

**CITY OF FLORENCE**  
**Ordinance No. TBD Series 2020**  
**FINDINGS OF FACT**  
**Exhibit B**

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**Planning Commission Public Hearing Date:** November 10, 2020  
**City Council Public Hearing Date:** TBD  
**File Nos:** PC 20 22 ANN 01 and PC 20 23 ZC 02 & 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.

Rezoning

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 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 / 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 Ocean 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 DLCD 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 those services are available. After annexation, the Property will be provided City services such as sewer and police protection. The Property is within the Siuslaw Rural Fire Protection District. The Property will continue to be served by all districts presently providing public services.

## **III. PUBLIC NOTICE**

Notice of the proposed City Code Amendments 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 site on October 28<sup>th</sup> to change the first hearing date to November 10<sup>th</sup>.

Notice of the Planning Commission’s public hearing was mailed on October 14, 2020 to property owners within 300 feet of the proposed annexation areas. Notice was published in the Siuslaw News on October 28<sup>th</sup> and November 4<sup>th</sup>, 2020. On October 14<sup>th</sup> 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.

## Public Comments:

At the time of this report, the City received over 73 sets of comments/concerns on this application. These are provided under separate cover. In summary these comments included concerns for the wetland areas and associated habitat and flooding concerns, stormwater drainage, conflicts with previous development promises, additional traffic on the local roads, and lack of pedestrian facilities. These concerns are not directly applicable to the annexation and zoning of a piece of property. There are no criteria applicable to the concerns raised. Once the property is annexed and a subdivision or platting application is received most if not all of the concerns mentioned will be addressed at that time.

## 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:

At the time of this report, the City had received the following comments:

- 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, dated October 6, 2020. 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.*

- 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 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).*

## V. APPLICABLE REVIEW CRITERIA

### Annexation

#### **Oregon Revised Statutes (ORS)**

222.111; 222.120; 222.125; and 222.170 (2)

#### **Florence Realization 2020 Comprehensive Plan, Chapters**

- 1: Citizen Involvement, Policy 4
- 2: Land Use, Policy 6; Residential Policies 2, 7, 8 & 10; and Section on Residential Plan Designations
- 8: Parks, Recreation and Open Space; Parks and Recreation section, Policy 3
- 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 10-1-1-6-3 & 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, Policy 4
- 2: Land Use, Policy 6; Residential Policies 2, 7, 8 & 10; and Section on Residential Plan Designations
- 17: Coastal Shorelands: Ocean, Estuary and Lake Shorelands, Policies 11 & 17 Prime Wildlife

#### **Florence City Code (FCC), Chapters**

- 1: Zoning Regulations; Sections 10-1-1-6-4, 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 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 and State Statutes.

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

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## FLORENCE REALIZATION COMPREHENSIVE PLAN

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### Chapter 1: Citizen Involvement

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## **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 policy because the process used by the City to approve the resolution recommending approval of 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 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.

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## **Chapter 2: Land Use**

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## **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. 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.**

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.**

Currently, this land is zoned Suburban Residential/Interim Urban Combining District Overlay /Prime Wildlife within Lane County and is undeveloped. The implementing zone for this area is Low Density with a Prime Wildlife Overlay due to the proximity and location of the South Heceta Junction Seasonal Lakes. The City has established policy in the Comprehensive Plan and city code regulating development adjacent to these natural resources and land use classifications. The adjacent street infrastructure is designated either Urban Local or Local Access Roads serving just the Idylewood and Sea Pine Subdivisions and thus away from high concentrations of traffic. The surrounding areas 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 code 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.**

**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.**

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 Medium Density Residential district. This Property's location adjacent to this higher 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.

The applicants have proposed the annexation and zone assignment of Low Density Residential. This proposal meets all the requirements of this zone such as minimum lot size and width outlined in Title 10 Chapter 10, which is 50 x 80.

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## **Chapter 14: Urbanization**

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### **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 public right-of-way, Oceana Drive to the west; 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 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 property owners to eliminate the need for septic systems and their maintenance and repair.
- 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**

- 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. 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.

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 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. Recent annexations found the Waste Water Treatment Plant has an excess capacity of .555 million gallons daily.

Water: The properties are currently undeveloped. The properties will eventually be served by a connection to Heceta Water People's Utility District services.

Stormwater: There will be no change in the handling of stormwater upon annexation. Upon development, the property will be expected to meet City Code, retaining all stormwater on-site.

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. Access would be proposed and reviewed with a development proposal. 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 street availability. Improvements to the adjacent streets will be accomplished in conjunction with improvements to the property.

The City is not requesting maintenance transfer of Oceana Drive at this time. The County has submitted testimony requesting the above-mentioned streets be annexed concurrently with this proposal. At the time of writing staff does not have a recommendation for Planning Commission.

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.

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. 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.**

Referrals 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 recommendation does not include annexation of these streets at this time. Lane County's comments will be considered in the annexation and zoning assignment action.

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 occurred. Lane County will be informed of all proposed developments occurring on the property in the future until that transfer has completed.

- 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. As of this report writing no testimony had been received.

- 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.

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## **Chapter 8: Parks, Recreation and Open Space**

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- 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.**

The lands to the south and east of the Property is designated Three Mile Prairie in Lane County Parks. 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.

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

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### **Policies**

**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 16 of the Florence Realization Comprehensive Plan.

**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 it is not a development application. They will apply at the time a development application is received once annexed.

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## **OREGON REVISED STATUTES**

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### **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.

**(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.

**(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. 8, Series 2008, adopted by the City Council, the legislative body of the City, on April 21, 2008, 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.

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.

**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. 8, Series 2008 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.

**(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. 8, Series 2008 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. A public hearing on this annexation and zoning assignment proposal will be held before both the Planning Commission and City Council allowing City electors to be heard on the proposed annexation and zone change.

**(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 required. Notice of the public hearing was published in the Siuslaw News on October 28<sup>th</sup> and November 4<sup>th</sup>, 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.

**(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.**

**(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.

**(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.

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## **FLORENCE CITY CODE**

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### **TITLE 10: CHAPTER 1: ZONING ADMINISTRATION**

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

#### **10-1-1-6-3: TYPE III REVIEWS – QUASI-JUDICIAL LAND USE HEARINGS:**

##### **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. These criteria are met.

#### **10-1-1-6-4: TYPE IV PROCEDURE (LEGISLATIVE)**

##### **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 have proposed an annexation and zoning assignment for their properties. There will be at least two public hearings as part of this process.

**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 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.

### **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 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. 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.

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## **TITLE 10: CHAPTER 10: RESIDENTIAL DISTRICTS**

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### **10-10-1: RESIDENTIAL ZONES AND PURPOSE:**

**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 a Prime Wildlife shorelands management unit overlay. This zone and overlay are appropriate as they correspond to plan designation (Low Density) assigned to property and served by Oceana Drive a local road. No specific policies are applicable under this annexation or zoning proposal related since no development is applied for under this application.

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## **TITLE 10: CHAPTER 19 SECTIONS 5 & 9: Prime Wildlife Overlay District (/PW)**

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This overlay and the associated administrative policies will apply to the areas so designated in the comprehensive plan and included in the petition for annexation.

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**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 impact 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.

## **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 and 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.

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## **VIII. EXHIBITS**

Resolution 20 22 ANN 01: Exhibit A Annexation – Legal Description

Resolution 20 23 ZC 02: Exhibit A Zoning – Zoning Map

Exhibit B: Findings of Fact

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 and Petition

Exhibit J: Statement of Support

Exhibit K: Testimony

Exhibit L: Referral Comments