

**CITY OF FLORENCE
ORDINANCE NO. 14, SERIES 2016**

AN ORDINANCE ESTABLISHING NATURAL ESTUARY MANAGEMENT UNIT AND CONSERVATION MANAGEMENT UNIT ZONING TO THE ESTUARY SOUTH OF HWY 126 WITHIN THE UGB; COMMERCIAL DISTRICT TO MR 18-12-26-31 Tax Lot 02300 NORTH OF HWY 126, AND COMMERCIAL AND NATURAL RESOURCE CONSERVATION SHORELAND MANGAGEMENT UNIT OVERLAY TO 05454 Highway 126, ASSESSOR'S MAP 18-12-26-42-01700, 1800, & 1900 & 18-12-26-31-02400 & 6300 AND 18-12-26-42-02000, 02100 & 02300.

RECITALS:

1. Florence City Code (FCC) Title 10, Chapter 1, Section 3-B-1 provides that a quasi-judicial zone change may be initiated by a property owner within the affected area.
2. The City of Florence was petitioned by property owners, Don and Norma Saxon, on July 18, 2016, for annexation of their property and assignment of applicable City zoning of the property currently zoned by Lane County as required by FCC 10-1-3-B-1 and FCC 10-1-1-4.
3. The Planning Commission met on September 27, 2016 at a properly noticed public hearing to consider the proposal, evidence in the record, and testimony received.
4. The Planning Commission determined on September 27, 2016, 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.
5. The City Council met in a public hearing on October 17, 2016, after giving the required notice per FCC 10-1-1-5, to consider the proposal, evidence in the record, and testimony received.
6. The City Council deliberated on October 17, 2016 and found that the subject property is designated Commercial in the Realization 2020 Plan and the City Council supported the establishment of city-zoning as Service Industrial District consistent with Florence Comprehensive Plan and Zoning Code objectives.
7. The City Council adopted Ordinance No. 13, Series 2016 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 properties owned by the petitioners as Commercial District, Natural and Conservation Estuary Management Unit Districts and Natural Resources Conservation Estuary Shorelands Management Unit Overlay as shown on the attached map as Exhibit A.
2. This annexation is based on the Findings of Fact in Exhibit B and evidence in the record.
3. 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.
4. 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.
5. 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. 13, Series 2016.

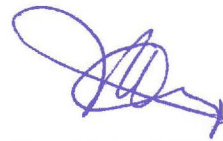
ADOPTION:

First Reading on the 17th day of October, 2016.

Second Reading on the 17th day of October, 2016

This Ordinance is passed and adopted on the 17th day of October, 2016.

AYES	4	Councilors Lacer, Lyddon, Greene, and Mayor Henry
NAYS	0	
ABSTAIN	0	
ABSENT	1	Councilor Preisler



Joe Henry, Mayor

Attest:



Kelli Weese, City Recorder

Current & Proposed Zoning Map

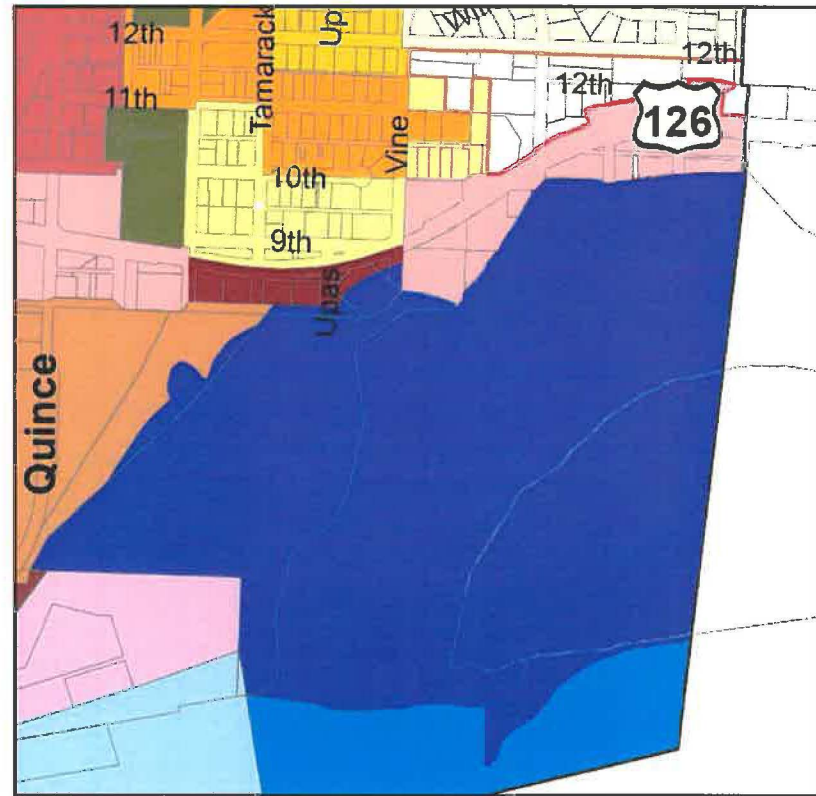
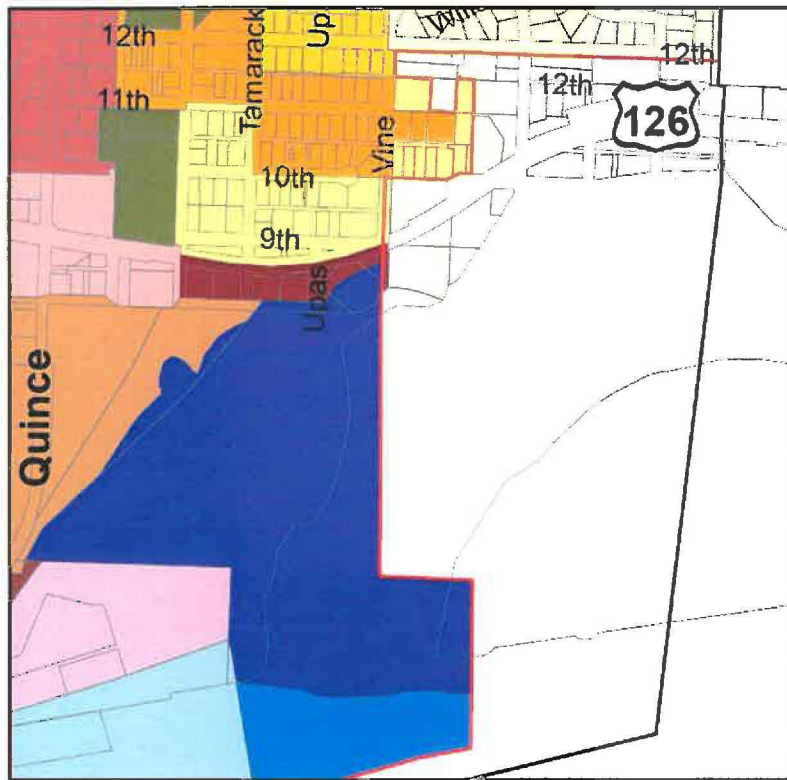
Ordinance 14, Series 2016 - Exhibit A

Map 18-12-26-31 Tax lots 02300, 02400, & 06300; Map 18-12-26-42 Tax lots 01700, 01800, 01900, 02000, 02100, & 02300 & Estuary and adjacent rights of way as described in Exhibit B of Ordinance 13, Series 2016

Zoning Assignment and Annexation

Current – Lane County Neighborhood Commercial

Proposed – Commercial, Natural Estuary and Conservation Estuary



FINDINGS OF FACT

Ordinance 13, 2016: Exhibit "C"

Ordinance 14, 2016: Exhibit "B"

Public Hearing Date: October 17, 2016

Planner: Wendy FarleyCampbell

I. PROPOSAL DESCRIPTION

Proposal: Annexation

A request for the City of Florence to annex properties from Lane County into the city.

Rezoning

Upon annexation, the properties will be zoned with a city zoning district. The corresponding zoning district matching the included properties' plan designation is Commercial District, Natural Estuary and Conservation Estuary Districts and Natural Resource Conservation Shoreland Management Unit Overlay

Applicant: Don and Norma Saxon

Property Owners/Petitioners & Associated Properties (described in Exhibit B of Ordinance 13, Series 2016):

Don and Norma Saxon excepting those submerged and submersible lands owned by the Oregon Department of State Lands within the listed tax lots

Land north of Hwy 126:

MR 18-12-26-31 Tax Lot 2300

Land south of Hwy 126 with partial development:

05454 Highway 126, Map and Taxlot 18-12-26-31-02400, Map and Taxlot 18-12-26-31-6300, Map and Taxlot 18-12-26-42-01700, & Map and Taxlots 18-12-26-42-01800 & 01900

Land south of Hwy 126, east of partially developed lands

Map and Taxlots 18-12-26-42-02000, 02100 and 2300

Other land to be annexed:

Rights-of-way: ODOT-Hwy 126; City of Florence-Willow (North & South of Hwy 126), 10th, Xylo, Yew, and ZebraWood south of Hwy 126 (undeveloped) and east west running alleys of Blocks 72, 75 & 76 south of Hwy 126 (undeveloped)

Submerged and submersible lands: Oregon Department of State Lands—
South of Hwy 126 from the existing city limits to the eastern and southern
UGB boundary which follows the Federal Navigation Channel

Comprehensive Plan Map Designation: Commercial

Surrounding Land Use / Zoning:

Sites:

Land north of Hwy 126:

MR 18-12-26-31 Tax Lot 02300: County C2 (Neighborhood
Commercial District) and Overlays BD & AS (Beaches & Dunes and
Airport Safety Combining Zone)

Land south of Hwy 126 with partial development:

05454 Highway 126: Incomplete Commercial (piers with building,
gravel lot area)

Map and Taxlot 18-12-26-42-01800 & 18-12-26-31-02400 County C2
(Neighborhood Commercial District) and Overlays BD & AS (Beaches
& Dunes and Airport Safety Combining Zone)

Map and Taxlot 18-12-26-42-01700 & 01900 & 18-12-26-31-06300
County C2 (Neighborhood Commercial District) and Overlays BD & AS
& NRC (Beaches & Dunes, Airport Safety Combining Zone, and
Natural Resources Conservation)

Land south of Hwy 126, east of partially developed lands

Map and Taxlots 18-12-26-42-02000, 02100, & 02300 County C2
(Neighborhood Commercial District) and Overlays BD & AS & NRC
(Beaches & Dunes, Airport Safety Combining Zone, and Natural
Resources Conservation)

North: Undeveloped / City RS (Single Family Residential) &
Single Family Residences / County RA (Suburban Residential)
South: Siuslaw River / County NE (Natural Estuary and Conservation Estuary
District)
East: Undeveloped / County NR (Natural Resource)
West: Single Family Residences and Undeveloped Residential &
Commercial / City RS (Single Family Residential) H (Highway District),
Estuary Management Unit NE (Natural Estuary District) and Shoreland
Management Unit NR (Natural Resource Conservation Overlay)

Streets / Classification: Hwy 126 / Major Arterial; Willow (North & South of Hwy
126), 10th, Xylo, Yew, and Zebrowood (South of Hwy 126) / Local Streets

(undeveloped) and east west running alleys of Blocks 72, 75 & 76 south of Hwy 126 (undeveloped)

II. NARRATIVE

There are nine tax lots under consideration for annexation as well as submerged and submersible lands south of Hwy 126 and the following rights-of-way Hwy 126, Willow (North & South of Hwy 126), 10th, Xylo, Yew, and Zebrawood south of Hwy 126 (undeveloped) and east west running alleys of Blocks 72, 75 & 76 south of Hwy 126 (undeveloped). 05454 Highway 126 consists of Map and Taxlots 18-12-26-42-01700, 01800 & 01900 & 18-12-26-31-02400 & 06300 and is developed with one building atop piers with associated gravel lot.

The one submerged lot south of Hwy 126 (Tax lot 2200/Lot 14 of Block 75, east of Yew St.) south and between land identified as tax lot 2100 is not included with this application. The petitioner attempted to contact the owner of the vacant property, but received no response. Staff spoke with the owner, Debra Burkett, on October 7, 2016 who stated she did not wish to be included in the petition for annexation.

The property owners are the initiating applicants, Don and Norma Saxon who petitioned for annexation on July 18, 2016. Their application was deemed complete as of July 18, 2016. This proposal is reviewed under both the "Double Majority" annexation (ORS 222.125) and "Triple Majority" methodologies since there were no electors. The annexation and zoning assignments will be processed as a quasi-judicial zone amendment with a hearing. It is not currently City policy to annex properties which have not petitioned the City to annex.

The properties are within the Siuslaw Rural Fire Protection District. The properties will continue to be served by SVFR.

The applicant, petitioners, or any others accessing Oregon Department of Transportation right-of-ways must apply for access permits from ODOT.

III. PUBLIC NOTICE

Notice of the Planning Commission's public hearing was mailed on September 7, 2016 to property owners within 300 feet of the proposed annexation areas. Notice was published in the Siuslaw News on September 14th and 21st. On September 7, 2016 notices were posted at City Hall, the Florence Post Office, the Justice Center, and the Siuslaw Public Library.

Notice of the City Council's public hearing was posted on the properties October 4, 2016, published in the Siuslaw News on October 5th and 12th. On October 4, 2016 notices were posted at City Hall, the Florence Post Office, the Justice Center, and the Siuslaw Public Library.

Public Comments:

At the time of this report, the City had received no written public comments.

IV. REFERRALS

On September 7, 2016, referrals were sent to Florence Public Works and Police; Lane County Transportation, Surveyor, Land Management and Environmental Health; Oregon Department of Transportation; DLCD; the U.S. Post Office; Charter Communications; Century Link; Coastcom; Central Lincoln PUD; Heceta Water PUD; Central Coast Disposal; Country Transfer and Recycling; Department of State Lands; and Siuslaw Valley Fire and Rescue.

Referral Comments:

At the time of this report, the City had received comments from Daniel Ingram, Lane County Transportation; Lindsey Eichner, Lane County Planning; and Chuck Perino, Department of State Lands.

Daniel Ingram, Senior Engineering Associate at Lane County Public Works, stated that Lane County Transportation Planning had no comments on the proposal.

Lindsey Eichner, Associate Planner at Lane County Planning, stated that Lane County Planning had no comments but would like a follow-up when the action is complete so they can close out the building permits.

Chuck Perino, Proprietary Coordinator at Oregon Department of State Lands, stated their department owns the submerged and submersible land in that area....there are no impacts to the land as a result of this annexation, and have no real comments on the action occurring. Any development, leases, easements, etc. would still go through their processes and would require local planning signoff.

Stacy Scott, Cultural Resource Protection Specialist, Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians, requests consultation prior to site development or utility improvements to identify cultural concerns. She cited city code requiring a land use process and approval for the utility improvements or modification of historic structures (fish weirs and plank house foundations)

V. APPLICABLE REVIEW CRITERIA

Annexation

Oregon Revised Statutes (ORS)

222.111; 222.120; 222.125; and 222.170 (2)

Florence Realization 2020 Comprehensive Plan

Chapter 1: Citizen Involvement, Policy 4

Chapter 14: Urbanization, Policies 1 and 3 through 7

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

Rezoning, Historic Resources, Policy 4

Florence Realization 2020 Comprehensive Plan

Chapter 2: Land Use, Policies 1 & 8, Section on Commercial Designations

Chapter 16: Estuarine Resources, Natural Estuary Section

Chapter 17: Coastal Shorelands: Ocean, Estuary, and Lake Shorelands, Natural Resource Conservation Section

Florence City Code (FCC)

Title 10, Chapter 1: Zoning Regulations, Sections 10-1-1-5-E-3, 10-1-2-3, and 10-1-3-B-4

VI. FINDINGS OF FACT

The following findings support Ordinances 13 & 14, Series 2016 and address approval criteria within the Florence Realization 2020 Comprehensive Plan, Florence City Code and State Statutes.

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

FLORENCE REALIZATION COMPREHENSIVE PLAN

Chapter 1: Citizen Involvement

“Goal

To develop a citizen involvement program that insures the opportunity for citizens to be involved in all phases of the planning process.”

Policies

4. “Official City meetings shall be well publicized and held at regular times. Agendas will provide the opportunity for citizen comment.”

This proposal is consistent with this citizen involvement goal and Policy 4 because the process used by the City to approve Ordinances 13 & 14, Series 2016 of this annexation and zone assignment request was consistent with the City’s applicable citizen involvement program, which ensured that citizens were provided an opportunity to be involved in this land use action. Specifically, official City meetings on this action were publicized and held at regular times and provided the opportunity for citizen comment.

The public process used met all of the requirements stated in Florence City Code pertaining to the rezoning of properties.

The proposal is the subject of public hearings before both the Planning Commission and the City Council. This annexation proposal was considered by the Florence Planning Commission on September 27, 2016. The public hearing was noticed in accordance with Florence City Code 10-1-1-5 as a quasi-judicial land use decision before the Planning Commission. The City notified property owners within 300 feet

of the sites 21 days prior to the Planning Commission public hearing. The City also published the required notice of the Planning Commission's public hearing two times in the Siuslaw News on September 14th and 21st. Finally, the City posted notice at four public places within the City on September 7th: City Hall, Justice Center, Siuslaw Public Library, and Post Office.

This annexation proposal was considered by the Florence City Council on October 17, 2016. The public hearing was noticed in accordance with Florence City Code 10-1-1-5 as a quasi-judicial land use decision before the City Council. The City published the required notice of the City Council's public hearing two times in the Siuslaw News on October 5th and 12th. Finally, the City posted notice at four public places within the City on October 5th -- City Hall, Justice Center, Siuslaw Public Library, and Post Office.

The Planning Commission and City Council agenda packets were posted on the City's website prior to the public hearing. The staff report was available seven days prior to the Planning Commission and City Council public hearings; therefore, this proposal was reviewed in accordance with the City's acknowledged plan and was consistent with the plan policies for Citizen Involvement.

Chapter 2: Land Use

Policies

- 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."**

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. Documentation of recent study results in the record 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.

Commercial

Goal

To utilize appropriately designated land for the development of commercial businesses and establishments in a manner that provides for the needs and desires of the Florence resident, tourist, and regional marketplace while enhancing the attractive nature of this coastal community.

Policy 8. Any northward expansion of commercially designated lands along Highway 101 and eastward along Highway 126 shall be consistent with the land use element of the Comprehensive Plan.

Currently, these lands are zoned either Suburban Residential or Neighborhood Commercial, by Lane County. Most of the properties under consideration for annexation do not feature a commercial component and feature vacant undeveloped or undevelopable land. While these properties will be zoned to Commercial when annexed into the City, that zoning will allow development of the properties with uses consistent with other development westward along Highway 126, which is already within the city limits. Those properties are zoned Highway and are seeing development in line with what is permitted within that district.

The current commercial structure on the primary subject property will be considered pre-existing non-conforming until such time that the development on the lot is expanded to meet additional commercial needs. Then, the proposed uses and site design will be reviewed for consistency with the land use elements of the Comprehensive Plan and the implementing policies with the Florence City Code.

Commercial Plan Designation Categories and Background

Commercial

...The third area designated Commercial are lands north and south of Highway 126 and east of Quince Street. These lands were designated Highway Commercial in the 1988 Comprehensive Plan Map and zoned for commercial use by Lane County. Retail and service commercial, professional offices, lodging and restaurant establishments are appropriate uses for this area. Upper story residences are encouraged where they can be protected from highway impacts.

The implementing zoning district for the Commercial Plan designation is the Commercial District.

The non-submerged properties under consideration for annexation are designated Commercial and will be rezoned to their corresponding zoning of Commercial. The existing building in this area has a county approval for retail sales. These areas will add to the commercial lands inventory within the Florence city limits.

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

Historic Resources

Goal

To identify and protect the historic resources within the community.

Policy 4. The City shall maintain a working relationship with the Siuslaw Pioneer Museum and the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians, which are repositories of much of the pre-history and history of the Florence area.

Staff from the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians submitted testimony asking the city to notice the tribe prior to any ground disturbing activities involving construction on the applicants' site or installation of the city's utilities in the area in accordance with Title 10 Chapter 2, Subsection 12-E 1 and 4. They state the area is located near a historic tribal village and is a culturally sensitive archaeological location. The city will follow its adopted land use processes set out by city code as requested of the Tribe.

Chapter 14: Urbanization

Goal

To provide for an orderly and efficient transition from County/rural land uses to City/urban land uses.

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 properties to the west and north; it is, therefore, an orderly transition from rural to urban land uses.
- The existing public infrastructure is an orderly and efficient mechanism for providing urban services to this geographic area. The annexation will allow the provision of City water and sewer to the properties being annexed. All connections to the sewer line will be funded through system development charges, connection fees, and the sewer and water funds in the 2016-17 City of Florence Budget. This financing method allows for cost-effective service delivery to all users of the system.
- The provision of sewer service will allow the property owners to avoid additional construction of septic systems and inefficient use of open space contained within the lots to be annexed for the drain field.

Annexation Policies

- 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 property owners in order to receive City services, but 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 City has received a petition from the property owners with signature of all listed property owners and electors. This policy criterion is met.

The proposed annexation is not an island annexation because the territory to be annexed is contiguous with the Florence city limits.

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, storm drainage, streets, fire and police protection, power, and communications. The 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 existing and possible future commercial development and has concluded that there is sufficient capacity in the City's wastewater treatment facilities to serve the existing uses without negatively affecting existing customers.

Water: The Florence Public Works Department has evaluated the impact of the existing and possible future commercial development and has concluded that there is sufficient capacity in the City's water collection and treatment facilities to serve the existing uses without negatively affecting existing customers.

Stormwater: There will be no change in the handling of stormwater upon annexation. The properties will develop stormwater treatment systems consistent with code when site improvements are made.

Streets: The properties are accessed via Highway 126, which are under ODOT jurisdiction. As a major arterial, Highway 126 is intended to serve high volumes of regional traffic, which it currently does to the pre-existing annexing area. The increased usage (vehicular trips) made available by annexation and zone change can be accommodated by Highway 126.

Fire: Siuslaw Valley Fire and Rescue District currently provides protection services to the annexation area and will continue to do so following the annexation. The City

eliminated contractual agreements with Siuslaw Valley Fire and Rescue that previously provided protection services to city residents.

Police: Once annexed, the City will provide public safety services. The Florence Police Department will 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. 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. 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.

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.

Staff sent referral requests to Lane County on September 7, 2016. Lane County Transportation & Planning have responded. Their referral comments are included above within the Referrals section.

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.

Staff sent a request for comments on September 7, 2016 to Heceta Water Public Utility District. The properties are outside their service boundaries. No replies were received.

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

The applicant and petitioners of the properties will be required to pay water, sewer, street and stormwater systems development charges. If the partially developed properties had been completed and used, a finding would have been made that the impact to the supporting street and storm systems was pre-existing, therefore, no other systems development charges would have been required at this time. Water service would be available via a well along Highway 126. Future development of the properties will necessitate payment of applicable systems development charges. Any partially and undeveloped properties and expansions to properties will be charged systems development charges commensurate with their impacts on the systems. 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.

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 redevelopment of the properties, with the exception of maintenance and access off of Highway 126 adjacent to the properties, which is maintained by ODOT.

Chapter 16: Siuslaw River Estuarine Resources

Goals

- 1. To recognize and protect the unique environmental, economic, cultural, and social values of the Siuslaw Estuary and associated wetlands.**
- 2. To protect, maintain, where appropriate develop, and where appropriate restore the long term environmental, economic, cultural, and social values, diversity and benefits of the Siuslaw Estuary.**
- 3. To provide for appropriate uses with as much diversity as is consistent with the “Shallow Draft Development” Oregon Estuary Classification, and taking into account the biological, economic, recreational, cultural, and aesthetic benefits of the estuary.**

Natural Estuary Management Unit (MU) Designation

The purpose of the Natural Estuary Management Unit is to assure the protection of significant fish and wildlife habitats, the continued biological productivity within the estuary, provide for educational and scientific needs and to maintain a level of diversity essential to provide for a long-term, dynamic ecosystem which can withstand a variety of pressures. All major tracts of saltmarsh, tideflats and eelgrass

and algae beds will be found in this MU, as they are the areas of primary biological productivity without which the health of the entire estuary could not be maintained. Uses within the “Natural Estuary” MU shall be of a low-intensity, undeveloped nature stressing minimal human impact.

The Natural Estuary MU applies within the Florence UGB to Management Units C and G on Map 17-1.

Management Unit G is the tide flats at the mouth of the North Fork of the Siuslaw, both north and south of the Highway 126 Bridge.

Rationale is:

- a. Extensive seagrass beds
- b. Benthic fauna, such as softshell and macoma clams and shrimp
- c. Major tract of tidal marsh and productive tideflats
- d. Shorebird use
- e. Low intensity recreational importance

The extensive eelgrass beds, aside from being extremely important for nutrient exchange, provide an excellent habitat for many organisms, both by direct attachment and as a result of its stabilizing effect on the substrate. One benefit of this biologically rich condition is excellent fish habitat. Furthermore, the tidal flats, because of their close proximity to the population center, are one of the most heavily used sites for recreational clam digging. A recorded tribal archaeological site is located in this Management Unit, providing evidence of tribal utilization of this habitat and confirming the long-term productivity of this habitat. When this management unit designation was assigned in 1978, the Siuslaw had approximately 750 acres of tidelands, about 20 percent of the river’s total estuarine habitat. Only the Salmon and Chetco River estuaries have smaller percentages of tidelands. Because of the unique value of these lands for nutrient productivity and biological habitat, combined with the scarcity of tideland in the Siuslaw, the importance of a natural designation on this area is apparent.

The estuary lands within the area proposed for annexation will be classified as Natural Estuary Management Unit and Conservation Estuary Management Unit consistent with the Coastal Resources Management Plan. The Natural Estuary area is located in the Management Unit of “G.” Any existing structures constructed or fill placed within this MU is pre-existing non-conforming. The petitioners’ phased site plans reviewed and approved by Lane County through their land use approval process for additional buildings to be placed on the piers are pre-existing non-conforming, albeit the approvals are over 20 years old. The utility lines to serve the proposed annexation that are constructed within the right-of-way and on-site will require a land use process in accordance with Florence City Code Title 10 Chapter 2, Section 12E.

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

Goals

1. To conserve, protect, where appropriate, develop and, where appropriate, restore the re-sources and benefits of coastal shorelands, recognizing their value for protection and maintenance of water quality, fish and wildlife habitat, water-dependent uses, economic resources, cultural resources, and recreation and aesthetics.
2. To reduce the hazard to human life and property, the adverse effects on water quality, and the adverse effects on fish and wildlife habitat, resulting from the use and enjoyment of Florence's coastal shorelands

14. In Natural Resources Conservation Management Units, the following additional policies shall apply:

- a. For Shorelands in the Natural Resources Conservation MU within the Florence UGB, implementation requirements in Lane Code Chapter 10 Overlay Zoning Districts shall apply outside city limits, and the Natural Resource Conservation Overlay Zoning District in Florence City Code Title 10 Chapter 19 shall apply inside city limits.
- b. Uses shall fall within and respect Priorities 1-5 of the Priority Statement (Policy 12).
- c. Filling in Coastal Lakes adjacent to this MU shall only be allowed in very rare instances and after a complete study of potential physical or biological impacts on the Lake. The cumulative effects of all such fills shall be considered. Positive benefits must outweigh negative effects.
- d. Land divisions outside city limits within the Florence UGB shall not be allowed prior to annexation to the city. Land divisions within city limits in this MU shall be approved only with affirmative findings that the land division and subsequent use are consistent with shoreland values as identified by on site evaluation.
- e. For any approved development on coastal lake or estuarine shoreland in this MU, a minimum 50' horizontal buffer zone is required from the estuary or lake. (Setback requirements on ocean shorelands in this MU will vary depending on the rate of erosion in the area and will be determined by site review, with a 100 foot minimum.)
- f. Only developments and activities which do not pose a threat to life or property from land instability, erosion or other natural hazard shall be allowed.

Natural Resources Conservation Management Unit Designation

This designation, when applied to lands within the Florence UGB is provided to allow for human activities consistent with long-term use of natural resources in harmony with natural systems of the coastal shorelands and waters. This designation is meant to ensure that all changes occur with recognition of, and respect for, those natural systems. Activities that conserve or enhance resources are encouraged, as well as recreation and public access to the coastal waters.

This Plan designation shall be implemented through the Natural Resources Conservation Overlay District in Lane Code Chapter 10, for the area outside city limits; and through the Natural Resource Conservation Overlay District in Florence

City Code Title 10, Chapter 19, for the area inside city limits. This city Overlay District will be applied to property in this MU when annexed to the city.

The Natural Resources Conservation Management Unit (MU) designation applies within the Florence UGB to the following areas shown on Map 17-1: the area north of the North Jetty (MU #50); along the estuary in southeast Florence (MU #5); along the North Fork (MU #6); Munsel Lake Shorelands MU #4; and Heceta Junction Lake Shorelands.

Management Unit #5 is a 50-foot wide strip of land measured from the mean high tide line, starting at the northern boundary of MU #4 and extending to the UGB, including any adjacent lands within the 100-year floodplain.

Rationale is:

- a. Steeply rising bank limits estuarine influence;
- b. Adjacent tideflats limit accessibility to river channel;
- c. Expansive tideflats limit erosion danger;
- d. Adjacent to a biologically productive part of the estuary – marshes at the confluence of North Fork and Main Stem;

This management unit is intended to protect the riparian vegetation and provide a buffer for the adjacent natural estuarine Management Unit. Hazard of flooding or bank erosion is limited by the steeply rising banks and the wide expanse of tideflats adjacent. The adjacent properties east of Munsel Creek have developed street access and are provided with city services; city setbacks and parking requirements will limit the extent of development on the south side of Highway 126.

The shorelands proposed for annexation along the south side of Hwy 126 will have a shorelands management unit overlay of Natural Resources Conservation Unit, specifically defined in Management Unit #5.

Any structures constructed or fill placed within this MU are pre-existing non-conforming. The petitioners' site plans reviewed and approved by Lane County through their land use approval process for additional buildings to be placed on the existing piers are pre-existing non-conforming, albeit the approvals are over 20 years old. As such the 50' setback is not achievable under those approvals. However, as discussed above in policy additional land divisions will not be permitted.

OREGON REVISED STATUTES

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 proposed annexation area is located within the urban growth boundary of the City of Florence, all within Lane County. The annexation is contiguous to the City from the west on the south side of Hwy 126 and from the west and north for properties on the north side of Hwy 126. It is bordered by the Siuslaw River to the south.

(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.

This proposal for annexation of the subject properties was initiated by petition to the legislative body of the City by owners of real property in the territory to be annexed.

(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 properties will pay property taxes at the same rate as other properties within the City consistent with Oregon laws governing taxation. This 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, expresses 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 City received written consents from 100% of the owners within the proposed annexation area and there are no electors, as allowed in ORS 222.170; therefore, an election is not required.

ORS 222.120 Procedure without election by city electors; 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, Services 2010 expresses 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.

(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 expresses 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. A public hearing on all annexations will be held allowing City electors to be heard on the annexation. Consistent with this Resolution, the City Council held a duly advertised public hearing on October 17, 2016, after receiving a recommendation from the Planning Commission. The electors of the City may appear and be heard on the question of annexation at that public hearing.

(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 and City Council public hearings were noticed as required. Notice of the public hearings were published in the Siuslaw News on September 14th and 21st and October 5th and 12th, 2016. Notices were posted in four public places in the City at City Hall, Justice Center, Siuslaw Public Library, and Post Office on September 7th, 2016 and October 5th.

(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 lines of properties on the south side of Hwy 126 and on the west and north side for property on the north side of Hwy 126. The City Council held a public hearing on the annexation request on October 17, 2016. An Ordinance passed, as required under (b) showing that the electors and landowners consented in writing to the annexation consistent with ORS 222.170.

(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 was 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 consents from property owners were received by the City on petitions requesting annexation to the City. The City received written consents from all property owners of the properties requesting annexation.

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 nor ever used the reduced process it outlines even though past applications have met the criteria. This application meets the criteria of this statute. There is no policy in City Code requiring a hearing for processing an annexation. Policy requires that a state process that requires a majority of consents be required.

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.

There are two owners of the property in the proposed annexation area. The City received written consents from both property owners of the properties who own 100% of the land in the contiguous area to be annexed representing 100% of the assessed value of real property in the contiguous territory to be annexed prior to the public hearing dates.

(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 in the proposed annexation area. The City has received written consents from all property owners of the properties within the area proposed to be annexed prior to a public hearing before the legislative body of the City of Florence. The written consents were all signed prior to September 27, 2016 and received before the City Council public hearing as required by ORS 222.120.

FLORENCE CITY CODE

TITLE 10: CHAPTER 1: ZONING ADMINISTRATION

10-1-1-5-E-3

- 3. In the case of a rezoning request, it shall additionally be shown that a public need exists; and that the need will be best served by changing the zoning of the parcel of land in question.**

The applicants requested annexation of their property within the UGB. This process includes the assignment of the zoning district corresponding to their properties' Commercial comprehensive plan designation and that of their management and shorelands unit assignment in accordance with Goals 16 & 17. The property upon annexation will be rezoned from its current county zone to the City's Commercial District zone with a Natural Resources Conservation Shorelands Management Unit Overlay. The estuary will be zoned Natural Estuary and Conservation Estuary. The rezone is necessary to finalize annexation. The public need and good of annexation has been reviewed elsewhere in this report. The selected zoning is appropriate and corresponds to the Commercial Comprehensive Plan designation and the Management Unit designations map of the Florence 2020 Comprehensive Plan.

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).

The zoning district corresponding to the subject properties' Comprehensive Plan designation is Commercial with a Natural Resources Conservation Shorelands Management Unit Overlay. The Commercial zone with a Natural Resources Conservation Shorelands Overlay, Natural Estuary Management Unit and Conservation Estuary Management Unit designations are assigned upon approval of the request from Council and finalization of the annexation process with the county.

The developable properties meet the minimum lot frontage dimensions and lot sizes for the Florence City Code Title 10, Chapter 15: Commercial District. It is unknown if the structure currently on the lots proposed for annexation meet the setback requirements of the Commercial District, Natural Estuary District, Conservation Estuary District and Natural Resources Conservation Shoreland MU. Upon annexation, the county approved phased site plans and uses on these properties and the lots themselves would be considered pre-existing non-conforming. Expansion from those plans approved by the county or a change of use will require the sites to meet land use regulations in proportion to the expansion or change of use.

10-1-3: AMENDMENTS AND CHANGES

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 September 27, 2016, the Planning Commission held a public hearing on this annexation request and quasi-judicial zone assignment. Then on October 17, 2016 the Florence City Council held a public hearing on the annexation 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. 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.

VII. CONCLUSIONS

The evidence in the record demonstrates that the annexation and zone assignment are consistent with the policies set forth in state statutes, Florence City Code, and the Florence Realization 2020 Comprehensive Plan, based on the findings.