

**CITY OF FLORENCE
ORDINANCE NO. 2, SERIES 2021**

AN ORDINANCE ESTABLISHING LOW DENSITY RESIDENTIAL ZONING DISTRICT TO OCEANA DRIVE AND ASSESSOR'S MAP REFERENCE (MR) 18-12-10-40, TAX LOTS 400 AND 401, AND MR 18-12-10-34, TAX LOT 801 AND PRIME WILDLIFE COASTAL SHORELANDS OVERLAY DISTRICT TO MR 18-12-10-40, TAX LOTS 400 AND 401, AS PART OF A PROPOSED ANNEXATION OF APPROXIMATELY 48.82 ACRES.

RECITALS:

1. Florence City Code (FCC) Title 10, Chapter 1, Section 2-3 provides that Council may establish zoning and land use regulations that become effective on the date of annexation.
1. The City of Florence was petitioned by the property owner, Benedick Holdings LLC, on July 30, 2020, as required by Oregon Revised Statutes (ORS) 222.111(2) and Florence City Code (FCC) 10-1-1-4.
2. The Planning Commission met on November 10, 2020, at a properly noticed public hearing to consider the proposal, evidence in the record, and testimony received.
3. The Planning Commission determined on December 8, 2020, after review of the proposal, testimony, and evidence in the record, that the proposal was consistent with the City's acknowledged Realization 2020 Comprehensive Plan and adopted findings of fact in support of the annexation and zoning assignment.
4. The City Council met in a public hearing on February 1st and 22nd, 2021, after giving the required notice per FCC 10-1-1-6, to consider the proposal, evidence in the record, and testimony received.
5. The City Council deliberated on April 5, 2021, and found that the subject property is plan designated Low Density Residential in the Realization 2020 Plan, and the City Council supported the establishment of zoning as Low Density Residential consistent with Florence Comprehensive Plan and Zoning Code objectives.
6. The City Council adopted Ordinance No. 1, Series 2021, annexing the property as described in the Ordinance title above.

Based on these findings,

THE CITY COUNCIL OF THE CITY OF FLORENCE ORDAINS AS FOLLOWS:

1. The City of Florence approves the zoning of the property as Low Density Residential as shown on the attached map **Exhibit A** and Prime Wildlife Coastal

Shorelands Overlay District to MR 18-12-10-40, tax lots 400 and 401 as illustrated in Comprehensive Plan Map 17-1 and described in Chapter 17.

2. To maintain the requirements under the City Traffic Impact Analysis and State Transportation Planning Rule are met the allowed density shall be that permitted under the base code rather than an increase as allowed under the Planned Unit Development code FCC 10-23 or where streets are platted as tracts.
3. This zoning is based on the Findings of Fact in **Exhibit B** and evidence in the record.
4. The City shall produce an updated Zoning Map that is filed with the City Recorder and bear the signature of the Planning Commission chairperson as required by FCC 10-1-2-2.
5. The City Recorder is hereby directed to file certified copies of this Ordinance with the Lane County Assessment and Taxation Office and the Lane Council of Governments.
6. Pursuant to FCC 10-1-2-3, the zoning established by this Ordinance will take effect on the effective date of the annexation approved in Ordinance No. 1, Series 2021.

ADOPTION:

First Reading on the 5th day of April, 2021

Second Reading on the 5th day of April, 2021

This Ordinance is passed and adopted on the 5th day of April, 2021.

AYES	4	Councilors Woodbury, Wantz, Meyer and Mayor Henry
NAYS	1	Councilor Wisniewski
ABSTAIN	0	
ABSENT	0	



Joe Henry, Mayor

Attest:



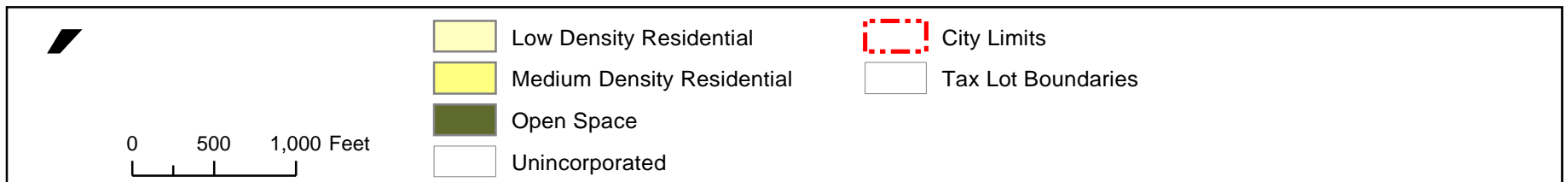
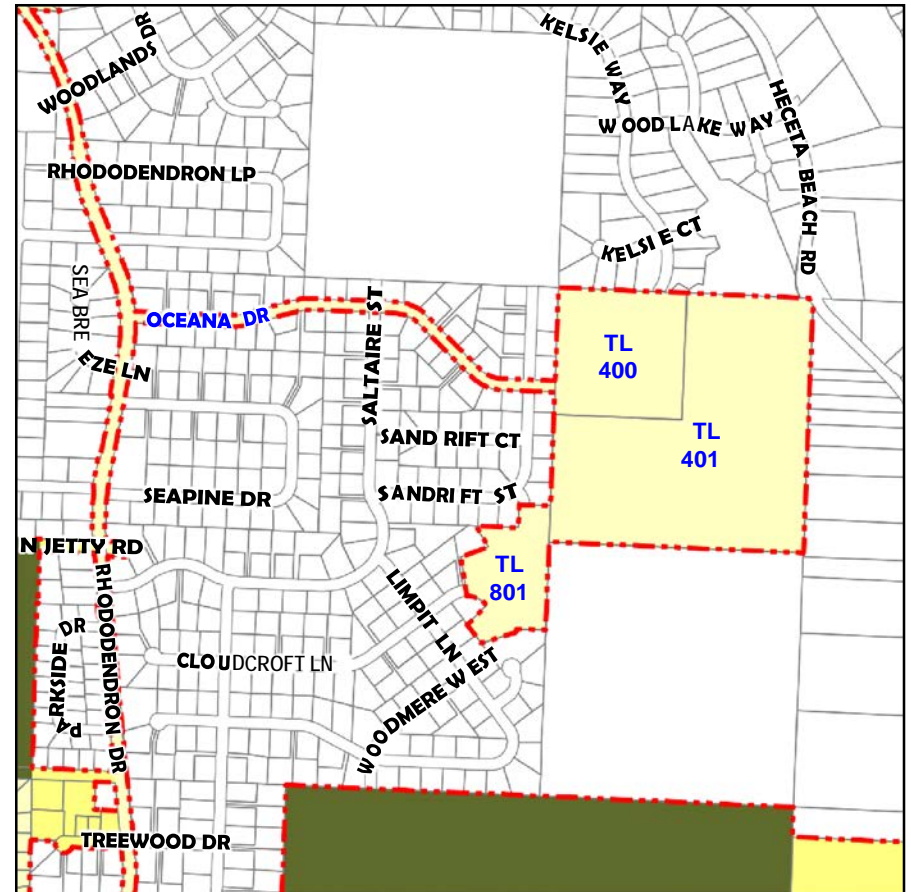
Kelli Weese, City Recorder

**City of Florence Current and Proposed Zoning
 CC 20 07 ZC 02 – Benedick Holdings, LLC Zone Assignment
 Ordinance No. 2, Series 2021
 Exhibit A - Zoning Map**

Before Proposed Rezoning



After Proposed Rezoning



CITY OF FLORENCE
Ordinance Nos. 1 & 2 Series 2021
FINDINGS OF FACT
Exhibit B
April 5, 2021

Public Hearing Date: February 1st and 22nd, 2021
File Nos: CC 20 06 ANN 01 and CC 20 07 ZC 02

I. PROPOSAL DESCRIPTION

Proposal: Annexation

A request from a property owner for the City of Florence to annex their property and Oceana Drive from Lane County into the City.

Zone Assignment

Upon annexation, the property requires zoning assignment. The corresponding zoning district matching the property's plan designation is Low Density Residential. Portions of the property in the area of the South Heceta Junction Seasonal Lakes will also assume the coastal shoreland management unit overlay of Prime Wildlife.

Applicant Representatives: Michael Farthing, attorney for the owner

Petitioners/Applicants: Benedick Holdings, LLC.

General Property and Right-of-Way Description (Annexation--described associated Exhibit A; Zoning--illustrated in associated Exhibit A):

Oceana Drive and Assessor's Map Reference (MR) 18-12-10-40, Tax Lots (TL) 400 and 401 and MR 18-12-10-34 Tax Lot 801

Comprehensive Plan Map Designation: Low Density Residential and Prime Wildlife Coastal Shoreland Management Unit Overlay

Surrounding Land Use | Current Zoning:

Site: Vacant | All TL: Suburban Residential with Interim Urban Combining District Overlay & TL 401: Prime Wildlife Shoreland Overlay

North: Single-family residences / Suburban Residential with Interim Urban Combining District Overlay

South: Vacant | Natural Resources

East: Single-family residences/Vacant/South Heceta Junction Seasonal Lakes | Suburban Residential with Interim Urban Combining District Overlay and Prime Wildlife Overlay

West: Single-family residences | Suburban Residential with Interim Urban Combining District Overlay

Streets | Classification: West – Cloudcroft Lane, Gullsettle Ct., Sandrift St. | Local (Lane County TSP); West of Oceana Dr. – Rhododendron Dr. | Minor Arterial (CoF TSP); South of Oceana Dr. – Saltaire St. | Local (Lane County TSP); East – None; North – Kelsie Ct. & Kelsie Way | Local (Lane County TSP)

II. NARRATIVE

The applicant petitioned for the annexation of combined property (“the Property”) from Lane County jurisdiction to City of Florence jurisdiction for the eventual purpose of subdividing it into single-family lots with connection to City sewer service. There are no electors residing on the Property. The petition also requests annexation of Oceana Drive, a County road designated “local”. Oceana Dr. extends east to the Property from Rhododendron Dr. a minor arterial in the City of Florence jurisdiction and municipal boundary. The petition was received on July 30, 2020. The application was deemed complete on August 28, 2020. On October 9, 2020 the City received a letter from Mr. Farthing requesting postponement of the hearing to accommodate a 35-day noticing period with DLCDC addressing a procedural objection based on ORS 197.610(1). In the same letter they granted a 90-day extension to the 120-day statutory deadline.

State law requires signatures from at least 50% of the property owners and electors of the Property to petition for annexation without an election. This type of annexation is known as a “Double Majority” annexation (ORS 222.125). The City received a signed petition from the property owner and will process the annexation under the “Triple Majority” methodology (ORS 222.170(1)). Florence City Code Title 10 Chapter 1 calls for processing the annexation as a Type IV application. The zoning assignment procedure applies to the Property and Oceana Dr. In accordance with 10-1-1-5 B the two actions will be processed through consolidated proceedings.

The Property is not currently served by Heceta Water PUD, but as it resides in that district and services are available will continue to be served by Heceta Water PUD. After annexation, the Property will be provided City services such as sewer and police protection. The Property is within the Siuslaw Rural Fire Protection and Western Lane Ambulance Districts. The Property will continue to be served by all districts presently providing public services.

The Florence City Council opened the second and final evidentiary public hearing on February 1, 2021. At that meeting they received reports from Planning and Public Works staff, verbal and written testimony from the public and verbal and written comments from the applicant’s representative. To ensure all affected parties received the opportunity to testify the opportunity to provide verbal and written testimony into the record was made available until February 22, 2021.

On February 22nd after providing the opportunity for anyone who had not already provided verbal testimony to do so the Council closed the hearing and closed the record. The Council then provided the applicant seven days to issue their final written argument, ending March 1, 2021. On April 5, 2021 the City Council reconvened and deliberated to a decision.

III. PUBLIC NOTICE

Notice of the proposed zone change was sent to the Department of Land, Conservation and Development (DLCD) on October 6, 2020, not less than 35 days prior to the proposed first evidentiary hearing of November 10, 2020, as required by State law and the Florence City Code. An update was loaded on the DLCD website on October 28th to change the first hearing date to November 10th.

Notice of the Planning Commission's public hearing was mailed on October 14, 2020 to property owners within 300 feet of the proposed annexation/zone assignment areas. Notice was published in the Siuslaw News on October 28th and November 4th, 2020. On October 14th notices were posted at the Florence Post Office, and due to COVID facility closures on the outside door glass of City Hall, the Florence Justice Center, and the Siuslaw Public Library. On October 14, 2020 land use notice signs with holders containing notices mailed to property owners were posted at Oceana Drive (west and east ends), Cloudcroft Lane and Kelsie Way. The signs were periodically restocked with notices.

Notice of the City Council public hearing was mailed on December 28, 2020 to property owners within 300 feet of the proposed annexation/zone assignment areas. On January 28, 2021 notice was mailed to three property owners and hand delivered to seven property owners whose mailing addresses or ownership had changed since the mailing list was last updated. These are included in Exhibit P. Notice was published in the Siuslaw News on January 16, 23, & 30, 2021. On December 28th notices were posted at the Florence Post Office, and due to COVID facility closures on the outside door glass of City Hall, the Florence Justice Center, and the Siuslaw Public Library. On December 28, 2020 land use notice signs with holders containing notices mailed to property owners were posted at Oceana Drive (west and east ends), Cloudcroft Lane and Kelsie Way. The signs were restocked with updated notices announcing the new extended testimony periods.

Public Comments:

The City received 227 written letters/emails of comments/concerns on this petition for annexation and zone assignment by the close of the hearing on February 22, 2021. These are provided under separate cover as Exhibits K and M.

There are topics raised by testifiers that do not have associated criteria related to Florence City Code, Florence Realization 2020 Comprehensive Plan or state law or rule for the application and petition for an annexation and zone change. These are listed below. The concerns are found to not apply to this application and do not have a direct response in the findings. Some of the concerns raised will be addressed during a development/land division proposal for the property when there is a nexus for review and resolution.

- Application of Lane County Codes (LC315-05 & LC 16.229(6))
- Requirement for an Environmental Impact Study
- Negative impacts on owners/residents (no specificity)

- Requirement for petitioner to assess the worst-case development scenario to ensure it would conform
- Decreasing property values
- Increasing taxes
- Requirement for adjacent properties to hook up if their septic systems fail/or do not and are just required to
- Forced annexation
- Impacts to Old Town parking
- City enforcement of Covenants, Conditions and Restrictions on existing subdivisions outside the city limits
- City calling up an Improvement Agreement on adjacent subdivisions that stipulates property owner sewer construction and connection and right-of-way construction when required by the City
- Applicant/Petitioner failing to follow-through on promises
- Past vegetation removal
- Failed County subdivision tentative plat and variance requests
- Flooding within adjacent subdivision
- Incomplete private stormwater system within the adjacent subdivision
- How annexation will meet ORS 191.030 related to determination of damages
- How annexation will meet ORS 199.410 & 462(1) related to Boundary Commissions
- Nobody wants it
- Anti-growth
- Use of virtual meeting format rather than in-person meetings

The topics of public testimony listed below that could be responded to within applicable criteria are included in the below findings. These findings of fact represent the City Council's determinations and evaluation of the evidence taking into account all related testimony on each criterion. Except where underlined the policy **was not** provided by the complainant. FCP means Florence Realization 2020 Comprehensive Plan, FCC means Florence City Code:

- Wildlife displacement (FCP Chapter 5, RTESS Policies 3 & 5)
- Endangered Species sited (FCP Chapter 5)
- Significant Wetland designation-Goal 17 versus Goal 5 (FCP Ch. 5 Wetlands and Riparian Areas)
- Presence of Wetlands on Property (FCP Chapters 2, 5 & 7)
- Prime Wildlife preliminary investigation—performance & source (FCC 10-19)
- Transportation Planning Rule (OAR 660-012)
- FCC 10-1: Traffic Impact Study for zoning amendment (FCC 10-1)
- Lack of adequate vehicular ingress and egress (FCP Chapter 14, Oregon Fire Code)
- Lack of pedestrian access (FCP Chapter 14 & FCC Ch. 36)
- Noticing: Property Owners missed, property owners along roads not being considered, and DLCD (FCC 10-1)
- Stormwater Provision not offered by applicant (FCC 10-1-1-4-C-2)
- Sewer Provision not offered by applicant (FCC 10-1-1-4-C-2)

- Street Improvements not offered by applicant (FCC 10-1-1-4-C-2)
- Traffic Congestion in Idylewood (FCP Chapter 14)
- Tsunami Evacuation Zone adjacent to property (FCP Chapter 7)
- Annexation is Development (FCC 10-1)
- Using a blanket resolution for annexation application and approval procedures (not taking the annexation to a vote of the jurisdiction) (ORS 222.120)
- Contiguity: Using a street to establish city boundary connectivity (ORS 222.111)
- Planning Commissioner Conflict of Interest and Bias (FCP Chapter 1)
- Adjacent Development Hazards—Soils (FCP Chapter 7)
- Suitability of land for residential zoning designation (FCP Chapter 2)
- Rushed Process during a pandemic (FCC 10-1)
- Excess residential land (FCP Chapter 2)

The applicant’s representative Michael Farthing (Attorney) provided letters after the initial July application in response to the above-mentioned testimony and also as final written argument. These are included as Exhibits I2, N & N2.

IV. REFERRALS

Referrals were sent to Florence Public Works (Utilities and Airport), Building, and Police Departments; Lane County Transportation and Land Management Divisions, Charter Communications; Century Link; Central Lincoln PUD; Heceta Water PUD; Western Lane Ambulance and Siuslaw Valley Fire and Rescue.

Referral Comments:

Referral comments in their entirety are included in Exhibit L. Summaries of these comments are included below.

- Tom Turner, Chief of Florence Police Dept. dated October 6, 2020

“We do have capacity. We have been policing all around the area. This incorporation should not create any problems for us.”

- Mike Miller, Florence Public Works Department, submitted comments on Sewer, Streets, Stormwater, and Water on October 6, 2020 and comments on Traffic on January 17, 2021. Below is a summary of his written referral comments.

Sewer: Total sewer system capacity is currently 1.3 million gallons per day (mgd) dry weather flow. Our current average dry weather flow is 0.745 mgd, which equates to 0.555 mgd of excess flow capacity.

The City has parallel 6-inch diameter pressure sewer mains in Rhododendron Dr. with only one in use. There is excess capacity in this system and the system was sized to accommodate this area. The developer will need to extend a pressure sewer line from Rhododendron Drive along Oceana Drive to the development

where a neighborhood sewer pumping station will be constructed as part of the development. Regarding providing sanitary sewer service, the proposed project will provide opportunities for other surrounding homeowners that desire sanitary sewer service from the City. It is the policy of the city of Florence to provide sanitary sewer service to any property within the City's wastewater service area. However, the property owners are to pay for sewer main extension, manholes, construction, connection fees, engineering fees, street opening permits and any other fees necessary for the connection to the public sewer system for the project.

Streets: *Oceana Drive is currently classified as an urban local road which is maintained by Lane County and not automatically transferred to the City upon annexation. The City will need to evaluate whether or not the street is in an acceptable condition to transfer maintenance (Jurisdictional Transfer) of the roadway to the City. Annexation of local access roads, such as Gullsettle Court and Cloudcroft Lane, would automatically include jurisdictional transfer to the City.*

Stormwater: *Stormwater for the proposed Idylewood 4th Addition will need to consider not only management of the surface water runoff, but also groundwater. stormwater runoff from private property cannot be directed to Lane County road right-of-way or into any Lane County drainage facility, including roadside ditches. According to Lane County, ditches adjacent to County roads are designed solely to accommodate stormwater runoff generated by the roadways themselves (Lane Manual Chapter 15.515).*

Water: *The proposed subdivision is within Heceta Water People's Utility District (HWPUD) service territory and HWPUD will remain the water service provider for this area. Please contact HWPUD for specific fire flow capacities for this area.*

Traffic: *Provided the 2019 Speed Order for Rhododendron Dr. from the State of Oregon, a document explaining how speed zones are established and changed, and a press release dated 2/20/19 when the speed limit on Rhody was lowered from 45 to 40 via the speed order #J9333. In summary, the state has responsibility to set the speed zones within a community. In December 2020, the city downloaded the data from the radar speed signs on Rhododendron Drive. According to the data, the 85th percentile speed along Rhody south bound near Shelter Cove was 43 mph (posted speed is 40 mph) with 1,639 average daily trips (ADT). The radar speed sign at 12th and Rhody recorded the 85th percentile speed at 35 mph (posted at 30) with 1,445 ADT. This data snap shot was from September 1, 2020 to December 7, 2020. The results of the study and data from a 12/20 download of the radar speed signs indicate Rhododendron Dr. is safe and has the capacity for additional trips for development proposed for the site.*

- Luke Pilon, Century Link, dated October 5, 2020. "I have no issues with this expansion."

- Lane County Public Works Dept., Transportation Planning, dated October 5, 2020. Below is a summary of their written comments.

Streets: They recommend the proposed annexation also include Gullsettle Court, Cloudcroft Lane, and Kelsie Way, the three Local Access Roads that are adjacent to the subject properties, as well as Oceana Drive. Lane County does not maintain, but may regulate the use of Local Access Roads [Lane Code (15.010(35)(e)(v) & (vii)].

In order for Lane County to provide jurisdictional transfer of Oceana Drive, Gullsettle Court, Cloudcroft Lane, and Kelsie Way, annexation must occur; however, annexation of the right-of-way means that jurisdictional transfer has been completed for Local Access Roads. Jurisdictional transfer of County Roads (Oceana Drive) requires an additional public process that may take many years to complete.

Stormwater: Stormwater runoff from private property must not be directed to the Lane County road right-of-way or into any Lane County drainage facility, including roadside ditches. Ditches adjacent to County roads are designed solely to accommodate stormwater runoff generated by the roadways themselves (Lane Manual Chapter 15.515).

- Tony Miller, Siuslaw Valley Fire and Rescue and Western Lane Ambulance, dated Nov. 5, 2020. Stated the annexation and zone change would not affect the service provided and would be considered as part of their response protocols. Development will need to meet all the required fire codes for access, egress and water supply.
- Carl Neville, Heceta Water PUD, dated December 10, 2020, stated “Heceta Water is planning on serving this development and has the resources to do so.”

V. APPLICABLE REVIEW CRITERIA

Annexation

Oregon Revised Statutes (ORS)

222.111; 222.120; 222.125; and 222.170

Oregon Administrative Rules (OAR)

OAR: 660-012-0060

Florence Realization 2020 Comprehensive Plan, Chapters

- 1: Citizen Involvement, Policies 1 & 4
- 2: Land Use, Policy 6
- 5: Open Spaces and Scenic, Historic, and Natural Resources Rare, Threatened, Endangered and Sensitive Species: Policy 3; Native Vegetation: Policy 3
- 7: Development Hazards and Constraints: Policies 1-4
- 8: Parks, Recreation and Open Space; Parks and Recreation section, Policy 3
- 12: Transportation: Policies 1 & 8
- 14: Urbanization; Annexation section, Policies 1 through 7

17: Coastal Shorelands: Ocean, Estuary and Lake Shorelands, Policies 11 & 17
Prime Wildlife

Florence City Code (FCC), Chapters

1: Zoning Regulations; Sections 10-1-1-4; 10-1-1-5; 10-1-1-6-3 & 4, 10-1-2-3 & 10-1-3

Proposed Zone Assignment—Low Density with Prime Wildlife Overlay

Florence Realization 2020 Comprehensive Plan

- 1: Citizen Involvement, Policies 1 & 4
- 2: Land Use, Policy 1; Residential Policies 2, 7, 8 & 10; and Section on Residential Plan Designations
- 5: Open Spaces and Scenic, Historic, and Natural Resources: Wetlands Policies 1 & 6; Rare, Threatened, Endangered and Sensitive Species: Policy 3; Native Vegetation: Policy 3
- 7: Development Hazards and Constraints: Policies 1-4
- 12: Transportation: Policies 1 & 8
- 17: Coastal Shorelands: Ocean, Estuary and Lake Shorelands, Policies 11 & 17
Prime Wildlife

Florence City Code (FCC), Chapters

- 1: Zoning Regulations; Sections 10-1-1-4; 10-1-1-5; 10-1-1-6-3 & 4, 10-1-2-3 & 10-1-3
- 10: Residential Districts; Section 1
- 19: Estuary, Shorelands, and Beaches and Dunes; Sections 5—Administration & 9-Prime Wildlife Overlay District

Oregon Administrative Rules (OAR)

OAR: 660-012-0060

Oregon Land Use Planning Goals

- Goal 10 Housing

VI. FINDINGS OF FACT

The following findings support the resolutions and address approval criteria within the Florence Realization 2020 Comprehensive Plan, Florence City Code, State Statutes and State Administrative Rules.

Applicable criteria are shown in **bold text**, followed by findings of consistency in plain text.

FLORENCE REALIZATION COMPREHENSIVE PLAN

Chapter 1: Citizen Involvement

Policies

3. The City Council shall ensure that a cross-section of Florence citizens is involved in the planning process, primarily through their appointments to the Planning Commission, Design Review Board, Citizen Advisory Committee and other special committees. (Ordinance Nos. 1 & 2 Series 2021)

Testimony was brought up that this policy applies to the property owners not noticed along the roads that Lane County wanted the city to include in the annexation. This policy is not about noticing procedures. However, this concern is addressed in the FCC 10-1 section of the findings. The Planning Commission is made up of a diverse set of members who individually and collectively meet the code criteria of Title 2 Chapter 3 with regard to employment. All of the Commissioners reported having no conflict of interest with regard to their employment past or present. Concern was raised that because a commissioner sold insurance or homes that it was a conflict. This is an annexation proceeding and not an application to create lots. And while there could eventually be homes constructed to be sold and insured that does not mean their firms have secured the business of doing so. It is premature with the amount of process still involved. It is found that this policy and the supporting code of FCC 2-3 are met.

4. Official City meetings shall be well publicized and held at regular times. Agendas will provide the opportunity for citizen comment. (Ordinance Nos. 1 & 2 Series 2021)

This proposal is consistent with this policy because the processes used by the City to approve the resolutions recommending approval of and ordinances approving this annexation and zone assignment request is consistent with the City's applicable citizen involvement program which ensures that citizens will be provided an opportunity to be involved in this land use action. Specifically, official City meetings in this action were well publicized by the city and held at regular times and provide the opportunity for citizen comment. The public process used meets all of the requirements of Florence City Code pertaining to zone assignment and annexation with their respective land use processes.

While the public hearings were conducted virtually with no opportunity for in-person attendance the public could attend the meetings virtually and provide verbal testimony during the public hearings via the internet or via a landline phone. Those wishing to just attend the hearing could do so through the go-to-webinar platform application, or they could watch the hearing live and playback offered by the videographer through an internet stream and Channel 191 on Charter Cable. Opportunities for written participation were also available with extensions provided at both the Planning Commission and City Council hearings. All persons requesting to participate in person virtually were accommodated and either they participated, their pre-recorded message played during the hearing and made available to the decision body prior to the decision being made (Talbot-PC), or their comments relayed to the decision body to the satisfaction of the testifier (Farthing-PC). The February 1, 2021 hearing procedure explanation included a written slide and verbal announcement that the verbal record would be open on February 22nd for those who had not yet had the opportunity to participate verbally.

Chapter 2: Land Use

Policies

- 1. Designation and location of land uses shall be made based on an analysis of documented need for land uses of various types, physical suitability of the lands for the uses proposed, adequacy of existing or planned public facilities and the existing or planned transportation network to serve the proposed land use, and potential impacts on environmental, economic, social and energy factors.**
(Ordinance No. 2 Series 2021)

The designation of this property as Low Density (previously named Restricted Residential) was adopted in 2002 as part of Periodic Review following a Buildable Lands Inventory which was updated in 2005 and again most recently in 2018. Plan designating this private land for single family detached home use in the least dense of all the available residential districts is the most physically suitable option to be placed adjacent to the sensitive natural resources to the east.

The recent BLI and Housing Needs Analysis (p.3) Appendix 10 of the Comprehensive Plan found that *“Florence should plan for 1,624 net new dwelling units over the next 20 years. This net new housing need is expected to consist of: 764 owner-occupied dwellings, 597 renter-occupied dwellings and 263 short-term rental units...The planned net new housing mix over the next 20 years would consist of: 858 single-family detached homes, 145 manufactured housing units, 265 townhomes/duplexes, 357 multifamily housing units, and 40+/- special needs housing units. The amount of required land area to accommodate this level of housing development is expected to be approximately 231 acres (gross buildable land area).”* There is a documented need for housing of this housing type...858 detached single family.

Testimony included that there was already sufficient Low Density zoned land within the city limits citing 222 acres. This statement comes from page 42 of the HNA section VI.B.1. and Exhibit VI.6. This statement was misinterpreted. Appendix I on page 69 of the HNA classifies the Low Density District (formerly Restricted), Coast Village District and Medium Density District (formerly Single Family) as “low density”. So, of the 222 acres only around 78.4 of it actually zoned Low Density and with around 30 of that being developable due to critically steep slopes and Goal 5 Significant Riparian Area setbacks. Also, half of that land is in multiple ownerships with no immediate street access and utility solutions for stream crossings. The subject property has immediate access to a street network and utilities and is more suitable for development presently than some of the other land. The natural resource impacts are discussed at length in multiple sections in the findings and the policies are in support of this zone being the most suitable because there is adequate city code criteria and comprehensive plan policy related to protecting the resources and addressing hazards (FCC 10-7 & 19).

“

- 6. “The City shall conduct an internal review at least once every three years to assess the capacity of sewer, water and stormwater systems including three-year projections of additional consumption using a three percent growth rate.”**
(Ordinance No. 1 Series 2021)

The annexation proposal is consistent with this policy because the provision of city utility services to the annexation area is based on the most up-to-date assessment of the

projected capacity of these systems, assuming a 3 percent growth rate. This policy directs that the City conduct these internal reviews on a regular basis to ensure that the City continuously has the capacity to serve existing and new development, including annexed properties. The City has actively studied the capacity of these systems and hired consultants to supplement these studies. Most recently the City updated its Stormwater Management Plan and Public Facilities Master Plan. Public Works testimony using analysis from the documentation within these recent study results confirm that the City has the capacity to serve the annexation area without affecting service to existing City residents; consistent with the direction in this policy.

Residential

Goal

To create residential living environments that satisfy a wide variety of local and regional population needs and desires and add long-term community value.

Policy 2. The City shall initiate an evaluation of its residential ordinances following adoption and acknowledgment of this Plan with respect to increasing residential densities through the use of smaller lot sizes, encouraging cluster developments, and providing developers with density bonus options based on public benefit criteria. (Ordinance No. 2 Series 2021)

In December 2019 the City adopted new housing codes that increased the density of residential districts through the use of small lots. The revised Low Density Residential District (formerly Restricted Residential) implements this policy and provides the framework for the future development of this property.

Policy 7. Residential development shall be discouraged in areas where such development would constitute a threat to the public health and welfare, or create excessive public expense. The City continues to support mixed use development when care is taken such that residential living areas are located, to the greatest extent possible, away from areas subject to high concentrations of vehicular traffic, noise, odors, glare, or natural hazards. (Ordinance No. 2 Series 2021)

The City has Code provisions that address and implement this policy. To the extent this policy is directly applicable as a criterion for this application, the following findings show this application's compliance. In addition, the City's Code largely provides more protections for the property's development in comparison to the County's regulations. This policy is satisfied.

Prime Wildlife Overlay: Currently, this land is zoned Suburban Residential/Interim Urban Combining District Overlay /Prime Wildlife within Lane County and is undeveloped. The City's implementing zone for this area is Low Density with most of the land receiving a Prime Wildlife Overlay due to the location of the South Heceta Junction Seasonal Lakes. The City has established policy in Chapter 17 of the Florence Comprehensive Plan and development restrictions in FCC 10-19 that protect the natural resource area from

encroachment of development activities and inappropriate land uses. The effect does not merely discourage as set in Policy 7 but rather eliminates development and its impact opportunity within and surrounding the wetlands/lake area. The City Code's Chapter 19 of Title 10 includes development criteria more restrictive than presently established by the county's LC 10.245 such as allowed uses and minimum parcel size within the buffer area. FCC 10-19-9-C permits single family homes in the Prime Wildlife Overlay as long as the development criteria are followed for setbacks, buffers, vegetation retention, building materials, and screening.

Stormwater Management: There are no public stormwater systems in this part of the Urban Growth Boundary that are available to private properties. They are for the exclusive use of the public rights of way. There was considerable testimony on existing flooding and a highwater table in the area adjacent to the subject properties. This situation is documented in the City's Stormwater Master Plan, 2000 on Figure 5-1 and again in the 2018 Stormwater Master Plan Update in Figure 4-43. Section 4.13. of the 2018 plan states "...stormwater improvements in this region are the responsibility of HOAs and private developers. The City cannot implement any improvements as long as this region is outside of city limits. If this region is ever annexed in, the City may wish to complete further studies of stormwater behavior in this area, to assess the need for pump stations, pipe systems, and/or other infrastructure." The City acknowledges the existing problem and possibility of being part of the solution. The testimony includes correspondence between the county and various entities about a failed or incomplete effort to place a stormwater management system by the developer. Lane County after searching their subdivision records state they have no record of a stormwater system required as a condition of approval of development and that it appears to be a voluntary effort on the part of the developer rather than an unmet requirement of existing development. Correspondence in the record appears that the County was tying future development to resolving the existing private stormwater piped system located on private properties.

The City of Florence has comprehensive stormwater policies and development standards in FCC Title 9 Chapter 5 and the Stormwater Design Manual. The code criteria and design manual implement the policies in Chapter 11 of the Florence Realization 2020 Comprehensive Plan. They require extensive analysis and methods for treatment, flood prevention, storage construction, limits to impervious areas, and vegetation retention. The highwater table in the area, soil type, development policies, and adjacent lake and wetland area will greatly restrict development density within the subject property. Stormwater Plans for a development are peer reviewed by the City's engineer and in certain circumstances a hydrogeologist. Lane County does not have any similar policy, code, or design standards. Thus, development in the city versus the county will do more to reduce the threat to public health and welfare and the threat of excessive public and private expense related to flooding. Upon a development request such as platting land, the extent of the wetlands and location of the average highwater line will be inventoried by a professional for the purpose of evaluating the applicable development criteria such as setback buffer and lot size. These will be reviewed concurrently with and include, a stormwater management plan designed by an engineer at the applicant's expense.

Tsunami Evacuation: Additionally, the area is located near but outside of the Tsunami Hazard Overlay Zone, Tsunami Inundation Zones (TIZ), and Tsunami Evacuation Zones (TEZ) and thus not subject to the risk of a tsunami. Residents with egress along

Rhododendron Drive and outside the TEZ and TIZ are to shelter in place so as to not create congestion on the roads to those within the TEZ and TIZ and attempting to evacuate. The TIZ are Maps E of the Appendix 7 of the Florence Comprehensive Plan. There are no policies related to the applicant's properties since they are outside of the TIZ.

Soils: The Natural Resources Conservation Service Soils Map, Map C, of Appendix 7 to the Florence Realization 2020 Comprehensive Plan illustrates the property includes soils Netarts fine sand, 3 to 12 % slopes, Waldport fine sand 12-30% slopes and Yaquina loamy fine sand. The map's legend states the latter two soils are unsuitable or conditionally suitable for development. Most of Florence consists of soils with this designation. So, consistent with the soils map designation a Phase 1 Site Investigation Report (SIR) is required in conjunction with a development proposal and land division to identify areas of hazard. Findings of a hazard will require Phase 2 SIR performed by an engineer. Accepted engineering practices shall determine the extent of development allowed. This site is not dissimilar from other properties within the City with similar zoning and soils which require analysis prior to development and land division. The result of the analysis will determine suitability for construction and mitigating measures such as large lot sizes. The Low Density Zone is the most suitable district for its soil type and proximity to the natural resources of this area as identified during assignment of the Low Density comp plan designation of this property in 2002. Policy 2 of Chapter 7 of the Florence Realization Comprehensive Plan states this process is performed and with it measures presented to be taken to reduce the hazard. Presence of a hazard does not eliminate any possibility for residential development. For this property to be developed through a land division process (housing) annexation is required. There are no policies related to the applicant's properties since this application is a request for annexation and changing zoning from the County's low density Suburban Residential zone to the City's Low Density Zoning District.

Vehicular noise, odors, and glare: The adjacent street infrastructure is designated Urban Local (Oceana Drive) and Local Access Roads (remainder). This network serves just the Idylewood Subdivisions and does not have vehicular traffic passing through it to get to other destinations. The western side of Florence is served by Rhododendron Drive a Minor Arterial which is over 1000 ft. away from the property boundaries. The surrounding area is residential and away from uses that produce noise, odor and glare. Any proposed development on this Property will be subject to city code related to traffic impact studies and resulting improvements and also be subject to nuisance and land use codes.

Policy 8. Existing residential uses in residential zoning districts and proposed residential areas shall be protected from encroachment of land uses with characteristics that are distinctly incompatible with a residential environment. Existing residential uses in commercial and industrial zones shall be given the maximum practicable protection within the overall purposes and standards of those districts. (Ordinance No. 2 Series 2021)

Policy 10. Single family residential uses (including manufactured homes) shall be located in low and medium density residential areas, and shall be discouraged from high density residential areas to protect that land for the intended uses. (Ordinance No. 2 Series 2021)

There is no existing use on the proposed annexation site. Any future development will be in accordance with the implementing zoning district, Low Density Residential and the Prime Wildlife Overlay district. The properties to the north and west of this Property have County zoning consistent with the City's Low Density Residential district. This Property's location adjacent to the similar density zone and planned for single family residences meets the policy.

Low Density Residential

The Low Density Residential designation is intended for areas where existing lot sizes are in the neighborhood of 9,000 square feet or larger and newly platted lots are 7,500 sq. ft., and for areas where environmental constraints preclude smaller lots. The corresponding zoning district is Low Density Residential. This designation provides primarily for single family homes and for manufactured homes meeting certain minimum standards. (Ordinance No. 2 Series 2021)

The area was plan-designated Low Density in the Florence Realization 2020 Comprehensive Plan Map in 2002 and retains the designation presently. The applicants have proposed the Low Density Residential zone assignment which is the implementing zone for the plan designation. The properties all meet the requirements of this zone presently such as minimum lot size and width outlined in Title 10 Chapter 10, which is 50 x 80 and 10-19-9-H which is 5 acres for the land having a Prime Wildlife designation. This criterion is met.

Chapter 5: Open Spaces and Scenic, Historic, and Natural Resources

Wetlands and Riparian Areas (Ordinance No. 2 Series 2021)

Objective

To protect significant wetlands for their critical value in maintaining surface and groundwater quality and quantity, providing wildlife habitat, performing flood control, and enhancing the visual character of the Florence community.

Policies

- 1. For the purpose of land planning and initial wetland and riparian identification within the Florence Urban Growth Boundary (UGB), the City and Lane County shall rely on the 2013 Florence Local Wetland and Riparian Area Inventory (2013 Inventory), approved by the Oregon Division of State Lands, and as amended hereafter. The 2013 Inventory within the Florence UGB, as amended, is adopted as part of this Comprehensive Plan and is physically located in Appendix 5.**
- 6. The City shall protect the functions and values of significant² Goal 5 riparian corridors and wetlands for flood control, water quality, and fish and wildlife habitat through Code provisions that protect these resources from development in accordance with Statewide Planning Goal 5 administrative rules (OAR 660 Division**

23) and the Economic, Social, Environmental, and Energy (ESEE) Analysis and Limited Protection Program.

There was testimony stating the wetlands in the area are classified as “Significant” and thus subject to an ESEE analysis for the rezone/PAPA action under Goal 5 OAR 660 Division 23. The South Heceta Junction Lakes are intermittent and classified as “significant resources” under Goal 17 coastal shorelands as identified in the Lane County Coastal Resources Inventory and as Wetland #29 in Table 6 and Sheet 3 of the 2013 “Florence Area Local Wetlands and Riparian Inventory” (Inventory). Table 6 indicates the Oregon Rapid Wetland Assessment Protocol (ORWAP) method did not classify the lakes/wetlands that are part of this petition as Goal 5 “Significant Wetlands” as illustrated on Sheet 2 of the 2013 Local Wetlands Inventory. This means the Goal 5 ESEE analysis requirement does not apply to this zone amendment for a Goal 17 significant resource. It is worth mentioning an ESEE analysis has been performed and is located in the Inventory in Appendix 5 of the Florence 2020 Comprehensive Plan. These policies are met.

Rare, Threatened, Endangered and Sensitive Species (RTESS)

Policies

3. The City shall provide potential developments with information about retention of such sites early in discussions about development plans, in order to ensure that site designs provide for retention of the RTESS resource, or mitigation if that should be appropriate as determined in consultation with the appropriate state agencies.

OAR 660-23-110(4) defines wildlife habitat to include: • threatened or endangered species habitat (more than incidental use), • sensitive bird nesting, roosting or watering sites for osprey or great blue heron, • habitat essential to achieving policies of population objectives in wildlife species management plans adopted by Oregon Fish and Wildlife Commission, • areas mapped by ODFW as habitat for wildlife species of concern or habitat of concern. (*Ordinance Nos. 1 & 2 Series 2021*)

Testimony was received about wildlife displacement and observance of an endangered species on the site. The applicant does not propose development of the property at this time. They need to annex in order to begin the process to develop such as platting or construction. When an application is received the city and applicant will coordinate with the Oregon Department of Fish and Wildlife as required in this policy, Goal 5 of the OAR and as implemented in Title 10 Chap 19 of the Florence City Code.

Native Vegetation

Policies

3. The City shall continue to require vegetative stabilization of steep slopes and cutbanks. The emphasis will be on the use of native plant materials where possible. However, since slope/bank stability is the paramount concern in these situations, the City will approve the plant materials that best stabilize the slope/bank, even if they are not native plant materials. (*Ordinance Nos. 1 & 2 Series 2021*)

Testimony included concerns for both vegetation removal and development on steep slopes. Presently no specific development is proposed. However, the applicant has had several variations of a residential plat over the last 12 years or so, one is included in Exhibit K58. When platting of the property is proposed the applicable code criteria and comp plan policies related to performing Phase 1 & Phase 2 Site Investigation Reports (FCC 10-7) will be implemented.

Map C, of Appendix 7, of the Florence Realization 2020 Comprehensive Plan, Natural Resources Conservation Service Soils Map illustrates the property consists of three different soils types and water: Yaquina loamy fine sand, Waldport fine sand, 12 to 30 percent slopes and Netarts fine sand, 3 to 12 percent slopes. The first two require Site Investigation reports as they are conditionally suitable upon findings by an engineer that the risk is mitigated by implementing stabilization and other property protection measures. This almost always includes vegetation preservation. This policy is met through the application of code criteria.

Chapter 7: Development Hazards and Constraints

Policies (*Ordinance Nos. 1 & 2 Series 2021*)

- 1. The City shall restrict or prohibit development in known areas of natural hazard or disaster in order to minimize risk to citizens, reduce the hazard of loss of life and economic investments, the costs of expensive protection works, and public and private expenditures for disaster relief.**
- 2. Prior to development taking place in known areas of potential natural hazard, applicants shall provide a Site Investigation Report which clearly determines the degree of hazard present and receive City approval for the measures to be taken to reduce the hazard.**
- 3. All new development shall conform to City Code, the adopted Building Code and Flood Insurance Program requirements in flood-prone areas.**
- 4. For those areas that have excessive slopes or conditions which constitute a geological hazard, proposed developments shall be keyed to the degree of hazard and to the limitation on the use imposed by such hazard. Accepted engineering practices shall determine the extent of development allowed. The City may require a professional engineer's report to fulfill this requirement.**

Map C, of Appendix 7, of the Florence Realization 2020 Comprehensive Plan, Natural Resources Conservation Service Soils Map illustrates the property consists of three different soils types and water: Yaquina loamy fine sand, Waldport fine sand, 12 to 30 percent slopes and Netarts fine sand, 3 to 12 percent slopes. The first two require Site Investigation reports as directed by Florence City Code Title 10 Chapter 7. Those two soil types are listed as “conditionally suitable” and require an engineer to evaluate the site and recommend mitigation such as stabilization and other property protection measures. This

almost always includes vegetation preservation and setbacks from slopes in accordance with Oregon Residential Specialty Code Figure R403.1.9.1. The Yaquina soils are identified as wet areas in FCC Title 10 Chapter 7. The city code includes a requirement for risk mitigation, again performed by an engineer. The flooding concerns on the adjacent properties will be evaluated at the same time and stormwater issues for a ¼ mile up and down gradient from the development (FCC Title 9 Chapter 5 Stormwater Management) addressed. The SIRs will be performed in coordination with the Stormwater Management Plan to ensure comprehensive consideration of all of the factors affecting this property. These policies will be reviewed and applied when These policies are met through the application of code criteria and building codes related to slope stability and flood prone soils.

Chapter 8: Parks, Recreation and Open Space

- 3. Within the Florence urban growth boundary, the City and Lane County shall designate lands for possible park development purposes. Lands so designated shall be reserved for future park system expansion upon annexation. (Ordinance No. 1 Series 2021)**

The lands to the south and east of the Property is designated Three Mile Prairie in Lane County Parks Master Plan. Map 8-1 illustrates the City's contribution to this park with its 40-acre parcel south of the county's lands. The Property while including habitat and resources consistent with the adjoining public park lands is not specifically slated for contribution to the park's land base.

Of note city code does require access to these public resources upon land division. The development of this Property will require provision of this access at a point of reasonable pedestrian and vehicular thru-access. At that time the developer may wish to engage with the County and City to determine if dedication of undevelopable lands to Three Mile Prairie is of mutual interest.

Chapter 12: Transportation

- 1. Provide safe transportation all seasons of the year through street standards that require and widths, curvature and grades appropriate to all weather conditions. (Ordinance Nos. 1 & 2 Series 2021)**

Testimony was provided saying this Policy was not met. The City does in fact have street standards that require widths, curvature and grades appropriate to all weather conditions. These standards are found under Florence City Code Title 10 Chapter 36 Public Facilities and are applied when streets are proposed for platting, the city is constructing a capital improvement project, or there is a nexus to a developer to redesign or improve an existing street. This criterion does not apply to this application as there is no nexus to upgrade any streets that may not meet standards. This analysis and engineered solutions are proposed with an application for tentative plat or other land use construction activity.

8. The City shall protect the function of existing and planned transportation systems as identified in the TSP through application of appropriate land use and access management techniques. *(Ordinance Nos. 1 & 2 Series 2021)*

• Pursuant to the State Transportation Planning rule, any land use decisions which significantly affect a transportation facility shall ensure that allowed land uses are consistent with the function, capacity, level of service of the facility.

OAR: 660-012-0060

Plan and Land Use Regulation Amendments

(1) If an amendment to a functional plan, an acknowledged comprehensive plan, or a land use regulation (including a zoning map) would significantly affect an existing or planned transportation facility, then the local government must put in place measures as provided in section (2) of this rule, unless the amendment is allowed under section (3), (9) or (10) of this rule. A plan or land use regulation amendment significantly affects a transportation facility if it would:

(a) Change the functional classification of an existing or planned transportation facility (exclusive of correction of map errors in an adopted plan);

(b) Change standards implementing a functional classification system; or

(c) Result in any of the effects listed in paragraphs (A) through (C) of this subsection based on projected conditions measured at the end of the planning period identified in the adopted TSP. As part of evaluating projected conditions, the amount of traffic projected to be generated within the area of the amendment may be reduced if the amendment includes an enforceable, ongoing requirement that would demonstrably limit traffic generation, including, but not limited to, transportation demand management. This reduction may diminish or completely eliminate the significant effect of the amendment.

...

(3) Notwithstanding sections (1) and (2) of this rule, a local government may approve an amendment that would significantly affect an existing transportation facility without assuring that the allowed land uses are consistent with the function, capacity and performance standards of the facility where:

(a) In the absence of the amendment, planned transportation facilities, improvements and services as set forth in section (4) of this rule would not be adequate to achieve consistency with the identified function, capacity or performance standard for that facility by the end of the planning period identified in the adopted TSP;

Testimony stated the addition of the annexed lands would convert Oceana Drive to a “collector” road classification. The Florence Transportation Systems Plan (2012), p. 28 states “*Local Streets provide land access and carry locally generated traffic at relatively low speeds to the collector street system. Local streets should provide connectivity through neighborhoods, but should be designed to discourage cut-through vehicular traffic.*”

Oceana Drive and the other Idylewood subdivision streets will continue to carry locally generated traffic through neighborhoods as there would be no direct connectivity to Heceta Beach Road that would make this area opportunistic for cut-through traffic. Map 4-3 FUNCTIONAL CLASSIFICATION in the TSP illustrates the local street classification of Oceana Drive and the other streets in Idylewood, even with a proposed connection to Kelsie Way to the north through the annexed area. The proposed functional classification will not change with the annexation of these properties and eventual development of the property.

The zoning is changing from Suburban Residential (a County designation permitting 6,000 sq. ft. lots) to Low Density Residential (a City designation permitting 7,500 sq. ft. lots). The similar yet reduced density of this zone change does not significantly affect Oceana Drive or any other Idylewood streets as explained in the OAR criteria above. The developable land area is significantly reduced due to the intermittent lake system and associated 100' buffer area and reduced lot size with the zone amendment. The addition of a predicted 40 or so residences as interpolated from the illustration in Exhibit K58 spread out across four access points onto Rhododendron Drive will not significantly affect the Idylewood subdivision roadways. Nevertheless, 3a of OAR 660-012-0060 offers relief of the requirement if the roadways were not adequate to achieve consistency by the end of the planning period in the adopted TSP, which is 2037. The street design of Oceana Dr. is constructed to County standards that are no longer compliant nor with City standards. They do however, meet fire code as addressed elsewhere in the findings. The area is built out and without a developer to upgrade it if the nexus existed the streets would stay non-conforming through the planning period of 2037. Additionally, this zone change approval limits the residential density to that permitted with the zone assigned rather than granting an exception for greater density as offered through the Planned Unit Development procedure. This criterion is met.

Chapter 14: Urbanization

Goal

To provide for an orderly and efficient transition from County/rural land uses to City/urban land uses. (Ordinance No. 1 Series 2021)

This proposal is consistent with this Urbanization goal because the proposed annexation provides for an orderly and efficient transition from County/rural land uses to City/urban land uses, as follows:

- The annexation area is within the Florence urban growth boundary (UGB) and is contiguous to existing City limits via public right-of-way, Oceana Drive to the west and the proposal meets the city code and comp plan policies; it is, therefore, an orderly transition from rural to urban land uses.
- The existing public infrastructure in Rhododendron Drive and the adjacent streets is an orderly and efficient mechanism for providing urban services to this abutting geographic area. The annexation will allow the provision of City sewer to the properties being annexed. All connections to the sewer line will be funded through system development charges, connection fees, and property owner investment.

This financing method allows for cost-effective service delivery to all users of the system.

- The provision of sewer service will allow the adjacent property owners to eliminate the need for their septic systems and their maintenance and repair in this high ground water area.
- Additionally, bringing sewer into the initial Idylewood development, the oldest of the plats, will provide the opportunity for additional sewer connections from adjoining developed properties.

Annexation Policies (*Ordinance No. 1 Series 2021*)

- 1. The procedures of ORS 222.840 et. Seq. (Health Hazard Abatement) shall be initiated if needed to remove dangers to public health. In the absence of a need for health hazard abatement annexation procedures, any annexation of county territory to the City of Florence shall utilize an annexation method allowable by state law that requires a majority of consents, and shall not utilize the “island annexation” procedures set forth by ORS 222.750.**

The proposed annexation has been initiated by the sole property owners in order to receive City services and public services has not been initiated in order to abate a health hazard. ORS 222.840 is not applicable to this specific proposal.

The City of Florence has utilized for this proposed annexation a method allowable by state law that requires a majority of consents and did not utilize an “island annexation.” The proposed annexation is not an island annexation because the territory to be annexed is contiguous with the Florence city limits in Rhododendron Drive. The City has received a signed petition from the property owner. This criterion is met.

- 2. For properties within the North Florence Dunal Aquifer that are also within the Urban Growth Boundary, no land divisions shall be allowed prior to annexation to the City. The North Florence Dunal Aquifer boundary is delineated by the EPA Resource Document “For Consideration of the North Florence Dunal Aquifer as a Sole Source Aquifer,” EPA 910/9-87-167, September 29, 1987, Comprehensive Plan Appendix 5.**

The property is located within the UGB and the North Florence Dunal Aquifer and thus not eligible for land division until annexed. For the applicant to develop the properties totaling 43 acres with more than one residence annexation is required.

- 3. Conversion of lands within the UGB outside City limits shall be based on consideration of:**

- a) Orderly, economic provision for public facilities and services:**

The proposed annexation is consistent with Policy 3a. because the annexation area will be served through an orderly, economic provision of public facilities and services, including sewer, water, streets, fire and police protection, power, and communications. The city utility services have the capacity to serve the properties within the proposed

annexation and the services and facilities can be provided in an orderly and economic manner, as described in detail below. The annexation request is not intended to address details about placement of individual utility lines or other development level utility details.

Sewer: The Florence Public Works Department has evaluated the impact of the possible future residential development and has concluded that there is sufficient capacity in the City's wastewater treatment facilities to serve the proposed Low Density residential uses without negatively affecting existing customers. Additionally, there is capacity to serve other homes within the area that would be subject to OAR 340-071-0160. Recent annexations found the Waste Water Treatment Plant has an excess capacity of .555 million gallons daily. The City has parallel 6-inch diameter pressure sewer mains in Rhododendron Dr. with only one in use. There is excess capacity in this system and the system was sized to accommodate this area. The developer will need to extend a pressure sewer line from Rhododendron Drive along Oceana Drive to the development where a neighborhood sewer pumping station will be constructed as part of the development. Regarding providing sanitary sewer service, the proposed project will provide opportunities for other surrounding homeowners that desire sanitary sewer service from the City. It is the policy of the city of Florence to provide sanitary sewer service to any property within the City's wastewater service area. However, the property owners are to pay for sewer main extension, manholes, construction, connection fees, engineering fees, street opening permits and any other fees necessary for the connection to the public sewer system for the project. Title 10 Chapter 36 and Title 11 Chapters 2 and 3 both require the applicant to install sewer service in conjunction with development and platting, respectively.

Extending sewer along Oceana Drive to serve the applicant's property creates a sewer connection opportunity for the property owners in the oldest platted portion of the Idylewood subdivision (1981). This action addresses future water quality issues. By providing a means for individual land owners to economically hook up to City sewer, the annexation creates the means to economically respond to any groundwater issues created by failed or failing individual septic systems. Without the sewer extension created by the Benedick sewer extension, resolving individual property groundwater issues would be prohibitively expensive. The conversion of the Benedick properties to city jurisdiction creates an opportunity for economic and orderly provision of sewer services for 70 existing residences and whatever the number the carrying capacity of the annexed lands produces.

Water: The properties are currently undeveloped and located within the Heceta Water People's Utility District. The properties will eventually be served by a connection to their services. Heceta Water PUD provided testimony into the record Exhibit "L6" that they are "planning on serving this development and has the resources to do so."

Stormwater: There will be no change in the handling of existing stormwater on the site upon annexation. There is no public stormwater system in this area of the Urban Growth Boundary for the use of private development. All systems are for the conveyance of stormwater from public right of ways. The site is undeveloped. The city requirements of handling of stormwater are more restrictive than as applies presently. Upon development, the property will be expected to meet City Code, whereby the

quantity and flow rate of stormwater leaving the site after development shall be equal to or less than the quantity and flow rate of stormwater leaving the site before development. The other associated policies reduce the risk of public and private impacts and support the natural resource area of the coastal lake area. The Stormwater Master Plan, 2018 includes in Section 4.13 acknowledgement of the flooding issues west of the properties proposed for annexation. There are presently two projects in the plan that will directly benefit the Idylewood subdivision and nearby neighborhoods. They include a ditch restoration project in Rhododendron Drive from Woodlands to North Jetty Road and pump replacement in North Jetty Road. The City in Section 4.13 includes itself as a potential partner to resolving the flooding issues once annexation occurs. The City has already researched and planned initial stormwater improvements for the area via the 2018 plan. Annexation of the proposed properties brings an opportunity for applying an orderly resolution of the adjacent flooding issues that have prevailed for over 25 years without neighborhood or developer resolution or jurisdictional enforcement or long range planning by Lane County.

Streets: The Property abuts the public rights-of-way of Oceana Dr., Cloudcroft Lane, Gullsettle Ct. and Kelsie Way which are under Lane County jurisdiction. These are all urban local or local access streets, and are expected to serve traffic to residences and parks in the area. The existing and any future usage (vehicular trips) made available by annexation and zone assignment can be accommodated by the surrounding platted right-of-way availability. The streets' paved widths meet the 2019 Oregon State Fire Code, Appendix D and the number of access points (four) exceed the minimum requirement of two for the area. Any additional required improvements to the adjacent streets will be accomplished in conjunction with a development proposal when access would be proposed and reviewed. Adequacy of these rights-of-way would be considered and improvements required when there is a nexus to require their improvement. No vehicular trips are proposed with this application thus no improvements to existing streets are required with this application.

While Oceana Drive is proposed for annexation the City is not requesting maintenance transfer of Oceana Drive from Lane County at this time. The County has submitted testimony requesting the other above-mentioned streets be annexed concurrently with this proposal. Neither the applicant nor the City seeks annexation of these streets at this time. Their annexation may be required for future development. Local Access Roads transfer maintenance responsibility to a city immediately upon annexation. Prior to assuming city maintenance responsibility for these county roads, a greater understanding is needed about any issues within these rights of way. Assuming maintenance without regard to potential issues could have unexpected economic impacts. The City expects that any future development proposals for the property will need to remain consistent with the development requirements of Lane Code Chapter 15 until jurisdictional transfer of the subject property and right-of-way occur. Lane County will be informed of all proposed developments occurring on the property in the future.

Florence City Code Title 10 Chapter 1 Section 1-4-E-2 requires performance of a Traffic Impact Study upon "A change in zoning or plan amendment designation where there is an increase in traffic or a change in peak-hour traffic impact." The County's Suburban Residential zoning district currently permits lot sizes similar (6000 sq. ft.) to the minimum required by the Low Density District (7500 sq. ft.). Both the city and county apply the

Prime Wildlife Shorelands overlay. A TIS is not required for this application, but will be required in accordance with subsection “2c”, when the proposed trip count is met. It is for these same reasons that the Transportation Planning Rule does not apply—residential density is not increasing, zone is not impacted, development will connect to the existing street network and will be evaluated via a TIA/TIS when an impact is proposed. An existing public street network is available to serve this property. Planning Commission recommended a restriction be placed allowing the density permitted under the base code rather than an increase in allowed density offered under the Planned Unit Development code FCC 10-23. This is to ensure the decision to not need a TIA/TIS is maintained under the City and TPR criteria.

Fire and Life Safety: Siuslaw Valley Fire and Rescue District currently provides protection services to the annexation area and will continue to do so following the annexation. They provided comment that they could continue to serve the property.

The Idylewood subdivisions have access to Rhododendron Drive via four access points. The streets’ paved widths meet the 2019 Oregon State Fire Code, Appendix D and the number of access points exceed the minimum requirement of two for the area.

Police: Once annexed, the City will provide public safety services. The Florence Police Department will expand their current emergency response service to patrol and respond to calls for the subject properties.

Power: Central Lincoln People’s Utility District currently provides electricity to the annexation area and will continue to do so following the annexation.

Communications: CenturyLink currently provides phone service to the area and will continue to do so following the annexation. They provided comment that they have no concerns with the proposal. Other utility companies such as Charter and OregonFAST.net provide other communications services and will continue to do so following the annexation. In addition, there are a number of cellular phone companies that provide service in the area.

b) conformance with the acknowledged City of Florence Comprehensive Plan;

This proposal is consistent with this policy because the Florence Realization 2020 Comprehensive Plan was acknowledged by the Department of Land Conservation and Development (DLCD) and is the acknowledged Plan for the City of Florence. The property is located within the Urban Growth Boundary on the Florence Realization 2020 Comprehensive Plan Map. The proposed use—residential is consistent with the long range plan for the area and fulfills the growth and housing policies in the Comprehensive Plan and Oregon Law. As demonstrated in these findings of fact the annexation proposal is in conformance with this acknowledged Plan.

c) consistency with state law.

The annexation proposal is consistent with this policy because the proposal is consistent with state law, as presented below in the review of Oregon Revised Statutes.

Also, the proposal is consistent with this policy because the Florence Realization 2020 Comprehensive Plan implements Oregon's Land Use Goals.

- 4. The City will send a referral requesting comments on annexations to Lane County. The Comments submitted will be considered in any action taken on the annexation request and will become part of the public record of the proceeding.**

Referral requests were sent to Lane County. Lane County Transportation Planning provided testimony, dated Oct. 6, 2020. They requested that in addition to Oceana Drive the proposed annexation also include Gullsettle Court, Cloudcroft Lane, and Kelsie Way, the three Local Access Roads that are adjacent to the subject properties.

This petition and decision do not include annexation of these streets at this time. Local Access Roads transfer maintenance responsibility to a city immediately upon annexation. Prior to assuming city maintenance responsibility for these county roads, a greater understanding is needed about any issues within these rights of way. Assuming maintenance without regard to potential issues would be contrary to Chapter 14 Annexation policy 3a. The City expects that any future development proposals for the property will need to remain consistent with the development requirements of Lane Code Chapter 15 until jurisdictional transfer of the subject property and right-of-way occur. Lane County will be informed of all proposed developments occurring on the property in the future.

- 5. The City will send a referral requesting comments on annexations to the Heceta Water District, for annexations within the District's service boundary. The comments submitted will be considered in any action taken on the annexation request and will become part of the public record of the proceeding.**

The Water District was provided notice and time to comment on the proposed annexation. On December 10, 2020, Carl Neville sent written comment (L6) stating "Heceta Water is planning on serving this development and has the resources to do so."

- 6. Annexed properties shall pay systems development charges as required by City Code.**

The applicants will be required to pay the project costs to extend sewer services where they do not currently exist. Future development of the properties will necessitate payment of applicable systems development charges. Any undeveloped properties and expansions to developed properties will be charged systems development charges commensurate with their impacts on the systems.

- 7. As a matter of public policy, Lane County and the City of Florence share a substantial interest in development within the Urban Growth Boundary. In order to receive a full range of urban services provided by the City of Florence, development within the Urban Growth Boundary shall require annexation. However, it is also recognized that until annexation Lane County will retain primary permitting responsibility for those lands.**

Lane County provides services and administers jurisdiction to all properties outside of the City of Florence and within the Urban Growth Boundary. After the completion of annexation, the City of Florence will be the responsible jurisdiction for development of the property, with the exception of maintenance and access off of streets adjacent to the property, which are maintained by Lane County.

Chapter 17: Coastal Shorelands: Ocean, Estuary and Lake Shorelands

Policies (Ordinance Nos. 1 & 2 Series 2021)

11. Coastal Shorelands in the Florence UGB shall be all lands contiguous with the ocean, the Siuslaw Estuary, and four lake areas: Munsel Lake, Heceta Junction Lake, South Heceta Junction Seasonal lakes, and North Jetty Lake. The following Management Unit designations, as described in this Chapter of the Comprehensive Plan, shall apply to Shorelands within the Florence UGB: Shoreland Dredged Material Disposal Sites, Natural Resources Conservation, Mixed Development, Residential Development, and Prime Wildlife Area. Application of these MUs to specific areas is shown on “Map 17-1: Estuary and Coastal Shoreland Management Units in the Florence UGB,” in this chapter of this Comprehensive Plan.

Implementation requirements in Lane Code Chapter 10 Overlay Zoning Districts shall apply to these MUs within the Florence UGB, outside city limits, and Florence City Code Title 10, Chapter 19, shall apply within Florence city limits.

The Property is contiguous with the Heceta Junction Lake area and thus the policies of the Coastal Shorelands are applicable. These lands are presently subject to Chapter 10 of Lane County Code. Upon annexation these lands will be subject to Chapter 19 of City Code and the policies of Chapter 17 of the Florence Realization Comprehensive Plan. Chapter 19 is discussed later in the report.

17. In Prime Wildlife Management Units, the following additional policies shall apply:

a. For Shorelands in the Prime Wildlife MU within the Florence UGB, implementation requirements in Lane Code Chapter 10 Overlay Zoning Districts shall apply outside city limits, and the Prime Wildlife Overlay Zoning District in Florence City Code Title 10 Chapter 19 shall apply inside city limits.

b. Uses shall fall within Priority 1 of the General Priority Statement (Policy 12). No use shall be permitted within a Prime Wildlife Shorelands MU unless that use is determined to be consistent with protection of natural values identified in the description of the MU.

c. For any approved development in this MU, a minimum 100’ horizontal buffer zone from the coastal lakes is required.

d. Outside of the buffer zone, development shall not result in the clearance of native vegetation in excess of that which is necessary for the actual structure's required access and fire safety requirements. Areas of excessive vegetation removal shall be replanted as soon as possible.

e. State Fish and Wildlife Biologists shall have a 14-day "review and comment" period to evaluate the impact of any development on critical habitats and to make suggestions concerning ways to avoid or mitigate identified adverse impacts.

f. Filling in of freshwater marshes or coastal lakes adjacent to this MU is prohibited.

g. Development on lots less than five acres in size shall be prohibited. Where lots less than five acres existed on July 24, 1980, development may occur if in conformance with the requirements of the base zoning district and this management unit.

h. No dredge spoils deposition shall be allowed in the Prime Wildlife management unit.

These policies do not directly apply to this proposal since development: land division, clearing, grading, or construction are not proposed. Regardless, nothing in the applicant's submittals propose an action against the above policies for the area impacted by the management unit overlay. The original proposal for platting with Lane County that is in the record as Exhibit K58 does not meet the requirements above and the applicant knows this. Concern for wildlife was one of the concerns in the testimony. Subsection "e" above includes a process for working with the state to identify critical habitats in support of Goal 5 and Goal 17. Subsection "b" refers to policy 12.1 concerning maintenance of the integrity of the coastal waters. The code includes provision of a minimum 110' setback with more likely for flood control and it established uses permitted and the permit types required for each type of use. The code criteria implement this policy. Once an application is received that includes activity subject to the above policies a thorough review will be performed by the city and state agencies that includes review of the implementing code in FCC 10-19: Estuary, Shorelands, and Beaches and Dunes and conditions of approval made. These criteria are met in that they do not presently apply.

OREGON REVISED STATUTES (*Ordinance No. 1 Series 2021*)

ORS 222.111 Authority and procedure for annexation.

(1) When a proposal containing the terms of annexation is approved in the manner provided by the charter of the annexing city or by ORS 222.111 to 222.180 or 222.840 to 222.915, the boundaries of any city may be extended by the annexation of territory that is not within a city and that is contiguous to the city or separated from it only by a public right of way or a stream, bay, lake or other body of water. Such territory may lie either wholly or partially within or without the same county in which the city lies.

The Property proposed for annexation area is located within the urban growth boundary of the City of Florence. The Property is contiguous to the City boundaries through the

concurrent annexation of Oceana Dr. as proposed by the petitioner. In *Thomas P. Link v. City of Florence*, p. 29 the Court commented that where the city annexes the road as well as the “target area” it makes the entire annexed area contiguous to the city. This criterion is met.

(2) A proposal for annexation of territory to a city may be initiated by the legislative body of the city, on its own motion, or by a petition to the legislative body of the city by owners of real property in the territory to be annexed.

The annexation petition of the Property was initiated by the sole owner of the real property in the territory to be annexed. Pursuant to established practices, the County will consent to the annexation of Oceana Dr. This criterion is met.

(3) The proposal for annexation may provide that, during each of not more than 10 full fiscal years beginning with the first fiscal year after the annexation takes effect, the rate of taxation for city purposes on property in the annexed territory shall be at a specified ratio of the highest rate of taxation applicable that year for city purposes to other property in the city. The proposal may provide for the ratio to increase from fiscal year to fiscal year according to a schedule of increase specified in the proposal; but in no case shall the proposal provide for a rate of taxation for city purposes in the annexed territory which will exceed the highest rate of taxation applicable that year for city purposes to other property in the city. If the annexation takes place on the basis of a proposal providing for taxation at a ratio, the city may not tax property in the annexed territory at a rate other than the ratio which the proposal authorizes for that fiscal year.

The annexed Property will pay property taxes at the same rate as other properties within the City consistent with Oregon laws governing taxation. The proposal for annexation did not include a tax differential schedule as allowed in this statutory section.

(4) When the territory to be annexed includes a part less than the entire area of a district named in ORS 222.510, the proposal for annexation may provide that if annexation of the territory occurs the part of the district annexed into the city is withdrawn from the district as of the effective date of the annexation. However, if the affected district is a district named in ORS 222.465, the effective date of the withdrawal of territory shall be determined as provided in ORS 222.465.

The annexation area is within the Siuslaw Valley Fire and Rescue District, which is a rural fire protection district named in ORS 222.510, but not named in ORS 222.465. The annexation area will not be withdrawn from the Fire District and thus will remain within the Siuslaw Valley Fire and Rescue District.

(5) The legislative body of the city shall submit, except when not required under ORS 222.120, 222.170 and 222.840 to 222.915 to do so, the proposal for annexation to the electors of the territory proposed for annexation and, except when permitted under ORS 222.120 or 222.840 to 222.915 to dispense with submitting the proposal for annexation to the electors of the city, the legislative body of the city shall submit such proposal to the electors of the city. The proposal for annexation may be voted upon at a general election or at a special election to be held for that purpose.

Resolution No. 28, Series 2010, adopted by the City Council, the legislative body of the City, on July 6, 2010, expressed in Section 2: "The Council hereby elects to dispense with any and all elections both in the City and in the annexed territory whenever permitted to do so by ORS Chapter 222 and instead will hold a public hearing on all annexations allowing City electors to be heard." The Court in Thomas P. Link vs. City of Florence found that ORS 222.120 did nothing to limit a city from using a previously adopted resolution or policy to dispense with an annexation election. In proceeding without an election, the Council is re-confirming its policy determination as set out in Resolution No. 28, Series 2010.

There are no electors within the Property to be annexed. The City received written petition from the sole owner of the Property within the annexation area, as allowed in ORS 222.170; therefore, an election is not required. This criterion is met.

ORS 222.120 Procedure for annexation without election; hearing; ordinance subject to referendum.

(1) Except when expressly required to do so by the city charter, the legislative body of a city is not required to submit a proposal for annexation of territory to the electors of the city for their approval or rejection.

Chapter II Section 4 Item (2) (h) of the Charter for the City of Florence lists annexation as one of the City's powers "to annex areas to the City in accordance with State law." The Charter does not expressly require the City to submit a proposal for annexation of territory to the electors of the City for their approval or rejection. Therefore, the City will not be holding an election on this annexation request. Resolution No. 28, Series 2010 expressed the City's intent to dispense with elections in the City and annexation area as permitted by ORS Chapter 222, when sufficient written consents are received. The Court in Thomas P. Link vs. City of Florence found that ORS 222.120 did nothing to limit a city from using a previously adopted resolution or policy to dispense with an annexation election. This criterion is met.

(2) When the legislative body of the city elects to dispense with submitting the question of the proposed annexation to the electors of the city, the legislative body of the city shall fix a day for a public hearing before the legislative body at which time the electors of the city may appear and be heard on the question of annexation.

Resolution No. 28, Series 2010, Section 2 specifically expressed the City Council's intent to dispense with any and all annexation elections both in the City and in the annexed territory whenever permitted by ORS Chapter 222 and instead hold a public hearing. Public hearings on this annexation and zoning assignment proposal were held before both the Planning Commission and City Council (the legislative body) allowing City electors to be heard on the proposed annexation. This criterion is met and exceeded.

(3) The city legislative body shall cause notice of the hearing to be published once each week for two successive weeks prior to the day of hearing, in a newspaper of general circulation in the city, and shall cause notices of the hearing to be posted in four public places in the city for a like period.

The Planning Commission public hearing was noticed as listed in this criterion. Notice of the public hearing was published in the Siuslaw News on October 28th and November 4th, 2020. On October 13, 2020 notices were posted in four public places in the City Florence Post Office, and due to COVID facility closures on the outside glass of City Hall, the Florence Justice Center, and the Siuslaw Public Library.

The City Council public hearing was mailed on December 28, 2020 to property owners within 300 feet of the proposed annexation/zone assignment areas. On January 28, 2021 notice was mailed to three property owners and hand delivered to seven property owners whose mailing addresses or ownership had changed since the mailing list was last updated. These are included in Exhibit P. Notice was published in the Siuslaw News on January 16, 23, & 30, 2021. On December 28th notices were posted at the Florence Post Office, and due to COVID facility closures on the outside glass of City Hall, the Florence Justice Center, and the Siuslaw Public Library.

(4) After the hearing, the city legislative body may, by an ordinance containing a legal description of the territory in question:

(a) Declare that the territory is annexed to the city upon the condition that the majority of the votes cast in the territory is in favor of annexation;

(b) Declare that the territory is annexed to the city where electors or landowners in the contiguous territory consented in writing to such annexation, as provided in ORS 222.125 or 222.170, prior to the public hearing held under subsection (2) of this section; or

(c) Declare that the territory is annexed to the city where the Department of Human Services, prior to the public hearing held under subsection (1) of this section, has issued a finding that a danger to public health exists because of conditions within the territory as provided by ORS 222.840 to 222.915.

The proposed annexation is contiguous to the City limits on the western property line through the extension of City boundaries over Oceana Drive. Subsection “b” above is met.

(5) If the territory described in the ordinance issued under subsection (4) of this section is a part less than the entire area of a district named in ORS 222.510, the ordinance may also declare that the territory is withdrawn from the district on the effective date of the annexation or on any subsequent date specified in the ordinance. However, if the affected district is a district named in ORS 222.465, the effective date of the withdrawal of territory shall be determined as provided in ORS 222.465.

No properties will be withdrawn from the Siuslaw Valley Fire and Rescue as discussed above.

(6) The ordinance referred to in subsection (4) of this section is subject to referendum.

The Ordinance passed by City Council is subject to referendum per ORS 222.170 (1) and 222.170 (2).

(7) For the purpose of this section, ORS 222.125 and 222.170, “owner” or “landowner” means the legal owner of record or, where there is a recorded land contract which is in force, the purchaser thereunder. If there is a multiple ownership in a parcel of land each consenting owner shall be counted as a fraction to the same extent as the interest of the owner in the land bears in relation to the interest of the other owners and the same fraction shall be applied to the parcel’s land mass and assessed value for purposes of the consent petition. If a corporation owns land in territory proposed to be annexed, the corporation shall be considered the individual owner of that land.”

The written consent from the sole property owner was received by the City on a petition requesting annexation to the City.

ORS 222.125 Annexation by consent of all owners of land and majority of electors; proclamation of annexation. The legislative body of a city need not call or hold an election in the city or in any contiguous territory proposed to be annexed or hold the hearing otherwise required under ORS 222.120 when all of the owners of land in that territory and not less than 50 percent of the electors, if any, residing in the territory consent in writing to the annexation of the land in the territory and file a statement of their consent with the legislative body. Upon receiving written consent to annexation by owners and electors under this section, the legislative body of the city, by resolution or ordinance, may set the final boundaries of the area to be annexed by a legal description and proclaim the annexation. [1985 c.702 §3; 1987 c.738 §1]

Note: 222.125 was added to and made a part of ORS chapter 222 by legislative action but was not added to any smaller series therein. See Preface to Oregon Revised Statutes for further explanation.

The City historically has used ORS 222.120 and never included this section of the statute in the criteria or ever used the reduced process it outlines even though past applications have met the criteria. This application meets the criteria of this statute.

ORS 222.170 Effect of consent to annexation by territory; proclamation with and without city election.

(1) The legislative body of the city need not call or hold an election in any contiguous territory proposed to be annexed if more than half of the owners of land in the territory, who also own more than half of the land in the contiguous territory and of real property therein representing more than half of the assessed value of all real property in the contiguous territory consent in writing to the annexation of their land in the territory and file a statement of their consent with the legislative body on or before the day:

(a) The public hearing is held under ORS 222.120, if the city legislative body dispenses with submitting the question to the electors of the city; or

(b) The city legislative body orders the annexation election in the city under ORS 222.111, if the city legislative body submits the question to the electors of the city.

The area under consideration consists of the applicant's property and Oceana Drive. The written consent from the sole property owner of the applicant's property was signed and provided with the petition for annexation received by the City on July 30, 2020. The applicant owns property representing 100% of the assessed value of real property under consideration. This criterion is met.

(2) The legislative body of the city need not call or hold an election in any contiguous territory proposed to be annexed if a majority of the electors registered in the territory proposed to be annexed consent in writing to annexation and the owners of more than half of the land in that territory consent in writing to the annexation of their land and those owners and electors file a statement of their consent with the legislative body on or before the day:

(a) The public hearing is held under ORS 222.120, if the city legislative body dispenses with submitting the question to the electors of the city; or

(b) The city legislative body orders the annexation election in the city under ORS 222.111, if the city legislative body submits the question to the electors of the city."

There are no electors within the proposed annexation area. The written consent from the sole property owner was signed and provided with the petition for annexation received by the City on July 30, 2020. The public hearing was held under ORS 222.120 as discussed under ORS 222.170(1).

(3) "Annexed properties shall pay system development charges as required by City Code."

The proposed annexation is consistent with Policy 3 because Florence City Code Title 9 Chapter 1 Section 4-A requires properties annexed to pay system development charges. Systems development charges will be paid upon connection to City utilities and upon further development on the property.

FLORENCE CITY CODE

TITLE 10: CHAPTER 1: ZONING ADMINISTRATION

10-1-1-4: APPLICATION: *(Ordinance Nos. 1 & 2 Series 2021)*

A. Applications and Petitions required by Title 10 and 11 of this Code shall be on forms prescribed by the City and include the information requested on the application form.

C. Except when this Code provides to the contrary, an application or petition regulated by Titles 10 and 11 of this Code:

- 1. Shall be reviewed by the Planning Director within thirty (30) days to determine if the application is complete, including required drawings, plans, forms, and statements.**
- 2. Shall identify the public facilities and access which may be needed to support the development, including but not limited to utilities and transportation infrastructure, and how they will be financed.**
- 3. Shall identify off-site conditions including property lines, utility locations and sizes, existing and future streets, land uses, significant grade changes and natural features such as streams, wetlands and sand dunes for an area not less than three hundred (300) feet from the proposed application site that is one (1) acre or larger and within 100 feet from the proposed application site that is less than one (1) acre in size. (Amd. By Ord. No. 4, Series 2011)**
- 4. Shall be accompanied by a digital copy or two hard copies of required plans of dimensions measuring 11 inches by 17 inches or less. Costs of document reduction may be passed onto the applicant.**
- 5. Shall be filed with a narrative statement that explains how the application satisfies each and all of the relevant criteria and standards in sufficient detail for review and decision-making. Additional information may be required under the specific application requirements for each approval.**
- 6. Shall be accompanied by any other information deemed necessary by the City Planning Department.**
- 7. Shall be accompanied by the required, non-refundable fee.**

The applicant provided a petition and application on July 30, 2020 on the requisite forms, via the required method with the required fee. The application was deemed complete on August 28, within 30 days of the receipt of the application. The applicant's materials include a narrative statement supported by exhibits of maps that review what they believed to be the relevant criteria. For public facilities and access needed to support development the materials explain they intend to extend city sewer service at the applicant's expense with system development charges paying for any upsizing required to serve the greater area. Annexation is the only way to plat the properties with housing. The petition includes annexation of Oceana Dr. to accomplish this connection and provide a transportation connection. It is also explained in the applicant's materials that water and fire water are already available via Heceta Water PUD and Siuslaw Valley Fire and Rescue, respectively. Public stormwater facilities for private use are not available to this part of the city or UGB. The City of Florence has policy in FCC 10-9 that stormwater is retained on site. The subdivisions of Mariners Village, Shelter Cove, Fawn Ridge and Sea Watch all south of this development retain stormwater on-site. The referral agencies and departments have all provided testimony summarized above and provided in full in Exhibit "L" that public utilities and services are available to serve the property and, in some cases, (sewer) discuss more specifically what will be required (a pump station and sewer line extension). These criteria are met.

E. Traffic Impact Studies: *(Ordinance No. 2 Series 2021)*

2. Criteria for Warranting a Traffic Impact Study: All traffic impact studies shall be prepared by a professional engineer in accordance with the requirements of the road authority. The City shall require a Traffic Impact Study (TIS) as part of an application for development; a proposed amendment to the Comprehensive Plan, zoning map, or zoning regulations; a change in use, or a change in access, if any of the following conditions are met:

a. A change in zoning or plan amendment designation where there is an increase in traffic or a change in peak-hour traffic impact.

Testimony was received whereby it was thought a TIS was required. The zoning is changing from Suburban Residential (a County designation permitting 6,000 sq. ft. residential lots (LC 10.135)) to Low Density Residential (a City designation permitting 7,500 sq. ft. residential lots (FCC 10-10)). Additionally, the city is more restrictive permitting just houses, parks, child care, and churches whereas Lane County zoning permits also permits hospitals and schools. The similar yet reduced density of this zone change does not increase traffic. And the proposed eventual use is the same having the same peak hour traffic impact. The developable land area is significantly reduced due to the intermittent lake system and associated 100' buffer area and reduced lot size with the zone amendment. The addition of a predicted 40 or so residences as interpolated from the illustration in Exhibit K58 spread out across four access points onto Rhododendron Drive will not significantly affect the Idylewood subdivision roadways. Additionally, this zone change approval limits the residential density to that permitted with the zone assigned rather than granting an exception for greater density as offered through the Planned Unit Development procedure. This criterion is met in that it does not apply.

10-1-1-5: GENERAL PROVISIONS *(Ordinance Nos. 1 & 2 Series 2021)*

A. 120-Day Rule: The City shall take final action on Type I, II, and III permit applications that are subject to this Chapter, including resolution of all appeals, within 120 days from the date the application is deemed as complete, unless the applicant requests an extension in writing. Any exceptions to this rule shall conform to the provisions of ORS 227.178. (The 120-day rule does not apply to Type IV legislative decisions – plan and code amendments – without an applicant under ORS 227.178.)

B. Consolidation of proceedings: When an applicant applies for more than one type of land use or development permit (e.g., Type II and III) for the same one or more parcels of land, the proceedings shall be consolidated for review and decision.

1. If more than one approval authority would be required to decide on the applications if submitted separately, then the decision shall be made by the approval authority having original jurisdiction over one of the applications in the following order of preference: the Council, the Commission, or the City Planning Official or designee.

2. When proceedings are consolidated: a. The notice shall identify each application to be decided

b. The decision on a plan map amendment shall precede the decision on a proposed land use district change and other decisions on a proposed development. Similarly, the decision on a zone map amendment shall precede the decision on a proposed development and other actions.

The application has applied for annexation with an associated zone change. These proceedings have been consolidated and the petition for annexation labeled as Ordinance 1, Series 2021 and the zone change/assignment as Ordinance 2, Series 2021. The Type IV annexation must be processed first and the zone change second. As in the criteria above in 2.b. There is no application for a proposed development that follows these applications and their proceedings. The land must be annexed and assigned a zone to be available to make application for development. Thomas P. Link versus The City of Florence made a determination for Driftwood Shores annexation that annexation of developed lots is not defined as “development”. Likewise, the comprehensive plan policy requiring properties to annex prior to land division (Florence Comprehensive Plan Chapter 14 Policy 2) makes development not possible until annexed. The applicant has provided two extensions to the 120-day rule, one 90 day and another 60 day. These criteria are met.

10-1-1-6: TYPES OF REVIEW PROCEDURES:

10-1-1-6-3: TYPE III REVIEWS – QUASI-JUDICIAL LAND USE HEARINGS: (*Ordinance Nos. 2 Series 2021*)

B. Notification of Hearing:

1. At least twenty (20) days prior to a Type III (quasi-judicial) hearing, notice of hearing shall be posted on the subject property and shall be provided to the applicant and to all owners of record of property within 100 feet of the subject property, except in the case of hearings for Conditional Use Permits, Variance, Planned Unit Development and Zone Change, which notice shall be sent to all owners of record of property within 300 feet of the subject property.

a. Notice shall also be provided to the airport as required by ORS 227.175 and FCC 10-21-2-4 and any governmental agency that is entitled to notice under an intergovernmental agreement with the City or that is potentially affected by the proposal. For proposals located adjacent to a state roadway or where proposals are expected to have an impact on a state transportation facility, notice of the hearing shall be sent to the Oregon Department of Transportation.

b. For a zone change application with two or more evidentiary hearings, notice of hearing shall be mailed no less than ten (10) days prior to the date of the Planning Commission hearing and no less than ten (10) days prior to the date of the City Council hearing.

c. For an ordinance that proposes to rezone property, a notice shall be prepared in conformance with ORS 227.186 and ORS 227.175(8).

d. Notice shall be mailed to any person who submits a written request to receive notice.

e. For appeals, the appellant and all persons who provided testimony in the original decision.

2. Prior to a Type III (quasi-judicial) hearing, notice shall be published one (1) time in a newspaper of general circulation. The newspaper's affidavit of publication of the notice shall be made part of the administrative record.

Subsections 1c and 1e are not applicable. Notice was provided as required in subsections 1a, 1b, 1d and 2. Lane County Transportation during the referral notice period submitted in their testimony a request that several Lane County roads be also considered for annexation. This petition for annexation and application for zone change was made by a petitioner owning property rather than the City of Florence and it did not include these additional roads. The City would become the maintenance entity of those roads and the City has no interest to annex those roads at this time. Therefore, the noticing list was built and notices provided to those within 300 feet of the boundary description on the petition received.

Notice of the Planning Commission's public hearing was mailed on October 14, 2020 to property owners within 300 feet of the proposed annexation/zone assignment areas. Notice was published in the Siuslaw News on October 28th and November 4th, 2020. On October 14th notices were posted at the Florence Post Office, and due to COVID facility closures on the outside door glass of City Hall, the Florence Justice Center, and the Siuslaw Public Library. On October 14, 2020 land use notice signs with holders containing notices mailed to property owners were posted at Oceana Drive (west and east ends), Cloudcroft Lane and Kelsie Way. The signs were periodically restocked with notices.

Notice of the City Council public hearing was mailed on December 28, 2020 to property owners within 300 feet of the proposed annexation/zone assignment areas, those who testified at the PC hearing and to others who requested to be included on the notice distribution list. On January 28, 2021 notice was mailed to three property owners and hand delivered to seven property owners whose mailing addresses or ownership had changed since the mailing list was last updated. Those receiving notice are listed in Exhibit P. All who should have been provided notice were. The public hearing opened on February 1st was consequently extended to February 22nd to accommodate the late notices mailed January 28th. On December 28th notices were posted at the Florence Post Office, and due to COVID facility closures on the outside door glass of City Hall, the Florence Justice Center, and the Siuslaw Public Library. On December 28, 2020 land use notice signs with holders containing notices mailed to property owners were posted at Oceana Drive (west and east ends), Cloudcroft Lane and Kelsie Way. The signs were restocked with updated notices announcing the new extended testimony periods. Notice was published in the Siuslaw News on January 16, 23, & 30, 2021.

These criteria are met and exceeded.

10-1-1-6-4: TYPE IV PROCEDURE (LEGISLATIVE) (*Ordinance No. 1 Series 2021*)

D. Notice of Hearing:

1. Required hearings. A minimum of two hearings, one before the Planning Commission and one before the City Council, are required for all Type IV applications (e.g., re-zonings and comprehensive plan amendments).

The applicants proposed an annexation and zoning assignment for their properties. Two public hearings were held as part of this process, Planning Commission on November 10, 2020 and City Council on February 1, 2021. This criterion is met.

2. Notification requirements. Notice of public hearings for the request shall be given by the Planning Department in the following manner: (*Ordinance Nos. 1 & 2 Series 2021*)

a. At least 20 days, but not more than 40 days, before the date of the first hearing on an ordinance that proposes to amend the comprehensive plan or any element thereof, or to adopt an ordinance that proposes to rezone property, a notice shall be prepared in conformance with ORS 227.186 and mailed to:

1. Each owner whose property would be rezoned in order to implement the ordinance (including owners of property subject to a comprehensive plan amendment shall be notified if a zone change would be required to implement the proposed comprehensive plan amendment.

2. Any affected government agency.

3. Any person who requests notice in writing.

4. For a zone change affecting a manufactured home or mobile home park, all mailing addresses within the park, in accordance with ORS 227.175.

5. Owners of airports shall be notified of a proposed zone change in accordance with ORS 227.175.

The City Council public hearing was mailed on December 28, 2020 to property owners within 300 feet of the proposed annexation/zone assignment areas and to interested parties who had requested to receive public notice. On January 28, 2021 notice was mailed to three property owners and hand delivered to seven property owners whose mailing addresses or ownership had changed since the mailing list was last updated. These are included in Exhibit P. Referral notices were sent to government agencies and the owner of the Florence Airport on October 1, 2020. These criteria are met,

b. At least 10 days before the scheduled Planning Commission hearing date, and 14 days before the City Council hearing date, public notice shall be published in a newspaper of general circulation in the City. (*Ordinance No. 1 Series 2021*)

Notice was published in the Siuslaw News on January 16, 23, & 30, 2021. This criterion is met and exceeded.

c. The City Planning Official or designee shall: 1. For each mailing of notice, file an affidavit of mailing in the record as provided by subsection. 2. For each published notice, file in the record the affidavit of publication in a newspaper that is required in subsection b. (Ordinance Nos. 1 & 2 Series 2021)

An affidavit for the Council hearing mailing is in the hearing record as Exhibit P and the Planning Commission one is in the record. The Siuslaw News has provided an affidavit of the newspaper publications which are also in the record. This criterion is met.

d. The Oregon Department of Land Conservation and Development (DLCD) shall be notified in writing of proposed comprehensive plan and zoning code amendments at least 35 days before the first evidentiary hearing. (Ordinance No. 2 Series 2021)

Notice of the proposed zone change was sent to the Department of Land, Conservation and Development (DLCD) on October 6, 2020, not less than 35 days prior to the proposed first evidentiary hearing of November 10, 2020, as required by State law and the Florence City Code. An update was loaded on the DLCD website on October 28th to change the first hearing date to November 10th. This criterion is met.

10-1-2-3: ZONING OF ANNEXED AREAS: The City Council may establish zoning and land use regulations that become effective on the date of annexation. This zoning district shall be consistent with the objectives of the Florence Comprehensive Plan and Zoning Code. When zoning is not established at the time of annexation, an interim zoning classification most nearly matching the existing County zoning classification shall be automatically applied until the City Council establishes zoning and land use regulations in accordance with the conditions and procedures of Chapter 1 of this Title. (Amd. by Ord. 30, Series 1990). (Ordinance Nos. 1 & 2 Series 2021)

The zoning district corresponding to the subject property's Comprehensive Plan designation is Low Density Residential. The Low Density District will be assigned upon approval of the request from Council and finalization of the annexation process with the county and state. Property designated as Prime Wildlife with the County will transfer applicable regulations from Lane County's Chapter 10.245 to the Florence City Code Title 10 Chapter 19. FCC 10-19-5: B. states: "As lands are annexed over time, Coastal Shorelands shall include all lands contiguous with the ocean, the Siuslaw Estuary, and four lake areas: Munsel Lake, Heceta Junction Lake, South Heceta Junction Seasonal Lakes, and North Jetty Lake. Upon annexation, Coastal Shorelands Overlay Zoning Districts are applied to the properties depicted on the Map 17-1 Estuary and Coastal Shoreland Management Units in the Florence UGB in the Comprehensive Plan....". Therefore, there is technically no zone change rather a change in regulation assignment. Therefore, the shorelands are not included on the Florence Zoning Map because they are represented in 17-1 and regulated by FCC 10-19 where the map is called out specifically and these lands under annexation consideration are illustrated and represented with the Prime Wildlife designation already. Review of the applicable code and comp plan objectives and policies are contained within these findings. It is found that the petition and application are consistent with the Florence Realization 2020 Comprehensive Plan and the Title 10 – Zoning Regulations of the Florence City.

10-1-3: AMENDMENTS AND CHANGES (*Ordinance No. 2 Series 2021*)

B. Quasi-Judicial Changes:

- 4. Planning Commission Review:** The Planning Commission shall review the application for quasi-judicial changes and shall receive pertinent evidence and testimony as to why or how the proposed change is consistent or inconsistent with and promotes the objectives of the Florence Comprehensive Plan and Zoning Ordinance and is or is not contrary to the public interest. The applicant shall demonstrate that the requested change is consistent with the Comprehensive Plan and Zoning Ordinance and is not contrary to the public interest.

On November 10, 2020, the Planning Commission held a public hearing on this annexation request and quasi-judicial zone assignment. The findings of fact were available in advance of the hearing and were reviewed against the applicable city and state policies. The applicant provided a statement of compliance in Exhibit J that demonstrated that the requested change is consistent with the Comprehensive Plan and Zoning Ordinance and is not contrary to the public interest. Annexation of properties within the UGB is permitted if the request meets the applicable ORS and the city's urbanization policies. These have been reviewed earlier with supporting findings.

TITLE 10: CHAPTER 10: RESIDENTIAL DISTRICTS

10-10-1: RESIDENTIAL ZONES AND PURPOSE: (*Ordinance Nos. 2 Series 2021*)

A. Low Density Residential (LDR): The Low Density Residential District is intended to provide a quality environment for low density, urban residential uses and other Planned Unit Development as determined to be necessary and/or desirable.

The vacant Property and Oceana Dr. are proposed to be zoned Low Density Residential District with portions of the Property receiving a Prime Wildlife shorelands management unit overlay. This zone and overlay are appropriate as they correspond to plan designation (Low Density) and overlay assigned to property and served by Oceana Drive a local road. The approximate 43-acre Property meets the minimum lot size of the district (7500 sq. ft.). The presence of the coastal shoreland designation on the majority of this property makes the Low Density residential designation (rather than Medium or High Density) with the opportunity for a Planned Unit Development scenario an appropriate zoning choice to reduce the risk of impact on the natural resource area found within most of the eastern portion of the site. The proposed zone change meets the applicable criteria of FCC 10-10.

TITLE 10: CHAPTER 19 SECTIONS 5 & 9: Prime Wildlife Overlay District (IPW)

(*Ordinance Nos. 1 & 2 Series 2021*)

In accordance with FCC 10-19-5-A & B this overlay and the associated administrative polices will apply to the areas so designated in the comprehensive plan that are also included in the petition for annexation. These areas are generally illustrated on Exhibit H which is Map 17-1: Estuary & Coastal Shorelands Management Units in the Florence UGB from the Florence Realization 2020 Comprehensive Plan. According to the Comprehensive

Plan, Chapter 17 page 18 this management unit includes the area covered by seasonal standing water identified on Natural Resources Conservation Service maps or, if available, photogrammetric maps and a fifty foot strip of surrounding vegetation.

The City's PW criterion include policies that will apply with a proposal for development application. Portions of the property are presently zoned Prime Wildlife under the County code. The associated property is automatically assigned this overlay with annexation but is included in this review for clarity of the assignment. In accordance with 10-19-9-A staff performed a Preliminary Investigation of the property to ascertain the location of the resources identified in the Lane Coastal Resources Management Plan and illustrated on "Florence Local Wetland Area Inventory Sheet 3 Coastal Shorelands & Wetland Areas". Lots 400 and 401 were found to be impacted as represented on the 2013 Inventory Report and using the Wetland delineation photo mapping assembly previously performed and in the record as Exhibit K58 as a guide. The applicant has performed analysis of the resources on this property previously for applications to the County and in the record. Specifically, the applicant with a land division or development application will be required to delineate wetlands, identify the average highwater line upon which to establish the buffer and determine whether the site possesses areas of unique biological assemblages, habitats of rare or endangered species, or a diversity of wildlife species identified in the Coastal Resources Inventory, or function to provide or affect water quality, bank stability or flood control.

FCC 10-19-9-C permits single family homes in the Prime Wildlife Overlay as long as the development criteria are followed for setbacks, buffers, vegetation retention, building materials, and screening. The 100' required buffer plus 10' setback may need to be increased to provide adequate flood control and preserve habitat. The permitted uses with the development standards illustrate this property is planned to be zoned in accordance with the City Code and Comprehensive Plan policy. Codes and policies are in place to protect the uses from flooding and to protect the natural resources and wildlife from excessive encroachment and destruction of habitat.

Oregon Administrative Rules – 660-015-0000

(Ordinance No. 2 Series 2021)

OAR 660-015-0000 (Goal 10):

To provide for the housing needs of citizens of the state.

Buildable lands for residential use shall be inventoried and plans shall encourage the availability of adequate numbers of needed housing units at price ranges and rent levels which are commensurate with the financial capabilities of Oregon households and allow for flexibility of housing location, type and density.

[...]

Needed Housing Units -- means housing types determined to meet the need shown for housing within an urban growth boundary at particular price ranges and rent levels. On and after the beginning of the first periodic review of a local government's acknowledged comprehensive plan, "needed housing units" also includes government-assisted housing. For cities having populations larger than 2,500 people and counties having populations larger than 15,000 people, "needed housing units" also includes (but is not limited to) attached and detached single-family housing,

multiple-family housing, and manufactured homes, whether occupied by owners or renters.
[...]

Finding: The population of the City of Florence exceeds 2,500 people, so the requirement for various housing types applies.

The City's Residential Buildable Lands Inventory was updated in late 2018. In compliance with Goal 10 and applicable administrative rules implementing Goal 10, the inventory looks at acreage available for development within the City's residential areas. While residential uses are permitted or conditionally permitted in areas with non-residential designations, the BLI only inventories acreage within residential zoning districts. (See Housing Needs Analysis Appendix I.)

The zoning assignment for this annexation request does relate to the opportunity to provide additional residential uses. The addition of land to the city limits impacts the City's residential inventory in the City's BLI in a positive way by adding more buildable land to the inventory to support additional housing.

The Housing Needs Analysis, 2017 Exhibit IV.6. identifies a forecasted need under Scenario A of 858 single family dwelling units with an estimated land need of 164 acres. The proposed zoning assignment to Low Density Residential for the 43+ acres creates a positive impact on the supply of residential land base, albeit with more than half of that land undevelopable. Presently, there is around 40 acres of land within City limits that is zoned Low Density, is undeveloped and developable. The remainder is incumbered with wetlands, steep slopes or commercial recreation development.

B. IMPLEMENTATION

5. Additional methods and devices for achieving this goal should, after consideration of the impact on lower income households, include, but not be limited to: (1) tax incentives and disincentives; (2) building and construction code revision; (3) zoning and land use controls; (4) subsidies and loans; (5) fee and less-than-fee acquisition techniques; (6) enforcement of local health and safety codes; and (7) coordination of the development of urban facilities and services to disperse low income housing throughout the planning area.

Finding: The proposal is consistent with this rule because it includes proposed zoning that support implementation of the adopted HNA, including needed housing types such as single family residential and accessory dwelling units providing the opportunity for housing units as identified above.

VII. CONCLUSION

The evidence in the record demonstrates, based on findings herein, that the proposed annexation and zone assignment is consistent with the policies set forth in state statutes, Florence City Code, and the Florence Realization 2020 Comprehensive Plan. To maintain the requirements under the City Traffic Impact Analysis and State Transportation Planning Rule are met the allowed density shall be that permitted under the base code rather than an

increase as allowed under the Planned Unit Development code FCC 10-23 or where streets are platted as tracts.

VIII. EXHIBITS

To the approval:

Ordinance 1, Series 2021: Exhibit A Annexation – Legal Description

Ordinance 2, Series 2021: Exhibit A Zoning – Zoning Map

Exhibit B: Findings of Fact, March 31, 2021

To the record:

Exhibit C: 2007-2020 Annexations & DWS (note: these are Exhibits B & C in applicant's statement of support)

Exhibit D: Vicinity Map

Exhibit E: Comp Plan Map

Exhibit F: Zoning Map

Exhibit G: Aerial Map

Exhibit H: Shoreland Map

Exhibit I: Application, Petition, and Supplemental

Exhibit I2: Applicant Response dated 11/24/20

Exhibit J: Statement of Support

Exhibit K: Testimony (Planning Commission)

Exhibit L: Referral Comments (Updated from PC recommendation)

Exhibit M: Testimony (City Council)

Exhibit N: Applicant Statement of Compliance

Exhibit N2: Applicant Letter of Final Argument

Exhibit O: Siuslaw News Articles

Exhibit P: Mailing/Delivery Affidavits