



# TILLAMOOK COUNTY BOARD OF COMMISSIONERS NOTICE OF MEETING AGENDAS

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## BOARD OF COMMISSIONERS:

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

## CONTACT:

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**COMMUNITY UPDATE MEETING**  
**Tuesday, July 27, 2021 at 8:00 a.m.**  
Teleconference

**WORKSHOP**  
**Wednesday, July 28, 2021 at 8:30 a.m.**  
**Commissioners' Meeting Rooms A & B**  
County Courthouse, 201 Laurel Avenue, Tillamook, Oregon

**BOARD MEETING**  
**Wednesday, July 28, 2021 at 10:00 a.m.**  
**Commissioners' Meeting Rooms A & B**  
County Courthouse, 201 Laurel Avenue, Tillamook, Oregon

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## PUBLIC COMMENT

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

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

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

## AGENDAS

### COMMUNITY UPDATE - AUDIO07-27-2021A.MP3

CALL TO ORDER: Tuesday, July 27, 2021 8:00 a.m.

1. 00:26 Welcome and Board of Commissioners' Roll Call
2. 00:44 Coastal Caucus
3. 23:22 Tillamook County Community Health Center
4. 31:22 Tillamook Family Counseling Center
5. 32:43 Sheriff's Office/Emergency Management
6. 35:40 Board of Commissioners
7. Cities
  - 57:49 Manzanita
  - 59:26 Bay City
  - 59:52 Tillamook
  - 1:03:31 South County
  - 1:05:48 Nehalem
  - 1:06:39 County Fair

**ADJOURN – 9:07 a.m.**

### WORKSHOP - AUDIO07-28-2021A.MP3

CALL TO ORDER: Wednesday, July 28, 2021 8:30 a.m.

1. 00:26 Welcome & Request to Sign Guest List
2. 01:33 Public Comment: There were none.
3. 01:34 Non-Agenda Items: There were none.
4. 01:35 COVID-19 Vaccine Update/Marlene Putman, Administrator, Health and Human Services;  
Ed Colson, Emergency Preparedness Coordinator, Ready Northwest
- 16:05 Universal Indoor Mask Recommendation/Marlene Putman, Administrator, Health and Human Services

5. 27:37 Discussion Concerning Oregon Health Authority Intergovernmental Agreement #170665 for Environmental Health Services/Marlene Putman, Administrator, Health and Human Services
6. 32:57 Discussion Concerning a Memorandum of Agreement with HIV Alliance for Ryan White Program Services/Marlene Putman, Administrator, Health and Human Services
7. 34:24 Discussion and Consideration of a Personnel Requisition for a New Regular Full-Time Public Health Program Representative in the Health and Human Services Department/Marlene Putman, Administrator, Health and Human Services

A motion was made by Commissioner Skaar and seconded by Vice-Chair Yamamoto. The motion passed with three aye votes. The Chair signed the requisition.

8. 40:26 Discussion and Consideration of a Personnel Requisition for a Replacement Regular Full-Time Accounting Clerk II in the Health and Human Services Department/Marlene Putman, Administrator, Health and Human Services

A motion was made by Commissioner Skaar and seconded by Vice-Chair Yamamoto. The motion passed with three aye votes. The Chair signed the requisition.

9. 41:20 Discussion and Consideration of a Personnel Requisition for a New Regular Full-Time Permit Technician in the Department of Community Development/Sarah Absher, Director, Department of Community Development

A motion was made by Commissioner Skaar and seconded by Vice-Chair Yamamoto. The motion passed with three aye votes. The Chair signed the requisition.

10. 42:46 Discussion and Consideration of a Personnel Requisition for a Replacement Regular Full-Time IT Specialist III in the Information Services Department/Damian Laviolette, Director, Information Services

A motion was made by Commissioner Skaar and seconded by Vice-Chair Yamamoto. The motion passed with three aye votes. The Chair signed the requisition.

11. 43:49 Board Concerns – Non-Agenda Items: There were none.
12. 43:53 Public Comments: There were none.

**ADJOURN – 9:14 a.m.**

**MEETING - AUDIO07-28-2021B.MP3**

CALL TO ORDER: Wednesday, July 28, 2021 10:01 a.m.

1. 01:36 Welcome & Request to Sign Guest List
2. 01:45 Pledge of Allegiance
3. 02:04 Public Comment: There were none.
4. 02:13 Non-Agenda Items: There were none.
5. 02:17 COVID-19 Vaccine Update/Marlene Putman, Administrator, Health and Human Services;  
Ed Colson, Emergency Preparedness Coordinator, Ready Northwest
- 16:20 Vaccine and Face Coverings Guidelines/Commissioner Erin Skaar
- 19:02 Face Covering Recommendations/Commissioner David Yamamoto
- 21:32 Public Health Concerns/Commissioner Mary Faith Bell

**LEGISLATIVE – ADMINISTRATIVE**

6. 23:38 Consideration of Oregon Health Authority Intergovernmental Agreement #170665 for Environmental Health Services/Marlene Putman, Administrator, Health and Human Services

A motion was made by Commissioner Skaar and seconded by Vice-Chair Yamamoto. The motion passed with three aye votes. The Chair signed the agreement.

7. 25:08 Consideration of a Memorandum of Agreement with HIV Alliance for Ryan White Program Services/Marlene Putman, Administrator, Health and Human Services

A motion was made by Commissioner Skaar and seconded by Vice-Chair Yamamoto. The motion passed with three aye votes. The Board signed the agreement.

**Chair Bell recessed the meeting at 10:30 a.m.**

**Chair Bell reconvened the meeting at 10:35 a.m. – AUDIO07-28-2021C.MP3**

8. **10:30 a.m.**  
**First Public Hearing: Concerning #851-21-000086-PLNG-01: A Goal Exception Request for Approval of an Exception to Statewide Planning Goal 18, Implementation Measure (IM) 5; Approval of a 18,Comprehensive Plan Amendment for a "Committed" Exception and/or a "Reasons" Exception to Goal Implementation Measure 5 for the Construction of Shoreline Stabilization along the Westerly Lots of the Pine Beach Subdivision and Five Oceanfront Lots to the North Located Within the Barview/Twin Rocks/Watseco**

Unincorporated Community Boundary Together with Floodplain Development Permit Request #851-2 1-000086-PLNG for the Installation of a Beachfront Protective Structure (Rip Rap Revetment) Within an Active Eroding Foredune East of the Line of Established Vegetation in the Coastal High Hazard (VE) Zone, an Area of Special Flood Hazard Within the Flood Hazard Overlay Zone. The Subject Properties are Lots 11-20 of the Pine Beach Replat Unit #1, Designated as Tax Lots 114 Through 123, of Section 7DD, and Tax Lots 3000,3 100,3104,3203 And 3204 of Section 7DA all in Township 1 North, Range 10 West of The Willamette Meridian, Tillamook County, Oregon. There are Multiple Property Owners and Applicants/Sarah Absher, Director, Department of Community Development

00:02      Opened Public Hearing  
00:42      Public Hearing Procedures/Joel Stevens, County Counsel  
10:29      Staff Report/Sarah Absher

**Chair Bell recessed the meeting at 11:50 a.m.**

**Chair Bell reconvened the meeting at 11:56 a.m. – AUDIO07-28-2021D.MP3**

00:11      Applicant Presentation/Wendie Kellington, Kellington Law Group, PC  
1:10:32      Engineering Consultant Report

**Chair Bell recessed the meeting at 2:06 p.m.**

**Chair Bell reconvened the meeting at 2:13 p.m. – AUDIO07-28-2021E.MP3**

00:25      Property Owner Testimony/Rachel Hollard, Mike Ellis, Mark Kemball, Evan Darro  
14:59      Goal 18 Exception Comments/Senator Betsy Johnson  
19:23      Clear Determination and Evaluation of Goal 18 Exception/Meg Reed, Oregon Department of Land Conservation and Development  
23:37      A motion to close oral testimony was made by Vice-Chair Yamamoto and seconded by Commissioner Skaar. The motion passed with three aye votes.  
24:22      A motion to allow written testimony to remain open until 5:00 p.m. on 8/6/2021 was made by Vice-Chair Yamamoto and seconded by Commissioner Skaar. The motion passed with three aye votes.  
24:59      Closed Public Hearing

**Chair Bell recessed the meeting at 2:55 p.m. to go into executive session pursuant to ORS 192.660(2)(b) AUDIO07-28-2021F.MP3**

**Chair Bell reconvened the meeting at 4:45 p.m. - AUDIO07-28-2021G.MP3**

9. ----- Board Concerns – Non-Agenda Items: There were none.

10. ----- Public Comments: There were none.

11. ----- Board Announcements

**ADJOURN – 4:45 p.m.**

4. COVID-19 Vaccine Update/Marlene Putman, Administrator, Health and Human Services; Ed Colson, Emergency Preparedness Coordinator, Ready Northwest
5. Discussion Concerning Oregon Health Authority Intergovernmental Agreement #170665 for Environmental Health Services/Marlene Putman, Administrator, Health and Human Services
6. Discussion Concerning a Memorandum of Agreement with HIV Alliance for Ryan White Program Services/Marlene Putman, Administrator, Health and Human Services
7. Discussion and Consideration of a Personnel Requisition for a New Regular Full-Time Public Health Program Representative in the Health and Human Services Department/Marlene Putman, Administrator, Health and Human Services
8. Discussion and Consideration of a Personnel Requisition for a Replacement Regular Full-Time Accounting Clerk II in the Health and Human Services Department/Marlene Putman, Administrator, Health and Human Services
9. Discussion and Consideration of a Personnel Requisition for a New Regular Full-Time Permit Technician in the Department of Community Development/Sarah Absher, Director, Department of Community Development
10. Discussion and Consideration of a Personnel Requisition for a Replacement Regular Full-Time IT Specialist III in the Information Services Department/Damian Laviolette, Director, Information Services
11. Board Concerns – Non-Agenda Items
12. Public Comments

## **ADJOURN**

## **MEETING**

CALL TO ORDER: Wednesday, July 28, 2021 10:00 a.m.

1. Welcome & Request to Sign Guest List
2. Pledge of Allegiance
3. Public Comment
4. Non-Agenda Items
5. COVID-19 Vaccine Update/Marlene Putman, Administrator, Health and Human Services; Ed Colson, Emergency Preparedness Coordinator, Ready Northwest

## LEGISLATIVE – ADMINISTRATIVE

6. Consideration of Oregon Health Authority Intergovernmental Agreement #170665 for Environmental Health Services/Marlene Putman, Administrator, Health and Human Services
7. Consideration of a Memorandum of Agreement with HIV Alliance for Ryan White Program Services/Marlene Putman, Administrator, Health and Human Services
8. **10:30 a.m.**  
**First Public Hearing:** Concerning #851-21-000086-PLNG-01: A Goal Exception Request for Approval of an Exception to Statewide Planning Goal 18, Implementation Measure (IM) 5; Approval of a 18, Comprehensive Plan Amendment for a "Committed" Exception and/or a "Reasons" Exception to Goal Implementation Measure 5 for the Construction of Shoreline Stabilization along the Westerly Lots of the Pine Beach Subdivision and Five Oceanfront Lots to the North Located Within the Barview/Twin Rocks/Watseco Unincorporated Community Boundary Together with Floodplain Development Permit Request #851-2 1-000086-PLNG for the Installation of a Beachfront Protective Structure (Rip Rap Revetment) Within an Active Eroding Fore dune East of the Line of Established Vegetation in the Coastal High Hazard (VE) Zone, an Area of Special Flood Hazard Within the Flood Hazard Overlay Zone. The Subject Properties are Lots 11-20 of the Pine Beach Replat Unit #1, Designated as Tax Lots 114 Through 123, of Section 7DD, and Tax Lots 3000,3 100,3104,3203 And 3204 of Section 7DA all in Township 1 North, Range 10 West of The Willamette Meridian, Tillamook County, Oregon. There are Multiple Property Owners and Applicants/Sarah Absher, Director, Department of Community Development
9. Board Concerns – Non-Agenda Items
10. Public Comments
11. Board Announcements

## **ADJOURN**

### **OTHER MEETINGS AND ANNOUNCEMENTS**

The Commissioners will hold a Leadership Team Teleconference with Tillamook County Elected Officials and Department Heads on **Monday, July 26, 2021** at **9:00 a.m.** The teleconference number is 1-971-254-3149, Conference ID: 736 023 979#.

The Commissioners will attend a planning meeting for the Kiwanda Corridor Project on **Tuesday, July 27, 2021** at **2:00 p.m.** The meeting will be held in the Kiwanda Community Center, Faye Jensen Room, 34600 Cape Kiwanda Drive, Pacific City, Oregon.

The Pacific City/Woods Parking Advisory Committee has scheduled a meeting for **Wednesday, July 28, 2021** at **1:00 p.m.** The teleconference number is 1-253-215-8782, Meeting ID: 826 3627 1523, and Passcode: 345999.



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## JOIN THE BOARD OF COMMISSIONERS MEETINGS

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

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

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## MEETING INFORMATION AND RULES

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

## **AGENDAS**

### **COMMUNITY UPDATE**

CALL TO ORDER: Tuesday, July 27, 2021 8:00 a.m.

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

### **ADJOURN**

### **WORKSHOP**

CALL TO ORDER: Wednesday, July 28, 2021 8:30 a.m.

1. Welcome & Request to Sign Guest List
2. Public Comment
3. Non-Agenda Items





## Isabel Gilda

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**From:** REED Meg \* DLCD <Meg.REED@dlcd.oregon.gov>  
**Sent:** Tuesday, July 27, 2021 3:52 PM  
**To:** Sarah Absher; Allison Hinderer; Public Comments  
**Cc:** SNOW Patty \* DLCD; PHIPPS Lisa \* DLCD; Shipsey Steven; WADE Heather \* DLCD  
**Subject:** EXTERNAL: DLCD Written Comments on 851-21-000086-PLNG-01 and 851-21-000086-PLNG  
**Attachments:** DLCDletter\_7.27.21\_851-21-000086-plng-01-goalexceptionrequest.pdf

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

Hi Sarah,

Please find attached DLCD's letter regarding the hearing on applications 851-21-000086-PLNG-01 and 851-21-000086-PLNG with the Tillamook Board of County Commissioners tomorrow.

Also, I would like to sign up to give public comment virtually at the hearing tomorrow.

Thank you,  
Meg



**Meg Reed**

Coastal Shores Specialist | Oregon Coastal Management Program  
Pronouns: She/her  
Oregon Department of Land Conservation and Development  
Cell: 541-514-0091 | Main: 503-373-0050  
[meg.reed@dlcd.oregon.gov](mailto:meg.reed@dlcd.oregon.gov) | [www.oregon.gov/LCD](http://www.oregon.gov/LCD)

*My email address has changed. Please update your records to reflect my new email address: [meg.reed@dlcd.oregon.gov](mailto:meg.reed@dlcd.oregon.gov). Note that your Outlook Cache may need to be cleared.*



# Oregon

Kate Brown, Governor

Department of Land Conservation and Development

Oregon Coastal Management Program

810 SW Alder Street, Suite B

Newport, OR 97365

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

July 27, 2021

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



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

Dear Chair Bell and Tillamook County Commissioners,

Thank you for the opportunity to provide written testimony for the goal exception request, #851-21-000086-PLNG-01, and for the floodplain development permit request, #851-21-000086-PLNG. These requests are seeking approval of an exception to Statewide Planning Goal 18, Implementation Requirement 5, to place a beachfront protective structure along the westerly lots of the Pine Beach Subdivision and five oceanfront lots to the north located within the Barview/Twin Rocks/Watseco Unincorporated Community Boundary. Please enter this letter into the record of the hearing on the subject requests.

This testimony will focus on the following topics: beachfront protective structure limitation of Goal 18 policy; reasons exception pathway to seek a goal exception; comments by the Tillamook County Planning Commission; and proposed beachfront protective structure design.

### **Date Limitation of Beachfront Protective Structures**

The above referenced properties (15 tax lots) are seeking a pathway to place a beachfront protective structure (BPS) along the oceanfront to mitigate ocean flooding and erosion. Goal 18, Implementation Requirement (IR) 5 states:

*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.*

After much research, County planning staff have determined that the five lots that are part of the George Shand Tracts subdivision, Tax Lots 3000, 3100, 3104, 3203 and 3204 of Section 7DA in Township 1 North, Range 10 West of the Willamette Meridian, Tillamook County, Oregon, do meet the definition of development under Goal 18, IR 5, and thus do **not** need an exception to the goal for the placement of a BPS.

On the other hand, the County has concluded that the ten tax lots that are part of the Pine Beach Replat Unit #1 do not meet the definition of development because they were developed after 1977. These are Tax Lots 114 through 123, of Section 7DD in Township 1 North, Range 10 West of the Willamette Meridian, Tillamook County, Oregon. The County's determination was made based upon the following information:

- Utilizing the 1977 aerial imagery from the Army Corps of Engineers, the County determined that qualifying development (residential, commercial, or industrial buildings) was not present on any of these tax lots.
- Although the original plat "Pine Beach" was recorded in 1932 containing 121 lots, the County has found that the entire plat, with the exception of Second Street between Pacific Highway and Ocean Boulevard and the separate ownerships along Second Street, was vacated in 1941. The Pine Beach Replat was then subsequently approved in 1994. Thus, on January 1, 1977, there was no eligible development on the oceanfront parcels at this site and it was not part of a statutory subdivision. Additionally, the replat in 1994 was processed by the County as a new subdivision and the resulting lots are in a significantly different configuration than the Pine Beach subdivision plat of 1932. This resulted in a new subdivision.

Based on the County staff determinations for the above referenced parcels, the George Shand Tracts parcels meet the definition of development under Goal 18, IR 5 and therefore do not need a goal exception for the placement of a BPS, while the Pine Beach Replat Unit #1 parcels do not meet the definition of development under Goal 18, IR 5 and therefore do need a goal exception to the 1977 development date limitation of Goal 18 for the placement of a BPS, in addition to any local criteria.

It is unclear from the Planning Commission recommendation to the Board of County Commissioners whether the Planning Commissioners decided that all or part of this area needs a goal exception. Tillamook County must make the threshold determination of eligibility for BPS very clear for each of the tax lots under this goal exception request. State law authorizes a county to take a goal exception for uses not allowed by the goal or to allow a use authorized by a statewide planning goal that cannot comply with the approval standards for that type of use. If an area was developed on January 1, 1977, then a county need not, and cannot lawfully, take an exception to Goal 18, IR 5. Previous case law has affirmed that a goal exception cannot be taken for a use that the goal allows. *DLCD v. Yamhill County*, 183 Or App 556, 53 P3d 462 (2002). That makes sense, because the statutory definition of an "exception" is that the amendment to the comprehensive plan does "not comply with some or all goal regulations applicable to the subject property." ORS 197.732(1)(b)(B). See also OAR 660-004-0022 (use not allowed by the goal); OAR 660-004-0020(2)(b) (areas that do not require an exception). Thus, the initial determination before the County is whether the applications are for properties that were not developed on January 1, 1977.

### **Reasons Exception Pathway**

The applicants suggest multiple pathways for approving their goal exception request. The Planning Commission determined that there is only one avenue for these applicants, which is a general

“reasons” exception and that the applicants only need an exception to Goal 18 IR 5, not IR 2. The department agrees.

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

The department agrees with the Planning Commission that a general “reasons” exception to Goal 18 is necessary for the lots that are not eligible for BPS under Goal 18 and that the proper administrative rule provisions are those of OAR 660-004-0022(1) and OAR 660-004-0020.

The homes that exist in the application area were built in conformance with the other provisions of Goal 18, specifically Goal 18, IR 2. The houses were **not** built in an active foredune or in a dune area subject to ocean flooding at the time of development, which means they did not need an exception to Goal 18, IR2. The other goal exceptions (to Goals 3, 4, 11, and 14) that allow for the Barview/Twin Rocks/Watseco community to be residentially developed, do not specify the exact location of development on each parcel in this unincorporated community. Additional zoning requirements dictate those limits, and in the case of these ocean-fronting parcels, Tillamook County applied the Beach & Dune Overlay Zone of their Land Use Ordinance. The houses were built in the eastern portions of their respective parcels to comply with the prohibition areas of Goal 18 for residential development. The department understands the applicants to argue that the exceptions to Goals 3, 4, 11, and 14 allowed the development to be placed, and because those homes are now in a foredune subject to ocean flooding, they automatically have or should be allowed by right to have an exception to Goal 18, IR2. However, the rules provide 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.” OAR 660-004-0010(3). The notion of an implied or precautionary exception, as the applicants suggest, is not supported by law. Furthermore, an exception to exclude certain lands from the requirements of Goals 3, 4, 11, and 14 does not exempt the County from the requirements of any other goals, including Goal 18, for which the County has not taken an exception. OAR 660-004-0010(3). A goal exception is an affirmative act that is incorporated into a comprehensive plan. Tillamook County has identified and adopted specific exception areas for Goal 18, IR 2 in the County’s Comprehensive Plan (Part 6 of the Beaches and Dunes Element). The lands in the application are not part of an existing goal exception under Goal 18 and are not reflected in the Tillamook County Comprehensive Plan. Nor do these homes need a retroactive exception to Goal 18, IR 2, as the applicants suggest.

The question at hand is not whether these properties need an exception to exist where they are, but whether they can install a beachfront protective structure to protect the existing development. The applicants are seeking an exception to the date-based limitation on the placement of beachfront protective structures for Goal 18 because they were developed after January 1, 1977. Therefore, only a general “reasons” exception to Goal 18, IR 5 is needed in this case (OAR 660-004-0022(1)).



Recent LUBA decisions, subsequent to this application, also provide additional guidance on the matter:

- Coos County: <https://www.oregon.gov/luba/Docs/Opinions/2021/05-21/20002.pdf>
- City of Coos Bay: <https://www.oregon.gov/luba/Docs/Opinions/2021/05-21/20012.pdf>

In brief, these LUBA decisions note that taking a reasons exception is a high bar and the applicant and jurisdiction must follow the reasons exception process closely and carefully to demonstrate the need.

The department agrees with the County Staff Report, dated May 27, 2021, page 5, which states: “staff also finds that an exception to one goal or goal requirement (ex. Goals 11 and 14) does not ensure compliance with any other applicable goals or goal requirements, in this case for the proposed construction of the beachfront protective structure. Staff finds the Applicants must meet the burden of proof to satisfy the applicable exception criteria without the sole basis of argument that other exceptions have already been taken”.

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

As mentioned above, the provisions of OAR 660-004-0022 specify the pathway for the applicants for the ineligible properties. Specifically, OAR 660-004-0022(1) provides:

- (1) For uses not specifically provided for in this division, or in OAR 660-011-0060, 660-012-0070, 660-014-0030 or 660-014-0040, the reasons shall justify why the state policy embodied in the applicable goals should not apply. Such reasons include but are not limited to the following:*
- (a) There is a demonstrated need for the proposed use or activity, based on one or more of the requirements of Goals 3 to 19; and either*
- (A) A resource upon which the proposed use or activity is dependent can be reasonably obtained only at the proposed exception site and the use or activity requires a location near the resource. An exception based on this paragraph must include an analysis of the market area to be served by the proposed use or activity. That analysis must demonstrate that the proposed exception site is the only one within that market area at which the resource depended upon can reasonably be obtained; or*
- (B) The proposed use or activity has special features or qualities that necessitate its location on or near the proposed exception site.*

An application that does not satisfy these provisions fails and may not be approved.

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

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

- 1) Reasons that justify why the state policy embodied in the applicable goal should not apply;*
- 2) Areas which do not require a new exception cannot reasonably accommodate the use;*

- 3) *The long-term environmental, economic, social and energy consequences resulting from the use of the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site; and*
- 4) *The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts.*

It is imperative that the County focus on these standards when evaluating the exception application for the lots deemed ineligible within the Barview/Twin Rocks/Watseco Unincorporated Community Boundary. As already stated, the other exception pathways the applicants argue for are not relevant in this case and those arguments cannot be the basis for an exception decision.

**Findings Made by the Tillamook County Planning Commission**

A staff memo dated July 21, 2021, summarizes the findings made by the Tillamook County Planning Commission to recommend approval of these requests. Of particular concern to the department is the following statement:

“It is not right to deny a property owner the same opportunities to protect their property that others are afforded due to grandfathered rights that allow them to take action for protection of their property. (Properties where ‘development’ existed on January 1, 1977.)”

This finding cannot be used to justify a goal exception. Goal 18, IR 5 is a ‘grandfather clause’ to allow development already in existence at the time the policy was adopted to use shoreline armoring, while new development must account for shoreline erosion through non-structural approaches. As seen in previous case law, “the purpose of a ‘grandfather clause’ is to prevent hardship to individuals who have existing uses. A ‘grandfather clause’ is enacted to preserve rights, not to grant additional rights.” *Spaght v. Dept. of Transportation*, 29 Or App 681, 686, 564 P2d 1092 (1977) (citation omitted).

Here, the Planning Commission seems to assert that the Goal 18, IR 5 grandfather clause for developed properties should grant the same rights to other properties that were not developed. That interpretation is contrary to the purpose of Goal 18, IR 5, which is in part to preserve the rights to protect a developed property with a BPS, while providing that future development occur in a manner that does not rely on BPS in order to afford the natural functions of the beach and dunes to continue. To construe otherwise is to defeat a primary purpose of Goal 18. In addition, “the exceptions process is not to be used to indicate that a jurisdiction disagrees with a goal.” OAR 660-004-0000(2). Therefore, not agreeing with the policy does not authorize the County to use that disagreement as a basis for a valid goal exception decision.

During the Planning Commission’s deliberation at the July 15<sup>th</sup> hearing of these applications, there was discussion of the County’s obligations, particularly under Goal 7, to protect these properties from ocean flooding and erosion. Goal 7 obligates jurisdictions to plan for natural hazards by adopting inventories, policies and implementing measures in their comprehensive plans to reduce

risk to people and property from natural hazards. The Goal does not obligate the County to protect life and property indefinitely once development has occurred, but to consider natural hazards in the course of planning. The County is not compelled by the Goal 7 requirements to grant the exception, nor would the County be out of compliance with Goal 7 in the absence of the exception. What the applicants are seeking is an exception to allow them to place a beachfront protective structure to mitigate the impacts of coastal erosion and flooding. The proposed BPS is their preferred solution, which the regulations currently prohibit. It could be argued that the risk to persons and property could be addressed or even eliminated in other ways – such as removal or relocation of the houses and infrastructure.

#### **Proposed Beachfront Protective Structure**

The applicants put forth a specific design for a beachfront protective structure, referenced throughout the applications. The department has some concerns about the design as proposed.

BPS are not the ultimate solution to eliminate coastal hazard risks. The applicants claim that the proposed beachfront protection will solve all threats to the properties from coastal flooding and erosion and not incur further harm to either the beach or surrounding properties. It is important to note that erosion will continue to occur in this location and the impacts of climate change will continue to exacerbate those conditions. Beachfront protective structures can provide a level of protection for development from erosion and flooding but will need to be continually maintained and may fail over time. Additionally, the structures themselves will continue to impact the beach in this area by withholding sediment and fixing the shoreline in place, as has been seen in other beach systems. While one structure may not affect the system very much, the cumulative effects of armoring along the entirety of this system will have an impact over time, limiting north/south beach access as sea levels continue to rise. Beachfront protective structures do not conserve nor protect the beach and dune environment, they protect development from the impacts of coastal erosion.

The applicants have identified that nearly 90% of the Rockaway Subregion of the Rockaway littoral cell is eligible for BPS. While many of those homeowners may choose to armor their properties over the coming years and decades, many of those lots are not yet armored and those permitting decisions have not yet been made. Much of this sublittoral cell, and particularly the area of the subject properties, is not currently armored. If the County decides to approve this exception request and application for a BPS, the County is committing to a high level of shoreline armoring in this sublittoral cell. As has been observed in other beach systems, particularly in Lincoln Beach in Lincoln County, the proliferation of shoreline armoring has been detrimental to the natural functioning of the beach system. By approving additional armoring, the County is committing to a preference for private development protection over protection of the beach and dune resource.

Additionally, applicants claim that because the BPS will initially be erected on private property and buried with sand and vegetation that the structure will remain that way indefinitely and never become exposed. If this is the case, then they are assuming that sand nourishment, dune augmentation, and vegetation methods will work to mitigate the hazards, in which case they do not need a structure or a goal exception. However, if these non-structural methods are not sufficient, as

the applicants argue elsewhere, then it is important to evaluate the structure assuming it will become exposed and located on the ocean shore and public beach. Assuming conditions remain similar to what the area has experienced over the past two decades, the beach will continue to narrow over time resulting in increased wave energy directed on the structure. Once located on the ocean shore and within the jurisdiction of Oregon Parks and Recreation Department (OPRD), the BPS will be an unpermitted structure that will have to seek a permit through OPRD. The Ocean Shore is defined as "the land lying between extreme low tide of the Pacific Ocean and the statutory vegetation line as described by ORS 390.770 or the line of established upland shore vegetation, whichever is farther inland."

The applicants argue that sand will build up over the revetment during summer months. However, this is an eroding coastline experiencing a net loss of sand; any sand placed on structures gets eroded quickly. El Nino conditions can cause hotspot erosion in the southern ends of littoral cells and accretion in the northern ends of littoral cells. Accretion of sand over beachfront protective structures in other parts of the Rockaway beach littoral cell does not guarantee the same will happen at the site of the proposed beachfront protection structure. Supplemental sand placement and re-vegetation will likely be needed here. Taking sand from the public beach, if that is proposed, will need to be permitted by OPRD. Applicants have also cited that the current vegetation is dying due to saltwater inundation from flooding. Any vegetation that is planted or replanted in this area will need to be tolerant of the saltwater flooding, and continually be maintained. The maintenance for this structure as proposed, especially with these additional requirements (buried in sand and vegetated), is perpetual and may not be possible over the long term.

The applicants do include an analysis of potential impacts from this proposed structure in regards to north/south beach access. However, these calculations are for present water level and wave conditions only and do not consider various sea level rise scenarios in the coming decades. As the shoreline continues to naturally erode back towards the BPS, the beach will most likely steepen in addition to the BPS itself presenting a steeper slope, which will result in different wave runup conditions. These processes could set up a feedback in which the wave runup continues to increase, resulting in more attack on the BPS and causing less 'safe hours' to walk past the structure in the north/south direction.

Independent of the decision regarding the Goal Exception request, if the Board approves the structure, DLCD supports the Planning Commission's recommendation to add conditions of approval to the permit, particularly to ensure applicants have the responsibility to maintain their structure in perpetuity and should the structure be uncovered, that the property owners obtain any new permits from the County and OPRD. Many BPS built along the Oregon coast are initially buried with sand and planted with beach grass or other vegetation. However, almost none of them retain that state for very long and it can become very difficult for homeowners to keep up with that level of maintenance because of costs and lack of sand supply, especially in highly erosive environments.

**Conclusion**

To summarize, DLCD recommends that the County make a clear determination on the eligibility status of each of the 15 tax lots under the application and only evaluate a goal exception for those areas that need a goal exception to Goal 18, IR 5. As previously stated, a goal exception cannot be taken for a use already allowed by the goal. Additionally, the pathway of review for this application is a general "reasons" exception as provided in OAR 660-004-0020 and OAR 660-004-0022(1). Only the criteria for this pathway should be evaluated for a goal exception decision. The County cannot use a disagreement with the grandfather clause of Goal 18, IR 5 as the basis for granting a goal exception. Lastly, the department recommends that the County carefully review the proposed BPS and attach specific conditions of approval to the permit, if approved, to ensure the structure is built as designed and maintained in perpetuity by the owners.

DLCD wants and supports a better outcome for oceanfront development and infrastructure. We do not want to see homes falling into the ocean, but we also do not want to see a proliferation of armoring in all cases because it is a short-sighted solution that impacts the public beach. There are alternative outcomes to pursue, ones that require envisioning a coastal future that looks different from the coastline of the past. One that is more mindful of the hazards that are present in this environment and that will continue to get worse with climate change.

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

Sincerely,



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

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

## Isabel Gilda

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**From:** Teryn Yazdani <terynd@crag.org>  
**Sent:** Tuesday, July 27, 2021 8:48 PM  
**To:** Public Comments; Sarah Absher; Allison Hinderer; Melissa Jenck  
**Cc:** Anuradha Sawkar; phillip@oregonshores.org; orshores@teleport.com  
**Subject:** EXTERNAL: Or. Shores Comment for BOCC Pub. Hearing, Tillamook County File No(s) 851-21-000086-PLNG-01/851-21-000086-PLNG  
**Attachments:** 2021.07.27\_FINAL Or. Shores Tillamook G18 BOCC Comment.pdf

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

Dear Sarah,

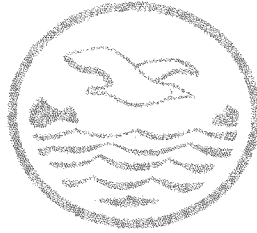
As you know, this office represents the Oregon Shores Conservation Coalition. Please find attached Oregon Shores' written testimony and materials for the aforementioned files. Please confirm receipt of this email and attached documents.

Sincerely,  
Teryn Yazdani

--

**Teryn Yazdani**  
Legal Fellow  
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*She/Her/Hers*

*Protecting and Sustaining the Pacific Northwest's Natural Legacy*



OREGON SHORES  
CONSERVATION COALITION

July 28, 2021

Tillamook Board of County Commissioners  
c/o Sarah Absher, Director  
Tillamook County Courthouse  
201 Laurel Avenue  
Tillamook, OR 97141

*Via Email to: [publiccomments@co.tillamook.or.us](mailto:publiccomments@co.tillamook.or.us), [sabsher@co.tillamook.or.us](mailto:sabsher@co.tillamook.or.us),  
[ahindere@co.tillamook.or.us](mailto:ahindere@co.tillamook.or.us), [mjenck@co.tillamook.or.us](mailto:mjenck@co.tillamook.or.us)*

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

Dear Chair Bell, Vice-Chair Yamamoto, and Commissioner Skaar,

Please accept these comments from the Oregon Shores Conservation Coalition and its members (collectively, "Oregon Shores") to be included in the evidentiary record for the Board of County Commissioner's ("BOCC" or "Board") hearing on 851-21-000086-PLNG-01/851-21-000086-PLNG Land Use Applications for Goal Exception, Flood Plain Development Permit. Oregon Shores is a non-profit organization dedicated to protecting the Oregon coast's natural communities, ecosystems, and landscapes while preserving the public's access to these priceless treasures in an ecologically responsible manner. Our mission includes assisting local residents in land use matters and other regulatory processes affecting their coastal communities, as well as engaging Oregonians and visitors alike in a wide range of advocacy efforts and stewardship activities that serve to protect our state's celebrated public coastal heritage. For nearly half a century, Oregon Shores has been a public interest participant in legal processes and policy decisions related to land use, shoreline, and estuarine management in the State of Oregon.

Oregon Shores previously submitted comments and supplementary evidence materials for inclusion within the record for this matter before the Planning Commission on May 27, 2021,

June 3, 2021 Comment, and June 10, 2021. In addition, we submitted a letter on June 24, 2021 objecting to certain materials submitted by the Applicants in contravention of Planning Commission requirements originally provided at the May 27, 2021 public hearing. We hereby adopt in full and incorporate by reference our previous comments and materials in the record.

Please continue to notify us of any further decisions, reports, or notices issued as well as meetings or hearings held in relation to these Land Use Applications (“Applications”). Pursuant to ORS 197.763(4) and (6), Oregon Shores respectfully requests that the BOCC continue the hearing in order to allow for an opportunity to present additional evidence, arguments, and testimony regarding these Applications. Additionally, Oregon Shores requests that the BOCC leave the record open following the public hearing to allow for submission of additional information and rebuttal of information presented for at least seven days.<sup>1</sup> Oregon Shores will provide further comments as appropriate and allowed.

At its July 15, 2021 public hearing, the Planning Commission passed a motion to recommend approval of Development Permit request #851-21-000086-PLNG to the Board of County Commissioners.<sup>2</sup> Additionally, the Planning Commission recommended that the Board “work with staff on development of Conditions of Approval [incorporated into Development Permit #851-21-000086-PLNG] for construction of the BPS with required inspections during the construction phase to ensure the BPS is constructed as proposed and in accordance with the development standards outlined in the Beach and Dune Overlay Zone.”<sup>3</sup>

Our comment supports the view that the Planning Commission erred in its application of the requisite criteria, and misconstrued or otherwise failed to make adequate and substantiated findings regarding its recommendation to approve the Applicants’ requests. Oregon Shores argues that the Applications have not demonstrated compliance with the applicable approval criteria set forth in the Statewide Planning Goals (“Goals”), the requisite criteria for a Goal Exception within the Oregon Administrative Rules (“OAR”), the Oregon Revised Statutes (“ORS”), the Tillamook County Comprehensive Plan (“TCCP”), and the Tillamook County Land Use Ordinance (“TCLUO”). On the basis of the present record, a recommendation for denial is the most supported conclusion. Oregon Shores respectfully requests that this Board reject the recommendation of the Planning Commission and deny approval of the Applications for the following reasons.

**A. The Applications Do Not Meet the Mandatory Requirements for Granting a Reasons Exception under OAR 660-004-0020 and OAR 660-004-0022.**

In DLCD’s May 19, 2021 Letter, the Department determined that “the proper administrative rule provisions are those of OAR 660-004-0022(1) . . . because the houses that exist in this area were lawfully developed under the County’s regulations at the time of

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<sup>1</sup> ORS §§ 197.763(4), (6); TCLUO SECTION 10.080(5).

<sup>2</sup> Board of County Commissioners Hearing Packet at 1. At the time of writing this comment, Oregon Shores was unable to locate an official draft of the Planning Commission’s findings and recommendation to the Board on the County website. Thus, Oregon Shores references the Planning Commission decision as stated in the Board of County Commissioners Hearing Packet.

<sup>3</sup> *Id.* at 2.



development.”<sup>4</sup> DLCD also stated that it was the Department’s “position that a ‘reasons’ exception to Goal 18 is necessary in this case[.]” and that because the Applications do not establish that adjacent uses are the basis for this exception request—a requirement for a “committed” exception under OAR 660-004-0028—they do not qualify for or need a “committed” exception.<sup>5</sup> The Department found “[o]nly a general ‘reasons’ exception to Goal 18, Implementation Requirement #5 is needed in this case.”<sup>6</sup> DLCD ultimately recommended “that the County deny [this] goal exception request” due to the Applications’ “problematic and missing analysis.”<sup>7</sup>

Oregon Shores agrees with DLCD’s assessment that the “demonstrated need” pathway or a reasons exception is the only available avenue for a goal exception in this instance. As noted previously and within this comment, the Applicants and Applications do not demonstrate that the proposal is consistent with the criteria for a reasons exception under OAR 660-004-0022(1)’s catch-all provision. Oregon Shores also agrees with DLCD that the County should deny the Applicants this goal exception request due to missing, problematic analysis and failure to meet the mandatory criteria. Oregon Shores incorporates by reference our previous analysis regarding OAR 660-004-0022 and OAR 660-004-0020 in our May 27, 2021 Comment, our June 3, 2021 Comment, and our June 10, 2021 Comment on this matter. Further, Oregon Shores incorporates by reference our previous analysis regarding ORS 197.732 in our May 27, 2021 Comment and our June 3, 2021 Comment.

As previously stated in detail in our June 10, 2021 Comment, which Oregon Shores incorporates by reference, the Applications also fail to meet the necessary, mandatory criteria for “built” and “committed” exceptions under Goal 2, Part II, ORS 197.732(2)(a)–(b), OAR 660-004-0025, and OAR 660-004-0028. However, even if the Applications met the mandatory criteria for these two exception pathways—which they do not—“built” and “committed” exceptions are neither necessary nor applicable in the current circumstance. As highlighted in DLCD’s June 10, 2021 Letter:

[T]he application does not warrant either a “built” exception or a “committed” exception . . . There is no [beachfront protective structure or BPS] at the proposed location yet, so it is not “built.” Likewise, there is only one BPS in the immediate area (the Shorewood RV Resort) which the applicants argue has not impacted the properties. Therefore, other BPS in the adjacent area have not “committed” this beach and dunes resource area to a non-resource use necessitating BPS here as well.<sup>8</sup>

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<sup>4</sup> May 19, 2021 DLCD Letter to the Tillamook County Planning Department at 2.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*; see also June 10, 2021 DLCD Letter to the Tillamook County Planning Department at 3 (“Since there is not a specific section in OAR 660-004-0022 pertaining to reasons for an exception to allow [beachfront protective structures] for an ineligible development, a general ‘reasons’ exception is the appropriate pathway for the applicants.”).

<sup>7</sup> *Id.* at 5.

<sup>8</sup> June 10, 2021 DLCD Letter to the Tillamook County Planning Department at 3.

The Applications have still failed to demonstrate otherwise that the current circumstances necessitate "built" or "committed" exceptions. Because they fail to meet the relevant goal exception requirements of ORS and OAR, the Board of County Commissioners should deny the Applications.

**B. The Applications Do Not Meet the Mandatory Local Criteria Under the Tillamook County Land Use Ordinances ("TCLUO") and the Tillamook County Comprehensive Plan ("TCCP").**

**i. Applicable TCLUO Provisions**

The Applications fail to meaningfully address the local criteria as required in the TCLUO regarding the Flood Hazard Overlay Zone, the Beach and Dune Overlay Zone, the TCLUO's Comprehensive Plan Text Amendment Criteria under Article 9, and the TCLUO's Article 10 Administrative Provisions. Each local land use ordinance and the Applications' noncompliance will be discussed in further detail below.

*a. TCLUO Section 3.510: Flood Hazard Overlay ("FH") Zone*

*i. 3.510(1): Purpose*

The stated purpose of the FH zone is to:

[P]romote the public health, safety and general welfare and to minimize public and private losses or damages due to flood conditions in specific areas of unincorporated Tillamook County by provisions designed to:

- (a) Protect human life and health;
- (b) Minimize expenditure of public money for costly flood control projects;
- (c) minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the public;

\* \* \*

(e) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazards; "

(f) Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;

\* \* \*

(h) Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.

The proposed project area is within an active eroding foredune east of the line of established vegetation in the Coastal High Hazard (VE) zone as well as within an Area of Special Flood Hazard within the Flood Hazard Overlay Zone (TCLUO Section 3.510). The subject fifteen tax lots are Lots 11-20 of the Pine Beach Replat Unit #1, designated as Tax Lots 114 through 123,<sup>9</sup> of Section 7DD, between 17300 to 17480 Pine Beach Loop in Rockaway Beach [Pine Beach Properties]. Additionally, the subject properties also include Tax Lots 3000, 3100,

3104, 3203, and 3204<sup>10</sup> (north to south) of Section 7DA [Ocean Boulevard Properties]. All properties are in Township 1 North, Range 10 West of the Willamette Meridian, Tillamook County, Oregon.

The Applications' analysis entirely overlooks the negative impacts that the proliferation of BSP will have on the shoreline and how adding riprap to a mostly untouched portion of the beach<sup>11</sup> will impact the public's safety and access. Additionally, as our colleague Surfrider noted in its June 3, 2021 comment, this proposal would likely have detrimental impacts on adjacent properties based on the well-known impacts of riprap on adjacent structures. "Property owners have . . . commented on the detrimental effect they witness on rip rap adjacent properties. Water gets refracted off of the hard structure and creates more erosion to the adjacent properties than if the structure was not there. It can funnel and focus wave energy to create destruction."<sup>12</sup> The Applications lack any analysis regarding the potential harms that this proposal will have on adjacent properties and infrastructure in relation to protecting human life and health and impacts to adjacent public facilities and utilities. Because this proposal will likely have many significant impacts on more than just the Applicants' privately owned homes and properties, more is needed in order for this proposal to accomplish the FZ zone's stated purpose.

ii. 3.510(10): Specific Standards for Coastal High Hazard Areas  
(V, VE, or V1-V30 Zones)

TCLUO Section 3.510(10) states that "[l]ocated within areas of special flood hazard established in Section 3.510(2) are Coastal High Hazard Areas. These areas have special flood hazards associated with high velocity waters from tidal surges" and must meet a number of mandatory standards. Because the Applicants' proposed site is located within a VE flood zone, the standards in this section apply. TCLUO Section 3.510(10)(h) requires that development in Coastal High Hazard Areas "[p]rohibit man-made alteration of sand dunes, including vegetation removal, which would increase potential flood damage." The Applications, in response to this requirement, state that the purpose of the beachfront protection structure is to "decrease potential flood damage and "in order to accomplish this purpose, the man-made alteration of sand dunes, including vegetation removal . . . is required[.]"<sup>13</sup> Although the Applications attempt to explain away removal of vegetation and area disturbance as "temporary," "minimal," and necessary for the long-term protection of the dune and its vegetation, their analysis is inconsistent and contrary to the plain language of the TCLUO. The Applications cannot justify TCLUO Section 3.510(10) by acting in conflict with TCLUO Section 3.510(10)—especially given the harmful, long-term impacts that increased proliferation of riprap and alteration of sand dunes will have on the public's beach and surrounding properties.

iii. 3.510(14)(b): Development Permit Review Criteria

Although much of the development review criteria apply to fill and is thus not applicable to this proposal, the Applications have not adequately analyzed 3.510(14)(b)(5)'s development

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<sup>11</sup> See Attachment A (showing the pristine nature of the Pine Beach Area).

<sup>12</sup> Surfrider Foundation's June 3, 2021 Comment at 2.

<sup>13</sup> Combined Application at 84.

permit review criteria requiring that “no feasible alternative upland locations exist on the property.” While the proposal states the BPS “is placed at the most landward point possible on the subject properties,” it is worth noting that in general, the Applications failed to look into adequate alternatives for preventing beach-front erosion outside of installing BSP. The Applications have provided no analysis regarding realistic, non-structural solutions to the issues the properties face. To satisfy this criterion, Oregon Shores argues that more complete examination of non-structural alternatives to BSP is needed.

b. *TCLUO Section 3.530: Beach and Dune Overlay Zone*

The stated purpose of the Beach and Dune Overlay Zone is to “regulate development and other activities in a manner that conserves, protects and, where appropriate, restores the natural resources, benefits, and values of coastal beach and dune areas, and reduces the hazard to human life and property from natural events or human-induced actions associated with these areas.” This zone applies “to dune areas identified in the Goal 18 . . . Element of the Comprehensive Plan and indicated on the Tillamook County Zoning Map.” TCLUO Section 3.530(4)(A) lays out specific permitted uses, including strict requirements under Section 3.530(4)(A)(4)(b) requiring beachfront protective structures on properties developed after January 1, 1977 to receive an exception to Statewide Planning Goal 18, IR 5.

The Applications fail to meaningfully address a number of required criteria under Section 3.530(4)(A)(4). For example, Section 3.530(4)(A)(2) requires a showing that “[n]on-structural solutions cannot provide adequate protection” to justify the placement of beachfront protective structures on the properties. The Applications merely state that “the instillation of the proposed beachfront protective structure is the only viable solution to stop rapid erosion, the loss of shoreline vegetation, and the threat of damage to property, dwellings and infrastructure”<sup>14</sup> in the proposal area. As stated above and in the record, this assertion is overly conclusory and fails to address how shoreline hardening will impact and increase future erosion rates on the site. The Applications have not explored other options to address the issues the properties face, including actions that would only impact the homeowners such as implementing better setbacks of structural changes to the homes themselves rather than to the public’s beach.

Another example of failure to meet the mandatory criteria relates to Section 3.530(4)(A)(6). This provision requires that “existing public access is preserved” when placing beachfront protective structures. In addressing this criterion, the Applications conclusively state that “[t]he proposed beachfront protective [structure] is designed such that these [existing public] accesses will be maintained,” therefore asserting that the proposal is consistent with this requirement. The Applications fail to meaningfully address the impacts to public access that the proliferation of riprap will have on this site and on the public’s beach, falling short of ensuring that public access is preserved. Thus, the Applications fail to meet vital criteria under TCLUO Section 3.530 and their proposal should be denied by the Board of County Commissioners.

*c. TCLUO Section 9.030(3) – Text Amendment Criteria*

The applicable criteria for amendments to the Tillamook County Comprehensive Plan under TCLUO Section 9.030(3) are:

- (a) If the proposal involves an amendment to the Comprehensive Plan, the amendment must be consistent with the Statewide Planning Goals and relevant Oregon Administrative Rules;
- (b) The proposal must be consistent with the Comprehensive Plan. (The Comprehensive Plan may be amended concurrently with proposed changes in zoning);
- (c) The Board must find the proposal to be in the public interest with regard to community conditions; the proposal either responds to changes in the community, or it corrects a mistake or inconsistency in the subject plan or ordinance; and
- (d) The amendment must conform to Section 9.040 Transportations Planning Rule Compliance.

As explained elsewhere in this and related comments, the Applications fail to demonstrate consistency with Goals and OARs. Therefore, the Applications fail to meet the requirement of TCLUO Section 9.030(3)(a). The Applications' consistency with the Tillamook County Comprehensive Plan as required by Section 9.030(3)(b)<sup>15</sup> and the proposed amendment's conformity with Section 9.030(3)(d) will be discussed in more detail below.

The Applications state the proposal is consistent with subsection (c) of this criterion because “[i]t is in the public interest to protect this subdivision [at issue], which is part of a larger urban residential area . . . as well as to protect the water and sewer public facilities that serve[] that greater community and supporting street system.”<sup>16</sup> The Applications also state that this criterion is satisfied because the “proposal responds to natural changes in the community that were contrary to the 70-year trend of shoreline prograding that existed at the time of residential development.”<sup>17</sup> The Applications fail to meaningfully address this criterion and fail to show that this proposal is truly within the “public interest” regarding community conditions. As previously noted in Oregon Shores' prior comments and throughout the record, approval of this proposal will impose more coastal harm and negatively impact the public interest—particularly with impeding future and sustained public access to the beach. While the proposal's purpose is to prevent damage to private properties, the beachfront protection structures are going on land that belongs to Oregonians as a whole. The Applications fail to satisfy this criterion and thus are not in compliance with TCLUO Section 9.030(c)'s mandatory text amendment criteria.

The Applications also conclusively state that the proposed construction of the beachfront protective structure complies with TCLUO Section 9.040 because it “will not generate any additional traffic other than during construction, when traffic will be minimal.” While compliance with this criterion is only relevant to the proposal within the context of meeting the text amendment requirements in TCLUO Section 9.030(3)(d), the Applications still fail to

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<sup>15</sup> *Infra* Section B(ii).

<sup>16</sup> Pine Beach & Ocean Boulevard Combined Application for Shoreline Protection (“Combined Application”) at 95.

<sup>17</sup> *Id.*

meaningfully address it. Further, the Applications failed to meaningfully analyze or consider the temporary impacts of the construction.

Even if the Board finds that the Applications have meaningfully addressed compliance with TCLUO 9.040, that ultimately is inconsequential because the Applications fail to satisfy or address the mandatory criteria of TCLUO 9.030(3)(a)–(c) and thus fail to show that the proposal meets the text amendment criteria.

*d. TCLUO Article 10 Administrative Provisions*

While TCLUO Article 10 contains purely procedural steps, the most relevant portion of that mandatory criteria states, under TCLUO Section 10.010(3), that “[t]he processing of applications . . . under this Ordinance shall be consistent with the Oregon Revised Statutes (ORS)” As noted in Oregon Shores’ Prior Comments, throughout the record, and above, the Applications fail to show that this proposal is consistent with the Oregon Revised Statutes—namely, they fail to show that this proposal is compliant with and reasons exception under ORS 197.732. For that reason, the Applications fail to meet the mandatory criteria under TCLUO Article 10.

**ii. The Applications Do Not Comply with the Applicable Statewide Planning Goals, the Applicable Tillamook County Comprehensive Plan Provisions.**

The Applicants assert in both their Combined Application and Final Argument that the proposal satisfies a number of Statewide Planning Goals, and TCCP Goals, or Elements. However, the Applications fail to provide the necessary and adequate reasoning for such conclusory assertions and fail to demonstrate the proposal’s compliance with the relevant Statewide Planning Goals or the TCCP Goals. As previously noted by DLCDC, an exception to one goal or goal requirement does not ensure compliance with any other applicable goals or goal requirements for the proposed uses at the exception site. Post-acknowledgement plan amendments (“PAPAs”), such as the proposal at issue, must comply with Oregon’s Statewide Planning Goals under ORS 197.175(2)(a). The Applicant bears the burden of proof in showing that its proposal complies with all applicable criteria and standards. Tillamook County’s decision to approve the proposed PAPA must either explain why the rezoning is consistent with the Goals or adopt findings explaining why the Goal is not applicable. Each relevant Goal and its parallel (i.e., implementing) TCCP Goal Element is discussed in further detail below.

*a. Goal 5 Natural Resources, Scenic and Historic Areas, and Open Spaces; TCCP Goal 5, TCCP Goal 17*

The Applications fail to demonstrate compliance with Goal 5. The purpose of Goal 5 is to “protect natural resources and conserve scenic and historic areas and open spaces.” To be consistent with Goal 5, Tillamook County is required to inventory and adopt a program to protect and/or conserve several types of resources, findings, and related policies. The Combined Application asserts that because “[t]here are no identified Goal 5 resources on the subject property or on immediately surrounding properties,” the proposal “does not implicate and is

consistent with Goal 5.”<sup>18</sup> The Final Argument concludes that because “there are no Goal 5 resources on the Subject Properties . . . the proposal cannot be inconsistent with Goal 5.”<sup>19</sup> However, the Applicants fail to provide sufficient information or analysis to support these assertions. In fact, publicly available evidence suggests the opposite conclusion may be true. There are known inventoried Goal 5 resources, including significant wildlife habitat areas (Hidden Lake, Smith Lake, and Camp Magruder) which could be impacted by the Applicants’ proposal.<sup>20</sup> As noted previously, the Applications fail to meaningfully address impacts of the proposed BPS to Camp Magruder or other adjacent properties and therefore fail to meaningfully address the proposal’s consistency with Goal 5. Absent further analysis, the Applications fail to establish consistency with Goal 5.

*b. Goal 6 Air, Water, and Land Resources Quality; TCCP Goal 6*

The Applications fail to demonstrate compliance with Goal 6. The purpose of Goal 6 is to “maintain and improve the quality of the air, water[,] and land resources of the state.” Here, the Applications claim that the proposal’s approval “maintains ocean and sand resources so that they may be enjoyed by the public rather than risking the serious damage that would occur if the proposed BPS is not approved.”<sup>21</sup> There is no evidence to meaningfully support this conclusion, and as noted previously, publicly available scientific evidence suggests the opposite to be true. Namely, the proposed riprap structure will deplete sand resources, drown the public’s beach, and take the public’s beach in order to protect private property. As noted by DLCD “[t]he impacts of additional shoreline armoring on the beach, beach access, and surrounding properties are not adequately addressed in the [Applications].”

The Applications also state that the “proposed BPS protects water delivery systems” relied upon by the public and that the public “would suffer catastrophic damage if the proposal is not approved and the ocean rips out the homes and the water infrastructures serving them.” Again, there is no meaningful evidence to support the claim that the BPS would protect water delivery systems, or that it is a preferred way to do so in the case that such water systems are in fact threatened. Further, the Applications fail to explain how this is relevant to address compliance with Goal 6 (i.e., whether the proposal does in fact “maintain and improve the quality of air, water, and land resources of the state”).

Finally, in the TCCP, Goal 6 only specifically addresses requirements, findings, and policies on air quality, water quality, solid waste disposal, and noise control—none of which are specifically addressed by the Applications. The Applications focus only on the damages to the private properties and fail to meaningfully analyze the harmful impacts that the BPS would have on the land resources and the overall long-term health and safety of the beach. Absent such analysis, the Board of County Commissioners cannot conclude that this proposal is consistent with Goal 6.

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<sup>18</sup> Combined Application at 52.

<sup>19</sup> Applicants’ Final Argument (“Final Argument”) at 28–29; Combined Applications at 52.

<sup>20</sup> TCCP Goal 17, Sec. 3.2b; TCCP Goal 5 Sec. 1.3c.

<sup>21</sup> Combined Application at 53.

*c. Goal 7 Areas Subject to Natural Hazards; TCCP Goal 7*

The Applications fail to demonstrate compliance with Goal 7. The purpose of Goal 7 is “[t]o protect people and property from natural hazards.” Under Goal 7(A)(2), “coastal erosion” is one of the hazards the County should protect against. The Applicants correctly state that Goal 7 requires that appropriate safeguards be applied when planning for development in areas identified as a natural hazard. However, the Applications’ assertion that “approving the proposed BPS is the only way to ensure that the county can reasonably comply with Goal 7 at this location”<sup>22</sup> is not meaningfully supported by the record and provided analysis. While the beach at the proposed site has changed since the time of the subdivision’s approval and since construction of the residential dwellings, the current threats endangering the Applicants will only worsen with increased shoreline hardening. The Applicants ask for a solution to what are asserted as “immediate threats”<sup>23</sup> to the properties; however, the addition of riprap to the coastline will, in the long run, only exacerbate and escalate the coastal erosion and natural hazards the properties face. The Applications provide no meaningful discussion of the long-term hazard impacts to the beach and public safety within the context of Goal 7. Absent such analysis, the Board of County Commissioners cannot conclude that the proposed plan amendment and Goal 18 IR 5 exception is consistent with Goal 7 based on the current record.

Under Section 1.1(b)(4) of the TCCP Goal 7, implementation guidelines specify that “possible creation of new natural hazards by proposed developments should be considered, evaluated, and provided for.” The Applications have yet to meaningfully evaluate or provide solutions for the increase harm and hazards that the proliferation of riprap will have on the natural environment, neighboring properties, overall safety of the beach. They only focus their analysis on the hazards and impacts to the private property owners will face if hardening is denied. As stated throughout the record, increased shoreline hardening—especially riprap—on the coast increases the rate and amount of erosion, degrades the long-term stability of and access to the beaches, and results in the need for more shoreline to compensate for damage. The Applications failure to meaningfully address this aspect demonstrates noncompliance with TCCP Goal 7.

*d. Goal 8 Recreational Needs; TCCP Goal 8*

The Applications also fail to establish compliance with Goal 8. The purpose of Goal 8 is “[t]o satisfy the recreational needs of the citizens of the state and visitors, and where appropriate, to provide for the siting of necessary recreational facilities including destination resorts.” In their Combined Application, the Applicants highlight that there are two beach accesses in the exception area that connect Pine Beach Loop and Ocean Boulevard to a long stretch of dry sandy beach.<sup>24</sup> The Applications then conclusively state that “[t]he proposed structure will improve the

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<sup>22</sup> Combined Application at 53.

<sup>23</sup> Oregon Shores agrees with DLCD that there does not appear to be a clear “specificity of a unique need” in this case, and strongly argues that the Applicants should address less impactful alternatives to their preferred method of mitigation of shoreline erosion. It should also be noted that four of the subject properties are currently undeveloped. Per Oregon Shores’ review, the Applications omit a discussion of need for the proposal for these properties, and fail to address compliance with Goal 7.

<sup>24</sup> See Combined Application at 54 (“There are two beach accesses in the exception area. One beach access



northern beach access[.]” “allows improved access to the beach[.]” and does not interfere with the southern beach access.”<sup>25</sup> The Applications further state that approval of the proposed riprap would “protect[] those public recreation interests from the harm that would occur to the ocean and beaches[.]”<sup>26</sup> These assertions are not only unsupported but also inaccurate. The Applications fail to address the harms and negative impacts to recreation that increased riprap will have on the public’s access to the beach. As stated in Oregon Shores’ prior comments and throughout the record, the addition of shoreline hardening to these sites—particularly the addition of riprap—would destroy recreational opportunities and greatly disturb the public’s access. Riprap not only reduces the walkability of a beach by making public walking and recreation spaces narrower and less safe but also continues beach erosion and causes beaches to disappear entirely over time.<sup>27</sup> The Applications provide no meaningful discussion of how the purpose of Goal 8 will be fulfilled. Absent such analysis, the Planning Commission cannot on the basis of the current record conclude that the proposed plan amendment is consistent with Goal 8.

*e. Goal 9 Economic Development; TCCP Goal 9*

The Applications also fail to demonstrate compliance with Goal 9. The purpose of Goal 9 is “[t]o provide adequate opportunities throughout the state for a variety of economic activities vital to the health, welfare, and prosperity of Oregon’s citizens.” The Applications conclusively state that the proposal “does not implicate” yet is still “consistent with Goal 9.”<sup>28</sup> This assertion is overly conclusive and if the Applicants claim compliance with Goal 9, they must assert a more robust analysis. Absent such analysis, the Board of Commissioners cannot on the basis of the current record conclude that the proposal is consistent with Goal 9.

*f. Goal 10 Housing; TCCP Goal 10*

The Applications also fail demonstrate compliance with Goal 10. The purpose of Goal 10 is “to provide for the housing needs of the citizens of the state.” It imposes an affirmative duty on local governments to ensure opportunities for the provision of adequate numbers of needed housing units at prices and rents that are affordable to Oregonians. *See* OAR 660-008-0000(1) (describing the purpose of Goal 10).

As noted in our prior June 10, 2021 Comment, the TCCP Goal 10 element satisfies the County’s planning obligation under Goal 10. The Applications conclusively assert that the “County’s acknowledged Goal 10 Buildable Lands Inventory relies greatly upon its urban unincorporated communities, to include the Twin Rocks-Watseco-Barview urban unincorporated community that includes the subject properties, to provide medium density residential uses to the

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runs between Tax Lots 123 and 3204 to the beach. See Exhibit Q, p. 2. The other access runs from Pine Beach Loop between Tax Lots 113 and 114, and then along the southern boundary of Tax Lot 114 to the beach. Those beach accesses connect Pine Beach Loop and Ocean Boulevard to a long stretch of dry sandy beach. See Exhibit Q, p. 2; Exhibit F, Attachment 1, field photos.”)

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *The True Cost of Armoring the Beach*, SURFRIDER (July 6, 2020) <https://sandiego.surfrider.org/the-true-cost-of-armoring-the-beach/> (last visited June 7, 2020).

<sup>28</sup> Combined Application at 54.

County.” However, even assuming this to be true, the Applications’ materials themselves acknowledge that this “need has largely been met, with a few more vacant lots available in the identified area.” The Applications fail to demonstrate that the existing structures are needed housing within the meaning of Goal 10, or that said existing upland structures and vacant lots are somehow necessary to meet the County’s identified need under Goal 10. The Applicants’ materials also fail to establish that there are any requirements or obligations on the County under Goal 10 that would necessitate the proposed exception to Goal 18 to allow the Applications’ preferred shoreline erosion mitigation use (i.e., hardened SPS). The Applications’ assertion that “[p]rotecting the existing lots planned, zoned and mostly developed with residences complies with the County’s buildable lands inventory and meets the County’s demonstrated housing needs under Goal 10” does not constitute an express obligation under Goal 10 that would require the County to take the proposed exception to Goal 18 allowing hardened SPS for otherwise ineligible properties. Because the Applicants’ materials fail to establish requirements or obligations on the County related to Goal 10, the Board of County Commissioners cannot conclude that the proposal is consistent with the demonstrated need rule on the basis of Goal 10 itself sufficient to justify an exception to Goal 18.

*g. Goal 11 Public Facilities; TCCP Goal 11*

The Applications also fail to demonstrate compliance with Goal 11. The purpose of Goal 11 is to “plan and develop a timely, orderly and efficient arrangement of public facilities and services to serve as a framework for urban and rural development.” The Applications assert that the proposal is consistent with Goal 11 without providing any reasoning other than the assertion that “[o]ne purpose of the proposed revetment is to protect . . . public facility investments from potential future beachfront erosion.”<sup>29</sup> The Applications fail to provide meaningful evidence to support this claim and fail to demonstrate how the preferred method of shoreline erosion mitigation (i.e., a hardened SPS) is consistent with Goal 11. Absent further analysis and evidence, the Board of Commissioners cannot on the basis of the current record conclude that the proposal is consistent with Goal 11.

As noted in Oregon Shores’ June 6, 2021 Comment, the Goal 11 element of the TCCP fulfills the County’s planning obligations with respect to and directs development in accordance with Goal 11 (including the Watseco-Barview Water District and the Twin Rocks Water District). The Applicants’ materials do not establish that there are requirements or obligations on the County related to Goal 11 that necessitate either the proposed SPS or the proposed exception to Goal 18 to allow the SPS at the Pine Beach or Ocean Shore Boulevard properties.

*h. Goal 14 Urbanization; TCCP Goal 14*

The Applications also fail show compliance with Goal 14. The purpose of Goal 14 is to “provide for an orderly and efficient transition from rural to urban land use to accommodate urban population and urban employment inside urban growth boundaries, to ensure efficient use of land, and to provide for livable communities.” The Applications state that the subject properties are “subject to an acknowledged goal exception that designates them to provide urban

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<sup>29</sup> *Id.* at 56.

levels of residential use and are served with urban public facilities and services[.]”<sup>30</sup> thus making them consistent with Goal 14. The Applications also state that the “proposed structure is consistent with the level of that development and will protect that development.”<sup>31</sup> However, the Applications fail to explain how the fact that the existing structures on the subject properties may have been subject to a previous Goal exception for residential development is relevant to the inquiry of whether the proposed SPS is compliant with Goal 14 for the purposes of taking an exception to Goal 18. As noted by DLCDC:

[T]he *homes* that exist in the application area were built in conformance with the provisions of Goal 18, Implementation Requirement (JR) 2. The *houses* were not built in an active foredune or in a dune area subject to ocean flooding, which means they did not need an exception to Goal 18, IR2. The other goal exceptions (to Goals 3, 4, 11, and 14) that allow for the Barview/Twin Rocks/Watseco community to be residentially developed, do not specify the exact location of development on each parcel in this unincorporated community... The *houses* were built in the eastern portions of their respective parcels to comply with the prohibition areas of Goal 18 for residential development. [DLCDC] understands the applicants to argue that the other goal exceptions allowed the development to be placed in a foredune and therefore, they have an exception to Goal 18, IR2. That is not reflected in the Tillamook County Comprehensive Plan. To reiterate, a goal exception is an affirmative act that is required to be incorporated into a comprehensive plan.

In other words, the proposed BPS requires an exception to Goal 18, and is not simply consistent with Goal 14 because the upland structures may be subject to an exception to said Goal.

Further, Goal 14 focuses mostly on managing urban growth using the urban growth boundary; this Goal—and its implementation in the TCCP—are about criteria to manage and control the phasing of development within an urban growth boundary.<sup>32</sup> The addition of riprap and BPS on the coast is not consistent with the overall purpose and requirements of Goal 14 which dictate urbanization. The fact that the BPS may “protect” the development that has taken place on the subject properties is not enough to make this specific proposal consistent with Goal 14. The Applicants reliance on this Goal and the prior Goal exception is misplaced. Even if the Board determines that this proposal is consistent with Goal 14 and takes the Applications’ assertions as truth, the proposal’s consistency with this Statewide Planning Goal should not be determinative of the proposal’s compliance with the applicable Goals criteria as a whole.

*i. Goal 17 Coastal Shorelands; TCCP Goal 17*

The Applications also fail to satisfy obligations under Goal 17. The purpose of Goal 17 is to “conserve, protect, *where appropriate*, develop and *where appropriate* restore the resources and benefits of all coastal shorelands, recognizing their value for protection and maintenance of water quality, fish and wildlife habitat, water-dependent uses, economic resources and

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<sup>30</sup> *Id.* at 56.

<sup>31</sup> *Id.*

<sup>32</sup> *See* TCCP Goal 1, 2.5: Purpose of the Urbanization Goal, Goal 14.

recreation and aesthetics.”<sup>33</sup> In other words, local governments must first conserve and protect “the resources and benefits of all coastal shorelands, recognizing their value for protection and maintenance of water quality, fish and wildlife habitat, water-dependent uses, economic resources and recreation and aesthetics.” If development is consistent with Goal 17’s mandate to conserve and protect (i.e., “where appropriate”), only then can it be allowed to proceed. The Goal’s objective is also “[t]o reduce the hazard to human life and property, and the adverse effects upon water quality and fish and wildlife habitat, *resulting from* the use and enjoyment of Oregon’s coastal shorelands.”<sup>34</sup>

In their Combined Application, the Applicants state that Goal 17 does not apply to the subject properties because the properties were “planned for residential use and the findings for the Pine Beach Subdivision approval in 1994 noted that an exception to Goal 17 was taken for the area.”<sup>35</sup> As noted above, the fact that the subject properties may have an exception for the development of the subdivision or structures on the eastern portions of their relevant parcels (consistent with Goal 18’s prohibitions) does not automatically mean that the subject properties have an exception for the proposed BPS. DLCD has previously noted that the subject properties are, in fact, subject to both Goal 17 and Goal 18 as resource lands; therefore, the Applications err by claiming Goal 17 does not apply to this proposal. The Applicants should address compliance with Goal 17.

The Applications also state that the proposed BPS will not interfere with recreational uses in violation of Goal 17 because “the BPS is located on vegetative property, not on the beach” and therefore there is “no way” the BPS nor the location of the BPS will interfere with public access or recreational uses.<sup>36</sup> This assertion is overly conclusive and fails to recognize the erosive nature of riprap and the impacts BPS has on beaches. The Applications fail to meaningfully address the harmful impacts this proposal will have on the public’s beach and long-term beach access by limiting the scope of this proposal’s impact to private property interests. Without a more in-depth analysis of how this proposal will impact this coastal shorelands area, the Board should not determine the Applications are in compliance with Goal 17.

*j. Goal 18 Beaches and Dunes; TCCP Goal 18*

The purpose of Goal 18 is to “conserve, protect, where appropriate develop, and where appropriate restore the resources and benefits of coastal beach and dune area[]” and to “To reduce the hazard to human life and property from natural or man-induced actions associated with these areas.” As discussed previously, because the properties were not developed as of January 1, 1977, Goal 18 prohibits the Applicants’ from constructing their preferred method of shoreline erosion mitigation (i.e., hardened SPS) in order to protect the public’s beach. Hence, to lawfully develop the proposed SPS, the Applicants bear the burden of demonstrating that an exception to Goal 18 is justified.

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<sup>33</sup> Goal 17, (emphasis added).

<sup>34</sup> Goal 17, (emphasis added).

<sup>35</sup> Combined Application at 57.

<sup>36</sup> See Final Argument at 30.

As stated in Oregon Shores' prior comments and throughout the record, the Applicants' proposal for riprap proliferation is antithetical to beach conservation, and increases erosion to adjacent properties as well as creating a public safety hazard (through narrowing of the beach). For these reasons, the legislative declaration in ORS 390 and policy underlying Goal 18 effectively placed a cap on the amount of ocean shore in Oregon that may be armored to limit the cumulative impacts of such hardening. Specifically, Goal 18 prohibits permits for SPS where development exists after January 1, 1977. Oregon Shores incorporates by reference our previous robust analysis regarding the proposal's inconsistency with Statewide Planning Goal 18 in our June 3, 2021 Comment and our June 10, 2021 Comment on this matter. Oregon Shores strongly argues that the Applications fall well short of the high bar required by the general reason set forth at OAR 660-004-0022(1). As such, the Board of County Commissioners should recommend denial of the Applications.

Finally, as noted by DLCDC, future uses of the four vacant oceanfront lots within the proposed goal exception location "would have to comply with the provisions of Goal 18, including to reduce hazards to human life and property." As discussed above, the Applications fail to provide specific analysis regarding these vacant lots, including addressing compliance with Goal 18. The Applicants should address compliance with Goal 18 with respect to these lots prior to any final decision in this matter.

As highlighted in our June 3, 2021 Comment, incorporated by reference, Tillamook County has identified and adopted specific exception areas for Goal 18, Implementation Requirement #2 in the County's Comprehensive Plan (Part 6 of the Beaches and Dunes Element). As noted in the Staff Report:

Section 6 of the Goal 18 element of the [TCCP] inventories those built and committed areas where a Goal 18 exception has been taken. These are areas within unincorporated Tillamook County identified as built and committed areas located on foredunes which are conditionally stable and that are subject to ocean undercutting or wave overtopping, and on interdune areas (deflation plains) that are subject to ocean flooding. These built and committed areas are Cape Meares, Tierra Del Mar, Pacific City and Neskowin.

The areas specified in the Applications are not within these three adopted Goal 18, IR 2 exception areas, as set forth in the TCCP (TCCP Goal 18, §§6.1a-d).

*k. Catch-all Analysis for Goals 1, 3, 4, 12, and 13*

For the sake of issue preservation, Oregon Shores notes that the Applications conclusively state compliance with Goals 1, 3, 4, 12, and 13. While it is true that Goals 3 and 4 are not implicated in this matter, the Applications cannot simply state that the project is consistent with the Goals without a more analysis. The Applications also state that the proposal is consistent with Goal 1 because the application is processed in accordance with the county's acknowledged land use regulations and procedures. Because the local criteria, as detailed above, are not satisfied, the proposal is not consistent with Goal 1 or Goal 2.

The purpose of Goal 12 is to “provide and encourage a safe, convenient and economic transportation system.” The Applications conclusively state that the proposal is consistent with Goal 12 without providing any reasoning other than the assertion that the traffic generated from structure construction will not have any significant impacts necessary to address under Goal 12. Absent such analysis, the Board of Commissioners cannot on the basis of the current record conclude that the proposal is consistent with Goal 12. Even the Board determines that this overly conclusive assertion means that the proposal is consistent with Goal 12, the proposal’s consistency with this Statewide Planning Goal should not be determinative of the proposal’s compliance with the applicable Goals criteria as a whole. The purpose of Goal 13 is to “conserve energy.” The Applications conclusively state that the proposal “does not directly implicate” yet is still “consistent with Goal 13.”<sup>37</sup> This assertion is overly conclusive and if the Applications claim compliance with Goal 13, they must assert a more robust analysis. Absent such analysis, the Board of Commissioners cannot on the basis of the current record conclude that the proposal is consistent with Goal 13.

**iii. The Applications Do Not Comply with the Applicable Tillamook County Comprehensive Plan Policies Contained in TCCP Goal 7, TCCP Goal 16, TCCP Goal 17, and TCCP Goal 18.**

*a. TCCP Goal 7, Policy 2.4(a)*

In addressing erosion Policy 2.4(a) in their Combined Application, the Applications only focused on the riprap’s immediate stabilization of the shoreline and failed to address how this beachfront protection structure impacts the stability of its surrounding area over time, the implications that this structure will have on public safety, and how this proposal may ultimately result in the proliferation of more shoreline hardening.<sup>38</sup> TCCP Goal 7, Section 2.4(a) does not require the County to use hardened SPS to prevent erosion much less approve an exception to Goal 7 and the TCCP’s Goal 7 element to allow private entities to do so, and the Applicants’ materials fail to argue otherwise. The Applications’ assertion that failure to approve the proposed exception for the Applicants’ preferred shoreline mitigation measure (i.e., hardened riprap) measure would mean the County would fail to comply with the TCCP implementation measure to fulfill its planning obligation under Goal 7, is unsupported and contrary to the case law governing OAR 660-004-0022(1)(a). Further, given that the proposed SPS will increase erosion and the need for remedial measures, the suggestion that it is needed is contrary to sound management of natural hazards on the shoreline. The Applications assert, absent any meaningful evidence and analysis, that “critical public infrastructure is at risk.” Even assuming this is true, again, there is no obligation identified by the Applications that require the County to uses riprap as a preventative or remedial measure in this case.

*b. TCCP Goal 7, Policy 2.5(d)*

The Applications failed to specifically discuss compliance with TCCP Goal 7 Policy 2.5(d) for Flooding, which states that “permanent structures shall not be placed in channels

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<sup>37</sup> Combined Application at 55–56.

<sup>38</sup> Combined Application at 63.

subject to flash flooding.” The BPS the Applicants are proposing is a permanent shoreline hardening structure in an area that is subject to tidal flooding. The Applications fail to acknowledge this policy that seemingly opposes this proposal and fail to offer an analysis of how this proposal is still in compliance with this policy.

*c. TCCP Goal 16, Policy 7.5(2)*

The Applications state that that the “shoreline stabilization proposed here is the highest option left” as vegetated riprap. Goal 16 Policy 7.5(2) does state that the general priorities for shoreline stabilization within estuarine waters, intertidal areas, tidal wetlands, and along WDD shoreland zones and other shoreland areas are, from highest to lowest, proper maintenance of existing riparian vegetation; planting of riparian vegetation; vegetated riprap; non-vegetated riprap; groins, bulkheads and other structural methods. However, the Applications fail to discuss any other preferred alternatives to shoreline stabilization and insist that “vegetated riprap” is the only means of addressing the private homeowners’ issues. The Applications’ conclusive analysis fails to demonstrate compliance with this TCCP policy.

*d. TCCP Goal 16, Policy 7.5(4)*

Goal 16. Policy 7.5(4) states that structural shoreline stabilization methods shall be permitted *only if*:

- a. flooding or erosion is threatening a structure or an established use or there is a demonstrated need (i.e., a substantial public benefit) and the use or alteration does not unreasonably interfere with public trust rights; and
- b. land use management practices or non-structural solutions are inappropriate because of high erosion rates or the use of the site; and
- c. adverse impacts on water currents, erosion and accretion patterns and aquatic life and habitat are avoided or minimized.

The Applications conclusively state that each of the above-mentioned Policy 7.5(4) subsections are met; however, the Applications fail to meaningfully discuss each in detail. Even if the Board finds that the Applications are consistent with this TCCP Policy, that consistency should not be determinative of the Applications overall consistency with the TCCP.

*e. TCCP Goal 16, Policy 7.5(5)–(6)*

While these policies only apply to Estuary Natural/Estuary Conservation Aquaculture zones and Estuary Conservation 1/Estuary Conservation 2 zones respectively and may not specifically apply to these Applications, the Applicants state in their Combined Application that the proposal is consistent with both policies because the BOS will “protect existing dwellings and public water and sewer facilities” as well as “not adversely affect long term use of the beach resource and not cause alteration of the beachfront other than at the protected location.”<sup>39</sup> As stated throughout this record and in Oregon Shore’s previous comments, the Applications have only conclusively stated that the proposed BPS will “not adversely” impact the surrounding

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<sup>39</sup> Combined Application at 67.

and adjacent beaches and not impact public beach access. The proposal fails to offer any discussion addressing the harmful nature of riprap and thus, the Applications fail to meaningfully demonstrate compliance with these TCCP Policies.

*f. TCCP Goal 17, Policy 4.2*

To the extent that Goal 17, Policy 4.2 applies, the Applications have failed to meaningfully address compliance. This policy for shoreline development states:

New shoreland development, expansion, maintenance or restoration of existing development; or restoration of historic waterfront areas shall be sited, designed, constructed and maintained to minimize adverse impacts on riparian vegetation, water quality and aquatic life and habitat in adjacent aquatic areas, and to be consistent with existing hazards to life and property posed by eroding areas and flood hazard areas.

To accomplish this:

- a. The requirements of the National Flood Insurance Program shall be used to regulate development in flood hazard areas within coastal shorelands:
- b. Shoreland setbacks shall be established to protect riparian vegetation and to recognize eroding areas (See Section 9, of this element):
- c. Priority shall be given to nonstructural rather than structural solution to problems of erosion or flooding:
- d. Existing state and federal authorities referenced in the Water Quality policies shall be utilized for maintaining water quality and minimizing Goal 17 Coastal Shorelands Complete 62 man-induced sedimentation in aquatic areas.

The Applications have failed to meaningfully discuss how the proposed riprap will minimize adverse impacts and how it is consistent with existing hazards to life and property in these areas—especially related to safety of beach access and the hazardous impacts of riprap. As stated above, this policy gives priority to “nonstructural” solutions rather than structural solutions to address the problems of shoreline erosion or flooding. The Applications fail to offer solutions more in line with the TCCP’s shoreline development policy and thus fail to demonstrate compliance.

*g. TCCP Goal 17, Policy 4.3*

The Applications fail to meaningfully discuss compliance with Goal 17, Policy 4.3 related to scenic views and public access. The policy states:

New shoreland development, expansion, maintenance or restoration of existing development and restoration of historic waterfront areas shall be designed to promote visual attractiveness and scenic views and provide, where appropriate, visitor facilities, public viewpoints and public access to the water. Existing public access to publicly owned shorelands shall be maintained. Existing public ownerships, right-of-way and similar public easements in coastal shorelands which provide access to, or along coastal waters shall be retained or replaced if sold,



exchanged or transferred. Rights-of-way may be vacated to permit redevelopment or shoreland areas provided public access across the affected site is retained. This TCCP policy highlights the importance of the public's access to the County's shorelands—something implementation of this proposal threatens. The Applications fail to mention this policy and how the proposed BPS will comply with the County's policy to maintain existing public ownership and access to the coastal shorelands.

*h. TCCP Goal 18, Policy 2.4a and 4.4e*

The Applications failed to discuss compliance with Goal 18, Policy 2.4a which states, in relevant part:

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

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

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

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

Goal 18, Policy 4.4e confirms that this policy "shall apply to beachfront protective structures"

As noted throughout the record and this comment, the Applications fail to fully address the hazardous impacts of BPS on access to the public's beach and on the long-term negative effects of riprap on erosion on the site and surrounding beach as a whole.

*i. TCCP Goal 18, Policy 2.4b*

As noted above in Section B(i)(a) analyzing Flood Hazard Overlay Zone compliance, the Applications have not demonstrated total compliance with certain FH zone criteria. Because of this, the Applications fail to demonstrate compliance with Goal 18, Policy 2.4b which requires that "[d]evelopment in beach and dune areas shall comply with the requirements of the Flood Hazard Overlay zone."

*j. TCCP Goal 18, Policy 4.4c*

This policy implements Goal 18, IR 5, stating that "[b]eachfront protective structures . . . are permitted only where development existed on January 1, 1977 or where buildings are authorized by Section 5." This is the main crux of the Applicants' request and because the Applications failed to justify an exception under Goal 18, IR 5, they cannot show compliance with this TCCP policy.

*k. TCCP Goal 18, Policy 4.4f*

This policy states that “[s]horeline protection measures shall not restrict existing public access.” The Applications conclusively argue throughout the record that there will be no issues with existing public access because “[t]he proposed structure will improve the northern beach access with a gravel path and ramp that goes over the rock revetment and allows improved [beach] access” and because “the proposal does not interfere with the southern beach access.” However, this argument fails to analyze the known impacts of riprap on the public’s beach and the sustained impacts that the proliferation of shoreline hardening will have on the beach and future adjacent sites. The Applications fail to meaningfully analyze address this in and fail to show compliance with this TCCP policy. As a whole, this proposal is not consistent with the TCCP and thus the Board should deny the Applications.

**C. Conclusion**

Allowing installation of hardened structures along the shore, which can deprive the beach of a sand source that may help to mitigate the progressive loss of sand from Oregon’s bluff-backed shorelines due to increasing erosion, does not protect the public’s interest in the beach as the County is required to do. Given the increases in storm surge and wave height we are already experiencing on the Oregon coast, and given what we know of further predicted changes resulting from long-term climate change and cyclical climatic events such as El Niño, these requests for protective structures permits are likely to increase. Further, allowing the installation of protective structures exacerbates the risks to public health and safety as well as to shorefront properties by encouraging investment in shorefront protection rather than incentivizing movement away from shoreline areas and coastal hazards. The result is prioritizing the protection of private property in the short-term to the detriment of the public’s long-term interest in preserving the beach, inconsistent with the Oregon Beach Bill and Goal 18. In the long run, armoring the ocean shore will prove futile against sea level rise and erosion. In the meantime, significant practical and policy questions arise in light of the effects of rising sea level on the ocean shore.

Oregon Shores strongly believes that the Board of County Commissioners needs to get in front of this crisis and make decisions on the basis of present and increasing risks, consistent with the principles of Goal 18 and ORS 390.610. The Applications fail to demonstrate reasons justifying an exception to Goal 18 and fails to satisfy the mandatory local criteria. On the basis of the present record and Oregon Shores’ previous comments, incorporated by reference, the Board of County Commissioners should deny these applications.

Sincerely,

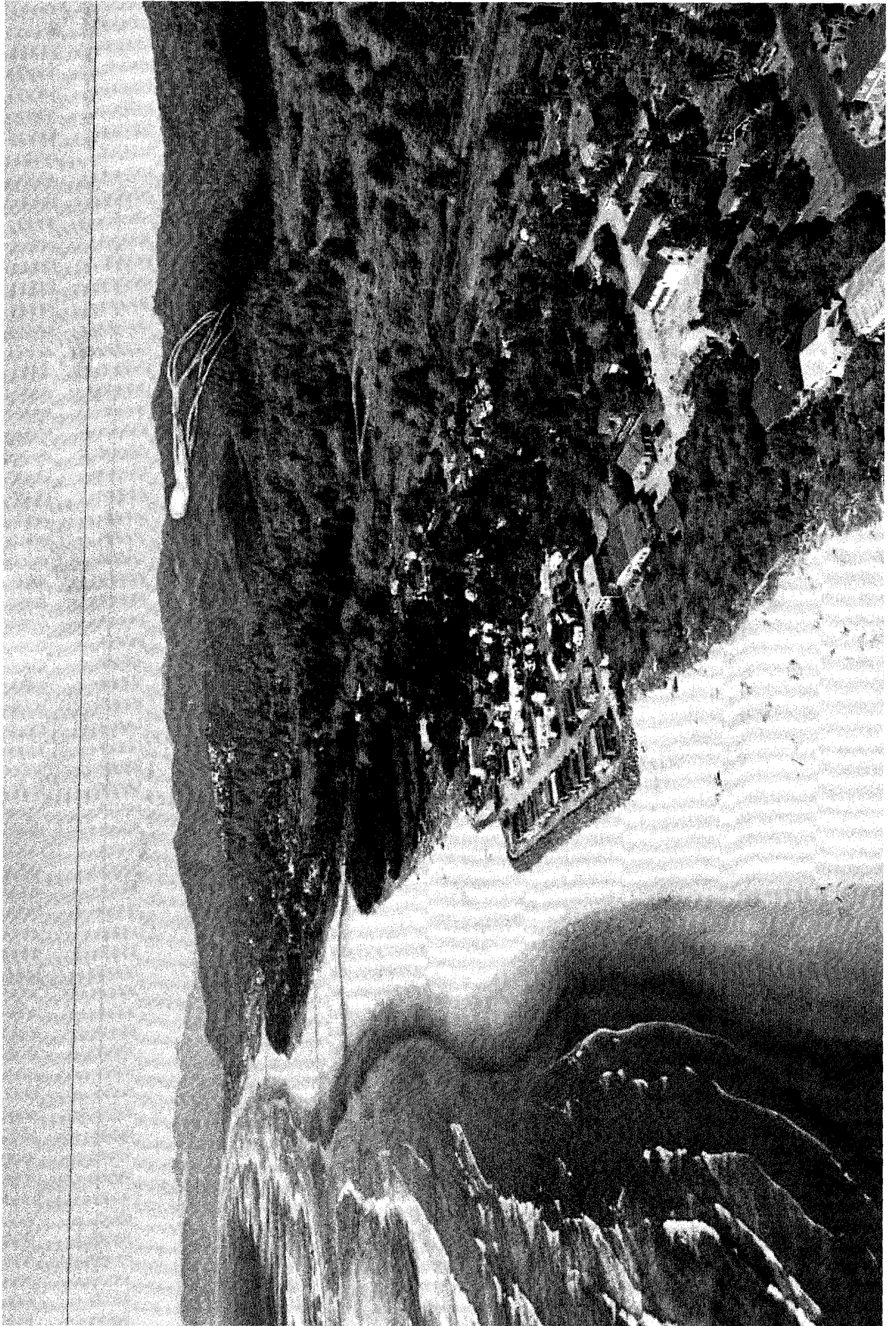
A handwritten signature in black ink, appearing to read "Phillipe", followed by a long horizontal line extending to the right.

Tillamook County File No(s) 851-21-000086-PLNG-01/851-21-000086-PLNG  
BOCC Public Hearing - Comments of Oregon Shores Conservation Coalition

Phillip Johnson  
Executive Director  
Oregon Shores Conservation Coalition  
P.O. Box 33  
Seal Rock, OR 97376  
(503) 754-9303  
[phillip@oregonshores.org](mailto:phillip@oregonshores.org)

# Attachment A

## Aerial Photos of the Pine Beach Area





**Tillamook County**



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

1510 – B Third Street  
Tillamook, Oregon 97141  
www.tillamook.or.us

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

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*Land of Cheese, Trees and Ocean Breeze*

# **MEMO**

**Date:** June 17, 2021  
**To:** Tillamook County Planning Commission  
**From:** Sarah Absher, CFM, Director  
**Subject:** June 24, 2021 Planning Commission Hearing regarding Zone Change/Map Amendment Request #851-21-000069-PLNG and Goal Exception/Development Permit consolidated review requests #851-21-000086-PLNG/#851-21-000086-PLNG-01

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Included with this memorandum are copies of written testimony for the above referenced land use application requests. The testimony is divided and organized in accordance with the 4:00pm deadlines for each testimony period. Testimony submittal deadlines for these application requests were as follows:

- New testimony by any party was received by 4:00pm on June 3, 2021
- Rebuttals (no new testimony) by any party was received by 4:00pm on June 10, 2021
- Final written testimony by Applicants was due by 4:00pm on June 17, 2021

Copies of all testimony and evidence submitted can be found on the Community Development Land Use Application page: <https://www.co.tillamook.or.us/commdev/landuseapps>. Please be advised that some copies of documents and evidence within the packet have been copied in black and white, or may be in duplicate to provide colored copies of maps, graphs, etc. for Planning Commission review.

The public hearings for Zone Change/Map Amendment request #851-21-000069-PLNG and Goal Exception/Development Permit consolidated review requests #851-21-000086-PLNG/#851-21-000086-PLNG-01 will commence at 6:30pm and 7:30pm on June 24, 2021, respectively. Both hearings will open with final oral comments from Applicants followed by final comments from staff. No updates to the May 20, 2021 staff reports have been made. Staff findings contained within the May 20, 2021 reports continue to apply.

Staff has no recommended Conditions of Approval for Planning Commission consideration, however Conditions of Approval can be drafted upon Planning Commission request.

The Planning Commission will ultimately make recommendations to the Tillamook County Board of Commissioners to approve or deny these requests. Should the Planning Commission choose to take action on these requests at the June 24, 2021 hearings, findings made by the Planning Commission and actions recommending approval or denial of these requests will be documented in staff reports for these requests that will be provided to the Board of County Commissioners and posted for public inspection at least 7-days prior to the first date of evidentiary hearings stated below for each request. The record for each of these requests will continue to be maintained on the Community Development Land Use Application page: <https://www.co.tillamook.or.us/commdev/landuseapps>.

Following recommendation from the Tillamook County Planning Commission, virtual public hearings regarding Zone Change/Map Amendment request #851-21-000069-PLNG will be held by the Tillamook County Board of Commissioners at 10:30a.m. on Wednesday, July 7, 2021 and at 10:30a.m. on Wednesday, July 21, 2021 in the Board of County Commissioners Meeting Rooms A & B of the Tillamook County Courthouse, 201 Laurel Avenue, Tillamook, OR 97141. The July 7, 2021 virtual hearing will be a *de novo* hearing and new testimony will be taken. Oral testimony will also be taken at this virtual hearing in the same format as the Planning Commission hearing process.

Following recommendation from the Tillamook County Planning Commission, virtual public hearings regarding Goal Exception/Development Permit consolidated review requests #851-21-000086-PLNG/#851-21-000086-PLNG-01 will also be held by the Tillamook County Board of Commissioners at 10:30a.m. on Wednesday, July 28, 2021 and at 2:00p.m. on Monday, August 16, 2021 in the Board of County Commissioners Meeting Rooms A & B of the Tillamook County Courthouse, 201 Laurel Avenue, Tillamook, OR 97141. The July 28, 2021 virtual hearing will be a *de novo* hearing and new testimony will be taken. Oral testimony will also be taken at this virtual hearing in the same format as the Planning Commission hearing process.

Unless otherwise noticed, all hearings will take place in a virtual format. Please visit <https://www.co.tillamook.or.us/bocc/page/board-commissioners-meeting-schedule> for access information for Board of County Commissioner meetings.

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

Sincerely,  
Sarah Absher, CFM, Director




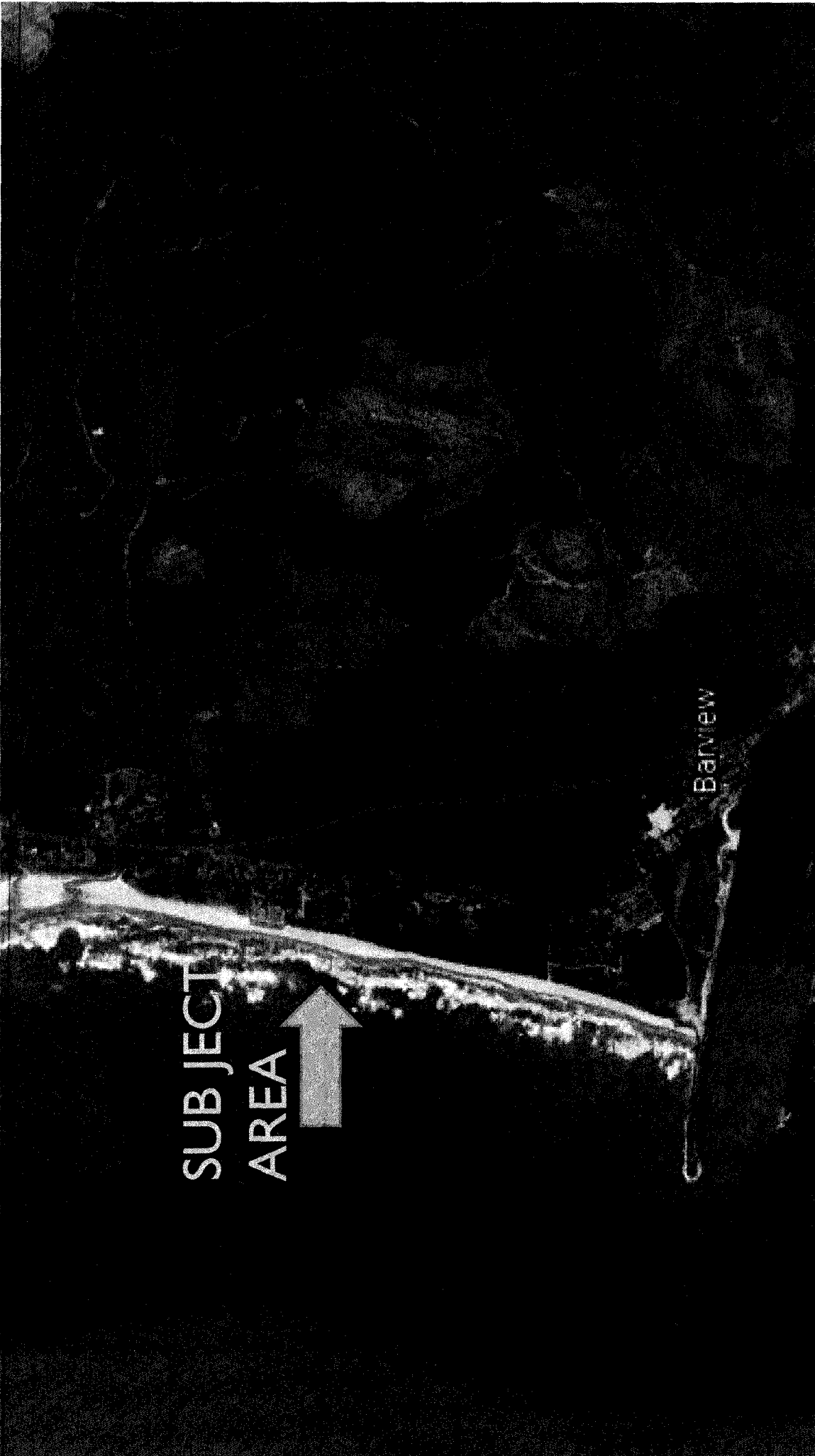
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**#851-21-000086-PLNG-01: GOAL 18 EXCEPTION REQUEST**  
**#851-21-000086-PLNG: FLOODPLAIN DEVELOPMENT**  
**PERMIT**

SARAH ABsher, CFM, DIRECTOR

TILLAMOOK COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT





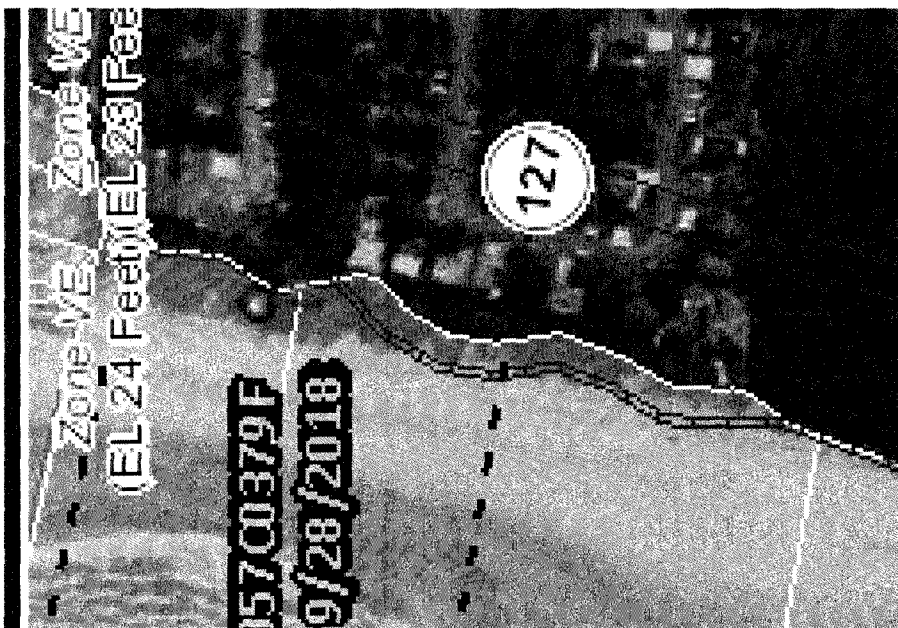
SUBJECT  
AREA



Barview

# VICINITY MAP & SUBJECT AREA











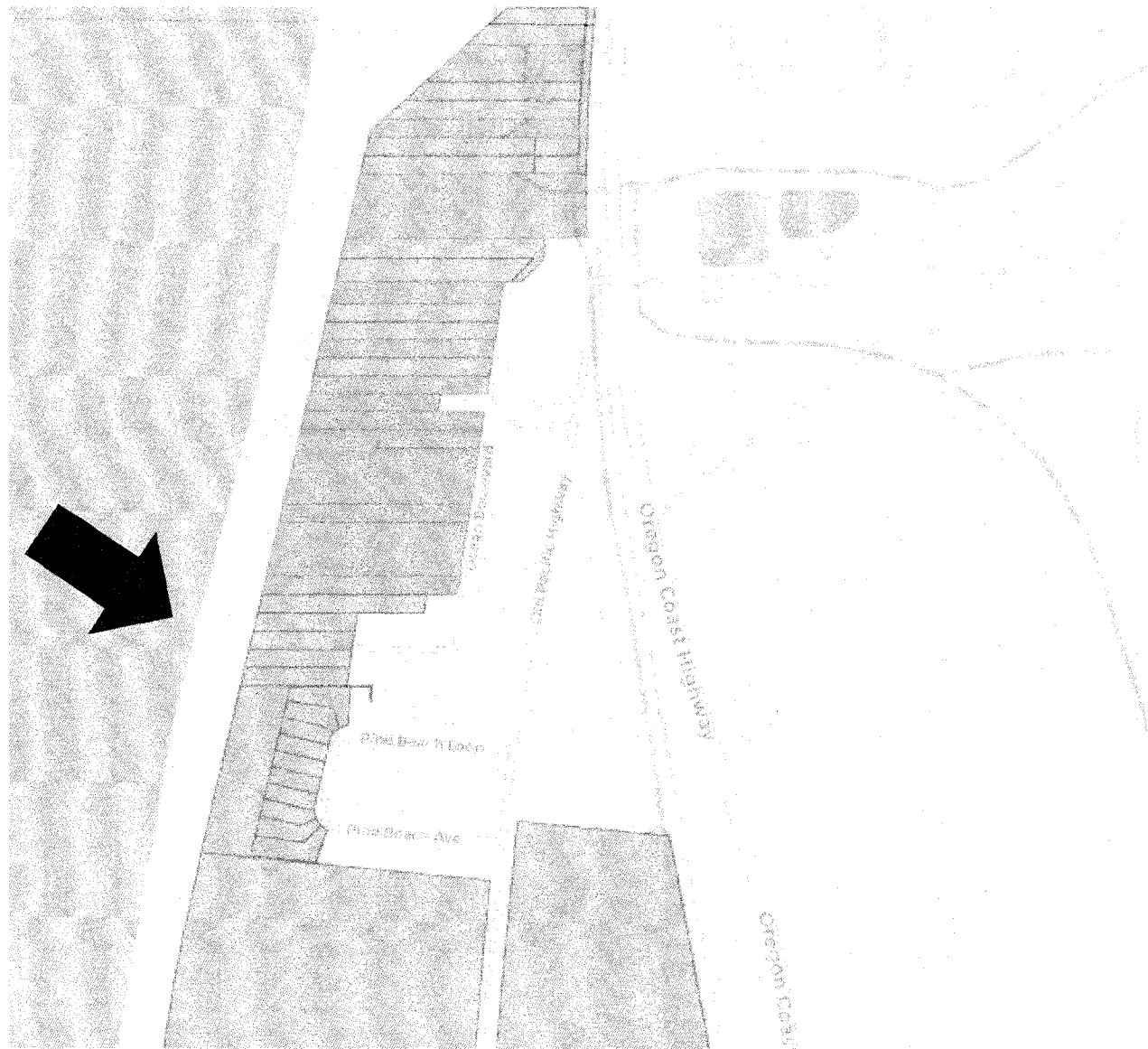
### Shoreline Armoring and Eligibility

- Beachfront Protective Structures, OPRD, 2015
- Goal 18 Eligibility Inventory, OCMP, 2015

-  Eligible for Protection
-  Eligible due to Exception
-  Not Eligible for Protection
-  Rockaway Beach Only - See City Planner.  
(Western extent of Goal 18 Exception is the ocean setback line.)

[HTTPS://WWW.COASTALATLAS.NET/OCEANSHORES/](https://www.coastalatlascorp.com/oceanshores/)

Coastal Atlas,  
Goal 18 Eligibility  
Inventory, OCMP,  
2015





# APPLICATIONS UNDER REVIEW

- Goal Exception request for approval of an exception to Statewide Planning Goal 18, Implementation Measure (IM) 5; approval of a comprehensive plan amendment for a “committed” exception and/or a “reasons” exception to Goal 18, Implementation Measure 5 for the construction of shoreline stabilization along the westerly lots of the Pine Beach Subdivision and five oceanfront lots to the north located within the Barview/Twin Rocks/Watseco Unincorporated Community Boundary .
- Development Permit Request for the installation of a beachfront protective structure (rip rap revetment) within an active eroding foredune east of the line of established vegetation in the Coastal High Hazard (VE) zone, an Area of Special Flood Hazard within the Flood Hazard Overlay Zone.
  - Beach & Dune Hazard Overlay Zone provisions are also made part of this permit review process.



# **CONSIDERATION FOR ACTION**

## **2 SEPARATE APPLICATIONS & DECISIONS**

#851-21-000086-PLNG-01

- EXCEPTION TO GOAL 18 IMPLEMENTATION MEASURE 5 TO ALLOW THE CONSTRUCTION OF A BEACHFRONT PROTECTIVE STRUCTURE (BPS)

#851-21-000086-PLNG

- DEVELOPMENT PERMIT FOR CONSTRUCTION OF BPS (BEACH & DUNE OVERLAY ZONE) & DEVELOPMENT WITHIN AREA OF SPECIAL FLOOD HAZARD

## GOAL 18 IMPLEMENTATION MEASURES #2 & #5

- Statewide Planning Goal 18 Implementation Measure #2 requires prohibition of residential, commercial and industrial development on beaches, active foredunes and other foredunes which are conditionally stable and that are subject to ocean undercutting or wave overtopping, and on interdune areas (deflation plains) that are subject to ocean flooding.
- These are areas within unincorporated Tillamook County identified as built and committed areas located on foredunes which are conditionally stable and that are subject to ocean undercutting or wave overtopping, and on interdune areas (deflation plains) that are subject to ocean flooding. **These built and committed areas are Cape Meares, Tierra Del Mar, Pacific City and Neskowin.**
- Implementation Measure #5 of Statewide Planning Goal 18 only allows beachfront protective structures where development existed on **January 1, 1977.** *Development is defined as houses, commercial and industrial buildings, and vacant subdivision lots which are physically improved through construction of streets and provision of utilities to the lot and includes areas where an exception to (2) above has been approved.*
- Criteria that must be met for the construction of beachfront protective structures is included in Implementation Measure #5 and require evidence that visual impacts are minimized, access to the beach is maintained, negative impacts to adjacent properties are minimized, and long-term or recurring costs to the public are avoided.

# APPLICABLE PROVISIONS

Oregon Statewide Planning Goals

Oregon Revised Statutes

- ORS 197.732

Oregon Administrative Rules, Exception Requirements

- OAR 660-004-0020-0022 Goal 2, Part II(c), Exception Requirements, (11) Goal 18  
Foredune Development Reasons Exception Requirements

Tillamook County Comprehensive Plan

TCLUO Section 3.510: Flood Hazard Overlay Zone

TCLUO Section 3.530: Beach & Dune Overlay Zone

TCLUO Section 9.030: Text Amendment Procedure and Criteria

TCLUO Article 10: Administrative Provisions

## DEFINITION OF "DEVELOPMENT" STATEWIDE PLANNING GOAL 18

### ■ 1977

- Develop
- To make a physical change in the use or appearance of land, to divide land into parcels, or to create or terminate rights of access.
  
- Development
- The act, process, or result of developing.

### ■ 1984

- Houses and vacant subdivision lots which are physically improved through construction of streets and provision of utilities to the lot.

## DISCUSSION & CONSIDERATION

- DEFINITION OF DEVELOPMENT
  - 1977- IS EXCEPTION REQUIRED IF DEVELOPMENT MET DEFINITION?
    - 1941 SUBDIVISION PLAT VACATION OF PINE BEACH
  - 1984- EXCEPTION WOULD BE REQUIRED IF DEVELOPMENT DOES NOT MEET 1984 DEFINITION OF DEVELOPMENT
- WHAT TYPE OF EXCEPTION IS APPROPRIATE FOR CONSIDERATION? APPLICANT EXPLORES ALL THREE. TESTIMONY RECEIVED BY DLCD & OTHERS ARGUE THAT A REASONS EXCEPTION IS THE ONLY PATH FORWARD FOR A GOAL 18 IM5 EXCEPTION
- DEVELOPMENT LAWFULLY PERMITTED. GOAL 18 IM2/IM5 EXCEPTIONS WERE NOT REQUIRED TO BE TAKEN ON THE YOUNGER STABILIZED DUNE. THREAT OF EROSION & OCEAN FLOODING WAS NOT PRESENT AT THE TIME OF DEVELOPMENT BUT ARE PRESENT NOW.

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## **THE BEACH IS THE RESOURCE- PURPOSE OF GOAL 18 IS TO PRESERVE & PROTECT THE BEACH RESOURCE**

- **PROTECTION PRIORITY: DEVELOPMENT OR THE BEACH?**
- **POLICIES OF GOAL 18 ITSELF- PROTECT BEACH RESOURCE- WHAT IMPACT, IF ANY, DOES THE BPS HAVE ON THE RESOURCE NOW AND IN THE FUTURE, AND ULTIMATELY WILL THE BPS RESULT IN FURTHER DEGRADATION OF THE RESOURCE?**
- **WHILE SITE CONDITIONS MAY CHANGE DUE TO CONTINUED EROSION, THE CONSTRUCTION OF THE PROPOSED BPS IS LOCATED WHOLLY WITHIN PRIVATE PROPERTY BOUNDARIES OF THE SUBJECT PROPERTIES**
- **FUNCTION OF BPS- ONLY WHEN THREAT OF EROSION EXISTS AT THE LOCATION OF THE BPS. UNTIL THEN, WHAT IS THE PURPOSE AND FUNCTION OF THE BPS?**
- **ENSURING PUBLIC ACCESS ALONG THE BEACH, NOT NECESSARILY ACCESS TO THE BEACH FROM THE PRIVATE/PUBLIC ROAD SYSTEM**
- **LINCOLN COUNTY APPLICATION VS TILLAMOOK COUNTY FROM DLCD STANDPOINT- SITE CONDITION CONSIDERATION**

## **RELATIONSHIP WITH OTHER POLICIES & GOALS**

- **GOAL 7, NATURAL HAZARDS- COUNTY'S OBLIGATION TO UPHOLD OTHER POLICIES OF STWP & COMPREHENSIVE PLAN- BPS PROPOSAL AND GOAL EXCEPTION REQUEST IS CONSISTENT WITH GOAL 7 POLICIES?**
- **GOAL 10 HOUSING ELEMENT- POLICY TO PROMOTE DIVERSE HOUSING STOCK & HOUSING CRISIS?**
- **SHORELAND GOAL 17 ELEMENT- HAS EXCEPTION BEEN TAKEN? PRIORITY OF NON-STRUCTURAL VS STRUCTURAL SOLUTIONS? SHOULD AN ALTERNATIVE ANALYSIS BE DONE TO PROVE WHY NON-STRUCTURAL SOLUTIONS CANNOT BE CONSIDERED?**

**DISCUSSION & CONSIDERATION CONTINUED**

# RELEVANT GOALS & GOAL ELEMENTS

Goal 1 - Planning  
Process & Citizen  
Involvement

Goal 2 - Land Use Plan  
& Exception Process  
(Reasons/Committed  
Exception Request)

Goal 7 - Hazards

Goal 11 - Public  
Facilities

Goal 14 - Urbanization

Goal 17 - Shorelands

Goal 18 - Beaches &  
Dunes

- Goal 18 IM #2
- Goal 18 IM #5

**CRITERIA  
DISCUSSION**

**REQUEST:  
4 EXCEPTIONS**

**ORS 197.732: GOAL EXCEPTIONS; CRITERIA; RULES;  
REVIEW**

**OAR 660-004-0020 GOAL 2, PART II(b), COMMITTED  
EXCEPTION**

**OAR 660-004-0020 GOAL 2, PART II(c), EXCEPTION  
REQUIREMENTS**

**OAR 660-004-0022: REASONS NECESSARY TO  
JUSTIFY AN EXCEPTION UNDER GOAL 2, PART II(c)**

**TCLUO ARTICLE 9, SECTION 9.030(3) CRITERIA FOR  
TEXT AMENDMENT**



## SUMMARY OF FINDINGS MADE BY APPLICANT TO JUSTIFY WHY EXCEPTIONS SHOULD BE GRANTED

- DEVELOPMENT was lawfully permitted by Tillamook County
  - Some if not all properties meet definition of “DEVELOPMENT” as originally defined in Goal 18
    - Determination and identification of properties that meet definition of “development”
  - Subject area is an irrevocably committed area intended for urban residential use
- REQUEST IS CONSISTENT WITH GOAL 18 (AND GOAL 7) POLICIES TO REDUCE HAZARD TO HUMAN LIFE & PROPERTY FROM NATURAL ACTIONS ASSOCIATED WITH COASTAL BEACH & DUNE AREAS
- Visual impacts are minimized and existing beach access is maintained.
- BPS IS DESIGNED TO MINIMIZE IMPACTS ON ADJACENT PROPERTIES AND WILL NOT INCREASE RISK OF HAZARDS (WAVE RUN-UP, INCREASED WAVE HEIGHT, INCREASED FLOOD RISK OR DIVERSION OF FLOOD WATER)
- BPS IS DESIGNED TO MEET GOAL 18 REQUIREMENTS & BEACH & DUNE HAZARD OVERLAY ZONE STANDARDS
  - (a) The use will be adequately protected from any geologic hazards, wind erosion, undercutting ocean flooding and storm waves, or the use is of minimal value;
  - (b) The use is designed to minimize adverse environmental effects; and
  - (c) The exceptions requirements of OAR 660-004-0020 are met.

## SUMMARY CONTINUED

- The project design protects surrounding properties from the adverse impacts of development, including protection from direction of additional water to surrounding properties, increase in wave heights or wave runup, or impact to the natural littoral drift of sediment along the coast.
- As stated in the Technical Memorandum provided by West Consultants, the proposed revetment structure will reduce the risk of damage to life, property and the natural environment from beach erosion and coastal flooding resulting from large waves occurring during high tides.
- West Consultants Technical Memorandum explains that the structure is designed to address ocean flooding and storm waves and that its design will not cause an increase to FEMA total water levels near the structure.
- The proposed beachfront protective structure will protect the natural environment from beach erosion and adverse impacts from coastal flooding.
- Applicants state the design of the proposed beachfront protective structure is consistent with Goal 18, IM 3 and will provide protective measures where natural protective measures have failed including protection (not the destruction) of desirable vegetation.
- Applicants state the proposed beachfront protective structure does not use or affect groundwater as the structure does not reach down to the water table and will not lead to loss of water quality or the intrusion of salt water into water supplies.
- Foredune breaching is not part of the proposed development.
- Applicants state that while grading and sand movement will occur for the development of the proposed beachfront protective structure, these construction activities are not for the purposes of maintaining views or preventing sand inundation (Exhibit B). The proposal to construct a beachfront protective structure will protect the foredune.
- BPS will be constructed and maintained (including vegetation maintenance requirements) by the property owners.

## ENVIRONMENTAL, ECONOMIC, SOCIAL & ENERGY CONSEQUENCE ANALYSIS SUMMARY

- Applicants state the ESEE demonstrates consequences that would result from the construction of a beachfront protective structure at the subject location are not significantly more adverse than what would typically result from the same proposal being located in a different area that would or would not require a Goal 18, IM 5 exception. Applicants add that there are only two differences between the proposed exception area and the other sites:
  - The proposed exception area is much larger than individual property elsewhere and while the adverse environmental impact of building a beachfront protective structure at the subject location is greater than for a single property, the impact will be temporary given the impact area will be recovered with sand, replanted and monitored.
  - An environmental benefit will result from this proposal for a larger area as a greater area of the foredune (not just an area within a single lot) will be restored and protected with beach grasses, shrubs and trees.
  - Locating the beachfront protective structure at any other location would not protect the subject properties and related public infrastructure, hence the reason for the exception request.

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## TCLUO SECTION 9.030(CRITERIA)

- (a) If the proposal involves an amendment to the Comprehensive Plan, the amendment must be consistent with the Statewide Planning Goals and relevant Oregon Administrative Rules;
- (b) The proposal must be consistent with the Comprehensive Plan. (The Comprehensive Plan may be amended concurrently with proposed changes in zoning);
- (c) The Board must find the proposal to be in the public interest with regard to community conditions; the proposal either responds to changes in the community, or it corrects a mistake or inconsistency in the subject plan or ordinance; and
- (d) The amendment must conform to Section 9.040 Transportations Planning Rule Compliance.

## PUBLIC & AGENCY COMMENTS

- LACK OF EVIDENCE THAT EXCEPTION SHOULD BE GRANTED
- ALTERNATIVES ANALYSIS DOES NOT MEET JUSTIFICATION FOR EXCPETION
- THREAT OF EROSION TO ADJACENT PROPERTIES
- INCREASED THREAT OF FLOOD RISK TO ADJACENT PROPERTIES
- PROTECTION OF EXISTING DEVELOPMENT DOES NOT JUSTIFY NEED TO GRANT EXCEPTION
- EXCEPTION SHOULD NOT BE GRANTED SIMPLY BECAUSE EXCEPTIONS IN THIS AREA HAVE ALREADY BEEN TAKEN
- THREAT OF BEACH ACCESSIBILITY ON STRETCH OF BEACH ADJACENT TO THE SUBJECT PROPERTIES

# DEVELOPMENT PERMIT DISCUSSION

## BEACH & DUNE OVERLAY ZONE, TCLUO SECTION 3.530

- **PERMITTED CONSTRUCTION OF A BPS REQUIRES GOAL EXCEPTION**
- *For the purposes of this requirement, "development" means houses, commercial and industrial buildings, and vacant subdivision lots which are physically improved through the construction of streets and provision of utilities to the lot. Lots or parcels where development existed as of January 1, 1977, are identified on the 1978 Oregon State Highway Ocean Shores aerial photographs on file in Tillamook County.*
- **SITE DEVELOPMENT REQUIREMENTS & DETAILED SITE INVESTIGATION REQUIRED**
- *The report of a Detailed Site Investigation shall recommend development standards to assure that proposed alterations and structures are properly designed so as to avoid or recognize hazards described in the preliminary report or as a result of separate investigations. The report shall include standards for:*
  - *a. Development density and design;*
  - *b. Location and design of roads and driveways;*
  - *c. Special foundation design (for example spread footings with post and piers), if required;*
  - *d. Management of storm water runoff during and after construction.*
- *Summary Findings and Conclusions. The Preliminary and Detailed Site Reports shall include the following summary findings and conclusion:*
  - *1. The proposed use and the hazards it might cause to life, property, and the natural environment;*
  - *2. The proposed use is reasonably protected from the described hazards for the lifetime of the structure.*
  - *3. Measures necessary to protect the surrounding area from any hazards that are a result of the proposed development;*
  - *4. Periodic monitoring necessary to ensure recommended development standards are implemented or that are necessary for the long-term success of the development.*
- **BPS WILL NOT EXCEED 3-FOOT HEIGHT MAXIMUM**

## DEVELOPMENT PERMIT DISCUSSION FLOOD HAZARD OVERLAY ZONE, TCLUO SECTION 3.510

- GENERAL STANDARDS
  - ANCHORING
  - CONSTRUCTION MATERIALS & METHODS
  - UTILITIES
- SPECIFIC STANDARDS FOR COASTAL HIGH HAZARD AREAS
  - ELEVATION & PILING CONSTRUCTION (NOT APPLICABLE)
  - MUST BE ENGINEERED DESIGN
  - MUST BE LOCATED LANDWARD OF THE REACH OF MEAN HIGH TIDE
  - PROHIBIT MAN-MADE ALTERATION OF SAND DUNES, INCLUDING VEGETATION REMOVAL, WHICH WOULD INCREASE POTENTIAL FLOOD DAMAGE

## DEVELOPMENT PERMIT DISCUSSION FLOOD HAZARD OVERLAY ZONE CRITERIA, TCLUO SECTION 3.150

### *Development Permit Review Criteria*

- *(1) The fill is not within a floodway, Coastal High Hazard Area, wetland, riparian area or other sensitive area regulated by the Tillamook County Land Use Ordinance.*
  - *(2) The fill is necessary for an approved use on the property.*
  - *(3) The fill is the minimum amount necessary to achieve the approved use.*
  - *(4) No feasible alternative upland locations exist on the property.*
  - *(5) The fill does not impede or alter drainage or the flow of floodwaters.*
- 
- *BPS is not a new or modified Flood Refuge Platform*



## CONCLUSIONS

ARE THE  
CIRCUMSTANCES  
UNIQUE AND  
EXCEPTIONAL TO  
JUSTIFY GRANTING  
AN EXCEPTION?

BEACH AND DUNE  
DEVELOPMENT  
STANDARDS FOR  
BPS MET?

GOAL 18 CRITERIA  
FOR  
BPS MET?

FLOOD HAZARD  
OVERLAY ZONE  
STANDARDS FOR  
DEVELOPMENT  
WITHIN THE SPHA-  
CRITERIA MET?

## FINDINGS IN SUPPORT OF APPROVING THE GOAL 18 EXCEPTION REQUEST BY THE PLANNING COMMISSION

- Unique and exceptional circumstances apply to these properties. The subdivision and subsequent development of the lots was done through appropriate land use and permitting processes and were done in good faith.
- Zoning allows for residential development of these properties within the Unincorporated Community of Barview/Twin Rocks/Watseco, an urbanized area committed to urban development through previously taken Goal Exceptions (3,4, 11 and 14).
- Because this area has historically been categorized as a stabilized dune, no Goal 18 Exceptions were needed to be considered or taken for this area at the time of adoption of the Tillamook County Comprehensive Plan.
- Request for Goal 18 Exception is not a self-created issue. At the time of permitting and land use review, development was sited on a stabilized dune. Site conditions that exist today did not exist at the time of development- specifically erosion and ocean flooding.
- In relation to adjacent lots not part of this exception request, granting a Goal 18 Exception does not prevent those who already have a right to rip rap or develop from pursuing same option in the future. It is not right to deny a property owner the same opportunities to protect their property that others are afforded due to grandfathered rights that allow them to take action for protection of their property. (Properties where “development” existed on January 1, 1977.)
- The development standards and criteria of the Flood Hazard Overlay Zone have been met through design and location of the proposed BPS.
- The development standards and criteria of the Beach and Dune Overlay Zone have been met through design and location of the proposed BPS.

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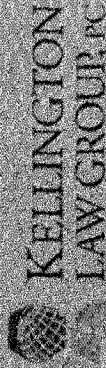
## ADDITIONAL FINDINGS BY THE PLANNING COMMISSION:

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

# Pine Beach Combined Application for Shoreline Protection

Tillamook County Board of Commissioners  
July 28, 2021

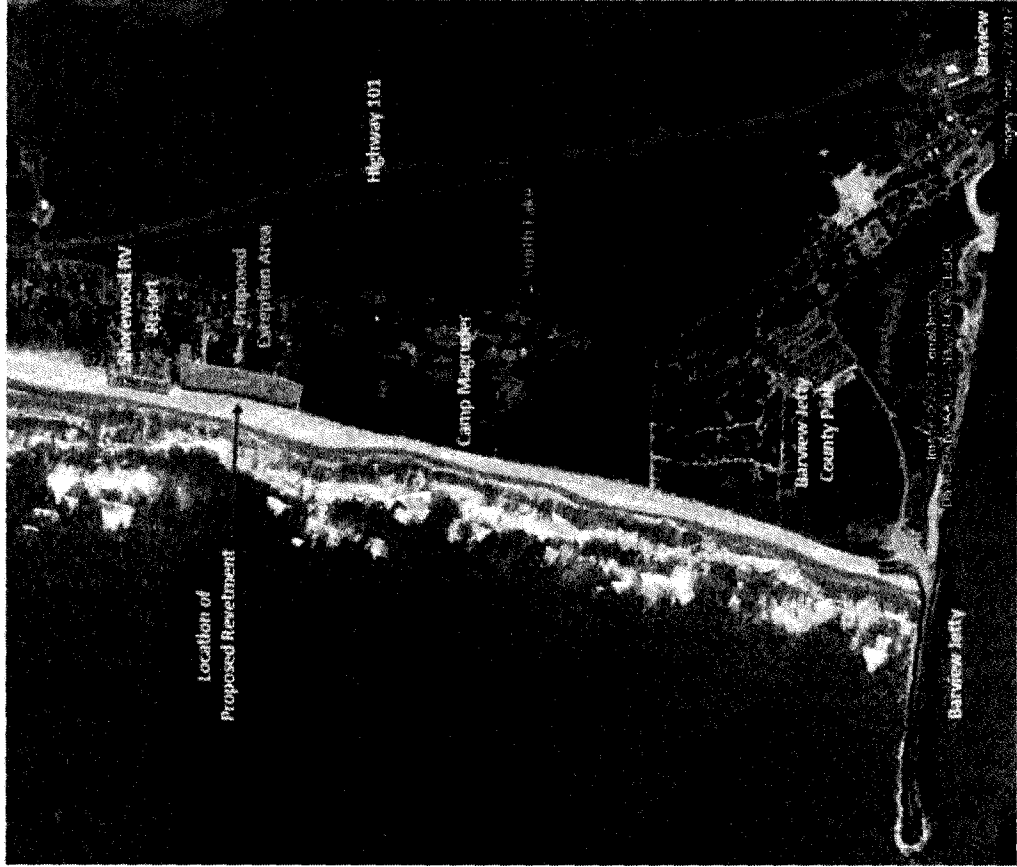
Presented by:  
Wendie L. Kellington, Kellington Law Group, PC  
P.O. Box 159, Lake Oswego, Or 97034

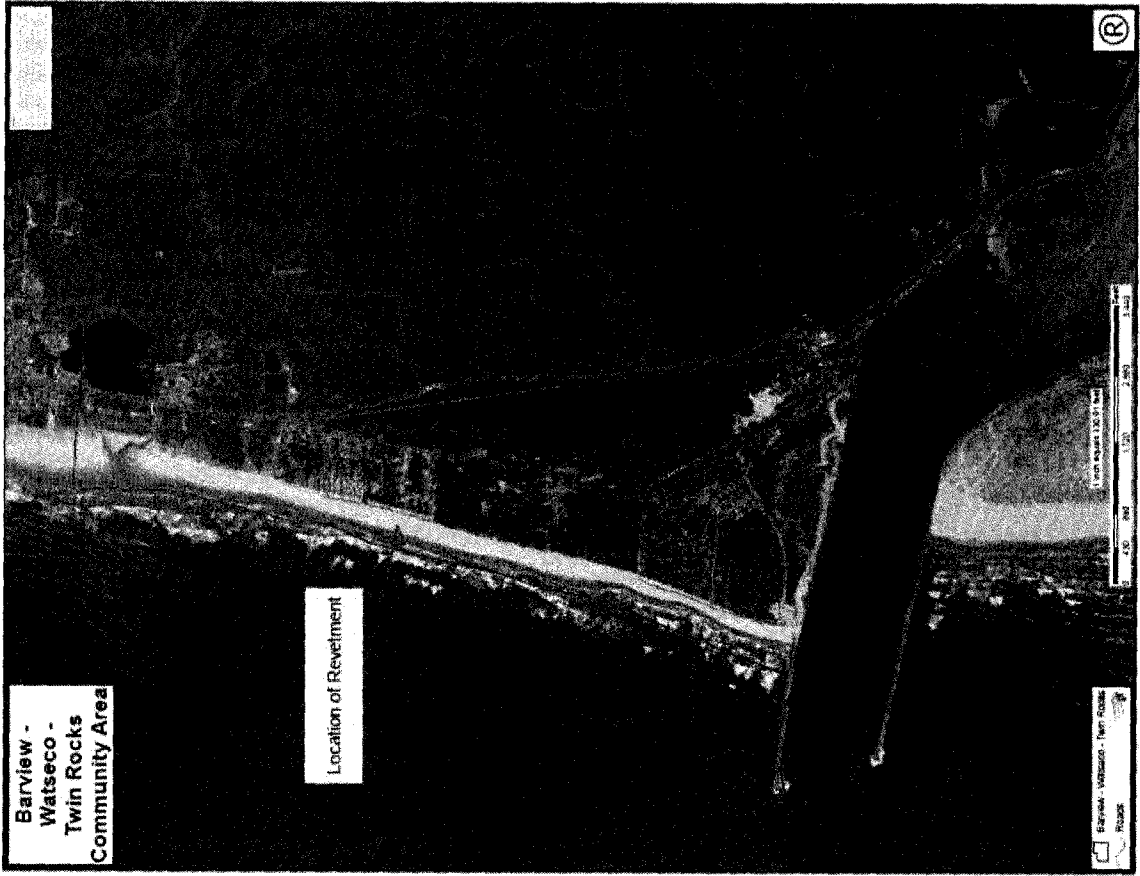
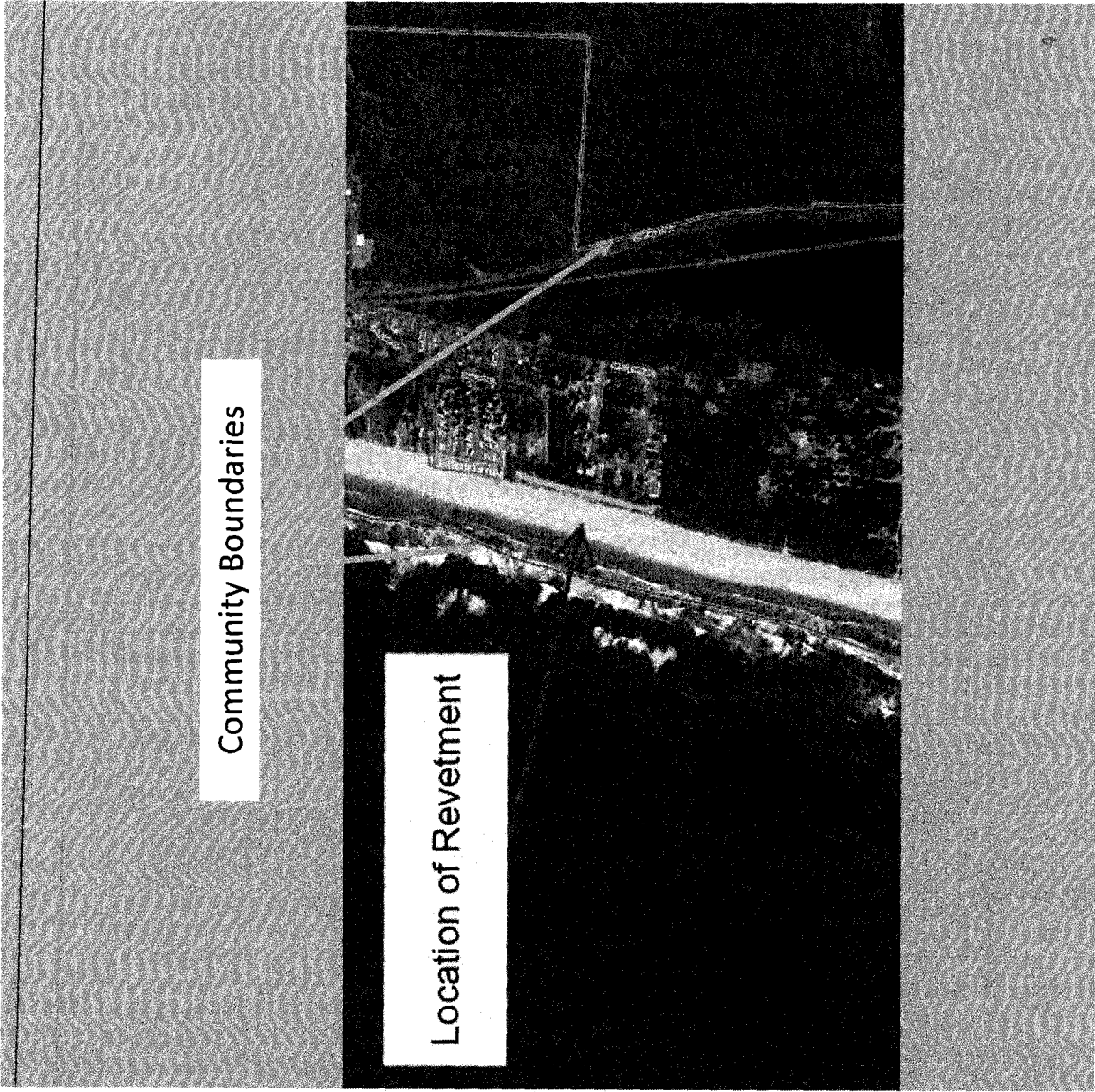


## Subject Properties/Proposal

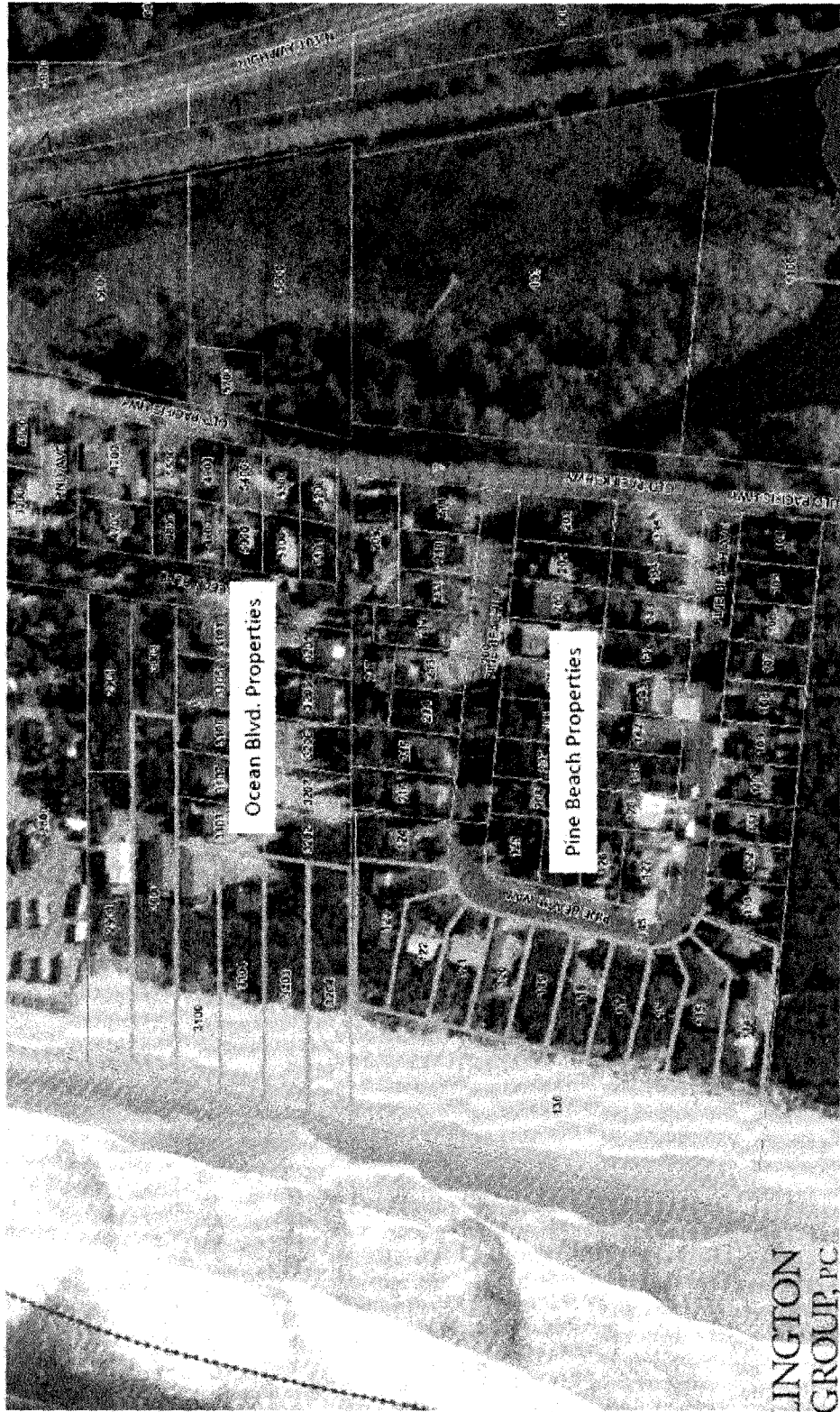
- Avoiding a piecemeal approach, the owners of 15 properties working together seek approval of a critically needed beachfront protective structure.
- Application is for Goal 18 exception and County Development Permit
- Proposal is supported by the Pine Beach HOA.
- Proposal is supported by the County Planning Commission
- Pine Beach Loop (Pine Beach Subdivision – first platted 1932; replatted 1994) and Ocean Blvd. (George Shand tracts platted 1950).
- Acknowledged urban unincorporated community (Twin Rocks/Barview/Watseco), long planned and zoned for medium density urban residential use under an acknowledged urban planning program.

Proposed Exception Area and Adjacent Lands Map





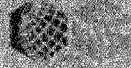
Subject Properties





## Owners – personal responsibility Tillamook County is sole Decisionmaker

- The beachfront protective structure (“BPS”) is not on beach.
- The BPS is entirely in the backyards of the properties it will protect.
- All other BPS proposals including Shorewood RV Park’s was on the dry sand beach and County and OPRD had to approve.
- BPS here is entirely east of OPRD jurisdiction – east of established vegetation/SVL and east of the dry sand beach;
- Neither OPRD nor DLCD approval required – the Subject Properties are in an acknowledged urban unincorporated community that is part of an acknowledged and appropriate residential development program.
- Δ Tillamook County is only the approval authority - local control.



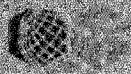
# Beachfront Protection is Urgently Needed

- 70-plus years of prograding; residential development approved on stable ground.
- Sudden onset retrograding beach: winter 1997-98 El Nino/1998-1999 El Nina.
- Aggressive erosion ever since.
- Now, King Tides in 2020 and 2021 reached Subject Properties + 45' beyond
- Continued significant threat of severe flooding.
- At risk are human lives, residential development, public water and sewer infrastructure.
- The proposal protects people; public and private investments; avoids significant environmental harm from destroyed homes; garaged vehicles; broken sewer and water infrastructure; broken electrical connections; gas connections; proposal protects coastal dune habitat.
- Water and sewer district costs of repair may be beyond district's capacity; at minimum would cause significant strain districts' resources.
- Torn out infrastructure risks dangerous service disruptions to the larger community.

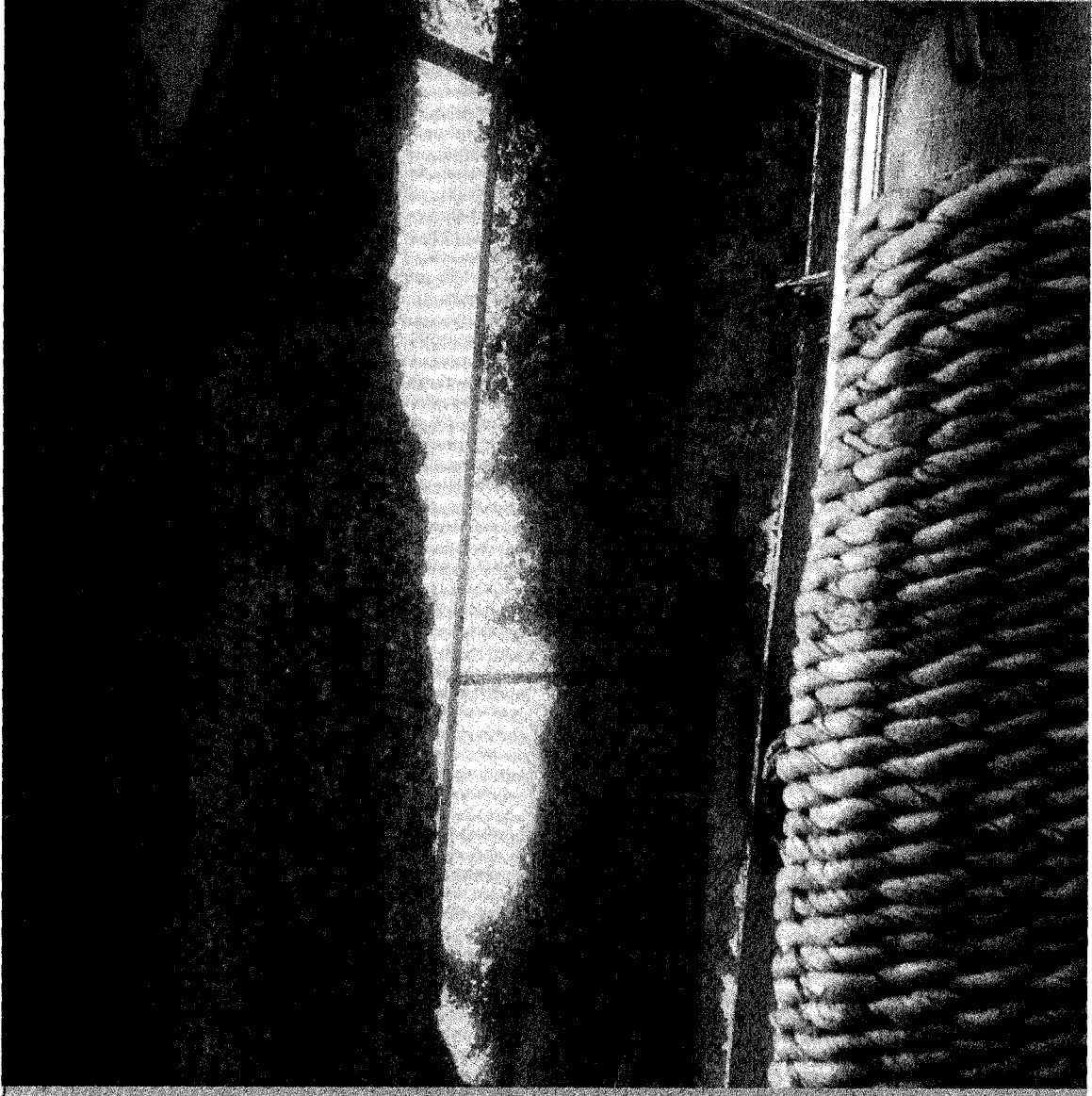
January 12, 2021 Tides Flooding Pine Beach Properties



2021-12-01 11:51:23 PST



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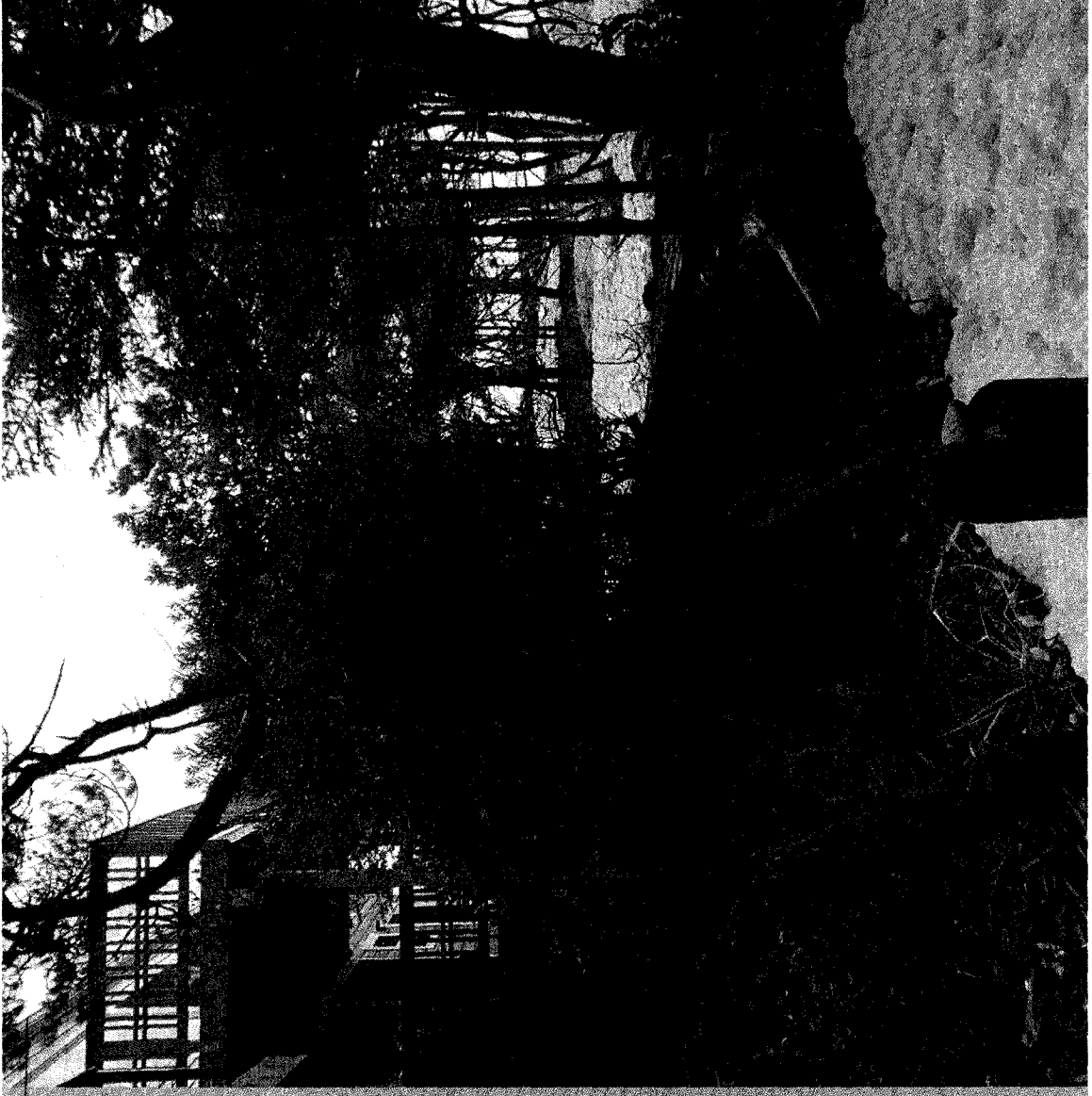




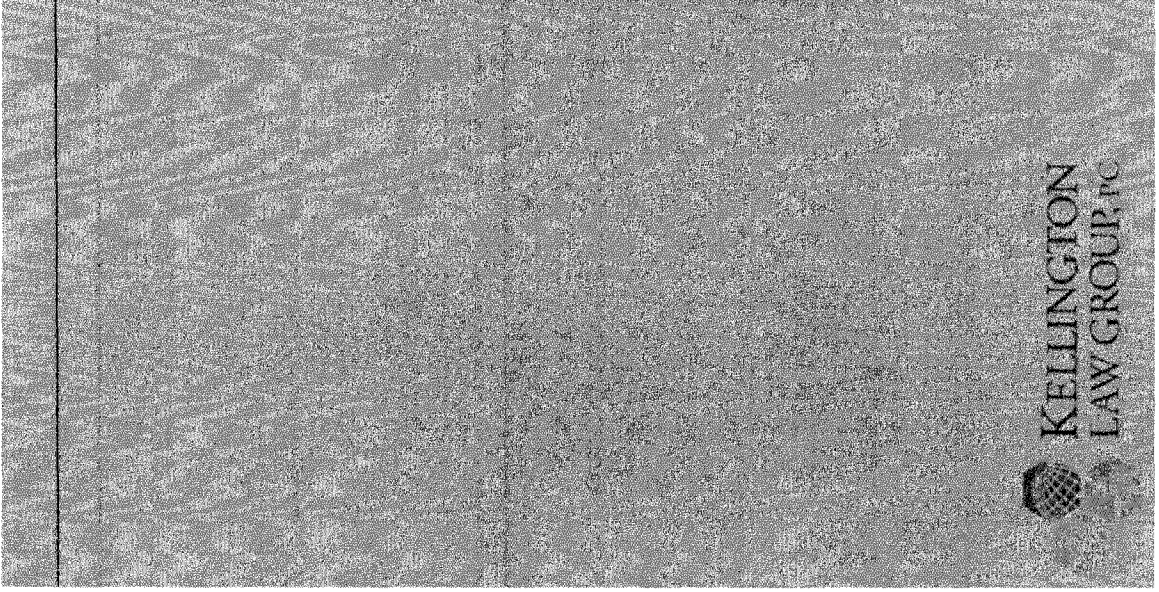
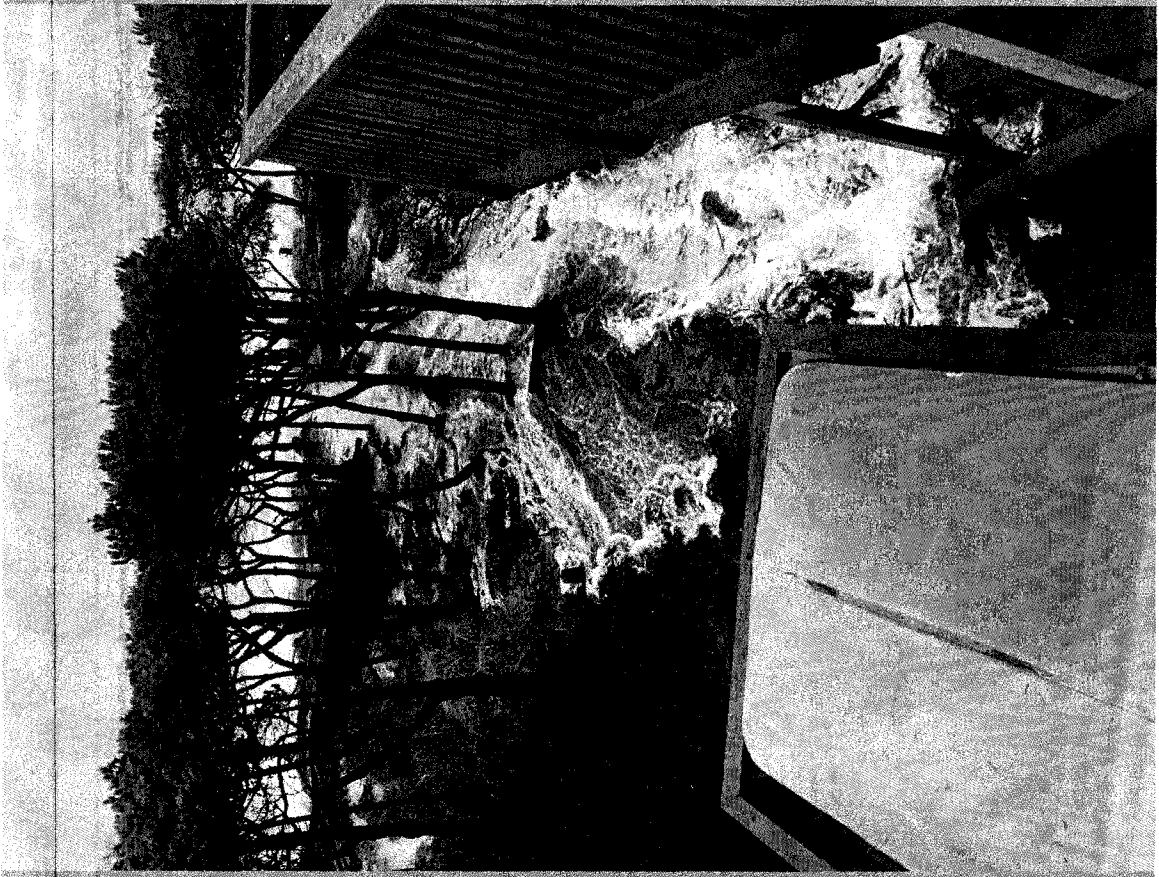
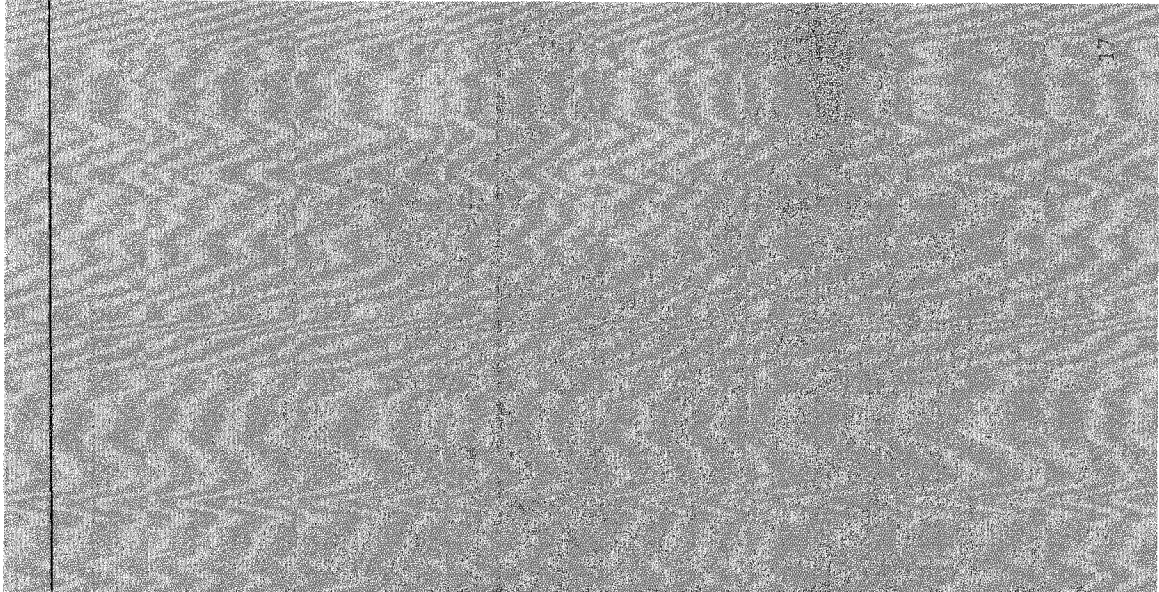




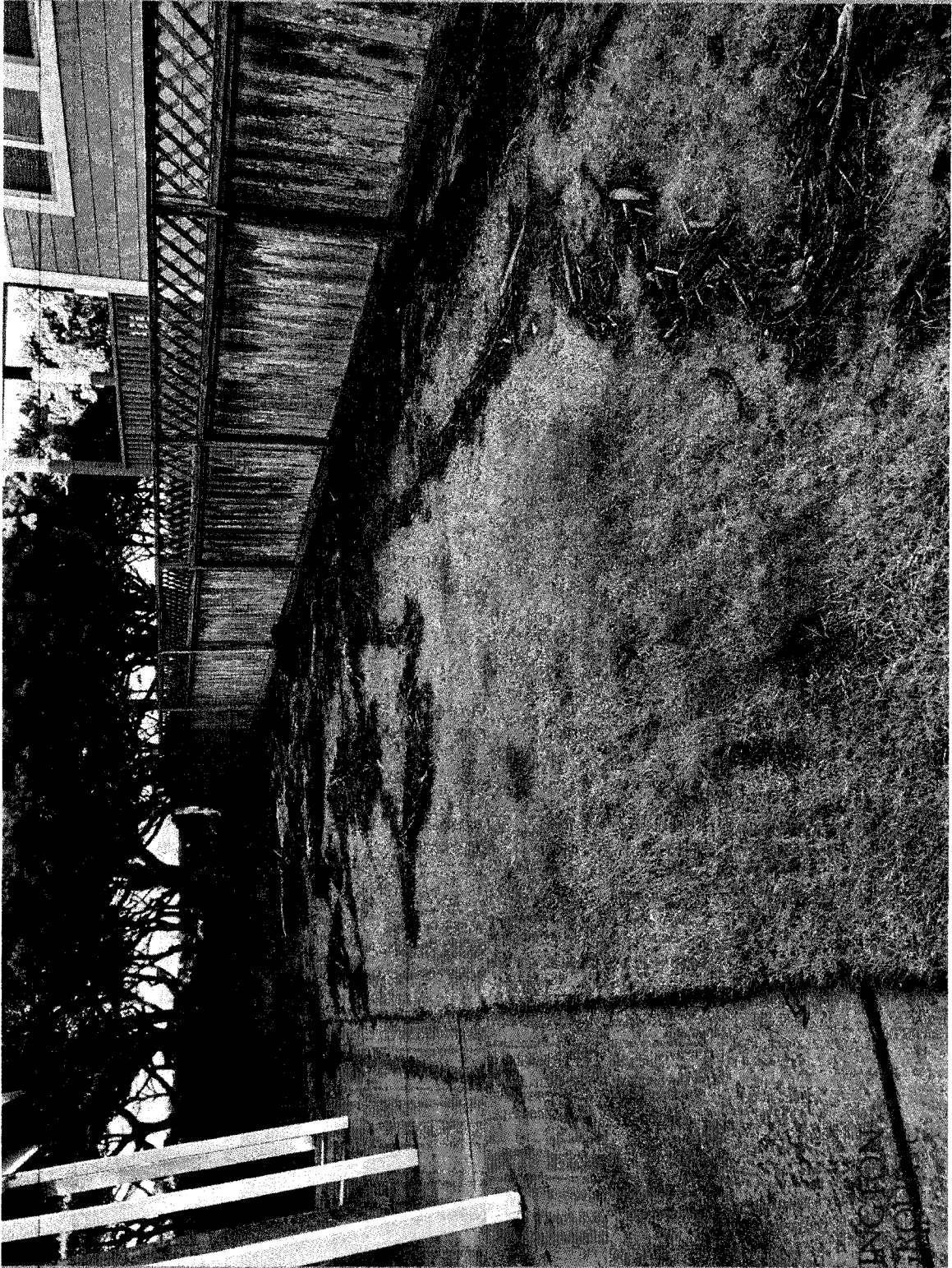


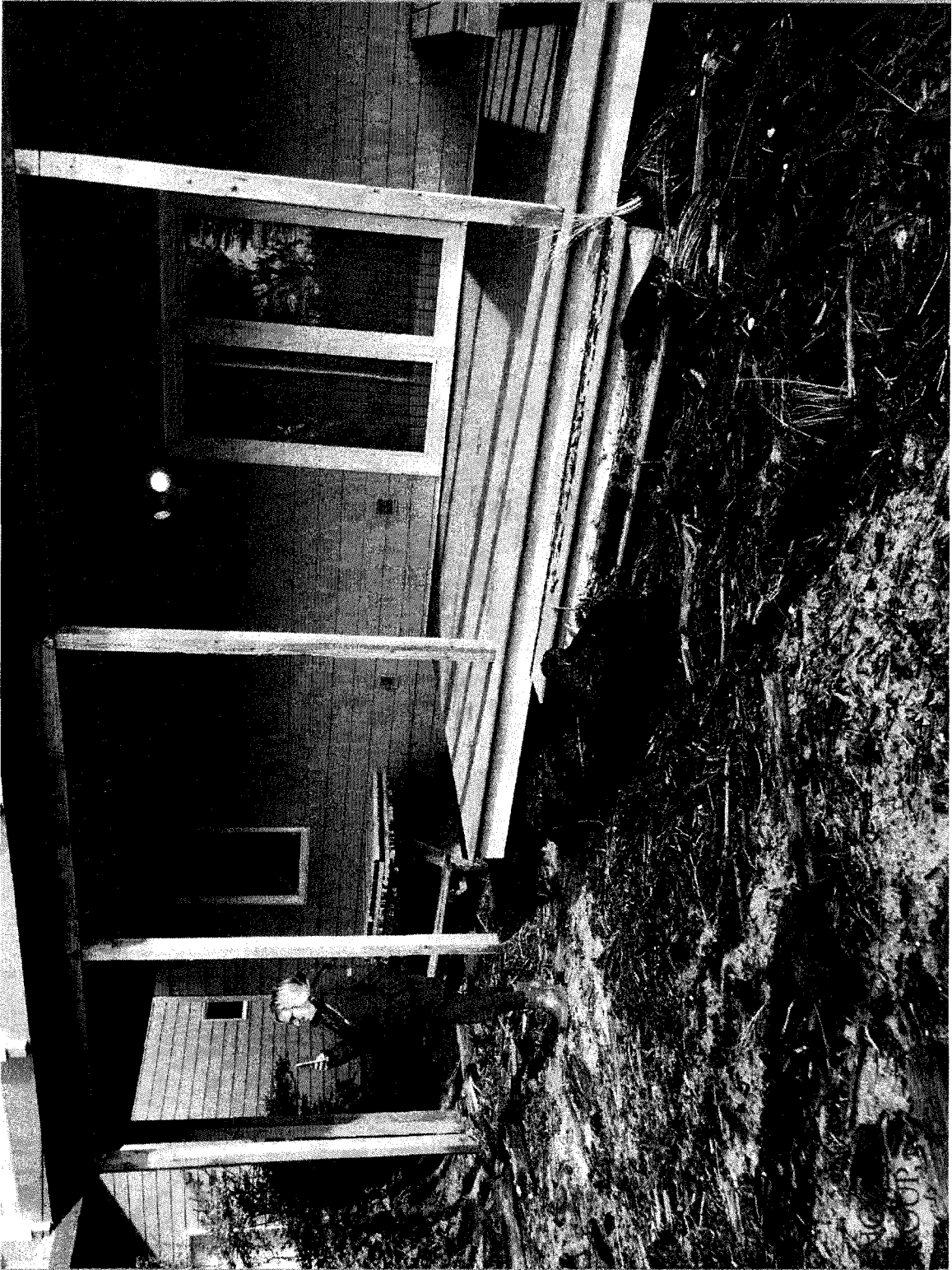




















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# Properties and infrastructure are now in imminent peril

- 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**

# Property Owners Contribute \$75,000/year to County in Taxes

**Tax Statements 2020-21**

Account #	Map #	Tax 2020-21
399441	1N1007DD00114	\$8,969.35
399444	1N1007DD00115	\$5,075.78
399447	1N1007DD00116	\$5,456.46
399450	1N1007DD00117	\$2,329.53
399453	1N1007DD00118	\$5,566.80
399456	1N1007DD00119	\$2,329.53
399459	1N1007DD00120	\$5,249.30
399462	1N1007DD00121	\$5,451.05
399465	1N1007DD00122	\$5,181.77
399468	1N1007DD00123	\$7,609.27
62425	1N1007DA03000	\$5,787.17
62611	1N1007DA03100	\$5,419.97
355715	1N1007DA03104	\$5,261.53
62719	1N1007DA03203	\$2,647.78
322822	1N1007DA03204	\$2,647.78
<b>TOTAL:</b>		<b>\$74,983.07</b>

**TOTAL: \$74,983.07**

# Subject Properties are an Important Source of Property Taxes Supporting County Service Providers

- If Subject Properties are wiped out, \$75,000 in annual tax revenues will be irrevocably lost.

- Police
- Fire
- Schools
- Education Service Districts

Catastrophic loss not only would cause lost property tax revenues, but also impose fiscal strain:

- Allowing Subject Properties to be wiped out: strain emergency providers and social services networks.
- Allowing Subject Properties to be wiped out: strain public facilities district equipage and resources.
- Approval is necessary so the Applicants can protect themselves and their homes.

# Application Legal Framework for Decision

- The Oregon land use planning system consists of state statutes, administrative rules, the Statewide Planning Goals and local plans and regulations.
- The legislature ensured local authority:
  - DLCD is responsible to “acknowledge” local plans and regulations to certify that local plans and regulations comply with all the state land use rules.
  - But local governments are vested with authority and responsibility to approve land use requests like the proposal.
  - This application is a local land use request that is exclusively within the control of the County Board of Commissioners.
- The legislature expressly authorizes cities and counties to adopt goal exceptions to retain flexibility in the land use system. ORS 197.732.
- DLCD rules echo the same: “The intent of the exceptions process is to permit necessary flexibility in the application of the Statewide Planning Goals.” OAR 660-004-000(3).
- DLCD rules specifically say Goal 18 exceptions are permitted. OAR 660-004-0010(1)(g).
- Goal exceptions are site specific amendments to the County’s Plan.
- It is simply mistaken that Goal 18 exceptions can never be granted to provide beachfront protection.
- The legal framework allows them in proper circumstances, such as those here.

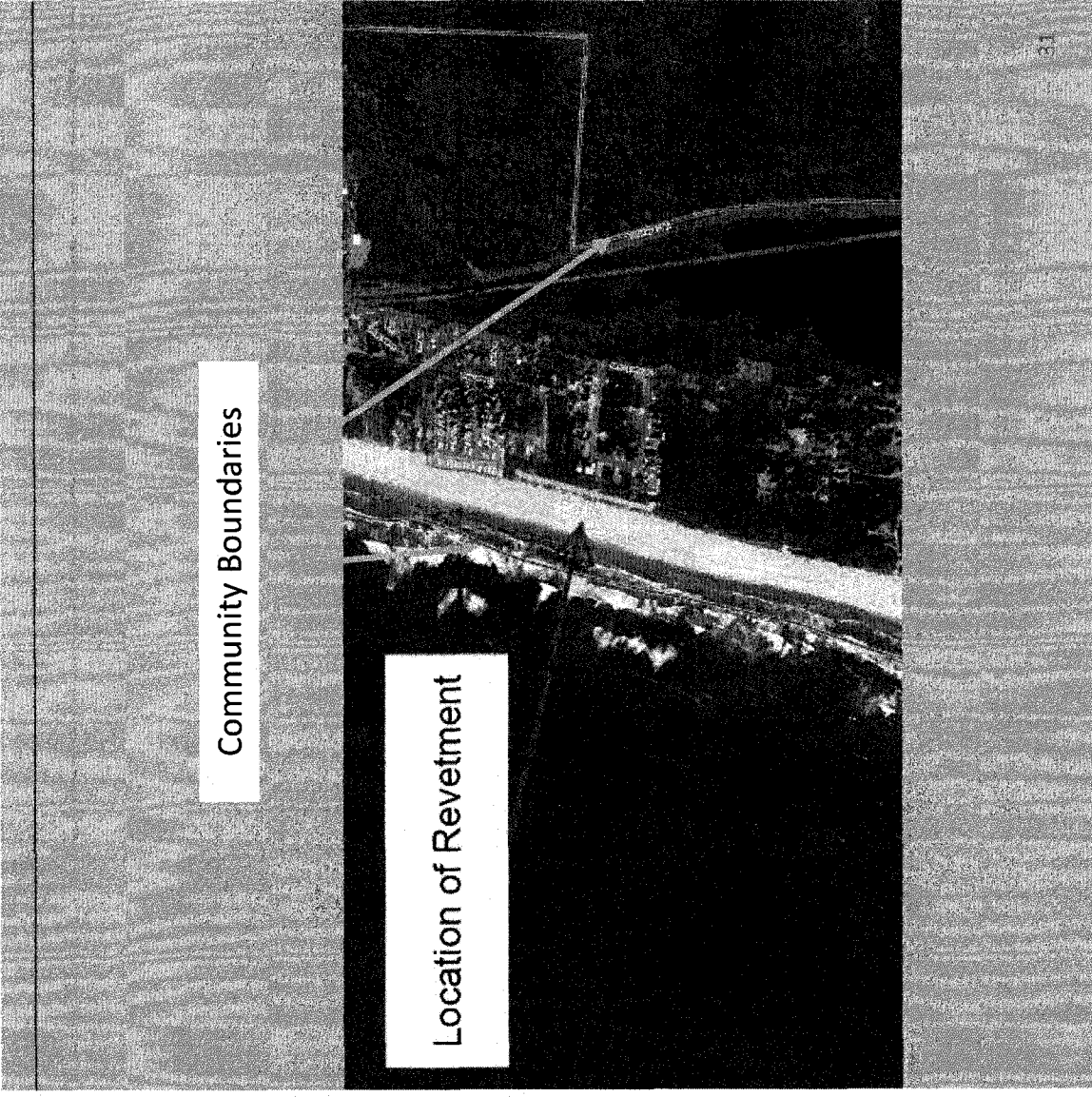
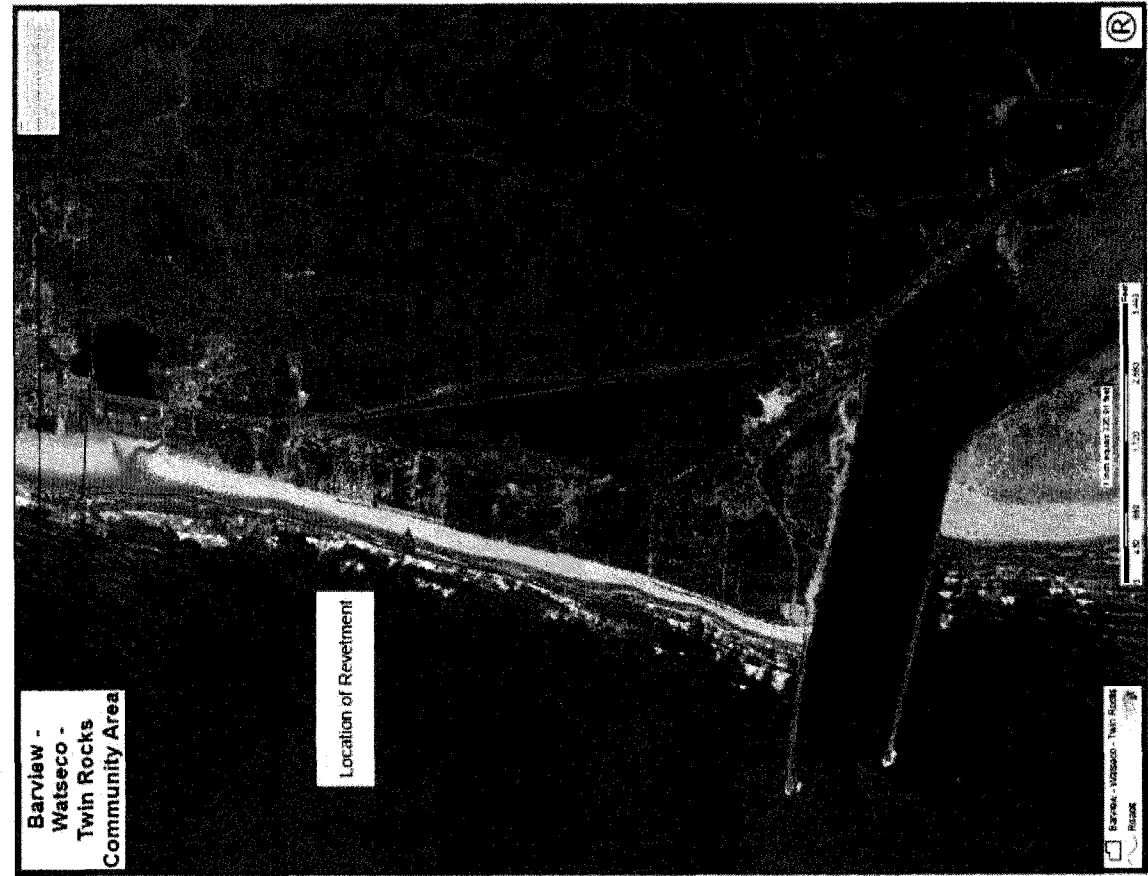
## Goal Exceptions

- The legislature outlines three appropriate types of exceptions. ORS 197.732. All are relevant here.
- They are:
  - The land is “**physically developed** to the extent that it is no longer available for the uses allowed by the applicable goal.”
  - The land is “**irrevocably committed** \*\*\* to uses not allowed by the applicable goal because adjacent uses and other relevant factors make the uses allowed by the applicable goal impractical.”
    - Often referred to together as “built and committed” exceptions – this is how County plan refers to them.
  - “**Reasons** justify why the state policy” in a goal should not apply.
    - DLCDC rules expressly allow two types of “reasons” exceptions. One is specific to Goal 18, and one is called the “catch all” that applies generally.



## County is Familiar with Goal Exceptions and has Adopted them Previously

- County has taken and DLCD has acknowledged as completely appropriate a “built and committed” Goal 17 Exception for the entire urban unincorporated community of Twin Rocks/Barview/Watseco (including where the proposed BPS will be located and beach beyond)— from County Plan:
- **“8.2 \*\*\*” Built and Committed” Rural Shorelands from Goal 17 Rural shoreland Use Requirements 3e.** Tillamook County finds that there are shoreland areas which are \*\*\*”built and committed” to a type and degree of development which is not rural in nature. These include the following communities \*\*\* which are necessary, suitable or intended for urban use (Netarts, Oceanside, Pacific City, Neskowin, Cloverdale, Neahkahnie and Twin Rocks-Watseco-Barview.)”



## Request is for a Limited Exception to Goal 18, Implementation Measures 2 and 5

### \*\*\* Exception to Goal 18, Implementation Measure 2 \*\*\*

- Goal 18, Implementation Measure 2 says the County should not allow residential development on dunes subject to wave overtopping/undercutting.
  - No one thought Goal 18, Implementation Measure 2 would be triggered here.
  - When the County approved residential development on the Subject Properties, the beach had been in a 70+ year period of prograding; the approved residential development was east of a coastal forest, safe and exactly where Goal 18, IM 2 said it should be – nothing was proposed on a dune subject to overtopping/undercutting.
  - In fact, all residential development was approved far away from such dunes.
  - Residential development was established on Subject Properties in good faith based upon compliance with all rules.
  - Later, the dune dramatically changed; now, the Subject Properties are in significant danger.
  - Now, Subject Properties are residential development on a type of dune that Goal 18, IM 2 forbids.
- The requested limited Goal 18, IM 2 exception will do two things:
  - Allow the County to continue its long planned urban residential development program in Twin Rocks/Barview/Watseco.
  - Allow the County to protect urban residential development in that long-planned program so the County can comply with its obligations to protect people and property from destruction caused by natural or man-made hazards.
- Approval of requested limited Goal 18, IM 2 exception will mean Goal 18 allows the proposed beachfront protective structure.

## \*\*\* Limited Exception to Goal 18, Implementation Measure 5 \*\*\*

- Goal 18, Implementation Measure 5 says the County should prohibit beachfront protective structures for property that was not "developed" on Jan 1 1977.
- The limited Goal 18, IM 5 exception will *also* allow the protective structure, even though properties not "developed" by 1977.
- Request for exceptions to both Goal 18, Implementation Measures 2 and 5 is to provide the best insurance that the Subject Properties are protected.
- Either exception will allow the proposed beachfront protection system.
- But approving both Goal 18, Implementation Measure 2 and Implementation Measure 5 exceptions, maximizes any County approval decision being sustained if there are appeals.

# The Proposed BPS Meets Standards for Exceptions

\*\*\* Physically developed/committed type \*\*\*

The Subject Properties are residentially developed/committed to residential development.

- All are in platted subdivisions;
- 11 are built with houses/garages; many occupied by full time residents;
- 4 do not yet have houses, but are developed with urban infrastructure (sewer, water, electricity, gas, telephone) and roads,
- All are in an acknowledged urban unincorporated community and zoned R-3 (med density residential). County Plan reinforces Twin Rocks-Barview-Watseco commitment to residential development:

Lands included within the community growth boundary are committed to development and can be easily served with sewer and water.

Environmental consequences are beneficial because committed areas are used for development.

The entire area is included within sewer and water districts. Developed areas are currently served and undeveloped areas are in close proximity to existing lines.

Economic consequences are favorable because sufficient land that can be easily served is included within the boundary.

- (5) County Plan states the County “needs” the Subject Properties and the rest of Twin Rocks-Barview-Watseco to maintain housing:

- 1) Demonstrated need to accommodate long range urban population growth requirements consistent with LCDC goals.

There is a need to accommodate approximately 130 additional housing units by the year 2000. The community growth boundary will accommodate approximately 320 dwellings.

- In fact, the acknowledged County Comprehensive Plan defines facts here to meet “committed” exception type

Another form of “commitment” could consist of significant earlier public decisions, such as the approval and recording of a subdivision upon which construction has been started. Such construction might be the laying of a water or sewer line specifically designed and sized to permanently serve the subdivision.

## Proposed BPS Also Meets “Reasons” Exception Standards

- Demonstrated need for the County to amend its Plan to meet state Goal 7 obligations to protect persons and property from natural / man-made hazards.
- Demonstrated need for the County to comply with its acknowledged Goal 10 (housing) obligations to provide urban residential development on the Subject Properties.
- Demonstrated Goal 14 need to provide for the livability of the County designated urban unincorporated communities of Twin Rocks/Barview/Watseco.
- Demonstrated Goal 18 need to “reduce the hazard to human life and property from natural or man-made actions” in beach and dune areas.
- Denial would put County at risk of not complying with these state Goal obligations.

## "Reasons" Exception Standards

- "Areas that do not require a new exception cannot reasonably accommodate the use".
  - **NOTE:** This is not an alternative methods issue, but an alternative areas issue.
  - Regardless, the evidence shows that there is no other area for the proposed BPS or other method that can protect the human lives and properties at severe risk.
- "The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site."
- "The proposed uses are compatible with other adjacent uses or will be so rendered through measures designed to reduce adverse impacts."
- **NOTE:** Rule defines meaning of "compatible": "Compatible" is not intended as an absolute term meaning no interference or adverse impacts of any type with adjacent uses."
- Evidence demonstrates only that the proposal is compatible with other adjacent uses.



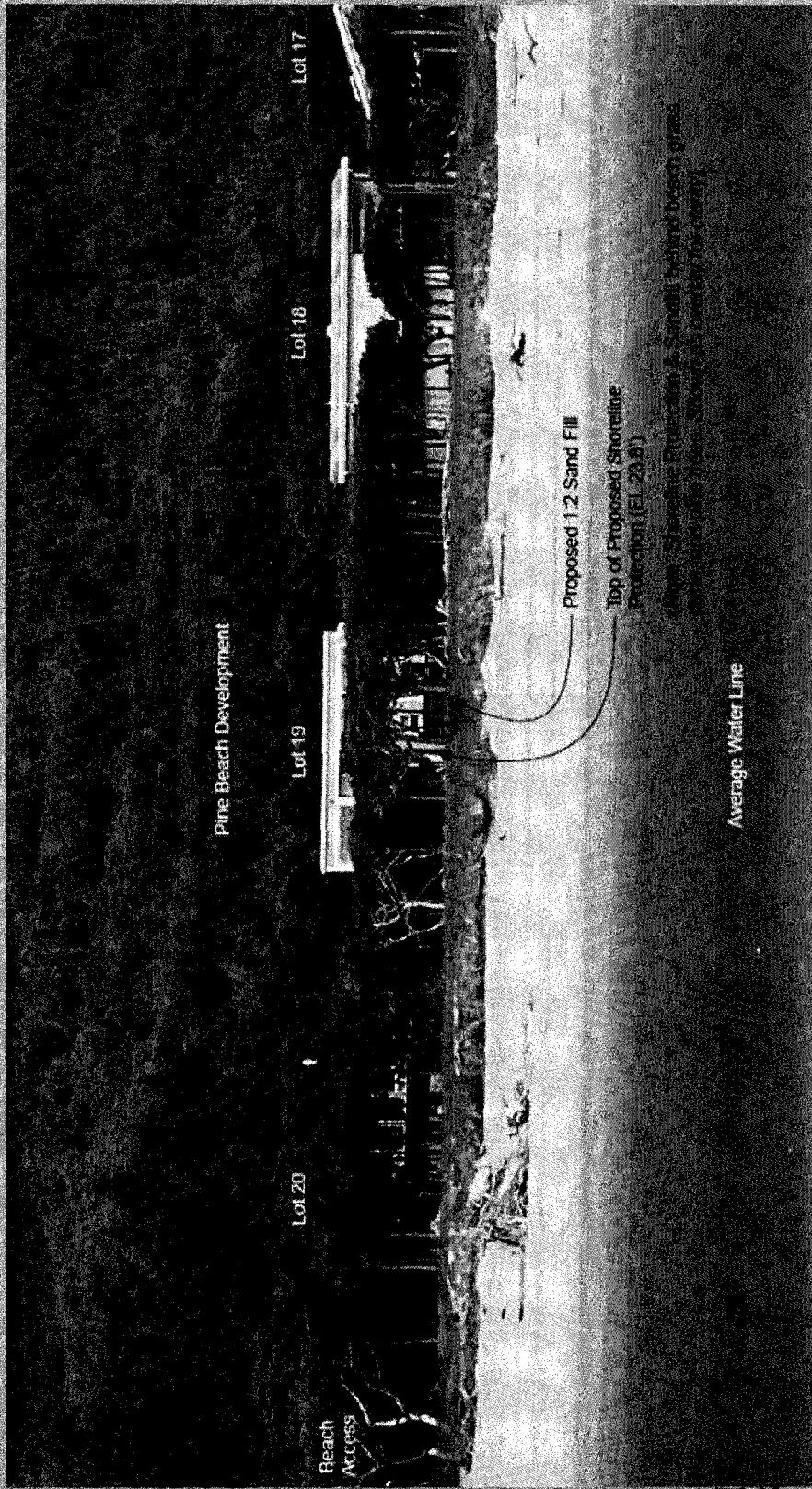
## Goal 18 Specific “Reasons” Exception Standards

- “Goal 18 – Foredune Development: An exception may be taken to the foredune use prohibition in Goal 18 ‘Beaches and Dunes’, Implementation Requirement. Reasons that justify why this state policy embodied in Goal 18 should not apply shall demonstrate that:
  - “(a) The use will be adequately protected from any geologic hazards, wind erosion, undercutting ocean flooding and storm waves, or the use is of minimal value;
  - “(b) The use is designed to minimize adverse environmental effects.”
  - (c) meets other previously listed reasons exception standards.
- The evidence, opinions of experts, County Planning Commission and legal analyses show that all “reasons” exception standards are met.

## Expert Analysis Establishes that Approval Furthers State and County Land Use Programs and Policies

- Planning Commission reviewed and agreed that approval is appropriate.
- Expert analysis backed by authoritative papers (DOGAMI and others) proves that all standards are met .
- Expert analysis proves that the proposed beachfront protection is compatible, minimizes adverse environmental effects, is properly designed and will not cause ocean flanking, accelerated wave runup, or any other harm.
- Evidence demonstrates that the proposal does not cause adverse impacts to persons on the beach walking north/south; no adverse impact on east/west private access points to the beach.
- Proposed protection cannot be easily seen by beachgoers.

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



- Approval is Consistent with DLCD's "Goal 18 Focus Group" Expectations – the Exception Process is Appropriate

EXHIBIT E  
Page 11 of 34

### Policy Options Discussed

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

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

# Claims that there is no severe, imminent flooding risk, are mistaken

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

EXHIBIT F  
Page 3 of 26

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

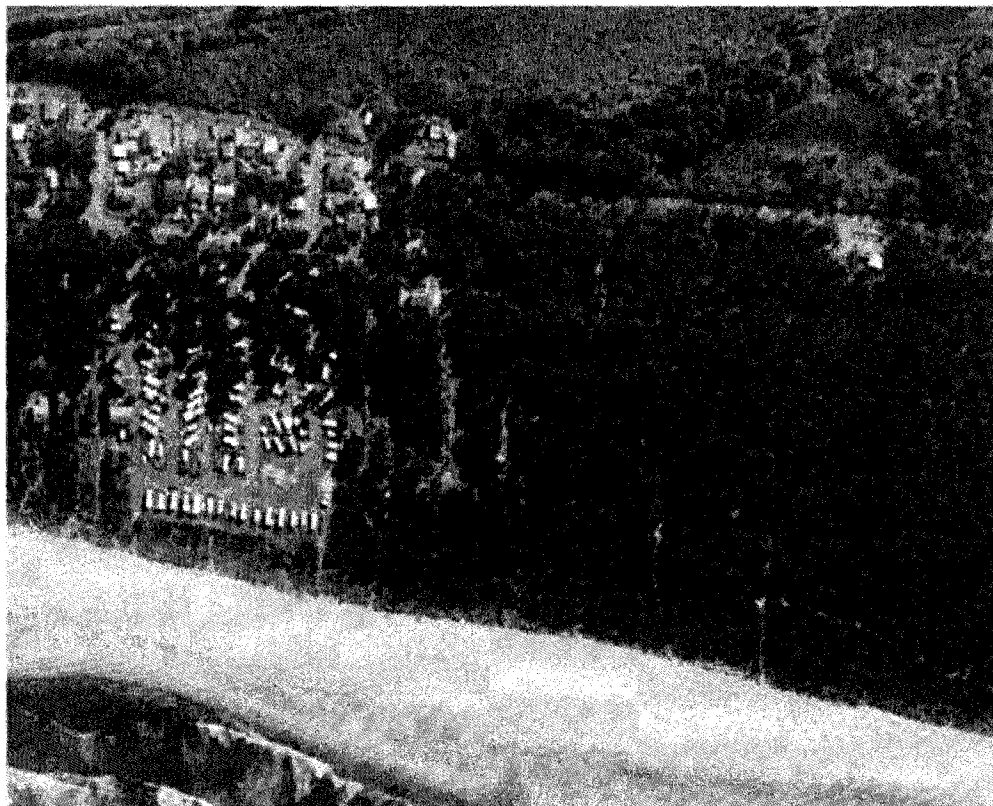
<b>Year</b>	<b>Distance from Western Edge of Oceanfront Homes along Pine Beach Development and Ocean Boulevard Properties (ft)</b>	<b>Loss of Property since 1994 (ft)</b>
1994	221	0
2000	138	-83
2005	138	-83
2012	86	-135
2021	79	-142

The problem  
explained in  
graphics



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

Beach Erosion History - Google Earth



1994

1994


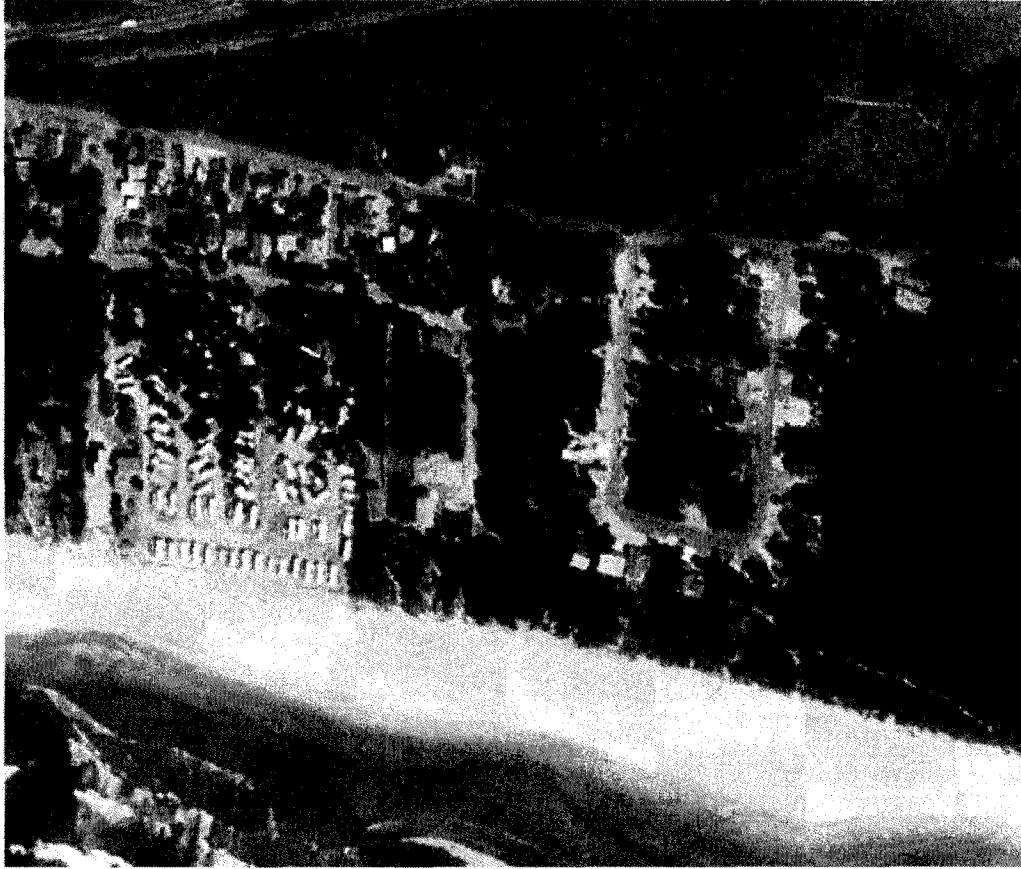
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EXHIBIT J  
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2000

2000


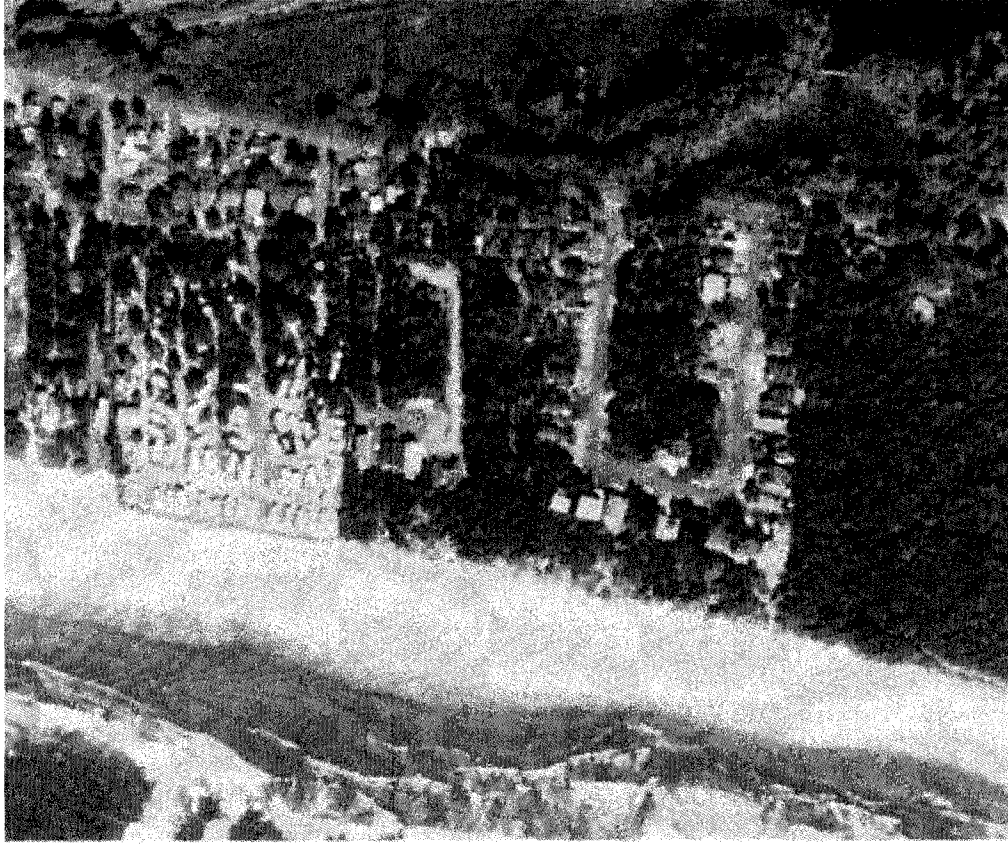
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August 2005

8/2005


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EXHIBIT J  
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2011

2011


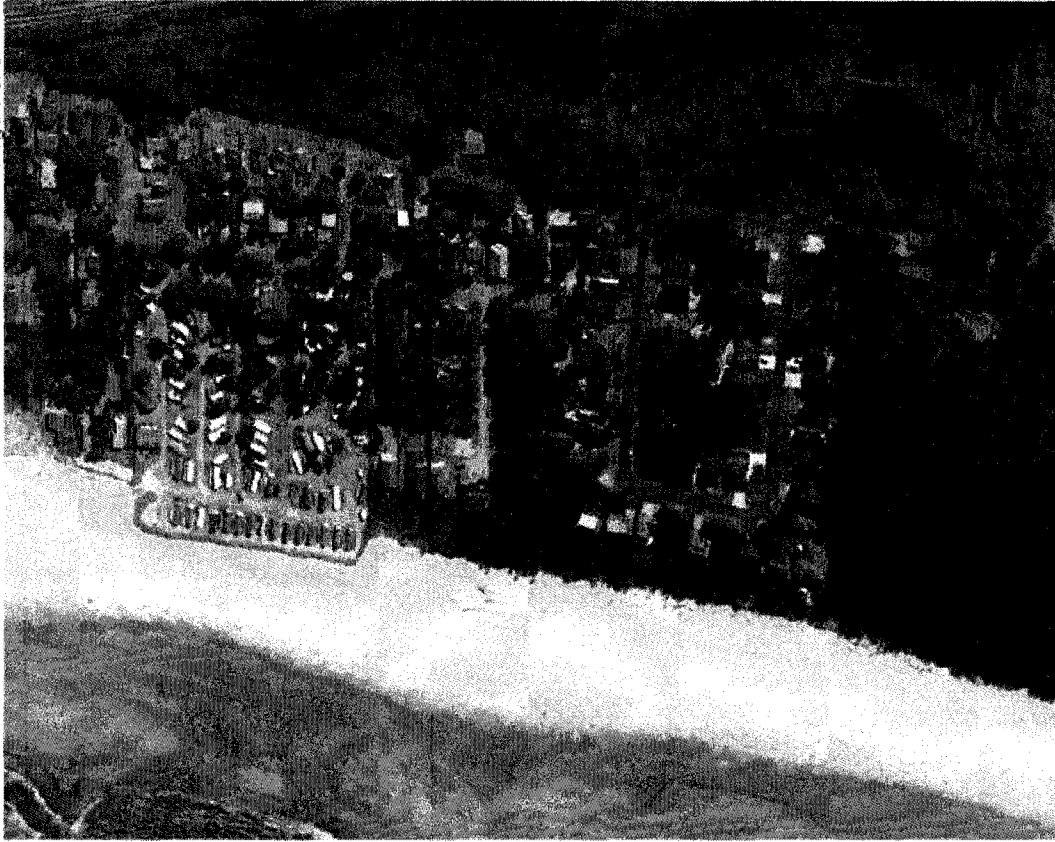

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EXHIBIT J  
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2014

2014

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2016

2016


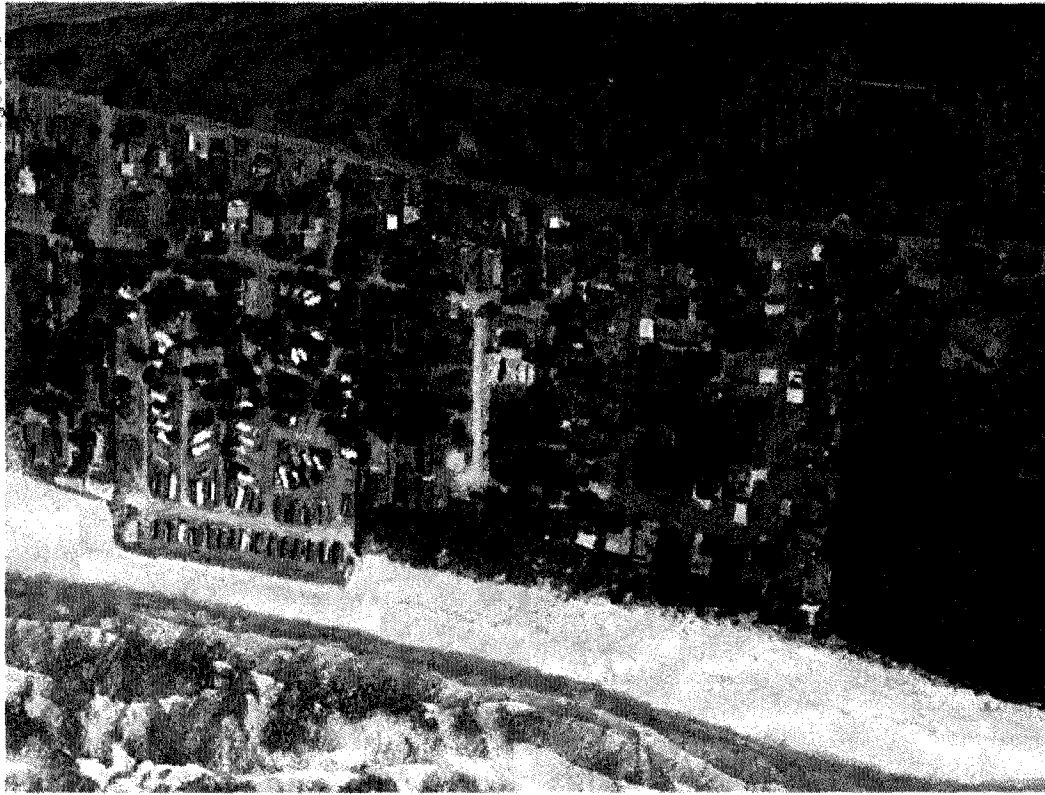
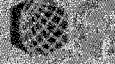
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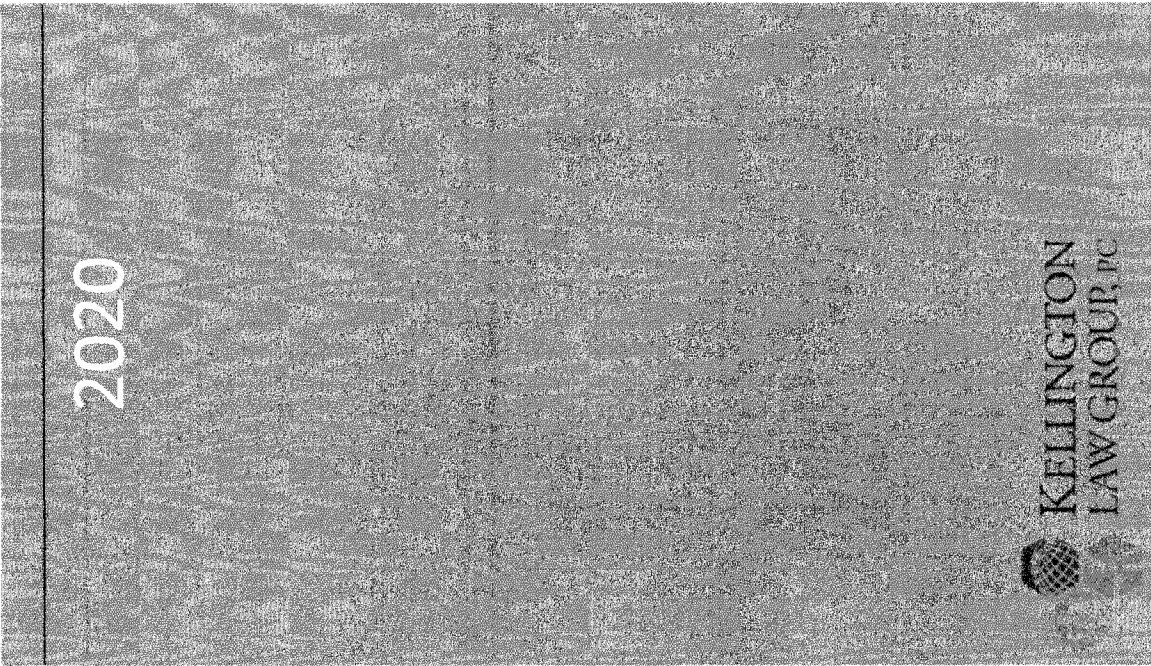
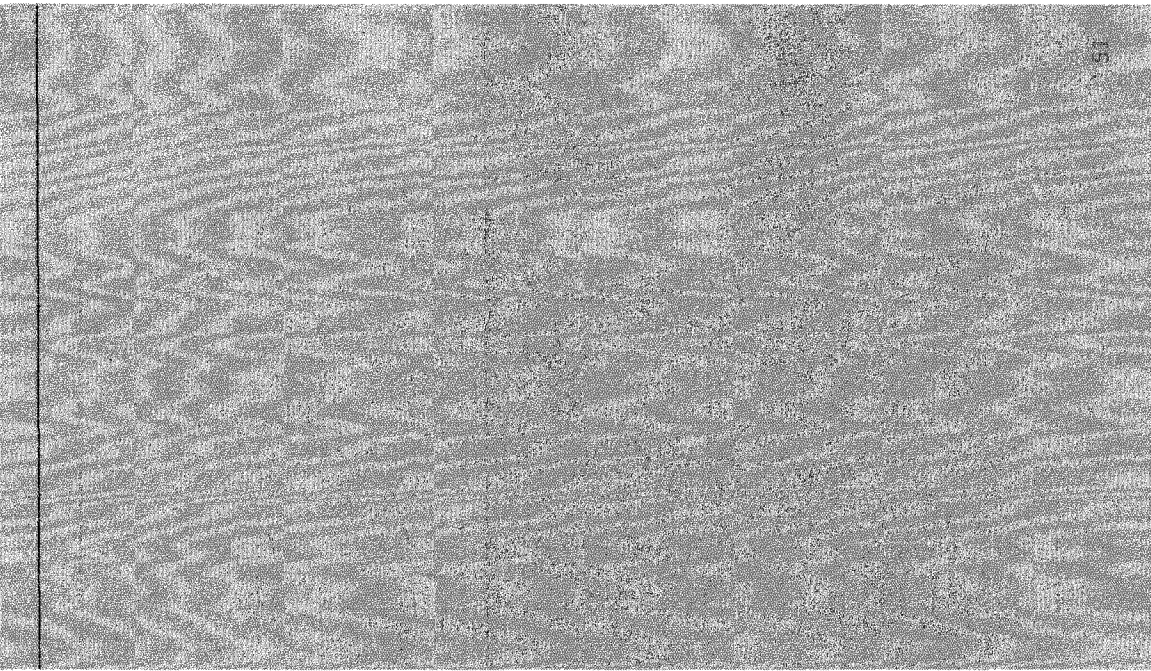
EXHIBIT J  
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
2017

2017

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2020

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# Dune Changes - 1975-2020

## 1975 (USDA):

- Younger stabilized dune
- Open dune sand conditionally stable

## 1994 (Pine Beach Dune Hazard Report):

- 70-year history of ocean prograding
- Coastal forest had grown on open dune sand
- Homes to be sited on younger stabilized dune
- No active foredunes
- No risk of wave overtopping undercutting

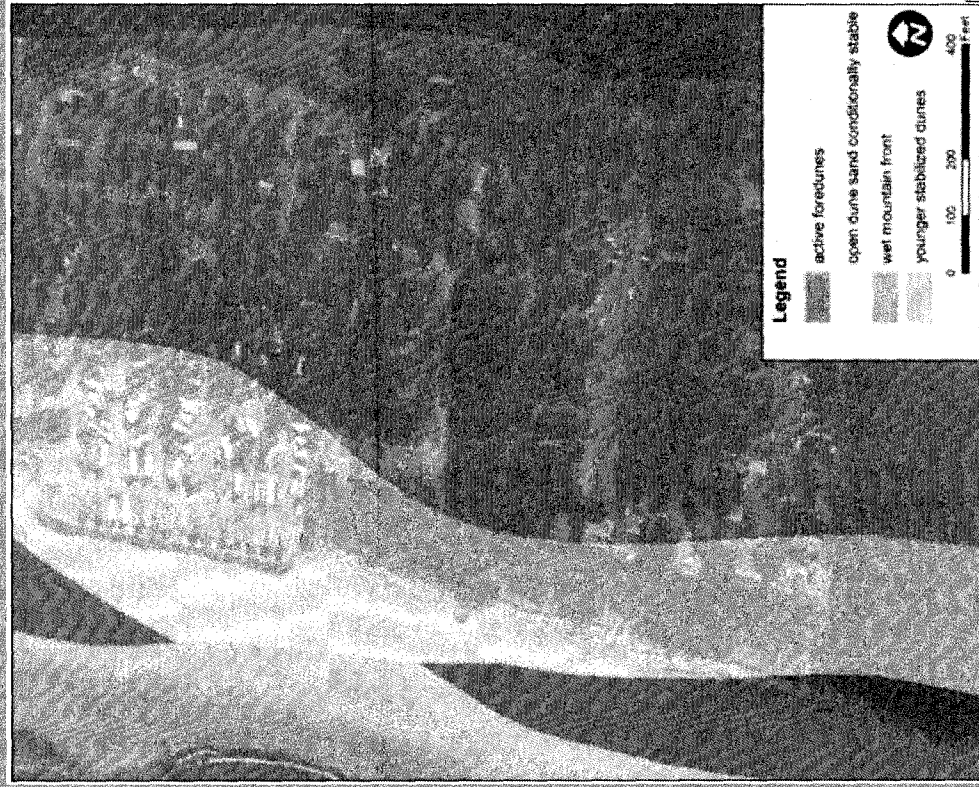


Figure 2. Beach and dune geomorphic mapping classifications at Subject Project (USDA, 1975)

## Dune Changes 1975-2020

### 2020 (DOGAMI):

- Subject Properties are now on “recently stabilized foredune” (DLCD classification: “conditionally stable foredune”).
- That dune is now subject to ocean undercutting / wave overtopping
- BPS will be on active foredune.

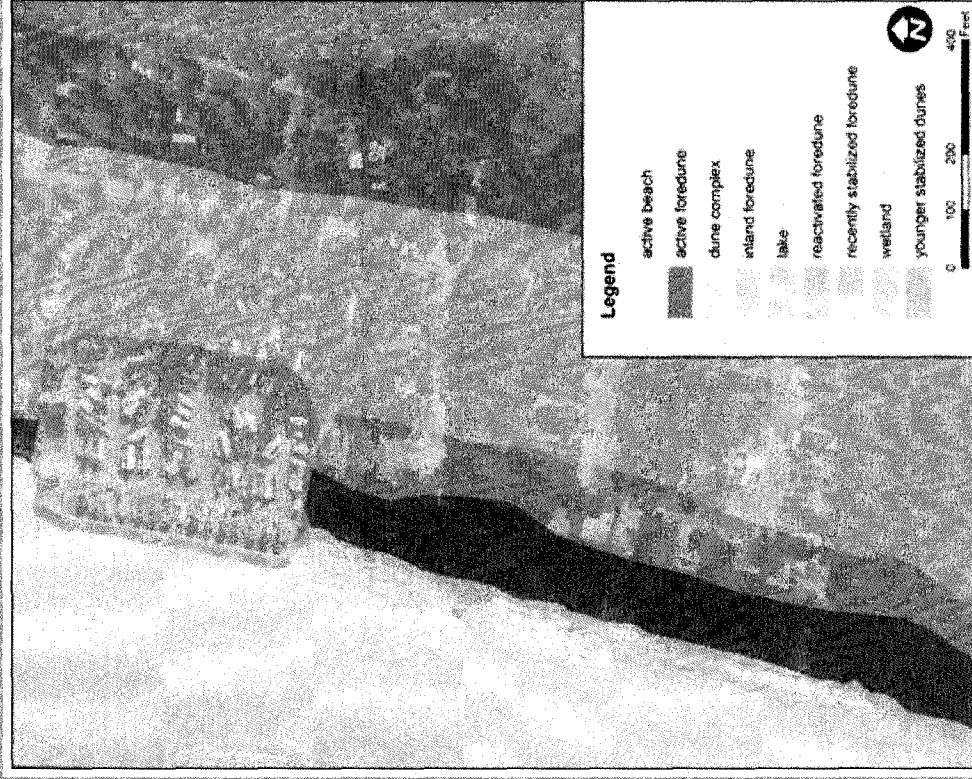


Figure 3. Beach and dune geomorphic mapping classifications at Subject Project (DOGAMI, 2020)



## Changes in 1975-2020

- Summary:
  - When the residential development on the Subject Properties was approved, the development was where Goal 18 said it should be - on a "younger stabilized dune" that was not subject to ocean undercutting or wave overtopping.
  - Now, the residential development on the Subject Properties is on a "conditionally stable foredune" that is subject to ocean undercutting and wave overtopping, where Goal 18, IM 2 forbids residential development without a goal exception.
  - Hence the requested exception to Goal 18, IM 2.

- Applicants respectfully request that the County Board follow the recommendation of its planning commission and approve the requested exceptions because the law and evidence supports doing so
- Applicants are willing and enthusiastic to work with County to help draft findings as desired.

## Alternative Request

- The Applicants request the County also make alternative findings that the existing built/committed exceptions to Goals 3, 4 and 17 that allow the approved residential development to be exactly where it is, is also a built and committed exception that allows the approved residential development to continue to exist where it is even when the dune changed and became subject to wave overtopping/undercutting.
- Recall that Goal 18, Implementation Measure 2, prohibits residential development on a dune subject to wave overtopping/undercutting without an exception that allows the residential development to be there.
- The Goal 3, 4 and 17 exceptions were approved on the basis that the Subject Properties and Twin Rocks-Barview-Watseco was committed to residential use.
- They allow the Subject Properties residential development to be where it is.
- Which is now on an eroding dune. Therefore, the existing exceptions allow residential development on an eroding dune.

# The Policy Underpinnings for Existing Exceptions Demonstrates Approved Residential Development may Remain in Place and, as such, Goal 18 Requires they be Protected from Harm

- It is true that exceptions to one goal do not “ensure compliance with any other applicable goal” (OAR 660-004-0010(3)).
- However, it is also the case that the existing exceptions that cover the Subject Properties, together with the acknowledged applicable urban planning program, commit the Subject Properties to residential development.
- Goal 18 states that its purpose is “To reduce the hazard to human life and property from natural or man-induced actions associated with these areas.”
- Accordingly, it furthers the policy of Goal 18 to protect life and property from hazards, to interpret the existing committed exceptions that allow residential development on the Subject Properties, to be exceptions to Goal 18, Implementation Measure 2 such that Goal 18 allows Beachfront Protective Structures, without a new exception.

## Requested Board of Commissioners Decision:

1. The Subject Properties meet standards for a "committed" and a "built" exception to Goal 18, Implementation Measure 2 that otherwise prohibits residential development on a dune subject to wave overtopping/undercutting.
2. The Subject Properties meet standards for a "committed" and a "built" exception to Goal 18, Implementation Measure 5 that otherwise prohibits beachfront protection for property not "developed" on January 1, 1977.
3. The Subject Properties meet the standards for a Goal 18 specific "reasons" exception to Goal 18, Implementation Measure 2.
4. The Subject Properties qualify for the "catch all" reasons exception to Goal 18, Implementation Measure 2 and 5. (DLCD prefers).

**IN THE ALTERNATIVE ONLY**, the existing exceptions that cover the Subject Properties allow residential development on a dune that is now eroding and so they are in fact an exception to Goal 18, Implementation Measure 2. Which means Goal 18 allows the proposed BPS.

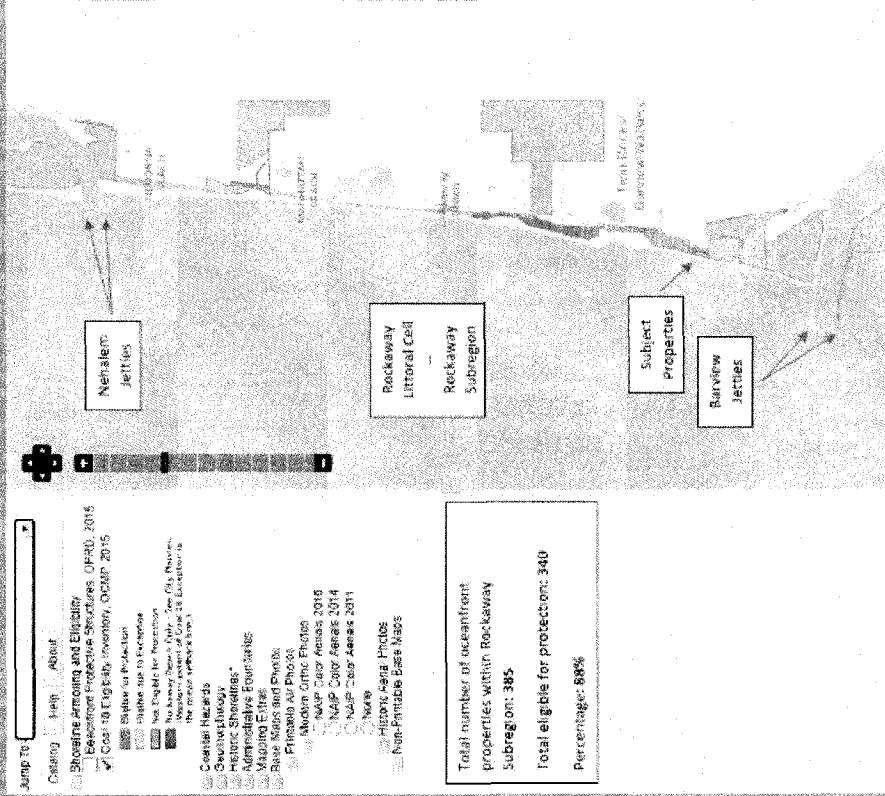
## The Request is Unique – not reproducible elsewhere

- When the Pine Beach subdivision was replatted (1994-1996), when the George Strand tracts were initially platted (1950), when water and sewer was extended to the subdivisions and when most houses were built, the ocean had been PROGRADING for 70-years—depositing sand, not taking it away.
- The professional reports of the time, stated residential development would be more than 237 feet away from the surveyed statutory vegetation line and further still from the ocean.
- A coastal forest separated residential development from the beach.
- The Subject Properties' residential development was approved in good faith in complete compliance with all state and County standards. No reason to punish good faith landowners.
- Coastal processes substantially influenced by two man-made jetties on either end of the Rockaway littoral subregion.
- No other known littoral cell or littoral subregion on Oregon Coast is bounded by jetties in such close proximity to one another.
- The unusual placement of the man-made jetties in the Rockaway subregion has caused extreme erosion in the subregion where the Subject Properties are located, yet sand is still being deposited the rest of the littoral cell. The problem is unique to the Rockaway subregion.
- Subject Properties are in an acknowledged and vibrant urban unincorporated community.
- Goal 3, 4 and 17 exceptions already.
- 90% of the properties in the Rockaway subregion either have or are entitled to have rip rap per DLCD's own "Atlas." This was the compelling reason that DLCD and others used to approve BPS in Lincoln County. No reason this justification does not also apply here.



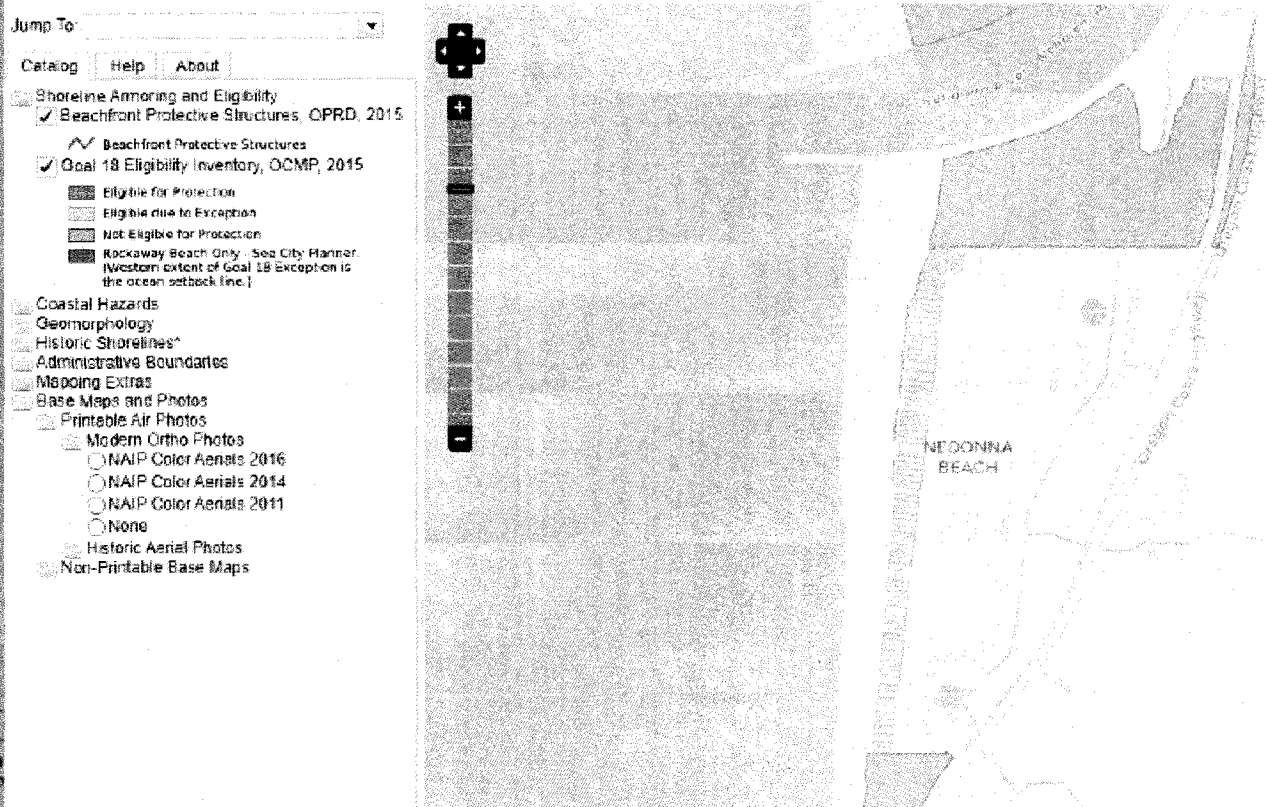
# Nearly 90% of Properties in Rockaway Subregion are Eligible for BPS

- 90% of the residential properties with development are identified as eligible for protection on DLCD's "Coastal Atlas".
- Non-eligible properties are the Subject Properties and properties that are generally zoned RM and Open Space w/little to no development.



# Nearly 90% of Properties in Rockaway Subregion are Eligible for BPS

## Goal 18 Eligibility Inventory and BPS – Rockaway Subregion: Nedonna Beach





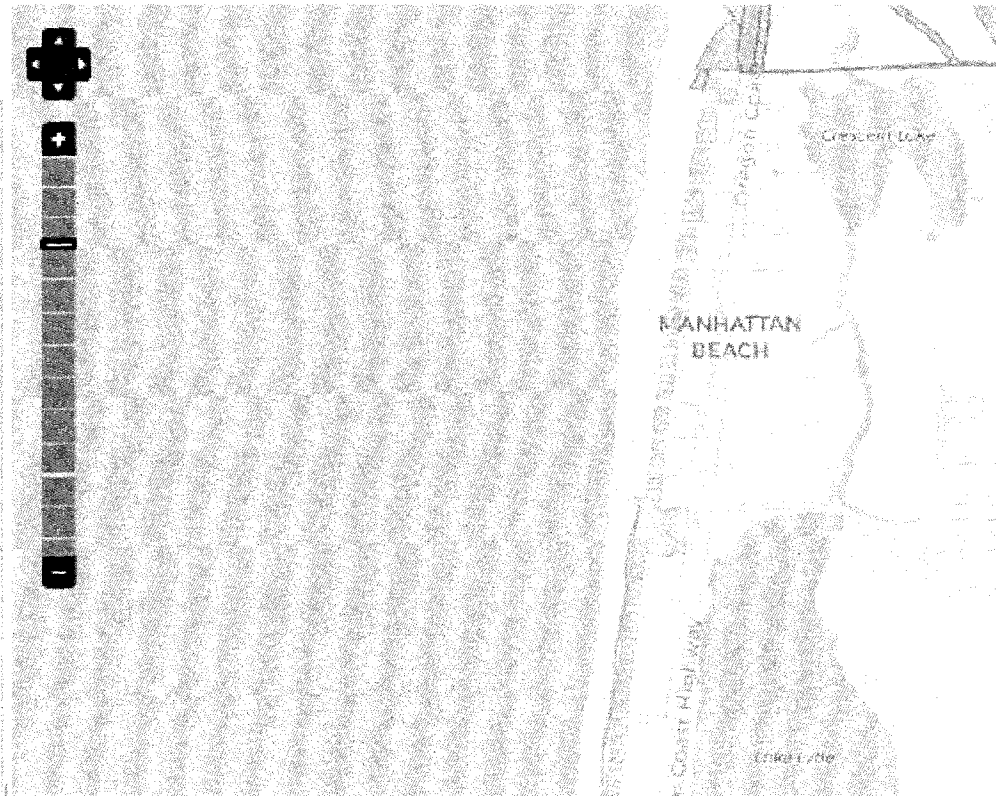
# Nearly 90% of Properties in Rockaway Subregion are Eligible for BPS

## Goal 18 Eligibility Inventory and BPS – Rockaway Subregion: Manhattan Beach

Jump To:

Catalog Help About

- Shoreline Armoring and Eligibility
  - Beachfront Protective Structures, OPRD, 2015
    - Beachfront Protective Structures
  - Goal 18 Eligibility Inventory, OCMR, 2015
    - Eligible for Protection
    - Eligible due to Exception
    - Not Eligible for Protection
    - Rockaway Beach Only - See City Planner. (Western extent of Goal 18 Exception is the ocean setback line.)
- Coastal Hazards
- Geomorphology
- Historic Shorelines\*
- Administrative Boundaries
- Mapping Extras
- Base Maps and Photos
  - Printable Air Photos
    - Modern Ortho Photos
      - NAIP Color Aerials 2016
      - NAIP Color Aerials 2014
      - NAIP Color Aerials 2011
      - None
    - Historic Aerial Photos
  - Non-Printable Base Maps





# Nearly 90% of Properties in Rockaway Subregion are Eligible for BPS

Goal 18 Eligibility Inventory and BPS – Rockaway Subregion: Twin Rocks Barview/Watseco

Jump To: \_\_\_\_\_

Catalog Help About

- Shoreline Armpits and Eligibility
- Beachfront Protective Structures: OPRD, 2015
- Goal 18 Eligibility Inventory: OCMIP, 2015
- Eligible for Protection
- Eligible Site in Exception
- Not Eligible for Protection
- Rockaway Beach Club - See City Planner's Minutes entry of Goal 18 Exception in the Ocean Report file
- Coastal Hazards
- Geomorphology
- Historic Shorelines
- Administrative Boundaries
- Mapping Extras
- Base Maps and Photos
- Printable Air Photos
- Recent Aerials 2016
- NAP Color Aerials 2014
- NAP Color Aerials 2011
- None
- Historic Aerial Photos
- Non-Printable Base Maps

## Revetment Details

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



## Comment/Answer

- This section addresses comments made by people who objected to the proposal before the planning commission.

## Comment/Answer

- *“Site conditions and environmental factors that impact development are beyond the County’s control. At what point does the County’s responsibility to protect private properties developed in coastal high hazard areas end?”*
- The existing residential development on the Subject Properties was never in a mapped “coastal high hazard area.”
- The Subject Properties became subject to ocean undercutting/wave overtopping due to the unusual effect of too closely placed man-made jetties influenced by successive El Nino and El Nina events causing unexpected erosion in the Rockaway subregion that reversed the 70+-year period of prograding that had been occurring when residential development was approved on the Subject Properties.
- County obligations under Goal 7: “Protect people and property from natural hazards.” Goal 18: “Reduce the hazard to human life and property from natural or man-induced actions associated with [coastal beach and dune] areas.”



## Comment/Answer

- *“Goal 18 recognizes importance of natural function of the beach. Actions should not contribute to loss of a natural resource. Rip rap always contribute to loss of natural function of the beach”*
- The proposed BPS will not contribute to loss of the beach. The BPS will not be sited on the beach; it will be sited entirely in the Applicants’ backyards which are still vegetated.
- Proposed BPS is “Type II” in Weggel’s classification system = structure w/minimal impacts on coastal processes within littoral cell system.
- There are types of BPS that cause harm, but the proposed BPS is not one of them – it has been carefully designed and per the well-known classification system, the proposal has minimal impact.

## Comment/Answer

- “Goal 18 protects public access to the beach and citizen rights to enjoy the beach. Construction of a BPS will restrict access to the beach.”
- As explained throughout the record, the BPS will not restrict access to or along the beach any more than is already occurring.
- Shorewood RV Resort’s BPS restricts access along the beach during high tides.
- Proposed BPS will be located further inland than Shorewood RV Resort’s BPS.
- High tides already restrict N-S access along the beach in front of Subject Properties (water comes right up to homes). BPS will not further restrict N-S access.



## Comment/Answer

- *“The beach is the natural resource and protecting the resource is greater than the right to protect private property from erosion and ocean flooding.”*
- Goal 18 places two overarching goal obligations on the County: (1) To conserve, protect, where appropriate develop, and where appropriate restore the resources and benefits of coastal beach and dune areas; and (2) To reduce the hazard to human life and property from natural or man-induced actions associated with these areas.
- The acknowledged planning program for the Subject Properties is under Goal 18’s “appropriate development” prong.
- County is obligated under Goal 18 to protect human life and property from the hazards of coastal erosion and flooding.

## Comment/Answer

- *“Concern of negative impacts to neighboring properties if BPS is constructed. Shorewood RV Park and other properties in the County were identified to support these concerns.”*
- BPS will have no negative impacts to adjacent properties.
- Property to north is entitled to BPS (built before 1977), hence not part of this application. And can get BPS anytime they want it without going through a Goal exception process.
- Shorewood RV Park BPS does not harm neighboring properties. Erosion on adjacent properties caused by same forces that are eroding the Subject properties.

## Comment/Answer

- *“Lack of demonstration and justification to grant exception through Reasons criteria.”*
- The Applicants have thoroughly demonstrated that the proposal complies with the requirements for a Goal 18-specific “reasons necessary” standard under OAR 660-004-0022(11) and the requirements for a “catch-all” reasons exception under OAR 660-004-0020(1).
- Respectfully, it appears likely that many commentors have not read the Applicants’ submittals.

## Comment/Answer

- *“Blanket exceptions should not be granted. The taking of one exception does not alone constitute or satisfy criteria for granting additional exceptions.”*
- This is no “blanket exception.” Authoritative papers encourage property owners to work together as here to avoid the “sawtooth effect.”
- Subject Properties’ existing exceptions not sole basis for granting the requested exceptions, but factor into “reasons why” calculus of why the requested exception should be approved.
- Existing exceptions are only directly used in the Applicants’ requested ALTERNATIVE decision that the existing exceptions already allow residential development on the eroding dune and so are an exception to the prohibition in Goal 18, Implementation Measure 2, that residential development be prohibited on an eroding dune.



## Comment/Answer

- *"This decision is precedent setting, as DOGAMI projections indicate conditions are going to get worse, what obligation will the County be under in the future should this exception request be approved?"*
- DOGAMI and other professional projections indicate only Rockaway littoral subregion is experiencing significant continued erosion.
- 90% of all properties in Rockaway subregion are already entitled to BPS, so will not require a Goal 18 exception when they need BPS.
- Other 10% are mostly large tracts in public ownership or large tracts with no development that would require a BPS.
- Neskowin is also experiencing significant erosion but they also already have a Goal 18 exception that allows the BPS.
- Other Goal 18 exceptions requests will have to be evaluated on a case-by-case basis.
- No reasonable basis to conclude this is precedent setting because no other known part of the County or the state has the unique circumstances that are causing severe erosion here.



Thank you

• Questions?