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

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

2. Background

The subdivisions.

The Subject Properties were created via two separate subdivision processes.

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

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

The urban unincorporated community.

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

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

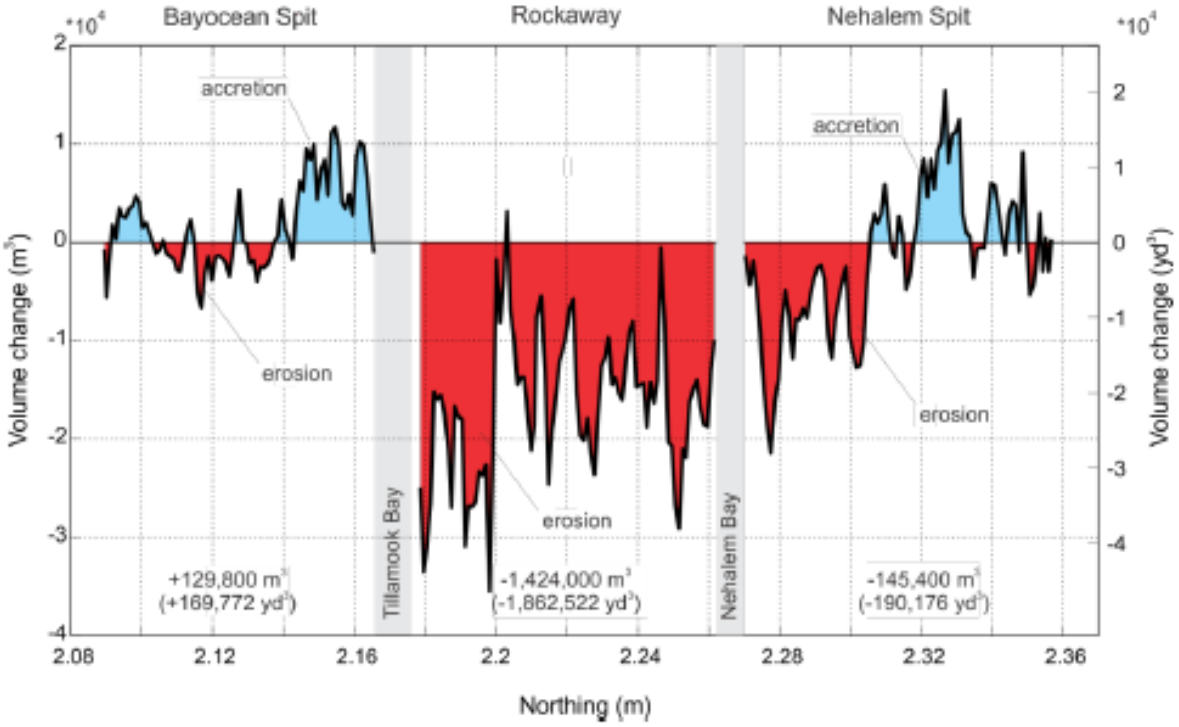
No one could seriously argue that firefighters were wrong to try to save the Oregon cities of Talent and Phoenix from the 2020 Alameda wildfire that enveloped them, because they lacked Goal 4 exceptions and so should have been allowed to return to forestland.

Historic beach conditions.

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

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

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



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

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

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

The proposed beachfront protective structure.

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

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

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

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

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

3. FAQs

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

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

Goal 18 has two fundamental purposes. They are:

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

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

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

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

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

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

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

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

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

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

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

The County can only apply adopted and acknowledged standards, criteria and policies that were in effect at the time of application to these applications. *Waveseer of Oregon LLC v. Deschutes County*, 308 Or App 494, 501 (2021); *Jones v. Willamette United Football Club*, 307 Or App 502, 514 (2020). Parties have called for the County to implement recently published state global climate change guidelines that are themselves not written as applicable requirements and do not by their terms apply here. This the County cannot do. Those documents provide no standards for any development proposal and only recommend future steps for local governments to take to develop programs that implement new guidance about dealing with climate change. While not directly applicable to this Application, granting approval here is consistent with the overarching policy reflected in those documents:

Oregon is already experiencing the effects of the changing climate and ocean. Statewide, air temperatures are rising, winter snow packs are decreasing, and ocean chemistry is shifting – these drivers have cascading effects, impacting both our communities and the environment on which we depend. Climate impacts are not expected to affect all regions and communities equally with underserved populations, rural communities, and fragile ecosystems disproportionally affected. Oregon must act now to reduce future impacts and address social and financial inequities.

State government has a duty to our communities, businesses, and future generations not only to reduce emission of Green House Gases (GHGs), the primary cause of climate and ocean change, but to take action to address the impacts of change across all sectors. The 2021 Oregon Climate Adaption Framework (Framework) urges the state to plan for and respond to these impacts in a transformative, coordinated, and efficient manner amplifying our impact and minimizing redundant effort. Doing so will allow Oregon to take advantage of emerging opportunities and harness existing state resources to protect people and the environment.

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

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

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

Is the proposed BPS located on the beach? NO.

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

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

Does the BPS adversely affect beach access? NO.

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

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

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

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

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

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

> "The proposed revetment will have no distinguishable adverse impacts to the shoreline since it will be located above the 1% annual chance of exceedance still water line, and the amount of sediment loss from the proposed structure is small relative to the active sediment volume within the surf zone. * * * [T]here will be no impacts to the surrounding properties (properties in the Rockaway Beach subregion) since it will not direct additional water to the surrounding property, increase wave heights/wave runup, or adversely impact the natural littoral drift of sediment along the coast. The northern and southern ends of the rock revetment will be angled into the bank to prevent flank erosion, and rocks will be placed to reduce the potential increases in velocities around the structure ends." May 27, 2021 Technical Memorandum.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The purpose of a built/developed exception is "to recognize and allow continuation of existing types of development in the exception area." OAR 660-004-0018(1). OAR 660-004-0025 provides the standards for a built/developed exception and allows the County to adopt an exception to a goal when the land subject to the exception is "physically developed to the extent that it is no longer available for uses allowed by the applicable goal." Whether land has been physically developed with uses not allowed by the applicable goal depends on the situation at the exception site. OAR 660-004-0025(2). Goal 18, IM 2 expressly prohibits "residential development" on active foredunes or other foredunes that are conditionally stable but subject to ocean undercutting or wave overtopping. When development on the Subject Properties was approved and built, the development was located on a conditionally stable foredune consistent with Goal 18. Since then, the dune has become subject to ocean undercutting and wave overtopping. In other words, the development now exists in a location where Goal 18, IM 2 prohibits it to be. Therefore, the Subject Properties are each physically developed with uses not allowed by Goal 18, IM 2 (*i.e.,* residential development located on an active foredune or other foredune that is conditionally stable but subject to ocean undercutting or wave overtopping).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Demonstrated Need Requirement

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

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

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

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

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

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

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

(1) Identify obligations:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The BPS must be at this location.

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

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

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

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

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

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

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

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

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

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

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

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

OAR 660-004-0020(2) Issues

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10. The proposal is entitled to a development permit.

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

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

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

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

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

11. Conclusion

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Thank you for your time and consideration.

Very truly yours,

Wendie L. Kellington

CC: Clients

Pine Beach Combined Application for Shoreline Protection

Tillamook County Planning Commission

May 27, 2021

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

KELLINGTON LAW GROUP, PC

Presentation organization

- Explain the subject properties;
- Explain why this request is unique;
- Explain the legal framework and why the requested exception is precautionary;
- Explain the proposed shoreline protection;
- Explain the dangers the properties face without the BPS;
- Explain how the exception standards are met.

Subject Properties

- For efficiency and avoid piecemeal approach, owners of 15 properties working together seek shoreline protection.
- Proposal is supported by the Pine Beach HOA
- Pine Beach Loop (Pine Beach Subdivision – first platted 1932; replatted 1994) and Ocean Blvd. (George Shand tracts platted 1950).
- South of Rockaway Beach (directly south of Shorewood RV Resort).
- North of Camp Magruder and Barview Jetty.
- Zoned CR-2 (Community Medium Density Residential) with Beach and Dune Overlay (BD) and Flood Hazard Overlay (FH); in Barview/Watseco/Twin Rocks unincorporated community.
- TL 2900 between the RV Park and other George Shand Tracts is supportive but not participating because they have an undisputed right to BPS - their house was built in 1974.
- Engineering analysis - proposed BPS does not adversely affect the TL 2900 property; ocean will continue to approach as now.

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Proposed Exception Area and Adjacent Lands Map

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Subject Properties

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General Principles to Keep in Mind –Proposal is Unique

- The proposed beachfront protective structure ("BPS") is entirely east of the line of established vegetation; Oregon Parks and Recreation Department (OPRD) has jurisdiction only up to the line of established vegetation.
- The BPS will be east of that. Therefore, OPRD is not involved.

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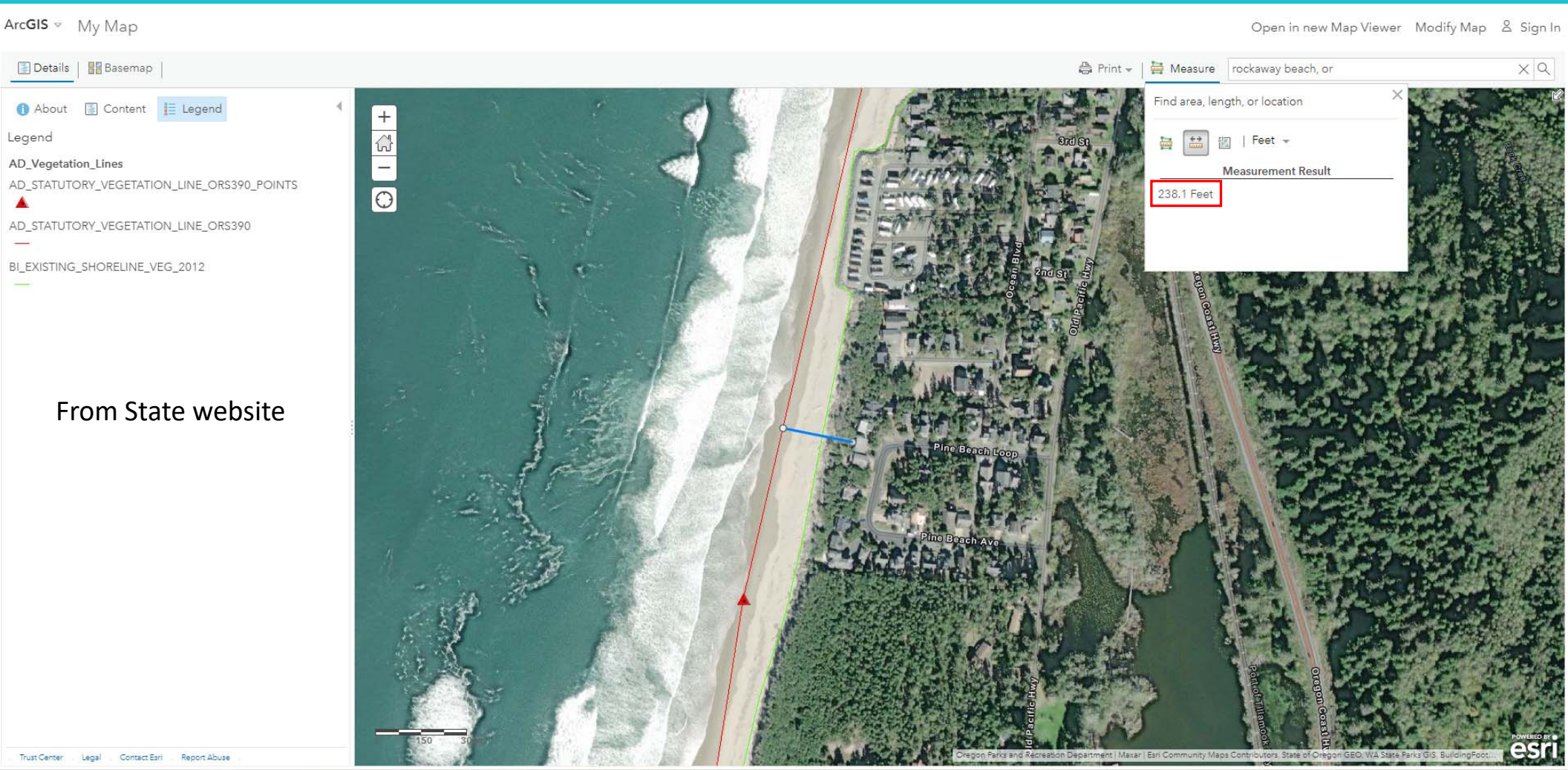

From State website

Goal 18 Exception Framework

- Goal 18, Implementation Measure (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 Measure 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. 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."

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The "(2) Above"

- Goal 18, "(2) above" says:

"Local 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."

- The requested exception will allow the existing residential development to be where it is, on a beach or dune subject to ocean undercutting and wave overtopping.
- Goal 18(5) says that residential development that is allowed to be on dunes subject to ocean overtopping/undercutting under an exception, is entitled to shoreline protection.

Why this Exception Request is Precautionary

- The residential development is already allowed to be on the dunes they are on, under an existing "built and committed" exception.
- The dunes they are on are now subject to ocean overtopping/undercutting.
- Therefore, it seems like these residences are entitled to shoreline protection under the express terms of Goal 18, because they have an exception allowing them to be where they are – on a dune subject to overtopping/undercutting.
- The odd thing is that when the subdivisions were established, and when the houses were built, there was no danger of ocean flooding or wave overtopping. The "(2) above" requirement did not apply.
- Now, that has changed (probably due to climate change and perhaps jetty changes also have a role). Now, the dunes are subject to ocean flooding and wave overtopping. So "(2) above" now applies.
- Query: Since all of the houses to be protected are allowed under existing built and committed exceptions allowing them to be exactly where they are - in fact they are on land zoned and planned for medium density residential use - doesn't that mean they already have an exception to Goal 18's "(2) above" that says without an exception no houses "shall" be allowed on dunes subject to ocean overtopping/undercutting?
- That should mean that the properties are in fact eligible for shoreline protection under Goal 18(5) because an "*exception to (2) above has been approved.*"

- That is the main reason why the requested Goal 18 exception is precautionary

  - In case the existing exception that allows the residential development to be where it is, is not good enough.

- The Applicants do not have the luxury of time for an academic debate on the fine points of Goal 18.

- Their homes are in significant danger.

Other Reasons why this Exception is Precautionary

- If the existing exception is not good enough under Goal 18, "(2) above" then the homes would be lawful nonconforming uses that are allowed to be continued and maintained in good repair (ORS 215.130(5)) and the proposed BPS should be allowed without a goal exception on that basis. But the homes are not nonconforming uses since they are consistent with their zoning. However, it may be the niceties of Goal 18 could drive that result.

- Property is already committed to residential development and the owners have the right to maintain their homes.

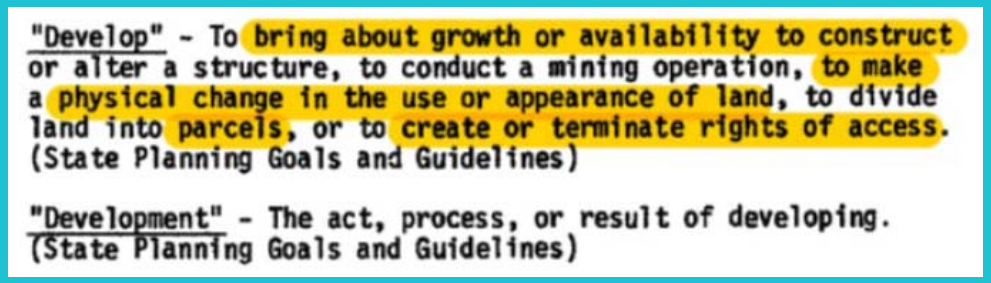
Final Reasons why a Goal 18 Exception seems Unnecessary

- The Goal 18 version in effect when the subdivisions were platted (until 1984) said shoreline protection was allowed on property “developed” on January 1, 1977;

- “developed” just meant the property had to be in a platted subdivision lot or partition parcel.

- All the properties were “developed” – platted subdivisions - under that rule:

Until 1984, the Goal 18 term “develop”, meant the following:



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

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

Pine Beach and Ocean Blvd. properties were “developed” – divided into subdivision lots to “bring about growth or availability to construct a structure” on January 1, 1977.

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Last reason that a new Goal 18 exception may be unnecessary

- The version of Goal 18 now in effect says shoreline protection is allowed for property that was "developed" on January 1, 1977 "means houses *** and vacant subdivision lots which are physically improved through construction of streets and provision of utilities to the lot ***."
- George Shand Tracts and Pine Beach subdivision meet this definition - water from the Watseco Water District predecessor was available and streets ran by GS tracts and Pine Beach subdivision lots, as you can see:

1932 Pine Beach Subdivision

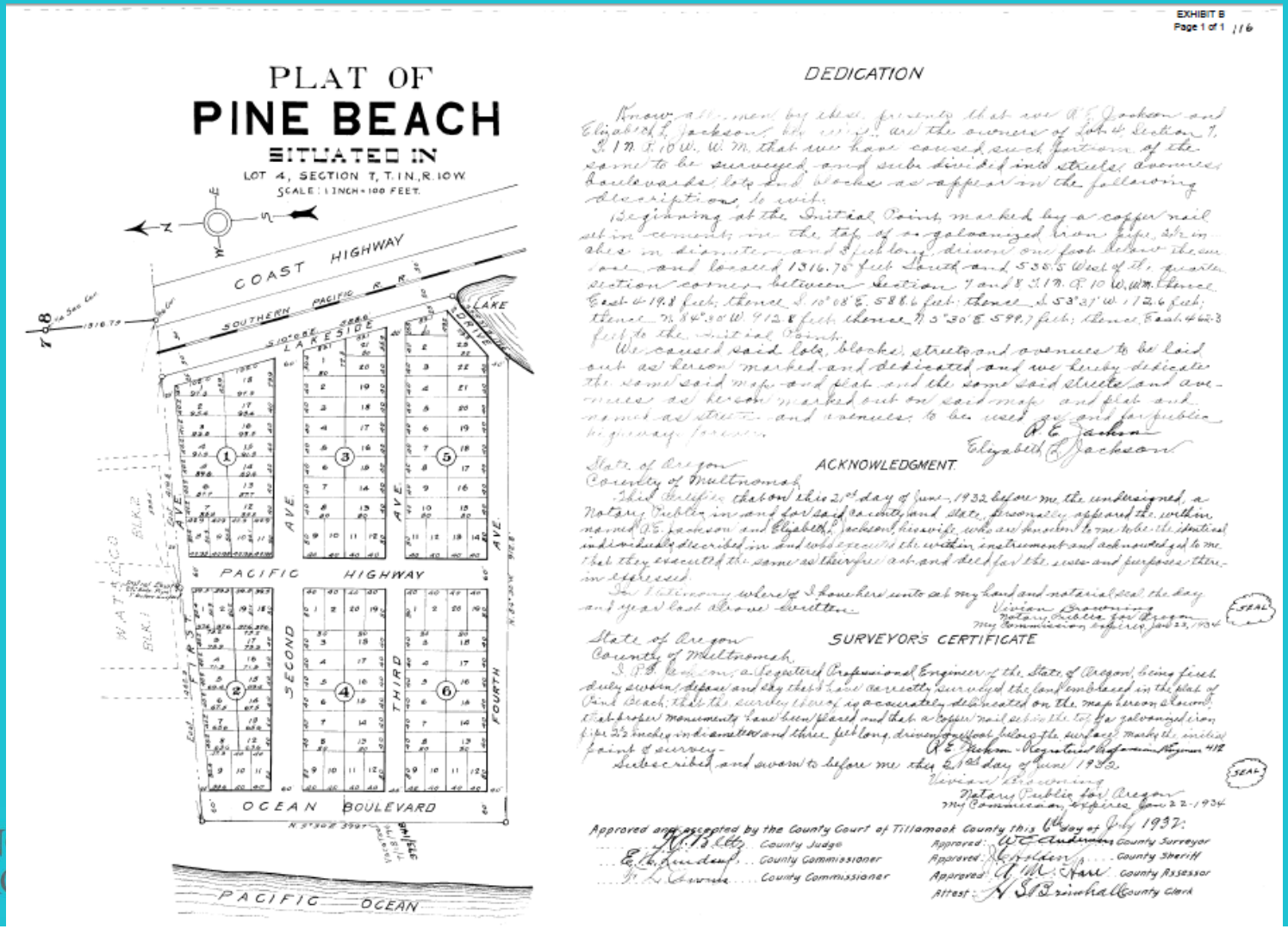


EXHIBIT B
Page 1 of 1 116

PLAT OF
PINE BEACH
SITUATED IN
LOT 4, SECTION 7, T. 1 N., R. 10 W.
SCALE: 1 INCH = 100 FEET.

COAST HIGHWAY
SOUTHERN PACIFIC R. R.
LAKE SHORE
LAKE AVE
PACIFIC HIGHWAY
SECOND AVE
THIRD AVE
FOURTH AVE
OCEAN BOULEVARD
PACIFIC OCEAN
BLK. 2
BLK. 1

DEDICATION

Know all men by these presents that we R E Jackson and Elizabeth L Jackson his wife are the owners of Lot 4 Section 7, T 1 N R 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 appear on 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, 2½ inches in diameter and 3 feet long, driven one foot below the surface and located 1316.70 feet South and 538.5 West of the quarter section corner between Section 7 and 8 T 1 N R 10 W W.M. thence East 619.8 feet; thence S. 10°08' E. 586.6 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 hereon marked and dedicated and we hereby dedicate the same said map and plat and the same said streets and avenues as hereon marked out on said map and plat and names as streets and avenues to be used for and for public highway forever.

R E Jackson
Elizabeth L Jackson

ACKNOWLEDGMENT.

State of Oregon
County of Multnomah

This Certifies that on this 2nd day of June 1932 before me the undersigned, a Notary Public in and for said county and state, personally appeared the within named R E Jackson and Elizabeth L Jackson his wife, who are known to me to be the identical individuals 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.

Vivian Browning
Notary Public for Oregon
My Commission expires June 22, 1934

(SEAL)

SURVEYOR'S CERTIFICATE

State of Oregon
County of Multnomah

I P E Jackson, 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 thereof is accurately delineated on the map hereon shown; that proper monuments have been placed and that a copper nail at the top of a galvanized iron pipe 2½ inches in diameter and three feet long, driven one foot below the surface, marks the initial point of survey.

R E Jackson Registered Engineer No. 418

Subscribed and sworn to before me this 21st day of June 1932.

Vivian Browning
Notary Public for Oregon
My Commission expires June 22-1934

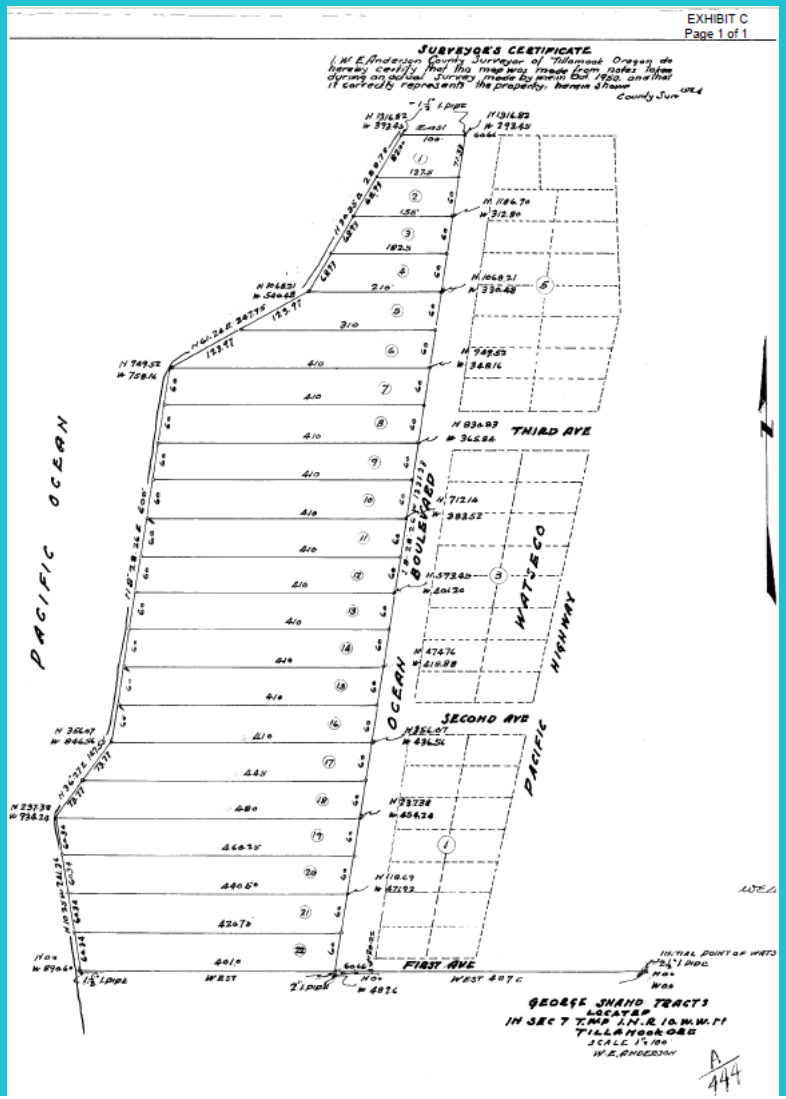
(SEAL)

Approved and accepted by the County Court of Tillamook County this 6th day of July 1932:

H. B. Latty ... County Judge
E. L. Lundeen ... County Commissioner
H. L. Edwards ... County Commissioner

Approved: W. C. Anderson ... County Surveyor
Approved: R. Golden ... County Sheriff
Approved: A. M. Starr ... County Assessor
Attest: H. S. Brimhall ... County Clerk

1950 George Shand Tracts (Ocean Blvd. properties)



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Potential Planning Commission Actions

- The Planning Commission can recommend approval of the Goal 18 exception

AND

- The Planning Commission can find in the alternative that no Goal 18 exception is required because:
  - ✓The existing built and committed exception is an adequate exception to Goal 18 "2 above"
  - ✓The properties were subdivisions that met the definition of "developed" under Goal 18 in effect until 1984;
  - ✓The properties meet the current definition of developed in the current Goal 18 rule;
  - ✓The houses are allowed to be maintained under their existing built and committed exception;
  - ✓The houses have at least a nonconforming use right under ORS 215.130(5) to continue and be maintained with shoreline protection.

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Test in Two Recent Coos County and City of Coos Bay LUBA Cases About Goal Exceptions Needing to be based on Exceptional Circumstances, is Met

- Approving the requested exception does not set a precedent for BPS's everywhere else.

- There is a unique situation here - when the subdivisions were platted and the houses were built the ocean had for 70 years or more been PROGRADING. No one was rolling the dice.

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This Request is Unique

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

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Subject properties' developers did everything right

- George Shand Tracts (Ocean Blvd. properties) platted in 1950.
- Pine Beach replatted in 1994.
- Homes seeking BPS here were constructed beginning in 1989.
- When constructed, there had been a **70-year period of ocean progration – depositing of sand and adding land.**

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map inclusion areas of OSC, that are east of the setback line at 180 feet." Mr. Reckendorf states further: "No active foredune occurs in the reach today, and erosion has removed essentially all of any prior conditionally stable foredune." Mr. Reckendorf concludes that the Westerly portion of the property where no development is proposed is classified as open dune sand conditionally stable (OSC). Mr. Reckendorf further concludes that the portion of the property where development is proposed is within a younger stabilized dune (YSD), according to the SCS classification system. The dune classification of

HISTORY OF ACCRETION AND EROSION

A review of CoE and OSHD aerial photos for this area dated 1939, 1945, 1953, 1960, 1967, 1970, 1973, 1978, 1980 and 1984 show a steady increase in vegetation over the entire property. Copies of those aerial photos are included in the accompanying flood hazard study by David Simpson. These maps have also been previously submitted to Tillamook County and are available in the PINE BEACH REPLAT file. Also previously submitted are clear mylar overlays at the scales of 1"=100' for the 1967 photo and 1"=200' for the other OSHD photos. The most Westerly line of vegetation has moved Westward since at least 1939 as described by Frank Reckendorf (1/29/93), David Simpson (9/93) and Paul See (6/2/94). The original plat of PINE BEACH, dated 1932, shows the ocean beach to be located at least 320 feet East of where it is today. A copy of the original plat map for PINE BEACH have been previously submitted to Tillamook County and is available in the PINE BEACH REPLAT file.

Evidence of relatively active beach erosion is presented and discussed by John Marra (12/92), by David Simpson (9/93), by Frank Reckendorf (1/29/93) and by Paul See (6/2/94). Each of these individuals describes the erosion process as being cyclical with an overall net accretionary trend in this area. The winter of 1993-94 showed a net buildup in the sand on the beach which accumulated at the foreslope of the remnant of the foredune.

Marra (12/92), by David Simpson (9/93), by Frank Reckendorf (1/29/93) and by Paul See (6/2/94). Each of these individuals describes the erosion process as being cyclical with an overall net accretionary trend in this area. The winter of 1993-94 showed a net buildup in the sand on the beach which accumulated at the foreslope of the remnant of the foredune.

DISCUSSION OF FLOOD HAZARDS

Potential hazards due to ocean flooding have recently been studied, calculated and identified by a new flood hazard study by David Simpson, Coastal Engineer, dated September 1993. This new study was made at the request of the

PAUL D. SEE AND ASSOCIATES, INC.
300 SURF PINES ROAD
SEASIDE, OREGON 97138
738-5869

June 1, 1994 #1064 ref 8022

Ronald G. Larson
Handforth Larson and Barrett, Inc.
P. O. Box 219
Manzanita, OR 97130

RE: Geologic inspection, Pine Beach Development, Watseco area. (Farr)
T1N, R10W, Sec 7DA

Notwithstanding the periodic erosion by storm surf, records confirm that this segment of shoreline has been prograding since at least 1939. Because of the transcient and unpredictable episodes of regression, no consistent rate of accretion can be applied. **However, between 1917 and this date, the shoreline has accreted westerly at least 1000 feet.** Cooper (1) depicts an average of 300 meters of post-jetty accretion between 1917 and 1939. Stembridge (2) notes that the least prograding between the Nehalem River and Tillamook Bay totals more than 30 feet between 1939 and 1975.

apparently fresh local field of scattered drift logs over a 200+/- foot wide strip in 1967. Pine, willow, and beach grass vegetation had gradually obscured these logs from aerial view by 1984, but field inspection confirms their presence to this date. Periodic erosion, particularly during and following the 1982-83 El Nino event, removed several tens of feet of the dune frontage, exposing a dense tangle of logs weathered from the dune front. All present storm-tossed logs on the vegetated surface are old and decayed, however, having apparently been deposited prior to 1967.

Notwithstanding the periodic erosion by storm surf, records confirm that this segment of shoreline has been prograding since at least 1939. Because of the transcient and unpredictable episodes of regression, no consistent rate of accretion can be applied. However, between 1917 and this date, the shoreline has accreted westerly at least 1000 feet. Cooper (1) depicts an average of 300 meters of post-jetty accretion between 1917 and 1939. Stembridge (2) notes that the least prograding between the Nehalem River and Tillamook Bay totals more than 30 feet between 1939 and 1975.

The surface profile in this area includes a relatively low foredune, only

1.

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See/HLBI
6/1/94

slightly higher than the hummocky, vegetated plain to its east. The area has obviously not experienced a net regression in the past 50 years, although the presence of fresh appearing logs in 1967 is evidence of storm wash-over at some point prior to that date.

The property is well vegetated with beach pines and willow and other upland shrubs and grasses. This cover has obviously developed in a few decades, and the shoreline remains at some risk from severe episodic storm wave overtopping due to its elevation. However, revised Velocity (storm wave) flooding limits have been modelled by Simpson (3), indicating an easterly limit of Velocity flooding at 200 feet from the beach, or well short (70 to 130 feet west) of the proposed construction setback, established at 237 feet east of the State Coastal Zone line.

In conclusion, the property appears to be relatively safe from long-term net erosion and shoreline regression. Current modelling of Velocity flooding will not impact the area proposed for development. The Tillamook Bay north jetty will continue to present a barrier to southerly offshore sand transport, causing a continued net accretion along this beach. No evidence exists to suggest reversal of a trend that has continued for more than 70 years.

the foreseeable future. The most recent event seems to have occurred about the year 1690. Current projections estimate a 20 to 30 percent chance of a magnitude 8 or greater regional quake in the next 50 years.

Coastal dunefields such as this are at risk from liquefaction of saturated sands at depth which can cause differential foundation settlement during strong seismic tremors, as well as impact from an accompanying tsunami. Whitmore (4) has calculated an initial tsunami wave height of 12.63 feet along the Rockaway Beach area for an 8.0 magnitude Cascadia earthquake, with an additional 18.17 feet allowance for error, diurnal tide maximum, and 2.2 feet of coseismic subsidence, for an overall runup potential of 30.8 feet under worst-case conditions.

Risks associated with great Cascadia earthquakes must naturally be considered in light of the long and varied intervals between events. While our understanding of Northwest seismicity is expanding rapidly, the timing or magnitude of future events can only be broadly estimated.

Observations and recommendations incorporated herein are the result of

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EXHIBIT M
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LB & Associates
INCORPORATED

Box 219 • 160 Laneda Ave.
Arista, OR 97130

August 25, 1995

RECEIV
AUG 2 9 1995

Mr. and Mrs. Don Linker
15917 SE Arista Drive
Milwaukie, OR 97267

RE: Addendum #1 to Beach and Dune Hazard Report, Tax Lots 3100 and 3104, 1N 10 7DA, Watseco, Oregon.

Dear Mr. and Mrs. Linker:

C. History of Erosion and Accretion:

The dunes on the subject property have shown a net accretion of sand over the past 70 years as evidenced shown by aerial photographs over that time frame. There has also been a corresponding increase in natural vegetation cover in that time. There were fresh logs deposited in the photographs from 1967 which indicate that there was an extreme wash-over just prior to that date. In the five years since the original report, there has been a net accretion of approximately 0.6 feet.

The Westerly portion of the property is classified as an Active Foredune. The crest of this dune is approximately 240' West of the Easterly property line with an elevation of approximately 23.1'. The Easterly portion of the property is classified as an Older Stabilized Dune.

B. History of Dune Stabilization:
There is no history of any dune stabilization projects.

C. History of Erosion and Accretion:
The dunes on the subject property have shown a net accretion of sand over the past 70 years as evidenced shown by aerial photographs over that time frame. There has also been a corresponding increase in natural vegetation cover in that time. There were fresh logs deposited in the photographs from 1967 which indicate that there was an extreme wash-over just prior to that date. In the five years since the original report, there has been a net accretion of approximately 0.6 feet.

Page 1 of 6

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FINDINGS AND HAZARDS ANALYSIS

The primary relevant hazard on this site is the movement of sand, both accretion and erosion. In addition to this hazard there is the hazard of flooding and earthquake. Mitigation of these hazards is discussed herein.

Erosion and Accretion: The dune in this area has been accumulating sand at least since 1939 and shows no indication of changing that pattern soon. There have been isolated incidents of winter storm erosion. There is no guarantee that the accretion patterns will continue as is so it is important to the property owner to monitor the condition of the dunes to detect any changes. In order to monitor and document the movement of sand on the subject property, the owner, and all future owners, should photograph the property from the ocean side at least once every six months. These photographs can be compared to determine the extent of sand movement and to determine if any additional mitigation measures are

Erosion and Accretion: The dune in this area has been accumulating sand at least since 1939 and shows no indication of changing that pattern soon. There have been isolated incidents of winter storm erosion. There is no guarantee that the accretion patterns will continue as is so it is important to the property owner to monitor the condition of the dunes to detect any changes. In order to monitor and document the movement of sand on the subject property, the owner, and all future owners, should photograph the property from the ocean side at least once every six months. These photographs can be compared to determine the extent of sand movement and to determine if any additional mitigation measures are necessary.

property extended about 190 feet East of the Ocean Shores Boundary when the foredune was subject to erosion under computer modeling.

Earthquake: Mr. See comments in the original report of the potential regional hazard of severe earthquakes. The most serious such earthquake, for which evidence goes back about 7700 years, is estimated to have been a magnitude of about 8 or greater on the Richter scale. Current projections estimate a 30 percent chance of a magnitude 8 or greater regional earthquake in the next 50 years. Building code requirements for the State of Oregon do not presently address earthquakes of this magnitude, but there are recognized construction methods that can be used by contractors for owners wishing a degree of added protection in less than maximum earthquakes. In addition, strong seismic acceleration can be expected to result in liquefaction of weak saturated sediments, allowing for abrupt settlement of foundations. A pile foundation would not necessarily protect against damage by liquefaction of saturated ground in severe quakes.

The State of Oregon Department of Geology and Mineral Industries projects the maximum tsunami run-up from various possible earthquake events. The worst cast scenario would involve a M8.8 Cascadia Earthquake and could result in a wave 18 feet high with a total run-up of 39 feet. No practical engineering measures could protect a frame residence against this type of event.

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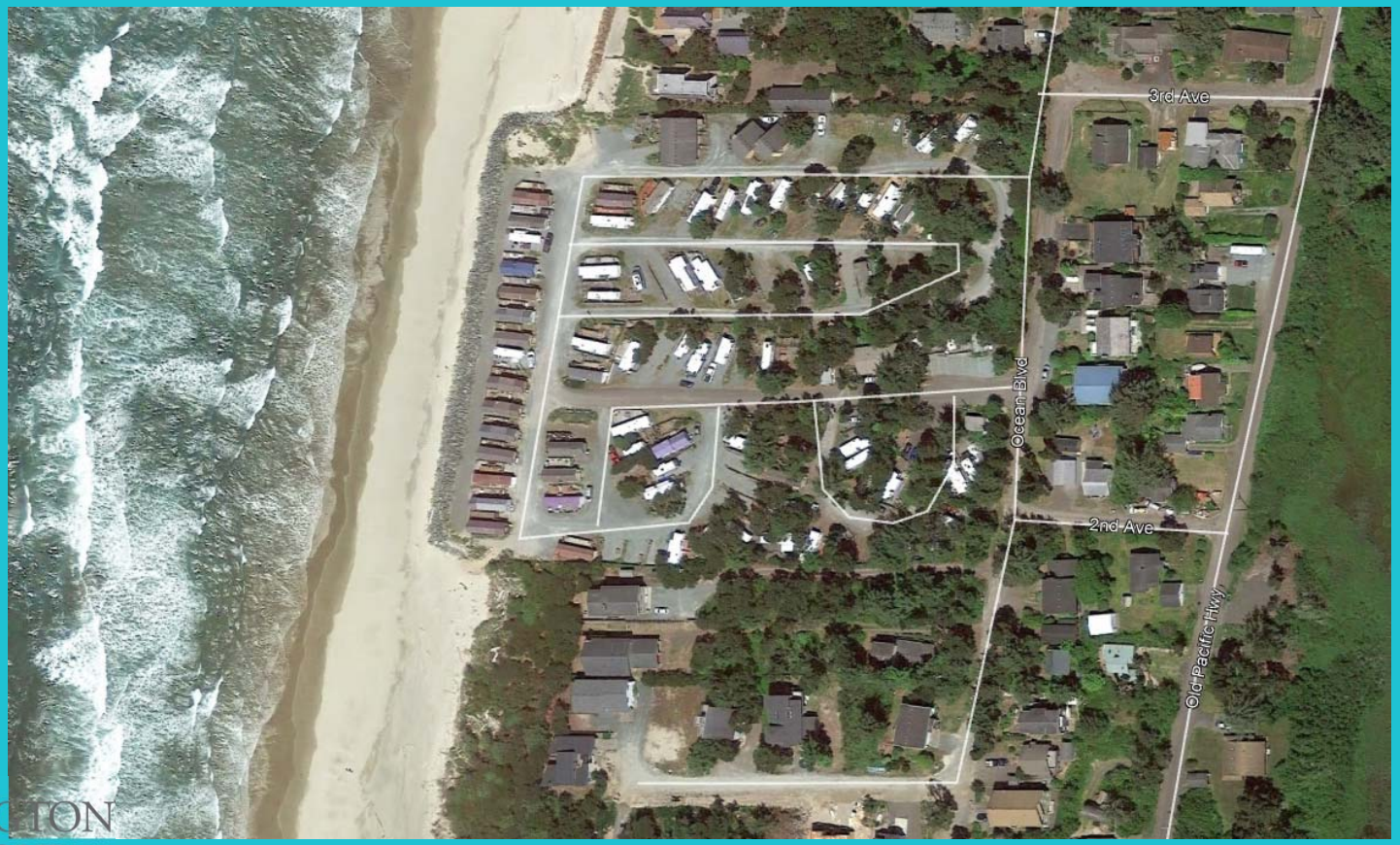
The Details of the Proposed BPS – the proposed BPS will be directly south of Shorewood RV Resort that is protected with rip rap.



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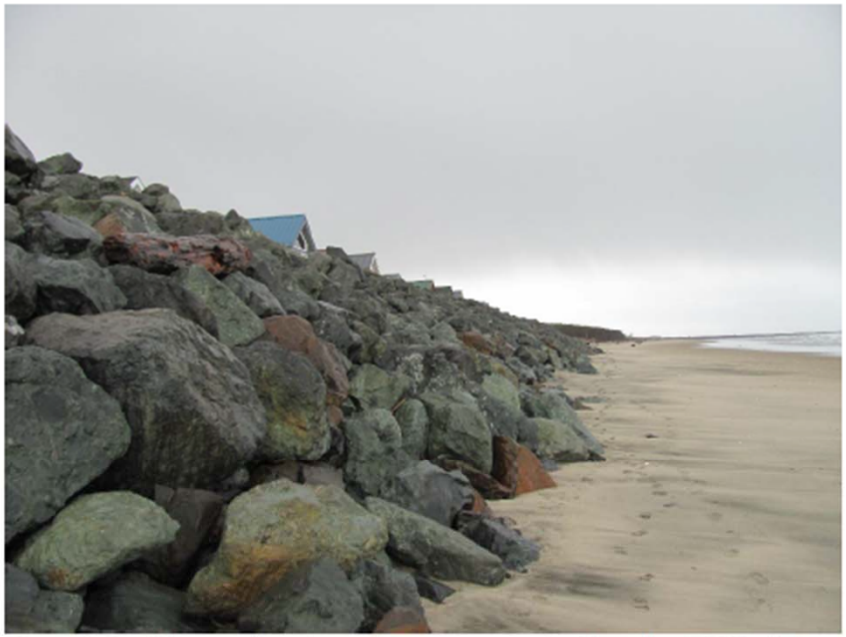

Photo 1. Looking south at the rock revetment at the Shoreline RV Park located about 900 feet north of the Pine Beach subdivision.

Photo 2. Close-up of rock revetment at the Shoreline RV Park located about 900 feet north of the Pine Beach subdivision.

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

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

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Revetment Details

- BPS will be entirely on private property → backyards of Pine Beach and Ocean Blvd. homes
- 10’ landward of existing vegetation line
- 185’ landward of Oregon Ocean Shore Line (aka statutory vegetation line (“SVL”)
- Approx. size: 6’ thick 30’ wide rock revetment; maximum height 3’ above ground level
- Covered in excavated sand, replanted with native beach grasses
- Maintains existing beach accesses

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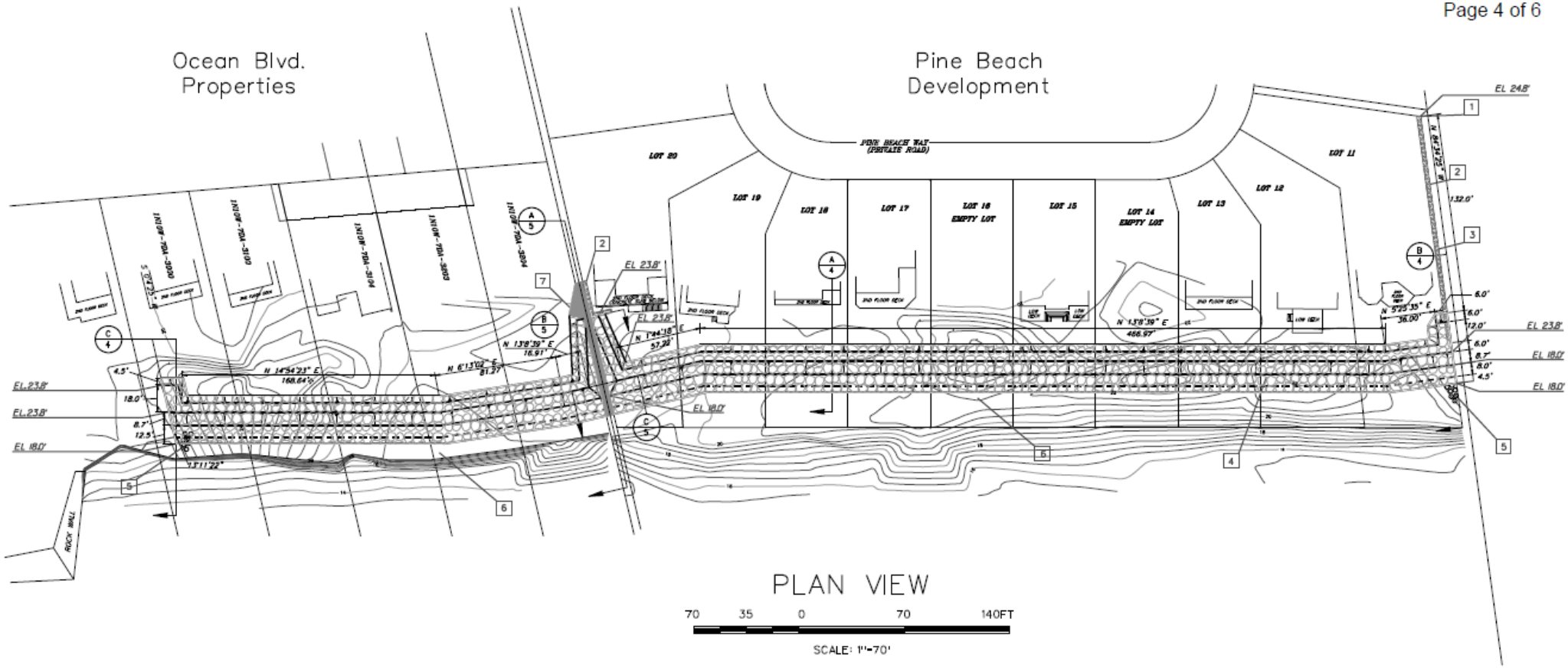
Ocean Blvd.
Properties
Pine Beach
Development
PINE BEACH WAY
(PRIVATE ROAD)
LOT 20
LOT 19
LOT 18
LOT 17
LOT 16
EMPTY LOT
LOT 15
LOT 14
EMPTY LOT
LOT 13
LOT 12
LOT 11
EL 23.8'
EL 18.0'
EL 24.8'
ROCK WALL
PLAN VIEW
70 35 0 70 140FT
SCALE: 1"=70'

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

- Retrograding beach since 1994
- King Tides in 2020 and 2021 reached oceanfront homes
- Continued threat of flooding
- At risk is not only the homes, but also the water and sewer infrastructure that serves them.
- BPS protects the public and private investments in the area and avoids significant environmental hard from the potential for ocean broken and claimed sewer and water pipes.
- Water and sewer district costs of repair may be beyond the capacity of the districts to repair or at least would cause significant strain those district's resources.

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Properties and infrastructure are now in imminent peril

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

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

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

The problem explained by graphics

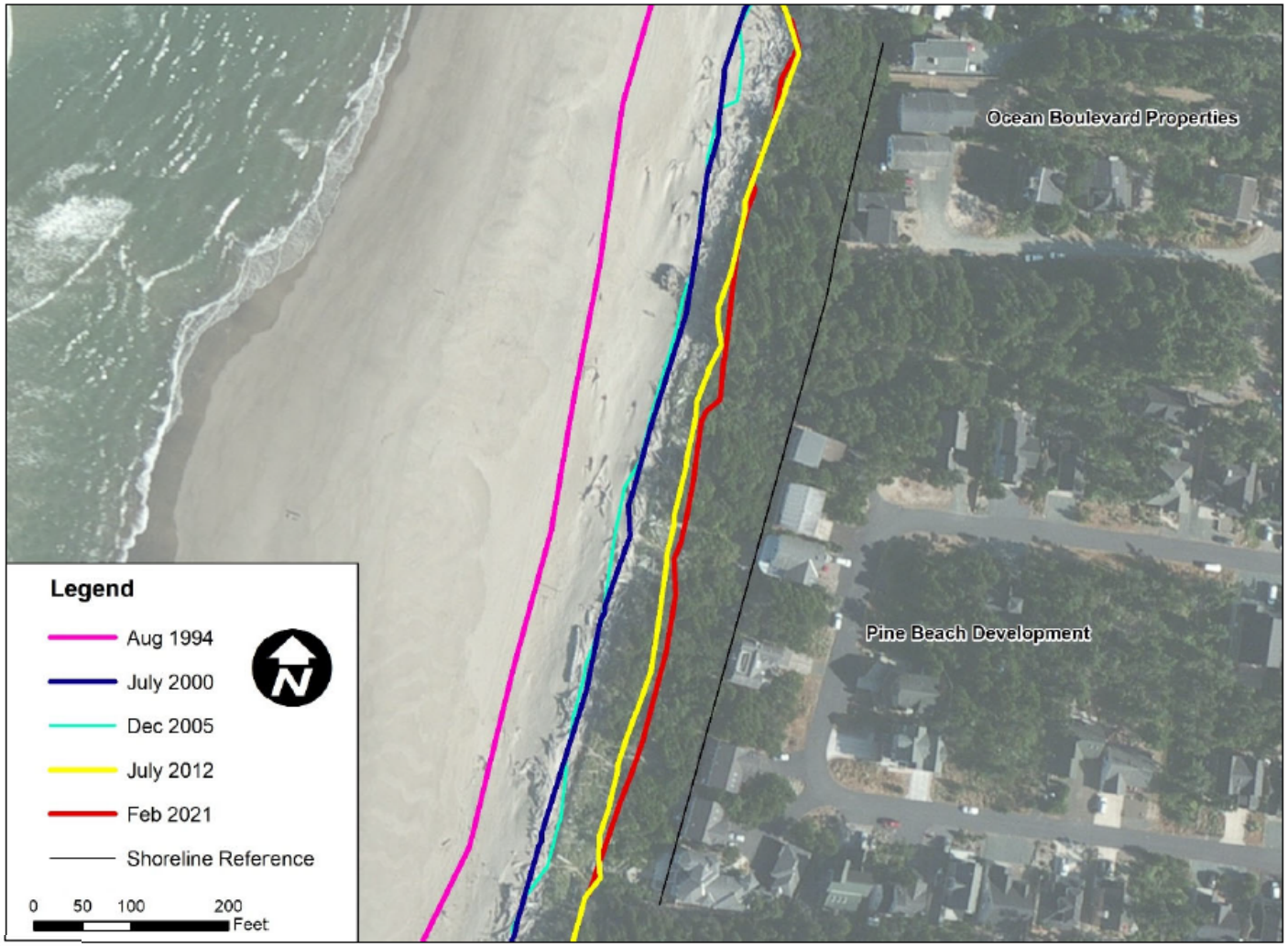

Figure 2. Top of shoreline for the period between 1994 and 2021

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1994

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Beach Erosion History – Google Earth

1994

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2000

2000

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8/2005

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August 2005

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2011

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2011

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2014

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2014

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2016

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2016

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2017

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2017

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2020

2020

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January 12, 2021 Tides Flooding Pine Beach Properties

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Properties and infrastructure are now in imminent peril

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

Real Market Value Based on 2020 County Tax Assessment Reports

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

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

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The Goal 18 Exception Request

- Applicants seek a "Committed" Exception (ORS 197.732(2)(b); OAR 660-004-0028)
  - ➢ The proposal meets all relevant state standards and criteria for a "committed" exception

    and seeks a
- A "Reasons" Exception (ORS 197.732(2)(c); OAR 660-004-0020–22)
  - ➢ The proposal meets all relevant state standards and criteria for a "committed" exception "reasons" exception.
  - ➢ NOTE: Not seeking a "catch all" reasons exception at issue in the two new Coos County LUBA cases.

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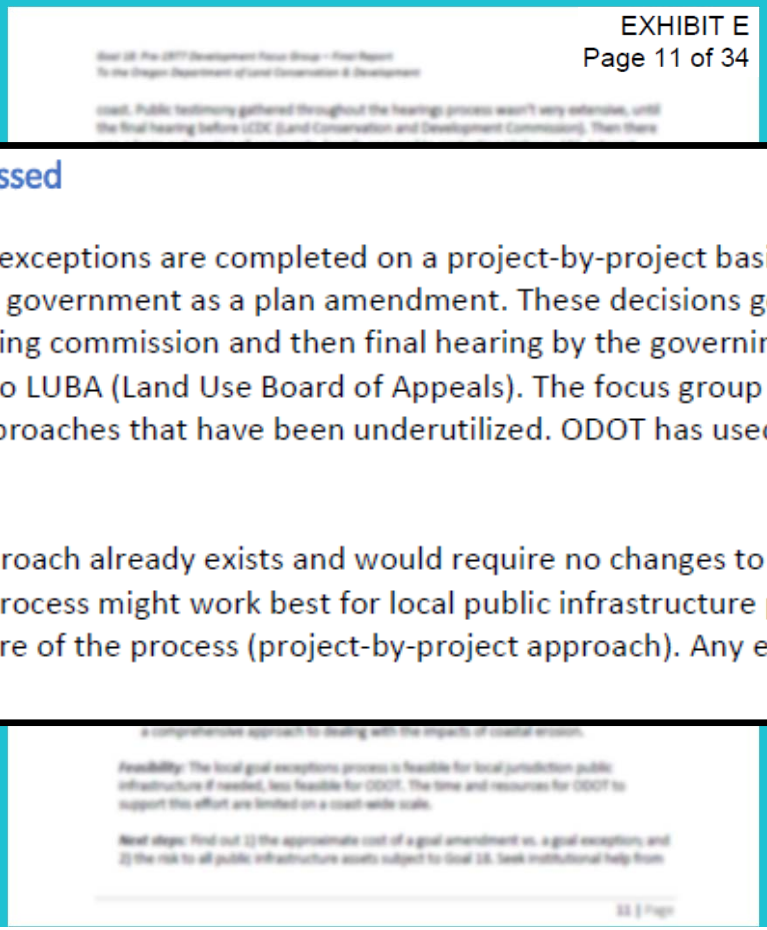
- 2019 DLCD Goal 18 Focus Group recognized that Goal 18 exception process exists and that anyone can pursue this option.



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Policy Options Discussed

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

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

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Committed Exception

- "Committed" Exception (ORS 197.732(2)(b)):

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

  *"(b) The land subject to the exception is **irrevocably committed** as described by Land Conservation and Development 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**[.]"*

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Committed Exception Standards

- (OAR 660-004-0028):

*"(2) Whether land is **irrevocably committed** depends on the relationship between the exception area and the lands adjacent to it. The findings for a committed exception therefore must address the following:*

"(a) The characteristics of the exception area;

"(b) The characteristics of the adjacent lands;

"(c) The relationship between the exception area and the lands adjacent to it; and

"(d) The other relevant factors set forth in OAR 660-004-0028(6)."

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Standards for Committed Exception

- Standards for "Committed" Exception (OAR 660-004-0028):

*"(3) Whether uses or activities allowed by an applicable goal are **impracticable** * * * shall be determined through consideration of factors set forth in this rule[.] * * * It is the purpose of this rule to permit irrevocably committed exceptions where justified so as to provide **flexibility** in the application of broad resource protection goals. It shall **not** be required that local governments demonstrate that every use allowed by the applicable goal is '**impossible**.'"*

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Standards for Committed Exception

- Standards for "Committed" Exception (OAR 660-004-0028):

"(6) Findings of fact for a committed exception shall address the following factors:

"(a) Existing adjacent uses;

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

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

" * *"*

"(d) Neighborhood and regional characteristics;

*"(e) Natural or man-made features or other impediments separating the exception area from adjacent resource land. * * *;*

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

"(g) Other relevant factors.

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BPS meets Exception Standards

- Subject properties are **irrevocably committed** to urban levels of residential use.
- Area proposed for exception can be put to no other practical use than residential use and to protect the existing homes and infrastructure – to include public sewer and water facilities.
- The properties and area are zoned for residential use, in unacknowledged unincorporated community. It is not "practical" to demand the area – homes and infrastructure - be wiped out by ocean action.

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BPS Meets Committed Exception Standards

"(a) Existing adjacent uses; – residential – in peril without exception

"(b) Existing public facilities and services (water and sewer lines, etc.) – existing public infrastructure investment in peril, without requested exception.

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

" * * Lot size and ownership patterns are consistent with their existing built and committed exception zoning.*

"(d) Neighborhood and regional characteristics; – the community is Barview/Watseco/Twin Rocks and its character is outlined in the county plan as a vibrant unincorporated community to be protected and preserved.

*"(e) Natural or man-made features or other impediments separating the exception area from adjacent resource land. * * *; – existing goal exceptions already decided the land is not suitable for resource use.*

"(f) Physical development according to OAR 660-004-0025; and – The properties are physically developed or are entitled to be physically developed at urban levels, under their existing zoning.

"(g) Other relevant factors. – The developer did everything right – at the time of development, the land was prograding for 70+ years.

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Reasons Exception Standards

- "Reasons" Exception (ORS 197.732(2)(c)):

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

  "(c) The following standards are met:

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

  "(B) Areas that no not require a new exception cannot reasonably accommodate the use;

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

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

Reasons Exception Standards – Specific to Goal 18

- Goal 18-Specific Standards for "Reasons" Exception (OAR 660-004-0022):

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

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

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

"(c) The exceptions requirements of OAR 660-004-0020 are met."

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BPS Meets Reasons Exception Standards

"(A) Reasons justify why the state policy embodied in the applicable goals should not apply; – property is subject to existing exception that already allows the homes; property owners did not roll the dice. Significant public and private investment at stake. No harm to public interest, BPS not on the beach. Goal 18 purposes met. Goal 18 would only prohibit the BPS in the first place without an exception if the property were not already developed. Property developed in an acknowledged unincorporated community. Small Goal 18 variation if at all.

"(B) Areas that no not require a new exception cannot reasonably accommodate the use; – BPS must be located where it is proposed in order to protect the threatened homes and infrastructure it's designed to protect; no other location can serve this site-specific purpose.

"(C) The long term environmental, economic, social and energy consequences resulting from the use of the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and – EESE impacts will not be more adverse than if locating BPS elsewhere; BPS will reduce adverse environmental impact of coastal erosion/destruction of native vegetation; will provide economic benefit – protecting investment in properties/homes/infrastructure; will provide social benefit – protect human life and property from natural hazards; will maintain/improve beach accesses and enjoyment of beach. Avoids environmental devastation of broken sewer and water infrastructure if not protected.

"(D) The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts." – uses of property will remain residential, consistent with adjacent uses and residential zoning; will blend into shoreline; will not deflect wave energy onto or cause flooding on adjacent properties.

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BPS Meets Reasons Exception 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; - BPS designed to protect it from geologic hazards, wind erosion, undercutting ocean flooding and storm waves; launchable toe to prevent undermining by ocean scour; ecology blocks ensure that wave runup does not flow around structure and flood homes; replating with native vegetation will minimize erosion and increase stability.

"(b) The use is designed to minimize adverse environmental effects; and – BPS will have no impact on adjacent shorelines; covered in sand and replanted with native vegetation for natural appearance; will be monitored and periodically resanded/replanted; will have environmental benefit – prevent coastal erosion and protect native coastal vegetation/habitat.

"(c) The exceptions requirements of OAR 660-004-0020 are met." – meets requirements of OAR 660-004-0020 (previous slide).

Goal 18 Standards for BPS

- (a) visual impacts are minimized; BPS to be covered in sand and replanted and maintained.
- (b) necessary access to the beach is maintained; Existing beach access is maintained and improved
- (c) negative impacts on adjacent property are minimized; Engineering report establishes that the BPS will not cause negative impacts on adjacent property; BPS avoids harm to adjacent property if their needed infrastructure destroyed by wave action attacking beachfront.
- (d) long-term or recurring costs to the public are avoided. BPS avoids long term or recurring costs to the public associated with FEMA losses; public infrastructure losses; losses of needed access to highway.

Comprehensive Plan Amendment

- Proposal is consistent with Statewide Planning Goals.
  - *Key Goals:*
    - Goal 7 (Hazards): "*To protect people and property from natural hazards.* - *BPS will protect existing development and persons from natural hazards that did not exist and were not anticipated at time of development which had seen trend of 70+ years of beach progration.*
    - 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. * * * 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."* - *Pine Beach and surrounding area has an approved exception to Goal 17. Regardless, the proposal complies w/Goal 17. Goal 17, (5) says that where shown to be necessary, structural solutions to erosion and flooding problems shall be designed to minimize adverse impacts on water currents, erosion and accretion patterns. Proposed BPS is a necessary structural solution to erosion and flooding that is designed to minimize adverse impacts (if any) to water currents, erosion and accretion patterns and will have no significant adverse impact on surrounding properties.*

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Consistent with Statewide Planning Goals Continued

- 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." BPS protects existing framework of public facilities in Barview/Watseco/Twin Rocks unincorporated community
- Goal 18: "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." Proposal protects approved development including public infrastructure, on coastal dune area. It reduces hazards to human life and property.

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Comprehensive Plan Policies

- Proposal is consistent with Tillamook County Comprehensive Plan.
- *Key Points:*
  - County Goal 7 (Hazards Element) – Policy 2.4(a) Erosion - *Specifically allows riprap to stabilize shorelines as preventative or remedial action.*
  - County Goal 18 (Beaches and Dunes Element) – Policy 2.4(a):

"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; - BPS is use proposed and will not have adverse effects on site or adjacent areas.

"(b) The temporary and permanent stabilization programs and the planned maintenance of new and existing vegetation; - BPS is a permanent stabilization program; will be overlain with sand, replanted with native vegetation, will be regularly inspected and maintained by property owners and resanded/replanted when necessary.

"(c) Methods for protecting the surrounding area from any adverse effects of the development; and, - Proposed BPS is designed not to cause adverse effects to surrounding properties; launchable toe; natural appearance; will not cause increase in FEMA total water levels near the BPS.

"(d) Hazards to life, public and private property, and the natural environment which may be caused by the proposed use." – Purpose of BPS is to protect life, public and private property and the natural environment from continued coastal erosion hazard.

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Comprehensive Plan

- County Goal 18, Policy 2.4(b): *"Development in beach and dune areas shall comply with the requirements of the Flood Hazard Overlay zone."* – *BPS complies with requirements of FH zone.*
- County Goal 18, Policy 2.4(c): *"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 engineer's technical memo; sand will be retained during construction and overlain atop the BPS; BPS will be immediately revegetated and monitored.*
- County Goal 18, Section 4.2 recognizes: *"In cases of severe erosion, it may be necessary to use some means of structural shoreline stabilization such as a revement or seawall. These structures, when properly designed, can withstand the force of ocean waves and protect the shoreline behind them. * * * Revetments, especially riprap revetments, have the least potential for visual disruption because they may be covered by summer sand build-up."* – *Proposed BPS is rip rap, which will be covered in sand and replanted with native vegetation – least potential for visual disruption.*

Comprehensive Plan
Barview/Watseco/Twin Rocks Community Plan

- Goal 1 - Barview/Watseco/Twin Rocks will be an attractive, safe and clean small town. The proposed BPS is designed to address a significant safety threat for this community.
- Goal 2: Barview/Watseco/Twin Rocks will have safe drinking water and sanitation. The proposed BPS is designed to protect the drinking water and sanitation infrastructure from destruction due to waive action.
- Buildable Lands Inventory "the Buildable Lands Inventory determined that 798 potential residential lots could be developed in Barview/Watseco/Twin Rocks." The proposed BPS helps to ensure that the area is able to deliver the anticipated safe residential uses as the community plan and BLI anticipate.
- Community Plan zoning "SECTION 3.011: COMMUNITY SINGLE FAMILY RESIDENTIAL ZONE (CSFR)
- (1) PURPOSE: The purpose of the CSFR zone is to provide for the creation and use of
- small-acreage residential homesites. Land that is suitable for Community Single Family
- Residential use is located within an unincorporated community boundary and is
- physically capable of having homesites. The proposed BPS helps to ensure this policy is realized.

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Tillamook County Land Use Ordinance

- Community Medium Density Urban Residential Zone (CR-2) (TCLUO 3.014):
  - ***USES PERMITTED OUTRIGHT:***
    - *"(a) One or two-family dwelling."*
- The proposal is accessory to permitted residential uses and essential for their survival.
- No prohibitions on BPS in CR-2 zone.
- *See* page 77 of applicants' narrative.

Tillamook County Land Use Ordinance

- Flood Hazard Overlay (FH) (TCLUO 3.510):
  - The proposal meets all development standards in FH zone.
  - *See* pages 78-87 of applicants' narrative.

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Tillamook County Land Use Ordinance

- Beach and Dune Overlay (BD) (TCLUO 3.530):
  - The proposal meets all development standards in BD zone.
  - *See* pages 87-93 of applicants' narrative.

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Summary

- Applicants respectfully request that you approve the proposed BPS under a Goal 18 exception;
- and
- Applicants respectfully request that you also approve the requested BPS in the alternative as allowed under Goal 18 without any need for a further goal exception.
- Thank you and staff for your time and consideration.

KELLINGTON LAW GROUP, PC

Pine Beach Combined Application for Shoreline Protection

Tillamook County Planning Commission

May 27, 2021

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

KELLINGTON LAW GROUP, PC

Subject Properties

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

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Proposed Exception Area and Adjacent Lands Map

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Subject Properties

KELLINGTON LAW GROUP, PC

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

- Retrograding beach since 1994
- King Tides in 2020 and 2021 reached oceanfront homes+
- Continued significant threat of flooding
- At risk is not only homes, but public water and sewer infrastructure.
- BPS protects public and private investments; avoids significant environmental harm from parts of destroyed homes and broken sewer and water pipes; broken electrical connections, gas connections; protects coastal dune habitat.
- Water and sewer district costs of repair may be beyond district's capacity or would cause significant strain the district's resources.
- Torn out infrastructure would cause dangerous service disruptions to the larger community.

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January 12, 2021 Tides Flooding Pine Beach Properties

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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

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22

Properties and infrastructure are now in imminent peril

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

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

Year	Distance from Western Edge of Oceanfront Homes along Pine Beach Development and Ocean Boulevard Properties (ft)	Loss of Property since 1994 (ft)
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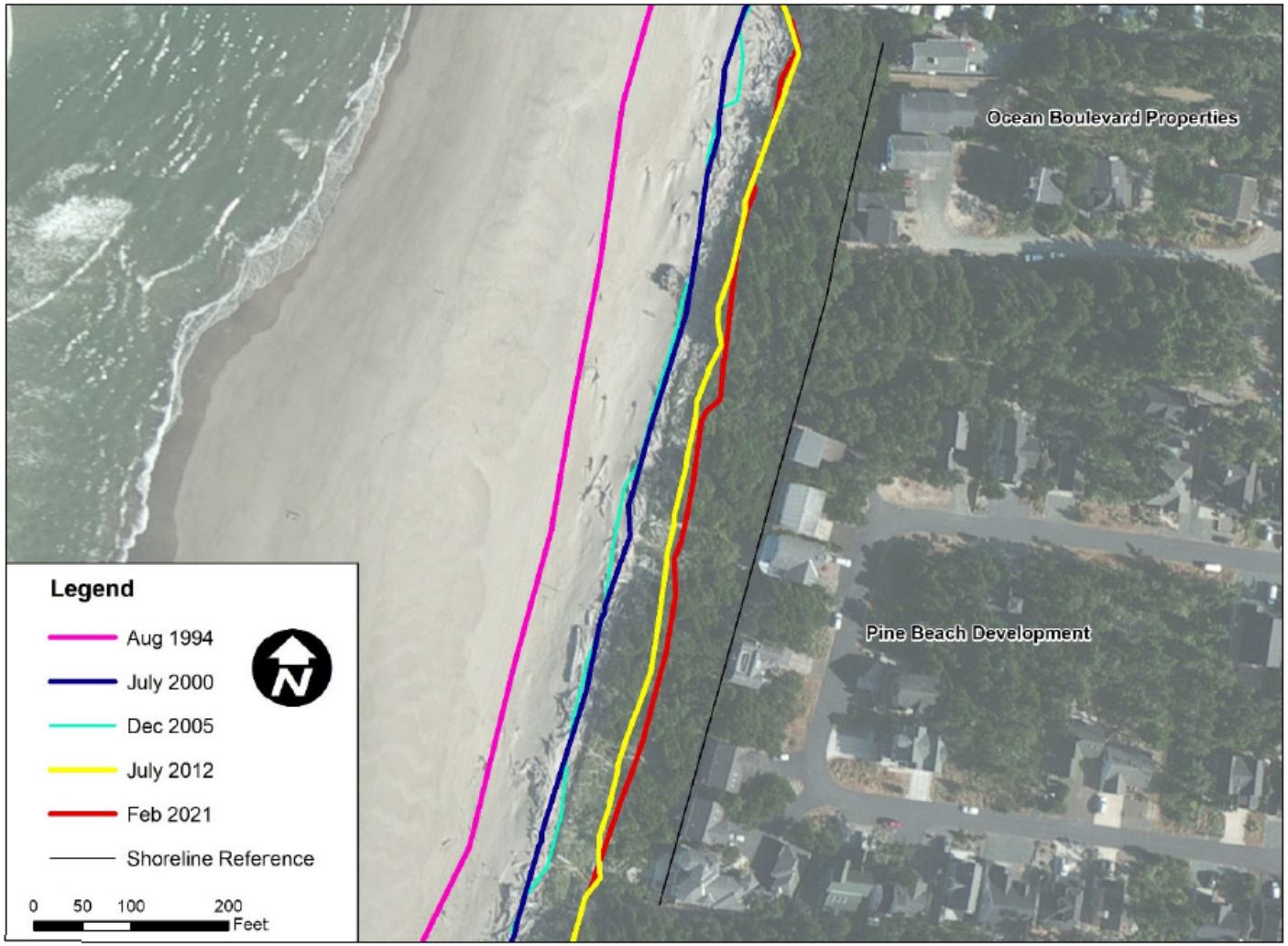

Figure 2. Top of shoreline for the period between 1994 and 2021

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1994

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Beach Erosion History – Google Earth

1994

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2000

2000

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8/2005

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August 2005

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2011

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2014

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2014

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2016

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2016

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2017

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2017

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2020

2020

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Owners – personal responsibility
Approval authority rests entirely with Tillamook County

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

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Legal Principles – the Easy Ones

1. Properties are already committed to urban residential development under acknowledged planning program that applies.
2. Goal 18 has two parts – the part that supports “appropriate development” and the part that prohibits development.
3. The properties are acknowledged under the “appropriate development” part.
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5. The easy, completely defensible decision here is to find that all the properties are entitled to a Goal 18, IM 2 and Goal 18, IM 5 exception because they are committed to the acknowledged planning urban residential development program - the “appropriate development” prong of Goal 18 - not the “prohibit development” prong of Goal 18.

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

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

Legal Principles – Easy Ones # 2

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

Legal Principles – Easy Ones # 3

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

Legal Principles – Easy Ones # 4

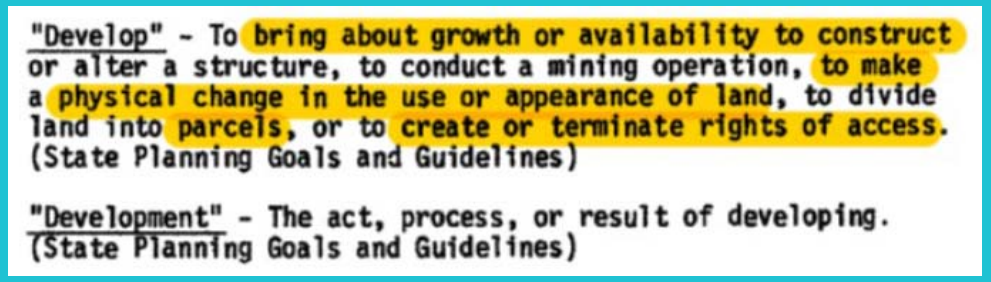
- OAR 660-004-0022(11) – the type of reasons exception specific to Goal 18 applies and is met.
- DLCD does not claim not met – just says does not apply.
- Both Goal 18, IM 2 and IM 5 prohibit development in the eroding foredune.
- OAR 660-004-0022(11) applies and the County should so find.
- The BPS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

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

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

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

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



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

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

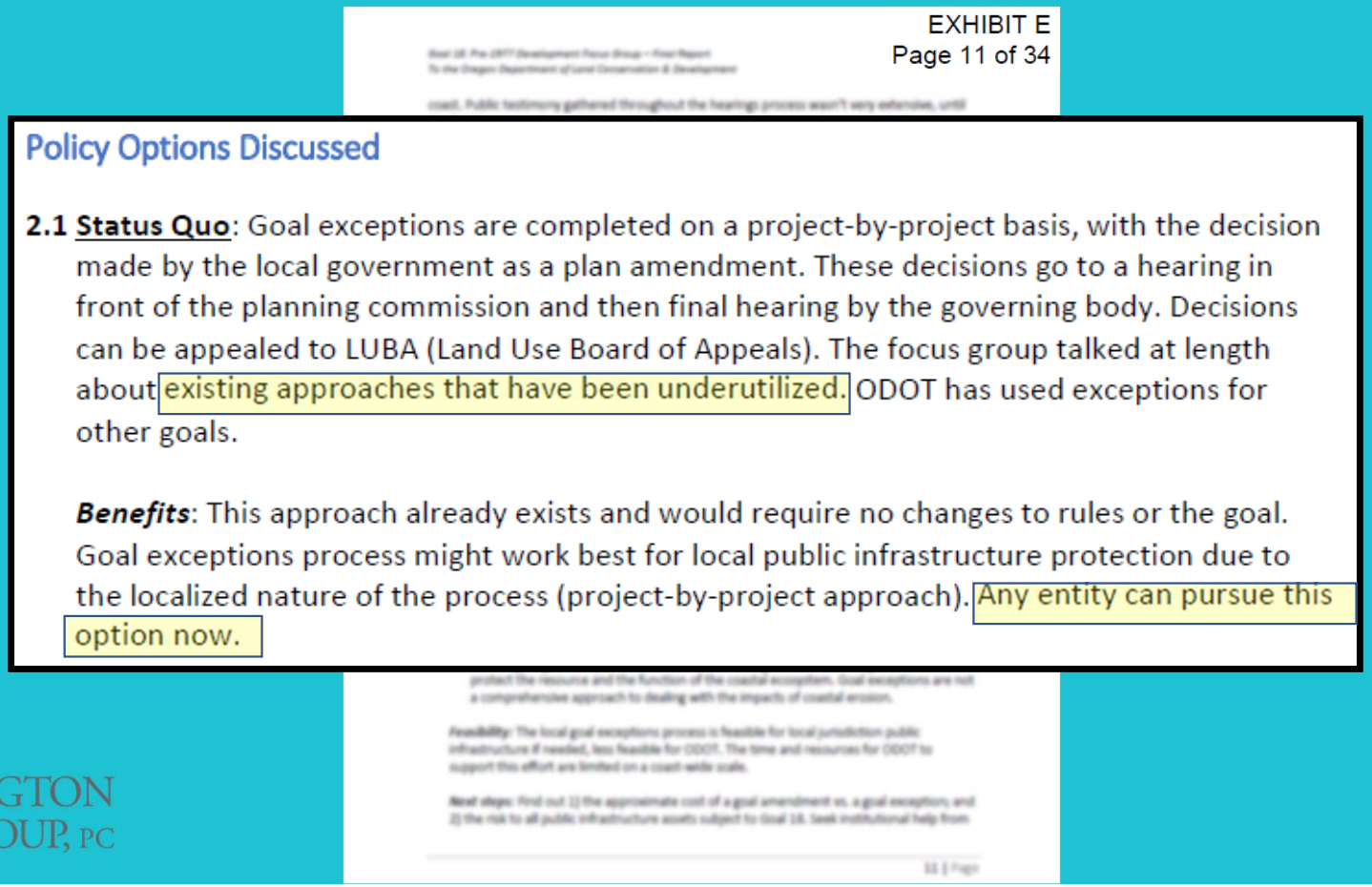
- The version of Goal 18 IM 5 now in effect: shoreline protection allowed for property that was "developed" on January 1, 1977. "Developed" "means houses *** and vacant subdivision lots which are physically improved through construction of streets and provision of utilities to the lot ***."
- George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

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

DLCD is Wrong:

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

- DLCD's letter: inconsistent with its published position



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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.

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Requested Planning Commission Decision:

1. The Subject Properties qualify for a “committed” and a “built” exception because they are “built” and “committed” under an acknowledged planning program that commits them to residential development. As a result, the Subject Properties are entitled to shoreline protection under Goal 18, Implementation Measure 5.
2. The Subject Properties qualify for the “catch all” reasons exception DLCD prefers. It is impossible for the County to comply with Goal 7’s requirement to protect life and property if County refuses to allow life and property to be protected from natural hazards. The circumstances are unique: the properties are acknowledged to comply with the “appropriate development” prong of Goal 18, and it is only the fact that the ocean reversed 70 years of prograding to aggressive retrograding, that triggers Goal 18, Implementation Measure 2. The Subject Properties are entitled to shoreline protection under Goal 18, Implementation Measure 5.

Requested Planning Commission Decision:

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

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

Requested Planning Commission Decision:

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

PC Should find that this Request is Unique

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

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Planning Commission Should find that the Developers Did Everything Right

- George Shand Tracts (Ocean Blvd. properties) platted in 1950.
- Pine Beach **replatted** in 1994.
- Homes seeking BPS here were constructed beginning in 1989.
- All development strictly avoided, by hundreds of feet, foredunes subject to overtopping and undercutting.
- When constructed, there had been a **70-year period of ocean progration – depositing of sand and adding land.**
- **Planning commission should find it is inappropriate to punish the owners now that unexpected natural hazards have stricken and taken out natural foredune vegetation.**

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

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

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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.

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Thank you

- Questions?

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Pine Beach Combined Application for Shoreline Protection

Tillamook County Planning Commission
May 27, 2021

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

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Subject Properties

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

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Proposed Exception Area and Adjacent Lands Map

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Subject Properties

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

- Retrograding beach since 1994
- King Tides in 2020 and 2021 reached oceanfront homes+
- Continued significant threat of flooding
- At risk is not only homes, but public water and sewer infrastructure.
- BPS protects public and private investments; avoids significant environmental harm from parts of destroyed homes and broken sewer and water pipes; broken electrical connections, gas connections; protects coastal dune habitat.
- Water and sewer district costs of repair may be beyond district's capacity or would cause significant strain the district's resources.
- Torn out infrastructure would cause dangerous service disruptions to the larger community.

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January 12, 2021 Tides Flooding Pine Beach Properties

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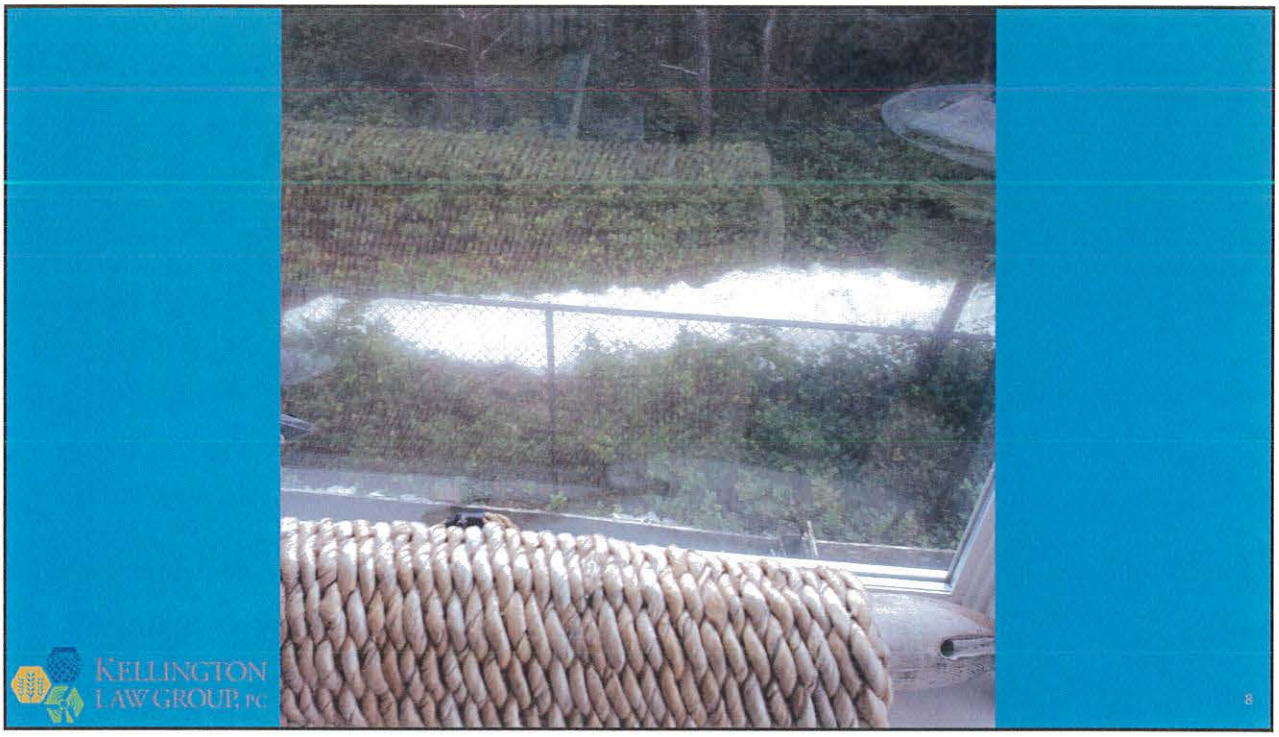

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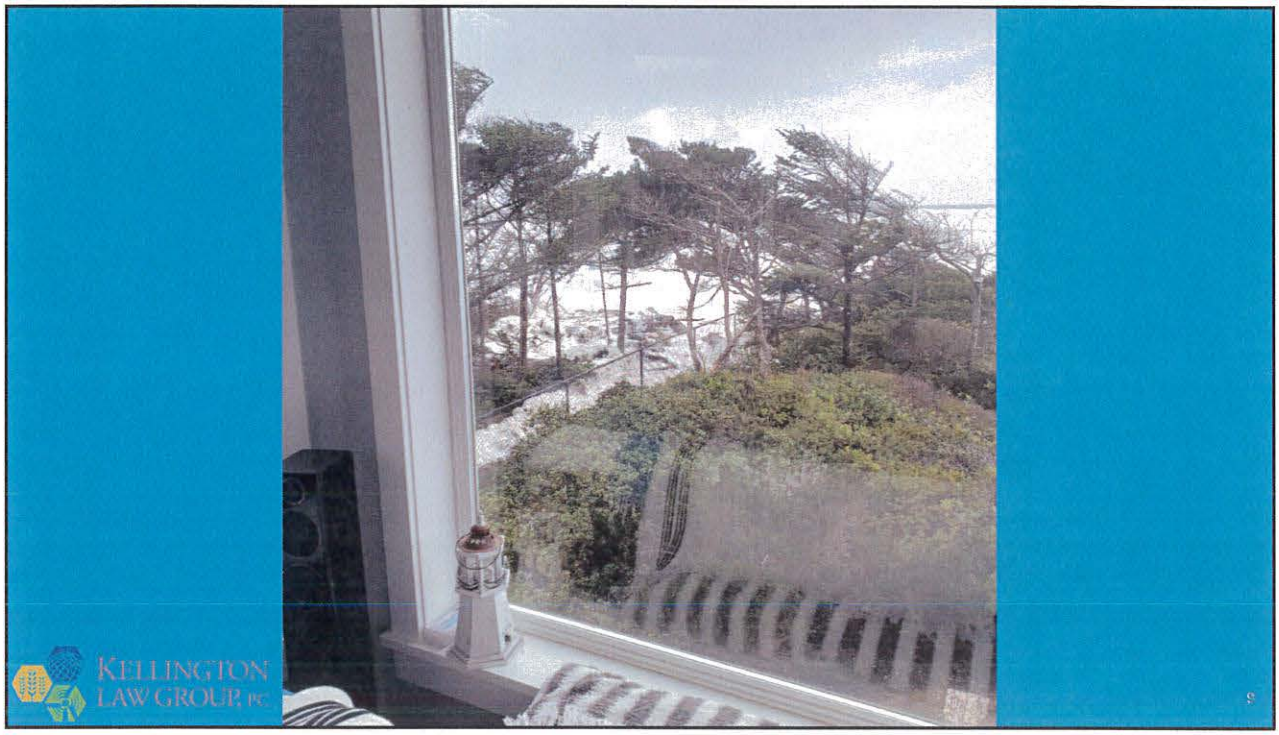

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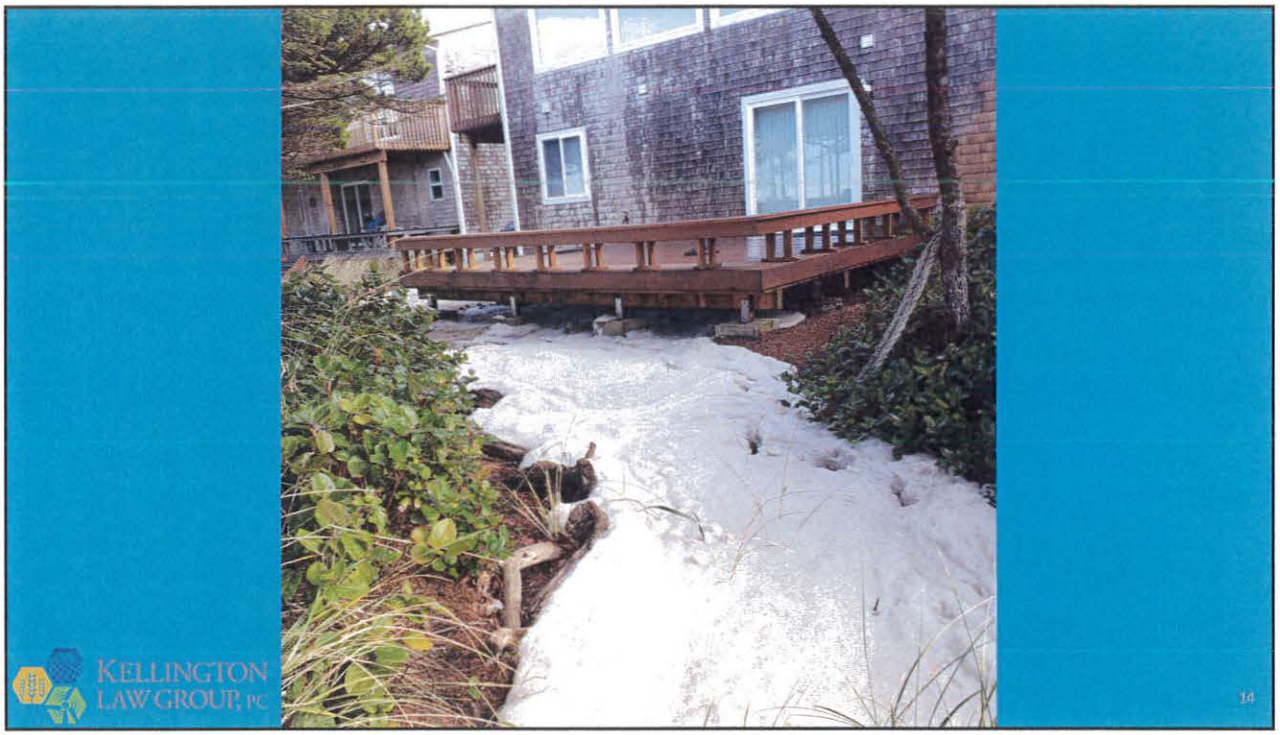

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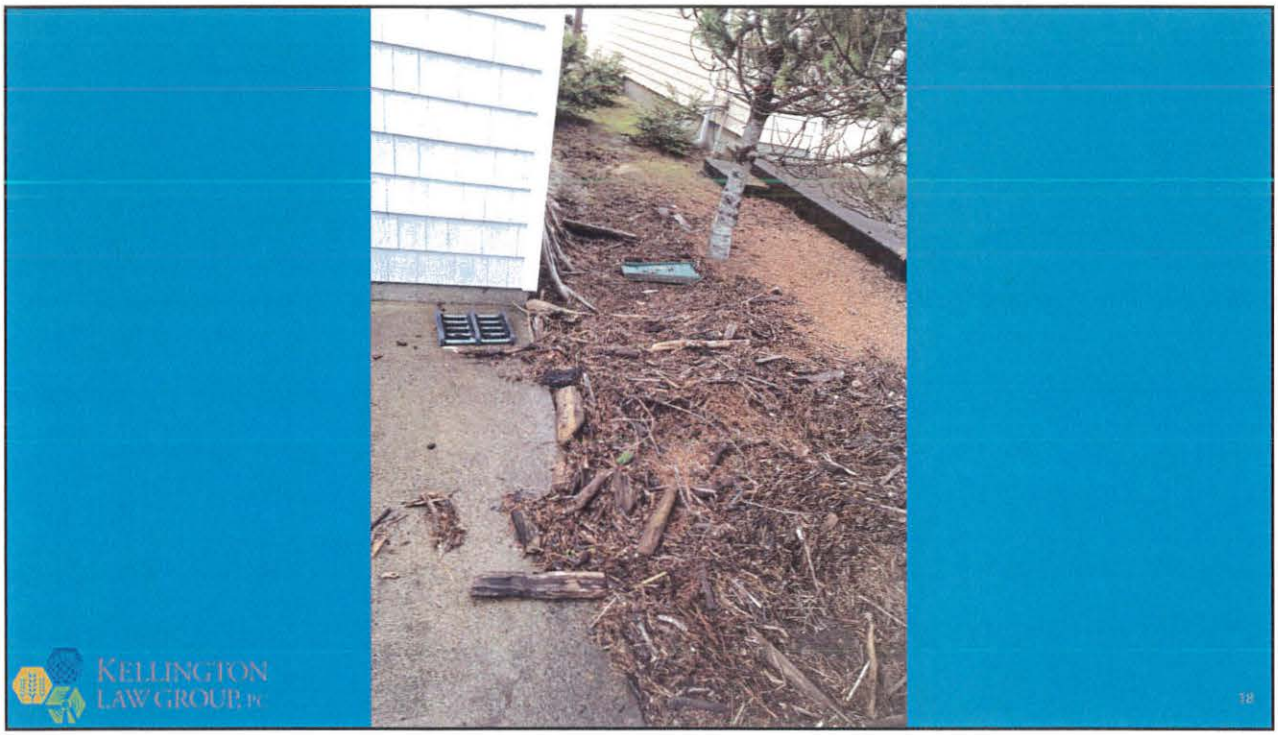

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1994

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1994

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2000

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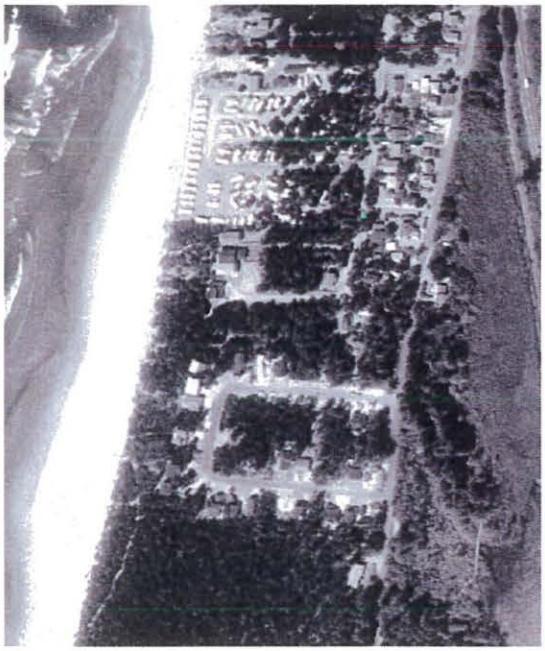

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2020

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DLCD is Wrong:

- **The 1932 Pine Beach Plat was NOT vacated.**
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- **The properties DO have a Goal 17 exception.**
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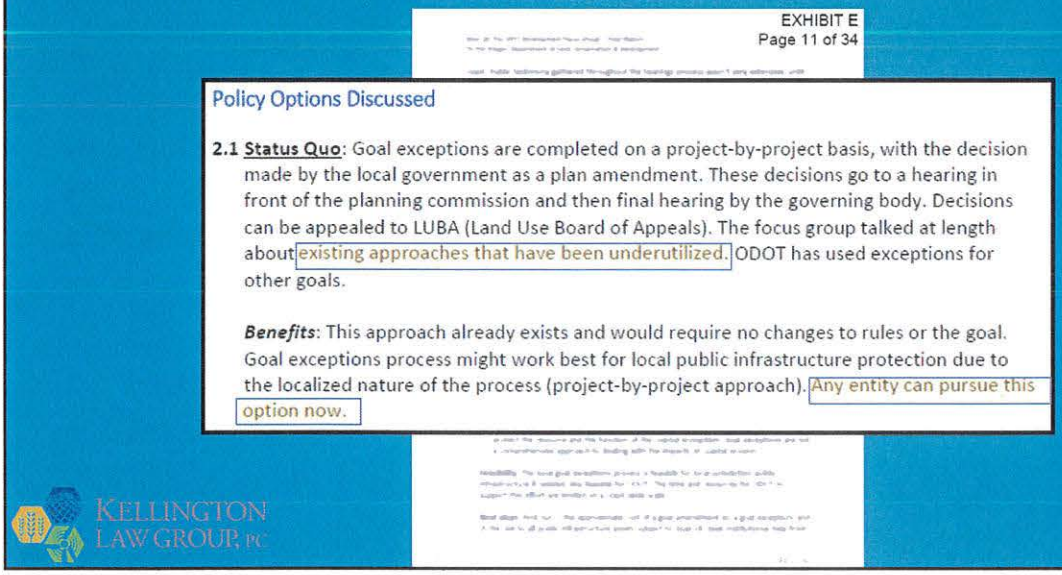
- DLCD's letter: inconsistent with its published position



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Requested Planning Commission Decision:

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

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PC Should find that this Request is Unique

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

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Planning Commission Should find that the Developers Did Everything Right

- George Shand Tracts (Ocean Blvd. properties) platted in 1950.
- Pine Beach **replatted** in 1994.
- Homes seeking BPS here were constructed beginning in 1989.
- All development strictly avoided, by hundreds of feet, foredunes subject to overtopping and undercutting.
- When constructed, there had been a **70-year period of ocean progration – depositing of sand and adding land.**
- **Planning commission should find it is inappropriate to punish the owners now that unexpected natural hazards have stricken and taken out natural foredune vegetation.**

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

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

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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.

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Thank you

- Questions?

KELLINGTON LAW GROUP, PC

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Allison Hinderer

From: Sarah Absher
Sent: Thursday, May 27, 2021 3:35 PM
To: Allison Hinderer
Subject: Testimony for Pine Beach Revetment Project

13 copies please for tonight.

Thank You,
Sarah

From: Troy Taylor <troy@campmagruder.org>
Sent: Thursday, May 27, 2021 3:33 PM
To: Sarah Absher <sabsher@co.tillamook.or.us>
Subject: EXTERNAL: Testimony for Pine Beach Revetment Project

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

Hi Sarah, I hope this finds you well and I hope it is in time for the meeting this evening about Pine Beach Loop's revetment project. I wanted to enter my thoughts and concerns as Director at Camp Magruder, the property adjacent to Pine Beach Loop on the South side.

I sympathize with the precarious nature of the dilemma the beach front property owners are facing and understand they must take steps soon or they are faced with losing their houses and investments to the ocean as it encroaches. I am appreciative of the approach the beachfront owners have brought, seeking a less environmentally invasive plan and taking into consideration the adjacent properties. They have assured me their revetment will not cause additional loss of land to Camp Magruder as the ocean encroaches further in the years to come, and that this project will not result in a sort of island protruding into the beach as Shorewood RV park's rip-rap has done. I feel like the beachfront owners and their planning firm have been thoughtful in their planning beyond simply protecting their assets. As a neighbor I'm hopeful we can continue to communicate openly and find agreements and compromises that benefit us both.

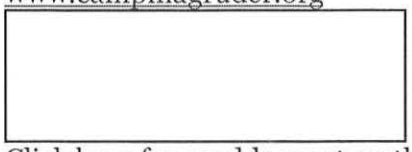
My greatest concerns lie in the uncertainty that always exists when human initiated environmental changes impact complex ocean currents and rhythms. Even with the best intentioned planning, I worry there are unknown consequences we may find ourselves dealing with. We can look up and down our stretch of beach and see examples from past projects. I think it is possible this project is small scale enough that it won't have major impacts on our beach, the Pine Beach properties, and their neighbors, but I would rest easier if an outside expert were brought in who studies and understands ocean patterns and the affects of human interventions to weigh in on what this project will look like 10, 20, 50 years down the road.

When Camp Magruder was opened in 1945, the beach was nearly 100 yards farther in. When the jetty was constructed, it nearly doubled the camp's acreage. The ocean has been slowly reclaiming that beach in predictable and less predictable ways, and in some cases we are at its mercy, in others we have the opportunity to engineer the landscape. Whatever we decide, I want to feel like we've explored as much as possible what the consequences of this decision will be in the long run, to be assured we aren't engaging in a short term fix that causes longer term problems.

The Pine Beach Loop beachfront owners have been intentional in their planning to acknowledge these types of concerns, and I appreciate that time and effort. I would feel even more comfortable if a few other voices with specific knowledge on the longer term environmental risks gave their blessing too.

Thanks for your time,

Troy Taylor
Director
503-355-2310
www.campmagruder.org



Click here for our blogpost on the joy we expect during the challenging summer to come

Allison Hinderer

From: Sarah Absher
Sent: Thursday, May 27, 2021 11:29 AM
To: Allison Hinderer
Subject: Pine Beach Goal 18 Exception

13 copies please

-----Original Message-----
From: Aubrey Pagenstecher <aubpag@gmail.com>
Sent: Thursday, May 27, 2021 11:28 AM
To: Sarah Absher <sabsher@co.tillamook.or.us>
Subject: EXTERNAL: Pine Beach Goal 18 Exception

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

To whom it may concern,

We are writing today, as persons with a vested interest in nearby beachfront property, to strongly urge the commission to deny the exception requested by the Pine Beach development to allow rip rap. Allowing the exception would continue to allow a domino effect of preventable damage to the area.

The Oceanfront Setback and Goal 18 rules were established to mitigate coastal erosion caused by human development. Subsequent to their implementation, Shorewood was granted exceptions to install rip rap and further develop additional beachfront property. The project at Pine Beach Loop was also permitted after these measures were implemented. Later, additional rip rap was permitted at Shorewood, and 3 adjacent properties were allowed to install rip rap to prevent continuing damage caused by the placement at Shorewood.

The solution should be to stop granting Goal 18 exception requests for additional nearby properties. Instead, require all properties in question to be remediated with other, less damaging methods such as raising their foundations with piers, which current oceanfront building codes require. Allowing more rip rap to be installed will simply continue to transfer the problem to the public and other nearby property owners.

It is time to stop prioritizing the protection of the rights of a few landowners over the rights of many.

Thank you for your thorough and fair consideration of this matter.

Aubrey Pagenstecher
Steve Pagenstecher

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

May 27, 2021

Via Email

Tillamook County Planning Commission
c/o Melissa Jenck
Tillamook County Department of Community Development
1510-B Third Street
Tillamook, OR 97141

mjenck@co.tillamook.or.us, sabsher@co.tillamook.or.us

Re: Oregon Coast Alliance testimony for a request for an exception to Goal 18, #851-21-000086

Dear Members of the Planning Commission,

On behalf of Oregon Coast Alliance (ORCA), please accept this testimony for requested goal exception to Goal 18 for the installation of a beachfront protective structure (rip rap 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.

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. As noted in the staff report, this property is one where "development did not exist[] … on January 1, 1977[.]" Staff Report at 4.[1] Because of this, an exception is necessary to place any beachfront protective structures. Moreover, because 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.

Any request for an exception faces a high bar. The criteria for a "reasons" exception are found in OAR 660-004-0020(2).[2]

---

[1] ORCA also agrees that "the development was not in existence on any of the subject properties on January 1, 1977, that creation of the properties alone does not meet the definition of *development* under Goal 18 and concurs with the determination reflected on the Coastal Atlas Map. 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.

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

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

(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

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.

The applicant's 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.

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. The applicant has also not demonstrated a particularly unique need for the proposed exception. Eroding shores are common throughout Oregon and the general area. If all eroding shorelands are eligible for a protective structure, then Goal 18 has simply become superfluous and nothing about this property is unique. The applicant must demonstrate that this area is somehow different than other areas where shoreline armoring is not permitted. Moreover, the applicant must demonstrate alternatives to the use of a protective structure.

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, at this point, 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 applicant has failed to consider the effect of the exception on surrounding properties; nor has the applicant considered the unique circumstance of the property directly to its north: Shorewood RV Park.

> 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."

Built before 1977, Shorewood is eligible for shoreline armoring under Goal 18. Shorewood received, from the Division of State Lands, an initial emergency authorization for riprap on March 8, 1999, following the erosion caused by the El Niño year of 1997-98. The DSL authorization wrongly relies on a statement from the City of Rockaway Beach that Shorewood's emergency permit "qualifies for stabilization under the City's comprehensive land use plan and, specifically, Statewide Planning Goal 18, as addressed in the plan." Shorewood is not in the city limits of Rockaway Beach, and the city had no authority or jurisdiction over Shorewood. The Tillamook County permit for the 1999 emergency riprap (issued September 30, 1999) properly indicates that Shorewood is part of the unincorporated Twin Rocks community. It does not appear in research thus far that Shorewood has ever been issued a permanent riprap permit by any agency of either the state or the county. ORCA has only been able to locate an Oregon Parks Department repair permit, dated July 22, 2003, for the original emergency riprap structure. *See* attachments to the testimony.

The riprap at Shorewood has caused significant erosion around the structure over the twenty-two years since it was authorized as an emergency placement. Especially as it apparently has never been finalized as a permanent structure, it is appropriate to take notice of the damage to beach integrity it has caused in the immediate area, as there is little to no other riprap in the vicinity. This erosion damage is precisely what Goal 18 seeks to prevent in all unnecessary situations, such as this Pine beach proposal.

But the applicants' failure to address the relevant Goal 18 factors goes yet deeper. The applicants' proposal repeatedly refers to 1994 as the date from which to judge the state of the shoreline. But the first houses were built on the oceanfront lots in 1997 – the same year as the strong El Niño year of 1997-98 impacted the area, and caused the first relatively recent pulse of erosion. Other houses were built after two subsequent El Niño events caused some further erosion – noticeable but not of emergency proportions. In other words, the applicants' reliance on steady accretion of the beach for 70 years as a ground for now allowing a Goal 18 exception is misplaced. There is a regular recurring cycle of sand shifts, normal in every littoral cell, and these are irrelevant for any discussion of a Goal 18 exception. The applicants have failed to carry their burden showing that circumstances exist that would compel an exception.

Additionally, 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 is also deficient. For the environmental considerations, the applicant alleges that the structure was "designed to reduce adverse impacts" but then fails to explain the expected impacts. Even if it is assumed that the allegation is correct, some degree of impact is conceded. It is incumbent upon the applicant 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 of merely "addressing" the impacts by a request for riprap.

It is relevant to an ESEE analysis that as of 2015, 64 percent of the 9.5 km of shoreline between Tillamook Bay north jetty and Nehalem south jetty is eligible under Goal 18 for beach armoring, but contains only 2.6 km of existing armoring. This is only 27.4 percent of the entire shoreline in this stretch. In other words, the primary purpose of the Goal 18 restriction on armoring, which is to prevent further erosion of the shoreline, can easily be upheld. The shoreline in the area is subject to a low percentage of armoring, even of those properties eligible, and is in a largely natural condition, showing little erosion other than regular cycles of sand movement. Granting a Goal 18 exception to Pine Beach would disrupt natural cycles, fly in the face of the required alternatives analysis and an analysis of actual shoreline conditions. However, the applicant did not include discussion of existing regional shoreline armoring, and its relevance in Goal 18 implementation, in its ESEE analysis.

The economic analysis is likewise deficient. It fails to acknowledge the economic impacts to other properties. The applicant focuses almost exclusively on the value of the existing homes and the possibility of damage to water and sewer facilities. The notion that remedial action would not occur for such facilities is far-fetched, not to mention other, less drastic solutions to any future problems.

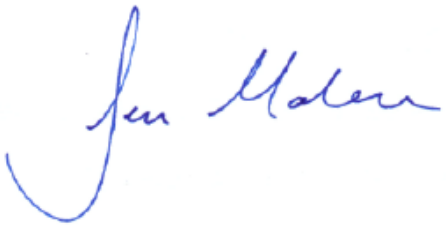
The applicant also includes four vacant oceanfront lots within the proposed exception area. There is no demonstrated reason for the inclusion of these properties, as the alleged threats are not present on vacant land.

ORCA adopts by reference the analysis of DLCD, including the statement that "this application contains problematic and missing analyses. Therefore, DLCD recommends that the County deny the goal exception request." DLCD letter, May 19, 2021, Page 5 (emphasis in original).

For the above reasons, the application must be denied because it fails in several respects to satisfy the requirements for a Goal 18 reasons exception.

ORCA requests that the record remain open for new evidence and testimony for a period not less than seven days, and that the hearing be continued to a date certain.

Sincerely,



Sean T. Malone
Attorney for Oregon Coast Alliance

Cc:
Client

Allison Hinderer

From: Sarah Absher
Sent: Wednesday, May 26, 2021 11:21 AM
To: Allison Hinderer
Subject: Pine Beach Loop Goal 18 Exception

13 copies for tomorrow evening please.

Thank You,
Sarah

From: Chris Berrie <keeks54@gmail.com>
Sent: Wednesday, May 26, 2021 10:49 AM
To: Sarah Absher <sabsher@co.tillamook.or.us>
Subject: EXTERNAL: Pine Beach Loop Goal 18 Exception

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

My family has owned beachfront property in the vicinity of Shorewood and Pine Beach for 55 years. My parents were the property owners at the time rip rap was installed at Shorewood. They were not aware of the permitting at that time, nor were other neighbors. Had they been, there would have been strong resistance.

The domino effect created when a homeowner installs riprap and neighboring owners also must to protect their property is very much in evidence on our stretch of the beach. Most property owners in this area have not requested, and do not want, additional rip rap installations with the resulting negative impacts to the beach, a public asset.

Based on two recent cases, it does not seem that Goal 18 exceptions are all that rare. Dale Anderson received immediate approval to install riprap on two properties he recently acquired in Rockaway, while Tai Dang had to sue the City of Rockaway to be allowed to use riprap to protect his property of long-standing ownership.

As an existing owner of a property next to ours, Mr. Anderson would have been fully aware of prohibitions regarding the use of rip rap when he purchased a property next door to Shorewood in the last few months. He was also given permission to install rip rap at a recent building project near the Rockaway Wayside. It's extremely concerning to see an owner with property purchases subject to Goal 18, and apparent ample financial resources, being given controversial exceptions.

An explanation of those exceptions is in order, as well as why Shorewood was granted permission to extend their property onto the beach using rip rap. The Shorewood exception put other houses close by in harm's way. It has also made the beach in front of Shorewood impassable at high tides, disrupting the public's access to walk the beach south of there. It's extremely difficult to understand why Shorewood's exception was approved at all. It was the first link in a chain of destruction for very mobile RVs that could easily be moved. The Anderson exception and any subsequent approvals will continue to increase human damage to the beach and other properties.

In any case, it seems approval in the preceding cases has established precedent that all neighboring rip rap applications would have to be approved. A better solution would be to require removal of the rip rap that has been installed since Goal 18 was implemented.

The rights of a few private owners should not supersede the rights of all others, including the public's ownership of and access to the beach in it's natural state, unblemished by walls of rip rap and loss of sand. The allowance of several "rare" exceptions here has opened Pandora's box, for which legal action may become the only solution, regardless of the decision.

Dale and Lisa Wacker
17475 Ocean Blvd.
Rockaway Beach, OR 97136

May 26, 2021

Attention Tillamook County Department of Community Development,

We are home and property owners in the immediate neighborhood that could be affected by the plan for a "shoreline stabilization wall" proposed by the Pine Beach neighborhood. We purchased two lots adjacent to the private access trail that leads to the beach from Ocean Boulevard. We built our home in 2009 and have resided here full-time since then. This is our home, and one of the primary reasons we chose to live here is the access to the beach trail that is guaranteed by the deed to our property.

The prospect of a rock wall being placed at the end of our only access to the beach is unacceptable! Not only will it make access to the beach less safe and more difficult for us, it will greatly reduce accessibility for others in the neighborhood who have mobility issues. This neighborhood has utilized this trail for several decades, it is an integral part of the quality of life for its residents; not to mention the adverse reduction of the value of our property if there was no longer an accessible trail to the beach. So any threat to the usability of our trail is something we are adamantly *opposed* to.

But these are just some of the considerations to be concerned about; another alarming issue is the effect such a wall will have on our shoreline. Evidence of the destructive results of a rock retaining wall can be seen immediately north of us at the Shorewood RV Park. It is quite obvious that the placement of the wall of rocks across the shoreline of the their property has carved away a considerable amount of beach frontage north and south of it since it was installed. Which ironically has lead to the very issue that the property owners proposing this wall are

attempting to protect their properties from, lets not inflict this destructive concept on any more of Oregon's shoreline!

What these property owners do not acknowledge is that this issue was obvious and well-known before they built their homes there. Issues with the receding shoreline will not be solved with the placement of the proposed rock wall. The ocean will easily wash over it during storms and king tides; thus giving little protection, but causing further damage to the natural contours of shore over time. This damage will be especially evident southward causing damage to the oceanfront areas of Camp Magruder and possibly the Barview Jetty County Park. The *exception* to code that would allow this "shoreline stabilization wall" *must not be granted*; these homeowners should consider other options that will not affect every other neighbor in the area while causing further destruction of the shoreline.

Sincerely,
Dale and Lisa Wacker

KELLINGTON
LAW GROUP, PC

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

Phone (503) 636-0069
Mobile (503) 804-0535
Email: wk@klgpc.com

May 25, 2021

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

RE: 851-21-000086-PLNG-01: Response to DLCD's May 19, 2020 Letter

Dear Sarah,

This responds to DLCD's letter dated May 19, 2021. DLCD asserts mistaken facts and mistaken law. Many of DLCD's objections are so far off of the law and facts, on topics DLCD certainly should be aware of, as to make its letter seem designed to obstruct for sport. The agency's letter is unhelpful and disappointing in the extreme for the 15 families who have spent significant resources preparing the Application with more than 100 pages of narrative (now more than 139 pages) demonstrating compliance with all approval standards and to produce a thoughtful, detailed engineering report further demonstrating such compliance - documents that it appears that DLCD did not even read. DLCD's demands boil down to a position that all of that effort is simply is not good enough, reminiscent of Emperor Joseph II's complaint that Mozart's Marriage of Figaro had "too many notes."

In deference to DLCD's surprising request for a "catch all" reasons exception, this response adds a precautionary "catch all" reasons exception to Goals 18, Implementation Measures 2 and 5 to this request for shoreline protection for the families of the subject Pine Beach/George Shand Tracts properties. The Applicants also add a precautionary built exception analysis to the same Goal 18 implementation measures, to the extent DLCD seems to suggest that is required too. Further, the Applicants provide an even more detailed supplemental engineering analysis under separate cover, although again, nothing requires it. The issue seems to be that DLCD did not read the one first provided.

Regardless, and whatever legal approach is selected, there should be little doubt but that under **any** of the several legal approaches presented, the Applicants have demonstrated that the County can and should approve the requested beachfront protective structure ("BPS"). Approving the proposed BPS is the reasonable and responsible thing to do to protect life, property and public infrastructure in the Pine Beach/George Shand Tracts area.

We also wish to clarify a fundamental misconception in DLCD's letter. DLCD asserts that the request is not and cannot be a Goal 18, Implementation Measure 2 exception. This is incorrect. The Applicants request shoreline protection. As such, they request a Goal 18,

Implementation Measure 5 exception, through an exception to Goal 18, Implementation Measure 2. In other words, the exception request is intended to be both things applying DLCD's methodology. However, to the extent that there is any doubt, the Applicants do seek an exception to Goal 18, Implementation Measure 2, but understand that the appropriate vehicle to do that, is by starting with an exception to Goal 18, Implementation Measure 5. If that is wrong, then the County should consider the exception request to be one to Goal 18, Implementation Measure 2 and to Implementation Measure 5, to cover all bases. The relevant provisions of Goal 18 are below.

> Goal 18, Implementation Measure (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 Measure 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**." (Bold emphasis is supplied.)
>
> Goal 18, "(2) above" says:
>
> "Local 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. ***" (Bold emphasis is supplied.)

Applicants seek approval of beachfront protection for their homes and in so doing they show that under "(2) above", they either have an existing exception that allows their houses to be on the foredune where they are, which is fine enough to continue to allow them to be where they are when hazard strikes the dune, or they are entitled to take and have sought, an exception to "2 above" to supplement the exception that they already have. Once the reviewer finds that the Applicants either have or are entitled to an exception to "2 above" then Goal 18, Implementation Measure 5 requires that they be allowed shoreline protection for their homes.

Finally, while discussed in greater detail below, we point out that as a technical matter, it is not the existing exceptions that commit the area to residential development. It is the LCDC/DLCD "acknowledged," and detailed, comprehensive County approved planning program implementing those exceptions, that establishes that the Subject Properties are committed to their "appropriate development" within an urban unincorporated community that is reflected in the medium density residential development for which they are planned and zoned. Put another way, it is the **acknowledged planning program** that establishes, as a matter of law, that the Subject Properties and the urban unincorporated community area within which they exist are committed to uses other than Goal 18's undeveloped foredunes subject to ocean overtopping/undercutting. In this regard, it also cannot be forgotten that the existing

acknowledged planning program for the Subject Properties and their area is acknowledged as complying with **all goals, including Goal 18**. Goal 18 has two facets - "appropriate development" and "no development." The Goal 18 planning program for the subject properties is the "appropriate development" prong for residential development. Once that fundamental legal reality is understood, it must also be understood that state law does not allow the County or the state to sit idly by and watch that "appropriate development" be destroyed and human lives threatened. In planning terms, Goal 7 which requires protecting people and property from natural hazards, requires otherwise. In human terms, the question should not even need to be asked.

DLCD's analysis of the subdivision status of the lots is incorrect and inconsistent with state law.

Contrary to DLCD's assertion at pages 1-2 of its letter, the original Pine Beach Plat was not vacated until 1996 when it was vacated with a REPLAT. The Pine Beach Replat is provided in the Staff Report, Exhibit D Additional Information. The original Pine Beach Plat, which is excerpted below, is provided as part of the original application materials under Exhibit B.

Under state law, which presumably DLCD is aware of, to vacate a plat, the County governing body is required to direct the surveyor to show the vacation on the plat. ORS 271.230(1). The County surveyor in turn is required to note approved plat vacations on the plat. *Id.* There is no noted vacation on the Pine Beach plat for 1941. Rather, the **only** vacation shown on the original Pine Beach Plat, is the one dated 1996, which is a date well-after January 1, 1977. *See* excerpt of 1996 Replat immediately below. Applicants are aware of no 1941 vacation of the original Pine Beach subdivision and DLCD provides nothing in the record to support its assertion.[1] Under the law, if there had been a plat vacation in 1941, it was required to have been, and would have been, noted on the plat., per ORS 271.230(1).[2] There is no such notation.

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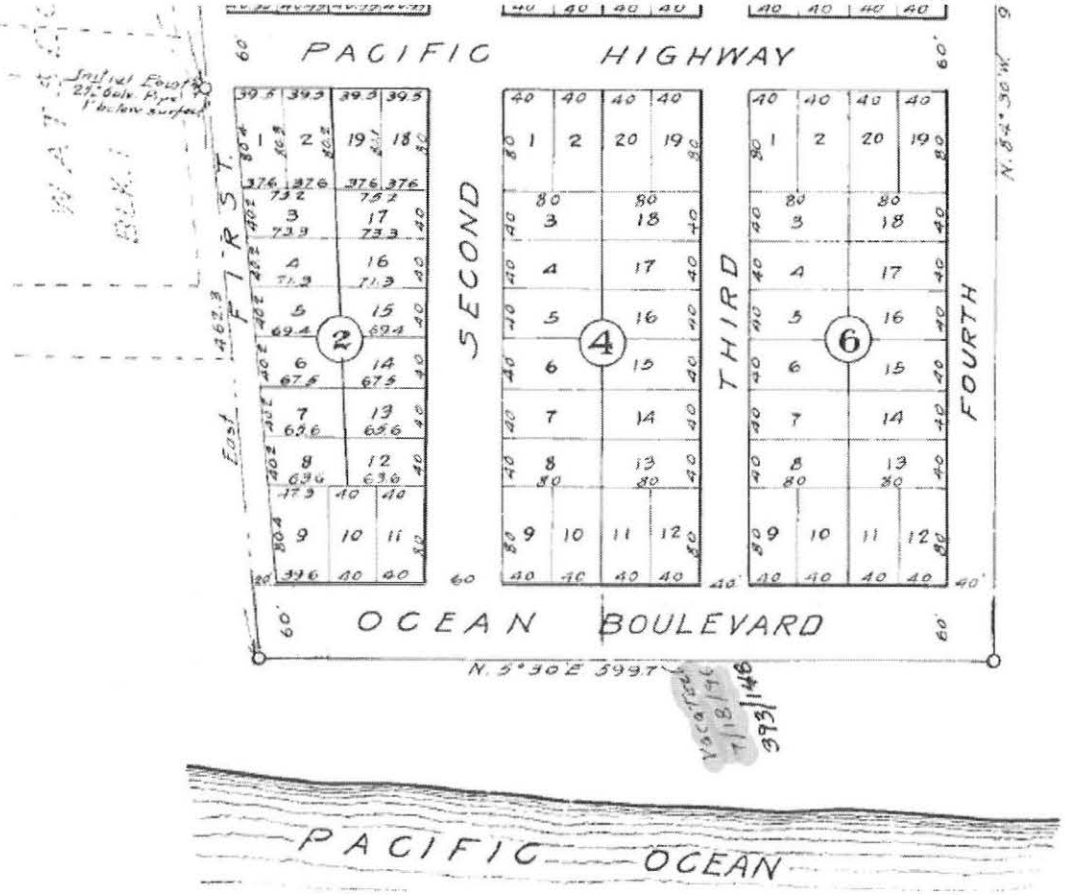
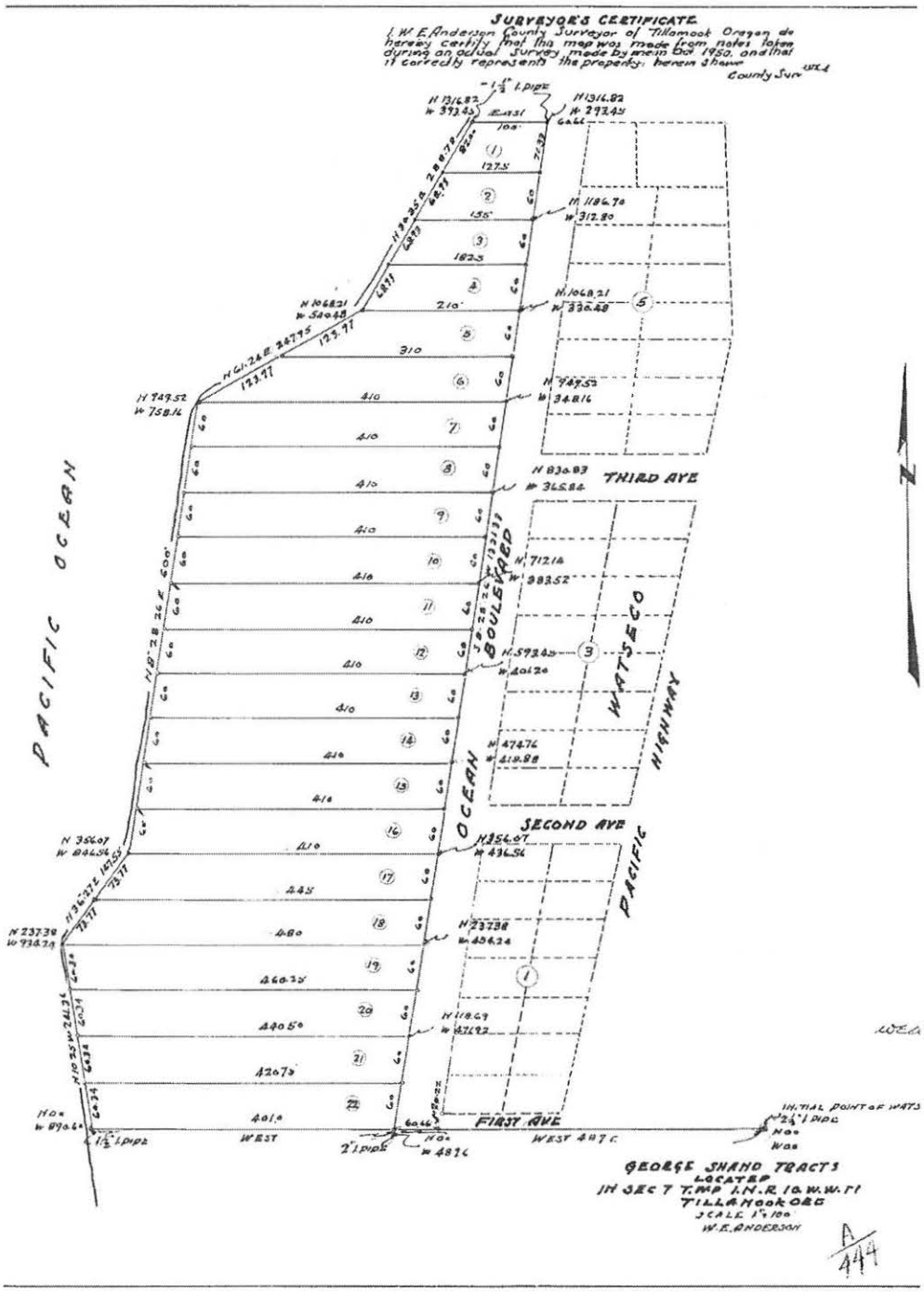
[1] Applicants provided the staff report for the decision approving the Pine Beach Replat, at Exhibit G, p 4. That staff report says that the plat was vacated in 1941 except for six lots that had previously been sold in 1932 and 1933 and a significant part - "Second Street between Pacific Highway and Ocean Boulevard and the separate ownerships along Second Street." We have searched the deed records and there is nothing recorded to support the claim that the plat was vacated. ORS 271.230(1) requires that any plat vacation be recorded. That did not happen. The claim that any part of the plat was vacated in 1941 is incorrect, as a matter of law.

[2] ORS 271.230(1) provides in relevant part: "If any * * * plat * * * is vacated by a county court * * *, the vacation order or ordinance shall be recorded in the deed records of the county. Whenever a vacation order or ordinance is so recorded, the county surveyor of such county shall, upon a copy of the plat that is certified by the county clerk, trace or shade with permanent ink in such manner as to denote that portion so vacated, and shall make the notation "Vacated" upon such copy of the plat, giving the book and page of the deed record in which the order or ordinance is recorded. Corrections or changes shall not be allowed on the original plat once it is recorded with the county clerk."



Other evidence that the 1932 Pine Beach subdivision was not vacated is the fact that the current Pine Beach subdivision is a "replat." ORS 92.010(13) defines "replat" as "the act of platting the lots, parcels and easements *in a recorded subdivision* or partition plat to achieve a reconfiguration of the existing subdivision or partition plat or to increase or decrease the number of lots in the subdivision." The current Pine Beach subdivision could not be a "replat" if the original subdivision had been vacated. The Pine Beach subdivision was "developed" under state law on January 1, 1977. It abutted the town of Watseco, and had "provision" of utilities and a road. DLCD does not claim otherwise; rather they only assert, incorrectly, that the 1932 plat was vacated.

DLCD also asserts that the George Shand Tracts - divided into 22 small (60 x 60) lots under a recorded 1950 plat - is not a "subdivision". Exhibit C. That is and always has been a misstatement of the law. DLCD knows better. The George Shand plat (appended to the Application as Exhibit C) is below:



Dividing land into 22 small units of land in a calendar year has always resulted in a subdivision. This was the case under the law in effect at the time that the subdivision was approved and now. The 1947 Or Laws Chapter 346 (HB 331) stated:

1947 Or Laws Chapter 346, Section 1:

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

The George Shand Tracts are also a subdivision under today's law, which defines "subdivision" as "an act of subdividing land or an area or a *tract* of land subdivided." ORS 92.010(17). In turn, "subdivide land" means "means to divide land to create four or more lots within a calendar year." ORS 92.010(16). A "lot" is "a single unit of land that is created by a subdivision of land." ORS 92.010(4). The George Shand tracts were divided into many more than four lots in one calendar year – 22 lots to be exact – in 1950.

Under the laws in effect at the time, and today, the mere fact that the subdivision used the term "tract" does not have the legal significance that DLCD's letter attempts to attribute to it, a fact that presumably DLCD is well aware of. Furthermore, the George Shand Tracts subdivision had the "provision of utilities" and roads by 1977. At least one house (TL 2900) was built in 1974 in the George Shand Tracts and connected to the Watseco water utility. Application, Exhibit D. The properties in the George Shand Tracts were "developed" on January 1, 1977, as that term is used in the current version of Goal 18, Implementation Requirement 5. DLCD does not claim otherwise, other than advancing its remarkable and playful claim that a land division into 22 small lots in 1950 is not a "subdivision" because it was called the George Shand Tracts.

Accordingly, under Goal 18 Implementation Measure 5, all of the Subject Properties are entitled to shoreline protection because they were "developed" on January 1, 1977. As a technical matter, the requested shoreline protection should be approved on the basis that it does not require a Goal 18 exception as well as the requested precautionary Goal 18 exception.

<u>The Subject Properties have Goal 11, 14, and 17 exceptions and their acknowledged planning program is not "resource use" but rather urban levels of residential use and urban public facilities and services.</u>

DLCD says that the Applicants' property ("Subject Properties") is "resource land" under Goal 17 and Goal 18. DLCD Letter p. 4. Respectfully, DLCD is wrong, as it should know, given the acknowledged planning program for the Subject Properties is urban levels of

residential development, in an acknowledged urban unincorporated community; and so as a matter of law, it is not "resource land."

DLCD also asserts that the Subject Properties are "resource land" because they do not have a Goal 17 exception. DLCD is wrong again and is uniquely charged with responsibility to know better.

The Subject Properties, and all of the Twin Rocks-Watseco-Barview area, are subject to a Goal 17 exception that DLCD acknowledged years ago. This is reflected in the County's published Comprehensive Plan. Had DLCD checked its own records or the County plan, it would see that the County plan at Goal 17, 8.2, says:

> "Findings for Exemption of **'Built and Committed' Rural Shorelands from Goal 17 Rural Shoreland Use Requirements 3e.**
>
> "Tillamook County finds that there are shoreland areas which are not urban under the definition of 'urban lands' provided on page 24 of the Statewide Planning Goals and Guidelines, yet 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 not rural as defined by the Goals, because they are not characterized by sparse settlement, small farms or acreage homesites. (Refer to Sections 2 and 3 of the Urbanization Element for a discussion on rural lands and urban lands and for policies and findings for these community centers.)
>
> "a. Communities which are NOT necessary, suitable or intended for urban use (Falcon Cove, Cape Meares and Tierra Del Mar); and
>
> "b. Communities which are n**ecessary, suitable or intended for urban use** (Netarts, Oceanside, Pacific City, Neskowin, Cloverdale, Neahkahnie and **Twin Rocks-Watseco-Barview.)**"

Having an acknowledged comprehensive Goal 17 exception allowing urban levels of residential uses and related development on the Subject Properties and for the "Twin Rocks-Watseco-Barview" community, means Goal 17 does not apply and the land is not "resource land." Relatedly, that acknowledged planning program also means that the Subject Properties are not "resource land" under Goal 18 either. Recall that Goal 18 does two things, it protects beaches and dunes AND it allows "appropriate" residential development on dunes, if the dunes are not subject to wave undercutting or overtopping. Goal 18, Implementation Measure 2. In fact, Goal 18's "Goal" is:

> "To conserve, protect, *where appropriate develop*, and where appropriate restore the resources and benefits of coastal beach and dune areas[.]" (Emphasis supplied.)

The subject properties were platted and developed "appropriately" under Goal 18. So the acknowledged Goal 18 planning program, **is not for resource use, but for the acknowledged urban levels of residential use**. On this, ORS 197.015(1) defines *"Acknowledgment"* to mean "a commission order *that certifies* that a comprehensive plan and land use regulations, land use regulation or plan or regulation amendment *complies with the goals*[.]" (Emphasis supplied.) That puts it beyond any doubt that the subject properties are not Goal 18 resource areas, but rather Goal 18 appropriately developed areas.

That also means under Goal 7 ("To protect people and property from natural hazards"), Goal 18 ("To reduce the hazard to human life and property from natural or man-induced actions associated with these areas") and various County plan requirements, the subject residential properties **must** be allowed to be safe, protected from certain disaster from an advancing natural hazard, by approving the request for shoreline protection.

The subject properties are now fully either built, or they are committed, to the levels of urban development that DLCD has "acknowledged" is the "appropriate development" of them under Goal 18. That means as planned and zoned, the subject properties comply with all facets of Goal 18 - including that they may be developed on the dune that they are now on.

The property and surrounding area are also in an acknowledged unincorporated urban community that is planned and zoned for residential use for which a Goal 14 exception has been taken. *See* Comprehensive Plan, Goal 14 Urbanization, p. 14-44 and 14-45 (Twin Rocks-Barview (refer to exception maps 1N10W #1, 2, & 3)). This area also has a Goal 11 exception to provide urban levels of public facilities and services (water and sewer) to the subject and surrounding properties. The County's acknowledged Goal 10 (Housing) Buildable Lands Inventory identifies significant medium density residential uses to be delivered to from the unincorporated community including all of the properties represented by the applicants here. **Those properties, appropriately established as medium density residential uses, are entitled to be safe**.

In fact, no one claims the Subject Properties were not appropriately developed under Goal 18, and no one disputes that the Subject Properties are acknowledged to comply with all facets of Goal 18.

DLCD's pitch is limited to the idea that the County ought to deny the medium density residential development determined to be appropriate development of the subject properties under the acknowledged planning program, the right to be safe - to be protected from certain disaster because:

(1) of DLCD's fallacious syllogism:

- All property with an exception that allows residential development to be on a foredune subject to ocean overtopping/undercutting, is entitled to shoreline protection.

- The Subject Properties have an exception that allows residential development on a foredune subject to ocean overtopping/undercutting.
- Therefore, the existing exception does not entitle the Subject Properties to shoreline protection because the foredune is subject to ocean overtopping/undercutting,

and

(2) DLCD's unsupported idea that the County must refuse to allow the existing exception to be supplemented to allow the "appropriate" residential development to be on the now eroding foredune, so shoreline protection can be prohibited. DLCD gives no reason or rationale, they just say it, as if that is enough to make it so.

To state their propositions, shows they are untenable. The proper syllogism under the rules is:

- All property with an exception that allows residential development to be on a foredune subject to ocean overtopping/undercutting, is entitled to shoreline protection.
- The Subject Properties have an exception that allows residential development on a foredune subject to ocean overtopping/undercutting.
- Therefore, the existing exception entitles the Subject Properties to shoreline protection because the foredune is subject to ocean overtopping/undercutting,

The existing exception for Twin Rocks-Watseco-Barview allows the existing residential development to be on the foredune it is on, including now that the foredune has unexpectedly become subject to ocean overtopping/undercutting. But, if the existing exception is not good enough, then it seems equally clear that the administrative rules expressly authorize the existing exception to be supplemented to allow the acknowledged "appropriate development" to continue to exist when erosion starts. Either way, an exception to the prohibition on shoreline protection in Goal 18, Implementation Measure 5, either exists or an exception can and should be approved.

DLCD also complains that "Applicants should address impacts to these lands [Goal 17 and 18] in their analysis" (DLCD letter p. 4). This ignores that the application narrative directly addresses the proposal's consistency with Goal 17, as it does each of the Statewide Planning Goals. Application Narrative, p. 56-57 (Goal 17); p. 51-62 (Statewide Planning Goals).

With all due resect, there is no good faith claim to be made that the property is planned or zoned for "resource use" as DLCD alleges. The County's acknowledged comprehensive plan provides otherwise. There is also no reasonable way to argue the law requires that an acknowledged urban community and the appropriate medium density residential development for which it is planned, is not allowed to be safe under Goal 18 when disaster strikes. The planning

program for the Subject Properties and their area is already acknowledged to comply with Goal 18, based upon the existing exceptions.

Applicants have the Right to an Exception Under OAR 660-004-0022(11)

Inexplicably, DLCD says that OAR 660-004-0022(11) - the type of reasons exception expressly applicable to Goal 18 - does not apply. DLCD does not challenge the analysis or evidence for the OAR 660-004-0022(11) exception presented in the application narrative. Rather, they simply claim that this rule - that expressly allows an exception for foredune development that Goal 18 otherwise prohibits - cannot seek a Goal 18 exception for foredune development otherwise prohibited by Goal 18.

DLCD's argument that OAR 660-004-0022(11) does not apply is "because the houses that exist in this area were lawfully developed under the County's regulations at the time of development." DLCD Letter, p. 2. This does not explain why OAR 660-004-0022(11) does not apply to allow protection of that lawful development. Nothing in the text of Goal 18 provides or even hints that the reasons exception of OAR 660-004-0022(11) is not available for properties simply because they were "lawfully developed under the County's regulations at the time of development." Indeed, it seems implausible that the rule would be available only to structures that were unlawfully developed as DLCD's reasoning suggests is its preference. DLCD improperly inserts a requirement ("must be unlawfully developed") that is not in any language in the administrative rule or Statewide Planning Goal 18. DLCD's interpretation violates ORS 174.010.[3]

If what DLCD means to say is that the Subject Properties are lawfully developed notwithstanding their foredune is now subject to ocean overtopping/undercutting, then they are necessarily agreeing that the existing exceptions are adequate to cover Goal 18, Implementation Measure 2, because it is the existing exceptions that make the Subject Properties' development lawful. If, on the other hand, DLCD is saying that the existing development is *unlawful* under Goal 18, Implementation Measure 2, then they are admitting this exception request is appropriate under OAR 660-004-0022(11). But they cannot plausibly assert that we must ignore the existence of that Goal 18, Implementation Measure 2. Their position has to be one or the other - either the existing exceptions are good enough to be Goal 18, Implementation Measure 2 exceptions or the Applicants are entitled to a new exception under Goal 18, Implementation Measure 2. Because, no matter how you slice it, the residential development to be protected by the proposed shoreline protection is on a foredune subject to wave overtopping/undercutting. The below assumes that DLCD thinks that a new exception to Goal 18, Implementation Measure 2 is needed, even though the agency is not particularly clear.

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[3] ORS 174.010 provides:

> "In the construction of a statute, the office of the judge is simply to ascertain and declare what is *** *not to insert what has been omitted*, or to omit what has been inserted; and where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all."

The proposal is for a Goal 18, Implementation Measure 5 exception through a Goal 18, Implementation Measure 2 exception. If DLCD's point is that can only be a Goal 18, Implementation Measure 5 exception, then the proposal meets all standards for that too. We note that DLCD does not contend that OAR 660-004-0022(11) does not apply to Goal 18, Implementation Measure 5 in any instance, but only that it does not apply in this instance for the stated reason that houses are lawfully there - under an existing exception. DLCD fails to explain and it is not apparent, why its argument leads to the conclusion that OAR 660-004-0022(11) does not apply. DLCD's position is unreasonably punitive against citizens who, and a County that, did everything right under the Oregon Planning program and the only thing that has changed is an unanticipated natural hazard befell the properties. That position is untenable.

OAR 660-004-0022(11) allows the following exceptions:

> "Goal 18 — Foredune Development: An exception may be taken to the foredune use prohibition in Goal 18 "Beaches and Dunes", Implementation Requirement. Reasons that justify why this state policy embodied in Goal 18 should not apply shall demonstrate that:
>
> "(a) The use will be adequately protected from any geologic hazards, wind erosion, undercutting ocean flooding and storm waves, or the use is of minimal value;
>
> "(b) The use is designed to minimize adverse environmental effects; and
>
> "(c) The exceptions requirements of OAR 660-004-0020 are met."

This rule provides the standards for a type of "reasons" exception to any of the Goal 18 prohibitions on foredune development. It is hard to understand how it does not apply here.

Several Goal 18 implementation requirements prohibit foredune development. Relevant to this case, is that Goal 18, Implementation Requirement 5, prohibits permits for beachfront protective structures except in particular circumstances which include where an exception allows residential development on an eroding dune. Beachfront protective structures are, by their nature, located in the foredune, as here. That exceptions to Goal 18, Implementation Measure 5 are contemplated by OAR 660-004-0022(11), is clear from the rule's express terms and its context that Goal 18, Implementation Requirement 5 expressly allows beachfront protective structures in the *foredune,* where an *exception to the foredune development* prohibition in Goal 18, Implementation Measure 2 has been taken. Unpacking this, Goal 18, Implementation Requirement 5 obviously applies to prohibit beachfront protective structures in the foredune, unless an exception allows that development on foredunes that are subject to ocean overtopping/undercutting. That is what is being sought here - an exception to allow shoreline protection for residential development on a foredune subject to ocean overtopping/undercutting.

Accordingly, an exception to allow shoreline protection in an eroding foredune is an exception for "Foredune Development" that the administrative rule is talking about.[4] On its face, OAR 660-004-0022(11) applies to Implementation Measure 5 as well as Implementation Measure 2 and the proposed shoreline protection use. By its express terms or context, it cannot be denied that OAR 660-004-0022(11) applies here.

Part of DLCD's problem is that it claims the proposed shoreline protection is not a "use" and the OAR 660-004-0022(11) types of reasons exception is for "uses". DLCD is wrong that shoreline protection is not a "use". The County's acknowledged code makes shoreline protection structures an "accessory" residential *use*. TCLUO 3.500(2). That ends the matter.

DLCD presumes that OAR 660-004-0022(11) is limited to reasons exceptions for houses, not a beachfront protective structure ("BPS"). That too is incorrect. Goal 18, Implementation Measure 2 prohibits "**residential development**" on dunes that are subject to ocean overtopping/undercutting. That implementation measure expressly **distinguishes between commercial and industrial "buildings" and residential "development**," which includes much more than houses. It is basic statutory interpretation that different terms used in the same provision mean different things. The proposed BPS is "residential development" in this instance as much as a fence, garage or other residential feature in a residential development would be.

Here, the proposed BPS is inextricably linked to the safety and very viability of the affected residentially planned and zoned Subject Properties. Nothing in the express words or context of the rule says the exception provision OAR 660-004-0022(11) cannot be used to justify BPSs on residential lots as a part of the residential development. Further, a close reading of the rule says you can have shoreline protection if there is an existing exception that allows residential development on an eroding dune. The exception need not be for the shoreline protection; rather it need only be for residential development on an eroding dune.

The record plainly establishes that when the Applicants' properties were platted and when the houses and infrastructure developed, the entire development was painstakingly consistent with Goal 18. At the time, the development was located far from the shoreline on a stabilized dune and the dune was not subject to ocean overtopping and undercutting. Consequently, there was no Goal 18, Implementation Measure 2 or Implementation Measure 5 issue to worry about or any need to take an exception to Goal 18 to allow for the residential development of the Subject Properties. As the geologic analysis from that period plainly demonstrates, the beach had been prograding westward for decades. The erosive natural hazard happened later when the character of the dune changed.

Now that the Applicants' authorized residential development is on not just a foredune, but on an foredune subject to wave overtopping and undercutting, do they need a new exception that says it is to Goal 18, Implementation Measure 2 to be there so they are entitled to shoreline

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[4] The rule would also authorize and exception to Goal 18, Implementation Requirement 6 which prohibits foredune breaching and Implementation Requirement 7 which prohibits grading or sand movement to prevent inundation.

protection under Implementation Measure 5? If so, that is what this effort is all about and the County should approve this exception as a precaution.

Or is it the case that the **existing acknowledged exception** that commits the area and subject properties to residential use and that makes residential development in the area acknowledged as "appropriate development" under Goal 18, simply means that the existing exception's scope necessarily includes residential development when the foredune becomes erosive and so there is an existing Goal 18 Implementation Measure 2 exception already? If so, then the County should adopt alternative findings so deciding.

The Applicants either need a new exception to Goal 18, Implementation Requirement 2 to allow continued safe use of their properties that are committed to residential development on the foredune or they do not; but there is nothing about the need for safety for the Subject Properties that means they are disqualified from an exception necessary for safety.

As a result, the application properly uses OAR 660-004-0022(11) as a basis to establish the reasons necessary to justify an exception to one or both of Goal 18, Implementation Measure 2 and Implementation Measure 5, under Goal 2, Part II(c). DLCD incorrectly asserts otherwise and demands a reasons exception to Goal 18, Implementation Measure 5 under the "catch all" reasons exception provisions. DLCD Letter, p. 2. While not required to do so, to remove any issue, Applicants provide the "catchall" reasons for exceptions to both Goal 18, Implementation Measure 2 and Implementation Measure 5 as an additional way to approve the requested shoreline protection.

Two New LUBA Decisions

DLCD directs the Planning Commissioners to two recent LUBA decisions that discuss the reasons exceptions process, but DLCD provides little analysis about the grounds for those decisions. DLCD letter, p. 3. Applicants discuss those decisions below to aid the County.

While DLCD is correct to state that the reasons exception process must be followed closely and attention paid to addressing each approval criteria, their casual reference to such complex cases presents an inaccurate and distorted understanding of their holdings.

LUBA issued two decisions on May 4, 2021 addressing goal exceptions – *Oregon Shores Conservation Coalition v. Coos County*, __ Or LUBA __ (LUBA No. 2020-002, May 4, 2021); *Confederated Tribes of Coos v. City of Coos Bay*, __ Or LUBA __ (LUBA No. 2020-012, May 4, 2021). At issue were reasons exceptions to Goals 9, 12, 13 and 16 for a natural gas liquefaction facility *(i.e.*, a pipeline), related estuary dredging and the Jordan Cove applicant's effort to obtain a reasons exception using both the "catch all" justification of ORS 660-004-0022(1) and goal-specific justifications to Goals 9, 12, 13 and 16. Most relevant here is that the applicant sought a Goal 16 specific reasons exception and a "catch all" reasons exception. LUBA decided that the applicant was ineligible for a Goal 16 exception because the specific reasons exception rule for Goal 16 exceptions limited eligibility to dredging proposals to support the "present level of navigation." LUBA decided that the proposal would widen the channel "to

allow navigation by deep-draft, ocean-going vessels" and decided that was not "'continuation of the present level of navigation' under any definition." Therefore, the Goal 16 specific basis for a reasons exception did not apply. Other goal specific reasons exceptions for other goals also did not apply.

These LUBA cases are most informative on how they viewed the application of the "catch all" reasons exception basis that applies when a specific goal's reasons exception bases do not apply. To understand LUBA's decision, it is important to understand the framework for the "catch all" type of reasons exception.

ORS 660-004-0020 provides the general requirements for a Goal 2, Part II(c) "reasons" exception. The rule mirrors its statutory equivalent, ORS 197.732(2)(c) and imposes four separate requirements for a reasons exception. The first of those requirements is: "Reasons justify why the state policy embodied in the applicable goals should not apply." OAR 660-004-0020(2)(a); ORS 197.732(2)(c)(A). OAR 660-004-0022 is the administrative rule that addresses what is required to demonstrate that reasons are necessary to justify an exception under that standard. The rule provides a "catch all" at OAR 660-004-0022(1) that applies unless one of the latter numbered provisions, which are goal or use specific, applies. *See* OAR 660-004-0022(1) ("For uses not specifically provided for in this division [or other rules], 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: ["catch all" provisions follow]").

LUBA held the applicant had not demonstrated a sufficient reason to justify the exception under the "catch all" in OAR 660-004-0022(1)(a) because the applicant had not demonstrated the first "catch all" standard was met. The first "catch all" standard requires showing a need for the proposal "based on one or more of the requirements of goals 3 to 19." The analysis in those decisions focuses on whether the goals cited by the applicants actually imposed a requirement that needed to be met and involved an analysis of LUBA's decision in *VinCEP v. Yamhill County*, 55 Or LUBA 433 (2007).

Here, the Applicants' goal exception request did not originally seek the "catch all" reasons exception, because it is not required to do so. Rather, the Applicants sought both a committed exception and a reasons exception under ORS 660-004-0022(11), discussed above and in the application narrative. OAR 660-004-0022(11) is specific to Goal 18, which in turn invokes the remaining reasons exceptions requirements of OAR 660-004-0020, not the "catch all" of OAR 660-004-0022(1).

DLCD in their May 19, 2021 letter asserts that a "catch all" reasons exception is required. DLCD letter p. 2. As a precaution and to cooperate with DLCD, the Applicants below justify that type of exception as a basis for their requested shoreline protection.

Returning to the recent Coos Bay cases, the problem for the applicants there was that they had to demonstrate that they would be at risk of failing to satisfy one or more "obligations" imposed by a statewide planning goal under OAR 660-004-0022(1)(a), as interpreted in *VinCEP*

v. Yamhill County. They could not do that. In the Coos Bay cases, LUBA explained that the *VinCEP* analysis for the "catch all" reasons exception requires a showing of a:

> *"'demonstrated need * * * based on one or more of the requirements of Goals 3 to 19' standard at OAR 660-004-0022(1)(a) to require that the county demonstrate that it is at risk of failing to satisfy one or more obligations imposed by a statewide planning goal and that the proposed exception is a necessary step toward maintaining compliance with its goal obligations."*

While LUBA did not delve further into *VinCEP* in the Coos Bay cases, it is worth examining further what LUBA said in that case. First, LUBA noted that, "OAR 660-004-0022(1)(a) is the first prong of a **non-exclusive, generic set of reasons** that are sufficient to justify an exception to allow a use not permitted by the applicable goals[.]" *VinCEP,* 55 Or LUBA at 442. In other words, the "demonstrated need" based on "one or more of the requirements of Goals 3 to 19" **is not the only** way one can satisfy the first reasons exception requirement. It is, however, the primary way applicants have tried to meet the "demonstrated need" requirement.

Second, LUBA explained in *VinCEP* that the reasons exception requirements are not to be read or applied in a draconian manner:

> "We do not necessarily agree with petitioners that the county must be 'between the devil and the deep blue sea' with respect to its planning responsibilities, in order to identify a 'demonstrated need' under OAR 660-004-0022(1)(a). Stated differently, the county need not be faced with a circumstance in which it must choose between violating its Goal 9 obligations or its Goal 3 obligations. Nonetheless, the county must establish that there is a demonstrated need for the proposed hotel based on the requirements of one or more of the goals[.]" *Id.* at 448.

Third, the facts in *VinCEP*, as with the Coos Bay cases, are significant. In *VinCEP*, the applicant sought to rely upon Goal 9's general mandate to "provide adequate opportunities for a variety of economic activities" to demonstrate compliance with the reasons exception's need requirement. However, LUBA noted that Goal 9 does not "require" any planning for employment uses on rural lands at all or impose any other requirements aimed at rural lands. *Id.* at 446. Also, LUBA noted that the record and findings did not contain any evidence of a market demand for the proposed use that might be sufficient to demonstrate a "need" for the proposed use. *Id.* at 449. Likewise, the Coos Bay applicants did not present any goal requirements that the county was at risk of violating if it did not approve the use.

The Coos Bay LUBA cases support the proposed exceptions here. First, the specific Goal 18 basis for a reasons exception applies by its express terms, as explained above. Further, under the "catch all", there is at least one clear goal requirement that the County would violate by refusing to allow the proposed BPS.

Goal 7 requires the County to protect people and property from natural hazards. Its natural hazard planning implementation requirement (A)(1) *requires* local governments to adopt plans and implementing measures to reduce risk to people and property from natural hazards. That is exactly what is sought here - a plan amendment that will allow the applicants to protect their person and lawfully established property from the natural hazard of coastal erosion in a manner that the comprehensive plan says the County will act.

There are other relevant goals, but Goal 7 provides a direct command that binds the County that is easy to understand. It would violate and cannot be reconciled with Goal 7 to demand that the Subject Properties committed under an acknowledged planning program to urban residential development, and their developed housing and supporting infrastructure, to be destroyed and the occupants of those properties to be at significant risk of serious harm or death.

Among the other goals that require approval of the requested BPS is Goal 18 itself which requires the county "To reduce the hazard to human life and property from natural or man-induced actions associated with [coastal beach and dune areas.]" And Goal 18's command that "Coastal comprehensive plans and implementing actions shall provide for diverse and appropriate use of *** dune areas consistent with their *** recreational *** and economic values ***", means that when a county has made the choice, as Tillamook County has done here, to develop the dune area, it must then allow that development to be safe and protected from natural hazards, as Goal 7 requires.

The appropriate use of the dune areas here is that of the acknowledged urban unincorporated community with medium density residential use that the County's plan identifies it to deliver. Letting the acknowledged unincorporated community be destroyed by coastal erosion is not providing for the "diverse and appropriate use" of these dune areas and is certainly not protecting persons and property from natural hazards.

A final point, the two LUBA Coos Bay cases talk about how "reasons" exceptions should be "exceptional" and not so broadly framed that they can be easily applied to establish other exceptions across a broad range of circumstances. The Application certainly meets that standard. This situation is exceptional and the basis for granting an exception would not apply to coastal properties generally.

When the acknowledged planning program for the Subject Properties were established,, the beaches were prograding for decades and the properties were in full compliance with Goal 18. No exception was required because, under the Goal 18 framework, the development was placed so far away from potential coastal hazards that it was implausible to conclude that they would be threatened by ocean overtopping or undercutting. The development was placed precisely where the state goals said they should be placed, and included an extensive natural, vegetated protective barrier between any development and the ocean. The situation here is legally and factually unique and does not apply broadly to other properties. That unusual historic and factual background significantly narrows the situations that could receive a "reasons" exception. The theory behind Goal 18 is that all development that is approved consistent with the Goal 18 framework will not be subject to beach-related hazards. Indeed, one of its primary

purposes is to ensure that development is not located where "appropriate development" is threatened. Under that framework, because the Subject Properties have been planned and zoned and developed consistent with Goal 18, the present threat from the ocean is exceptional and it is beyond unfair to punish the owners of those properties, and the public infrastructure that serves them, by demanding persons be exposed to extreme danger or death and the development acknowledged to be completely appropriate, be torn out when climate change and perhaps other forces intervene. Neither Goal 18 nor Goal 7 allow or sanction that result.

DLCD's claim to the contrary suggest a disrespect for the planning program it has acknowledged for the area, and a callous, inflexible view of the Oregon planning program.

Precautionary "Catch All" Reasons Exception to Goal 18, Implementation Measure 2 and Implementation Measure 5

As noted, DLCD thinks a "catch all" goal exception is appropriate. DLCD letter, p. 2 In response, the Applicants provide a "catch all" reasons exception below. Please note that the Applicants have also instructed their expert to conduct additional analysis. When it is completed, Applicants will submit it and, if necessary, supplement the below.

As discussed above, the first of the four standards for the "catch all" reasons exception relies upon OAR 660-004-0022(1) as opposed to the OAR 660-004-0022(11) Goal 18 specific reason provided with the original application, but the other three standards remain the same between the "catch all" and the Goal 18-specific reasons exception standards. Consequently, there is significant overlap between the analysis for the two exceptions. For purposes of convenience and brevity, the analysis below incorporates by reference the analysis provided on pages 36 through 51 of the application narrative and supplements that analysis with responses related to DLCD's letter. Also, the format of the analysis below will reflect the "standard" followed by "Applicants Comment" findings approach used in the original application narrative.

Goal 2, Part II(c) "reasons exception" (see also ORS 197.732(2)(c) and OAR 660-004-0020 through 660-004-0022):

APPLICANTS COMMENT:

The Applicants provide the following "catch all" reasons exception to allow the proposed development under Goal 18, to exempt it from limitations imposed by Goal 18 Implementation Measures 2 and 5, which restrict the development of beachfront protective structures (BPS) in foredune areas subject to ocean overtopping and undercutting.

> ***"(2) The four standards in Goal 2 Part II(c) required to be addressed when taking an exception to a goal are described in subsections (a) through (d) of this section, including general requirements applicable to each of the factors:***
>
> > ***"(a) Reasons justify why the state policy embodied in the applicable goals should not apply.' The exception shall set forth the facts and assumptions***

used as the basis for determining that a state policy embodied in a goal should not apply to specific properties or situations, including the amount of land for the use being planned and why the use requires a location on resource land;" (See also ORS 197.732(2)(c)(A)).

APPLICANTS COMMENT:

As LUBA noted in *VinCEP* and the two Coos Bay cases noted above, this standard requires that an applicant demonstrate why a state policy embodied in Goal 18 should not apply. Those cases discuss that the "reasons justify" standard is addressed under OAR 660-004-0022 and that the "catch all" reasons exception requirements are provided under OAR 660-004-0022(1). Demonstration of compliance with those requirements satisfies the requirement set forth under OAR 660-004-0020(2)(a).

The Applicants' Comment from pages 37 through 40 under this standard are hereby incorporated. In summary, those comments refer to reasons in addition to standards required by statewide planning goals that justify why the state policy embodied in the applicable goal should not apply. Among other things, they set forth the evidence used in the analysis to include: the documented history of beach progration in the decades prior to approval of the Pine Beach Subdivision replat and development on the George Shand Tracts, the expert analysis that there was no demonstrable reason at the time that pattern of beach growth should stop, nevertheless reverse; that the County's comprehensive planning documents did, and still do, show the area as one having a prograding beach instead of a retrograding or even stable beach. *See*, e.g., Application Exhibits F through J.

DLCD's letter states that the application does not explain how this area differs from other areas that are also not eligible for beachfront protection. That is simply not the case, there is extensive evidence and discussion about the unique background leading up to development of these properties. One look at the County's coastal map shows how little of the coastline is shown to have a "prograding" beach compared to those areas that have fair notice from the county's planning documents of a retrograding beachfront. Even fewer properties are located in areas that have exceptions to Goals 3, 4, 11, 14 and 17 and are planned to be consistent with all state goals including Goal 18 (and all other Statewide Planning Goals), have been designated as urban unincorporated communities and deemed appropriate for development within Goal 18 areas. Far fewer will have the geotechnical analysis that demonstrates decades of beach progression that supported the approved development. And even fewer of those will have been constructed on a subdivision that did not require an exception to Goal 18 because it was on a stable dune several hundred feet away from the ocean and included a 150-foot wide naturally-vegetated common area to serve as a natural mitigation barrier to the effects of ocean erosion and ocean storm events. That is not a commonplace context that will be applicable to many locations along the Oregon Cost. It is unique to this location and, as required by the standard, is "exceptional."

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."***

APPLICANTS COMMENT:

As noted in *VinCEP*, this standard provides a non-exclusive list of reasons that justify a reasons exception.

As demonstrated in the application materials, there is a demonstrated need for the proposed BPS because the properties, houses and supporting public infrastructure are at significant risk of being destroyed by ocean erosion without it. The application materials make clear that the only option is to protect the properties (and infrastructure) with the proposed BPS or they will be lost.

As discussed above, there is a requirement to protect lawfully developed property from coastal hazards (coastal erosion and flooding), based upon the requirements of Goal 7. Goal 7 is "[t]o protect people and property from natural hazards," which includes coastal erosion and its consequential coastal flooding. Goal 7(A)(1) requires that "Local governments *shall* adopt comprehensive plans (inventories, policies and i*mplementing measures*) to r*educe risk to people and property from natural hazards*." (Emphasis supplied.) This is not just a mindless planning exercise, the County must plan to deal with natural hazards and then implement that plan by

making decisions consistent with the comprehensive plan, otherwise the County will fail to meet its Goal 7 requirements.

The County has adopted comprehensive plan measures to implement Goal 7. In addition to the analysis and mapping conducted pursuant to the goal, the County adopted policies and related land use regulations to implement those policies. The County Goal 7 policy regarding erosion provides, in relevant part:

> "a. Prevention or remedial action shall include any or all of the following:
>
> "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.; and,
>
> "8. Any other measures deemed appropriate to deal with site specific problems." (Emphasis supplied.)

The County acted consistently with the above when approving the original subdivisions and building permits for the Subject Properties. Those approvals implemented the prevention strategies outlined in the County plan at 1 through 8 above, as discussed in the original application narrative. Buffer areas and building setbacks were imposed, vegetation and re-vegetation was required and maintained. Now, the Applicants seek to implement the policy that remedial action be taken to stabilize the shoreline with riprap now that the original vegetation stabilization mechanisms have failed.

The proposed plan amendments (exception) seek an implementation measure identified in the Comprehensive Plan to reduce the risk to people and lawfully developed and developable property from the natural hazards threatening them, because the dune has now become subject to ocean overtopping and undercutting. The proposed erosion mitigation BPS use[5] directly implements the County's Goal 7 program. Failure to approve the proposed plan amendment

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[5] The DLCD letter argues that the use is not a BPS but is "mitigation of shoreline erosion." DLCD letter, p. 4. DLCD is wrong. Of course the use is the proposed BPS. Had Applicants not provided a particular BPS, no doubt DLCD would be complaining that it had nothing to evaluate against the criteria. Regardless, the original application narrative repeatedly refers to the beachfront protective structure's use and function, which is the equivalent of the "mitigation of shoreline erosion" terms that apparently DLCD would rather the applicant use. DLCD's parsing of words provides no insight or benefit to the required analysis. Everyone knows that the purpose and function of the BPS is to mitigate shoreline erosion at the location of the Subject Properties. DLCD's argument is an unhelpful and an example of disappointing gamesmanship.

implementation measure adopted to comply with Goal 7 means that it would fail to comply with Goal 7 requirements if it does not implement this the proposed plan amendment.

The proposed BPS will protect both the people who own the subject properties but also beachgoers, from catastrophic ocean driven erosion. If homes are destroyed, then people who live in them are at risk of harm or death. If the ocean destroys the homes on the subject properties, it will almost certainly also get to the public water and sewer infrastructure that they are connected to. For the Subject Properties that are undeveloped (but in an acknowledged medium density residential zone), there is nothing that stops the ocean from getting to the infrastructure that fronts those properties. The fact that critical public infrastructure is at risk is bad enough, but failing to protect these properties also risks dangerous objects and human waste flooding the beach and ocean. It risks water lines and mains being broken and so risks infiltration of pollutants into the system that serves hundreds of homes. The proposed BPS will protect the acknowledged unincorporated community from devastating losses associated with the above. The proposed BPS will protect the infrastructure that people of the unincorporated community rely upon from destruction and catastrophic losses. It will protect the water and sewer districts from catastrophic infrastructure losses that they may find difficult to address. There is a demonstrated need for the proposed use based upon the requirements of Goal 7.

Moreover, the second express goal of Goal 18 is "[t]o reduce the hazard to human life and property from natural or man-induced actions associated with these areas." That requirement includes protection from natural actions, including the drastic natural change in beach progration to regression. The hazards to life and property in this instance are not man-induced, they are natural in origin.

Goal 18 further commands that "Coastal comprehensive plans and implementing actions shall provide for *diverse and appropriate use* of *** dune areas consistent with their *** recreational *** and economic values ***." (Emphasis supplied.) The appropriate use of the dune areas here is that which the County governing body has determined to be appropriate in establishing the acknowledged Twin Rocks-Barview-Watseco urban unincorporated community, with medium density residential use that the County's acknowledged plan and Buildable Lands Inventory determines is appropriate. Having made that policy choice for how development will occur in this area, insisting that a significant part of the acknowledged unincorporated community be destroyed by coastal erosion is not providing for the "diverse and appropriate use" of these dune areas and fails to implement the second part of Goal 18 the promises and requires authorization of the "diverse and appropriate" use of dunes. As the original application narrative demonstrates, the proposal is consistent with those comprehensive plan measures adopted by the County to implement Goal 18. There is a demonstrated need for the proposed use based upon the requirements of Goal 18.

There is also a need for the proposal based upon the requirements of Goal 10. Goal 10 provides, that it is the obligation of local governments to "[t]o provide for the housing needs of citizens of the state." Goal 10 calls for the county to inventory buildable lands intended for residential uses. As noted above and as the record shows, 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 County. That need has largely been met, with a few more vacant lots available in the identified area. If the existing residential structures and the lots planned for residential use necessary to meet the County's identified need are allowed to fall into the ocean, the County will be failing to meet its Goal 10 obligations and callously, will be required to find land to meet that need elsewhere. Protecting 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.

Goal 11 also establishes a demonstrated need for the proposed BPS. Goal 11 provides that it is the County's obligation "[t]o plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development." It also calls for counties to develop and adopt community public facilities plans and to implement them. The County has carried out this planning exercise in the urban unincorporated community and developed efficient water and sewer services to the area, to include the subject property served by the Watesco-Barview Water District and the Twin Rocks Sanitary District. Without the proposed BPS, these Goal 11 facilities and services will be under threat not just for the subject properties, but for the greater system. There is nothing "orderly and efficient" about refusing to protect lawful, established public facilities and services from catastrophic erosion hazards when adequate and appropriate mitigation measures can be taken to protect that infrastructure. Nothing in Goal 11 or its or related administrative rules is furthered by the County insisting that public facilities be so threatened. Indeed, the whole purpose of Goal 11 is to abate the potential public health hazards that may flow if such systems are not installed or are inadequate. Protecting these existing public facilities and services from damage due to the imminent threat of erosion enables the County to meet its obligation to have an orderly and efficient arrangement of public facilities and services.

OAR 660-004-0022 also requires that applicants demonstrate that either (1) the proposed use or activity is dependent on a resource that can only reasonably be obtained at the proposed exception site, or (2) "[t]he proposed use or activity has special features or qualities that necessitate its location on or near the proposed exception site."

The second of the two options is met here. The proposed BPS is designed to prevent the catastrophic erosion that is seriously threatening people and property. The proposed BPS is only effective if it is established on the subject properties as proposed. It cannot be located at another location along the beach and still protect the Subject Properties. Accordingly, it should be beyond dispute that the "proposed use or activity has special features or qualities that necessitate its location on or near the proposed exception site."

> ***"(b) Areas that do not require a new exception cannot reasonably accommodate the use'. [See also, ORS 197.732(2)(c)(B).] 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;"

APPLICANTS COMMENT:

Applicants addressed this standard at page 40 of the application narrative. That response is hereby incorporated. In short, that response explains that the standard only requires an evaluation of areas that can "reasonably accommodate" the proposed use. As with the standard addressed immediately above, the location of the BPS must be somewhere between the subject properties and the ocean. If located anywhere else, then the structure will not prevent erosion on the subject properties. DLCD asserts that the alternatives analysis requires evaluation of alternative types of shoreline protection. That is not what the standard says. The standard says that you look to *alternative areas*, not alternative types of shoreline protection. Once again, DLCD improperly attempts to change what the standard means by comment letter. Regardless, the Applicants' engineer establishes that the proposed BPS is the only structure that will provide the necessary protection.

"(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:"

APPLICANTS COMMENT:

Applicants addressed this standard at page 41 of the application narrative. That response is hereby incorporated. It reflects the summary provided above.

Here again, DLCD argues that "applicants do not adequately analyze alternatives to a beachfront protective structure." DLCD letter, p. 4. Nothing in the reasons exceptions standards require an analysis of alternative beachfront protective structures or alternative "methods" other than what is proposed and DLCD has not pointed to any standard that imposes such a requirement. The express language requires an analysis of "possible alternative areas." Alternative areas are not alternative methods.

Several alternative methods other than the proposed BPS are conceptually possible and none are effective and as to off-shore structure, that one is impossible to get permitting approval for. The options include: planting/replanting of vegetation; a different "type" of beachfront protective structure; repeated replenishment of the sand on the beach; and the construction of off-shore structures to lessen the wave energy before it hits the beach and thereby conceptually halting the shoreline regression.

Under the standard provided above, only alternatives that do not require a new exception need be considered. That eliminates most of the other "alternative method" options. Using any other type of BPS, such as geo-bags, would also require an exception and, as explained by the engineers early in the process, would likely be less effective and potentially more costly than the proposed design. Repeated sand replenishment of the beach would require exceptions to Goal 18 Implementing Measure 6 (foredune breaching) and likely Implementation Measure 2 because such method is not protected from wind or storm wave erosion. Constructing an off-shore underwater structure would likely require an exception to one or more of Goals 17 Coastal Shorelands, Goal 18 Beaches and Dunes and Goal 19 Ocean Resources, as well as require approval and permitting from the State and/or Federal governments who are unlikely to give approval, for such a structure.

The only alternative "method" that would not require a goal exception is planting or re-planting vegetation. However, given the fact that such an approach was imposed at the time the Pine Beach subdivision was approved and that vegetation washed away, and the fact that the 142 feet of property lost to shoreline regression since 1994 occurred on land that was historically well-vegetated with natural grasses and shrubs, it is not reasonable or possible to conclude that new plantings could somehow resist the same erosion forces that overcame established vegetation. It is not reasonable to propose a method that has already failed to prevent harm.

DLCD's "alternative methods" to beachfront protective structures argument is a red herring. No standard requires it, and there are no reasonable alternative BPSs that would not also require a goal exception that could possibly work for the site. If there were, the Applicants would already be implementing them because they would invariably have been cheaper than the cost of implementing the necessary BPS proposed.

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

APPLICANTS COMMENT:

No resource land is being used for the proposed shoreline protection. The subject properties are already subject to a committed exception for urban residential development and the County's Goal 18 decision for the property was to develop it. Under Goal 18, the Subject Properties are urban medium residential density land not resource land. There is also no adjacent resource land in the unincorporated community in which the subject properties are located.

The response from page 42 of the application narrative is hereby incorporated.

> ***"(ii) Can the proposed use be reasonably accommodated on resource land that is already irrevocably committed to non-resource 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?"

APPLICANTS COMMENT:

As with several of the other inquiries, this one presumes the exception requests development on resource lands. Here, the land where the BPS will be constructed has an acknowledged planning program that commits it to residential use, not protection as a beach resource. The urban levels of residential development and supporting public facilities and services irrevocably commit these properties to the approved residential uses the proposed BPS will protect. Also, the BPS cannot be located anywhere else and still protect the properties.

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

APPLICANTS COMMENT:

The exception area is contained within the County-designated Twin Rocks-Barview-Watseco Community Plan, which is a Tillamook County urban unincorporated community. The closest urban growth boundary is within the City of Rockaway Beach, approximately 2 miles north of the subject properties. Again, the proposed beachfront protective structure is specifically required to abate shoreline erosion only for the subject properties. Therefore the *"proposed use [cannot] be reasonably accommodated inside an urban growth boundary"* based on the evidence presented above. Being accommodated within the urban unincorporated community boundary is the regulatory equivalent of being reasonably accommodated in an urban growth boundary, in any case.

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

APPLICANTS COMMENT:

The proposed beachfront protective structure'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 erosion. The proposal complies with this standard.

"(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."

APPLICANTS COMMENT:

Applicants addressed this standard at pages 43-44 of the application narrative. That response is hereby incorporated. In summary, it explains that, given the nature of the proposed use and its locational requirements, the analysis contained here and above is necessarily a "broad review" as allowed by the standard. It is unlikely that any parties can come forward to describe *"specific sites that can more reasonably accommodate the proposed use."* Applicants also note that DLCD makes no effort to argue that a BPS located at some other location would be effective in mitigating erosion at the subject properties or even to propose that there are viable alternative methods that would protect the subject properties.

"(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;" (See also, ORS 197.732(2)(c)(C)).

APPLICANTS COMMENT:

The EESE analysis provided at application narrative pages 44 through 48 is hereby incorporated by reference and supplemented with the points below. The additional points presented below are intended to respond to DLCD's comments that the impacts of additional shoreline armoring on the beach, beach access, and to its remarkable claim that impacts to surrounding properties are not addressed. DLCD letter, p. 4. The Applicants' engineer explained that the proposed BPS will not adversely impact surrounding property at Exhibit F, p. 9. Nonetheless, the Applicants asked their consulting engineer to supplement his analysis and that supplement is being submitted under separate cover.

DLCD also demands under this standard, an "alternative methods" analysis even though the standard by its express terms, does not require it. We address that and all of DLCD's other objections below, even though it is unnecessary because they have either already been addressed or because no standard requires what DLCD demands.

Environmental:

DLCD expressed concern about the impacts of the proposed BPS, on the larger beach system. The Applicants' expert evaluated the effect of the proposed BPS on the surrounding area and found that:

> "There will be no impacts to the surrounding property since it will not direct additional water to the surrounding property, increase wave heights/wave runup, or impact the natural littoral drift of sediment along the coast. The northern and southern ends of the rock revetment will be angled into the bank to prevent flank erosion."

The area is already significantly impacted by BPS - DLCD opines that 30% of the littoral cell is already "armored." DLCD may include the four jetties in that calculation, but it is unknown what it is that they rely upon. The existing "armoring" appears to be much smaller. But regardless, at worst the proposal adds 0.8% increase in the "armoring of the littoral cell. Hardly a major increase. Recall, to the north of the proposed BPS is the Shorewood RV Resort, which has a large, above-ground BPS on the beachfront. To the south is riprapped beachfront and the north jetty. The proposal only adds 2.8% of armoring to the subpart of the littoral cell between Nehalem and Tillamook. For the entire Rockaway Littoral Cell (between Cape Falcon on the North and Cape Meares on the South), the impact is even less to the point of being miniscule:

Length of the entire littoral cell: 106,200 ft

Existing shoreline armoring (not including the four jetties in the littoral cell): 5930 ft, which is about 5.6% of littoral cell length

Existing shoreline armoring with Pine Beach Revetment (to including the four jetties in the littoral cell): 6810 ft, which is about 6.4% of littoral cell length (0.8% increase)

Given the length of beachfront and the concentrated "shoreline armoring," that already exists, the impact of the proposed is simply significant. The only evidence in the record is that the proposed BPS will not adversely affect properties in the immediate area, the sub-cell between Nehalem and Tillamook or the entire littoral cell.

Furthermore, the design of the proposal to be covered with sand and beach grasses and other natural vegetation is far preferable than the above-ground armoring at the Shorewood RV Resort. The proposal will make it possible to reestablish shoreline vegetation on the properties - on the proposed BPS. The proposed design is environmentally equally as good or better than other BPS methodologies that could be placed at the same location. Replenishing the beach with sand cannot stop and does not stop the ocean overtopping and undercutting at issue. It also does not afford an opportunity for the establishment of native grasses or larger vegetation – it is recognized only as a temporary solution with minimal, if any, environmental benefits. And while a natural foredune benches with native vegetation is obviously the best of all possible solutions from an environmental perspective, that by itself has failed to stop the retrograding shoreline.

The alternative of a large protective structure off-shore, is a nonstarter. The Applicants have no right to it, it would not be on their property as is the proposal and DLCD would object to that even more than the proposal.

Economic:

The long-term economic consequences of a beachfront protective structure would be similar for the subject properties as it would be for any other property that might be considered. As discussed in the application narrative, the cost of paying for and maintaining the proposed BPS will be borne by the property owners. One would anticipate that any of the alternative mitigation methods would also have costs borne by the Applicants.

As mentioned in the analysis above, the cost of re-planting vegetation would likely be comparatively low, but has not succeeded in halting shoreline regression and would need to be repeated.

Not approving the proposed BPS risks significant and imminent losses of private property - $10,284,990 to be exact in assessed real market value is at stake, not to mention the significant losses to public and private infrastructure. There is no public economic cost associated with authorizing the proposed BPS; rather authorization averts public infrastructure losses.

Social:

Applicants point out that the proposed BPS design continues to maintain the same three beach access locations that presently exists. There is no social "loss" from the proposal

compared to the present conditions other than a slightly changed (improved) appearance. It is likely that the other types of mitigation measures could be designed to protect existing beach access.

Beachgoers will be able to experience a similar landscaped appearance under the proposed BPS, as now. The sand replenishment approach would temporarily provide beachgoers with an experience similar to what they now have but without a foredune, but that is only temporary as such an approach dangerously does not prevent erosion and will result not only in beach sand loss, but also in structural and infrastructure losses due to storm activity.

The social cost of the loss of the Subject Properties is great and even greater social cost attends the loss of the Twin Rock-Barview-Watseco urban unincorporated community that would follow. The entire community would feel and be unsafe if the County refused to allow the "appropriate" and acknowledged development to be unsafe. After all, "safety needs" are one of the 5 levels of Maslow's hierarchy of needs that dictate individual behavior. Healthy people, feel safe.

Energy:

As the application narrative explains, the energy consequences – positive or negative – of constructing the beachfront protective structure at the subject property or at another location that would and would not require a Goal 18 exception are the same and minor in nature regardless. The narrative from p. 47 and 48 is hereby incorporated.

There appears to be little differences in the energy expenditures between the various mitigation options. All require the expenditure of energy during periods of construction or maintenance. Natural vegetation/revegetation would likely be the least energy intensive, but like sand replenishment, would likely be required to be repeated over and over, even if successful.

EESE Conclusions:

The EESE conclusions now are no different than as explained at page 48 of the original application narrative. The EESE analysis weighs in favor of locating the beachfront protective structure at the proposed location because the chosen site and methodology is not significantly more adverse than would result from locating it in another area that requires an exception. There is and can be no evidence otherwise.

> ***"(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." (See also, ORS 197.732(2)(c)(D)).

APPLICANTS COMMENT:

The response from the original application narrative pages 48 and 49 is hereby incorporated.

The issue posed by this standard is whether the proposed uses are compatible with or will be rendered compatible with other adjacent uses. Points worth reiterating are that the proposed BPS is a structure that will be covered with sand and revegetated, and monitored for additional revegetation if needed, all at the property owner's costs. Following the installation of the BPS and the re-sanding and revegetation of the site, the proposal will resemble a natural foredune. Persons walking along the beach will continue to enjoy looking at natural vegetation that steps up from the beach, just as they do now.

As discussed above, the Applicants' expert rendered his opinion that there are no adverse impacts to adjacent uses or properties or indeed the entire littoral cell from the proposed BPS. The original engineering analysis demonstrated no adverse erosion or other impacts on adjacent properties. The analysis following DLCD's comments demonstrates the same and that there are no adverse impacts to the greater beach area. The proposed BPS is compatible with other adjacent land uses because (1) it is BPS just as there is BPS immediately to the north, (2) it will not even be noticeable, and (3) the fact that it will keep safe existing homes and people in an acknowledged unincorporated urban community is the soul of being compatible with that community and the adjacent urban uses here.

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

The proposal satisfies the requirements for a "built" exception.

DLCD's summary rejection of and incomplete description of the "committed" exception requested by Applicants (DLCD letter, p. 2) begs a more complete explanation about the exceptions process and, more importantly, whether in this instance the requested BPS/mitigation of shoreline erosion measure can be approved under all three of the types of exception. It can.

ORS 197.732 provides for three types of Goal exceptions. ORS 197.732(2) provides, in relevant part:

"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: [list of 4 criteria follows]."

The above language mirrors that provided under Goal 2, Part II. The three types of exceptions are known as "built" or "physically developed", "committed", and "reasons" exceptions. OAR 660 division 4 provides the regulations for goal exceptions. OAR 660-004-0025 provides the exception requirements for land physically developed to other uses. OAR 660-004-0028 provides exception requirements for land irrevocably committed to other uses. And, as discussed above, OAR 660-004-0020 and 660-004-0022 provide requirements for reasons exception.

Conceptually, the focus of a built exception is on the existing development on the subject property itself; the basis for a committed exception is on the development of the surrounding properties; and the basis for a reasons exception are for other "reasons" why the normal rules of the respective goal should not apply in this instance.

The original application narrative demonstrated that the proposed BPS can be approved under a committed or a Goal 18-specific reasons exception. The analysis above explains that the proposed BPS can be approved under the standards for a "catch all" reasons exception. The analysis here demonstrates the proposed BPS can be approved under the standards for a built/physically developed reasons exception.

Initial Observations

The Subject Properties are in an acknowledged urban unincorporated community, with an acknowledged medium density residential zone and plan designation. As such they are not "available" to be undeveloped with residential development, as Goal 18, Implementation Measure 2 contemplates for a dune subject to overtopping and undercutting. They are available for residential development, of which the proposed shoreline protection is a part. Therefore, any suggestion that the subject properties are not entitled to a built or a committed exception for the requested BPS, simply cannot be an informed one.

Built Exception

OAR 660-004-0025 provides:

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

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

APPLICANTS COMMENT:

OAR 660-004-0025(1) provides that an exception to a goal may be taken when the land subject to the exception is physically developed to the extent it is no longer "available for uses allowed by the applicable goal." Here, Goal 18, Implementation Requirement 2 expressly prohibits the development of "residential developments" on active foredunes or other foredunes that are conditionally stable but subject to ocean undercutting or wave overtopping as are the subject properties. That is what we have here.

The evidence in the record irrefutably demonstrates that each of the properties are physically developed with residential development. The vast majority of the subject parcels are fully developed with residences, public facilities and services that support the residential development, as well as accessory uses in some instances. Even the vacant lots are developed with public facilities and services deemed "impermissible" under Goal 18. If the vacant lots are not entitled to a "built" exception, then they are certainly entitled to a "committed" one based upon the existing acknowledged urban zoning that they and the surrounding urban unincorporated community, enjoys.

Regardless, it is certain that Goal 18 would, today, prohibit any and all of the acknowledged approved medium intensity residential development that is allowed and that exists on each of the Subject Properties because the dune is now eroding. That is the crux of a built exception – the development already exists at a location where the Goal would otherwise prohibit.

Part (2) of the rule provides whether the land has been physically developed with uses not allowed by an applicable goal will depend on the situation at the site of the exception. This development was lawfully approved and was consistent with Goal 18 requirements at that time of development. Given the unexpected reversal of progration to regression of the shoreline, the existing development is now inconsistent with Goal 18, Implementation Measure 2's requirement that residential development not be on eroding dunes. As a result, the Applicants are seeking an exception to the Goal 18, Implementation Measure 2 prohibition on such development. This situation is no different than any lawfully developed property that suddenly finds itself inconsistent with a Goal's requirements due to the adoption of a new goal, amendment of an existing goal, or a drastic change in the natural environment. The property owner is entitled to

seek a built exception to the goal's requirements because of the existing development in order to protect lawfully established structures and infrastructure.

The application materials fully satisfy the requirements set forth under OAR 660-004-0025(2). The Applicants have submitted maps and detailed drawings of the exact nature and extent of the area that is physically developed with uses Goal 18 now prohibits. The proposed findings, and any findings adopted by the County should, address those materials. Those materials show the locations of structures, roads and water and sewer facilities on the properties.

The evidence in the record demonstrates that Tillamook County may adopt an exception to Goal 18 for the subject property to allow for the existing residential development including its infrastructure and its protection pursuant to OAR 660-004-0025.

Applicants are Entitled to an Irrevocably Committed Goal 18 Exception

DLCD is mistaken that the applicants are ineligible for a committed exception. DLCD letter, p. 2. DLCD relies upon OAR 660-004-0010(3) to argue that the fact that the County has taken other exceptions for the subject properties does not exempt the properties from the application of the other goals. OAR 660-004-0010(3) provides:

> "(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 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."

There are two responses.

First, as a technical matter, it is not the existing exceptions that commit the Subject Properties to residential development. Rather, it is the acknowledged existing planning program established under the Subject Properties' acknowledged exceptions to Goals 3, 4, 11, 14 and 17 that does so. The existing exceptions are the foundation for, but under OAR 660-004-0010(3) they are not the committing decision. The acknowledged existing planning program puts urban residential development on the foredune that has become subject to ocean overtopping. OAR 660-004-0010(3) does not say that an acknowledged planning program cannot commit property to the acknowledged development that it allows - here irrevocably committing property to residential development on a foredune now subject to wave overtopping.

Second, this rule does not say the existing exceptions are irrelevant. The rule says nothing about whether existing exceptions that support a planning program that is acknowledged to comply with Goal 18, that allows residential development on a foredune, as a matter of law are also necessarily exceptions that continue to allow that residential development when the foredune becomes subject to ocean overtopping/undercutting.

In fact, there is **no case** in all of Oregon like this one here - where residential development (or any development) is acknowledged to comply with **all goals, including Goal 18, based upon other exceptions (to Goals 17, 14, 11, 4 and 3)** and then the fully allowed development later becomes unlawful under Goal 18 with which it is acknowledged to comply, due to natural disaster or natural hazards. It is the fact that the existing exceptions allow the exact residential development that is sought to be protected with a BPS, that means they are now also an exception that allows that acknowledged residential development when natural disaster or hazard strikes. It must be that the existing goal exceptions that led to LCDC's acknowledgement that the residential development planning program for the Subject Properties complies with Goal 18 as "appropriate development," are now also exceptions to Goal 18, Implementation Measure 2. It cannot be the law that an exception allowing residential development that is acknowledged to comply with Goal 18, cannot suddenly stop being an exception that allows residential development under Goal 18 simply because disaster strikes.

As a result, the County should adopt an alternative finding that the existing exceptions allow residential development on the dunes even though they have started eroding.

The existing acknowledged exceptions that cover the subject properties allow medium density residential development in an urban unincorporated community. Those exceptions form the basis for the County's acknowledged planning program for the Subject Properties and the unincorporated urban community in which they exist. Unincorporated communities are regulated by OAR 660 division 22. OAR 660-022-0010(9) defines an urban unincorporated community as:

"[A]n unincorporated community which has the following characteristics:

"(a) Include at least 150 permanent residential dwellings units;

"(b) Contains a mixture of land uses, including three or more public, commercial or industrial land uses;

"(c) Includes areas served by a community sewer system; and

"(d) Includes areas served by a community water system."

The rule defines an "unincorporated community" as a settlement with the following characteristics:

"(a) It is made up primarily of lands subject to an exception to Statewide Planning Goal 3, Goal 4 or both;

"(b) It was either identified in a county's acknowledged comprehensive plan as a "rural community," "service center," "rural center," "resort community," or similar term before this division was adopted (October 28, 1994), or it is listed in the

Department of Land Conservation and Development's January 30, 1997, "Survey of Oregon's Unincorporated Communities";

"(c) It lies outside the urban growth boundary of any city;

"(d) It is not incorporated as a city; and

"(e) It met the definition of one of the four types of unincorporated communities in sections (6) through (9) of this rule, and included the uses described in those definitions, prior to the adoption of this division (October 28, 1994)." OAR 660-022-0010(10).

The Tillamook County Comprehensive Plan, Goal 14 chapter expressly cites the above standards for identifying unincorporated communities. Comprehensive Plan, Goal 14, p. 14-19 (at (8)). It also identifies the OAR 660-022-0010(9) requirements for urban unincorporated communities in its description for "Urban Unincorporated Area." Comprehensive Plan, Goal 14, p. 14-19 (at (7)(d)). The Plan, Goal 14, p. 14-19 (at (9), states:

"Tillamook County has 16 communities that have all of the required characteristics; Barview, Beaver, Cape Meares, Cloverdale, Falcon Cove, Hebo, Idaville, Neahkahnie, Neskowin, Netarts, Oceanside, Pacific City/Woods, Siskeyville, Tierra Del Mar, Twin Rocks and Watseco."

Related plan policies are provided at Goal 14, p. 14-20 (at 3.2(B) Policies):

"(1) Tillamook County will plan for unincorporated communities in accordance with Statewide Planning Goal 14 (Urbanization) and the unincorporated communities rule (OAR 660, Division 22) as available resources permit. Such planning is a high priority given the importance of these communities to the county and citizen concerns about the quantity and quality of growth that is occurring within them.

* * * * *

"(3) Tillamook County will designate unincorporated communities in accord with OAR 660-022-010, establish boundaries for these communities in accord with OAR 660-22-030. Community public facility plans will be developed where required by OAR 660-22-050."

The County has implemented these policies in the Twin Rocks-Barview-Watseco Community Plan, provided as Exhibit T to the application. Under that acknowledged community plan, the Subject Properties and the area around them are planned for residential development.

As the application narrative discusses, public facilities and services, to include water and sewer, are provided to each of the subject properties and there is a related community public facility plan as required by OAR 660-022-0050 for urban unincorporated communities.

All of the above, to include the analysis of the committed exception requirements and supporting evidence submitted with the application, demonstrate that the entire area around and including the subject properties is irrevocably committed to urban residential uses and to development that is fundamentally inconsistent with the conservation of the receding foredune.

There is no possibility of natural resource uses being established on the properties. They are not planned for protection of those resources and are developed and planned under an acknowledged program that is inconsistent with natural resource use of those properties. There is no possibility that it is appropriate under the acknowledge plan and zoning program that covers the area, that the Subject Properties will deliver undeveloped beaches or dunes. Due to natural forces that proceeded contrary to what is indicated in the County's planning documents and contrary to the best experts' analysis of what should have occurred, the areas intended for undeveloped beach and dune areas have been lost over the intervening decades.

The prior Goal 11, Goal 14 and Goal 17 exceptions taken for the Subject Properties and their greater unincorporated community, and the consequential development that flowed from those exceptions, has committed the subject properties to uses inconsistent with Goal 18's prohibition of development on foredunes subject to overtopping. Consequently, those properties are entitled to a committed exception as analyzed in the original application narrative and above.

For these reasons, the County should adopt a committed exception and approve the development application for the proposed BPS.

The County should reject DLCD's request that the County not evaluate the beachfront protective structure.

DLCD appears to object to the fact that the applicant has put forth a specific design for the BPS. DLCD asks the County to consider the BPS design through a separate process. DLCD letter, p. 5. With all due respect to DLCD, they misunderstand the application and fail to grasp the concept of a consolidated application, which the Tillamook County Land Use Ordinance and state statutes authorize. As the staff report explains, Article 10 of the TCLUO allows for consolidated applications such as the one here.

The application is for a BPS, so it makes sense to show the County what that will be so the County can decide if it meets relevant standards. County approval for the BPS should follow because the proposed BPS is either allowed outright or requires an exception to Goal 18, and the Application seeks both. Nothing about the request requires the inefficiency and time waste of a "separate" process; rather the Applicants, in dire time sensitive circumstances, have a right to request what they have. While the County is required to address the goal exception standards separately from the design of the BPS, nothing requires that such findings not be part of the same

application process. The demand for separate processes finds no support in any law and unreasonably delays the BPS use that is urgently needed.

Furthermore, if indeed Applicants are correct that, if an exception is needed, OAR 660-004-0022(11) provides the standards to demonstrate the "reasons necessary" for the exception, OAR 660-004-0022(11)(a) requires the County to conclude "the use will be adequately protected from any geologic hazards, wind erosion, undercutting ocean flooding and storm waves[.]" How can a decision-maker possibly make such a conclusion without a designed BPS as part of the application? Even under the "catch all" reasons exception, how can the County consider the potential environmental, economic, social or energy (EESE) consequences of a proposed BPS, if one does not know the design?

There is no requirement that the County separate the review processes and there is every reason to believe that it is impossible to demonstrate compliance with the reasons exception approval criteria without a proposed BPS design. The County should reject DLCD's suggestion to complicate, delay and separate the decision processes.

Conclusion

As the staff report, DLCD's letter and the application makes clear, the historical facts and legal context surrounding Applicants' proposed beachfront protective structure are complex.

Applicants have submitted the applications due to circumstances not of the County's or Applicants' making. At the time the of the County's acknowledged development program assigned medium residential development as the appropriate use of the Subject Properties, they were located several hundred feet from the shoreline with a well-vegetated protective barrier in-between. The Pine Beach/George Shand Tracts areas had seen over a half-century of prograding beach, pushing the shoreline farther and farther from the subject properties and vegetation was increasing. Now the properties, dwellings and supporting infrastructure are threatened by wave overtopping / undercutting due to ocean erosion.

The Application narrative and the supporting evidence in the record demonstrate that, under any legal approach, the County can and should approve the proposed BPS. The application narrative has carefully analyzed and addressed each of the approval standards, providing evidence that supports each approach. The proposed BPS has been carefully designed to ensure that there are no off-site adverse impacts; that existing beach access points are maintained, and that a natural foredune environment, albeit hardened, will be restored and maintained.

Nothing in the statewide planning goals requires the County to abandon its acknowledged planning efforts. Nothing requires the County to abandon Goal 7 which requires the County to protect people and property. Nothing requires the County to abandon its acknowledged Comprehensive Plan Goal 7 planning program that expressly relies upon shoreline protection (rip rap) to protect oceanfront development when natural hazards present themselves. Nothing requires the County to abandon prior approvals or to sacrifice significant public and private

investments in public facilities and services because an area is befallen by a natural hazard. Nothing in the statewide planning goals or the County's regulations prohibit property owners from seeking protections from hazards that no one, to include the County and DLCD in acknowledging the County's regulations, never expected the property owners to face. Now that the owners face dauting and imminent natural hazards, they are entitled to the requested BPS to protect their wholly "appropriate residential development." The Applicants' request is not outlandish, improper, or bad in some inherent way as DLCD suggests. Rather, in a published report DLCD explained, in dismissing any need to fundamentally change Goal 18 Implementation Measure 5 (Exhibit E to the Application narrative), that the exception process "works" to allow protective structures where needed. DLCD's report simply claims that the exceptions process is underutilized.

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

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

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

3. The acknowledged residential development/urban unincorporated community planning program that covers the Subject Properties is based upon existing exceptions to Goals 3, 4, 11, 14 and 17 and is acknowledged to comply with Goal 18 as "appropriate development." As a result, those exceptions that allow residential development of the Subject Properties are also an exception to Goal 18, Implementation Measure 2, to allow that residential development now that the foredune is subject to ocean overtopping/undercutting. That means there is an existing exception to "(2) above" and that the Subject Properties are entitled to shoreline protection under Goal 18, Implementation Measure 5.

4. In the alternative, the Subject Properties qualify for a new exception to Goal 18, Implementation Measure 2 that prohibits residential development on a foredune subject to ocean overtopping/undercutting, because the existing acknowledged planning program as a matter of

law, establishes that commitment. That means they are entitled to shoreline protection under Goal 18, Implementation Measure 5.

5. In the alternative, the Subject Properties qualify for a reasons exception under OAR 660-004-0022(11) specific to Goal 18's prohibition on foredune development because both Goal 18, Implementation Measures 2 and 5 prohibit foredune development and the proposed BPS meets all OAR 660-004-0022(11) standards. Recall, DLCD does not claim otherwise, They just assert that OAR 660-004-0022(11) is not available here without really explaining why and it is not apparent why that would be so. This also means that the Subject Properties are entitled to shoreline protection under Goal 18, Implementation Measure 5.

6. In the alternative, the Subject Properties qualify for a "catch all" reasons exception because they easily meet all criteria. It is impossible for the County to comply with Goal 7's requirement to protect life and property to do as DLCD wishes and demand the Subject Properties not be protected from the natural hazard that befalls them. The circumstances here are unique because the properties are acknowledged to comply with Goal 18 and it is only the fact that the ocean's behavior changed from decades of prograding to serious retrograding, that triggers Goal 18, Implementation 2. This also means that the Subject Properties are entitled to shoreline protection under Goal 18, Implementation Measure 5.

7. In the alternative, the Subject Properties qualify for a "built" exception because like the "committed" exception for which they also qualify, they are "built" with lawful homes with public infrastructure or as to the vacant lots, they are "built" with public water and sewer infrastructure and streets that serve them. They are "built" under an acknowledged planning program that commits them to residential development. This also means that the Subject Properties are entitled to shoreline protection under Goal 18, Implementation Measure 5.

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

Thank you.

Very truly yours,

Wendie L. Kellington

Wendie L. Kellington

Allison Hinderer

From: Sarah Absher
Sent: Monday, May 24, 2021 12:39 PM
To: Allison Hinderer
Subject: FW: Goal 18 Exception for Rip Rap at Shand Development & Pine Beach Replat Unit 1

Comments from Public Works

From: Ron Newton <rnewton@co.tillamook.or.us>
Sent: Monday, May 24, 2021 10:31 AM
To: Sarah Absher <sabsher@co.tillamook.or.us>
Cc: Chris Laity <claity@co.tillamook.or.us>; Jasper Lind <jlind@co.tillamook.or.us>; Jeanette Steinbach <jsteinba@co.tillamook.or.us>
Subject: RE: Goal 18 Exception for Rip Rap at Shand Development & Pine Beach Replat Unit 1

Sarah

For the Shand Development and the Pine Beach Subdivision Public Works will not have any comment. Neither of these have public vehicular access located where rip rap would be a viable option within any of the dedicated right of ways.

Ron Newton, *LSI*
Engineering Tech III
Tillamook County Public Works
Working From Home
Cell – 503.812.1441

From: Sarah Absher <sabsher@co.tillamook.or.us>
Sent: Monday, May 24, 2021 10:25 AM
To: Ron Newton <rnewton@co.tillamook.or.us>
Subject: RE: Goal 18 Exception for Rip Rap at Shand Development & Pine Beach Replat Unit 1

Hello Ron,

Thank you. The "Shand" development (not actually a platted subdivision) is just north of Pine Beach. Long lots that F&A the ocean.

Sincerely,
Sarah

From: Ron Newton <rnewton@co.tillamook.or.us>
Sent: Monday, May 24, 2021 9:53 AM
To: Sarah Absher <sabsher@co.tillamook.or.us>
Subject: RE: Goal 18 Exception for Rip Rap at Shand Development & Pine Beach Replat Unit 1

Sarah

Can you tell me where the Shand Development is located?

Ron Newton, *LSI*
Engineering Tech III
Tillamook County Public Works
Working From Home
Cell – 503.812.1441

From: Sarah Absher <sabsher@co.tillamook.or.us>
Sent: Tuesday, May 18, 2021 11:42 AM
To: Chris Laity <claity@co.tillamook.or.us>
Cc: Ron Newton <rnewton@co.tillamook.or.us>; Jeanette Steinbach <jsteinba@co.tillamook.or.us>
Subject: Goal 18 Exception for Rip Rap at Shand Development & Pine Beach Replat Unit 1
Importance: High

Good Morning Chris,

I am preparing the staff report for the Goal 18 Exception request for Rip Rap at the properties identified above.

I just wanted to check in to see if I could get a few comments from Public Works prior to the May 27th hearing. What I am interested in is knowing if TCPW feels there could be transportation impacts with the installation of rip rap at the subject properties for shoreline protection and also if there are any records of road development for these properties prior to January 1, 1977.

Thank You,

Sarah Absher, CFM, Director
Tillamook County Department of Community Development
1510-B Third Street
Tillamook, OR 97141
503-842-3408x3317

Allison Hinderer

From: Sarah Absher
Sent: Monday, May 24, 2021 10:24 AM
To: Allison Hinderer
Subject: Goal 18 Exception Request-Watseco Water

Thank You Allison,

Yes, this would be good to print out for the hearing. 13 copies please.

Thank You,
Sarah

From: Allison Hinderer <ahindere@co.tillamook.or.us>
Sent: Monday, May 24, 2021 9:42 AM
To: Sarah Absher <sabsher@co.tillamook.or.us>
Subject: FW: EXTERNAL: Re: Goal 18 Exception Request-Watseco Water

Do you need this?

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

From: Watseco-Barview Water <watsecobarview@centurylink.net>
Sent: Monday, May 24, 2021 9:28 AM
To: Allison Hinderer <ahindere@co.tillamook.or.us>
Subject: Re: EXTERNAL: Re: Goal 18 Exception Request-Watseco Water

Yes, the water line was installed when the development occurred. Not before.
Barbara

On 5/18/2021 12:00 PM, Allison Hinderer wrote:

> Hello again,
>
> I have a follow up question, when was the water line installed? Was it not until development occurred?

Mary & Tom Gossart
593 NW 94th Terrace
Portland, Oregon 97229

May 24, 2021

Tillamook County Dept. Of Community Development
1510 B Third Street
Tillamook, Oregon 9714

Attn. Sarah Absher

To Whom It May Concern:

We are writing in response to a notice of a public hearing on May 27, 2021 re: 85221-000086-PLNG-01. My husband and I are the owners of the house just North of the proposed revetment (Lot 2900 on map), and South and adjacent to Shorewood RV Park. We have owned the home for over 30 years and have witnessed the erosion occurring over that time. We have also observed the erosion to the North and South of Shorewood precipitated by the rip-rap placed at Shorewood RV Park beach front in the late 1990's. As our home was built in 1974, we would not need an exception to Goal 18 to apply for a permit to rip-rap.

Our concern is with the proposed rip-rap structure for the Pine Beach Development and the 5 lots/houses to the North. Our house would become the only structure located between the Shorewood rip-rap and the proposed rip-rap starting at Pine Beach. Our observations are that rip-rap does put adjacent properties at risk of erosion, in this case funneling high tides and surges directly on to our beach front. The Pine Beach rip-rap proposal states that the North and South ends will be "angled into the bank". Since our house is at the North end, it would appear to send waves and debris onto our lot. We do not agree with their conclusion in Exhibit F, page 9, 5.5 that surrounding properties will not be impacted. This would effectively put us in a position to seriously consider rip-rap to protect our property, something we have resisted doing.

We are willing to work with the Pine Beach Group to find solutions to mitigating any negative impacts to our property. We have not moved forward on this as we have been waiting to hear the outcome of their request for an exception to Goal 18. If they are granted the exception, we would be happy to discuss options in the design of the rip-rap to mitigate the effect on our property. We understand the reasoning and intent of Goal 18 and the County and State interest in maintaining it.

Respectfully,

Mary Gossart

Tom Gossart

Barbara Trout 17640 Old Pacific Hwy, Rockaway Beach, Oregon 97136

May 24, 2021

To: Tillamook County Department of Community Development
Tillamook County Planning Commission
Tillamook County Board of Commissioners

I am writing today to express my opposition to #851-21-000086-PLNG-01 because it would significantly devalue my real property and take my property rights by eliminating my access to the beach.

In 1967 the same year as Oregon's landmark Beach Bill, Ray Losli granted a permanent 5-foot pedestrian beach access easement for "current and future" property owners for Watseco Blocks 1,3 and 5. This easement ownership document #181528 was recorded by Tillamook County Clerk June Wagner in Book 208 on page 56.

I currently own property on Watseco blocks 3 and 5, and the only access I have to the beach is through this deeded access which is on the north boundary of the Pine Beach Development, and within the proposed project area.

As a property owner with permanent deeded access within the project area, I was not notified of this proposed land use action. Therefore, I believe the entire process of consideration of this Goal 18 exception on this time schedule is legally flawed because the Tillamook County Department of Community Development did not follow the proper notification procedure: ORS 215.503 (9) (b) "Adopts or amends an ordinance in a manner that limits or prohibits land uses previously allowed in the affected zone" I believe that since, if approved, this would block current deeded beach access for all property owners on Watseco Blocks 1,3, and 5, each of those approximately 40 property owners should have been legally notified.

The private individuals who wish to complete this project do not have the right of imminent domain to take ownership without compensation of my and the other property owners deeded easement allowing our right to access the beach. If you grant this exception to Goal 18 and allow the rip rap/revetment project it will create an unreasonable obstruction to my deeded beach access, and you will be significantly reducing the value of my property and taking my property rights.

I find this unacceptable, and I hope you agree.

Sincerely

Barbara Trout

Elaine S. Cummings
17690 Old Pacific Hwy.
Rockaway Beach, OR 97136

May 24, 2021

Sarah Absher, Director
Tillamook County Planning Department
1510 B 3rd St.
Tillamook, OR 97141

RE: Opposition to #851-21-000086-PLNG-01

Dear Ms. Absher,

I have been a resident of the Watseco-Barview neighborhood since August of 1988 and a property owner since March of 1992. It has come to my attention that ocean front property owners in the Pine Beach Replat have applied for a Goal 18 exception to install rip rap on the front of their property. If they along with the property owners to the north of them are allowed to do so, my deeded access to the beach would be blocked. I was never notified that this action was instigated as I believe ORS states I need to be.

When the Pine Beach Replat began in 1997, several of us in the neighborhood became aware that their original replat was in violation of the existing Tillamook County set-back requirements. We discovered in searching the files at the planning department that after the process began, the County drafted a change to the ordinance, sent it to the developers and said that if they agreed with the revisions, they should send in their fees and the County would change it for them.

We were doing an extensive amount of amount of research regarding the conditionally stable sand dunes which comprised the development area and subjects like the fact that North Carolina had banned the use of rip rap because, among other things, it does not stop erosion, it only moves the site at which it occurs.. We also documented the significant amount of erosion that had been ongoing at the Pine Beach site. In other words, the developers were completely aware of the dangers of building too close to the ocean.

One of the reasons we were moved to do this research was that there were several important errors in the developer's initial dune hazard report. For instance, they claimed that the "fore dune"....about 1 1/2 feet high...was several feet higher than velocity flood height when it was actually several feet lower. There was not any real fore dune left. They also claimed that there had not been significant erosion.

The facts we uncovered are documented in our testimony to LUBA and to the County Commissioners. Also, at least one ocean front land owner cut his shore pine to allow an unobstructed view, which killed the trees, allowing some inundation. Seemingly, they did not ask anyone locally about over cutting shore pine before doing so or they would have known that would happen.

The rip rap allowed at Shorewood Trailer Park is being described by the Oregon Shores Conservation Coalition as "one of the worst shoreline armoring disasters on the Oregon coast" and we have heard that State Parks officials verbally admit this should never have been allowed. At high tide, it blocks our access to the beach when traveling from our deeded access north. This rip rap has created a tremendous amount of erosion to the north and south of the structure, it now forms somewhat of a peninsula, which is known by it's neighbors as "Cape Shorewood." PLEASE don't make this mistake again!

Sincerely,

Elaine S. Cummings

Paul and Velma Limmeroth
17495 Ocean Blvd
Rockaway Beach, Or 97136

May 24, 2021

To: Tillamook County Department of Community Development
Tillamook County Planning Commission
Tillamook County Board of Commissioners

I am writing today to express my concern regarding #851-21-000086-PLNG-01. When we purchased our property in 2011 it came with a recorded easement deed for access to the beach. Our purchase of the property hinged on that guarantee of easement. This easement was granted in 1967 for a 5 foot pedestrian beach access for "current and future" property owners for Watseco Blocks 1, 3 and 5. This easement ownership document #181528 was recorded by Tillamook County Clerk June Wagner in Book 208 on page 56.

Our property is in block 5. The only access we have to the beach is this deeded access. This access is on the north boundary of the Pine Beach Development, and within the proposed project area.

When the last home was built on the south side of the path I asked the owner if he was worried about ocean encroachment. "Nope, that is what insurance is for." We purchased back from the ocean because we did not want to have to worry about ocean encroachment on our property. The people on the front row made a choice to see the ocean from their house. We made a choice to see the ocean after a walk down our deeded pathway.

I do not think that the private individuals wanting to do this project have the right of imminent domain to take ownership without compensation of ours, and other property owners deeded access to the beach. If you grant this exception to Goal 18 and allow the rip rap/revetment project it will create an unreasonable obstruction to my deeded beach access, and you will be significantly reducing the value of my property and taking my property rights.

Please do not take our access and enjoyment of the beach from us.

Sincerely,

Paul and Velma Limmeroth

Oregon
Theodore R. Kulongoski, Governor

Parks and Recreation Department
Ocean Shores Program
84505 Highway 101 S
Florence, OR 97439
(541) 997-5755
FAX (541) 997-4425

Nature HISTORY Discovery

September 7, 2007

Chuck Barrett
1750 4th St NE
Salem, OR 97301

RE: Shorewood Travel Trailer Village

Dear Mr. Barrett,

Thank you for sharing your concerns regarding the current beach conditions in the Twin Rocks area just north of Garibaldi.

The subject property received an Emergency Authorization allowing the owner to place approximately 700 cubic yards of material under Project # SP-16876 from the Division of State Lands (DSL) on March 8, 1999. They conducted a site inspection on February 19, 1999 confirming the emergency need due to coastal erosion.

As an outcome of the 1999 Legislative Assembly, Senate Bill 11 transferred all permitting authority under statute and rule on the ocean shore to Oregon Parks and Recreation Department. All subsequent repairs to the structure authorized by our agency are not given allowances to increase their existing footprint outside of the original approval by DSL. This permit condition precludes the property owner from extending the structure further west so as not to further impede recreational access along the ocean shore.

This past winter, a rip embayment located just west of the subject property has certainly exacerbated the erosion issue and contributed to the loss of beach sand you mention that has restricted north-south access. Significant erosion was created this past spring to the three adjoining properties to the north of the subject property to which our agency gave emergency permit approval to place riprap. These owners are now seeking an Ocean Shore Alteration Permit from our agency as required by law. The request for a public hearing you mentioned ended on September 6, 2007.

We share your concern with the current beach profile in this area and will continue to monitor the situation to see if sand supply conditions change.

Sincerely,

Jeff Farm
Ocean Shores Program Manager

Cc: Governor's Office
Tony Stein, Coastal Land Use Coordinator

63400-0865

16905

Walk-In –

Chuck Barrett

TRACKING #

REFERRAL CODE: OPRD/Building on beach; Garibaldi & Rockaway

☐ OPINION ☐ CASEWORK ☐ REFERRAL ☐ NO FURTHER ACTION

RECEIVED 8/23/07 RECORDED ☐ AM ☐ PM RETURN CALL: ☐

NAME: Chuck Barrett NAME CONFIRMED: ☐

HOME PHONE #: 503-362-6512 BUS. PHONE #:

STREET: 1750 4th St NE

CITY: Salem STATE: OR ZIP 97301

NOTES:

SS# AND/OR CLAIM#: DOB:

HAS CALLER CONTACTED THIS OFFICE BEFORE: No Phone Ltr Fax E-mail

Garibaldi and Rockaway beach can't walk up the beach. Cit has spoken with State Parks. Shorewood RV owns the property and have brought rocks in to extend property People can't walk along the beach. They have "No Tresspassing" signs. There are other property owners that want to do the same thing. There is a hearing scheduled in September in Newport. Thinks State parks is a part of hearing. Parks states that (Mr. Stein) Shorewood got the permits from DSL. Building took place since last Summer.

North of Smith Lake between Barview/Garibaldi & Rockaway Beach.

RETURN CALL LOG:

DATE	TIME	N/A	STANDARD MESSAGE	INFO PROVIDED	BY
8-23-07	11:00 AM				

- Faxed to Brett 6-8-07
- Mailed to Sue 6-8-07

Request for Repair of Shoreline Protective Structure

Date: May 31, 2007

1. Name of Contractor: Bret Smith (Mohler Sand & Gravel)

   Address: 36435 Highway 101 North

   Phone: (503) 368-5157

2. Name of Property Owner: Sue Niemi (Shorewood RV Park)

   Address: 17600 Ocean Blvd

   Phone: (503) 355-2278

3. Map and Tax Lot Numbers of Property: T 1N R 10W Section 7 Subsection

   Tax Lot 2301, 2400, 2500, 2600

4. Permit #'s of Original Project: OPRD #: DA-____-____ DSL #: SP-16876

5. Describe damage to structure:
   Riprap base at beach end has been washed away causing landward boulders to slough down in the seaward direction.

6. When did the damage occur?
   Throughout the months of April & May 2007

7. Describe the proposed repairs:
   Four (4) to five (5) foot-size boulders will be placed by excavator to be supplied by contractor to effect placement of material where washout and slumping areas occur in the northern half of the existing rock berm. The height of the rock wall will be restored to four (4) feet above existing ground level.

8. Will additional material be hauled in? X Yes _ No If yes, how much material is needed? __ 300 cubic yards to start, then reassessment

REQUESTS FOR REPAIR WORK MUST INCLUDE A SITE PLAN AND CROSS SECTION DRAWING OF THE PROPOSED WORK. THESE DRAWINGS WILL BE COMPARED WITH THE ORIGINAL PERMIT APPROVAL TO VERIFY THAT THE REPAIR WORK WILL CONFORM TO THE DIMENSIONS OF THE ORIGINAL PROJECT. IF NECESSARY, A PERMIT FOR EQUIPMENT ACCESS ON THE BEACH SHALL BE SUBMITTED ALONG WITH THIS INFORMATION.

IN CASES WHERE THE ORIGINAL WORK WAS CONSTRUCTED PRIOR TO 1967, OR WHERE A PERMIT WAS NOT REQUIRED, APPLICANTS MAY NEED TO SUBMIT PHOTOS OR OTHER EVIDENCE OF THE ORIGINAL STRUCTURE.

THE INFORMATION ON THE PREVIOUS PAGE SHALL BE COMPLETED SEPARATELY FOR EACH TAX LOT.

I certify that I am familiar with the information contained in the repair application, and, to the best of my knowledge and belief, this information is true, complete, and accurate. I further certify that I possess the authority to undertake the proposed activities. I understand that the granting of other permits by local, county, state or federal agencies does not release me from the requirement of obtaining the permits requested before commencing the project. I understand that local permits may be required before the state authorization is issued.

Frances E. (Sue) Niemi — 5/31/07

Frances E. (Sue) Niemi
Property Owner or Authorized Agent — Date

OREGON REVISED STATUTE 390.650 ALLOWS REPAIRS TO BE EXEMPT FROM THE NORMALLY REQUIRED PERMIT PROCESS WHEN THE FOLLOWING IS MET:

ORS 390.650(5): An application for a new Ocean Shore Improvement Permit is not required for the repair, replacement or restoration, in the same location, of an authorized improvement or improvement existing on or before May 7, 1967, if the repair, replacement or restoration is commenced within three years after the damage to or destruction of the improvement being repaired, replaced or restored occurs.

To be completed by OPRD:

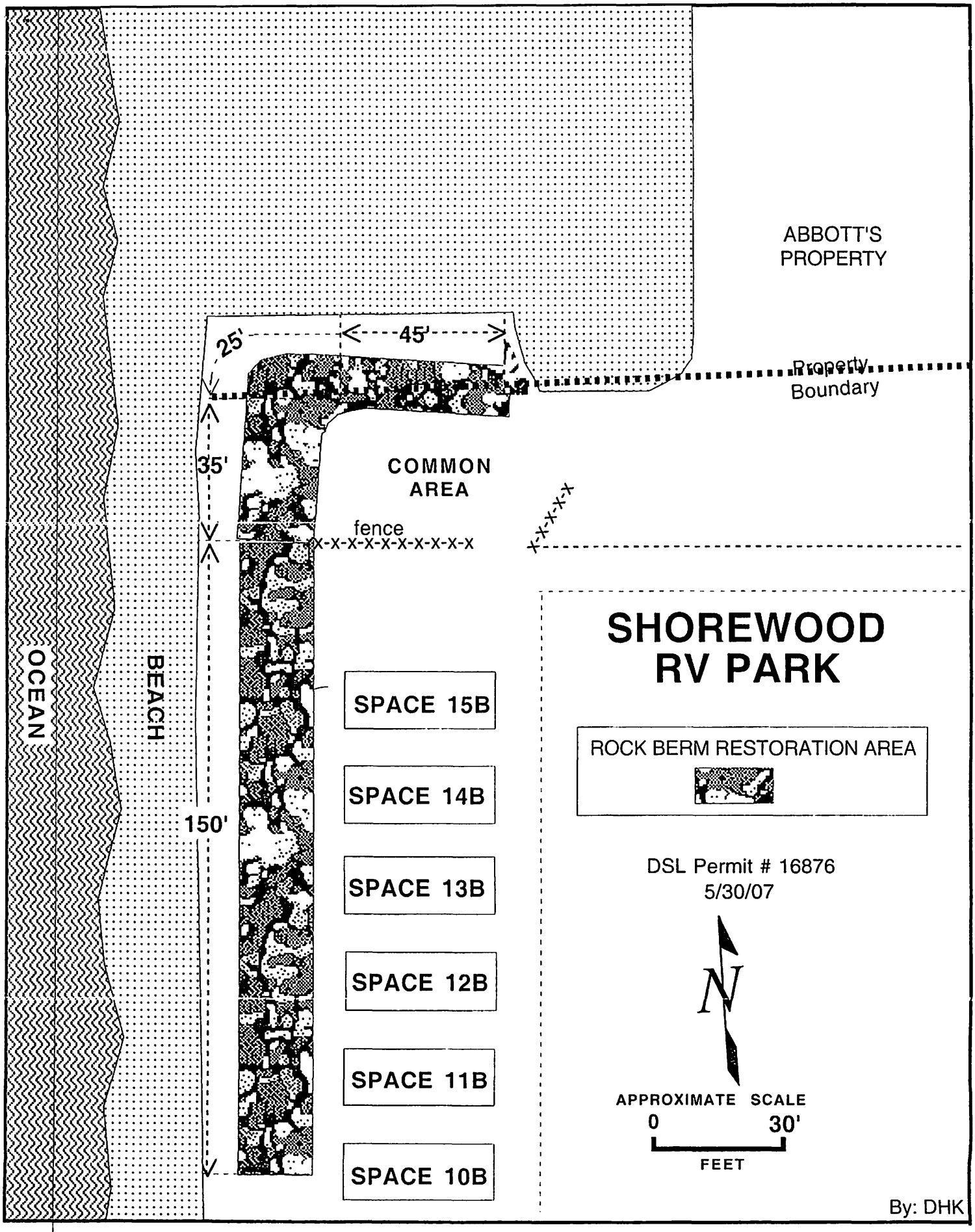
Repair Project is [X] is not [ ] exempt from the Ocean Shore Improvement Permit requirement of ORS 390.640.

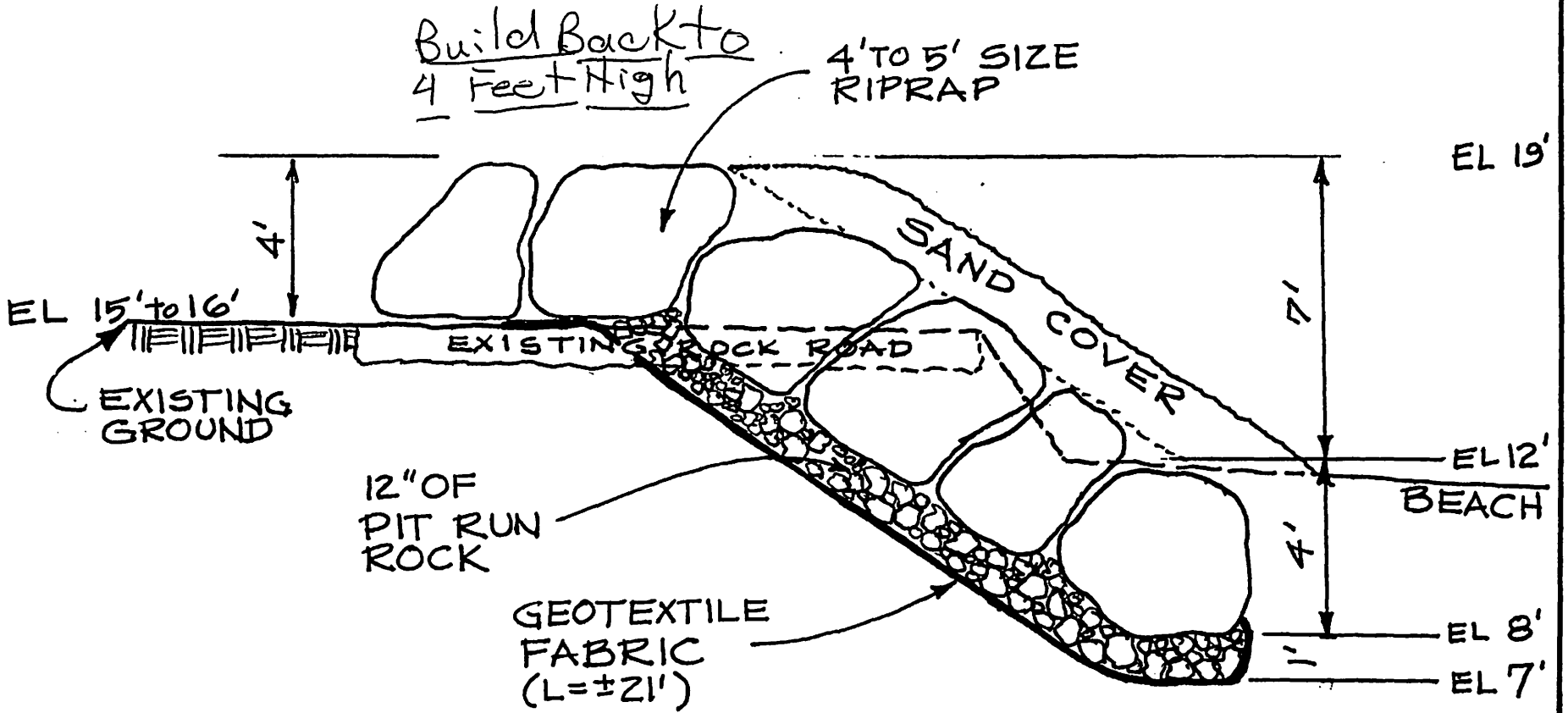
Special Conditions Required:
REPAIR WORK TO EXISTING RIP RAP REVETMENT SHALL CONFORM TO THE ORIGINAL DIMENSIONS AS SHOWN ON DSL PERMIT NO. 16876. UP TO 300 CUBIC YARDS OF ADDITIONAL MATERIAL MAY BE ADDED TO REPLENISH SETTLED ROCK. A PROJECT EVALUATION WILL BE REVIEWED UPON COMPLETION OF THE PLACEMENT OF 300 CU. YDS. THE BEACH WILL BE RESTORED TO ITS PRE-EXISTING CONDITION.

Authorized by:

T. Stahr — 6-7-07

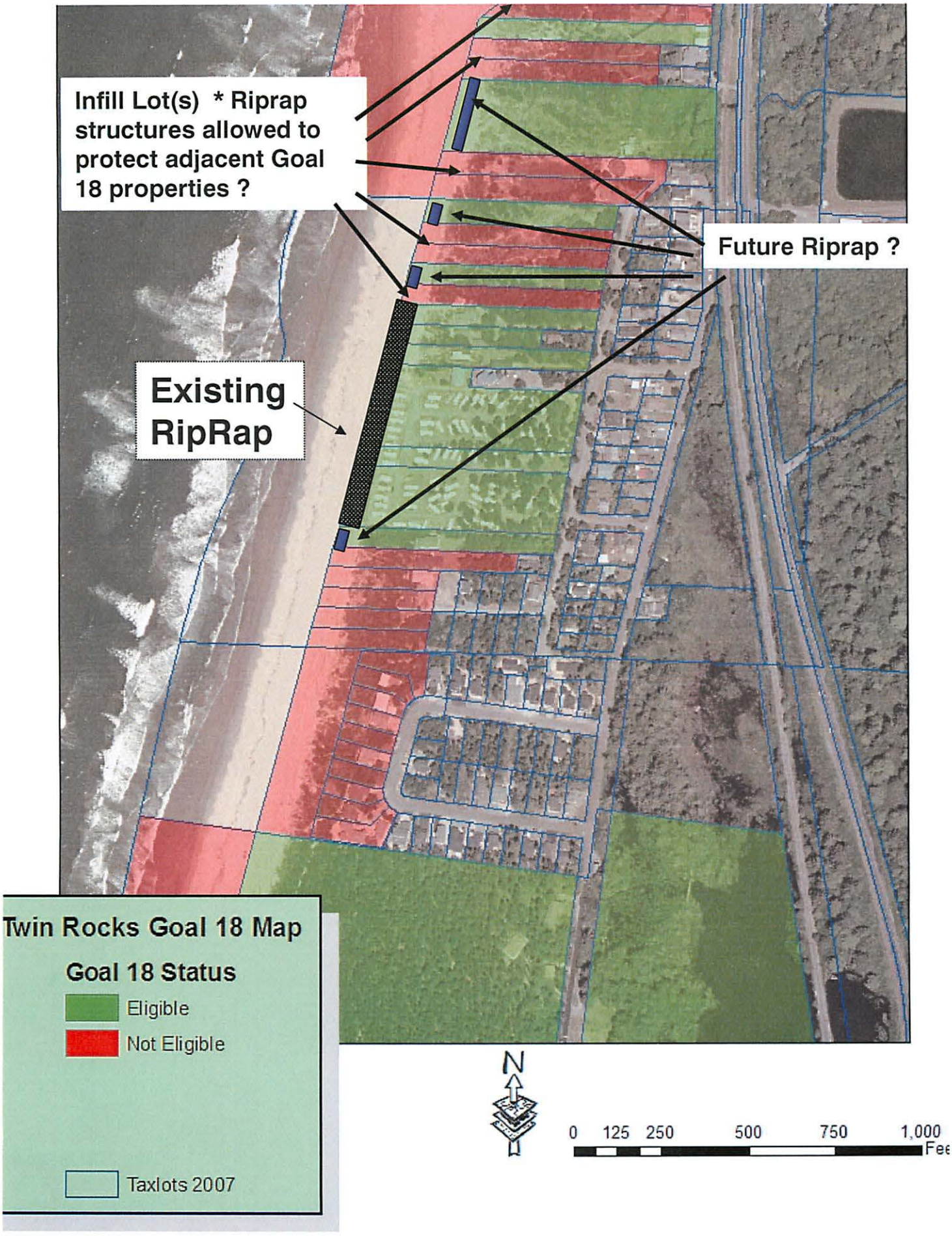
Coastal Land Use Coordinator or Designee — Date


ABBOTT'S
PROPERTY
25'
45'
Property
Boundary
35'
COMMON
AREA
fence
x-x-x-x-x-x-x-x-x-x
x-x-x-x-x
OCEAN
BEACH
150'
SPACE 15B
SPACE 14B
SPACE 13B
SPACE 12B
SPACE 11B
SPACE 10B
SHOREWOOD
RV PARK
ROCK BERM RESTORATION AREA
DSL Permit # 16876
5/30/07
N
APPROXIMATE SCALE
0
30'
FEET
By: DHK



SHOREWOOD
RV PARK

1/4"=1'-0"


Infill Lot(s) * Riprap structures allowed to protect adjacent Goal 18 properties ?
Future Riprap ?
Existing RipRap
Twin Rocks Goal 18 Map
Goal 18 Status
Eligible
Not Eligible
Taxlots 2007
N
0 125 250 500 750 1,000
Fee

From: "VAUGHAN Joy" <Joy.Vaughan@state.or.us>
To: "STEIN Tony" <Tony.Stein@state.or.us>
Date: 10/22/07 8:42AM
Subject: Shorewood Travel Trailer Village

Hi Tony,

Thanks for the clarification regarding the Shorewood Travel Trailer Village in Rockaway Beach. Since this is Parks jurisdiction, I am forwarding this email to you. If you need anything from DSL, let me know.

See you on Friday!

Joy

From: STAFFORD Lorna
Sent: Friday, October 19, 2007 2:22 PM
To: SOLLIDAY Louise
Cc: MOYNAHAN Kevin; MORALES Michael; VAUGHAN Joy
Subject: Rep. Boone

Debbie called saying she got a call from Rep. Clem's office who received a call from a Mr. Chuck Barrett (ph: 503-362-6512). He owns property in Rockaway and called with a complaint that the Shorewood Travel Trailer Village has exceeded their 750cy rock "thing" (assuming its riprap or something). She would like a call back to find out if we have been out there or what the story is on this. She said that Jeff Farm with Parks has been dealing with the issue.

Debbie's cell phone is 503-717-2931.

Lorna M. Stafford
Assistant to the Director & Land Board Secretary
Oregon Department of State Lands
775 Summer St. NE, Suite 100
Salem OR 97301-1279
Phone: 503-986-5224
Fax: 503-378-4844
www.oregonstatelands.us

CC: "MOYNAHAN Kevin" <Kevin.Moynahan@state.or.us>, "MORALES Michael" <Michael.Morales@state.or.us>