

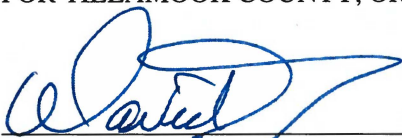

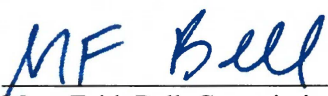


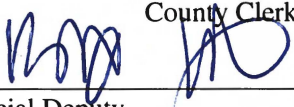
NOW, THEREFORE, THE BOARD OF COUNTY COMMISSIONERS FOR TILAMOOK COUNTY, OREGON, ORDERS AS FOLLOWS:

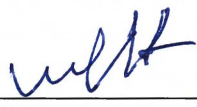
- Section 1. The petition for an election on the proposed City of Oceanside is hereby denied.
  
- Section 2. Before the close of business on May 16, 2022, County Counsel shall mail a copy of this order to the chief petitioners and also notify participating parties of this decision.
  
- Section 3. This decision shall become effective upon the mailing of the documents listed in Section 2.
  
- Section 4. In support of the decision set forth in Section 1 of this order, the Board adopts the stipulated findings and conclusions set forth in the Decision attached as "Exhibit A" to this order and incorporated here by reference.

DATED this 11<sup>th</sup> day of May 2022.

BOARD OF COUNTY COMMISSIONERS  
FOR TILLAMOOK COUNTY, OREGON

	Aye	Nay	Abstain/Absent
 _____ David Yamamoto, Chair	✓	_____	_____
 _____ Erin D. Skaar, Vice-Chair	✓	_____	_____
 _____ Mary Faith Bell, Commissioner	✓	_____	_____

ATTEST: Tassi O'Neil,  
County Clerk  
  
\_\_\_\_\_  
Special Deputy

APPROVED AS TO FORM:  
  
\_\_\_\_\_  
William K. Sargent, County Counsel



## “Exhibit A”

### I. APPLICABLE CRITERIA AND STANDARDS

The Tillamook County Board of County Commissioners (“the Board”) adopts and incorporates the discussion of the applicable statutory and administrative rule standards and criteria set out in these documents in the record:

- (1) Department of Community Development (“DCD”) Staff Report (January 19, 2022) and appended documents;
- (2) DCD Supplemental Staff Report (January 26, 2022) and appended documents; and
- (3) Memorandum from DCD Director Sarah Absher (March 23, 2022) and appended documents.

Additionally, the record must demonstrate the proposed city’s ability and willingness to comply with applicable Oregon land use goals as set out in *1000 Friends of Oregon v. Wasco County*, 299 Or 244 (1985).

The Board also finds that, although this is a quasi-judicial land use decision, neither the 120-day nor the 150-day deadlines for a final decision prescribed in ORS 215.427(1) apply because this is not an application for a permit, limited land use decision or zone change.

### II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

#### A. RECITALS

In discussions at the March 30, 2022, hearing session, the Board and Petitioners agreed it was in the best interest of the parties, the public and the tribunal for the Board to issue its Decision and Order based on stipulated findings of fact and conclusions of law, subject to appropriate public review and comment. The agreement was based on these factors and circumstances:

- (1) Petitioners filed and gathered signatures on a petition and economic feasibility analysis that were premised on an assumption that hearings would be completed and approval secured no later than February 13, 2022. That was the deadline for qualifying the measure for the May 17, 2022, Primary Election ballot pursuant to ORS 221.040(3).
- (2) Delaying an incorporation vote beyond the May 17, 2022, election would preclude the incorporated city (assuming voter approval) from meeting the July 15, 2022, notice deadline for participation in the 2022-2023 county tax collection cycle. Deferring such collections until the 2023-2024 cycle would result in a materially different revenue and expenditure program than that proposed in the original petition.
- (3) In deference to these time constraints, the Board worked to hear Petitioners’ presentation, take public comment, obtain staff input, complete deliberations and make a decision over the course of two hearing sessions on January 26, and February 2, 2022. (An additional hearing session that was scheduled and publicly noticed for January 19, 2022, was unexpectedly cancelled.) On February 2, 2022, the Board unanimously voted to deny the petition based on the record before it. On February 9, 2022, the Board granted petitioners’ motion for reconsideration and withdrew the decision but were unable to schedule further sessions until after the May Primary Election deadline.
- (4) In hearing sessions on February 9 and March 31, 2022, Petitioners and the Board entered into constructive dialogue over whether and how the proceedings and resulting deliberations had been hampered by factors such as the time constraints, the novelty of incorporation proceedings, the vagaries of the statutory provisions and a scarcity of guiding precedent. Petitioners also noted the uncertain legal ramifications of extending the Board's consideration of the current petition, given the budget disparity described above.
- (5) At the hearing session on March 31, 2022, Petitioners advised the Board of their intent to continue their pursuit of an incorporation election, building on the experience and insights gained from the Board's findings in this proceeding. To

that end, the Board and petitioners agreed to negotiate and abide by an order based on stipulated findings that are designed to provide specific guidance as to the perceived shortcomings in this record.

## B. STIPULATED FINDINGS AND CONCLUSIONS

Accordingly, the Board and petitioners stipulate to the following findings and conclusions:

### Threshold Requirements

1. The Board adopts and incorporates Oceansiders United's ("Petitioners") recital of the pre-hearing submissions and notice measures taken at pages 3-4 of Petitioners' Proposed Analysis and Findings ("Petitioners' Analysis") (January 18, 2022).
2. The Board adopts and incorporates the statement in the Supplemental Staff Report (page 4) indicating that "both the County and petitioners have met the notice of public hearing requirements for an incorporation proposal outlined in ORS 221.440(2)." It also accepts and adopts statements on the hearing record by DCD Director Absher and Counsel Joel Stevens that petitioners' actions and submissions, including a proposed tax rate, boundary map and Economic Feasibility Statement ("EFS"), satisfied both the procedural and content prerequisites for securing a hearing on the petition for incorporation.
3. The Board adopts County Clerk Tassi O'Neill's certification that Petitioners obtained sufficient, valid signatures on the petition from electors within the proposed city boundary.

### Boundary Determinations

4. The Board deems the record insufficiently developed to support findings on the issue of whether areas seeking exclusion from the new city would "benefit" from incorporation under ORS 221.040(2).
5. The Board deems the record insufficiently developed to support findings on the issue of whether The Capes development would "benefit" from inclusion in the proposed city under ORS 221.040(2).
6. The Board and Petitioners mutually acknowledge that development of a complete record on the issue of such "benefits" was hampered by the belated discovery of information regarding the legal impact of exclusion on an area's legal right to access sewer services under Oregon land use laws.
7. The Board and Petitioners agree that the need to resolve such "benefits" issues areas in this proceeding was obviated as a practical matter by the Board's ultimate decision to deny the petition based on economic feasibility. They further stipulate that such findings may be deferred for consideration without prejudice in any future incorporation hearing.

### Likely Compliance with Land Use Goals

8. The Board adopts and incorporates by reference the analysis and proposed findings in the section of Petitioners' Analysis entitled "Analysis of 'Likely' Compliance with Land Use Goals" (pages 15-24). The Board further adopts and incorporates DCD Director Absher's statements in the Supplemental Staff Report (page 3) describing factors relating to "the likelihood that Oceanside can and will comply with Oregon Statewide Planning Goals and the development of a land use program."
9. The Board adopts and incorporates Director Absher's hearing testimony concluding that an incorporated city of Oceanside would be likely and able to comply with the Oregon Statewide Planning Goals.

### Economic Feasibility

10. Services: The Board adopts and incorporates by reference the description of services proposed to be provided by the city of Oceanside and the relationship of those services to existing services as outlined in the EFS (pages 4-9).
11. Projected Resources: Petitioners' representations that the "Projected Resources" discussion and accompanying "Notes" reflected in the EFS (pages 10-11) reflect financial estimates drawn from or calculated in good faith reliance on data provided to Petitioners by the County Assessor, DCD staff, Public Works officials and other authoritative sources, such as the League of Oregon Cities and United States 2020 Census reports.
12. Projected Expenditures: With the exception of the "Roads" allocations referenced below, the Board accepts Petitioners' estimates of "Projected Expenditures" and accompanying "Notes" in the EFS (pages 12-14) as a feasible projection drawn in good faith from information provided by County DCD and Public Works staff, published budget information from other cities and other authoritative sources.
13. Tax rate: The record reflects objections by some property owners to the adequacy of the proposed tax rate. As developed and presented in the limited time allowed, the Board finds that the record was insufficiently developed to persuasively establish that the tax rate of \$.80 per \$1000 of assessed value "would generate operating tax revenues sufficient to support an adequate level of municipal services" pursuant to ORS 221.031(2)(c). The Board bases this finding on the following evidence and considerations:
  - a. A city tax at what the Board deems to be a relatively low rate will require the city to rely on alternative revenue sources that are linked to short-term rental operations. In the time available, Petitioners did not present sufficiently persuasive analysis to address the risk that funding for city operations would be vulnerable to reductions in short-term rental operations caused by unanticipated economic or political developments.
  - b. While Petitioners' EFS reflected a balance of projected revenues and expenditures during the first three years after incorporation as required under ORS 221.035, the record was insufficiently developed as to how the city will be able to accommodate potential cost increases associated with long-term growth or inflation, given that the proposed, modest city tax rate will be permanent and that any increases in such tax revenue are strictly constrained by state law.
  - c. The record as presented lacked adequate information or analysis to establish the feasibility of Petitioners' hypothetical allocation of \$50,000 per year for road maintenance and improvements.

