

SECTION 3.500 OVERLAY ZONES

An Overlay Zone is a supplementary zoning designation placing special restrictions or allowing special uses of land beyond those required or allowed in the Base Zone. The Tillamook County Land Use Ordinance contains the following Overlay Zones.

- 3.505 Utilities Facility Overlay (UFO)
- 3.510 Flood Hazard Overlay (FH)
- 3.515 Scenic Waterway Overlay (SWO)
- 3.520 Planned Development Overlay (PD)
- 3.525 Coast Resort Overlay (CR)
- 3.530 Beach and Dune Overlay (BD)
- 3.545 Shoreland Overlay (SH)
- 3.550 Freshwater Wetlands Overlay (FW)
- 3.555 Mineral and Aggregate Resources Overlay Zone (MA)
- 3.560 Tillamook Airport Obstruction (TAO)
- 3.565 Pacific City Airport Obstruction Overlay Zone (PAO)
- 3.570 Neskowin Coastal Hazards Overlay Zone (Nesk-CH)
- 3.575 Netarts Planned Residential Development Overlay Zone (NT-PRD)
- 3.580 Tsunami Hazard Overlay Zone (TH)

The boundaries of these overlay zones are generally indicated on the Tillamook County Zoning Map. Further information about the exact boundaries can be found within each overlay zone chapter.

Properties within overlay zones are subject to the provisions and standards of both the overlay zone and base zone. Where the standards of the base zone and overlay zone conflict, the more restrictive provisions shall apply unless otherwise stated.

SECTION 3.505: UTILITIES FACILITIES OVERLAY ZONE (UFO)

- (1) **PURPOSE:** The purpose of the UFO zone is to accommodate the facilities necessary to supply the foreseeable utility needs of the County. The UFO zone is applied as an overlay upon existing zones in order to permit the installation of utility facilities in appropriate locations. Sites included in this zone should be of sufficient size and quality to provide the needed service, minimize off-site impacts, and preserve resource values in the area.
- (2) **USES PERMITTED OUTRIGHT:** In the UFO zone, in addition to the uses permitted outright in the underlying zone, the following uses and their accessory uses are permitted outright, subject to all applicable supplementary regulations contained in this Ordinance.
 - (a) Electrical substations and switching facilities.
 - (b) Electrical transmission lines and line support structures.

- (c) Towers for communications, wind energy conversion systems, or structures having similar impacts.
 - (d) Energy generation systems.
 - (e) Water supply and treatment facilities, water control structures, pumping stations, storage tanks, and reservoirs.
 - (f) Waste treatment works, including any devices or systems used to store, treat, recycle, or reclaim municipal wastes; or to recycle or reuse waste water; including sewer lines, outfalls, and pumping facilities.
 - (g) Yards or structures for storage and/or repair of utility supplies and equipment.
 - (h) Utility offices.
- (3) **USES PERMITTED CONDITIONALLY:** In the UFO zone, uses other than, but related to, the uses listed in (2) above are permitted subject to the provisions of Article 6 and the requirements of all applicable supplementary regulations contained in this Ordinance. Any of the utility uses listed in (2) above which are listed as Conditional Uses in the underlying zone shall be permitted outright upon the application of the UFO zone.
- (4) **STANDARDS:** In the UFO zone, the following standards shall apply to uses listed in (2) above, in lieu of standards contained in the underlying zone. The standards do not apply to any distribution lines providing services to residential, commercial, industrial, or other customers. All structures listed in this zone are subject to applicable supplementary regulations such as those contained in Sections 3.510, 3.545, 4.130, and 4.140 of this Ordinance.
- (a) Except as provided in this section, no utility structure shall be constructed closer than either 20 feet from a front property line or 10 feet from any other property line. Utility structures that are no greater than 36 square feet from these setbacks. Transmission lines and related structures are exempt from these setbacks, but they are subject to all requirements of the right-of-way, easement, or County franchise for such facilities.
 - (b) Minimum lot dimensions for specific utility uses are as follows:
 - (1) Electrical substation: 100 by 200 feet.
 - (2) Water storage tank: 100 by 100 feet.
 - (c) Buildings shall not exceed 35 feet in height. Other structures not used for human occupancy may exceed this height limitation, as provided in Section 4.120.

- (d) Outdoor storage areas within 200 feet of a residential use or zone shall be screened with a sight-obscuring fence.
- (e) Off-street parking and loading shall be provided in accordance with the standards set forth in Section 4.030.
- (f) Signs that are 16 square feet in area or less, and which are necessary for safety or other operational requirements, shall be permitted subject to the standards contained in Section 4.020.
- (g) Substations and other utility facilities shall utilize equipment, baffling structures, site excavation, and earthen berms or landscaped screening to limit objectionable noise and visual impacts upon adjacent residential uses or zones.
- (h) Any building providing a place of employment shall meet state and County Sanitation requirements for sewage disposal.
- (i) Fresh water wetlands identified by the Oregon Department of Fish and Wildlife, and adopted by the County as critical wildlife habitats, shall be protected according to site-specific recommendations provided by the Oregon Department of Fish and Wildlife.
- (j) Public Works Department requirements shall be met for any utility structure placed in a public right-of-way by a utility not having a franchise for such location. For those utilities having such a franchise, requirements of the franchise shall be met.

SECTION 3.510: FLOOD HAZARD OVERLAY ZONE (FH)

- (1) PURPOSE: It is the purpose of the FH zone to promote the public health, safety and general welfare and to minimize public and private losses or damages due to flood conditions in specific areas of unincorporated Tillamook County by provisions designed to:
 - (a) Protect human life and health;
 - (b) Minimize expenditure of public money for costly flood control projects;
 - (c) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the public;
 - (d) Minimize prolonged business interruptions;
 - (e) Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazards;
 - (f) Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas;

- (g) Ensure that potential buyers are notified that property is in an area of special flood hazard; and
 - (h) Ensure that those who occupy the areas of special flood hazard assume responsibility for their actions.
 - (i) Maintain the functions and values associated with Special Flood Hazard Areas which reduce the risk of flooding.
- (2) **BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD:** The areas of special flood hazard identified by the Federal Insurance Administration in a scientific and engineering report entitled “The Flood Insurance Study for Tillamook County” dated September 28, 2018, with an accompanying Flood Insurance Rate Maps (FIRMs), are hereby adopted by reference and declared to be a part of this ordinance. The Flood Insurance Study and the FIRM are on file at the Tillamook County Department of Community Development at 1510-B Third Street, Tillamook, OR 97141. The best available information for flood hazard area identification as outlined in this Section shall be the basis for regulation until a new FIRM is issued that incorporates data utilized under this Section.
- (3) **CONTENT:** In order to accomplish this purpose, this Section of the Land Use Ordinance includes methods and provisions for:
- (a) Restricting or prohibiting uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;
 - (b) Requiring that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;
 - (c) Maintaining the natural and existing flood plains, stream channels, and natural protective barriers, which help accommodate or channel flood waters;
 - (d) Minimizing and controlling filling, grading, dredging, and other development which may increase flood damage or may increase flood hazards in other areas;
 - (e) Preventing or regulating the construction of flood barriers which will unnaturally divert flood waters or may increase flood hazards in other areas;
 - (f) Encouraging mitigation and restoration programs in "exchange" (/in addition to) for alteration of Special Flood Hazard Areas, existing and natural floodplains, stream channels, and natural protective barriers, which help accommodate or channel flood waters
- (4) **DEFINITIONS:** Unless specifically defined below or in Article XI of this ordinance, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

AREA OF SHALLOW FLOODING: A designated AO, AH, AR/AO, AR/AH, or VO zone on a community's Flood Insurance Rate Map (FIRM) with a 1 percent or greater annual chance of flooding to an average depth of 1 to 3 feet where a clearly defined channel does not exist, where the path of flooding is unpredictable, and where velocity flow may be evident. Such flooding is characterized by ponding or sheet flow. (Note: Flood Zones are included in this definition (NFIP definition CFR 59.1) that are not located in Tillamook County.)

ADDITION: An alteration to an existing structure that results in any increase in its ground floor area.

BASE FLOOD: Flood having a one percent chance of being equaled or exceeded in any given year. Also referred to as the "100-year flood". Designation on maps always includes the letters A, A1-A30, AE, AO, V, V1-V30 or VE.

BASEMENT: Any area of a building having its floor subgrade (below ground level) on all sides.

BREAKAWAY WALL: A wall that is not a part of the structural support of the building and is intended through its design and construction to collapse under specific lateral loading forces, without causing damage to the elevated portion of the building or supporting foundation system.

COASTAL HIGH HAZARD AREA: An area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms or seismic sources. The area is designated on the FIRM as Zone V1-V30, VE or V.

CONDITIONAL LETTER OF MAP REVISION (CLOMR): Letter from FEMA commenting on whether a proposed project, if built as proposed, would meet the minimum National Flood Insurance Program standards for proposed hydrology changes. If the project, built as proposed, revises the Flood Insurance Rate Map and/or Flood Insurance Study, a Letter of Map Revision (LOMR) is required to be submitted no later than six months after project completion.

CRITICAL FACILITY: A facility for which even a slight chance of flooding might be too great. Critical facilities include, but are not limited to schools, nursing homes, hospitals, police, fire and emergency response installations, installations which produce, use or store hazardous materials or hazardous waste.

DEVELOPMENT: Any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation, drilling operations or the storage of equipment or materials located within the area of special flood hazard.

ENHANCEMENT: The process of improving upon the natural functions and/or values of an area or feature which has been degraded by human activity.

FILL: Any material such as, but not limited to, sand, gravel, soil, rock or gravel that is placed on land including existing and natural floodplains, or in waterways, for the purposes of development or redevelopment.

FLOOD OR FLOODING:

- (a) A general and temporary condition of partial or complete inundation of normally dry land areas from:
 - (1) The overflow of inland or tidal waters.
 - (2) The unusual and rapid accumulation or runoff of surface waters from any source.
 - (3) Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in paragraph (a)(2) of this definition and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, as when earth is carried by a current of water and deposited along the path of the current.

(b) The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels or suddenly caused by an unusually high water level in a natural body of water, accompanied by a severe storm, or by an unanticipated force of nature, such as flash flood or an abnormal tidal surge, or by some similarly unusual and unforeseeable event which results in flooding as defined in paragraph (a)(1) of this definition.

FLOOD BOUNDARY & FLOODWAY MAP: Historical maps issued by the Federal Emergency Management Agency where the boundaries of the area of special flood hazards applicable to Tillamook County have been designated as Zones A, AE or A1-A30.

FLOOD INSURANCE RATE MAP (FIRM): An official map of a community, on which the Federal Insurance Administrator has delineated both the special hazard areas and the risk premium zones applicable to the community. A FIRM that has been made available digitally is called a Digital Flood Insurance Rate Map (DFIRM).

FLOOD INSURANCE STUDY: The official report provided by the Federal Insurance Administrator that includes flood profiles, the Flood Insurance Rate Map, Flood Boundary & Floodway Map, and the water surface elevation of the base flood.

FLOOD PLAIN: Any land area susceptible to being inundated by water from the sources specified in the flood(ing) definition.

FLOOD PLAIN MANAGEMENT REGULATIONS: The provisions of this ordinance in addition to the Land Division Ordinance, building codes, health regulations, and other applications of police power. The term describes such state or local regulations, in any combination thereof, which provide standards for the purpose of flood damage prevention and reduction.

FLOODWAY, REGULATORY: The channel of a river or other watercourse and the adjacent land area that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot. The regulatory floodway is delineated by the Federal Emergency Management Agency on the Flood Insurance Study, Flood Insurance Rate Map and/or the Flood Boundary and Floodway Map.

HIGHEST ADJACENT GRADE: The highest natural elevation of the ground surface prior to construction next to the proposed walls of a structure.

HIGHWAY READY: The status of a recreational vehicle that is on wheels or a jacking system, is attached to the site by quick disconnect type utilities and security devices only, and has no permanently attached additions. 'Highway Ready' includes having a plan and making provision to remove the unit in the event of flood.

HYDROSTATIC LOADS: Loads caused by water either above or below the ground surface, free or confined, which is either stagnant or moves at very low velocities, of up to five (5) feet per second. These loads are equal to the product of the water pressure times the surface area on which the water acts. The pressure at any point is equal to the product of the unit weight of water (62.5 pounds per cubic foot) multiplied by the height of water above that point or by the height to which confined water would rise if free to do so.

HYDRODYNAMIC LOADS: Loads induced on buildings or structures by the flow of flood water moving at moderate or high velocity around the buildings or structures or parts thereof, above ground level when openings or conduits exist which allow the free flow of flood waters. Hydrodynamic loads are basically of the lateral type and relate to direct impact loads by the moving mass of water, and to drag forces as the water flows around the obstruction.

IRREVOCABLY COMMITTED: Any platted area with improved streets, sewer, water, and fire districts, as well as established commercial and high density residential uses as of June 2, 1978.

LETTER OF MAP CHANGE (LOMC): An official FEMA determination, by letter, to amend or revise effective Flood Insurance Rate Maps and/or Flood Insurance Studies. LOMC's are issued in the following categories:

- (a) Letter of Map Amendment (LOMA): An amendment to the Flood Insurance Rate Maps based on technical data showing that an existing structure, parcel of land or portion of a parcel of land that has not been elevated by fill (natural grade) was inadvertently included in the special flood hazard area because of an area of naturally high ground above the base flood.
- (b) Letter of Map Revision (LOMR):
 - (1) LOMR-F (Letter of Map Revision based on Fill) is a letter from FEMA stating that an existing structure or parcel of land that has been elevated by fill would not be inundated by the base flood.
 - (2) A LOMR revises the current Flood Insurance Rate Map and/or Flood Insurance Study to show changes to the floodplains, floodways or flood elevations. LOMRs are generally based on manmade alterations that affected the hydrologic or hydraulic characteristics of a flooding source and thus result in modification to the existing regulatory floodway, the effective base flood elevation, or the special flood hazard area. A Conditional Letter of Map Revision (CLOMR) may be approved by FEMA prior to issuing a permit to start a project if the project has a potential to affect the special flood hazard area.

LOWEST FLOOR: The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking or vehicles, building access or storage, in an area other than a basement area, is not considered a building's lowest floor, provided that such enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

MANUFACTURED DWELLING: Any of the following type of structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when attached to the required utilities:

Residential Trailer: a structure, greater than 400 square feet, constructed for movement on the public highways that was constructed before January 1, 1962.

Mobile Home: A structure having at least 400 square feet of floor area and which is transportable in one or more sections. A structure constructed for movement on the public highways that was constructed between January 1, 1962 and June 15, 1976, and met the construction requirements of Oregon mobile home law in effect at the time of construction.

Manufactured Dwelling: A structure constructed for movement on the public highways, after June 15, 1976,

that was constructed in accordance with federal manufactured housing construction and safety standards and regulations in effect at the time of construction.

MANUFACTURED DWELLING PARK OR SUBDIVISION: A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

MANUFACTURED DWELLING PARK OR SUBDIVISION, EXISTING: A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufacture homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, an either final site grading or the pouring of concrete pads) is completed before August 1, 1978, the effective date of the floodplain management regulations.

MEAN SEA LEVEL: Specific Datum NAVD 88

MECHANICAL EQUIPMENT: Electrical, heating, ventilation, plumbing, and air conditioning equipment, storage tanks and other service facilities.

MITIGATION: The reduction of adverse effects of a proposed project by considering, in the following order:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action;
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;
- (c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action by monitoring and taking appropriate measures; and
- (e) Mitigating for the impact by replacing or providing comparable substitute floodplain areas.

NEW CONSTRUCTION: For the purposes of determining insurance rates, structures for which the “start of construction” commenced on or after the effective date of an initial FIRM or after December 31, 1974, whichever is later, and includes any subsequent improvements to such structures. For floodplain management purposes, new construction means structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by a community and includes any subsequent improvements to such structures.

PERMANENT FOUNDATION: A natural or manufactured support system to which a structure is anchored or attached. A ‘permanent foundation’ is capable of resisting flood forces and may include posts, piles, poured concrete or reinforced block walls, properly compacted fill, or other systems of comparable flood resistivity and strength.

REACH: A hydraulic engineering term used to describe longitudinal segments along a stream of water. A reach will generally include a segment of the flood hazard area where flood heights are primarily controlled by man-made or natural obstructions or constrictions. In an urban area an example of a reach would be the segment of a stream or river between two consecutive bridge crossings.

RECONSTRUCTION: The repair of a structure damaged by any cause (not limited to flooding) without increasing the floor area of the structure.

RECREATIONAL VEHICLE: A vehicle built on a single chassis; 400 square feet or less when measured at the largest horizontal projection; designed to be self-propelled or permanently towable by a light duty truck; designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use; and includes the following:

- (a) **CAMPER:** A structure containing a floor that is designed to be temporarily mounted upon a motor vehicle, and which is designed to provide facilities for temporary human habitation.
- (b) **MOTOR HOME:** A motor vehicle with a permanently attached camper, or that is originally designed, reconstructed or permanently altered to provide facilities for temporary human habitation.
- (c) **TRAVEL TRAILER:** A trailer that is capable of being used for temporary human habitation, which is not more than eight feet wide, and except in the case of a tent trailer, has four permanent walls when it is in the usual travel position.
- (d) **SELF-CONTAINED RECREATIONAL VEHICLE:** A vehicle that contains a factory-equipped, on-board system for the storage and disposal of gray water and sewage.

REHABILITATION: Any improvements and repairs made to the interior and exterior of an existing structure that do not result in an increase in the ground floor area of the structure. Examples include remodeling a kitchen, gutting a structure and redoing the interior, or adding a second story.

REINFORCED PIER: A pier with a footing adequate to support the weight of the manufactured dwelling under saturated soil conditions. Concrete blocks may be used if vertical steel reinforcing rods are placed in the hollows of the blocks and the hollows are filled with concrete or high strength mortar. Dry stacking concrete blocks does not constitute a 'reinforced pier'.

REPETITIVE LOSS: Flood-related damages sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before damage occurred.

RESTORATION: The process of returning a disturbed or altered area or feature to a previously existing natural condition. Restoration activities reestablish the ecological structure, function, and/or diversity to that which occurred prior to impacts caused by human activity.

SPECIAL FLOOD HAZARD AREA (SFHA): Zones on Flood Insurance Rate Maps that depict the land in the floodplain within a community that is subject to a one percent or greater chance of flooding in any given year. Special Flood Hazard Area is synonymous with "Area of Special Flood Hazard." Special Flood Hazard Areas on Flood Insurance Rate Maps are always designated as Zones A, A1-A30, AE, AO, V, V1-V30 or VE.

START OF CONSTRUCTION: Includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement or other improvement occurred within 180 days of the permit date. The actual start means either the first placement of permanent construction of the structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the state of excavation; or the placement of a manufactured dwelling on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of street and/or walkways; nor does it include excavation for a basement, footings, piers, or foundation or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as

dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

STRUCTURE: For the purposes of this Section, a walled and roofed building, a modular or temporary building, or a gas or liquid storage tank that is principally above ground.

SUBSTANTIAL DAMAGE: Damage of any origin sustained by a structure where the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT: Any reconstruction, rehabilitation, addition or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement. The term includes structures which have incurred substantial damage regardless of the actual repair work performed. The market value of the structure is:

- (1) The real market value of the structure prior to the start of the initial repair or improvement. Substantial Improvements shall be calculated cumulatively over a five year period using the real market value in County Assessor records at the beginning of the five year period; or
- (2) In the case of damage, the real market value of the structure prior to the damage occurring.

The term substantial improvement does not, however, include either:

- (3) Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by local code enforcement prior to substantial improvement or substantial damage and which are solely necessary to assure safe living conditions, or
- (4) Any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places provided that the alteration will not preclude the structure's continued designation as a historic structure.

WATER SURFACE ELEVATION: Heights, in relation to mean sea level, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

- (5) **GENERAL STANDARDS:** In all areas of special flood hazards the following standards are required:

LETTER OF MAP REVISION

- (a) If hydrologic and hydraulic analysis indicates an increase in flood levels, the applicant shall obtain a Conditional Letter of Map Revision (CLOMR) from FEMA before any encroachment, including fill, new construction, substantial improvement, or other development is permitted. Upon completion of the project, but no later than six months after project completion, a Letter of Map Revision (LOMR) shall be submitted to FEMA to reflect the changes on the FIRM and/or Flood Insurance Study. A LOMR is required only when the CLOMR documents an increase in flood levels during the occurrence of the base flood or where post-development conditions do not reflect what was proposed on the CLOMR.

ANCHORING

- (b) All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.
- (c) All manufactured dwellings must likewise be anchored to prevent flotation, collapse or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (See FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for techniques). A certificate signed by a registered architect or engineer which certifies that the anchoring system is in conformance with FEMA regulations shall be submitted prior to final inspection approval.

CONSTRUCTION MATERIALS AND METHODS

- (d) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.
- (e) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.
- (f) Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be elevated to prevent water from entering or accumulating within the components during conditions of flooding. In Flood Zones A, A1-A30, AE, V, V1-V30 or VE, such facilities shall be elevated three feet above base flood elevation. In Flood Zone AO, such facilities shall be elevated above the highest grade adjacent to the building, a minimum of one foot above the depth number specified on the FIRM (at least two feet above the highest adjacent grade if no depth number is specified).__

UTILITIES

- (g) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood water into the system.
- (h) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters.
- (i) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding, consistent with Oregon Department of Environmental Quality (DEQ) standards.

SUBDIVISION AND PARTITION PROPOSALS

- (j) All subdivision and partition proposals governed by the Land Division Ordinance shall be consistent with the need to minimize flood damage.
- (k) All subdivision and partition proposals governed by the Land Division Ordinance shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.

- (l) All subdivisions and partition proposals governed by the Land Division Ordinance shall have adequate drainage provided to reduce exposure to flood damage.
- (m) Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision and partition proposals governed by the Land Division Ordinance and other proposed developments which contain at least 50 lots or 5 acres (whichever is less).

REVIEW OF BUILDING AND MANUFACTURED DWELLING PERMITS

- (n) Where elevation data is not available either through the Flood Insurance Study or from another authoritative source, applications for building permits and/or manufactured dwelling permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks, photographs of past floodings, etc., where available. Failure to elevate at least three feet above grade in these zones may result in higher insurance rates.

SMALL ACCESSORY STRUCTURES

- (o) Relief from elevation or floodproofing as required for structures in A, AE or A1-A30 zones per Section 3.510(6) and AO zones per Section 3.510(11) may be granted for accessory structures that are:
 - (1) Less than 200 square feet and do not exceed 10 feet in height;
 - (2) Not temperature controlled;
 - (3) Not used for human habitation and are used solely for parking of vehicles or storage of items having low damage potential when submerged;
 - (4) Not used to store toxic material, oil or gasoline, or any priority persistent pollutant identified by the Oregon Department of Environmental Quality unless confined in a tank installed in compliance with this ordinance or stored at least one foot above base flood elevation;
 - (5) Constructed in accordance with anchoring and construction materials and methods standards in Section 3.510(5)(a) through (h); and
 - (6) If in an A, AE or A1-A30 zone, constructed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or must meet or exceed the following requirements:
 - i. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
 - ii. The bottom of all openings shall be no higher than one foot above grade; and
 - iii. Openings may be equipped with screens, louvers, or other coverings or devices provided they permit the automatic entry and exit of floodwaters.
 - (7) The cost of flood insurance for a structure permitted to be built with a lowest floor elevation below the base flood elevation will be commensurate with the increased risk resulting from the reduced lowest floor elevation.

- (6) SPECIFIC STANDARDS FOR A ZONES (A, AE or A1-A30): In all areas of special flood hazards where base flood data has been provided as set forth in Section 3.510(2) or other base flood data are utilized, the following provisions are required:

RESIDENTIAL CONSTRUCTION

- (a) New construction and substantial improvement of any residential structure, including manufactured dwellings, shall have the lowest floor, including basement, at a minimum of three feet above base flood elevation.
- (b) Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or must meet or exceed the following minimum criteria:
 - (1) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 - (2) The bottom of all openings shall be no higher than one foot above grade.
 - (3) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.

NONRESIDENTIAL CONSTRUCTION

- (c) New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall have either the lowest floor including basement elevated to three feet above the level of the base flood elevation or higher; or, together with attendant utility and sanitary facilities, shall:
 - (1) Be floodproofed so that the portion of the structure that lies below the portion that is three feet or more above the base flood level is watertight with walls substantially impermeable to the passage of water.
 - (2) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy.
 - (3) Be certified by a registered professional engineer or architect that the design and methods of construction are in compliance with accepted standards of practice for meeting provisions of this Subsection based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the Community Development Director.
 - (4) Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described for residential construction in Section 3.510(6)(a) and (b).
 - (5) Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g. a building constructed to the base flood level will be rated as one foot below that level).

(7) MANUFACTURED DWELLINGS

- (d) Any manufactured dwelling which incurs substantial damage as the result of a flood, must be elevated to the standards listed in (e) or (f) below.
- (e) All manufactured dwellings to be placed or substantially improved within Zones A, AE or A1-30 shall be elevated on a permanent foundation such that the lowest floor of the manufactured dwelling is at or above three feet above the base flood elevation and shall be securely anchored to an adequately anchored foundation system in accordance with Section 3.510(5) and requirements of the Oregon Residential Specialty Code.
- (f) Manufactured dwellings to be placed or substantially improved on sites in a Velocity (V1-V30, VE and V) Zone, that are not subject to the above manufactured dwelling provisions, shall be elevated so that:
 - (1) The lowest floor of the manufactured home is elevated to a minimum of three feet above the base flood elevation, or
 - (2) The manufactured dwelling chassis is supported by reinforced piers or other foundation elements of at least equivalent strength that are no less than 36 inches in height above grade and are securely anchored to an adequately designed foundation system to resist flotation, collapse and lateral movement in accordance with requirements of the Oregon Residential Specialty Code. Electrical crossover connections shall be a minimum of 12 inches above base flood elevation.

(8) RECREATIONAL VEHICLES: Recreational vehicles may occupy a site in a Special Flood Hazard Area for periods of 180 consecutive days or less provided they are fully licensed and highway ready. Recreational vehicles are on its wheels or jacking system, is attached to the site only by quick disconnect type utilities and security devices and has no permanently attached additions. Recreational vehicles that do not meet these criteria become manufactured dwellings and must be anchored and elevated pursuant to this ordinance.

(9) SPECIFIC STANDARDS FOR FLOODWAYS: Located within areas of special flood hazard established in Section 3.510(2) are areas designated as regulatory floodways. Since the floodway is an extremely hazardous area due to the velocity of flood waters which carry debris, potential projectiles, and erosion potential, the following provisions apply:

- (a) Encroachments in the regulatory floodway including fill, new construction, substantial improvements and other development are prohibited unless certification is provided by a professional registered civil engineer demonstrating through hydrologic and hydraulic analysis performed in accordance with standard engineering practice that such encroachment shall not result in any increase in flood levels during the occurrence of the base flood discharge.
- (b) If Subsection 9(a) is satisfied, all new construction and substantial improvement shall comply with all applicable flood hazard reduction provisions of Section 3.510(5) and (6).
- (c) If hydrologic and hydraulic analysis indicates an increase in flood levels, the applicant shall obtain a Conditional Letter of Map Revision (CLOMR) from FEMA before any encroachment, including fill, new construction, substantial improvement, or other development, in the regulatory floodway is permitted. Upon completion of the project, but no later than six months after project completion, a

Letter of Map Revision (LOMR) shall be submitted to FEMA to reflect the changes on the FIRM and/or Flood Insurance Study. A LOMR is required only when the CLOMR documents an increase in flood levels during the occurrence of the base flood or where post-development conditions do not reflect what was proposed on the CLOMR.

- (d) Projects for stream habitat restoration may be permitted in the floodway provided:
 - (1) The civil engineer shall, as a minimum, provide a feasibility analysis and certification that the project was designed to keep any rise in 100-year flood levels as close to zero as practically possible and that no structures will be impacted by a potential rise in flood elevation; and,
 - (2) An agreement to monitor the project, correct problems, and ensure that flood carrying capacity remains unchanged is included as part of the local approval.
- (e) Before a Regulatory Floodway is determined in an A1-A30 or AE Zone: In areas where a regulatory floodway has not been designated, no new construction, substantial improvements or other development (including fill) shall occur within an AE Zone designated on the community's Flood Insurance Rate Map, unless it is demonstrated that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.
- (f) As noted in "The Flood Insurance Study for Tillamook County" as revised on September 28, 2018, certain areas of Tillamook County are subject to heavy tidal influence and sheet flows. Floodways are not applicable in this type of flooding. Thus, the following areas are not subject to the requirement of Section (9)(e) above:
 - (1) Nehalem River downstream of cross-section A
 - (2) Nestucca River where it joins Nestucca Bay
 - (3) Tillamook River
 - (4) Wilson River from cross-sections A to Y
 - (5) Trask River from cross-sections A to AF
 - (6) Kilchis River downstream of cross-section C

(10) **SPECIFIC STANDARDS FOR COASTAL HIGH HAZARD AREAS (V, VE or V1-V30 ZONES):** Located within areas of special flood hazard established in Section 3.510(2) are Coastal High Hazard Areas. These areas have special flood hazards associated with high velocity waters from tidal surges and, therefore, in addition to meeting all provisions in this Section the following provisions shall apply to residential, non-residential, manufactured dwellings and other development in Coastal High Hazard Areas:

- (a) All new construction and substantial improvements in Zones V1-V30, VE and V shall be elevated on pilings and columns so that:
 - (1) The bottom of the lowest horizontal structural member of the lowest floor (excluding the pilings or columns) is elevated to or above one foot above the base flood level: and
 - (2) The pile or column foundation and structure attached thereto is anchored to resist flotation, collapse and lateral movement due to the effects of wind and water loads acting simultaneously on all building components. Wind and water loading values shall each have

a one percent chance of being equaled or exceeded in any given year (100-year mean recurrence interval).

- (b) A registered professional engineer or architect shall develop or review the structural design, specifications and plans for the construction and shall certify that the design and methods of construction to be used are in accordance with accepted standards of practice for meeting the provisions of (a)(1) and (a)(2) above. A certificate shall be submitted, signed by the registered professional engineer or architect that the requirements of this Section will be met.
 - (c) Obtain the elevation (in relation to mean sea level) of the bottom of the lowest structural member of the lowest floor (excluding pilings and columns) of all new and substantially improved structures in Zones V1-30, VE, and V and whether or not such structures contain a basement. The Community Development Director shall maintain a record of all such information.
 - (d) All new construction shall be located landward of the reach of mean high tide.
 - (e) Provide that all new construction and substantial improvements have the space below the lowest floor either free of obstruction or constructed with non-supporting breakaway walls, open wood lattice-work, or insect screening intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system, For the purpose of this Section a breakaway wall shall have a design safe loading resistance of not less than 10 and no more than 20 pounds per square foot. Use of breakaway walls which exceed a design safe loading resistance of 20 pounds per square foot (either by design or when so required by local or state codes) may be permitted only if a registered professional engineer or architect certifies that the designs proposed meet the following conditions:
 - (1) Breakaway wall collapse shall result from a water load less than that which would occur during the base flood; and
 - (2) The elevated portion of the building and supporting foundation system shall not be subject to collapse, displacement, or other structural damage due to the effects of wind and waterloads acting simultaneously on all building components (structural and nonstructural). Maximum wind and water loading values to be used in this determination shall each have a one percent chance of being equaled or exceeded in any given year (100-year mean recurrence interval).
 - (f) If breakaway walls are utilized, such enclosed space shall be usable solely for parking of vehicles, building access, or storage. Such space shall not be used for human habitation.
 - (g) Prohibit the use of fill for structural support of buildings.
 - (h) Prohibit man-made alteration of sand dunes, including vegetation removal, which would increase potential flood damage.
- (11) SPECIFIC STANDARDS FOR AREAS OF SHALLOW FLOODING (AO ZONE): Shallow flooding areas appear on FIRM's as AO zones with depth designations. The base flood depths in these zones range from 1 to 3 feet where a clearly defined channel does not exist, or where the path of flooding is unpredictable and where velocity flow may be evident. Such flooding is usually characterized as sheet flow. In these areas the following provisions apply:

- (a) Require adequate drainage paths around structures on slopes to guide floodwaters around and away from proposed structures.

RESIDENTIAL

- (b) New construction and substantial improvements of residential structures (including manufactured dwellings) within AO zones shall have the lowest floor (including basement) elevated above the highest grade adjacent to the building, a minimum of one foot above the depth number specified on the FIRM (at least two feet above the highest adjacent grade if no depth number is specified).

NON-RESIDENTIAL

- (c) New construction and substantial improvements of nonresidential structures, including manufactured dwellings used for non-residential purposes, within AO zones shall either:
 - (1) Have the lowest floor (including basement) elevated above the highest grade adjacent to the building, a minimum of one foot above the depth number specified on the FIRM (at least two feet above the highest adjacent grade if no depth number is specified); or
 - (2) Together with attendant utility and sanitary facilities, be completely floodproofed to one foot above the depth number specified on the FIRM so that any space below that level is watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. If this method is used, compliance shall be certified by a registered professional engineer or architect as in Subsection (6)(c)(3) of this Section.

(12) **WARNING AND DISCLAIMER OF LIABILITY:** The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the areas of special flood hazard or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of Tillamook County, any officer or employee thereof, or the Federal Insurance Administration, for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

(13) **SPECIAL ADMINISTRATIVE PROVISIONS FOR FH ZONE:**

- (a) **Designation of the Local Administrator:** The Community Development Director of Tillamook County is hereby appointed to administer and implement the provisions of this Flood Hazard Overlay Zone by granting or denying development permit applications in accordance with its provisions.
- (b) **Duties of the Community Development Director shall include, but not be limited to:**
 - (1) Review of all Floodplain Development Permits for construction and other development within an Area of Special Flood Hazard identified on the Flood Insurance Rate Map to assure that the requirements of this Section have been satisfied and that all other necessary permits have been obtained from those federal, state or local governmental agencies from which prior approval is required.

- (2) Review all other permit applications to determine compliance with this Section.
- (3) Notify adjacent communities and the Department of Land Conservation and Development prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Insurance Administration.
- (4) Require that maintenance is provided within the altered or relocated portion of said watercourse so that the flood carrying capability is not diminished.
- (5) Provide base flood elevation and structure elevation requirements to the Building Official.
- (6) Determine if structures meet substantial improvement or substantial damage thresholds.
- (7) Where base flood elevation data is provided through the Flood Insurance Study or required within this Section, obtain and record on an Elevation Certificate the actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, and whether or not the structure contains a basement.
- (8) For all new or substantially improved floodproofed structures:
 - (a) Verify and record the actual elevation (in relation to mean sea level), and
 - (b) Maintain the floodproofing certifications required in this Section.
- (9) Maintain for inspection in perpetuity the affidavits of certification required in this Section. Affidavits of certification, such as elevation certificates, V zone certification, floodproofing, breakaway walls, floodway no-rise, etc., are required to be submitted by the permit applicant for elevations and structural requirements as specified in this Section, both pre- and post-construction, utilizing forms provided for this purpose by FEMA. Elevations may be certified by a licensed surveyor or a registered professional architect or engineer. Structural requirements may be certified by a registered professional architect or engineer.
- (10) Where interpretation is needed requiring the boundaries of the areas of special flood hazard, the Community Development Director will make the necessary interpretation. The person contesting the ruling of the Community Development Director shall be given a reasonable opportunity to appeal the ruling as provided in Section 3.510(15).
- (11) When base flood elevation has not been provided as set forth in Section 3.510(2), the Community Development Director shall obtain, review and reasonably utilize any base flood data and floodway available from federal, state, or other source in order to administer the provisions of Section 3.510.
- (12) All records pertaining to the provisions of this Section shall be maintained in the Tillamook County Community Development Department and shall be open for public inspection.
- (13) When a Variance is granted, the Community Development Director shall give written notice that the structure will be allowed to be built with the lowest floor elevation at or below base flood elevation, and that the cost of flood insurance will be commensurate with the increased risk resulting from the lowest floor elevation.

- (c) Restrict the location of structures placed on undeveloped parcels between Brooten Road and the Nestucca River, from the Woods Bridge downstream to map cross-section line F on the amended floodway map for the Nestucca River.

Such structures shall occupy no more than 62.5% of the lot width of the parcel to be built upon. This requirement does not apply if the structure is built upon pilings with the area beneath the structure open to permit passage of flood water.

Any such structure shall comply with all other requirements of this Section and shall provide a regulatory floodway analysis for structures in the floodway. The intent of this Subsection is to maintain a minimum of 1000 feet of open space on the east bank of the Nestucca River, between Brooten Road and the river, from the Woods Bridge structure downstream to map cross-section line F on the amended floodway map for the Nestucca River.

- (d) Publicly owned open land recreation parks and accessory restroom facilities, where allowed in the underlying zone, shall be allowed in floodplain areas below the base flood elevation. The accessory restroom facilities shall be located outside of floodplain areas if possible. If it is not possible, the restroom structures shall be located:

- (1) On the highest portion of the park grounds; and
- (2) Be wet-floodproofed; and
- (3) Maintain riparian setbacks; and
- (4) Adequate backflow valves shall be installed;

If the structure is located in a designated floodway, it shall conform to 1 through 4 above and shall be small enough and positioned so that it will not divert floodwaters. Any structure located within the regulatory floodway must have a floodway analysis to assure there is no-rise in base flood elevation.

- (e) All residential and non-residential development and substantial improvements, within the Pacific City Airport Overlay Zone where the height is restricted by the PAO zone, below that allowed by the underlying zone, shall conform to the FH zone regulations except that the lowest floor elevation and the floodproofing shall be certified at the base flood elevation given on the FIRM maps instead of the required three foot above base flood elevation level. Any structure located within the regulatory floodway must have a floodway analysis to assure there is no-rise in base flood elevation.

- (14) **DEVELOPMENT PERMIT PROCEDURES:** A development permit shall be obtained before construction or development begins within any area of special flood hazard zone. The permit shall be for all structures including manufactured dwellings, and for all development including fill and other development activities, as set forth in the Definitions contained in this Section of the Land Use Ordinance.

- (a) Application for a development permit shall be made on forms furnished by the Community Development Director and shall include but not necessarily be limited to: plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question, existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information in 3.510(14)(a)(1)–(4) is required and Development Permits

required under this Section are subject to the Review Criteria put forth in Section 3.510(14)(b):

- (1) Elevation in relation to mean sea level of the lowest floor, including basement, of all structures as documented on an Elevation Certificate;
 - (2) Elevation in relation to mean sea level to which any proposed structure will be floodproofed as documented on an Elevation Certificate;
 - (3) If applicable, certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in Subsection (6)(c)(3) of this Section; and
 - (4) Description of the extent to which any watercourse will be altered or relocated as a result of proposed development.
- (b) Development Permit Review Criteria
- (1) The fill is not within a Coastal High Hazard Area.
 - (2) Fill placed within the Regulatory Floodway shall not result in any increase in flood levels during the occurrence of the base flood discharge.
 - (3) The fill is necessary for an approved use on the property.
 - (4) The fill is the minimum amount necessary to achieve the approved use.
 - (5) No feasible alternative upland locations exist on the property.
 - (6) The fill does not impede or alter drainage or the flow of floodwaters.
 - (7) If the proposal is for a new critical facility, no feasible alternative site is available.
 - (8) For creation of new, and modification of, Flood Refuge Platforms, the following apply, in addition to (14)(a)(1-4) and (b)(1-5):
 - i. The fill is not within a floodway, wetland, riparian area or other sensitive area regulated by the Tillamook County Land Use Ordinance.
 - ii. The property is actively used for livestock and/or farm purposes,
 - iii. Maximum platform size = 10 sq ft of platform surface per acre of pasture in use, or 30 sq ft per animal, with a 10-ft wide buffer around the outside of the platform,
 - iv. Platform surface shall be at least 1 ft above base flood elevation,
 - v. Slope of fill shall be no steeper than 1.5 horizontal to 1 vertical,
 - vi. Slope shall be constructed and/or fenced in a manner so as to prevent and avoid erosion.

Conditions of approval may require that if the fill is found to not meet criterion (5), the fill shall be removed or, where reasonable and practical, appropriate mitigation measures shall be required of the property owner. Such measures shall be verified by a certified engineer or hydrologist that the mitigation measures will not result in a net rise in floodwaters and be in coordination with applicable state, federal and local agencies, including the Oregon Department of Fish and Wildlife.

- (c) Before approving a development permit application for other than a building, the Community Development Director may determine that a public hearing should be held on the application. Such hearing shall be held before the Planning Commission and a decision made by the Planning Commission in accordance with the provisions of Article X.

(15) APPEALS, REDUCTIONS AND VARIANCES:

- (a) An appeal of the ruling of the Community Development Director regarding a requirement of this Section may be made to the Tillamook County Planning Commission pursuant to Section 10.100.-
- (b) Reductions of the "3 feet above base flood elevation" standard may be granted by the Community Development Director, upon findings that:
 - (1) Strict application of the three-foot standard would produce an unreasonable or inequitable result; and
 - (2) A lesser elevation requirement will not result in an appreciable increase in flood damage.

Reductions to below 1 foot above base flood elevation require a Variance as described in (c), below.

The intent of this provision is to limit this application of the Director's discretion to those rare and unusual circumstances where the three-foot standard would result in unnecessary and burdensome development requirements.

- (c) Variances to the standards contained in Section 3.510 shall be issued only in accordance with the following criteria:
 - (1) Generally, the only condition under which a variance from the elevation standard may be issued is for new construction and substantial improvements to be erected on a lot of one-half acre or less in size contiguous to and surrounded by lots with existing structures constructed below the base flood level, providing the items in subsection (15)(c)(2) have been fully considered. As the lot size increases the technical justification required for issuing the variance increases.
 - (2) The following items shall be considered in review of variance applications:
 - (i) The danger that materials may be swept onto other lands to the injury of others;
 - (ii) The danger to life and property due to flooding or erosion damage;
 - (iii) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
 - (iv) The importance of the services provided by the proposed facility to the community;
 - (v) The necessity to the facility of a waterfront location, where applicable;
 - (vi) The availability of alternative locations for the proposed use which are not subject to flooding or erosion damage;
 - (vii) The compatibility of the proposed use with existing and anticipated development;
 - (viii) The relationship of the proposed use to the comprehensive plan and flood plain management program for that area;
 - (ix) The safety of access to the property in times of flood for ordinary and emergency vehicles;
 - (x) The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters and the effects of wave action, if applicable, expected at the site; and,

- (xi) The costs of providing governmental services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
- (3) Variances may be issued for the reconstruction, rehabilitation, or restoration of structures listed on the National Register of Historic Places or the Statewide Inventory of Historic Properties, without regard to the procedures set forth in this section.
- (4) Variances shall not be issued within a designated floodway if any increase in flood levels during the base flood discharge would result.
- (5) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.
- (6) Variances shall be issued only upon:
 - (i) A showing of good and sufficient cause;
 - (ii) A determination that failure to grant the variance would result in exceptional hardship to the applicant;
 - (iii) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud on or victimization of the public as identified in subsection (15)(c)(2), or conflict with existing local laws or ordinances.
- (6) Variances as interpreted in the National Flood Insurance Program are based on the general zoning law principle that they pertain to a physical piece of property; they are not personal in nature and do not pertain to the structure, its inhabitants, economic or financial circumstances. They primarily address small lots in densely populated residential neighborhoods. As such, variances from the flood elevations should be quite rare.
- (7) Variances may be issued for nonresidential buildings in very limited circumstances to allow a lesser degree of floodproofing than watertight or dry-floodproofing, where it can be determined that such action will have low damage potential, complies with all other variance criteria except subsection (15)(c)(1), and otherwise complies with general standards in Section 3.510(5).
- (8) Any applicant to whom a variance is granted shall be given written notice that the structure will be permitted to be built with a lowest floor elevation below the base flood elevation and that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation.
- (e) The procedures for reviewing and taking action on a variance under the provisions of this Section shall be pursuant to the procedures for a Type II review in accordance with Article 10 of the TCLUO.
- (16) PROVISIONS: The provisions of Section 3.510 shall take precedence over all prior resolutions or orders of the Board of County Commissioners relating to Floodplain Management.

SECTION 3.515: SCENIC WATERWAY OVERLAY ZONE (SWO)

- (1) **PURPOSE AND AREAS INCLUDED:** The purpose of this zone is to facilitate implementation of the Oregon Park and Recreation Commission’s management plan for the Nestucca River Scenic Waterway, and thereby to protect and preserve the natural setting and water quality of waterways possessing outstanding scenic, fish, wildlife, geological, botanical, historic, archaeological, and outdoor recreation values. The zone comprises all land within one -fourth mile of the top of bank of the Nestucca River from the County line downstream to its confluence with Moon Creek (approximately river mile 24.5, in Blaine). The boundaries of this zone are governed by the Tillamook County Scenic Waterway Overlay Zone Map, available at the County Planning Office and on the County website.
- (2) **USES PERMITTED:**
 - (a) Any development activity, mining operation, timber harvesting, or other landscape alteration activity permitted in the underlying zone may be allowed, provided the activity is approved by the Oregon Parks and Recreation Department, or otherwise complies with the Scenic Waterway Notification procedures described in OAR-736-040-0080.

SECTION 3.520: PLANNED DEVELOPMENT OVERLAY (PD)

- (1) **PURPOSE:** The purpose of the PLANNED DEVELOPMENT is to permit greater flexibility and creativity in the design of land development than is presently possible through the strict interpretation of conventional zoning and land division ordinances. The intent is to encourage development designs that preserve and/or take advantage of the natural features and amenities of a property such as, but not limited to, views water frontage, wetlands, sloping topography, geologic features and drainage areas. A Planned Development should be compatible with the established and proposed surrounding land uses. A Planned Development should accrue benefits to the County and the general public in terms of need, convenience and service sufficient to justify any necessary exceptions to the zoning and land divisions ordinances.
- (2) **STANDARDS AND REQUIREMENTS:** The following standards and requirements shall govern the application of a Planned Development in an area in which it is permitted.
 - (a) A PLANNED DEVELOPMENT OVERLAY ZONE is allowed in the RR-2, RR-10, CSFR, CR-1, CR-2, CR-3, RMH, RC, CC and RI, CI, and unincorporated community zones where permitted.
 - (b) A planned development may include any uses and conditional uses permitted in the RR, CSFR, CR-1, CR-2, CR-3, RMH, and RC zones. In addition, the uses permitted in the CC and CI, RI, and unincorporated community zones where permitted will be permitted in the areas where the underlying zone permits those uses.
 - (c) The density of a planned development will be based on the density of the underlying zone. (d)

The height limit may be increased to not more than 35 feet by the Planning Commission in approving a specific Planned Development project. If the applicant is requesting a height increase, this request shall be noted in the notice to affected property owners. The Planning Commission may allow an increase in the height if there is a reasonable basis for the additional height such as: topography of the site, clustering of units, preservation of open space, staggering of building sites, and view corridors between ocean front dwelling units.

- (e) Dimensional standards for lot area, depth, width, and all yard setback standards of the underlying zone shall not apply and these standards shall be established through the Planned Development approval process in order to fulfill the purpose set forth in Section 3.520 (1). In the RR/PD zoned areas, only those properties located within a Community Growth Boundary can utilize this item. All rural RR/PD zoned land shall conform to the density and standards of the RR zone.
- (f) The development standards of the Land Division Ordinance shall provide the basic guide for the design of a planned development. Variances may be permitted through the Planned Development approval process in order to fulfill the purposes set forth in Section 3.520 (1). Variance process and criteria contained in the Tillamook County Land Division Ordinance and Tillamook County Land Use Ordinance must be followed.

(3) PLANNED DEVELOPMENT PROCEDURE: The following procedures shall be observed in applying for and acting on a planned development.

- (a) An applicant shall submit a preliminary development plan to the Planning Department for review. The preliminary plan shall include the following information:
 - (1) Proposed land uses, building locations and housing unit densities.
 - (2) Proposed circulation pattern indicating the status of street ownership. (3)
Proposed open space uses.
 - (4) Proposed grading and drainage pattern.
 - (5) Proposed method of water supply and sewage disposal.
 - (6) Economic and supporting data to justify any proposed commercial development in an area not so zoned.
 - (7) Relation of the proposed development to the surrounding area and the comprehensive plan.
- (b) During its review the Planning Department shall distribute copies of the proposal to county

agencies for study and comment. In considering the plan, the Planning Department shall seek to determine that:

- (1) There are special physical conditions or objectives of development which the proposal will satisfy to warrant a departure from the standard ordinance requirements.
 - (2) Resulting development will not be inconsistent with the comprehensive plan provisions or zoning objectives of the area.
 - (3) The plan can be completed within a reasonable period of time.
 - (4) The streets are adequate to support the anticipated traffic and the development will not overload the streets outside the planned area.
 - (5) Proposed utility and drainage facilities are adequate for the population densities and type of development proposed.
 - (6) The parcel is suitable for the proposed use, considering its size, shape, location, topography, existence of improvements, and natural features.
 - (7) The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs or prevents the use of surrounding properties for the permitted uses listed in the underlying zone.
 - (8) The proposed use is timely, considering the adequacy of public facilities and services existing or planned for the area affected by the use.
 - (9) Proposed uses which are not otherwise permitted by the underlying zoning on the parcel are accessory uses within the entire development.
- (c) The Planning Department shall notify the applicant whether, in its opinion, the foregoing provisions have been satisfied and, if not, whether they can be satisfied with further plan revision.
- (d) Following this preliminary review, the applicant may request approval of the planned development by the Planning Commission according to the provisions in Article VI if the proposal is to take place on property designated with the PLANNED DEVELOPMENT OVERLAY ZONE prior to May 30, 1985.
- (e) If the property is to be divided under the provisions of the Land Division Ordinance, a request according to the requirements of that Ordinance shall be included as part of the Planning Commission's review.
- (f) The filing fee for a planned development is the total of all fees for the action requested.

- (g) In addition to the requirements of this section, the Planning Commission may attach conditions it finds are necessary to carry out the purposes of this ordinance.
 - (h) Planned Development shall be identified on the zoning map with the letters "PD" in addition to the abbreviated designation of the existing zone.
 - (i) Building permits in a planned development shall be issued only on the basis of the approved plan. Any changes in the approved plan shall be submitted to the Planning Commission for approval in accordance with the procedures for approval of a conditional use request.
 - (j) In an existing PD overlay zone, lots on parcels of record as of the date of adoption of this ordinance which are less than one acre in size, may be built upon in accordance with all other requirements of the zone in which the lot or parcel is located and of this ordinance.
- (4) TO ESTABLISH A NEW PLANNED DEVELOPMENT OVERLAY ZONE: To establish a Planned Development Overlay designation under Article IX of this ordinance, the applicant must submit to the department the following material in addition to the requirements of Article IX and Section 3.520 (3):
- (a) A conceptual development plan for the proposed site with the object of demonstrating that the property possesses the characteristics set forth in Section 3.520 (1) of this ordinance. The plan shall include a scale drawing or the entire site showing proposed land uses, road ways, pedestrian ways, drainage patterns, common areas, recreation facilities, natural features, residential lots and the approximate location of structures other than single family residences.
 - (b) Parcels receiving the PLANNED DEVELOPMENT OVERLAY ZONE designation after July 1, 1992, will be eligible for development under the Land Division Ordinance, with the approved and recorded conceptual plan serving as the zoning map for the land parcel.
 - (c) Any proposed change to an approved conceptual plan which may increase the intensity of use or off-site impacts must conform to the criteria and procedures contained in Article IX of this ordinance. This determination shall be made by the Director. Notice of such a determination shall be provided to those within the required notice area.

SECTION 3.525: COAST RESORT OVERLAY (CR)

- (1) PURPOSE AND INTENT: The purpose of the COAST RESORT OVERLAY ZONE is to recognize sites that are suitable and appropriate for the location of recreation oriented coast resorts as defined in this Section, and to establish standards to guide the development of such facilities. The COAST RESORT OVERLAY ZONE is intended to insure the compatibility of coast resorts with the natural resources of the County.

Tillamook County recognized that ocean shore lands constitute an outstanding natural scenic and recreational resource. Therefore, the COAST RESORT OVERLAY ZONE is provided for and may be applied only to lands which abut the ocean beach or a major part of which have views of the ocean.

- (2) DEFINITIONS: A "coast resort" is a self-contained development that serves as an attraction for vacationers and other visitors and provides temporary lodging in conjunction with natural, scenic and recreational amenities available as an integral part of the development and in the surrounding environment. A coast resort:
- (a) Is located on a large site with a high level of natural amenities;
 - (b) Maintains the open space character of the site and the design, density and layout of the development maintains the natural and scenic amenities of the site;
 - (c) Provides primarily visitor oriented accommodations and has developed recreation facilities and natural amenities that are a primary attraction for visitors;
 - (d) Is located at least 25 road miles from an urban growth boundary containing a population of 50,000 or more.

"Visitor oriented accommodations" are lodging, restaurants, meeting facilities, staff housing and other facilities that provide for the needs of visitors and which constitute a majority of the developed facilities on the site.

"Developed recreational facilities" on the site are those which require a significant investment and are provided at a level and variety in proportion to the number of living accommodations in the development.

A "self-contained development" is one in which sewer, water and recreational facilities are provided in conjunction with the development and in which the sewer and water facilities are limited to meet the needs of the development.

- (3) PERMITTED USES:
- (a) The following uses are permitted when provided as a part of, and intended primarily to serve persons at, a coast resort developed under this Section:
 - (1) Living accommodations including lodges, hotels, motels, one-family, two-family and multifamily dwelling units.
 - (2) All manner of outdoor and indoor recreation facilities including, but not limited to, golf courses, tennis courts, swimming pools, racquetball and handball courts, riding stables, nature trails, and walking/running/bicycle paths.
 - (3) Convention facilities and meeting rooms.

(b) The following uses are permitted when provided as uses incidental to and together with the uses described in (a) above as a part of a coast resort, subject to the conditions and restrictions on such incidental uses set forth in the Section.

(1) Restaurants, lounges and nightclubs.

(2) Theaters and performing arts auditoriums. (3)

Health clubs, spas and exercise studios.

(4) Craft and art studios and galleries.

(5) Kennels, as a service for resort guests only.

(6) Commercial services and specialty shops to provide for the needs of vacationers and visitors.

(7) Airport or heliport.

(8) First aid station or infirmary.

(9) Facilities necessary for utility service. (10)

Sewer and water treatment plant.

(11) Farm and forest uses.

(12) Signs subject to Section 4.020.

(4) APPLICATION OF THE OVERLAY ZONE AND PROCEDURE:

(a) APPLICATION: The COAST RESORT OVERLAY ZONE may be applied to any non- estuarine property complying with the standards contained herein. Application of the Overlay Zone to specific property is accomplished through a Zoning Map change. Approval of a Zoning Map change to COAST RESORT OVERLAY ZONE signifies that the affected property is suitable for development pursuant to this Section and subject to the Land Use Plan approved at the time of zone change, but does not authorize development.

(1) The zone or zones applicable to the property preceding the change will be retained on the Zoning Map. If a proposed Preliminary Development Plan is not submitted for a site within five years of the zone change to COAST RESORT OVERLAY ZONE, the designation shall be extinguished and removed from the zoning map, unless prior to the

end of the five year period the property owner submits a request for a two-year extension and thereafter the Planning Commission approves the extension. Approval shall be based upon a finding that circumstances have not changed sufficiently since prior approval to render the zone change inappropriate. The CR zone may be extended thereafter from year to year based upon a similar application and finding.

- (2) While the COAST RESORT OVERLAY ZONE is applicable to certain property, no development or use of the property shall occur except as provided in this Section.
 - (3) Development pursuant to this COAST RESORT OVERLAY ZONE Section shall be reviewed and approved based upon the provisions of this Section rather than the provisions of the underlying zone or zones. The requirements of other applicable overlay zones and supplemental standards shall apply.
 - (4) A proposed zone change from COAST RESORT OVERLAY ZONE to a zone or zones other than the underlying zone or zones retained on the Zoning Map shall be evaluated as a change from such underlying zone or zones.
- (b) PROCEDURE:
- (1) Zone Change: An amendment to the Zoning Map to apply the COAST RESORT OVERLAY ZONE may be initiated by the Board of County Commissioners or by application of the property owner. The procedure shall be as provided in Section 9.020 but the matters to be included in an application and considered on review shall be as set forth in (5) of this section and the criteria for approval of the change shall be as set forth in (6) of this section. A land use plan for the site shall be approved as a part of the zone change. The requirements for the land use plan are described in (5) (e) of the section. If development as identified on the land use plan requires one or more exceptions to Land Conservation and Development Commission Goals the Goal 2 exception process, including comprehensive plan amendments shall be complied with at the time of the zone change.
 - (2) Preliminary Development Plan: A Preliminary Development Plan shall determine the nature, location and phasing, if any, of development on property designated COAST RESORT OVERLAY ZONE. A property owner may initiate a request for approval of a Preliminary Development Plan by filing an application with the Planning Department. The Planning Commission shall review the Preliminary Development Plan according to the procedure of Article 6 and standards and criteria of (7), (8) and (9) of this Section.
 - (3) Final Development Plan: A Final Development Plan shall include the elements provided in (10) of this Section and shall be the authority for issuance of building and other required development permits. The proposed Final Development Plan shall be submitted to the Planning Department and approved or denied by the Director pursuant to the criteria set forth in (11) of this Section. If the proposed development will include subdivision or major partition of the property, preliminary approval shall be obtained prior to approval of the Final Development Plan as required by the Land Division Ordinance. If the

Preliminary Development Plan authorized phased development, the final Development Plan may be for one or more of the phases. If a Final Development Plan is not submitted within five years of approval of the Preliminary Development Plan, the latter shall expire and a new Preliminary Development Plan shall be required, unless prior to the end of the five year period the property owner submits a request for a one- year extension and thereafter the Planning Commission approves the extension.

Approval shall be based upon a finding that circumstances have not changed sufficiently since prior approval to render the Preliminary Development Plan inappropriate. The Plan may be extended thereafter from year to year based upon a similar application and finding.

- (4) Pre-application Conference: Prior to submitting a zone change application or a Preliminary Development Plan application, the applicant shall confer with the Planning director regarding the proposal and the requisites of the applications.
- (5) Combined Procedure: The steps described in 4 (b) (1) and 4 (b) (2) above may be combined in which case the Preliminary Development Plan shall serve as the Land Use Plan required for zone change approval.

(5) CONTENTS OF ZONE CHANGE APPLICATION FOR COAST RESORT OVERLAY ZONE: The following information shall be provided as part of an application for a zone change to COAST RESORT OVERLAY ZONE:

- (a) The completed application form.
- (b) A site map, drawn to scale, showing the subject property and all property within 250' of the boundaries of the subject property.
- (c) A vicinity map showing the area and land uses within 1/2 mile of the property.
- (d) A site inventory and map including the following information as is available in the Comprehensive Plan or other readily available published inventories (The maps shall be at either a 1:100, 200, 300, or 400 scale.):
 - (1) SCS soils classifications.
 - (2) Forest site classification.
 - (3) Goal 5 resources inventoried in the Comprehensive Plan.
 - (4) The shorelands boundary and shorelands resources inventoried in the Comprehensive Plan.
 - (5) Outstanding natural features not included within (3) or (4) above.
 - (6) Beach and dunes land form classifications.

- (7) Geologic hazards.
- (e) A Land Use Plan for the site.
- (1) The Land Use Plan shall consist of a site map, a site suitability matrix and any findings and conditions required under this Subsection (e). The site map shall divide the site into units having common physical, locational and aesthetic characteristics as determined from the site inventory. Each unit shall be identified on the map by a district letter, number or descriptive designation. Non-contiguous portions of the site having common characteristics may be included in one unit. The site suitability matrix shall list on the horizontal scale the five land use categories described below. It shall list on the vertical scale the designations of each of the units shown on the site map. Each of the combinations of land use category and site unit shall be evaluated for use suitability and assigned a value of "suitable", "moderately suitable" or "unsuitable".
 - (2) The land use categories to be evaluated for each site unit are as follows:
 - (a) Natural (N): Areas that will not be altered or developed because of extreme hazard to life or property, or because of significant ecological, scientific, educational, historic, archaeological or other values identified for protection in the Comprehensive Plan.
 - (b) Low Intensity Recreation (RL): Recreation activities that require no developed facilities or minimal facilities having minor impact on the ecosystem such as unpaved paths, footbridges or boat docks suitable only for small boats and canoes.
 - (c) High Intensity Recreation (RH): Recreation activities requiring substantial developed facilities such as tennis courts, golf courses or marinas and related utility facilities.
 - (d) Development Density 1 (D1): Moderate to low intensity residential development and utility facilities.
 - (e) Development Density 2 (D2): High intensity residential facilities, commercial and utility facilities.
 - (3) Suitability evaluations shall be utilized in the following manner:
 - (a) A site unit evaluated as suitable for Natural uses will not be developed for other uses except for protection or restoration consistent with the requirements of Sections 3.545 and 4.140 regardless of its moderate suitability or suitability under another land use category.

- (b) A site unit with a land use category other than Natural evaluated as moderately suitable for the category will permit the uses for such category only upon findings describing the reason for the evaluation and conditions and findings demonstrating mitigation of adverse impacts from such permitted uses or such part thereof as are proposed. A site unit not designated as natural that contains significant ecological, scientific, educational, historic or other values identified in the Comprehensive Plan for limitation of conflicting uses shall be evaluated as moderately suitable or unsuitable only and the conditions and findings shall implement the limited protection required by the Comprehensive Plan.
 - (c) A site unit with a land use category other than Natural evaluated as unsuitable for the category will not permit the uses for such category.
 - (d) A site unit evaluated as unsuitable or moderately suitable for Natural uses and moderately suitable or suitable for uses in another land use category will permit the uses under the other category or such part thereof as are proposed, subject to the requirements of (b) above if applicable.
- (f) A written statement providing justification for the proposed zone change according to the approval criteria state in (6) of this Section. The written statement shall include the report of a qualified economist or other market research specialist addressing the issue of the developed recreation facilities that will be necessary, when considered together with the natural amenities of the property, to constitute a primary attraction for visitors. Because a specific development plan is not required for a zone change, the report may refer to categories and ranges of scale of facilities and may provide two or more acceptable alternatives.
- (g) A demonstration of the feasibility of providing sewer, water and fire services, including public services availability or on-site provision of services, as applicable.
- (6) CRITERIA FOR APPROVAL OF COAST RESORT OVERLAY ZONE: A zone change to COAST RESORT OVERLAY ZONE shall be approved upon findings that the following criteria are satisfied:
- (a) The natural amenities of the property shall include at least (i) ocean views from a majority of the property or (ii) portions of the property that abut the ocean beach. The natural amenities considered together with identified developed recreation facilities that can be provided on the property (as demonstrated by the Land Use Plan) will constitute a primary attraction for visitors. This conclusion shall be supported by the report required in (5) (f) of this Section.
 - (b) The property is not well suited for commercial agriculture considering the terrain, adverse soil or land conditions, drainage and flooding, location and size of the tract.
 - (c) The proposed development of the property in accordance with the Land Use Plan can be accomplished without substantial interference to or significant adverse effects upon identified sensitive or unique natural areas or ecological features.

- (d) The proposed development of the property can be accomplished in accordance with the Land Use Plan in a manner that will be compatible with the uses permitted on adjacent lands.
 - (e) Suitable access exists or can be provided to serve development of the property.
 - (f) Adequate sewer, water and fire services can be provided to serve the proposed development of the property.
 - (g) Required findings for needed Goal exceptions have been made.
 - (h) The proposed development of the property is consistent with the Comprehensive Plan.
- (7) CONTENTS OF APPLICATION FOR APPROVAL OF PRELIMINARY DEVELOPMENT PLAN: The information required as part of the preliminary development plan shall be as stated in the Tillamook County Land Division Ordinance. The application shall also include such additional information in the form of written statements, maps and drawings as is necessary to demonstrate compliance with the development standards and approval criteria of (8) and (9) of this Section.
- (8) DEVELOPMENT STANDARDS:
- (a) The Preliminary Development Plan shall be consistent with the Land Use Plan approved for the property.
 - (b) The proposed development shall satisfy the definition of COAST RESORT contained in this Section.
 - (c) The Preliminary Development Plan shall demonstrate that the majority of the developed housing units will be used by visitors and not by full time residents. Such units include, but are not limited to, hotel and motel rooms, cabins, and time share units.
 - (d) Developed recreational facilities shall be provided on the property of a variety, quantity and quality that, when considered together with the retained natural amenities of the property, will be sufficient to constitute in combination a primary attraction for visitors. Satisfaction of this standard shall be demonstrated by the report submitted as required by (5) (f) of this Section and supplemented by a similarly qualified individual if necessitated by any changes in the proposed facilities from the zone change submittal. The developed recreational facilities shall also be adequate to serve the number of living accommodations proposed.
 - (e) A coast resort shall consist of not less than 160 acres of property. Living units, enclosed recreation, entertainment or commercial facilities and paved surfaces may cover a maximum of 40% of the gross area of the property.
 - (f) To the greatest extent possible, significant vegetation and natural features on the property shall be preserved.

- (g) The commercial, cultural and entertainment uses permitted in (3) (b) (1) through (7) of this Section are intended to be incidental to the primary uses in (3) (a). Such incidental uses shall be permitted only at a scale suited to serve visitors to the coast resort except to the extent that a particular use cannot be reduced from the proposed scale without impairing the function or economic viability of the use.
 - (h) Any commercial, cultural or entertainment services provided as a part of the coast resort shall be contained within the development and shall not be oriented to public highways adjacent to the property. The buildings shall be designed to be compatible in appearance with the living accommodations and shall be constructed of similar materials.
 - (i) A coast resort shall be served by on-site sewage and water systems approved by the DEQ, except where connection to a public system is permitted under the Public Service and Facilities (Goal 11) element of the Comprehensive Plan and such connection will not result in increased tax expense for property served by the public system prior to the connection.
 - (j) Adequate fire protection shall be available through an existing fire district or provided on site.
 - (k) A coast resort proposal shall not alter the character of the surrounding area in a manner which substantially limits, impairs, or prevents the permitted use of the surrounding properties. A coast resort proposal shall not force a significant change in or significantly increase the cost of farm or forest practices on nearby lands devoted to farm or forest uses.
 - (l) All requirements of other applicable county ordinance provisions shall be satisfied.
 - (m) A Preliminary Development Plan may specify phases of development if each successive phase together with previously completed phases is capable of operating in a manner consistent with the intent and purpose of this Section.
- (9) APPROVAL CRITERIA FOR PRELIMINARY DEVELOPMENT PLAN: The Preliminary Development Plan for a coast resort development permitted under this Section shall be approved upon finding that the following criteria have been met:
- (a) The proposed development will satisfy the development standards in (8) of this Section.
 - (b) The development has been designed to provide beach access or views of the ocean as a major feature of the project.
 - (c) The proposed type and level of development is appropriate to the site and will be compatible with the existing uses of the adjacent lands as well as the potential future uses as indicated by the current Comprehensive Plan and zoning designations.
 - (d) The proposed means of external and internal circulation is adequate to provide for the safe movement of vehicles and pedestrians.

- (e) Adequate public services will be available to serve the development, including water supply, sewage disposal, electric power, telephone service, police and fire protection.
- (10) CONTENTS OF FINAL DEVELOPMENT PLAN: The information required as a part of the final development plan shall be as stated in the Tillamook County Land Division Ordinance and shall also include information regarding the method of compliance with (12) (a) of this Section.
- (11) APPROVAL CRITERIA FOR FINAL DEVELOPMENT PLAN: The Final Development Plan for the site, or for a phase of development if applicable shall be approved if it contains the information required under (10) above, is consistent with the approved Preliminary Development Plan and if all other applicable County requirements have been met. The approved method of compliance with the requirements of (12) (a) of this Section may be amended from time to time with the prior written approval of the Planning Director.
- (12) IMPLEMENTATION:
 - (a) To provide adequate assurance that developed recreational facilities proposed in the Preliminary Development Plan will be completed, the Final Development Plan shall specify one or a combination approved by the Planning Director of the following procedures. Building permits and final subdivision plat approvals shall be issued only upon compliance with the specified procedure.
 - (1) The total number of subdivided lots and the total number of dwelling units not on individual lots that will be offered for sale, exclusive of time share sales, shall be specified. Such lots and dwelling units shall be referred to in this Subsection (12) (a) as "units". The estimated cost of each of the proposed developed recreational facilities stated in current dollars shall be specified. Subdivision final plat approvals and building permits for not more than 25% of the total number of units may be issued prior to completion of any developed recreational facilities. Thereafter, the percentage of units for which final subdivision plat approvals or building permits are issued compared to the total number of units shall not exceed the percentage of the dollar value of completed developed recreation facilities based on their estimated cost compared to the total estimated costs.
 - (2) The Preliminary Development Plan shall provide for no fewer than four phases satisfying the requirements of (8) (m) of this Section. The first phase shall not include more than 25% of the total number of units determined in the manner described in (1) above.
 - (3) A corporate surety performance bond shall be deposited with the county in a form acceptable to the Planning Director and in an amount equal to the estimated cost of all developed recreational facilities proposed in the Final Development Plan prior to issuance of final subdivision plat approvals or building permits for development pursuant to the plan.

- (b) When phased development has been approved through the Preliminary Development Plan, development of a subsequent phase shall not begin until all developed recreation facilities of the previous phase have been completed.
- (13) FEES: The fees for COASTAL RESORT OVERLAY ZONE applications should be calculated in the same way and at the same amount as those assessed for PLANNED DESTINATION RESORT applications as provided in Section 3.045 (12) (6) of this ordinance.

SECTION 3.530 BEACH AND DUNE OVERLAY (BD)

- (1) PURPOSE: The purpose of the Beach and Dune Overlay Zone is to establish criteria and performance standards to direct and manage development and other activities in beach and dune areas in a manner that:
- (a) Conserves, protects and, where appropriate, restores the resources and benefits of coastal beach and dune areas;
 - (b) Reduces the risks to life and property from natural and man-induced actions on these inherently dynamic landforms; and
 - (c) Ensures that the siting and design of development in beach and dune areas is consistent with Statewide Planning Goals 7 and 18, and the Hazards Element and Beaches and Dunes Element of the Tillamook County Comprehensive Plan.

Risk is ever present in identified beach and dune areas. The provisions and requirements of this section are intended to provide for identification and assessment of risk from beach and dune natural hazards, and to establish standards that limit overall risk to the community from identified hazards to a level acceptable to the community. Development in identified hazard areas is subject to increased levels of risk, and these risks must be acknowledged and accepted by present and future property owners who proceed with development in these areas.

- (2) AREAS INCLUDED: All beach and dune areas categorized in the table below and as identified in Open File Report O-20-04, Temporal and Spatial Changes in Coastal Morphology, Tillamook County, Oregon by the Oregon Department of Geology and Mineral Industries (DOGAMI) are subject to the provisions of this section. Beach and dune landforms are identified and mapped in this DOGAMI report. The following table provides a crosswalk between the categories mapped in O-20-04 and the categories subject to the provisions of this Section 3.530 and the Beaches and Dunes Element of the Tillamook County Comprehensive Plan.

DOGAMI Inventory Classification	Goal 18, DLCDC Classification	Mapping Code
Beach	Beach	B
Active Foredune	Foredune, Active	FDA
Active Dune Hummocks	Hummocks, Active	H
Recently Stabilized Foredune	Foredune, Conditionally Stable	FD
Dune Complex	Dune Complex	DC
Younger Stabilized Dunes	Dune, Younger Stabilized	DS
Older Stabilized Dunes	Dune, Older Stabilized	ODS
Open Dune Sand	Dune, Active/Dune, Parabolic	OS
Open Dune Sand Conditionally Stable	Dune, Conditionally Stable	OSC
Active Inland Dune	Dune, Active	AID
Wet Interdune	Interdune	W
Wet Deflation Plain	Deflation Plain	WDP

- (3) **PERMITTED USES:** Within the Beach and Dune Overlay Zone, all uses permitted pursuant to the provisions of the underlying zone may be permitted, subject to the additional requirements and limitations of this section.
- (4) **HABITAT RESTORATION & ENHANCEMENT:** Permits for the enhancement or restoration of beach and dune landforms for the purposes of wildlife and plant habitat are permitted in the Beach and Dune Overlay Zone subject to the following requirements:
- (a) Any proposed vegetation removal shall be the minimum extent necessary to carry out the purpose of the habitat restoration or enhancement project.
 - (b) Activities shall demonstrate compliance with the requirements of the Flood Hazard Overlay Zone, if applicable.
 - (c) Activities shall be tied to an existing conservation plan, wildlife strategy, Endangered Species Act requirement, or other applicable document.
 - (d) The permit application shall include a clear plan for what activities will be carried out, the timing of the activities, and include:
 - (A) Temporary and permanent stabilization programs, sand contouring, and the planned maintenance of new and existing vegetation over at least a five-year period from completion of work;
 - (B) Methods for protecting the surrounding area from any adverse effects of the restoration or enhancement activities; and

(C) Minimize to insignificant levels hazards to life, public and private property, and the natural environment which may be caused by the proposed activities.

(e) Application, review, decisions, and appeals for permits for habitat restoration or enhancement shall be a Type I procedure in accordance with Article 10.

(5) DUNE AREA DEVELOPMENT PERMIT:

- (a) Except for activities identified in subsection (5)(b) as exempt, any new development, new construction, substantial improvement, shoreline alteration (including activities outside of OPRD's jurisdiction) or grading activity in an area subject to the provisions of this section shall require a Dune Area Development Permit. The Dune Area Development Permit may be applied for prior to or in conjunction with a building permit, grading permit, or any other permit or land use approval required by Tillamook County.
- (b) The following activities are exempt from the requirement for a Dune Area Development Permit:
 - (A) Maintenance, repair, or alterations to existing structures that do not alter the building footprint or foundation and do not constitute substantial improvement as defined in Article 11;
 - (B) Exploratory excavations under the direction of a certified engineering geologist or registered geotechnical engineer;
 - (C) Construction of structures for which a building permit is not required;
 - (D) An excavation which is less than two feet in depth, or which involves less than twenty-five cubic yards of volume;
 - (E) Fill that is less than two feet in depth or that involves less than twenty-five cubic yards of volume;
 - (F) Yard area vegetation maintenance on slopes less than 20%;
 - (G) Removal of trees smaller than 8 inches dbh (diameter breast height);
 - (H) Removal of trees larger than 8 inches dbh provided the canopy area of the trees that are removed is any one-year period is less than 25% of the lot or parcel area;
 - (I) Forest operations subject to regulation under ORS 527 (the Oregon Forest Practices Act);
 - (J) Maintenance and reconstruction of public and private roads, streets, parking lots, driveways, and utility lines, provided the work does not extend outside the existing right-of-way boundary;
 - (K) Maintenance and repair of utility lines, and the installation of individual utility service connections;
 - (L) Emergency response activities intended to reduce or eliminate an immediate danger to life, property, or flood or fire hazard;

- (M) Restoration, repair, or replacement of a lawfully established structure damaged or destroyed by fire or other casualty in accordance with subsection (15) of this section;
 - (N) Beachfront protective structures subject only to regulation by the Oregon Parks and Recreation Department under OAR Chapter 736, division 20;
 - (O) Remedial sand grading authorized by a Remedial Sand Grading Permit issued pursuant to subsection (11) of this section; and
 - (P) Foredune grading authorized by a Foredune Grading Permit issued pursuant to subsection (12) of this section.
 - (Q) Lots or parcels less than 20,000 square feet in size located on an Older Stabilized Dune where the average existing slope is less than 19% measured from the highest to lowest point of the property.
 - (P) Lots or parcels greater than 20,000 square feet in size located on an Older Stabilized Dune where the average existing slope of the building footprint or area to be disturbed measured from the highest to lowest point within the footprint or area to be disturbed is 29 percent or greater.
- (d) Application, review, decisions, and appeals for Dune Area Development Permits shall be a Type I procedure in accordance with Article 10.
- (e) In addition to a completed application as prescribed in Article 10, an application for a Dune Area Development Permit shall include the following:
- (A) A site plan that illustrates areas of disturbance, ground topography (contours), roads and driveways, an outline of wooded or naturally vegetated areas, watercourses, erosion control measures, and trees with a diameter of 8-inches dbh (diameter breast height) or larger proposed for removal;
 - (B) An estimate of depths and the extent of all proposed excavation and fill work;
 - (C) Identification of the coastal erosion hazard zone for the parcel or lot upon which development is to occur;
 - (D) Identification of all natural hazards potentially present and estimated sea level rise expected for the parcel or lot upon which development is to occur.
 - (E) A Geologic Hazard Report prepared by a qualified licensed geoprofessional (as defined in Article 11) which meets the content requirements of subsection (6); and
 - (F) If engineering remediation is required to make the site suitable for the proposed development, an engineering report, prepared by a registered civil engineer (with experience relating to coastal processes), geotechnical engineer, or certified engineering geologist which provides design and construction specifications for the required remediation.
- (f) A decision to approve a Dune Area Development Permit shall be based upon findings of compliance with the following standards:

- (A) The proposed development complies with the applicable requirements and standards of subsections (7), (8), (9), (10), and (13) of this section;
 - (B) Any proposed foredune grading for site preparation cannot go below the Base Flood Elevation plus four feet; shall be the minimum area necessary for the construction of a structure; shall include plans for temporary and permanent stabilization of the site, including a re-vegetation plan of exposed sand areas; and shall conform with the requirements of subsection (11)(b) of this section. Additionally, all graded sand shall remain in the beach-foredune system;
 - (C) The Geologic Hazard Report conforms to the standards for such reports set forth in subsection (6) of this section; and
 - (D) The development plans for the application conform, or can be made to conform, with all recommendations and specifications contained in the Geologic Hazard Report.
- (g) In approving a Dune Area Development Permit, the decision maker may impose any conditions which are necessary to ensure compliance with the provisions of this section or with any other applicable provisions of the Tillamook County Land Use Ordinance.
 - (h) In the event the decision maker determines that additional review of the Geologic Hazard Report by a qualified licensed geoprofessional is necessary to determine compliance with this section, Tillamook County may retain the services of such a professional for this purpose. The applicant shall be responsible for all costs associated with the additional review. The results of that evaluation shall be considered in deciding on the Dune Area Development Permit.

(6) GEOLOGIC HAZARD REPORT STANDARDS

- (a) For the purposes of Section 3.530, a Geologic Hazard Report refers to engineering geologic reports, geotechnical reports, and geotechnical engineering reports.
- (b) Geologic Hazard Reports required by this section shall be prepared consistent with standard geologic practices employing generally accepted scientific and engineering principles, and shall, at a minimum, contain the applicable provisions outlined in the Oregon State Board of Geologist Examiners publication "Guidelines for the Preparation of Engineering Geologic Reports", 2nd Edition, 5/30/2014 or other published best practice guidelines for engineering geologic or geotechnical engineering reports, consistent with current scientific and engineering principles. Reports shall reference the published guidelines upon which they are based
- (c) Geologic Hazard Reports required by this section shall include the following from the preparer(s) of the report:
 - (A) A statement that all the applicable content requirements of this subsection have been addressed or are not applicable to the review. An explanation shall be accompanied with any requirement identified as not applicable;
 - (B) A description of the qualifications of the professional(s) that prepared the report. If multiple licensed professionals contributed to the report, each professional shall individually sign and stamp their own work products and
 - (C) A statement by the preparer(s) that they have the appropriate qualifications to have completed

the report and all its contents.

- (d) All Geologic Hazard Reports are valid for purposes of meeting the requirements of this section for a period of five (5) years from the date of preparation. Such reports are valid only for the development plan addressed in the report. Tillamook County assumes no responsibility for the quality or accuracy of such reports. Within that five-year period, the Planning Director can require at their discretion an addendum by a qualified licensed geoprofessional certifying that site conditions have not changed from the original report. If site conditions have changed, a new Geologic Hazard Report will be required.
- (e) For development activities that are subject both to this section and Section 4.130: Development Requirements for Geologic Hazard Areas, one complete Geologic Hazard Report can be used for meeting the requirements of this section and Section 4.130. The report shall include requirements for both sections as applicable.
- (f) In addition to the requirements set forth in subsections (b) and (c), Geologic Hazard Reports for lots or parcels abutting the ocean shore shall, to the extent applicable and based on best available information, include the following information, analyses, and recommendations:
 - (A) Site description:
 - (i) The history of the site and surrounding areas, such as previous riprap or dune grading permits, erosion events, exposed trees on the beach, or other relevant local knowledge of the site.
 - (ii) Topography, including elevations and slopes on the property itself.
 - (iii) Vegetation cover.
 - (iv) Subsurface materials – the nature of the rocks and soils.
 - (v) Conditions of the seaward front of the property, particularly for sites having a sea cliff.
 - (vi) Presence of drift logs or other flotsam on or within the property.
 - (vii) Description of streams or other drainage that might influence erosion or locally reduce the level of the beach.
 - (viii) Proximity of nearby headlands or jetties which might block the longshore movement of beach sediments, thereby affecting the level of the beach in front of the property.
 - (ix) Description of any shore protection structures that may exist on the property or on nearby properties.
 - (x) Presence of pathways or stairs from the property to the beach.
 - (xi) Existing human impacts on the site, particularly that might alter the resistance to wave

attack.

- (xii) Location and condition of nearby beach access sites.

(B) Description of the fronting beach:

- (i) Average widths of the beach during the summer and winter.
- (ii) Median grain size of beach sediment.
- (iii) Average beach slopes during the summer and winter.
- (iv) Elevations above mean sea level of the beach at the seaward edge of the property during summer and winter.
- (v) Presence of rip currents and rip embayments that can locally reduce the elevation of the fronting beach.
- (vi) Presence of rock outcrops and sea stacks, both offshore or within the beach zone.
- (vii) Information regarding the depth of beach sand down to bedrock at the seaward edge of the property.

(C) Analyses of Erosion and Flooding Potential:

- (i) Analysis of DOGAMI beach monitoring data for the site or nearby area (if available).
- (ii) Analysis of human activities affecting shoreline erosion.
- (iii) Analysis of possible mass wasting, including weathering processes, land sliding or slumping.
- (iv) Calculation of wave run-up beyond mean water elevation that might result in erosion of the sea cliff or foredune (see Stockdon, 1996).
- (v) Evaluation of frequency that erosion-inducing processes could occur, considering the most extreme potential conditions of unusually high-water levels together with severe storm wave energy.
- (vii) For dune-backed shorelines, use established geometric model to assess the potential distance of property erosion and compare the results with direct evidence obtained during site visit, aerial photo analysis, or analysis of DOGAMI beach monitoring data.
- (viii) Description of expected local sea level rise over the next 50 years and impacts of that sea level change on the site, including during severe storm conditions.

(D) Assessment of potential reactions to erosion episodes:

- (i) Determination of eligibility for beachfront protective structures as prescribed in

subsection (13).

- (ii) Assessment of potential reactions to erosion events, under climate change conditions, addressing the need for future erosion control measures, building relocation, or building foundation and utility repairs.
- (g) Geologic Hazard Reports for land divisions as deemed needed by the Director and for development requiring building permits, except for activities listed as exempt in subsection (5)(b), shall also include the following recommendations:
- (A) Use results from the above analyses to establish setbacks (beyond any minimums set by this section), building techniques, or other mitigation to ensure an acceptable level of safety and compliance with all local requirements.
 - (B) Recommend a foundation design, or designs, that render the proposed structures ready moveable.
 - (C) Recommend a plan for preservation of vegetation and existing grade within the setback area, if appropriate.
 - (D) Include a consideration of a local variance process to reduce the building setback on the side of the property opposite the ocean, if this reduction helps to lessen the risk of erosion, flooding, bluff failure or other hazard.
 - (E) Recommend methods to control and direct water drainage away from the ocean (e.g., to an approved storm water system), or if not possible, to direct water in such a way so as to not cause erosion or visual impacts.
- (h) Erosion Control Measures: All uses subject to a Dune Area Development Permit and Geologic Hazard Report shall address the following erosion control measure requirements, designed by a qualified licensed geoprofessional within the Geologic Hazard Report:
- (A) Stripping of vegetation, grading, or other soil disturbance shall be done in a manner which will minimize soil erosion, stabilize the soil as quickly as practicable, and expose the smallest practical area at any one-time during construction;
 - (B) Development plans shall minimize cut or fill operations so as to prevent off-site impacts;
 - (C) Temporary vegetation and/or mulching shall be used to protect exposed critical areas during development;
 - (D) Permanent plantings and any required structural erosion control and drainage measures shall be installed as soon as practical;
 - (E) Provisions shall be made to effectively accommodate increased runoff caused by altered soil and surface conditions during and after development. The rate of surface water runoff shall be structurally retarded where necessary;
 - (F) Provisions shall be made to prevent surface water from damaging the cut face of excavations or the sloping surface of fills by installation of temporary or permanent drainage across or

above such areas, or by other suitable stabilization measures such as mulching, seeding, planting, or armoring with rolled erosion control products, stone, or other similar methods;

- (G) All drainage provisions shall be designed to adequately carry existing and potential surface runoff from the twenty-year frequency storm to suitable drainageways such as storm drains, natural watercourses, or drainage swales. In no case shall runoff be directed in such a way that it significantly decreases the stability of known landslides or areas identified as unstable slopes prone to earth movement, either by erosion or increase of groundwater pressure;
- (H) Where drainage swales are used to divert surface waters, they shall be vegetated or protected as necessary to prevent offsite erosion and sediment transport;
- (I) Erosion and sediment control devices shall be required where necessary to prevent polluting discharges from occurring. Control devices and measures which may be required include, but are not limited to:
 - (i) Energy absorbing devices to reduce runoff water velocity;
 - (ii) Sedimentation controls such as sediment or debris basins. Any trapped materials shall be removed to an approved disposal site on an approved schedule;
 - (iii) Dispersal of water runoff from developed areas over large undisturbed areas.
- (J) Disposed spoil material or stockpiled topsoil shall be prevented from eroding into streams or drainageways by applying mulch or other protective covering; or by location at a sufficient distance from streams or drainageways; or by other sediment reduction measures; and
- (K) Such non-erosion pollution associated with construction such as pesticides, fertilizers, petrochemicals, solid wastes, construction chemicals, or wastewaters shall be prevented from leaving the construction site through proper handling, disposal, site monitoring and clean-up activities.

(7) **ADDITIONAL DEVELOPMENT LIMITATIONS IN DUNE AREAS:** In addition to the conditions, requirements, and limitations imposed by any required Geologic Hazard Report, all development subject to a Dune Area Development Permit shall conform to the following requirements:

- (a) Construction of residential, commercial, or industrial buildings is prohibited on beaches, active foredunes, other foredunes that are conditionally stable and subject to ocean undercutting or wave overtopping, interdune areas (deflation plains) that are subject to ocean flooding, and within an area identified by FEMA FIRM maps to be subject to ocean flooding, except on lands that are subject to an approved exception to Goal 18, Implementation Requirement 2, as set forth in Section 6.1 of the Beaches and Dunes Element of the Tillamook County Comprehensive Plan.
- (b) Other development in these beach and dune areas shall be permitted only if adequate findings are provided to the County which demonstrate that the proposed development is adequately protected from any geologic hazards, wind erosion, undercutting, ocean flooding and storm waves; and is designed to minimize adverse environmental effects. In addition, findings shall be provided to address the following:

- (A) The type of use proposed and the adverse effects it might have on the site and adjacent areas;
 - (B) Temporary and permanent stabilization programs and the planned maintenance of new and existing vegetation;
 - (C) Methods for protecting the surrounding area from any adverse effects of the development; and
 - (D) Hazards to life, public and private property, and the natural environment that may be caused by the proposed use.
- (d) Safest site requirement: All new construction or substantial improvements shall be located within the area most suitable for development based on the least exposure to risk from coastal hazards as determined by a qualified licensed geoprofessional as part of a Geologic Hazard Report prepared in accordance with subsection (6). Notwithstanding the provisions of the underlying zone, as necessary to comply with this requirement, any required yard or setback except for the Oceanfront Setback outlined in subsection (8) may be reduced by 10 feet or up to 50%, whichever is greater.
- (e) Building heights shall be measured from the existing (pre-construction) grade. Only in Foredune Management Areas shall additional fill be allowed on an oceanfront lot to achieve the required four feet plus Base Flood Elevation, consistent with the provisions of Section 3.510: Flood Hazard Overlay Zone. In this instance, building height shall be measured on the foredune grade from four feet plus Base Flood Elevation.
- (f) Accessory structures and on-site sewage disposal systems, which the Department determines are consistent with the purpose of this zone, may be permitted oceanward of the Oceanfront Setback Line, subject to the standards of this section and the following provisions:
- (A) The location of accessory structures and on-site sewage disposal systems will be determined in each case based on site-specific information provided by a Geologic Hazard Report, prepared in accordance with subsection (6).
 - (B) Any accessory structure higher than three feet as measured from existing grade will be subject to the variance procedure and criteria set forth in Article 8 of the Tillamook County Land Use Ordinance.
 - (C) Accessory structures for on-site subsurface sewage disposal systems may not be located oceanward of the primary structure on the subject property unless the following provisions are met:
 - (i) The primary structure on the subject property is an authorized residential, commercial, or industrial structure in existence as of October 28, 1992;
 - (ii) The accessory structure is required for repair of an existing disposal system, and there is no viable alternative system or location landward of the primary structure; and
 - (iii) The owner of the subject property submits an affidavit to the Department acknowledging that the property owner has been informed a beachfront protective

structure will not be authorized to protect the disposal system against erosion, and that the owner has sole responsibility for maintaining the disposal system and for notifying any purchaser of this condition prior to sale of the property.

(g) Beach Access:

- (A) Non-structural, low-impact pedestrian footpaths to the beach, not to exceed four-feet in width, shall be permitted in all dune areas, except where restricted in Foredune Management Areas.
- (B) Boardwalks and other structural pathways are subject to the requirements of 7(b) above.
- (C) Off-road recreational vehicle use in dune areas shall be permitted in Sand Lake Recreational Area. Motor vehicles registered to operate on public highways and roads shall be allowed to travel on beaches where posted by the Oregon Parks and Recreation Department (ORS 390.678). Operation of motor vehicles at other beach locations will require a permit from the Oregon Parks and Recreation Department.
- (D) In Foredune Management Areas, where heavy use of public easements or rights of way destabilizes dune areas on adjoining private property, signs may be placed at landward beach entrance points to encourage the use of alternative public access points. Signs shall be subject to review by the Foredune Management Authority, Tillamook County, and the Oregon Parks and Recreation Department.

(h) Land Grading Practices: No excavations for residential and commercial site development shall be done earlier than thirty (30) days prior to the start of construction. Following the completion of major construction, excavated areas shall be stabilized. At a minimum, the site shall be stabilized within nine (9) months of construction completion.

(8) OCEANFRONT SETBACKS: As used in this section, “vegetation line” means the ocean shore state recreation area boundary as described in ORS 390.770 or the line of established upland shore vegetation, whichever is farther inland. In areas subject to the provisions of this section, all development, except for activities listed as exempt in subsection (5)(b), shall be set back from the vegetation line the greater of:

- (a) A distance specified in a required Geologic Hazard Report if it is more restrictive than the Oceanfront Setback Line; or
- (b) A distance established through calculation of an Oceanfront Setback Line (OSL) as follows:
 - (A) On a lot or parcel where there are existing buildings located within 300 feet of the boundaries of the subject lot or parcel on both the north and the south, the OSL is a line drawn between the nearest building to the north and the nearest building to the south. The line shall be drawn between the most oceanward points of the two building footprints closest to the vegetation line.
 - (B) On a lot or parcel where there are buildings within 300 feet of the boundaries of the subject lot or parcel on one side only (north or south), the OSL is the average distance from the vegetation line of all such buildings. The measurement for calculating the average shall be made from the most oceanward point of the building footprints closest to the vegetation line.

- (C) On a lot or parcel where there are no buildings within 300 feet north or south of the boundaries of the subject lot or parcel, the OSL is the average distance from the vegetation line of the nearest two buildings. The measurement for calculating the average shall be made from the most oceanward point of the building footprints closest to the vegetation line.
 - (D) For purposes of calculating the OSL, “building” means a lawfully established, permanent residential, commercial, public, or industrial structure within 500 feet of the vegetation line and located on a lot or parcel that abuts the vegetation line. It does not include detached accessory structures.
 - (E) For purposes of calculating the OSL, “closest point of a building” means the point on an exterior wall of a building that is closest to the vegetation line. It does not include decks, second story decks, other structural improvements above finished grade, unroofed porches or landings, walkways, or building projections such as cornices, eaves, canopies, sunshades, gutters, or chimney chases.
- (c) In no case may any structure or other development be permitted west of the statutory vegetation line or line of actual vegetation, whichever is more landward, except as authorized by the Oregon Department of Parks and Recreation in accordance with OAR Chapter 736, division 20.
 - (e) On lots or parcels created prior to the effective date of this section, where the application of the minimum oceanfront setback, together with any other required yards and/or setbacks, results in a building footprint area of less than 1,500 square feet, the required yard setback opposite the oceanfront may be reduced as follows:
 - (A) The required yard setback opposite the oceanfront may be reduced by an amount necessary to provide a building footprint of not more than 1,500 square feet, or to a minimum of 10 feet, whichever is less.
 - (B) If the reduction in setback permitted in subsection (A) results in a permissible building footprint of less than 1,500 square feet, the oceanfront setback may be reduced by an amount necessary to provide a building footprint of not more than 1,500 square feet.
 - (f) Notwithstanding the above provisions, the Planning Director shall require a greater setback from the ocean where there is evidence of significant coastal, environmental, or geologic hazards as determined by a Geologic Hazard Report submitted pursuant to Section 3.530(6) or other information available to the Department. In making this determination, the Geologic Hazard Report and the Director shall consider evidence of recent and future beach erosion and whether the proposed development has been designed to adequately minimize and mitigate for any adverse environmental effects to the fullest extent required by law.
- (9) FOREDUNE BREACHING: When permitted, foredune breaching and restoration shall be conducted in a manner consistent with sound principles of conservation. Such breaching may be permitted only:
- (a) To replenish sand supply in interdune areas;
 - (b) On a temporary basis in an emergency, such as for fire control, hazard removal or clean up, draining farmlands, or alleviating flood hazards; or

(c) For other purposes only upon adoption of an exception to Statewide Planning Goal 18.

(10) GROUNDWATER REQUIREMENTS: Applications for development which will utilize groundwater resources shall provide a hydrologic analysis which demonstrates that groundwater withdrawal will not:

- (a) Lead to the loss of stabilizing vegetation;
- (b) Lead to a deterioration of water quality; and
- (c) Result in the intrusion of salt water into water supplies.

(11) REMEDIAL SAND GRADING: As used in this section "remedial sand grading" means the removal of accumulated sand which poses an immediate threat of damage or is preventing access to a structure. Remedial sand grading does not alter the crest of the foredune. Before remedial sand grading activities can occur, an approved Remedial Sand Grading Permit from Tillamook County is required. Application, review, and decisions for Remedial Sand Grading Permits shall be a Type I procedure in accordance with Article 10.

(a) Remedial sand grading can be conducted on an individual lot or parcel on an as-needed basis and may be permitted in all areas subject to the BD Overlay Zone with or without a foredune management plan. Remedial sand removal may include:

- (A) Clearing of sand which poses an immediate threat of inundation to houses, commercial or industrial buildings, beach access points, or infrastructure such as streets and utility lines, or which is preventing access to a structure;
- (B) Excavation necessary for the purpose of placing a beachfront protective structure;
- (C) Minor reshaping of the forward portion of the foredune necessary to provide an even slope for planting stabilizing vegetation.

(b) All remedial sand grading shall be conducted in compliance with the following standards:

- (A) Rear yard (Rear yard is the yard seaward of the structure): Sand may be removed to the level of the top sill of the foundation up to 40 feet from the building, provided the foredune crest is not altered. From the 20-foot line, where applicable, all grading shall slope upward to the crest of the dune at a ratio of 2:1 (horizontal: vertical).
- (B) Side yards: Sand may be removed to the level of the top sill of the foundation within 10 feet of the building. From the 10-foot line, sand grading shall slope upward at a ratio of 2:1.
- (C) Front yard: All sand that is landward of the building may be removed down to the sill level of the foundation, provided removal does not create slopes of more than 2:1 with adjacent properties. Grading may not lower the front yard below the level of adjacent streets or roads except to clear sidewalks or driveways.
- (D) All remedial grading shall be done in a manner that does not lower the existing height of the foredune and does not significantly damage existing vegetation. Any removal which exceeds standards shall be promptly restored.

- (E) Permittees shall notify the Tillamook County Department of Community Development at least 48-hours prior to conducting authorized remedial grading to allow onsite inspection by the county and to provide for flagging by the county, if needed.
- (F) All graded sand that is moved up and over the foredune seaward of the building shall be moved and placed in a manner that does not reduce the height of the foredune, uses one pathway (no more than 12 feet in width), and that minimizes disturbance to vegetation and the beach.
- (G) All graded sand shall remain in the beach-foredune system.

(12) FOREDUNE GRADING: Foredune grading may be performed only as authorized in a foredune management plan adopted and acknowledged in conformance with Statewide Planning Goal 18. As used in this section “foredune grading” means grading that lowers the height of the foredune for view restoration and/or maintenance, or other purposes, and does not include remedial grading authorized by subsection (11) of this section.

- (a) Foredune grading shall require a Foredune Grading Permit. Application, review, decisions, and appeals for Foredune Grading Permits shall be a Type II procedure in accordance with Article 10.
- (b) A decision to approve a Foredune Grading Permit shall require findings of compliance with the following requirements:
 - (A) The proposed foredune grading will be performed on a continuous portion of the foredune of not less than 500 feet in length;
 - (B) The application for the Foredune Grading Permit includes the written consent of all owners of property within the continuous portion of the foredune to be graded;
 - (C) The application for the Foredune Grading Permit shall include elevation profiles of existing and proposed foredune conditions prepared by a registered surveyor; and
 - (D) The proposed foredune grading will conform to all the requirements and specifications of the applicable foredune management plan, including requirements for height and width of the graded foredune, stabilization measures, redistribution of graded sand, and maintenance and monitoring.
- (c) Upon completion of foredune grading under an approved Foredune Grading Permit, final foredune elevations and conditions shall be surveyed by a registered surveyor, showing compliance with permit conditions, and submitted to the Tillamook County Department of Community Development.

(13) REQUIREMENTS FOR BEACHFRONT PROTECTIVE STRUCTURES:

- (a) A Dune Area Development Permit is required for beachfront protective structures not subject to regulation by the Oregon Parks and Recreation Department under OAR Chapter 736, division 20.
- (b) In all cases, beachfront protective structures shall be permitted only where development existed on January 1, 1977, or where an exception to Goal 18, Implementation Requirement 2 or 5 has been adopted in the County’s comprehensive plan.

- (c) For the purposes of this subsection, "development" means houses, commercial and industrial buildings, and vacant subdivision lots which are physically improved through construction of streets and provision of utilities to the lot.
- (d) All beachfront protective structures shall be subject to the following requirements:
 - (A) Visual impacts shall be minimized;
 - (B) Access to and along the beach shall be maintained;
 - (C) Negative impacts on adjacent property shall be minimized;
 - (D) Long-term or recurring costs to the public shall be avoided.
 - (E) Structures shall be designed to minimize adverse impacts on water currents, erosion, and accretion patterns;
 - (F) Land-use management practices and non-structural solutions to problems of erosion and flooding shall be preferred to structural solutions; structural solutions shall only be utilized when it is determined that land-use management and non-structural solutions are not adequate; and
 - (G) All applicable requirements of the Flood Hazard Overlay Ordinance as described in TCLUO Section 3.510 shall be followed.
- (e) In addition to the applicable requirements set forth in subsection 6, Geologic Hazard Reports for beachfront protective structures shall, to the extent applicable and based on best available information, include the following information, analyses, and recommendations:
 - (A) Project Need: Analysis of the types of hazards affecting the property; estimated rate of erosion based on visual observations, aerial photo analysis, published reports, such as DOGAMI hazard risk zone studies, and DOGAMI beach monitoring data; description of the type of property, improvements, or structures that are threatened, and description of the nature of the threat.
 - (B) Evaluation of Alternatives: Include a description of the preferred erosion mitigation technique, any practices that have been attempted previously, as well as an evaluation of the following options:
 - (i) Hazard avoidance options (siting or relocation);
 - (ii) Non-structural stabilization methods (e.g., foredune enhancement, beach nourishment, vegetation plantings, cobble berms);
 - (iii) Structural stabilization (e.g., riprap, seawalls); and
 - (iv) Bio-engineered structures (e.g., clay burritos and vegetated terraces); and
 - (v) Site modifications for the control of erosion such as vegetation management, drainage controls, slope regrading, and building reinforcements.

- (C) Analysis of Impacts from Preferred Alternative, including:
 - (i) Potential for flank scour and toe scour;
 - (ii) Shoreline alignment impacts to adjoining properties and non-armored neighbors, including impacts to properties not eligible for shoreline protective structures; potential for the preferred alternative to cause rip embayments or prolong existing embayment patterns;
 - (iii) Reduction in sand supply caused by preferred alternative;
 - (iv) Quantify narrowing or loss of beach area;
 - (v) Impacts from expected maintenance of the project over the lifetime of the structure. Include history of maintenance of similar projects nearby, analysis of local sea level rise, and trends in littoral sand movement. Describe the expected maintenance methods that could occur;
 - (vi) Impacts to existing public beach access routes, and provisions to keep access route in a useable condition; and
 - (vii) Impacts to sites of geologic interest, such as fossil beds or ancient forest remnants.

(14) CERTIFICATION OF COMPLIANCE: Permitted development shall comply with the recommendations in the required Geologic Hazard Report. Certification of compliance shall be provided as follows:

- (a) Plan Review Compliance: Building, construction or other development plans shall be accompanied by a written statement from a certified engineering geologist or licensed geotechnical engineer stating that the plans comply with the recommendations contained in the Geologic Hazard Report for the approved Dune Area Development Permit.
- (b) Inspection Compliance: Upon the completion of any development activity for which the Geologic Hazard Report recommends an inspection or observation by a certified engineering geologist or licensed geotechnical engineer, the certified engineering geologist or licensed geotechnical engineer shall provide a written statement indicating that the development activity has been completed in accordance with the applicable Geologic Hazard Report recommendations.
- (c) Final Compliance: No development requiring a Geologic Hazard Report shall receive final approval (e.g., certificate of occupancy, final inspection, etc.) until the department receives:
 - (A) A written statement by a certified engineering geologist or licensed geotechnical engineer indicating that all performance, mitigation, and monitoring measures specified in the report have been satisfied, including confirmation of foredune restoration and implementation of temporary and permanent vegetation stabilization measures;
 - (B) If mitigation measures incorporate engineering solutions designed by a licensed professional engineer, a written statement of compliance by the design engineer.
 - (C) A written statement by the qualified licensed geoprofessional indicating that all erosion control measure requirements were met.

(15) RESTORATION AND REPLACEMENT OF EXISTING STRUCTURES:

- (a) Notwithstanding any other provisions of this ordinance, application of the provisions of this section to an existing use or structure shall not have the effect of rendering such use or structure nonconforming as defined in Article 7.
- (b) Replacement, repair or restoration of a lawfully established building or structure subject to this section that is damaged or destroyed by fire, other casualty or natural disaster shall be permitted, subject to all other applicable provisions of this ordinance, and subject to the following limitations:
 - (A) Replacement authorized by this subsection is limited to a building or structure not larger than the damaged/destroyed building.
 - (B) Structures replaced pursuant to this subsection shall be located no further seaward than the damaged structure being replaced.
 - (C) Replacement or restoration authorized by this subsection shall commence within one year of the occurrence of the fire or other casualty which necessitates such replacement or restoration.
 - (D) Where the cost of restoration or replacement authorized by this subsection equals or exceeds 80 percent of the market value of the structure before the damage occurred, such restoration or replacement shall also comply with subsections (7) and (8) of this section.
- (c) A building permit application for replacement, repair, or restoration of a structure under the provisions of this subsection shall be accompanied by a Geologic Hazard Report prepared by a qualified licensed geoprofessional that conforms to the standards set forth in subsection (6) and subsection (13) if applicable. All recommendations contained in the report shall be complied with in accordance with subsection (14).
- (d) A building permit application for replacement, repair, or restoration authorized by this subsection shall be processed and authorized as Type I review pursuant to Section 10.020.

[TCLUO Section 3.530 Adopted May 11, 2022]

SECTION 3.545: SHORELAND OVERLAY (SH)

- (1) PURPOSE: The purpose of the SHORELAND OVERLAY ZONE is to:
 - (a) Provide for development, restoration, conservation of protection of coastal shorelands in a manner which is compatible with the resources and benefits of coastal shorelands and adjacent coastal water bodies.
 - (b) Protect identified priority dredged material disposal and mitigation sites from uses which would prevent their ultimate use for dredged material disposal or mitigation;
- (2) AREAS INCLUDED: The SHORELAND OVERLAY ZONE is designated on the Tillamook County Zoning Maps. Included in this zone are:

- (a) Lands contiguous with the ocean estuaries and coastal lakes that contain the following features shown in the Coastal Shoreland Element of the Comprehensive Plan:
 - (1) Areas subject to ocean flooding and lands within 100 feet of the ocean shore or within 50 feet of an estuary or a coastal lake.
 - (2) Adjacent areas of geologic instability where the geologic instability is related to or will impact a coastal water body.
 - (3) Riparian vegetation or other natural or man-made riparian resources necessary for shoreline stabilization or water quality maintenance.
 - (4) Significant shoreland and wetland biological habitats.
 - (5) Areas necessary for water-dependent and water-related uses.
 - (6) Shoreland areas of exceptional aesthetic or scenic quality.
 - (7) Coastal headlands.
 - (b) Priority Dredged Material Disposal (DMD-1) and Mitigation (MIT-1) sites.
- (3) Categories of Coastal Shorelands: There are two categories of coastal shorelands included in the SHORELAND OVERLAY ZONE.
- (a) Rural Shorelands are the first category of Coastal Shorelands. Rural Shorelands are those areas that are outside an urban growth boundary and do not fall within the second category of Coastal Shorelands.
 - (b) The second category are those shorelands identified in the Estuarine Element and Coastal

Shorelands Element of the Comprehensive Plan as:

- (1) Significant shoreland and wetland biological habitat.
 - (2) Exceptional aesthetic or scenic resources and coastal headlands.
 - (3) Priority dredged material disposal and priority mitigation sites.
 - (4) Beaches, active foredunes, conditionally stable foredunes that are subject to ocean undercutting or wave overtopping and interdune areas subject to ocean flooding.
- (4) USES PERMITTED: Uses authorized by the underlying zone as outright or conditional uses are permitted, except at locations identified in (3) above.
- (a) Rural Shorelands in General:
- (1) Rural shorelands uses are limited to:
 - (a) Farm uses,
 - (b) Propagation and harvesting of forest products consistent with the Oregon Forest Practices Act,
 - (c) Aquaculture,
 - (d) Water-dependent recreational, industrial and commercial uses,
 - (e) Replacement, repair or improvement of existing state park facilities,
 - (f) Other uses are allowed only upon a finding by the County that such uses satisfy a need which cannot be accommodated at any alternative upland location, except in the following cases:
 - (1) In built and committed exception shoreland areas, where all uses permitted in the underlying zone are permitted, and
 - (2) In the F-1, F, SFW-20, and RM zones, where the Other Uses listed in Sections 8.4.e, 8.4.f, 8.4.g and 8.5.e, respectively of the Coastal Shoreland Element, are permitted, if no suitable non-shoreland locations exist on the parcel.
- (b) Significant Shoreland and Wetland Biological Habitats (Identified in Section 3.2 of the Coastal Shorelands Element of the Comprehensive Plan).

- (1) Only low intensity uses and developments such as hiking trails and platforms for wildlife viewing or similar types of educational, scientific or recreational uses may be permitted providing that such uses and developments will not act as a barrier to or result in major disturbances or displacement of fish or wildlife species. Maintenance of existing drainageways and drainage structures is permitted.
- (2) In significant wetland biological habitats, no development is allowed except for the placement of a floating or pile supported dock or a boat ramp using less than 50 cubic yards of fill to allow boat access to a coastal lake providing that such developments are placed to minimize impacts on wetland habitats.

Where dwellings are permitted in the underlying zone, the density of allowed development shall be determined by the size of the entire parcel providing the allowed development will not result in a major impact to adjacent significant wetland habitat.

- (3) Dredging less than 50 cubic yards from a coastal lake to provide access to a public boat ramp or a public boat dock is allowed, subject to the approval of Tillamook County.
- (4) Within the Neskowin Community Growth Boundary, only the following uses are allowed within significant shoreland and wetland biological habitat and within 25 feet of the upland edge of such habitat:
 - (a) Low-impact recreational uses consistent with Section 3.545(4)(b)(1);
 - (b) Existing park or golf course facilities which exist as of March 1, 1999, and maintenance of existing facilities. Improvements and additions, provided adverse impacts to shoreland and wetland habitat are not measurably increased, or are mitigated.
 - (c) Repair, replacement or maintenance of existing structures and drainage facilities, provided that size or capacity is not increased (unless necessary for improved fish passage);
 - (d) Bank stabilization;
 - (e) Vegetation management of non-native plants;
 - (f) maintenance and improvement of stream corridors for storm drainage purposes or for fish and wildlife enhancement;
 - (g) Stormwater discharge;
- (5) The 25-foot setback requirement of Section 3.545 (4)(b)(4) may be reduced through the provisions of Article VIII. In addition to the standard variance criteria, the variance

request shall meet the following criterion: Encroachment on the shoreland or wetland biological habitat, along with any proposed mitigation, will not have negative impacts on the natural functions and values of the resource area.

- (c) Exceptional Aesthetic or Scenic Resources and coastal Headlands (identified in Section 3.2 of the coastal Shorelands Element of the Comprehensive Plan).
 - (1) Rock quarries, mining and mineral extraction, industrial uses, communication and energy generation towers other than wind energy conversion systems, power transmission lines, landfills and airports are not permitted.
 - (2) In the Cascade Head Scenic Research Area, and the Oswald West, Nehalem Bay, Cape Meares, Cape Lookout, Cape Kiwanda and Nestucca Spit State Parks, forest uses shall be limited to those allowed by the respective management plans for these areas. In other exceptional aesthetic or scenic resource areas or on coastal headlands, forest uses are limited to fire, insect and disease control, reforestation and hazard tree removal as long as the resource remains substantially unaltered.
 - (3) Buildings may be allowed only if they and the land preparation which precedes them preserves the natural topography and unique scenic features and does not substantially alter the scenic character or the natural vegetative cover of the area.
 - (4) Signs shall be constructed of wood and shall be limited to interpretive and directional signs having an area no greater than 16 square feet.
- (e) Priority Dredged Material Disposal and Priority Mitigation sites (identified by the symbols DMD-1 and MIT-1 respectively on the Estuary Zoning Maps).
 - (1) Uses shall not preclude the ultimate use of the site as a dredged material disposal or mitigation site.
 - (2) Structures or other improvements shall be of a temporary nature, easily moved or of low value, so that demolition or removal of these structures can be easily accomplished in order to accommodate dredged material disposal or mitigation. On priority mitigation sites only structures or other improvements which can be completely removed from the site are allowed.
 - (3) Fill is permitted only where it is necessary to maintain or repair existing structures and facilities such as dikes. In priority mitigation sites there shall be no land grading which will reduce the potential of using the site for mitigation.
- (5) CONDITIONAL USES:
 - (a) Aquatic and shoreland disposal of dredged material shall be allowed only at approved sites listed in the Comprehensive Plan, unless the disposal is part of an approved fill project. Dredged

material disposal is subject to the standards of Section 3.140 (4).

- (b) Mitigation actions shall be allowed only at approved sites listed in the Comprehensive Plan, unless the mitigation is part of an approved dredge or fill project. Mitigation actions are subject to the standards of Section 3.140 (12).
 - (c) Estuarine restoration actions (as defined in Section 6.12 of the Estuarine Resources Element of the Comprehensive Plan) shall be allowed only at approved sites listed in the Comprehensive Plan, unless the restoration action is approved as part of a mitigation project. Restoration actions are subject to the standards of Section 3.140 (15).
- (6) STANDARDS: Uses within the SHORELAND OVERLAY ZONE are subject to the provisions and standards of the underlying zone and of this section. Where the standards of the SHORELANDS OVERLAY ZONE and the underlying zone conflict, the more restrictive provisions shall apply.
- (a) Riparian vegetation shall be protected and retained according to the provisions outlined in Section 4.140, REQUIREMENTS FOR PROTECTION OF WATER QUALITY AND STREAMBANK STABILIZATION.
 - (b) Development in flood hazard areas shall meet the requirements of Section 3.510, FLOOD HAZARD OVERLAY ZONE.
 - (c) Development in beach and dune and other geologic hazard areas shall meet the requirements of Section 3.085, BEACH AND DUNE OVERLAY ZONE and Section 4.130, DEVELOPMENT REQUIREMENTS FOR GEOLOGIC HAZARD AREAS.
 - (d) Forestry operations shall be consistent with the protection of the natural values of major marshes, significant wildlife habitat and riparian vegetation. A forest operation for which notification is required by ORS 527.670 (2) shall be governed by the Oregon Forest Practices Act and any supplemental agreements entered into by the Oregon State Board of Forestry and the Oregon State Fish and Wildlife Commission.
 - (e) The productivity of resource land on Rural Shorelands shall be considered when determining the location of "Other Uses" within a given land parcel in the F-1, F, and SFW-20 zones. "Other Uses" within these zones shall be located so that the productivity of resource land is maintained.
 - (f) Existing public ownerships, rights of way and similar public easements in coastal shorelands which provide access to or along coastal waters shall be retained or replaced if sold, exchanged or transferred. Rights of way may be vacated to permit redevelopment of shoreland areas provided public access across the affected site is retained.
- (7) ADMINISTRATIVE PROVISIONS:
- (a) All applications for developments in the SHORELANDS OVERLAY ZONE shall be reviewed

for compliance with the requirements of the underlying zone and the requirements of the SHORELANDS OVERLAY ZONE.

- (b) All applications shall be accompanied by a plot plan identifying the location of the parcel and its boundaries, the location of existing uses on the property, the proposed location of developments and uses and the location of any waterbodies, watercourses and wetlands in the vicinity of the proposed developments. Developments involving contiguous parcels under separate ownerships may be considered in a single application, provided that all affected property owners sign the final application.
- (c) In the following instances, public agencies shall be notified of applications for development in the SHORELANDS OVERLAY ZONE.
 - (1) Significant Wetland Biological Habitats: The Oregon Department of Fish and Wildlife, Oregon Division of State Lands, Oregon Department of Land Conservation and Development, U. S. Fish and Wildlife Service, Environmental Protection Agency and U. S. Army Corps of Engineers shall be notified.
 - (2) Other Significant Shoreland Habitats: The Oregon Department of Fish and Wildlife, Oregon Department of Land Conservation and Development, and U. S. Fish and Wildlife Services shall be notified.
 - (3) Coastal Headlands and Exceptional Aesthetic and Scenic Resources: The Oregon Parks and Recreation Division and Oregon Department of Land Conservation and Development shall be notified.
 - (4) Priority Dredged Material Disposal and Mitigation Sites: The Oregon Department of Fish and Wildlife, Oregon Division of State Lands, Oregon Department of Land Conservation and Development, Oregon Department of Economic Development, U. S. Fish and Wildlife Service, National Marine Fisheries Service, Environmental Protection Agency, U. S. Army Corps of Engineers and the locally affected Port District shall be notified.
 - (5) Public Access Projects: The Oregon Parks and Recreation Division and the Oregon Department of Land Conservation and Development shall be notified.
- (d) Notification Procedure
 - (1) If a development application involves regulated activities (for definition see Section 3.120), notice will be mailed within 7 days of County receipt of the State or Federal permit notice. The Planning Department shall consider any comments received no later than seven days before the closing date for comments on the State or Federal permit notice.

- (2) If a development application involves a conditional use or a variance, notification procedures shall be those of Articles VI or VIII respectively.
- (3) In all other instances, notice will be mailed within seven days of the receipt of a completed application. The Planning Department shall consider all comments received within ten days after notice has been mailed.

SECTION 3.550: FRESHWATER WETLANDS OVERLAY (FW)

- (1) **PURPOSE AND AREAS INCLUDED:** The purpose of this zone is to protect significant areas of freshwater wetlands, marshes and swamps from filling, drainage or other alteration which would destroy or reduce their biological value. Areas included in this zone are:
 - (a) Significant Goal 5 Wetlands: wetlands identified as “significant” in the Goal 5 Element of the Comprehensive Plan;
 - (b) Notification Wetlands: wetlands shown on the Statewide Wetland Inventory (discussed in the Goal 5 Element of the Comprehensive Plan).

When required, the verification of zone boundaries shall be carried out in conjunction with the property owner and the Oregon Division of State Lands.

- (2) **USES PERMITTED:**
 - (a) Significant Goal 5 Wetlands:
 - (1) A forest operation for which notification is required by ORS 527.670 (2) shall be governed by the Oregon Forest Practices Act and any supplemental agreements entered into by the Oregon State Board of Forestry and the Oregon State Fish and Wildlife Commission.
 - (2) Other uses and developments permitted outright or conditionally in the underlying zone shall be permitted if they will not result in filling, drainage, removal of vegetation or other alteration which would destroy or reduce the biological value of the wetland. Minor drainage improvements necessary to ensure effective drainage on surrounding agricultural lands shall be allowed where such an action has been fully coordinated with the Oregon Department of Fish and Wildlife and the Tillamook County Soil and Water Conservation District. Existing drainage ditches may be cleared to original specifications without review.
 - (b) Notification Wetlands:
 - (1) uses permitted outright or conditionally in the underlying zone shall be permitted subject to approval by the Oregon Division of State Lands.

- (3) STANDARDS: The following standard shall be met in addition to the standards of the underlying zone.
- (a) Where dwellings are permitted in the underlying zone, the density of allowed development shall be determined by the size of the entire parcel.
 - (b) Development activities, permits, and land-use decisions affecting a Notification Wetland require notification of the Division of State Lands, and are allowed only upon compliance with any requirements of that agency. The applicant shall be responsible for obtaining approval from the Division of State Lands for activities on Notification Wetlands.

SECTION 3.555: MINERAL AND AGGREGATE OVERLAY (MA)

- (1) Purpose
- (2) Definitions
- (3) Overlay Zone Areas
- (4) Procedure for Applying the Overlay Zone
- (5) Extraction Area - Allowed Uses
- (6) Exemptions
- (7) Extraction Area - Development Standards
- (8) Site Reclamation
- (9) Site Plan Review
- (10) Impact Area - Uses and Development Standards
- (11) Termination of the Mineral and Aggregate Overlay

(1) PURPOSE

The purpose and intent of the MINERAL AND AGGREGATE RESOURCES OVERLAY ZONE is: (A)

To provide a mechanism to identify and protect significant mineral and aggregate resource sites;

(B) To allow the development and use of mineral and aggregate resources subject to uniform operating standards;

(C) To balance and resolve conflicts between surface mining activities and activities on surrounding land;

(2) DEFINITIONS

AGGREGATE RESOURCES: The rock, gravel, sand and other similar resources that are used for the construction of roads, parking areas, walkways and structures.

CONFLICTING USE: A use authorized in the underlying zone and located within the impact area which, if allowed, could adversely affect operations at a significant mineral and aggregate resource site. For the purposes of this chapter, another Goal 5 resource located within the impact area may be considered a conflicting use if that resource could be adversely affected by mining or processing activities, or force a change in mining or processing at the site.

ESEE ANALYSIS: The analysis of Economic, Social, Environmental and Energy consequences of;

(a) Allowing mining on a significant site, and

- (b) Allowing conflicting uses to displace mining on a significant site. Based on the results of the ESEE analysis, the County shall determine a level of protection for the resource, and implement a program to achieve the designated level of protection.

EXTRACTION AREA: The area of identified significant mineral and aggregate reserves in which mining and processing are permitted.

GOAL 5 PROCESS: The planning process required by Oregon Administrative Rules (OAR) Chapter 660, Division to implement the requirements of Statewide Planning Goal 5. This process includes the identification of conflicting uses, the analysis of economic, social, environmental and energy consequences of conflicting uses, the determination on the level of protection to be afforded a resource site, and the selection of a program to protect significant sites.

IMPACT AREA: The area surrounding the extraction area in which conflicting uses occur and in which ESEE consequences are analyzed, and the establishment of new conflicting uses is regulated.

MINERAL RESOURCES: The metallic, industrial and energy resources such as silver, copper, lead, zinc, clay, coal and natural gas.

MINING: All or any part of the process of extracting mineral or aggregate products. Mining does not include:

- (a) Excavations conducted by a landowner or tenant on the landowner or tenant's property for the primary purpose of constructing or maintaining roads to a mine site;
- (b) Excavation or grading conducted in the process of farm or cemetery operations;
- (c) Excavation or grading conducted within a road right-of-way or other easement for the primary purpose of road construction, reconstruction or maintenance; or
- (d) Removal, for compensation, of materials resulting from on-site construction for which a development permit and a construction time schedule have been approved by the County.

NOISE OR DUST SENSITIVE USE: A conflicting use which is primarily used for habitation. Residential structures, churches, hospitals, schools, public libraries, and campgrounds are considered noise or dust sensitive uses during their period of use. Forest uses and farm uses are not noise or dust sensitive uses unless so determined through the Goal 5 process to the effect that they satisfy this definition in more than an incidental manner.

PROCESSING: The washing, crushing, milling, sorting, handling, and conveying of mineral and aggregate resources, including the batching and blending of such resources into asphalt or portland cement concrete.

RESTRICTIVE COVENANT: An enforceable promise, given by the owner of a parcel whose use and enjoyment of that parcel may be restricted in some fashion by mining occurring on another parcel, not to object to the terms of a permit used by a local government, state agency or federal agency. The restrictive covenant shall be recorded in the real property records of the County and shall run with the land, and is binding upon the heirs and successors of the parties. The covenant shall state that obligations imposed by the covenant shall be released when the site has been mined and reclamation has been completed.

SCREENED USES:

- (a) Conflicting uses identified through the Goal 5 process, and
- (b) Scenic viewpoints or other areas designated as significant Goal 5 resources.

SIGNIFICANT SITE: A site containing either significant aggregate resources or significant mineral resources.

- (A) A SIGNIFICANT AGGREGATE RESOURCE site is a site that contains aggregate or stone material which meet modified Oregon Department of Transportation specifications for construction grade material, which are the three materials tests of abrasion (OSHD TM 211) with loss of not more than 35 percent by weight, Oregon Air Degradation (OSHD TM 208) with loss of not more than 35 percent by weight and Sodium Sulphate Soundness (OSHD TM 206) with loss of not more than 18 percent by weight; and is located within an ownership or long-term lease containing reserves in excess of 100,000 cubic yards; or is located on property owned by, or under long-term lease to a city, county, state jurisdiction for the primary purpose of excavating aggregate or stone materials for road construction and maintenance.
- (B) A SIGNIFICANT MINERAL RESOURCE site is a site that contains non-aggregate minerals that have been determined to be significant based upon an analysis and findings concerning the commercial or industrial use of the resource and the relative quality and abundance of the resource in Tillamook County.

SITE PLAN: A County permit either;

- (a) To begin mining in the extraction area, or
- (b) To begin a use in the impact area.

The SITE PLAN shall include such surveys, maps, diagrams, narratives and other materials as may be necessary to describe the placement of and use of all improvements, equipment, fixtures, mitigation measures, landscaping, and vehicles on site.

(3) OVERLAY ZONE AREAS

The MINERAL AND AGGREGATE OVERLAY ZONE comprises two areas, the Extraction Area

and the Impact Area. Neither element of the overlay, the Extraction Area or the Impact Area, shall be applied independently by the County to land within another county, or within a city or its urban growth boundary.

- (A) **EXTRACTION AREA:** The Extraction Area shall be applied to significant sites where mining is permitted. This area may consist of one or more parcels or portions of parcels, and may be applied to contiguous properties under different ownership. The Extraction Area boundary may be modified through the Goal 5 process to reduce conflicts with uses existing when the overlay is applied. The Extraction Area shall be identified on the zoning map.
- (B) **IMPACT AREA:** The Impact Area may be applied to parcels or portions of parcels adjacent to and within 750 feet of the Extraction area boundary unless a different sized impact area is identified in the Goal 5 process. The Impact Area shall be identified on the zoning map.

(4) **PROCEDURE FOR APPLYING THE OVERLAY ZONE**

- (A) **DETERMINATION OF A SIGNIFICANT SITE:** The County shall analyze information about the locations, quality and quantity of mineral and aggregate deposits. Information necessary to demonstrate the significance of a resource shall include:
 - (1) A survey, map, tax lot map, or other legal description that identifies the location and perimeter of the mineral and aggregate resource with reasonable particularity; and
 - (2) Information demonstrating that the resource meets or can meet applicable quality specifications for the intended use(s). Information may consist of laboratory test data or the determination of a geologist, engineer, or other qualified person; and
 - (3) Information demonstrating the quantity of the resource as determined by exploratory test data, or other calculations compiled and attested to by a geologist, engineer, or other qualified person.
- (B) **PLACEMENT ON THE INVENTORY:** Based on the analysis of information about the location, quality and quantity of the mineral and aggregate resource, the County shall determine the inventory status of the resource site. Each site considered by the County shall be placed on one of three inventories based on the following criteria:
 - (1) If the resource site meets the definition of an significant site, the County shall include the site on an inventory of "Significant Sites"; or
 - (2) If information is not available to determine whether or not the resource site meets the definition of a significant site, the County shall include the site on an inventory of "Potential Sites". Sites shall remain on the "Potential Sites" inventory until information is available to determine whether or not the site is significant; or

- (3) If the resource site does not meet the definition of a significant site, the County shall include the site on an inventory of "Other Sites".
- (C) IDENTIFY THE IMPACT AREA: For each significant site, the Impact Area shall be identified and mapped. The Impact Area shall include the Extraction Area and all lands within 750 feet of the Extraction Area boundary, unless the Impact Area is modified through the Goal 5 process.
 - (D) IDENTIFY CONFLICTING USES: For each significant site placed on the inventory, conflicting uses shall be identified.
 - (1) The identification of conflicting uses shall include uses in existence at the time of review, as well as the potential conflicting uses. Identification of potential conflicting uses shall be accomplished by analyzing the uses allowed in the underlying zone(s).
 - (2) If no conflicting uses are identified, the Extraction Area portion of the MINERAL AND AGGREGATE OVERLAY ZONE shall be applied to the resource site. The Impact Area overlay shall not be applied.
 - (E) ESEE ANALYSIS: For each significant site where conflicting uses have been identified, an ESEE analysis shall be performed.
 - (1) The ESEE analysis shall determine the relative value of use of the mineral or aggregate resource site as compared to existing or potential conflicting uses.
 - (2) The ESEE analysis shall be limited to uses and Goal 5 resources identified pursuant to Subsection (D) of this Section.
 - (3) The ESEE analysis shall consider opportunities to avoid and mitigate conflicts. The analysis shall examine:
 - (a) The consequences of allowing conflicting uses fully, notwithstanding the possible effects on mining and processing;
 - (b) The consequences of allowing mining and processing fully, notwithstanding the possible effects on conflicting uses;
 - (c) The consequences of protecting conflicting Goal 5 resources;
 - (d) The applicability and requirements of other Statewide Planning Goals, the County Comprehensive Plan or provisions of the County Zoning Ordinance.
 - (F) DECISION ON PROGRAM TO PROVIDE GOAL 5 PROTECTION: Based on the ESEE analysis, the County shall determine the amount of protection to be given each significant site. Each determination shall be incorporated into the Comprehensive Plan, and reflected on the County zoning maps. The County shall make one of the following determinations:

- (1) Protect the site fully and allow mining and processing. To implement this decision the County shall apply the MINERAL AND AGGREGATE OVERLAY ZONE. Development of the significant site shall be governed by the standards in Section 3.555 (7). As part of the final decision, the County shall adopt site-specific policies specifying the planned use of the site following reclamation and prohibiting the establishment of conflicting uses within the Impact Area.
- (2) Balance protection of the significant site and conflicting uses and allow mineral and aggregate mining and processing. To implement this decision the County shall apply the MINERAL AND AGGREGATE OVERLAY ZONE, specify the planned use of the site following reclamation, and identify which uses in the underlying zone are allowed outright, allowed conditionally, or prohibited. Section 3.555 (7) and other site-specific requirements developed through the Goal 5 process shall govern mining at the significant site. Section 3.555 (10) and any other site-specific requirements developed through the Goal 5 process shall govern development of conflicting uses within the Impact Area.
- (3) Allow conflicting uses fully, even though this may impair mining and processing. To implement this decision the County shall not apply the MINERAL AND AGGREGATE OVERLAY ZONE, and shall not include the site on the inventory of significant sites. The site will not be protected from conflicting uses.

(G) DESIGNATION OF THE MINERAL AND AGGREGATE RESOURCES OVERLAY ZONE AREAS: The MINERAL AND AGGREGATE RESOURCES OVERLAY ZONE AREAS may be applied through the initial legislative planning process, the plan update process or through an individual application for a Comprehensive Plan amendment and zone change. The boundary of the Overlay Zone Area shall be all property within the Mineral and Aggregate Resources Extraction and Impact Areas.

Individual applications shall be initiated by the petition of the owner, contract purchaser, or option holder of property comprising the Extraction Area.

(H) SITE PLAN APPROVAL: The operator of a Significant Site may seek approval of a Site Plan as part of the Goal 5 Process. The standards for Site Plan approval are state in Section 3.555 (9). If the operator chooses to delay application for a Site Plan until some later time, the procedure shall be as set forth in Section 3.555(9).

(5) EXTRACTION AREA ALLOWED USES

(A) Uses permitted either outright or conditionally in the underlying zone may be allowed subject to the underlying zone criteria, any requirements adopted as part of the Goal 5 process, and the following criteria:

- (1) Permitted uses shall be reviewed according to the site plan review procedure;

- (2) Noise sensitive uses as defined in Section 3.555 (2) or those uses determined through the Goal 5 process to be conflicting uses may be permitted as conditional uses;
 - (3) Applications for conditional uses within the Extraction Area shall be reviewed against the approval criteria of Section 3.555 (10).
- (B) The following uses shall be permitted subject to the review standards of Section 3.555 (7) and any requirements adopted as part of the Goal 5 process:
- (1) Mining;
 - (2) Processing, except the batching or blending of mineral and aggregate materials into asphalt concrete within two miles of a planted commercial vineyard existing on the date the application was received for the asphalt batch plant;
 - (3) Stockpiling of mineral and aggregate materials extracted and processed onsite;
 - (4) Sale of mineral and aggregate products extracted and processed onsite;
 - (5) Storage of equipment or vehicles used in conduction with onsite mining or processing;
 - (6) Buildings, structures and activities necessary and accessory to development or reclamation of a mineral or aggregate resource.

(6) EXEMPTIONS

The following mining activities are exempt from the provisions of Section 3.555 (7). Operators or land owners claiming any of these exemptions have the burden of establishing the validity of the exemption.

- (A) Pre-existing or nonconforming activities subject to Article VII of this Ordinance;
- (B) In exclusive farm use zones, mining less than 1,000 cubic yards of material or excavation preparatory to mining of an area of less than one acre;
- (C) In all other zones, mining less than 5,000 cubic yards of material or disturbing less than one acre of land within a period of 12 consecutive months until such time that mining affects five or more acres;
- (D) Mining and processing auxiliary to forest practices.

(7) EXTRACTION AREA DEVELOPMENT STANDARDS

The following standards apply to mining and processing unless other standards are adopted in the Goal 5 process. Prior to the commencement of mining, the applicant shall demonstrate that the following

standards or replacement standards adopted in the Goal 5 process are met or can be met by a specified date.

(A) ACCESS:

- (1) Onsite roads used in mining, and access roads from the extraction site to a public road shall be designed and constructed to accommodate mining vehicles and equipment, and shall meet the following standards:
 - (a) All access road intersections with public roads shall comply with the road approach regulations of the agency with jurisdiction for the public road;
 - (b) All onsite roads within the Extraction Area shall be constructed and maintained in a manner so that all applicable DEQ standards for vehicular noise control, ambient air quality and water quality are met or can be met by a specified date;
 - (c) Effective dust control measures shall be applied to all onsite roads within the Extraction Area within 250 feet of a noise or dust sensitive use existing on the effective date that the overlay is applied.
- (2) Improvements to public roads outside of the Extraction Area may only be required as necessary to correct safety deficiencies and to provide effective dust control. Requirements for road improvements shall be specified in the Goal 5 program for the site, and shall be based upon the ESEE analysis.

(B) SCREENING:

- (1) The mining activities listed in Subsection (B) (2) of this Section shall be obscured from view of screened uses, unless one of the exceptions in Subsection (B) (4) of this Section applies. Screening shall be accomplished in a manner consistent with Subsection (B) (3) of this Section.
- (2) Mining Activities to be Screened.
 - (a) All excavated areas except:
 - (1) Those areas where reclamation is being performed,
 - (2) Internal onsite roads existing on the effective date of this ordinance,
 - (3) New roads approved as part of the site plan review,
 - (4) Material excavated to create berms, and

- (5) Material excavated to change the level of the mine site to an elevation which provides natural screening;
 - (b) All processing equipment;
 - (c) All equipment stored on the site.
- (3) Types of Screening.
- (a) Natural Screening. Existing vegetation or other landscape features which are located within the boundaries of the Extraction Area, and which obscure the view of mining activities from screened uses, shall be preserved and maintained consistent with the development and use of the resource.
 - (b) Supplied Screening. Supplied vegetative screening is screening that does not exist at the time of the site plan review. Plantings used in supplied vegetative screening shall be evergreen shrubs and trees and shall not be required to exceed a height of six feet at the commencement of mining. Supplied earthen screening shall consist of berms covered with earth and stabilized with ground cover.
- (4) Exceptions. Supplied screening shall not be required when and to the extent that any of the following circumstances exist:
- (a) The natural topography of the site provides screening to obscure mining activities from screened uses;
 - (b) Supplied screening cannot obscure mining activities from screened uses due to local topography;
 - (c) The applicant demonstrates that supplied vegetative screening cannot reliably be established or cannot survive for a ten-year period due to soil, water or climatic conditions;
 - (d) Mining activities that are visible from screened used will be completed or removed, and reclaimed within 6 months; or
 - (e) An alternate program or technique to achieve screening is developed, and determined to be at least as effective as the natural or supplied screening described above.
- (C) AIR QUALITY: The discharge of contaminants and dust created by mining shall comply with applicable DEQ ambient air quality and emissions standards.
- (D) STREAMS AND DRAINAGE: Mining abutting a lake or other perennial body of water, shall be

subject to the riparian protection measures contained in Section 4.140 of this ordinance unless mining is allowed within this area as part of the Goal 5 process.

- (E) FLOOD PLAIN: Any mining operation conducted in a flood plain shall demonstrate compliance with all applicable standards and criteria of Section 3.510 of this ordinance.
- (F) NOISE: Noise created by mining shall not exceed applicable DEQ noise control standards. Compliance with this standard can be demonstrated by the report of a certified engineer, and compliance methods may include use of existing topography, equipment modifications, equipment siting or use of supplied berms.
- (G) HOURS OF OPERATION:
 - (1) Mining and processing are restricted to the hours of 7 a.m. to 10 p.m., Monday through Saturday, unless otherwise limited by the Goal 5 process. Hauling and other activities may operate without restriction provided that DEQ noise control standards are met.
 - (2) Mining shall not take place on Sundays or the following legal holidays: New Year's Day, Memorial Day, July 4, Labor Day, Thanksgiving Day, and Christmas Day.
- (H) DRILLING AND BLASTING:
 - (1) Drilling and blasting are restricted to the hours of 9 a.m. to 6 p.m., Monday through Friday. No drilling or blasting shall occur on Saturdays, Sundays, or the following legal holidays: New Year's Day, Memorial Day, July 4, Labor Day, Thanksgiving Day, and Christmas Day.
 - (2) Notice of blasting events shall be provided in a manner calculated to be received by property owners and tenants within the impact area at least 48 hours prior to the blasting event. For ongoing blasting activities, notice shall be provided once each month for the period of blasting events, and specify the days and hours when blasting is expected to occur.
- (I) SURFACE WATER: Surface water shall be managed in a manner which meets all applicable DEQ water quality standards and DOGAMI requirements. The applicant shall demonstrate that all water necessary for the proposed operation has been appropriated to the site and is legally available.
- (J) COMPLIANCE WITH SPECIAL CONDITIONS: The applicant shall demonstrate that all special conditions or requirements adopted as part of the Goal 5 process have been satisfied or will be satisfied by a specified date.
- (K) PERFORMANCE AGREEMENTS: The mining operator shall keep applicable DOGAMI permits or exemption certificates in effect.

(8) SITE RECLAMATION

- (A) No mining shall begin without the operator providing the County a copy of a DOGAMI operating permit and approved reclamation plan or exemption certificate issued in accordance with ORS 517.750 through 517.900 and the rules adopted thereunder.
- (B) The jurisdiction of the County with respect to mined land reclamation is limited to determining the subsequent beneficial use of mined areas, ensuring that the subsequent beneficial use is compatible with applicable provisions of the Comprehensive Plan, and ensuring that mine operations are consistent with adopted programs to protect other Goal 5 resources.
- (C) The County shall coordinate with DOGAMI to ensure compatibility between DOGAMI and the County in the following manner:
 - (1) When notified by DOGAMI that an operator has applied for approval of a reclamation plan and issuance of an operating permit, the County shall, in turn, notify DOGAMI if local site plan approval is required.
 - (a) If site plan approval is required, the County shall request that DOGAMI delay final action on the application for approval of the reclamation plan and issuance of the operating permit until after site plan approval has been granted.
 - (b) If site plan approval is not required, the County shall notify DOGAMI that no land use approval is required, and the County will review the proposed reclamation plan during DOGAMI's notice and comment period.
 - (2) When reviewing a proposed reclamation plan and operating permit application circulated by DOGAMI, the County shall review the plan against the following criteria:
 - (a) The plan will rehabilitate mined land for a use specified in the Comprehensive Plan, including subsequent beneficial uses identified through the Goal 5 process;
 - (b) The reclamation plan, and surface mining and reclamation techniques employed to carry out the plan complies with the standards of Section 3.555(7);
 - (c) Measures are included which will ensure that other significant Goal resources determined to conflict with mining will be protected in a manner consistent with the Comprehensive Plan.

(9) SITE PLAN REVIEW

- (A) Site plan review is required prior to commencement of mining. Applications shall be in the form required by the County, and shall demonstrate compliance with the standards of Section 3.555 (7) and any requirements adopted as part of the Goal 5 process.
- (B) Applications for site plan approval of surface mining operations and activities authorized by Section 3.555(6) shall be reviewed in accordance with the provisions for making a limited land

use decision as provided by ORS 215.425.

- (C) The County shall approve, conditionally approve, or deny a site plan based on the ability of the site plan to conform to the standards of Section 3.555 (7) and any other requirements adopted as part of the Goal 5 process.
- (D) If the County determines that the site plan is substantially different from the proposal approved in the Goal 5 process, the application shall be denied or conditioned to comply with the decision adopted as part of the Goal 5 process, or the applicant may choose to apply for a Comprehensive Plan amendment whereby the original decision reached through the Goal 5 process will be reexamined based on the revised site plan.

(10) IMPACT AREA - USES AND DEVELOPMENT STANDARDS

- (A) USES PERMITTED OUTRIGHT: Uses permitted outright in the underlying zone, except noise or dust sensitive uses or conflicting uses, may be permitted subject to the standards and criteria of the underlying zone(s).
- (B) USES ALLOWED CONDITIONALLY:
 - (1) Noise or dust sensitive uses or conflicting uses shall be reviewed as conditional uses subject to the standards and criteria of the underlying zone and this Section.
 - (2) Conditional uses in the underlying zone(s) which are not noise or dust sensitive uses or conflicting uses shall be reviewed as conditional uses subject to the standards and criteria of the underlying zone.
- (C) PROHIBITED USES: Uses identified through the Goal 5 process as incompatible with mining in all instances shall not be permitted within the Impact Area.
- (D) APPROVAL CRITERIA: To approve uses allowed conditionally in the Impact Area, the applicant must demonstrate compliance with the following criteria:
 - (1) The proposed use will not interfere with or cause an adverse impact on lawfully established and lawfully operating mining operations;
 - (2) The proposed use will not cause or threaten to cause the mining operation to violate any applicable standards of this chapter;
 - (3) The applicable criteria of Subsection (E) of this Section are met;
 - (4) Any setbacks or other requirements imposed through the Goal 5 process have been met, or can be met by a specified date through the imposition of conditions on the conflicting use.

(E) NOISE AND DUST REDUCTION:

- (1) The applicant for a new noise or dust sensitive use shall demonstrate that the mining operation in the adjacent Extraction Area will maintain compliance with DEQ noise control standards and ambient air quality and emission standards as measured at the new noise or dust sensitive use.
- (2) The applicant for a new noise sensitive use shall submit an analysis prepared by an engineer or other qualified person, demonstrating that the applicable DEQ noise control standards are met or can be met by a specified date by the adjoining mining operation. If noise mitigation measures are necessary to ensure continued compliance on the part of the mining operation, such measures shall be a condition of approval. If noise mitigation measures are inadequate to ensure compliance with DEQ noise control standards, the noise sensitive use shall not be approved within the Impact Area.
- (3) As a condition of final approval for the establishment of a new noise sensitive use, the applicant may be required to execute a restrictive covenant in favor of the mining operator that incorporates the compliance items specified in Subsection (E) (2) of this Section.

(11) TERMINATION OF THE MINERAL AND AGGREGATE OVERLAY

When a significant site has been fully mined and reclamation has been complete, the property shall be rezoned to remove the MINERAL AND AGGREGATE RESOURCES OVERLAY ZONE. Rezoning shall not relieve requirements on the part of the owner or operator to reclaim the site in accordance with ORS 517.750 through 517.900 and the rules adopted thereunder.

SECTION 3.560: TILLAMOOK AIRPORT OBSTRUCTION (TAO)

- (1) PURPOSE: It is hereby found that an obstruction has the potential for endangering the lives and property of users of Tillamook Airport, and property or occupants of land in its vicinity; that an obstruction may affect existing and future instrument approach minimums of Tillamook; and that an obstruction may reduce the size of areas available for the landing, takeoff, and maneuvering of aircraft, thus tending to destroy or impair the utility of Tillamook Airport and the public investment therein. Accordingly, it is declared:
 - (a) That the creation or establishment of an obstruction has the potential of being a public nuisance and may injure the region served by Tillamook Airport.
 - (b) That it is necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of obstructions that are a hazard to air navigation be prevented.
 - (c) That the prevention of these obstructions should be accomplished, to the extent legally possible, by the exercise of the police power without compensation.

It is further declared that the prevention of the creation or establishment of hazards to air navigation, the elimination, removal, alteration or mitigation of hazards to air navigation, or the marking and lighting of obstructions are public purposes for which a political subdivision may raise and expend public funds and acquire land or interests in land.

(2) DEFINITIONS:

- (a) AIRPORT - the Tillamook Airport.
- (b) AIRPORT ELEVATION - the highest point of an airport's usable landing area measured in feet from sea level. 35 feet above mean sea level for Tillamook Airport.
- (c) APPROACH SURFACE - a surface longitudinally centered on the extended runway centerline, extending outward and upward from the end of the primary surface and at the same slope as the approach zone height limitation slope set forth in Article IV of this ordinance. In plan, the perimeter of the approach surface coincides with the perimeter of the approach zone.
- (d) APPROACH, TRANSITIONAL, HORIZONTAL AND CONICAL ZONES - these zones are set forth in Article III of this ordinance.
- (e) CONICAL SURFACE - a surface extending outward and upward from the periphery of the horizontal surface at a slope of 20 to 1 for a horizontal distance of 4,000 feet.
- (f) HAZARD TO AIR NAVIGATION - an obstruction determined to have a substantial adverse effect on the safe and efficient utilization of the navigable airspace.
- (g) HEIGHT - for the purpose of determining the height limits in all zones set forth in this ordinance and shown on the zoning map, the datum shall be mean sea level elevation unless otherwise specified.
- (h) HORIZONTAL SURFACE - a horizontal plane 150 feet above the established airport elevation, the perimeter of which in plan coincides with the perimeter of the horizontal zone.
- (i) LARGER THAN UTILITY RUNWAY - a runway that is constructed for and intended to be used by propeller driven aircraft of greater than 12,500 pounds maximum gross weight and jet-powered aircraft.
- (j) NONPRECISION INSTRUMENT RUNWAY - a runway having an existing instrument approach procedure utilizing air navigation facilities with only horizontal guidance, or area type navigation equipment, for which a straight-in nonprecision instrument approach procedure has been approved or planned.
- (k) OBSTRUCTION - any structure, growth, or other object, including a mobile object, which

exceeds a limiting height set forth in Article IV of this Ordinance.

- (l) PERSON - an individual, firm, partnership, corporation, company, association, joint stock association or governmental entity; includes a trustee, a receiver, an assignee or a similar representative of any of them.
 - (m) PRIMARY SURFACE - a surface longitudinally centered on a runway. When the runway has a specifically prepared hard surface the primary surface extends 200 feet beyond each end of that runway; for military runways or when the runway has no specially prepared hard surface, or planned hard surface, the primary surface ends at each end of that runway. The width of the primary surface is set forth in Article III of this Ordinance. The elevation of any point on the primary surface is the same as the elevation of the nearest point on the runway centerline.
 - (n) RUNWAY - a defined area on an airport prepared for landing and takeoff of aircraft along its length.
 - (o) STRUCTURE - an object, including a mobile object, constructed or installed by man, including but without limitation, buildings, towers, cranes, smokestacks, earth formation and overhead transmission lines.
 - (p) TRANSITIONAL SURFACES - these surfaces extend outward at 90 degree angles to the runway centerline and the runway centerline extended at a slope of seven (7) feet horizontally for each foot vertically from the sides of the primary and approach surfaces to where they intersect the horizontal surfaces.
 - (q) TREE - any object of natural growth.
 - (r) UTILITY RUNWAY - a runway that is constructed for and intended to be used by propeller-driven aircraft of 12,500 pounds maximum gross weight and less.
 - (s) VISUAL RUNWAY - a runway intended solely for the operation of aircraft using visual approach procedures.
- (3) AIRPORT ZONES: there are hereby created and established certain zones which include all of the land lying beneath the approach surfaces, transitional surfaces, horizontal surfaces, and conical surfaces as they apply to Tillamook Airport. Such zones are shown on Tillamook Airport Approach and Clear Zone Map consisting of one sheet, prepared by Century West Engineering Corporation, and dated June, 1979, which is attached to this Ordinance, and made a part hereof. An area located in more than on (1) of the following zones is considered to be only in the zone with the more restrictive height limitation. The various zones are hereby established and defined as follows:
- (a) UTILITY RUNWAY VISUAL APPROACH ZONE - the inner edge of this approach zone coincides with the width of the primary surface and is 250 feet wide for Runway 1/19. The approach zone expands outward uniformly to a width of 1,250 feet at a horizontal distance of

5,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.

- (b) RUNWAY LARGER THAN UTILITY WITH A VISIBILITY MINIMUM GREATER THAN 3/4 MILE NONPRECISION INSTRUMENT APPROACH ZONE - the inner edge of this approach zone coincides with the width of the primary surface and is 500 feet wide for Runway 13/31. The approach zone expands outward uniformly to a width of 3,500 feet at a horizontal distance of 10,000 feet from the primary surface. Its centerline is the continuation of the centerline of the runway.
- (c) TRANSITIONAL ZONES - the transitional zones are the areas beneath the transitional surfaces.
- (d) HORIZONTAL ZONE - the horizontal zone is established by swinging arcs of 10,000 feet radii from the center of each end of the primary surface of each runway and connecting the adjacent arcs by drawing lines tangent to those arcs. The horizontal zone does not include approach and transitional zones.
- (e) CONICAL ZONE - the conical zone is established as the area that commences at the periphery of the horizontal zone and extends outward there from a horizontal distance of 4,000 feet.

(4) AIRPORT ZONE HEIGHT LIMITATIONS: except as otherwise provided in this Ordinance, no structure shall be erected, altered, or maintained, and no tree shall be allowed to grow in any zone created by this Section to a height in excess of the applicable height limit herein established for such zone. Such applicable height limitations are hereby established for each of the zones in question as follows:

- (a) UTILITY RUNWAY VISUAL APPROACH ZONES - RUNWAY 1/19 - slopes twenty (20) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 5,000 feet along the extended runway centerline.
- (b) RUNWAY LARGER THAN UTILITY WITH A VISIBILITY MINIMUM GREATER THAN 3/4 MILE NONPRECISION INSTRUMENT APPROACH ZONE - RUNWAY 13/31 - slopes thirty-four (34) feet outward for each foot upward beginning at the end of and at the same elevation as the primary surface and extending to a horizontal distance of 10,000 feet along the extended runway centerline.
- (c) TRANSITIONAL ZONES - slope seven (7) feet outward for each foot upward beginning at the sides of and at the same elevation at the primary surface and the approach surface, and extending to a height of 150 feet above the airport elevation which is 35 feet above mean sea level. In addition to the foregoing, there are established height limits sloping seven (7) feet outward for each foot upward beginning at the sides of and at the same elevation as the approach surface, and extending to where they intersect the horizontal surface.
- (d) HORIZONTAL ZONE - established at 150 feet above the airport elevation or at a height of 185 feet above mean sea level for Tillamook Airport.

- (e) CONICAL ZONE - slopes twenty (20) feet outward for each foot upward beginning at the periphery of the horizontal zone and at 150 feet above the airport elevation and extending to a height of 350 feet above the airport elevation.
 - (f) EXCEPTED HEIGHT LIMITATIONS - nothing in this Ordinance shall be construed as prohibiting the construction or maintenance of any structure, or growth of any tree to a height up to 35 feet above the surface of the land.
 - (g) RESTRICTIVE LIMITATION - where an area is covered by more than one (1) height limitation, the more restrictive limitation shall prevail.
- (5) USE RESTRICTIONS: notwithstanding any other provisions of this Ordinance, no use may be made of land or water within any zone established by this Section in such a manner as to create electrical interference with navigational signals or radio communication between the airport and aircraft, make it difficult for pilots to distinguish between airport lights and others, result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, create bird strike hazards, or otherwise in any way endanger or interfere with the landing, takeoff, or maneuvering of aircraft intending to use the Airport.
- (6) EXISTING USES:
- (a) REGULATIONS NOT RETROACTIVE - the regulations prescribed by this Section shall not be construed to require the removal, lowering or other change or alteration of any structure or tree not conforming to this Section as of the effective date of this Ordinance, or otherwise interfere with the continuance of an existing use. Nothing contained herein shall require any change in the construction, alteration or intended use of any structure, the construction or alteration of which was begun prior to the effective date of this Ordinance, and is diligently prosecuted.
- No permit shall be granted that would allow the establishment or creation of an obstruction or permit an existing use, structure or tree to become a greater hazard to air navigation amendments thereto.
- (b) MARKING AND LIGHTING - the owner of any existing structure or tree not in compliance with this Section is hereby required to permit the installation, operation and maintenance thereon of such markers and lights as shall be deemed necessary by the airport owner to indicate to the operators of aircraft in the vicinity of the airport the presence of such airport obstruction. Such markers and lights shall be installed, operated and maintained at the expense of the airport owner.
 - (c) USES ABANDONED OR DESTROYED - whenever the Tillamook County Planning Department determines that a nonconforming tree or structure has been abandoned or more than 80 percent torn down, physically deteriorated or decayed, no permit shall be granted that would allow such structure or tree to exceed the applicable height limit or otherwise deviate from the regulations of this section.
- (7) VARIANCES: any person desiring to erect or increase the height of any structure, or permit the growth of any tree, or use property, not in accordance with the regulations prescribed in this Section, may apply

to the Planning Commission for a variance from such regulations. The application for variance shall be accompanied by a determination from the Federal Aviation Administration as to the effect of the proposal on the operation of air navigation facilities and the safe, efficient use of navigable airspace. Such variance shall be allowed where it is duly found that a literal application or enforcement of the regulations will result in unnecessary hardship and, relief granted, will not be contrary to the public interest, will not create a hazard to air navigation, will do substantial justice, and will be in accordance with the spirit of this Ordinance. Additionally, no application for variance to the requirements of this Section may be considered by the Planning Commission unless a copy of the application has been furnished to the airport owner for advice as to the aeronautical effects of the variance. If the airport owner does not respond to the request within forty-five (45) days after receipt, the Planning Commission may act to grant or deny said application without such advice.

(a) OBSTRUCTION MARKING AND LIGHTING - any variance granted may, if such action is deemed advisable to effectuate the purpose of this Ordinance and be reasonable in the circumstances, be so conditioned as to require the owner of the structure or tree in question to install, operate and maintain at the owner's expense, such markings and lights as may be necessary. If deemed proper by the Planning Commission, this condition may be modified to require the owner to permit the airport owner at its own expense, to install, operate and maintain the necessary markings and lights.

(8) JURISDICTION: within the boundaries of the property comprising the Port of Tillamook Bay Airport and Industrial Park, the provisions of this Section shall be administered directly by the Port of Tillamook Bay.

SECTION 3.565: PACIFIC CITY AIRPORT OBSTRUCTION OVERLAY ZONE (PAO)

(1) PURPOSE: It is hereby found that an obstruction has the potential for endangering the lives and property of users of Pacific City Airport, and property or occupants of land in its vicinity; that increasing obstructions may affect the continued use of the Pacific City State Airport; and that an obstruction may reduce the size of areas available for the landing, take off, and maneuvering of aircraft, thus tending to destroy or impair the utility of Pacific City State Airport and the public investment therein. Accordingly, it is declared that:

(a) The creation or establishment of an obstruction has the potential of being a public nuisance and may injure the region served by the Pacific City State Airport.

(b) It is necessary in the interest of the public health, public safety, and general welfare that the creation or establishment of obstructions that are a hazard to air navigation be prevented.

It is further declared that the prevention of the creation or establishment of hazards to air navigation, the elimination, removal, alteration or mitigation of hazards to air navigation, or the marking and lighting of obstructions are public purposes for which a political subdivision may raise and expend public funds and acquire land or interests in land.

(2) DEFINITIONS:

- (a) AIRPORT: The Pacific City State Airport.
- (b) AIRPORT CENTERLINE: The center of the existing paved Pacific City State Airport runway surface.
- (c) AIRPORT ELEVATION: The highest point of an airport's usable landing area measured in feet from sea level. This is six (6) feet above mean sea level for Pacific City State Airport.
- (d) AIRPORT HAZARD: Any structure, tree or use of land which exceeds height limits established by the Airport Imaginary Surfaces.
- (e) AIRPORT IMAGINARY SURFACES: The imaginary areas in space which are defined by the Approach Surfaces, Transitional Surfaces, Special Height Surface, Horizontal Surface, and Conical Surface and in which any object extending above these imaginary surfaces is an obstruction.
- (f) APPROACH SURFACE: A surface longitudinally centered on the extended runway centerline and extending upward from the end of the Primary Surface on the South and the displaced threshold on the North. The inner edge of the approach surface is the same width as the primary surface and extends to a width of seven hundred (700) feet. The airport approach surface extends for a horizontal distance of 5,000 feet at a slope of twenty (20) feet outward for each foot upward (20.1).
- (g) APPROACH ZONE: All the land lying beneath the Approach Surface.
- (h) CONICAL SURFACE: Begins at the edge of the Horizontal Surface (5,000 feet from the south end of the Primary Surface and 5,000 feet from the center of the displaced threshold on the north at one hundred fifty (150) feet above the airport elevation) and extends twenty (20) feet outward for each foot upward (20.1) for 4,000 feet extending to a height of three hundred fifty (350) feet above the airport elevation.
- (i) CONICAL ZONE: All the land lying beneath the Conical Surface.
- (j) DISPLACED THRESHOLD; A displaced threshold is a threshold located at a point on the runway other than at the runway end (which point is 300 feet south of the North property line for Pacific City State Airport) and reduces the length of runway available for landing airplanes. The runway behind the displaced threshold is available for completing landing rollouts in the opposite direction and takeoff in either direction.
- (k) HORIZONTAL SURFACE: A horizontal plane one hundred fifty (150) feet above the established airport elevation, the perimeter of which is constructed by swinging arcs of 5,000 feet from the center of the south end of the Primary Surface and the center of the displaced threshold to the north and connecting the adjacent arcs by lines tangent to those arcs.

- (l) HORIZONTAL ZONE: All the land lying beneath the Horizontal Surface.
- (m) MEAN SEA LEVEL: Equivalent to National Geodetic Vertical Datum (NGVD) for the purposes of this Ordinance.
- (n) OBSTRUCTION: Any structure, growth, or other object, including a mobile object, which exceeds a limiting height set forth in Section 3.565 (3).
- (o) PRIMARY SURFACE: A surface longitudinally centered on a runway. The width of the Primary Surface is one hundred (100) feet on each side of the Airport Centerline, for a total width of two hundred (200) feet for the Pacific City State Airport. This surface begins at the northern property boundary, remains south of Pacific Avenue and extends to the south the full length of the paved runway (1850 feet) plus 100 feet beyond. The elevation of any point on the Primary Surface is six (6) feet above mean sea level for the Pacific City State Airport.
- (p) RUNWAY: A defined rectangular area on an airport prepared for the landing and takeoff of aircraft along its length. For Pacific City State Airport, the paved runway begins at the north property line and extends one thousand eight hundred fifty (1850) feet to the south.
- (q) SPECIAL HEIGHT SURFACE: A surface elevated thirty-three (33) and thirty-seven (37) feet above mean sea level which is located over the Special Height Zone. The surface will be slightly irregular where it has been pierced by development prior to the adoption of this Section, in which case the surface lies so as to average the heights of the immediately adjacent neighboring structures or the height of the special height zone, whichever is higher.
- (r) SPECIAL HEIGHT ZONE: This area borders the Primary Surface and the Approach Zone on its inside edges. The outside edge of the zone is formed where the 37 foot MSL height intersects the Transition Zone each side of and perpendicular to the Primary Surface on the south and the Primary Surface and Displaced Threshold on the north (three hundred seventeen (317) feet from the Runway Centerline) and then angles to intersect the Approach Surfaces at points located six hundred twenty (620) feet beyond the end of the Primary Surface to the south, six hundred twenty (620) feet beyond the Displaced Threshold to the north and one hundred thirty-one (131) feet perpendicular to each side of the extended Runway Centerline at the six hundred twenty (620) foot locations. This zone could also be described as all the land lying beneath the Transitional Surface from the Primary Surface to a point where the Transitional Surface reaches thirty-seven (37) feet above mean sea level. The Special Height Zone is now divided into two zones. Zone A runs between one hundred (100) and one hundred twenty (120) feet from the runway centerline within the Special Height Zone, and allows structures to be thirty-three (33) feet above mean sea level. Zone B runs between one hundred twenty (120) feet and three hundred seventeen (317) feet from the Runway Centerline within the Special Height Zone and allows structures to be thirty-seven (37) feet above mean sea level.

- (s) STRUCTURE: An object, including a mobile object, constructed or installed by man, including but without limitation, buildings, towers, cranes, smokestacks, earth formation and overhead transmission lines.
 - (t) TRANSITIONAL SURFACE: A surface which extends one (1) foot upward for each seven (7) feet outward (7:1) from the sides of the Primary Surface south of the Displaced Threshold at a height of six (6) feet above mean sea level, and from the sides of the Approach Surfaces thence extending 1 foot upward for each seven (7) feet outward (7:1) to a height of one hundred fifty (150) feet above the airport elevation to where they intersect the horizontal surfaces.
 - (u) TRANSITIONAL ZONE: All the land lying beneath the transitional surface, except the area within the Special Height Zone.
 - (v) TREE: Any object of natural growth.
 - (w) UTILITY RUNWAY: A runway that is constructed for and intended to be used by propeller-driven aircraft of 12,500 pounds maximum gross weight and less.
 - (x) VISUAL RUNWAY: A runway intended solely for the operation of aircraft using visual approach procedure.
- (4) USE RESTRICTIONS: Notwithstanding any other provisions of this Ordinance, no use may be made of land or water within any zone established by this Section in such a manner as to create electrical interference with aviation radio communications, result in glare in the eyes of pilots using the airport, impair the visibility in the vicinity of the airport, create bird strike hazards, or otherwise in any way endanger or interfere with the landing, takeoff, of maneuvering of aircraft intending to use the airport.
- (a) ALLOWABLE USES IN APPROACH ZONE EAST OF NESTUCCA RIVER: Uses permitted are those which do not congregate more than one person per 100 square feet of ground floor at one time. Examples of permitted uses include, but are not limited to, single family dwellings; barbers; tailors; printers; cleaners; shoe repair; tennis and racquetball courts; fire and ambulance stations; car wash; utility substations; warehousing, including ministorage; light industry; wholesale sales establishments not open to the general public; sales and service with large outdoor storage space, including the sale and repair of cars, trucks, farm equipment, heavy machinery, and marine craft; the storage of construction, plumbing, heating, paving, electrical, and painting materials; and parking for trucks as part of a construction or shipping operation. Business and professional offices are permitted if it can be demonstrated that they will not congregate more than one person per one hundred (100) square feet of ground floor space at any one time. Examples of uses not permitted include, but are not limited to, public or private schools or day care centers; churches; mobile home or RV parks; motels or hotels; group cottages; multi-family dwellings; hospitals; medical or other health care clinics; sanitarium, rest home or nursing home; animal hospital; retail sales establishments, including grocery stores, convenience stores, dining and drinking establishments, and shopping malls; private and public meeting facilities such as lodges or

community centers; libraries; and commercial amusement and entertainment establishments.

- (b) No use shall occur within the area defined by the Primary surface which will present an obstruction to aircraft except parking as allowed under (3) (e) above, or as approved through the variance procedure described in Section 3.565(6).

(5) EXISTING USES:

- (a) REGULATIONS NOT RETROACTIVE: The regulations prescribed by this Section shall not be construed to require the removal, lowering or other change or alteration of any structure or tree not conforming to this Section as of the effective date of this Ordinance, or otherwise interfere with the continuance of an existing use. Nothing contained herein shall require any change in the construction, alteration or intended use of any structure, the construction or alteration of which was begun prior to the effective date of this Ordinance, and which shows signs of progress toward completion every six months.

No permit shall be granted that would allow the establishment or creation of an obstruction or permit an existing use, structure or tree to become a greater hazard to air navigation than it was on the effective date of this Ordinance or any amendments thereto.

- (b) EXISTING USES DESTROYED: In the Approach Zone existing structures as of the date of the adoption of this Ordinance may be reconstructed in the event they are destroyed, so long as the new structure has the same height, floor area and location as the old structure or as long as they comply with existing uses and restrictions then applicable whichever is more lenient. Existing uses in the Approach Zone as of the date of adoption of this Ordinance will be allowed to continue and be re-established on the same lot.

- (c) MARKING AND LIGHTING: The owner of any existing structure or tree not in compliance with this Section is hereby required to permit the installation operation and maintenance thereon of such markers and lights as shall be deemed necessary by the airport owner to indicate to the airport the presence of such airport obstruction. Such markers and lights shall be installed, operated and maintained at the expense of the airport owner.

- (6) VARIANCES: Any person desiring to erect or increase the height of any structure, or permit the growth of any tree, or use property, not in accordance with the regulations prescribed in this Section, may apply to the Planning Commission for a variance from such regulations. The application for variance shall be accompanied by a determination from the Federal Aviation Administration as to the effect of the proposal on the operation of air navigation facilities and the safe, efficient use of navigable airspace. To obtain a determination, an FAA form 7460-1 must be filed in advance with the FAA and the Oregon State Aeronautics Division. Such variance shall be allowed where it is duly found that a literal application or enforcement of the regulations will result in unnecessary hardship and, if relief is granted, will not be contrary to the public interest, will not create a hazard to air navigation, will do substantial justice, and will be in accordance with the spirit of this Ordinance. If the airport owner and the FAA do not respond to the request within forty-five (45) days after receipt, the Planning Commission may act to grant or deny

said application without such advice.

NOTE: OBSTRUCTION MARKING AND LIGHTING: Any variance granted may be so conditioned as to require the owner of the structure or tree in question to install, operate and maintain at the owner's expense, such markings and lights as may be necessary.

- (7) NOTICE OF PENDING APPLICATIONS: In addition to the Requirements of the Oregon Administrative Rule 738-100 and Oregon Revised Statute 215.223, the Oregon State Aeronautics Division shall be notified of all applications including building permits within the Approach Zone east of the Nestucca River and shall be given fourteen (14) days to comment before action is taken on the application.
- (8) COMPLIANCE: In addition to complying with the provisions of the primary zoning district, uses shall comply with the provisions of this overlay zone. In the event of any conflict between any provisions of this overlay zone and the primary zoning district, the more restrictive provision shall apply. An area located in more than one of the following zones is considered to be only in the zone with the more restrictive height limitation, except for those properties within the Special Height Zone.
- (9) HOLD HARMLESS AGREEMENT

KNOW ALL PERSONS BY THESE PRESENTS, that the undersigned, hereinafter referred to as Grantors (whether singular or plural), hereby covenant and agree that Grantors shall not, by reason of their ownership or occupation of the following described real property, protest or bring a suit or action in any court or administrative forum against Tillamook County or its officers, employees or agents, or the State of Oregon, Department of Transportation and Aeronautics Division, or its officers, employees or agents, for aviation related noise, property damage or personal injury based on the fact that the State of Oregon, Department of Transportation, and Aeronautics Division own and operate the Pacific City State Airport and that Tillamook County granted building and development permits to grantor to develop the following described real property. The Grantors acknowledge that the Pacific City State Airport does not conform to Federal Aviation Administration Standards and that development of the Grantor's real property also will not conform to Federal Aviation Administration Standards.

The real property of Grantors subject to this covenant and agreement is situated in the County of Tillamook, State of Oregon, and described as follows:

SECTION 3.570: NESKOWIN COASTAL HAZARDS OVERLAY ZONE (NESK-CH)

- (1) **PURPOSE:** The purpose of the Neskowin Coastal Hazards Overlay Zone is to manage development in areas subject to chronic coastal hazards in a manner that reduces long term risks to life, property, and the community by:
- (a) Identifying areas that are subject to chronic coastal natural hazards including ocean flooding, beach and dune erosion, dune accretion, bluff recession, landslides, and inlet migration;
 - (b) Assessing the potential risks to life and property posed by chronic coastal natural hazards; and
 - (c) Applying standards to the site selection and design of new development which minimize public and private risks to life and property from these chronic hazards; such measures may include hazard avoidance and other development limitations consistent with Statewide Planning Goals 7 and 18 as well as the Hazards Element and Beaches and Dunes Element of the Tillamook County Comprehensive Plan.

It is recognized that risk is ever present in identified hazard areas. The provisions and requirements of this section are intended to provide for full identification and assessment of risk from natural hazards, and to establish standards that limit overall risk to the community from identified hazards to a level acceptable to the community. It must be recognized, however, that all development in identified hazard areas is subject to increased levels of risk, and that these risks must be acknowledged and accepted by present and future property owners who proceed with development in these areas.

- (2) **AREAS INCLUDED:** All lands within coastal erosion hazard zones as depicted on the Coastal Erosion Hazard Zone map adopted as Appendix D to the Neskowin Community Plan are subject to the provisions of this section.
- (3) **PERMITTED USES:** Within the Neskowin Coastal Hazards Overlay Zone, all uses permitted pursuant to the provisions of the underlying zone may be permitted, subject to the additional requirements and limitations of this section.
- (4) **NESKOWIN COASTAL HAZARD AREA PERMIT:**
- (a) Except for activities identified in subsection (4)(b) as exempt, any new development, new construction or substantial improvement, as defined in Article I, in an area subject to the provisions of this section shall require a Neskowin Coastal Hazard Area Permit. The Neskowin Coastal Hazard Area Permit may be applied for prior to or in conjunction with a building permit, grading permit, or any other permit or land use approval required by Tillamook County.
 - (b) Except for beach or dune areas subject to the limitations of subsection (8) of this section, the following activities are exempt from the requirement for a Neskowin Coastal Hazard Area Permit:

- (A) Maintenance, repair, or alterations to existing structures that do not alter the building footprint or foundation and do not constitute substantial improvement;
 - (B) An excavation which is less than two feet in depth or which involves less than twenty-five cubic yards of volume;
 - (C) Fill that is less than two feet in depth or that involves less than twenty-five cubic yards of volume;
 - (D) Exploratory excavations under the direction of a certified engineering geologist or registered geotechnical engineer;
 - (E) Construction of structures for which a building permit is not required;
 - (F) Removal of trees smaller than 8 inches dbh (diameter breast height);
 - (G) Removal of trees larger than 8 inches dbh (diameter breast height) provided the canopy area of the trees that are removed in any one year period is less than twenty-five percent of the lot or parcel area;
 - (H) Yard area vegetation maintenance and other vegetation removal on slopes less than 25% slopes;
 - (I) Forest operations subject to regulation under ORS 527 (the Oregon Forest Practices Act);
 - (J) Maintenance and reconstruction of public and private roads, streets, parking lots, driveways, and utility lines, provided the work does not extend outside the previously disturbed area;
 - (K) Maintenance and repair of utility lines, and the installation of individual utility service connections;
 - (L) Emergency response activities intended to reduce or eliminate an immediate danger to life or property, or flood or fire hazard;
 - (M) Restoration, repair, or replacement of a lawfully established structure damaged or destroyed by fire or other casualty in accordance with subsection (12) of this section; and
 - (N) Construction/erection of beachfront protective structures subject to regulation by the Oregon Parks and Recreation Department under OAR 736, Division 20.
- (c) Application, review, decisions, and appeals for Neskowin Coastal Hazard Area Permits shall be in accordance with the following requirements:

- (A) A property owner or authorized agent shall submit an application for a Neskowin Coastal Hazard Area Permit to the department on a form prescribed by the department.
- (B) Upon determination that the application is complete, the department may refer the application to affected cities, districts, and/or local, state and federal agencies for comments.
- (C) Upon completion of the period for comments from affected agencies, the director shall approve or deny the application, or, at the director's discretion, refer the application to the Planning Commission for a public hearing.
- (D) Notice of a decision by the director to approve or deny an application shall:
 - (i) Be provided to the applicant and to the owners of record of property within 250 feet of the subject property on the most recent Tillamook County property tax assessment roll;
 - (ii) Be provided to the Neskowin Citizen Planning Advisory Committee;
 - (iii) Explain the nature of the decision and the use or uses that could be authorized;
 - (iv) List the applicable criteria from this ordinance that apply to the subject decision;
 - (v) Set forth the street address or other easily understood information identifying the location of the subject property;
 - (vi) State that a copy of the department's staff report and record of decision is available for inspection at no cost and can be provided at reasonable cost;
 - (vii) Provide the name and telephone number of the department staff person to contact for additional information; and,
 - (viii) Provide an explanation of the procedure and deadline for appealing the decision to the commission for a public hearing
- (E) A decision by the director to approve or deny an application for a Neskowin Coastal Hazard Area Permit may be appealed in accordance with Article 10.
- (F) An approved Neskowin Coastal Hazard Area Permit shall be valid for a period of two (2) years from the effective date of the decision. If development authorized by the permit is not initiated within this two (2) year time period, the Neskowin Coastal Hazard Area permit shall expire.

- (d) In addition to a completed application as prescribed in subsection (c), an application for a Neskowin Coastal Hazard Area Permit shall include the following:
 - (A) A site plan that illustrates areas of disturbance, ground topography (contours), roads and driveways, an outline of wooded or naturally vegetated areas, watercourses, erosion control measures, and trees with a diameter of at least 8 inches dbh (diameter breast height) proposed for removal;
 - (B) An estimate of depths and the extent of all proposed excavation and fill work;
 - (C) Identification of the bluff- or dune-backed hazard zone or landslide hazard zone for the parcel or lot upon which development is to occur. In cases where properties are mapped with more than one hazard zone, an engineering geologist shall identify the hazard zone(s) within which development is proposed.
 - (D) A geologic report prepared by an engineering geologist that meets the content requirements of subsection (5);
 - (E) If engineering remediation is required to make the site suitable for the proposed development, an engineering report, prepared by a registered civil engineer, geotechnical engineer, or certified engineering geologist (with experience relating to coastal processes), which provides design and construction specifications for the required remediation; and,
 - (F) A Hazard Disclosure Statement, executed by the property owner, which sets forth the following:
 - (i) A statement that the property is subject to potential chronic natural hazards and that development thereon is subject to risk of damage from such hazards;
 - (ii) A statement that the property owner has commissioned a geologic report for the subject property, a copy of which is on file with Tillamook County, and that the property owner has reviewed the geologic report and has thus been informed and is aware of the type and extent of hazards present and the risks associated with development on the subject property;
 - (iii) A statement acknowledging that the property owner accepts and assumes all risks of damage from natural hazards associated with the development of the subject property.
- (e) A decision to approve a Neskowin Coastal Hazard Area Permit shall be based upon findings of compliance with the following standards:

- (A) The proposed development is not subject to the prohibition of development on beaches and certain dune forms as set forth in subsection (8) of this section;
 - (B) The proposed development complies with the applicable requirements and standards of subsections (6), (7), (8), and (10) of this section;
 - (C) The geologic report conforms to the standards for such reports set forth in subsection (5) of this section;
 - (D) The development plans for the application conform, or can be made to conform, with all recommendations and specifications contained in the geologic report; and
 - (E) The geologic report provides a statement that, in the professional opinion of the engineering geologist, the proposed development will be within the acceptable level of risk established by the community, as defined in subsection (5)(c) of this section, considering site conditions and the recommended mitigation.
- (f) In the event the director determines that additional review of a Neskowin Coastal Hazard Area Permit application by an appropriately licensed and/or certified professional is necessary to determine compliance with the provisions of this section, the County may retain the services of such a professional for this purpose. All costs incurred by the County for this additional review shall be paid by the applicant in addition to the application fee for a Neskowin Coastal Hazard Area Permit established pursuant to Section 10.020.
 - (g) In approving a Neskowin Coastal Hazard Area Permit, the director or commission may impose any conditions that are necessary to ensure compliance with the provisions of this section or with any other applicable provisions of the Tillamook County Land Use Ordinance.

(5) GEOLOGIC REPORT STANDARDS

- (a) Geologic reports required by this section shall be prepared consistent with standard geologic practices employing generally accepted scientific and engineering principles, and shall, at a minimum, contain the items outlined in the Oregon State Board of Geologist Examiners "Guidelines for Preparing Engineering Geologic Reports in Oregon". Reports shall reference the published guidelines upon which they are based. All engineering geologic reports are valid for purposes of meeting the requirements of this section for a period of five (5) years from the date of preparation. Such reports are valid only for the development plan addressed in the report. Tillamook County assumes no responsibility for the quality or accuracy of such reports.

- (b) For the purposes of Section 3.570, geologic reports should be prepared by these guidelines for engineering geologic reports. All references in Section 3.570 that refer to geologist reports assume that they are prepared with these guidelines.

- (c) In addition to the requirements set forth in subsection (5)(a), geologic reports for lots or parcels abutting the ocean shore shall, to the extent practicable based on best available information, include the following information, analyses and recommendations:
 - (A) Site description:
 - (i) The history of the site and surrounding areas, such as previous riprap or dune grading permits, erosion events, exposed trees on the beach, or other relevant local knowledge of the site.
 - (ii) Topography, including elevations and slopes on the property itself.
 - (iii) Vegetation cover.
 - (iv) Subsurface materials – the nature of the rocks and soils.
 - (v) Conditions of the seaward front of the property, particularly for sites having a sea cliff.
 - (vi) Presence of drift logs or other flotsam on or within the property.
 - (vii) Description of streams or other drainage that might influence erosion or locally reduce the level of the beach.
 - (viii) Proximity of nearby headlands that might block the longshore movement of beach sediments, thereby affecting the level of the beach in front of the property.
 - (ix) Description of any shore protection structures that may exist on the property or on nearby properties.
 - (x) Presence of pathways or stairs from the property to the beach.
 - (xi) Existing human impacts on the site, particularly any that might alter the resistance to wave attack.

 - (B) Description of the fronting beach:
 - (i) Average widths of the beach during the summer and winter.

- (ii) Median grain size of beach sediment.
- (iii) Average beach slopes during the summer and winter.
- (iv) Elevations above mean sea level of the beach at the seaward edge of the property during summer and winter.
- (v) Presence of rip currents and rip embayments that can locally reduce the elevation of the fronting beach.
- (vi) Presence of rock outcrops and sea stacks, either offshore or within the beach zone.
- (vii) Information regarding the depth of beach sand down to bedrock at the seaward edge of the property.

(C) Analyses of Erosion and Flooding Potential:

- (i) Analysis of DOGAMI beach monitoring data for the site (if available).
- (ii) Analysis of human activities affecting shoreline erosion.
- (iii) Analysis of possible mass wasting, including weathering processes, landsliding or slumping.
- (iv) Calculation of wave run-up beyond mean water elevation that might result in erosion of the sea cliff or foredune.¹
- (v) Evaluation of frequency that erosion-inducing processes could occur, considering the most extreme potential conditions of unusually high water levels together with severe storm wave energy.
- (vi) For dune-backed shoreline, use an established geometric model to assess the potential distance of property erosion, and compare the results with direct evidence obtained during site visit, aerial photo analysis, or analysis of DOGAMI beach monitoring data.
- (vii) For bluff-backed shorelines, use a combination of published reports, such as DOGAMI bluff and dune hazard risk zone studies, aerial photo analysis, and fieldwork to assess the potential distance of property erosion.

¹ Stockdon, H. F., Holman, R. A., Howd, P. A. and Sallenger, A. H., 2006, Empirical parameterization of setup, swash, and runup: Coastal Engineering, 53, p 573-588.

- (viii) Description of potential for sea level rise, estimated for local area by combining local tectonic subsidence or uplift with global rates of predicted sea level rise.
- (D) Assessment of potential reactions to erosion episodes:
- (i) Determination of legal restrictions of shoreline protective structures (Goal 18 prohibition, local conditional use requirements, priority for non-structural erosion control methods).
 - (ii) Assessment of potential reactions to erosion events, addressing the need for future erosion control measures, building relocation, or building foundation and utility repairs.
- (E) Recommendations:
- (i) Use results from the above analyses to establish setbacks (beyond any minimums set by this section), building techniques, or other mitigation measures to ensure an acceptable level of safety and compliance with all local requirements.
 - (ii) Recommend a foundation design, or designs, that render the proposed structures readily moveable.
 - (iii) Recommend a plan for preservation of vegetation and existing grade within the setback area, if appropriate.
 - (iv) Include consideration of a local variance process to reduce the building setback on the side of the property opposite the ocean, if this reduction helps to lessen the risk of erosion, bluff failure or other hazard.
 - (v) Recommend methods to control and direct water drainage away from the ocean (e.g. to an approved storm water system); or, if not possible, to direct water in such a way so as to not cause erosion or visual impacts. In addition, the report shall specify erosion control measures as necessary to conform to the requirements of Section 5.100.
- (d) Geologic reports required by this section shall include a statement of the engineering geologist's professional opinion as to whether the proposed development will be within the acceptable level of risk established by the community, considering site conditions and the recommended mitigation.

As used in this section, "acceptable level of risk" means the maximum risk to people and property from identified natural hazards deemed acceptable to the community in fulfilling

its duty to appropriately protect life and property from natural hazards. For development subject to the provisions of this section, the acceptable level of risk is:

(A) Assurance that life safety will be protected from the identified hazard(s), excluding a tsunami resulting from a Cascadia megathrust earthquake, for a period of [50-70] years, considering site conditions and specified mitigation; and

(B) A high likelihood that the proposed structures will be protected from substantial damage from the identified hazard(s), excluding a Cascadia megathrust earthquake and resultant tsunami, for a period of [50-70] years, considering site conditions and specified mitigation.

(e) Geologic reports required by this section shall include a statement certifying that all of the applicable content requirements of this subsection have been addressed.

(6) **ADDITIONAL DEVELOPMENT LIMITATIONS IN COASTAL HAZARD AREAS:** In addition to the conditions, requirements, and limitations imposed by any required geologic report, all development subject to a Neskowin Coastal Hazard Area Permit shall conform to the following requirements:

(a) **Moveable structure design:** Except for non-habitable accessory structures (e.g. garages, storage buildings), to facilitate the relocation of structures that become threatened by coastal hazards.

(b) **Safest site requirement:** All new construction or substantial improvement shall be located within the area most suitable for development based on the least exposure to risk from coastal hazards as determined by an engineering geologist as part of a geologic report prepared in accordance with subsection (5). Notwithstanding the provisions of the underlying zone, as necessary to comply with this requirement:

(A) Any required yard or setback may be reduced by up to 50%; and,

(B) The maximum building width may be increased to up to 90% of the distance between opposite side lot lines.

(c) **New lot or parcel development prohibition:**

Unless exempt from the requirements of subsection (10)(a) of this section, on lots and parcels created after [insert effective date of this section], new construction or substantial improvement in the area subject to the provisions of this section is prohibited.

(d) **Residential density limitation:**

Within the Neskowin Low Density Residential Zone (NeskR-1) and the Neskowin Rural Residential Zone (Nesk-RR), on lots or parcels which are developed with an existing dwelling or

dwelling, the construction of additional dwelling units, including accessory dwelling units, is prohibited.

- (7) **MINIMUM OCEANFRONT SETBACKS:** In areas subject to the provisions of this section, the building footprint of all new construction or substantial improvement subject to a Neskowin Coastal Hazard Area Permit shall be set back from the ocean shore in accordance with the following requirements:
- (a) Of the following, the requirement that imposes the greatest setback shall determine the minimum oceanfront setback:
 - (A) A setback specified in a required geologic report;
 - (B) A setback that coincides with the Oceanfront Setback Line (OSL) determined pursuant to Section 3.530 (4)(A)(1)c.; or
 - (C) On bluff-backed shorelines, a setback from the bluff edge a distance of 50 times the annual erosion rate (as determined by an engineering geologist) plus 20 feet (or other distance determined to be an adequate buffer). The bluff edge shall be as defined in the required geologic report.
 - (b) On lots or parcels subject to the minimum oceanfront setback, the required yard setback opposite the oceanfront may be reduced by one foot for each one foot of oceanfront setback provided beyond the required minimum, down to a minimum of 10 feet.
 - (c) On lots or parcels created prior to the effective date of this section, where the application of the minimum oceanfront setback, together with any other required yards and/or setbacks, results in a building footprint area of less than 1,500 square feet, the minimum oceanfront setback may be reduced by an amount necessary to provide a building footprint of not more than 1,500 square feet.
- (8) **ADDITIONAL LIMITATIONS ON DEVELOPMENT ON BEACHES AND DUNES:** In addition to the conditions, requirements, and limitations imposed by any required engineering geologic report, all development subject to a Neskowin Coastal Hazard Area Permit in identified beach and dune areas shall be subject to the following requirements:
- (a) Foredune breaching and restoration shall be conducted in a manner consistent with sound principles of conservation. Such breaching may be permitted only:
 - (A) To replenish sand supply in interdune areas;
 - (B) On a temporary basis in an emergency, such as for fire control, hazard removal or clean up, draining farm lands, or alleviating flood hazards; or

- (C) For other purposes only upon adoption of an exception to Statewide Planning Goal 18.
- (b) Applications for development that will utilize groundwater resources shall provide a hydrologic analysis that demonstrates that groundwater withdrawal will not:
 - (A) Lead to the loss of stabilizing vegetation;
 - (B) Lead to a deterioration of water quality; or
 - (C) Result in the intrusion on salt water into water supplies.
- (c) Fore-dune grading may be performed only as authorized by and in accordance with a fore-dune management plan adopted and acknowledged in conformance with Statewide Planning Goal 18.
- (d) Identified beach and dune areas that are not subject to an exception to Goal 18, Implementation Requirement 2, as set forth in Section 6.1d of the Beaches and Dunes Element of the Tillamook County Comprehensive Plan, shall be subject to the following requirements:
 - (A) Required geologic reports shall address, in addition to the requirements of subsection (5), the following:
 - (i) The type of use proposed and the adverse effects it might have on the site and adjacent areas;
 - (ii) Temporary and permanent stabilization programs and the planned maintenance of new and existing vegetation;
 - (iii) Methods for protecting the surrounding area from any adverse effects of the development; and
 - (iv) Hazards to life, public and private property, and the natural environment that may be caused by the proposed use.
 - (B) On beaches, active foredunes, other foredunes that are only conditionally stable and subject to ocean undercutting or wave overtopping, and interdune areas (deflation plains) that are subject to ocean flooding:
 - (i) Residential developments and commercial and industrial buildings are prohibited.
 - (ii) Other development in these areas shall be permitted only if findings are provided which demonstrate that the proposed development is adequately protected from

any geologic hazards, wind erosion, undercutting, ocean flooding and storm waves, and is designed to minimize adverse environmental effects.

(9) REQUIREMENTS FOR BEACHFRONT PROTECTIVE STRUCTURES:

- (a) In reviewing a Land Use Compatibility Statement (LUCS) for an Oregon Parks and Recreation Department Ocean Shore Permit authorized by ORS 390.640, the director may determine that an application to construct a beachfront protective structure is in compliance with the local comprehensive plan and implementing regulations only if the beachfront protective structure will be placed where development existed on January 1, 1977, or where an exception to Goal 18, Implementation Requirement 2 has been adopted as set forth in Section 6.1d of the Beaches and Dunes Element of the Tillamook County Comprehensive Plan.
- (b) For the purposes of this subsection, "development" means houses, commercial and industrial buildings, and vacant subdivision lots which are physically improved through construction of streets and provision of utilities to the lot.
- (c) Review and decisions on Land Use Compatibility Statements for Ocean Shore Permits shall be conducted in accordance with the requirements for an administrative action in accordance with Article 10.

(10) LAND DIVISION REQUIREMENTS: All land divisions in areas subject to the provisions of this section shall be subject to the following requirements:

- (a) Except as provided for in subsection (10)(b) below, all new lots and parcels shall have a building site located outside the Nesk-CH Overlay Zone. Such a building site shall consist of a minimum of 1,500 contiguous square feet of area that complies with all required lot setbacks and is located landward of the area subject to the provisions of this section.
- (b) In a land division, one new lot or parcel may be exempted from the requirements of subsection (10)(a) to allow for the development or maintenance of one new single family dwelling within the Neskowin Coastal Hazards Overlay zone for properties capable of a land division. The new lot or parcel:
 - (A) Shall be divided from a lot or parcel that was created prior to November 5, 2014; and
 - (B) Is subject to an approved Coastal Hazard Area permit in accordance with subsection (4) of this section; and
 - (C) Shall be divided from a lot or parcel that is vacant; or
 - (D) Shall be divided from a lot or parcel that contains an existing dwelling located outside of the Nesk-CH Overlay Zone; or

- (E) The net result shall contain only existing single family dwelling(s) located within the Nesk—CH Overlay Zone.

(11) CERTIFICATION OF COMPLIANCE: Permitted development shall comply with the recommendations in any required geologic or engineering report. Certification of compliance shall be provided as follows:

- (a) Plan Review Compliance: Building, construction or other development plans shall be accompanied by a written statement from an engineering geologist stating that the plans comply with the recommendations contained in the geologic report for the approved Neskowin Coastal Hazard Area Permit.
- (b) Inspection Compliance: Upon the completion of any development activity for which the geologic report recommends an inspection or observation by an engineering geologist, the engineering geologist shall provide a written statement indicating that the development activity has been completed in accordance with the applicable geologic report recommendations.
- (c) Final Compliance: No development requiring a geologic report shall receive final approval (e.g. certificate of occupancy, final inspection, etc.) until the department receives:
 - (A) A written statement by an engineering geologist indicating that all performance, mitigation, and monitoring measures specified in the report have been satisfied;
 - (B) If mitigation measures incorporate engineering solutions designed by a licensed professional engineer, a written statement of compliance by the design engineer.

(12) RESTORATION AND REPLACEMENT OF EXISTING STRUCTURES:

- (a) Notwithstanding any other provisions of this ordinance, application of the provisions of this section to an existing use or structure shall not have the effect of rendering such use or structure nonconforming as defined in Article VII.
- (b) Replacement, repair, or restoration of a lawfully established building or structure subject to this section that is damaged or destroyed by fire, other casualty or natural disaster shall be permitted, subject to all other applicable provisions of this ordinance, and subject to the following limitations:
 - (A) Replacement authorized by this subsection is limited to a building or structure not larger than the damaged/destroyed building.
 - (B) Structures replaced pursuant to this subsection shall be located no further seaward than the damaged structure being replaced.

- (C) Replacement or restoration authorized by this subsection shall commence within one year of the occurrence of the fire or other casualty that necessitates such replacement or restoration.
 - (D) Where the cost of restoration or replacement authorized by this subsection equals or exceeds 80 percent of the RMV of the structure before the damage occurred, such restoration or replacement shall also comply with subsections (6) and (7) of this section.
- (c) A building permit application for replacement, repair or restoration of a structure under the provisions of this subsection shall be accompanied by a geologic report prepared by an engineering geologist that conforms to the standards set forth in subsection (5). All recommendations contained in the report shall be complied with in accordance with subsection (11).
 - (d) A building permit application for replacement, repair, or restoration authorized by this subsection shall be processed and authorized as an administrative action pursuant to Article 10.

SECTION 3.575: NETARTS PLANNED RESIDENTIAL DEVELOPMENT OVERLAY ZONE (NT-PRD)

1. PURPOSE: The purpose of a Planned Residential Development is to encourage development designs that preserve the natural features and amenities of a property such as but not limited to: stream corridors, water frontage (bay, stream, wetland and shoreline), wetlands, sloping topography and natural geologic features, groves of trees and significant views. A Planned Residential Development shall conform to the general objectives as presented by the comprehensive plan for the area and it shall be compatible with the established and proposed surrounding land uses.
2. STANDARDS AND REQUIREMENTS: The following standards and requirements shall govern the application of a Planned Residential Development in an area in which it is permitted.
 - a. A Planned Residential Development overlay zone is allowed in the RR, NT-R2 and NT-R3 zones.
 - b. The density of a Planned Residential Development shall conform to the density and standards of the underlying zone.
 - c. Dimensional standards for lot area, depth, width, and all yard setback standards of the underlying zone shall not apply. These standards shall be established through the Planned Residential Development approval process in order to fulfill the purpose of the NT-PRD Overlay Zone. In the RR/PRD zoned areas, only those properties located within a Community Growth Boundary can utilize this item.
 - d. The height limit may be increased to not more than 35 feet by the Planning Commission in approving a specific Planned Residential Development project.

3. **PLANNED RESIDENTIAL DEVELOPMENT PROCEDURE:** The following procedures shall be observed in applying for and acting on a planned residential development.
- a. To establish a new Planned Residential Development Overlay designation under Article IX of this ordinance, the applicant must submit to the Department the following material in addition to the requirements of Article IX and Section 3.575 (3)(b) through (k):
 - 1. A conceptual development plan for the proposed site with the object of demonstrating that the property possesses the characteristics set forth in Section 3.575 (1) of this ordinance. The plan shall include a scale drawing of the entire site showing proposed land uses, road ways, pedestrian ways, drainage patterns, common areas, recreation facilities, natural features, residential lots and the approximate location of structures other than single family residences.
 - 2. Parcels receiving the Planned Residential Development Overlay Zone designation after the effective date of this ordinance will be eligible for development under the Land Division Ordinance, with the approved and recorded conceptual plan serving as the zoning map for the land parcel.
 - 3. Any proposed change to an approved conceptual plan which may increase the intensity of use or off-site impacts must conform to the criteria and procedures contained in Article IX of this ordinance. This determination shall be made by the Director. Notice of such a determination shall be provided to those within the required notice area.
 - b. An applicant shall submit a preliminary development plan to the Planning Department for review. The preliminary plan shall include the following information:
 - 1. Proposed land uses, building locations and housing unit densities.
 - 2. Proposed circulation pattern indicating the status of street ownership.
 - 3. Proposed open space uses.
 - 4. Proposed grading and drainage pattern.
 - 5. Proposed method of water supply and sewage disposal.
 - 6. Inventory of and plan for protecting existing natural and cultural resources (e.g., wetlands, estuaries, wildlife, vegetation, historic and cultural sites).
 - 7. Relation of the proposed development to the surrounding area and the comprehensive plan.

8. Narrative addressing applicable provisions of the Comprehensive Plan and Sections in the underlying zone.
- c. During its review the Planning Department shall distribute copies of the proposal to County agencies for study and comment. In considering the plan, the Planning Department shall seek to determine that:
1. There are special physical conditions or objectives of development which the proposal will satisfy to warrant a departure from the standard ordinance requirements.
 2. Resulting development will not be inconsistent with the comprehensive plan provisions or zoning objectives of the area.
 3. The plan can be completed within a reasonable period of time.
 4. The streets are adequate to support the anticipated traffic and the development will not overload the streets outside the planned area.
 5. Proposed utility and drainage facilities are adequate for the population densities and type of development proposed.
 6. The parcel is suitable for the proposed use, considering its:
 - size (5-40 acres)
 - shape (not a linear or separated parcel)
 - existence of improvements (adequate sewer, water, and fire facilities)
 - natural features (avoids sensitive natural, cultural or historic resources, particularly streams, significant trees and cultural sites)
 7. The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs or prevents the use of surrounding properties for the permitted uses listed in the underlying zone.
 8. The proposed use is timely, considering the adequacy of public facilities and services existing or planned for the area affected by the use.
 9. Proposed uses which are not otherwise permitted by the underlying zoning on the parcel are accessory uses within the entire development.
- d. The Planning Department shall notify the applicant whether, in its opinion, the foregoing provisions have been satisfied and, if not, whether they can be satisfied with further plan revision.

- e. Following this preliminary review, the applicant may request approval of the Planned Residential Development by the Planning Commission according to the provisions in Article VI if the proposal is to take place on property designated with the Planned Development Overlay Zone prior to May 30, 1985.
- f. If the property is to be divided under the provisions of the Land Division Ordinance, a request according to the requirements of that Ordinance shall be included as part of the Planning Commission's review.
- g. The filing fee for a Planned Residential Development is the total of all fees for the action requested.
- h. In addition to the requirements of this section, the Planning Commission may attach conditions that are necessary to carry out the purpose of this ordinance.
- i. Planned Residential Development shall be identified on the zoning map with the letters "PRD" in addition to the abbreviated designation of the existing zone.
- j. Building permits in a Planned Residential Development shall be issued only on the basis of the approved plan. Any changes in the approved plan shall be submitted to the Planning Commission for approval in accordance with the procedures for approval of a conditional use request.
- k. In an existing PRD overlay zone, lots or parcels of record as of the date of adoption of this ordinance which are less than one acre in size, may be built upon in accordance with all other requirements of the zone in which the lot or parcel is located and of this ordinance.

SECTION 3.580 TSUNAMI HAZARD OVERLAY ZONE (TH)

(1) PURPOSE: The purpose of the Tsunami Hazard Overlay Zone is to increase the resilience of the community to a local source (Cascadia Subduction Zone) tsunami by establishing standards, requirements, incentives, and other measures to be applied in the review and authorization of land use and development activities in areas subject to tsunami hazards. The standards established by this section are intended to limit, direct and encourage the development of land uses within areas subject to tsunami hazards in a manner that will:

- a. Reduce loss of life;
- b. Reduce damage to private and public property;
- c. Reduce social, emotional, and economic disruptions; and
- d. Increase the ability of the community to respond and recover.

Significant public and private investment has been made in development in areas which are now known to be subject to tsunami hazards. It is not the intent or purpose of this section to require the relocation of or otherwise regulate existing development within the Tsunami Hazard Overlay Zone. However, it is the intent of this section to control, direct and encourage new development and redevelopment such that, over time, the community's exposure to tsunami risk will be reduced.

(2) **APPLICABILITY:** All lands identified as subject to inundation from the XXL magnitude local source tsunami event as set forth on the applicable Tsunami Inundation Map(s) (TIM) published by the Oregon Department of Geology and Mineral Industries (DOGAMI) are subject to the requirements of this section. The boundary of the Tsunami Hazard Overlay Zone as depicted on the Tillamook County Zoning Map, including the Large (L) and Medium (M) inundation boundaries, shall not be modified after the date of adoption of this Section unless modified in accordance with the provisions in Article 10.

(3) **DEFINITIONS:**

“Essential Facilities” means:

- a. Hospitals and other medical facilities having surgery and emergency treatment areas;
- b. Fire and police stations;
- c. Tanks or other structures containing, housing or supporting water or fire- suppression materials or equipment required for the protection of essential or hazardous facilities or special occupancy structures;
- d. Emergency vehicle shelters and garages;
- e. Structures and equipment in emergency preparedness centers; and
- f. Standby power generating equipment for essential facilities.

“Hazardous Facility” means structures housing, supporting or containing sufficient quantities of toxic or explosive substances to be of danger to the safety of the public if released. For purposes of this section, utility facilities are exempt from this definition.

“Special Occupancy Structures” means

- g. Covered structures whose primary occupancy is public assembly with a capacity greater than 300 persons;
- h. Buildings with a capacity of greater than 250 individuals for every public, private or parochial school through secondary level or child care centers;
- i. Buildings for colleges or adult education schools with a capacity of greater than 500 persons;
- j. Medical facilities with 50 or more resident, incapacitated persons not included in subsection (a) through (c) of this paragraph;
- k. Jails and detention facilities; and
- l. All structures and occupancies with a capacity of greater than 5,000 persons.

“Substantial Improvement” means any repair, reconstruction, or improvement of a structure which exceeds 50 percent of the real market value of the structure.

“Tsunami Vertical Evacuation Structure” means a building or constructed earthen mound that is accessible to evacuees, has sufficient height to place evacuees above the level of tsunami inundation, and is designed and constructed with the strength and resiliency needed to withstand the effects of tsunami waves.

“Tsunami Inundation Maps (TIMs)” means the map, or maps in the DOGAMI Tsunami Inundation Map (TIM) Series, published by the Oregon Department of Geology and Mineral Industries, which cover(s) the area *within Tillamook County*.

- (4) USES: In the Tsunami Hazard Overlay Zone, except for the prohibited uses set forth in subsection (5), uses authorized by the underlying zone as outright or conditional uses are permitted.
- (5) PROHIBITED USES: Unless authorized in accordance with subsection (6), the following uses are prohibited in the specified portions of the Tsunami Hazard Overlay Zone:
- a. In areas identified as subject to inundation from the LARGE (L) magnitude local source tsunami event as set forth on the Tsunami Inundation Map (TIM), the following uses are prohibited:
 - i. Hospitals and other medical facilities having surgery and emergency treatment areas.
 - ii. Fire and police stations.
 - iii. Structures and equipment in government communication centers and other facilities required for emergency response.
 - iv. Buildings with a capacity greater than 250 individuals for every public, private or parochial school through secondary level or child care centers.
 - v. Buildings for colleges or adult education schools with a capacity of greater than 500 persons.
 - vi. Jails and detention facilities.
 - b. In areas identified as subject to inundation from the MEDIUM (M) magnitude local source tsunami event as set forth on the Tsunami Inundation Map (TIM), the following uses are prohibited:
 - i. Tanks or other structures containing, housing or supporting water or fire- suppression materials or equipment required for the protection of essential or hazardous facilities or special occupancy structures.
 - ii. Emergency vehicle shelters and garages.
 - iii. Structures and equipment in emergency preparedness centers.
 - iv. Standby power generating equipment for essential facilities.
 - v. Covered structures whose primary occupancy is public assembly with a capacity of greater than 300 persons.
 - vi. Medical facilities with 50 or more resident, incapacitated patients.
 - c. Notwithstanding the provisions of Article 7, the requirements of this subsection shall not have the effect of rendering any lawfully established use or structure nonconforming.
- (6) Use Exceptions. A use listed in subsection (5) of this section may be permitted upon authorization of a Use Exception in accordance with the following requirements:
- a. Public schools may be permitted upon findings that there is a need for the school to be within the boundaries of a school district and fulfilling that need cannot otherwise be reasonably accomplished.
 - b. Fire or police stations may be permitted upon findings that there is a need for a strategic location.
 - c. Other uses prohibited by subsection (4) of this section may be permitted upon the following findings:
 - i. There are no reasonable, lower-risk alternative sites available for the proposed use;

- ii. Adequate evacuation measures will be provided such that life safety risk to building occupants is minimized; and,
- iii. The buildings will be designed and constructed in a manner to minimize the risk of structural failure during the design earthquake and tsunami event.

(7) Applications, review, decisions, and appeals for Use Exceptions authorized by this subsection shall be in accordance with the requirements for a Type III procedure as set forth in Article 10.

(8) Evacuation Route Improvement Requirements. Except single family and two-family dwellings (attached or detached) on existing lots and parcels, all new development, substantial improvements and land divisions in the Tsunami Hazard Overlay Zone shall incorporate evacuation measures and improvements, including necessary vegetation management. Such measures shall include:

- a. On-site improvements:
 - i. Improvements necessary to ensure adequate pedestrian access from the development site to designated evacuation routes in all weather and lighting conditions.
 - ii. Frontage improvements to designated evacuation routes that are located on or contiguous to the proposed development site. Such improvements shall be proportional to the evacuation needs created by the proposed development.
 - iii. Tsunami evacuation structure(s) of sufficient capacity to accommodate the evacuation needs of the proposed development where determined under a Type III review to be proportional to the evacuation needs created by the proposed development.
- b. Off-site improvements: Improvements to portions of designated evacuation routes that are needed to serve, but are not contiguous to, the proposed development site. Such improvements shall be proportional to the evacuation needs created by the proposed development.
- c. Evacuation route signage adequate to provide necessary evacuation information consistent with the proposed use of the site.
- d. Evacuation route improvements and measures required by this subsection shall include, at a minimum, the following:
 - i. Improved streets and/or all-weather surface paths of sufficient width and grade to ensure pedestrian access to designated evacuation routes in all lighting conditions; and
 - ii. Improved streets and paths shall provide and maintain horizontal clearances sufficient to prevent the obstruction of such paths from downed trees and structure failures likely to occur during a Cascadia earthquake.

(8) Tsunami Evacuation Structures

- a. All vertical tsunami evacuation structures shall be of sufficient height to place evacuees above the level of inundation for the XXL local source tsunami event.
- b. Tsunami evacuation structures are not subject to the building height limitations of this ordinance.

(9) Flexible Development Option

- a. The purpose of the Flexible Development Option is to provide incentives for, and to encourage and promote, site planning and development within the Tsunami Hazard Overlay Zone that results in lower risk exposure to tsunami hazard than would otherwise be achieved through the conventional application of the requirements of this chapter. The Flexible Development Option is intended to:
 - i. Allow for and encourage development designs that incorporate enhanced evacuation measures, appropriate building siting and design, and other features that reduce the risks to life and property from tsunami hazard; and

- ii. Permit greater flexibility in the siting of buildings and other physical improvements and in the creation of new lots and parcels in order to allow the full realization of permitted development while reducing risks to life and property from tsunami hazard.
- b. The Flexible Development Option may be applied to the development of any lot, parcel, or tract of land that is wholly or partially within the Tsunami Hazard Overlay Zone.
- c. The Flexible Development Option may include any uses permitted outright or conditionally in any zone, except for those uses prohibited pursuant to subsection (5) of this section.
- d. Overall residential density shall be as set forth in the underlying zone or zones. Density shall be computed based on total gross land area of the subject property, excluding street right-of-way.
- e. Yards, setbacks, lot area, lot width and depth, lot coverage, building height and similar dimensional requirements may be reduced, adjusted or otherwise modified as necessary to achieve the design objectives of the development and fulfill the purposes of this section.
- f. Applications, review, decisions, and appeals for the Flexible Development Option shall be in accordance with the requirements for a Type II procedure as set forth in Article 10.
- g. Approval of an application for a Flexible Development Option shall be based on findings that the following criteria are satisfied:
 - i. The applicable requirements of sub-paragraphs (b) and (d) of this subsection are met; and
 - ii. The development will provide tsunami hazard mitigation and/or other risk reduction measures at a level greater than would otherwise be provided under conventional land development procedures. Such measures may include, but are not limited to:
 1. Providing evacuation measures, improvements, way finding techniques and signage;
 2. Providing tsunami evacuation structure(s) which are accessible to and provide capacity for evacuees from off-site;
 3. Incorporating building designs or techniques which exceed minimum structural specialty code requirements in a manner that increases the capacity of structures to withstand the forces of a local source tsunami; and
 4. Concentrating or clustering development in lower risk portions or areas of the subject property, and limiting or avoiding development in higher risk areas.