



OREGON SHORES CONSERVATION COALITION

May 27, 2021

Tillamook County Planning Commission
c/o Planning Director Sarah Absher
510-B Third Street
Tillamook, Oregon, 97141.

Via Email to: sabsher@co.tillamook.or.us

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

Dear Chair Heckeroth and members of the Tillamook County Planning Commission:

Please accept these comments from the Oregon Shores Conservation Coalition and its members (collectively “Oregon Shores”) to be included in the file for Tillamook County File Nos. 851-21-000086-PLNG-01 (Goal Exception)/851-21-000086-PLNG (Flood Plain Development Permit).¹ Oregon Shores is a non-profit organization dedicated to protecting the Oregon coast’s natural communities, ecosystems, and landscapes, while preserving the public’s access to these priceless treasures in an ecologically responsible manner. Our mission includes assisting people in land use matters and other regulatory processes affecting their coastal communities, as well as engaging Oregonians and visitors alike in a wide range of advocacy efforts and stewardship activities that serve to protect our state’s celebrated public shoreline and coastal heritage.

For half a century, Oregon Shores has been an active public interest participant in legal processes and policy decisions related to coastal land use, shoreline management, and protection

¹ Tillamook Cnty. Dept. of Cmty. Dev., *NOTICE OF PUBLIC QUASI-JUDICIAL HEARINGS TILLAMOOK COUNTY PLANNING COMMISSION TILLAMOOK COUNTY BOARD OF COMMISSIONERS REGARDING: GOAL 18 EXCEPTION & FLOODPLAIN DEVELOPMENT PERMIT*, 1-8 (May 20, 2021) [*Pub. Notice*].

of coastal resources in the State of Oregon. Over the past several decades, we have offered testimony on numerous proposals involving shoreline protection structures (“SPS”)² in order to express serious concerns about the known harmful impacts these structures have on shorelines, coastal ecosystems, the public’s access to the beach, and public safety. Oregon Shores’ members and the public we serve live, visit, and enjoy recreation opportunities on the beach fronting and in the near vicinity of the proposed project area. Oregon Shores’ CoastWatch volunteers, which include members and non-members alike, monitor the miles of shorefront directly before and in the near vicinity of the proposed project area.³

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

I. Background and General Comment

Oregon Shores provides these written comments in order to underscore the apparent deficiencies in the combined Application narrative, and to emphasize the importance of a robust review prior to approval of a goal exception and development of harmful SPS in a highly dynamic coastal environment. Upon the current record, the Applicants have not demonstrated compliance with the applicable approval criteria set forth in the Statewide Planning Goals (“Goals”), the Oregon Revised Statutes (“ORS”), applicable Oregon Administrative Rules (OARs), the Tillamook County Comprehensive Plan (TCCP), and the Tillamook County Land Use Ordinance (LUO).⁵ Our comments support the view that the Applications fail to provide the minimum information necessary to be evaluated for compliance with applicable standards and criteria.

A. Summary of Application Requests

This proposal concerns a requests for:

1. For approval of an exception to Goal 18, IR5;
2. Approval of a comprehensive plan amendment for a "committed" exception and/or a "reasons" exception to Goal 18, IR5 for the construction of shoreline stabilization along

² Hardened shoreline protection structures (synonymous with “beachfront protective structures”) include riprap revetments, concrete seawalls, bulkheads, and the like. These structures are somewhat different, but the publicly available evidence indicates that the harmful impacts of each are substantially the same and should be considered as such by OPRD for the purposes of review.

³ Oregon Shores CoastWatch Tour of the Miles, Mile 293, link: <https://oregonshores.org/mile/291>

⁴ ORS 197.763(4), (6).

⁵ Staff Report, 2. Oregon Shores does not concede that the proposals are consistent with any of these listed criteria.

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; and

3. A Floodplain Development Permit Request for the installation of a beachfront protective structure (rip rap revetment) within an active eroding foredune east of the line of established vegetation in the Coastal High Hazard (VE) zone, an Area of Special Flood Hazard within the Flood Hazard Overlay Zone.

As discussed throughout this comment, these properties are ineligible for SPS under Goal 18, IR #5's prohibition on development of hardened armoring for beachfront properties that were not developed prior to January 1, 1977. Hence, the County should deny the Applications.

B. Background of SPS in Oregon

Hardened SPSs will adversely impact the beaches, bluffs, and dunes upon which they are built. As one authority has put it “seawalls damage virtually every beach they are built on. If they are built on eroding beaches – and they are rarely built anywhere else – they eventually destroy them.”⁶ Another authority has described why this is true:

“The ability of beaches to retreat landward and build seaward in response to changes in sea level, storm waves, and other natural processes is fundamental to their protective role as well as to their continued existence. Shoreline hardening to thwart nature’s ebb and flow is therefore the antithesis of beach conservation.”⁷

The permitting process for SPSs on the coast as well as Goal 18 (protecting Beaches and Dunes) trace their origin to the Oregon legislature’s decision to adopt the “Beach Bill,” now codified in ORS Chapter 390. In 1967, the legislature proclaimed the state’s sovereignty over the ocean shore and adopted a clear policy in favor of preserving the ocean shore for future recreational uses and doing “whatever is necessary” to protect the public’s scenic and recreational use of the beach.⁸ Goal 18, Implementation Requirement 5 (“Goal 18, IR #5”) is a further acknowledgment of the legislature’s declaration, and presents the threshold question of any given property’s eligibility for an SPS in Oregon.⁹ In recognition of the severe and often irreparable damage that even a small section of shoreline armoring will likely have on the ability of the beach to replenish itself in the long-term, and of the effects of the intrusion of SPSs upon the public’s right to safe enjoyment of and lateral recreational access to Oregon’s beaches, Goal 18, IR #5 limits the placement of “beachfront protective structures” to those areas where “development existed” prior to 1977.¹⁰ According to one authority, the purpose of the policy

⁶ Cornelia Dean, *Against the Tide: The Battle for America’s Beaches*, 53 (2001).

⁷ Pillkey, Orrin H., quoted in *Duke Research*, 60 (1992).

⁸ See ORS 390.610(4).

⁹ See Or. Dep’t of Land Conservation & Dev., “Goal 18: Beaches and Dunes,” OAR 660-015-0010(3) (2019) [*hereinafter* Goal 18] at 1, <https://www.oregon.gov/lcd/OP/Documents/goal18.pdf>.

¹⁰ See Goal 18 at 2. See also OAR 736-020-0010(6): General Standards – Compliance with LCDC Goals, (OPRD rule applying Goal 18, IR 5 to ocean shore permits).

[I]s to limit long term, cumulative impacts from shoreline hardening, such as scouring and lowering of the beach profile, that can over time result in the loss of the dry sand public beach. The policy is premised on a basic “grandfathering” concept, allowing development that occurred prior to the adoption of the policy to qualify for hard protection, but precluding shore hardening for new development. New development must instead account for shoreline erosion through non-structural approaches (e.g., increased setbacks). In the face of increased ocean erosion occurring in conjunction with climate change and sea level rise, limiting hard structures and allowing natural shoreline migration is a critical policy tool for conserving and maintaining Oregon’s ocean beaches.¹¹

As noted by DLCD in their comment for this matter, taking a reasons exception taking a reasons exception pursuant to Goal 2 “is a high bar and the applicant and jurisdiction must follow the reasons exception process closely and carefully to demonstrate the need.” Oregon Shores strongly agrees. Additionally, exceptions to Goal 18, IR #5 have led to development in highly hazardous coastal areas with insufficient setbacks, leading to further proliferation of these structures.¹² Exceptions such as these give preference to the short-term interests of maladaptive private development over the public’s long-term interest, declared by the legislature, in the beach. Any proposal to avoid the restrictions of Goal 18, IR #5 through seeking a reasons exception must be subject to a robust evaluation.

II. The proposed properties are ineligible for a permit for SPS under Goal 18, #IR5.

The subject 15 tax lots at the core of this proposal are seeking a pathway to place a beachfront protective structure along the oceanfront to mitigate ongoing ocean flooding and erosion. Generally, this type of request to place shoreline armoring on the public’s beach would be under the jurisdiction of the Oregon Parks and Recreation Department (OPRD). Specifically, Goal 18, IR #5 presents the threshold question for obtaining an ocean shore alteration permit for the purposes of constructing SPS from OPRD. OPRD must evaluate the Applications for compliance with applicable ocean shore alteration permit standards under ORS 390 and OAR 736, Div. 20. OAR chapter 736, division 20¹³ stresses the importance of careful, case-by-case decision-making on ocean shore alteration permits, and requires applicants to obtain an affidavit from the relevant local government planning department certifying that the proposal is eligible for SPS under Goal 18, IR5 and relevant comprehensive plan provisions by either:

- (1) Establishing, in accordance with Goal 18, IR #5, that development existed on property at issue on January 1, 1977, or
- (2) An exception to the Goal 18, IR #5 requirement has been approved by the appropriate local jurisdiction. For the purposes of Goal 18, the definition of “development” means

¹¹ Edward J. Sullivan, *Shorelands Protection in Oregon*, 33 J. Envtl. Law & Litigation 129, 150 (2018) (citing Matt Spangler, Senior Coastal Policy Analyst, DLCD) [*hereinafter Sullivan*].

¹² As a general rule, Oregon Shores strongly argues that even in areas where an exception to Goal 18, IR #5 is taken, new developments in coastal areas should be designed to be readily moveable and with sufficient setbacks to avoid the need for SPS. While development permits are under the jurisdiction of coastal cities and counties, Oregon Shores strongly urges OPRD to coordinate with local governments to ensure protection of the public’s interest in the beach.

¹³ See OAR 736-020-0005: Factors Evaluated.

houses, commercial and industrial buildings, and vacant subdivision lots which are physically improved through the construction of streets and provisions of utilities to the lot.

Tillamook County has not identified this area as a “developed area” as of January 1, 1977. In addition, the 1977 aerial imagery from the Army Corps of Engineers also shows that qualifying development (residential, commercial, or industrial buildings) was not present on any of the subject tax lots. Further, the original plat "Pine Beach" (recorded in 1932, and containing 121 lots) was vacated in 1941 (with the exception of Second Street between Pacific Highway and Ocean Boulevard and the separate ownerships along Second Street). The present Pine Beach Replat was approved in 1994. Oregon Shores strongly agrees with DLCD in its conclusion that on January 1, 1977, there was no eligible development on the oceanfront parcels at the Pine Beach site and it was not part of a statutory subdivision. Further, relying on plats that might be eligible on the eastern side of the subdivision is insufficient to establish that the entire Pine Beach area is eligible for armoring under the applicable Goal 18, IR #5 criteria and interpreting case law.

There appear to be four vacant lots in the proposed goal exception area. These are clearly inconsistent with the definition of development as contemplated by Goal 18, IR #5, and are thus ineligible for SPS. Finally, as DLCD notes, the five parcels to the north of Pine Beach Subdivision were part of the George Shand Tracts, surveyed in 1950. However, tracts are not considered a statutory subdivision as defined in ORS 92.010 and so these parcels of land do not meet the definition of development as defined in Goal. As such, they are ineligible for SPS under the Goal. For these reasons, Oregon Shores strongly concurs with the assessment by DLCD that an exception to Goal 18, IR #5 is required to allow construction of the proposed beachfront protective structure on the subject properties. As discussed below, the Applications fail to meet the criteria to justify such an exception.

III. The Applicant fails to meet the criteria required to qualify for a “committed exception” under ORS 197.732(2)(b) and OAR 660-004-0028, as well as the specific foredune exception contained under OAR 660-004-0022(11).

Oregon Shores strongly argues that the Applications fail to establish consistency with the criteria contained within ORS 197.732(2)(b) (implemented by OAR 660-004-0028), as well as the specific Goal 18 reasons exception criterion regarding foredune development per OAR 660-004-0022(11). It is important to note that it is DLCD’s position “that a "reasons" exception) to Goal 18 [under the administrative rule provisions of OAR 660-004-0022(1)] is necessary in this case.” Specifically:

- Oregon Shores argues that the specific reasons set forth in OAR 660-004-0022(11) is inapplicable to the current requests because the structures at issue were lawfully developed under the County's regulations at the time of development. The Applications fails to establish that a SPS is a use as contemplated by the specific exception to the foredune use prohibition contained in OAR 660-004-0022(11). As noted by DLCD, the "use" in this case is the "mitigation of shoreline erosion," and the Applications do not adequately analyze alternatives to a beachfront protective structure. Further, the

Applications fail to provide sufficient information to meaningfully meet the criteria contained within OAR 660-004-0022(11)(a)-(c).

- As noted by DLCD, the lands at issue are not part of an existing goal exception previously taken by the County to Goal 18 within the TCCP. Tillamook County has identified and adopted specific exception areas for Goal 18, Implementation Requirement #2 in the County's Comprehensive Plan (Part 6 of the Beaches and Dunes Element), but the structures and properties at issue are not included in those adopted exception areas. The Applicant's attempt to stretch the existing exception is unsupported by law.
- Because the Applications fail to establish that adjacent uses are the basis for this proposal, they cannot meet the criteria to justify a committed exception. As noted by DLCD, although the area may now subject to ocean flooding, the structures at issue already exist lawfully and the County's beach and dune landform inventory has not changed. The proposed armoring will not be constructed on property that is currently developed. Rather, it will be installed on the sandy beach, which is currently committed to the public's use. Finally, in context of OPRD's regulations and Goal 18 itself, alternatives to hardened SPS must be considered prior to installing SPS. They suggest moving the homes as alternative to development, which suggests that the irrevocably committed concept is inappropriate as an avenue for an exception here.

For the above reasons, the only appropriate avenue for the current request is OAR 660-004-0022(1). As discussed below, the Applications fail to meet the applicable criteria.

IV. The Applicant fails to meet the criteria required for an amendment of the TCCP in order to take a "reasons" exception to Goal 18, IR #5

OAR 660-004-0020 details the criteria applicant must meet before Coos County can adopted an amendment to the TCCP in order to take a reasons exception to Goal 18. ORS 197.732 contains Oregon's statutory guidelines for the Goal 2 exception process and its criteria parallel the criteria set forth in OAR 660-004-0020. The four requirements for a goal exception are:

- (a) Reasons justify why the state policy embodied in the applicable goals should not apply.
- (b) Areas that do not require a new exception cannot reasonably accommodate the use.
- (c) The long-term environmental, economic, social and energy consequences resulting from the use at the proposed site with measures designated to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located in areas requiring a goal exception other than the proposed site.
- (d) The proposed uses are compatible with other adjacent uses or will be so rendered through measure designed to reduce adverse impacts.

As discussed, because the proposed exception fails to demonstrate compliance with applicable provisions of OAR 660-004-0020, it cannot demonstrate compliance with OAR 197.732.

In order to find that reasons justify a goal exception, there must be sufficient information provided in the record and reasoning to support each of the criteria. As the Oregon Court of Appeals explained: “an exception must be just that – exceptional.”¹⁴ As DLCD noted, two recent cases (LUBA 2020-002 and LUBA 2020-012) further clarify that a reasons exception is a “high bar” and requires a careful and clear showing of demonstrated need. The Applicants’ proposal that the County set forth within the TCCP the justification for a Goal 18 exception at the proposed sites warrants careful consideration to assess consistency with this “exceptional” standard. As shown below, the Applicants’ proposals fall short of meeting this bar.

A. First Goal Exception Requirement: Reasons Justify Why the State Policy Embodied in the Goals Should not Apply.

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

- (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;

OAR 660-004-0020(2)(a) requires the Applicant identify “reasons” as to why Goal 18, #IR 5 criteria should not apply to the proposed sites. OAR 660-004-0022 identifies the types of “reasons” that may be used to justify the exception.

OAR 660-004-0022(1). Reasons Necessary to Justify an Exception Under Goal 2, Part II(c)

Under OAR 660-004-0022(1), if a use is not specifically provided for, the reasons shall justify why the state policy embodied in the applicable goals should not apply. Acceptable reasons include:

- (a) There is a demonstrated need for the proposed use or activity, based on one or more of the requirements of Goals 3 to 19; and either

¹⁴ 1000 Friends of Oregon v. LCDC, 69 Or App 717, 731 (1984).

- (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.

OAR 660-004-0022(1)(a) requires the Applications to establish a “demonstrated need” for the proposed use or activity based on the requirements of one or more of Goals 3 to 19. The Applications seek an exception to Goal 18, IR #5 on the basis of either a committed exception or under the specific reason set forth in OAR 660-004-0022(11). As discussed above, the Applications cannot advance an exception under either pathway. Further, they fail to meaningfully address the criteria regarding demonstrated need sufficient to allow an exception under OAR 660-004-0022(1)(a). Specifically, they fail to provide a sufficient basis (i.e., a specific obligation) under Goals 3 to 19 that requires the Goal 18 exception in this case. As DLCD noted, an application that does not satisfy these provisions fails and may not be approved. Because the Applications fail to provide sufficient information to address this criterion, the County must deny the requests.

B. Second Goal Exception Requirement: Areas that do Not Require a New Exception Cannot Reasonably Accommodate the Use.

OAR 660-002-0020(2)(b) requires a showing that areas that do not require an exception cannot reasonably accommodate the use. As discussed in detail above, the Applicant has not demonstrated a need for the proposal. Further, because the Applications fail to establish a unique and immediate need for the proposed armoring in this location and do not meaningfully discuss alternatives such as relocated the oceanfront homes, the Application cannot meet the requirements of subsection (2)(b).

C. Third Goal Exception Requirement: The Long-Term Environmental, Economic, Social and Energy Consequences Resulting from the Use at the Proposed Site are Not Significantly More Adverse than Would typically Result from the Same Proposal Located in Other Areas that Would Require a Goal Exception.

OAR 660-002-0020(2)(c) requires the applicant to demonstrate “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.” Further,

“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.

For the same reasons set forth above, the Applicant has not demonstrated compliance with this criterion.

D. Fourth Goal Exception Requirement: The Proposed Uses are Compatible with Other Adjacent Uses or Will Be So Rendered through Measures Designed to Reduce Adverse Impacts.

Oregon Shores strongly contends that the Applications are inconsistent with his criteria. There are significant existing recreational uses adjacent to the proposed site (i.e., the public’s use of the beach) that are not meaningfully addressed. Further, this proposal, if approved, will increase erosion in areas that are not currently armored. The Applications fail to address how the proposed structure would impact unarmored areas. As such, the Applications fail to meet this criterion.

For the reasons stated above, the Applicant has not demonstrated that a Goal 18 exception is justified for the proposal.

IV. The Applicant fails to demonstrate consistency with the Goals.

As noted by DLCD, an exception to one goal or goal requirement does not ensure compliance with any other applicable goals or goal requirements for the proposed uses at the exception site. Oregon Shores strongly argues that the Applications fail to provide sufficient information to evaluate whether the exception as proposed would comply with the rest of the goals. In particular, the impacts of additional shoreline armoring on the beach, beach access, and surrounding properties are not adequately addressed in the applications, inconsistent with Goal 18 and Goal 17.

As such, the requests must be denied. Oregon Shores will provide further comment on these matters as appropriate and allowed.

V. Application for Floodplain Development Permit (TCLUO Section 3.510)

The question at hand is whether the applicants should be allowed to place a beachfront protective structure for the purpose of shoreline erosion mitigation on the subject properties. As discussed above, the Applications fail to demonstrate eligibility. Oregon Shores will provide comment on the request for the floodplain development deemed necessary for the project once the Goal exception and associated plan map and text amendments and zoning changes have been resolved. General comments are provided here for preservation purposes. Based on a

preliminary review, Applications fail to meaningfully address these criteria, and as such, should be denied.

VI. Conclusion

On the basis of the present record, the County should deny these applications.

Sincerely,

A handwritten signature in black ink, appearing to read "Phillip Johnson", with a long horizontal line extending to the right.

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

Testimony in opposition #851-21-000086-PLNG-01

My family has owned oceanfront property just north of Shorewood RV park since the 1960s, and I have frequently visited for all of my 37 years. I love this place and I am so glad I now get to spend time here with my children, the fourth generation of our family to visit. I am opposed to the proposal to allow an exception for the Pine Beach Loop subdivision for a variety of reasons:

1) Exhibit F, Table 1 from the Kellington Law Group's updated Powerpoint presentation shows that even in 1994, the western edge of the homes in question was 221 feet from the beach. The Pacific Ocean is the largest, most dynamic ocean in the world, and I think it is reasonable for oceanfront homeowners to assume the risk inherent to building this close to a powerful ocean.

2) If Goal 18 was written in 1977, and structural development in this subdivision/adjacent properties didn't begin until 1994, any homeowner or builder had the choice if they wanted to buy or develop the properties subject to this rule.

3) I certainly have sympathy for anyone facing damage to or loss of a house. But I don't understand why protecting one's property from the ocean with a physical barrier is fair if it damages someone else's property or impedes the public's use of the beach. I have seen the erosion to the adjacent shoreline after the Shorewood RV park rip rap was installed and waves were deflected to the north and south. Now, during high tide, the Shorewood RV park rip rap often blocks pedestrians from being able to continue walking on the beach. Is it considerate to other property owners or beachgoers enjoying this amazing public resource to perpetuate this process?

3) The presentation states the riprap will entirely be in the homeowner's backyard. If the shoreline is receding, won't this essentially be the beach in a few years?

4) Due to climate change, sea levels as well as the severity of storms will continue to rise. I believe allowing patchwork exceptions to this rule is shortsighted.

My hope is the Tillamook County Planning Commission makes their decision based on what is best for the all who enjoy this part of the coast rather than a select group of property owners.

Thank you for your time and consideration,

Camryn Pennington

Allison Hinderer

From: Sarah Absher
Sent: Monday, May 31, 2021 6:21 PM
To: Chris Berrie
Cc: Allison Hinderer
Subject: RE: Pine Beach Loop Goal 18 Exception

Thank You Chris,

I have copied Allison so that she can add this testimony to the record.

Sincerely,

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

From: Chris Berrie <keeks54@gmail.com>
Sent: Monday, May 31, 2021 5:59 PM
To: Sarah Absher <sabsher@co.tillamook.or.us>
Subject: Re: Pine Beach Loop Goal 18 Exception

I'm requesting the replacement of my original public comment with this submission. My original testimony was written in haste, as I had only become aware of the May 27 hearing on the day before. I did not complete adequate research and was not as objective as I would have liked.

My family has owned beachfront property in the vicinity of both Shorewood and Pine Beach for 55 years. The progression of events created when riprap is installed on a property, thereby necessitating similar installations by neighboring owners, is very much in evidence on our stretch of the beach.

Beach erosion occurs naturally and oceanfront home owners must accept that risk. Allowing installation of riprap goes against the intent of the Oceanfront Setback and Goal 18 rules, established to minimize coastal erosion caused by artificial structures. The majority of property owners in this area do not want additional riprap installations, with the resulting negative impacts to the natural beach, a public asset.

The solution is to not approval of additional riprap permits and exception requests. Instead, all properties in question should be required seek protection with other methods less damaging to the beach overall. Allowing more riprap to be installed will simply continue to transfer the problem to the public and other nearby property owners.

In 1999, Shorewood was granted an emergency authorization to place riprap and fill on the beach because of erosion due to particularly aggressive El Niño tides. It's confounding that the authorization was granted to protect highly mobile RVs which were easily movable and that they were allowed to extend their property onto the beach.

The authorization was granted during a period of time when jurisdiction had been transferred to Oregon Parks and Recreation. It was not an actual permit, rather an emergency authorization and, as noted in the document itself, revocable based on the discretion of the prevailing jurisdiction. Despite the fact that the riprap made the beach impassable at high tide and has continually transferred significant erosion to neighboring properties, it has been allowed to remain.

A challenge in 2007 from a local property owner, Chuck Barrett, on file in the public comments for this hearing, was met with an assurance that the OPRD shared his concerns and would monitor the situation. No subsequent action has ever been taken by any jurisdiction to remedy this problem. In fact, Shorewood was allowed to continue to add riprap. Additionally, three neighbors to their north were then permitted to install additional riprap to mitigate damage to their adjoining properties.

Common sense, the law and research submitted to these public comments indicate that the Pine Beach replat should never have been permitted. Information from Ms. Cummings states that false information was submitted by the developers and accepted at face value, for which she has documentation. According to the lawyer for OCA, Sean Malone, the Goal 18 exception proposal for Pine Beach Loop also contains incorrect or misleading information and assertions to support their case. The fact of the matter is that Pine Beach Loop should not qualify for an exception as there was no existing development at the time Goal 18 and the Oceanfront Setback rules were established and should never have been permitted for home construction in the first place.

The letter from the lawyer representing the applicants for the exception request for Pine Beach Loop, Wendie Kellington, demonstrates the disdain and disregard she and her clients have for anyone who challenges their misleading and erroneous assertions. It's time to stop allowing the most damaging property protection measures for a handful of affluent, private owners over the concerns of all others who are impacted. This violates the heart of the Oceanfront Setback and Goal 18 rules, as well as the Oregon Beach Bill.

On May 28, 2021, at 4:20 PM, Sarah Absher <sabsher@co.tillamook.or.us> wrote:

Hello Chris,

The comments are part of the record. I would recommend submitting additional comments and perhaps explaining why the contents of your second letter are a bit different.

Sincerely,
Sarah

From: Chris Berrie <keeks54@gmail.com>
Sent: Friday, May 28, 2021 2:29 PM
To: Sarah Absher <sabsher@co.tillamook.or.us>
Subject: Re: Pine Beach Loop Goal 18 Exception

Hi, Sarah.

As I had only become aware of the hearing the day before, I submitted my testimony in haste and without adequate research. It's much less objective than I would prefer. I didn't realize there would be an additional week to submit comments.

May I ask that you remove the comments I submitted? In the next few days, I will replace them with some that have been given due consideration.

On May 27, 2021, at 10:30 AM, Chris Berrie <keeks54@gmail.com> wrote:

Thanks, Sarah!

On May 26, 2021, at 11:20 AM, Sarah Absher
<sabsher@co.tillamook.or.us> wrote:

Good Afternoon Chris,

Thank you for the email and testimony. I will pass this along to the Planning Commission and Commissioners at the upcoming hearings.

Sincerely,
Sarah

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

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

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

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

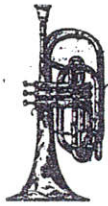
Based on two recent cases, it does not seem that Goal 18 exceptions are all that rare. Dale Anderson received immediate approval to install riprap on two properties he recently acquired in Rockaway, while Tai Dang had to sue the City of Rockaway to be allowed to use riprap to protect his property of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

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

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

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

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



Dave Robertson Music

17655 Ocean Blvd.
Rockaway Beach, OR 97136
(503) 812-0897
drmusic41@gmail.com

Received

MAY 27 2021

Tillamook County
Board of Commissioners

May 24, 2021

Tillamook County Board of Commissioners
201 Laurel Avenue
Tillamook, OR 97141

Ladies and Gentleman:

I'm writing in opposition to the proposed Goal 18 Exception regarding the rip rap revetment on the north side of the Pine Beach Loop development. When my late wife and I bought our home at 17655 Ocean Boulevard (Lot #3500), the purchase included a deeded easement from Ocean Boulevard to the beach at the south end of Ocean Boulevard and along the northern boundary of Pine Beach. Put simply, I object to my legal access to the beach from my home being blocked by the proposed project. I paid for beach access, it's my legal right to have it, and I want it.

Furthermore, had it not been for due diligence on the part of neighbors who alerted me to the situation, it's likely that the project would have gone ahead without my knowledge, and my rights would have been violated. Choosing to ask for forgiveness rather than for permission is NOT a good governing philosophy.

Thank you for your consideration,

Dave Robertson, ASCAP