

BEFORE THE BOARD OF COMMISSIONERS
FOR LINCOLN COUNTY, OREGON

ORDINANCE NO. 520

Amending the Lincoln County Comprehensive Plan adopting an exception to Statewide Planning Goal 18, Implementation Requirement 5 (“Goal 18, IR 5”). The exception would allow for the placement of beachfront protective structures on property in Gleneden/Lincoln Beach that is otherwise ineligible under IR 5, for protective structures (Case File No. 01-LUPC-21). The subject property, SeaRidge Condominiums, is identified as Tax Lot 90000 on assessor’s Map No. 08-11-28-BA, with a street address of 4175 North Highway 101 (the “Exception Property”). This Ordinance declares an emergency.

WHEREAS, on March 19, 2021, David Phillips, Vial Fotheringham LLP, on behalf of SeaRidge Condominiums filed a land use application with the County requesting an amendment to the County Comprehensive Plan adopting an exception to Goal 18, IR 5 (the “Proposed Amendment and Exception”) allowing for the placement of beachfront protective structures on the Exception Property (the “Application”); and

WHEREAS, as proposed for this project, beachfront protective structures are not permitted on the Exception Property unless an exception to Goal 18, IR 5, is adopted as part of the County’s Comprehensive Plan. A plan amendment to adopt an exception to a Statewide Planning Goal is governed by the County’s Comprehensive Plan, its Land Use Planning Code, Oregon Revised Statutes, and various Oregon Administrative Rules as outlined in the findings incorporated herein and attached hereto; and

WHEREAS, on June 14, 2021, following notice as required by law, the Lincoln County Planning Commission held a public hearing to consider the Proposed Amendment and Exception, and received public comment thereon; and

WHEREAS, on June 29, 2021, the Planning Commission reconvened for purposes of deliberation to reach a decision, and voted to recommend that the Lincoln County Board of Commissioners (the “Board”) adopt the Proposed Amendment and Exception. On August 2, 2021, the Planning Commission adopted written Findings, Conclusions, and Final Order making that recommendation; and

WHEREAS, on August 3, 2021, the County provided public notice of the Planning Commission’s adoption of the Findings, Conclusions, and Final Order recommending that the Board adopt the Proposed Amendment and Exception; and

WHEREAS, on September 9, 2021, following notice as required by law, the Board held a public hearing to consider the Proposed Amendment and Exception and receive public comment thereon; and

WHEREAS, the Board considered all public comments received into the record in advance of and during the September 9, 2021, hearing on the Proposed Amendment and Exception; and

WHEREAS, upon conclusion of the public hearing on September 9, 2021, and closing of the record, the Board voted to approve the Proposed Amendment and Exception and directed the County's attorney to prepare a draft ordinance reflecting its decision for review by the Board during a subsequent public meeting; and

WHEREAS, on September 15, 2021, during a public meeting, the Board voted to approve this Ordinance, exhibits, and other incorporated materials as set out below;

NOW, THEREFORE, IT IS HEREBY ORDAINED AS FOLLOWS:

SECTION 1

1. The Proposed Amendment and Exception are approved.
2. The Comprehensive Plan is amended by incorporating an exception to Goal 18, IR 5, to allow for the placement of beachfront protective structures on the Exception Property as proposed in the Application (Case File No. 01-LUPC-21).
3. After its own careful consideration of all facts and evidence in the record, and based on its own review of the applicable law, the Board adopts as findings the Planning Commission's Findings, Conclusions, and Final Order dated August 2, 2021, which is attached as Exhibit 1.
4. The land in the Exception Property that is covered by the exception to Goal 18, IR 5, approved herein is shown in the Application site plan exhibit, which is attached as Exhibit 2.
5. This Ordinance and attached exhibits constitute the findings of fact and statement of reasons that demonstrate that the standards for an exception have been met, and are made part of the County's Comprehensive Plan in satisfaction of OAR 660-004-0000(2) and OAR 660-004-0015(1).
6. Copies of this Ordinance shall be forwarded to the County Surveyor; the County Assessor; County Counsel Kristin Yuille; County Planner John O'Leary, County Planner Megan Hoff; County Planning and Development Director Onno Husing; and David Phillips.
7. The Department of Planning and Development shall provide a Notice of Adoption of this Ordinance to the Oregon Department of Land Conservation and Development in accordance with the Post Acknowledgment Procedures set forth in ORS 197.615.

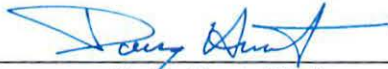
8. The Department of Planning and Development shall issue public notice of this Ordinance, as required by Oregon law and local code, including notice of the right and deadline for seeking juridical review.

SECTION 2

This Ordinance being necessary for the immediate preservation of the public peace, health, and safety, an emergency is declared to exist, and this Ordinance shall take effect upon its passage.

DATED this 15th day of September, 2021.

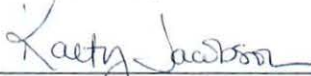
LINCOLN COUNTY BOARD OF COMMISSIONERS



Doug Hunt, Chair



Claire Hall, Commissioner



Kaety Jacobson, Commissioner

ATTESTED TO:



Kristi Peter
Recorder

APPROVED AS TO FORM:

/s/ Gerald Herbage via email on 9/15/2021

M. Gerard Herbage
Assistant County Counsel

BEFORE THE PLANNING COMMISSION
OF LINCOLN COUNTY OREGON

Applicant and Owner: SeaRidge Condominium)
Association; agent: Vial Fotheringham, LLP)
)
)

Case File #01-LUPC-21
Findings, Conclusions, and
Final Order

I. OVERVIEW

A. Nature of Application.

The applicant requests that Lincoln County (the “County”) amend its comprehensive plan (the “Comp Plan”) to adopt exceptions to Statewide Planning Goal 18, Implementation Requirement 5 (“Goal 18, IR 5”), to allow for the construction of beachfront protective structures on its property (“subject property”) in Gleneden/Lincoln Beach (“Gleneden Beach”)¹ which is ineligible for beachfront protective structures under IR 5.

B. Property Information.

1. Lot Size.

13.48 acres (shoreline 600 feet)

2. Property Location.

4175 N Hwy 101 (08-11-28-BA-90000)

3. Zoning Designation.

Residential Planned Development (R-1, P-D)

4. Comp Plan Designation.

Rural Community (RC)

5. Surrounding Land Use.

The subject property is surrounded (on the east, north, and south) by residential neighborhoods developed at urban level densities (with water and sewer services), with some modest

¹ These two beaches constitute one subarea of the Siletz littoral cell and are often referred to collectively as Gleneden Beach.

commercial uses located east of the subject property along Hwy 101. The ocean beach abuts the subject property on the west.

6. Topography/Vegetation.

The western edge of each of the subject property abuts near-vertical marine terrace bluffs, which face the Pacific Ocean. The upland portions of the properties are developed and landscaped to support residential uses.

7. Existing Structures.

SeaRidge Condominiums has 80 privately owned condominiums in 14 separate buildings. 26 of the condominiums are ocean fronting. Gleneden Sanitary District Pump Station # 6 is on the western edge of the property.

8. Utilities.

Sewer: Sanitary sewer (GSD Sanitary District)

Water: Community water (K-GB-LB Water District)

Electricity: Central Lincoln PUD

9. Development Constraints.

The subject property is susceptible to shoreline erosion and landslide hazards. Portions of this property are designated in the hazard-mapping system of the Oregon Department of Geology and Mineral Industries (DOGAMI) as having a landslide designation of “High – Landsliding Likely,” and erosion designations of “High Hazard Zone” and “Very High (Active) Hazard Zone.”

C. Applicable Criteria.

Goal Exception.

- OAR 660-004-0020: “Goal 2, Part II(c), Exception Requirements”²
- OAR 660-004-0022: “Reasons Necessary to Justify an Exception Under Goal 2, Part II(c)”

Comprehensive Plan Amendment.

- Lincoln County Code (LCC) 1.1235: “Quasi-Judicial Amendments”
- Lincoln County Comprehensive Plan

² Incorporates and expounds on criteria in Goal 2, Part II, and ORS 197.732.

- Applicable Statewide Planning Goals³

Ancillary Code Provisions and Required Exception Process.

- Lincoln County Code (LCC) 1.1310: “Residential Zone R-1”
- LCC 1.1381: “Coastal Shorelands (CS) Overlay Zone”
 - LCC 1.1381(4): “Procedure”
 - LCC 1.1381(5)(f): “Shoreland Stabilization”
- OAR 660-004-0000: “Purpose”
- OAR 660-004-0015: “Inclusion as Part of the Plan”
- OAR 660-004-0030: “Notice and Adoption of an Exception”
- LCC 1.1252: “Notice of Exception to Statewide Planning Goals”

II. SUMMARY OF APPLICATION

The applicant requests an amendment to the County’s Comp Plan adopting an exception to Goal 18, IR 5, which states that “[p]ermits for beachfront protective structures shall be issued only where development existed on January 1, 1977.” Because development did not exist on the subject properties on January 1, 1977, an exception is required to allow the applicant to seek approval from the Oregon Department of Parks and Recreation (OPRD) for Ocean Shores Permits authorizing the installation of beachfront protective structures.

The applicant submitted extensive evidence, arguments and analysis addressing the applicable criteria. Geotechnical reports in the record from Doug Gless, Principal Engineering Geologist at H.G. Schlicker & Associates, Inc., and Vladimir Shepsis, Principal Engineer at Mott MacDonald, conclude that beachfront protective structures are necessary to protect the existing development on the subject property from the rapid and accelerating erosion of the beachfront bluff. Mr. Gless’s report provides a detailed littoral-cell-level geomorphological assessment of the condition of Gleneden Beach. The report concludes that the sediment supply to the beach in this area has been severely diminished by human alterations in the form of (past) sand mining and the proliferation of beachfront protective structures. Mr. Shepsis provides a site-specific analysis of the beach and erosion conditions. The geotechnical reports conclude that the extent of erosion at Gleneden Beach is uniquely severe because of the degraded condition of the beach, the natural geological and geomorphological conditions of the site, and effects of climate change.

The applicant provided evidence and arguments that if beachfront protective structures are not placed on the subject property, the existing improvements on the subject property will almost certainly be severely damaged, if not lost entirely. The applicant submitted evidence into the record documenting that economic harm would result if the improvements on the properties were

³ As mandated by ORS 197.175.

lost. In addition to this economic harm, the applicant argues that the loss of the condominiums and related facilities will present physical risks to residents and visitors of SeaRidge, as well as the public who recreate along the ocean shore.

The applicant asserts that these circumstances are compelling and unique, and justify a reasons exception under both the general reasons standard in OAR 660-004-0022(1) and the narrower “demonstrated need” standard in OAR 660-004-0022(1)(a)-(b). For the latter standard, the applicant asserts that the reasons exception is necessitated by requirements in Statewide Planning Goals 7, 8, 9, 10, 17, and 18.

The applicant’s submittal also provides analysis that concludes that all other criteria (supportive criteria) for the proposed goal exception and comprehensive plan amendment – including compliance with relevant Statewide Planning Goals and Comp Plan provisions – are satisfied.

III. SUMMARY OF DECISION

The Lincoln County Planning Commission (the “Commission”) concludes that the requested reasons exception to Goal 18, IR 5, for the subject property is justified and satisfies all applicable criteria.

At the heart of this application is the question of whether there are sufficient reasons to exclude the subject property from the restriction of Goal 18, IR 5 (which permits the construction of new beachfront protective structures only on land where development existed on January 1, 1977, as defined by the rule).

The Commission finds such reasons exist. The purpose of Goal 18, IR 5 is to protect the physical integrity and recreational and aesthetic values of Oregon’s beaches from the damaging effects of beachfront protective structures. The record supports the conclusion that, due to sediment supply disruption and other factors, the physical integrity and long-term viability of the beach at Gleneden Beach have been lost and cannot be restored. Therefore, the purpose of IR 5 cannot be achieved at Gleneden Beach.

Analyses from public and private experts in the record demonstrate that natural sediment supply processes at Gleneden Beach have been irreversibly damaged by a singular proliferation of protective structures and past sand-mining operations. The harm from these activities is being exacerbated by the uniquely vulnerable geological and geomorphological conditions of the site, and the intensifying effects of climate change.

There is substantial evidence in the record that allowing a shoreline protective structure (such as riprap armoring) to be installed on the subject property will have no effect on the rate or extent of degradation of the beach at Gleneden Beach. The evidence also demonstrates that the proposed protective structures will not further impact the quality of the beach’s limited natural resources and will not further degrade the already altered appearance of the shoreline in Gleneden Beach.

Therefore, the Commission finds that the fundamental reason for the proposed goal exception – that the purpose of Goal 18, IR 5, cannot be achieved at Gleneden Beach – is sufficient justification for the requested exception as required by OAR 660-004-0022(1). Supporting this reason is the fact, established by substantial evidence in the record, that the applicant will

experience significant financial harm if a shoreline protective structure cannot be deployed to protect the subject property. The Commission concludes the proposed exception to Goal 18, IR 5, for the subject property is justified. As set out below, this conclusion is based on specific findings that the proposed exception and plan amendment satisfy the requirements of OAR 660-004-0022(1) and all other applicable criteria.

IV. GENERAL FINDINGS OF FACT

The key findings of fact underlying our recommendation of approval are as follows:

A. The subject property is currently ineligible for shoreline protective structures under Goal 18, IR 5.

Based upon the record of this proceeding, the subject property is ineligible under Goal 18, IR 5, to construct a shoreline protective structure because development, as defined in Goal 18, did not exist on the subject property on January 1, 1977. Because the applicant's property is subject to this Statewide Planning Goal restriction, it is within the authority of the County to grant an exception to this requirement, if justified pursuant to the requirements of Goal 2 and OAR Chapter 660, division 4.

B. Circumstances at Gleneden Beach indicate that almost complete armoring of the shoreline is virtually inevitable.

The evidence submitted in support of the application demonstrates that the proliferation of existing protective structures on Gleneden Beach is an exceptional circumstance. As shown in the expert analysis submitted by the applicant, of the 268 tax lots identified in the Goal 18 Eligibility Inventory, 212 are identified as being protected by a shoreline structure.⁴ In terms of scale, 12,440 of the 16,800 linear feet of the Gleneden Beach shoreline are protected by a protective structure, almost entirely riprap. *Id.* The 12,440 linear feet of armoring on Gleneden Beach constitute more than 10 percent of the total length of beachfront protective structures along the entire Oregon Coast.⁵ As stated by coastal engineering expert Doug Gless, this shoreline has "the longest stretch and highest density of shorefront protective structures along the Oregon Coast."⁶

The applicant's property is among the last remaining unprotected lots on Gleneden Beach identified as ineligible for shoreline protective structures in the state's Goal 18 inventory. Of the 268 oceanfront lots on Gleneden Beach, 253 (94.4 percent) are either currently protected by riprap or eligible under Goal 18, IR 5, to construct a protective structure in the future.⁷ To provide context, according to a 2015 DLCD report, approximately 5 percent of properties on the Oregon coast are currently armored, and approximately 10 percent more are identified by the

⁴ [HGSA Geotechnical Rep.](#), at 2, citing "Goal 18 Eligibility Inventory by the Oregon Coastal Management Program (2015) and shown on the Oregon Coastal Atlas Ocean Shores Viewer (OSV) webpage (accessed December 2020)."

⁵ [Analysis of Shoreline Armoring & Erosion Policies](#), State of Oregon – DLCD (Apr. 2015).

⁶ [HGSA Geotechnical Rep.](#), at 3.

⁷ [HGSA Geotechnical Rep.](#), at 2 (stating that only 57 lots are designated as ineligible, but 42 of those lots are identified as already being protected with a shoreline protective structure).

state as eligible to construct a protective structure.⁸

The origins of this unusually large number of structures and eligible properties on Gleneden Beach were explained in the staff report and in expert reports on the record. Post-World War II urban-level development of this beach was characterized by the creation of small oceanfront lots and the construction of homes on the edge of the bluffs. As these bluffs retreated landward (to the east), homeowners installed riprap structures to protect their properties, which in turn exacerbated erosion at unprotected areas and those structures starved the beach of new sand from the armored bluffs. This negative feedback loop, which is destroying Gleneden Beach, is being exacerbated by climate change.

C. The sediment supply for Gleneden Beach has been irrevocably disrupted by the proliferation of protective structures and past sand mining.

Based on the evidence in the record, The Commission finds the loss of sediment supply has irreversibly compromised the physical integrity of the beach at Gleneden Beach. This is due to a combination of factors, principally the proliferation of protective structures and past sand mining.

According to the applicant's expert reports and other scientific literature, damage from the proliferation of protective structures is exacerbated by sand mining that took place from 1965 to 1971 at the mouth of Schoolhouse Creek in Gleneden Beach. The sand loss from the mining operation was approximately 12,000 cubic yards per year.⁹ Past research indicates that this mining resulted in a deficit of approximately one-half to three-quarters of new sand supply.¹⁰

The geotechnical analysis submitted by the applicant concluded that even if all currently unprotected properties – regardless of Goal 18 eligibility – were allowed to freely erode, the natural functions of the beach cannot be restored.¹¹ Expert opinions detailed in the staff report suggest that even if all the riprap and all the oceanfront homes in Gleneden Beach were removed, those actions would not restore natural processes at Gleneden Beach.

This disruption of the natural processes essential to maintaining the integrity of the beach is attributed to a unique and extraordinary confluence of destructive forces affecting this beach.

D. The oceanfront structures on the subject property are in danger of imminent destruction, and the most practicable way to reduce this risk is by the construction of a shoreline protective structure.

The Commission accepts evidence from the applicant's experts that the oceanfront residential structures and supporting infrastructure on the subject property face an imminent threat of failure from the rapid erosion of the shoreline bluff.¹² We also accept the evidence in the applicant's

⁸ *Analysis of Shoreline Armoring & Erosion Policies*, State of Oregon – DLCD (Apr. 2015).

⁹ James W. Good, *Ocean Shore Protection Policy and Practices in Oregon: An Evaluation of Implementation Success* (Aug. 7, 1992, Oregon State University, at 207) (citing Komar and Rea 1975).

¹⁰ *HGSA Geotechnical Rep.*, at 4.

¹¹ *HGSA Geotechnical Rep.*, at 20.

¹² *Mott MacDonald SeaRidge Rep.*, at 7

geotechnical reports that the erosion is accelerating and that the collapse of some structures is imminent.

The Commission accepts the expert analysis submitted by the applicant that: (1) the proposed armor rock revetment (i.e. riprap) will be an effective means to arrest the erosion of the subject property's bluffs,¹³ (2) the recommended protective structure is designed and will be constructed to avoid adverse impacts to adjacent properties,¹⁴ and (3) such structures are the most practicable alternative for reducing the risk of structure failure on the subject property.¹⁵

E. The existing protective structures on Gleneden Beach have contributed to, and will continue to contribute to, the acceleration of the erosion of the shoreline bluffs supporting the subject property.

The Commission finds the applicant's experts have demonstrated that the proliferation of shoreline protective structures on Gleneden Beach is causing, and will continue to cause, significant erosion to the few remaining unprotected properties. We accept Doug Gless's conclusions that "[t]he proliferation of shoreline protective structures to protect Goal 18 eligible properties has resulted in starving Gleneden Beach of sediment and increasing erosion at unprotected sites[,]” and that this proliferation of protective structures has “endangered” the ineligible lots.¹⁶

The evidence in the record demonstrates that changing circumstances, such as climate change and proliferation of surrounding protective structures, has accelerated the rate of erosion at the subject property. The materials submitted by the applicant show that approximately 60 protective structures have been built at Gleneden Beach since the early 1990s.¹⁷

F. Other unique conditions are contributing to the anomalous rate and severity of retreat of the subject property's shoreline bluffs.

In addition to the impact from the existing protective structures, the Commission finds there is substantial evidence that other factors are contributing to the rapid bluff erosion occurring at the subject property. Among these include:

1. The geological composition of the bluffs and the dynamics of Gleneden Beach, which make the subject property particularly susceptible to extreme erosion events.¹⁸
2. As a result of its sediment starved condition, Gleneden Beach is being disproportionately impacted by the effects of climate change, which include greater storm activity, substantial growth of wave intensity, ocean acidification, more frequent El Niño systems,

¹³ [Mott MacDonald SeaRidge Rep.](#), at 8

¹⁴ [Mott MacDonald SeaRidge Rep.](#), at 8

¹⁵ [Mott MacDonald SeaRidge Rep.](#), at 8; [HGSA Geotechnical Rep.](#), at 21.

¹⁶ [HGSA Geotechnical Rep.](#), at 20.

¹⁷ [HGSA Geotechnical Rep.](#), at 9.

¹⁸ [HGSA Geotechnical Rep.](#), at 3

etc.¹⁹

- G. **The continued application of Goal 18, IR 5, to the subject property will almost certainly result in the loss of existing development, financial harm to the applicant and adverse impacts to the local economy.**

The justification for this exception is anchored to the evidence that Gleneden Beach has been irreparably damaged by its existing development and thus, the Goal 18, IR 5's purpose of protecting the integrity and natural values of the beach cannot be achieved by its continued application to the subject property. Under such circumstances, and only under these special circumstances, can the loss of existing development and the economic consequences be relevant considerations to granting this exception.

As set forth in the applicant's expert reports, without the placement of a shoreline protective structure, the almost certain result will be severe damage or total loss of 26 condominium units, along with critical utility infrastructure for 54 additional units. Based on the property tax records submitted by the applicants, the real market value of the subject property is \$12,166,040²⁰.

- H. **Adoption and incorporation of expert analysis.**

The Commission incorporates by reference the analysis and conclusions in the expert reports submitted by the applicants and made part of the record as additional findings of fact. These are:

1. *Engineering Geologic Investigation For Goal 18 Exception; Gleneden Beach and Lincoln Beach From Tax Lot 3200, Map 08-11-28CB North to Tax Lot 311, Map 08-11-09DA Lincoln County, Oregon, H.G. Schlicker & Associates, Inc. (Jan. 6, 2021);*
2. *Technical Memorandum, SeaRidge Condominiums, Gleneden Beach, OR, Geotechnical Reports Supporting Goal 18 Exception Application, Mott MacDonald (Jan. 25, 2021);* and,
3. *Report on estimated economic contribution of the Wyndham/Worldmark Resort, SeaRidge Condominiums and other selected beachfront properties in Lincoln County Oregon, Edward C. Waters Ph.D. et al. (Feb. 1, 2021).*

V. SATISFACTION OF CRITERIA

Based on the facts outlined above, as well as those set out in specific responses below, the Commission concludes that the requested goal exception and corresponding Comp Plan amendment satisfy all applicable criteria.

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

(1) If a jurisdiction determines there are reasons consistent with OAR 660-

¹⁹ See scientific articles and state plans in Narrative Statement, Section I(C)(2).

²⁰ This number does not include the potential loss, and, at a minimum, the reduction in value, of the other 56 units at SeaRidge. See Economic Impact section in Narrative Statement, Section I(E).

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: Based upon substantial evidence on the record, the Commission finds there are reasons consistent with OAR 660-004-0022 to take an exception to Goal 18, IR 5, for the subject property. The justification for this exception, if ultimately adopted by the Lincoln County Board of Commissioners (the “Board”), will be set forth in the County’s Comprehensive Plan.

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

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

Findings: As set out in the general findings of fact above and as outlined in the response to OAR 660-004-0022 below, the Commission finds compelling reasons exist to justify why the state policy embodied in Goal 18, IR 5, should not apply to the subject property. These reasons are summarized below.

The purpose of Goal 18, IR 5, which is to protect Oregon’s beaches from the adverse effects of beachfront protective structures cannot be achieved at the subject property. This is because the existing proliferation of protective structures, the impacts of sand mining, and other factors have degraded the natural processes at Gleneden Beach to a point that the natural values of the beach cannot be protected or restored. This is the principal and overriding reason that the proposed exception is justified.

Other significant reasons in support of the exception are as follows:

1. Gleneden Beach is singular because a majority of the bluffs are armored with riprap – at a scale that is exponentially greater than other beaches in Oregon.
2. Gleneden Beach is also exceptional in the number and proportion of its oceanfront lots that are eligible for protective structures under Goal 18, IR 5. Just 15 out of the 268 oceanfront lots are not currently protected by riprap and are classified under Goal 18 IR 5 as ineligible for the construction of a new beachfront protective structure. This pattern of eligibility and the accelerated rates of erosion occurring there virtually assure that shoreline armoring will eventually be nearly continuous in Gleneden Beach.
3. Scientists agree the addition of riprap at the subject property will have no effect on the rate or extent of Gleneden Beach’s continuing degradation.

4. The record also shows that the placement of beachfront protective structures on the subject property will have no meaningful impact on Gleneden Beach's appearance or natural resources.
5. Protective structures at the subject property can be placed in a manner that will not further degrade the appearance of its shoreline, the quality of its natural resources, its recreational uses, or its public access.
6. The oceanfront buildings at the subject property are in danger of imminent destruction unless riprap structures are installed.
7. The rate, severity, and acceleration of erosion at the subject property is unique and extreme compared to oceanfront land on other beaches on the Oregon coast.
8. If not abated through the placement of beachfront protective structures, the continued shoreline retreat will result in financial harm to the applicant, including the loss of homes for numerous residents of SeaRidge.
9. A total or near-total loss of the condominiums will result in the loss of significant tax revenue, local business income, jobs, and economic activity.
10. The placement of beachfront protective structures on the subject property will arrest the erosion of the bluffs and is the most practicable approach to protect the threatened condominiums.

In summary, while all of the above findings are significant, these are supportive factors which, under the OARs, need to be addressed. These factors support and underscore the core reason that justifies the proposed exception to Goal 18, IR 5, which is that preserving the natural values and functions of the beach cannot be achieved at this site, and therefore, the application of IR 5 to the subject property provides no benefit.

In further compliance with this criterion, the Commission finds that the proposed protective structure must be placed upon the beach, along the subject property's bluffs, to stop the critical erosion that is imminently threatening the oceanfront structures thereon. There are no other viable actions that can be taken to protect the subject property.

The location and amount of land subject to the goal exception was set forth in Appendix D to the applicants' Narrative Statement, and is hereby incorporated and attached to these findings.

Finally, the exception, if adopted by the Board, will include these findings of fact, incorporated expert reports, additional conclusions and findings by the Board, as well as all other supporting factual materials.

(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[.]

Findings: The Commission finds that because the purpose of the proposed exception is the protection of the oceanfront buildings on the subject property, the protective structure can only be placed on the fronting bluffs. Further, there are, by definition, no alternative sites for the construction of a beachfront protective structure that would not be on a beach. The exception area is illustrated in the applicant's site plans, attached as Exhibit D of the application for Case File 01-LUPC-21.

(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?

Findings: The proposed exception to Goal 18, IR 5, is for the purpose of protecting the buildings on the subject property from the effects of critical erosion of the oceanfront bluffs. Thus, the proposed use – the construction of the beachfront structure to protect this existing development – can only occur on the subject property. No other alternative exists.

The resource land in the subject case is the beach. We find that the proposed protective structure cannot be placed on nonresource land because, in order to serve its intended purpose of protecting the subject property from the effects of beachfront erosion, it must be placed on the beach.

As previously established, the beachfront protective structure can serve its intended purpose only if placed on the subject property, and therefore cannot be accommodated on any other lands, including those that are irrevocably committed to nonresource use or are inside an urban growth boundary.

Finally, the proposed riprap revetment does not require the provision of a public facility or

service:

(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: As stated above, the proposed revetment structures necessitating the requested exception to Goal 18, IR 5, can only be placed along the subject property’s bluffs to protect the condominiums thereon. As such, no other sites exist that could “more reasonably accommodate the proposed 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.” 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: The proposed protective structures must be placed on the subject property to protect the imminently threatened dwellings thereon. There is no other land – requiring a goal exception or not – that could be used for the placement of the proposed protective structures to protect the subject property’s buildings.

But even if the proposed revetments could be placed elsewhere, the subject property is a uniquely appropriate area. As the record clearly establishes, Gleneden Beach has been irrevocably damaged by the unequalled proliferation of protective structures and past sand mining. The subject property is one of only 15 properties (out of 268) on Gleneden Beach not currently armored and that are listed as ineligible under Goal 18. The addition of the proposed riprap structures will have no effect on the rate or extent of Gleneden Beach's ongoing deterioration, and will have no impact on the beach's already-altered appearance and diminished natural resources. Substantial evidence in the record supports our finding that it is highly unlikely there are any other sites on the Oregon Coast that would have less short- or long-term environmental, economic, social, and energy consequences resulting from the placement of the riprap structure.

In contrast, armoring other sites on the Oregon Coast outside of Gleneden Beach will have negative consequences for those beaches. Such effects of this shoreline hardening include accelerating erosion of the unprotected properties, degradation of natural habitat, and interference with the sand supply of the littoral cell. These impacts will not result in Gleneden Beach because the existing shoreline protective structures have already irreversibly damaged that beach.

(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 proposed revetments will be compatible with the surrounding shoreline structures and the established urban density residential development in the area. Of the 268 oceanfront lots on Gleneden Beach, 212 (80 percent) are identified as currently being protected by a shoreline structure. This corresponds to 12,440 feet of hardened shoreline along the total 16,800 feet of Gleneden Beach shoreline. The density of protective structures along the stretch of shoreline including the subject property is even higher, where 90 percent are protected from erosion with riprap. The subject property is one of the only 15 tax lots (out of 268) on Gleneden Beach that are both unprotected and identified as ineligible for shoreline protective structures.

As outlined in these findings and in the supporting materials, the placement of protective structures on the subject property will not impact the rate or extent of Gleneden Beach's destruction, its appearance, or, what few natural resources continue to exist at these properties.

According to the applicant's geotechnical engineer, the proposed riprap structure has been designed and will be constructed to avoid adverse impacts to adjacent properties.

B. 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. Reasons that may allow an exception to Goal 11 to provide sewer service to rural lands are described in OAR 660-011-0060. Reasons that may allow transportation facilities and improvements that do not meet the requirements of OAR 660-012-0065 are provided in OAR 660-012-0070. Reasons that rural lands are irrevocably committed to urban levels of development are provided in OAR 660-014-0030. Reasons that may justify the establishment of new urban development on undeveloped rural land are provided in OAR 660-014-0040.

(1) For uses not specifically provided for in this division, or in OAR 660-011-0060, 660-012-0070, 660-014-0030 or 660-014-0040, the reasons shall justify why the state policy embodied in the applicable goals should not apply. Such reasons include but are not limited to the following: 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, IR 5, is not addressed in subsections 2 through 11 of OAR 660-004-0022 and thus, only subsection 1, the “catch-all” provision, applies to this application.

This section broadly states that for this type of exception, “reasons shall justify why the state policy embodied in the applicable goals should not apply.” This section also provides a nonexclusive example of reasons that will justify an exception. The second part of OAR 660-004-0022(1), and (1)(a)-(b) states that “[s]uch 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 that the use is dependent or can reasonably only be

located on or near the site. In line with past case law,²¹ the Commission interprets this clear language to mean that the “demonstrated need” subset of reasons is only one, non-exclusive type of reason that can justify an exception. For this decision, we do not rely on this narrower, non-exclusive basis for a reasons exception.

OAR 660-004-0022(1) provides that for a local government to take an exception, it must identify reasons that “justify why the state policy embodied in the applicable goals should not apply.” As discussed throughout this decision, the Commission finds that the state policy underlying Goal 18, IR 5, should not apply to the subject property because Gleneden Beach is irreversibly degraded to the extent that the continued application of IR 5 to the subject property will result in no benefit. Conversely, the prospective immediate loss of 26 condominium units, and the probable negative impacts on the other 54 in the long-term, without any countervailing benefit, would serve no rational purpose in furtherance of established land use goals and policies. The Commission finds that these unique and compelling circumstances provide sufficient reasons that justify why the state policy embodied in Goal 18, IR 5 should not apply to the subject property.

LUBA has provided guidance on the scope of reasons that can satisfy the general standard in OAR 660-004-0022(1). LUBA has declared that the reasons for an exception must be self-limiting “and not so broadly framed that it can be applied to establish other exceptions across a broad range of circumstances.” *Oregon Shores Conservation Coalition v. Coos Cty.* (LUBA No. 2020-002, at 32) (citing *VinCEP v. Yamhill Cty.*, 55 Or LUBA 433, 449 (2007)).

This requirement is satisfied in these unique circumstances. The principal reason for granting the exception is that the beach in Gleneden Beach has been degraded to the extent that the values protected by Goal 18, IR 5 have been irrevocably lost. As documented in the record and stated throughout these findings, this degradation is the result of the sediment supply at Gleneden Beach being severely disrupted by the proliferation of protective structures and sand mining.

This singular and unprecedented circumstance is the result of other unique factors, including:

1. The Gleneden Beach shoreline has “the longest stretch and highest density of shorefront protective structures along the Oregon coast.”²² 212 of the 268 oceanfront tax lots are already protected by a shoreline structure, which equates to 12,440 of the 16,800 linear

²¹ *E.g.*, *Todd v. City of Florence*, 52 Or LUBA 445, 451 (2006) (“The catch-all provision lists a set of non-exclusive reasons why the policy embodied by the applicable goals should not apply, including, inter alia, a “demonstrated need” for the proposed use.”); *Friends of Marion Cty.*, 59 Or LUBA at 341-44 (agreeing that “the OAR 660-004-0022(1)(a) requirement to identify an unmet need “based on the requirements of Goals 3-19” is part of non-exclusive set of reasons that can justify an exception[.]”); *Dep’t of Land Conservation and Dev. v. Yamhill Cty.*, 31 Or LUBA 488 (1996) (holding that OAR 660-004-0022(1)(a) is not exclusive, but that a local government should clearly indicate in the findings that it is not relying on subsection 1(a)); *Pacific Rivers Council, Inc. v. Lane Cty.*, 26 Or LUBA 323, 1993 WL 1473218, at *8 (1993) (“We realize OAR 660-04-022(1) states the reasons adequate to justify a goal exception “include but are not limited to” those set out in [the] subsections * * *” but the local government needs to state in the findings that it is basing its decision on reasons outside the scope of subsection 1(a).). The Oregon Court of Appeals has also interpreted this phrase in the same fashion, stating that the examples following the phrase “including, but not limited to” in OAR 660-004-0022(3) “are just that—examples, not a description of the entire group” of reasons that can justify an exception. *1000 Friends of Oregon v. Jackson Cty.*, 292 Or App 173, 183-84, 423 P3d 793 (2018).

²² HGSA Geotechnical Rep., at 3.

feet of the Gleneden Beach shoreline.²³ This 12,440 linear feet of armoring is more than 10 percent of the total length of beachfront protective structures along the entire Oregon coast.²⁴

2. Gleneden Beach is exceptional in the number and proportion of its oceanfront lots that are eligible for protective structures under Goal 18, IR 5: 253 of the 268 oceanfront lots on Gleneden Beach (94.4 percent) are either currently protected by riprap or eligible under IR 5 to construct a beachfront structure in the future.²⁵ This percentage is exponentially greater than the proportion of eligible properties on the Oregon coast, which is around 10 percent.²⁶
3. Gleneden Beach was significantly harmed by years of intensive sand mining, which resulted in a sand loss of approximately 12,000 cubic yards per year over a period of six years.²⁷ Past research indicates that this caused a permanent loss of approximately one-half to three-quarters of new sand supply.²⁸
4. The sediment supply deficit caused by the extensive proliferation of protective structures and past sand mining has focused severe erosion impacts on the few remaining unprotected bluffs.²⁹
5. The compromised condition of the beach results in exacerbated impacts from climate change, which is further deteriorating the health and natural function of the beach.³⁰

The lack of harm to the beach from the placement of the proposed shoreline protective structure is, on its own, insufficient to justify the proposed goal exception. There must also be a meaningful countervailing need for the structures. We find such a need exists here.

The continued application of Goal 18, IR 5, to the subject property will almost certainly result in the loss of substantial existing development, significant financial harm to the subject property's owners, and negative impacts on the local economy. The Commission underscores, again, that these factors related to hazards and economic considerations – on their own – cannot justify a goal exception to Goal 18, IR 5. These economic/social factors must be viewed together with the degraded condition of Gleneden Beach and the corresponding lack of benefit from the continued application of Goal 18, IR 5, at the subject property, to support a conclusion that the proposed goal exception is justified.

The compelling and unparalleled circumstances and reasons above are, inherently, self-limiting.

²³ [HGSA Geotechnical Rep.](#), at 2, citing “Goal 18 Eligibility Inventory by the Oregon Coastal Management Program (2015) and shown on the Oregon Coastal Atlas Ocean Shores Viewer (OSV) webpage (accessed December 2020).”

²⁴ [Analysis of Shoreline Armoring & Erosion Policies](#), State of Oregon – DLCDC (Apr. 2015).

²⁵ [HGSA Geotechnical Rep.](#), at 2 (stating that only 57 lots are designated as ineligible, but 42 of those lots are identified as already being protected with a shoreline protective structure).

²⁶ [Analysis of Shoreline Armoring & Erosion Policies](#), State of Oregon – DLCDC (Apr. 2015).

²⁷ James W. Good, *Ocean Shore Protection Policy and Practices in Oregon: An Evaluation of Implementation Success* (Aug. 7, 1992, Oregon State University, at 207 (citing Komar and Rea 1975)).

²⁸ [HGSA Geotechnical Rep.](#), at 4.

²⁹ [HGSA Geotechnical Rep.](#), at 10, 20; Mott MacDonald SeaRidge Rep., at 4

³⁰ [HGSA Geotechnical Rep.](#), at 7, 14, 19.

The Commission finds, in satisfaction of OAR 660-004-0022(1), such circumstances and reasons “justify why the state policy embodied in the applicable goals should not apply.”

C. LCC 1.1235: Quasi-Judicial Amendments

A quasi-judicial amendment to the Comprehensive Plan and Zoning Maps may be authorized provided that the proposal satisfies all applicable requirements of this Chapter and also provided that the applicant, in a quasi-judicial hearing, demonstrates that the change is in accord with the Comprehensive Plan goals and policies or the Statewide Planning Goals and that:

- (1) There has been a substantial change in the character of the area since zoning was adopted and which warrants changing the zone;**
- (2) Zoning previously adopted for the area was in error; or**
- (3) There is a public need for the change being sought.**

This provision requires an amendment to be justified by one of three circumstances and comport with the goals and policies of the Comprehensive Plan or Statewide Planning Goals.

The Commission finds that the proposed Comp Plan amendment to adopt an exception to Goal 18, IR 5, satisfies two of these alternatives. There have been several substantial changes since the adoption of the Comp Plan. These changes include the addition of as many as 60 protective structures on Gleneden Beach,³¹ the substantial increase in both the understanding and effects of climate change,³² the development of a full understanding of the nature and extent of harm that is caused by the proliferation of protective structures to the health and function of a beach, and the impacts of this degraded beach on remaining unprotected properties.³³ All of the above factors represent substantial changes in the character of the area that justify a comprehensive plan amendment under LCC § 1.1235.

The lack of a full understanding of (1) the impact of protective structures on the health of a beach and unprotected properties, and (2) the existence and consequence of climate change is also relevant to the second alternative criterion (that the original zoning was adopted in error). Had these natural dynamics been better understood at the time, a piecemeal approach to shoreline protection and the corresponding harm to unprotected properties could have been avoided by the adoption of an exception for the remaining 15 out of 268 lots that were not already protected by, or eligible for, riprap under Goal 18, IR 5. Such an exception was likely warranted if a fuller understanding of the existing conditions described above had been available to decision makers at the time. Accordingly, this alternative justification for a comprehensive plan amendment is also satisfied.

³¹ [HGSA Geotechnical Rep.](#), at 9.

³² See academic journals and government climate plans in Section I(C)(2) in the [Narrative Statement](#).

³³ [HGSA Geotechnical Rep.](#), at 19.

D. Compliance with relevant Comp Plan provisions.

Both state law and the county's code require that comprehensive plan amendments be consistent with the unamended portions of the Comp Plan. ORS 197.175(2)(a); LCC § 1.1235. We find that the proposed goal exception amendment does not conflict with any comprehensive plan provision. The amendment's consistency with relevant comprehensive plan provisions is discussed below.

1. LCC § 1.0050 Natural Hazards Goals.

Natural hazard goals:

(1) To identify and evaluate areas where natural hazards are known or suspected to exist.

(2) To protect life and property from natural disasters and hazards.

(3) To provide appropriate safeguards for land uses in areas of natural hazards.

Finding: The proposed goal exception amendment will reduce risk from the natural hazards present at the subject property and protect life and property while not further harming this severely degraded portion of Gleneden Beach. The amendment is consistent with this provision.

2. LCC § 1.0090 Coastal Shoreland Goals.

Coastal shoreland goals:

(1) To identify coastal shore lands.

(2) To identify appropriate uses in coastal shorelands.

(3) To recognize the value of coastal shore lands for protection and maintenance of water quality, fish and wildlife habitat, water dependent uses, economic resources, and recreation and aesthetics.

Finding: Like Goal 17, this provision calls for a balanced approach in the development, use, and protection of coastal shorelands. The proposed amendment is consistent with this provision because the proposed protective structures will protect significant existing development and cause no harm to the health, natural resources, or function of the shorelands of Gleneden Beach in its severely degraded condition.

3. LCC § 1.0100 Beaches and Dunes Goals.

Beaches and dunes goals:

(1) To protect, conserve and, where appropriate, restore, the beaches and dunes of Lincoln County.

(2) To ensure that development will be designed to minimize adverse environmental effects.

(3) To ensure that development will be adequately protected from any geological hazards, wind erosion, undercutting, ocean flooding and storm waves.

Finding: Like Goal 18, this provision calls for a balanced approach in the development, use, and protection of the County's beaches and dunes areas. The proposed amendment is consistent with this provision because the proposed protective structure will protect significant existing development from known geological hazards and undercutting while causing no harm to the health, natural resources, or function of Gleneden Beach in its severely degraded condition.

4. LCC § 1.0105 Beaches and Dunes Policies.

5. LCC § 1.0105(1):

Lincoln County shall base land use decisions in beach and dune areas, other than older stabilized dunes, on specific findings which shall include the following:

(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.

Findings: As described in these findings, the proposed riprap structure that requires the goal exception and comprehensive plan amendment will have no negative impact on the already-deteriorated Gleneden Beach, and will be constructed to avoid any damage to adjacent properties.

With regard to subsection (b), the objective of the amendment and goal exception is to stabilize the subject property's bluff. According to the applicant's geotechnical engineer, the riprap structure is designed to be low maintenance, will be covered with vegetation, and will halt erosion of the subject property's beachfront bluff.

Similarly, for subsection (c) and protection of the surrounding area, the applicant's geotechnical engineer also states that the proposed riprap has been designed and will be constructed to avoid adverse impacts to adjacent properties. As discussed above, the proposed protective structure will also not have a deleterious effect on the health, function, or natural resources of Gleneden

Beach.

Finally, subsection (d) is satisfied; the purpose of the amendment is to install a structure that will address existing natural hazards to life and private/public property.

The findings above are further detailed and supported throughout these findings, as well as the materials incorporated herein.

6. LCC § 1.0105(2):

Lincoln County shall recognize the authority of the Division of State Lands and the Oregon Department of Transportation to regulate the placement of beach front protective structures, such as bulkheads, sea walls, rip-rap and similar protective structures. The above agencies' findings for such permits shall address and comply with Lincoln County Beach and Dune Policies 3 and 4 below, and shall address the following:

(a) Hazards, as well as benefits, to life, public and private property, and the natural environment which may be caused by the proposed use; and

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

(c) Methods and techniques designed to minimize adverse impacts on the site and surrounding area; and

(d) The necessity for beach front protective structures.

The applicant will be required to have all necessary state permits before beginning construction. Under state statute and administrative rules, all the findings required by this provision will be addressed in the state permit findings.

7. LCC § 1.0105(3):

Beachfront protective structures will be designed to minimize impacts on the beach on either side of the beach zone line and on beach erosion and accretion patterns.

The applicant's geotechnical analysis states that the proposed protective structures will avoid adverse impacts on adjacent properties. As described throughout these findings, the proposed protective structures will not impact the natural functions of Gleneden Beach (including beach erosion or accretion patterns).

8. LCC § 1.0105(4):

Beachfront protective structures may be permitted only where development existed on January 1, 1977, unless an exception to Statewide Planning

Goal 18, implementation requirement 5, has been adopted as part of the comprehensive plan.

The proposed beachfront protective structures will be allowed by the County if the Board adopts the requested exception to Goal 18, IR 5, for the subject property.

9. LCC § 1.0105(5):

Lincoln County shall rely on the State Parks and Recreation Division to regulate beach sand removal.

The OPRD will regulate any sand removal on the subject property as part of its subsequent permitting process.

10. LCC § 1.0105(6):

Lincoln County may allow sand removal from the dune system upon a finding that the resulting natural processes of the dune form will not adversely affect property on or off the site.

No dune system will be impacted by proposed shoreline protective structure.

11. LCC § 1.0105(7):

Lincoln County shall cooperate with the State Parks and Recreation Division to ensure that construction of access to beach areas observes sound conservation practices and to protect existing public easements through beach and dune areas.

The proposed protective structure does not involve the construction of new beach access and will not interfere with the creation of any easements providing beach access.

12. LCC § 1.0105(11):

Lincoln County shall encourage the stabilization of those active dunes that pose threat to public or private property.

The proposed protective structure will be located along the beach bluff, not active dunes.

13. LCC § 1.0105(12):

Lincoln County shall cooperate with the Oregon State Department of Fish and Wildlife to protect significant wildlife habitat in beach and dune areas as identified in the Lincoln County Plan Inventory and designated on Plan and Zone maps.

The subject property is not designated as having significant wildlife habitat in the comprehensive plan inventory. Nothing in the approval of this exception will preclude or prevent the County from cooperating with the state to ensure all measures are taken to protect any significant

wildlife habitat that may, at a later date, be identified in the associated beach area subject to this exception.

14. LCC § 1.0105(13):

Prior to development, Lincoln County shall require an approved revegetation and sand stabilization plan that is to be followed during and after development.

Provisions of this policy will be applied if vegetative areas are expected to be disturbed. Because the County only reviews the state's permits for shoreline protective structures, County staff will coordinate with OPRD staff to address any revegetation or sand stabilization plans as needed and required.

15. LCC § 1.0105(14):

Except for beach front protective structures regulated by state permitting agencies, Lincoln County shall establish development standards consistent with the recommendations of the RNKI */sic/* Environmental Hazard Inventory and Department of Geology and Mineral Industries Bulletin 81.

The proposed amendment and goal exception is for the construction of a beachfront protective structure; this requirement does not apply.

16. LCC § 1.0105(20):

Lincoln County shall review all proposed actions which may result in the alteration of any beach or any active or conditionally stable dune form in the following manner:

(a) Ocean front lots: Site specific geotechnical analysis by qualified registered professional geologist or engineering geologist except when the only known or suspected hazard is coastal recession and minor slope sloughing which can be compensated for with adequate setbacks as set out in Environmental Hazard Inventory, RNKR, 1977.

(b) Sand areas: Except for beach front protective structures which are regulated by state permitting agencies, a detailed geotechnical analysis shall be required for active or conditionally stable dune forms and for areas of high ground water.

The applicant has submitted the required site-specific geotechnical analysis. Subsection (b) does not apply.

17. LCC § 1.0105(21):

Construction and alteration in beach and dune areas shall be designed and located so as to minimize vegetation removal and exposure of stable and

conditionally stable areas to erosion.

Applicant's proposed shoreline protective structure will result in minimal vegetation removal. Any vegetation removed shall be offset by the planting of new vegetation upon the riprap structure. The proposed structure will protect unstable areas from erosion.

18. LCC § 1.0120 Ocean Resource Goals.

Ocean resource goals:

(1) To understand the impacts and relationships of ocean activities to ocean resources.

(2) To ensure proper management and protection of ocean resources.

The proposed amendment and goal exception is for the construction of a beachfront protective structure, which will be located east of the state's territorial sea boundary line. The Commission finds this goal does not apply.

19. LCC § 1.0130 Economic Goals.

(1) To establish an economic planning process in the county.

(2) To support and encourage the expansion of existing industrial and commercial activities in appropriate locations.

(3) To support and encourage the creation of new industrial and commercial activities in appropriate locations.

(4) To recognize the environmental and developmental constraints in expansion of industrial, commercial, and residential activities.

(5) To improve the average wage in the county.

(6) To improve the quality of employment opportunities in Lincoln County.

The amendment is consistent with these goals.

20. LCC § 1.0135 Economic Policies.

(1) Lincoln County shall designate suitable lands for the creation and expansion of industrial and commercial activities.

* * *

(7) Lincoln County shall encourage labor intensive commercial and industry.

* * *

(10) When conflicting land uses are proposed, the alternatives shall be evaluated based upon economic, social, energy, and environmental costs and benefits.

The proposed amendment and goal exception are also consistent with this provision. The requested goal exception will protect a significant existing condominium development. Adopting the exception also constitutes a proper balancing of economic, social, and environmental costs because the continued application of Goal 18, IR 5, at the properties will provide no respective benefit.

21. LCC § 1.0160 Housing Goals.

Housing goals:

(1) To assist in providing housing.

(2) To provide opportunities for a variety of housing choices, including low and moderate income housing to meet the needs, desires, and financial capabilities of all Lincoln County residents.

(3) To make housing more efficient.

Without the adoption of the proposed goal exception, 26 condominium housing units on the subject property could be lost and removed from the County's housing supply. The County finds the proposed amendment is consistent with this policy.

22. LCC § 1.0170 Recreation Goals.

Recreational goals:

(1) To provide for recreation facilities for both residents and visitors in Lincoln County.

(2) To maintain the region as a tourist recreation area.

SeaRidge provides recreation and lodging facilities for its residents and short-term renters (lodging opportunities for visitors), including a clubhouse, tennis and basketball courts, a hot tub, a swimming pool, and beach access.

Adoption of the proposed amendment will advance the comprehensive plan's recreation goals by maintaining the region as a tourist recreation area.

23. LCC § 1.0175 Recreation Policies.

(6) Proposed oceanfront developments shall dedicate areas for public beach accesses in low bank areas consistent with county standards.

* * *

(9) Lincoln County shall diversify recreation opportunities within the County and shall include opportunities and facilities for the physically handicapped where appropriate.

* * *

(15) Lincoln County shall encourage outdoor recreation activities which are compatible with the primary land uses.

These policies are consistent with the requested comprehensive plan amendment. The proposed shoreline protective structure will not impede the development of recreational opportunities in Lincoln County.

E. Compliance with applicable Statewide Planning Goals.

Under ORS 197.175(2)(a), comprehensive plan amendments must comply with the Statewide Planning Goals. The County finds that the proposed amendment adopting an exception to Goal 18, IR 5, for the Properties complies with all planning goals.

Goal 1: Citizen Involvement. To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.

Goal 1 requires local governments to adopt and administer programs to ensure the opportunity for citizens to be involved in the local planning process. The County has adopted such a program under its zoning code. LCC 1.1250, 1.1252, 1.1255. All applicable notices, hearings, and related procedures have been and will continue to be observed during the course of these proceedings.

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.

Goal 2 requires establishing a land use planning process and policy framework as a basis for all land use decisions. This requires an adequate factual base for all land use decisions. This planning process is set forth in the County's Comp Plan and zoning code. The relevant criteria for this application are outlined in Section I(C) above and addressed in Section IV.

Goal 2 also sets forth a process for taking an exception to a planning goal requirement. This process is at issue here, and the Goal 2 criteria for an exception are addressed in Section IV(B) and (C) of these findings.

Goal 3: Agricultural Lands. To preserve and maintain agricultural lands.

There is no agricultural land at issue in the applications. Goal 3 is not applicable to the proposed amendment.

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 growing 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 requested amendment does not concern forest lands. Goal 4 is not applicable to the proposed Comp Plan amendment.

Goal 5: Natural Resources, Scenic and Historic Areas, and Open Spaces. To protect resources and conserve scenic and historic areas and open spaces.

The County's Goal 5 inventory of significant sites was reviewed, and no inventoried Goal 5 resources appear on the subject property. Accordingly, the proposed Comp Plan amendment is consistent with Goal 5.

Goal 6: Air, Water and Land Resources Quality. To maintain and improve the quality of the air, water and land resources of the state.

Goal 6 requires comprehensive plans to follow multiple guidelines to conserve the quality of air, water, and land resources in the state. The amendment and goal exception proposed by the applicant does not relate to the Comp Plan's implementation of these guidelines.

Further, at this stage of the permitting process, the County is only required to find that it is reasonable to expect that federal and state environmental standards will be met in the future, when permits for installation of the protective structures are sought.³⁴ Based on the design materials and expert analysis submitted by the applicants, we make this finding here.

Goal 7: Areas subject to natural hazards. To protect people and property from natural hazards.

The county finds that the proposed amendment will permit the installation of a beachfront protective structure for the purpose of protecting property from natural hazards (ocean erosion). Therefore, the amendment is consistent with Goal 7.

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.

The County finds that the proposed amendment is consistent with Goal 8 because the exception will permit the preservation of existing recreational resources.

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 County finds that the proposed amendment is consistent with Goal 9 because the exception

³⁴ See *Nicita v. City of Oregon City*, 74 Or LUBA 176 (2016).

will permit the preservation of existing economic resources.

Goal 10: Housing. To provide for the housing needs of citizens of the state.

The County finds that the proposed amendment is consistent with Goal 10 because the exception allows the preservation of existing housing units.

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.

The proposed amendment does not concern public facilities and services; however, it would advance this policy by protecting public facilities and services on the subject property, such as Gleneden Sanitary District Pump Station #6, which is at risk of eroding onto the beach and causing a sewage spill at the SeaRidge site.

Goal 12: Transportation. To provide and encourage a safe, convenient and economic transportation system.

The proposed amendment does not concern a transportation system.

Goal 13: Energy Conservation. To conserve energy.

The proposed amendment does not concern energy conservation measures.

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 proposed amendment does not involve urban development on rural land or expansion of urban services outside an urban growth boundary. Goal 14 is not applicable to the proposed Comp Plan amendment.

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.

The proposed amendment concern land in Lincoln County and will not impact the Willamette River or the Willamette River Greenway. Goal 15 is not applicable to the proposed Comp Plan amendment.

Goal 16: Estuarine Resources. To recognize and protect the unique environmental, economic, and social values of each estuary and associated wetlands; and [t]o 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 does not apply to the applications because the subject property is not located in an estuary or within an Estuarine Management Unit.

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 [t]o reduce the hazard to human life and property, and the adverse effects upon water quality and fish and wildlife habitat, resulting from the use and enjoyment of Oregon's coastal shorelands.

The Commission finds that the proposed Comp Plan amendment is consistent with Goal 17 based on the facts described in Section IV.

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 [t]o reduce the hazard to human life and property from natural or man-induced actions associated with these areas.

The Commission finds that, in addition to the primary Goal 18 policies discussed in Section IV of these findings, the proposed Comp Plan amendment is consistent, and because of the severely degraded condition of Gleneden Beach, there are three other implementation requirements that are potentially relevant to the proposed development and corresponding amendment.

First, in addition to the prohibition on protective structures for properties not developed prior to 1977, Goal 18, IR 5, states that “review of all shore and beachfront protective structures shall provide that: (a) visual impacts are minimized; (b) necessary access to the beach is maintained; (c) negative impacts on adjacent property are minimized; and (d) long-term or recurring costs to the public are avoided.” We find that granting an exception to allow a shoreline protective structure would be compatible with these requirements. Further, compliance with these criteria is mandated under OPRD’s regulatory program.

Second, Implementation Requirement 1 provides that “[l]ocal 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 environmental which may be caused by the proposed use.

These criteria have already been addressed in these findings addressing compliance with LCC § 1.0105 (Beaches and Dunes Policies). As set forth therein, the criteria are satisfied.

Third, and finally, Implementation Requirement 3 mandates that the County shall regulate “actions in beach and dune areas to minimize the resulting erosion.” We find that the proposed protective structures will advance this requirement by mitigating the erosion of the Properties’ bluffs. Accordingly, except for Goal 18, IR 5, for which an exception is sought, the proposed Comp Plan amendment and underlying development comply 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 provides policies and protections for “Ocean Stewardship Areas.” The proposed protective structures do not affect any Ocean Stewardship Area; Goal 19 does not apply.

F. LCC § 1.1310: Residential Zone R-1

Beach front protection structures are listed in the R-1 zone as a use permitted outright subject to other applicable requirements of this chapter. LCC 1.1310(1)(e).

G. LCC § 1.1381: Coastal Shorelands (CS) Overlay Zone

1. Section (4): “Procedure”

Applicants requesting approval for land use actions within the areas subject to the provisions of the C-S zone shall submit, along with any application, a detailed site plan and/or written statement demonstrating how the proposed activities will conform to each of the applicable standards contained in the C-S zone. Planning Division or Planning Commission review of such applications shall proceed in accordance with the applicable provisions of this chapter.

The applicant has submitted the required site plans, written statements, and other supporting materials demonstrating how the proposed protective structures comply with the C-S zone. These materials have been reviewed by planning staff and this Commission. We find the applicable standards in the C-S zone have been met.

2. Section (5)(f): “Shoreland Stabilization”

(f) Shoreland Stabilization:

(A) Shoreline stabilization procedures shall be confined to those areas where:

(i) Active erosion is occurring which threatens existing uses or structures; or

(ii) New development or redevelopment of water dependent or water related uses requires protection for maintaining the integrity of upland structures or facilities.

(B) The following, in order, are the preferred methods of shoreline stabilization:

- (i) Vegetative or other non-structural.**
- (ii) Vegetated rip rap.**
- (iii) Unvegetated rip rap.**
- (iv) Bulkheads or sea walls.**

Structural shoreline stabilization methods shall be permitted only where a higher priority method is not feasible.

(C) Materials to be used must be clean and of a non-erodible quality that will allow long-term stability and minimize maintenance. Materials which could create water quality problems or which will rapidly deteriorate are not permitted.

(D) Minor modification of the bankline profile may be permitted on a case-by-case basis. These alterations shall not be for the purpose of gaining additional upland area.

(E) Shoreline stabilization structures shall be designed and located so as to minimize impacts on aquatic life and habitat, circulation and flushing characteristics, and patterns of erosion and accretion.

The applicant's expert reports from Doug Gless, Principal Engineering Geologist at H.G. Schlicker & Associates, Inc. and Vladimir Shepsis, Principal Engineer at Mott Macdonald demonstrate that all of the above requirements are met:

1. Active erosion is threatening 26 dwellings on the subject property.
2. The proposed protective structures are riprap, and it has been conclusively determined that vegetative or other nonstructural solutions are not viable solutions.
3. The proposed riprap structures will be constructed to the highest standards, with materials that are clean and of a non-erodible quality that will allow long-term stability and minimize maintenance. The proposed structures are designed to avoid adverse impacts to adjacent properties.
4. The proposed protective structures have been designed and will be placed to avoid impacts on natural resources. The proposed structures will also not harm air or water quality.

H. **OAR 660-004-0000: Purpose**

(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.

All information and documentation prepared by other groups or agencies used as substantial evidence to support these findings of fact will be included or properly incorporated by reference into the record of these proceedings. All information included by reference in the record will be made available to interested persons for their review prior to the last evidentiary hearing on the exception.

I. **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.

(2) A local government denying a proposed exception shall adopt findings of fact and a statement of reasons that demonstrate that the standards for an exception have not been met. However, the findings need not be incorporated into the local comprehensive plan.

This recommendation and findings of fact, as well as future findings by the Board, if the applications are ultimately approved, will demonstrate that the standards for the proposed exception to Goal 18, IR 5, have been met. As set forth above, these findings are supported by substantial evidence and include citations to key materials. The final findings adopted by the Board, if this application is approved, will be made part of the County's Comp Plan.

Some of the key substantial evidence supporting these findings are listed below. These materials will be adopted into the County's Comp Plan if this application is approved by the Board.

1. Expert analysis provided in the staff report;
2. *Engineering Geologic Investigation For Goal 18 Exception*; Gleneden Beach and Lincoln Beach From Tax Lot 3200, Map 08-11-28CB North to Tax Lot 311, Map 08-11-09DA Lincoln County, Oregon, H.G. Schlicker & Associates, Inc. (Jan. 6, 2021);
3. *Technical Memorandum, SeaRidge Condominiums, Gleneden Beach, OR, Geotechnical Reports Supporting Goal 18 Exception Application*, Mott MacDonald (Jan. 25, 2021);

4. *Report on estimated economic contribution of the Wyndham/Worldmark Resort, SeaRidge Condominiums and other selected beachfront properties in Lincoln County Oregon*, Edward C. Waters Ph.D. et al. (Feb. 1, 2021).
5. *Ocean Shore Protection Policy and Practices in Oregon: An Evaluation of Implementation Success*, James W. Good, Oregon State University (Aug. 7, 1992).
6. *Ocean Processes and Hazards Along the Oregon Coast*, Paul D. Komar, a chapter in *Coastal Natural Hazards, Science, Engineering, and Public Policy*, edited by James W. Good and Sandra S. Ridlington, Oregon State University (1992).
7. *Sea-cliff erosion along the Oregon Coast*, Paul D. Komar and Shyuer-Ming Shih, *Coastal sediments 1991*, Am. Soc’y Civ. Eng’g, New York, NY, at 1558-70.
8. Final Report (2019) DLCD Focus Group on Statewide Planning Goal 18: Beaches and Dunes, Implementation Requirement #5.”³⁵
9. *Impacts of Climate Change on Oregon’s Coasts and Estuaries*, Peter Ruggiero et al. (2010).
10. *Impacts of Climate Change on Coastal Erosion and Flood Probability in the US Pacific Northwest*, Peter Ruggiero (2008).
11. *Impacts of Climate Change on Oregon’s Coasts and Estuaries*, Washington, DC, EPA/600/R-10/184, 2011.
12. 2020 Oregon Natural Hazards Mitigation Plan, Department of Land Conservation and Development.
13. Third Oregon Climate Assessment Report (2017).
14. Draft Oregon Climate Change Adaptation Framework (2020).

J. 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

³⁵ <https://www.oregon.gov/lcd/OCMP/Pages/Goal-18-Focus-Group.aspx> (DLCD webpage explaining the purpose and findings of the 2019 focus group).

the Board when a plan amendment is reviewed as a post-acknowledgment plan amendment pursuant to OAR chapter 660, division 18.

The notices for the hearings on the proposed goal exception complied with zoning code and state notice rules. Further, the notices specifically stated that an exception was proposed and summarized the issue in an understandable manner. If approved by the Board, the proposed exception to Goal 18, IR 5, will take effect at the time the Comp Plan amendment is adopted.

K. LCC § 1.1252: Notice of Exception to Statewide Planning Goals

Actions involving the consideration of exceptions to the Statewide Planning Goals shall be subject to the notice and hearing requirements of LCC §§ 1.1250 & 1.1255. In addition, the required notice of public hearing shall specifically note the exceptions to be considered and shall summarize the issues in an understandable manner.

The notices for the hearings on the proposed goal exception complied with zoning code and state notice rules. Further, the notices stated that an exception was proposed and summarized the issue in an understandable manner.

VI. ORDER AND RECOMMENDATION

NOW THEREFORE, IT IS SO ORDERED by the Lincoln County Planning Commission that the Plan amendment and exception to Goal 18, IR 5, as requested in Case Files 01-LUPC-2 be APPROVED. This approval will serve as a recommendation to the Lincoln County Board of Commissioners.

This FINDINGS, CONCLUSIONS, AND FINAL ORDER was approved by the Lincoln County Planning Commission on August 2nd, 2021.



Andra Bobbitt, Chair
Lincoln County Planning Commission

Amending the Lincoln County Comprehensive Plan adopting an exception to Statewide Planning Goal 18, Implementation Requirement 5 ("Goal 18, IR 5"). The exception would allow for the placement of beachfront protective structures on property in Gleneden/Lincoln Beach that is otherwise ineligible under IR 5, for protective structures (Case File No. 01-LUPC-21) -- **Exhibit 2**



Conceptual plan view of armor rock revetment at Searidge Condominiums; footprint approximately 35,000 square feet.