

February 29, 2016

To: Sarah Absher
Senior Planner
Tillamook County Department of Community Development

From: Richard Hook
Chair, Neskowin Citizen Advisory Committee

Subject: Application 851-15-000265-PLNG: Proposal Rock Cove Subdivision

The purpose of this letter is to convey the observations and opinion of the Neskowin Citizen Advisory Committee (CAC) with respect to the application for development and subdivision made by Seabreeze Associates LP (Robert Fultz, General Partner). At the last CAC meeting, the CAC voted 36-0 (with one abstention) in opposition to this application. The reasons for our opposition are outlined below.

General Observations

First, it should be noted that the property subject to this application is almost entirely within the Neskowin Coastal Hazards Overlay Zone. Mr. Fultz, through legal maneuvers, obtained an exception to the Coastal Hazards ordinances approved by the County last year. If the exception had not been granted, this proposed subdivision would not be allowed, and the property would be limited to one lot. The underlying reasons for the Coastal Hazard Zone have not disappeared; the property is still subject to all of the hazards that were outlined in the approval process for the zone.

Second, the entire tract occupies an undrained topographic low. Please see photo Seabreeze1, taken from above the southeast corner of the property, and photo Seabreeze2, taken from ground level. Everyone, including Mr. Fultz, agrees that there is a substantial wetland on this property (0.79 acres out of a total 3.26 acres). Despite this fact, Mr. Fultz has chosen to maximize the number of lots in his subdivision proposal, thereby requiring a large amount of fill and a questionable means of mitigating the wetland and dealing with the runoff and drainage. This action is an unnecessary complication that creates many problems, as detailed below.

Detailed Observations - Statewide Planning Goal 7

Statewide Planning Goal 7, Areas Subject to Natural Disasters and Hazards, reads: "To protect life and property from natural disasters and hazards, developments subject to damage or that could result in loss of life shall not be planned nor located in known areas of natural disasters and hazards without appropriate safeguards. Plans shall be based on an inventory of known areas of natural disaster and hazard." The hazards listed include ocean flooding and erosion. The State planning requirements specify, among other requirements, that:

1. Developments should be keyed to the degree of hazard present;
2. Plans for flood areas should prefer uses that do not require structural protection;
3. Low density and open space uses should be preferred in floodplains

There are few locations within the Neskowin Coastal Hazard Zone that are more at risk from coastal erosion and ocean wave action and flooding than the proposed Proposal Rock Cove Subdivision. Long-time residents tell us that before the buildup of the foredune and the placement of riprap, this area, locally known as "The Cove", was subject to direct wave action and flooding. Even Mr. Fultz recognizes that this was once an ocean cove, calling his development "Proposal Rock Cove". A breach of the riprap and foredune would subject this area to this direct action from the ocean, filled or not. The "Neskowin

Shoreline Assessment, Coastal Engineering Analysis of Existing and Proposed Shoreline Protective Structures” (ESA PWA environmental engineers, March 2013) that is included in “The Neskowin Coastal Erosion Adaptation Plan” (June 2013), states that “as waves increase in height, the revetment (i.e. riprap) will experience more damage during storms, leading to greater maintenance costs” (page 15); and that the “large volumes of overtopping water have contributed to structural failures” (page 17). The maintenance of the riprap to the west of this property relies almost entirely on property owners on the beachfront, who may, or may not, choose to incur this sizable and ever increasing cost. The riprap and foredune will have to be maintained for the expected term of occupancy of the new homes in this proposed development to prevent the destruction of these homes by the ocean.

Detailed Observations – Wetland Issues

The Neskowin Community Plan, the Oregon Department of State Lands (DSL), and US Fish and Wildlife all concur that there is a sizable wetland on the property (0.79 acres, per DSL, out of a total 3.26 acres). Please see photo Seabreeze3, taken from north of the property, looking south. Building on the wetland requires approval of the Oregon Department of State Lands (and perhaps US Army Corps of Engineers and US Fish and Wildlife). In a letter sent to Mr. Fultz by DSL, dated December 15, 2015, DSL advised Mr. Fultz that “state law establishes a preference for avoidance of wetland impacts. Because measures to avoid and minimize wetland impacts may include reconfiguring parcel layout and size or development design, we recommend that you work with Department staff on appropriate site design before completing the city or county land use approval process.” The development proposal Mr. Fultz submitted to the County, contains no indication that he has worked with DSL on an appropriate site design that avoids and minimizes wetland impacts.

Further, the submitted application proposes to elevate the wetland areas up to grade with 2900 cubic yards of fill. Filling the wetland requires a Removal-Fill permit issued by DSL. This permit has a 120 day review process, including a Public review. As of February 17, Mr. Fultz has not applied for a Removal-Fill Permit; and thus could not obtain this permit, in the event it was approved, any sooner than the middle of June.

Although DSL does not require Mr. Fultz to postpone submission of his application for development to the County until he has obtained an agreement with DSL on an appropriate site design and a Removal-Fill permit, it is obvious that his development plan rests on the assumption that DSL will approve his proposal as submitted. The Tillamook County Land Division Ordinance, Section 070, part (1)(h) requires “Evidence that any required State and Federal permits, as applicable, have been obtained or can reasonably be obtained prior to development.” No such evidence has been provided in the application. Given the uncertainty that his application for a Removal-Fill Permit will be approved, especially since the proposed subdivision does not “avoid and minimize wetland impacts”, and given the problems with wetland mitigation, it is inappropriate for Mr. Fultz to submit his application to the County for approval before these issues are resolved.

Wetland mitigation is to be accomplished using two 5-foot-square catch basins connected to drainage lines that feed into two drywells separated by a 149 foot long, 3 foot diameter infiltration pipe on an adjacent Fultz-owned property. The seaward drywell is located within 10 to 15 feet of the top of the riprap revetment. The drywells and infiltration pipe will be only a few feet (at most) above the water table and it is difficult to see how these wells will accommodate the runoff. Sheet 4 of four shows this drainage plan, with the note: “pipe sizes assumed. Drainage calculations to be prepared as part of final design.” Thus, even the engineer does not know if the proposed plan will work at this point. It should be further noted that because “the Cove” is surrounded by higher elevations in every direction, the area

the area to be served by the drainage system is not just the 3.26 acres of the proposed development site but the surrounding 8 acres as well

The drainage plan does not document the suitability of the soils nor the depth of the water table in the area of the proposed dry wells. There is a significant likelihood that the saturated soils in the dry well area could:

- Weaken the riprap
- Damage the adjacent road
- Result in standing water that damages the road and adjacent properties

It seems that, at a minimum, the applicant should be required to demonstrate, by means of a report from a licensed engineer, the feasibility of the wetland mitigation plan, without creating the problems identified above.

Further, the subdivision proposal does not contain a plan or provision for the access to and maintenance of the drainage system. Because the subdivision proposal includes an untested mitigation scheme, DSL could require the Applicant to monitor the drainage system for 5 years, and after that time the monitoring requirement could be extended if standards of the permit are not met. The applicant must also put up a financial instrument that DSL holds until the monitoring is complete. DSL also requires that the mitigation site must also have permanent protection. Furthermore, per the Tillamook County Land Division Ordinance, Section 070, part (1)(f), the applicant must also provide that "all proposed private common areas and improvements if any, are identified on the preliminary plat and maintenance of such areas is assured through an appropriate legal instrument". No such assurance through a legal instrument has been provided.

According to Goal 7 of the Tillamook County Comprehensive Plan, Weak Bearing Soils are compressible soils that undergo a significant decrease in volume when subject to loading. Such soils commonly contain organic matter, such as peat, that release water under pressure. Compressible soils are associated with marshland (wetlands), tidal flats, estuaries, lake margins, and interdune areas, and are most likely present on this property. As acknowledged in the geologic report by R. Warren Krager that is included in the application, subsurface explorations were limited to hand-auger borings that terminated in near surface beach and dune sands. Construction on compressible soils can result in differential settling of a wide variety of structures including homes, roads, and drainage lines.

According to Goal 7, "proper engineering investigations should precede all medium to large construction in regions of possible compressible soils". Also, "protective measures shall be taken to insure that the cumulative effect of a proposed development or fill, when combined with all other development or previous placement of fill, will not increase the water surface elevation above a specified level." In his application, Mr. Fultz has not provided any "proper engineering investigations" nor has he demonstrated that "the cumulative effect of the proposed development will not increase the water surface elevation above a specified level." Tillamook County Land Division Ordinance, Section 060, part (1)(c)vii also states that the County may require that information be provided on the nature of the soil. This information also has not been provided.

Detailed Observations – Road Access

The sole access to the property includes an 800-foot-long section of road with a 20-foot-wide easement (Nescove Drive) that is immediately adjacent to the top of the riprap revetment and experiences overwash during storms during high water periods (this road section is shown in the upper left-hand corner of Sheet 1 of 4 of the Proposal Rock Cove Subdivision Preliminary Plat provided by Mr. Fultz.). Per the Tillamook County Land Division Ordinance, Section 070, part (1)(c): “Access to individual lots, and public improvements necessary to serve the development, including but not limited to water, sewer and streets, shall conform to the standards in Sections 150 and 160 of this ordinance.” Section 150(3) requires that “Improvements may be required by the Public Works Department on streets serving, but not within the boundaries of, the Subdivision or through the Partition of a parcel with a buildout potential of 5 or more parcels” Section 160(3)(a) requires a minimum right-of-way of 30 feet for local roadways. According to Section 160(7), “Whenever existing streets adjacent to or within a tract are of inadequate width, additional right-of-way and surfacing shall be provided by the applicant as part of the Subdivision or Partition”. Widening the road will require the unlikely concurrence of the property owners.

There are also problems with the additional traffic on Nescove Drive. Section 160(2)(b) requires that an “Average Daily Traffic (ADT) for design is to be determined based on the anticipated future usage of the roadway based on maximum density allowed by the zoning”. There is no indication that the applicant has made this determination. The oceanfront access road receives heavy pedestrian traffic during the summer and additional vehicle traffic, particularly during construction periods, will place pedestrians at risk. Passage of emergency vehicles could also be impaired by increased traffic. This potential impairment is a significant concern as the ocean front road is the only means of ingress into or egress out of the site of the proposed development. Furthermore, the heavy truck traffic during construction, especially that associated with mitigating the wetland, will damage the road. The subdivision proposal does not contain a provision for compensation for road damage. Roads in this area are maintained by the South Beach Road Association, a group of property owners that share easement rights to the roads. Mr. Fultz’s record of contributing money to road maintenance is poor. In recent years, he has declined to pay his road assessment fees to the Road Association. We strongly recommend that the County, given these facts, rigorously enforce the provisions of Section 140 of the Tillamook County Land Division Ordinance.

Given these uncertainties, it is our opinion that the road is inadequate for this proposed plan of development.

Conclusion

In summary, the CAC opposes this application.

If, against the opposition of the community and all of the inadequacies of the submitted proposal for development outlined above, the County decides to approve the plan, we ask that the County not approve any of the Uses Permitted Conditionally, per the Tillamook County Land Use Ordinance Section 3.322(3). This area is within the coastal hazard zone, even though an exemption has been permitted for subdivision, and all the reasons for minimizing density still pertain.

We submit this letter and the following photographs to the Tillamook County Department of Community Development for consideration by the Tillamook County Planning Commission.

