

January 26, 2017

To: Board of Commissioners
Tillamook County

Via: Sarah Absher, Senior Planner
Tillamook County Department of Community Development

From: Richard Hook, Chair
William Busch, Vice-Chair
Neskowin Citizen Advisory Committee

Re: Planning Commission's Decision to Approve Preliminary Subdivision Plat Approval Request 851-15-000265-PLNG, Proposal Rock Cove

The purpose of this letter is to convey the observations and opinions of the Neskowin Citizen Advisory Committee (CAC) about the development and subdivision application made by Seabreeze Associates LP (Robert Fultz, General Partner). At the February 6, 2016 CAC meeting, the CAC voted 36 to 0 (with one abstention) to oppose the application. Considering significant modifications to the proposed subdivision, the application was again reviewed by the CAC at its December 3, 2016 meeting, and the vote was 22 to 0 (with one abstention) to oppose the application. The reasons for the Neskowin CAC's opposition are outlined below.

Coastal flooding

The property subject to this application was, until the early 1980's, an embayment open to the ocean. Starting in the 1980's, homes were built on the stabilized foredune ridge seaward of the property. Following the 1997-1999 storms that caused widespread erosion along the Neskowin shoreline, the properties seaward of the applicant's property armored their beachfront with riprap. Despite the presence of the riprap revetment, much of the area of the proposed subdivision is located within the High and Moderate Risk Erosion Zones identified by the Oregon Department of Geology and Mineral Industries (DOGAMI)^{1,2}. The moderate risk erosion zone is subject to inundation during a 100-year storm. Neskowin has experienced three such storms in the last 20 years. The elevation of the applicant's property ranges from 15 feet to 23 feet above sea level. The height of the riprap revetment seaward of the property ranges from 20 to 28 feet³. The calculated total water levels at the riprap for 50-year and 100-year storms are 26.5 feet and 33.5 feet, respectively^{ibid}. There is a strong likelihood that the proposed subdivision site will flood during a 100-year storm and possibly even during a 50-year storm.

Stormwater drainage

The proposed subdivision site is a topographic low. The site is surrounded by hills to the south, east, and north and the foredune/riprap ridge to the west; the site serves as a catchment basin for precipitation that falls on a 10- to 11-acre area. Currently most of the rain that falls on this area is directed toward the proposed

¹ Allan, J.C. and G.R. Priest, 2001, Evaluation of coastal erosion hazard zones along dune and bluff backed shorelines in Tillamook County, Oregon: Cascade Head to Cape Falcon: Oregon Department of Geology and Mineral Industries, Open-File Report O-01-03, 120 p

² Stimely, L.L. and J.C. Allan, 2014, Evaluation of erosion hazards zones for the dune-backed beaches of Tillamook County, Oregon: Oregon Department of Geology and Mineral Industries, Open-File Report O-14-02, 113 p.

³ Neskowin Coastal Hazard Committee, 2013, The Neskowin Coastal Hazard Erosion Adaptation Plan

subdivision site and remains in the wetland until the water evaporates or infiltrates into the soil. With development and the introduction of impervious surfaces, rain water will be diverted away from the site. Diversion of stormwater without damaging neighboring properties is a major concern.

Between January and December 2016, the applicant submitted three different plans for dealing with the stormwater drainage. The final plan, submitted one week before the final Planning Commission hearing (December 15, 2016) has four options. The options include: (1) two scenarios in which water would be discharged through culverts embedded in the riprap revetment; (2) a system that would pump stormwater out of the basin and over a ridge to be discharged into Sutton Creek, a tributary of Neskowin Creek; and (3) the construction of a drain field adjacent to the riprap revetment.

Culverts. It is not clear that the Oregon Parks and Recreation Department (OPRD) will grant a permit to use the existing culvert that is damaged, in need of repair, and discharges onto property that is not owned by the applicant. It also is not clear that OPRD will approve a permit to build a new culvert that would pass through part of the revetment owned by the applicant. A problem with any culvert through the riprap is that periodically the culvert will be submerged. The hydraulics report submitted by the applicant identifies only 10 periods since 1969 for which the high tide elevation was higher than the elevation of the existing culvert outlet. This analysis neglects the fact that ocean waves contribute to the total water level along the riprap revetment. The tidal records cited in the hydraulic report are from a sheltered location in Yaquina Bay, Station 9435380, South Beach OR. The existing culvert is frequently inundated, an observation that may explain why the culvert is currently clogged with driftwood and has been damaged by moving riprap boulders.

Pumping water to Sutton Creek. The weaknesses of the proposal to pump stormwater to Sutton Creek are (1) the dependence on maintaining electrical power during a storm and (2) the fact that during periods of high discharge Sutton Creek poses a flooding problem in the Proposal Rock subdivision. Pumping additional water into Sutton Creek would exacerbate the existing flood hazard. Sutton Creek is also a habitat for endangered Coho salmon, making it unlikely that a permit would be granted to introduce stormwater into the creek.

Drain field and infiltration pipes. The fourth option, an infiltration system located close to the riprap revetment, has the potential to saturate the soils behind the riprap and weaken the riprap revetment. One of the typical failure modes for revetments is “excess groundwater pressure and piping failure through the armor layer”⁴ that would accompany saturated soils behind the revetment. The applicant has not provided sufficient geologic information to assess the suitability of the proposed drain field site. Parameters such as the depth to the water table at the site, fluctuations of the water table during storms, and the infiltration capacity of the site are needed for such a determination.

At the final Planning Commission hearing on December 15, 2016, the feasibility of the four drainage options was discussed at length but no conclusion was reached for handling stormwater. Two comments made by the Tillamook County Public Works Department representative, Ron Newton, are particularly troubling. The first, “viability [of the drainage system] is a function of budget”, suggests that there is an engineering solution to any problem. That maxim is frequently not the case. The second statement, which ultimately served as the resolution to the drainage issue, was that the Public Works Department would “work something out” with the engineering firm representing the applicant. This resolution of the stormwater drainage issue fails on several fronts. 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.” Permits to discharge water onto the beach through culverts in the riprap or pump water into Sutton Creek will be very difficult, if not impossible, to obtain. It is also very concerning that no one final proposal for stormwater drainage was available for review in the public hearing but rather a smorgasbord of proposals from which the commissioners instructed the Department of Public Works and the applicant to “work something out”. This solution completely bypasses the hearing process and possibility of public review and comment, contrary to the entire hearings, review, and approval process the Planning Commission is

⁴ US Corps of Engineers Coastal Engineering Manual, Part V-3, 24-25.

charged to conduct. This brazen attitude by the Planning Commission holds the public process for naught, and replaces it with a closed meeting that is neither legal nor acceptable.

Wetlands fill and buildability

Significant changes for dealing with the 0.79-acre wetland within the development site were proposed in the final plans presented to the Planning Commission on November 10, 2016, compared with the initial plan submitted in January 2016. The initial plan proposed to fill the wetland area and build homes on top of the fill. Revised plans submitted shortly before the first Planning Commission hearing on November 10, 2016 omitted the planned filling of the wetlands with the provision that the four or five homes to be constructed in the wetland area would be built on pilings. Filling the wetlands would have required permits from the Oregon Department of State Lands (DSL) and the U. S. Army Corps of Engineers because the amount of fill would have exceeded 50 cubic yards. It is unlikely that DSL would have readily granted a fill permit. In changing the plans to require building houses on pilings, the onus to obtain fill permits shifts to the future owners of the individual lots. It is possible that building a house on one of these lots might require less than 50 cu yd of fill, but it was not verified whether the DSL calculation for fill amount triggering their 50 cu yd threshold would be established on a lot-by-lot basis or on the cumulative total fill for the subdivision. If DSL were to consider the cumulative total fill for their permit requirement, one or two homes might be built and not exceed 50 cu yds of fill; however, subsequent lot owners would be required to apply for a DSL permit if their fill requirements caused the cumulative total fill to exceed 50 cu yd. In such a situation, it is entirely likely that their request would be denied, and property owners would be unable to build a house on their lot. Allowing the proposed subdivision to go forward without thoroughly clarifying the fill permitting requirements sets a troubling precedent in which the County is sanctioning the creation and sale of lots that future owners may ultimately find are unbuildable.

Failure to meet application deadline

Attorneys Bill Kabeiseman, representing Bora Architects and 15 other nearby property owners, and Zack Mittge, representing the Allgood family, have argued that the application for preliminary plat approval is void because it was deemed complete by the applicant more than 180 days after the initial application. We find these arguments compelling. The Planning Commission accepted the argument of the applicant's attorney, Mr. Hall, that the application was complete before the January 12, 2016 deadline based on a January 5, 2016 email sent by Mr. Hall to Sarah Absher in which he stated "This writing is to request that the application for Seabreeze application be deemed complete based on the information that the county has received to date. Please confirm that the application is "complete"...". No evidence was presented that a confirmation from Ms. Absher was sent. In contrast, the date in the title block of the original Proposal Rock Cove Preliminary Plat engineering drawings is January 14, 2016, two days after the deadline, and an email was sent by the applicant, Mr. Fultz, on January 15, 2016, three days after the deadline, stating "Okay, just sent you the last two items. Please deem complete today." Furthermore, documents supporting the application were originally date-stamped by the Development office on January 16, 2016.

Denial of motion to continue the Planning Commission hearing

The final Planning Commission hearing was held on the evening of December 15, 2016, a day when public schools in both Tillamook and Portland were closed because of icy road conditions. We, three Neskowin CAC officers and one additional passenger, made the drive from Neskowin to Tillamook, but the drive was hazardous and took twice the normal amount of time. The applicant's legal and technical experts were the only other people in attendance, besides two County Staff, County Legal Counsel, and five of the six Planning Commissioners. At the first Planning Commission hearing (November 10, 2016) devoted to the Proposal Rock Cove application, there were over 25 Neskowin property owners and representatives present to oppose the

application. A motion for a continuance of the hearing based on the inability to attend the proceeding was submitted by Mr. Kabeiseman, representing Bora Architects and the consortium of property owners. The motion was rejected by the Planning Commission Chair, and the hearing proceeded. From a procedural standpoint, the request for a continuance was reasonable and valid – it was dangerous for us, the CAC officers, and the others, including the Planning Commission, to attend this meeting. By denying the motion, the hearing was a one-sided affair in which those in opposition to the application did not have the opportunity to testify.

Conclusions

In summary, the Neskowin CAC opposes the Proposal Rock Cove preliminary plat application for the following reasons:

1. The subdivision site is subject to coastal flooding during storms.
2. A viable plan to deal with stormwater drainage that will not damage the property of nearby home owners has not been proposed.
3. It remains unclear whether DSL will grant wetland fill permits that would allow building on all the proposed lots.
4. The application was not complete by the 180-day deadline and should be declared void.
5. The Neskowin community was not given adequate opportunity to voice their opposition to the application.

We submit this letter to the Tillamook County Department of Community Development for consideration by the Tillamook County Board of Commissioners. The Commissioners should be particularly aware of liability issues raised in allowing development of an area with known coastal hazards and potentially unbuildable lots. The Neskowin CAC urges the Commissioners to reject the Proposal Rock Cove Application.