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MEMO

Date: July 6, 2022
To: Tillamook County Board of Commissioners
From: Sarah Absher, CFM, Director
Subject: June 27, 2022, Oceanside Incorporation Public Hearing

Included with this memorandum are copies of the following:

- “The Capes” First Hearing Brief
- Exclusion Area Map & Tillamook County Assessor Maps
- Transient Lodging Tax Information (Presented Fiscal & Calendar Year)
- Email from Oregon Department of Land Conservation & Development dated July 6, 2022
- Public testimony received since the June 20, 2022, hearing

“The Capes” First Hearing Brief:

The attached brief was submitted during the June 20, 2022, hearing proceedings. The Board asked questions of County Counsel and staff after receiving testimony explaining the objections and issues raised in the brief. County Counsel and staff continue to work through the objections and issues raised in the brief and can speak to these matters upon Board request.

Exclusion Area Map:

This map was prepared at the request of the Board. The yellow highlighted areas on the voter registration map identify those areas within the proposed Oceanside City boundary where a request to be excluded has been made. Areas include “The Capes”, a portion of “Avalon” known as “Avalon West”, “Terrasea”, the area identified as “Trillium”, and properties along Radar Road.

An additional request was made to relocate the location of the proposed northerly city boundary and exclude all properties within the proposed city boundary map north of the adjusted city boundary line. This new city boundary line is also depicted on the Exclusion Area Map.

Exclusion boundaries for “The Capes” and “Terrasea” follow platted subdivision boundary lines. Because there are no clearly platted lines identifying areas known as “Avalon West”, “Trillium” and the Radar Road area, exclusion boundaries are approximate.

Transient Lodging Tax (TLT) Information:

This information was also prepared at the request of the Board. TLT revenue reporting is presented in fiscal and calendar year format. Staff will be present at the hearing for further discussion of the TLT revenue reporting.

Email from the Oregon Department of Land Conservation & Development (DLCD):

Questions were raised at the June 20, 2022, public hearing regarding a previous determination that sewer eligibility would be removed for undeveloped properties no longer included within an acknowledged community boundary, city boundary or a city's urban growth boundary. Following the June 20, 2022, public hearing, staff reached out to DLCD for further information.

Comments from DLCD received this afternoon via email confirm platted lots excluded from the proposed city boundary will retain sewer eligibility. The email also indicates that exclusion of properties will result in multiple legal but non-conforming issues for those excluded properties. Staff continues to work through potential exclusion concerns with DLCD and will be prepared to discuss this matter in more detail at the July 13, 2022, hearing. Lisa Phipps, DLCD Coastal Policy Specialist, has confirmed attendance at the July 13, 2022, public hearing.

Economic Feasibility Study Update:

Petitioners are scheduled to meet with the County Treasurer tomorrow and will be submitting additional information later this week following tomorrow's meeting. Staff will post this new information on the incorporation application page for public inspection upon receipt of this updated information and will email copies of the updated information to the Board. Petitioner's will provide hard copies of the additional information at the July 13, 2022, public hearing.

General Information:

The record is available for inspection at the Department of Community Development and is also available for public inspection at on the Community Development webpage: [851-22-000224-PLNG | Tillamook County OR](#) found on the Land Use Applications page under the Planning tab of the Community Development webpage: [Land Use Applications Under Review | Tillamook County OR](#).

The Tillamook County Board of Commissioners will reopen the public hearing on July 13, 2022, at 1:00pm following quasi-judicial hearing proceedings. The hearing will take place at the ATV Building Tillamook County Sheriff's Office located at 5995 Long Prairie Road, Tillamook, Oregon.

An additional hearing is scheduled for July 28, 2022, at 2:00pm. The hearings have been properly noticed according to the requirements of ORS 221.040(2).

Public testimony will be taken at the July 13, 2022, public hearing. A link to access the hearing virtually will be posted the Community Development website the day prior to the hearing: [Community Development | Tillamook County OR](#).

Community Development hearing and meeting general information- including how to provide testimony and methods for participating in public meetings can be found at the Community Development webpage: [Hearing & Meeting Information | Tillamook County OR](#)

Please do not hesitate to contact me with any questions or concerns.

Sincerely,



**“THE CAPES”
FIRST HEARING
BRIEF**

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BEFORE THE BOARD OF COMMISSIONERS FOR THE
COUNTY OF TILLAMOOK, OREGON

In re:

PETITION TO INCORPORATE
OCEANSIDE

Matter No. 851-22-000224-PLNG

Hearing Date: June 27, 2022

THE CAPES' FIRST HEARING BRIEF

Petitioners sought and—were denied—an order from the County calling an election on the incorporation of the City of Oceanside, the boundaries of which would have excluded the Capes Homeowners Association. Petitioners quickly filed a second petition calling for the incorporation of the City of Oceanside, one that is almost identical in substance to their first petition except for its inclusion of the Capes. Land use planning, which includes the statutory incorporation process, is not an iterative process, one countenancing repeat attempts to achieve the same goal. But even more offensive to the land use process and its objectives is denying objectors, such as the Capes, a full and fair opportunity to be heard. The current petition violates both, and the County should dismiss it or, alternatively, continue the remaining hearings for no less than three months.

1 Procedural irregularities aside, the petition fails on the merits. The Capes will not benefit
2 from its forced inclusion in the proposed city because the purported benefits identified by
3 Petitioners are either without substance or are already extant in the absence of the proposed city.
4 As such, the Capes must be excluded the city's proposed boundaries. In any event, the
5 incorporation petition as a whole must be denied because the proposed city will be unable to
6 comply with Oregon's land use goals. Accordingly, the County must deny the incorporation
7 petition outright or, alternatively, must exclude the Capes from the proposed city.

8 **I. Procedural Objections — The County must dismiss the pending Incorporation
9 Petition or, alternatively, continue the hearings.**

10 *A. The Capes' Motion to Dismiss*

11 The Capes, by letter dated June 17, 2022, moved to dismiss the Incorporation Petition or,
12 alternatively, continue the hearings for at least three months. Petitioners filed a response, by letter
13 dated June 21, 2022, arguing against those outcomes.

14 *1. The County cannot, pursuant to Land Use Ordinance § 10.020(6)(d), hear
15 the current Incorporation Petition because not more than six months have
16 elapsed since the County's denial of the previous petition. The County must
17 dismiss this petition.*

18 Even assuming that the language used in Article X, and LUO § 10.020(6)(d), do not
19 compel the County to dismiss the Incorporation Petition, it is required to do so regardless. The
20 classification of a decision as either quasi-judicial or legislative under *Strawberry Hill 4-Wheelers
21 v. Board of Comm.*, 287 Or 591 (1979) can compel a local government to apply its relevant decision
22 framework. *See Van Dyke v. Yamhill Cty.*, 78 Or LUBA 530, 535–36 (2018) (“[U]nder state law
23 the decision must be viewed as a quasi-judicial decision[.] . . . [Accordingly,] the county erred in
24 processing the application under its legislative rather than its quasi-judicial procedures.”). As
recognized by the County in its Order denying Petitioner's first incorporation petition, this type of
proceeding is quasi-judicial. *See 1000 Friends of Oregon v. Wasco Cnty. Ct.*, 80 Or. App. 532, 537

1 (1986) (“We hold that the county's action on the incorporation petition was quasi-judicial.”), *rev'd*
2 *on other grounds*, 304 Or. 76 (1987). As such, the County must apply its quasi-judicial procedures
3 to the instant petition. Those procedures include LUO § 10.020(6)(d).

4 Furthermore, the County should exercise its discretion to apply Article X, and LUO
5 § 10.020(6)(d), to incorporation proceedings. “[W]here the code does not provide procedures or
6 standards governing a specific decision, a local government may, consistent with the due process
7 clause, essentially borrow procedures and standards applicable to other types of decisions.” *Emami*
8 *v. City of Lake Oswego*, 52 Or LUBA 18, 29 (2006). This is consistent with the LUO’s expansive
9 definition of its own scope, which includes “[a]ny application . . . based upon any State . . .
10 regulation.” LUO § 1.030(2) (stating that such any such application “shall constitute an application
11 . . . pursuant to [the LUO]”). Moreover, it would further the purpose of Article X to “establish
12 *standard decision-making procedures[.]*” LUO 10.010(1).

13 2. *The current incorporation petition must be denied because of the doctrines*
14 *of claim and issue preclusion because it is effectively identical to the first*
incorporation petition, which the County denied.

15 Even accepting Petitioners’ argument that LUO § 10.020(6)(d) does not apply, the County
16 must still dismiss or deny their petition. Petitioners have already had a full and fair opportunity to
17 litigate the same issues presented in the current Incorporation Petition. They lost. The doctrines of
18 claim and issue preclusion prohibit Petitioners from re-litigating that loss by filing this second
19 petition (or any successive petitions). *See, e.g., Johnson & Lechman-Su, P.C. v. Sternberg*, 272
20 Or. App. 243, 246 (2015) (“[I]ssue preclusion operates to prevent the relitigation of issues that
21 have been fully litigated in a prior proceeding between the same parties.”).

22 “Claim preclusion bars relitigation of claims that were previously decided or could have
23 been decided in a prior proceeding.” *Green v. Douglas Cty.*, 63 Or LUBA 200, 206 (2011) (citing
24 *Drews v. EBI Companies*, 310 Or 134, 140-41 (1990)); *see also Waxwing Cedar Prod., Ltd. v.*

1 *Koennecke*, 278 Or. 603, 610 (1977) (applying claim preclusion when “the two cases involve the
2 same claim, demand, or cause of action” (quotations omitted)). That is the case here; there is a
3 complete identity of issues and parties between the first incorporation petition and the petition
4 presently before the County.¹ Accordingly, the Incorporation Petition must be dismissed.

5 “Issue preclusion arises in a subsequent proceeding when an issue of ultimate fact has been
6 determined by a valid and final determination in a prior proceeding.” *Nelson v. Emerald People’s*
7 *Util. Dist.*, 318 Or 99, 103 (1993) (citations omitted). Issue preclusion applies when the prior
8 proceeding satisfies five requirements:

- 9 (1) “[t]he issue in the two proceedings is identical”;
- 10 (2) the issue actually was “litigated and was essential to a final decision on the merits
11 in the prior proceeding”;
- 12 (3) “[t]he party sought to be precluded has had a full and fair opportunity to be heard
13 on that issue”;
- 14 (4) “[t]he party sought to be precluded was a party or was in privity with a party to the
15 prior proceeding”; and
- 16 (5) “[t]he prior proceeding was the type of proceeding to which this court will give
17 preclusive effect.”

18 *Barackman v. Anderson*, 338 Or 365, 368 (2005) (*Barackman I*) (quoting *Nelson*, 318 Or at 104).

19 “[T]he party asserting issue preclusion bears the burden of proof on the first, second, and fourth
20

21 ¹ The Oregon Court of Appeals has noted that the claim preclusion may be inapplicable where “an
22 ordinance *specifically permits* [a successive application] to be filed.” *Lawrence v. Clackamas Cnty.*, 180
23 Or. App. 495, 502–03 (2002) (emphasis added). In *Lawrence*, the court thought that a Clackamas County
24 ordinance permitting the refile of a previously denied application in specific circumstances could override
the otherwise applicable doctrine. *See id.* at 503 n.3. The County has such an ordinance, LUO 10.020(6)(d);
however, Petitioners argue that it does not apply to incorporation petitions. Under that theory, the doctrine
of claim preclusion has not been displaced and bars this subsequent petition.

1 factors, after which the party against whom preclusion is asserted has the burden on the third and
2 fifth factors.” *Barackman v. Anderson*, 214 Or App 660, 667 (2007) (*Barackman II*). Petitioner’s
3 second petition satisfies each requirement.

4 The issue presented by the Petitioners’ two incorporation petitions is identical: whether the
5 petition meets the applicable requirements for the County to order an election on the question of
6 whether to incorporate Oceanside as a city. *See, e.g.*, Pets. Preliminary Hrg. Analysis at 1 (“The
7 current petition essentially renews the incorporation proposal evaluated by the Board in the
8 previous hearings.”). The only difference between the two petitions is insignificant and, in any
9 event, illusory. The first petition excluded the Capes, and the current petition includes the Capes.
10 But the inclusion or exclusion of certain property is itself a question to be determined by the
11 proceeding (i.e., it is not an issue that is framed by the petition). *See* ORS § 221.040(2) (requiring
12 the county to determine in the first instance whether to alter the boundaries of the proposed city).
13 Indeed, this actually occurred during the hearings on the first petition, and Petitioner’s failure to
14 properly develop the record on the status of the Capes directly resulted in the County’s denial. *See*
15 *Nelson*, 318 Or. at 104 (requiring that “[t]he issue was actually litigated and was essential to a final
16 decision on the merits in the prior proceeding”). Because Petitioners have filed, by their own
17 admission, an “essentially” identical incorporation petition, the doctrine of issue preclusion
18 compels the dismissal or denial of the instant Incorporation Petition.

19 3. *Alternatively, the County should continue the remaining two hearings to*
20 *provide the Capes with a reasonable opportunity to prepare and present its*
opposition to the current Incorporation Petition.

21 The County, in denying the first incorporation petition, found that the record before it was
22 deficient. To avoid the same result (and, perhaps, a third petition and set of hearings), the County
23 must continue the remaining two hearings on the pending incorporation petition for at least three
24 months. The Capes has retained Mimi Doukas of AKS Engineering & Forestry, LLC to review the

1 Incorporation Petition and prepare a report. Enclosed is a letter from Ms. Doukas describing the
2 time pressure created by the accelerated hearing schedule and the need for a continuance. As she
3 notes, “this schedule does not meet the spirit of Statewide Planning Goal 1 for public
4 participation.”

5 Petitioners oppose the continuance requested by the Capes. They argue that the requested
6 continuance would prohibit the question appearing on the November 2022 ballot. Further, they
7 argue that the Capes’ delay in participating requires denying the request. Neither argument
8 provides an adequate basis to deny the Capes the opportunity to fully participate in this process.

9 The County cannot push forward the incorporation of a new city on a deficient, one-sided
10 record, and the purported need to place the question before the voters during a specific election
11 cannot cure those deficiencies. The incorporation statute itself, by requiring at least 90 days elapse
12 between the order setting the election and the election itself, suggests that the Legislative Assembly
13 would concur. *See* ORS § 221.040(3); *see also* ORS § 221.005 (describing the policy underlying
14 ORS § 221.040 as “provid[ing] for the orderly incorporation [of new cities]”). Further, because an
15 incorporated Oceanside (approved in the November 2022 elections) would be unable to collect
16 city taxes, its budget—and therefore functionality—would be severely curtailed through July 2023.
17 With no pressing need to incorporate (other than Petitioners’ desire to do so), prudence (and state
18 law) compels a slight delay in order to provide the County and all interested parties a full
19 opportunity to participate.

20 Petitioners also argue that the Capes’ delay in participating requires the hearings to proceed
21 as scheduled. Petitioners’ argument rests on the incorrect assertion that the Capes has had
22 knowledge of Petitioners’ incorporation efforts—and, thus, a reason to participate—since
23 November 2021. The first incorporation petition, however, excluded the Capes from the proposed
24 city. While there is a procedure to officially notify and seek the participation of the owners of

1 potentially includable property, it was not used. *See* ORS § 221.040(2) (“If the court determines
2 that any land has been improperly omitted from the proposed city and the owner has not appeared
3 at the hearing, it shall continue the hearing and shall order notice given to the nonappearing owner
4 requiring the owner to appear before it and show cause, if any the owner has, why the owner's land
5 should not be included in the proposed city.”). Petitioners charge the Capes with incurring the
6 expense and time commitment to fully participate in a proceeding that excluded its property.
7 Likewise, Petitioners’ expression of an intent to file a second petition could not have triggered the
8 Capes’ duty to retain counsel and experts. That occurred when Petitioners actually filed the second
9 petition. From that point, the Capes has acted diligently to effectively participate in the pending
10 proceeding.

11 *B. The Proceedings and Denial of the First Incorporation Petition*

12 This proceeding, despite Petitioners attempts to frame it otherwise, is entirely distinct from
13 the proceeding on the first incorporation petition. The County must deny Petitioners’ efforts to
14 expedite this proceeding through reliance on the prior proceeding. Indeed, a contrary conclusion
15 would confirm the application of the preclusion doctrines, *see supra* § I(A)(2), and require the
16 County to dismiss or deny this second petition.

17 *1. The County cannot incorporate the record created during the proceedings*
18 *on the first incorporation petition into the instant proceedings.*

19 Petitioners ask the County to incorporate the entire record for their previous petition, which
20 the County denied, into the record of the present proceeding. *See* Staff Rep. at 2. This amounts to
21 over 480 pages of record material, some of which is irrelevant. The amount of material in the prior
22 record is unsurprising; it resulted from a multi-month process involving three hearings. But its
23 inclusion places an enormous burden on participants the current proceeding, requiring them to not
24 only review and evaluate the likely extensive materials that will be filed in this proceeding but all

1 of those from the prior proceeding. The County should strike the entire record of the prior
2 proceeding from the record and require Petitioners to specifically identify those portions of it on
3 which they intent to rely. Cf. ORS § 197.763(4)(a) (requiring “[a]ll documents or evidence relied
4 upon by the applicant . . . be made available to the public”). If the County declines to do so, it must
5 grant the continuance requested by the Capes to give it “a reasonable opportunity to respond.” See
6 ORS § 197.763(4)(b) (“If additional documents or evidence are provided by any party, the local
7 government may allow a continuance or leave the record open to allow the parties a reasonable
8 opportunity to respond.”).

9 2. *The stipulations reached between Petitioners and the County during the*
10 *proceedings on the first incorporation petition do not control the*
11 *procedures to be applied during the instant proceedings, and the findings*
 adopted by the County in denying the first incorporation petition do not
 bind the County during this new proceeding.

12 Petitioners are attempting to expedite the proceedings on the current incorporation at the
13 expense of the other interested parties by constraining the procedural and substantive issues before
14 the County. The materials submitted by Petitioners are replete with references to issues already
15 decided—stipulations made during the hearings on the first petition and issues already
16 conclusively decided. The purported stipulations are a nullity because they effectively act as ad
17 hoc procedures not adopted by ordinance or otherwise. Likewise, nothing decided by the County
18 in the previous proceeding is conclusively determined, which would deny the participants in the
19 current proceeding an impartial decision-maker.² See *Fasano v. Bd. of Cnty. Comm'rs of*
20 *Washington Cnty.*, 264 Or. 574, 588 (1973) (“Parties at [a quasi-judicial] hearing before the county
21

22 ² Petitioners cannot retain the favorable determinations reached by the County in the prior
23 proceeding and discard the remainder. If some of the prior findings are held conclusively determined, the
24 preclusion doctrines compel the wholesale adoption of the prior decision, resulting in the denial of the
current petition. See *infra* § I(A)(2).

1 governing body are entitled to an opportunity to be heard, to an opportunity to present and rebut
2 evidence, to a tribunal which is impartial in the matter . . . and to a record made and adequate
3 findings executed.”), disapproved of on other grounds by *Neuberger v. City of Portland*, 288 Or.
4 585 (1980).

5 **II. Substantive Objections — The County must exclude the Capes from the boundaries**
6 **of the proposed city, or alternatively, the County must deny the petition *in toto*.**

7 Petitioners ask the County to bifurcate the hearings on their incorporation petition,
8 addressing the inclusion or exclusion of property before moving on to the validity of the
9 incorporation itself. *See* Staff Rep. at 2. Accordingly, the primary focus of this brief will be the
10 lack of “benefit” to the Capes by its inclusion within the boundary proposed city. The limited
11 discussion of the remaining issues will be supplemented by additional briefing before the
12 subsequent hearings.

13 *A. The Capes will not “benefit” from its inclusion in the proposed city, and therefore,*
14 *it must be excluded.*

15 While citizens, in filing an incorporation petition, propose an initial boundary for the city,
16 the County is charged with actually determining the boundaries that will be presented to the voters
17 (assuming the petition is otherwise valid). *See* ORS § 221.040(2) (“The [County] may alter the
18 boundaries as set forth in the petition[.]”). Property must be included within the boundary if it will
19 be “benefited by being included”; property must be excluded if it “will not . . . be benefited.” *Id.*
20 Petitioners have identified several purported benefits that will accrue to the properties within the
21 new city. None, however, are the benefits required by the incorporation statute because they are
22 either not “benefits” or they are benefits that will go unrealized by the Capes.

23 Resolving the inclusion or exclusion of the Capes from the boundaries of the proposed city
24 presents a question of statutory construction: what constitutes a “benefit” as used in ORS
§ 221.040(2). In Oregon, statutes are interpreted with “the paramount goal of discerning the

1 legislature's intent." *State v. Gaines*, 346 Or. 160, 171 (2009); *see also* ORS § 174.020 ("In the
2 construction of a statute, a court shall pursue the intention of the legislature if possible."). In service
3 of that ultimate goal, statutory construction follows the three-step method set out in the seminal
4 Oregon Supreme Court case, *State v. Gaines*, 346 Or. 160 (2009). The tribunal first examines the
5 "text and context" of the phrase. *See id.* at 171 (citing *Portland Gen. Elec. Co. v. Bureau of Labor*
6 *& Indus.*, 317 Or 606, 610–11 (1993)). Second, the tribunal considers any relevant legislative
7 history. *See Gaines*, 346 Or at 171–72. A tribunal will always complete the first two steps, resorting
8 only to the third—"general maxims of statutory construction"—when uncertainty remains. *See id.*
9 at 172. In deciding whether to go on to the third step, a tribunal must determine whether the statute
10 is ambiguous; that is whether it is subject to two or more interpretations that are not "wholly
11 implausible." *State v. Dasa*, 234 Or App 219, 230 (2010) (quotation omitted).

12 While the guiding light of statutory construction is deciphering legislative intent, "there is
13 no more persuasive evidence of the intent of the legislature than the words [of the statute.]" *Gaines*,
14 346 Or at 171; *see also* ORS § 174.010 ("In the construction of a statute, the office of a judge is
15 simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert
16 what has been omitted or to omit what has been inserted."). "[T]ext should not be read in isolation
17 but must be considered in context." *Stevens v. Czerniak*, 336 Or. 392, 401 (2004); *see also Lane*
18 *County v. Land Conservation & Dev. Comm'n*, 325 Or. 569, 578 (1997) ("[W]e do not look at one
19 subsection of a statute in a vacuum; rather, we construe each part together with the other parts in
20 an attempt to produce a harmonious whole.") The context of a statute is not limited to the text-at-
21 issue but "includes other related statutes." *State v. Carr*, 319 Or. 408, 411–12 (1994).

22 The term "benefit" is not defined within the statutory scheme, so it must be given "[its]
23 plain, ordinary meaning[]." *State v. Eastep*, 361 Or. 746, 751 (2017) ("When statutes do not define
24 their terms, we assume that the legislature intended them to have their plain, ordinary meanings.").

1 This generally means referring to a dictionary definition. *See Dep't of Revenue v. Faris*, 345 Or.
2 97, 101 (2008) (“The word ‘certify’ is not statutorily defined. Thus, we look to the dictionary.”)

3 The relevant dictionary definition of “benefit” is “a good or helpful result or effect[.]”
4 Useless, Webster’s Third New Int’l Dictionary, Unabridged (2020 ed.), *available at*
5 <https://unabridged.merriam-webster.com/unabridged/benefit> (accessed June 26, 2022).³ Black’s
6 Law Dictionary offers a similar definition: “The advantage or privilege something gives; the
7 helpful or useful effect something has[.]” Benefit, Black’s Law Dictionary (11th ed. 2019). The
8 surrounding context of the word in the statute provides additional clarification. There must be a
9 causal link between inclusion with the proposed city and the realized “benefit.” *See* ORS
10 § 221.040(2) (“which would be benefited *by the formation* of the proposed city” (emphasis
11 added)). In other words, a “benefit” may not antedate the incorporation of the proposed city or
12 arise independent of its incorporation. Furthermore, a “benefit” must be, to some degree, able to
13 be realized or appreciated by discrete properties. *Cf. McManus v. Skoko*, 255 Or. 374, 379 (1970)
14 (“[T]he legislative purpose was to give the county courts control over the boundaries of the
15 proposed city[.]”). This construction of “benefit” is consistent with the Oregon Court of Appeals’
16 description of an appropriate area for incorporation as one that “may benefit from city functions.”
17 *Millersburg Dev. Corp. v. Mullen*, 14 Or. App. 614, 623 (1973). In sum, a property must be
18 included within the proposed city when that property will realize a helpful or useful effect resulting
19 from the creation of the new city and that effect may be realized by that discrete property. The

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21 _____
22 ³ The Oregon Supreme Court “consults *Webster’s Third* more often than any other dictionary.”
23 *Kohring v. Ballard*, 355 Or 297, 304 n.2 (2014) (This preference “is [most likely] rooted in the assumption
24 that legislatures use words in their ordinary senses, and *Webster’s Third* is a dictionary with a ‘descriptive’
focus, reporting ordinary usage, as opposed to other dictionaries with a ‘prescriptive’ focus, reporting
‘correct’ usage.” (quotation omitted)).

1 creation of a public sewer system is an example of a clear “benefit” under the statute; access to a
2 public park or a feeling of civic pride are not.

3 Broadly, the Capes will not realize any of the purported benefits asserted by Petitioners—
4 and, thus, should be excluded from the proposed city—because of its distance from the core of
5 Oceanside and its structure as a community association. Moreover, the inclusion of the Capes
6 appears to be less about the benefits it would receive and more about shoring up the proposed
7 city’s tax base. That is not a valid basis on which to subject the Capes to inclusion within the
8 proposed city. *Cf. Marion Cnty. Fire Dist. No. 1 v. Marion-Polk Cnty. Boundary Comm’n*, 19 Or.
9 App. 108, 116 (1974) (“The [Oregon Supreme C]ourt held that the obvious purpose was to tax the
10 industry This was held to be an unreasonable exercise of the annexation authority of the
11 city.”).

12 *1. Local control of tourism-related issues.*

13 Petitioners identify several purported benefits involving local resolution of the issues
14 caused by tourism and short-term rentals. Petitioners offer that the proposed city will be able to
15 make effective use of Transient Lodging Tax revenue to make improvements to address those
16 issues. The proposed city will also exercise regulatory and enforcement control over short-term
17 rentals. While these may benefit some property owners—those close to the core of Oceanside—
18 they will not benefit the Capes. As Petitioners ably explained in their Proposed Analysis and
19 Findings filed in the first incorporation proceeding, the structure and location of the Capes makes
20 these a non-issue.

21 The Capes has banned short-term rentals. It is a self-contained, gated community, and it
22 employs its own security service and self manages enforcement of its governing documents. While
23 the Capes might realize some benefit from the general improvements made by the purported city
24

1 in managing tourists and short-term rentals (e.g., less traffic congestion), such benefits are of a
2 general nature, available to the public.

3 2. *Local control of land use planning.*

4 Petitioners argue that the Capes will benefit from the proposed city, rather than the County,
5 being responsible for land use planning. For the reasons given *supra*, the Capes, through its
6 governing documents, already has a robust and development-specific equivalent. Furthermore,
7 land use planning is already ably handled by the County, and the substitution of one government
8 entity for another (when both are presumed competent to administer Oregon's statewide land use
9 goals) is not a cognizable benefit under the statute.

10 3. *Road Maintenance.*

11 Petitioners concede that the Capes, which has a private, self-funded road system, will not
12 benefit from local control of road maintenance.

13 4. *City Amenities.*

14 Petitioners cite the availability of "enhanced municipal; and recreational amenities" that
15 will be funded by the TLT. Petitioners do not list or otherwise describe these purported amenities.
16 In any event, general amenities are not benefits under the statute because they lack a property-
17 specific nexus; instead, they are realizable by the general public.

18 5. *Emergency Preparedness.*

19 Petitioners cite, without explanation or elaboration, "municipal emergency preparedness
20 measures and programs" as a purported benefit. Undefined preparedness measures are not benefits
21 under the statute because they lack a property-specific nexus; instead, they are realizable by the
22 general public.

1 6. *Sewer Eligibility.*

2 Finally, Petitioners argue that the Capes will benefit from its inclusion in the proposed city
3 because it will retain its eligibility to connect to the extant sewer system. Currently, properties
4 within the Oceanside community growth boundary, which includes the Capes, are served by the
5 Netarts-Oceanside Sanitary District. Because the statewide land use goals may not permit the
6 sharing of a community sanitary system between properties included in the proposed city and those
7 outside of its limits, *see infra* § II(B), this purported benefit is more akin to extortion. A statutory
8 benefit cannot be the retention of a service that a property already possesses.

9 In sum, because the Capes will receive no “benefit” as used in ORS § 221.040(2), the
10 County should exclude it from the boundaries of the proposed city.

11 *B. Regardless of the inclusion or exclusion of the Capes, the County must deny the*
12 *Incorporation Petition because it is incompatible with Goal 11.*

13 The County must deny the incorporation petition unless it is “reasonably likely that the
14 newly incorporated city can and will comply with the goals once the city assumes primary
15 responsibility for comprehensive planning in the area to be incorporated.” *1000 Friends of Oregon*
16 *v. Wasco Cnty. Ct.*, 299 Or. 344, 360 (1985). Because the proposed city will continue to share its
17 sanitary sewer system—the Netarts-Oceanside Sanitary District—with the unincorporated area of
18 Netarts, the proposed city will be unable to comply with Goal 11. Furthermore, to the extent that
19 non-compliance prohibits development or the continued use of already-developed land, the County
20 will likely have taken property without just compensation in violation of the constitutions of the
21 United States and Oregon.

22 Currently, the Netarts-Oceanside Sanitary District serves the two unincorporated
23 communities of Netarts and Oceanside. After the incorporation of Oceanside, the District will
24 serve a city and an unincorporated community. Under the administrative rules applying Goal 11,

1 the District will be prohibited from expanding (except in very limited circumstances) anywhere
2 outside of the proposed city's UGB. See OAR 660-011-0060(2)(b), (c). This will, effectively,
3 freeze new development in Netarts. It could also limit the development of the currently
4 undeveloped lots within the Capes.

5 **III. Conclusion**

6 In sum, the Capes respectfully requests that the County issue the following procedural
7 rulings: (1) dismiss the current Incorporation Petition for violating LUO § 10.020(6)(d) or pursuant
8 to the preclusion doctrines; (2) alternatively, continue the remaining hearings for no less than three
9 months to allow the Capes adequate preparation time; and (3) strike or otherwise disregard the
10 record, stipulations, and findings made during the proceeding on the prior incorporation petition.

11 The Capes also respectfully requests that the County either (1) exclude the Capes from the
12 boundaries of the proposed city because it will not benefit from its inclusion or (2) deny in the
13 entirety of the Incorporation Petition because the proposed city will be unable to comply with the
14 statewide land use goals.

15 Dated this 27th day of June, 2022.

VIAL FOTHERINGHAM LLP

17 /s/ Matthew A. Martin
18 Matthew A. Martin, OSB #126314
19 E: Matt.Martin@vf-law.com
20 David M. Phillips, OSB #072620
21 E: david.phillips@vf-law.com
22 17355 SW Boones Ferry Road, Suite A
23 Lake Oswego, OR 97035
24 T: (503) 684-4111
F: (503) 598-7758
E: Matt.Martin@vf-law.com
Of Attorneys for the Capes

June 24, 2022

Via First Class Mail & Electronic Mail



Director Sarah Absher
Dept. of Community Development
1510 B Third Street
Tillamook, Oregon 97141
E: sabsher@co.tillamook.or.us

**RE: No. 851-22-000224-PLNG: Petition for Incorporation of Oceanside
Request to Dismiss Petition or Postpone Scheduled Hearings**

Director Absher:

AKS Engineering and Forestry, LLC (AKS) has been hired by The Capes Homeowners Association (The Capes HOA) regarding the potential incorporation of Oceanside and inclusion of The Capes in the incorporated area.

An initial petition was filed for Oceanside's incorporation that did not include The Capes. This petition was considered by the Tillamook Board of County Commissioners (BOCC) and denied. Shortly thereafter, on June 7, 2022, a new petition was filed that did include The Capes. The County quickly scheduled public hearings on the new petition for June 27, July 13, and July 28, 2022.

The petition includes an Economic Feasibility Study that AKS and The Capes HOA need to review and understand to prepare testimony for the BOCC hearings. The Economic Feasibility Study forms the technical foundation of the proposal, and its large amount of data will take time to review and analyze. With the initial hearing scheduled less than 21 days from the petition filing, not enough time has been left for a technical review of the Economic Feasibility Study. Procedurally, this schedule does not meet the spirit of Statewide Planning Goal 1 for public participation.

The Capes HOA respectfully requests the County postpone the three scheduled hearings for at least three months to allow our team time to review the materials, determine how they will affect members of The Capes HOA, and prepare public testimony. Our team may need to add technical staff, such as an economist, to provide peer review of the report for consideration by BOCC.

Thank you for your attention to this matter. We look forward to discussing this petition at future hearings.

Sincerely,

AKS ENGINEERING & FORESTRY, LLC

A handwritten signature in black ink that reads 'Mimi Doukas'. The signature is written in a cursive, flowing style.

Mimi Doukas, AICP, RLA – Principal
12965 SW Herman Road, Suite 100 | Tualatin, OR 97062
P: 503.563.6151 | MimiD@aks-eng.com

**EXCLUSION
AREA MAP &
TILLAMOOK
COUNTY
ASSESSOR
MAPS**

PROPOSED OCEANSIDE CITY BOUNDARY

PROPOSED NORTH CITY BOUNDARY





"RADAR ROAD"

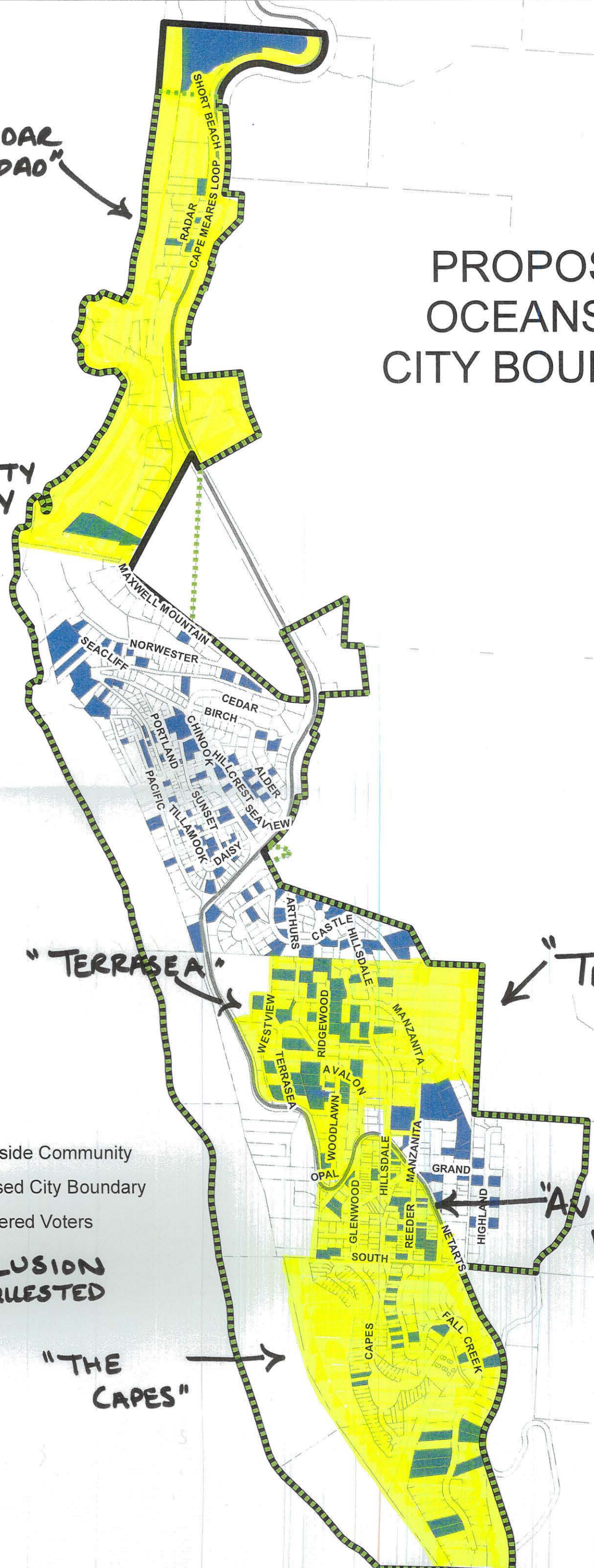
"TERRASEA"

"TRILLIUM"

"AVALON WEST"

"THE CAPES"

-  Oceanside Community
-  Proposed City Boundary
-  Registered Voters
-  EXCLUSION REQUESTED



01S10W30CA
TRILLIUM

CANCELLED:
101
201
202
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108

FOR ASSESSMENT AND TAXATION ONLY, NOT SUITABLE FOR
LEGAL, ENGINEERING, OR SURVEY PURPOSES

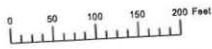
N.E. 1/4 S.W. 1/4 SEC. 30 T. 1S. R. 10W. W.M.
Tillamook County
1" = 100'



PORTIONS OF
P.1,2,3 2000-55 P-604
P.3 2000-52 P-601
P.3 2004-29 P-748

TRILLIUM
01S10W30CA
REVISED 07/18/12, WS

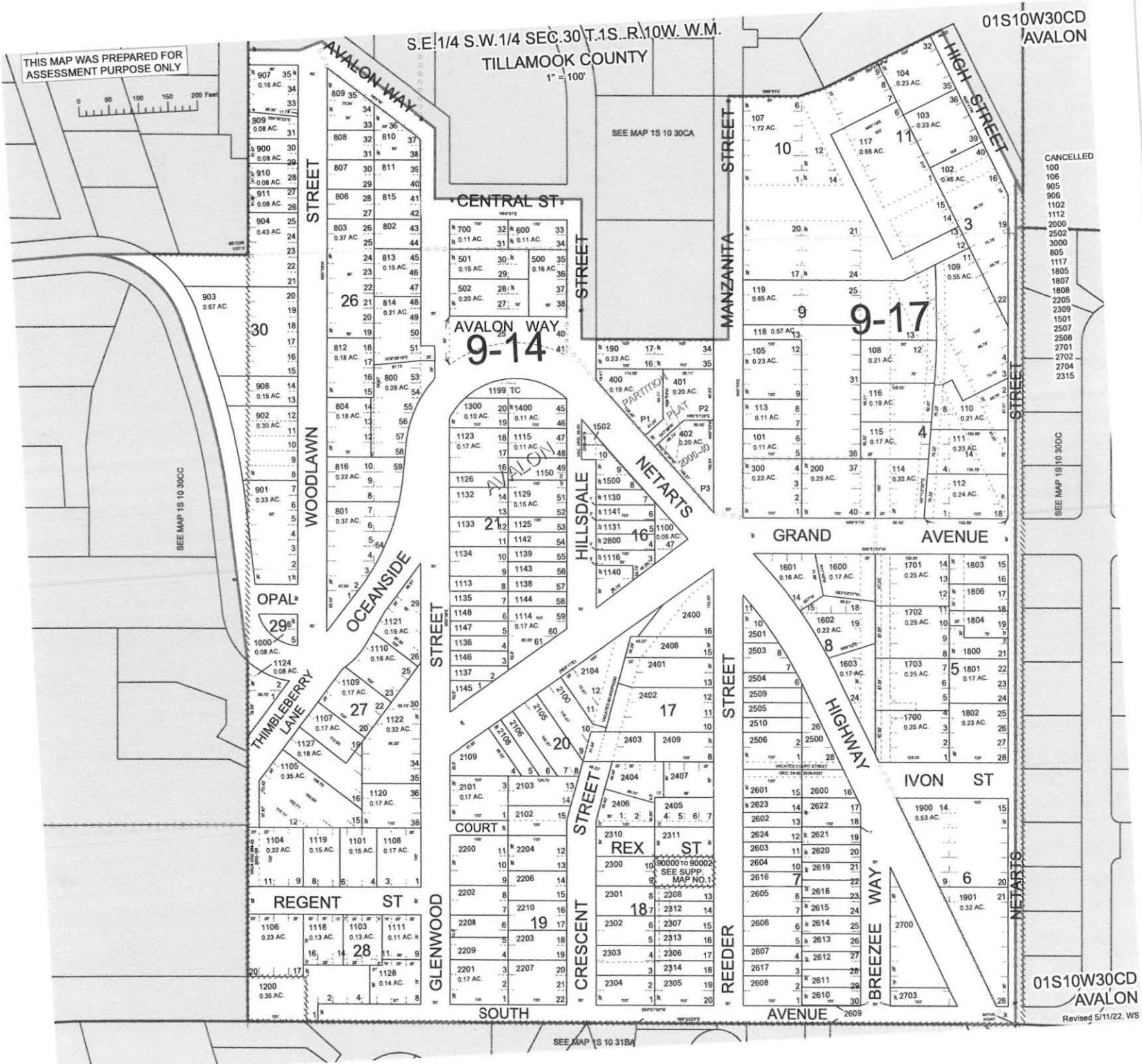
THIS MAP WAS PREPARED FOR
ASSESSMENT PURPOSE ONLY



N.W. 1/4 S.W. 1/4 SEC. 30 T.1S. R.10W. W.M.
TILLAMOOK COUNTY
1" = 100'

01S10W30CB
TERRASEA

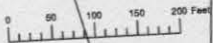




THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSE ONLY

S.E. 1/4 S.W. 1/4 SEC. 30 T.1S. R.10W. W.M.
TILLAMOOK COUNTY

01S10W30CD
AVALON



1" = 100'

CANCELLED
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2315

SEE MAP 1S 10 30DC

SEE MAP 1S 10 30CC

MANZANITA STREET

STREET

CENTRAL ST

AVALON WAY

AVALON WAY

AVALON WAY

AVALON WAY

AVALON WAY

AVALON WAY

AVALON WAY

COURT

REGENT ST

GLENWOOD STREET

SOUTH AVENUE

STREET

HILLSDALE STREET

NETARTS

REX ST

CRESCENT STREET

REEDER STREET

SEE MAP 1S 10 31BA

HIGH STREET

GRAND AVENUE

HIGHWAY

IVON ST

BREEZEE WAY

STREET

NETARTS

01S10W30CD
AVALON

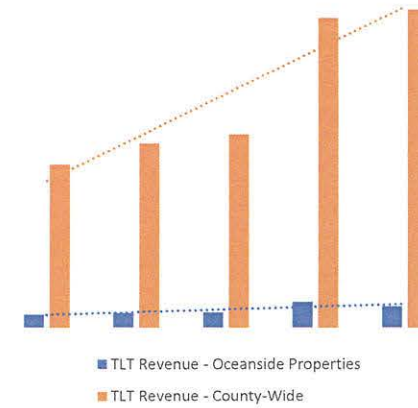
Revised 5/11/22, WS

**TRANSIENT
LODGING TAX
INFORMATION**

Oceanside TLT By Calendar Year

Line	Description	Rate	CY 2018	CY 2019	CY 2020	CY 2021	Projected CY 2022
1	Gross Lodging Receipts		3,830,333	4,314,931	4,480,047	7,499,423	6,161,450
2	Less Long-Term Rentals		(32,212)	(28,965)	(95,037)	(63,931)	(33,500)
3	Net Lodging Receipts		3,798,121	4,285,966	4,385,010	7,435,491	6,127,950
4	Tax	9%	341,831	385,737	394,651	669,194	551,516
5	Less Filer Reimb Fee	5%	(17,092)	(19,287)	(19,733)	(33,460)	(27,576)
6	TLT Revenue - Oceanside Properties		324,739	366,450	374,918	635,735	523,940
7	Year-To-Year Change			13%	2%	70%	-18%
8	TLT Revenue - County-Wide		4,004,485	4,506,518	4,739,265	7,580,585	7,781,830
9	Year-To-Year Change			13%	5%	60%	3%
10	Oceanside TLT Properties:						
	Short-term Rentals		117				
	Hotels		3				
	B&Bs		3				
	Total		123				
11	Short-Term Rental Annual Revenue:						
	Permits		29,250.00				
	(117 @ \$250)						
	Operator License Fees		75,000.00				
	(Max Occupancy @ \$75)						

TLT Revenue by Calendar Year



Oceanside TLT By Fiscal Year

Line	Description	Rate	FY 17-18	FY 18-19	FY 19-20	FY 20-21	Projected FY 21-22
1	Gross Lodging Receipts		3,479,017	4,045,715	3,776,597	6,552,418	7,738,890
2	Less Long-Term Rentals		(25,186)	(28,437)	(50,342)	(83,634)	(70,273)
3	Net Lodging Receipts		3,453,831	4,017,278	3,726,255	6,468,784	7,668,617
4	Tax	9%	310,845	361,555	335,363	582,191	690,176
5	Less Filer Reimb Fee	5%	(15,542)	(18,078)	(16,768)	(29,110)	(34,509)
6	TLT Revenue - Oceanside Properties		295,303	343,477	318,595	553,081	655,667
7	Year-To-Year Change			16%	-7%	74%	19%
8	TLT Revenue - County-Wide		3,685,918	4,234,442	3,870,639	7,113,739	7,716,670
9	Year-To-Year Change			15%	-9%	84%	8%
10	Oceanside TLT Properties:						
	Short-term Rentals	117					
	Hotels	3					
	B&Bs	3					
	Total	123					
11	Short-Term Rental Annual Revenue:						
	Permits	29,250.00					
	(117 @ \$250)						
	Operator License Fees	75,000.00					
	(Max Occupancy @ \$75)						

TLT Revenue by Fiscal Year



**EMAIL FROM
OREGON
DEPARTMENT OF
LAND
CONSERVATION
&
DEVELOPMENT**

Sarah Absher

From: PHIPPS Lisa * DLCD <Lisa.PHIPPS@dlcd.oregon.gov>
Sent: Wednesday, July 6, 2022 2:08 PM
To: Sarah Absher
Subject: EXTERNAL:

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

I caught a typo:

Hello, Sarah,

Thank you for the questions. I can make the BOCC meeting on the July 13th at 1:00pm.

With regard to your questions, see the responses below:

- Goal 11 & 14 Discussion: Confirmation that “The Capes” will retain ability to connect to sewer (both developed and undeveloped lots) if they are not located within either the incorporated city boundary, city UBG or the Netarts Unincorporated Community Boundary given the development was platted when the development was eligible for sewer.

Sewer would be grandfathered in for both developed and undeveloped lots because the development was platted when the development was eligible for sewer.

- You mentioned that “The Capes” being outside of the proposed city boundary or an unincorporated community boundary was problematic, irrespective of the sewer issue. Can you please elaborate?

If they are no longer inside of an UIC or within the proposed city boundary, the issues will be associated with the underlying zone. If I understand correctly, the underlying zone is a rural residential zone (pre-boundary) and not Forest. If people propose to make any future changes, alterations, modifications, etc., to their lots, structures, etc., they will be dealing with being a legal non-conforming use with no guarantees.

- Avalon “West” (1910-1911), Terrasea (1977-1978) and other similar platted subdivision developments are requesting to be excluded from the proposed city boundary for reasons similar to “The Capes” and were platted either prior to or during the very beginning of implementation of a land use program in Tillamook County. Would the continued sewer eligibility also apply to these subdivisions if they were excluded from the city boundary and no longer part of an unincorporated community?

This is an unfortunate development in this process and creates some really weird lines for the proposed city. With that being said, there is no reason that these would be treated any differently than The Capes.

From a land use perspective, relating or not relating to benefits, can you please share any concerns DLCD would have if all of these areas were excluded from the proposed city boundary? Avalon “West” is essentially all of Avalon west of Highway 131, which is a significant area of land between the “village” and “The Capes”. As you are also aware, Terrasea is located in the middle of the Oceanside unincorporated community.

•

There will be multiple legal but non-conforming uses/structures that get created through all of this and a weird boundary for the proposed city.

While The Capes has the opportunity to go within the boundary of Netarts, which we would encourage and support, the other two subdivisions do not have a similar opportunity. I think that this will make land use planning more challenging in these areas and create an odd boundary by having Terrasea surrounded by the city limits.

Please let me know if you need anything else.
Thank you,
Lisa Phipps
Coastal Policy Specialist



Lisa M. Phipps

Coastal Policy Specialist | Ocean/Coastal Services Division
Oregon Department of Land Conservation and Development
Cell: 503-812-5448 |
lisa.phipps@dlcd.oregon.gov | www.oregon.gov/LCD

Please note: I am out of the office on Fridays.

**PUBLIC
TESTIMONY
RECEIVED SINCE
JUNE 20TH
HEARING**

Lynn Tone

From: James Malcheski <jb_malcheski@hotmail.com>
Sent: Friday, June 24, 2022 3:12 PM
To: Lynn Tone
Subject: EXTERNAL: Oceanside Petition for Incorporation

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

To: Lynne Tone, Tillamook County Community Development

We are emailing you to offer our input into the hearing concerning the Petition To Incorporate Oceanside.

We are co-owners of the property at 570 Capes Point (also known as Lot 19) in The Capes. We have been *full-time residents* of The Capes since 2007, whereas the overwhelming majority of owners are non-resident.

Without much input to date, the issues for The Capes seem limited in scope, so we apologize in advance for any redundancy that you may find between this document and others from our community.

We see no reason to oppose the incorporation of Oceanside, except where it has chosen to include The Capes within its proposed city boundary. The Capes is a self-sustaining community that has been effectively managed by its owner-staffed Homeowners Association since its inception. It maintains all of its own roads, boundaries and storm drain system, along with active forest management, and has been a contributing part of the Oceanside Water and Netarts-Oceanside Sanitary districts systems during that entire time. It also has an extensive set of bylaws governing all aspects of the community. We feel that the HOA satisfies the needs of our little community.

Becoming part of the proposed city does not offer any tangible benefits to the owners and residents of The Capes. There are, however, issues that present as disadvantages. One thing that seems certain for the owners of property at The Capes would be an increase in property taxes, without any corresponding benefit. The unknown possibilities include new city laws and regulations and the reasonably certain possibility of ever-increasing taxes of various sorts. And, because of its voting rules, most of the homeowners in The Capes would be excluded from voicing their opinions through that process.

The inclusion of The Capes is certainly not necessary when it comes to Oceanside achieving its goal to incorporate.

The Capes has been a generous contributor to the well-being of the community.

We respectfully ask that you consider our input into this matter.

James B. Malcheski and Suzanne M. Kubalak

Sent from Mail for Windows 10

Lynn Tone

From: Joie Stover <whzurstove1@gmail.com>
Sent: Friday, June 24, 2022 3:35 PM
To: Lynn Tone; Jenny Green
Subject: EXTERNAL: Oceanside Incorporation

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

As Oceanside property owners in The Capes, we are opposed to the Petition to include the community in the proposed city boundary.

1. Our development would not benefit from being included.

* We maintain our own roads, storm water systems, stairs, gate, buildings and common grounds. We have adopted HOA community rules and covenants, which address such things as renting, home maintenance, CC&R's, etc. The Capes has sewer and water services already installed and maintained by the respective districts.

* The Capes property owners would incur an increase in property taxes, an increase in oversight, subjugation to new city laws, and a situation where most homeowners would be excluded from voting on any ballot issues due to part time residency (taxation without representation).

2. There remains the question of "urban services", specifically which sanitary district is included in the proposed city boundary. The Capes should be excluded from incorporation, remain in the sanitary district, and the existing sewer services made available to new homes.

* Existing homeowners and new homeowners should not have different rules around inclusion or exclusion to a sewer system. We believe that once a development is included in a sanitary district, you can not simply refuse service to others in that district.

3. The Capes is being put in a position that we are being forcibly annexed into the city boundary so the city of Oceanside can move forward with their latest Petition. We are opposed to Oceanside, "in this manner", attempting to solve their perceived tourist issues, with their main goal to have better control over rental policies, deal with the influx of tourists, etc. You can not simply change the community boundary.

Thank you,
Doug and Joie Stover
Lot 164, 5 Promontory Ln
Oceanside, OR 97134
(503) 831-1178

Lynn Tone

From: Robert Erickson <robertkerickson@gmail.com>
Sent: Friday, June 24, 2022 8:27 PM
To: Lynn Tone
Subject: EXTERNAL: Incorporation of Oceanside - Written Testimony

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

Tillamook County Commissioners:

We are writing to you as Capes homeowners to express our opposition to the second petition submitted by Oceansiders United for the Incorporation of Oceanside. Our opposition is as follows:

- To include The Capes into an incorporated Oceanside would provide absolutely no benefit to our community. We maintain our own roads, stormwater systems, buildings and common grounds. We have adopted covenants (CC&Rs) which provide for common rules such as renting, home maintenance, etc. The Capes has sewer and water services already installed and maintained by the Oceanside Netarts water and sewer systems. We expect as future homes are constructed here, they should be allowed to connect to existing districts.
- It is our understanding that the Tillamook County Commissioners denied the first petition submitted by Oceansiders United because the proposed tax rate was insufficient to support the services of an incorporated Oceanside. That petition excluded The Capes based upon a mutual agreement between Oceansiders United and The Capes. It seems to us that Oceansiders United has unilaterally reneged on that agreement solely for the purpose of gaining a sufficient number of homes at the expense of The Capes homeowners to increase its tax base.
- Because our homeowner fees already pay for all of the services that would occur as a result of Oceanside's incorporation, The Capes homeowners would have to pay increased taxes that would only be used to benefit Oceanside residents. Since most Capes homeowners are part-time residents and unable to vote on this petition, I am reminded of one of the reasons we fought the British for our independence...No Taxation Without Representation.

We urge you to deny the second petition submitted by Oceansiders United for the incorporation of Oceanside.

Sincerely yours,
Robert K Erickson
Marguerite McNair

Lynn Tone

From: Lynne S <beachdogs@msn.com>
Sent: Saturday, June 25, 2022 8:16 AM
To: Lynn Tone
Cc: Oceanside NA; Jenny Green
Subject: EXTERNAL: I STRONGLY OPPOSE including The Capes in the Oceanside Incorporation

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

Thank you Ms. Tone for considering my input on the topic of The Capes being included in the new Oceanside Incorporation proposal.

My name is Lynne Styles and I am a part time, original homeowner at The Capes since 1996 (26 years). I usually spend complete summers there and other extended visits year round. I have watched over the years and seen that Tillamook County really doesn't care about our community, even to the point of some residents "wishing" we would fall into the ocean when we had slides 25 years ago. I have never seen any of the Commissioners care about our community, yet they like to levy taxes and fees on us (water consumption determined by the value of our homes) whenever they can. They know that many of our residents are part-time and therefore CAN'T vote in Tillamook County. That makes us fair game for yet another tax on our community without ANY benefit to our owners.

I have been following this incorporation project from the beginning and have communicated with Jerry Keene several times via email. I fully support incorporation of Oceanside WITHOUT INCLUDING THE CAPES. My opinion is that the County only cares about Oceanside's tourism and short term rental revenues. Once again, I feel like this is taxation without representation by including The Capes. If we were a timber company or dairy farm they would listen to us in a fair and unbiased manner since those are the entities that line the county's coffers.

AGAIN, I STRONGLY OPPOSE INCLUDING THE CAPES IN ANY OCEANSIDE INCORPORATION PLANS!

Sent from [Mail](#) for Windows

Lynn Tone

From: len chaitin <eljayinv@gmail.com>
Sent: Saturday, June 25, 2022 8:23 AM
To: Lynn Tone
Subject: EXTERNAL: incorporation

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

to the Tillamook commissioners:

I am a full time resident of Tillamook county. I live in the so-called Camelot area. I would like to share my opinion regarding the petition to incorporate Oceanside as a city.

I, and many of my friends and neighbors, are dead set against this idea. Here are a few of the reasons why it make no sense to even consider such nonsense:

Nothing in either the original petition, the revised petition, or the current petition provides anything that the county either already does, or could do. Nothing.

Incorporation would increase our tax burden for no benefit other than to empower the petitioners. This is especially onerous now, We already have soaring costs of essentials, plus property values will be revised upwards, and the new tax proposed is based on assessed property values. This would really hurt..

Many people here are not full time residents - they have second homes or rental properties in the area. They are registered to vote in whatever area their primary residence is. Thus, they have no say on incorporation, but would have to bear the added burden. This is clearly a case of "taxation without representation".

There are many not mentioned that are associated with incorporation, such as, equipment purchases, added personnel, and added facilities. These hidden additional costs would, of course, be funded by additional taxes on us.

please do what you did last go-around - deny this petition.

Thank you for your attention to this letter

Len Chaitin.

June 25, 2020

Via email – ltone@co.tillamook.or.us

Lynn Tone
Tillamook County Community Development Office

RE: Second Petition for the Incorporation of Oceanside
#851-22-000224-PLNG
Verbal Comments to be Read at June 27, 2022 Hearing

Dear Tillamook County Commissioners:

My wife and I are owners of property within The Capes development (230 Capes Dr., Oceanside). We are opposed to including The Capes in the above-referenced petition. As you know, our development was not interested in the effort to incorporate Oceanside and our community was excluded in the first petition. For many of the same reasons, we are opposed to The Capes being included in the second petition.

We see no benefit being included within an incorporated City of Oceanside. We maintain our own roads, storm water systems, building and common grounds for which we pay HOA fees. The Capes is governed by community rules and covenants (CC&Rs) that are administered through our homeowners association. The status quo works quite well. Conversely, including The Capes within a City of Oceanside would result in an increase in property taxes, new bureaucratic oversight and city laws. Moreover, due to our part-time residency at The Capes, we would be excluded from voting on city ballot issues.

Thank you for your consideration.

Respectfully Submitted,



Lawrence Frank



Merry Gilbertson

Cc: Jenny Green – The Capes Manager

Lynn Tone

From: David Yamamoto
Sent: Sunday, June 26, 2022 2:39 PM
To: Lynn Tone
Subject: Fwd: EXTERNAL: Oceanside Incorporation

FYI

David Yamamoto
Tillamook County Commissioner
dyamamoto@co.tillamook.or.us
201 Laurel Avenue
Tillamook, OR. 97141
503.842.3403 (W)
503.701.1235 (C)

sent from Galaxy Tab 6

From: Rob Hoeper <robhoeper@aol.com>
Sent: Sunday, June 26, 2022 8:53:40 AM
To: David Yamamoto <dyamamoto@co.tillamook.or.us>
Subject: EXTERNAL: Oceanside Incorporation

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

Commissioner Yamamoto,

Thank you for scheduling the upcoming hearings on the Oceansiders United petition for incorporation.

I am a full-time resident of Oceanside residing at 1800 Maxwell Mountain Road. I wrote a letter supporting the incorporation petition during the first set of hearings. I remain strongly in support of allowing Oceansiders to have the chance to vote on the initiative in November for the same reasons I voiced earlier (local control of funds, land use decisions, building standards). The County's recent pause on short term rental licenses only adds to the need for Oceanside to be allowed the chance to weigh the pros and cons of STR's and act accordingly with input from all local land owners.

Finally, I have worked closely with the amazing team of folks preparing the materials needed to meet the statutory requirements for incorporation. I don't believe they have left any stone unturned and have more than met the requirements.

Again, thank you for the opportunity for us to give a voice to this important issue.

Rob Hoeper
1800 Maxwell Mountain
Oceanside

Lynn Tone

From: Mary Flock <mbflock@msn.com>
Sent: Sunday, June 26, 2022 6:50 PM
To: Lynn Tone
Subject: EXTERNAL: Testimony in support of Oceanside Incorporation

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

Please include our testimony in support of the Oceanside Incorporation in the record for the hearings.

DATE: June 27, 2022
To: Commissioners Bell, Skaar and Yamamoto
SUBJECT: Testimony in support of Oceanside Incorporation

We believe Oceanside deserves the right to a vote on incorporation. Our previous letters dated January 17, 2022 and February 7, 2022 in support of incorporation are already in the record.

When we bought our home 24 years ago, there were 0 vacation rentals in our Camelot neighborhood, just a few long-term rentals. Today there are 9 vacation rentals on Castle Dr., S. Castle Dr., Mordred Ct., and Arthurs Rd. which doesn't sound like a lot, but it is almost 20% of the existing homes. Real estate agents are encouraging potential sellers to get short term rental licenses because that's what buyers want and when new homes are built on the more than a dozen empty lots in Camelot, some become vacation rentals too. Vacation rentals are here to stay, but if this proliferation continues, there will be no such thing as a neighbor. Tillamook County paused short term rental licenses in response to the huge surge, but an incorporated Oceanside, not Tillamook County, would be in a better position with neighborhood involvement to monitor and control vacation rentals.

Because Oceanside was not incorporated, we were excluded from discussions regarding the demolition of The Cabins to build a new hotel. We only got a foot in the door because several Oceansiders are NOSD board members. When the Anchor Tavern was replaced years ago, Tillamook County only did a "minor review", even though the footprint of the building increased 25%, the new building was effectively twice as tall as the old structure and Oceansiders had organized to protest it, but to no avail. An incorporated Oceanside would have a seat at the table on planning decisions and would involve all Oceansiders.

Currently Pacific City has a multi-million dollar project funded by TLT to benefit tourists and residents, but they didn't have to submit any kind of grant application and Tillamook County is managing the entire project including buying land, hiring engineers, and reporting progress on a web site. Oceanside is 2nd only to Pacific City in generating TLT, yet we are supposed to compete with all of Tillamook County for grants to get a share of our own money and we have been consistently short-changed on the portion of TLT that was supposed to be used for roads. An incorporated Oceanside, would work within TLT regulations and make decisions about how to use our own TLT in a way that benefits tourists and residents.

Some neighborhoods, like The Capes, get to enjoy all the great things about Oceanside without having to experience any of the downside of living in a vacation destination. Some neighborhoods have roads that are new, not decades-old, narrow lanes. But we were all drawn to live in this beautiful, unique place and it's up to all of us to protect it. The \$.80 per thousand of tax-assessed values is an additional expense, but it is necessary if Oceanside is going to have a voice in its own future. When we voted for the new sewer, we weren't thrilled to increase our tax bill 20% (now 16%), but it was necessary to replace the failing sewer plan and provide for growth. Only registered voters in Oceanside got to vote on the new sewer even though all

developed and undeveloped properties were affected and only registered voters in Oceanside will get to vote on incorporation. This is not "unfair"; this is just how it works. All Oceansiders regardless of voter registration are members of and have a voice in the Oceanside Neighborhood Association which exists as an advisory committee for Tillamook County and after incorporation, would continue to exist but as an advisory board to the City of Oceanside.

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BEFORE THE BOARD OF COMMISSIONERS FOR THE
COUNTY OF TILLAMOOK, OREGON

In re:

PETITION TO INCORPORATE
OCEANSIDE

Matter No. 851-22-000224-PLNG

Hearing Date: June 27, 2022

THE CAPES' FIRST HEARING BRIEF

Petitioners sought and—were denied—an order from the County calling an election on the incorporation of the City of Oceanside, the boundaries of which would have excluded the Capes Homeowners Association. Petitioners quickly filed a second petition calling for the incorporation of the City of Oceanside, one that is almost identical in substance to their first petition except for its inclusion of the Capes. Land use planning, which includes the statutory incorporation process, is not an iterative process, one countenancing repeat attempts to achieve the same goal. But even more offensive to the land use process and its objectives is denying objectors, such as the Capes, a full and fair opportunity to be heard. The current petition violates both, and the County should dismiss it or, alternatively, continue the remaining hearings for no less than three months.

1 Procedural irregularities aside, the petition fails on the merits. The Capes will not benefit
2 from its forced inclusion in the proposed city because the purported benefits identified by
3 Petitioners are either without substance or are already extant in the absence of the proposed city.
4 As such, the Capes must be excluded the city's proposed boundaries. In any event, the
5 incorporation petition as a whole must be denied because the proposed city will be unable to
6 comply with Oregon's land use goals. Accordingly, the County must deny the incorporation
7 petition outright or, alternatively, must exclude the Capes from the proposed city.

8 **I. Procedural Objections — The County must dismiss the pending Incorporation
9 Petition or, alternatively, continue the hearings.**

10 *A. The Capes' Motion to Dismiss*

11 The Capes, by letter dated June 17, 2022, moved to dismiss the Incorporation Petition or,
12 alternatively, continue the hearings for at least three months. Petitioners filed a response, by letter
13 dated June 21, 2022, arguing against those outcomes.

14 *1. The County cannot, pursuant to Land Use Ordinance § 10.020(6)(d), hear
15 the current Incorporation Petition because not more than six months have
16 elapsed since the County's denial of the previous petition. The County must
17 dismiss this petition.*

18 Even assuming that the language used in Article X, and LUO § 10.020(6)(d), do not
19 compel the County to dismiss the Incorporation Petition, it is required to do so regardless. The
20 classification of a decision as either quasi-judicial or legislative under *Strawberry Hill 4-Wheelers*
21 *v. Board of Comm.*, 287 Or 591 (1979) can compel a local government to apply its relevant decision
22 framework. *See Van Dyke v. Yamhill Cty.*, 78 Or LUBA 530, 535–36 (2018) (“[U]nder state law
23 the decision must be viewed as a quasi-judicial decision[.] . . . [Accordingly,] the county erred in
24 processing the application under its legislative rather than its quasi-judicial procedures.”). As
recognized by the County in its Order denying Petitioner's first incorporation petition, this type of
proceeding is quasi-judicial. *See 1000 Friends of Oregon v. Wasco Cnty. Ct.*, 80 Or. App. 532, 537

1 (1986) (“We hold that the county's action on the incorporation petition was quasi-judicial.”), *rev'd*
2 *on other grounds*, 304 Or. 76 (1987). As such, the County must apply its quasi-judicial procedures
3 to the instant petition. Those procedures include LUO § 10.020(6)(d).

4 Furthermore, the County should exercise its discretion to apply Article X, and LUO
5 § 10.020(6)(d), to incorporation proceedings. “[W]here the code does not provide procedures or
6 standards governing a specific decision, a local government may, consistent with the due process
7 clause, essentially borrow procedures and standards applicable to other types of decisions.” *Emami*
8 *v. City of Lake Oswego*, 52 Or LUBA 18, 29 (2006). This is consistent with the LUO’s expansive
9 definition of its own scope, which includes “[a]ny application . . . based upon any State . . .
10 regulation.” LUO § 1.030(2) (stating that such any such application “shall constitute an application
11 . . . pursuant to [the LUO]”). Moreover, it would further the purpose of Article X to “establish
12 *standard decision-making procedures*[.]” LUO 10.010(1).

13 2. *The current incorporation petition must be denied because of the doctrines*
14 *of claim and issue preclusion because it is effectively identical to the first*
incorporation petition, which the County denied.

15 Even accepting Petitioners’ argument that LUO § 10.020(6)(d) does not apply, the County
16 must still dismiss or deny their petition. Petitioners have already had a full and fair opportunity to
17 litigate the same issues presented in the current Incorporation Petition. They lost. The doctrines of
18 claim and issue preclusion prohibit Petitioners from re-litigating that loss by filing this second
19 petition (or any successive petitions). *See, e.g., Johnson & Lechman-Su, P.C. v. Sternberg*, 272
20 Or. App. 243, 246 (2015) (“[I]ssue preclusion operates to prevent the relitigation of issues that
21 have been fully litigated in a prior proceeding between the same parties.”).

22 “Claim preclusion bars relitigation of claims that were previously decided or could have
23 been decided in a prior proceeding.” *Green v. Douglas Cty.*, 63 Or LUBA 200, 206 (2011) (citing
24 *Drews v. EBI Companies*, 310 Or 134, 140-41 (1990)); *see also Waxwing Cedar Prod., Ltd. v.*

1 *Koennecke*, 278 Or. 603, 610 (1977) (applying claim preclusion when “the two cases involve the
2 same claim, demand, or cause of action” (quotations omitted)). That is the case here; there is a
3 complete identity of issues and parties between the first incorporation petition and the petition
4 presently before the County.¹ Accordingly, the Incorporation Petition must be dismissed.

5 “Issue preclusion arises in a subsequent proceeding when an issue of ultimate fact has been
6 determined by a valid and final determination in a prior proceeding.” *Nelson v. Emerald People’s*
7 *Util. Dist.*, 318 Or 99, 103 (1993) (citations omitted). Issue preclusion applies when the prior
8 proceeding satisfies five requirements:

- 9 (1) “[t]he issue in the two proceedings is identical”;
- 10 (2) the issue actually was “litigated and was essential to a final decision on the merits
11 in the prior proceeding”;
- 12 (3) “[t]he party sought to be precluded has had a full and fair opportunity to be heard
13 on that issue”;
- 14 (4) “[t]he party sought to be precluded was a party or was in privity with a party to the
15 prior proceeding”; and
- 16 (5) “[t]he prior proceeding was the type of proceeding to which this court will give
17 preclusive effect.”

18 *Barackman v. Anderson*, 338 Or 365, 368 (2005) (*Barackman I*) (quoting *Nelson*, 318 Or at 104).

19 “[T]he party asserting issue preclusion bears the burden of proof on the first, second, and fourth
20

21 ¹ The Oregon Court of Appeals has noted that the claim preclusion may be inapplicable where “an
22 ordinance *specifically permits* [a successive application] to be filed.” *Lawrence v. Clackamas Cnty.*, 180
23 Or. App. 495, 502–03 (2002) (emphasis added). In *Lawrence*, the court thought that a Clackamas County
24 ordinance permitting the refiling of a previously denied application in specific circumstances could override
the otherwise applicable doctrine. *See id.* at 503 n.3. The County has such an ordinance, LUO 10.020(6)(d);
however, Petitioners argue that it does not apply to incorporation petitions. Under that theory, the doctrine
of claim preclusion has not been displaced and bars this subsequent petition.

1 factors, after which the party against whom preclusion is asserted has the burden on the third and
2 fifth factors.” *Barackman v. Anderson*, 214 Or App 660, 667 (2007) (*Barackman II*). Petitioner’s
3 second petition satisfies each requirement.

4 The issue presented by the Petitioners’ two incorporation petitions is identical: whether the
5 petition meets the applicable requirements for the County to order an election on the question of
6 whether to incorporate Oceanside as a city. *See, e.g.*, Pets. Preliminary Hrg. Analysis at 1 (“The
7 current petition essentially renews the incorporation proposal evaluated by the Board in the
8 previous hearings.”). The only difference between the two petitions is insignificant and, in any
9 event, illusory. The first petition excluded the Capes, and the current petition includes the Capes.
10 But the inclusion or exclusion of certain property is itself a question to be determined by the
11 proceeding (i.e., it is not an issue that is framed by the petition). *See* ORS § 221.040(2) (requiring
12 the county to determine in the first instance whether to alter the boundaries of the proposed city).
13 Indeed, this actually occurred during the hearings on the first petition, and Petitioner’s failure to
14 properly develop the record on the status of the Capes directly resulted in the County’s denial. *See*
15 *Nelson*, 318 Or. at 104 (requiring that “[t]he issue was actually litigated and was essential to a final
16 decision on the merits in the prior proceeding”). Because Petitioners have filed, by their own
17 admission, an “essentially” identical incorporation petition, the doctrine of issue preclusion
18 compels the dismissal or denial of the instant Incorporation Petition.

19 3. *Alternatively, the County should continue the remaining two hearings to*
20 *provide the Capes with a reasonable opportunity to prepare and present its*
opposition to the current Incorporation Petition.

21 The County, in denying the first incorporation petition, found that the record before it was
22 deficient. To avoid the same result (and, perhaps, a third petition and set of hearings), the County
23 must continue the remaining two hearings on the pending incorporation petition for at least three
24 months. The Capes has retained Mimi Doukas of AKS Engineering & Forestry, LLC to review the

1 Incorporation Petition and prepare a report. Enclosed is a letter from Ms. Doukas describing the
2 time pressure created by the accelerated hearing schedule and the need for a continuance. As she
3 notes, “this schedule does not meet the spirit of Statewide Planning Goal 1 for public
4 participation.”

5 Petitioners oppose the continuance requested by the Capes. They argue that the requested
6 continuance would prohibit the question appearing on the November 2022 ballot. Further, they
7 argue that the Capes’ delay in participating requires denying the request. Neither argument
8 provides an adequate basis to deny the Capes the opportunity to fully participate in this process.

9 The County cannot push forward the incorporation of a new city on a deficient, one-sided
10 record, and the purported need to place the question before the voters during a specific election
11 cannot cure those deficiencies. The incorporation statute itself, by requiring at least 90 days elapse
12 between the order setting the election and the election itself, suggests that the Legislative Assembly
13 would concur. *See* ORS § 221.040(3); *see also* ORS § 221.005 (describing the policy underlying
14 ORS § 221.040 as “provid[ing] for the orderly incorporation [of new cities]”). Further, because an
15 incorporated Oceanside (approved in the November 2022 elections) would be unable to collect
16 city taxes, its budget—and therefore functionality—would be severely curtailed through July 2023.
17 With no pressing need to incorporate (other than Petitioners’ desire to do so), prudence (and state
18 law) compels a slight delay in order to provide the County and all interested parties a full
19 opportunity to participate.

20 Petitioners also argue that the Capes’ delay in participating requires the hearings to proceed
21 as scheduled. Petitioners’ argument rests on the incorrect assertion that the Capes has had
22 knowledge of Petitioners’ incorporation efforts—and, thus, a reason to participate—since
23 November 2021. The first incorporation petition, however, excluded the Capes from the proposed
24 city. While there is a procedure to officially notify and seek the participation of the owners of

1 potentially includable property, it was not used. *See* ORS § 221.040(2) (“If the court determines
2 that any land has been improperly omitted from the proposed city and the owner has not appeared
3 at the hearing, it shall continue the hearing and shall order notice given to the nonappearing owner
4 requiring the owner to appear before it and show cause, if any the owner has, why the owner's land
5 should not be included in the proposed city.”). Petitioners charge the Capes with incurring the
6 expense and time commitment to fully participate in a proceeding that excluded its property.
7 Likewise, Petitioners’ expression of an intent to file a second petition could not have triggered the
8 Capes’ duty to retain counsel and experts. That occurred when Petitioners actually filed the second
9 petition. From that point, the Capes has acted diligently to effectively participate in the pending
10 proceeding.

11 *B. The Proceedings and Denial of the First Incorporation Petition*

12 This proceeding, despite Petitioners attempts to frame it otherwise, is entirely distinct from
13 the proceeding on the first incorporation petition. The County must deny Petitioners’ efforts to
14 expedite this proceeding through reliance on the prior proceeding. Indeed, a contrary conclusion
15 would confirm the application of the preclusion doctrines, *see supra* § I(A)(2), and require the
16 County to dismiss or deny this second petition.

17 *1. The County cannot incorporate the record created during the proceedings*
18 *on the first incorporation petition into the instant proceedings.*

19 Petitioners ask the County to incorporate the entire record for their previous petition, which
20 the County denied, into the record of the present proceeding. *See* Staff Rep. at 2. This amounts to
21 over 480 pages of record material, some of which is irrelevant. The amount of material in the prior
22 record is unsurprising; it resulted from a multi-month process involving three hearings. But its
23 inclusion places an enormous burden on participants the current proceeding, requiring them to not
24 only review and evaluate the likely extensive materials that will be filed in this proceeding but all

1 of those from the prior proceeding. The County should strike the entire record of the prior
2 proceeding from the record and require Petitioners to specifically identify those portions of it on
3 which they intent to rely. *Cf.* ORS § 197.763(4)(a) (requiring “[a]ll documents or evidence relied
4 upon by the applicant . . . be made available to the public”). If the County declines to do so, it must
5 grant the continuance requested by the Capes to give it “a reasonable opportunity to respond.” *See*
6 ORS § 197.763(4)(b) (“If additional documents or evidence are provided by any party, the local
7 government may allow a continuance or leave the record open to allow the parties a reasonable
8 opportunity to respond.”).

9 2. *The stipulations reached between Petitioners and the County during the*
10 *proceedings on the first incorporation petition do not control the*
11 *procedures to be applied during the instant proceedings, and the findings*
12 *adopted by the County in denying the first incorporation petition do not*
13 *bind the County during this new proceeding.*

14 Petitioners are attempting to expedite the proceedings on the current incorporation at the
15 expense of the other interested parties by constraining the procedural and substantive issues before
16 the County. The materials submitted by Petitioners are replete with references to issues already
17 decided—stipulations made during the hearings on the first petition and issues already
18 conclusively decided. The purported stipulations are a nullity because they effectively act as ad
19 hoc procedures not adopted by ordinance or otherwise. Likewise, nothing decided by the County
20 in the previous proceeding is conclusively determined, which would deny the participants in the
21 current proceeding an impartial decision-maker.² *See Fasano v. Bd. of Cnty. Comm'rs of*
Washington Cnty., 264 Or. 574, 588 (1973) (“Parties at [a quasi-judicial] hearing before the county

22 ² Petitioners cannot retain the favorable determinations reached by the County in the prior
23 proceeding and discard the remainder. If some of the prior findings are held conclusively determined, the
24 preclusion doctrines compel the wholesale adoption of the prior decision, resulting in the denial of the
current petition. *See infra* § I(A)(2).

1 governing body are entitled to an opportunity to be heard, to an opportunity to present and rebut
2 evidence, to a tribunal which is impartial in the matter . . . and to a record made and adequate
3 findings executed.”), disapproved of on other grounds by *Neuberger v. City of Portland*, 288 Or.
4 585 (1980).

5 **II. Substantive Objections — The County must exclude the Capes from the boundaries
6 of the proposed city, or alternatively, the County must deny the petition *in toto*.**

7 Petitioners ask the County to bifurcate the hearings on their incorporation petition,
8 addressing the inclusion or exclusion of property before moving on to the validity of the
9 incorporation itself. *See* Staff Rep. at 2. Accordingly, the primary focus of this brief will be the
10 lack of “benefit” to the Capes by its inclusion within the boundary proposed city. The limited
11 discussion of the remaining issues will be supplemented by additional briefing before the
12 subsequent hearings.

13 *A. The Capes will not “benefit” from its inclusion in the proposed city, and therefore,
14 it must be excluded.*

15 While citizens, in filing an incorporation petition, propose an initial boundary for the city,
16 the County is charged with actually determining the boundaries that will be presented to the voters
17 (assuming the petition is otherwise valid). *See* ORS § 221.040(2) (“The [County] may alter the
18 boundaries as set forth in the petition[.]”). Property must be included within the boundary if it will
19 be “benefited by being included”; property must be excluded if it “will not . . . be benefited.” *Id.*
20 Petitioners have identified several purported benefits that will accrue to the properties within the
21 new city. None, however, are the benefits required by the incorporation statute because they are
22 either not “benefits” or they are benefits that will go unrealized by the Capes.

23 Resolving the inclusion or exclusion of the Capes from the boundaries of the proposed city
24 presents a question of statutory construction: what constitutes a “benefit” as used in ORS
§ 221.040(2). In Oregon, statutes are interpreted with “the paramount goal of discerning the

1 legislature's intent.” *State v. Gaines*, 346 Or. 160, 171 (2009); *see also* ORS § 174.020 (“In the
2 construction of a statute, a court shall pursue the intention of the legislature if possible.”). In service
3 of that ultimate goal, statutory construction follows the three-step method set out in the seminal
4 Oregon Supreme Court case, *State v. Gaines*, 346 Or. 160 (2009). The tribunal first examines the
5 “text and context” of the phrase. *See id.* at 171 (citing *Portland Gen. Elec. Co. v. Bureau of Labor*
6 *& Indus.*, 317 Or 606, 610–11 (1993)). Second, the tribunal considers any relevant legislative
7 history. *See Gaines*, 346 Or at 171–72. A tribunal will always complete the first two steps, resorting
8 only to the third—“general maxims of statutory construction”—when uncertainty remains. *See id.*
9 at 172. In deciding whether to go on to the third step, a tribunal must determine whether the statute
10 is ambiguous; that is whether it is subject to two or more interpretations that are not “wholly
11 implausible.” *State v. Dasa*, 234 Or App 219, 230 (2010) (quotation omitted).

12 While the guiding light of statutory construction is deciphering legislative intent, “there is
13 no more persuasive evidence of the intent of the legislature than the words [of the statute.]” *Gaines*,
14 346 Or at 171; *see also* ORS § 174.010 (“In the construction of a statute, the office of a judge is
15 simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert
16 what has been omitted or to omit what has been inserted.”). “[T]ext should not be read in isolation
17 but must be considered in context.” *Stevens v. Czerniak*, 336 Or. 392, 401 (2004); *see also Lane*
18 *County v. Land Conservation & Dev. Comm’n*, 325 Or. 569, 578 (1997) (“[W]e do not look at one
19 subsection of a statute in a vacuum; rather, we construe each part together with the other parts in
20 an attempt to produce a harmonious whole.”) The context of a statute is not limited to the text-at-
21 issue but “includes other related statutes.” *State v. Carr*, 319 Or. 408, 411–12 (1994).

22 The term “benefit” is not defined within the statutory scheme, so it must be given “[its]
23 plain, ordinary meaning[.]” *State v. Eastep*, 361 Or. 746, 751 (2017) (“When statutes do not define
24 their terms, we assume that the legislature intended them to have their plain, ordinary meanings.”).

1 This generally means referring to a dictionary definition. *See Dep't of Revenue v. Faris*, 345 Or.
2 97, 1 (2008) (“The word ‘certify’ is not statutorily defined. Thus, we look to the dictionary.”)

3 The relevant dictionary definition of “benefit” is “a good or helpful result or effect[.]”
4 Useless, Webster’s Third New Int’l Dictionary, Unabridged (2020 ed.), *available at*
5 <https://unabridged.merriam-webster.com/unabridged/benefit> (accessed June 26, 2022).³ Black’s
6 Law Dictionary offers a similar definition: “The advantage or privilege something gives; the
7 helpful or useful effect something has[.]” Benefit, Black’s Law Dictionary (11th ed. 2019). The
8 surrounding context of the word in the statute provides additional clarification. There must be a
9 causal link between inclusion with the proposed city and the realized “benefit.” *See* ORS
10 § 221.040(2) (“which would be benefited *by the formation* of the proposed city” (emphasis
11 added)). In other words, a “benefit” may not antedate the incorporation of the proposed city or
12 arise independent of its incorporation. Furthermore, a “benefit” must be, to some degree, able to
13 be realized or appreciated by discrete properties. *Cf. McManus v. Skoko*, 255 Or. 374, 379 (1970)
14 (“[T]he legislative purpose was to give the county courts control over the boundaries of the
15 proposed city[.]”). This construction of “benefit” is consistent with the Oregon Court of Appeals’
16 description of an appropriate area for incorporation as one that “may benefit from city functions.”
17 *Millersburg Dev. Corp. v. Mullen*, 14 Or. App. 614, 623 (1973). In sum, a property must be
18 included within the proposed city when that property will realize a helpful or useful effect resulting
19 from the creation of the new city and that effect may be realized by that discrete property. The

20 _____
21 ³ The Oregon Supreme Court “consults *Webster’s Third* more often than any other dictionary.”
22 *Kohring v. Ballard*, 355 Or 297, 304 n.2 (2014) (This preference “is [most likely] rooted in the assumption
23 that legislatures use words in their ordinary senses, and *Webster’s Third* is a dictionary with a ‘descriptive’
24 focus, reporting ordinary usage, as opposed to other dictionaries with a ‘prescriptive’ focus, reporting
‘correct’ usage.” (quotation omitted)).

1 creation of a public sewer system is an example of a clear “benefit” under the statute; access to a
2 public park or a feeling of civic pride are not.

3 Broadly, the Capes will not realize any of the purported benefits asserted by Petitioners—
4 and, thus, should be excluded from the proposed city—because of its distance from the core of
5 Oceanside and its structure as a community association. Moreover, the inclusion of the Capes
6 appears to be less about the benefits it would receive and more about shoring up the proposed
7 city’s tax base. That is not a valid basis on which to subject the Capes to inclusion within the
8 proposed city. *Cf. Marion Cnty. Fire Dist. No. 1 v. Marion-Polk Cnty. Boundary Comm’n*, 19 Or.
9 App. 98, 116 (1974) (“The [Oregon Supreme C]ourt held that the obvious purpose was to tax the
10 industry This was held to be an unreasonable exercise of the annexation authority of the
11 city.”).

12 *I. Local control of tourism-related issues.*

13 Petitioners identify several purported benefits involving local resolution of the issues
14 caused by tourism and short-term rentals. Petitioners offer that the proposed city will be able to
15 make effective use of Transient Lodging Tax revenue to make improvements to address those
16 issues. The proposed city will also exercise regulatory and enforcement control over short-term
17 rentals. While these may benefit some property owners—those close to the core of Oceanside—
18 they will not benefit the Capes. As Petitioners ably explained in their Proposed Analysis and
19 Findings filed in the first incorporation proceeding, the structure and location of the Capes makes
20 these a non-issue.

21 The Capes has banned short-term rentals. It is a self-contained, gated community, and it
22 employs its own security service and self manages enforcement of its governing documents. While
23 the Capes might realize some benefit from the general improvements made by the purported city
24

1 in managing tourists and short-term rentals (*e.g.*, less traffic congestion), such benefits are of a
2 general nature, available to the public.

3 2. *Local control of land use planning.*

4 Petitioners argue that the Capes will benefit from the proposed city, rather than the County,
5 being responsible for land use planning. For the reasons given *supra*, the Capes, through its
6 governing documents, already has a robust and development-specific equivalent. Furthermore,
7 land use planning is already ably handled by the County, and the substitution of one government
8 entity for another (when both are presumed competent to administer Oregon’s statewide land use
9 goals) is not a cognizable benefit under the statute.

10 3. *Road Maintenance.*

11 Petitioners concede that the Capes, which has a private, self-funded road system, will not
12 benefit from local control of road maintenance.

13 4. *City Amenities.*

14 Petitioners cite the availability of “enhanced municipal; and recreational amenities” that
15 will be funded by the TLT. Petitioners do not list or otherwise describe these purported amenities.
16 In any event, general amenities are not benefits under the statute because they lack a property-
17 specific nexus; instead, they are realizable by the general public.

18 5. *Emergency Preparedness.*

19 Petitioners cite, without explanation or elaboration, “municipal emergency preparedness
20 measures and programs” as a purported benefit. Undefined preparedness measures are not benefits
21 under the statute because they lack a property-specific nexus; instead, they are realizable by the
22 general public.

1 6. *Sewer Eligibility.*

2 Finally, Petitioners argue that the Capes will benefit from its inclusion in the proposed city
3 because it will retain its eligibility to connect to the extant sewer system. Currently, properties
4 within the Oceanside community growth boundary, which includes the Capes, are served by the
5 Netarts-Oceanside Sanitary District. Because the statewide land use goals may not permit the
6 sharing of a community sanitary system between properties included in the proposed city and those
7 outside of its limits, *see infra* § II(B), this purported benefit is more akin to extortion. A statutory
8 benefit cannot be the retention of a service that a property already possesses.

9 In sum, because the Capes will receive no “benefit” as used in ORS § 221.040(2), the
10 County should exclude it from the boundaries of the proposed city.

11 B. *Regardless of the inclusion or exclusion of the Capes, the County must deny the*
12 *Incorporation Petition because it is incompatible with Goal 11.*

13 The County must deny the incorporation petition unless it is “reasonably likely that the
14 newly incorporated city can and will comply with the goals once the city assumes primary
15 responsibility for comprehensive planning in the area to be incorporated.” *1000 Friends of Oregon*
16 *v. Wasco Cnty. Ct.*, 299 Or. 344, 360 (1985). Because the proposed city will continue to share its
17 sanitary sewer system—the Netarts-Oceanside Sanitary District—with the unincorporated area of
18 Netarts, the proposed city will be unable to comply with Goal 11. Furthermore, to the extent that
19 non-compliance prohibits development or the continued use of already-developed land, the County
20 will likely have taken property without just compensation in violation of the constitutions of the
21 United States and Oregon.

22 Currently, the Netarts-Oceanside Sanitary District serves the two unincorporated
23 communities of Netarts and Oceanside. After the incorporation of Oceanside, the District will
24 serve the city and an unincorporated community. Under the administrative rules applying Goal 11,

1 the District will be prohibited from expanding (except in very limited circumstances) anywhere
2 outside of the proposed city's UGB. See OAR 660-011-0060(2)(b), (c). This will, effectively,
3 freeze new development in Netarts. It could also limit the development of the currently
4 undeveloped lots within the Capes.

5 **III. Conclusion**

6 In sum, the Capes respectfully requests that the County issue the following procedural
7 rulings: (1) dismiss the current Incorporation Petition for violating LUO § 10.020(6)(d) or pursuant
8 to the preclusion doctrines; (2) alternatively, continue the remaining hearings for no less than three
9 months to allow the Capes adequate preparation time; and (3) strike or otherwise disregard the
10 record, stipulations, and findings made during the proceeding on the prior incorporation petition.

11 The Capes also respectfully requests that the County either (1) exclude the Capes from the
12 boundaries of the proposed city because it will not benefit from its inclusion or (2) deny in the
13 entirety of the Incorporation Petition because the proposed city will be unable to comply with the
14 statewide land use goals.

15 Dated this 27th day of June, 2022.

VIAL FOTHERINGHAM LLP

17 /s/Matthew A. Martin
18 Matthew A. Martin, OSB #126314
19 E: Matt.Martin@vf-law.com
20 David M. Phillips, OSB #072620
21 E: david.phillips@vf-law.com
22 17355 SW Boones Ferry Road, Suite A
23 Lake Oswego, OR 97035
24 T: (503) 684-4111
F: (503) 598-7758
E: Matt.Martin@vf-law.com
Of Attorneys for the Capes



June 24, 2022

Via First Class Mail & Electronic Mail

Director Sarah Absher
Dept. of Community Development
1510 B Third Street
Tillamook, Oregon 97141
E: sabsher@co.tillamook.or.us

RE: No. 851-22-000224-PLNG: Petition for Incorporation of Oceanside
Request to Dismiss Petition or Postpone Scheduled Hearings

Director Absher:

AKS Engineering and Forestry, LLC (AKS) has been hired by The Capes Homeowners Association (The Capes HOA) regarding the potential incorporation of Oceanside and inclusion of The Capes in the incorporated area.

An initial petition was filed for Oceanside's incorporation that did not include The Capes. This petition was considered by the Tillamook Board of County Commissioners (BOCC) and denied. Shortly thereafter, on June 7, 2022, a new petition was filed that did include The Capes. The County quickly scheduled public hearings on the new petition for June 27, July 13, and July 28, 2022.

The petition includes an Economic Feasibility Study that AKS and The Capes HOA need to review and understand to prepare testimony for the BOCC hearings. The Economic Feasibility Study forms the technical foundation of the proposal, and its large amount of data will take time to review and analyze. With the initial hearing scheduled less than 21 days from the petition filing, not enough time has been left for a technical review of the Economic Feasibility Study. Procedurally, this schedule does not meet the spirit of Statewide Planning Goal 1 for public participation.

The Capes HOA respectfully requests the County postpone the three scheduled hearings for at least three months to allow our team time to review the materials, determine how they will affect members of The Capes HOA, and prepare public testimony. Our team may need to add technical staff, such as an economist, to provide peer review of the report for consideration by BOCC.

Thank you for your attention to this matter. We look forward to discussing this petition at future hearings.

Sincerely,

AKS ENGINEERING & FORESTRY, LLC

Mimi Doukas, AICP, RLA – Principal

12965 SW Herman Road, Suite 100 | Tualatin, OR 97062
P: 503.563.6151 | MimiD@aks-eng.com

Lynn Tone

From: James Bedlion <james.bedlion@greshamoregon.gov>
Sent: Wednesday, June 29, 2022 12:12 PM
To: Lynn Tone
Subject: EXTERNAL: Letter in opposition to incorporation

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

To our county Commissioner's,

As a homeowner in the Avalon area that is slated to be incorporated if this vote is allowed, I would like to speak to the infeasibility of the petition that is before you currently. As a City employee for the city of Gresham, I have firsthand knowledge of what is required in regards to staffing for a city. In this proposal, there is mention of one FTE and one Part time person, I do not believe that this number of staff is adequate to form and manage a city of any size, so to cover all area's of being incorporated into this city, what is the cost to citizens going to be for out sourcing or contracting with other municipalities to cover all the needed resources and staff that is required to run: Planning, building, community Development, water, sewer, and the other departments needed to govern and manage a city? Where will city hall be located? What is the cost to rent or purchase and build these facilities? Vehicles for city use, maintenance on both the building and vehicles. This proposal has no real life look at what we already have available and covered by Tillamook County. Our subdivision also maintains our own roads, so we also will see no benefit from this additional taxation and should have the option as a subdivision to opt out of the incorporation. The boundaries for this city should be first set by a vote of the homeowners to determine what the will of the people really is. In this current process, unless you are registered to vote in the area, you have no say in this incorporation attempt. This is not reflective of those with a vested interest in this issue. I would ask that a survey of all property owners be taken to see what number of vested interested parties have to say. Oceansiders united does not speak for many property owners in oceanside, but only a small number of full-time residents. This attempt to incorporate should include opportunity for all to have a voice. Therefore, I am writing this letter today, because it will be my only chance to have any voice in this matter. I encourage all homeowners inside this boundary to speak out and speak up!

Oceanside property owner and future resident,
Jim Bedlion
Senior Building Inspector
Plumbing Inspector
503-793-3243

CITY OF
GRESHAM

Lynn Tone

From: Marlene Stellato <buddythrive2@yahoo.com>
Sent: Wednesday, June 29, 2022 11:06 AM
To: Lynn Tone
Subject: EXTERNAL: Comment On Proposed Oceanside Incorporation

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

Hi Lynn,

Your name was once again provided as a point of contact for comments for consideration regarding the Oceanside, Oregon proposed incorporation. Our comment follows and appreciate your help in sharing as appropriate. Thank you.

Our comment:

As a member of the Terrasea HOA, we see little benefit for the incorporation of Oceanside, Oregon & are strongly opposed to it. The Terrasea HOA takes care of its own roads, is a private community & has its own HOA policies. As a homeowner in the Terrasea HOA, we feel the Terrasea HOA should be excluded from the proposed Oceanside, Oregon incorporation. If the Terrsea HOA is not excluded from the proposed Oceanside, Oregon incorporation, then existing homeowners in the Terrasea HOA should be "grandfathered" in and not be subject to the additional tax levy resulting from the Oceanside, Oregon incorporation. We strongly oppose the incorporation of Oceanside, Oregon under the present proposal & hope the issue will not be on the ballot for consideration. Thank you.

The Stellato's
595 Terrasea Way
Oceanside, Oregon

Lynn Tone

From: Chris Laity
Sent: Tuesday, February 15, 2022 9:37 PM
To: ychanba@gmail.com
Subject: RE: EXTERNAL: [Chris Laity] Oceanside Incorporation - which streets were budgeted for handover to Oceanside?

Yuriy,

All county roads (roads with 3 digits where county is responsible for maintenance) and all Local Access Roads (roads with 4 digits where the county is not responsible for maintenance) located within the proposed incorporated area would be handed over to the city to manage. This excludes Cape Meares Loop Road. I don't believe that Hwy 131 would be included in the incorporation. Woodlawn Street is a Local Access Road, but would become the responsibility of the proposed city to maintain. The same is true for Avalon Way. Specifically we reviewed all work that was done in the last 10 years for the following roads:

845 – Maxwell Mountain Road
847 – Norwester Road
3079 – Seacliff Trail
848 – Cedar Street
3209 – Birch Street
3208 – Alder Street
792 – Hillcrest Ave.
793 – Seaview Ave.
836 – Chinook Ave.
837 – Sunset Ave.
849 – Ocean Street
844 – Lilac Street
840 – Aster Street
841 – Violet Street
838 – Daisy Street
838 – Tillamook Ave.
843 – Portland Ave.
839 – Rosenberg Loop
846 – Pacific Ave.
3162 – Castle Drive
3163 – Castle Lane
3113 – Arthurs Road
3112 – Mordred Court
794 – Hillsdale Street
797 – Huckleberry Lane
3217 – Avalon Way
3218 – Woodlawn Street
3071 – Manzanita Street
3083 – Grand Ave.
3081 – Highland Drive
3084 – Breezee Way
670 – Reeder Street
3050 – South Ave.

3216 – Crescent Street
3064 – Regent Street
3067 – Glenwood Street
3065 – Grand Ave.
3066 – Hillsdale Street



Chris Laity, P.E. | Director
TILLAMOOK COUNTY | Public Works
503 Marolf Loop Road
Tillamook, OR 97141
Phone (503) 842-3419
claity@co.tillamook.or.us

This e-mail is a public record of Tillamook County and is subject to the State of Oregon Retention Schedule and may be subject to public disclosure under the Oregon Public Records Law. This e-mail, including any attachments, is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure, or distribution is prohibited. If you are not the intended recipient, please send a reply e-mail to let the sender know of the error and destroy all copies of the original message.

From: Tillamook County OR <tillamookcounty-or@municodeweb.com>
Sent: Thursday, February 10, 2022 11:39 AM
To: Chris Laity <claity@co.tillamook.or.us>
Subject: EXTERNAL: [Chris Laity] Oceanside Incorporation - which streets were budgeted for handover to Oceanside?

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

Yuriy Chanba (ychanba@gmail.com) sent a message using the contact form at <https://www.co.tillamook.or.us/>.

Hello, Mr. Laity.

My name is Yuriy Chanba. I'm a property owner and part-time resident at 5378 Woodlawn St in Oceanside.

Oceanside Incorporation petitioners point to you as source for the proposed city budget's roads expenditures. Could you please help me with understanding what specific roads in Oceanside were discussed to be handed over for the city to manage?

Thank you very much in advance for your prompt response,

Yuriy Chanba
5037094270

Lynn Tone

From: Sarah Absher
Sent: Tuesday, June 28, 2022 11:45 AM
To: davefr; David Yamamoto; Mary Faith Bell; Erin Skaar
Cc: Lynn Tone
Subject: Formal Request for Exclusion from 851-22-000224

Thank You Dave,

Lynn will include this testimony in the upcoming hearing packet.

Sincerely,



Sarah Absher, CBO, CFM, Director
TILLAMOOK COUNTY | Community Development
1510-B Third Street
Tillamook, OR 97141
Phone (503) 842-3408 x3317
sabsher@co.tillamook.or.us

From: davefr <davefr@gmail.com>
Sent: Tuesday, June 28, 2022 11:43 AM
To: Sarah Absher <sabsher@co.tillamook.or.us>; David Yamamoto <dyamamoto@co.tillamook.or.us>; Mary Faith Bell <mfbell@co.tillamook.or.us>; Erin Skaar <eskaar@co.tillamook.or.us>
Cc: xxx xxx <davefr@gmail.com>
Subject: EXTERNAL: Formal Request for Exclusion from 851-22-000224

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

Director Ms. Sarah Absher, Commissioners Ms. Skaar, Ms. Bell, Mr Yamamoto,

Do we have a formal process for the submission of exclusion requests under 221.040.P2 other than thru testimony??

In any event, please accept this email document as our formal request to exclude North Rural Oceanside (ie Radar Road + surrounding properties) from 851-22-000224 PLNG under Oregon Statute 211.040.P2. The benefits of inclusion are negligible given our unique nature and are far outweighed by the cost in tax increases. Here's why:

1. All our roads are private driveways and successfully maintained by the property owners at minimal cost (including Radar Road).

2. We are outside of the NOSD Sewer boundary. NOSD has no plans to extend sewer service to our area and would require annexation and a rough estimate of \$4M to do so. (See attachment A from Dan Mello - NOSD District Superintendent)
3. Of a survey of the 27 households in our area, 80% are opposed to incorporation and 20% in favor. (response rate was 87%). (see attachment B from Gary Ciment)
4. STR's are not problematic in our area given our isolation from the core village services and tourist attractions.
5. Our rural area is fully developed given the significant geographical limitations and this precludes any meaningful future development potential. (ie no need for the oversight services of a City Manager)

Please see attachment C. Map sections 1S 11 24DA, AD and AA are the sections we are formally asking to be excluded from the petitioner's proposal based on 211.040.P2

Thank you,
 Dave and Rose Friedlund
 2500 Cape Meares Loop
 Oceanside, OR 97123

M Gmail **Attachment A** davefr <davefr@gmail.com>

Radar R-1 area NOSD service?

3 message

davefr <davefr@gmail.com> Sun, Jun 12, 2022 at 8:53 AM
 To: dan@nosd.us

Hi Dan,
 I'm an Oceanside resident in the Radar Rd area served by a private septic system and have a few brief "what if" questions:

1. If my septic drain field failed (not just the tank) and I didn't have a backup drain field, would there be a potential option to get NOSD extended North and get hooked up?
2. Very rough estimate of cost/funding to extend NOSD to Radar Rd/North Oceanside? Are we talking millions or thousands of \$'s.
3. Does NOSD have any future plans to serve North Oceanside and what factors would be required to do so?

Thanks for the help. I'm just trying to get a very rough idea of the future options if ever needed.

Thanks!!
 Dave Friedlund
 2500 Cape Meares Loop

Dan Mello <dan@nosd.us> Tue, Jun 28, 2022 at 8:21 AM
 To: davefr <davefr@gmail.com>
 Cc: John Prather <jprather@nosd.us>

Hello Dave,

I did receive your email request and presented at the Board meeting on June 17th. I am to draft a response letter to your questions and have the board review before sending. I just returned from vacation yesterday and wanted to let you know that we are working on it.

I can tell you that Radar Rd. is outside of the NOSD sewer service boundaries and would require an annexation to be served under our current process. The District has no plans to serve that area but it was looked at in our Facility Plan and because it is outside our boundaries we have no actual plan or timeline to extend. And it would be somewhere, in today's dollars, approximately 4 million dollars to extend service but this number is my estimate and would need an engineering study to be more accurate.

If you have any further questions please contact me at any time.

Thank you
 Daniel A. Mello, District Superintendent

Radar Road Residents/Incorporation

3 messages

davefr <davefr@gmail.com>
To: Gary Ciment <cimentgary@gmail.com>

Tue, Jun 28, 2022 at 5:53 AM

Hi Gary,
I'm preparing a new testimony for the next Oceanside incorporation hearings in July and would like to say that most Radar Road residents are opposed to incorporation. Is that still an accurate statement?

Do you happen to have any number or percentages for and against?

Thanks!
Dave

Gary Ciment <cimentgary@gmail.com>
To: davefr <davefr@gmail.com>

Tue, Jun 28, 2022 at 8:56 AM

Hey Dave,

Yes, I do have those numbers for and against. And the bottom line is that the vast majority of Radar Road residents said that they did **NOT** want to be included in the incorporated area. Here are the details:

I sent out an email survey to **every** property owner that lived north of Short Creek (so it didn't include you guys). That included the 27 full-time households, part-time households, and STR owners -- one vote per property. That first emailing took place in October, 2021 and simply asked the question "Do you want to be included in the Oceanside incorporation area?" -- yes, no or maybe. I followed up with two reminders in November and December, allowing every resident a chance to reconsider their vote, if they so wished.

In the end, the response rate was 87%, and of those that responded, it was an 80% "no" and 20% "yes" vote (0% "maybes"). So, I can unequivocally state that the vast majority of Radar Road and environs folks did **NOT** want to be included in the Oceanside incorporation area.

Incidentally, I sent an email with this same message to the Tillamook County board of supervisors in time for that first consideration back in May (?). In the announcement for that meeting, they said that they would look over community input from their earlier decision, so theoretically, they should already be aware of this survey among us Radar Road folks.

Best of luck in your quest!!

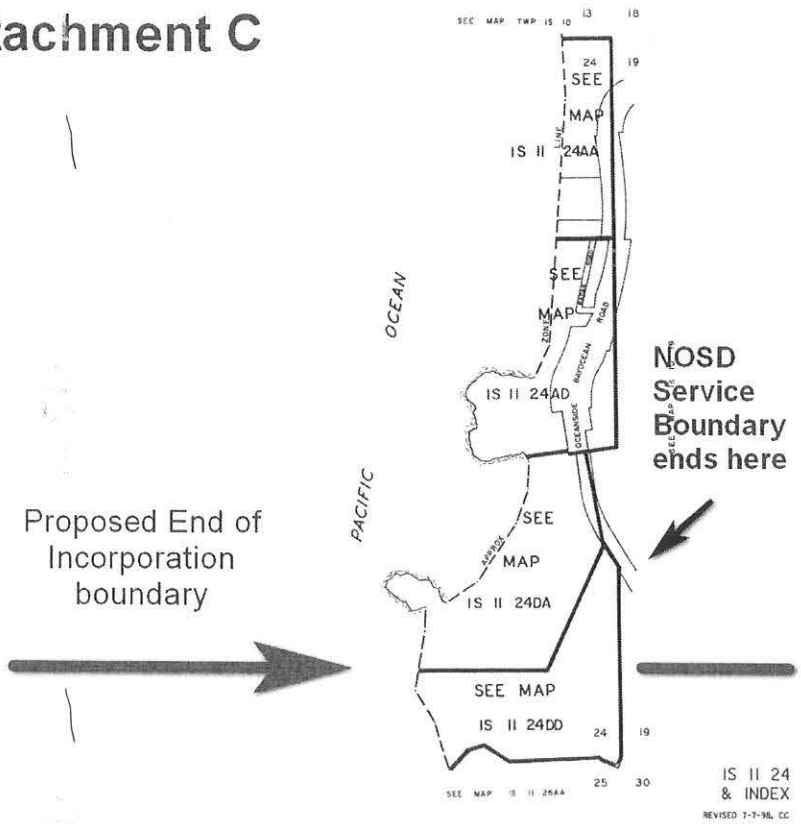
Gary Ciment
2690 Radar Road

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSE ONLY

SECTION 24 T.1S. R.11W.W.M.
TILLAMOOK COUNTY
1" = 400'

IS II 24
& INDEX

Attachment C



Lynn Tone

From: Bruce Jaeger <nguyenjaeger@gmail.com>
Sent: Monday, June 27, 2022 5:26 PM
To: Public Works; Erin Skaar; David Yamamoto; Mary Faith Bell; Lynn Tone
Subject: EXTERNAL: Clarification of Roads Budget for the Community

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

Hello Mr Laity and best Monday wishes. I reached out to Mr Keene on March 30, 2022 to request help to add transparency to the roads budget for the Oceanside Incorporation petition. I had suggested he meet with you for answers. Since I did not hear back from him I can only assume he did not have this discussion, and am addressing my questions more directly (to you).

1). Can you please help me identify all the roads the new city would assume ownership of? You mention in your latest Memorandum dated June 21, 2022 "roughly 4.5 miles". There are also an additional 17 Local Access roads (totalling 2.68 miles) that a representative from Oceansiders United stated would fall under the new city management (like those in my neighborhood that we have serviced out of pocket since 2009). This servicing would not have been part of your database. We service the roads in our neighborhood every year or two with new grading, graveling, and compacting. The cost over the past two years is about \$6,500 or \$325 per homeowner. Terrasea HOA collects \$300 per year in their road fund from all property owners. Terrasea is paved and has major work completed every 7-10 years. Last year the bill was \$85,000. I am told that technically, these roads too would be part of the new city management if the HOAs were to dissolve. In discussions with other local neighborhoods with Local Access or HOA roads I have found all have annual charges equating to \$300+ range per property owner. The petitioners have stated the \$50,000 annual budget is feasible, but as you can see this would equate to about \$65 per homeowner citywide (\$50 per property owner). Can you see why I am scratching my head over this and offer your thoughts?

2). In the first hearings the petitioners stated you said the stormwater drainage treatment needed to be completed before street repair, to be most prudent in dealing with costs. You said the cost of the study would be about \$200,000. I had asked for an estimated budget for the total project and to identify all the roads in the new city that would be involved in this cost estimate. Would it simply be for one road or for the entire proposed City? Can you help with this estimate? Also, in the June 21 Memorandum, you state, "8. Over the long term (20-30 years or so), Oceanside will likely face the prospect of funding engineering and construction work to update its stormwater drainage system". Why did this change from a priority to a distant future need?

3). Provided in the original petitioner's packet was the Annual Maintenance Cost Report (with the Inflation Adjustment factor). The copy provided was cut off in 2016 (looks like a printer error). Can you please provide the entire worksheet or this year's version including 2021 numbers if available?

As I said in my March request; I believe having clarity on these questions will be very meaningful to the whole community in determining the feasibility of the petition. I understand this is only a small piece of the whole feasibility study, and budget for that matter, but it is your expertise that has been called upon here and so I am calling on it again. Thank you for your thoughts and consideration. Please let me know how I can better help

Best Regards,

Bruce Jaeger
5372 Woodlawn St W Oceanside OR 97134
(503) 317-6150

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Lynn Tone

From: Mary Flock <mbflock@msn.com>
Sent: Sunday, June 26, 2022 6:50 PM
To: Lynn Tone
Subject: EXTERNAL: Testimony in support of Oceanside Incorporation

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

Please include our testimony in support of the Oceanside Incorporation in the record for the hearings.

DATE: June 27, 2022
To: Commissioners Bell, Skaar and Yamamoto
SUBJECT: Testimony in support of Oceanside Incorporation

We believe Oceanside deserves the right to a vote on incorporation. Our previous letters dated January 17, 2022 and February 7, 2022 in support of incorporation are already in the record.

When we bought our home 24 years ago, there were 0 vacation rentals in our Camelot neighborhood, just a few long-term rentals. Today there are 9 vacation rentals on Castle Dr., S. Castle Dr., Mordred Ct., and Arthurs Rd. which doesn't sound like a lot, but it is almost 20% of the existing homes. Real estate agents are encouraging potential sellers to get short term rental licenses because that's what buyers want and when new homes are built on the more than a dozen empty lots in Camelot, some become vacation rentals too. Vacation rentals are here to stay, but if this proliferation continues, there will be no such thing as a neighbor. Tillamook County paused short term rental licenses in response to the huge surge, but an incorporated Oceanside, not Tillamook County, would be in a better position with neighborhood involvement to monitor and control vacation rentals.

Because Oceanside was not incorporated, we were excluded from discussions regarding the demolition of The Cabins to build a new hotel. We only got a foot in the door because several Oceansiders are NOSD board members. When the Anchor Tavern was replaced years ago, Tillamook County only did a "minor review", even though the footprint of the building increased 25%, the new building was effectively twice as tall as the old structure and Oceansiders had organized to protest it, but to no avail. An incorporated Oceanside would have a seat at the table on planning decisions and would involve all Oceansiders.

Currently Pacific City has a multi-million dollar project funded by TLT to benefit tourists and residents, but they didn't have to submit any kind of grant application and Tillamook County is managing the entire project including buying land, hiring engineers, and reporting progress on a web site. Oceanside is 2nd only to Pacific City in generating TLT, yet we are supposed to compete with all of Tillamook County for grants to get a share of our own money and we have been consistently short-changed on the portion of TLT that was supposed to be used for roads. An incorporated Oceanside, would work within TLT regulations and make decisions about how to use our own TLT in a way that benefits tourists and residents.

Some neighborhoods, like The Capes, get to enjoy all the great things about Oceanside without having to experience any of the downside of living in a vacation destination. Some neighborhoods have roads that are new, not decades-old, narrow lanes. But we were all drawn to live in this beautiful, unique place and it's up to all of us to protect it. The \$.80 per thousand of tax-assessed values is an additional expense, but it is necessary if Oceanside is going to have a voice in its own future. When we voted for the new sewer, we weren't thrilled to increase our tax bill 20% (now 16%), but it was necessary to replace the failing sewer plan and provide for growth. Only registered voters in Oceanside got to vote on the new sewer even though all

developed and undeveloped properties were affected and only registered voters in Oceanside will get to vote on incorporation. This is not "unfair"; this is just how it works. All Oceansiders regardless of voter registration are members of and have a voice in the Oceanside Neighborhood Association which exists as an advisory committee for Tillamook County and after incorporation, would continue to exist but as an advisory board to the City of Oceanside.

Mary Flock
5565 Castle Drive
Tillamook, OR 97141

Jud Griner
5565 Castle Drive
Tillamook, OR 97141

Lynn Tone

From: David Yamamoto
Sent: Sunday, June 26, 2022 2:39 PM
To: Lynn Tone
Subject: Fwd: EXTERNAL: Oceanside Incorporation

FYI

David Yamamoto
Tillamook County Commissioner
dyamamoto@co.tillamook.or.us
201 Laurel Avenue
Tillamook, OR. 97141
503.842.3403 (W)
503.701.1235 (C)

sent from Galaxy Tab 6

From: Rob Hoeper <robhoeper@aol.com>
Sent: Sunday, June 26, 2022 8:53:40 AM
To: David Yamamoto <dyamamoto@co.tillamook.or.us>
Subject: EXTERNAL: Oceanside Incorporation

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

Commissioner Yamamoto,

Thank you for scheduling the upcoming hearings on the Oceansiders United petition for incorporation.

I am a full-time resident of Oceanside residing at 1800 Maxwell Mountain Road. I wrote a letter supporting the incorporation petition during the first set of hearings. I remain strongly in support of allowing Oceansiders to have the chance to vote on the initiative in November for the same reasons I voiced earlier (local control of funds, land use decisions, building standards). The County's recent pause on short term rental licenses only adds to the need for Oceanside to be allowed the chance to weigh the pros and cons of STR's and act accordingly with input from all local land owners.

Finally, I have worked closely with the amazing team of folks preparing the materials needed to meet the statutory requirements for incorporation. I don't believe they have left any stone unturned and have more than met the requirements.

Again, thank you for the opportunity for us to give a voice to this important issue.

Rob Hoeper
1800 Maxwell Mountain
Oceanside

June 25, 2020

Via email – ltone@co.tillamook.or.us

Lynn T. one
Tillamook County Community Development Office

RE: Second Petition for the Incorporation of Oceanside
#851-22-000224-PLNG
Verbal Comments to be Read at June 27, 2022 Hearing

Dear Tillamook County Commissioners:

My wife and I are owners of property within The Capes development (230 Capes Dr., Oceanside). We are opposed to including The Capes in the above-referenced petition. As you know, our development was not interested in the effort to incorporate Oceanside and our community was excluded in the first petition. For many of the same reasons, we are opposed to The Capes being included in the second petition.

We see no benefit being included within an incorporated City of Oceanside. We maintain our own roads, storm water systems, building and common grounds for which we pay HOA fees. The Capes is governed by community rules and covenants (CC&Rs) that are administered through our homeowners association. The status quo works quite well. Conversely, including The Capes within a City of Oceanside would result in an increase in property taxes, new bureaucratic oversight and city laws. Moreover, due to our part-time residency at The Capes, we would be excluded from voting on city ballot issues.

Thank you for your consideration.

Respectfully Submitted,



Lawrence Frank



Merry Gilbertson

Cc: Jenny Green – The Capes Manager

Lynn Tone

From: len chaitin <eljayinv@gmail.com>
Sent: Saturday, June 25, 2022 8:23 AM
To: Lynn Tone
Subject: EXTERNAL: incorporation

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

to the Tillamook commissioners:

I am a full time resident of Tillamook county. I live in the so-called Camelot area. I would like to share my opinion regarding the petition to incorporate Oceanside as a city.

I, and many of my friends and neighbors, are dead set against this idea. Here are a few of the reasons why it make no sense to even consider such nonsense:

Nothing in either the original petition, the revised petition, or the current petition provides anything that the county either already does, or could do. Nothing.

Incorporation would increase our tax burden for no benefit other than to empower the petitioners. This is especially onerous now, We already have soaring costs of essentials, plus property values will be revised upwards, and the new tax proposed is based on assessed property values. This would really hurt..

Many people here are not full time residents - they have second homes or rental properties in the area. They are registered to vote in whatever area their primary residence is. Thus, they have no say on incorporation, but would have to bear the added burden. This is clearly a case of "taxation without representation".

There are many not mentioned that are associated with incorporation, such as, equipment purchases, added personnel, and added facilities. These hidden additional costs would, of course, be funded by additional taxes on us.

please do what you did last go-around - deny this petition.

Thank you for your attention to this letter

Len Chaitin.

Lynn Tone

From: Lynne S <beachdogs@msn.com>
Sent: Saturday, June 25, 2022 8:16 AM
To: Lynn Tone
Cc: Oceanside NA; Jenny Green
Subject: EXTERNAL: I STRONGLY OPPOSE including The Capes in the Oceanside Incorporation

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

Thank you Ms. Tone for considering my input on the topic of The Capes being included in the new Oceanside Incorporation proposal.

My name is Lynne Styles and I am a part time, original homeowner at The Capes since 1996 (26 years). I usually spend complete summers there and other extended visits year round. I have watched over the years and seen that Tillamook County really doesn't care about our community, even to the point of some residents "wishing" we would fall into the ocean when we had slides 25 years ago. I have never seen any of the Commissioners care about our community, yet they like to levy taxes and fees on us (water consumption determined by the value of our homes) whenever they can. They know that many of our residents are part-time and therefore CAN'T vote in Tillamook County. That makes us fair game for yet another tax on our community without ANY benefit to our owners.

I have been following this incorporation project from the beginning and have communicated with Jerry Keene several times via email. I fully support incorporation of Oceanside WITHOUT INCLUDING THE CAPES. My opinion is that the County only cares about Oceanside's tourism and short term rental revenues. Once again, I feel like this is taxation without representation by including The Capes. If we were a timber company or dairy farm they would listen to us in a fair and unbiased manner since those are the entities that line the county's coffers.

AGAIN, I STRONGLY OPPOSE INCLUDING THE CAPES IN ANY OCEANSIDE INCORPORATION PLANS!

Sent from Mail for Windows

June 30, 2022

To: Tillamook County Commissioners David Yamamoto, Mary Faith Bell, Erin Skaar

From: Pam Zielinski
5680 Castle Dr W
PO Box 423
Oceanside, OR 97134

RE: PETITION TO INCORPORATE OCEANSIDE

At the June 27th hearing by the BOCC, the following was referenced from ORS 221.040

[t]he court [the county commission] may alter the boundaries as set forth in the petition to include all territory which may be benefited by being included within the boundaries of the proposed incorporated city, but shall not modify boundaries so as to exclude any land which would be benefited by the formation of the proposed city. No land shall be included in the proposed city which will not, in the judgment of the court, be benefited ...

The last sentence in the excerpt above seems to mandate that The Capes be excluded from incorporation if the Commissioners agree there is no benefit. If that happens, then I believe that Trillium and Terrasea must also be excluded because those developments have HOAs providing the same services provided by The Capes HOA to its own members.

Additionally, it seems to me that all the so-called benefits offered by the proposed incorporation are outweighed by the negative impact incorporation will have on this community. At what point to "benefits" cease to be beneficial when they are negated by the corresponding damage created in the process of offering those so-called benefits?

I am very pleased with the Land Use Planning services currently provided by Tillamook County. Sarah Absher's department is very effective with communication and nearly always provides reasonably timely responses to information requests. Moving to a part-time planning department with less experience and fewer resources will slow and frustrate the process of building and development in Oceanside.

For 100 years Oceanside has been a rural hamlet, peaceful, serene, beautiful, with the exception of the times when land use issues have divided the citizens and created hostility. Keeping an arm's length between neighbors who have strong differences of opinion by keeping Oceanside within the jurisdiction of Tillamook County is one way to ameliorate the animosity which can develop between neighbors who are at odds on a land use issue.

We already have infrastructure and utilities here. Emergency readiness can be accomplished via ONA or the Oceanside Neighborhood Association or the local fire district. We have excellent land use planning services provided by the county. The only benefit incorporation MAY offer which we do not already enjoy is the possibility of attracting grant funding. But that possibility is not even quantifiable, and in my opinion is heavily outweighed by the strong likelihood that incorporation will create more problems than it will solve.



Lynn Tone

From: Tillamook County OR <tillamookcounty-or@municodeweb.com>
Sent: Wednesday, July 6, 2022 9:26 AM
To: Lynn Tone
Subject: EXTERNAL: [Lynn Tone] Oceanside incorporation

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

Chris and Kelly Grant (christgrant503@hotmail.com) sent a message using the contact form at <https://www.co.tillamook.or.us/>.

Greetings from 2630 Radar Road. Again we read wording in some doc's from Oceanside United that they are offering us SO many POTENTIAL benefits that they wish to disregard our desire to not be included in their plan. We are rural residents of Tillamook county. We have no desire to be part of Oceansides business and wish them to stay out of ours. Chris and Kelly Grant 503-842-2921