



8. The Board adopts the findings and conclusions set forth in the Decision attached as "Exhibit A" and incorporated by reference herein, and

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

Section 1. The boundaries originally set forth in the petition for an election on the proposed City of Oceanside are modified so as to be consistent with those on the "Final Area Map" attached as "Exhibit B" and incorporated by reference herein.

Section 2. By stipulation of the parties, the Board acknowledges the Capes' withdrawal of all its pending motions (namely, those presented in the Letter of June 17, 2022, to Director Sarah Absher and in the Capes' First Hearing Brief dated June 27, 2022), which motions are denied as moot.

Section 3. The petition for an election on the proposed City of Oceanside is hereby approved.

Section 4. In support of the decision set forth in the Sections above, the Board adopts the findings and conclusions set forth in the Decision attached "Exhibit A" to this order and incorporated herein by reference.

IT IS FURTHER ORDERED THAT:

Section 5. The election on the proposed city shall take place on November 8, 2022.

Section 6. The metes and bounds description of the exterior boundaries of the proposed city is attached as "Exhibit C" and incorporated by reference herein.

Section 7. The Tillamook County Clerk shall include on the ballot a description of the boundaries of the proposed city using streets and other generally recognized features.

Section 8. The Tillamook County Clerk shall include on the ballot a statement of the proposed permanent rate limit for operating taxes as included in the petition for incorporation of the proposed city.

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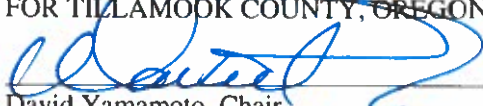


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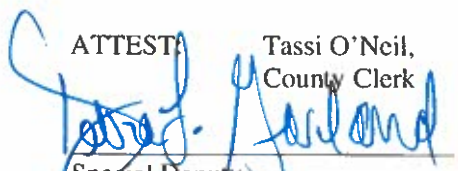
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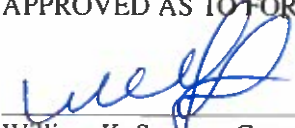
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DATED this 3rd day of August 2022.

BOARD OF COUNTY COMMISSIONERS  
FOR TILLAMOOK COUNTY, OREGON

	Aye	Nay	Abstain/Absent
 David Yamamoto, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Erin D. Skaar, Vice-Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Mary Faith Bell, Commissioner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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 reports and appended documents;
2. Legal description of the proposed Oceanside city boundary as modified by the Board at the July 28, 2022, public hearing.

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

1. The Capes Homeowners Association (“the Capes”) is an Oregon mutual benefit nonprofit corporation organized under the Oregon Planned Community Act, ORS Chapter 94, objecting on its own behalf and on behalf of its individual members. The Capes consists of and acts on behalf of the owners of property described in the Plat of the Capes, including the subsequent phases numbered two through five, found in the Maps of the Tillamook County Surveyor at C-0436, C-0440, C-0443, C-0445, and C-0449. The Capes falls within the boundary of the Unincorporated Community of Oceanside.
2. The Capes is a private development with a gate and private road system with all maintenance and repair costs borne solely by the Capes’ constituent owners.
3. As forth in its Declaration of Covenants, Conditions, and Restrictions and other governing documents, the Capes places additional restrictions on the use and development of subject properties beyond those imposed by Tillamook County’s Land Use Ordinance. Acting pursuant to this authority, the Capes has banned short-term rentals and hired private security. The Capes enforces the restrictions placed on its constituent properties by its governing documents.
4. The Capes’ sanitary sewer system is part of the Netarts-Oceanside Sanitary District.
5. The Capes development occurred prior to the creation of the Unincorporated Community of Oceanside. As such, when the County approved the creation of that unincorporated community, it continued the Capes’ pre-existing Planned Development Overlay Zone. *See* Board Order OA-97-03 at ¶ 4 (“In [the Capes] the current county zoning regulations and existing Master Plan approvals, or any amendments thereto, shall apply.”).
6. The Capes already receives, and will continued to receive, all of the community services and facilities that could be offered by the proposed city.

### III. CONCLUSIONS OF LAW

1. Before an incorporation election may be held, the Board is charged with establishing the final boundaries of the proposed city on which a vote will be held. *See* ORS § 221.040(2), (3)(a); *McManus v. Skoko*, 255 Or. 374, 379 (1970).

2. The Board must include property within the boundary of the proposed city if it will be “benefited by being included.” ORS § 221.040(2). The Board must exclude property from the boundary of the proposed city if it “will not . . . be benefited.” *Id.*
3. A property is “benefited by being included” in the proposed city when, as a result of its inclusion, a property will receive, from the proposed city, one or more community services or access to one or more community facilities than it would otherwise. These facilities and services include sewage disposal, water, storm drainage, and roads. A property that, by its inclusion in the proposed city, will not receive any additional service or facility “will not . . . be benefited.”
4. Because the Capes would receive no additional community service or facility as a result of its inclusion within the boundaries of the proposed city, the Capes will not benefit from its inclusion within the boundaries of the proposed city.
5. Because the Capes will not benefit from its inclusion within the boundaries of the proposed city, the Capes must be excluded from the boundaries of the proposed city.

#### 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”) (June 7, 2022).
2. The Board adopts and incorporates the statement in the June 20, 2022, staff report 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 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 is sufficiently 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 is sufficiently developed to support findings that “The Capes” development would not “benefit” from inclusion in the proposed city under ORS 221.040(2).

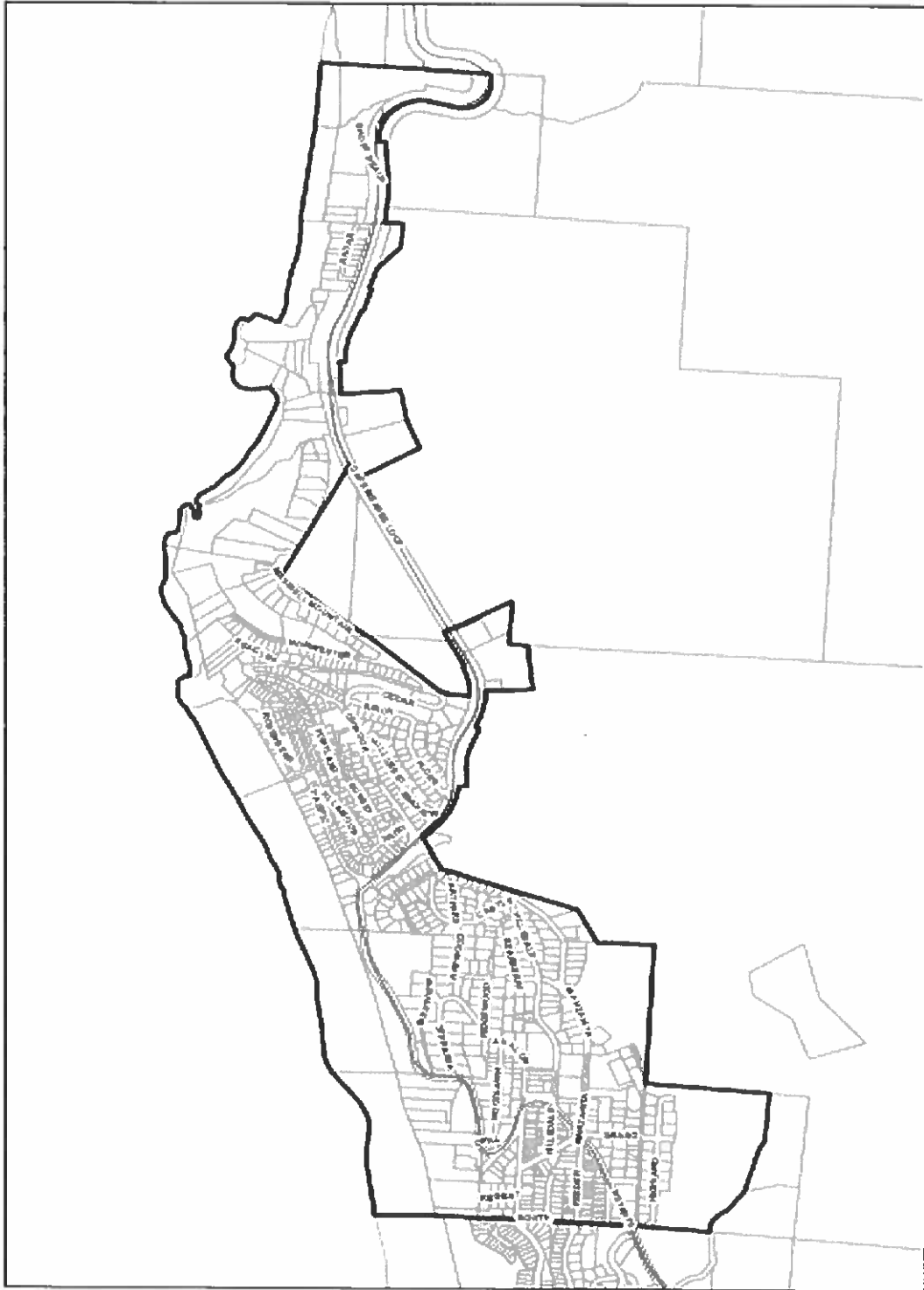
#### Likely Compliance with Land Use Goals

6. 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” dated June 7, 2022. The Board further adopts and incorporates DCD Director Absher’s statements 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.”
7. 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

8. 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.
9. Projected Resources: Petitioners' representations reflected in the EFS 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.
10. Projected Expenditures: The Board accepts Petitioners' EFS 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.
11. 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 is sufficiently 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).

**“Exhibit B”**



## “Exhibit C”

### CITY BOUNDARY LEGAL DESCRIPTION

Beginning at the intersection of the Pacific Ocean, Oregon Beach Zone Line with the Section Line common to Section 30 and Section 31, Township 1 South, Range 10 West of the Willamette Meridian in Tillamook County, Oregon, said point also being the Northwest Corner of “The Capes No. 2”, Tillamook County Clerk’s Records and being the **True Point of Beginning** of the land herein described. Thence Easterly along above said Section Line and along the North line of “The Capes No. 2, The Capes No. 3 and The Capes No. 5”, Tillamook County Clerk’s Records to the Initial Point of above described “The Capes No. 5”; thence Easterly along said Section Line 327.20 Feet, to the ¼ Corner common to Section 30 and 31 of above described Township 1 South, Range 10 West of the Willamette Meridian; thence Easterly along the South line of said Section 30, to the Southwest Corner of Parcel 1, Partition Plat #2007-34, Tillamook County Clerk’s Records; thence Northerly along the West line of said Parcel 1 and Parcel 2, Partition Plat #2007-34 to the Northwest Corner of said Parcel 2, said point being on the North Line of the Southwest Quarter of the Southeast Quarter of Section 30, Township 1 South, Range 10 West, Willamette Meridian, said point being on the Southerly Boundary of Unsurveyed Parcel 1, Partition Plat #2009-12; thence Westerly along said North Line of the Southwest Quarter of the Southeast Quarter of Section 30 to the North-South Centerline of Section 30; thence Northerly along said North-South Centerline of Section 30 to the Center Quarter of Section 30; thence Westerly along the East-West Centerline of Section 30 to the Southeast Corner of the Tract conveyed in Deed Instrument #2019-3149, Tillamook County Clerk’s Records; thence North 31°19’57” West a distance of 339.51 Feet to the Northeast Corner of the Tract conveyed in Deed Instrument #2011-5663, Tillamook County Clerk’s Records, said point being the most Easterly Corner of Partition Plat #2022-09, Tillamook County Clerk’s Records; thence along the Northerly line of Partition Plat #2022-09 bearing North 75°07’13” West a distance of 568.04 Feet to the Northeast Corner of “Second Addition to Camelot Estates” Tillamook County Clerk’s Records; thence along the Northerly line of above described, “Second Addition to Camelot Estates” bearing North 75°07’13” West a distance of 624.00 Feet to the most Northerly Corner thereof, said point being on the Northeasterly Line of “Camelot Estates”, Tillamook County Clerk’s Records; thence along the Northeasterly line of above described, “Camelot Estates” bearing North 30°21’42” West a distance of 138.89 Feet to the most Northerly Corner of “Camelot Estates”, said point being on the Westerly line of above described Unsurveyed Parcel 1, Partition Plat #2009-12; thence continuing on the bearing of North 30°21’42” West to a point on the Easterly Right of Way of Cape Meares Loop Road; thence Northerly along the Easterly Right of Way of Cape Meares Loop Road and the Westerly Boundary of above described Parcel 1, Partition Plat #2009-12 to the Southwest Corner of that Tract of Land described in Deed Instrument #2010-5101, Tillamook County Clerk’s Records; thence bearing North 83°30’00” East a distance of 150.00 Feet to the Southeast Corner of above described Instrument #2010-5101; thence North 84°01’34” East a distance of 248.86 Feet to the Southeast Corner of Deed Instrument #2021-2673, Tillamook County Clerk’s Records; thence along Easterly Line of Instrument #2021-2673 bearing North 9°47’00” West a distance of 409.34 Feet to a point on the North Line of Section 30, Township 1 South, Range 10 West, Willamette Meridian; thence bearing North 89°56’03” West a distance of 152.40 Feet to a point; thence North 121.54 Feet to the Initial Point of Partition Plat #1994-34, Tillamook County Clerk’s Records; thence along the Boundaries of Parcel 1, Partition Plat #1994-34 the following 3 courses: North a distance of 266.05 Feet, North 31°23’00” West a distance of 12.86 Feet and South 58°37’00” West a distance of 525.00 Feet; thence continuing South 58°37’00” West a distance of 100.00 Feet to the Westerly Right of Way of Cape Meares Loop Road; thence Southerly along the Westerly Right of Way of Cape Meares Loop Road to the Northeast Corner of Parcel 3, Partition Plat #2010-26, Tillamook County Clerk’s Records; thence along the Northerly Boundary of above described Parcel 3 bearing South 89°35’44” West a distance of 149.25 Feet and North 78°09’28” West a distance of 88.40 Feet to the Northerly Right of Way of Maxwell Mountain Road; thence Northwesterly along the Northerly Right of Way of Maxwell Mountain Road to the most Westerly Corner of that Tract described as Parcel No. 3, Instrument #2018-7373, Tillamook County Clerk’s Records; thence Northerly along the Westerly Boundary of the above described Parcel No. 3, to the Centerline of Cape Meares Loop Road; thence Southerly along the Centerline of Cape Meares Loop Road to a point intersecting with the extension of the Southerly Boundary of that Tract described in Deed Instrument #2022-1736, Tillamook County Clerk’s Records; thence bearing North 58°37’00” East to the most Southerly Corner of the above stated Tract; thence bearing North 58°37’00” East a distance of 545.00 Feet to the most Easterly Corner of the above stated Tract; thence bearing North 25°20’00” West a distance of 281.40 Feet to the most Northerly Corner of the above stated Tract, said point also being the most Easterly Corner of that Tract of described in Deed Book 344, Page 454, Tillamook County Clerk’s Records; thence along the Easterly Boundary of above described Tract bearing North 13°14’00” West a distance of 281.40 Feet to the most Northerly Corner thereof; thence along the Northerly Boundary of above described Tract bearing South 89°52’14” West to the Southeast Corner of that Tract described in Deed Book 306, Page 856, Tillamook County Clerk’s Records; thence Northerly along



the Easterly Boundary of the above described Tract to the Northeast Corner thereof, said point being on the Easterly Right of Way of Cape Meares Loop Road; thence Northerly along the Easterly Right of Way of above described Cape Meares Loop Road to the most Southerly Corner of that Tract described in Deed Book 107, Page 263, Tillamook County Clerk's Records; thence along the Easterly Boundary of above described Tract bearing North 49°05'00" East a distance of 198.48 Feet and bearing North 0°11'00" West a distance of 220.00 Feet to the Northeast Corner thereof; thence along the Northerly Boundary bearing West a distance of 150.00 Feet to a point on the Easterly Right of Way of Cape Meares Loop Road; thence Northerly along the Easterly Right of Way of Cape Meares Loop Road to a change in Right of Way at Station 84+57.34 PC as described on Roll Map F-13-26, Tillamook County Surveyor's Office; thence Westerly along said Station 84+57.35 PC to the Centerline of said Cape Meares Loop Road; thence Northerly along said Centerline to it's intersection with the North Line of Section 19, Township 1 South, Range 10 West, Willamette Meridian; thence Westerly along the North Line of said Section 19, to the Northwest Corner thereof, said point also being the Northeast Corner of Section 24, Township 1 South, Range 11 West, Willamette Meridian; thence Westerly along said North Line of Section 24 to it's intersection of the Pacific Ocean, Oregon Beach Zone line; thence Southerly along the Pacific Ocean, Oregon Beach Zone Line to the intersection of the Pacific Ocean, Oregon Beach Zone Line with the Section Line common to Section 30 and Section 31, Township 1 South, Range 10 West of the Willamette Meridian in Tillamook County, Oregon, said point also being the Northwest Corner of "The Capes No. 2", Tillamook County Clerk's Records and being the **True Point of Beginning**