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Via Email

City of Florence
250 Highway 101
Florence OR 97439
(541) 997-3437
kelli.weese@ci.florence.or.us

Re: Oregon Coast Alliance Open Record Testimony for CC 20 06 Ann 01 and CC 20 07
ZC 02, Benedick Holdings, LLC Annexation and Zone Change.

Dear City of Florence City Council,

Oregon Coast Alliance (ORCA) is an Oregon nonprofit corporation whose mission is to protect coastal natural resources and work with residents to enhance community livability. ORCA hereby submits this open record testimony for the above-mentioned applications, all of which fail to satisfy the relevant standards and criteria. The applicant is Benedick Holdings, LLC, and the proposal is to annex approximately 48.82 acres of property and right-of-way and apply a City of Florence zoning designation to the annexed lands for eventual subdivision into 32 units. The proposal consists of annexing Oceana Drive and property described as Assessors Map No. 18-12-10-40, Tax Lots 400 and 401 and Assessor's Map no. 18-12-10-34, Tax Lot 801, and other areas. The property is currently zoned Beaches and Dunes, and proposed to be zoned Low Density Residential with a Prime Wildlife shorelands management unit overlay (LDR/PW). At issue is proposed Ordinance No. 1 (Annexation Request) and Ordinance No. 2 (Zoning Assignment). The proposed annexation area is a wooded reserve that is heavily populated with wildlife and is characterized as a natural water basin with wetlands. The property is also subject to seasonal flooding and significant flooding has occurred historically, in 1999 and 2017.

Stormwater problems abound for the proposed annexation. ORCA shares the concerns of not only affected residents of the area proposed to be annexed but also those concerns of Lane County Commissioner Jay Bozevich, City of Florence Public Works, and Lane County Transportation Planning. Regarding the stormwater drainage, the fact is that the county never

accepted the system to be maintained publicly. The required steps for acceptance were never completed, and, therefore, the County never accepted the storm drain system. Idylwood development and the streets serving it are served by a private storm drain system. Moreover, without jurisdictional transfer, any development, including redevelopment, must comply with Lane Code Chapter 15, including sections 15.070, 15.105, 15.135, 15.137, and 15.704.

Commissioner Bozevich notes that there must be assurances about the capacity of the services. To do otherwise would be to ignore clear evidence of significant flooding. ORCA agrees with Commissioner Bozevich that:

“[T]he City should require a study by a registered professional engineer certifying no increase in discharge from the development or if there is an increase the study should certify the downstream systems can accommodate the discharge safely. The certification should be should be done prior to issuing any construction, grading or clearing permits that could exacerbate the current storm drainage problems in the area.”

In a similar vein, the City of Florence Public Works Department notes that:

“The determination of longterm maintenance of Oceana Drive needs additional analysis, considering maintenance history, stormwater management, Pavement Condition Index (PCI), current conditions of the roadway, and planned repairs prior to the City requesting jurisdictional transfer of maintenance responsibilities after annexation.”

Public Works also noted that the after-the-fact stormwater system that was installed is not accessible for maintenance, which creates significant existing problems, let alone the problems that will occur in the face of future development. There are also significant legal issues with the adequacy of the easements for the entire length of the existing stormwater system. Numerous encroachments and obstructions (including fences, trees, vegetation, outbuildings, etc.) have been placed over the stormwater system. A 10-ft wide travel way was to be constructed sufficient to support the County’s maintenance equipment, but the travel way was never constructed. City of Florence Public Works further notes, and ORCA agrees that:

“Stormwater for the proposed Idylewood 4th Addition will need to consider not only management of the surface water runoff, but also groundwater. During times of heavy and concentrated rain events, like the flooding in 1999 and most recently in 2017, the groundwater levels become so high that it prevents surface water runoff from infiltrating into the ground. Additionally, on the eastern boundary of the project, seasonal lakes can compound stormwater management and all elements of stormwater management will need to be analyzed and addressed in order to prevent localized flooding events. Conveyance of stormwater discharge from the subject property (emergency and overflow) will need to be thoroughly addressed in the stormwater management plan for the project. This includes an analysis of the downstream effects of discharge form their stormwater management system.”

Moreover, stormwater runoff cannot be directed to the Lane County road right-of-way or into any Lane County drainage facility, including roadside ditches. *See Lane Manual 15.515*. The City of Florence is in a position where the existing stormwater system cannot be maintained or improved in an area with overwhelming evidence of historic flooding.

Stormwater is a significant concern because the annexation area is comprised of a topographical depression that is largely wetlands with a high groundwater table and experiences significant rainfall. In the past, these factors have combined to cause serious flooding and the creation of seasonal lakes. Local testimony has underscored this issue and the planning commission should be cognizant of those on-the-ground testimonials. Evidence in the record demonstrates that the 1996 rains flooded an area of approximately 4 acres. Ponds from flooding have persisted for weeks, creating significant damage to existing residences. Streets have flooded, creating ingress and egress problems for residents and emergency vehicles. It is folly to annex an area for residential development that seasonally floods. The city does not have the infrastructure or capacity to discharge more stormwater into the Siuslaw River. More housing in the area without collection and distribution will result in even greater impacts, including significant erosion.

There is a basic failure on the part of the applicant to demonstrate that on-site stormwater retention is possible during rainfall events coupled with a high groundwater. The applicant has failed to demonstrate that it can provide orderly, economic stormwater systems in the annexation area. Indeed, as City of Florence Public Works pointed out, this developer of the existing subdivisions was to maintain the entire stormwater system from Gullsettle Court to Rhododendron Drive for five years. But the required items were never completed, and the five-year warranty period of a developer-managed stormwater system was never even begun. There is simply no realistic manner in which to satisfy the City's annexation policy 3, which requires that the conversion of lands outside the City limits be based on consideration of "orderly, economic provision for public facilities and services." Plainly, the proposed ordinances (e.g., the proposed Findings) do not sufficiently address this issue or the developer's prior failures of stormwater management, simply stating that:

"There will be no change in the requirements of handling of stormwater upon annexation. Upon development, the property will be expected to meet City Code, retaining all pre-development stormwater flows on-site. The associated policies reduce the risk of public impacts and support the natural resource area of the coastal lake area."

The proposed ordinances are essentially ignoring policy 3. If the City is not going to find this requirement is satisfied at this time, then the applicant would have to provide a further opportunity for the public to address this criterion at the development stage, through a conditional approval. *See Rhyne v. Multnomah County*, 23 Or LUBA 442, 447 (1992). This would be highly inappropriate, as these policies and criteria must be met in order for Florence to find annexation possible. Especially given the history of multiple developer failures in

stormwater management in the existing nearby affected subdivisions, the stormwater issue cannot be kicked down the road to a potential future development after annexation.

ORCA also shares the concerns of the many neighbors and concerned individuals about traffic congestion and traffic congestion, which also implicates the City's annexation policy 3. The annexation area floods every winter due to its seasonal lakes. Traffic is already an issue on Rhododendron Drive, where residents walk and bike. Almost 400 homes exist on Idylewood Drive and virtually all ingress and egress use just two streets. Traffic congestion in this area can also lead to significant consequences given that the area is within the tsunami-inundation zone.

The transportation network and traffic management are also not capable of being provided in an orderly and economic manner. Aside from the basic congestion that exists and the problems that would occur by exacerbating that congestion, the seasonal flooding creates additional problems for the unimproved streets. Oceana drive is classified as a "local road," and it is not striped, has no paved shoulders, curbs, gutters, sidewalks or on-street parking areas. Oceana Drive is substandard to meet current County or City standards, and the applicant fails to provide for any improvements to the road infrastructure. The record also contains clear evidence that there are significant topographic and regulatory issues for Kelsie Way. The application therefore fails to demonstrate that annexation will provide an orderly and economic improvement of the street system.

Finally, Lane County Transportation Planning noted that "In order for Lane County to provide jurisdictional transfer of Oceana Drive, Gullsettle Court, Cloudcroft Lane, and Kelsie Way, annexation must occur; however, annexation of the right-of-way means that jurisdictional transfer has been completed for Local Access Roads. Jurisdictional transfer of County Roads requires an additional public process that may take many years to complete." The City of Florence cannot ignore how little this annexation proposal meets the annexation policy criteria of "orderly and economic" provision of transportation infrastructure.

Regarding sewerage, there is evidence in the record that a new "neighborhood sewer pumping station" would be required to serve development in the annexation area, yet the application is silent the need for an additional facility. The City must also "consider" and account for the fact that others along the annexation right-of-way would be required themselves to connect to a new sewer line, pursuant to OAR 340-071-0160(4)(f). The City must determine whether additional properties that are served by on-site septic tanks will be required to subsequently connect to the sewer line and whether the City can accommodate that additional increase in usage. The applicant has failed to demonstrate that it can provide orderly, economic sewer systems in the annexation area, and the City has not addressed it.

The proposed annexation and zone change is also inconsistent with the City of Florence comprehensive plan. Annexation policy 3(b) requires conformance with the City's comprehensive plan and Florence Zoning Ordinance section 4(B) requires that a proposed zone

change be consistent with the Florence comprehensive plan residential land use policy 7¹, development hazards and constraints policy 1², and transportation policies³ are not satisfied here. The threat to the public health and safety and development hazard is stormwater collection and distribution and associated traffic (with and without the associated flooding of the roadways). For both the rezone and the annexation, these policies are not satisfied. Policy 7 is plainly implicated here and the City must account for why this type of development in an area of known flooding and without remedial measures to address that flooding will not constitute a threat to the public health and safety. Moreover, it is puzzling how the remedial measures – which the applicant does not voluntarily own up to – would not be an excessive expense for the City and surrounding residents. Instead of placing residential development away from these seasonal lakes, the proposal purports to place homes *within* these seasonal lakes. One would be hard-pressed to find a more inappropriate place for residential development. If the City approves this annexation and zone change in light of these well-known threats to the public health and safety, then the City would likely be opening itself up to significant liability, as well as a disregard for the safety of its constituency.

Finally, the applicant has apparently ignored the fact that the South Heceta Junction Seasonal Lakes are designated as significant wetlands in the Florence Area Local Wetlands. Wetlands and Riparian objective 2 require that the City “protect significant wetlands for their critical value in maintaining surface and groundwater quality and quantity, providing wildlife habitat, performing flood control, and enhancing the visual character of the Florence community.” The wetlands, by virtue of their flooding, serve the important purpose of controlling – in part – flooding in the other residential areas nearby the proposed annexation property. Numerous residents in the surrounding area have attested to the rich wildlife that are no doubt protected by the undeveloped area proposed for annexation. Finally, as significant inventoried resources, the applicant has not addressed whether the rezone will require an ESEE analysis under Statewide Planning Goal 5. These issues must be addressed before the project can move forward in any meaningful manner.

¹ Policy 7 provides that “[r]esidential development shall be discouraged in areas where such development would constitute a threat to the public health and welfare, or create excessive public expense. The City continues to support mixed use development when care is taken such that residential living areas are located, to the greatest extent possible, away from areas subject to high concentrations of vehicular traffic, noise, odors, glare, or natural hazards.”

² Development Hazards and Constraints Policy 1 provides that “[t]he City shall restrict or prohibit development in known areas of natural hazard of loss of life and economic investments, the costs of expensive protection works, and public and private expenditures for disaster relief.”

³ Transportation policy 1 requires that the City “[p]rovide safe transportation all season of the year through street standards that require lane widths, curvature and grades appropriate to all weather conditions.”

It is plainly obvious that the surrounding property owners are overwhelmingly opposed to the annexation and zone change, and for good reason given the stormwater issues, sewer issues, and traffic concerns, to name only a few. These concerns are rooted in serious concerns that implicate the public health and safety of not only those currently living in the surrounding area but also for those that may find themselves in the unfortunate position of purchasing a property within a seasonal lake. As noted above, the City could not pick a worse place for residential development, and the City will only be creating future problems for itself by approving the annexation and zone change. For these reasons, the City Council should overturn the planning commission and deny both the proposed annexation and rezone.

Sincerely,

A handwritten signature in blue ink that reads "Sean T. Malone". The signature is fluid and cursive, with a large initial "S" and "M".

Sean T. Malone
Attorney for Oregon Coast Alliance

Cc:
Client