

BEFORE THE BOARD OF COMMISSIONERS

FOR TILLAMOOK COUNTY, OREGON

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

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

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

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

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

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

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DATED THIS _____ DAY OF _____, 2021.

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

Aye Nay Abstain/Absent

Mary Faith Bell, Chair

_____ / _____

David Yamamoto, Vice-Chair

_____ / _____

Erin D. Skaar, Commissioner

_____ / _____

**ATTEST: Tassi O'Neil,
County Clerk**

APPROVED AS TO FORM:

Special Deputy

Joel Stevens, County Counsel

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

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

“EXHIBIT A”

BEFORE THE TILLAMOOK COUNTY BOARD OF COMMISSIONERS

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

I. GENERAL INFORMATION:

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

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

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

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

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

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

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

Background:

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

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

II. APPLICABLE PROVISIONS:

A. Goal Exception

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

B. Comprehensive Plan Amendment

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

C. Development Permit

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

III. SUMMARY OF APPLICATION:

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

The Applicants acknowledged that Goal 18: Beaches and Dunes applies to their application. Goal 18, Implementation Measure (IM) 5 provides that “[p]ermits for beachfront protective structures shall be issued only where development existed on January 1, 1977. * * * ‘[D]evelopment’ means houses, commercial and industrial buildings, and vacant subdivision lots which are physically improved through construction of streets and provision of utilities to the lot and includes areas where an exception to (2) above has been approved. * * *” “(2) above” is a reference to Goal 18, IM 2, which provides that “[l]ocal governments * * * shall prohibit residential developments * * * on beaches, active foredunes, on other foredunes which are

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

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

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

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

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

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

IV. SUMMARY OF DECISION:

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

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

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

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

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

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

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

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

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

V. GENERAL FINDINGS OF FACT:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VI. SATISFACTION OF CRITERIA:

A. GOAL EXCEPTION

1. Oregon Statewide Planning Goal 18, Implementation Measure 5

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

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

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

2. ORS 197.732 – Goal Exceptions

“(1) As used in this section:

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

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

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

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

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

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

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

“(b) The land subject to the exception is irrevocably committed as described by Land Conservation and Development Commission rule to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable; or

“(c) The following standards are met:

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

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

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

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

“ * **

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

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

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

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

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

“(c) The following standards are met:

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

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

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

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

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

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

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

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

4. OAR 660-004-0000 – Purpose

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

** * **

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

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

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

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

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

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

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

5. OAR 660-004-0005 – Definitions

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

- “(1) An ‘Exception’ is a comprehensive plan provision, including an amendment to an acknowledged comprehensive plan, that:
 - “(a) Is applicable to specific properties or situations and does not establish a planning or zoning policy of general applicability;*
 - “(b) Does not comply with some or all goal requirements applicable to the subject properties or situations; and*
 - “(c) Complies with ORS 197.732(2) [and] the provisions of this division[.]”**

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

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

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

“ * **

“(g) Goal 18 ‘Beaches and Dunes.’”

“ * **

“ * **

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

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

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

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

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

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

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

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

OAR 660-004-0020(1) provides:

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

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

OAR 660-004-0020(2) provides:

³ See footnote 1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Environmental:

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

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

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

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

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

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

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

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

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

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

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

Economic:

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

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

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

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

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

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

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

Social:

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

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

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

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

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

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

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

Energy:

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

EESE Conclusions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Demonstrated Need”:

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

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

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

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

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

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

(1) Identify obligations:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Locational Requirement:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. COMPREHENSIVE PLAN AMENDMENT

1. TCLUO 9.010: Authorization to Initiate Amendments

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

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

2. TCLUO 9.030: Text Amendment Procedure

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

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

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

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

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

TCLUO 9.030(3) provides:

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

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

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

The following demonstrates state goal compliance.

Goal 1 – Citizen Involvement

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

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

Goal 2 – Land Use Planning

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

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

Goal 3 – Agricultural Lands

“To preserve and maintain agricultural lands.”

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

Goal 4 – Forest Lands

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

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

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

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

Goal 5 requires the County to identify, inventory and provide protective measures in its land use code, if appropriate, for specific resources. The evidence in the record demonstrates that there are no identified Goal 5 resources on the Subject Properties or on immediately surrounding or even nearby properties. The nearest Goal 5 resource is Smith Lake with is several hundred feet to the east and south of the Subject Property, across hold Highway 99. The proposal does not implicate Goal 5.

Goal 6 – Air, Water and Land Resource Quality

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

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

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

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

Goal 7 – Areas Subject to Natural Hazards

“To protect people and property from natural hazards.”

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

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

Goal 8 – Recreational Needs

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

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

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

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

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

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

Goal 9 – Economic Development

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

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

Goal 10 – Housing

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

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

Goal 11 – Public Facilities and Services

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

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

Goal 12 – Transportation

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

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

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

Goal 13 – Energy Conservation

“To conserve energy.”

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

Goal 14 – Urbanization

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

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

Goal 15 – Willamette River Greenway

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

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

Goal 16 – Estuarine Resources

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

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

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

Goal 17 – Coastal Shorelands

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

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

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

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

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

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

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

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

Goal 18 – Beaches and Dunes

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

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

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

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

Goal 18, IM 1 provides:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Goal 18, IM 3 provides:

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

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

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

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

Goal 18, IM 4 provides:

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

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

The proposal is consistent with Goal 18, IM 4.

Goal 18, IM 5

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

Goal 18, IM 6 provides:

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

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

Goal 18, IM 7 provides:

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

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

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

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

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

The proposal is consistent with Goal 18.

Goal 19 – Ocean Resources

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

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

The proposal is consistent with the Statewide Planning Goals.

TCLUO 9.030(3)(b) provides:

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

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

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

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

COUNTY HAZARDS ELEMENT (Goal 7)

County Goal 7 – 2.4 Erosion

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

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

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

Policy 2.4b is not applicable because there are no slopes greater than 15% on the Subject Properties.

County Goal 7 – 2.5 Flooding

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

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

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

County Goal 7 – 2.6 Tsunamis (Seismic Waves)

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

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

COUNTY HOUSING ELEMENT (Goal 10)

County Goal 10 – Policy 3.2

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

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

COUNTY PUBLIC FACILITIES ELEMENT (Goal 11)

County Goal 11 – Policy 3.1

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

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

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

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

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

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

COUNTY ESTUARINE RESOURCES ELEMENT (GOAL 16)

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

County Goal 16 – 7.5 Shoreline Stabilization

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

“a. proper maintenance of existing riparian vegetation;

“b. planting of riparian vegetation;

“c. vegetated riprap;

“d. non-vegetated riprap;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“c. established uses on private property.”

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

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

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

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

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

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

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

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

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

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

COUNTY URBANIZATION ELEMENT (Goal 14)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

COUNTY BEACHES AND DUNES ELEMENT (GOAL 18)

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

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

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

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

Locate structures as far from the beach as possible

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

Vegetate open sand areas and protect existing vegetation

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

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

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

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

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

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

Implementing Requirement (1) states, in relevant part:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

County Goal 18 – Policy 2.4 – Policies

Each of the applicable policies are identified and addressed below.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

County Goal 18 – Section 3 – Foredune Management:

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

County Goal 18 – Section 4 – Coastal Erosion:

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

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

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

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

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

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

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

Policy 4.4c: Coastal Erosion: Policies; Protective Structures

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

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

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

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

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

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

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

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

The proposal is consistent with the Tillamook County Comprehensive Plan.

TCLUO 9.030(3)(c) provides:

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

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

TCLUO 9.030(3)(d) provides:

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

TCLUO 9.040 provides:

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

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

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

C. DEVELOPMENT PERMIT

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

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

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

2. TCLUO 3.510: Flood Hazard Overlay Zone

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

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

“ANCHORING

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

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

“CONSTRUCTION METHODS AND MATERIALS

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

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

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

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

The proposal complies with these standards.

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

“(a) All new construction and substantial improvements in Zones V1-V30, VE and V shall be elevated on pilings and columns so that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

All applicable standards for Coastal High Hazard Areas are met.

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

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

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

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

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

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

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

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

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

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

“(b) Development Permit Review Criteria

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The application meets all standards for a floodplain development permit.

3. TCLUO 3.530: Beach & Dune Overlay Zone

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“6. Existing public access is preserved; and”

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

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

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

“7. The following construction standards are met:

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

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

“b. The revetment slope is constructed at a slope that is between 1:1 to 2:1.”

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

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

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

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

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

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

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

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

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

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

“a. Preliminary Site Investigation

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

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

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

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

“b. History of dune stabilization in the area;

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

“d. General topography including spot elevations;

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

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

“g. Location of the state beach zone line;

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

“i. Elevation and width of the foredune crest.

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

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

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

“b. Detailed Site Investigation

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

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

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

“a. Development density and design;

“b. Location and design of roads and driveways;

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

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

The proposal satisfies the requirements of a detailed site investigation.

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

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

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

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

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

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

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

The application meets all approval standards for a Development Permit.

VII. CONCLUSION

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

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

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

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

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

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

DRAFT