

Exhibit M1-51
City Council Testimony
Received after the Planning Commission Hearing
and prior to
Jan 28, 2021 at 4:00 p.m.

From: [Jeff Gemutliche](mailto:Jeff.Gemutliche)
 To: andy.clark@lanecountyor.gov; Fred.Boss@doj.state.or.us; [Joe Henry](mailto:Joe.Henry); [Joshua Greene](mailto:Joshua.Greene); [Kelli Weese](mailto:Kelli.Weese); lindsey.eichner@lanecountyor.gov; [Mark Brennen Brennen](mailto:Mark.Brennen.Brennen); [Ned Hickson](mailto:Ned.Hickson); [Ron Preisler](mailto:Ron.Preisler); [Wendy Farley-Campbell](mailto:Wendy.Farley-Campbell); [Woody Woodbury](mailto:Woody.Woodbury); zmittge@eugenelaw.com
 Cc: [Thatcher, Cher](mailto:Thatcher.Cher); [Thatcher, Cher](mailto:Thatcher.Cher); [Terry & Kathy](mailto:Terry.Kathy); [Rich & Susan Johnson](mailto:Rich.Susan); [Mike & Linda Harrah](mailto:Mike.Linda); [Mary McCarthy](mailto:Mary.McCarthy); [Linda Bickel](mailto:Linda.Bickel); [Lea Patten](mailto:Lea.Patten); [jok simons](mailto:jok.simons); [Jerry Bateman](mailto:Jerry.Bateman); [Jamie/Jim sikora](mailto:Jamie/Jim.sikora); [Diane Petty](mailto:Diane.Petty); [Cindy Flesher](mailto:Cindy.Flesher); [Cameron La Follette](mailto:Cameron.La.Follette); [Annie & Dave Blanks](mailto:Annie.Dave); "Bruce"
 Subject: Planning Dept. "Purposely" Left Out Parts Of Mike Millers Testimony Re: Benedick Annexation
 Date: Monday, December 7, 2020 4:09:51 PM

COF Planning Department in its "Finding Of Facts Exhibit B" pages 3 & 4 & also 11 dated 12-6-2020 (https://www.ci.florence.or.us/sites/default/files/fileattachments/planning_commission/meeting/packets/15071/exhibit_b_-_findings.pdf), has left out an extensive amount of Public Works Director Mike Miller's "complete" testimony/comments, Exhibit L4 in the following link (https://www.ci.florence.or.us/sites/default/files/fileattachments/planning_commission/meeting/packets/15051/exhibit_11-14_-_referral_comments.pdf) in its recommendation to COF Council for Benedick's Annexation proposal. Read both the full original statement (directly below) and the "conveniently truncated" statement below that for everyone's edification. Leaving out the full statement is outrageous on its face & either a deliberate attempt or, at the very least, an unprofessional misrepresentation of existing facts & testimony that are absolutely pertinent & germane for a decision making body to arrive at the "right" decision. This will affect a large portion of the Florence area residents & environment for years to come & as such the full testimony of the COF Public Works Director needs to be included ! We would also like to know who exactly, & if all planning dept. staff signed off on this recommendation?

Full Statement On Oceana & Adjacent streets made (exhibit L4, streets, stormwater in the following link):

https://www.ci.florence.or.us/sites/default/files/fileattachments/planning_commission/meeting/packets/15051/exhibit_11-14_-_referral_comments.pdf

From: Mike Miller To: Aleia Bailey Cc: planning department Subject: RE: Referral for comment: Land Use Application PC 20 22 ANN 01 & PC 20 23 ZC 02 - Benedick Holdings, LLC Annexation and Zone Change Date: Tuesday, October 6, 2020 5:02:42 PM

Good afternoon Aleia, Below are our comments related to the PC 20 22 ANN 01 & PC 20 23 ZC 02, Idylewood 4th Addition:

Sanitary Sewer Currently, the total sanitary sewer capacity of the treatment plant is 1.3 million gallons per day (mgd) dry weather flow. Our current average dry weather flow is 0.745 (this is pre-COVID-19, the flows are currently less due to COVID-19) which equates to 0.555 mgd of excess capacity at the treatment plant. The City has pressure sanitary sewer collection system facilities located within Rhododendron Drive. The sewer pressure lines consist of parallel 6-inch diameter pressure sewer mains with only one in use. The dual 6-inch diameter pressure lines were designed and installed in anticipation of providing sewer service to this region of the City/Urban Growth Boundary. There is excess capacity in this system and the system was sized to accommodate this area. In order to provide service to the proposed development, 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. Additionally regarding sanitary sewer service, the proposed project will provide opportunities for other surrounding homeowners an opportunity to have City sanitary sewer service if they desire. City sanitary sewer service is currently only available to properties within the City limits. Properties outside of the City limits would need to annex prior to receiving 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, pump stations, 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 The proposed streets within the Idylewood 4th Addition are proposed to be City streets and will need to meet City standards for construction. Oceana Drive is currently classified as a urban local road which is maintained by Lane County. Since it is a urban local roadway, Oceana would not automatically transfer to the City upon annexation. The City will need to evaluate whether or not the street is in an acceptable condition, including stormwater management, to transfer maintenance (Jurisdictional Transfer) of the roadway to the City. Oceana Drive was chip sealed by Lane County crews in 2014 and has some settlement/tree root heave issues (one area on Oceana Drive was addressed by the County about 2 years ago). The determination of long term maintenance of Oceana Drive needs additional analysis, considering maintenance history, stormwater management, Pavement Condition Index (PCI), current conditions of the roadway, and planned repairs prior to the Exhibit L4 City requesting jurisdictional transfer of maintenance responsibilities after annexation. Jurisdictional transfer is a separate process whereby the City would petition the County to transfer maintenance responsibilities. Annexation of local access roads, such as Gullsettle Court and Cloudcroft Lane, most likely would automatically include jurisdictional transfer to the City. This would need to be verified with Lane County.

Stormwater There is a lot of history concerning stormwater in regards to the existing Idylewood 1st and 2nd Additions. The original developer of the Idylewood subdivision installed a stormwater conveyance system as a result of serious flooding that occurred in 1999 in the Sandrift, Saltaire, Oceana and Gullsettle Court areas. The developer installed an underground (piped) stormwater system from Gullsettle Court to Rhododendron Drive. According to County records there are deficiencies with the stormwater conveyance system, namely accessibility for maintenance. Existing cleanout locations between Saltaire Street and

Rhododendron Drive are not large enough for maintenance activities and manholes need to be constructed in their place. Additionally, it is not clear if adequate easements have been established for the entire length of the stormwater system or if they have been dedicated to the County. Additionally, over the years since the stormwater system was installed, there are obstructions and encroachments to the system. These obstructions and encroachments include fences, trees, vegetation, and outbuildings (reported garages and sheds) constructed over the stormwater line. The County required a 10-foot wide travel way to be constructed with a grade and structure base sufficient to support the County's maintenance equipment, which has not been constructed. One last item regarding the existing stormwater system was that after all the items were completed, the developer was to maintain the entire stormwater system from Gullsettle Court to Rhododendron Drive for a period of five years. These items have never been completed and the 5 year warranty period has therefore never been established or started. Florence Public Works only brings this up since stormwater and stormwater management is a critical consideration of the new proposed Idylewood 4th Addition. Stormwater for the proposed Idylewood 4th Addition will need to consider not only management of the surface water runoff, but also groundwater. During times of heavy and concentrated rain events, like the flooding in 1999 and most recently in 2017, the groundwater levels become so high that it prevents surface water runoff from infiltrating into the ground. Additionally, on the eastern boundary of the project, seasonal lakes can compound stormwater management and all elements of stormwater management will need to be analyzed and addressed in order to prevent localized flooding events. Conveyance of stormwater discharges from the subject property (emergency and overflow) will need to be thoroughly addressed in the stormwater management plan for the project. This includes an analysis of the downstream effects of discharges from their stormwater management system. Please also note that 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).

Mike Miller, Florence Public Works Department, Below is a "summary" (12-6-2020, pages 3 & 4, also note page 11 of the same document of the following link)

https://www.ci.florence.or.us/sites/default/files/fileattachments/planning_commission/meeting/packets/15071/exhibit_b_-_findings.pdf of his original written referral comments dated October 6, 2020. **Note How Much Of The Original Testimony of Mike Miller Is Purposely Left Out !**

CITY OF FLORENCE Ordinance No. TBD Series 2020 FINDINGS OF FACT Exhibit B 12/6/20 Planning Commission Public Hearing Date: November 10, 2020 Planning Commission Deliberation and Decision: December 8, 2020 City Council Public Hearing Date: TBD

Pages 3 & 4

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).

Page 11.

Stormwater:

There will be no change in the requirements of handling of stormwater upon annexation. Upon development, the property will be expected to meet City Code, retaining all pre-development stormwater flows on-site. The associated policies reduce the risk of public impacts and support the natural resource area of the coastal lake area.

Streets: The Property abuts the public rights-of-way of Oceana Dr., Cloudcroft Lane, Gullsettle Ct. and Kelsie Way which are under Lane County jurisdiction. These are all urban local or local access streets, and are expected to serve traffic to residences and parks in the area. The existing and any future usage (vehicular trips) made available by annexation and zone assignment can be accommodated by the surrounding platted street availability. Improvements to the adjacent streets will be accomplished in conjunction with improvements to the property when access would be proposed and reviewed with a development proposal. Additionally, adequacy of these rights-of-way would be considered and improvements required when there is a nexus to require their improvement. No vehicular trips are proposed with this application thus no improvements to existing streets is required with this application.

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. Neither the applicant nor the City seeks annexation of these streets at this time. Their annexation may be required for future development.

What the COF Planning Dept. also chooses to ignore are parts of: **"shall not be contrary to the public interest"**

LC 10.315-05 Purpose. As the Comprehensive Plan for Lane County is implemented, changes in District and other requirements of this chapter will be required. Such amendments shall be made in accordance with the procedures of this section. Florence is completing periodic review to update their Comprehensive Plan for application within the long term planning horizon extending to the year 2020. The proposed amendments to Lane Code Chapter 10 are found to support the policy amendments to the Coastal Goal of the Florence Comprehensive Plan. **LC 10.315-20 Criteria. Zonings, rezonings and changes in the requirements of this chapter shall be enacted to achieve the general purpose of this chapter and shall not be contrary to the public interest.** **LC 10.015 Purpose.** The purpose of this chapter is to provide procedures for dividing the unincorporated portions of Lane County into districts and to provide requirements pertaining to such districts in accordance with a comprehensive plan, and is adopted to protect and promote the public health, safety, and welfare, and to promote the implementation of the Comprehensive Plan for Lane County. Such procedures and requirements are intended to achieve the following objectives:

- (1) To encourage the most appropriate use of land and resources throughout the County.**
- (2) To facilitate the adequate and efficient provision of transportation, water, sewerage, schools, parks, and other public requirements.**
- (3) To avoid undue concentration of population.**
- (4) To secure safety from fire, panic, flood, and other dangers.**
- (5) To prevent the overcrowding of land.**
- (6) To provide adequate light and air.**
- (7) To lessen congestion in the streets, roads, and highways.**
- (8) To provide an environment of character in harmony with existing and proposed neighboring use of land.**
- (9) To preserve and enhance the quality of Lane County's environment**

From: Mary McCarthy <avomaria46@icloud.com>

Sent: Tuesday, December 15, 2020 1:17 PM

To: Joe Henry <joe.henry@ci.florence.or.us>; Kelli Weese <kelli.weese@ci.florence.or.us>

Cc: Joshua Greene <joshua.greene@ci.florence.or.us>; ron.priesler@ci.florence.or.us; Woody Woodbury <Woody.Woodbury@ci.florence.or.us>; Wendy Farley-Campbell <wendy.farleycampbell@ci.florence.or.us>; Dylan Huber-Heidorn <Dylan.HH@ci.florence.or.us>

Subject: Benedick Annexation

Ms Weese and Mr. Mayor

I just sent a copy of this email to the Mayor and to Kelli but I missed the DOT between Kelli and Weese. Also, in the copy, cut and paste process I cut off my home address and phone number in the first email.

Mayor Henry and the City Council:

It is patently obvious that despite an overwhelming rejection by those who will be most affected, the people you were elected to SERVE, that this DEVELOPER'S plan is to DEVELOP this property. The Planning Commission and Michael Farthing continue to say this is "only an annexation." What a load of thinly veiled rhetoric! We know what you are "planning" for us.

A corporation based on the other side of Lane County has been trying for YEARS to DEVELOP this property. Benedick, LLC has been thwarted time and again because the land is unsuitable for building, yet right NOW the City of Florence has chosen to look favorably on the "ANNEXATION" proposal? Right NOW when public participation has been reduced to a virtual debacle? Right NOW when we cannot assemble at the "new and improved" City Hall to put your collective feet to the fire? How very convenient for Benedick and the City of Florence.

At a recent Planning Commission meeting, Ms. Farley-Campbell noted that letters received by the City regarding this matter were mostly in opposition. What I'd really like to see is even ONE letter expressing delight with the proposition of being forced to pay many thousand\$ to hook up to the City's sewer system, or to have hundreds more cars traveling up and down Oceana all day and all night, or to make flooding worse for those who already suffer this as a consequence of this very same developer's inadequacies and failure to address past promises to the folks of Idylwood?

My piece of Florence paradise lies within the confines of Heceta South. We, too, are threatened by this proposal. The thought of opening Kelsie Way to access by another development is untenable to me and many of my neighbors who have continued to stand together for years in opposition of Benedick, LLC. We live on Lane County roads but we pay for the upkeep of the roads and we like it that way. We have limited ingress and egress and we like it that way. We have no sidewalks and we like it that way. We have no street lights and we like it that way. We see the occasional bear, deer, coyote, cougar and we like it that way. We see what lies in the future as you rush this through and we DO NOT LIKE IT that way. We also realize that living outside the city limits puts our wishes on your very back burner. We have no say in City matters. We don't vote for you. You don't care what we think. You should.

Mary McCarthy
87950 Kelsie Way
541.997.1767
Sent from my iPhone

Aleia Bailey

From: johnksg <johnksg@yahoo.com>
Sent: Tuesday, December 15, 2020 5:31 PM
To: planningdepartment
Subject: Benedick Holdings application for annexation and rezoning

My name is John McBride and I am the property owner of 87640 Limpit Lane.

I wish to register my **strong opposition** to this proposed annexation and rezoning.

Sent from my Verizon, Samsung Galaxy smartphone

From: Joanne Dal Pra <dalprajoanne@gmail.com>
Sent: Sunday, December 20, 2020 8:22 AM
To: Joe Henry
Subject: Benedick Holdings LLC proposed land annexation

Mayor Henry,

I am disappointed in your eagerness to encroach on the life's of the very constituents who voted you into the office of mayor. Since when did government gain overreach over its citizens? Why have people become so greedy that what directly matters to the majority is dismissed for money!? There has been so much opposition to this now and in the past and you continue to push this on our community. This is not better for anyone! You are the mayor, figure out some other way to make that buck! Florence is a wonderful small idyllic community and we should all want to maintain that feel. Listen to the people, Joe. There was talk this last election of changes in the mayorship. We stood by you in hopes that you would listen to us. Don't be on the wrong side of things. Listen to the concerns of those in your community. We have rights and you shouldn't trample those rights. It's a dark time in our country but we've always had our beautiful Florence to feel good about. Don't take that away from us too. Do the right thing Joe. Oppose this annexation, please.

Joanne Dal Pra
87642 Rhodowood Dr
Florence
Sent from my iPad

Aleia Bailey

From: Paula Ziegelasch <pziegelasch@gmail.com>
Sent: Monday, December 21, 2020 1:51 PM
To: planningdepartment
Subject: ATTN: Planning Commission

Dear Commissioners

In reviewing the Realization 2020 Florence Comprehensive Plan, the clear intent of the document is to protect from land development that is not consistent with “**shoreland values.**” As stewards of this glorious landscape, each voting member of the Planning Commission and City Council is left to evaluate for themselves these referenced “shoreland values”. For me, this value is not measured in dollars.

The Realization 2020 Florence Comprehensive Plan also specifies, in keeping with “the desire of the citizens of Florence to retain an aesthetically pleasing community, the importance of retaining as much as possible of the native vegetation such as the shore pines, wax myrtles, huckleberry, and native rhododendrons cannot be overemphasized.” Rezoning from low density residential will not be in keeping with the intent of the plan.

Furthermore, as evidenced by the Florence Area LWI National Wetlands Inventory (attached), the subject property is smack dab in the center of a wetlands area. Wetlands are defined as “a distinct ecosystem that is flooded by water, either permanently or seasonally, where oxygen-free processes prevail. The primary factor that distinguishes wetlands from other landforms or water bodies is the characteristic vegetation of aquatic plants, adapted to the unique hydric soil.” As a property subject to flooding, it is not feasible for development without risk to the entire community.

An abundance of wildlife have made their homes in the 50 acres in question and will undoubtedly be squeezed out with the encroachment of this development. This area would be much better suited as a park to protect and preserve this important habitat.

Finally, I do not have access to the Lane County file (693 pages) relating to the county’s struggles with Benedick Holdings LLC relating to this property over the last 30 years but I would be interested to see if an Environmental Impact Statement has already been conducted and registered to evaluate the impact to this area. Please include a review of this file in your evaluation prior to making any irrevocable decision on annexation and rezoning.

Thank you for your consideration.

Paula Ziegelasch
87762 Saltaire St.
541-603-6948

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PZ

Aleia Bailey

From: Keith Lockhoven <kbhome@epud.net>
Sent: Monday, December 28, 2020 8:00 AM
To: Joe Henry; Woody Woodbury; Sally Wantz; Bill Meyer; Kelli Weese; planningdepartment
Subject: Benedick Annexation and Zone Assignment Application

For the record, this email is to notify you that I oppose the subject annexation application.

Keith Lockhoven
87656 Saltaire St.
Florence, OR 97439
541-606-2046



Virus-free. www.avg.com

September 14, 2020

Wendy Farley Campbell, Planning Director
City of Florence
250 Highway 101
Florence, Oregon 97439


Ref: Letter against Benedick Annexation Petition

I'm writing this letter against the proposed Benedick Annexation Project. In looking at the aerial photo of where the proposed annexation is, this will cause nothing but problems for current residents of Heceta South and Idylewood.

1. According to the aerial photo, this will become a short cut for anyone wanting to cut over between Rhododendron Drive and Heceta Beach Road. Currently, the roads are too narrow for residents to park their cars along each side of these roads, let alone it becoming a thoroughfare.
2. Along these lines, many residents can walk the neighborhood freely without worrying about being run over, but all our lives will forever be changed when this becomes a short cut!
3. Property values are great now because of the development(s) we live in, but property values will decline once the increased traffic starts up.
4. If this development goes forth, will the City go against its promise not to force annexation to the existing homes in the area?
5. Included in the documents on the City website, this proposed annexation project is being compared to Fawn Ridge and Driftwood Shores. There is no comparison here. The Driftwood Shores area was already developed, and Fawn Ridge had no impact to other pre-existing neighborhoods. It was just an off shoot from Rhododendron Drive, and not directly affecting other homes.
6. Impact to wildlife is also a huge concern. Currently we have a healthy balance with Wood Lake Park and the area around the seasonal lakes for wildlife to live. Taking out another huge chunk of land will drive the animals into the neighborhoods and decimate their habitat.

Florence is already experiencing traffic congestion, parking difficulties in Old Town and shopping areas, endangering pedestrians with increased traffic, and dwindling livability and desire to live in Florence. At what price is the City willing to allow the growth and greed to continue? Do we want to look like another Newport or Lincoln City, or worse yet – a California Coastal town?

We highly urge the City to deny this application.


Cheryl Chipps 87812 Saltaire St


Kenneth Chipps 4936 Sandrift Ct


Judith Chipps 4936 Sandrift Ct


Chris Kohl 87812 Saltaire St

From: Bruce <bwh541@gmail.com>
Sent: Tuesday, December 15, 2020 2:36 PM
Subject: New info on Annexation/Rezoning

CAUTION: This email originated from outside of Central Lincoln. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Friends and neighbors,

Here's a collection of new information re: the proposed annexation that I think you'll find interesting (and, most likely, scary).

My home purchase in 2012 came with multiple Covenants, Conditions, Covenants, and Restrictions (CCRs). The original CCRs for Idylewood which were updated by an "Improvement Agreement" between the City of Florence and JMB Enterprises Inc. (a corporation controlled by the Benedicks), on February 18, 1981. Then, new CCRs were signed on June 7, 1982.

These conditions apply to all lots along Oceana Drive, plus a few on Saltaire and a few on Sandrift; in total, there are 70 lots in the original Idylewood subdivision that are subject to these CCRs and Improvement Agreement.

From the June 7, 1982 CCRs, the most salient points are found under Paragraph 18; allow me to summarize:

Paragraph 18 references the Improvement Agreement, stating that in order "to obtain concurrence with the subdivision by the City of Florence" the Declarants agreed to impose certain improvement obligations in the CCRs. These include:

18.1 says that sanitary sewer lines shall be installed "when city sewage treatment facilities are available." And, "the cost of installation of the sanitary sewer lines within the subdivision shall be borne entirely, on a prorata basis, by the then lot owners." Got that? Not only do you have to pay for your hookup, you have to pay for the sanitary sewer lines that connect with the main trunk line on Rhododendron Drive.

18.2 talks about "Other Improvements," and says that "paving with curb and gutters, storm sewers and sidewalks to city standards shall be installed, "when the City deems it necessary." The paragraph acknowledges that "these improvements are generally required within one year following annexation". The cost of these improvements are borne entirely by the lot owners.

Related to this: The Plat Map shows all our street rights-of-way as 60 feet wide; right now, the pavement is 24 ft. wide. So, the City's "improvements" may consume about 18 feet of the streetside buffer you now enjoy.

18.3 strengthens the conditions of the Improvement Agreement: It says "all lot owners agree to waive any and all rights to remonstrate against annexation." This section also states that "when sewers become available, hook-up will be made without remonstrance." Section 18.3 also prevents owners from challenging the formation of a local improvement district (LID) to pay for the new sewer lines.

In other words, when it comes time to pay for the sewer system and any local improvement project that the City chooses to initiate, you may not protest.

18.4 goes even further: Lot owners "agree to sign any and all waivers, petitions, consents" that are needed to obtain the improvements that are proposed. The only thing you can complain about is the manner in which costs are assessed among lot owners.

Finally, 18.5 releases the developer: It says that the Declarant (Julius and Justine Benedick) has no obligation to lot owners to construct or install sanitary sewer lines or other improvements.

In short, the CCRs and Improvement Agreement impose on 70 owners the obligation to:

- a) pay for the main sanitary sewer line from Rhododendron Drive, and
- b) pay for connection to that sewer line, and
- c) pay for street improvements to Oceana Drive, all
- d) upon the City's request, without any opportunity to challenge.

And, of course, once our homes are annexed to the City of Florence, we are on the hook for a property tax increase of \$2.86 per \$1,000 valuation (currently).

NONE OF THIS REQUIRES ANYTHING TO BE BUILT ON THE BENEDICK PROPERTY.

In short, the 70 residents along Oceana Drive could be forced, according to CCRs recorded at Lane County, to fund the improvements along Oceana that Benedick needs.

Please, if this doesn't seem right to you, let the City know. Even if you've written to them in the past, write to them again. The more opposition we can get into the public record, the better.

NEXT STEPS:

I asked the City about the Council's schedule to discuss the Benedick petition, and Aleia Bailey, Planning Administrative Assistant, told me, "We can't say for sure when a date will be set for the Council hearing, however we anticipate it will be a February meeting."

"The Planning Department will continue to accept correspondence throughout the process. Email the Planning department at planningdepartment@ci.florence.or.us or send mail to 250 Hwy 101, Florence, OR 97439."

However, because the Mayor and City Councilors are the decision-makers at this next stage in the process, I encourage you to write to them also. Just make sure your letters and emails reference the "Benedick Holdings application for annexation and rezoning," so that your communication is filed correctly.

Here's the list: Joe Henry, Mayor; Woody Woodbury, Council President; Sally Wantz, Council Member; and Bill Meyer, Council Member (with another Council Member to be appointed soon). The City's website has not yet published the email addresses for the new Councilors; I'll forward those to you as soon as they're available.

CORRECTION:

In a previous email, I referred to Cameron La Follette as an attorney; this is not correct. She does have a law degree, but she has not taken the Bar exam in Oregon, and therefore does not practice law. She is the Executive Director of Oregon Coast Alliance, and is a trusted and valued ally. I apologize for my error.

POSTSCRIPT:

Those of you who live in Idylewood Additions 1, 2, and 3 have different CCRs, signed in 1991 and 1995, with reference to a "Statement of Compatibility" rather than an "Improvement Agreement."

With the usual caveat that *I am not an attorney*, my reading tells me your CCRs make the same requirement re: sewer hookups, and the same promises to not oppose annexation, but not the demands that you pay for road improvements.

I have PDFs of all plat maps and documents referenced above, which I can send you upon request. You probably received copies of the relevant CCRs from the escrow company when you purchased your property. However, CCRs "run with the land" -- which means that even if you did not receive any copies with your home purchase, the CCRs still apply.

Thanks for your attention,

A handwritten signature in black ink, appearing to read 'B Hadley', with a long, sweeping horizontal line extending to the right.

Bruce Hadley
Idylewood Owners LLC
4828 Oceana Dr
Florence, OR 97439

(541) 901-1140

Aleia Bailey

From: Erin Reynolds
Sent: Friday, January 01, 2021 11:56 AM
To: planningdepartment
Subject: FW: Benedick

-----Original Message-----

From: Joe Henry <joe.henry@ci.florence.or.us>
Sent: Monday, December 28, 2020 3:57 PM
To: Erin Reynolds <erin.reynolds@ci.florence.or.us>
Subject: Fw: Benedick

Joe Henry, Mayor
Florence Oregon
(A City in Motion)

From: Joanne Dal Pra <dalprajoanne@gmail.com>
Sent: Monday, December 28, 2020 9:31 AM
To: Joe Henry
Subject: Benedick

This is my second letter hoping to help you see what a mistake it would be to let this annexation proceed. Have you gotten so comfortable in your "position" that you no longer care what the people think? How can you make a decision that affects so many without asking what they think? You know what is at stake here. Years ago this same issue was met with a resounding no. What has changed, Joe, your relationship to the people of Florence? Have you forgotten who gave you that position? Is greed so widespread that we can't even feel safe in our beautiful small town? Don't go down as the mayor that over reached and ruined the city he was supposed to lead and protect. Think about the people who may have to sell their homes because of this decision. Get creative, Mayor and find another way to grow Florence in a more respectful way. In November we counted on you to do the right thing so do it. Please mayor, listen to the people.

Joanne Dal Pra

Sent from my iPad

Aleia Bailey

From: Bill McDougle <mcdouglebill24@gmail.com>
Sent: Friday, January 01, 2021 9:59 AM
To: planningdepartment
Subject: Benedick Holdings Application for Annexation and Rezoning

I am not going to reiterate the many valid arguments against the Idylewood annexation presented to you by the people who will be directly affected by that action. I am sure you are aware of them. Instead, I will remind you that as an elected member of a governmental body in a representative democracy, you have the responsibility to make decisions based on the will of the majority. I have read many of the letters and emails presented to you by the residents of Idylewood; none of them are in favor of the annexation and have made their concerns known to you.

To vote in favor of annexation is to ignore your due diligence and deem the desires of one corporation as more important than the needs of hundreds of property owners.

Bill McDougle

87635 Woodmere E

Florence, OR

-----Original Message-----

From: Cris Reep <crisreep@gmail.com>

Sent: Wednesday, December 30, 2020 6:33 PM

To: Kelli Weese <kelli.weese@ci.florence.or.us>

Subject: Benedick Holdings Application for Annexation and Zoning

Annexation is NOT a public benefit. Residents in both Idylewood and Heceta South are very happy with our situation as it exists today, which is why we purchased our homes in this area in the first place.. We enjoy quiet streets, nearby wildlife habitat, dark nights perfect for night sky viewing, affordable taxes, and we fix our own streets. None of us want sewers and most of us cannot afford to pay for them. We don't want to lose part of our front yards, have street lights put in, and have higher taxes.

Why does the greed of developers trump Lane County citizens needs? Why does the City Council of Florence feel the need to diminish the town's appeal by unwise choices regarding green space and wetlands? Growth at all costs is an outdated 20th century concept that does not fit with today's world. Lane County knew enough to disallow building in this sensitive, sloped, and essential acreage for drainage; I cannot understand why the planning commission voted to allow it. I do know that they were extremely disinterested and practically asleep during the meeting I viewed. I can only hope that you, the members of the Florence City Council, are more engaged and are able to think critically about your citizens needs and desires.

Sincerely,

Cris Reep

Aleia Bailey

From: Joanne Dal Pra <dalprajoanne@gmail.com>
Sent: Wednesday, December 30, 2020 10:14 AM
To: planningdepartment
Subject: Benedick annexation

If the 1981/82 docs mandate that the 70 property owners in the original Idylewood subdivision would be on the hook for completion of the sewer system and roads how can you honestly say this petition for annexation is only for Oceana Drive?

If there is any chance that this is not the case then all of those property owners and the property values should be included and counted along with Benedicks. Those voices should be heard and you should be listening.

Joanne Dal Pra
Frank Cano
87642 Rhodowood Dr
Florence, OR 97439

Sent from my iPad

Aleia Bailey

From: PAUL SANDRA BOWEN <sl_bowen@msn.com>
Sent: Monday, January 04, 2021 12:03 PM
To: Joe Henry; Woody Woodbury; Sally Wantz; Bill Meyer; kelli.weese@ci.florence.ci.or.us; planningdepartment
Subject: Benedick Holdings, LLC Annexation and Rezoning

As homeowners in Idlewood we are very much against the subject annexation and rezoning. There are multiple areas of contention that we feel are accurately presented in the following points presented to you prior to now.

“You will be called on in a few weeks to review an application from Benedick Holdings LLC for annexation and rezoning of their property, along with Oceana Drive — a public road with existing homes alongside.

The Planning Commission approved the application, but they and the Staff made a number of errors:

#1: They ignored or minimized the quantity and quality of testimony received in opposition. For example, Staff told the Commissioners that letters received are “mostly in opposition,” when in fact they are all in opposition. The only letter received to date in support of this application is the one from the Benedick’s attorney.

#2: They did not carefully consider all the evidence. There are 1,225 pages in testimony now — and that number will certainly grow in the coming weeks. There is simply no way that the Commissioners and Staff were able to review all of that.

#3: They’re rejecting much of the testimony on the grounds that the issues raised have to do with development, not annexation and rezoning. But Staff and Commissioners and the Applicant have all, in verbal and written comments, referred to the alleged benefits of this development. Why is it that they can use the “D word” and we may not? It is true that there will be an additional process to address how development occurs on the property. However, this is the only opportunity for the City to consider whether development should be allowed on the property.

#4: The application itself is incomplete. The City’s annexation policies at a minimum require that the annexation area “can be served by an orderly, economic provision of public facilities and services.” Just because the Applicant does not propose a particular development, that doesn’t mean the City is free to ignore the provisions of its comprehensive plan. Rather, the burden is on the Applicant to demonstrate that a worst-case development scenario would conform. They have not done so.

#5: As just one example, Planning Staff admitted that they have not received confirmation from Heceta Water PUD that the area to be annexed can be served — which is necessary, because the City of Florence does not have the capacity. So, the Planning Staff simply “assumed” — their word, not mine — that water is available.

#6: The Planning Department has not provided adequate notice to all property owners affected, and has failed to provide an open means for discussion. Many of the residents affected by this annexation do not have access to the internet and/or email, and both of the online meetings were plagued by technical difficulties. What’s the hurry? Why not wait until we can have public, in-person meetings and hearings?

#7: At least three of the Planning Commission members who approved this application will receive direct financial benefit from any future development, and should have recused themselves from consideration of the Benedick application.

#8: The City’s own Storm Water Management Plan, completed in October 2000 by Brown & Caldwell, confirmed what every resident of Idlewood knows: We have flooding problems in low-lying areas. On pages 40-41 and 60-61, the Storm Water Plan details the failed attempts of the developer — namely, Benedick — to remedy the problem, and estimates the cost of a fix at \$219,000. In today’s dollars, that’s \$334,000. This is an existing problem that has nothing to do with future development, but it has everything to do with Oceana Drive.

#9: There are 1981 and 1982 legal agreements in place, signed by Benedick and the City, regarding the original Idlewood subdivision. These legally binding, non-remonstrance agreements obligate 70 homeowners to make mandatory sewer hookups, and require us to pay for all road improvements, “at the sole discretion of the city council.” So, the \$334,000 bill for the storm water fix becomes our problem, not the City’s, and not Benedick’s.

#10: Because of these legal agreements, the 70 homeowners within the original Idylewood subdivision have virtual ownership of Oceana Drive. We have to pay for its maintenance and improvement, and the mandatory sewer hookups mean we have forced annexation of our homes. Therefore, the “triple majority” rule that the Planning Department is using to justify this cherry-stem annexation is not valid. All of those 70 homeowners must have a vote in this application.

#11: Speaking of cherry-stem annexations: The Oregon Supreme Court, Court of Appeals, and LUBA said that cherry-stem annexations in Estacada, Portland, and St. Helens involving connection only by a narrow road fail the “reasonableness” test. Oceana Drive is only 24 feet wide and nearly 2,400 feet long; that is not a connection, it is a very thin and absurd stretch of the imagination.

#12: A final point on cherry-stems: The Applicant and Planning Department point to past annexations in Florence — notably Fawn Ridge and Driftwood Shores — as precedent and justification. However, those are not comparable. The Fawn Ridge annexation was forced on the developer by the City; it was the only way he could get permission to develop. In the case of Driftwood Shores, there was a failing septic system and impending condemnation. And in both cases, the “stem” represented by Rhododendron Drive did not obligate any of the property owners along Rhody to connect to the sewer, nor to make road improvements. On Oceana Drive, we don’t have any failing septic systems, and we do have the legal obligations.

In conclusion: In order that the City of Florence avoid embarrassment at best, and illegal actions at worst, I encourage you to send this application back to the Planning Commission for a more reasoned, thorough, and even-handed review.”

Please do not ignore the tremendous negative impact this proposal will have on all of us in Idylewood, on the homeowners in the vicinity of Idylewood, as well as on the wildlife in the 48+ acres that Benedick Holdings is trying to access through Oceana Drive as well as possibly through Cloudcroft Lane.

Paul C. Bowen
Sandra L. Bowen
4844 Cloudcroft Lane
Florence, OR 97439

Sent from my iPad

Aleia Bailey

From: PAUL SANDRA BOWEN <sl_bowen@msn.com>
Sent: Monday, January 04, 2021 7:37 PM
To: Joe Henry; Woody Woodbury; Sally Wantz; planningdepartment
Subject: Benedick Holdings Annexation

Tonight's City Council Meeting and its handling of the proposed "cherry stem" annexation leads us to believe that you have already made your decision on this issue.

We are not lawyers, merely retirees who moved to Florence and particularly the Idylewood development. Your desire to add this area to the city and the monetary gains from it seems to outweigh the wishes and complaints of the people who actually live in that area and will be irretrievably affected by the results of your actions.

We sincerely hope that there are folks with the money needed to fight this annexation. All we can do is say NO to this proposed annexation. Our fear is that all this is "falling on deaf ears" and the homeowners of Idylewood and our representatives will be unable to get a fair hearing.

Paul C. Bowen
Sandra L. Bowen
4844 Cloudcroft Lane
Florence

Sent from my iPad

From: laurie carruthers <laurianne58@gmail.com>

Sent: Sunday, January 3, 2021 3:50 PM

To: Joe Henry

Subject: Annexation

Hello my name is Laurie carruthers I live in Idylewood and I am against this annexation I also would like to ask how I can purchase a sign to display ... Thank you Laurie Carruthers

-----Original Message-----

From: Annie Blanks <HAPEFACE2@aol.com>
Sent: Wednesday, January 6, 2021 5:10 PM
To: Kelli Weese <kelli.weese@ci.florence.or.us>
Subject: Letter of objection

January 7, 2021

City of Florence
250 Highway 101 North
Florence, Oregon 97439

Attention: Mayor Henry and City Council Members

Re: Letter of objection 2021 in the matter of Benedict, LLC Annexation request

Dear Mayor and City Council Members,

We, David and Annie Blanks are homeowners and members of Heceta South Homeowners Assoc. Inc. in Heceta South. We submit this letter as our written opposition to the proposed annexation and zone change for the property located at Assessors Map No. 18-12-10-40, Tax Lots 400 and 401 and Assessors Map 18-12-10-34, Tax Lot 801.

Please include these comments in the record of these proceedings.

Based on Heceta South's attorney's perception, we believe the applicant's proposed cherry-stem annexation, and zone change violates several key provisions of state and local laws.

These were very thoroughly expressed in writing in Heceta South's formal objection letter by Heceta South's attorney, Zack Mittge (Hutchinson-Cox of Eugene, Oregon) prior to the City's Planning Commission meeting on 12/8/20.

None of these points were specifically discussed or addressed during the hearing and were obviously ignored as the planning commission voted (unanimously), per recommendation of city planning staff, to recommend approval of the annexation request.

Given the points made by the Heceta South attorney, which were not mentioned or discussed during the meeting, the planning department staff recommendation to approve annexation is gross misconduct and unprofessional behavior. Also, none of the commissioners expressed any questions about the opposition testimony from over 100 concerned citizens, nor were there any questions about the legality of approving this annexation request.

The fact that all the testimony but that submitted by one entity, Benedick, LLC, was in objection to this request was totally ignored, again, including the objection letters from land use attorney for Heceta South and Idylewood Homeowners Group.

Also of importance, the Director of Planning and her staff repeatedly down-played any opposition testimony that made mention of developing this land, if annexed.

She repeatedly pointed out that development and annexation are two different matters, while it is crystal clear from the documents submitted by Benedick's legal counsel that the single reason for this annexation bid and zoning change is for subsequent development, which is amplified by the exact type of zoning change being requested.

Although the process of annexation and the mention of any subsequent development was repeatedly harped on by Ms. Farley-Campbell as being TWO SEPARATE ISSUES, her staff gave reports about verifying that local utility companies and the city's own waste treatment plant all had the capacity for this new development.

It's very odd that this testimony was sought and included in this matter since development has nothing to do with annexation. This is another example of the planning department's gross incompetence and unprofessional behavior. It seemed rather too convenient that the mass of passionately written objection letters from property owners who will be directly affected could be ignored due to not speaking solely or exactly to the criteria cited in public hearing notice. This is the exact reason why concerned citizens in Heceta South and then Idylewood felt the need to hire an attorney: to raise objections related to these criteria. Those objections are supported by citations of law and previous case outcomes relative to these criteria.

Yet, again, these two objection letters, produced by Hutchinson-Cox attorney Zack Mittge, containing many legal objections, were ignored and not discussed or addressed during the planning commission's deliberations.

We would like to point out that four of the planning commissioners are employed in businesses that would appear to benefit from Benedick's planned development. The Chairperson, Mr. Murphey, sells insurance, while Commissioner Miller is a real estate appraiser, Commissioner Hauptman is a real estate financing consultant, and Commissioner Jagoe is the principal broker at a local real estate sales company.

None of these commissioners stated any reason why they could not fairly vote on this matter and every one of them voted YES.

Now that this matter is before the City Council where an actual decision will be made, it is important to know that the Mayor is a mortgage originator, which is another position that could benefit from business with Benedick's new housing development.

This matter should not have passed the planning commission due to the obvious appearance of conflict of interest of four of its members. Now, the Mayor should declare that the planning commission made serious errors in approving this matter and reverse that recommendation, and should that not happen, he must excuse himself for the same reason. In closing:

Throughout this poorly managed process, which included holding virtual meetings (with poor technical quality), starting and continuing this process during a worldwide pandemic (which was a major distraction to everyone not paying close attention to City of Florence business), I believe that the planning department effectively denied access to many concerned persons without the equipment or skills to participate. This is again an example of the gross misconduct and unprofessional behavior exhibited by the planning department staff and its leadership.

Given all these points, I implore the City of Florence to deny this annexation request and put this matter to rest.

Thank you for your time.

Regards,
David and Annie Blanks
5014 Kelsie Court
Florence, Oregon. 97439

cc: Joe Henry, Mayor

Woody Woodbury, Councilor
Sally Wantz, Councilor
Bill Meyer, Councilor
Kelli Weese, City Recorder
Planning Department

Sent from my iPad

Aleia Bailey

From: Jeff Gemutliche <jeffgemutliche@shasta.com>
Sent: Wednesday, January 06, 2021 6:25 PM
To: Joe Henry; Woody Woodbury; Sally Wantz; Bill Meyer; planningdepartment; Wendy Farley-Campbell; Kelli Weese; Jay.Bozievich@lanecountyor.gov; Dylan Huber-Heidorn
Subject: Benedick Holding LLC Annexation ---TO CITY OF FLORENCE MAYOR, CITY COUNCIL, PLANNING DEPT. & LANE COUNTY COMMISSIONER

TO CITY OF FLORENCE MAYOR, CITY COUNCIL, PLANNING DEPT. & LANE COUNTY COMMISSIONER

From: Jeff Talbot 5033 Kelsie Court Florence, OR 97439 1-541-590-3899

This letter concerns the recent (12-8-2020) recommendation by the Florence Planning Department & Planning Commission to the City Of Florence (COF) City Council hearing (1-4-2021) to approve the annexation petition by Benedick Holding (BH LLC) that encompasses Oceana Drive, tax lots 400, 401, 801 and also includes a zone change or adjustment.

That approval recommendation was supposedly justified by COF Planning Dept. & Commission in stating that they were required to approve said annexation because of legal criteria constraints, codes & or parameters that were "supposedly" met by COF Planning Dept. & the applicant, BH LLC. There was, & is, so much more that needs to be considered involving this annexation that is conveniently & purposely being swept under the carpet that you need to review in its entirety.

Said annexation, which was pushed thru by the Planning Dept./Commission, in no way took into full consideration the true public welfare, "public good", wishes or multi-level concerns of hundreds of "non-noticed" citizen residents of the City Of Florence & Lane County who will be directly negatively impacted because legal noticing requirements only pertain to property owners within 300 feet of the proposed annexation. Of the 117 comments allowed so far, **not one was in favor** of this annexation other than the applicant's, Benedick Holding LLC. The decision to recommend annexation completely failed to adequately address the totality of COF Public Works Director Mike Miller's complete comments & testimony of Oct. 6, 2020 (included below) which is an extremely important requirement for the annexation process to move forward ! Also included below are Lane County Public Works Department of Transportation's statements of requirements & recommendations pertaining to this annexation that calls into question issues of jurisdiction on a number of levels.

Either there are flawed mental processes involved with this annexation recommendation proposal, or worse, because it is obviously more than an inadvertent omission given that Public Works Director Mike Miller's full testimony & comments to the COF Planning Dept. was

glossed over in both the Nov. 10, 2020 "virtual" Public Hearing (hearing is a joke term because nobody could hear it) & again glossed over in the "virtual" Planning Commission Public Meeting on Dec. 8, 2020, when no testimony or comments were allowed by the public, that recommended the annexation to the City Council !

These virtual hearings, because of corona virus restrictions, were & are an issue which BH LLC has intentionally used as a strategic advantage for its benefit, with the City Of Florence's help of course, to the detriment of a large population segment of older, not tech savvy, negatively impacted citizens who were not allowed or able to participate in. This matter, caused in part by a pandemic event, none-the-less needs to be taken into consideration rather than hastily moving forward with the annexation because it is prejudiced against a certain segment of the public. Also COF, you need to consider that an actual public meeting was allowed at the City of Florence Event Center for convenient political purposes (Meeting The Candidates Sept. 26, 2020) but now the public is precluded from personally showing up which directly negatively affects them----why? We, the public, not only need to meet the candidates (now mayor & councilors) in person but tell them what we think concerning this wrongful annexation proposal "in person" !

Residents & citizens are against this annexation because there is not one legitimate reason for its approval other than to benefit special money interests in COF & an out of the area developer (BH LLC) who has openly, blatantly, significantly, defiantly & illegally shown consistent disregard of rules & regulation requirements & has ignored permit obligations in dealing with issues that directly effect existing adjacent developments & parcels going back years & years. Why & how has the applicant been allowed to get away with non-compliance of these issues to "never" complete or comply with storm water runoff requirements for existing Idylewood Subdivisions described as being large concerns & will present many problems as per **COF Public Works Director Mike Miller, Lane County Transportation Dept. & Lane County Commissioner Jay Bozievich** (statements in evidence below)? This issue "currently" negatively impacts LC & COF citizen's properties & their roadways each and every winter. Many Idylewood area residents need pumps to run during heavy winter rains !

Now, that same developer (BH LLC), who failed to complete or to remedy those situations (see evidence below), is petitioning for an annexation that will place further multi-level hardships & burdens on already negatively impacted current residents & citizens! Who has the most to gain here---not the public? Before there is any further forward movement with this annexation process, the applicant (BH LLC) "MUST" be required, & held accountable, to follow thru with past, current & continuing obligations to LC & Florence area residents involving existing Idylewood subdivisions that BH LLC. has developed. That makes logical legal sense before anything proceeds !

Mike Miller & LC Transportation also raise questions of the jurisdiction of Oceana Drive in particular, but many other streets as well, if annexation is to continue. Hundreds of Lane

County residents are being placed in a "neverland" of no input, no representation & a no vote situation because they are not in the COF boundary. We are not getting any help from Lane County to resolve an issue that possible annexation presents as to the what, how, when & exactly who will have jurisdiction of Oceana Drive and whether adjacent streets should or might be transferred that will certainly further negatively impact current residents. City Council, you need to read the comments & reports as to exactly what this jurisdictional confusion means & get it resolved before letting the horse out of the barn & then later deciding you should have closed the barn (annexation) door ! Note the email(s) (below this paragraph) that were sent between Lane County individuals by (Jay Bozievich Western Lane County Commissioner). COF Planning Director Wendy Farley Campbell was, & is, aware (knowledge aforethought) of the legal concerns, problems & ramifications yet chose to ignore them and push this annexation thru---unconscionable !

From: BOZIEVICH Jay K ^Next Previous Sent Thursday, May 01, 2014 11:40 AM To: MORGAN Bill F Cc: MILLER Marsha A; LAIRD Matt P Subject: Fwd: Development Impact on non county maintained roads-Idlewood subdivision, Florence, Or Bill, Idlewood subdivision has a long history of non-compliance and drainage issues that stretch back to Commissiona: Morrison's tenure. My understanding is that no approvals of the 4th addition would be given until the stormwater issues in the previous phases had been corrected. If they are not, the county could find ourselves involved in litigation from the current home owners. I would suggest that whoever get the referrer from LMD on this subdivision go back and review the volumes of files on the previous phases. Thanks, Jay Sent from my iPad Begin forwarded message: From: LAIRD Matt P Date: May 1, 2014 at 11:07:44 A M PDT To: BOZIEVICH Jay K Cc: MILLER Marsha A WILKINSON Sarah W KENDALL Jerry Subject: RE: Development Impact on non county maintained roads-Idlewood subdivision, Florence, Or

If this annexation goes forward it will mean many years of legal fights & court proceedings that will cost COF & most likely Lane County (in joined litigation) dearly to remove this can of worms which is so very eagerly being pushed thru. COF should also consider that it is next to impossible to reverse an annexation decision which BH LLC knows as well the COF Council should. This well might set a precedent for a higher court review & ruling given the unique convoluted circumstances regarding & including: Ignored unfulfilled past & present obligations by the applicant that "now" negatively affects "current" area residents, questions of jurisdictional control of Oceana Drive & adjoining street's maintenance mentioned & the total purposeful prejudicial disregard of a certain segment of the populace as far as the public hearing process was & is concerned! There is absolutely no purpose served for this annexation for the COF citizens or those of Lane County. Those factual & legal issues requires you to deny the BH LLC Annexation.

The whole parcel area of tax lots 400,401, 801 will serve the populace much better as a designated park & open space wetland (pictures of part of tax lot 400 under water that is proposed for development are shown in previous file evidence) which already is a wildlife

migration route between 2 other wildlife area habitats instead of a never ending flood causing problem that the COF & Lane County have "**knowledge aforethought**" of. Just recently in Nov. of 2020 the U.S. Fish and Wildlife Service has added the coastal distinct population of the Pacific coastal marten to the list of threatened species protected under the Endangered Species Act. This endangered species has been sighted within the protected area boundary that is included in the parcel(s) proposed for annexation & development by BH LLC. It's astonishing, that after BH LLC has for years demonstrated a pattern of willful neglected legal responsibilities, that the COF Planning Department/Commission would allow & ignore, even push, this annexation forward to The City Of Florence City Council for an in favor determination considering the numerous unresolved existing flooding & storm water runoff problems, questionable legal jurisdictional matters & a very callous prejudicial disregard for "all" citizens & residents ability to comment & respond. We implore the COF City Council to **deny this annexation** & not make a decision that will be further astonishing & produce numerous legal ramifications for years to come.

Please note the attached pictures (very bottom) that show exactly how The City Of Florence placed notices before the first (11-10-2020) COF Planning Dept. hearings behind a no trespassing sign on the east end of Oceana Dr. while others were placed in a ditch that got completely saturated at the west end of Oceana Dr. Then (12-29-2020) a notice box of The Notice of City Council Hearing scheduled for 2-1-2021 was placed at the end of Kelsie Way that only 2 residences might be able to see. It disappeared after the COF Planning Department was notified that it was in a place where nobody could see it? This was all acknowledged by COF Planning Dept. Exactly who are the City of Florence leaders & representatives working for, certainly not the public "Good" if this annexation is approved! We wonder if COF representatives have read the actual city code sections that refer to the mandate of considering the "public good" ?

We, the public good, finds that you must deny this annexation.

Statements & Testimony below:

Mike Miller, COF Public Works Director

Streets The proposed streets within the Idylewood 4th Addition are proposed to be City streets and will need to meet City standards for construction. Oceana Drive is currently classified as a urban local road which is maintained by Lane County. Since it is a urban local roadway, Oceana would not automatically transfer to the City upon annexation. The City will need to evaluate whether or not the street is in an acceptable condition, including stormwater management, to transfer maintenance (Jurisdictional Transfer) of the roadway to the City. Oceana Drive was chip sealed by Lane County crews in 2014 and has some settlement/tree root heave issues (one area on Oceana Drive was addressed by the County about 2 years ago). The determination of long term maintenance of Oceana Drive needs additional analysis,

considering maintenance history, stormwater management, Pavement Condition Index (PCI), current conditions of the roadway, and planned repairs prior to the City requesting jurisdictional transfer of maintenance responsibilities after annexation. Jurisdictional transfer is a separate process whereby the City would petition the County to transfer maintenance responsibilities. Annexation of local access roads, such as Gullsettle Court and Cloudcroft Lane, most likely would automatically include jurisdictional transfer to the City. This would need to be verified with Lane County.

Stormwater There is a lot of history concerning stormwater in regards to the existing Idylewood 1st and 2nd Additions. The original developer of the Idylewood subdivision installed a stormwater conveyance system as a result of serious flooding that occurred in 1999 in the Sandrift, Saltaire, Oceana and Gullsettle Court areas. The developer installed an underground (piped) stormwater system from Gullsettle Court to Rhododendron Drive. According to County records there are deficiencies with the stormwater conveyance system, namely accessibility for maintenance. Existing cleanout locations between Saltaire Street and Rhododendron Drive are not large enough for maintenance activities and manholes need to be constructed in their place. Additionally, it is not clear if adequate easements have been established for the entire length of the stormwater system or if they have been dedicated to the County. Additionally, over the years since the stormwater system was installed, there are obstructions and encroachments to the system. These obstructions and encroachments include fences, trees, vegetation, and outbuildings (reported garages and sheds) constructed over the stormwater line. The County required a 10-foot wide travel way to be constructed with a grade and structure base sufficient to support the County's maintenance equipment, which has not been constructed. One last item regarding the existing stormwater system was that after all the items were completed, the developer was to maintain the entire stormwater system from Gullsettle Court to Rhododendron Drive for a period of five years. These items have never been completed and the 5 year warranty period has therefore never been established or started. Florence Public Works only brings this up since stormwater and stormwater management is a critical consideration of the new proposed Idylewood 4th Addition.

Stormwater for the proposed Idylewood 4th Addition will need to consider not only management of the surface water runoff, but also groundwater. During times of heavy and concentrated rain events, like the flooding in 1999 and most recently in 2017, the groundwater levels become so high that it prevents surface water runoff from infiltrating into the ground. Additionally, on the eastern boundary of the project, seasonal lakes can compound stormwater management and all elements of stormwater management will need to be analyzed and addressed in order to prevent localized flooding events. Conveyance of stormwater discharges from the subject property (emergency and overflow) will need to be thoroughly addressed in the stormwater management plan for the project. This includes an analysis of the downstream effects of discharges from their stormwater management system.

Please also note that 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).

Lane County Public Works Transportation Dept

PUBLIC WORKS DEPARTMENT | TRANSPORTATION PLANNING 3040 N DELTA HIGHWAY | EUGENE, OR 97408 P: 541.682.6996 | F: 541.682.8554 Page 1 of 2

October 5, 2020 CITY FILE: PC 20 22 ANN 01 & PC 20 23 ZC 02 OWNER: Benedick Holdings, LLC APPLICANT: Michael Farthing MAP & TAX LOTS: 18-12-10-40-00400; 18-12-10-40-00401; 18-12-10-34-00801 PROPOSAL: ANNEXATION OF APPROXIMATELY 48.82 ACRES INCLUDING THE PUBLIC RIGHT-OF-WAY OF OCEANA DRIVE AND THREE PROPERTIES Thank you for the opportunity to review and comment on this proposal.

Please accept the following comments from Lane County Transportation Planning:

COMMENTS FROM LANE COUNTY TRANSPORTATION PLANNING

The subject properties (“properties”) are located within the City of Florence’s Urban Growth Boundary. The properties are located at the terminus of Oceana Drive, as shown in the figure below. Oceana Drive is a Lane County road functionally classified as an Urban Local road.

Lane County recommends 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.

PUBLIC WORKS DEPARTMENT | TRANSPORTATION PLANNING 3040 N DELTA HIGHWAY | EUGENE, OR 97408 P: 541.682.6996 | F: 541.682.8554 Page 2 of 2

Unless and until the jurisdictional transfer of Oceana Drive, Gullsettle Court, Cloudcroft Lane, and Kelsie Lane occurs, its current status as an Urban Local road or a Local Access Road requires that any redevelopment of new development of the property demonstrate compliance with Lane County's requirements for roads as applicable. Such requirements are at Lane Code (LC) Chapter 15 and include: LC 15.070: Building Setback Requirements for Local Access Roads, Public Roads, County Roads, and State Roads or Highways; LC 15.105: Dedication and Improvement Requirements LC 15.135: General Access Requirements; LC 15.137: Access Management Requirements; and LC 15.704: Urban Local Street Standards. A full copy of LC Chapter 15 is available for review at:

<https://www.lanecounty.org/cms/one.aspx?portalId=3585881&pageId=4119453>

Improvement Requirements At the time of development, Lane County may require half-street improvements that are proportional to the impacts of development pursuant to LC 15.105 (1).

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).

Mayor & COF Council members; keep in mind that Benedick Holding LLC has always mentioned & maintained that the "only" reason for annexation is for development ---annexation & development are thus inextricably intertwined contrary to what Wendy Farley Campbell says !







Please take the time to fully review "all" the evidence & testimony on record that I & many others have presented & referred to you on this matter .

Jeff Talbot 5033 Kelsie Court Florence, OR 97439 1-541-590-3899

October 6, 2020

Wendy Farley Campbell
Florence Planning Department
250 Highway 101
Florence, OR 97439

Re: Benedick Annexation Petition

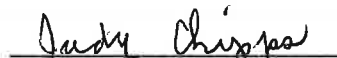
Benedick's greedy plans to build 32 plus houses in the Idylewood/Heceta South subdivisions is not only stupid but dangerous! That would put approximately 60 plus more vehicles on these streets which all dump onto Rhododendron Drive.

There are only two available outlets to Highway 101. In case of an emergency such as a wildfire or Tsunami, which are predicted to happen, where are all these people to go to evacuate? There should have been a direct route built from this area to 101 straight across. Right now Rhododendron Drive is a bad evacuation route, and adding 40 to 60 more vehicles to the 200 plus or more is a dangerous situation, and very irresponsible of the City to consider.

- Building any more homes along Rhododendron Drive is a bad idea for everyone.
- Annexing Idylewood/Heceta South goes against the City's promise to the homeowners of these areas.
- Creating a short cut from Rhododendron Drive to Heceta Beach Road on already narrow streets is dangerous to both pedestrians and motorists.
- The wildlife habitat will be greatly impacted by this irresponsible proposal.
- Existing property values will decrease once this becomes a through fare for those wanting a short cut.
- Pumping more and more people into Florence is causing problems everywhere in town. More traffic, lack of parking, lack of desire to live in this town.

Benedick should find some other area, outside of the Tsunami evacuation route area, to line his already greedy pockets!


Kenneth Chipps 4936 Sandrift


Judy Chipps 4936 Sandrift


Cheryl Chipps 87812 Saltaire


Chris Kohl 87812
Saltaire

From: Holly & Larry <happy3dogs@rocketmail.com>
Sent: Friday, January 08, 2021 10:34 AM
To: planningdepartment
Subject: Benedick Annexation

Sirs,

We have concerns in the matter listed above because it has a history of being underhanded. The disregard for residents quality of life and personal property, as well as for the environment and wildlife, is unacceptable.

There are many residents in this community that are on fixed incomes. The financial and mental burden this project would create is unconscionable.

Holly & Larry Herr

87764 Saltaire Street
Florence, OR 97439

From: "lvhinoregon" <lvhinoregon@g.com>
To: "Jay Bozievich" <Jay.Bozievich@lanecountyor.gov>
Sent: Friday, January 8, 2021 11:11:58 AM
Subject: Fwd: Annexation

From: "lvhinoregon" <lvhinoregon@g.com>
To: "Jay Bozievich" <jay.bozievich@co.lane.us>
Sent: Sunday, December 27, 2020 7:11:49 PM
Subject: Annexation

Hi Jay--- I hope you had a Merry Christmas !!
I had read that you have tax problems where you live. I hope you win on that point.
I had met you several years ago at the Florence Event Center. I was impressed that it seemed that you care about the people in your district.
I imagine you have heard about the annexation going on in Florence, Benedict Holdings LLC and Idylewood housing area that Benedict built.
Now he has passed and his successors want to develop the last piece of property which is in between Idylewood and Heceta South housing area.

This property has no access as it is a wetlands.. So , now they have contacted the City of Florence and the Planning commission to annex part of Idylewood and go through 1 of our streets, Cloudcroft, which is a very quiet street.

The planning commission has approved it and looks like it is going to go through many letters in opposition--

I do not know how 8 people can say OK in the planning dept.

City council of 5 people--, especially Mayor Joe Henry, as per Siuslaw News Sat. Dec. 12 page 1A and continued on 8A. More letters to the editor in the last couple of weeks.

Planning boss Wendy Farley referred to double majority and triple majority as a way to get away with it without letting the people who are effected vote on it... What a country !!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!

If you go to the Idylewood.com site, you can read some of the letters written..

Then because of COVID residents can not even face the planning commission or the Mayor and his team.

How much is the financial Impact on all of the residents--??

Haven't heard them talk about that.. but, I bet they have figured out how much money the city can take in.

There are drainage problems which Benedict was supposed to take care of when he first built this subdivision, but never did.

I doubt that the planning dept. even walked onto the property.... If they did they should be armed because of the wildlife -- bears, cougars.

Our subdivision is probably 100% retired and on fixed income-- just in our section a lot of the women are widows now because we are all getting older...I doubt if the ladies need more taxes, sewer hook=ups and whatever else the city comes up with in the future.

I wrote to you last night on your website, but I had a problem sending and lost it.. So, I am trying again.

I would like any help or advice if you could help us.

87798 Limpit Lane

Since I originally wrote this quite a bit has changed.... I sent this to you twice and it came back twice... I have called your office and cell phone for the last 3 days and left messages. No return call. I hope you are OK.

The planning commission met and passed the annexation as far as they are concerned, so now it is up to the city Council....Which is composed

of the Mayor -Joe Henry, 1 returned member-Woody and 2 new members - just elected and 1 vacant seat....

At any rate I do not know how 5 people can make a decision for 500 people.

It is VITAL for any annexation to be in the best interest of both the city and the property owners... I think Mayor Henry forgot about us, the property owners.

There is an ad in Wednesdays Siuslaw News about "NO on annexation" with the names of over 100 residents names objecting. We would really appreciate your help in this matter...

Thank you

NO ON ANNEXATION
!!!!!!!!!!!!!!!!!!!!!!!!!!!!!!

Sincerely ,

Les and Shirly Hamilton
541-902-2220
87798 Limpit Lane

Florence,Or.

Mr. Mayor and Councilors,

I'd like you to rethink the City's policy regarding cherry stem annexations — those where you use a narrow public road as the pretext for creating contiguity between the City and a separate parcel.

These cherry stem annexations are now illegal in 16 states in the U.S., and other states allow it only for government land. Cherry stem annexations are a constant source of dispute, contention, and litigation. As with so many things nowadays, the only people who truly benefit are the lawyers.

Cherry stem annexations are doubly problematic because they listen to the owners of the cherry, and pay no attention to the stem — that is, the owners along the stem are not allowed a voice.

This is due to your application of the triple majority rule, which became law in Oregon in 2016. By the way, did you know that that law came from Senate Bill 1573, which was entirely written and paid for by the Oregon Homebuilders Association, along with the construction industry?

I'm not saying that development should be stopped; of course not. However, the City of Florence interpretation and application of annexation law puts 100% of the power and influence in the hands of developers, leaving individual homeowners hanging out to dry.

For example, in a recent case before the Planning Commission, City staff told the Commissioners that letters received are "mostly in opposition," when in fact they are all in opposition. More than 1,225 pages of evidence. The only letter received

in support was the single one from the developer's attorney. Yet the application was approved.

Also, the emphasis on annexation allows your Planning Department to ignore any testimony they deem to be about development, rather than about annexation; your policies treat them as wholly separate issues.

In any application for annexation, it is true that there is a later process to address how later development occurs on the property in question. However, it is only at the initial application for annexation that the City has the opportunity — and obligation — to consider whether development should be allowed.

The City's current annexation policies at a minimum require that the annexation area "can be served by an orderly, economic provision of public facilities and services."

I ask you to keep in mind — and also instruct your Planning Department — that just because an Applicant does not propose a particular development, that doesn't mean the City is free to ignore the provisions of its comprehensive plan. Rather, the burden is on the Applicant to demonstrate that a worst-case development scenario will conform. This requirement is often ignored.

Another curious by-product of the cherry stem annexations has to do with the notification required. Your Planning Department has chosen to interpret the notification requirements to apply only to properties within 100 feet of the cherry; they don't seem to apply to the properties along the stem, using the justification that the stem is, in most cases, a public road. This may be a legal

interpretation of code, but it certainly is not an ethical one. If someone is going to dig up your street, wouldn't you like to know about it?

Related to public notice: These annexation issues are huge, and the current pandemic limitations create a strain on everyone. However, I beg you to be fair. With a single online hearing on annexation, which many, many people are unable to access due to technical limitations, you can radically change the future.

These aren't minor decisions about the style of siding to be used on a maintenance building; these are decisions about whether someone who's lived in their home for 25 years will be able to continue to stay there. What's the hurry? Why not wait until we can have public, in-person meetings and hearings?

Again: Your annexation decisions are life-changing for residents in the area. For the developer, the owner of the cherry, it's just more padding for his bank account. But for the individual homeowners along that stem — who, to repeat myself, are not given a voice — it represents a financial hardship that they simply cannot bear.

In conclusion: In order that the City of Florence best serve all residents, and to avoid lengthy and unnecessary litigation, I encourage you to rethink your cherry stem approach. It is bad policy, it is bad business, and it is bad for our future.

Speaker's Card for tonight's City Council meeting

1 message

Kelli Weese <kelli.weese@ci.florence.or.us>
To: Bruce <bwh541@gmail.com>

Mon, Jan 4, 2021 at 12:12 PM

Good Afternoon Mr. Hadley,

Thank you for submitting a speaker's card for tonight's City Council meeting. Please keep your discussion tonight on the general topic of annexation policy. As you know, there is an upcoming specific land use public hearing item set for the Council's attention at their February 1st City Council meeting. Tonight is not the time to address the specific Benedick annexation matter. If you would like to provide testimony regarding the Benedick Annexation, you are able to provide written testimony to planningdepartment@ci.florence.or.us, or submit a City Council speaker's card. For more information on this specific application, visit the City's website at <https://www.ci.florence.or.us/planning/benedick-annexation-petition-zone-assignment>.

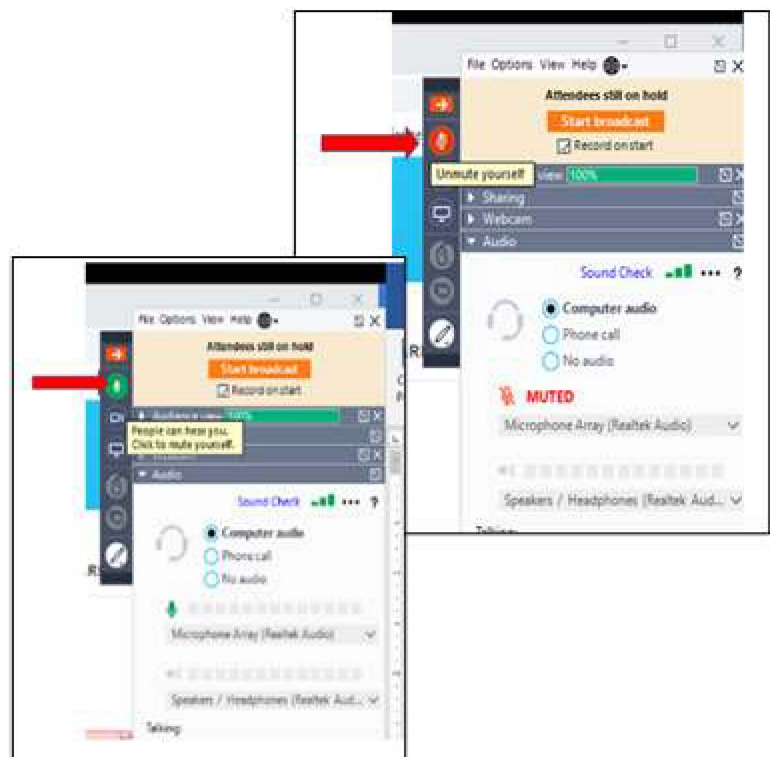
Tonight's City Council meeting will be held at 5:30 p.m. on the virtual platform GotoWebinar. In order to participate in the meeting, you will need to utilize the link at <https://attendee.gotowebinar.com/register/2095668474958409996> to sign up as an attendee for the meeting. To learn more about how to participate in a gotowebinar meeting, visit the tutorial link at <https://www.youtube.com/watch?v=IQ3Xwwgbd8Y> for a video, or at <https://support.goto.com/webinar/how-to-join-attendees> for a written guide.

Timeline & Instructions

Since you have indicated you would like to speak about an item that is not on the agenda, your time to speak will come during the public comments section at the beginning of the meeting. When public comments begins, Mayor Henry or I will call your name, and at that time we will unmute you to allow you to speak. It will likely also be necessary for you to unmute yourself through the gotowebinar platform (see instructions below). Since this is a public comment item, you will have three minutes to speak. Once your time limit has been completed, you will be notified that this is the case and you will be muted again by the organizer.

How to Unmute Yourself

Click on the microphone button on the left-hand side of the GotoWebinar control panel to unmute yourself. When the icon is green, you are unmuted. When it is grey or red, you are muted. (see pictures)



Additional Comments

You may also submit any written testimony you like through the following mechanisms.....

- Submit written testimony to me via email at kelli.weese@ci.florence.or.us,
- Mail written comments to Florence City Hall, Attn: City Recorder, [250 Hwy 101, Florence, OR 97439](#)
- Drop off written comments to the City of Florence drop box located at Florence City Hall ([250 Hwy 101](#)) to the right of the main entrance
- **** NOTE:** Written comments received at least 2 hours prior to the meeting will be distributed to the City Council, posted to the City of Florence website, and made part of the record.

If you would like to find out more about the upcoming meeting, including viewing the agenda, please visit the City of Florence website at <https://www.ci.florence.or.us/council/city-council-meeting-191>

Thank you again for your interest, if you have any questions please feel free to reply to this email or give me a call. Have a good rest of the day.

Kelli Weese, CMC, AICP

City Recorder / Economic Development Coordinator

kelli.weese@ci.florence.or.us

(541) 997-3437

City of Florence

250 Hwy 101

Florence, OR 97439

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Kelli Weese, CMC, AICP

City Recorder / Economic Development Coordinator

kelli.weese@ci.florence.or.us

(541) 997-3437

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2 - AI 1 - Speaker's Card - Bruce Hadley - 12.31.20 6.28pm.pdf
584K

November 20, 2020

Florence Planning Department,

Rhododendron Drive is already a risky road to drive with the current amount of traffic, with drivers treating Rhododendron Drive as though it was a highway - driving 60 MPH and passing on double yellow lines.

I have had cars behind me trying to pass while I was making a left hand turn; a driver passing several cars on double yellow lines coming towards me and I had to slam on the breaks and go towards the edge of the road to avoid a head-on collision; cars passing on the curves almost running me off the road; a very large truck going around a curve so fast he ended up sliding towards me in my lane, and the list goes on.

As mentioned at the last Planning Meeting on November 10th, the police chief said he sees no problem policing new annexed areas, but I see absolutely no police presence between 35th Street and Heceta Beach Road now. Between the proposed 35th Street and Rhododendron Drive project, and the Benedick Annexation proposal, we're looking at more than 100+ more cars on a road that was not built for such traffic. Not to mention, Rhododendron Drive is a Tsunami Evacuation Route!

Try pulling up to the stop sign at 35th and Rhododendron Drive and try and look left towards the river, good luck – with traffic speeding going North, and having a hill blocking your view, it's been downright dangerous pulling out at times.

How about trying to make a right turn onto Oceana Drive with speeding drivers behind you not wanting to slow down while you make a right turn, they don't seem to care that you've been signaling your turn and continue riding your bumper, and have actually had some pull into the opposite lane to go around me – on the curve!

Why is the City considering such proposals? Florence is already at capacity - just try going to Old Town and find a parking spot on the weekend, or any shopping area! Developing any more property along Rhododendron Drive is a recipe for disaster. Is the City prepared for that?

I hope the Planning Committee considers the current problems and decides against these ridiculous new proposals.

Cheryl Chipps
87812 Saltaire St.

Aleia Bailey

From: Elke Dodd <elkedodd@gmail.com>
Sent: Tuesday, January 12, 2021 12:03 PM
To: planningdepartment
Subject: No to annexation of Idylewood

I am against the annexation of Idlewood to the city. As a resident for 20 years, I enjoy the community as it is. The restrictions and added expense to the residents would be financially devastating to many of the fixed income residents who can't afford to pay for a new sewer system and additional high city taxes. Thank you

Sincerely,

Elke Dodd
541-999-1158
87694 Limpit Lane
Florence, OR 97439

January 2021

This is a letter to oppose the Benedick Holdings, LLC application for annexation.

My name is Kathy Johnson and I am a homeowner in Heceta South.

I am very much opposed to the annexation of Idylewood, and the surrounding areas. We are retired folks on a fixed income and our life savings become more and more precious to us as the years pass. If the annexation is approved, it will open the floodgates to development. Development will lead to a sewer system and taxes that were not in our 'Retirement Plans'. Something we did not ask for, we do not need and we DO NOT want. We are very happy maintaining our private septic systems. Kelsie Way is mentioned by the Lane County Transportation Department as an annexation requirement if Oceana Drive is to be annexed by the City of Florence.

There is no one in Idylewood or the surrounding areas that want this annexation. NO ONE. It's a shame that WE, the people that this annexation will impact, cannot vote on it. And now, under the cover of a worldwide pandemic, poor quality virtual meetings, this is being railroaded through. It has been so undercover, that many affected residents were unaware that the annexation was on the table again! It was only neighbors talking to neighbors that we found out about it. That is how I found out about it! I did not see any signs in the area about annexation. I did not receive any notice in my mailbox about annexation. I am very disappointed in the City of Florence for being so under the table about this mess.

If this annexation is allowed, Benedick Holdings, LLC will benefit and make a lot of money. It's well known that there are people in City Hall that could possibly benefit and make a lot of money. And the long-time residents of Idylewood, Heceta South and surrounding areas will not benefit one thing, and will lose a lot of money. Not only in the sewer system and increased taxes, but in the de-valuation of our homes. And many of the long-time residents will be forced to move as they will not be able to afford the added expenses.

Is this fair?

Is this right?

Finally, we are living in semi-private, long established, quiet, tranquil and safe neighborhoods. We want to keep it that way. PLEASE! Do not let this annexation request go through!

Please let us retire and remain in peace.

Thank you for your time in reading my letter.
Kathy Johnson

14 January 2021

Re: Benedick Holdings LLC Application for Annexation and Rezoning

Mayor and City Councilors,

The City has said, repeatedly and emphatically, that “the City’s current policy has been to only annex those who request and petition to be annexed.”

However, “current” means today, and says nothing about tomorrow. And any “policy” may be changed, quickly and quietly, with no public input. (Compare, for example, the City’s policy of promoting “cherry stem” annexations; did the voters get a say in that?)

In any case, the City’s attempt to pacify Idylewood homeowners with policy doesn’t work, because we’re staring down both barrels of two legally binding agreements:

The “Improvement Agreement,” signed by the City and the Benedicks in 1981, and the “Covenants, Conditions, and Restrictions” (CCRs) recorded with Lane County in 1982.

I have written about these documents in some detail in previous letters, so I’ll just summarize here: The Improvement Agreement and CCRs say that the owners of the 70 lots in the original Idylewood subdivision, which straddles Oceana Drive, shall:

- a) pay for the extension of the sewer line from Rhododendron Drive, and
- b) connect to the sewer, whether they want to or not, at their own expense, and
- c) pay for any and all road improvements the City requests: curbs, sidewalks, widening, etc.

The City’s past annexations along Rhododendron Drive presented nothing like this predicament. The homeowners along Rhody and the other streets annexed had no legal obligation to connect to the sewer, and they had no financial responsibility for road improvements.

City officials can talk all they want about their good intentions, but the fact remains that the 1981 Improvement Agreement for the original Idylewood subdivision supersedes policy and public relations. That Agreement says that my neighbors, mostly fixed-income retirees, are on the hook for tens of thousands of dollars for improvements that they neither want nor need.

So, here’s a very simple solution, one that should satisfy both sides of the annexation argument: The City of Florence can amend the 1981 Improvement Agreement with a new agreement.

Namely, we would replace Section 2 with:

“Sanitary sewer lines shall be installed within said subdivision by the City when City sewerage facilities are available to this site. Hook-ups shall be made only at the request of the neighboring property owners except in the event of a failing system on a neighboring property, in which case connection of that property to the sanitary sewer lines shall be mandatory. The cost of hook-ups to the sanitary sewer shall be borne entirely by the property owner requesting such connection or required to connect due to a failing system. The costs of installation of the sanitary sewer lines shall be borne entirely by the City, including the costs of major trunk lines.”

Note that this revision still gives the City the ability to exercise a “health hazard” annexation, when a homeowner’s septic system has failed and cannot be repaired.

Next, we would replace Section 3 with:

- Upon annexation of any streets within the subdivision by the City of Florence,*
- a) Maintenance of those annexed roads shall be the responsibility of the City of Florence, and homeowners may not impede reasonable maintenance work performed by City employees;*
 - b) Major improvements to annexed roads, such as curbs, gutters, sidewalks, or widening within the platted right-of-way, must be approved by a simple majority of homeowners within the subdivision, where ownership of each lot constitutes one vote;*
 - c) The cost of road maintenance and road improvements shall be borne by the City of Florence.*

Finally, we need to remove the top two paragraphs on page two of the Improvement Agreement. As written in 1981, those two paragraphs give all power to the City, and deny all ability for remonstrance. In other words, they present a completely one-sided proposition. Removing them hurts no one.

Now, I am not an attorney, but I know that all three of these changes can be made, legally and quickly. The City and a Benedick representative would simply sign off on the revised document.

Some of my neighbors will disagree, but I think it makes sense for us to face the inevitability of annexation within the Urban Growth Boundary. If it doesn’t happen this year, it will keep coming up, year after year.

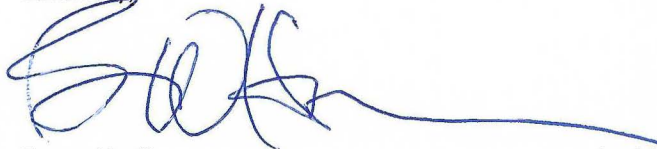
But at the same time, we must protect the “feel” of the Idylewood neighborhood — the reason why people made their homes here — as well as the pocketbooks of residents who simply cannot bear the liabilities imposed by two 40-year-old, poorly written documents.

If you agree to this suggestion, then all parties should be satisfied:

Benedick Holdings LLC gets approval of its application for annexation and rezoning; the City of Florence gets to annex more land within its urban growth boundary; and the homeowners in Idylewood have a legally binding promise that they will not be forced to annex their own properties, they will not be forced to connect to the sewer, and they will not be asked to pay for the sewer line nor any road improvements.

What possible objection could you have?

Sincerely,



Bruce Hadley

[Idylewood Owners LLC](#)

4828 Oceana Dr.

Florence, OR 97439

bwh541@gmail.com

tel. (541) 901-1140

Jan 12, 2021

Wendy Farley-Campbell, Planning Director
City of Florence
250 Highway 101
Florence, OR 97439

Re: Objection to the petition put forth by Benedict Holdings, LLC
Annexation and Zone Change

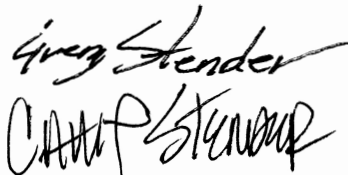
Preexisting land use laws and or development, halted the attempt of this same developer to expand Idelwood Subdivision into this exact same area many years ago (1998- 1999).

We request the City of Florence to ask for full disclosure why necessary development permits have been denied by Lane County Departments regarding this proposed land within Lane County jurisdiction.

Annexation by the City of Florence clearly will not provide or guarantee any means for this particular land development proposal given its location and environmental status and classification by both State and Federal laws to be not developed upon. We cannot afford another developers flop of land property that was never intended to be built on but was, you do not have to look far to witness this for yourself in the surrounding florence area.

Home owner/buyer financial loss, environmental impact and threat to public safety is at risk yet again.

Sincerely Opposed!
24 year resident @ 4873 Cloudcroft Lane
Greg and Carol Stender

Handwritten signatures of Greg Stender and Carol Stender. The signature for Greg Stender is written in black ink and is cursive. The signature for Carol Stender is also in black ink and is cursive, appearing below the signature for Greg Stender.

January 11, 2021



Dear Mayor and Councilors,

Exhibit M27

I am writing in support of the written testimony provided by Sean T. Malone, Attorney at Law on November 24, 2020, and the verbal testimony Bruce Hadley submitted during the City Council meeting on 1/4/2021, and subsequently to be continued on 1/25/2021. I am very concerned about the destruction of property that would be incurred with the annexation of Oceana Dr. and the harm that would be wrought on the residents along Oceana Dr. if annexation were to be approved. The harm to residents would include devastating financial impact, physical danger from increased traffic flow, and emotional damage from the ruination of the wildlife environment that currently exists throughout the Idlewood neighborhood. Further related to the environmental concerns would be the severe reduction of prime Pacific Marten (a federally listed threatened species) habitat that would occur with the approval of annexation of Oceana Dr. and the development of the Benedict Holdings LLC property to the east of Oceana Dr. (see attached Distribution of Pacific Marten in Coastal Oregon, Northwestern Naturalist, Autumn, 2016, 97:71-81). I am in the process of gathering more research data regarding this issue, and I have contacted Nature's Conservancy and Earthjustice (see attached article, "Court Overturns Government Refusal to Protect Rare Coastal Marten), two organizations who have fought extensively for the protection of the Pacific Marten, and other coastal wildlife, for their assistance in the matter of this annexation application. It is my belief that the City of Florence would be in violation of the ODFW, State of Oregon, and the Federal Department of Fish and Wildlife conservation plan for the Pacific Marten by approving the annexation of Oceana Dr. and the development application of Benedict Holdings LLC.

Sincerely,

Marilyn K. Krueger (541-790-1112)

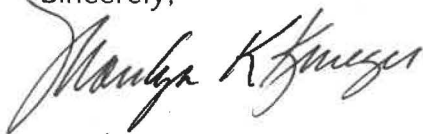
4958 Oceana Dr.

January 11, 2021

Dear Mayor and Councilors,

I am writing in support of the written testimony provided by Sean T. Malone, Attorney at Law on November 24, 2020, and the verbal testimony Bruce Hadley submitted during the City Council meeting on 1/4/2021, and subsequently to be continued on 1/25/2021. I am very concerned about the destruction of property that would be incurred with the annexation of Oceana Dr. and the harm that would be wrought on the residents along Oceana Dr. if annexation were to be approved. The harm to residents would include devastating financial impact, physical danger from increased traffic flow, and emotional damage from the ruination of the wildlife environment that currently exists throughout the Idlewood neighborhood. Further related to the environmental concerns would be the severe reduction of prime Pacific Marten (a federally listed threatened species) habitat that would occur with the approval of annexation of Oceana Dr. and the development of the Benedict Holdings LLC property to the east of Oceana Dr. (see attached Distribution of Pacific Marten in Coastal Oregon, Northwestern Naturalist, Autumn, 2016, 97:71-81). I am in the process of gathering more research data regarding this issue, and I have contacted Nature's Conservancy and Earthjustice (see attached article, "Court Overturns Government Refusal to Protect Rare Coastal Marten), two organizations who have fought extensively for the protection of the Pacific Marten, and other coastal wildlife, for their assistance in the matter of this annexation application. It is my belief that the City of Florence would be in violation of the ODFW, State of Oregon, and the Federal Department of Fish and Wildlife conservation plan for the Pacific Marten by approving the annexation of Oceana Dr. and the development application of Benedict Holdings LLC.

Sincerely,

A handwritten signature in black ink, appearing to read "Marilyn K. Krueger". The signature is fluid and cursive, with the first name being the most prominent.

Marilyn K. Krueger (541-790-1112)

[← PRESS ROOM](#)

March 28, 2017

Court Overturns Government Refusal to Protect Rare Coastal Marten

Victory: Mink-like marten threatened by logging, pesticides, climate change

CONTACTS

Greg Learie, Earthjustice, (415) 217-2000

Noah Greenwald, Center for Biological Diversity, (503) 484-7495

Rob DiPerna, EPIC, (707) 822-7711

SAN FRANCISCO, CA — Today, [a federal judge](#) overturned an April 2014 decision by the U.S. Fish and Wildlife Service denying endangered species protection to coastal martens. The court's action is in response to a lawsuit filed by Earthjustice on behalf of the Center for Biological Diversity and Environmental Protection Information Center.

Coastal martens were believed extinct until 1996 because of historic fur trapping and loss of their old-growth forest habitats, but are now known to occur in three small, isolated populations in California and Oregon.

"We're thrilled the elusive coastal marten is back on track to getting the endangered species protection it so badly needs," **said Noah Greenwald, endangered species director at the Center for Biological Diversity.** "The science is clear that these fascinating and beautiful animals have been reduced to small, isolated populations and face a host of threats that place them at risk of extinction."

Small carnivores related to minks and otters, coastal martens are found only in old-growth forest and dense coastal shrub in Northern California and southern and central coastal Oregon. Once extensively trapped for their fur, the cat-like animals

were once common; now fewer than 100 of them survive in California, while an unknown but very small number are still found in Oregon.

“The magic of the Endangered Species Act is that it puts scientific facts over political games,” **said Earthjustice attorney Greg Loarie, who represented the groups.** “In the courts, the protection of endangered species still matters. Science still matters. The law still matters.”

The martens’ historic range extends from Sonoma County in coastal California north through the coastal mountains of Oregon. Humboldt martens were rediscovered on the Six Rivers National Forest in 1996. Since then researchers have continued to detect martens using track plates and hair snares. In 2009 a marten was detected in Prairie Creek Redwoods State Park by remote-sensing camera, the first to be photographed in recent times. Martens are typically 2 feet long and have large triangular ears and a long tail; they eat small mammals, berries and birds and are eaten by larger mammals and raptors.

“This decision is a win for science and common sense,” **said Rob DiPerna, California forest and wildlife advocate at the Environmental Protection Information Center.** “We thought we'd lost the marten due to bad human decision-making once before, and we could not stand by and watch that happen again.”

[Read the legal document.](#)



SOURCE DATA: 80 FED. REG. 18,751



Coastal martens were believed extinct in California, until they were rediscovered on the Six Rivers National Forest in 1996.

SIX RIVERS NATIONAL FOREST

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– TIM PRESO

Managing Attorney, Northern Rockies office.

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DISTRIBUTION OF PACIFIC MARTEN IN COASTAL OREGON

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ABSTRACT—Information on the distribution of rare and little known species is critical for managers and biologists challenged with species conservation in an uncertain future. Pacific Martens (*Martes caurina*) historically resided throughout Oregon and northern California's coastal forests, but were considered extinct until 1996 when a population in northern California was rediscovered. Only 26 verified contemporary (1989–2012) records were known within Oregon prior to this survey. The coastal subspecies (*M. c. humboldtensis*) was petitioned for listing under the federal Endangered Species Act in 2010. We surveyed for martens during 2014–2015 with 3 separate, non-invasive surveys. We conducted exploratory surveys in 2014, and surveyed at 2 scales during 2015 to confirm the persistence of historical populations (<5 km prior detections) and to determine the limits of current distributions in the region (5–50 km). We surveyed 348 sample units using a total of 72 track plate and 908 remote camera stations for >14 d within a 25,330 km² area, yielding 355,018 photographs. Martens were detected (photographs, tracks, or genetically verified hair samples) at 72 sample units. We detected 28 individual martens in coastal Oregon using a combination of genetic confirmation and captured individuals. Marten observations were clustered in the Central and South Coast regions, suggesting existing populations have persisted since published observations prior to 1998. We did not locate new populations despite an extensive effort to survey new areas, but did learn a unique population exists in the coastal dunes of Central Oregon. Future research could include surveys at a finer-scale to refine population boundaries and estimate minimum population sizes, better define habitat conditions, and evaluate potential threats to population stability (such as disease, genetic bottlenecks). Until population estimates and trends are known, conservation efforts may benefit from local management actions, such as restricting or eliminating kill-trapping in the Coast Ranges, as well as broad efforts to increase connectivity, especially where existing populations face significant barriers to movement, such as a major roadway (Highway 101). Based on our observations, efforts to increase the size, number, and extent of populations could be valuable for long-term conservation of the species.

Key words: American Marten, camera trap, detectability, distribution, Humboldt Marten, *Martes caurina*, Oregon, Pacific Marten

Pacific Martens (*Martes caurina*), previously referred to as American Marten (*Martes americana*, Dawson and Cook 2012), once resided throughout the coastal forests of northern California, Oregon, Washington, and British Columbia (Merriam 1890; Grinnell and others 1937; Yocom 1974). Since the early 1900s, the range of these populations has declined by greater than 95% (Zielinski

and others 2001; Slauson and others In Press), and the northern California subspecies was considered extirpated (Zielinski and Golightly 1996). Surveys during the past 20 y revealed at least 3 populations along the Pacific Coast, in northern California and southern Oregon, the central coast of Oregon, and the Olympic Mountains of Washington (Zielinski and others 2001). The size of the populations and range extents are unknown, but a considerable amount of sampling has recently occurred to address some of these uncertainties, including a description of the current range in Oregon (this study).

Pacific Marten historically occurred throughout coastal forests of Oregon and northern California (Grinnell and Dixon 1926; Grinnell and others 1937; Yocom 1974). Although previously described as 2 subspecies separated at the state border (Miller 1912; Grinnell and others 1937; Slauson and others 2009), there was evidence suggesting populations in northern California and Oregon comprise a single subspecies, the Humboldt Marten (*Martes caurina humboldtensis*), but genetic designations are unresolved (M Schwartz, USDA Forest Service Wildlife Genomics Laboratory, pers. comm.). Currently, this potential subspecies of Pacific Marten in the coast ranges may occur in 2 isolated populations in northern California and southern Oregon ("South Coast Population") and the central coast ("Central Coast Population") of Oregon (Zielinski and others 2001).

Habitat of Pacific Marten in coastal northern California includes structurally complex late-seral forests as well as lower productivity forests with high shrub densities, including areas associated with serpentine soils (Slauson and others 2007). This marten population was affiliated with dense shrub layers, particularly ericaceous shrubs (for example, huckleberry [Ericacrae], blueberry [*Vaccinium* spp.], Salal [*Gautheria shallon*]), which produce edible berries during fall. Martens rest and den in locations that protect them from predation and weather elements, including: cavities, chambers, and broken tops (Raphael and Jones 1997; Bull and Heater 2001a; Slauson and Zielinski 2009; Joyce 2013). Marten resting structures in the coastal range included live trees and snags with cavities averaging >90 cm (35") diameter at breast height (Slauson and Zielinski 2009) and large logs. These structures were often associated with forests >400 y old (Slauson and Zielinski 2009), and may be relatively rare within

heavily managed, even-aged coastal forests. Due to the paucity of research on marten habitat characteristics in coastal forests of Oregon, we acknowledge the potential importance of habitat features not described here.

Humboldt Martens were petitioned for listing under the federal Endangered Species Act in September 2010 (Center for Biological Diversity 2010). In January 2012, the US Fish and Wildlife Service (USFWS) published a 90-d finding initiating a status review of the Humboldt Marten to determine if listing the species was warranted (USFWS 2012). Given the unresolved taxonomy of the coastal populations of martens in California and Oregon, the USFWS evaluated a Distinct Population Segment of the Pacific Marten that comprised coastal populations in Oregon and California. In April 2015, the USFWS found this Distinct Population Segment did not warrant listing (USFWS 2015), but this ruling has been litigated. The USFWS was sued by the Environmental Protection Information Center and Center for Biological Diversity in December 2015 (Center for Biological Diversity 2015).

The general lack of knowledge of marten distribution or habitat characteristics in coastal forests of Oregon catalyzed a multi-agency collaboration, which began unified survey efforts in the summer of 2014. Previous to this effort, the knowledge of population distribution in Oregon was largely based on contemporary roadkill carcasses collected from biologists and reported to the Oregon Department of Fish and Game (ODFW, Zielinski and others 2001, $n = 14$), records of legally-trapped animals reported to ODFW (Hiller 2011, $n = 3$), and verified detections from non-invasive survey efforts (Zielinski and others 2001, $n = 9$, Fig. 1A). Our goal was to evaluate marten distribution in coastal Oregon by surveying at 2 scales: within 5 km and 50 km of prior detections. The 2 scales correspond with the intention to confirm the persistence of historical subpopulations (5 km), and then to determine limits to the current distributions of martens in the associated region. These surveys encompassed >70% of the marten's predicted historical range in Oregon (Zielinski and others 2001).

METHODS

Study Area

Our survey area included over 325 km of the Oregon coast north of the California boarder,

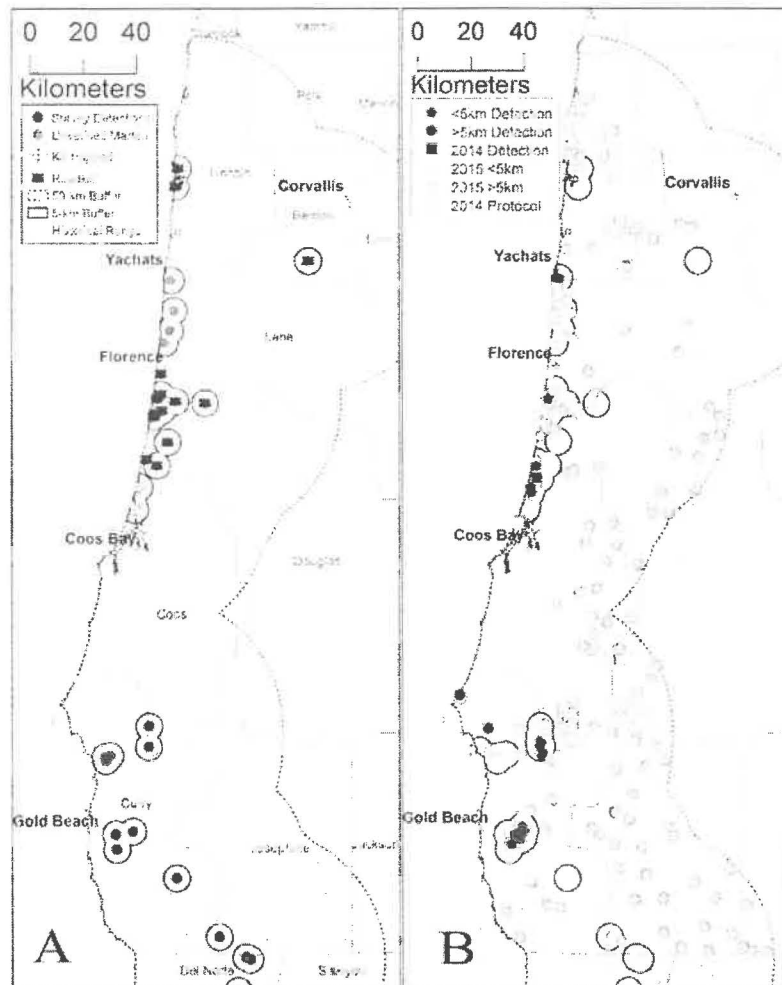


FIGURE 1. Our study occurred in the Klamath and Coastal Mountain Ranges of Oregon in Lincoln, Benton, Lane, Douglas, Coos, Curry, and Josephine counties (grey lines). Pacific Marten (*Martes caurina*) were verified in 26 locations from collected roadkill ($n = 14$), non-invasive surveys ($n = 9$), and reported kill-trapped individuals ($n = 3$) prior to 2014 (Fig. 1A). During 2014–2015, we surveyed 394 sample units and 908 stations (grey), detecting at least 13 individuals at 49 locations (black filled) in a portion of their historical range (grey polygon, Fig. 1B). We used survey methods congruent with Humboldt Marten (*M. c. humboldtensis*) surveys in California (squares, Slauson and Moriarty 2014), a protocol designed to assess detectability within 5 km of former detections (pentagons, Moriarty and others In review), and a modified monitoring protocol for carnivores (circles, Truex and others 2013). Dashed line indicates the 50 km extent of the study.

and encompassed an area extending 50 km from previous locations (exceeding 25,330 km²) within the Klamath and Coastal Mountain ranges (Fig. 1). Moving from the coast inland, dominant landcover types include Sitka Spruce (*Picea sitchensis*) along the coast, Western Hemlock (*Tsuga heterophylla*) in the Coastal Mountains, and mixed evergreen forests in interior valleys of southwest Oregon (Franklin and Dyness 1973).

Sitka Spruce zones are very mild (annual average temperature 10–11°C), while rain and frequent coastal fog contribute to an average of 200–300 cm of precipitation annually. Western Hemlock zones, often co-dominated by Douglas-fir (*Pseudotsuga menziesii*) in areas with a history of fire, are also wet (150–300 cm annual precipitation), somewhat cooler (7–10°C), but with drier summers (6–9% of total precipitation).

Mixed evergreen zones transition to oak (*Quercus* spp.) woodlands and grasslands at elevations <800 m. Mixed zones are relatively warm (10–18°C), with wet winters and dry summers (60–170 cm annually). The valleys tend to be dominated by oak woodlands, conifer forests (mostly *Psuedotsuga menziesii*, *Pinus ponderosa*, and *Lobocedrus decurrens*), and grasslands, and are the warmest and driest cover types west of the Cascade Range (50–100 cm annual precipitation; annual temperatures 3–32°C) with the highest fire frequency (Franklin and Dymess 1973).

Study Design

2014 Surveys.—During summer 2014, we surveyed strategically in areas within the predicted marten range using a 2-km grid aligning with marten survey efforts in California (Slauson 2004; Slauson and others 2007). Because forest age is correlated with the likelihood of marten habitat use, we surveyed two 2-km grids of 18 sample units with an intended arrangement of 3 × 6, chosen to detect martens along a gradient of vegetation age. We also established 52 additional sample units randomly chosen at a 6-km scale within the areas of Lincoln, Coos, and Douglas counties because of historical marten population range extents (Fig. 1B). A 2-km-grid sample unit consisted of 2 non-invasive triangular track plate stations designed for martens (25.4 cm/side) with 3 internal gun brush hair snares for genetic sampling (modified from Cushman and others 2008). One station was at the grid location and another was strategically placed near a riparian area or oldest forested stand as determined from remote sensing maps within 500 m of the central grid point (Slauson and Moriarty 2014). Sample units at the 6-km scale were surveyed in fall 2014 at randomly chosen locations in the Central Coast and consisted of either 2 track plate hair snares or 2 remote cameras. Stations were baited with chicken (1 drumstick) and an olfactory lure (Gusto, Minnesota Trapline Company, Pennock, MN) and checked every 3 d to replace bait and collect data. We conducted surveys for a minimum of 21 d, July through September. Only 1 marten was detected during these surveys, so in 2015 we used 2 approaches to expand our efforts.

2015 Surveys; Areas 5–50 km from Known Detections.—To determine the limits of the

current marten population, we sampled from May through October 2015 within 5–50 km of prior detections (Zielinski and others 2001, ODFW trap records, verified road kill), excluding non-forested areas (such as water, grassland). We used a stratified random sampling design to distribute the sample evenly among young, mature, and old forests when the majority of trees were <80 y, 80–195 y, and >195 y, respectively (Spies and Franklin 1991). To ensure we surveyed among a range of early-seral age classes that would have differing small mammal and thus prey communities (Anthony and Gomez 1998), we surveyed an even number of young stands in presumed open- (ages 0–20 y) and closed- (20–80 y) canopy classes. We expected canopy cover to increase and the stand to exhibit competitive exclusion following 20 y in the younger stands. Dominant-forest age class was approximated using gradient nearest neighbor (GNN) predictive maps (2012 version GNN) for forest composition and configuration (Ohmann and Gregory 2002), and then smoothed within a 9 pixel area (90 m × 90 m, ArcMap, Filter tool).

To sample a large geographic area, ensure crew access, and avoid duplicating prior efforts, we used Geospatial Modeling Environment to initially create 250 random points with a minimum of 6-km spacing between points within a 50 km land-based buffer of previous marten detections (Beyer 2014). Potential sampling locations were then further qualified and located within 750 m of a road or highway or 250 m of a trail, and not within 5 km of recent marten detections (2010–2015; Moriarty and others, unpubl. data), or in non-forested cover types (such as lakes, cities), providing us with 130 potential locations. Our sampling began in the south near the California border and proceeded northward every 3 wk.

Sample units consisted of 4 remote camera stations: 3 baited stations (separated by at least 500 m) and 1 unbaited trail-based camera. We abandoned or adjusted sample units if our access was restricted by non-permissioned private property, extreme terrain (>45° slope), or required hiking >2 km. Stations were active for a minimum of 14 d and were either checked, rebaited, or both every 5–8 d. The 3 baited stations were located in a triangular pattern congruent with the current Sierra Nevada Forest Carnivore protocol (Truex and others 2013),

which has been used to survey Fisher (*Pekania pennanti*) for over a decade (Zielinski and others 2013). We placed remote cameras (Moultrie M990-i No-Glow [$\sim 5\%$ of stations], Browning DarkOps [$\sim 10\%$], Bushnell 2012 Trophy Cam HD Black LED [$\sim 15\%$], Bushnell 2012 Trophy Cam HD Infra-Red [$\sim 10\%$], and Bushnell 2015 Aggressor No-Glow [$\sim 60\%$]) at baited stations and on trees or logs along game trails or log crossings of streams to increase the likelihood of imaging smaller carnivores (Linnell 2014). Cameras were placed >50 m from maintained roads to minimize edge effects, 0.5–1.0 m above the ground, in areas with $>20\%$ foliar cover, and facing north to reduce direct sunlight and poor exposures. We standardized camera mode (still pictures), time stamps, sensor sensitivity (high or normal if excessive vegetation shots were taken), capture delay (5 s between shots), and capture number (3 pictures/shot). Baited stations had a combination of chicken (1 drumstick), cat food (5.5 oz wet and fish flavored, perforated to increase spread of smell), and an olfactory lure (soaked sponge; Gusto, Minnesota Trapline Company, Pennock, MN) nailed or tied 0.5 m above the ground on a tree 1.5–3.0 m from the camera. The baited tree also included a 60–100 cm long reflective measuring strip to help distinguish sex, and station-specific signs for photo record keeping. As a control for animals which may be repelled by baited stations (such as Bobcats, *Lynx rufus*), we paired unbaited stations with the northernmost baited stations in each sample unit. We placed un-baited stations 50–150 m from a baited station, with the camera oriented parallel to a game trail or overgrown road, 0.5–1.0 m above the ground on a tree, angled 0 to 45° to the ground (with adjustments for slope), facing north, and with the focal spot located 2.5 m from the camera. We used only black LED cameras on all un-baited sets to increase the probability of detecting animals that may be deterred by shorter-wavelength infra-red or white flash.

2015 Surveys; Areas <5km from Known Detections.—We sampled January through March and June through October 2015 in areas within 5 km of prior marten detections (Zielinski and others 2001, ODFW trap records, verified road kill). The survey protocol differed because in addition to distribution we were interested in quantifying seasonal detectability with differing bait and height treatments (Moriarty and others, unpubl.

data). We randomly selected sampling units along access routes (roads and trails) within 5 km of historical marten detections. Each sampling unit was separated by a minimum of 750 m and placed at least 75 m from the access route. A sample unit consisted of 2 stations: a baited and trail set. Baited sets had 2 randomized treatments: height (high, low) and bait (chicken and gusto, cat food). For bait, we used either cat food or chicken with an olfactory lure (Gusto, Minnesota Trapline Company, Pennock, MN). Bait was nailed to a tree or log at 0.5 m (low), or 1.5–2.0 m (high). Trail sets were placed on the access route within 50–100 m from the baited set. Our survey period was 21 d, and we checked and re-baited sets weekly following setup.

When martens were detected for either 2015 protocol, genetic samples useful for determining sex or population estimates were obtained using triangular track plate boxes with gun brush hair snares. Track plates were composed of triangular corrugated plastic enclosures and aluminum plates coated with printer toner, a piece of tacky white paper for track collection, and bait (Ray and Zielinski 2008). These snares extended the station sample period by a maximum of 21 d. Track plate boxes were baited with chicken and cat food, contained 1–3 hair snares which were either bolts or gun brushes smeared with mouse glue. Collected hair samples were stored in vials containing desiccant and placed in coolers to prevent exposure to light, temperature, and moisture extremes.

Hair samples were sent to the US Forest Service National Genomics Laboratory (Missoula, MT) for genetic analyses. Whole genomic DNA was extracted from hair samples using the QIAGEN Dneasy Tissue Kit (Qiagen, Valencia, CA) with modifications for hair samples (Mills and others 2000). Hair samples were tested for species identification using the control region of mitochondrial DNA (mtDNA) using universal primers (Kocher and others 1989). Samples were analyzed using 13 microsatellite loci that were previously successful for mustelids (Dallas and Piertney 1998; Davis and Strobeck 1998; Duffy and others 1998; Flemming and others 1999; Jordan and others 2007). We accepted data from hair samples as error free only if the microsatellites produced consistent scores using a multi-tube approach (Eggert and others 2003; McKelvey and Schwartz 2004). Data was checked for genotyping errors using program Dropout

TABLE 1. We detected over 28 species in the Oregon Coast Ranges in 2015 while surveying for Pacific Marten (*Martes caurina*). We used 3 survey methods, but only summarize images taken from remote-cameras during 2015 conducted in areas outside (>5km) and within a 5km buffer of previous verified marten detections (Zielinski and others 2001). We report the total number of photos (No. Photos), sample units with detections ($n = 277$ surveyed), and percent for each species or group. Data are ordered by class (carnivores, small mammals, other) and by percent of sample units with detections (Overall Percent).

Species	>5km (%)	<5km (%)	No. photos	Sample units	Overall percent
Black Bear (<i>Ursus americana</i>)	81	23	23,995	106	47
Spotted Skunk (<i>Spilogale gracilis</i>)	54	41	16,777	106	47
Bobcat (<i>Lynx rufus</i>)	32	26	814	64	28
Grey Fox (<i>Urocyon cinereoargenteus</i>)	23	29	12,266	60	26
Opossum (<i>Didelphis virginiana</i>)	22	25	18,151	54	24
Pacific Marten (<i>Martes caurina</i>)	3	25	4316	36	16
Raccoon (<i>Procyon lotor</i>)	11	14	2195	29	13
Short-tailed Weasel (<i>Mustela erminea</i>)	7	8	304	17	7
Striped Skunk (<i>Mephitis mephitis</i>)	14	2	118	16	7
Domestic Dog (<i>Canis familiaris</i>)	0	11	269	15	7
Mountain Lion (<i>Puma concolor</i>)	11	3	197	14	6
Fisher (<i>Pekania pennanti</i>)	10	0	803	9	4
Coyote (<i>Canis latrans</i>)	4	4	83	9	4
Long-tailed Weasel (<i>Mustela frenata</i>)	4	1	31	5	2
House Cat (<i>Felis catus</i>)	0	2	25	3	1
Ringtail (<i>Bassariscus astutus</i>)	0	2	117	2	1
Mice and Voles (<i>Peromyscus</i> , <i>Myodes</i> , <i>Microtus</i>)	67	61	13,689	144	63
Douglas Squirrel (<i>Tamiasciurus douglassii</i>)	51	53	2128	118	52
Chipmunk (<i>Tamias</i> spp.)	65	29	6082	99	44
Northern Flying Squirrel (<i>Glaconys sabrinus</i>)	47	23	1058	75	33
Woodrat (<i>Neotoma</i> spp.)	26	11	3381	39	17
Cottontail (<i>Sylvilagus</i> spp.)	23	8	1217	33	15
California Ground Squirrel (<i>Otospermophilus beecheyi</i>)	6	0	272	6	3
Gray Squirrel (<i>Sciurus griseus</i>)	0	5	27	6	3
Golden-mantled Ground Squirrel (<i>Callospermophilus lateralis</i>)	2	0	9	2	1
Birds	82	63	20,814	161	71
Deer (<i>Odocoileus</i> spp., <i>Cervus</i> spp.)	70	29	4880	104	46

(McKelvey and Schwartz 2005). The samples were also tested using an SRX/SRY analysis to determine sex (Hedmark and others 2004). Genetic samples were stored at the National Genomics Laboratory. Detectability was evaluated only within stations <5 km of previous detections during the 2015 winter and summer surveys because martens were detected frequently enough to estimate parameters. We also collected samples opportunistically (such as road-killed individuals) throughout the surveys.

RESULTS

The combination of sampling efforts used in this study resulted in 348 sample units (908 stations), and represents the largest carnivore survey conducted in Oregon. During 2014, 87 sample units (174 stations) were surveyed with remote cameras (62%) or track plates (38%). One marten was detected during fall surveys via track plate. During 2015, 80–120 cameras were de-

ployed in the field at any given time. We surveyed 98 sample units using 394 camera stations >5 km from prior detections in summer 2015. Cameras were operational for 5516 camera nights and took 200,718 photographs. We detected at least 1 marten at 2 sample units near the Southern Coast Population, producing 11 photographs (Fig. 1B). Within 5 km of known detections, we surveyed 163 sample units using 340 camera stations during winter and summer 2015. Cameras were operational for a minimum of 7140 trap nights and took 154,313 photographs. Martens were detected in 70 sample units (43%) and 8646 marten photographs were obtained; however, 1 sample unit accounted for 16% of those photos ($n = 1370$) during its 21-d sample period.

We incidentally detected a minimum of 28 additional mammalian species using remote cameras (Table 1). Of the carnivores, Black Bear (*Ursus americana*) and Spotted Skunk (*Spilogale gracilis*) were detected most frequently, at 47% of

gon. Although our methods were appropriate for such a task, it is important to realize that individuals were likely missed due to imperfect detection of the animals whose home ranges were sampled, as well as animals whose home ranges fell entirely between sample units. We used a spacing distance of an average male home range (Powell 1994), meeting the assumption of independence for occupancy modeling (MacKenzie and others 2006). This spacing may not be able to accurately estimate the number of individuals because multiple sample units would need to be within each home range. In the areas that we did survey, we have high confidence of detecting individuals when present due to multiple survey devices (4) being in a clustered design, which increases accuracy for density and abundance estimation (Roughton and Sweeney 1977; Sun and others 2014; Wilton and others 2014). Using 4 stations within a sample unit during our surveys increased by one the number of cameras specified in the protocol for carnivore and Fisher monitoring in the Sierra Nevada Mountains (Truex and others 2013). In another study evaluating marten occupancy, Zielinski and others (2008) surveyed with sample units 636 m apart and a cluster of 2 or 3 stations at 250 m spacing. Thus, survey efforts to determine whether individual martens are present within a localized area may benefit from sampling units consisting of clustered devices spaced <1 km apart to increase device overlap within home ranges. Current efforts are underway to evaluate protocol effectiveness and minimum efforts required to detect individuals when present (Moriarty and others, unpubl. data).

Marten populations in coastal Oregon and California are currently vulnerable to local extirpation. The "Humboldt Marten Conservation Strategy and Assessment" suggests that the most impending threats include large-scale habitat fragmentation, high-severity and large-scale fire, and lethal disease (Slauson and others In Press). In areas where marten populations persist, a conservative and proactive approach may increase the likelihood of persistence. Slauson and others (In prep) described a 3-pronged approach for subspecies conservation: (1) protect existing populations; (2) re-establish populations in areas with suitable habitat; and (3) restore or focus management efforts to improve habitat conditions. In Oregon, additional information is necessary to describe

suitable habitat conditions, and significant information needs have been identified by Slauson and others (In prep).

While broader conservation strategies are being developed, several measures could help protect individuals within current populations. For instance, restricting lethal trapping of martens in the Coast Range could reduce anthropogenic pressure on small populations. It is unlikely that trapping is a large source of mortality; only 3 lethally-trapped Humboldt Martens have been reported in the past 5 y (Hiller 2011); however, any reduction of individuals may negatively affect populations. In Oregon, the most common verified mortality source has been vehicular strikes along Highway 101 ($n = 17$; 3 located during 2015, Moriarty, unpubl. data). Creating wildlife corridors under roadways using well-designed culverts have been effective for many species, but these may be logistically difficult to construct and require knowledge of crossing areas (Glista and others 2009). In areas suspected to be corridors, considerations for increased signage for wildlife crossing areas and reduced speed limits may decrease the number of vehicular mortalities (Glista and others 2009). However, vehicle strikes accounted for only 2% of documented Fisher mortalities near Yosemite National Park, California, even in heavy use areas (Gabriel and others 2015), so this cause may be trivial compared to predation, disease, and exposure to poison (such as rodenticides).

Habitat fragmentation through natural and anthropogenic alterations likely poses the largest threat to marten conservation. Marten populations decline with as little as 30% of the forest cover removed (Hargis and others 1999; Potvin and others 2000), and fuel reduction treatments typically decreased cover and connectivity in the Sierra Nevada (Moriarty and others 2015). Martens were deterred by low-canopy-cover openings, seldom moving 17 m beyond cover (Cushman and others 2011), and most often moving >50 m within forest patches to avoid such openings (Moriarty and others 2015). Despite potential vulnerabilities and avoidance from open understories, areas with high-fire risk may benefit from strategic variable-retention fuel-reduction treatments over a trajectory of several decades as suggested for Fisher habitat (Thompson and others 2011; Sweitzer and others 2016), but such information has not been

assessed for martens in Oregon. Further, future conservation strategies in the current Central Coast Population may differ from interior forests due to the unique coastal ecosystem. For instance, it might be more important to focus on road crossing and connectivity in the Central Coast, whereas the South Coast population may be more at risk due to poisoning and fire danger. With our current knowledge, maintaining connectivity with both overstory trees and dense shrub cover (for example see Slauson and others 2007) would be a conservative measure in areas with extant populations, both for preservation and potential expansion.

This survey represents the first large-scale exploration of marten distributions in coastal Oregon, but we still have little data to describe the behaviors, habitats, threats, and fine-scale distributions of coastal marten. Ultimately, more marten populations in coastal Oregon and northern California could assist in reducing threat of extirpation. Additional surveys to understand the distribution extent, and focused hypothesis-based research linking habitat and demographic parameters should be considered for strategic planning.

ACKNOWLEDGMENTS

Survey efforts were largely funded by the Oregon State University Fish and Wildlife Habitat in Managed Forests Research Program and the National Council for Air and Stream Improvement. The Oregon Forestry Industry Council funded surveys within 5-km of prior locations. USDA Forest Service, Pacific Northwest Research Station, funded data management and provided external support. Additional surveys were conducted by Hancock Forest Management, Plum Creek, USDA Forest Service (USFS) Siuslaw National Forest, Oregon Department of Forestry, and the Confederated Tribes of Siletz Indians of Oregon. Considerable aid with field logistics, vehicles, housing, and equipment was provided by the US Fish and Wildlife Service, Salem District Bureau of Land Management (BLM), USFS Rogue River-Siskiyou and Siuslaw National Forests, Weyerhaeuser, Hancock Forest Management, and USFS Region 6 Regional Office. We obtained private land access or surveys were completed by trained staff within the ownership for all randomly selected survey points; thanks to Plum Creek, Weyerhaeuser, Hancock Forest Management, Starker Forests, and Roseburg Timber for access or data. Thanks to Keith Slauson, Pacific Southwest Research Station, who assisted during the 1st y with study design and explaining California protocols. Extreme thanks to all field crew leaders (S Smythe, M

Linnell, B Peterson, GW Watts, J Bakke, C Shafer, K Kooi, M Penk, N Palazzotto, and R Smith) and team members (D Baumsteiger, M Cokeley, J Ellison, P Jacano, A Kornak, T McFadden, E Morrison, A Palmer, S Roon, S Riutzel, C Scott, T Stinson, and M Williams).

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Submitted 2 January 2016, accepted 9 May 2016.
Corresponding Editor: Paul Cryan.

* Unpublished.

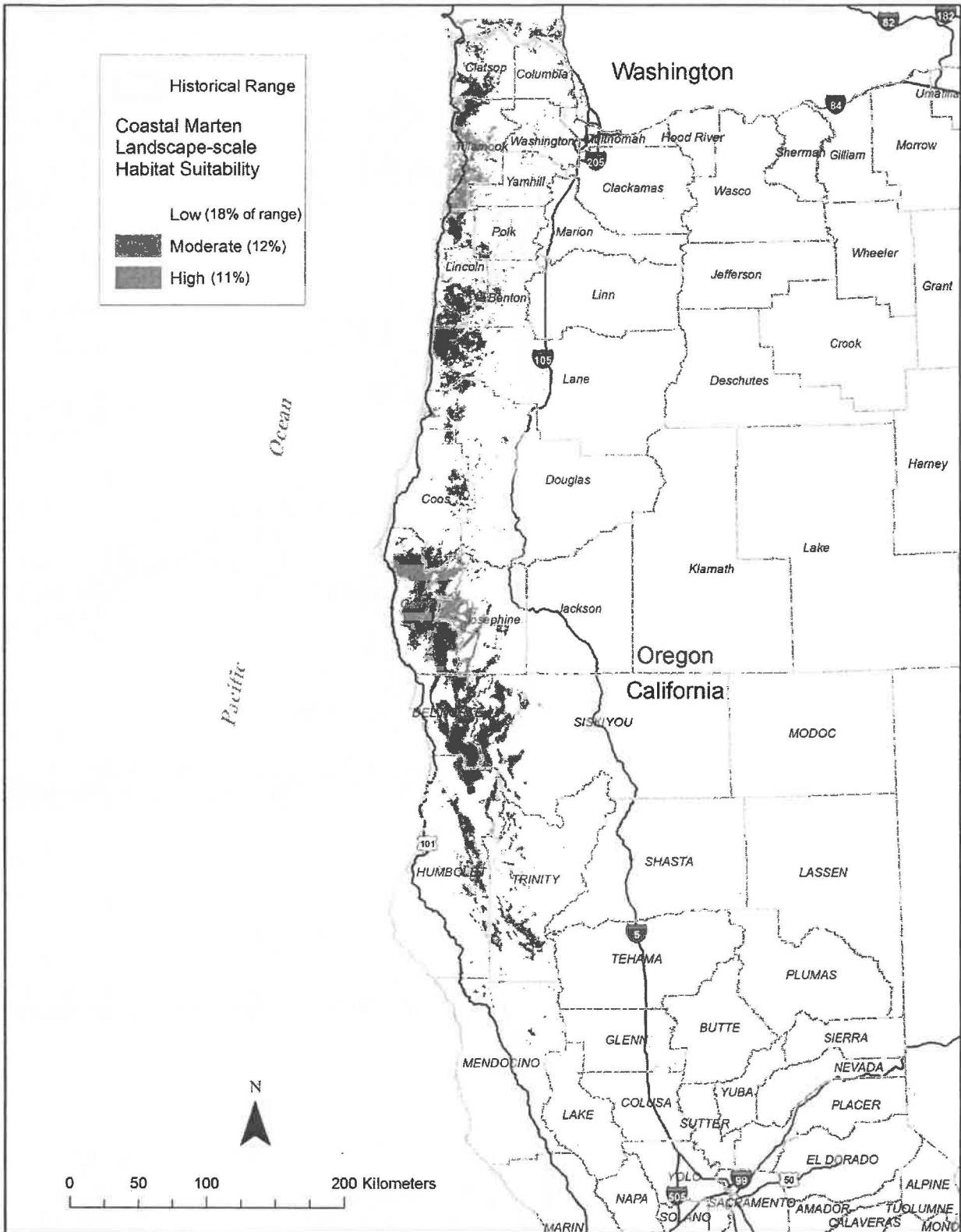


Figure 7.6. Current landscape habitat suitability for coastal martens throughout their historical range (Slauson et al. *In prep.*(b)). Coastal dune forest habitat in northern Coos County, Douglas County, and Lane County, Oregon are considered suitable, but were excluded by the model.

Aleia Bailey

From: Terry Danforth <rtdanforth@outlook.com>
Sent: Friday, January 15, 2021 12:33 PM
To: Joe Henry; Woody Woodbury; Sally Wantz; Bill Meyer; Kelli Weese; planningdepartment
Subject: Cherry Stem Annexation

Florence Oregon City Mayor and City Councilpersons,

I want to comment and voice my objections to the proposed annexation by the Benedict Holdings through the Idylwood Subdivision into the city of Florence. I have many concerns about this proposal. This proposed subdivision is an ill-conceived and illegal plan by the land developer. This development has been rebuked by the Oregon Coast Alliance Attorney Sean T. Malone for not following guidelines established by his organization to protect coastal natural resources and work with residents to enhance community livability. Attorney Zack Mittge representing the Heceta South subdivision comments that there are violations of state statues involving this Cherry Stem Annexation. He also points out that other statues have been violated regarding the environment, health and safety.

1. The timing of this proposal during a pandemic when it is difficult to access records and look at the on-site proposal is problematic by Benedict Holdings LLC. It is difficult for the residents that are most effected by the development have little input into this planning process. The access and subsequent necessary sewer line to the subdivision would be through the Idylewood subdivision. The roads currently are barely adequate for the current residents, much less for additional traffic that additional residents would require. This annexation would impact the roads, right away and residents of the entire Idlywood subdivision. There would be increased traffic from residents in this new sub-division and also because of construction equipment required for building additional infrastructure and residential buildings for this new sub-division.
2. This proposed subdivision was turned down by Lane County some time ago because concerns over wildlife, drainage, sewage, seasonal flooding and shallow water table and access issues. I think it is premature for the city council to consider this proposal without involvement by the residents that are most affected by this development.
3. The area where this proposed development is located has one of the largest areas in the Florence area where there is viable populations of deer, bear, and other wildlife species, which will be negatively impacted.
5. The Idylewood neighborhood is a retreat for walkers not only for residents in the sub-division, but also other Florence community residents. The narrow vegetation lined streets with little traffic afford community members to walk without fear of being run over or treated

with disrespect from motorists. It is a peaceful location that is not afforded anywhere else in the Florence community other than a beach that can be inhospitable at times for walking. Many residents in the subdivision are senior citizens and this neighborhood is the only reasonable option for exercise.

6. There are too many unanswered questions in Benedict Holding proposal. Specifically, about Storm water, Ground water, Seasonal Lakes, wildlife, and Sewage pump station. It appears that Benedict Holdings do not have an approved system for a drainage system they installed in the Gullsettle Court area after flooding occurred there in 1996.

7. I seriously question that there would be any positive economic benefit for the City of Florence. On the contrary the economic, environmental, and social impact on the residents in the Idlywood subdivision would be negatively impacted. Benedict Holdings have not made commitments to the liability of these infrastructure criteria. I have a suspicion that it does not fit into their business model.

8. The proposed sub-division proposed by Benedict Holdings would deny us the privilege that we now enjoy and certainly one of the reasons I bought in this sub-division. I strongly urge you deny the proposal for annexation by Benedict Holdings LLC.

Respectfully,

Richard T. Danforth
Lisa Wallace

87825 Limpit Lane
Florence, OR 97439

From: Jeff Gemutliche <jeffgemutliche@shasta.com>

Sent: Thursday, January 14, 2021 10:01 PM

To: Sally Wantz

Cc: Thatcher, Cher; Terry & Kathy; Rich & Susan Johnson; Mary McCarthy; jok simons; Linda Bickel; Linda Bickel; Lea Patten; Diane Pettey; Ken Chipps; Jerry Bateman; Jamie/Jim sikora; Cindy Flesher; Brent & Kathi Johnson; Annie & Dave Blanks

Subject: Hello Ms. Wantz COF Councilor----

Ms. Wantz,

1st off, congratulations on your being elected/included in the COF City Council !

Next, we very much liked & agreed with the fact that you had a common sense recommendation for the vacant COF City Council seat --- so conveniently ignored by the current "good old boys network" in control of COF for too long. It would be nice if the will of the people & public good is considered instead of the "benefit for the few"

We hope & truly expect that you will give a voice (so many of us are behind you) to us older residents that are not the well connected, those that are not neighbors in a gated community (City Council Of Shelter Cove), those who don't have a specific agenda other than to maintain a quality of life in their waning years who moved here for that specific reason. We're counting on you to give us that voice, to give us our rightful inclusion in decisions, to give us the dignity we deserve for just being here surviving that many in the COF hierarchy are attempting to negate & silence for the benefit of their own purposes! It's perfectly clear that there is something drastically wrong in our community when the powers that be purposely silence a certain segment of the population to push an agenda forward that excludes them totally for the benefit of those few. We think you know exactly what we mean---please help us ----

Thank you, Jeff & those included above, & so many many more----if you need a list of us all (we couldn't include it because of the cost but we'll give it to you---100s of no voice seniors !



From: Bert Nelson
4822 Oceana Dr
Florence Or 97439

Subject: Annexation of properties along Oceana Dr Florence Oregon

I am an 81 year old 70% disabled Vietnam Veteran who moved to my current address on Oceana Dr in Jul 2016. I made this move because the home on Oceana was more affordable, and quieter than where I lived before.

Your annexation will effect me quite dramatically. The taxes on my property will most likely go up dramatically. The actual value of my property will be substantially diminished. Requiring new sewage lines at my expense is not something I want, or can afford. Removing trees along Oceana Dr would greatly diminish my privacy as well as decrease my property value. I very much like to live on a quiet street, and increased traffic on Oceana is something I do not want. I moved here believing that my final years would be improved. You are about to take all this away from me by your annexation of my property.

I am too old (81) and too disabled (70% according to the VA) to make another move. In addition I fear the value of my property will be substantially diminished by your annexation.

State law requires signatures from at least 50 percent of the property owners to annex property. I do not believe that anywhere near 50% of the owners in this area have signed this request. Almost everyone I have talked to is in opposition to this annexation.

Benedick Holding LLC would greatly benefit, if this annexation takes place. They would be requiring others to pay for what benefits only Benedick Holding. I do not believe I should be required to pay for something I do not want and which is not in my best interest.

Bert Nelson
4822 Oceana Dr
Florence Or 97439
(503)989-1367

Aleia Bailey

From: Jeff Gemutliche <jeffgemutliche@shasta.com>
Sent: Tuesday, January 19, 2021 1:58 PM
To: Joe Henry; Bill Meyer; Woody Woodbury; Sally Wantz; Kelli Weese; Kelli Weese; Erin Reynolds; Wendy Farley-Campbell; Roxanne Johnston; Dylan Huber-Heidorn; planningdepartment; Jay.Bozievich@lanecountyor.gov; BELL Amber R; VARTANIAN Sasha L; Mike Miller; Sandi Anderson; lcbcccom@lanecountyor.gov; lcpwadmn@co.lane.or.us
Cc: Thatcher, Cher; Rich & Susan Johnson; Terry & Kathy; Peter Broderick; Ned Hickson; Mark Brennen; Mike & Linda Harrah; Linda Bickel; Lea Patten; Ken Chipps; jok simons; Mary McCarthy; Jamie/Jim sikora; Brent & Kathi Johnson; Annie & Dave Blanks; Cameron La Follette; Cindy Flesher; Hadley, Bruce; Jerry Bateman; zmittge@eugenelaw.com
Subject: Bendick Annexation Petition Evidence

To any & all concerned in the matter of the petition by Benedick Holding LLC (BH LLC) for annexation of Oceana Drive & noticed tax lots (400, 401, 801) into the City Of Florence.

Representatives of The City Of Florence (COF) , The COF City Council, The COF Planning Dept., The COF Planning Commission, The COF Public Works Dept. & to representatives of Lane County including The Lane County (LC) Commission, Lane County Planning Dept., Lane County Public Works Dept. & Lane County Transportation Dept. ,

I request that the following information be included in the objections to the mentioned annexation under consideration in the COF City Council meeting of 2-1-21 or at any time considerations are made. This is also to be included in any & all deliberations involving both Lane County & The City Of Florence regarding the mentioned annexation. I have made this inclusive of COF & Lane County individuals & agencies so there can be no more claims of ignorance of the problems, no more glossing over of the problems & no more deliberately ignoring the many problems & raised objections re: said problems. I recently spoke to Kelli Weese, COF Recorder; when I asked of her, if COF Council members or COF Planning Commission members read the testimony regarding evidence & objections in this matter, she told me that the members relied upon staff recommendations for making their decisions. So, how in the world can anyone make a comprehensive decision if all the pertinent true & correct facts are not included, purposely ignored or not allowed to be brought up in the hearings? This decision involves many hundreds of lives, it is unconscionable that such a decision be made without knowing the totality of facts! The virtual hearings themselves are ridiculous in that most of the time it's impossible to understand what is being said.

I would like to point out that many, if not most, of the above mentioned individuals & agencies have known about the numerous problems (legally, logistically & environmentally) regarding Oceana Drive and inclusive of the said tax lots. If not, I am bringing it to your attention right now! This concerns the fact that the annexation petitioner, Benedick Holding LLC, (BH LLC) has not complied or completed the requirements which were made of him for the development of existing subdivisions regarding storm water runoff systems that have presented serious ongoing flooding issues. It has been going on for 20 plus years. **This is well known & documented in email strings between Lane County & COF representatives & their agencies dating back to at least 2014 but referring to many years before that---it is in evidence!** This has been ever so conveniently buried under the auspices of following the letter of law when considering this annexation --- citizens are told this constantly. If the planning departments, commissions, councilors, commissioners are so taken with presenting the public with an argument of adherence to law & "for the public good" , why don't you extend that precept to Benedick Holding LLC and make him & yourselves adhere to it instead of burdening 100s of elderly residents with financial & quality of life hardships by forcing something upon them that none want or can afford? Make BH LLC complete what he was required & supposed to do before anymore talk or movement

on this annexation---make him do that first ! See how well he performs before anything else? In that context, let us see how well you perform ?

For anyone in a position representing the public, not just those of special interests or for personal pet agendas, I remind you that you have a duty to your citizens, residents--- those that are counting on you doing what is right! Your public responsibility mandates that you do what is best for the true "public good", all those existing older residents that you have been ignoring. Also consider that, in expediting something so patently wrong for the sake of convenience on the part of Lane County you are contributing to a furtherance of legal ramifications that will transfer to and haunt both Lane County & The City Of Florence for many years to come---you have knowledge aforethought of existing problems that you are all willfully ignoring.

So, for the sake of your own consciences, the sake of right against wrong, the sake of what is legally correct & for the sake of the real "public good" step up to the plate & exercise the concept of what true representatives of the public are supposed to be-----too many of you have evidently forgotten that. There are none so blind & deaf as those that refuse to see & listen-----

Jeff Talbot 5033 Kelsie Court Florence, OR 97439 541-590-3899

Aleia Bailey

From: Cher Thatcher <skidmore53@aol.com>
Sent: Tuesday, January 19, 2021 3:21 PM
To: Joe Henry; Woody Woodbury; Sally Wantz; Bill Meyer; Kelli Weese; planningdepartment; Wendy Farley-Campbell; jay.bozievich@lanecountyor.gov
Subject: Benedick Holdings LLC Annexation and Zone Change Request

I am writing this letter in regard to the annexation and zone change request before you from Benedick Holdings LLC. I adamantly oppose this annexation and zone change.

Prior to this letter, I wrote to the City of Florence Planning Dept. and along with my 9 page letter to the Planning Dept. I included 969 pages (hard copy and disk) of the entire Benedick file from Lane County. In these 969 pages (which you should have access to and should be reviewing) there are e-mails back and forth with Lane County officials and others in regard to the flooding and storm drainage issues along Oceana Drive and surrounding streets in the Idylewood subdivisions. Mr. Benedick NEVER did what Lane County required of him to “fix” the issues regarding the flooding and storm drainage and the problems still exist to this day.

Before Mr. Benedick can be allowed to develop his land (and development IS on the table as his own attorney mentions it in his letters to the COF) he should be forced to do what he was told to do by Lane County. I implore you to review the e-mails in regard to the storm drainage issues.

In regard to the zone change, the area that Mr. Benedick is planning on developing, should this annexation and zone change be approved, is a true wetlands. When development occurs on this land it will only cause FURTHER storm drainage issues and flooding. Not to mention the land is a habitat for many mammals, birds, amphibians and reptiles, etc. And, in fact, there has been a sighting of the pacific coastal marten – which just recently has been declared as an endangered species.

In the interim, the virtual meetings that have taken place with the Planning Dept. and the recent hearing with the City of Florence Mayor and Councilors are, to put it bluntly, a joke! They are hard to watch as one cannot understand what is being said and they need to be held in a setting where the public can sit and watch “live” and have their voices heard (albeit behind a mask). Benedick Holdings LLC is taking advantage of our horrible pandemic in that he is slipping this annexation under the wire – so many who are being affected in the Idylewood subdivision, including those along Oceana Drive, were not even notified of this annexation and zone change request.

I implore you to review the entire 969 pages which I provided as an attachment (in two white copy paper boxes) to my letter to the Florence Planning Dept. – It was to be (initially) scanned as the “K” testimonials. That attachment was delivered in person on October 5, 2020 to Aleia at the front doors of the City Hall.

This annexation and zone change should not take place unless and until all the hundreds of citizens who are NOT wanting this can be allowed to decently have their voices be heard.

Cher Thatcher
5033 Kelsie Court
Florence, Oregon 97439
(541) 590-3899

19 January 2021

Re: Benedick Holdings LLC Application for Annexation and Rezoning

Mayor and City Councilors,

You now have more than 1,300 pages of testimony in your file re: this application, and I realize it's a daunting task to carefully review all of that information and citizen input.

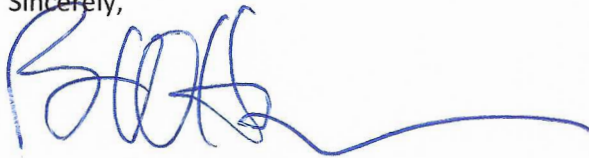
To help you with your review, and to put some of that mountain of testimony in context, please enter this letter and the attached three-page document into the public record.

The document attached is a brief history of the Idylewood subdivision, with a focus on the interaction among residents, Lane County, the City of Florence, and the Benedick family.

After reading this, I hope you will stop or at least push "pause" on the Benedick application. The history shows far too many broken promises, outright lies, and flagrant violations of legal code.

If you are truly interested in the public interest, you should not approve the application before you.

Sincerely,



Bruce Hadley

[Idylewood Owners LLC](#)

4828 Oceana Dr.

Florence, OR 97439

bwh541@gmail.com

tel. (541) 901-1140

Idylewood v. Benedick: Historical Notes

1980-1999

Chapter One: In the Beginning

City demands non-remonstrance clauses for later annexation, Benedick complies, and writes the CCRs so that he won't have to pay anything.

Idylewood is a success, with 1st addition, 2nd addition, and 3rd addition platted in 1991 and 1995. However, they have much softer CCRs.

Then, trouble in paradise: First huge flooding event in 1996 (we have photos), with another in 1999.

2000-2009

Chapter Two: Benedick's Broken Promises

Benedick never creates an HOA, which leads residents to believe CCRs will never be enforced, and denies the Idylewood residents a unified voice.

Benedick promises to create a park in the area east of Cloudcroft and Woodmere; this never happens.

Benedick tries to fix storm water and flooding issue, fails, and Lane County tells him what he must do to fix it; he ignores them.

Meanwhile, City of Florence (COF) pays outside experts for a Storm Water Management Plan, which details the problems, and puts a fix at \$335,000 (adjusted for inflation).

During this time, COF embarks on an aggressive annexation policy. First, they tell Fawn Ridge developer James Hurst that to get approval, he needs annexation (which he did not want). Second, they justify the capture of all of Rhododendron Drive by their "white knight" rescue of Driftwood Shores' failing septic system. This is in 2007-2008. This decision is later appealed to LUBA, but COF wins. Thus, cherry stems become precedent and policy, setting us up for the next chapter.

2010-2019

Chapter Three: Lane County Enters the Fray, Limpes Away

Benedick begins application process for Idylewood 4th addition on his remaining 46 acres, most of which is wetlands.

Benedick illegally clears trees with heavy equipment; Lane County tells him to stop. He at first says No, I have a State permit, then says, OK, I'll stop. But he leaves the downed logs that Lane County told him to remove.

COF reviews the application, and insists that Kelsie Way be connected to Oceana, to provide secondary ingress-egress; Benedick files for a variance, which (ironically) Heceta South supports, because they don't want Kelsie damaged. However, it's highly unlikely that Kelsie could have ever been used, due to topography.

COF also suggests that annexation is the way to go — but doesn't talk about how that would be accomplished. At this point, Oceana is not part of the plan.

After years of studies and reviews and back-and-forth, Lane County cuts Benedick's proposed 64 lots down to 55, and says that 9 of those will not be buildable — giving Benedick a net of 46.

Note that this is with the County's setback from wetlands of 50'; COF requires 100', which would cut the lot count down by at least another 14 or 15.

So, why is Benedick going with the more restrictive rules of COF? And if COF really wants "affordable housing," why do they care about 30 single-family homes in a high-end (read: expensive) neighborhood?

Lane County also asks for more studies re: seriously steep slopes, ground water, and more, before any digging may begin. This is 2016; Benedick does not respond, so it's "on hold," apparently forever.

Also in this timeframe, in May 2014, County Commissioner Bozievich writes an email citing the "long history of non-compliance and drainage issues," and says he recommends no approvals for 4th addition until the storm water issues has been corrected. If it is not, he says, "the county could find itself involved in litigation from the current home owners."

Meanwhile, in 2014, the Oregon Homebuilders Association writes legislation designed to bypass pesky regulations, red tape, and citizen input. With much lobbying, SB 1573 is signed into law in 2016. This opens the door to “triple majority” rule, and legitimizes cherry-stem annexations.

Also during this time period, Florence Mayor Joe Henry publicly states his intention to annex everything within the urban growth boundary.

2020-2021

Chapter Four: The City Starts Its Street Grab

Benedick files his petition for annexation and rezoning in July; the Planning Commission has one hearing (via the internet) in November, then approves it in December.

Idylewood Owners LLC is formed, and hires the same attorney used by Heceta South HOA. The mailing list starts with 43 names: The owners of properties that touch Oceana Drive. As of this writing, the mailing list is 366 names, all opposed to annexation.

There are at this time 1,300+ pages in testimony; it’s highly unlikely that anyone, even COF staff, has read all of it.

Of the 120+ letters submitted to the Planning Department in opposition, most are ignored. The Planning Department incorrectly states that they don’t have to consider development issues now; this is simply and legally not true.

Zero letters are received in support of the application, unless you count the one from Michael Farthing, the attorney for the Benedicks.

In the October 2020, USFW adds the Pacific Marten to its threatened and endangered list. The marten has been spotted within the past year on the Benedick property. Thus, it is suggested that more research is required before the consideration of annexation or rezoning; COF stonewalls.

Oceana Drive remains a huge question mark. The 1981 Improvement Agreement and our 1982 CCRs say that we have to pay for all road improvements, at the sole discretion of the City Council. Does that mean we inherit the \$335,000 repair that the COF study said would be required? Or do the COF taxpayers get to pick up that tab?

RECEIVED
City of Florence
JAN 19 2021
By: DHH

From County
Residents: comments
& Questions

From Suzanne #31
Curtis
541-902-0795

Exhibit M34

Florence government wants to Annex Oceana Dr into the City. Many upgrades will need to be done. But the City Annexed Rhododendron Street where is the "City plan" showing fine line, cost upgrade to Florence tax payers. Don't forget yearly maintenance expenditure

If Annexed, what is projected cost of Above comments to Florence tax payers for Oceana Dr.

Within the City limits there are new developments: the 35th St project approximately 90 homes, Fairway Estates phase I is 40 home and phase II has 40 lots for future building. Now Benedick's 30 to 40 homes outside City limits, with Oceana Dr Annexed.

Within Florence City limits storm water system will be paid by its tax payers, as well as maintenance and long term corrections.

Why does Florence want to keep adding storm water systems outside the City surrounded by Lane County tax payers?

Lately I've been informed Lane County has jurisdiction of Oceana Dr. and most of Saltane St.

Why didn't the County fine Benedict for the costs it spent — because of flooding at the east end of Oceana Drive continues?

Also - storm water run off impacts Oceana Dr. pavement, road bed - will the City, if annexation is approved, make this a cost to the developer, or the Lot Owner or Lane County for its derelict behavior.

Benedick never corrected the west end of Oceana Dr. + Rhododendrons storm water ponding. Now the City has control over Rhododendron St. What is its cost and plan to correct the problems?

With the Annexation, if it happens, a turn in Lane must be added. This would not be a charge to lot owners' — As this would be a new section of Oceana. Does the City or developer pay the bill?

Along Oceana most of the homes and driveways face the street. Many of these lots also continue along the panhandles to more homes. Do the Lot owners with sides forming the panhandles be charged with front and side expenses to City standards.

RECEIVED
City of Florence

JAN 19 2021

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From County
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To County Florence

p3

Idylwood resident David Campbell's letter,
Swain News 12/5/20 'Benedick Annexation'

If Mr. Campbell is correct Benedick's gravity system
was used from 2001 until 2007. Did Lane County
officials approve of this gravity flow system?

If accepted by Lane County what happened?
Why didn't Lane County fine Benedick,
if the gravity system was faulty?

What did Lane County do to solve this it's still
a problem!

If Benedick's development is approved by the City
of Florence, can the City or the builder, or County pay
for needed resolutions?

Will this again be an expense to Lot owners
unaware of County + Builder neglect?

What are the costs to Florence tax payers for annexation of Rhododendron St. and sewer lines hook up to Oceana after initial developer expenditures? Both of the aforementioned are surrounded by Lane County tax payers. But both sewer & street annexation require repair, expansion and maintenance. Again what are the cost to Florence tax payers?

The City should have long range budgets for Rhododendron and City's sewer annexation projects and proposed Oceana Dr. Let's not forget legal expenses. What are these costs to Florence tax payers?

Fluorence water

Within the City limits, there appears ongoing developments in various sizes: large developments Sand Pines East - Oak Street, small project on Oak St. 30th & 31st Street, large project across from Fred Meyers, Airport - 15th south of Boys and Girls Club, the 35th Street project - not yet started with approximately 90 homes, Fairway Estates' 40 homes in phase I, 40 more homes proposed in phase II.

How is the water source - an aquifer, under ground pumping system, handling the current new advanced population demands?

Is the aquifer capable with all the listed new within City limit developments? Heceta Water District, I believe only can be used in an emergency.

Outside City limits - Lane County residents use Heceta Water District PUD. It's not an aquifer system. Driftwood Shores and Flamingo Ridge East & West are part of the City use Heceta Water Districts water source. If Heceta Water no longer serves these + newer, maybe Oceana Dr. homes will the City provide water

epallens #2/5/30

BENEDICK ANNEXATION WAS

— AND IS — A BAD IDEA

Developer G. Benedick is at it again, trying to develop approximately 50 acres of wet lands and seasonal lakes. The first attempt consisted of 63 homes without regard to additional flooding.

He also made an attempt to annex Oceana Drive. We purchased our home in December 1999 with out this disclosure, the brochure said: "Subject to standing water"

The storm water was directed to Gullsettle Court catch basins and a pump station. The pump and all controls were removed about 10 years ago.

In 2001, Benedick installed a gravity flow system completed in 2007; Benedick would maintain the system for a period of time and the county would then inspect the system and, if approved, would assume the maintenance of the system.

That never happened. No one has maintained the system in all those years since.

At a meeting in Eugene with all county commissioners and residents from Idylewood (to support the Benedick proposal), county engineer Oliver Snowden stated — and I quote: "The county should never have allowed building in this area."

Now Benedick wants to add 63 homes with no place for the storm water to go.

The other problem is with traffic, considering the potential for as many as another 112 cars on Rhody from those 63 homes.

At the meeting in 2001, I asked Commissioner Anna Morrison for a copy of the meeting be sent to those who spoke. It is going on 20 years and, after many requests, we're still waiting.

*David Campbell
Florence*

APPRECIATE COMPASSION OF

Aleia Bailey

From: Nancy Patterson <nancy_patterson@sbcglobal.net>
Sent: Thursday, January 21, 2021 7:12 PM
To: planningdepartment
Cc: Nancy Patterson
Subject: Benedick Holdings LLC Application and Rezoning

Planning Department,

I am in opposition to the proposed annexation of Oceana Drive in Idylewood and the adjacent streets. This proposed annexation has not been requested by any of the homeowners in Idylewood but appears to be imposed on them.

I know that you have received many letters in opposition and protest, including one of mine to the Planning Department. I will keep this relatively brief.

My home at 4939 Oceana has been in my family since 1995. I inherited it from my father in 2013 and have kept it as a second home, knowing that I may not always be able to afford to do so. There is a lot of family history and sentimental feelings for me in this home as my children and I vacationed in Florence several times a year to visit my father for 18 years. I now use it in my retirement. I realize that I am different than most of my neighbors who have one primary home in Idylewood.

I would prefer for Idylewood to remain as it is, a Lane County rural neighborhood. I believe that this is why my neighbors chose to live here. However, I know that you may make a different decision in spite of us and in favor of the developer who set this in motion. If you make this decision, please do not mandate anything that would require financial responsibilities for Idylewood homeowners such as hook-up to sanitary sewer lines if there is no public health reason to do this. Please also do not require homeowners to be responsible for road improvements.

I realize that there is an Improvement Agreement dated in 1981 for the original Idylewood residential properties. This requires those homeowners be responsible for the above should the City want to annex the area and be able to provide services. It also states that residents have no ability for remonstrance. I ask that you amend this agreement, as proposed by Bruce Hadley in his letter to you on January 14, 2021. I am in agreement with him IF this annexation must go forward.

Please give consideration to the circumstances of many/most of the residents of Idylewood who have not requested annexation and are in retirement on fixed incomes. This likely means that there is NO financial reserve for unanticipated and increased expense at the level that annexation may cost us. I am assuming that If we are expected to take on the cost of sanitary sewer line hook-up and road "improvement" and maintenance, it may mean that many will have to sell and relocate, perhaps at a financial loss, and lose this close community.

Please be fair and consider the human factor.

Sincerely,

Nancy Patterson
[4939 Oceana Drive](#)
[Florence, Or 97439](#)

Current mailing address:

[151 Lincoln Avenue](#)
[Palo Alto, CA 94301](#)

Sent from my iPad



Richard & Susan Johnson

5046 Kelsie Court
Florence, Or. 97439

Exhibit M36

January 14, 2021

City of Florence Planning Dept.
250 Highway 101
Florence, Or. 97439

Re: Notice of City Council Hearing Ordinance 1 & 2, Series 2021
Notice of Planning Commission Decision - Resolution PC 20 22 Ann 0X & PC 20
23 ZC02- Benedick Holdings, LLC Annexation & Zone Change

We, Richard & Susan Johnson, are current owners and residents of Lot 50 in Heceta South subdivision located at 5046 Kelsie Court. Because of our property's close proximity to Benedick's property we have been notified by the City of Florence of the upcoming City Council meeting and the Planning Commission's decision. Please include this letter in the city record as testimony.

We have already provided a letter of testimony dated September 29, 2020 to the Planning Department citing our objections to the annexation of this property into the City of Florence and the application for changing the zoning of this property from Beaches & Dunes to the City of Florence's low density/prime wildlife zoning overlay. It should already be a part of the submitted testimony so I am not going to waste time reiterating the information we provided.

I do however want to make some additional statements. Last night as I started composing this letter, I could hear the yipping and howling of our neighbors, a pack of coyotes. I was reminded of the plethora of wildlife that we share our environment with. In the sixteen years that we have lived in our home we have been blessed by the many visits of coyotes, bobcats, mountain lions, bears, rabbits, deer, osprey, eagles, owls, frogs, and geese, to name just a few. My neighbor even spotted a rare coastal marten several years ago. The wetlands on Benedict's property and in the Heceta South subdivision provide a fragile habitat for them. These are mammals & birds who can not exist on the water of these wetlands but must survive on the surrounding lands. Who will speak for

them? Will you miss them when they are gone? I know I will. I object to the rezoning of this property. Rezoning of this property from Lane County's Beaches & Dunes zoning to the less restrictive City of Florence's zoning designation will destroy these creatures habitat and they will be forever lost.

As I have already stated, we have provided additional information in our previous letter regarding the other issues that will have a negative impact on us personally.

We, the people of this country are living through some extraordinary, unprecedented, and stressful times. We are in the middle of a global pandemic. Many of us have family members or friends who have contracted COVID-19, some of them have died. Cases in Florence are escalating. I believe we have 36 new cases in the last week. Last week our capital was stormed and an attempted coup occurred, people died during the invasion. Yesterday, our President was impeached for leading the rebellion. The FBI has warned all the states to expect more violence in our capitals and in the streets of our cities. Next week we will have the inauguration of our new administration. Our nation's capital is full of National Guardsman to protect our elected leaders. Our nation is divided and we are on the verge of losing our precious democracy unless cooler heads prevail.

Personally, the last thing I want to deal with right now is this annexation issue. Yet, I want my voice to be heard as many of my fellow citizens do. We will be receiving vaccines soon which will help us battle the virus. And by the Grace of God, we will survive the next few weeks without violence and maybe our nation can begin to heal. Before, we can heal the nation, we need to start here in our community. We need to show respect to each other. This annexation and rezoning issue is going to have an enormous impact on the lives of so many people. They deserve to be heard. Thousands of pages of testimony have already been submitted. Have you had the chance to review it all? I ask you, **NO I IMPLORE** you to use this time to review that testimony. Step back; take a breathe, and put this issue on hold until you are able to review the testimony. Give our fellow citizens the opportunity to get their vaccines (which will happen soon) so that we can all safely gather again. And then hold the public hearings so that you can listen to and see the folks that this will impact.

As leaders of our community, we ask you to set a good example for the leaders of our country. If we can start the healing locally, we will have hope for healing our country.

Sincerely yours,

Richard & Susan Johnson

Handwritten signatures of Richard and Susan Johnson. The signature for Richard Johnson is written above the signature for Susan Johnson. Both are in a cursive, handwritten style.

Florence Oregon City Council
250 Hwy 101
Florence OR 97439

Mayor and Councilors,

Please consider my comments for the review you will be called on in coming weeks for an application from Benedick Holdings LLC for annexation and rezoning of their property, along with Oceana Drive — a public road with existing homes alongside. Please consider these comments to deny such application:

The Planning Commission carelessly approved the application, as they and the Staff made numerous errors:

They completely ignored or minimized the quantity and quality of testimony received in opposition. For example, Staff told the Commissioners that letters received are “mostly in opposition,” when in fact they are all in opposition. The only letter received to date in support of this application is the one from the Benedick’s attorney.

They did not carefully consider all the evidence. There are 1,225 pages in testimony now — and that number will certainly grow in the coming weeks. There is simply no way that the Commissioners and Staff were able to review all of that.

A decision should not have been made without reviewing all facts.

They’re rejecting much of the testimony on the grounds that the issues raised have to do with development, not annexation and rezoning. But Staff and Commissioners and the Applicant have all, in verbal and written comments,

referred to the alleged benefits of this development. Why is it that they can use the “D word” and we may not? It is true that there will be an additional process to address how development occurs on the property. However, this is the only opportunity for the City to consider whether development should be allowed on the property. And it is common knowledge that development is their main goal. The application itself is incomplete. The City’s annexation policies at a minimum require that the annexation area “can be served by an orderly, economic provision of public facilities and services.” Just because the Applicant does not propose a particular development, that doesn’t mean the City is free to ignore the provisions of its comprehensive plan. Rather, the burden is on the Applicant to demonstrate that a worst-case development scenario would conform. They have not done so.

As just one example, Planning Staff admitted that they have not received confirmation from Heceta Water PUD that the area to be annexed can be served — which is necessary, because the City of Florence does not have the capacity. So, the Planning Staff simply “assumed” — their word, not mine — that water is available.

The Planning Department has not provided adequate notice to all property owners affected and has failed to provide an open means for discussion. Many of the residents affected by this annexation do not have access to the internet and/or email, and both of the online meetings were plagued by technical difficulties. Why not wait until we can have public, in-person meetings and hearings? All affected parties should have ability to review and comment. After all this directly affects their properties.

At least three of the Planning Commission members who approved this application will receive direct financial benefit from any future development, and should have recused themselves from consideration of the Benedick application. This is extremely concerning and should void the approval by itself.

The City's own Storm Water Management Plan, completed in October 2000 by Brown & Caldwell, confirmed what every resident of Idylewood knows: We have flooding problems in low-lying areas. On pages 40-41 and 60-61, the Storm Water Plan details the failed attempts of the developer — namely, Benedick — to remedy the problem, and estimates the cost of a fix at \$219,000. In today's dollars, that's \$334,000. This is an existing problem that has nothing to do with future development, but it has everything to do with Oceana Drive.

There are 1981 and 1982 legal agreements in place, signed by Benedick and the City, regarding the original Idylewood subdivision. These legally binding, non-remonstrance agreements obligate 70 homeowners to make mandatory sewer hookups, and require us to pay for all road improvements, "at the sole discretion of the city council." So, the \$334,000 bill for the storm water fix becomes our problem, not the City's, and not Benedick's. ABSURD!

Because of these legal agreements, the 70 homeowners within the original Idylewood subdivision have virtual ownership of Oceana Drive. We have to pay for its maintenance and improvement, and the mandatory sewer hookups mean we have forced annexation of our homes. Therefore, the "triple majority" rule that the Planning Department is using to justify this cherry-stem annexation is not valid. All of those 70 homeowners must have a vote in this application.

Speaking of cherry-stem annexations: The Oregon Supreme Court, Court of Appeals, and LUBA said that cherry-stem annexations in Estacada, Portland, and

St. Helens involving connection only by a narrow road fail the “reasonableness” test. Oceana Drive is only 24 feet wide and nearly 2,400 feet long; that is not a connection, it is a very thin and absurd stretch of the imagination.

A final point on cherry-stems: The Applicant and Planning Department point to past annexations in Florence — notably Fawn Ridge and Driftwood Shores — as precedent and justification. However, those are not comparable. The Fawn Ridge annexation was forced on the developer by the City; it was the only way he could get permission to develop. In the case of Driftwood Shores, there was a failing septic system and impending condemnation. And in both cases, the “stem” represented by Rhododendron Drive did not obligate any of the property owners along Rhody to connect to the sewer, nor to make road improvements. On Oceana Drive, we don't have any failing septic systems, and we do have the legal obligations. It is unthinkable that we should be forced to pay for road improvements and sewer connections not needed or asked for, of which we have no say or vote.

In conclusion: In order that the City of Florence avoid embarrassment at best, and illegal actions at worst, I encourage you to send this application back to the Planning Commission for a more thorough, fair and proper review.

Thank you for considering these comments,

Paul Meyer

4925 Oceana Dr

Florence, OR 97439

Fishfora11@hotmail.com



January 2, 2021

Exhibit M38

TO: MAYOR JOE HENRY, WOODY WOODBURY, COUNCILORS
WOODY WOODBURY, SALLY WANTS, BILL MEYER, KELLI WEESE AND
PLANNING DEPARTMENT

FROM: BONNIE WILSON, JAMES WILSON, IDYLEWOOD

RE: BENEDICK HOLDINGS APPLICATION FOR ANNEXATION

Let it be recorded that we strongly oppose the annexation and rezoning of
OCEANA DRIVE and the annexation of Idylewood subdivision into the city.

COUNTY PREVIOUSLY REJECTED APPLICATION

Benedick Holdings tried and failed to get the county to approve this annexation so Benedick Holdings could build more houses between Idylewood and Heceta South subdivisions. The county rejected the request. We resent the back door politics of trying to push this through the city after being rejected from the country. I understand this is for annexation, but the only person that is PRO annexation is the developer, Benedick Holdings and the three members of the city who will benefit from it. I don't know of a single neighbor in our subdivision who is for this annexation. Not one.

Refer to page 12 of the letter from HUTCHINSON COX, Attorneys regarding Land Use. The land in question is mostly unbuildable due to steep slopes, erosive soils, seasonal flooding and restrictions with the Prime Wildlife Coastal Shore Lands Overlay, Sanitary sewer is not available to the site, absent a pressurized line and pumping station which are NOT proposed and no stormwater systems available to address the seasonal groundwater flooding. The application does not address the existing roads, which are substandard to meet the current requirement of either the City or County and does not demonstrate the system has adequate capacity or has planned improvements that are sufficient to serve the proposed land use. No attempt is made to address the adverse

environmental, economic, social and energy impacts of placing a residential subdivision in the midst of an environmentally sensitive coastal shore land with seasonal flooding that is already severe enough to damage homes and restrict traffic circulation and for emergency vehicle access. As each of the factors weigh against annexation of this area, annexation of the property is contrary to this comprehensive plan policy and denial of the applications appropriate.

FLOODING ISSUES

There is an ongoing water issue along Oceana Drive that has never been resolved. It still floods after heavy rains and has a high groundwater table. After 20 years, the standing water and drainage issue still hasn't been properly resolved. The property damage to the flooded homes created by high water tables, heavy rains has damaged floors, insulation, yards and drain fields, but it also impacts the homes with possible deadly *Stachybotrys* mold. The application for annexation does not provide for stormwater systems in the annexation area or that it is feasible and the proposed annexation should be denied.

The proposed area is between Idylewood and Heceta South and is swamp land. Why would the city want to annex this property if there is no capacity for additional water from Heceta water?: How would that affect water usage, water pressure, water costs on existing homes?

ROAD ISSUES

Benedick built homes on narrow roads. If it was his plan to annex the additional property, why didn't he plan to put in a wider road or stub in city sewer at the time? (cutting corners) If Oceana is used to access this property, there are other roads, other than Oceana, that would be impacted. Included would be Sandrift, Gullsettle, and Cloudcroft and Kelsie Way. The connection to Kelsie Way, a connection is not feasible due to topography and regulatory issues and has been previously rejected by the Council. It would require widening the roads and taking out homeowners yards. Traffic would be right outside their doors and windows and their property value would plummet. Refer to page 9 of the letter from Hutchinson, Cox, attorneys it states the Florence Public Works has several

concerns regarding stormwater management, tree root issues, pavement, long term maintenance, etc. which indicates it requires “additional analysis” before it can recommend accepting the road or the purpose of maintenance.

As Oceana Drive is substandard to meet current standards and cannot be accepted by the City for maintenance, and the application proposed no improvements to the road infrastructure, the application does not provide for the provision of streets and denial of the annexation is appropriate.

Only a small portion of the roads in Idylewood are county maintained. The rest are the sole responsibility of the homeowners.

FINANCIAL COSTS TO HOMEOWNERS

If Idylewood were to be annexed and rezoning for additional homes, what would the cost be to current homeowners? How much more would property taxes be? It would be more than most neighbors could afford. Our subdivision is mostly retired people on fixed incomes. Their homes are their only assets for future long term care when needed. The city would certainly try to add city sewer and at what cost? In the letter to the editor of the Siuslaw News, Ken Chipps wrote it would only cost each homeowner around \$20,000 to hook up to a new sewer system, but that does not include street improvements, sidewalks, curbs and gutters, street lights, etc. In the letter from HUTCHINSON COX, Attorneys for the Heceta South Homeowners Association, it states that if the property is annexed, the Florence Public Works indicates that a new neighborhood sewer pumping station would be necessary to serve development in the annexation area. The application from Benedict Holdings does NOT propose to provide this pumping station. Who would be held responsible for this cost? The homeowners?

Idylewood does not have a Home Owners Association because it was stipulated all the lots had to be sold. Benedick has kept a couple empty lots for the purpose of not having an association that has the clout to call him to task. We're on our own. Again, Benedick is the only one who wants this annexation to be approved. Who are the three members of the city who would benefit and should have recused themselves?

WILDLIFE CORRIDOR

The area Benedick wants the city to annex is a natural area for wildlife. Annexation would wipe out a huge part of the Corridor. The wildlife has been moved to smaller areas already. Currently, we have no problem in the neighborhood of bears. If they are forced out of their wild area, we will experience more bears, cougars and coyotes in our yards. The application proposes to annex property designated as Prime Wildlife Shore Lands. South Heceta Junction Seasonal Lakes are designated as Shore Land Management Unit "Prime Wildlife" The application fails to conform with Wetlands and Riparian objective which is to protect significant wetlands for their critical value in maintaining surface and groundwater quality and quantity, providing wildlife habitat, performing flood control, and enhancing the visual character for the Florence community.

This management unit is subject to planning priorities which are inconsistent with the annexation of this property. Coastal Shore lands establishes policies within Prime Wildlife Management Units. The policy is to promote uses which maintain the integrity of estuaries and coastal waters. The proposed annexation would only adversely affect the wildlife habitat.

The Applicant's proposed zone change is not consistent with Florence Comprehensive Plan.

The Applicant's proposed zone change is not consistent with the Florence Zoning Ordinance.

I know this letter was meant to only address the issue of Annexation, but the reason for the push for annexation is for Benedick Holdings to build another subdivision. The annexation and development are intertwined. The county refused to approve the application and now the city wants to force it through. I want to know why.

James R. Wilson



Bonnie J. Wilson



Florenced City Council
250 HWY 101
Florence Oregon 97439

Mayor and Councilors:

The Benedick Holdings LLC for annexation and rezoning application should be referred back to the Planning Commission for further review.

I don't believe the commission read any of the correspondence from the homeowners or any other documentation. Did any commissioner take a look at the area in question? I doubt it. I understand that three members of the commission stand to gain financially if this application is approved. How INTERESTING and totally WRONG(to say the least)to even consider voting on this application. They should have EXCUSED themselves.

An issue of such great IMPORTANCE to so many people should be postponed until everyone concerned has had the opportunity to meet in person with council to express their concerns. A virtual meeting is NOT ADEQUATE! WHAT IS THE RUSH! GET THE DOLLAR \$\$ OUT OF YOUR EYES. DO THE RIGHT THING and refer this application back to the Planning Commission to properly research and do their homework.

Steamrolling people in the middle of a Pandemic appears to be a cowardly way to conduct business.

Hasn't there been enough hardship and misery this past year?

Florence is a great place to live thanks in part to your wise decisions in the past. Let's keep up the good work and be guided by democracy not dollar \$\$.

Kathryn Clark

A handwritten signature in black ink, appearing to read 'KClark', written in a cursive style.

JANUARY 4, 2021

Exhibit M40

TO: City Hall
250 Hwy. 101
FL OR. 97439

From: M. THOMPSON, Homeowner
87648 Saitaire
FL. OR 97439
Idylwood, Third Addition

SUBJECT: "Annexation"

Previously Received a notice concerning
Building Permit for Idylwood IV -
rejected by Lane Co. Pending City
of Florence - Is this also including
all of Idylwood ONLY Idylwood IV.
Why did Lane Co. not approve?

Concerns: Sewer and Water

Currently water is Heated with lead
notices.

Was told by Wally's that city sewers
only accept Liquids and not Solids.
This would not be acceptable.

Concerns also Erosion, Vegetation,
drainage, traffic & wildlife;

Prefer other improvements - all under-
ground utilities, also the Look
of an area which becomes "overbuilt,"
and Changing of zoning.

My Tax's and Insurance are extremely
high already as to when I last
Compared my amounts to other "Like"
Properties.

Sincerely,
M. Thompson

From: Coles, Tina <TColes@peacehealth.org<mailto:TColes@peacehealth.org>>

Sent: Monday, January 11, 2021 11:40 AM

To: Joe Henry

Subject: "Benedick Holdings Application for Annexation"

NO TO ANNEXATION (4946 Sandrift Ct.)

January 19, 2021

Letter of objection to the Benedick, LLC annexation request under consideration at the City of Florence Council meeting on February 1, 2021

Dear City of Florence Council Members:

Please include this objection letter in the record of these proceedings. My statements will include substantiation for denying this annexation and zoning change request due to: the Planning Commission's failure to formally acknowledge and respond to legal objections to this matter; the public's perception of conflict of interest and otherwise favorable bias towards the applicant's request; along with procedural errors made by the planning department staff as evidenced by allowing the hearing to continue, despite numerous technical problems in conducting the virtual meeting, then allowing commissioners to vote, and finally, forwarding its recommendation for approval to the city council.

I am Jok Simons, a homeowner and member of the Heceta South Homeowners Association, Inc. (Heceta South), and I hereby submit the following statements in opposition to the proposed annexation and zone change for the property located at Assessor's Map No. 18-12-10-40, Tax Lots 400 and 401, and Assessor's Map 18-12-10-34 Tax Lot 801.

Based on extensive land use law experience and thorough research into this proposed annexation and zoning change, Heceta South's attorney found that the annexation via the applicant's proposed cherry-stem method violates several key elements of state and local laws.

These were very thoroughly expressed in writing in Heceta South's formal objection letter, presented to the Florence Planning Commission by Heceta South's attorney, Zack Mittge (Hutchinson-Cox of Eugene, Oregon) prior to the City's Planning Commission meeting on 12/8/20.

None of these points were specifically acknowledged, discussed or addressed during the hearing and were obviously ignored as the planning commission voted (unanimously), per recommendation of city planning staff, to recommend approval of the annexation request.

As a matter of course, I believe that the City's legal counsel should have investigated Mr. Mittge's legal objections and responded to every one of them officially, in writing, to Heceta South. Also, prudence would suggest that the City's legal counsel should have briefed the Commissioners about any real or potential concerns or problems that could affect how they should vote. Apparently, legal counsel for the City was never involved in this process.

Given that the legal objections raised by the Heceta South attorney were not answered officially, nor were they mentioned or discussed during the meeting, the planning department staff's recommendation to approve annexation, in my estimation, is a serious procedural error, reflecting either lack of adequate knowledge or gross misconduct.

In addition, none of the commissioners expressed any questions about the opposition testimony from over 100 concerned citizens, nor were there any questions about the legality of approving this annexation request.

The fact that all the testimony, but that submitted by one entity, Benedick, LLC, was in objection to this request, was totally ignored, again, including the objection letters from land use attorney representing Heceta South and later Idylewood Homeowners Group.

Also of importance, it appeared to me during the public hearing that the Director of Planning and her staff repeatedly down-played or outright ignored any opposition testimony that made mention of developing this land, if annexed.

The Director repeatedly stated that development and annexation are two different matters, while it is quite evident from the documents submitted by Benedick's legal counsel that the single reason for this annexation bid and zoning change request is for subsequent development, which is amplified by the exact type of zoning change being requested.

Although the process of annexation and any subsequent development was repeatedly harped on by the Director as being TWO SEPARATE ISSUES, her staff gave reports verifying that local utility companies and the city's own waste treatment plant all had the capacity for this new development.

I found it very odd that this "capacity for new development" testimony was sought and included in this matter since participants were repeatedly told by the Director that development has nothing to do with annexation. I believe this is another example of the planning department's procedural errors, reflecting what appears to be incompetence or misconduct.

It seemed rather too convenient that the mass of passionately written objection letters from property owners who will be directly and negatively affected could be ignored due to not speaking solely about or exactly to the criteria cited in public hearing notice.

This is the exact reason why concerned citizens in Heceta South, and later Idylewood, felt the need to hire an attorney: to raise legal objections related to these criteria. Those objections are supported by citations of law and previous case outcomes relative to these criteria.

Yet, again, these two objection letters, produced by Hutchinson-Cox attorney Zack Mittge, containing many legal objections, were ignored and not discussed or addressed during the planning commission's deliberations. In fact Heceta South HOA never received a response to its objection letter from the City of Florence Planning Commission, which appears to be another serious procedural error given that numerous legal questions were raised and not responded to in any way, leaving the commissioners ignorant of the ramifications of their votes in this matter.

The appearance of impropriety a/o conflict of interest:

Finally, I would like to point out that three of the planning commissioners (at the time this request was approved for recommendation to the city council) are currently employed in businesses that would appear to directly benefit from Benedick's planned development.

- The Chairperson, Mr. Murphey, is an insurance business owner, thus he could profit from sales of homeowners and other policies to persons in Benedick's development;
- Commissioner Miller is a residential real estate appraiser, thus he could profit from sales of his services to the developer, local mortgage lenders, etc. as the valuation and financing of the homes in Benedick's development will require this service;

- Commissioner Jagoe is the principal broker at a local real estate agency, thus he could profit from listing and selling lots a/o new homes in Benedick's development, even if one of his agents is the broker.

Other Commissioners, at the very least could be predisposed or biased in favor of Benedick's annexation request due to their former occupations:

- Sandra Young is a retired land use planner whose training and experience could predispose her to vote favorably to such an annexation request; and
- Eric Hauptman is a retired developer whose background would be similar to Benedick's company and thus predispose him to vote favorably for such an annexation request.

None of these commissioners stated any reason why they could not fairly vote on this matter and every one of them voted YES.

The Director of Planning is fully aware of the vocations, present and past, of these commissioners, but apparently did not offer any advice to them about the appearance of conflict of interest or bias during the hearing.

This matter should not have passed the planning commission due to the planning department's failure to involve legal counsel to verify and answer legal objections raised by Heceta South's and Idylewood's attorney, and the appearance of conflict of interest relative to three of its members and the additional likelihood of favorable bias in two others.

In closing:

Now, that this matter is before the City Council for a decision, the Mayor should recommend that the Council declare that the planning commission made serious procedural errors in approving this matter and refuse to consider the annexation request on that basis.

Further, more errors will be made should this matter be considered and acted upon by the Council, because the Mayor, Joe Henry, is presently in the business of mortgage origination which could directly profit from a residential development by Benedick. Should there come a vote, the Mayor must excuse himself for the same reasons of appearance of conflict of interest and favorable bias.

Throughout this poorly managed process, the annexation request was not delayed or postponed due to the inability to hold a true, live public hearing meeting. A live meeting was impossible due to required precautions during the pandemic. Instead, the matter proceeded via virtual meetings (with poor technical quality), and because of this, I believe that the planning department effectively denied due access to many concerned persons. Persons without internet access and/or equipment and skills to use it could not participate. Even the free access to such equipment and assistance at the library was closed. I believe that this is evidence of either incompetence or misconduct by the planning department staff and its leadership.

Given all these points, I implore the City of Florence to deny this annexation request and put this matter to rest. Thank you for the opportunity to offer my testimony.

From: bnkjohnson1@verizon.net <bnkjohnson1@verizon.net>
Sent: Friday, January 22, 2021 3:18 PM
To: Joe Henry; Woody Woodbury; Sally Wantz; Bill Meyer
Subject: Annexation

Dear Mayor and City Council members,

I am writing you to add my name to the dozens upon dozens of people who are very much against the proposed annexation of Oceana Drive and the 48 plus acres owned by Benedick LLC. This annexation will adversely affect so many people in the area, not just Oceana Drive residents, but the whole Idylewood, Heceta South communities. And for what. So some out of town millionaire can make a few more millions and a few locals can add to their pockets. You should be voting for the common good of the many and not for the selfish few. If this annexation goes through, you will be changing for the worse so many peoples lives. Most of the people affected are retired and on a fixed income. Don't do it. It is not in the best interest of the City of Florence or us residents who are in the county. Thank you.

Regards
Brent Johnson

Government Overreach

12/11/2020

How can one or two City officials make decisions that impact 100's of homeowners without their approval? How is it that homeowners who will be impacted by the City's idiotic ideas aren't allowed the opportunity to even vote on the issue? Why does the Planning Commission not react to the dozens and dozens of letters sent to them stating the many valid reasons why the Benedick Holdings LLC annexation project should be denied? Why does the City wait for a pandemic to shove through a highly contested annexation project when the homeowners cannot face the Planning Commission in person to voice their objections?

This is exactly what the Florence Planning Department did on December 8th from the comfort of their homes, on a zoom meeting without anyone being able to attend the meeting in person to protest. Wendy Farley-Campbell and the Planning Commission already had their minds made up and it didn't matter how many dozens of letters of objection they received from the citizens who will be negatively impacted by this annexation project. They have been trying to shove forced annexation on the homeowners in the Heceta South and Idylewood subdivisions for 20 years. When it would come up on their agenda in the past, the homeowners showed up in mass to meetings at the City so the Planning Commission could see the angry faces opposed to the project. After months of heated exchanges with the Planning Commission in the past, it was publically stated they would not force annexation on anyone. They lied!

Fast forward to our current pandemic. The proposed project by Benedick Holdings LLC tried to get Lane County to approve a housing project behind the Heceta South and Idylewood subdivisions next to the seasonal lake by Heceta Beach Road in a semi to full wetlands area. This area is home to wildlife that will be displaced by this proposal. Lane County denied this project approximately 5 years ago. The City of Florence is so greedy for more tax dollars, more money from the ridiculous storm water runoff fees, waste water fees, street maintenance fees, and more permit fees, they got in bed with Benedick Holdings LLC to force the current homeowners into a deal that will cost unknown thousands of dollars. Money the homeowners cannot afford!

It was publically stated that it will only cost each homeowner around \$20,000 to hook up to the new sewer system. We don't need to hook up to the sewer system, we already maintain our septic systems and do not need this expensive sewer system. But their stated cost does not include everything else that comes along with this project. What about street improvements, such as sidewalks, curbs and gutters, street lights, and who will pay for the damages to the current landscaping, fences, and sheds on the properties? If you add up all the costs the City is imposing on the homeowners, will we be able to recoup these expenses when we try and sell our homes? I think not. So many who live in these neighborhoods live on fixed incomes and simply cannot afford this added expense and increased taxes, nor do we want to. We didn't ask for annexation, we have spoken loudly that we don't want it, but the City, Wendy Farley-Campbell and the Planning Commission ignores us.

The City claims they are only annexing Oceana Street, but when the City is involved it's like a cancer, it spreads. At the December zoom meeting it went from just Oceana Street, to homes within 300 feet of Oceana Street. So now it looks like they lied to everyone, it's not just the street itself but they are now snaring a good share of homes in the process. Forced annexation with all the costs involved, increased traffic on already narrow streets, negative impact to home values, but hey, what the City wants they find a way to sneak it in! And for what? It's not like Florence is a growing hub of new large companies that need a mass amount of housing – it's all about their bottom line!

I know everyone complains about the overreach of big government, but it's not just Washington DC, it's the little towns like Florence Oregon as well. We're supposed to be living in democratic society, not a dictatorship. What will it take to stop these officials from imposing their greedy ideas on the backs of the citizens? It's time for everyone to step up and tell the City, NO, not without our approval! We the People should be able to decide what kind of town we want to live in, not the greedy officials trying to squeeze every last dime out of our pockets!

Ken Chipps – Florence Oregon



25 January 2021

Re: Benedick Holdings LLC Application for Annexation and Rezoning

Mayor, City Councilors, and Planning Department:

The attached documents were sent to Lane County Commissioner Jay Bozievich on January 10, 2021; the same packet was mailed to the four other commissioners on January 12, 2021.

Because the facts presented in this packet are pertinent to the Benedick Holdings LLC application for annexation and rezoning, I'd like them entered into the public record.

Thank you,

A handwritten signature in blue ink, appearing to be "Bruce Hadley", with a long, sweeping underline.

Bruce Hadley

Idylewood Owners LLC

4828 Oceana Dr.

Florence, OR 97439

bwh541@gmail.com

tel. (541) 901-1140

10 January 2021

Jay Bozievich

Commissioner – District 1

Lane Co. Public Service Bldg.

125 East 8th St.

Eugene, OR 97401

Dear Commissioner Bozievich,

Hundreds of my neighbors and I — all your constituents — urgently need your help.

You are familiar with the Idylewood and Heceta South neighborhoods in Florence, and you likely recall a Eugene developer named Benedick, because you have been involved in their attempts to develop their wetlands property for the entire time you've been a Commissioner.

Well, they're at it again, but this time the Benedicks are attempting an "end run" around Lane County by applying to the City of Florence for annexation and rezoning of their 48-acre parcel. Their application includes the annexation of Oceana Drive, a County Road, because this gives them the contiguity they need to the City (at Rhododendron Drive).

And, thanks to the "triple majority" rule, the City gives only the Benedicks a vote in this matter. None of the 100+ homeowners along Oceana, nor the 600+ who live in Idylewood and Heceta South, nor the many hundreds more in neighboring areas, are given any say.

In fact, in the public record maintained by the City of Florence Planning Department, there are now nearly 1,300 pages of testimony in opposition to this application. There is exactly *one* letter in support; that one came from Michael Farthing, attorney for Benedick Holdings LLC:

To make matters worse, the City is refusing to listen to our concerns about future development on the Benedick property, because, they say, the application now before them is "only" about annexation and rezoning. So, when we try to talk about storm water, soil topography, wetlands, wildlife (including the Pacific Marten, recently listed by USFW as Endangered), and financial impacts, they brush us aside, saying, "That's a development issue. We'll deal with it later."

First of all, that's an incorrect (and likely illegal) reading of the City's Comprehensive Plan, which states that the applicant must prove "no harm" from a worst-case scenario, and the City must demonstrate that the annexation/rezoning truly is in the public interest. Neither Benedick nor the City have done so.

Second, once the annexation of Oceana Drive is complete, there is no turning back; to "de-annex" property is nearly impossible. And because of a unique "Improvement Agreement" executed between the Benedicks and the City in 1981, the 70 owners of the properties in the original Idylewood subdivision are on the financial hook for the installation of the sewer trunk line, for their mandatory connections to the sewer, and for any and all road improvements, all at the sole discretion of the City Council.

Rather than consume too much of your valuable time here, I've enclosed a number of attachments that you can refer to for more detail; I've itemized those at the bottom of the next page.

In the spirit of efficiency, allow me to “cut to the chase,” as they say in Hollywood.

You can stop this application now, Commissioner, with a very simple message to the City of Florence:

Tell them that Lane County does not want to give up jurisdiction of Oceana Drive.

Without Oceana, there can be no annexation, and without annexation, Benedick would be forced to return to the conditions spelled out for him in great detail from 2010 to 2016 by Lane County. In fact, that application is still on “timeline waiver,” should Benedick wish to revive it.

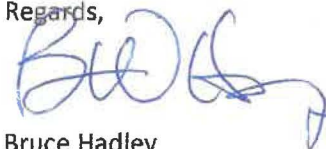
Lane County told him that his proposed 62 lots would have to be reduced to 55, and that nine of those were likely unbuildable, due to lot size. As a side note: The City’s setback requirement from wetlands is 100 feet, compared to the County’s 50-foot setback; this reduces the net available lots to 30 or less. This is the kind of factual detail that the City won’t let us talk about.

Lane County also told the Benedicks that more study was needed, because of sandy slopes exceeding 25%; fill and removal permits would be required, due to wetlands; and the County wanted more research regarding storm water. This last condition was prompted, I believe, by your May 2014 email in which you acknowledged a long history of flooding problems in Idylewood which Benedick never resolved, despite detailed instructions from the County as to what was (and still is) needed.

In short, Lane County didn’t give Benedick a flat “No” to his development proposal; the County just gave him answers he didn’t like. With the City, Benedick has a more pliable audience.

Please, Commissioner, we need someone in the government who will listen to us. You’ve done so in the past. We’re very grateful for your protection, and we’re counting on you again.

Regards,



Bruce Hadley
Idylewood Owners LLC
4828 Oceana Dr.
Florence, OR 97439

bwh541@gmail.com
tel. (541) 901-1140

Enclosures (in addition, please visit www.idylewood.com for more background + links):

- a) 11/10/20 letter to Florence Planning Dept from Zack Mittge, attorney for Heceta South HOA
- b) 11/24/20 letter to Florence Planning Dept from Zack Mittge, attorney for Idylewood Owners LLC
- c) Hadley email explaining 1981-82 Information Agreement and CCRs for original Idylewood
- d) Hadley three-page summary of the history between Benedick and Idylewood
- e) Hadley letter to Florence Planning Dept re: written poll of all owners along Oceana Drive
- f) Advertisement to run in Siuslaw News for the entire month of January
- g) Siuslaw News Guest Opinion by Idylewood resident Ken Chipps, published 12/19/20
- h) Siuslaw News Guest Opinion by Bruce Hadley, publication date TBA
- i) Hadley verbal comments re: annexation policies, delivered at 1/4/21 City Council meeting



Attorney
ZACK P. MITTGE
zmittge@eugenelaw.com

Paralegal
GAIL C. CROSS
gcross@eugenelaw.com

November 10, 2020

VIA EMAIL (planningdepartment@ci.florence.or.us)
and FIRST-CLASS MAIL

City of Florence Planning Commission
250 Highway 101
Florence, OR 97439

Re: PC 20 22 ANN 01 & PC 20 23 ZC 02
Benedick Holdings, LLC Annexation and Zone Change
Our Client: Heceta South Homeowners Association, Inc.
Our File No.: 11558

Dear Planning Commissioners:

On behalf of our client, the Heceta South Homeowners Association, Inc., (hereafter "Heceta South") we hereby submit the following comments in opposition to the proposed annexation and zone change for the property located at Assessor's Map No. 18-12-10-40, Tax Lots 400 and 401, and Assessor's Map 18-12-10-34 Tax Lot 801.

Please include these comments in the record of these proceedings, and include our firm on the list of parties receiving future notices associated with this application.

As is set forth herein, the Applicant's proposed cherry-stem annexation, and zone change violates several key provisions of state and local law. For ease of reference, we will highlight the relevant provisions of law in *bold italics* herein. In view of these defects in the two applications, we hereby formally request that the applications be denied in their entirety.

A. The City has failed to provide notice of the public hearing to property owners along three other streets that are being evaluated as part of the application for annexation and zone change.

ORS 197.763(2)(a) requires that notice of a public hearing be provided to owners of property within at least 100 feet of the property subject to an application:

Notice of hearings governed by this section shall be provided to the applicant and to owners of record of property on the most recent property tax assessment roll where such property is located:

(A) Within 100 feet of the property which is the subject of the notice where the subject property is wholly or in part within an urban growth boundary;

The City of Florence Zoning Ordinance expands this notice boundary to 300 feet for a zone change, to wit:

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 case of hearings for Conditional Use Permits, Variance, Planned Unit Development and Zone Change, which notice shall be sent to all owners of record property within 300 feet of the subject property.

FCC 10-1-1-6-3(B)(1).

In this case, notice was provided within “300 feet of the proposed annexation areas” which are identified in the application as “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” *October 6, 2020, Draft Findings*, p. 1-2.

However, the application includes an October 6, 2020 request by Lane County Transportation Planning that “the proposed annexation also include Gullsettle Court, Cloudcroft Lane, and Kelsie Way.” *Id.* at 9.

The City of Florence has not provided notice with regard to this additional annexation request to all property owners within 300 feet of these streets, and has failed to provide property owners with the 20-days advance notice required by state and local law. The City’s September 22, 2020 “Notice of Public Hearing” referenced the annexation and zone change of 48.82-acres of land and right-of-way of Oceana Drive. It does not reference an annexation or zone change for these three additional streets and is inadequate to inform affected parties within 300 feet of these streets (including Heceta South and its members) that an annexation and zone change is being considered for these streets.

By failing to provide affected property owners along each of these streets with notice conforming to state and local law, the City has failed to provide interested parties a hearing on these annexations, and has prejudiced their substantial rights to prepare and submit their case to the City. *Leonard v. Union County*, 24 Or LUBA 362 (1992)(County’s failure to provide individual written notice to which a person is entitled is failure to provide that party a hearing).

As the City is considering the annexation and zone change of these three streets, without proper notice to impacted property owners, its process violates state and local law, and a City decision on Gullsettle Court, Cloudcroft Lane, and Kelsie Way is subject to remand.

B. Annexation

1. The Applicant's proposed cherry-stem annexation is not reasonable.

In addition to the state statutes and rules and local comprehensive plan provisions addressed herein, annexations must at a minimum be reasonable before they can be approved.

This rule was first announced in the Oregon Supreme Court case of *Portland General Electric Co. v. City of Estacada*, 194 Or 145, 241 P2d 1129 (1952). In that case, the City of Estacada attempted to annex a power plant and mill by annexing a long narrow strip of land connecting PGE's 60 acres to the City of Estacada. *Id.* at 163. The Court described the shape of the cherry-stem annexation as being "likened unto a 'dumbbell in shape, one end being adjacent to the city and the other embracing plaintiff's dam and powerhouse.'" *Id.*

The City of Estacada pointed to its authority under state law to annex contiguous territory or territory that was only separated from the City by a stream or river as providing it an "absolute right to annex continuous property irrespective of its reasonableness." *Id.* at 158. In rejecting that position and determining that the annexation was void, the Court held that:

In a number of the Oregon decisions to which reference is made above, it is definitely held that where a city in annexation proceedings violates the state law the annexation is void. From time immemorial, we have consistently held that in the interpretation of state statutes relating to the enactment of legislation or ordinances by a city that the same must be exercised reasonably and not arbitrarily; therefore, in statutes empowering cities to legislate annexation proceedings, there is implied within the legislative grant that such cities must legislate reasonably and not arbitrarily, and such reasonableness is a part of the legislative grant to the same extent as it if were written literally into the statute.

It must be presumed that the Legislature in enacting this legislation was fully conversant with the decisions of this court that all ordinances passed by cities must be reasonable, and that it intended that annexation by cities should be effectuated reasonably. It would be absurd to think that the Legislature intended that a city would have carte blanche authority to reach out its tentacles like an octopus and envelop property which in no way could be considered as beneficial to the city or to the property annexed. If this were not so, there would be nothing to prevent the cities from attaching to themselves territory far removed from the city environs by a narrow ribbon strip, so long as the property attached was contiguous.

Id. at 159-60.

In finding the cherry-stem annexation unreasonable in that case, the Court noted that there were several homes situated outside of the annexation area that were located closer to the City than PGE's property, and that there was "no habitation whatsoever within the boundaries of plaintiff's property." *Id.* at 163-4. The Court expressly rejected arguments that the property could provide future homesites (once served by future infrastructure) "bordering a beautiful lake recreation area," by pointing out that there is already adequate room to expand within the City proper and there was other property closer to the City but which was excluded from annexation. *Id.* Finding that the annexation was unreasonable, the Court voided the annexation.

The Applicant is proposing the same kind of cherry-stem annexation in this case. The subject 48.82-acre is not contiguous to the City. In fact, the only way to make the subject property contiguous is by relying on that "narrow ribbon strip" of right-of-way for Rhododendron Drive for almost three-quarters of a mile from the City limits at South Harbor Vista Drive, and then extend another right-of-way strip approximately half a mile along the Oceana Drive right-of-way to the subject property. This is precisely the kind of unreasonable octopus-like expansion that the Oregon Supreme Court declared void in *PGE v. Estacada*.

These narrow ribbon-strips extend to envelope an irregularly-shaped property far-removed from the City proper. *See Rivergate Resident's Ass'n v. Portland Metro Area Local Gov't Bdry Comm'n*, 70 Or App 205, 211, 689 P2d 326 (1985) ("an irregularly shaped parcel raises a red flag as to the reasonableness of the annexation proposed.") In so doing, the proposed annexation bypasses large swaths of property that are already suitable and developed for residential use. The application would not include platted lots or fulfill a particular City need that must be met by annexing this property at this time. Moreover, as will be addressed in detail below, the subject property is very poorly adapted to the City's uses due to the presence of protected Goal 5 resources and buffers on most of the property which makes it unbuildable, and steep slopes and problems with a high-water table and seasonal flooding on the balance of the property.

As the proposed annexation bypasses better property on narrow ribbons of road right-of-way in order to annex a property that is poorly suited for urban development and unnecessary to meet identified needs of the City, annexation of the Applicant's property is unreasonable and should not be approved.

2. The Applicant's proposed cherry-stem annexation does not provide for the orderly and economic provision of public facilities and services.

The City's urbanization goal is "To provide for an orderly and efficient transition from County/rural land uses to City/urban land uses." To that end, the City's annexation policy 3

provides that the conversion of lands outside the City limits is based in part on whether there can be orderly provision of public facilities and services:

Conversion of lands within the UGB outside City limits shall be based on consideration of:

a. orderly, economic provision for public facilities and services;

This policy requires, at a minimum, that an applicant evaluate the availability of public facilities and services to serve the annexation area, and whether the annexation will impact on the provision of these services. The Applicant has failed to evaluate all public facility and service issues, or demonstrate that the proposed annexation will not impact the provision of these services.

a. Sanitary Sewer

The proposed findings on sanitary sewer fail to account for all impacts on existing users. The draft findings addressing sewerage provisions indicate 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.” *Draft Findings*, p. 8.

However, this ignores the fact that Florence Public Works indicates that a new “neighborhood sewer pumping station” would be necessary to serve development in the annexation area. *October 6, 2020 E-mail from Mike Miller to Aleia Bailey*, Exhibit L, p. 6. The application does not propose to provide this pumping station. Accordingly, the application does not demonstrate that orderly and economic provision of sanitary sewer service is available and denial of the annexation is appropriate.

In addition, the findings ignore impacts of this sewer line on the orderly and economic extension of sewer service to other residential property owners in the same neighborhood. The extension of the sanitary sewer line along Oceana Drive to connect to the proposed annexation area will result in the forced connection of additional properties along Oceana Drive to the City’s sewer system.

The property owners on Oceana Drive use on-site waste treatment facilities. The Oregon Department of Environmental Quality (DEQ) oversees permitting of these on-site waste treatment systems. DEQ’s regulations require that it must deny any permit for construction or installation of a new system, or the alteration or repair of an existing system if there is a sewerage system within 300 feet:

(4) Permit denial. The agent must deny a permit if any of the following occurs:

* * * *

(f) A sewerage system that can serve the proposed sewage flow is both legally and physically available, as described in paragraphs (A) and (B) of this subsection.

(A) Physical availability. A sewerage system is considered available if topographic or man-made features do not make connection physically impractical and one of the following applies:

(i) For a single family dwelling or other establishment with a maximum projected sewerage flow not exceeding 899 gallons, the nearest sewerage connection point from the property to be served is within 300 feet.

* * * *

(B) Legal availability. A sewerage system is deemed legally available if the system is not under a DEQ connection permit moratorium and the sewerage system owner is willing or obligated to provide sewer service.

OAR 340-071-0160(4)(f). Hence, under the applicable state regulations, property owners along Oceana Drive will no longer be able to alter or repair their existing on-site systems, and would be compelled to connect to proposed sewer line. This would be well over 50 additional properties along Oceana Drive that would be required to connect to the system.

The application does not address the impacts of these required connections all along Oceana Drive, or demonstrate that piecemeal connection of these homes outside the City limits to the City's sewer lines would provide an orderly and economic provision of these services. Accordingly, the applicant has failed to carry its burden on this issue and denial of the application is appropriate.

b. Stormwater

The application has also failed to demonstrate the availability of adequate stormwater treatment for the proposed annexation area.

The annexation area has a high seasonal water table which results in extensive groundwater flooding in and around the subject property. In 1996, the Applicant sought approval from Lane County to construct a pump and pipeline to discharge water from the adjoining Idylewood subdivision into the annexation area to alleviate severe seasonal flooding in that subdivision. As the Applicant stated:

The proposed storm water drainage plan is intended to alleviate occasional seasonal ponding that floods up to 13 lots in the Idylewood Subdivision and First Addition to Idylewood and an 800 foot section of Sandrift Court and Gullsettle Court. It is anticipated the drainage system will operate, at most, only once or twice a year.

* * * *

The most significant flood event occurred in February 1996 when over two feet of water covered an approximate 4-acre area improved with dwellings, sanitation drainfields, and roads. This same area also flooded to a similar degree in 1981, and to a lesser extent in other years during periods of high winter rainfall. This situation creates more than an inconvenience. Ponded water for periods up to three weeks has damaged floor insulation, yards, landscaping, and rendered septic drainfields unusable. Flooded streets have been impassable for residents and emergency vehicles, isolating the area from normal use and services.

Flooding appears to be due to a combination of a high winter groundwater table, periods of extreme rainfall, saturated soils, runoff from impervious surfaces and a lack of a natural drainage outlet. As a result, this small depression retains water as opposed to higher elevations that properly drain. The blockage or lack of natural outlets between the seasonal lakes to the east suggests that each individual lake basin retains run-off and precipitation which contributes to a higher groundwater table in the immediate area.

Benedick Special Use Permit (509-PA96-04223), p. 3-4. The Applicant sought to alleviate the flooding of this subdivision by constructing a storm pump and pipe system to collect the surface water and pump it off-site to a seasonal lake on the annexation property. Id. at 4.

The Applicant later abandoned this project in favor of an underground stormwater system to discharge water from Gullsettle Court offsite to Rhododendron Drive. In 2011, representatives of the County advised Lane County Commissioner Bozievich that this system had not been accepted by the County, because the Applicant had not completed the conditions for acceptance of that system. *April 18 2011 E-mail from John Petsch, Exhibit K, B I, p. 19. Florence Public Works comments by Mike Miller confirm that these items have “never been completed” and that additional obstructions have occurred in that system since 2011. October 6, 2020 E-mail from Mike Miller to Aleia Bailey, Exhibit L, p. 8.*

Florence Public Works confirms that the proposed annexation area will need to contend with “not only management of the surface water runoff, but also groundwater,” to wit:

During times of heavy and concentrated rain events like the flooding in 1999 and most recently in 2017, the groundwater levels become so high that it prevents surface water from infiltrating into the ground. Additionally, on the eastern boundary of the project, seasonal lakes can compound stormwater management and all elements of stormwater management will need to be analyzed and addressed in order to prevent localized flooding events. Conveyance of stormwater discharges from the subject property (emergency and overflow) will need to be thoroughly addressed in the stormwater management plan for the project. This includes an analysis of the downstream effects of discharges from their stormwater management system.

Id.

The application does not demonstrate that it is feasible for the applicant to provide on-site stormwater retention particularly during periods of peak rain events when a high- water table prevents ground infiltration. Moreover, the history of the Applicant’s Idylewood subdivision reflects that off-site discharge (to the annexation area or County facilities) has been necessary to contend with the high seasonal water table. Accordingly, the application does not demonstrate that it can provide orderly and economic stormwater systems in the annexation area, or that the same are feasible, and the proposed annexation should be denied on this basis as well.

c. Streets

The application also fails to demonstrate that streets can be provided to the annexation area in an orderly and economic manner.

The Applicant proposes to access the subject property principally from Oceana Drive. *Applicant’s Statement in Support*, p. 16. However, the application fails to demonstrate that this street can accommodate traffic when taking into account existing traffic volumes, or that the same conforms to applicable road standards.

As noted by Lane County transportation and confirmed by Florence Public Works, Oceana Drive is currently classified as a “local road.” *October 5, 2020 Comments from Lane County Transportation Planning*, Exhibit L, p. 3. *October 6, 2020 E-mail from Mike Miller to Aleia Bailey*, Exhibit L, p. 6. The travelled way is of variable width but approximately 16 – 20 feet wide. It is not striped, has no paved shoulders, curbs, gutters, sidewalks or on-street parking areas. It is currently used for unsegregated travel by pedestrians, cyclists and vehicles. Its

current classification is based on its use of providing access only to adjacent properties. In fact, the Lane Code defines a local road as:

(e) Local Road or Street. A road intended solely for the purpose of providing access to adjacent properties. A local road may terminate in a cul-de-sac or be part of a larger network. For the purposes of this chapter, roads functionally classified as Local Roads are County-maintained roads and do not include Public Roads that have not been accepted by the Board as County Roads, or Local Access Roads.

LC 15.010(18)(e). *See also November 29, 2011, Kittelson & Associates, Inc., Project Memorandum #8 – Facility Standards*, p. 11, *Florence TSP Vol. 2*, p. 412 (“Local streets are primarily intended to provide access to abutting land uses.”)

The application would convert Oceana Drive from a local road serving the adjacent properties to a collector street that gathers traffic from the annexation area and routes the same to the nearest arterial, Rhododendron Drive. *See LC 15.010(18)(d) (“Minor Collector. A road or street which gathers traffic within the neighborhood and directs it to a major collector or arterial.”) November 29, 2011, Kittelson & Associates, Inc., Project Memorandum #8 – Facility Standards*, p. 11, *Florence TSP Vol. 2*, p. 412 (“Collector streets provide some degree of access to adjacent properties, while maintaining circulation and mobility for all users.”)

The application fails to demonstrate that annexation will provide an orderly and economic improvement of the street system.

Oceana Drive is substandard to meet the minimum requirements for an urban local roadway under LC 15.704. Even under these minimal standards it lacks the required paved area and on-street parking, sidewalks, and curb and gutter. *See LC Diagrams 10 & 11*. Nor is Oceana Drive suitable to meet the standards for a neighborhood collector. *See LC 15.702 & Diagram 1*. Moreover, despite proposing annexation of the entire street to the City of Florence, the application does not demonstrate that it is feasible for Oceana Drive to meet either the City’s collector street standards, or its local street standards.

In addition, Florence Public Works has identified several concerns with regard to Oceana Drive – including stormwater management, settlement/tree root heave issues, pavement condition index (PCI), long-term maintenance, etc., which it indicates requires “additional analysis” before it can recommend accepting the road for the purposes of maintenance.

As Oceana Drive is substandard to meet current County of City standards, could not be accepted by the City for maintenance at this time, and the application proposed no improvements to the road infrastructure, the application does not provide for the orderly and economic provision of streets and denial of the annexation is appropriate.

Although not identified by the Applicant specifically, Lane County has proposed the annexation of other local access roads (Gullsettle Court, Cloudcroft Lane, and Kelsie Way) – LARs – as part of the application. As noted, proper notice for the annexation of has not been provided, so these roads are not properly before the City in this application.

Moreover, with regard to Kelsie Way, such a connection is not feasible due to topography and regulatory issues, and has been previously rejected by the Council.

In 2011, the Applicant sought approval of a subdivision from Lane County in the proposed annexation area. As part of that approval process, the Applicant sought a variance to connection standards to bar a connection due to the extreme topography of at the point of the proposed connection. The Applicant’s engineer submitted the following opinion in support of the variance:

County staff in their review of the variance request performed a site inspection and noted that topographic conditions present at the time of their visit supported the variance request for connection to Kelsie Way due to extreme topography...The plan continues to show no connection to Kelsie Way due to extreme topography as supported by county staff comments and shown by the updated contours.

December 1, 2011 Letter to Jerry Kendall from Clint Beecroft, EGR & Associates, Ex K, B I, p. 235. In addition to the topographic issues, the County’s Prime Wildlife Zone also imposed a 50-foot buffer around the South Heceta Junction Seasonal Lakes that would have been partially located with the right-of-way of Kelsie Way as extended, and which also precluded the connection. March 14, 2012, Idylewood 4th Addition Coastal Overlay Setbacks, EGR & Associates, Ex. K, B I, p. 86.¹

The City Council also considered a connection between Oceana Drive and Kelsie Way as part of the Transportation System Plan amendments in 2012. The proposed connection was identified as a potential street connection in draft documents prepared by Kittelson & Associates and was even included in a draft table of local street projects as item R-9. See TSP Appendix Vol 2, p. 303 (North Florence Local Street Network, Florence, Oregon Figure 5-12) & 426 (Table 2). However, the City Council removed that proposed connection from the final TSP, based on the topographic and regulatory issues identified above.

¹ Florence’s Prime Wildlife Overlay District /PW also imposed a buffer around these lakes of 100-feet and which precludes topographic modification. FCC 10-19-9-F (5) and (6). This wider buffer precludes any connection between the annexation area and Kelsie Way.

Accordingly, Kelsie Way is not relevant to the annexation, and its existence does not demonstrate the existence of an economic and orderly street system to serve the annexation area.

3. The Applicant's proposed cherry-stem annexation does not conform to the comprehensive plan of the City of Florence.

The Florence Comprehensive Plan annexation policy 3(b) requires that conversion of land outside the City limits conforms to the City's comprehensive plan:

Conversion of lands within the UGB outside the City limits shall be based on consideration of:

* * * *

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

However, the Florence Comprehensive Plan policies do not support the annexation of the proposed annexation area.

The Applicant's statement of support relies on the City's Citizen Involvement, Land Use, Residential, Housing, Public Utilities and Coastal Shorelands policies in support of its annexation. *Statement of Support*, p. 10-14 & 18-19. However, the application fails to address relevant policies which don't support annexation.

a. Citizen Involvement

The application process fails to provide for citizen involvement in accordance with the comprehensive plan and applicable state law.

Citizen Involvement Policy 3 provides that:

The City Council shall ensure that a cross-section of Florence citizens is involved in the planning process, primarily through their appointments to the Planning Commission, Design Review Board, Citizen Advisory Committee and other special committees.

That policy is being violated because the Council is not "ensur[ing] that a cross-section of Florence citizens is involved in the planning process."

As set forth in detail above, the City has failed to provide notice to property owners along Kelsie Way, Gullsettle Court or Cloudcroft Lane that these streets are being considered for annexation as well, depriving the property owners of a hearing.

In addition to this notice defect, that application is seeking to forego a public election process that would involve the City's electors in favor of a virtual meeting platform that disenfranchises elderly and low-income citizens. Again, this process deprives these citizens of their voice in these proceedings, and violates the Council's obligation to ensure that a "cross-section of Florence citizens is involved in the planning process." Furthermore, as will be addressed in greater detail below, the proposed process violates state law requirements which oblige the Council to make the decision to forego a popular vote on the application, and to fix a time and place for the voters to be heard before the Council on the annexation.

As the application violates the City's Citizen Involvement requirements, we respectfully request that the same be denied.

b. Land Use

The application violates Land Use Policy 1, which requires the City to designate areas for particular uses, based on factors including the documented need for the particular land use, the physical suitability of lands for uses, adequacy of public facilities and the transportation network, to wit:

Designation and location of land use shall be made based on an analysis of documented need for land uses of various types, physical suitability of the lands for the uses proposed, adequacy of existing or planned public facilities and the existing or planned transportation network to serve the proposed land use, and potential impacts on environmental, economic, social and energy factors.

Each of these factors weigh against the proposed annexation in this case. The application does not demonstrate that there is a documented need for the proposed housing at this location and at this time. The lands at issue are largely "unbuildable" due to the physical constraints of the site - which include steep slopes, erosive soils, and a seasonal groundwater flooding - as well as the regulatory restrictions associated with the Prime Wildlife Coastal Shorelands Overlay. Sanitary sewer is not available to the site, absent a pressurized line and pumping station which are not proposed, and no stormwater system available to address the seasonal groundwater flooding. The application does not address the existing transportation system - which is substandard to meet the current requirement of either the City or County - and does not demonstrate that the system has adequate capacity or has planned improvements that are sufficient to serve the proposed land use. In addition, no attempt is made to address the adverse environmental, economic, social and energy impacts of placing a residential subdivision in the midst of an environmentally sensitive coastal shoreland with seasonal flooding that is already severe enough to damage homes and restrict traffic circulation and fire and emergency vehicle access. As each of these factors weigh against annexation of this area, annexation of the property is contrary to this comprehensive plan policy and denial of the application is appropriate.

c. *Residential*

The Applicant also violates residential land use policies in Florence comprehensive plan, which require that the City discourage the residential development of areas that threaten the public health and welfare. Residential land use policy 7 provides:

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.

The proposed annexation and zone change is to allow residential development in an area that is known to constitute a threat to public health and welfare due to groundwater flooding and steep, highly-erodible soils. As noted by Lane County public works staff, existing residents in the adjoining Idylewood subdivision have had to contend with severe and persistent flooding, sometimes lasting several weeks, and which not only damages their homes, but has also prevented access by residents and emergency services. These natural hazards require that the City of Florence discourage residential development in this area in accordance with its comprehensive plan, and warrant denial of the application.

d. *Development Hazards and Constraints*

The proposed annexation also violates Policy 1 of the City's Development Hazards and Constraints chapter:

The City shall restrict or prohibit development in known areas of natural hazard or disaster in order to minimize risk to citizens, reduce the hazard of loss of life and economic investments, the costs of expensive protection works, and public and private expenditures for disaster relief.

The proposed annexation is located in an area of known natural hazards including seasonal groundwater flooding and steep, highly-erodible soils. Pursuant to its comprehensive plan policies, the City is charged with restricting or prohibiting development within this area in order to minimize risk to citizens, and reduce hazards to life, property and public investment. Accordingly, denial of this annexation application is appropriate.

e. *Public Facilities (Stormwater)*

The application also fails to address critical policies related to stormwater management. Seasonal groundwater flooding is a recognized issue in this area. The City's Stormwater Management Plan highlighted this issue in area immediately adjoining the proposed annexation area:

Problems reported in the Northwest Region mostly involve localized flooding of low-lying areas between the dunes. Gullsettle Court and Sandrift Street are low areas along the eastern edge of Idylewood development, as shown in Figure 4-6. For years, flooding has been reported from this area. During the wetter than average winter of 1981, the intersection of Oceana Drive and Sandrift Street was under 2 feet of water.

Recently, the return to a wet climatic cycle and construction of new homes in low area have increased the number of flooding complaints. During the past several years, local residents have pumped water out of their neighborhood to keep streets passable and prevent home from flooding. Unfortunately, the pumped water has allegedly caused problems in neighborhoods surrounding Gullsettle Court and Sandrift Street.

Florence Stormwater Management Plan (2000), p. 4-2.

The City's Water Quantity (Flow Control) policy 11 requires that:

Development shall mitigate all project impervious surfaces through retention and on-site infiltration to the maximum extent practicable. Where on-site retention is not possible, development shall detain stormwater through a combination of provisions that prevent an increased rate of flow leaving a site during a range of storm frequencies as specified in Florence City Code. Surface water discharges from onsite facilities shall be discharged to an approved drainage facility.

The annexation application does not demonstrate that it is feasible to mitigate all impervious surfaces on-site through infiltration in all conditions or to detain such waters on site. In fact, the history of the property reflects the opposite – that even in its current vacant condition, the annexation area contributes to a high seasonal groundwater table that floods the existing streets and residences in the Gullsettle Court and Sandrift Street areas. Development of the annexation area would only exacerbate these conditions, flooding streets and homes both within the annexation area and in the existing Idylewood subdivision. Accordingly, the proposed annexation does not conform to this policy either, and denial of the application is appropriate on this basis as well.

f. Coastal Shorelands

The application proposes to annex property designated as Prime Wildlife Shorelands in the comprehensive plan. As depicted on Map 17-1, the “South Heceta Junction Seasonal Lakes” are designated as Shoreland Management Unit (MU) “Prime Wildlife.”

This management unit is subject to planning priorities which are inconsistent with the annexation of this property for residential development. Coastal Shorelands policy 17 establishes policies within Prime Wildlife Management Units. Policy 17(b) provides:

- 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.***

Priority 1 of Policy 12 is to “Promote uses which maintain the integrity of estuaries and coastal waters.” The proposed low-density residential development in the annexation area does not maintain the integrity of the coastal waters, and the proposed residential uses would only adversely impact these waters by promoting inconsistent development, removing vegetation, disrupting surface and groundwater flows and interfering with wildlife habitat. This violation of Coastal Shoreland’s policy 17(b) warrants denial of this application.

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

City public works relies on the Idylewood 4th Addition site plans for the prior Lane County subdivision proposal to evaluate the proposal. These plans do not provide a 100-foot buffer around the South Heceta Junction Seasonal Lakes. Hence, to the extent that the application is based on these prior site plans, it violates Policy 17(c) and denial is warranted.

- 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.***

The annexation is proposed for the purposes of establishing a low-density residential subdivision. The residential lots would be below five-acres in size and would be created after the measuring date of July 24, 1980. Accordingly, development on these lots is prohibited by policy 17(g), and denial of the proposed annexation is also warranted on this basis.

g. Transportation

The application also fails to demonstrate that the proposed annexation will conform to applicable transportation-related policies. These include:

1. Provide safe transportation all seasons of the year through street standards that require lane widths, curvature and grades appropriate to all weather conditions.

The annexation would result in a change to the functional classification of Oceana Drive from primarily a local road to a neighborhood collector which will draw traffic from neighbors in the annexation area and funnel those to minor arterial Rhododendron Drive. However, the application does not establish that Oceana Drive conforms to County or City standards for a neighborhood collector or for a local road. The application proposes no improvement to this road to conform to applicable street standards. As the application does not propose to conform to applicable standards, it fails to provide safe transportation for all seasons of the year and denial is appropriate on this basis as well.

8. The City shall protect the function of existing and planned transportation systems as identified in the TSP through application of appropriate land use and access management techniques.

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

The annexation and zone change in this case is a land use decision which would significantly affect a transportation facility by changing the functional classification of Oceana Drive. OAR 660-012-0060(1)(a). In addition, the pass-through trips from the annexation area are types or levels or travel or access that are inconsistent with Oceana Drive's current functional classification, and would also result in increased traffic volumes that may degrade the function of existing transportation facilities that are otherwise projected to perform acceptably or which are already failing or projected to fail. OAR 660-012-0060(1)(c). As the application does not ensure that these allowed land use are consistent with the function, capacity and level of service of all impacted facilities, it violates this policy and denial of the application is warranted.

13. Streets, bikeways and walkways shall be designed to meet the needs of pedestrians and cyclists to promote safe and convenient bicycle and pedestrian circulation within the community. To promote bicycling and walking, marked bicycle lanes and sidewalks are required on all arterial and collector streets (other than those collectors identified as scenic drives) when those streets are

newly constructed, reconstructed, or widened to provide additional vehicular capacity. For collector streets that are identified as scenic drives, provision shall be made to adequately accommodate bicycles and pedestrians when those streets are newly constructed, reconstructed, or widened to provide additional vehicular capacity

Development shall provide adequate on-site circulation for vehicles, buses, bicycles, and pedestrians and shall provide off-site transportation improvements necessary to ensure that the incremental demands placed on the transportation system by the development are met.

The annexation and zone change in this case would change the functional classification of Oceana Drive – a local access road that allows unsegregated parking, and pedestrian, bicycle, and vehicular travel on the road surface – to a neighborhood collector. The application does not provide sidewalks or bike lanes for safe and convenient bicycle and pedestrian circulation consistent with the City’s transportation policy. According, the application violates this policy and denial of the application is warranted on this basis as well.

As the proposed annexation does not conform with the acknowledged City of Florence Comprehensive Plan, denial of the application is warranted.

4. The Applicant’s proposed cherry-stem annexation does not conform to state law.

The Applicant’s proposed cherry-stem annexation also fails to conform to the minimum requirements for annexation specified by statute. The applicant relies on ORS 222.120 and ORS 222.170(2) to obtain approval of the annexation without an election by either within the City of within the contiguous territory. However, neither of these statutes support annexation.

ORS 222.111(5) requires the legislative body to submit an annexation proposal to a general or special election, except only in those cases where state statute authorizes the legislative body to forego such an election:

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 proposals 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.

The application does not comply with either the exception to an election by the City, or the exception of an election within the contiguous territory. As such, annexation is not appropriate.

With regard to the general election by the City, the City Council first needs to decide whether to dispense with election on the annexation, and also fix a day for the public hearing. ORS 222.120(2) provides:

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.

This has not occurred in this case.

The legislative body of the City is the City Council. It has not considered the proposed annexation. It has not decided to dispense with an election on the proposed annexation. It has not fixed a date for a public hearing before the Council for the City's electors to be heard on the annexation. As such, there is no basis to dispense with an election on this annexation.

City staff suggest that the City Council has made this decision via adopting "Resolution No. 8, Series 2008" which "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." *Draft Findings*, p. 13. However, this resolution was repealed in 2010 on July 6, 2010 by Resolution No. 27, Series 2010, and is no longer enforceable. In any case, state law requires that the City Council make a case-by-case determination of whether to dispense an election on "the proposed annexation" before them. As the City Council has not decided to dispense with an election before the City on this application, it is improper for the application to rely on a public hearing under ORS 222.120(2).

Moreover, the public hearing on October 13, 2020 does not conform to ORS 222.120(2) as its date is neither fixed by the Council, and because the hearing is not held before the City Council. The draft findings suggest that the public notices of the Planning Commission hearing on October 13, 2020 meet the requirements of ORS 222.120. *Draft Findings*, p. 13 & 14. However, the City Council did not fix the October 13, 2020 date for this hearing. Moreover, the Planning Commission is not the legislative body for the City. ORS 222.120(2) mandates that if the Council is going to dispense with an election it has to listen the concerns of its electors at the public hearing it schedules, and not the Commission. As the City Council has neither fixed the date for a public hearing nor will be presiding at the hearing on October 13, 2020, that hearing provides no basis for the Applicant to avoid a general or special election under ORS 222.120(2).

The Applicant also cannot avoid an election within the contiguous territory by relying on ORS 222.170(2), because he does not have the consent of a majority of the electors within the territory.

ORS 222.170(2) provides:

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 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 legislative body submits the question to the electors of the city.

As conceded in the Applicant's supporting statement, "[t]here are no electors within the proposed annexation area." *Applicant's Statement in Support*, p. 10. Accordingly, the Applicant cannot provide the consent of a "majority of the electors" which, together with the consent of the owners, is a prerequisite for taking advantage of ORS 222.170(2). Accordingly, ORS 222.170(2) also does not provide a basis for approval of the annexation application.

As the application is not consistent with ORS 222.111, 222.120, or 222.170, we request that the same be denied.

C. Zone Change

The application also fails to demonstrate compliance with the applicable criteria for a zone change. These criteria are set out at 10-1-3:

A. Purpose: As the Comprehensive Plan for the City is periodically reviewed and revised, there will be a need for changes of the zoning district boundaries and the various regulations of this Title. Such changes or amendments shall be made in accordance with the procedures in this Section.

B. Type III (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.

The application includes a citation to this provision at page 20 of its statement of support but does not demonstrate compliance with these criteria. Instead, the supporting statement merely reflects that a public hearing will be held and that draft findings will be prepared.² The application does not demonstrate compliance with the criteria applicable to a zone change. As such, we respectfully request denial of the zone change application as well.

1. The Applicant's proposed zone change is not consistent with Florence Comprehensive Plan.

Florence Zoning Ordinance section 4(B) requires that a proposed zone change be consistent with the Florence Comprehensive Plan. As demonstrated in detail in subsection 3 above, which is hereby incorporated by reference, the application at issue does not conform to the Florence Comprehensive Plan, and would violate key policies including citizen involvement (and, in particular, faulty notice to DLCD), land use, residential land use, development hazards and constraints, public facilities (stormwater), coastal shorelands, and transportation. As the zone change application is not consistent with the Florence Comprehensive Plan, denial of the application is warranted.

2. The Applicant's proposed zone change is not consistent with the Florence Zoning Ordinance.

The application also failed to meet minimum requirements for a zone change in the Florence Zoning Ordinance. Section 10-1-1-4 of the zoning code establishes minimum standards for all land use applications and petitions in Chapters 10 and 11 in the Florence Zoning Code. FCC 10-1-1-4(A) & (C).

² "The Planning Commission will hold a public hearing on this annexation request and quasi-judicial zone assignment. The findings of fact will be available in advance of the hearing. Annexation of the Property within the UGB is permitted if the request meets the applicable ORS and the City's urbanization policies."

These minimum standards require that an application:

2. Shall identify the public facilities and access which may be needed to support the development, including but not limited to utilities and transportation infrastructure, and how they will be financed.

The application before the Planning Commission lacks this minimum information. The application does not identify needed public utility facilities, including but not limited to sanitary sewer and stormwater infrastructure, or transportation facilities necessary to serve the proposed annexation area or demonstrate that those facilities will be made available and how the same will be financed. As the application fails to provide this mandatory minimum information necessary to evaluate key aspects of the proposed zoning, denial of the application is warranted.

In addition, the application fails to provide required transportation information. Section 10-1-1-4(E) requires that an applicant provide a traffic impact study as part of any application for a zone change in order to allow the City to evaluate capacity and safety impacts on the transportation system, and to mitigate impacts:

E. Traffic Impact Studies:

1. Purpose of Traffic Impact Study: The purpose of a Traffic Impact Study is to determine:

a. The capacity and safety impacts a particular development will have on the City's transportation system;

b. Whether the development will meet the City's minimum transportation standards for roadway capacity and safety;

c. Mitigating measures necessary to alleviate the capacity and safety impacts so that minimum transportation standards are met; and

d. To implement section 660-012-0045(2)(e) of the State Transportation Planning Rule

2. Criteria for Warranting a Traffic Impact Study: All traffic impact studies shall be prepared by a professional engineer in accordance with the requirements of the road authority. The City shall require a Traffic Impact Study (TIS) as part of an application for development; a proposed amendment

to the Comprehensive Plan, zoning map, or zoning regulations; a change in use, or a change in access, if any of the following conditions are met:

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

b. Any proposed development or land use action that may have operational or safety concerns along its facility(s), as determined by the Planning Director in written findings.

c. The addition of twenty-five (25) or more single family dwellings, or an intensification or change in land use that is estimated to increase traffic volume by 250 Average Daily Trips (ADT) or more, per the ITE Trip Generation Manual.

3. Traffic Study Requirements: In the event the City determines a TIS is necessary, the information contained shall be in conformance with FCC 10-35-2-5, Traffic Study Requirements.

The Applicant's proposed zone change application would alter the underlying area requirements from the County's suburban residential zone to the City's low-density residential zone, decreasing lot size and increasing traffic volumes and peak-hour trips. Compare LC 16.229(6) & FCC 10-10-4(B). Accordingly, a traffic impact study is required with this application to evaluate capacity and safety impacts and to propose mitigation to address these impacts. As the application fails to provide this mandatory minimum information necessary to evaluate transportation impacts of the proposed zoning, denial of the application is warranted on this basis as well.

The application also lacks information required to be provided for the shorelands designation. Section 10-19-9(A) requires that a land use applicant provide a preliminary investigation to locate precisely the boundaries of the feature:

Preliminary Investigation: Any land use or building permit application within the /PW District as it applies to the South Heceta Junction Seasonal Lakes shall require a preliminary investigation by the Planning Director to determine the specific area to which the requirements of the district shall apply. The requirements of the district shall apply in an area generally identified on the Florence Coastal Overlay Zoning Map and, specifically, in the site-specific information submitted by an applicant to determine whether the site possesses areas of unique biological assemblages, habitats of rare or endangered species, or a diversity of wildlife species identified in the Coastal Resources Inventory, or function to provide or affect water quality, bank stability or flood control.

The application lacks this required preliminary investigation as well. As the application fails to properly evaluate the extent of the South Heceta Junction Seasonal Lakes and the Prime Wildlife area on the property subject to the zone change, denial of the application is warranted on this basis as well.

3. The Applicant's proposed zone change does not promote the objectives of the Florence Comprehensive Plan.

The application also fails to promote the objectives of the Florence Comprehensive Plan as required by FCC 10-1-3(B)(4).

Citizen involvement objective 2 requires the City to take into account citizen input in the planning process:

To take into account the desires, recommendations and needs of citizens during the planning process.

The application attempts to short-circuit this public process by avoiding an election on the annexation by all citizens as required by state law, and, in the zone change, by seeking approval during a global pandemic, which excludes citizens from the public hearing process guaranteed by state law, and relies on a virtual hearing platform that disenfranchises the elderly and persons with low-income who cannot access the proceedings. As the application violates this objective, denial of the application is appropriate.

The application also undermines the residential land use objective of providing consistent application of development standards to future residential development. As the comprehensive plan states:

Some residential subdivisions, both inside city limits and within urbanizable lands that were developed prior to 1995, have experienced infrastructure problems, stormwater deficiencies, slope failures, flooding due to high groundwater tables and invasive weed infestations. An objective of this Plan is to insure a more consistent application of development standards to future residential developments so as to avoid these problems of the past. Regardless of the type of residential development or subdivision, minimum development standards need to be provided and public or private facilities adequately maintained from the life of that development.

Comprehensive Plan, Pages II-8 – II-9. The existing Idylewood to the east, with its “stormwater deficiencies” and pervasive “flooding due to high groundwater tables” is likely one of the “residential subdivisions” referenced in this plan objective. However, despite the history of flooding and failures to correct infrastructure defects, the application does not

demonstrate that its proposed annexation and zone change will avoid these problems of the past. It fails to demonstrate that existing or planned improvements will address issues with infrastructure including sanitary sewer or stormwater, or with the transportation system. In addition, despite the fact that the Applicant is proposing to rezone a prime wildlife area with known seasonal groundwater flooding, the Applicant has not undertaken the required analysis of the extent of the natural resources on the site or demonstrated that future residential development is consistent with the high seasonal water table. As the application fails to demonstrate compliance with this residential land use objective, denial of the application is appropriate.

The application also fails to protect significant wetlands on the property in conformance with Wetlands and Riparian objective 2 in the comprehensive plan. That objective is:

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

The South Heceta Junction Seasonal Lakes are designated as Palustrine Unconsolidated Bottom (PUB) significant wetlands in the Florence Area Local Wetlands and Riparian Inventory. The application proposes to zone this entire annexation area for low-density residential use, and has failed to map or evaluate the wetlands areas on the subject property. Nor does the application propose any specific measures to protect groundwater quality and quantity, provide wildlife habitat, perform flood control or enhance the visual character of the community. Accordingly, the application does not conform to this objective either and denial of the application is appropriate.

4. The Applicant's proposed zone change does not promote the objectives of the Florence Zoning Ordinance.

The application also fails to promote the objectives of the Florence Zoning Code. The Zoning Code objectives at section 10-1-1-3 require, amongst other objectives, that zone changes meet the goals of the Florence Comprehensive Plan, that residential development be appropriately located, and that transportation systems promote the fast and efficient movement. The application at issue does not promote any of these objectives, and denial is warranted on this basis as well.

Zoning Ordinance objective 1 is:

1. ***To fulfill the goals of Florence's Comprehensive Plan.***

FCC 10-1-1-3(A)(1). The application does not address this standard, or compliance with any of the goals of the Florence Comprehensive Plan, and should be denied on this basis as well.

In particular, the application:

- a. fails to provide an “adequate factual base” for the decision as required by the Land Use Goal;
- b. fails to “conserve natural resources such as wetlands...and fish and wildlife habitat in recognition of their important environmental, social, cultural, historic and economic value” as required by the Open Spaces and Scenic, Historic, and Natural Resources Goal;
- c. fails to “identify and protect known sites and/or habitat of rare, endangered and sensitive species within the City and the UGB” as required by the Rare, Threatened, Endangered and Sensitive Species Goal;
- d. fails to “protect life and property from natural disasters and hazards” as required by the Development Hazards and Constraints Goal;
- e. fails to provide “decent, safe and sanitary” housing as required by the Housing Goal;
- f. fails to “assure that urban development in the urban growth boundary is guided and supported by types and levels of public facilities appropriate for the needs and requirements” of the area to be serviced “and that those facilities and services are provided in a timely, orderly and efficient arrangement” as provided in the Utilities, Facilities and Services Goal;
- g. fails to provide “cost effective collection and treatment of wastewater consistent with projected population growth and development needs” as required by the Wastewater Collection and Treatment Goal;
- h. fails to provide “a stormwater system that enhances and maintains livability through balanced, cost-effective solutions to stormwater management” as required by the Stormwater Goal;
- i. fails to “maintain public safety services at levels necessary to provide quality services to future residents and visitors” as required by the Public Safety and Health-Related Services Goal;
- j. fails to “create a safe transportation system,” “operate transportation facilities at a level of service that is cost-effective and appropriate for the area served,” “create a transportation network adequate to support existing and proposed land uses,” “meet the needs of land development while protecting public safety, transportation operations and mobility of all transportation modes” as required by the Transportation Goals;
- k. fails to provide “an orderly and efficient transition from County/rural land uses to City/urban land uses” as required by the Urbanization Goal; and
- l. fails to “conserve, protect, where appropriate, develop and, where appropriate, restore the resources and benefits of coastal shorelands, recognizing their value for protection and maintenance of water quality, fish and wildlife habitat” and “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” as required by the Coastal Shorelands Goal.

As the application does not fulfill the goals of the Florence comprehensive plan, it does not promote the objectives of the Zoning Ordinance and denial is warranted.

Zoning objective 3 requires that the application demonstrate that the proposed low-density housing is appropriately located:

3. To provide for desirable, appropriately located living areas in a variety of dwelling types and at a suitable range of population densities, with adequate provision for sunlight, fresh air and usable open space.

FCC 10-1-1-3(A)(3). The application does not demonstrate that the proposed low-density housing on the edge of the South Heceta Junction Seasonal Lakes and in an area of known, serious seasonal flooding is appropriately located. As the proposal does not support this objective, denial of the application is appropriate on this basis as well.

Zoning objective 6 requires a safe, fast and efficient transportation system:

6. To promote safe, fast and efficient movement of people and goods without sacrifice to the quality of Florence's environment, and to provide adequate off-street parking.

FCC 10-1-1-3(A)(6). The application does not promote this objective. Instead, it changes the functional classification for Oceana (which is already underdeveloped to comply with adequate street standards) and without providing the require traffic impact study or mitigation measures. As the application does not promote zoning objective 3, denial of the application is also appropriate on this basis.

As the application fails to demonstrate that the zone change promotes the objectives of the zoning ordinance, denial of the application is also appropriate on this basis.

5. The Applicant's proposed zone change is contrary to the public interest.

Finally, the proposed zone change is contrary to the public interest. The proposed zone change would allow an increased density of residents in an area with a high seasonal water table which already floods adjacent homes and streets during wet winter months. The application does not propose any improvements to physical infrastructure, despite the fact that the sanitary sewer lines cannot supply the area without a pumping station, and there is no stormwater collection or treatment system available in either Oceana Drive or the annexation area. The application does not evaluate the identified resources on the site and provides no measures to protect or preserve the prime wildlife habitat located on site. Moreover, the application proposes to alter the functional classification of Oceana Drive, but does not evaluate traffic impacts to the existing

infrastructure, or provide any form of mitigation, despite the fact that the streets are substandard for their present use.

As the application proposes a zone change for the private economic benefit of the landowner, but does not demonstrate any broader public benefit and fails to account for or mitigate the severe, substantial, long-term adverse impacts of the proposed change, the zone change is not in the public interest and denial of the application is appropriate.

Conclusion

As the public hearing on this application has not been properly noticed; the annexation is unreasonable and contrary to state statutes, the Florence Comprehensive Plan, and does not provide for the orderly and economic provision of public facilities and services; and, the zone change application is contrary to the comprehensive plan and zoning ordinance, does not promote the objectives of either, and is contrary to the public interest, we respectfully request that the application be denied.

Very truly yours,

HUTCHINSON COX



Zack P. Mittge

ZPM/gcc
Enclosures



**Hutchinson
Cox** Attorneys

Attorney
ZACK P. MITTGE
zmittge@eugenelaw.com

Paralegal
GAIL C. CROSS
gcross@eugenelaw.com

November 24, 2020

VIA EMAIL (planningdepartment@ci.florence.or.us)
and FIRST-CLASS MAIL

City of Florence Planning Commission
250 Highway 101
Florence, OR 97439

RE: PC 20 22 ANN 01 & PC 20 23 ZC 02 – Benedick Holdings, LLC
Annexation and Zone Change
Our Client: Idylewood Owners, LLC
Our File No. 15184-C2107

Dear Planning Commissioners:

On behalf of our client, Idylewood Owners, LLC, we hereby submit the following comments in opposition to the proposed annexation and zone change for the property located at Assessor's Map No. 18-12-10-40 Tax Lots 400 and 401 and Assessor's Map 18-12-10-34 Tax Lot 801 during the first open-record period following the Planning Commission hearing.

Please include these comments in the record of these proceedings, and include our firm on the list of parties receiving future notices associated with this application.

1. Annexation and Zone Change Criteria

The City's annexation and zone change standards require that the City consider impacts from the proposed annexation and zone change before granting approval to either of the applications. In particular, the City's annexation policies at a minimum require that the annexation area can be served by an orderly, economic provision of public facilities and services and that the application itself demonstrate conformance with the acknowledged City of Florence Comprehensive Plan. Likewise, the City's zoning code requires that the new zone also conforms to applicable comprehensive plan provisions as well as minimum requirements in the zoning code. This is only reasonable as the City cannot approve alterations to its zoning designations that are inconsistent with its comprehensive plan. See ORS 197.835(7)(providing for reversal of land use regulation amendments that do not conform to the comprehensive plan).

As comprehensively demonstrated in the letter submitted on behalf of the Heceta South Homeowners Association (which is hereby incorporated by this reference in full), the applicant has failed to demonstrate that its proposed annexation and zone change are consistent with these minimum standards.

Nevertheless, it has been urged that the City is free to disregard these express standards on the grounds that the application for the annexation itself proposes no development. However, these comprehensive plan and zoning code requirements are applicable at the time of annexation and zone change.

Where, as here, the applicant does not propose a particular development, the City does not merely ignore the provisions of its comprehensive plan. Instead, the burden remains on the applicant to demonstrate whether a reasonable worst-case development scenario under the proposed annexation and zoning would conform to the applicable comprehensive plan provisions.

As the applicant has not provided an adequate factual basis to demonstrate that its proposed annexation and zone change will conform to these minimum standards, evaluated a reasonable worst-case scenario associated with the proposed annexation and zone change, or even addressed the relevant criteria, it has not provided the City with any basis for approval of its decision and denial of the application is appropriate.

2. Reasonable Annexation

The applicant suggests that its annexation need not be reasonable as long as it conforms to the applicable comprehensive plan provisions under *DLCD v. City of St. Helens*, 138 Or App 222, 907 P2d 259 (1995). However, as the Court of Appeals confirmed in *DLCD v. City of St. Helens*, the “reasonableness” test of Portland General Electric has not been repealed by “subsequently-enacted land use legislation.” *Id.* at 227.

And while the Court acknowledges that this determination is no longer “solely or mainly” dependent upon judicial determinations of what is reasonable, and now looks to “specific legislative and regulatory criteria” this does not assist the application in this case which, as demonstrated by the Heceta South submission, fails to demonstrate compliance with these legislative and regulatory criteria.

In fact, in *DLCD v. St. Helens*, the Court of Appeals affirmed LUBA’s denial of a cherry-stem annexation of a property which, like the property at issue in this case, was located within an urban growth boundary, and only connected to the City by a narrow and annexed street right-of-way holding that the annexation of the street does not make the property contiguous to the City. As this is same approach taken by the applicant in this case, denial of the application is also appropriate on this basis.

3. An Election is Warranted in this Case

Finally, denial of the application is appropriate as the City Council has not decided to dispense with an election in this case. The procedural requirements for an annexation come from state law, and require submission of an annexation to the

electorate except in this cases where the City Council dispenses with an election. ORS 222.120(2).

The applicant attempted to rely on a 2008 general resolution to avoid an election on this issue. However, it now concedes that that resolution was repealed over a decade ago.

As the City Council has not elected to dispense with an election in this case, an election is required on the annexation.

Conclusion

As the applicant has failed demonstrate that its proposed zone change and annexation is consistent with applicable provisions in the City's Comprehensive Plan and zoning code, failed to demonstrate that same is reasonable or that its cherry-stem annexation is contiguous to the City, and because an election is required on the annexation at issue, we respectfully request that the Planning Commission recommend denial of the annexation.

Very truly yours,

HUTCHINSON COX



Zack P. Mittge

ZPM/gcc

c: Mike Farthing (via email)

December 15, 2020

Friends and neighbors,

Here's a collection of new information re: the proposed annexation that I think you'll find interesting (and, most likely, scary).

My home purchase in 2012 came with multiple Covenants, Conditions, and Restrictions (CCRs). The original CCRs for Idylewood which were updated by an "Improvement Agreement" between the City of Florence and JMB Enterprises Inc. (a corporation controlled by the Benedicks), on February 18, 1981. Then, new CCRs were signed on June 7, 1982.

These conditions apply to all lots along Oceana Drive, plus a few on Saltaire and a few on Sandrift; in total, there are 70 lots in the original Idylewood subdivision that are subject to these CCRs and Improvement Agreement.

From the June 7, 1982 CCRs, the most salient points are found under Paragraph 18; allow me to summarize:

Paragraph 18 references the Improvement Agreement, stating that in order "to obtain concurrence with the subdivision by the City of Florence" the Declarants agreed to impose certain improvement obligations in the CCRs. These include:

18.1 says that sanitary sewer lines shall be installed "when city sewage treatment facilities are available." And, "the cost of installation of the sanitary sewer lines within the subdivision shall be borne entirely, on a prorata basis, by the then lot owners." Got that? Not only do you have to pay for your hookup, you have to pay for the sanitary sewer lines that connect with the main trunk line on Rhododendron Drive.

18.2 talks about "Other Improvements," and says that "paving with curb and gutters, storm sewers and sidewalks to city standards shall be installed, "when the City deems it necessary." The paragraph acknowledges that "these improvements are generally required within one year following annexation". The cost of these improvements are borne entirely by the lot owners.

Related to this: The Plat Map shows all our street rights-of-way as 60 feet wide; right now, the pavement is 24 ft. wide. So, the City's "improvements" may consume about 18 feet of the streetside buffer you now enjoy.

18.3 strengthens the conditions of the Improvement Agreement: It says "all lot owners agree to waive any and all rights to remonstrate against annexation." This section also states that "when sewers become available, hook-up will be made without remonstrance." Section 18.3 also prevents owners from challenging the formation of a local improvement district (LID) to pay for the new sewer lines.

In other words, when it comes time to pay for the sewer system and any local improvement project that the City chooses to initiate, you may not protest.

18.4 goes even further: Lot owners "agree to sign any and all waivers, petitions, consents" that are needed to obtain the improvements that are proposed. The only thing you can complain about is the manner in which costs are assessed among lot owners.

Finally, 18.5 releases the developer: It says that the Declarant (Julius and Justine Benedick) has no obligation to lot owners to construct or install sanitary sewer lines or other improvements.

In short, the CCRs and Improvement Agreement impose on 70 owners the obligation to:

- a) pay for the main sanitary sewer line from Rhododendron Drive, and
- b) pay for connection to that sewer line, and
- c) pay for street improvements to Oceana Drive, all
- d) upon the City's request, without any opportunity to challenge.

And, of course, once our homes are annexed to the City of Florence, we are on the hook for a property tax increase of \$2.86 per \$1,000 valuation (currently).

NONE OF THIS REQUIRES ANYTHING TO BE BUILT ON THE BENEDICK PROPERTY.

In short, the 70 residents along Oceana Drive could be forced, according to CCRs recorded at Lane County, to fund the improvements along Oceana that Benedick needs.

Please, if this doesn't seem right to you, let the City know. Even if you've written to them in the past, write to them again. The more opposition we can get into the public record, the better.

NEXT STEPS:

I asked the City about the Council's schedule to discuss the Benedick petition, and Aleia Bailey, Planning Administrative Assistant, told me, "We can't say for sure when a date will be set for the Council hearing, however we anticipate it will be a February meeting."

"The Planning Department will continue to accept correspondence throughout the process. Email the Planning department at planningdepartment@ci.florence.or.us or send mail to 250 Hwy 101, Florence, OR 97439."

However, because the Mayor and City Councilors are the decision-makers at this next stage in the process, I encourage you to write to them also. Just make sure your letters and emails reference the "Benedick Holdings application for annexation and rezoning," so that your communication is filed correctly.

Here's the list: Joe Henry, Mayor; Woody Woodbury, Council President; Sally Wantz, Council Member; and Bill Meyer, Council Member (with another Council Member to be appointed soon). The City's website has not yet published the email addresses for the new Councilors; I'll forward those to you as soon as they're available.

Thanks for your attention,



Bruce Hadley
Idylewood Owners LLC
4828 Oceana Dr
Florence, OR 97439

tel.: (541) 901-1140
email: bwh541@gmail.com

POSTSCRIPT:

Those of you who live in Idylewood Additions 1, 2, and 3 have different CCRs, signed in 1991 and 1995, with reference to a "Statement of Compatibility" rather than an "Improvement Agreement."

With the usual caveat that *I am not an attorney*, my reading tells me your CCRs make the same requirement re: sewer hookups, and the same promises to not oppose annexation, but not the demands that you pay for road improvements.

I have PDFs of all plat maps and documents referenced above, which I can send you upon request. You probably received copies of the relevant CCRs from the escrow company when you purchased your property. However, CCRs "run with the land" -- which means that even if you did not receive any copies with your home purchase, the CCRs still apply.

Idylewood v. Benedick: Historical Notes

1980-1999

Chapter One: In the Beginning

City demands non-remonstrance clauses for later annexation, Benedick complies, and writes the CCRs so that he won't have to pay anything.

Idylewood is a success, with 1st addition, 2nd addition, and 3rd addition platted in 1991 and 1995. However, they have much softer CCRs.

Then, trouble in paradise: First huge flooding event in 1996 (we have photos), with another in 1999.

2000-2009

Chapter Two: Benedick's Broken Promises

Benedick never creates an HOA, which leads residents to believe CCRs will never be enforced, and denies the Idylewood residents a unified voice.

Benedick promises to create a park in the area east of Cloudcroft and Woodmere; this never happens.

Benedick tries to fix storm water and flooding issue, fails, and Lane County tells him what he must do to fix it; he ignores them.

Meanwhile, City of Florence (COF) pays outside experts for a Storm Water Management Plan, which details the problems, and puts a fix at \$335,000 (adjusted for inflation).

During this time, COF embarks on an aggressive annexation policy. First, they tell Fawn Ridge developer James Hurst that to get approval, he needs annexation (which he did not want). Second, they justify the capture of all of Rhododendron Drive by their "white knight" rescue of Driftwood Shores' failing septic system. This is in 2007-2008. This decision is later appealed to LUBA, but COF wins. Thus, cherry stems become precedent and policy, setting us up for the next chapter.

2010-2019

Chapter Three: Lane County Enters the Fray, Limpes Away

Benedick begins application process for Idylewood 4th addition on his remaining 46 acres, most of which is wetlands.

Benedick illegally clears trees with heavy equipment; Lane County tells him to stop. He at first says No, I have a State permit, then says, OK, I'll stop. But he leaves the downed logs that Lane County told him to remove.

COF reviews the application, and insists that Kelsie Way be connected to Oceana, to provide secondary ingress-egress; Benedick files for a variance, which (ironically) Heceta South supports, because they don't want Kelsie damaged. However, it's highly unlikely that Kelsie could have ever been used, due to topography.

COF also suggests that annexation is the way to go — but doesn't talk about how that would be accomplished. At this point, Oceana is not part of the plan.

After years of studies and reviews and back-and-forth, Lane County cuts Benedick's proposed 64 lots down to 55, and says that 9 of those will not be buildable — giving Benedick a net of 46.

Note that this is with the County's setback from wetlands of 50'; COF requires 100', which would cut the lot count down by at least another 14 or 15.

So, why is Benedick going with the more restrictive rules of COF? And if COF really wants "affordable housing," why do they care about 30 single-family homes in a high-end (read: expensive) neighborhood?

Lane County also asks for more studies re: seriously steep slopes, ground water, and more, before any digging may begin. This is 2016; Benedick does not respond, so it's "on hold," apparently forever.

Also in this timeframe, in May 2014, County Commissioner Bozievich writes an email citing the "long history of non-compliance and drainage issues," and says he recommends no approvals for 4th addition until the storm water issues has been corrected. If it is not, he says, "the county could find itself involved in litigation from the current home owners."

Meanwhile, in 2014, the Oregon Homebuilders Association writes legislation designed to bypass pesky regulations, red tape, and citizen input. With much lobbying, SB 1573 is signed into law in 2016. This opens the door to “triple majority” rule, and legitimizes cherry-stem annexations.

Also during this time period, Florence Mayor Joe Henry publicly states his intention to annex everything within the urban growth boundary.

2020-2021

Chapter Four: The City Starts Its Street Grab

Benedick files his petition for annexation and rezoning in July; the Planning Commission has one hearing (via the internet) in November, then approves it in December.

Idylewood Owners LLC is formed, and hires the same attorney used by Heceta South HOA. The mailing list starts with 43 names: The owners of properties that touch Oceana Drive. As of this writing, the mailing list is 366 names, all opposed to annexation.

There are at this time 1,300+ pages in testimony; it’s highly unlikely that anyone, even COF staff, has read all of it.

Of the 120+ letters submitted to the Planning Department in opposition, most are ignored. The Planning Department incorrectly states that they don’t have to consider development issues now; this is simply and legally not true.

Zero letters are received in support of the application, unless you count the one from Michael Farthing, the attorney for the Benedicks.

In the October 2020, USFW adds the Pacific Marten to its threatened and endangered list. The marten has been spotted within the past year on the Benedick property. Thus, it is suggested that more research is required before the consideration of annexation or rezoning; COF stonewalls.

Oceana Drive remains a huge question mark. The 1981 Improvement Agreement and our 1982 CCRs say that we have to pay for all road improvements, at the sole discretion of the City Council. Does that mean we inherit the \$335,000 repair that the COF study said would be required? Or do the COF taxpayers get to pick up that tab?

3 November 2020

Planning Commission
City of Florence
250 Highway 101
Florence, OR 97439

Re: Benedick Holdings LLC annexation

I realize that ORS 222.125 says that only the owner(s) of the property being annexed needs to support a petition for annexation, and Benedick Holdings LLC says they've satisfied that requirement because they are the owners of the parcel at the end of Oceana Drive.

However, their petition demands that all of Oceana Drive be annexed also, so it seems only fair and reasonable that the "votes" of homeowners on Oceana be counted, too, since their properties will be very directly affected by this proposed annexation.

To that end, on October 21, 2020, I mailed a letter to all 43 owners of record on Oceana Dr, plus two on Saltaire Street and three on Sandrift Street whose properties border Oceana.

In my letter — a copy is attached here — I asked everyone to express their opinion on a scale from 1 to 5, where "1" is most strongly in favor of the annexation, and "5" is most strongly opposed. I did not express my own opinion in my letter, and purposely did not try to influence the votes.

I received responses from 44 out of 48 owners, or 90%; the average of all votes is 4.95. To attain that average, two owners said "mildly opposed," or "4," and 42 owners said "strongly opposed," or "5." No one voted in favor, and no one said they had no opinion.

Note that in my survey, each property got only one vote, although there were approximately 72 adults represented in the final tally. It's a somewhat cruel irony that those 72 people don't have any say in the City of Florence elections, and never will, even if the street where they live is annexed.

It's also interesting to note that eight of my letters were returned by the U.S. Postal Service as "undeliverable," even though the names and addresses are valid and identical to what Lane County has on file; that's a return rate of almost 17%.

From those eight returns, I was able to track down and speak with six owners through a combination of internet research, phone calls, and knocking on doors. Most of these people did not know about the proposed annexation: They are not currently in residence, they've not seen the city's yellow "Land Use Decision" signs, and they're not receiving mail addressed to them at Oceana Drive.

I mention this detail about undeliverable mail not as an accusation of the city's notification procedures, but just to confirm that there are many people who would be permanently affected by the Benedick Holdings petition — if it is approved — who simply don't know about it.

By the way, I have saved all the "ballots" I received, and have detailed notes in an Excel spreadsheet to substantiate and support these findings. I'm happy to share those details, if anyone is interested, but I will obscure personal contact information such as phone numbers and email addresses.

In summary:

The Benedick Holdings petition would have a profoundly negative effect on all of Idylewood, but nowhere will that effect be as great — and as awful — as it would be for those of us who live on Oceana Drive. The people who voted in my survey, representing 90% of all Oceana homeowners, are unanimous in their opposition.

We hope you will pay attention to the will and wishes of the real majority, rather than a single, non-resident (albeit well-funded) developer.

Sincerely,



Bruce W. Hadley
4828 Oceana Dr.
Florence, OR 97439

20 October 2020

Dear neighbors,

I'm sending this letter because you own property that borders Oceana Drive; you are therefore very directly affected by the Benedick Holdings' petition for annexation.

Prior to the November 10 hearing at the Florence Planning Commission, I'd like to be able to send them a letter that tallies the overall acceptance or rejection of that petition among property owners.

In other words, I simply want to be able to tell them, "Of the 47 homeowners who live along Oceana Drive, X% are in favor of the annexation petition, and Y% are opposed."

Will you do me a big favor and let me know where you stand?

(I don't want to influence your vote one way or another, but if you need a copy of the petition materials, let me know.)

Here's my voting scale:

1	2	3	4	5
Strongly in favor of the annexation	Mildly in favor of the annexation	No opinion	Mildly opposed to the annexation	Strongly opposed to the annexation

Here are three ways to tally your vote:

- 1) You can mark your choice on this letter and return it to me; just stuff it in our yellow mailbox.
- 2) You can send me a text or email with your choice, number 1, 2, 3, 4, or 5. (Please include your property address, so that I can mark you off my list.)
- 3) You can call me.

All my contact information is below — with many thanks in advance for your help.

Regards,



Bruce Hadley
4828 Oceana Dr.
Florence, OR 97439

(541) 901-1140

bwh541@gmail.com

Oceana Owners & Friends say
NO TO
ANNEXATION

Alan Matisoff ~ Alexis & Ross Greenlee ~ Annie & Dave Blanks ~ Arlen Roemen ~ Barbara Fiorito ~ Beth Lints ~ Bill McDougale ~ Bob Ekas ~ Bonnie Wilson ~ Brent & Kathy Johnson ~ Brian Gardiner ~ Brian & Jessica Enochian ~ Brian & Pamela Hudson ~ Bruce & Linda Cochran ~ Bruce & Mary Williams ~ Bruce & May Hadley ~ Bruce Chadd ~ Cameron La Follette ~ Carl & Judith Hruska ~ Carol & Ed Dowty ~ Carol Pritchard ~ Charles & Alice Wilent ~ Charles & Betty King ~ Charles & Francine Wong ~ Charlie & Phyllis Campione ~ Cher Dolan ~ Cher Thatcher ~ Cheryl Chipps ~ Chris Kohl ~ Christine Cole ~ Cindy Flesher ~ Courtney & Carol Au Court ~ Cris Reep ~ Cynthia Wright ~ Darlene Norwood ~ David & Janice Riordan ~ David & Patricia Hole ~ Dennis & Angele Hamilton ~ Dennis & Ruth Ann Cromwell ~ Diana Lynne Greenlee ~ Ed Gallup ~ Eric & Linda Bickel ~ Eric Friesen ~ Frank Cano ~ Frank & Marbeth Scheidbach ~ Gail Petty ~ Gail Zilai ~ Gary & Kristina Edson ~ Gary Donnelly ~ Gary Newman ~ Gerald Bateman ~ Gwyn & Joe Decker ~ Heidi A. Clark ~ Ivy Medow ~ J. Patricia Bolin ~ Jacquelyn Price ~ James Booth ~ James Mackey ~ James Wilson ~ Jan & Michael Sapienza ~ Jan Gaynor ~ Jan Haney ~ Jane Balzer ~ Jeff Talbot ~ Jerry & Debbie McVicker ~ Jerry & Jo Mounts ~ Jerry Bateman ~ Jill Burch ~ Jim & Becky Mann ~ Jim & Robin Shaver ~ Jim & Sharron Diggins ~ Jim Pruss ~ Jim Sikora ~ Jimmie & Christine Seitsinger ~ Joanne Dal Pra ~ John Mackin ~ John McBride ~ Jok Simons ~ Juanita Mae Petroni ~ Judy Buhler ~ Karen & Patrick Thompson ~ Karen Childs ~ Kathee McDermott ~ Kathryn & William Clark ~ Kathi & Jack Hanauer ~ Ken Vida ~ Ken & Judith Chipps ~ Larry & Holly Herr ~ Larry & Judi Alldridge ~ Laurie & Dave Carruthers ~ Lea Patten ~ Les & Shirly Hamilton ~ Leslie & Frank Oliver ~ Lowell Moore ~ Lowrey Mumford ~ Lynne Davis ~ Marc & Amy Fletcher ~ Margaret Axnick ~ Marilyn Krueger ~ Marina Schwagermann ~ Mary & Bert Nelson ~ Mary McCarthy ~ Michael Davis ~ Michael Gardner ~ Mike & Bou Kilgore ~ Mike & Linda Harrah ~ Mike Benck ~ Mike Calvert ~ Mitch & Debbie Proyect ~ Monique Hugon ~ Nancy Patterson ~ Paul & Colleen Cunningham ~ Paul & Josefina Meyer ~ Paula Ziegelasch ~ Peter & Catura Marsh ~ Randall & Susan Pilcher ~ Ray & Jenny Hull ~ Rene McGuire ~ Rich & Susan Johnson ~ Richard & Mary Kauffman ~ Richard & Susan Johnson ~ Robert Clausen ~ Ron & Kate Gipson ~ Rosann Sanders ~ Rudy & Sue Zoldak ~ Sakre Edson ~ Sandra & Paul Bowen ~ Scott & Kathy Maurer ~ Shelby Sherman ~ Sheri & Al D'Amico ~ Sherri Ford-Mackey ~ Steve & Carol Wade ~ Steve & Sue Knowles ~ Steve Campbell ~ Steve Williams ~ Suzanne Curtis ~ Tania Green ~ Terrence & Debra Anderson ~ Terry & Kathy Barrett ~ Tom & Sharon Beall ~ Trudy Beck ~ Vito Coviello ~ William & Darlene Lambiaso ~ William Rehder

More info: www.idylewood.com

Annexation is an act of City overreach

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This area is home to wildlife that will be displaced by this proposal. Lane County denied this project approximately five years ago. The City of Florence appears so greedy for

GUEST VIEWPOINT By Ken Chipps Florence

more tax dollars, more money from the ridiculous storm water runoff fees, waste water fees, street maintenance fees, and more permit fees, it has aligned itself with Benedick Holdings LLC to force the current homeowners into a deal that will cost unknown thousands of dollars.

This is money the homeowners cannot afford.

It was publically stated that it will only cost each homeowner around \$20,000 to hook up to the new sewer system. We don't need to hook up to the sewer system, we already maintain our septic systems and do not need this expensive sewer system.

But their stated cost does not include everything else that comes along with this project. What about street improvements, such as sidewalks, curbs and gutters, street lights... and who will pay for the damages to the current landscaping, fences and sheds on the properties?

If you add up all the costs the City is imposing on the homeowners, will we be able to recoup these expenses when we try and sell our homes?

I think not.

So many who live in these neighborhoods live on fixed incomes and simply cannot afford this added expense and increased taxes, nor do we want to. We didn't ask for annexation. In fact, we have spoken loudly that we *don't* want it.

But the City and the Planning Commission ignores us.

The City claims it is only annexing Oceana Street, but when the City is involved it's like a cancer — it spreads. At the December Zoom meeting, it went from just Oceana Street to homes within 300 feet of Oceana Street.

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Forced annexation with all the costs involved, increased traffic on already narrow streets, negative impact to home values — but hey, what the City wants they find a way to sneak it in.

I know everyone complains about the overreach of big government, but it's not just Washington DC, it's the little towns like Florence as well. We're supposed to be living in democratic society, not a dictatorship. What will it take to stop these officials from imposing their ideas on the backs of the citizens?

It's time for everyone to step up and tell the City "No, not without our approval."

We the People should be able to decide what kind of town we want to live in, not officials trying to squeeze every last dime out of our pockets.

SUSLAW NEWS 12.19.20

Guest Opinion for January Siuslaw News

by Bruce Hadley, Idylewood Owners LLC

The Florence City Council will soon decide the fate of 70 homeowners in the original Idylewood subdivision, prompted by a Eugene developer's request that the City annex Oceana Drive — a 24-foot-wide public road that runs between Rhododendron Drive and the developer's property.

This developer, Benedick Holdings LLC, has been trying to develop their acreage between the Idylewood and Heceta South neighborhoods for more than 10 years. After failing to obtain subdivision approval from Lane County, they're now trying with the City, and they've found a willing audience.

That's where Oceana Drive comes in. The Benedicks don't own Oceana, of course; it's a county road maintained by Lane County. But that meager 24 feet of asphalt where Oceana touches Rhododendron gives Benedick — whose property is a half-mile away from Rhody — the contiguity with the City that they need to argue for annexation.

And, the City says, in applying its "triple majority" standard, only the Benedicks count. Triple majority means the request comes from a) majority of owners, who b) own a majority of the property area, and c) own property whose value represents the majority of the total. Publicly owned property like Oceana Drive doesn't count toward triple majority requirements, so the Benedicks get a pass.

This is what's called a "cherry stem" annexation; we'll leave aside for the moment the fact that this kind of annexation is illegal in 16 U.S. states, and allowed only for government property in three or for others. The City of Florence says they're OK, largely because they've done them before; notably, Driftwood Shores, where the "stem" was Rhododendron Drive.

However, Oceana (and a portion of Saltaire and Sandrift) have something that no previous annexation had: A poison pill. When the City annexed Rhododendron Drive, none of the property owners alongside the road were under any obligation or requirement to connect to the sewer, nor to become part of the City. In fact, almost none have.

But Idylewood and Oceana Drive are a very different case. You see, before the Benedicks began to develop Idylewood, they entered into an "Improvement Agreement" with the City of Florence. It was signed February 18, 1981, by Roger McCorkle, Mayor, and Julius and Justine Benedick, doing business at that time as JMB Enterprises, Inc.

Then on June 7, 1982, the Benedicks put in place the Covenants, Conditions and Restrictions (CCRs) for Idylewood. All of these documents are recorded by Lane County, and now govern the 70 lots of the original Idylewood subdivision. They are self-renewing, forever.

Taken together, the Improvement Agreement and the CCRs say that "the cost of installation of sanitary sewer lines within the subdivision shall be borne entirely by the then lot owners." This isn't talking about individual hookups; the Agreement specifically says "the cost of major trunk lines" shall be shared pro-rata. Also, note the use of the word "shall," meaning non-optional.

In addition, the Improvement Agreement and the CCRs say that those 70 owners are responsible for all road improvements: “paving with curb and gutters, storm sewers, and sidewalks,” whenever the City requests it — “at the sole discretion of the city council.” And, the CCRs add a helpful timeline: “It being acknowledged that these improvements are generally required within one year following annexation.”

By the way, both of these documents are rigidly laid out as “non remonstrance.” That means we, the 70 homeowners, may not object to any of these events, and we may not complain. So, no matter what the City says about “voluntary” sewer hookups, that just isn’t so.

And, the true poison in this pill is that the 70 homeowners — mostly retired, fixed-income — have to pay for the sewer line construction and all improvements on our street. (Spoiler alert: One of those improvements will very likely be an attempt to fix our existing stormwater problem, which the City’s Storm Water Management Plan described in detail in October 2000.)

The result of all this, should Benedick’s petition be approved: We’ll pay for the infrastructure, right up to his figurative doorstep. Once the property is annexed, the homeowners can be required to improve the street and install the sewer lines at any time. This is not just a financial burden; it is also a liability that will affect the marketability of our homes.

It is disingenuous at best and deceitful at worst to claim that this annexation petition affects only the Benedick property. This decision has significant financial ramifications for all properties along Oceana Drive, which will be on the hook for street improvements and sewer lines, and are much more likely to be forced to annex to the City.

The City keeps trying to sell this annexation as a public benefit. If that’s true, why doesn’t the City Council put this up for a vote? Or, at a minimum, suspend their consideration until everyone can participate in a truly open and public hearing?

Mr. Mayor and Councilors,

I'd like you to rethink the City's policy regarding cherry stem annexations — those where you use a narrow public road as the pretext for creating contiguity between the City and a separate parcel.

These cherry stem annexations are now illegal in 16 states in the U.S., and other states allow it only for government land. Cherry stem annexations are a constant source of dispute, contention, and litigation. As with so many things nowadays, the only people who truly benefit are the lawyers.

Cherry stem annexations are doubly problematic because they listen to the owners of the cherry, and pay no attention to the stem — that is, the owners along the stem are not allowed a voice.

This is due to your application of the triple majority rule, which became law in Oregon in 2016. By the way, did you know that that law came from Senate Bill 1573, which was entirely written and paid for by the Oregon Homebuilders Association, along with the construction industry?

I'm not saying that development should be stopped; of course not. However, the City of Florence interpretation and application of annexation law puts 100% of the power and influence in the hands of developers, leaving individual homeowners hanging out to dry.

For example, in a recent case before the Planning Commission, City staff told the Commissioners that letters received are "mostly in opposition," when in fact they are all in opposition. More than 1,225 pages of evidence. The only letter received

in support was the single one from the developer's attorney. Yet the application was approved.

Also, the emphasis on annexation allows your Planning Department to ignore any testimony they deem to be about development, rather than about annexation; your policies treat them as wholly separate issues.

In any application for annexation, it is true that there is a later process to address how later development occurs on the property in question. However, it is only at the initial application for annexation that the City has the opportunity — and obligation — to consider whether development should be allowed.

The City's current annexation policies at a minimum require that the annexation area "can be served by an orderly, economic provision of public facilities and services."

I ask you to keep in mind — and also instruct your Planning Department — that just because an Applicant does not propose a particular development, that doesn't mean the City is free to ignore the provisions of its comprehensive plan. Rather, the burden is on the Applicant to demonstrate that a worst-case development scenario will conform. This requirement is often ignored.

Another curious by-product of the cherry stem annexations has to do with the notification required. Your Planning Department has chosen to interpret the notification requirements to apply only to properties within 100 feet of the cherry; they don't seem to apply to the properties along the stem, using the justification that the stem is, in most cases, a public road. This may be a legal

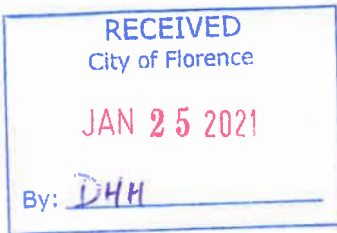
interpretation of code, but it certainly is not an ethical one. If someone is going to dig up your street, wouldn't you like to know about it?

Related to public notice: These annexation issues are huge, and the current pandemic limitations create a strain on everyone. However, I beg you to be fair. With a single online hearing on annexation, which many, many people are unable to access due to technical limitations, you can radically change the future.

These aren't minor decisions about the style of siding to be used on a maintenance building; these are decisions about whether someone who's lived in their home for 25 years will be able to continue to stay there. What's the hurry? Why not wait until we can have public, in-person meetings and hearings?

Again: Your annexation decisions are life-changing for residents in the area. For the developer, the owner of the cherry, it's just more padding for his bank account. But for the individual homeowners along that stem — who, to repeat myself, are not given a voice — it represents a financial hardship that they simply cannot bear.

In conclusion: In order that the City of Florence best serve all residents, and to avoid lengthy and unnecessary litigation, I encourage you to rethink your cherry stem approach. It is bad policy, it is bad business, and it is bad for our future.



January 16, 2021

To: Florence, Oregon City Mayor and City Councilpersons,

I want to comment and voice my objections to the proposed annexation by the Benedict Holdings through the Idylwood Subdivision into the city of Florence. I have many concerns about this proposal. This proposed subdivision is an ill-conceived and illegal plan by the land developer. This development has been rebuked by the Oregon Coast Alliance Attorney Sean T. Malone for not following guidelines established by his organization to protect coastal natural resources and work with residents to enhance community livability. Attorney Zack Mittge representing the Heceta South subdivision comments that there are violations of state statues involving this Cherry Stem Annexation. He also points out that other statues have been violated regarding the environment, health, and safety.

1. The timing of this proposal during a pandemic when it is difficult to access records and look at the on-site proposal is problematic. It is difficult for the residents that are most effected by the development have had little input into this planning process. The access and subsequent necessary sewer line to the subdivision would be through the Idylewood subdivision. The current roads are barely adequate for our current traffic. This annexation would have a negative impact on the roads, right away and residents in the entire Idlywood subdivision. The increased traffic from residents in this new sub-division and from construction equipment required for building additional infrastructure and residential buildings for this new sub-division will be a great hardship on current residents of Idylwood.

2. This proposed subdivision was turned down by Lane County some time ago because concerns over wildlife, drainage, sewage, seasonal flooding and shallow water table and access issues. I think it is premature for the city council to consider this proposal without involvement by the residents that are most affected by this development.

3. The area where this proposed development is located has one of the largest areas in the Florence area where there is viable populations of deer, bear, and other wildlife species, which will be negatively impacted.

5. The Idylewood neighborhood is a retreat for walkers not only for residents in the sub-division, but also other Florence community residents. The narrow vegetation lined streets with little traffic afford community members to a location to walk safely. It is a peaceful location that is not afforded anywhere else in the Florence community other than a beach that can be inhospitable at times for walking. Many residents in the subdivision are senior citizens and this neighborhood is the only reasonable option for exercise.

6. There are too many unanswered questions in Benedict Holding proposal. Specifically, about Storm water, Ground water, Seasonal Lakes, wildlife, and Sewage pump station. It appears that Benedict Holdings do not have an approved system for a drainage system they installed in the Gullsettle Court area after flooding occurred there in 1996.

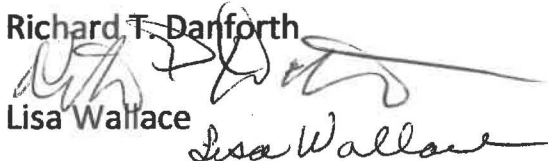
7. I seriously question that there would be any positive economic benefit for the City of Florence. On the contrary the economic, environmental, and social impact on the residents in the Idlywood subdivision would be negatively impacted. Benedict Holdings have not made commitments to the liability of these infrastructure criteria. I have a suspicion that it does not fit into their business model.

8. The proposed sub-division proposed by Benedict Holdings would deny us the privilege that we now enjoy and certainly one of the reasons I bought in this sub-division. I strongly urge you deny the proposal for annexation by Benedict Holdings LLC.

Respectfully,

Richard T. Danforth

Lisa Wallace

Handwritten signatures of Richard T. Danforth and Lisa Wallace. The signature of Richard T. Danforth is written in black ink and is positioned above the signature of Lisa Wallace, which is written in blue ink.

87825 Limpit Lane
Florence, OR 97439

Annexation Issues Regarding Flooding

There was extreme flooding of Sandrift Street in Idylewood back in 1996 when the rainy season dropped 121 inches. The area was saturated with water and Sandrift Street had 3 to 4 inches of water above the blacktop. Benedick had a 4 inch pump at the corner of Oceana and Sandrift Streets running day and night for weeks on end trying to keep up with the amount of water coming out of the area where Benedick Holdings LLC now wants to build 40 plus houses.

Since 1996, the rain amounts have been 7 to 8 feet which filled the ditches up to the blacktop but not 10 feet that was recorded previously. More recently, the water was not pumped out and 2 to 3 feet of stagnant water stayed in the ditches for months until it was finally absorbed into the ground.

The East end of Oceana Street, Sandrift Street, and Gullsettle Court are prone to flooding as this area is close to the seasonal lakes. This is Oregon and there are many more extreme rainy seasons to come. Tampering with this sensitive wetlands area, especially when the current flooding issues have not been addressed by the developer will cause further problems to the current homeowners for years to come.

Annexation of a wetlands/wildlife area is not something the City of Florence should ever allow!

Ken Chipps
Florence, Oregon

Aleia Bailey

From: Jeff Gemutliche <jeffgemutliche@shasta.com>
Sent: Thursday, January 28, 2021 11:30 AM
To: planningdepartment; Joe Henry; Woody Woodbury; Sally Wantz; Bill Meyer; Maggie Wisniewski; Kelli Weese
Subject: Benedick Holding LLC Letter

To the COF Planning Dept., COF Planning Commission, COF City Council,

Please include this in the record of objections to the Benedick Holding annexation of his property & Oceana Drive into the City Of Florence. I asked this question ("**Doesn't the City Council hearing notice require that the City Of Florence Council & the Planning Commission outline & address any changed or new addition requests by an applicant?**") verbally in the virtual meeting/hearing, among others, before being rudely cut off on Jan. 4, 2021. I would like to point out that there was a change to the notice re: zoning of land & since there was a change (see below differences to the hearing notice for Feb. 1, 2021, it needed to be addressed. The question was ignored, never has been answered or addressed ?

The November 10 Hearing Notice says:

The property is proposed to be zoned Low Density Residential with a Prime Wildlife shorelands management unit overlay (LDR/PW).

The December 8 Hearing Notice says:

The property is proposed to be zoned Low Density Residential with a Prime Wildlife shorelands management unit overlay (LDR/PW).

The February 1 Hearing Notice (sent 12/28) says:

The property is proposed to be zoned Low Density Residential with some property receiving a Prime Wildlife shorelands management unit overlay (LDR/PW).

I am once again mentioning that the public's involvement in this whole annexation & land zone change process has been deliberately & purposely cut off and ignored. Nothing that has been done so far regarding this issue has addressed the "public good" of 100s of existing affected Florence & Lane County citizens.

Jeff Talbot 5033 Kelsie Court Florence, OR 97439 1-541-590-3899

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GUEST VIEWPOINT

By Ken Chipps
Florence

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SUSAN NEWS 12.19.20

SUSUKU NEWS 12/30/20

LET'S GET THIS STRAIGHT

The Dec. 8 favorable approval recommendation made by the City of Florence's Planning Department and Planning Commission to the city council for annexation of Oceana Drive and certain wetlands had absolutely nothing to do with being "reasonable and for the public good."

What this gross misrepresented justification for annexation, as stated by Planning Director Wendy FarleyCampbell, that evening leaves out the fact that *none* of the hundreds of existing homeowners and residents — i.e., the public — wants this annexation.

It will have future devastating financial, safety and quality-of-life impacts to so many older residents

in adjacent areas, not just those along Oceana Drive.

The only "good" in this annexation will be for the benefit of a wealthy land developer (Benedick Holding LLC) and for the city's tax coffers at the direct expense of older, long-time existing residents that have been conveniently denied a say in this decision.

Keep in mind that there is no other reason for this annexation — none — other than for development of a wetland area that was previously shot down by Lane County.

If this annexation is passed by the Florence City Council, it will be a complete betrayal of the "for the public good principle" — let alone any democratic principle — and a total loss of trust and faith by citizens for whom the city council supposedly represents.

Not only that, the city can plan on years of expensive legal entanglements due to what will be solely for the benefit of a special interest.

—Jeff Gemutliche
Florence

1/6/21

ence area seemed to realize the value and importance of preserving green space in and around the community.

We were thrilled beyond measure to be able to purchase a modest house on the edge of forested acreage that had been set aside as a wetlands preserve or had been deemed unsuitable for development by Lane County.

It is a great disappointment to find that the city planning commission has agreed with a developer to annex many acres within our community of Idylewood. No one in the Idylewood area is in favor of annexation.

Annexation will increase taxes, increase traffic in the area, deprive homeowners on Oceana of much of their street frontage, and building in the area will destroy the green space and wildlife habitat.

Nobody will gain from this annexation except the developers and the city — the city by expanding its tax base, the developers by increasing their wealth.

The Florence City Council is considering the recommendation of the Planning Commission to approve the annexation. The residents of Idylewood are against annexation. The commission did not value the statements presented from residents of Idylewood. We demand that the city council listen to the concerns of citizens in this community.

—Cris Reep and Bill McDougle
Florence

**COUNCIL NOT LISTENING
TO IDYLEWOOD RESIDENTS**

When my husband and I were finally able to move to Oregon, we carefully evaluated different small towns and coastal communities. Among other desirable qualities, we loved the fact that the Flor-

SILUSCAW NEWS

1/9/21

**SIGN REMOVAL CODE
NOT CONSISTANT**

This afternoon, I saw a City of Florence van whose driver was uprooting our "Tell City Hall 'No' To Annexation" signs along Rhododendron Drive.

I stopped to talk with the guy, and he explained that he was removing all signs within the right-of-way, which extends eight feet off the pavement.

(Ignorance is no defense, I know, but our model was all of the "Elect Joe Henry" signs that were out there last fall.)

I'm not suggesting that the City turn a blind eye to code violations, but this is a very small town. The City knows who I am. There's contact info on our signs.

Couldn't someone have called or emailed to explain the violation, and to ask that the signs be moved or removed?

We certainly would have complied. It would have saved the Code Enforcement Officer's time (and taxpayer money), and would have better served community relations.

—Bruce Hadley
Idylewood - Florence

MOVED TO IDYLEWOOD TO ENJOY TRANQUIL BEAUTY

• **Annexation:** *noun* — The act or an instance of annexing, or adding to something larger, especially the incorporation of new territory into the domain of a city, country or state.

Annexation is sought by the builder (Benedict Holdings) so it can continue Cloudcroft Lane through our tranquil, Idylewood community.

With this will come radically increased traffic through our community and will make walking in our private streets dangerous.

Included in this annexation plan will be:

The taking of your property to make room for sewers, sidewalks and light poles. Property easements will completely change our wonderfully private, green community, into an all-night lighted environment to invite outside foot traffic.

Crime will likely follow.

Think those sidewalks and lights are free? Think again, we will be billed for them. Some of us will lose all of our green privacy to give way to the easements.

The installation of sewer lines; we have septic tanks and allowing the city to charge us for sewer lines will cost over \$200 per foot to each homeowner. And thousands more dollars to have it connected to your home.

You get: Annexed by saying nothing.

Watch the greenery fade to stained concrete and the wildlife with it. Count on your property values declining instead of rapidly increasing as ours is the type of neighborhood people pay a ton for to get away from city zones.

The City gets: To take away a chunk of the property you paid for (or are paying for already) along your street. They also get to bring in heavy equipment for months, blocking driveways, creating noise and ruining the beautiful trees and landscape. They will also get to take away your green natural privacy walls and open our community to endless cross traffic as folks will start cutting through our neighborhood to get to and from Highway 101.

The City will also get to build sidewalks and install light poles in our wireless/no pole community.

And finally — the best part — the City will get to bill you thousands of dollars for doing it all. That money will not be well spent on home improvements, but it will help lower your property values.

If you are fortunate enough to have lived here your whole life, this may not sound serious enough. However, like so many others, I moved here from a large city in California. I moved to Idylewood to enjoy the green privacy, peace and tranquil beauty. Neighbors love to walk in the street together, to walk dogs and visit with neighbors, without fear of speeding cars racing for Rhododendron Drive.

This is the community I invested in like many others. I love the fact that there are no sidewalks here and the community is dark at night, discouraging unwanted behavior outside. We did not buy property here to watch it turn into another city atmosphere.

We have a beautifully unique community here that we share with the wildlife. People who do not live here want to change that forever.

I hope this gets your attention. Speak up for your property rights. The City Planning Commission and mayor are rushing this by in hopes no one will notice until it is too late. Once annexed into the city, you cannot de-annex.

—Ken Vida
Florence

1-16-21

SUSAN NEWS

1/16/21

**ANNEXATION ISSUES
AND FLOODING**

There was extreme flooding of Sandrift Street in Idylewood back in 1996 when the rainy season dropped 121 inches. The area was saturated with water and Sandrift Street had 3 to 4 inches of water above the blacktop.

Benedick had a 4-inch pump at the corner of Oceana and Sandrift Streets running day and night for weeks on end trying to keep up with the amount of water coming out of the area where Benedick Holdings LLC now wants to build 40-plus units.

Since 1996, the rain amounts have been 7 to 8 feet, which filled the ditches up to the blacktop but not the 10 feet that was recorded previously. More recently, the water was not pumped out and 2 to 3 feet of stagnant water stayed in the ditches for months until it was finally absorbed into the ground.

The east end of Oceana Street, Sandrift Street and Gullsettle Court are prone to flooding as this area is close to the seasonal lakes.

This is Oregon and there are many more extreme rainy seasons to come. Tampering with this sensitive wetlands area, especially when the current flooding issues have not been addressed by the developer, will cause further problems to the current homeowners for years to come.

Annexation of a wetlands/wildlife area is not something the City of Florence should *never* allow.

—Ken Chipps
Florence

**ANNEXATION NOT THE 'CHERRY
STEM' BUT IT IS 'THE SHAFT'**

I'm writing to express my opposition to the annexation of Oceana Drive, and my deep concern that the Planning Commission and the City Council appear to not care less about the people this annexation will adversely impact.

All they seem to care about is the roughly 49 acres that can be developed at the end of Oceana Drive, the income it could produce for the Eugene millionaire that owns it, additional tax revenue for the city, and possibly money for themselves and friends — knowing the line of work they are in.

When I watched on TV (terrible audio and video) of the Planning Commission go through the motions of recommending the annexation, they kept referring to it as a "cherry stem" annex-

ation, the stem being Oceana Drive and the cherry being the 49 acres at the end of Oceana to be developed.

The owner, Benedick Holdings, LLC, will become richer, while the home owners on Oceana will become poorer. Their taxes will be higher, they have to pay for the road upgrades that will be needed and they will be losing some of their front yards with the widening of the road.

So, instead of calling Oceana Drive "the stem," I think it should be called "the shaft" because that's what the residents on Oceana Drive will be getting.

And it's not just Oceana Drive. I think our Mayor and City Council have their eyes on the whole Idylewood area for future annexation, which nobody wants.

— Brent Johnson
Florence

City's annexation plan is disingenuous at best, deceitful at worst

(Editor's Note: Viewpoint submissions on this and other topics are always welcome as part of our goal to encourage community discussion and exchange of perspectives.)

The Florence City Council will soon decide the fate of 70 homeowners in the original Idylewood subdivision, prompted by a Eugene developer's request that the City annex Oceana Drive — a 24-foot-wide public road that runs between Rhododendron Drive and the developer's property.

This developer, Benedick Holdings LLC, has been trying to develop their acreage between the Idylewood and Heceta South neighborhoods for more than 10 years. After failing to obtain subdivision approval from Lane County, they're now trying with the City — and they've found a willing audience.

That's where Oceana Drive comes in.

The Benedicks don't own Oceana, of course; it's a county road maintained by Lane County. But that meager 24 feet

of asphalt where Oceana touches Rhododendron gives Benedick — whose property is a half-mile away from Rhody — the contiguity with the City that they need to argue for annexation.

And essentially, the City says, in applying its "triple majority" standard, only the Benedicks count.

Triple majority means the request comes from 1) a majority of owners, who 2) own a majority of the property area, and 3) own property whose value represents the majority of the total. Publicly owned property like Oceana Drive doesn't count toward triple majority requirements, so the Benedicks get a pass.

This is what's called a "cherry stem" annexation; we'll leave aside for the moment the fact that this kind of annexation is illegal in 16 U.S. states, and allowed only for government property in three or four others.

The City of Florence says they're OK, largely because they've done them before; notably, Driftwood Shores, where

the "stem" was Rhododendron Drive.

However, Oceana (and a portion of Saltaire and Sandrift) have something that no previous annexation had: A poison pill.

When the City annexed Rhododendron Drive, none of the property owners alongside the road were under any obligation or requirement to connect to the sewer,

nor to become part of the City.

In fact, almost none have.

But Idylewood and Oceana Drive are a very different case. You see, before the Benedicks began to develop Idylewood, they entered into an "Improvement Agreement" with the City of Florence. It was signed Feb. 18, 1981, by then-mayor Roger McCorkle, and Julius and Justine Benedick, doing business at that time as JMB Enterprises, Inc.

Then, on June 7, 1982,

the Benedicks put in place the Covenants, Conditions and Restrictions (CCRs) for Idylewood. All of these documents are recorded by Lane County, and now govern the 70 lots of the original Idylewood subdivision.

They are self-renewing, forever.

Taken together, the Improvement Agreement and the CCRs say that

"the cost of installation of sanitary sewer lines within the subdivision shall be borne entirely by the then lot owners." This isn't talking about individual hookups; the Agreement specifically says "the cost of major trunk lines" shall be shared pro-rata.

Also, note the use of the word "shall," meaning non-optional.

In addition, the Improvement Agreement and the CCRs say that those 70 owners are responsible for all road improvements: "paving with curb and gutters,

storm sewers, and sidewalks," whenever the City requests it — "at the sole discretion of the city council."

And, the CCRs add a helpful timeline: "It being acknowledged that these improvements are generally required within one year following annexation."

By the way, both of these documents are rigidly laid out as "non remonstrance." That means we, the 70 homeowners, may not object to any of these events, and we may not complain. So, no matter what the City says about "voluntary" sewer hookups, that just isn't so.

And, the true poison in this pill is that the 70 homeowners — mostly retired, fixed-income — have to pay for the sewer line construction and all improvements on our street. (Spoiler alert: One of those improvements will very likely be an attempt to fix our existing stormwater problem, which the City's Storm Water Management Plan described in detail in October 2000.)

The result of all this,

should Benedick's petition be approved: We'll pay for the infrastructure, right up to his figurative doorstep.

Once the property is annexed, the homeowners can be required to improve the street and install the sewer lines at any time. This is not just a financial burden; it is also a liability that will affect the marketability of our homes.

It is disingenuous at best — and deceitful at worst — to claim that this annexation petition affects only the Benedick property. This decision has significant financial ramifications for all properties along Oceana Drive, which will be on the hook for street improvements and sewer lines, and are much more likely to be forced to annex to the City.

The City keeps trying to sell this annexation as a public benefit. If that's true, why doesn't the city council put this up for a vote? Or, at a minimum, suspend its consideration until everyone can participate in a truly open and public hearing?

GUEST VIEWPOINT

By Bruce Hadley
Idylewood Owners, LLC

1-9-1

NEWS

AN OPEN LETTER to the MAYOR & CITY COUNCIL

You and your staff have said, on many occasions, that "the City's current policy has been to only annex those who request and petition to be annexed."

However, "current" means today, and says nothing about tomorrow. And any "policy" may be changed, quickly and quietly, with no public input.

In any case, "current policy" fails with Idylewood homeowners, because we're staring down the loaded barrel of a unique, legally binding agreement: An "Improvement Agreement," signed by the City and the Benedicks in 1981.

To summarize, this agreement says that the owners of the 70 lots in the original Idylewood subdivision, which straddles Oceana Drive, shall:

- a) pay for the extension of the sewer line from Rhododendron Drive, and
- b) connect to the sewer, whether they want to or not, at their own expense, and
- c) pay for any road improvements the City wants: curbs, gutters, sidewalks, widening, etc.

The City's past annexations along Rhododendron Drive did not present this kind of predicament. The homeowners along Rhody had no legal obligation to connect to the sewer, and no financial responsibility for road improvements.

There is no precedent for the annexation of Oceana Drive.

So, here's a very simple solution that should satisfy all sides of the dispute: Amend the 1981 Improvement Agreement.

In that Agreement, section 2 would be rewritten to say that connection to the City's sewer is voluntary, except in the case of a health hazard, when a homeowner's septic system has failed beyond repair.

A revised section 3 would say that road maintenance is the task of the City, and major road improvements would need to be approved by a simple majority of the 70 homeowners within the original Idylewood subdivision.

10-27-21

SUSLOW NEWS

Finally, the top two paragraphs on page two should be deleted. As written 40 years ago, those paragraphs give homeowners no choice, no appeal. But since the subdivision is now complete, removing them hurts no one.

Now, I am not an attorney, but I know that all three of these changes *can* be made, legally and quickly. The City and the Benedick organization simply need to sign.

Without this revision, and upon annexation of Oceana Drive, we have new liens on our homes. Legally, I must divulge to prospective buyers that they could be obligated for tens of thousands of dollars in construction fees, at the sole discretion of the City Council.

With this revision, all parties should be satisfied:

Benedick Holdings LLC gets approval of its application for annexation and rezoning; the City of Florence gets to annex more land within its urban growth boundary; and the Idylewood homeowners have a written promise that they will not be forced to annex their own properties, they will not be forced to connect to the sewer, and they will not be asked to pay for road improvements.

What possible objection could you have?

Sincerely,

Bruce Hadley
Idylewood Owners LLC

www.idylewood.com

SINUSAW NEWS

Oceana Owners & Friends say **NO TO ANNEXATION**

H-12-1

Alan Matisoff ~ Alexis & Ross Greenlee ~ Annie & Dave Blanks ~ Arlen Roemen ~ Barbara Fiorito ~ Beth Lints ~ Bill McDougle ~ Bob Ekas ~ Bonnie Wilson ~ Brent & Kathy Johnson ~ Brian Gardiner ~ Brian & Jessica Enochian ~ Brian & Pamela Hudson ~ Bruce & Linda Cochran ~ Bruce & Mary Williams ~ Bruce & May Hadley ~ Bruce Chadd ~ Carl & Judith Hruska ~ Carol & Ed Dowty ~ Carol Pritchard ~ Carol Wade ~ Charles & Alice Wilent ~ Charles & Betty King ~ Charles & Francine Wong ~ Charles Caldwell ~ Charlie & Phyllis Campione ~ Cher Dolan ~ Cher Thatcher ~ Cheryl Chipps ~ Chris Kohl ~ Christine Cole ~ Cindy Flesher ~ Colleen Hodges ~ Courtney & Carol Au Court ~ Cris Reep ~ Cynthia Wright ~ Darlene Norwood ~ Dave & Chris Kieffer ~ David & Janice Riordan ~ David & Patricia Hole ~ Dennis & Angele Hamilton ~ Dennis & Ruth Ann Cromwell ~ Diana Lynne Greenlee ~ Ed Gallup ~ Eric & Linda Bickel ~ Eric Friesen ~ Frank Cano ~ Frank & Marbeth Scheidbach ~ Gail Petty ~ Gail Zilai ~ Gayle Kearns ~ Gary & Kristina Edson ~ Gary Donnelly ~ Gary Newman ~ Gerald Bateman ~ Greg & Carol Stender ~ Gwyn & Joe Decker ~ Heidi A. Clark ~ Ivy Medow ~ J. Patricia Bolin ~ Jacquelyn Price ~ James Booth ~ James Mackey ~ James Wilson ~ Jan & Michael Sapienza ~ Jan Gaynor ~ Jan Haney ~ Jane Balzer ~ Jeff Talbot ~ Jerry & Debbie McVicker ~ Jerry & Jo Mounts ~ Jerry Bateman ~ Jill Burch ~ Jim & Becky Mann ~ Jim & Robin Shaver ~ Jim & Sharron Dwiggin ~ Jim Pruss ~ Jim Sikora ~ Jimmie & Christine Seitsinger ~ Joanne Dal Pra ~ John Mackin ~ John McBride ~ Jok Simons ~ Juanita Mae Petroni ~ Judy Buhler ~ Karen & Patrick Thompson ~ Karen Childs ~ Kathee McDermott ~ Kathryn & William Clark ~ Kathi & Jack Hanauer ~ Ken Vida ~ Ken & Judith Chipps ~ Larry & Holly Herr ~ Larry & Judi Alldridge ~ Laurie & Dave Carruthers ~ Lea Patten ~ Les & Shirly Hamilton ~ Leslie & Frank Oliver ~ Lowell Moore ~ Lowrey Mumford ~ Lynne Davis ~ Marc & Amy Fletcher ~ Margaret Axnick ~ Maria McConnell ~ Marilyn Krueger ~ Marina Schwagermann ~ Mary & Bert Nelson ~ Mary McCarthy ~ Michael Davis ~ Michael Gardner ~ Mike & Bou Kilgore ~ Mike & Linda Harrah ~ Mike Benck ~ Mike Calvert ~ Mitch & Debbie Proyect ~ Monique Hugon ~ Nancy Patterson ~ Pat Boe ~ Paul & Colleen Cunningham ~ Paul & Josefina Meyer ~ Paula Ziegelasch ~ Peter & Catura Marsh ~ Randall & Susan Pilcher ~ Ray & Jenny Hull ~ Rene McGuire ~ Rich & Susan Johnson ~ Richard & Mary Kauffman ~ Robert Clausen ~ Ron & Kate Gipson ~ Rosann Sanders ~ Rudy & Sue Zoldak ~ Sakre Edson ~ Sandy & Paul Bowen ~ Scott & Kathy Maurer ~ Shelby Sherman ~ Sheri & Al D'Amico ~ Sherri Ford-Mackey ~ Steve & Carol Wade ~ Steve & Sue Knowles ~ Steve Campbell ~ Steve Williams ~ Suzanne Curtis ~ Taunia Green ~ Terrence & Debra Anderson ~ Terry & Kathy Barrett ~ Tom & Sharon Beall ~ Trudy Beck ~ Vito Coviello ~ William & Darlene Lambiaso ~ William Rehder

More info: www.idylewood.com

January 28, 2021

Mayor and City Council
Florence City Hall
250 Hwy 101
Florence OR 97439

RE: Benedict LLC Annexation and Zoning Assignment

Dear Mayor and Councilors,

I am writing to inform you of some of the history the owner/developer of the lands proposed for annexation has with Lane County and to make you aware of a potential storm drainage issue that has not been resolved to date.

The Idylewood Subdivision and subsequent additions and Benedict Holdings LLC have a long history and the files are large and difficult to wade through. The file I inherited from former Commissioner Morrison on the storm drain issue is two inches thick and it is only part of the record. I am only going to concentrate on the storm drainage issue and the fact that Lane County never accepted the system to be maintained publicly.

The records I have available to my clearly indicate that Benedict Holdings never completed all the required steps to have the County accept the storm drain system. This means that the existing Idylewood development and the streets serving it are served by a still private storm drain system. This “private” system receives the surface discharge from a portion of the properties proposed for annexation.

The files I inherited include photographic and written documentation of a flooding of residential property on multiple occasions in the Idylewood development from the residents. I believe the City should act with caution as it moves forward with any development of this property and require the developer to complete the process of upgrading the storm drain system in the previous phases of the development prior to annexation of lands that discharge to that system. Additionally, the City should require a detailed storm drainage analysis from a registered professional engineer certifying no increase in discharge from the development, or if there is an increase the study should certify the downstream systems can accommodate the discharge safely. The certification should be done prior to issuing any construction, grading or clearing permits that could exacerbate the current storm drainage problems in the area.

Sincerely,

Jay Bozievich, Commissioner
West Lane – District 1

From: Zack Mittge <zmittge@eugenelaw.com>
Sent: Thursday, January 28, 2021 8:34 AM
To: Wendy Farley-Campbell <wendy.farleycampbell@ci.florence.or.us>
Subject: Re: Benedick Holdings LLC Proposed Ordinances & Notice of Hearing Mailing List

Wendy,

Thanks for the follow-up e-mail.

In reviewing the affidavit provided the other day, it appears that the first page of the pdf was not searchable, which would account for a number of the owners not appearing to be on the list. I apologize for any confusion with regard to these addresses.

However, in reviewing the information you provided, I have a question about 4861 Oceana Drive. This notice appears to be going out to a PO Box in California. However, Lane County tax assessment relies on the physical address of 4861 Oceana Drive, and sent the 2020 tax statement to the owners at that address.

In terms of other properties, we're also not seeing notices to 4725 Sea Breeze Lane, or 87842 Saltaire Street, and it appears that notice was not provided to these owners. Would you please confirm whether notice has provided. As before we're continuing to review the notice list at this point, so these identified issues may not be exhaustive.

Very truly yours,

Zack P. Mittge

Zack P. Mittge | Attorney
940 Willamette Street, Suite 400
Eugene, OR 97401
PO Box 10886, Eugene, OR 97440
541-686-9160 | 541-343-8693 (fax)
www.eugenelaw.com



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and do not make any copies or records of them. Receipt of this email by anyone not already a client does not create an attorney client relationship.

From: Wendy Farley-Campbell <wendy.farleycampbell@ci.florence.or.us>
Date: Wednesday, January 27, 2021 at 3:25 PM
To: Zack Mittge <zmittge@eugenelaw.com>
Subject: FW: Benedick Holdings LLC Proposed Ordinances & Notice of Hearing Mailing List

Thank you Zack for the addresses. Staff compared the address list you provided with the mailing affidavit list and they are on there. You can see the names associated with the address in highlights below and which page of the affidavit.

We are happy to research and address concerns but when the addresses provided are included on the affidavit mailing list already provided to you then it is an exercise of taking up time—yours and ours. Are there addresses or people you or your client(s) would like us to research that are not on the mailing list or that cannot be confirmed from the mailing list? We do have a pile of envelopes that have been returned to the city as undeliverable. We can thumb through those as well.

You likely already know this but I mention it due to inconsistent wording in your emails before and after the address listing below. ORS requires mailing to property owners using the address provided by the tax assessor. There is no requirement in this case to send it to home occupants or to the home address unless that is the address included from the tax assessor.

Thank you again Zack.

Wendy FarleyCampbell, AICP
Planning Director | City of Florence
O: 541.997.8237

From: Aleia Bailey <aleia.bailey@ci.florence.or.us>
Sent: Wednesday, January 27, 2021 2:34 PM
To: Wendy Farley-Campbell <wendy.farleycampbell@ci.florence.or.us>; planningdepartment <planningdepartment@ci.florence.or.us>
Subject: RE: Benedick Holdings LLC Proposed Ordinances & Notice of Hearing Mailing List

Please see below, I identified that all the addresses listed are infact on the Affidavit of Mailing dated 12/28/20 and are all on page 1.

From: Zack Mittge <zmittge@eugenelaw.com>
Sent: Wednesday, January 27, 2021 2:00 PM
To: Wendy Farley-Campbell <wendy.farleycampbell@ci.florence.or.us>
Subject: Re: Benedick Holdings LLC Proposed Ordinances & Notice of Hearing Mailing List

Wendy,

Thank you for the e-mail.

As indicated, our own review identifies several property owners along Oceana Drive that did not receive the notice of hearing. These include both owners that reside at physical addresses along Oceana Drive, and also owners that receive their tax statements at a different physical address.

While not an exhaustive list, this error impacts at least the following physical addresses:

- 4785 Oceana Drive – Entile Family Revocable Living Trust – page 1
- 4806 Oceana Drive – Curtis Trust – page 1
- 4819 Oceana Drive – Benck Michael E & Carol J – page 1
- 4838 Oceana Drive – AuCourt Carol J & Courtney – page 1
- 4844 Oceana Drive – Dowty Family Trust – page 1
- 4861 Oceana Drive – Almadova Steven R & Stefanie – page 1
- 4864 Oceana Drive – Derby Richard L & Darlene E – page 1
- 4867 Oceana Drive – Dwiggin Wesley J & Sharron M – page 1
- 4860 Oceana Drive – Balzer Benjamin R & Jane C – page 1
- 4886 Oceana Drive – Boettcher Community Property Trust – page 1
- 4933 Oceana Drive – Daniel Douglas Rogina 05 Revocable Trust – page 1

According to the City’s affidavit, it has not provided notice to these properties at their physical addresses, or the owners at the physical address in the tax records.

Additional properties along Saltaire and Sandrift also failed to receive, including properties that abut directly on the Benedick property.

Very truly yours,

Zack P. Mittge

Zack P. Mittge | Attorney
940 Willamette Street, Suite 400
Eugene, OR 97401
PO Box 10886, Eugene, OR 97440
541-686-9160 | 541-343-8693 (fax)
www.eugenelaw.com



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From: Wendy Farley-Campbell <wendy.farleycampbell@ci.florence.or.us>
Date: Wednesday, January 27, 2021 at 11:24 AM
To: Zack Mittge <zmittge@eugenelaw.com>
Subject: RE: Benedick Holdings LLC Proposed Ordinances & Notice of Hearing Mailing List

Zack,

Thank you for your email. We are checking our list. Preliminary results show everyone on Oceana that owns property received a notice. We use the mailing addresses provided by the tax assessors office. If properties have sold and folks have not updated their mailing address that could be the reason for a discrepancy. Also, if you are simply comparing the mailing list to the addresses on Oceana it will not account for out of town owners that have their tax statements mailed to an address other than the physical one on Oceana.

If you have some instances you would like to specifically bring our attention to please do share so we can expedite the research and provide you and the public a timely response to your concern.

Regards,

Wendy

Wendy FarleyCampbell, AICP

Planning Director | City of Florence

O: 541.997.8237

From: Zack Mittge <zmittge@eugenelaw.com>

Sent: Wednesday, January 27, 2021 9:57 AM

To: Wendy Farley-Campbell <wendy.farleycampbell@ci.florence.or.us>

Subject: Re: Benedick Holdings LLC Proposed Ordinances & Notice of Hearing Mailing List

Ms. Farley-Campbell,

Thank you for this information.

The purpose of this e-mail is to advise you of a defect in the City's Notice of Hearing. The affidavit of mailing provided to our office Monday reflects that more than 10 homes on Oceana Drive that are adjacent to the area proposed for annexation were not provided with the requisite notice of the upcoming hearing on February 1st. It is highly likely that other homes within the notice area on other streets were also omitted from the City's notice.

ORS 197.763(2)(a)(A) requires that notices of land use hearings be provided to all property owners "Within 100 feet of the property which is the subject of the notice where the subject property is wholly or in part within an urban growth boundary." The notice of the upcoming hearing applies to the applicant's proposal "annexing Oceana Drive and property described as Assessor's Map No. 18-12-10-40, Tax Lots 400 and 401 and MR 18-12-10-34, Tax Lot 801."

As homes adjacent to the property which is the subject of the notice have not been provided with written notice of the hearing, the City's public hearing notice is deficient.

Please include this e-mail in the record of these proceedings, and include our firm on the list of all future notices associated with the proposed annexation and zone change.

Very truly yours,

Zack P. Mittge

Zack P. Mittge | Attorney

940 Willamette Street, Suite 400
Eugene, OR 97401
PO Box 10886, Eugene, OR 97440
541-686-9160 | 541-343-8693 (fax)
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From: Wendy Farley-Campbell <wendy.farleycampbell@ci.florence.or.us>
Date: Monday, January 25, 2021 at 4:51 PM
To: Zack Mittge <zmittge@eugenelaw.com>
Cc: Kelli Weese <kelli.weese@ci.florence.or.us>, Aleia Bailey <aleia.bailey@ci.florence.or.us>
Subject: Benedick Holdings LLC Proposed Ordinances & Notice of Hearing Mailing List

Zack,

Good afternoon. As per your request attached are the staff recommendations and the list of people mailed the notice of hearing for the Council hearing scheduled for February 1st for the Benedick Holdings LLC annexation request and zone assignment.

Please let me know if you have questions or need something further.

Regards,

Wendy FarleyCampbell, AICP

Planning Director | City of Florence
O: 541.997.8237
250 Highway 101, Florence OR 97439

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