

BEFORE THE LAND USE BOARD OF APPEALS
OF THE STATE OF OREGON

OREGON COAST ALLIANCE, an)	
Oregon non-profit corporation,)	
WOAHINK LAKE ASSOCIATION,)	
SUZANNE NAVETTA, an individual,)	LUBA No. 2011-113
)	
Petitioners,)	
)	
v.)	
)	
CITY OF DUNES CITY, a political)	
Subdivision of the state of Oregon,)	
)	
Respondent)	
)	

PETITIONERS' PETITION FOR REVIEW

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1

2 I. Petitioners have Standing

3 Petitioners Oregon Coast Alliance (“ORCA”), Woahink Lake Association, and
4 Suzanne Navetta (collectively “Petitioners”) have standing to bring this appeal because
5 Petitioners submitted a timely Notice of Intent to Appeal, ORS 197.830(2)(a). Petitioners
6 appeared before the local government either in writing or by oral testimony. *See e.g.*,
7 Record at 28-36 (ORCA); Record at 60-61, 81-28 (Woahink Lake Association); Record at
8 79, 309 (Suzanne Navetta). ORS 197.830(b). Therefore, Petitioners have standing to bring
9 this appeal.

10 II. Statement of the Case

11 A. Nature of the Decision and the Relief Sought

12 Petitioners appeal a land use regulation adopted by the City of Dunes City
13 (“Respondent,” “the City,” or “Dunes City”). Specifically, Respondent adopted Ordinance
14 No. 211A, which repeals Ordinance No. 203.¹ *See* Ordinance No. 211A, Record at 13-23,
15 Appendix at 15-25. Ordinance No. 203 was adopted on January 14, 2010 “to ensure that all
16 onsite wastewater disposal systems, also known as sewage disposal systems or septic
17 systems, are operated in a safe, healthful, and environmentally responsible manner” and
18 prevent “improper discharge of sewage effluent threatening surface water, groundwater and
19 public health, safety, and welfare.” Appendix at 1. In addition to repealing Ordinance No.
20 203, Ordinance No. 211A establishes “an educational program for septic system
21 maintenance, to be implemented within one year of adopting of [Ordinance No. 211A].”
22 Record at 4.

¹ ¹ Petitioners respectfully request that the Board take official notice of Ordinance No. 203, attached at Appendix 1-14. Ordinance No. 203 is codified at Dunes City Code Title 15, Chapter 157.

1 Petitioners respectfully request reversal or remand of the challenged decision because
2 the adoption of Ordinance No. 211A does not comply with the Dunes City Comprehensive
3 Plan, and it does not contain substantial evidence to support its findings with the
4 Comprehensive Plan policies and Goal 6.

5 B. Summary of the Arguments

6 The repeal of Ordinance No. 203 and adoption of Ordinance No. 211A does not
7 comply with Dunes City Comprehensive Plan policy E6 because Respondent failed to
8 demonstrate how Ordinance No. 211A will improve septic system maintenance, as required
9 by policy E6. Ordinance No. 203 improved upon the then-existing framework because it
10 identified failed and faulty septic systems, had a high compliance rate, and improved
11 phosphorous levels in the lakes. Instead of pointing to evidence that Ordinance No. 211A
12 will improve septic system maintenance, Respondent’s findings rely on conclusory
13 statements that simply reiterate the operative phrase of policy E6. Ordinance No. 211A will
14 not improve upon Ordinance No. 203 because Ordinance No. 211A’s undefined educational
15 program may not be implemented for an entire year, and there is nothing in the record to
16 demonstrate that an undefined educational program will improve upon Ordinance No. 203’s
17 mandatory inspection and pumping of septic systems.

18 Ordinance No. 211A impermissibly attempts to amend the comprehensive plan
19 because Ordinance No. 211A reads out of policy E6 the requirement for a “program” and a
20 program that “improves maintenance of septic systems.” Because Ordinance No. 211A
21 immediately repeals Ordinance No. 203’s maintenance and inspection program, and does not
22 immediately implement the “educational program,” Dunes City is left without a program to
23 improve septic system maintenance for some undefined period of time. Ordinance No. 211A
24 also reads out of policy E6 the requirement that it “improve septic system maintenance”

1 because Respondent’s findings do not demonstrate that the program will improve septic
2 system maintenance. If Respondent would like to amend the Comprehensive Plan policy, it
3 is free to do so, but it may not amend the Comprehensive Plan policy by adopting an
4 ordinance.

5 Ordinance No. 211A is inconsistent with express language of Comprehensive Plan
6 policy E6 because policy E6 requires “maintenance,” and Ordinance No. 211A only requires
7 “education.” Because the plain meaning of “maintenance” is clear, and Respondent
8 interprets “maintenance” to only include “education,” Respondent’s interpretation is
9 implausible.

10 Respondent made findings not supported by substantial evidence in the whole record
11 because Respondent’s findings that allegedly satisfy the criteria in the Comprehensive Plan
12 policies are inadequate and conclusory. Respondent offers no support for its finding that
13 there is “no established correlation established between water quality and erosion or septic
14 system effluent.” The Comprehensive Plan and the record, however, are replete with
15 evidence demonstrating a clear link between water quality and erosion or septic system
16 effluent. Because of Dunes City’s unique geography, lack of a public sewage system, and
17 the fact that the majority of the residents draw the domestic water from the lakes, the
18 Comprehensive Plan contains a substantial amount of evidence about the connection between
19 water quality and erosion or septic system effluent. To demonstrate the correlation between
20 water quality and erosion or septic system effluent, the record contains testimony of water
21 quality testing performed since 2002, studies by the United States Forest Service and others,
22 independent research by City Councilors, personal experiences of Dunes City residents, and a
23 Department of Environmental Quality “Fact Sheet” on “Septic System Maintenance.”
24 Respondent’s findings, however, rely only on conclusory assertions in their findings to

1 support the notion that there is no correlation between water quality and erosion or septic
2 system effluent. Respondent relies on similar inadequate and conclusory findings in
3 determining that Ordinance No. 211A’s undefined and unimplemented educational program
4 will improve upon the existing framework (i.e. Ordinance No. 203) that requires periodic
5 inspection and pumping of septic systems.

6 Finally, Respondent acknowledges that Goal 6 applies, but fails to make any findings
7 with regard to Goal 6. Assuming that certain findings for Comprehensive Plan policies under
8 the heading of “Air, Water, and Land Quality” can substitute as Goal 6 findings, those
9 findings are not supported by substantial evidence. As with Respondent’s other findings for
10 polices related to “Air, Water, and Land Quality,” the findings merely repeat the operative
11 phrase of the policy that they allegedly satisfy. These findings are conclusory, inadequate,
12 and not supported by substantial evidence. In addition, Siltcoos Lake has been placed on the
13 303(d) list under the Clean Water Act because it violates water quality standards for aquatic
14 weeds and algae, and there are no findings in the record demonstrating that the repeal of
15 Ordinance No. 203 and the adoption of Ordinance No. 211A will not threaten to violate,
16 violate, or compound the existing violations of the water quality standards.

17 C. Summary of the Material Facts

18 1. Onsite Septic Systems in Dunes City

19 The residents of Dunes City use onsite septic systems for treating sewage: “[s]ince
20 there is no public sewage systems in Dunes City, subsurface disposal systems (septic tanks
21 and drain fields) are the only available means of waste water treatment.” Comprehensive
22 Plan at 45 (Appendix at 32). Because the area is dominated by sandy dunes and “[s]andy
23 soils are porous,” the maintenance of onsite septic maintenance is integral to preventing
24 pollution from entering the lakes, their tributaries, and the groundwater. Record at 28. Early

1 onsite septic systems were, at times, located in close vicinity to Woahink Lake and
2 sometimes consisted of a fifty-five gallon drum without appropriate filters or treatment
3 devices: “The original septic maintenance ordinance [e.g. Ordinance No. 173] was put into
4 effect because [residents and the City Council] knew there were 55 gallon drums within 100
5 feet of the lake or closer that were acting as septic tanks with no drainfield.” Record at 311;
6 ~~see also~~ Record at 309 (“There were homes close to the lake that had no septic systems.
7 They had a hole in the ground with a 55 gallon drum. Those systems were corrupting the
8 lake.”). The issue of septic system maintenance is, therefore, important to Dunes City and its
9 residents, and this is reflected in Dunes City’s Comprehensive Plan.

10 2. Drinking Water in Dunes City

11 The residents of Dunes City draw their drinking water from the surrounding lakes,
12 tributaries, and wells:

13 “[M]any Dunes City residents live in the vicinity of Woahink and/or Siltcoos Lakes,
14 and the majority of Dunes City residents use Woahink Lake, Siltcoos Lake, Little
15 Woahink Lake, Woahink Creek and/or the Siltcoos River as their source of drinking
16 water. Dunes City has a water right for Woahink Lake, and provides permits to
17 residents who apply for water use; other residents obtain water from nearby sources
18 as listed above, or from wells. All these sources are vulnerable to contamination from
19 failing septic systems.

20
21 Woahink, Little Woahink, Siltcoos Lakes and their tributaries are all near one
22 another, and hydrologically connected in the manner well understood in dunal lake
23 ecosystems. Sandy soils are porous. Therefore, to protect against contamination of
24 the drinking water supply, the City enacted Ordinance 203.”

25
26 Record at 28.² Siltcoos Lake, however, is water quality impaired for excess aquatic weeds
27 and algae, and it has been the subject of Public Health Advisories in 2007 and 2008. Record

² Record at 86 (“Everyone knows that Woahink is a unique lake. Only one of three in the world like it. And that since it is spring and rain fed it is very slow to turnover and it takes much longer than most lakes to turnover, making pollution more difficult to deal with. Leaky septic systems in the watershed area do pollute lakes.”).

1 at 28, 33; ~~see~~ Comprehensive Plan at 35 (Appendix at 29) (“we must protect our water
2 supply from the ever present threat of contaminant run off”).

3 3. Dunes City Comprehensive Plan

4 “[C]omprehensive plans ... set forth the community’s long-range objectives and the
5 policies by which it intends to achieve them. *Mount Hood Stewardship Council v.*
6 *Clackamas County*, 33 Or LUBA 284 (1997). Because the risk of contaminating Dunes
7 City’s drinking water is ever-present, that risk is acknowledged throughout the
8 Comprehensive Plan, both in its text and policies. The Comprehensive Plan text repeatedly
9 recognizes the relationship between the City’s drinking water and its contamination from
10 erosion and onsite septic systems: “The main threats are septic tank seepage and nonpoint
11 source pollution. This problem is particularly serious because many residents utilize the
12 lakes for domestic water supplies.” Comprehensive Plan at 36 (Appendix at 30);
13 Comprehensive Plan at 35 (Appendix at 29) (“the water quality of Woahink should be an
14 important concern of the city. Recommendations include developing a water system on
15 Woahink, implementing regulations to keep sewage out of the lake, and further study of the
16 groundwater between Woahink and Siltcoos Lakes”); Comprehensive Plan at 45 (Appendix
17 at 32) (“The need to protect groundwater, lakes, and streams establishes a carrying capacity
18 of about one residential unit per acre”); Comprehensive Plan at 46 (Appendix at 33)
19 (“reliance on septic tanks in areas of high density can cause severe problems including well
20 contamination”); Comprehensive Plan at 50 (Appendix at 34) (“NPS [nonpoint source
21 pollution] is often caused by poor land use practices and can include erosion, improper use of
22 herbicides and pesticides, polluted urban runoff, and poor maintenance of septic tanks. The
23 degradation occurs with the accumulation of many small actions but the combined
24 cumulative impact can be serious”).

1 Seven Comprehensive Plan policies specifically implicate the protection of drinking
2 water, maintenance of onsite septic systems, or both:

3 “Dunes City shall strive to maintain the high water quality of Siltcoos and Woahink
4 Lakes through monitoring recreation use, commercial and industrial use, and run-off
5 of septic tank effluent. A Water Quality Control Committee will be formed to
6 examine problems with water quality.” Policy B8, Comprehensive Plan at 7
7 (Appendix at 27).

8 ...
9 “The city shall strive to preserve the land, air, and water resources in the city.” Policy
10 E1, Comprehensive Plan at 10 (Appendix at 28).

11 ...
12 “All development in the city shall comply with DEQ’s applicable air and water
13 quality standards and noise control standards.” Policy E2, Comprehensive Plan at 10
14 (Appendix at 28).

15 ...
16 “Waste discharges from future facilities shall not exceed the carrying capacity nor
17 degrade the quality of the land, air, and water resources.” Policy E3, Comprehensive
18 Plan at 10 (Appendix at 28).

19 ...
20 “Regulations involving land, air, and water resources of the city shall be based upon
21 long-term capabilities of the available natural resources to both support economic
22 activity and absorb the future, resulting man-made pollutants.” Policy E4,
23 Comprehensive Plan at 10 (Appendix at 28).

24 ...
25 “The city shall cooperate with the Department of Environmental Quality to ensure
26 compliance with disposal system requirements.” Policy E5, Comprehensive Plan at
27 10 (Appendix at 28).

28 ...
29 “The city shall adopt a program to improve maintenance of septic systems for the
30 benefit of all residents.” Policy E6, Comprehensive Plan at 10 (Appendix at 28).

31 ...
32 “Commercial properties shall have adequate sewage disposal systems and be in
33 harmony with their natural surroundings.” Policy I10, Comprehensive Plan at 15
34 (Appendix at 35).

35
36 Therefore, given the unique circumstances in Dunes City, the Comprehensive Plan
37 acknowledges the risk of contaminating drinking water from erosion and onsite septic
38 systems, and specific policies were created to prevent contamination of the City’s drinking
39 water supply.

1 4. Ordinance No. 203

2 On March 9, 2006, Respondent adopted Ordinance No. 173, which established
3 Chapter 157 within the Dunes City Code of Ordinances entitled “Septic System
4 Maintenance.” Record at 15. On January 14, 2010, Respondent adopted Ordinance No. 203
5 to protect the public health, safety, and welfare and ensure onsite septic systems are operated
6 in a safe, healthful, and environmentally responsible manner. Appendix at 1, 5; Record at 15.
7 Ordinance No. 203 repealed Ordinance No. 173 and amended Chapter 157. Record at 15.

8 Specifically, Ordinance No. 203 was adopted:

9 “to ensure that all onsite wastewater disposal systems, also known as sewage disposal
10 systems or septic systems are operated in a safe, healthful and environmentally
11 responsible manner. Proper system inspection and maintenance prevents the adverse
12 impacts of failing systems that may result in improper discharge of sewage effluent
13 threatening surface water, groundwater and public health, safety and welfare.”

14
15 Appendix at 5, Dunes City Code, Section 157.010; *see also* Appendix at 1 (“proper system
16 maintenance prevents the adverse impacts of failing systems that may result in improper
17 discharge of sewage effluent threatening surface water, groundwater and public health,
18 safety, and welfare”). Ordinance No. 203 recognized that:

19 “[o]nsite wastewater disposal systems are subject to failure due to lack of
20 maintenance, misuse, water infiltration, seismic activity and other reasons. In order
21 to minimize water quality problems from failed systems and extend the useful life of
22 these systems, the following program has been developed to regularly inspect onsite
23 systems, and seek effective maintenance and repair.”

24
25 Appendix at 5, Ordinance No. 203, Section 157.030.

26
27 Ordinance No. 203 established “local rules for the periodic inspection and
28 maintenance of onsite wastewater disposal systems to determine compliance with the Lane
29 County adopted standards for septic system evaluation or more rigorous standards adopted by
30 the Dunes City Council.” Appendix at 5, Ordinance No. 203, Section 157.020. According to
31 Ordinance No. 203:

1 “[o]wners of buildings served by onsite wastewater disposal systems are responsible
2 to have inspections performed at their expense by one of Dunes City’s approved
3 inspectors Owners are responsible for maintenance of their systems and shall
4 notify the City in the event the inspector’s report indicates a failure of the system or
5 the owner observes a failure of a system.”

6
7 Appendix at 6, Ordinance No. 203, Section 157.040. The City, in turn, was obligated to
8 maintain “[r]ecords of individual septic systems” and a “register of Dunes City approved
9 inspectors who have personal knowledge of the City’s Septic System Maintenance
10 Ordinance.” Appendix at 6, Ordinance No. 203, Section 157.050.

11 Ordinance No. 203 required the “[p]eriodic inspection of all onsite wastewater
12 disposal systems within the city limits,” Appendix at 6, Ordinance No. 203, Section 157.060,
13 and the “initial inspection shall include pumping of the septic tank and mapping of the septic
14 system.” Appendix A at 6, Ordinance No. 203, Section 157.060(A). However, the “initial
15 inspection will not be required if the property owner presents satisfactory evidence that the
16 system has been permitted and installed with a final approved inspection within the previous
17 five years,” and “[t]he date of the final inspection will serve as a basis for a periodic
18 inspection in 5 years.” *Id.*

19 “Periodic inspections include the condition of the septic tank contents, such as the
20 thickness of the scum layer and percent of solids in the tank, the absorption
21 disposal/drainfield and its capacity to accommodate a test volume of water, pumps,
22 filters, and other important features of the system and the preparation of a report. If a
23 periodic inspection indicates a fully functioning system, pumping is not required
24 unless the Inspector deems it necessary.”

25
26 Appendix at 6, Ordinance No. 203, Section 157.060(B). “Failure to inspect, pump, map, or
27 repair in accordance with the time frames or the inspection procedures . . . constitutes a
28 violation of the Dunes City Code of Ordinances and shall be subject to a penalty of \$250 per
29 calendar day . . . until the property is in compliance with the requirements [of the
30 Ordinance].” Appendix at 6, Ordinance No. 203, Section 157.060(A).

1 Implementation of Ordinance No. 203 revealed at least 65 septic systems that failed
2 or needed replacements or repairs. ~~See~~ Record at 50 (“It is especially noteworthy that of the
3 534 households that have complied thus far, 65 had failed septic systems, or needed replacements or
4 repairs”).³ By isolating failed onsite septic systems (or those in need of repair), Ordinance
5 No. 203 was “success[ful] in protecting Dunes City’s drinking water supply,” Record at 50,
6 especially given the connection between septic failures and contaminated drinking water
7 acknowledged in the Dunes City Comprehensive Plan. Overall, Ordinance No. 203 had a
8 compliance rate of “[r]oughly 70%.” Record at 50. “Water quality seems to have improved
9 since everyone got in compliance with Ordinance 203,” and “[t]here is less algae in Siltcoos
10 Lake.” Record at 48.

11 5. Ordinance No. 211A

12 On November 10, 2011, Respondent adopted Ordinance No. 211A, a land use
13 regulation amendment, that repealed Ordinance No. 203 and “replaced [Ordinance No. 203]
14 with an educational program for septic system maintenance, to be implemented within one
15 year of adoption.” Record at 4. Respondent specifically determined that “it is not in the best
16 interests of Dunes City residents to establish mandatory septic inspections, evaluations or
17 pumping,” and that “it is in the best interests of Dunes City residents to establish an
18 educational program to ensure adequate septic system maintenance.” Record at 4. Finally,
19 Dunes City determined that “Ordinance Number 211A meets all applicable criteria of the
20 Dunes City Code, Dunes City Comprehensive Plan and Oregon State Laws.” Record at 4.

³ In essence, Ordinance No. 203 merely ensured compliance on a local level with the State’s requirement that “[e]ach owner of real property is jointly and severally responsible for (a) [t]reating wastewater generated on that property in conformance with the rules adopted by the commission; (c) [m]aintaining, repairing, and replacing onsite system on that property as necessary to ensure proper operation of the system; (d) [c]omplying with all requirements for construction, installation, maintenance, replacement, and repair of onsite systems required in this division and OAR chapter 340, division 073.” OAR 340-071-0120.

1 III. Jurisdiction

2 The Board has jurisdiction because the challenged decision was a final land use
3 decision made by a local government that concerns the application of comprehensive plan
4 provisions and/or land use regulations. ORS 197.825(1); ORS 197.015(11); ORS
5 197.015(10)(a)(A).

6 IV. Assignments of Error

7 A. First Assignment of Error: Repeal of Ordinance No. 203 and Adoption of
8 Ordinance 211A does not Comply with, Impermissibly Attempts to rewrite,
9 and is Inconsistent with Dunes City Comprehensive Plan Policy E6.

10
11 The repeal of Ordinance No. 203 and the adoption of Ordinance No. 211A does not
12 comply with the Comprehensive Plan, impermissibly attempts to rewrite the Comprehensive
13 Plan, and is inconsistent with the express language of the Comprehensive Plan. “The Board
14 shall reverse or remand an amendment to a land use regulation or the adoption of a new land
15 use regulation if (a) [t]he regulation is not in compliance with the comprehensive plan.”
16 ORS 197.835(7)(a); ORS 197.175(2)(d) (each city shall “make land use decisions and limited
17 land use decisions in compliance with the acknowledged plan and land use regulations”); *Rea*
18 *v. City of Seaside*, 26 Or LUBA 444 (1994). Furthermore, the Board “shall affirm a local
19 government’s interpretation of its comprehensive plan and land use regulations, unless the
20 board determines that the local government’s interpretation (a) [i]s inconsistent with the
21 express language of the comprehensive plan or land use regulation.” ORS 197.829(1)(a).

22 1. Subassignment of Error: Repeal of Ordinance No. 203 and adoption
23 of Ordinance No. 211A does not comply with Comprehensive Plan
24 policy E6.

25
26 Comprehensive Plan policy E6 requires that “[t]he City shall adopt a program to
27 improve maintenance of septic systems for the benefit of all residents.” Comprehensive Plan
28 at 10 (Appendix at 28). Because Ordinance No. 203 improved septic system maintenance

1 from the then-existing framework, Respondent was required to explain how Ordinance No.
2 211A will improve septic system maintenance from Ordinance No. 203. Respondent,
3 however, failed to explain how or demonstrate how Ordinance No. 211A will improve upon
4 Ordinance No. 203.

5 a. Ordinance No. 203 improved maintenance of septic systems
6 from the then-existing framework
7

8 Ordinance No. 203 “improved maintenance of septic systems” because, as a result of
9 its implementation, it assisted Dunes City in identifying 65 onsite septic systems that had
10 either failed or were in need of replacements or repairs. Record at 50. Ordinance No. 203
11 had a compliance rate of “[r]oughly 70%,” Record at 50, and it would likely be higher if
12 Ordinance No. 203 could run its anticipated course, instead of being interrupted by the
13 adoption of Ordinance No. 211A. Thus, Ordinance No. 203 “improved” septic maintenance
14 because it identified failing and faulty septic systems that were contributing to the high levels
15 of phosphorous in the lakes, and it had a high compliance rate.

16 Reduced phosphorous levels in Woahink Lake after adoption of Ordinance No. 203
17 also indicate that septic system maintenance improved as a result of Ordinance No. 203.
18 Prior to the enactment of Ordinance No. 203, phosphorous levels in Woahink Lake averaged
19 roughly 9 micrograms, and, after the adoption of Ordinance 203, the phosphorous levels were
20 averaging roughly 5 micrograms, with levels reaching as low as 2 micrograms. ~~See~~ Record
21 at S1 (testimony of Ralph Farnsworth regarding testing of water in Woahink Lake). Mark
22 Chandler, the Citizen Member-Water Tester for the Dunes City Water Quality Committee
23 reiterated the findings of Ralph Farnsworth, noting that phosphorous levels in 2010 were half
24 what they were in 2005. Record at 81. Dunes City Councilor Koehler also noted that “[i]n
25 fact, before the Septic Maintenance [e.g. Ordinance No. 203] was enacted, we had high ‘P’
26 levels in Woahink and after the Septic Maintenance had its course, we lost a lot of that high

1 ‘P’ level. That’s phosphorous.” Record, DVD Recording of Nov. 10, 2011, City Council
2 Meeting at 50:10 – 50:28. Thus, the record demonstrates that phosphorous levels in the
3 Lakes decreased after the adoption of Ordinance No. 203, and, therefore, Ordinance 203
4 “improved maintenance of septic systems.”

5 b. Respondent failed to explain how Ordinance No. 211A will
6 improve septic system maintenance
7

8 To satisfy policy E6 of the Dunes City Comprehensive Plan, Dunes City must
9 demonstrate that repealing Ordinance No. 203, which improved upon the previous
10 framework, and implementing Ordinance 211A, which proposes to implement only “an
11 educational program for septic system maintenance, to be implemented within one year of
12 adopting [Ordinance No. 211A],” Record at 4, will improve “maintenance of septic
13 systems.”⁴ Respondent’s findings for Policy E6 provide that:

14 The proposals are consistent with this policy [e.g. policy E6] because the proposal
15 improves upon the existing code requirements to address maintenance of septic
16 systems for the benefit of all residents in Dunes City. Dunes City found that the
17 existing requirements for mandatory septic system pumping does not benefit all of the
18 residents and therefore initiated text amendments to the code to improve upon the
19 existing program. To ensure that the proposals are consistent with the maintenance
20 requirements established by the Oregon Department of Environmental Quality and
21 administered by Lane County, referrals were sent to the Dunes City Building Official,
22 Lane County Sanitation Department, DEQ and to DLCD notifying them of the
23 proposed amendments. In response, the Lane County Sanitation Department and the
24 Building Department LLC responded stating they had no comments on the proposed
25 amendments. This criterion is met.”
26

27 Record at 21 (emphasis added). Notably, Respondent does not explain or demonstrate how
28 Ordinance 211A would improve upon Ordinance No. 203. Instead, Dunes City simply
29 concludes without support that “the proposal improves upon the existing code requirements
30 to address maintenance of septic systems for the benefit of all residents in Dunes City.”
31 Record at 21. This is nothing more than a conclusory allegation without a foundation in the

⁴ Webster’s Dictionary defines “improve” as “to enhance in value or quality: make better.”

1 record. Simply finding that the “existing requirements for mandatory septic system pumping
2 does not benefit all of the residents” does not demonstrate that an educational program will
3 improve upon a program that required inspection and pumping. Furthermore, the fact that
4 the Lane County Sanitation Department and the Building Department did not comment does
5 not demonstrate that Ordinance 211A will “improve[] upon the existing code requirements.”
6 Therefore, Respondent’s findings are simply conclusory without support in the record.

7 c. Ordinance No. 211A will not improve maintenance of septic
8 systems from Ordinance No. 203
9

10 Ordinance No. 211A will not “improve maintenance of septic systems” in relation to
11 Ordinance No. 203 for a number of reasons. First, it is possible that there will be no program
12 for the maintenance of septic systems for an entire year because the repeal of Ordinance No.
13 203 is effective immediately and the educational program need only be implemented “within
14 one year of adoption of [Ordinance No. 211A].” Ordinance No. 211A contains “no further
15 language, guiding principles, standards or criteria other than this one line concerning the
16 nature of the educational program.” Record at 29; Record at 79 (the educational program
17 “has no direction; no directives; nobody knows what happens”). Respondent does not
18 explain or demonstrate how a septic maintenance ordinance that required “periodic
19 inspection and maintenance of onsite wastewater disposal systems” is improved by
20 withdrawing those maintenance requirements, Appendix at 5, Ordinance No. 203, Section
21 157.020, and, implements an undefined educational program at some undefined point in the
22 future.

23 Second, the record contains ample support to demonstrate that Ordinance No. 211A
24 will not improve upon Ordinance No. 203. For example, without required maintenance and
25 mandatory pumping there is simply no way to determine if an onsite septic system contains
26 cracks that will result in septic system effluent leaks: “Leaky septic systems in the watershed

1 area do pollute our lake. There is no way of checking whether an old septic tank is leaking
2 without pumping it dry to check for cracks. This is a well[-]established and noncontroversial
3 fact.” Record at 65; Record at 60 (Ordinance 211A will “allow further contamination of
4 Woahink Lake by removing much needed controls over septic systems and run off of
5 pollutants into Woahink Lake”).

6 Ordinance No. 203 merely made mandatory those recommendations of the
7 Department of Environmental Quality (“DEQ”), septic contractors, and policy documents.
8 “DEQ recommend that septic systems be pumped approximately every three – six years.”
9 Record at 63. According to a DEQ “Fact Sheet,” entitled “Septic Tank Maintenance”:

10 “When too much sludge and scum are allowed to accumulate, the incoming sewage
11 will not have enough time in the septic tank for solids to settle. Solids may flow to
12 the drainfield and clog the drainfield, causing the sewage to overflow to the ground
13 surface, where it exposes humans and animals to the disease-causing organisms in
14 sewage. To prevent this from happening, it is very important to check the tank and
15 have it serviced when needed.

16 ...

17 The drainfield may not fail immediately when a full tank is not pumped. However,
18 the septic tank is no longer protecting the drainfield from solids. This creates
19 inefficiencies in the drainfield and may allow contamination of the groundwater.

20 Continued neglect will result in failure of the drainfield, and it may need to be
21 replaced.

22 ...

23 The frequency of pumping depends on the size of the tank and what and how much
24 goes down your drains. Use of a garbage disposal and excessive water use can
25 increase pumping frequency.

26 ...

27 In Oregon, a 1,000 gallon septic tank is used for homes with up to four bedrooms. If
28 four people live in a four-bedroom house, a 1,000 gallon tank may need to be pumped
29 approximately every three years. If the same system serves a family of two, the tank
30 would be ready for pumping every six years. Systems installed before the current
31 rules and regulations may have smaller septic tanks and may need to be pumped more
32 often.”

33

34 Record at 64 (emphasis added); Record at 53 (“when I talk to septic contractors they all
35 recommend having a system checked/pumped every 5 years as part of regular maintenance”);

36 Record at 309 (“The checking of septic tanks is a good source of preventative maintenance.

1 In other words, it's not that you have effluent bubbling to the top of your property, it's what
2 if you have a crack in your system, which you cannot smell because it's underground, yet it
3 does reach to the lake and the water table.'").

4 Not only was Ordinance No. 203 consistent with recommendations of DEQ and
5 septic contractors, but it was also consistent with Dunes City's Drinking Water Source
6 Assessment and Potential Planning Strategies from December 2002. Those documents
7 "specify that the city should develop a septic maintenance and upgrade program requiring
8 periodic testing and inspection of septic systems." Record at 63. In fulfilling that need for
9 required periodic testing and inspection of septic systems, Ordinance No. 203 improved upon
10 the then-existing program, but it remains to be seen how Ordinance 211A will improve upon
11 Ordinance No. 203 because the record lends no support for such an allegation.

12 Thus, Ordinance No. 203 simply mandated periodic maintenance and pumping of
13 septic systems consistent with the recommendations of DEQ, septic contractors, and previous
14 policy documents. By repealing requirements consistent with these sound recommendations,
15 it is unclear how Ordinance No. 211A "improves upon existing requirements [i.e. Ordinance
16 No. 203]," Record at 21, and, Respondent's findings point to no support in the record other
17 than conclusory assertions.

18 2. Subassignment of Error: Ordinance No. 211A impermissibly attempts
19 to amend the Comprehensive Plan

20
21 Ordinance No. 211A impermissibly attempts to amend the Dunes City
22 Comprehensive Plan because it reads out of policy E6 the requirement of a "program" and
23 the requirement that the program "improve septic system maintenance." Comprehensive
24 Plan policy E6 has two basic requirements. First, it requires that there be a program, and,
25 second, it requires that the program improve septic system maintenance for the benefit of all
26 residents: "[t]he City shall adopt a program to improve maintenance of septic systems for the

1 benefit of all residents.” Comprehensive Plan at 10 (Appendix at 28). If Respondent would
2 prefer that there be no requirement for a “program” or that the program not be required to
3 “improve maintenance of septic systems for the benefit of all residents,” then it is free to do
4 that. However, Respondent is not free to rewrite Comprehensive Plan policy E6 by way of
5 adopting an ordinance.

6 In *Foland v. Jackson County*, 215 Or App 157, rev den, 343 Or 690 (2007), the
7 Oregon Court of Appeals affirmed the Board’s decision that a county’s interpretation of its
8 Land Development Ordinance (“LDO”) was inconsistent with the express language of the
9 ordinance, and that the county’s interpretation of the LDO was an impermissible attempt to
10 rewrite the ordinance itself. There, Jackson County’s LDO provided that a “[p]reliminary
11 development plan approval shall be valid for a period of three years from the date of approval
12 by the Board of Commissioners,” and if a final development approval was not submitted
13 within three years of approval of the preliminary development plan, then the preliminary
14 development plan “shall expire.” *Id.* at 160.

15 After LUBA remanded the county’s approval of the preliminary development plan,
16 the “case then remained before the county on remand for over 10 years.” *Id.* at 161. After
17 eventually submitting a modified preliminary development plan, the Respondents in that case
18 objected that the three-year deadline had long since expired. *Id.* The County disagreed and
19 concluded that the LDO deadlines apply only to cases in which the county has given final
20 approval at each stage, and that the time limits are “tolled during the period of appeal to
21 LUBA and during remand” because litigants could make it “‘virtually impossible’ for
22 applicants to obtain approval of their development plans by continually appealing them.” *Id.*
23 Respondents appealed to LUBA, and LUBA agreed with Respondents, concluding that:

24 “There is a fatal problem with the county’s purported ‘interpretation’ The
25 county has not *interpreted* the quoted LDO sections, it has attempted to rewrite them

1 to address a problem that the drafters apparently did not expressly anticipate. [. . .]
2 The county is certainly free to amend these sections to address any concerns it may
3 have about whether LUBA appeals make complying with the deadlines established by
4 those sections difficult or impossible. But the county is not free to insert new terms
5 or concepts into those LDO sections without amending those LDO sections.”
6

7 *Id.* at 162. In essence, the county in *Foland* attempted to amend their LDO by interpretation,
8 and, here, Respondent attempts to amend their comprehensive plan through an ordinance.

9 Respondent’s attempt, however, fails because it reads important provisions out of
10 Comprehensive Plan policy E6, including the requirement for a “program” and a program
11 that “improves septic system maintenance” over the existing framework. ~~See~~ ORS 174.010
12 (Courts are “not to insert what has been omitted, or to omit what has been inserted”).

13 According to Ordinance No. 211A, “Ordinance No. 203 is hereby repealed and
14 replaced with an educational program for septic system maintenance, to be implemented
15 within one year of adoption of this ordinance.” Record at 13. Ordinance No. 211A rewrites
16 the language of policy E6 because it leaves the city without a program between its adoption
17 (and the repeal of Ordinance No. 203) and the time in which the “educational program” is
18 implemented, which is to occur at some time within one year of the adoption of Ordinance
19 No. 211A. Record at 4. For some unspecified period of time, Dunes City will not have a
20 “program” pursuant to policy E6, let alone a “program to improve maintenance of septic
21 systems for the benefit of all residents.” In short, there will be no program until it is
22 implemented, and policy E6 requires that there be a program in place. Had Respondent
23 retained Ordinance No. 203 until the implementation of the educational program, then
24 Ordinance No. 211A would be consistent with the requirement of policy E6 in that it would
25 retain a program in the period before the educational program is implemented. Instead,
26 Respondent chose to immediately repeal Ordinance No. 203, leaving its residents without a
27 program to improve septic system maintenance for the benefit of all residents.

1 Ordinance No. 203 also attempts to modify policy E6 because it disregards the word
2 “improve.” That is, Respondent has not demonstrated that Ordinance No. 211A will
3 objectively “improve maintenance of septic systems.” *See supra*. Because policy E6
4 requires Respondent to improve upon the existing framework, and, as shown *supra*, there is
5 nothing in the record to demonstrate how Ordinance No. 211A would improve upon
6 Ordinance No. 203, then it follows that Ordinance No. 211A impermissibly attempts to
7 rewrite the express language of policy E6. If policy E6 merely required that Respondent
8 adopt any program for septic system maintenance, rather than a program that improves septic
9 system maintenance, then Ordinance No. 211A would not run afoul of policy E6. That,
10 however, is not the case, and, therefore, Ordinance No. 211A is an impermissible attempt to
11 amend Comprehensive Plan policy E6.

12 3. Subassignment of Error: Repeal of Ordinance No. 203 and adoption of
13 Ordinance No. 211A is inconsistent with Comprehensive Plan policy
14 E6
15

16 Ordinance No. 211A is inconsistent with the express language of Comprehensive
17 Plan policy E6. ORS 197.829. Comprehensive Plan policy E6 specifically requires a
18 program for maintenance of septic systems: “[t]he City shall adopt a program to improve
19 maintenance of septic systems for the benefit of all residents.” Comprehensive Plan at 10
20 (Appendix at 28). Ordinance No. 203 contained explicit provisions for maintenance,
21 including inspection and pumping. *See* Appendix at 6, Ordinance No. 203, section
22 157.060(A) (“The initial inspection shall include pumping of the septic tank and mapping of
23 the septic system”). Ordinance No. 211A, however, which repeals Ordinance No. 203, does
24 not include “maintenance,” and, instead, only includes “education.” In adopting Ordinance
25 No. 211A, Respondent has substituted the idea of “maintenance” in policy E6 for the idea of
26 “education” in Ordinance 211A. *See* ORS 174.010 (“In the construction of a statute, the

1 office of the judge is simply to ascertain and declare what is, in terms of substance, contained
2 therein, not to insert what has been omitted, or to omit what has been inserted”). Thus,
3 Respondent’s interpretation of “maintenance” to only include “education” is inconsistent
4 with policy E6.

5 “Whether a local government’s interpretation of its land use regulation is
6 ‘inconsistent with the express language’ of the regulation [or comprehensive plan]
7 under ORS 197.829(1)(a) ‘depends on whether the interpretation is plausible, given
8 the interpretive principles that ordinarily apply to the construction of ordinances
9 under the rules of *PGE* [v. *Bureau of Labor and Industries*, 317 Or 606, 610-12, 859
10 P2d 1143 (1993),]” as modified by *State v. Gaines*, 346 Or 160, 171-72, 206 P3d
11 1042 (2009). *Western Land & Cattle, Inc. v. Umatilla County*, 230 Or App 202, 209,
12 214 P3d 68 (2009) (quoting *Foland v. Jackson County*, 215 Or App 157, 164, 168
13 P3d 1238, rev den, 343 Or 690 (2007)).”

14
15 *Setniker v. Rickreall Community Water Assoc.*, ___ Or App ___ (August 3, 2011) (slip op at
16 17).⁵ Webster’s Dictionary defines “maintenance” as “the upkeep of property or equipment.”
17 Respondent’s interpretation of “maintenance” as “education” is implausible in light of the
18 plain meaning of “maintenance” and policy E6’s clear requirement for “maintenance.”
19 Therefore, Respondent’s interpretation is inconsistent with express language of the
20 Comprehensive Plan.

21 B. Second Assignment of Error: Respondent Made Findings Not Supported by
22 Substantial Evidence in the Whole Record

23
24 In adopting Ordinance No. 211A, Dunes City made findings not supported by
25 substantial evidence in the whole record. ~~See~~ ORS 197.835(9)(a)(C). To support its
26 determination that Policy B8, E1, E3, and E4 are satisfied, Respondent repeated the same two
27 sentences in its findings:

⁵ Under *PGE v. Bureau of Labor and Industries*, 317 Or 606, 610-12 (1993), the Board first examines the text and context of the provision in question, including any related sections, *id.* at 611, and in light of *State v. Gains*, 346 Or 160 (2009), the Board may examine the legislative history of the provision regardless of whether the provision contains ambiguity. If there is continued ambiguity after addressing legislative history, then the Board may resort to general maxims of statutory construction. *PGE*, 317 Or at 612.

1 “[s]amples have been collected from Siltcoos and Woahink Lakes; however, there has
2 been no correlation established between water quality and erosion or septic system
3 effluent. To address the maintenance of septic systems, the proposals improve upon
4 the existing code requirements for septic system maintenance for the benefit of all
5 residents in Dunes City.”

6
7 *See* Record at 19, 20. The pertinent finding for policy E6 differs slightly in its wording but
8 not in its substance: “Dunes City found that the existing requirements for mandatory septic
9 system pumping does not benefit all of the residents and therefore initiated text amendments
10 to the code to improve upon the existing program.” Record at 21.

11 A local government’s findings must be both adequate and supported by substantial
12 evidence to support that finding. *See Rudell v. City of Bandon*, __ Or LUBA __ (LUBA No.
13 2010-037, Nov. 29, 2010) (slip op at 8). In *Rudell*, the City of Bandon’s planning
14 commission and city council denied an application for a conditional use permit to site a
15 single family dwelling because of the decision that the entirety of a property was located on a
16 foredune. On review, the Board determined “that the city’s findings are inadequate to
17 explain the city’s decision that the entire property is located on a foredune,” and “nothing in
18 the record to which we have been directed explains or supports [the City’s] determination.”
19 *Id.* at 7. The same is true here because the City neither explains nor supports its findings
20 with any evidence in the record.

21 1. Subassignment of Error: Respondent’s finding that there is “no
22 correlation established between water quality and erosion or septic
23 system effluent” is inadequate and not supported by substantial
24 evidence

25
26 Dunes City Comprehensive Plan policies B8, E1, E3, and E4 respectively provide
27 that:

28 “Dunes City shall strive to maintain the high water quality of Siltcoos and Woahink
29 Lakes through monitoring recreation use, commercial and industrial use, and run-off
30 of septic tank effluent. A Water Quality Control Committee will be formed to
31 examine problems with water quality.” Policy B8, Comprehensive Plan at 7
32 (Appendix at 27).

1 ...
2 “The city shall strive to preserve the land, air, and water resources in the city.” Policy
3 E1, Comprehensive Plan at 10 (Appendix at 28).
4 ...
5 “Waste discharges from future facilities shall not exceed the carrying capacity nor
6 degrade the quality of the land, air, and water resources.” Policy E3, Comprehensive
7 Plan at 10 (Appendix at 28).
8 ...
9 “Regulations involving land, air, and water resources of the city shall be based upon
10 long-term capabilities of the available natural resources to both support economic
11 activity and absorb the future, resulting man-made pollutants.” Policy E4,
12 Comprehensive plan at 10 (Appendix at 28).

13
14 Respondent’s findings that the aforementioned criteria have been met each state the same
15 sentence verbatim:

16 “Samples have been collected from Siltcoos and Woahink Lakes; however, there has
17 been no correlation established between water quality and erosion or septic system
18 effluent.”

19
20 Record at 19-20. Aside from this conclusory assertion, Respondent neither points to samples
21 that have been collected, nor does it point to studies or empirical data demonstrating that
22 there is no correlation between water quality and erosion or septic system effluent. ~~See~~ ORS
23 197.835(a)(C). On the other hand, the Comprehensive Plan and the record demonstrate that
24 there is a correlation between water quality and erosion or septic system effluent.

25 a. Comprehensive Plan

26 Given the unique geography of Dunes City and the fact that Respondent has “no
27 public sewage system,” Comprehensive Plan at 45 (Appendix at 32), the Comprehensive
28 Plan devotes considerable space to the correlation between septic system effluent or erosion
29 and water quality, primarily because of the impact it can have on the residents’ drinking
30 water. Before development of the area, Woahink Lake was surrounded by vegetation, but
31 development has resulted in removal of vegetation that protected Woahink Lake’s water
32 quality:

1 “The increasing pressure of urban development has resulted in substantial removal of
2 vegetation in the riparian areas. [. . .] The riparian zone is a natural bio-filter and is
3 the most efficient known means of stabilizing shorelines and is crucial for protecting
4 the water quality. Originally Woahink Lake was completely encircled with
5 vegetation. As the loss of vegetation occurs we now see greater erosion.
6

7 Comprehensive Plan at 39 (Appendix at 31) (emphasis added); *see also* Comprehensive Plan
8 at 45 (Appendix at 32) (“Stabilized dunes have severe potential for erosion if the vegetative
9 cover is not maintained” and “[a]nother erosion problem occurs along the shores of the lakes,
10 wetlands and streams, due to land use practices. This can cause siltation and other water
11 quality problems.”) (emphasis added).

12 The Comprehensive Plan was updated and implemented in September of 1997, and,
13 at that time, it determined that:

14 “At present, there are no known direct waste discharges into either of the lakes [i.e.
15 Siltcoos or Woahink Lakes]. There is no serious pollution problems, but the potential
16 for such problems exists. The main threats are septic tank seepage and nonpoint
17 source pollution. This problem is particularly serious because many residents utilize
18 the lakes for domestic water supplies.”
19

20 Comprehensive Plan at 35-36 (Appendix at 29-30) (emphasis added). In 2007 and 2008,
21 however, Public Health Advisories were issued for Siltcoos Lake, Record at 28, and it was
22 placed on the 303(d) list as water quality impaired for aquatic weeds and algae, Record at 33.

23 The Comprehensive Plan also acknowledges that:

24 “It was determined by talking to Lane County staff on October 1, 1985, that the water
25 quality of Woahink should be an important concern of the city. Recommendations
26 include developing a water system on Woahink, implementing regulations to keep
27 sewage out of the lake, and further study of the groundwater between Woahink and
28 Siltcoos Lakes.”
29

30 Comprehensive Plan at 35 (Appendix at 29); *see also* Comprehensive Plan at 45 (Appendix
31 at 32) (“The need to protect groundwater, lakes, and streams establishes a carrying capacity
32 of about one residential unit per acre”); Comprehensive Plan at 46 (Appendix at 33)
33 (“reliance on septic tanks in areas of high density can cause severe problems including well

1 contamination”); Comprehensive Plan at 50 (Appendix at 34) (“NPS [i.e. nonpoint source
2 pollution] is often caused by poor land use practices and can include erosion, improper use of
3 herbicides and pesticides, polluted urban runoff, and poor maintenance of septic tanks. The
4 degradation occurs with the accumulation of many small actions but the combined
5 cumulative impact can be serious”). Therefore, the Comprehensive Plan demonstrates a clear
6 correlation between water quality and erosion or septic system effluent.

7 b. The Record

8 The record is also replete with testimony from residents, City Councilors, citations to
9 studies, and a DEQ fact sheet on septic system maintenance that demonstrate a clear
10 correlation between water quality and erosion or septic system effluent. First, several
11 residents of Dunes City, Ralph Farnsworth and Mark Chandler, had been testing water
12 quality on the lakes since 2002. Both provided testimony before the City Council to
13 demonstrate a correlation between water quality and septic system effluent. Mark Chandler,
14 a citizen-member of the City’s Water Quality Committee and water-tester, testified at the
15 November 10, 2011 hearing, stating:

16 “As you guys may be well aware of I have been monitoring our lake waters since
17 2002 and thanks to some funding from the City we were able to put together a pretty
18 comprehensive monitoring program in 2005. I would just like to bring a little bit of
19 that data to your attention this evening. The total phosphorous level that we found
20 averaged 12 micrograms per liter in 2005. In 2006, the original Septic Ordinance was
21 passed. In 2008 the total phosphorous levels were averaging 9 micrograms per liter.
22 Now you guys are aware that the lower the phosphorous level the less likely we are to
23 have any problems with algae blooms in the lakes. We certainly can’t draw a straight
24 line between adoption of the Septic Ordinance and the drop in nutrient levels. But is
25 it a complete coincidence that we in 2010 the levels [~~sic~~] were less than half they
26 were between 2005? I don’t think it is a complete coincidence.”

27
28 Record at 81.⁶ Ralph Farnsworth, a Dunes City resident, submitted a letter to the City
29 Council stating:

⁶ At the November 10, 2011, City Council hearing:

1 “[w]hen I started testing the water with Mark Chandler back in 2002 the Phosphorous
2 level averaged around 9 micrograms per liter in Woahink Lake. The Federal
3 guideline is for no more than 7.3 micrograms per liter in our coastal lakes. Currently
4 we’re averaging 5 micrograms or less, and recent tests have been as low as 2! So,
5 whoever says the septic ordinance isn’t working hasn’t done their homework, or they
6 have an ulterior motive in attempting to get rid of the septic maintenance requirement
7 in our Comprehensive Plan – because, clearly IT IS WORKING!”
8

9 Record at S1; *see also* Record at 277. Mr. Farnsworth went on to state that:

10
11 “I’ve heard it said, ‘when septic tanks fail, you know it!’ Sometimes that’s true.
12 Often the odor will get your attention but, too often the bottom of these tanks fail and
13 no odor is present. The sides can also crack and leach effluent out into the
14 groundwater. Remember, water flows downhill. You probably wouldn’t voluntarily
15 drink what your neighbor flushes from their toilet. Keep in mind that the current
16 ordinance might well keep you from a similar, albeit unintentional, intake as well.”
17

18 Record at S2. Therefore, the testimony of those Dunes City residents responsible for testing
19 the water quality of the lakes demonstrates that there is a correlation between water quality
20 and septic system effluent or erosion, and Respondent has failed to set forth any testing or
21 samples contradicting this testimony.

22 Second, two City Councilors testified based on their experience and their research
23 that there is a clear correlation between water quality and septic system effluent. At the

“Councilor Sathe asked Mark Chandler if there was any exact proof that the septic ordinance had reduced the phosphorous or if that reduction was the result of people not using phosphorous fertilizer anymore. Mr. Chandler replied that as he stated in his testimony, there is no way to draw that direct conclusion. He went on to state that the efforts the City has taken to reduce the nutrient levels in the lake has probably had a positive effect but there is no way to say 20% of it was from the septic ordinance or 40% of it was from the phosphate reduction ordinance. There is no way to make that kind of correlation.”

Record at 87-88. The mere fact that phosphorous fertilizer may have contributed to the reduction in phosphate levels in the lakes does not support the City Council’s finding that there is no correlation between water quality and erosion or septic system effluent. To the contrary, it lends support to the fact that phosphorous, whether it is from fertilizers or septic system effluent, degrades water quality. It is undisputed that wastewater contains phosphates. *See* Record at 57 (University of Minnesota Treatment Workshop Workbook, under the heading “How Soil Treats Wastewater,” stating that “[p]hosphates are removed from wastewater by being absorbed onto soil particles, particularly particles with high concentrations of iron, manganese, and aluminum.”).

1 November 10, 2011 meeting, City Councilor Mills demonstrated prudence and researched
2 the issue of septic system effluent and water quality before drawing her own conclusions on
3 the issue. Councilor Mills submitted written and oral testimony into the record, stating that:

4 “I was recently asked to show someone scientific studies that demonstrate a
5 connection between leaking septic systems and harm to lake water. I buried myself in
6 research for a couple of days and have come up with hundreds, if not thousands, of
7 such scientific evidence, with the oldest – perhaps the first, being done in the 1930’s
8 in the State of New York. I won’t bore you with the details of all the studies I located
9 between 1930 and today, but I can tell you of one study in Nevada that traced a
10 special dye as it migrated for 22 miles underground where it finally came back to the
11 surface in the marshlands. The most recent study is one that was released by Stanford
12 University last fall which actually traced the pollution plume of a leaking septic
13 system into the groundwater and out into the ocean at Stinson Beach in Northern
14 California.

15

16 “But even though we do not have a specific scientific study that says leaking septic
17 contribute to the detriment of water quality in Woahink and Siltcoos Lakes, the
18 undisputable, scientifically proven truth is, like it or not, leaking septic systems
19 pollute nearby water sources, be they above or below the ground everywhere else in
20 the world.”

21
22 “I am a proponent of the old saying: “An ounce of prevention is worth a pound of
23 cure.” I encourage you to think about the potential consequences. If the City Council
24 decides our lakes are not harmed by leaking septic systems and votes to do away
25 with mandated inspections, what happens if they are wrong?”

26

27 Record at 66 (emphasis added).

28 Also at the November 10, 2011 City Council meeting, City Councilor Koehler
29 questioned the finding of the planning commission that there was no correlation between
30 water quality and septic system effluent:

31 “...as you say because no correlation has been established between septic system
32 effluent and the water quality in Siltcoos Lake and Woahink. I think if you had
33 reviewed a lot of the studies that the Water Quality Committee had done in the last
34 four years, actually the last 10 years you’d see that there was a definite relationship
35 between the quality of topography, the sandy soil in this area, and many of the places
36 that are not buildable and how that affects the fast draw of effluent into the substrate.
37 So, that I’d take as a well, as a false statement that there is no correlation. But you
38 know, I was just wondering how long, have you studied Dunes City as a particular
39 area in your, before getting involved with running this, you know, working here? I
40 am just wondering where, how do you make some of these statements without having
41 related with some of the things that have gone on here.”

1
2 DVD Recording of November 10, 2011, City Council Meeting at 52:16 – 53:26. The
3 meeting minutes from the July 7, 2011 City Council Meeting also quote Councilor Koehler
4 in regard to the correlation between septic system effluent and water quality:

5 “One of the things [Councilor Koehler] did, because he works websites and was
6 interested in septic systems and waste, was google septic system and waste and got
7 six million hits. All the things he has read from other states, lake associations, etc. all
8 agree with Councilor Koehler. So, in his opinion, this ordinance is kind of in left
9 field from what he has seen in his life and experienced in the scientific field.”

10
11 Record at 313. Therefore, drawing from both the experience and research of two Dunes City
12 Councilors, a clear correlation between water quality and erosion or septic system effluent
13 can be discerned.

14 Third, numerous residents of Dunes City, concerned about their drinking water, cited
15 to studies and past experiences that demonstrate a clear link between water quality and septic
16 system effluent. Dunes City resident John Stead submitted written testimony and cited to a
17 United States Forest Service Watershed Analysis that focused on Woahink and Siltcoos
18 Lakes:

19 “According to the Forest Service’s ‘Coastal Lakes Watershed Analysis,’
20 ‘Eutrophication of Woahink and Siltcoos Lakes is particularly alarming ... a 1972
21 survey of septic tanks found that 26% of all tanks within 100 feet of the lake were
22 performing unsatisfactorily (Lane County, 1978). Where systems had failed, sewage
23 was coming to the ground surface very near the lake and in winter almost certainly
24 drained there....”

25
26 Record at 62. Mr. Stead again cited the “Coastal Lakes Watershed Analysis,” demonstrating
27 that pollution from phosphorous and algae at nearby Tenmile Lake resulted in unsafe
28 drinking water:

29 “If nutrient levels continue to increase relatively unchecked by State or County
30 officials, problems such as those in Tenmile Lake south of this watershed will begin
31 to take place. In Tenmile Lake, toxic algal blooms (Microcystis) have made water
32 unsafe for drinking or recreation during certain times of year with uncertainty of its
33 long-term effects on public safety and the viability of local tourism.”

34

1 Record at 62 (emphasis added).⁷ Relying on that same study, April Dumas, another Dunes
2 City resident, stated that:

3 “The Coastal Lakes Watershed Analysis in 1999 stated that Woahink Lake is more
4 susceptible to changes in water quality than any other lake in the watershed and the
5 most threatening threat to water quality is the amount of development occurring
6 around the lake. The Oregon Lakewatch, in 2000, cautioned that Woahink’s
7 continued high sediment loading and input from septic tank drainfields will lead to
8 degradation of water quality. Oregon’s Department of Land Conservation and
9 Development and its Department of Environmental Quality jointly stated in 2000 that
10 it is no longer possible to ignore the connection between urban development and
11 degraded water quality.”

12
13 Record at 360-61 (emphasis added).

14
15 Petitioner ORCA submitted information about the “nutrient-loading increases” in the
16 Port Orford area for Garrison Lake. In its written testimony, ORCA stated that:

17 “Garrison Lake is bordered by many buildings using septic systems, and has had
18 nutrient-loading increases that may be caused by septic problems. The Watershed
19 Council and colleagues (such as the Garrison Lake Restoration Committee) compiled
20 data and a map showing the age and inspection status of all buildings around the
21 Lake.
22 ...
23 The Garrison Lake information makes it clear that maintaining water quality in
24 coastal lakes is a fairly common problem, but resources exist to pinpoint the issue and
25 address it effectively.”

26
27 Record at 30; *see also* Record at 35 (Garrison Lake Watershed Septic Map).

28
29 Mary Jo Leach, another Dunes City resident, drawing on her previous experience
30 living on lakes that became polluted from onsite septic systems, testified about the
31 relationship between water quality and septic system effluent:

32 “I grew up in the Great Lakes on Lake Ontario which were just trashed and the Finger
33 Lakes which were trashed. The Lake I grew up on is a superfund study point because
34 it is so polluted and it’s primarily from septic. There is, people want statistics
35 specifically about septic there is so much empirical data that no one can deny it. It is
36 available every place you turn the two things are related. So, we can’t afford to test
37 our water here so somehow somebody’s going to wait until we get a test that says gee

⁷ Record at 65 (“Ten Mile Lake residents didn’t want to spend the money to check their septic systems. Now it’s too late. Their lake is dead, they can’t drink the water. It will cost them more now because of their failure to plan for the protection of their lake.”).

1 we fixed this septic and now this is happened to the water. That’s preposterous we
2 can’t even check, we had to scramble to check for algae. So, these things are just,
3 these are wish things that maybe somebody would want but there is so much data and
4 it is so persuasive and it follows at every possible public level, this information for
5 anyone who wanted to look to it. Now if you want to not look at it you can choose to
6 put the blinders on at [sic] not look.”
7

8 Record at 85. Thus, the studies cited by Dunes City residents and their past experiences
9 demonstrate a correlation between water quality and erosion or septic system effluent.

10 Finally, the record contains a “Fact Sheet” about “Septic System Maintenance” that
11 also demonstrates the correlation between human health (i.e. water quality) and septic system
12 effluent:

13 “When too much sludge and scum are allowed to accumulate, the incoming sewage
14 will not have enough time in the septic tank for solids to settle. Solids may flow to
15 the drainfield and clog the drainfield, causing the sewage to overflow to the ground
16 surface, where it exposes humans and animals to the disease-causing organisms in
17 sewage. To prevent this from happening, it is very important to check the tank and
18 have it serviced when needed.”
19

20 Record at 64. Therefore, there is overwhelming evidence in the record to demonstrate a clear
21 correlation between erosion or water quality and septic system effluent, and Respondent’s
22 findings to the contrary are simply inadequate and conclusory.

23 Substantial evidence is evidence a reasonable person would rely on in making a
24 decision. *Dodd v. Hood River County*, 317 Or 172, 179 (1993). Where there is conflicting
25 expert testimony as to whether applicable approval criteria are satisfied, LUBA will
26 generally not second guess a land use decision maker’s choice between conflicting evidence
27 so long as it appears that a reasonable person could decide as the decision maker did based
28 on all of the evidence in the record. *Westside Rock v. Clackamas County*, 51 Or LUBA 264,
29 294 (2006); *Cadwell v. Union County*, 48 Or LUBA 500, 507-08 (2005); *Angel v. City of*
30 *Portland*, 22 Or LUBA 649, 659, *aff’d* 113 Or App 169 (1992). Here, however, LUBA need
31 not entertain and weigh conflicting evidence because the record is devoid of evidence

1 demonstrating that there is no correlation between erosion or water quality and septic system
2 effluent. Where the overwhelming evidence demonstrates a clear relationship between water
3 quality and erosion or septic system effluent, a reasonable person would not defer to a
4 conclusory assertion to the contrary.

5 2. Second Subassignment of Error: Respondent’s finding that “the
6 proposals improve upon the existing code requirements for septic
7 system maintenance for the benefit of all residents in Dunes City” is
8 inadequate and not supported by substantial evidence
9

10 In its findings pursuant to Comprehensive Plan policies B8, E1, E3, and E4,
11 Respondent’s findings state: “[t]o address the maintenance of septic systems, the proposals
12 improve upon the existing code requirements for septic system maintenance for the benefit of
13 all residents in Dunes City.” Record at 19-20. The findings for policy E6 contain a similar
14 phrase: “Dunes City found that the existing requirements for mandatory septic system
15 pumping does not benefit all of the residents and therefore initiated text amendments to the
16 code to improve upon the existing program.” Record at 21. Aside from these conclusory
17 assertions, Respondent neither explains nor points to support in the record that Ordinance
18 No. 211A will actually “improve” upon Ordinance No. 203. *See* ORS 197.835(9)(a)(C) (the
19 board shall reverse or remand a land use decision if the local government “[m]ade a decision
20 not supported by substantial evidence in the whole record”).

21 Dunes City failed to explain or point to any evidence in the record to support its
22 finding that Ordinance No. 211A, a vague, non-mandatory educational program to be
23 implemented sometime in the future, would improve upon Ordinance No. 203, which
24 required periodic inspection and pumping of onsite septic systems to ensure maintenance.
25 Without some explanation as to how Ordinance No. 211A “improves maintenance of septic
26 systems,” Respondent’s findings are simply inadequate and conclusory. *See South of*
27 *Sunnyside v. Clackamas Co. Comm.*, 280 Or 3, 20-21 (1977) (“findings are incomplete and

1 conclusory” when “[t]here is no indication . . . of the facts upon which the Board relied”);
2 *Heiller v. Josephine County*, 23 Or LUBA 551, 556-57 (1992) (holding that a bare finding
3 that an applicable standard is met does not explain the basis for that determination). While
4 the record demonstrates that Ordinance No. 203 improved upon the then-existing framework,
5 *see supra* (water testing demonstrated a reduced level of phosphorous in Woahink Lake after
6 the implementation of Ordinance No. 203 and it isolated failed and faulty septic systems),
7 nothing in the record demonstrates that Ordinance No. 211A will improve upon Ordinance
8 No. 203. Without some evidence in the record that the educational program will, in fact, be
9 effective, then Respondent’s argument to the contrary are merely unsupported assertions.

10 Similarly, Respondent’s findings do not explain or point to any evidence in the record
11 to support its finding that Ordinance No. 211A would “benefit all of the residents of Dunes
12 City.” By removing requirements for inspection and pumping of onsite septic systems,
13 Respondent is placing the drinking water of the residents of Dunes City at risk.
14 Implementing ordinances that degrade drinking water can hardly be taken as a “benefit” for
15 anyone, let alone “all” the residents of Dunes City. Therefore, Respondent’s finding that
16 Ordinance No. 211A “improve[s] upon the existing code requirements for septic system
17 maintenance for the benefit of all residents in Dunes City” is inadequate and not supported
18 by substantial evidence.

19 C. Third Assignment of Error: Respondent’s findings in relation to Goal 6 (Air,
20 Water, and Land Quality) are inadequate and not supported by substantial
21 evidence
22

23 Respondent’s findings in relation to Goal 6 (Air, Water, and Land Quality) are
24 inadequate and not supported by substantial evidence because the findings are conclusory
25 and without a rationale, explanation, or evidence to support them. Goal 6 provides:

26 **“To maintain and improve the quality of the air, water and land resources of the**
27 **state.**

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All waste and process discharges from future development, when combined with such discharges from existing developments shall not threaten to violate, or violate applicable state or federal environmental quality statutes, rules and standards. With respect to the air, water and land resources of the applicable air sheds and river basins described or included in state environmental quality statutes, rules, standards and implementation plans, such discharges shall not (1) exceed the carrying capacity of such resources, considering long range needs; (2) degrade such resources; or (3) threaten the availability of such resources.”

Respondent concedes that Goal 6 applies to the repeal of Ordinance No. 203 and adoption of Ordinance No. 211A. Record at 2, 11. Respondent’s findings, however, do not explicitly address Goal 6, Record at 15-23, and Respondent did not adopt an exception to Goal 6. Record at 2, 11. Therefore, to the extent that Respondent failed to make Goal 6 findings, then Respondent clearly erred in failing to do so. Respondent did, however, address various policies in its Comprehensive Plan under the heading “Air, Land and Water Quality,” and assuming that these can be construed as Goal 6 findings, then Respondent’s findings are inadequate because they are not supported by substantial evidence.

Goal 6 is important to the residents of Dunes City because, as noted *supra*, the majority of residents draw their drinking water from the surrounding lakes and tributaries, which are subject to the ever-present threat of contamination. ~~See~~ Comprehensive Plan at 35 (Appendix at 29) (“we must protect our water supply from the ever present threat of contaminant run off”). Public Health Advisories were issued for those residents drawing their drinking water from Siltcoos Lake in 2007 and 2008, Record at 28, and Siltcoos Lake is already listed as water quality impaired under section 303(d) of the Clean Water Act because of excess aquatic weeds and algae. Record at 33.

“Water quality impaired streams are those that violate ambient water quality standards – that is, general water quality standards that do not distinguish between sources of pollution – developed by the DEQ pursuant to ORS 468B.048 and Section 303 of the Clean Water Act. Under the agreement, the DEQ must place streams that are currently impaired, as well as those that are expected to become impaired within a specified period of time, onto the ‘303(d) list.’ Once that is done, in conformance

1 with a schedule appended to the agreement, the DEQ must develop load limits for
2 streams on the 303(d) list.”

3

4 *Hawes v. DEQ*, 203 Or App 255, 260 (2005). Load limits are referred to as Total Maximum
5 Daily Loads or TMDLs, which

6 “limit the maximum amount of a pollutant that can be discharged – or ‘loaded’ – into
7 certain waters from all combined sources. Under the federal Clean Water Act, load
8 limits are to be established at levels ‘necessary to implement the applicable water
9 quality standards.’ 33 U.S.C. § 1313(d)(1)(C).”

10

11 *Hawes*, 203 Or App at 258; *see also Dioxin/Organochlorine Center v. Clarke*, 57 F.3d 1517,
12 1520 (9th Cir. 1995) (“a TMDL represents the cumulative total of all ‘load nutrients’ which
13 are in turn best estimates of the discrete loading attributed to nonpoint sources, natural
14 background sources, and individual wasteload allocations (‘WLAs’), that is, specific portions
15 of the total load allocated to individual point sources.”).

16

17 As of yet, no TMDL has been set for Siltcoos Lake, and, therefore, DEQ cannot
18 authorize any new discharges that would increase the algae and aquatic weed problem until
19 the TMDL is completed. *See Friends of Pinto Creek v. EPA*, 504 F.3d 1007, 1011-1012 (9th
20 Cir. 2007) (40 C.F.R. § 122.4(i) prohibits the discharge of a pollutant from a new source
21 when the water body already exceeds its water quality standards for that pollutant).

22

23 Regardless of whether a TMDL has been set, Ordinance 211A will increase or threaten to
24 increase nutrient loads from failing or overloaded septic systems because it will remove
protective maintenance measures, including inspection and pumping, that will further violate
existing water quality standards.⁸ *See Friends of Pinto Creek*, 504 F.3d at 1011 (“Under §

⁸ Councilor Koehler addressed this concern when he stated that:

“The one would be Policy E3 waste discharges from future facilities, you didn’t take into account TMDL levels included in some of the DEQ’s findings Coastal Lakes, which is very specific. In fact, before the Septic Maintenance was enacted we had high ‘P’ levels in Woahink and after the Septic Maintenance had its course we lost a lot of that high ‘P’ level. That’s phosphorous. The other one is also E4 included in

1 303 of the Clean Water Act, 33 U.S.C. § 1313, the states are required to set water quality
2 standards for all waters within their boundaries, regardless of the sources of the pollution
3 entering the waters. Pursuant to § 303(d)(1), 33 U.S.C. § 1313(d)(1), each state is required to
4 identify those waters that do not meet the water quality standard which is frequently called
5 the ‘§ 303(d)(1) list.’” (emphasis added). Therefore, Respondent has not demonstrated that
6 Ordinance No. 211A will “not threaten to violate, or violate applicable state or federal
7 environmental quality statutes, rules and standards.” Goal 6.

8 In *Citizens for Florence v. City of Florence*, ___ Or LUBA ___ (LUBA No. 98-029,
9 Oct. 21, 1998) (slip op at 26), the Board determined that “where a local government’s
10 watershed is already in violation of applicable state or federal environmental standards, the
11 local government cannot amend its plan to allow future development that will compound that
12 violation without either finding that Goal 6 is satisfied or taking an exception to Goal 6.”
13 Here, Respondent neither made Goal 6 findings, nor did it take an exception to Goal 6.
14 Siltcoos Lake already violates water quality standards, and that is why it is on the 303(d) list.

that and, but that’s as far I can go with that. I was just wondering as a general, had you looked into that criteria?”

Record, DVD Recording of Nov. 10, 2011, City Council Meeting at 50:00 – 50:35. In response, Planning Commission member Melissa Anderson stated:

“My, I would say in general no, the criteria in my understanding as we need to meet the Code but which is more procedural and the Comprehensive Plan are more broadly Policy statements, as you have mentioned Policy E3 and E4, and then referred to in terms of septic requirements that DEQ establishes all of these requirements and has authorized Lane County to administer those requirements and that there, in terms of those septic requirements there are no requirements for the City to have, you know, maintenance requirements and so that essentially we just need to meet our Comprehensive Plan Policies.”

Record, DVD Recording of Nov. 10, 2011, City Council Meeting at 50:35 – 51:30 (emphasis added).

1 Removing the septic system maintenance protections contained within Ordinance No. 203
2 will only “compound that violation.”

3 Even though Respondent’s findings address several Comprehensive Plan policies
4 pertaining to “Air, Land, and Water Quality,” those findings do not contain substantial
5 evidence to demonstrate that, as a result of the implementation of Ordinance 211A, the
6 cumulative effect of future development and existing development (1) will not exceed the
7 carrying capacity of Siltcoos and Woahink Lakes and their tributaries; (2) will not degrade
8 Siltcoos and Woahink Lakes and their tributaries; (3) will not threaten the availability of
9 drinking water from Siltcoos and Woahink Lakes and their tributaries; and, finally, that
10 Ordinance 211A (4) will not “threaten to violate, or violate applicable state or federal
11 environmental quality statutes, rules, and standards,” including water quality standards for
12 Siltcoos Lake.

13 Under the heading “Air, Land and Water Quality,” Respondent’s findings address
14 Policies E1, E2, E3, E4, E5, E6, and I-10. Record at 19-21. Following a general pattern,
15 Respondent addresses each policy with conclusory findings that contain little or no variation.
16 In essence, Respondent merely repeats the policy and then alleges that it has been satisfied
17 without any supporting evidence, and, therefore, Respondent does not demonstrate how Goal
18 6 is satisfied, even though it concedes that Goal 6 is applicable. ~~See~~ Record at 2, 11.

19 In response to Policy E1, E3, and E4, Respondent’s findings follow a pattern wherein
20 only the second sentence of each paragraph differs, but that sentence simply parrots the
21 respective policy. Respondent’s findings begin by stating: “The proposals are consistent
22 with this policy because they are consistent with the septic system requirements established
23 by DEQ and administered by Lane County.” Then, for policy E1, E3, and E4, Respondent
24 merely repeats the operative phrase in the policy. For example, policy E1 requires that “[t]he

1 city shall strive to preserve the quality of the land, air, and water resources in the city,” and
2 the findings state that “[t]hese regulations ensure adequate sewage disposal systems are
3 provided, which preserve the quality of land and water resources in the city.” Record at 20.

4 For policy E3, which requires that “[w]aste discharges from future facilities shall not
5 exceed the carrying capacity nor degrade the quality of the land, air, and water resources,”
6 Respondent’s findings mirror the policy, stating that “[t]hese regulations ensure adequate
7 sewage disposal systems are provided, which ensure waste discharges from future facilities
8 do not exceed the carrying capacity nor degrade the quality of the land and water resources in
9 the city.” Record at 20.

10 Policy E4 requires that “[r]egulations involving land, air, and water resources of the
11 city shall be based upon long-term capabilities of the available natural resources to both
12 support economic activity and absorb the future, resulting man-made pollutants.”
13 Comprehensive Plan at 10 (Appendix at 28). Consistent with the pattern for policies E1 and
14 E3, Respondent’s findings for E4 state that “[t]hese regulations ensure adequate sewage
15 disposal systems are provided, which ensure the long-term capabilities of the available
16 natural resources are preserved.”

17 The final three sentences for the findings associated with policies E1, E3, and E4 are
18 then set forth verbatim for each finding:

19 “Further, samples have been collected from Siltcoos and Woahink Lakes; however,
20 there has been no correlation established between water quality and erosion or septic
21 system effluent. To address the maintenance of septic systems, the proposals improve
22 upon the existing code requirements for septic system maintenance for the benefit of
23 all residents in Dunes City. This criterion is met.”

24
25 Record at 20.

26
27 For policy E2 and I-10, Respondent’s findings are exactly the same. Policy E2
28 requires that “[a]ll development in the city shall comply with DEQ’s applicable air and water

1 quality standards and noise control standards,” and policy I-10 requires that “[c]ommercial
2 properties shall have adequate sewage disposal systems and be in harmony with their natural
3 surroundings.” Comprehensive Plan at 10, 15 (Appendix at 28, 35). In response to these
4 policies, Respondent’s findings, again, set forth the same conclusory rationale without
5 support: “The proposals are consistent with this policy because they are consistent with the
6 septic system requirements established by DEQ and administered by Lane County, which
7 ensure adequate sewage disposal systems are provided. This criterion is met.” Record at 20.

8 Policy E6 provides that “[t]he city shall adopt a program to improve maintenance of
9 septic systems for the benefit of all residents.” Record at 21. Respondent’s findings simply
10 mirror the policy requirement in a circular and conclusory fashion, stating: “The proposals
11 are consistent with this policy because the proposal improves upon the existing code
12 requirements to address maintenance of septic systems for the benefit of all residents in
13 Dunes City. Dunes City found that the existing requirements for mandatory septic system
14 pumping does not benefit all of the residents and therefore initiated text amendments to the
15 code to improve upon the existing program.” Record at 21. The findings then state that
16 Respondent notified the Dunes City Building Official, Lane County Sanitation Department,
17 DEQ, and DLCD to “ensure that the proposals are consistent with the maintenance
18 requirements,” but that “they had no comments on the proposed amendments.”

19 The findings for these Comprehensive Plan policies not only fail to demonstrate how
20 the policies themselves would be satisfied, but they also fail to demonstrate how Ordinance
21 No. 211A will not exceed the carrying capacity of, degrade, or threaten the availability of
22 drinking water from Siltcoos and Woahink Lakes and their tributaries. Finally, and perhaps
23 most importantly, the findings fail to demonstrate how Ordinance No. 211A, by removing
24 maintenance requirements for septic systems under Ordinance No. 203, will not compound

1 the existing violation of water quality standards for Siltcoos Lake. The fundamental flaw is
2 that the findings for these policies do not contain *any* rationale, explanation, or evidence to
3 demonstrate that the relevant requirements of the policies themselves or Goal 6 were
4 satisfied. Therefore, assuming *arguendo* that the findings for policies E1, E2, E3, E4, E5,
5 E6, and I-10 can substitute for Goal 6 findings, Respondent's findings with regard to Goal 6
6 are inadequate and not supported by substantial evidence.

7 V. Conclusion

8 By repealing Ordinance No. 203 and adopting Ordinance No. 211A, Respondent
9 acted contrary to the Comprehensive Plan and made findings not supported by substantial
10 evidence, and, therefore, Petitioners respectfully request reversal or remand of Respondent's
11 decision.

12

13 Respectfully Submitted: March 14, 2012

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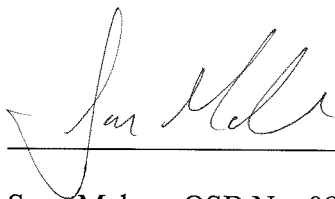
17 Sean T. Malone OSB No. 084060
18 Attorney at Law
19 259 E. 5th Ave, Suite 200-G
20 Eugene OR 97401
21 Attorney for Petitioners

CERTIFICATE OF FILING AND SERVICE

I certify that on March 14, 2012, I filed the original of petitioners' Petition for Review along with four copies with the Land Use Board of Appeals, Public Utility Commission Building, 550 Capitol Street, N.E., Suite 235, Salem, OR 97301-2552 by Certified First Class Mail.

I also certify that on March 14, 2012, I served a true and correct copy of this Petition for Review by First Class Mail to the following person(s):

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Dated: March 14, 2012

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ORDINANCE NO. 203

AN ORDINANCE TO AMEND CHAPTER 157 WITHIN THE DUNES CITY CODE OF ORDINANCES ENTITLED "SEPTIC SYSTEM MAINTENANCE" AND REPEALING ORDINANCE NO. 173

WHEREAS, on March 09, 2006, the City Council of Dunes City adopted Ordinance No. 173, which established Chapter 157 within the Dunes City Code of Ordinances entitled "Septic System Maintenance" and;

WHEREAS, the Dunes City Planning Commission and City Council have considered an amendment to Chapter 157 of the Dunes City Code; and

WHEREAS, the Planning Commission and the City Council wish to ensure that all onsite wastewater disposal systems, also known as sewage disposal systems or septic systems, are operated in a safe, healthful, and environmentally responsible manner; and

WHEREAS, proper system maintenance prevents the adverse impacts of failing systems that may result in improper discharge of sewage effluent threatening surface water, groundwater and public health, safety and welfare; and

WHEREAS, on August 19, 2009, as per ORS 197.610 and OAR Chapter 660, Division 18, a notice of the proposed amendment of the Dunes City Code was sent to DLCD; and

WHEREAS, no exceptions to applicable statewide planning goals numbers 2, 5, and 6 are proposed; and

WHEREAS, no exceptions to applicable Dunes City Comprehensive Plan policies B8, E1, E2, E3, E5, E6, and I10 are proposed; and

WHEREAS, in accordance with ORS 227.186 (Ballot Measure 56), notice of the proposed changes to Chapter 157 of the Dunes City Code was mailed to owners of real property in Dunes City on September 09, 2009, 15 days prior to the first evidentiary hearing, which was publicly announced as postponed to October 22, 2009, 28 days prior to the first evidentiary hearing; and

WHEREAS, the City Council is ready to consider adoption of amendments to Chapter 157 of the Dunes City Code.

NOW THEREFORE, THE CITY OF DUNES CITY ORDAINS AS FOLLOWS:

Section 1. Amendment to Chapter 157 within the Dunes City Code of Ordinances entitled "Septic System Maintenance"

Chapter 15, Title 15, Land Usage, of the Dunes City Code of Ordinances is amended and is attached hereto as Exhibit A to this Ordinance and included by reference herein.

Section 2. Administrative Fees

The City Council may, by resolution, impose fees to cover all or a portion of the expense of implementing and administering this Ordinance.

Section 3. Severability Clause

If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, that portion shall be deemed a separate, distinct, and independent provision and that holding shall not affect the validity of the remaining portions of this Ordinance.

Section 4. Effective Date

This Ordinance shall take effect thirty (30) calendar days after adoption and publication of a Notice of Adoption in accordance with Dunes City law.

Section 5. Repeal

The repeal of Ordinance 173 shall not affect any action occurring before the repeal takes effect. Ordinance Number 173 is hereby repealed.

Passed at the first reading in a regular meeting of the City Council of Dunes City, Oregon on this 10th day of, December, 2009

Ayes: 4 Nays: 0 Abstain: 0 Absent: 2

Passed at the second reading and placed on final passage, and adopted by the City Council of Dunes City, Oregon on this 14th day of, January, 2010

Ayes: 6 Nays: 0 Abstain: 0 Absent: 0

APPROVED BY THE MAYOR OF THE CITY OF DUNES CITY, OREGON, THIS 14th DAY OF, JANUARY, 2010

[Signed copy available at City Hall]

Eric Hauptman, Mayor

ATTEST:

[Signed copy available at City Hall]

Amy Graham, City Recorder

EXHIBIT A

Title XV: LAND USAGE

Chapter 157

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§157.0 SEPTIC SYSTEM MAINTENANCE

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CHAPTER 157
SEPTIC SYSTEM MAINTENANCE

Sections:

§157.005	Definitions
§157.010	Intent
§157.020	Purpose
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§157.050	Dunes City's Responsibilities
§157.060	Inspections Required
§157.070	System Failure and Use Violations
§157.080	Business License Required
§157.090	Compliance
§157.095	Lien Against Property

§157.005 Definitions

The following terms used in these regulations shall have the meanings set forth below.

Access port / cleanout port - The opening at the top of the septic tank usually fitted with a tight fitting lid or plug that gives access to the interior of the tank for inspection and cleanout.

Distribution box - A watertight structure that receives septic tank or other treatment facility effluent and distributes it into one (1) or more header pipes leading to the absorption area.

Drainfield / absorption field - A system of absorption trenches, a seepage trench, or a system of seepage trenches.

Effluent - The fluid discharged from the septic tank to the drainfield.

Inspection - A critical examination to meet the standards of the code.

Map - A scale drawing of the property to include the entire septic system relative to the lot lines, outbuildings, dwellings, driveways, and parking areas. A map shall also include riparian areas, shoreland zones, and wetlands when present.

Olfactory observation - The possible detection of sewage odor whereby the indication of a failing septic system could be ascertained (also referred to as the smell test).

Septic system - The system that may be composed of piping, septic tank, distribution boxes, filters, pumps and electrical connections, components, including the drainfield, necessary to treat sewage.

Septic tank - A watertight receptacle that receives sewage from a sanitary drainage system and is designed to separate solids from liquids, digest organic matter during a period of detention, and allow the liquids to discharge to a second treatment unit or to a soil absorption field.

Sewage - Water-carried human and animal wastes, including kitchen, bath, and laundry wastes from residences, buildings, industrial establishments, or other places, together with any groundwater infiltration, surface waters, or industrial waste that may be present.

Visual observation - Inspection of the drainfield and surrounding area for soggy soil or unusual plant growth.

(Ord. 203, passed 12/10/09)

§157.010 Intent

It is the intent of the Dunes City Septic System Maintenance Ordinance to ensure that all onsite wastewater disposal systems, also known as sewage disposal systems or septic systems are operated in a safe, healthful and environmentally responsible manner. Proper system inspection and maintenance prevents the adverse impacts of failing systems that may result in improper discharge of sewage effluent threatening surface water, groundwater and public health, safety and welfare.

(Ord. 173, passed 03/09/06; Am. Ord. 203, passed 12/10/09)

§157.020 Purpose

The purpose of this ordinance is to establish local rules for the periodic inspection and maintenance of onsite wastewater disposal systems to determine compliance with the Lane County adopted standards for septic system evaluation or more rigorous standards adopted by the Dunes City Council.

(Ord. 173, passed 03/09/06; Am. Ord. 203, passed 12/10/09)

§157.030 General Provisions

Onsite wastewater disposal systems are subject to failure due to lack of maintenance, misuse, water infiltration, seismic activity, and other reasons. In order to minimize water quality problems from failed systems and extend the useful life of these systems, the following program has been developed to regularly inspect onsite systems, and seek effective maintenance and repair.

(Ord. 173, passed 03/09/06; Am. Ord. 203, passed 12/10/09)

§157.040 Owners' Responsibilities

Owners of the buildings served by onsite wastewater disposal systems are responsible to have inspections performed at their expense by one of Dunes City's approved inspectors at the time periods specified below in §157.060. Owners are responsible for maintenance of their systems and shall notify the City in the event the inspector's report indicates a failure of the system or the owner observes a failure of a system.

(Ord. 173, passed 03/09/06; Am. Ord. 203, passed 12/10/09)

§157.050 Dunes City's Responsibilities

- A. Records of individual septic systems shall be established and the City shall maintain such records.
- B. City shall maintain a register of Dunes City approved inspectors who have personal knowledge of the City's Septic System Maintenance Ordinance. The Register shall include the name of the individual inspector and the City will remove an inspector's name from the register for failure to comply with the provisions of this Ordinance including, but not limited to; 1) failure to provide inspection results to the City within fourteen (14) calendar days, or 2) providing inspection results that are deemed by the City to be incomplete or unacceptable.

- C. City shall provide forms for all inspection reports.

(Ord. 173, passed 03/09/06; Am. Ord. 203, passed 12/10/09)

§157.060 Inspections Required

Periodic inspection of all onsite wastewater disposal systems within the city limits is required. The inspector shall provide an original copy of the completed inspection form and map to the City with a copy to the property owner within fourteen (14) calendar days of completion of the inspection.

- A. **Initial Inspection** - The initial inspection shall include pumping of the septic tank and mapping of the septic system. The map shall include cleanout port, access port, distribution box, and the drainfield. This initial inspection will not be required if the property owner presents satisfactory evidence that the system has been permitted and installed with a final approved inspection within the previous five years. Such evidence will become the basis for compliance with §157.060(C). The date of the final inspection will serve as a basis for a periodic inspection in 5 years.
- B. **Periodic Inspection** - Periodic inspections include the condition of the septic tank contents, such as the thickness of the scum layer and percent of solids in the tank, the absorption disposal/drainfield and its capacity to accommodate a test volume of water, pumps, filters, and other important features of the system and the preparation of a report. If a periodic inspection indicates a fully functioning system, pumping is not required unless the Inspector deems it necessary.

The Inspector shall use the City's "Septic Maintenance Record and Inspection Report" form to prepare a report of the system's current condition including the reason or reasons the inspector may have used to require pumping and submit it to the City along with a copy of the map of the system.

C. **Frequency of Inspections** - Septic systems shall be inspected at the following frequencies unless it is determined that public health or environmental conditions require more frequent inspections.

1. Every system shall be inspected at a minimum of once every five years following the initial inspection. At the discretion of the City Recorder, extensions may be granted based on individual circumstances for no longer than one year and any requests beyond one year will be at the discretion of the Council.
2. Prior to the sale or transfer of ownership of any existing property the system shall be inspected, mapped, and pumped unless an inspection, mapping, and pumping has been conducted within 5 years of the date of sale or transfer.
3. Onsite sewage disposal systems shall be inspected when the quantity or characteristics of the wastewater discharge change because of an addition to the building or a change in the building's use.
4. Commercial and institutional buildings shall have their onsite sewage disposal systems inspected on an annual basis or at other time intervals specified by the City.
5. By March of 2012, every owner shall submit to the City an inspection report, mapping, and pumping of all septic systems on their property.

(Ord. 173, passed 03/09/06; Am. Ord. 203, passed 12/10/09)

§157.070 System Failure and Use Violations

If an inspection determines that a system has failed, or is being used in violation of the Dunes City Code or Department of Environmental Quality's standards for onsite wastewater treatment systems (OAR Chapter 340, Division 71), a notice shall be sent to the property owner and to the appropriate County and State agencies. Failed systems or systems being used in violation must be repaired or decommissioned after obtaining all appropriate permits within ninety (90) calendar days of the notification date. At the discretion of the City Recorder, extensions may be granted based on individual circumstances. All systems with effluent above ground shall be declared an emergency public health hazard by the City Recorder and immediate abatement is required. The person performing the work shall provide a copy of the final inspection report to the City within fourteen (14) calendar days.

(Ord. 173, passed 03/09/06; Am. Ord. 203, passed 12/10/09)

§157.080 Business License Required

Individuals and companies that perform septic system inspections and pumping within the corporate limits of the City shall obtain a business license from the City in accordance to the

licensing procedures established by the City. An annual business license fee shall be established by the City Council.

(Ord. 173, passed 03/09/06; Am. Ord. 203, passed 12/10/09)

§157.090 Compliance

Failure to inspect, pump, map, or repair in accordance with the time frames or the inspection procedures specified by this Chapter constitutes a violation of the Dunes City Code of Ordinances and shall be subject to a penalty of \$250 per calendar day by direction of the City Recorder until the property is in compliance with the requirements of this Chapter.

(Ord. 173, passed 03/09/06; Am. Ord. 203, passed 12/10/09)

§157.095 Lien Against Property

A. The City Recorder shall forward to the owner and/or owner's representative (if known by the City), by registered or certified mail, a notice stating:

1. The amount of the penalty;
2. That the penalty will be assessed and turned over to a collection agency and possibly become a lien against the property unless paid within thirty (30) calendar days from the date of the notice;
3. That if the owner and/or owner's representative (if known by the City), objects to the penalty he or she may file a written notice of objection with the City Recorder not more than fourteen (14) calendar days from the date of the notice.

B. In the event that an objection is received, the Council, in the regular course of business, shall hear and determine the objections to the penalty that is assessed.

C. If the penalty is not paid within thirty (30) calendar days from the date of the notice of Council decision, the assessment of the penalty stated or determined by the Council shall be turned over to a collection agency and possibly become a lien against the property.

D. An error in the name of the owner and/or owner's representative (if known by the City), or a failure to receive the notice of the proposed assessment will not void the assessment, and it shall remain a valid collection against the property.

(Ord. 173, passed 03/09/06; Am. Ord. 203, passed 12/10/09)

EXHIBIT B

CHANGES COMPARISONS ON EXHIBIT A		
Section Number	Terms Added	Terms Removed
§157.005	Definitions	None
§157.010	Inspection and	None
§157.020	Inspection	Evaluation
§157.030	Seismic activity	None
	Inspect	Evaluate
§157.040	Responsibilities	Responsibility
	Wastewater disposal	None
	Inspections	Evaluations
	One of Dunes City's approved	State approved
	§	Section
§157.050(B)	Dunes City	State
	Inspection	Evaluation
	Fourteen (14) calendar days	Ten days
	Inspection results	Evaluations
	By the City to be	None
§157.050 (C)	(C)	(D)
	None	Informational pamphlets shall be provided at the time that the septic system owner is notified that an evaluation is due
	Inspection	Evaluation
§157.060	Inspections Required	Evaluations Required
	Inspection form and map to the City	Evaluation form to the owner
	Copy to the property owner	Copy to the City
	Fourteen (14) calendar days of completion of the inspection	10 days of completion of the evaluation
§157.060 (A)	Initial Inspection	Initial Evaluation
	Initial inspection	Initial evaluation
	Pumping of the septic tank and mapping of the septic system. The map shall include cleanout port,	Mapping of the septic tank, including clean-out,
	This initial inspection will not be required if the property owner presents satisfactory evidence that the system has been permitted and installed with a final approved inspection within the previous five years.	However, this evaluation will not be required if the property owner presents a satisfactory map of the system and evidence that the system has been installed or pumped within the previous five years.
	The date of the final inspection will	None

CHANGES COMPARISONS ON EXHIBIT A

Section Number	Terms Added	Terms Removed
§157.060 (A) (cont.)	serve as a basis for a periodic inspection in 5 years.	
§157.060 (B)	Periodic Inspection	Evaluation Standard
	<p>Periodic inspections include the condition of the septic tank contents, such as the thickness of the scum layer and percent of solids in the tank, the absorption disposal/drainfield and its capacity to accommodate a test volume of water, pumps, filters, and other important features of the system and the preparation of a report. If a periodic inspection indicates a fully functioning system, pumping is not required unless the Inspector deems it necessary.</p> <p>The Inspector shall use the City's "Septic Maintenance Record and Inspection Report" form to prepare a report of the system's current condition including the reason or reasons the inspector may have used to require pumping and submit it to the City along with a copy of the map of the system.</p>	<p>All evaluations shall be in accordance with Dunes City standard 157.060 and shall address the following factors:</p> <p>(1) Evaluations will be accepted only from inspectors who are qualified to perform the evaluation and are registered in accordance with ORS Chapters 672 or 700 or have a current NSF International Wastewater System Inspector Accreditation or other certification approved by the Oregon Department of Environmental Quality.</p> <p>(2) The inspector shall conduct a visual and olfactory observation of the ground surface above the system and in the vicinity of the system. Offensive odor and/or surface effluent are evidences of system failure.</p> <p>(3) An examination of the following:</p> <p>(a) The condition of the septic tank and its contents;</p> <p>(b) The absorption/disposal field(s), drainfields;</p> <p>(c) Pumps, filters and other important features of the system; and;</p> <p>(4) Preparation of a report of the system condition and mapping of the drainfield by the inspector.</p>

CHANGES COMPARISONS ON EXHIBIT A		
Section Number	Terms Added	Terms Removed
§157.060 (C)	Frequency of Inspections	Frequency of Evaluations
	Shall be inspected	Shall be evaluated
§157.060 (C) (1)	Shall be inspected	Shall be evaluated
	Following the initial inspection	Following the initial evaluation
	At the discretion of the City Recorder, extensions may be granted based on individual circumstances.	If a building is vacant and the system is due for an evaluation, the evaluation shall be made when the building is reoccupied. Alternative systems, including sand filters systems, shall have an evaluation at time intervals specified by the permit for installation, or as recommended by the system manufacturer
§157.060 (C) (2)	The system shall be inspected	The system shall be evaluated
§157.060 (C) (3)	Systems shall be inspected	Systems shall be evaluated
§157.060 (C) (4)	Inspected on an annual basis	Evaluated on an annual basis
§157.060 (C) (5)	By March of 2012, every owner shall submit to the City and inspection report, mapping, and pumping of all septic systems on their property.	Within five years from the adoption of this ordinance, every owner shall submit to the City an evaluation and mapping of all septic systems on their property.
§157.070	System Failure and Use Violations	System Failure
	If an inspection determines	If an evaluation determines
	Violation of the Dunes City Code	Violation of the Code
	To the property owner and to the appropriate County and State agencies	To the property owner and also to Lane County
	Failed systems or systems being used in violation must be repaired or decommissioned after obtaining all appropriate permits within ninety (90) calendar days of the notification date. At the discretion of the City Recorder, extensions may be granted based on individual circumstances. All systems with effluent above ground shall be declared an emergency public health hazard by the City Recorder and	After obtaining a permit from Lane County, the failed system may be repaired by a DEQ State approved installer or the homeowner.

CHANGES COMPARISONS ON EXHIBIT A

Section Number	Terms Added	Terms Removed
§157.070 (cont.)	immediate abatement is required.	
	The person performing the work shall provide a copy of the final inspection report to the city within fourteen (14) calendar days.	The person that repaired the system shall notify the City within ten days of the repair completion date.
§157.080	§157.080	§157.085
	Business License Required	Approved Inspectors Responsibilities
	None	City approved inspectors will perform evaluations at the request of the septic system owners or the City and provide a written report including a map giving the location of the entire system to both the owner and the City.
	Septic system inspections	Septic system evaluations
	Business license from the City in accordance to the licensing procedures established by the City. An annual business license fee shall be established by the City Council.	Business license from the City. An annual business license fee shall be established by the City Council. Requirements for obtaining a business license are as follows: (A) Complete and application form. (B) Pay an annual fee. (C) Provide proof of liability insurance. (D) Provide proof of DEQ State Approved licensing. (E) Agree to the terms and conditions regarding remission of fees and reporting to the City.
§157.090	Failure to inspect, pump, map, or repair in accordance with the time frames or the inspection procedures	(A) Failure to inspect and/or map in accordance with the time frames or the evaluation procedures
	And shall be subject to a penalty of \$250 per calendar day by direction of the City Recorder until the property is in compliance with the requirements of this Chapter.	And shall be subject to a fine not to exceed \$250. (B) Each calendar date on which a violation occurs constitutes a separate violation until the

CHANGES COMPARISONS ON EXHIBIT A

Section Number	Terms Added	Terms Removed
§157.090 (cont.)		property is in compliance with the requirements of this Chapter.
§157.095(A)	The owner and/or owners representative (if known by the City)	The owner or the person in charge of the property
§157.095 (A) (1)	Penalty	Fine
§157.095 (A) (2)	That the penalty will be assessed and turned over to a collection agency and possibly become a lien against the property unless paid within thirty (30) calendar days from the date of the notice;	That the fine will be assessed to and become a lien against the property unless paid within 30 days from the date of the notice;
§157.095 (A) (3)	That the owner and/or owner's representative (if known by the City), objects to the penalty he or she may file a written notice of objection with the City Recorder not more than fourteen(14) calendar days from the date of the notice.	That if the owner or person in charge of the property objects to the fine he or she may file a written notice of objection with the City Recorder not more than ten days from the date of the notice.
§157.095 (B)	In the event that an objection is received,	At least ten days after the date of notice,
	Objections to the penalty that is assessed.	Objections to the fine that is assessed.
§157.095 (C)	If the penalty is not paid within thirty (30) calendar days from the date of notice of the Council decision, the assessment of the penalty	If the fine is not paid within 30 days from the date of the notice, the assessment of the fine
	Shall be turned over to a collection agency and possibly become a lien against the property.	Shall be made by resolution and entered in the docket of city liens, and shall constitute a lien on the property.
§157.095 (D)	(D)	(E)
	None	The lien may be enforced in the same manner as liens for street improvements are enforced, and shall bear interest at the legal rate of interest. The interest shall commence to run from the date of the entry of the lien in the lien docket.
	An error in the name of the owner and/or owner's representative (if known by the City)	An error in the name of the owner or the person in charge of the property

CHANGES COMPARISONS ON EXHIBIT A		
Section Number	Terms Added	Terms Removed
§157.095 (D) (cont.)	And it shall remain a valid collection against the property.	And it shall remain a valid lien against the property.

ORDINANCE NO. 211A

AN ORDINANCE REPEALING ORDINANCE NO. 203 ENTITLED "SEPTIC SYSTEM MAINTENANCE" AND ESTABLISHING AN EDUCATIONAL PROGRAM TO ENSURE SEPTIC SYSTEM MAINTENANCE

WHEREAS, the Dunes City Council adopted Ordinance No. 203, on January 14, 2010, which established Chapter 157 within the Dunes City Code of Ordinances entitled "Septic System Maintenance" and;

WHEREAS, the Dunes City Council reviewed the maintenance, inspection and reporting requirements of Ordinance 203 and initiated amendments to the septic system maintenance standards;

WHEREAS, the Dunes City Planning Commission held a public hearing on Ordinance Number 211A on October 27, 2011 after sending notice to all required parties;

WHEREAS, the Dunes City Council held a public hearing on Ordinance Number 211A on November 10, 2011, after receiving the Planning Commission's recommendation;

WHEREAS, the Dunes City Council finds it is not in the best interests of Dunes City residents to establish mandatory septic inspections, evaluations or pumping;

WHEREAS, the State of Oregon has reserved unto itself, unless it has entered into an agreement with one of its counties pursuant to ORS 454.725, jurisdiction over wastewater disposal systems in the State of Oregon; and

WHEREAS, the State of Oregon has entered into an agreement pursuant to ORS 454.725 with Lane County, Oregon, for the oversight of wastewater disposal systems in Lane County;

WHEREAS, the Dunes City Council finds it is in the best interests of Dunes City residents to establish an educational program to ensure adequate septic system maintenance;

WHEREAS, the Dunes City Council finds Ordinance Number 211A meets all applicable criteria of the Dunes City Code, Dunes City Comprehensive Plan and Oregon State Laws;

NOW, THEREFORE, THE CITY OF DUNES CITY ORDAINS AS FOLLOWS:

Section 1: Repeal.

The repeal of Ordinance 203 shall not affect any action occurring before the repeal takes effect. Ordinance Number 203 is hereby repealed and replaced with an educational program for septic system maintenance, to be implemented within one year of adoption of this ordinance.

Section 2: Findings of Fact.

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Dunes City adopts the findings of fact in Exhibit A as the basis for the decision to adopt this ordinance.

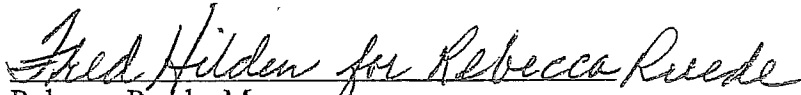
Section 3: Effective Date.

According to Dunes City's Charter, this ordinance will become effective 30 days after adoption.

Passed at the second reading, placed on final passage, and adopted by the City Council of Dunes City, Oregon, on this 10th day of November, 2011.

Ayes: 4 Nays: 2 Abstain: Absent: Vacant:

ADOPTED BY THE DUNES CITY COUNCIL THIS 10th DAY OF NOVEMBER, 2011.


Rebecca Ruède, Mayor

ATTEST:


Fred Hilden, City Recorder



CITY COUNCIL FINDINGS OF FACT
LEGISLATIVE TEXT AMENDMENTS
SEPTIC SYSTEM MAINTENANCE REQUIREMENTS
ORDINANCE NUMBER 211A

City Council

Public Hearing Date: November 10, 2011 ~ 7:00 pm

Applicant: Initiated by Dunes City

Proposal: Legislative Text Amendment to the Dunes City Code to Amend the City's Septic System Requirements

Staff: Melissa Anderson, AICP, Contract Planner

I. INTRODUCTION

On March 09, 2006, the City Council of Dunes City adopted Ordinance No. 173, which established Chapter 157 within the Dunes City Code of Ordinances entitled "Septic System Maintenance." On January 14, 2010, the Dunes City Council amended Chapter 157 "Septic System Maintenance" by repealing Ordinance No. 173 and adopting Ordinance No. 203 to ensure adequate septic system maintenance, inspections and reporting to the city.

After reviewing the existing standards for maintenance, inspections and reporting of septic systems, the city initiated amendments to the septic system maintenance requirements. Two alternatives were under consideration by the city and both proposals are legislative text amendments to Title 15 of the Dunes City Code of Ordinances by repealing Ordinance Number 203 entitled "Septic System Maintenance," and replacing it with an alternative program for septic system maintenance.

The two options considered for an alternative septic maintenance program were presented as Ordinance Number 210A and Number 211A. These two options are described below:

Option #1) Ordinance Number 210A repeals Ordinance Number 203 and replaces it with new regulations to ensure proper septic system maintenance by adding a new Chapter 142 entitled "Septic System Maintenance" in Title 14 of the Dunes City Code of Ordinances; and

Option #2) Ordinance Number 211A repeals Ordinance Number 203 and establishes an educational program to ensure proper septic system maintenance.

On October 27, 2011, the Planning Commission held a public hearing on the proposed ordinances and deliberated to a decision that night. The Planning Commission recommended the City Council adopt both Ordinance Number 210A and 211A.

On November 10, 2011, the City Council held a public hearing on the proposed ordinances, deliberated to a decision that night and adopted Ordinance Number 211A, repealing Ordinance Number 203 and establishing an educational program to ensure septic system maintenance.

II. NOTICE AND REFERRALS:

Public Notice: Prior to the Planning Commission and City Council public hearings, notice was mailed directly to all property owners within Dunes City on September 28, 2011, and a notice was published in the Siuslaw News on October 8, 2011 and on October 26, 2011. The public notices stated the nature of the proposals, how to participate and the date, time and location of the public hearings as required by state law and the city code. Prior to the Planning Commission public hearing of October 19, 2011 one comment had been received in favor of retaining Ordinance No. 203, which is included in the exhibits. At the Planning Commission public hearing on October 27, 2011, written testimony was submitted into the record and these comments are included in the exhibits. At the City Council public hearing on November 10, 2011, additional written testimony was received, submitted into the record and these comments are included in the exhibits.

Agency and Organization Referrals: Notice of the proposed code amendments were sent to the Department of Land Conservation and Development (DLCD) on September 7, 2011 not less than 45 days prior to the first evidentiary hearing of October 27, 2011, as required by State law.

On October 3, 2011, referrals were sent to the Dunes City Building Official, Lane County Sanitation Department, the Oregon Department of Environmental Quality and the DLCD Regional Representative notifying them of the proposed amendments, public hearing dates and requesting comments. On October 7, 2011, the Lane County Sanitation Department and the Building Department LLC responded stating they had no comments on the proposed amendments.

III. APPLICABLE CRITERIA

The proposed amendment is a legislative amendment to the Dunes City Code and the following criteria apply to this matter.

- Dunes City Code of Ordinances, Title 15 *Land Usage*, Chapter 155 *Zoning and Development*, Section 155.4 *Applications and Review Procedures*, Subsection 155.4.1.7 *Type IV Procedure (Legislative)*
- Dunes City Comprehensive Plan Elements: *Citizen Involvement, Land Use, and Air, Land and Water Quality*
- Oregon Revised Statutes (ORS) 197.610 *Local government notice of proposed amendment or new regulation; exceptions; report to commission.*
- ORS 227.186 *Notice to property owners of hearing on certain zone change; form of notice; exceptions; reimbursement of cost.*

IV. REVIEW OF APPLICABLE CRITERIA

Dunes City Code (DCC) Chapter 155 – Zoning and Development

155.4 Applications and Review Procedures
155.4.1.7 Type IV Procedure (*Legislative*)

B. Notice of Hearing.

1. A minimum of two hearings, one before the Planning Commission and one before the City Council, are required for all Type IV applications submitted to the City.

Finding: The proposals are consistent with this criterion because two hearings were conducted before a final decision was made. A public hearing was conducted before the Planning Commission and a public hearing was conducted before the City Council prior to making a final decision. This criterion is met.

2. The Planning Secretary shall give notice of public hearings for the request in the following manner:
 - a. At least 20 days, but not more than 40 days, before the date of the first hearing on an ordinance that proposes to amend the Comprehensive Plan or any element thereof, or to adopt an ordinance that proposes to rezone property, a notice shall be prepared in conformance with ORS 227.175 and mailed to:
 1. Each owner whose property would be rezoned in order to implement the ordinance;
 2. Any affected governmental agency.
 3. Recognized neighborhood groups or associations affected by the ordinance;
 4. Any person who requests notice in writing;
 5. For a rezone affecting a manufactured home or recreational vehicle park, all mailing addresses within the park.

Finding: The proposals are consistent with this criterion because a public notice was mailed to all property owners in Dunes City, affected government agencies and neighborhood groups and anyone requesting a notice on September 28, 2011, at least 20 days and not more than 40 days before the first public hearing before the Planning Commission on October 27, 2011. This criterion is met.

- b. At least 14 days before the scheduled Planning Commission public hearing date, and 14 days before the City Council hearing date, notice shall be published in a newspaper of general circulation in the City.

Finding: The proposals are consistent with this criterion because at least 14 days before the Planning Commission public hearing on October 27, 2011, a notice was published in the Siuslaw News on October 8, 2011. Additionally, at least 14 days before the City Council public hearing on November 10, 2011, a notice was published in the Siuslaw News on October 26, 2011. This criterion is met.

- c. The Planning Secretary shall:
 1. For each mailing of notice provided in Subsection B.2. above, file an affidavit of mailing in the record; and
 2. For each published notice provided in Subsection B.2. above, file an affidavit of publication in the record;

Finding: The proposals are consistent with this criterion because an affidavit of mailing and publication were filed into the record. This criterion is met.

- d. The Department of Land Conservation and Development (DLCD) shall be notified in writing of proposed Comprehensive Plan and development code amendments at least 45 days before the first public hearing at which public testimony or new evidence will be received.

Finding: The proposals are consistent with this criterion because a notice was sent to DLCD on September 7, 2011, at least 45 days prior to the first evidentiary hearing with the Planning Commission on October 27, 2011. This criterion is met.

155.4.1.7 Type IV Procedure (*Legislative*)

E. **Decision-Making Considerations.** The recommendation by the Planning Commission and the decision by the City Council shall be based on consideration of the following factors:

1. The Statewide Planning Goals and Guidelines adopted under Oregon Revised Statutes Chapter 197 (for Comprehensive Plan amendments only);

Finding: This criterion does not apply because the proposals are not comprehensive plan amendments.

2. Comments from any applicable federal or state agencies regarding applicable statutes or regulations;

Finding: The proposals are consistent with this criterion because referrals were sent to the Lane County Sanitation Department, the Oregon Department of Environmental Quality and to DLCD notifying them of the proposed amendments and requesting comments. In response, on October 7, 2011 Lane County Sanitation Department stated they had no comments on the proposed amendments. This criterion is met.

3. Any applicable intergovernmental agreements; and

Finding: The proposals are consistent with this criterion because there are no intergovernmental agreements that are applicable to this matter. This criterion is met.

4. Any applicable Comprehensive Plan policies and provisions of this Code that implement the Comprehensive Plan. Compliance with Section 155.4.7 shall be required for Comprehensive Plan amendment, and Master Road Plan amendment.

Finding: The proposals are consistent with this criterion because applicable Comprehensive Plan Policies are addressed in the following section and these findings are incorporated herein. Additionally, applicable provisions of the Dunes City Code are addressed for consistency in this report. Lastly, Section 155.4.7 of the Dunes City Code is not applicable because the proposals do not amend the Comprehensive Plan Map or the Master Road Plan. This criterion is met.

DUNES CITY COMPREHENSIVE PLAN

Citizen Involvement and Land Use Planning

Policy A1. Citizens involvement. Dunes City's citizens involvement program shall insure that the citizens of Dunes City have the opportunity to be involved in all phases of the planning process.

The citizens involvement program shall incorporate the following components:

1. Citizen Involvement; to provide for widespread citizen involvement.
2. Communication; to assure effective two-way communication with citizens.

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3. **Citizen Influence;** to provide the opportunity for citizens to be involved in all phases of the planning process.
4. **Technical Information;** to assure that technical information is available in an understandable form.

Finding: The proposals are consistent with these policies because citizens have been provided opportunities to be involved in all phases of the planning process. Public notice was mailed to all property owners and published in the Siuslaw News, notifying the public of the proposed code amendments and how to participate in the public hearing before the Planning Commission and City Council. The information contained in proposed Ordinance No. 210A and 211A was available to the public prior to the hearings. Citizens were provided an opportunity to provide testimony before and during each public hearing. Widespread public involvement was solicited and provided for through all phases of the planning process. These criteria are met.

Land Use and Urbanization

Policy A12. Dunes City shall coordinate land use decisions where needed with Lane County, Douglas County, the Oregon Dunes National Recreation Area, Oregon State Parks, Oregon Department of Transportation, Oregon Department of Fish and Wildlife, The Oregon Department of Forestry, and other local, state and federal agencies.

Finding: The proposals are consistent with these policies because referrals were sent to affected local and state agencies in order to coordinate the proposed land use decision. Dunes City sent referrals to the Dunes City Building Official, Lane County Sanitation Department, Oregon Department of Environmental Quality and the Department of Land Conservation notifying them of the proposed amendments, public hearing dates and requesting their comments. A response from Lane County Sanitation and the Building Department LLC (the Dunes City Building Official) were received stating they had no comment on the proposals. This criterion is met.

Open Space, Scenic Areas, and Natural Resources

Lakes Policies

Policy B8. Dunes City shall strive to maintain the high water quality of Siltcoos and Woahink Lakes through monitoring recreation use, commercial and industrial use, and run-off of septic tank effluent. A Water Quality Control Committee will be formed to examine problems with water quality.

Finding: The proposals are consistent with this policy because no correlation has been established between septic system effluent and the water quality of Siltcoos and Woahink Lakes. Samples have been collected from Siltcoos and Woahink Lakes; however, there has been no correlation established between water quality and erosion or septic system effluent. To address the maintenance of septic systems, the proposals improve upon the existing code requirements for septic system maintenance for the benefit of all residents in Dunes City. This criterion is met.

Air, Land and Water Quality

General Policies

Policy E1. The city shall strive to preserve the quality of the land, air, and water resources in the city.

Finding: The proposals are consistent with this policy because they are consistent with the septic system requirements established by DEQ and administered by Lane County. These regulations ensure adequate sewage disposal systems are provided, which preserve the quality of land and water resources in the city. Further, samples have been collected from Siltcoos and Woahink Lakes; however, there has been no correlation established between water quality and erosion or septic system effluent. To address the maintenance of septic systems, the proposals improve upon the existing code requirements for septic system maintenance for the benefit of all residents in Dunes City. This criterion is met.

Policy E2. All development in the city shall comply with DEQ's applicable air and water quality standards and noise control standards.

Finding: The proposals are consistent with this policy because they are consistent with the septic system requirements established by DEQ and administered by Lane County, which ensure adequate sewage disposal systems are provided. This criterion is met.

Policy E3. Waste discharges from future facilities shall not exceed the carrying capacity nor degrade the quality of the land, air, and water resources.

Finding: The proposals are consistent with this policy because they are consistent with the septic system requirements established by DEQ and administered by Lane County. These regulations ensure adequate sewage disposal systems are provided, which ensure waste discharges from future facilities do not exceed the carrying capacity nor degrade the quality of the land and water resources in the city. Further, samples have been collected from Siltcoos and Woahink Lakes; however, there has been no correlation established between water quality and erosion or septic system effluent. To address the maintenance of septic systems, the proposals improve upon the existing code requirements for septic system maintenance for the benefit of all residents in Dunes City. This criterion is met.

Policy E4. Regulations involving land, air, and water resources of the city shall be based upon long-term capabilities of the available natural resources to both support economic activity and absorb the future, resulting man-made pollutants.

Finding: The proposals are consistent with this policy because they are consistent with the septic system regulations established by DEQ and administered by Lane County. These regulations ensure adequate sewage disposal systems are provided, which ensure the long-term capabilities of the available natural resources are preserved. Further, samples have been collected from Siltcoos and Woahink Lakes; however, there has been no correlation established between water quality and erosion or septic system effluent. To address the maintenance of septic systems, the proposals improve upon the existing code requirements for septic system maintenance for the benefit of all residents in Dunes City. This criterion is met

Sewage Systems Policies

Policy E5. The city shall cooperate with the Department of Environmental Quality to ensure compliance with disposal system requirements.

Finding: The proposals are consistent with this policy because Dunes City adheres to sewage disposal system requirements, as established by the Oregon Department of Environmental Quality (DEQ) and administered by Lane County. Installation of new septic systems and modifications to existing septic systems are reviewed, inspected and approved through the Lane County Sanitation Department. The Dunes City Building Official and building permit process coordinates with the Lane County Sanitation Department to ensure sewage disposal system requirements are reviewed and implemented according to state requirements.

To ensure coordination with appropriate agencies, referrals were sent to the Dunes City Building Official, Lane County Sanitation Department, DEQ and to DLCDC notifying them of the proposed amendments, public hearing dates and requesting comments. In response, the Lane County Sanitation Department and the Building Department LLC responded stating they had no comments on the proposed amendments. This criterion is met.

Policy E6. The city shall adopt a program to improve maintenance of septic systems for the benefit of all residents.

Finding: The proposals are consistent with this policy because the proposal improves upon the existing code requirements to address maintenance of septic systems for the benefit of all residents in Dunes City. Dunes City found that the existing requirements for mandatory septic system pumping does not benefit all of the residents and therefore initiated text amendments to the code to improve upon the existing program. To ensure that the proposals are consistent with the maintenance requirements established by the Oregon Department of Environmental Quality and administered by Lane County, referrals were sent to the Dunes City Building Official, Lane County Sanitation Department, DEQ and to DLCDC notifying them of the proposed amendments. In response, the Lane County Sanitation Department and the Building Department LLC responded stating they had no comments on the proposed amendments. This criterion is met.

Commercial Land Use

Commercial Policies

Policy I-10. Commercial properties shall have adequate sewage disposal systems and be in harmony with their natural surroundings.

Finding: The proposals are consistent with this policy because they are consistent with the septic system requirements established by DEQ and administered by Lane County, which ensure adequate sewage disposal systems for commercial properties. This criterion is met.

OREGON REVISED STATUTES (ORS)

ORS 197.610: Local Government Notice of Proposed Amendment or New Regulation; Exceptions; Report to Commission.

197.610(1) A proposal to amend a local government acknowledged comprehensive plan or land use regulation or to adopt a new land use regulation shall be forwarded to the Director of the Department of Land Conservation and Development at least 45 days before the first evidentiary hearing on adoption. The proposal forwarded shall contain the text and any supplemental information that the local government believes is necessary to inform the director as to the effect of the proposal. The notice shall include the date set for the first evidentiary hearing.

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Finding: The proposals are consistent with criterion because a notice was sent to DLCD on September 7, 2011, at least 45 days prior to the first evidentiary hearing with the Planning Commission on October 27, 2011. This criterion is met.

ORS 227.186: Notice to property owners of hearing on certain zone change; form of notice; exceptions; reimbursement of cost.

227.186(1) As used in this section, "owner" means the owner of the title to real property or the contract purchaser of real property, of record as shown on the last available complete tax assessment roll.

(2) All legislative acts relating to comprehensive plans, land use planning or zoning adopted by a city shall be by ordinance.

(3) Except as provided in subsection (6) of this section, at least 20 days but not more than 40 days before the date of the first hearing on an ordinance that proposes to amend an existing comprehensive plan or any element thereof, or to adopt a new comprehensive plan, a city shall cause a written individual notice of a land use change to be mailed to each owner whose property would have to be rezoned in order to comply with the amended or new comprehensive plan if the ordinance becomes effective.

(4) At least 20 days but not more than 40 days before the date of the first hearing on an ordinance that proposes to rezone property, a city shall cause a written individual notice of a land use change to be mailed to the owner of each lot or parcel of property that the ordinance proposes to rezone.

(5) An additional individual notice of land use change required by subsection (3) or (4) of this section shall be approved by the city and shall describe in detail how the proposed ordinance would affect the use of the property. The notice shall:

(a) Contain substantially the following language in boldfaced type across the top of the face page extending from the left margin to the right margin:

This is to notify you that (city) has proposed a land use regulation that may affect the permissible uses of your property and other properties.

(b) Contain substantially the following language in the body of the notice:

On (date of public hearing), (city) will hold a public hearing regarding the adoption of Ordinance Number _____. The (city) has determined that adoption of this ordinance may affect the permissible uses of your property, and other properties in the affected zone, and may change the value of your property. Ordinance Number _____ is available for inspection at the _____ City Hall located at _____. A copy of Ordinance Number _____ also is available for purchase at a cost of _____. For additional information concerning Ordinance Number _____, you may call the (city) Planning Department at ____-____.

Finding: The proposals are consistent with this criterion because a measure 56 public notice was sent directly to all property owners within Dunes City in accordance with ORS 227.186. The public notice was mailed on September 28, 2011, at least 20 days but not more than 40 days before the date of the first hearing of October 27, 2011. The required information stated in the statute was included in the notice. This criterion is met.

V. CONCLUSION

The proposal to amend the Dunes City Code, by repealing Ordinance Number 203 Entitled "Septic System Maintenance" and replacing it with an alternative program for septic system maintenance as presented in Ordinance Number 211A meets all applicable criteria of the Dunes City Code, Dunes City Comprehensive Plan and Oregon State Laws.

VI. EXHIBITS

- A. [Findings of Fact]
- B. Response from Lane County Sanitation Department (10/07/11)
- C. Response from Building Department LLC (10/07/11)
- D. Comment from Craig McMicken (10/01/11)
- E. Comment from Jamie Mills, Chairman of the Dunes City Water Quality Committee (10/21/11)
- F. Comment from Cameron La Follette, Oregon Coast Alliance (10/26/11)
- G. Comment from John A. Maciolek (10/27/11)
- H. Planning Commission Findings and Recommendation to Council
- I. Comment from Owen Goodrich (11/3/11)
- J. Comment from Liz Purtell (11/7/11)
- K. Comment from Cameron La Follette, Oregon Coast Alliance (11/9/11)
- L. Comment from Gail Nichols (11/9/11)
- M. Comment from Jerry Curran - Siuslaw Newspaper Editorial (11/9/11)
- N. Comment from Dan & Sue Scarberry (11/10/11)
- O. Comment from Peter Howison (11/10/11)
- P. Home Sewage Treatment Workshop Memo, Univ. of Minnesota, 1981 from Rand Dawson (submitted 11/10/11)
- Q. Comment from Del & Barbara Riesenhuber (11/10/11)
- R. Comment from Woahink Lake Association (submitted 11/10/11)
- S. Comment from John Stead (11/10/11)
- T. Comment from April Dumas (11/10/11)
- U. Comment from Dunes City Council President Jamie Mills (11/10/11)

CHAPTER I GOALS, POLICIES, RECOMMENDATIONS, AND PLAN IMPLEMENTATION

September 16, 1997

INTRODUCTION

A. Foreword

This Comprehensive Plan is a general plan for the logical and orderly development of Dunes City over the years. There are reasons for writing it beyond the State requirements that each city and county in Oregon have a plan.

There are already in existence building codes, zoning ordinances, health and safety codes, anti-pollution requirements, and many more laws that restrict what a person may do with their own property. These are necessary rules so that we can have some assurance of what our neighborhoods will generally be like in the future.

Developers should be able to put the proper type of construction in the right place with the least damage to the environment. New citizens may be attracted by having some assurance of what their future surroundings will look like. Residents who are already here should gain confidence that their city will not deteriorate as has been the case in so many unplanned communities.

The first section of the plan contains the policies that guide the city decision-makers. Following the policies are sections that contain inventory material that were used to develop the policies and a section on the history of Dunes City and the surrounding area.

The original plan, adopted September 9, 1976, was put together by a group of area citizens with a variety of backgrounds. New members were appointed by the Mayor and the City Council at public meetings from a list of interested citizens. This Comprehensive Plan Advisory Committee met 24 times in 1974. The group learned the mechanics of planning. They gathered statistics, made a partial survey, determined desires and complaints of the populace, and discussed solutions to the problems.

The next operation was the assembly into usable form of all the information that had been gathered. This resulted in an outline of the Plan and Preliminary Goals and Policies being completed by the end of 1974.

B. Open Space, Scenic Areas, and Natural Resources

Policy B1. The city shall protect natural resources and encourage their wise management, proper development, and reuse. Areas possessing unique ecological, scenic, aesthetic, scientific, or educational values shall be considered in the planning and zoning process.

Policy B2. The city shall protect the waterways and geologic and wooded integrity of the area so that the community may proudly identify itself with trees, lakes, dunes and rivers.

Dunes

Policy B3. Stabilizing vegetation on older dunes will be protected through special planning and development review procedures. Approval of new development on stabilized dunes will be subject to a site review.

Policy B4. Dunes City will coordinate with Lane County, the Oregon Department of Transportation, and the Oregon Dunes National Recreation Area to protect the stabilized dunes west of Highway 101.

Lakes

Policy B5. Elements of the aquatic environment such as the lakes, marshes, mudflats, lagoons, riparian vegetation, and critical wildlife habitat and resources shall be considered in the planning and zoning process.

Policy B6. Methods of conserving water resources must be considered in all land use and development proposals and decisions. In compliance with the Mid-Coast Basin Program adopted on September 25, 1984, the City recognizes that Siltcoos and Woahink Lakes are classified only for utilization of water for domestic, livestock, and in-lake uses for recreation, wildlife, and fish life purposes.

Policy B7. Dunes City will coordinate its efforts with governmental agencies and nearby jurisdictions, for implementing and studying possible alternatives for maintaining good water quality.

Policy B8. Dunes City shall strive to maintain the high water quality of Siltcoos and Woahink Lakes through monitoring recreation use, commercial and industrial use, and run-off of septic tank effluent. A Water Quality Control Committee will be formed to examine problems with water quality.

Policy D2. Where possible, the city shall provide services through decentralized systems which do not require tax money for support. Community systems should be funded through direct user charges to those who use them.

Policy D3. The city shall encourage citizens to make use of the existing procedures for funding neighborhood improvements for levying and collecting special assessments. This would allow the creation of local improvement districts where those directly benefiting from improvements would pay for them.

Policy D4. The city will cooperate with the Lane County Sheriffs' Office, Oregon State Police, and the Neighborhood Watch program.

Policy D5. The city supports efforts of the Siuslaw Rural Fire District to encourage citizen participation in fire prevention programs.

Policy D6. The city shall cooperate with Central Lincoln PUD to assist Dunes City residents in reducing their consumption of energy through conservation.

E. Air, Land and Water Quality

General Policies

Policy E1. The city shall strive to preserve the quality of the land, air, and water resources in the city.

Policy E2. All development in the city shall comply with DEQ's applicable air and water quality standards and noise control standards.

Policy E3. Waste discharges from future facilities shall not exceed the carrying capacity nor degrade the quality of the land, air, and water resources.

Policy E4. Regulations involving land, air, and water resources of the city shall be based upon long-term capabilities of the available natural resources to both support economic activity and absorb the future, resulting man-made pollutants.

Sewage Systems Policies

Policy E5. The city shall cooperate with the Department of Environmental Quality to ensure compliance with disposal system requirements.

Policy E6. The city shall adopt a program to improve maintenance of septic systems for the benefit of all residents.

and surrounding dunes and hills. Together they create a visual impact of beauty not matched in many cities.

Data contained within Appendix D was excerpted from a memo from Bob Anderson, Lake Watch Volunteer and Dunes City Periodic Review Advisory Committee (PRAC) member, to the PRAC, May 21, 1996.

It was determined, by talking with Lane County staff on October 1, 1985, that the water quality of Woahink should be an important concern of the city. Recommendations include developing a water system on Woahink, implementing regulations to keep sewage out of the lake, and further study of the groundwater between Woahink and Siltcoos Lakes. Another recommendation included encouraging the city to coordinate its efforts with other nearby jurisdictions for implementing and studying possible alternatives for the water system. Some of the recommendations made by the staff were based on results from the Coastal Water Supply Study as well as general observations.

In accordance with the provisions of ORS 536.300(2), pertaining to water resources of the Mid-Coast Basin, in 1984 the Water Resource Board adopted a program to determine the highest and best use of the waters of the Mid-Coast Basin. Lakes of the Mid-Coast Basin, such as Devils, Triangle, Lily, Sutton, Mercer, Collard, Munsel, Cleawox, Carter, Lost, Elbow, Clear, Woahink, Siltcoos, Tahkenitch, and Threemile are classified for utilization of water for domestic, livestock, and in-lake uses for recreation, wildlife, and fish life purposes. The provisions exclude consumption on the lakes for power development and industrial and mining purposes. Future industrial use will be limited to the existing industrial consumption of water on Siltcoos Lake by International Paper.

Information from the Mid-Coast Basin Program indicates that the City has water rights in the amount of 1.4 cubic feet per second and an additional 1.5 cubic feet per second from Woahink Lake. With retention of these water rights, which could provide enough water for a population of approximately 25,000, there is reason to believe that a sufficient amount of water exists for the projected population (AAGR .9%) of 1459 in the year 2015. A sufficient amount of water will be available for domestic as well as commercial use if the City develops a public water system.

There is no problem at present with water withdrawal volumes on any of the lakes, however we must protect our water supply from the ever present threat of contaminant run off. Most lakes retain a relatively constant level all year due to subsurface water infiltration. Studies of the lakes show Woahink has a retention time of one-to-two years, whereas Siltcoos has a retention time of only approximately two months.

The lakes have outstanding recreational and scenic values. As a result, they are under continual and increasing development pressure. At present, there are no known direct waste

discharges into either of the lakes. There are no serious pollution problems, but the potential for such problems exists. The main threats are septic tank seepage and nonpoint source pollution. This problem is particularly serious because many residents utilize the lakes for domestic water supplies.

Siltcoos Lake, the largest lake on the Oregon coast, is unique in that it has a very broad body. Siltcoos has an area of about 3,000 acres and 29.6 miles of shoreline of which 0.71 miles are in public ownership. Of the private shoreline, approximately 6.61 miles are already developed. Public recreation facilities are presently limited to a county park at Ada and a boat landing at Westlake. In addition, there are two hike-in campsites on the shore west of Booth Island. They are reached by boat or trail, starting at mile post 198 on Highway 101. Two separate parcels of land owned by the City will be developed for park use.

Booth Island in Siltcoos Lake has been designated a significant natural area by the Oregon Natural Heritage Program. Booth Island is characteristic of a natural island environment. Band-tailed pigeons make use of the island regularly, as do eagles and osprey.

Recreational use of the lake is substantial because of its unique fishery value. It is one of the prime large-mouth bass lakes in the Pacific Northwest and also supports rainbow trout, sea-run cutthroat, black bass, coho salmon, pan fish, and sturgeon. The Siltcoos River provides anadromous fish with access to the lake and its tributaries.

Siltcoos Lake serves as a source of industrial water supply for the International Paper Plant at Gardiner in Douglas County.

Siltcoos is quite shallow and exhibits complete mixing of waters at nearly all times, with subsequent uniform oxygen levels and generally higher nutrient and turbidity levels than most other nearby lakes. Brazil weed, a non-native plant, was introduced inadvertently and is now a pest. Algae growth is pronounced, giving the lake a characteristic green, murky appearance.

Characteristic of most Oregon coastal lakes, Siltcoos has low alkalinity and some enrichment with sodium and chloride from the ocean. In the winter months, the water is slightly acidic, while it is neutral to slightly alkaline in the summer. No problem exists with oxygen depletion.

Localized contamination problems may occur occasionally during summer months near specific out-falls and bathing-boating areas. There is a potential for contamination problems in lake arms draining agricultural areas and in locations where water turnover is low. Soil situations in the vicinity of the lakes are such that runoff is likely to pose increasing problems as recreational, vacation home, and residential development continues if not properly developed.

Woahink Lake has a surface area of 820 acres and a maximum depth of 80 feet. Water quality in Woahink Lake is considered to be very good. The manager at Honeyman Park

Bog Club-Moss, listed as very rare or threatened in Oregon, has been found near the Waxmyrtle Campground in Oregon Dunes National Recreation Area (outside the city limits).

d. Coastal shorelands

(i) The planning area. The shorelands planning area is defined as all lands 500 feet from the mean high water mark of Siltcoos and Woahink Lakes and all lands west of the Oregon Coast Highway. The north shore of Siltcoos Lake and most of the shoreline of Woahink Lake are in the city limits. Two parcels of land west of the coast highway and the coast highway, the Oregon Dunes National Recreation Area. A small portion of each triangle is in the city limits; the remainder is under County jurisdiction.

(ii) Shoreland identification. Within the planning area, an inventory was made to identify shorelands according to Statewide Goal 17.

Hydraulic Action: Siltcoos and Woahink Lakes are fresh water lakes and, hence, are not subject to ocean wave or tidal action. The level of water in the lakes varies somewhat over the year, flooding more of its wetlands during the winter months.

Geologic Instability: The areas of geologic instability are the active sand dunes west of the coast highway (see, DOGAMI Bulletin '85). Areas with active sand dunes should be protected and adjacent stabilized dunes maintained as a buffer against the advancement of the sand. Steep slopes along the lakes and in other areas will require careful review.

Riparian Resources: The vegetative cover on the shorelines of Siltcoos and Woahink Lakes is recognized as important habitat for fish and wildlife and for its importance in stabilizing the banks from erosion. A development setback of 50 feet has been established to protect those riparian resources.

The increasing pressure of urban development has resulted in substantial removal of vegetation in the riparian areas. The city shall have information available for shoreline owners as to the importance of maintaining the riparian area with vegetation. Native plants are preferred as they require no fertilizer and little maintenance. The riparian zone is a natural bio-filter and is the most efficient known means of stabilizing shorelines and is crucial for protecting the water quality. Originally Woahink lake was completely encircled with vegetation. As the loss of vegetation occurs we now see greater erosion. Siltcoos has more diverse riparian vegetation than other lakes in the area. Snags on Woahink and Siltcoos are especially important as roosts for eagles and osprey. In total, six species of mammals and 24 species of birds depend on the snags as nesting or den sites. (See appendix).

(4) Wetlands. See Dunes City Local Wetlands Inventory and Riparian Inventory and zoning ordinance.

(5) Erosion. Stabilized dunes have severe potential for erosion if the vegetative cover is not maintained. Damage to the vegetative cover can occur through vehicular traffic, such as off-road vehicles, construction, or lowering of the water table. Use of lands west of the Pacific Coast Highway is of particular concern to Dunes City. These lands should be protected by the County and the Oregon Dunes National Recreation Area to act as a buffer from intrusion by moving sand. The city will work with these and other agencies to this purpose.

Another erosion problem occurs along the shores of the lakes, wetlands and streams, due to land use practices. This can cause siltation and other water quality problems. The city will work towards better enforcement and stronger ordinances to correct these problems.

(iii) Development suitability. A system for determining the suitability of soils for development purposes has been devised by the Soil Conservation Service (contained in the Soils Survey of Lane County) and the office of the Lane County Resource Soil Scientist. A rating is given to each soil type. This rating is based on the slope, wetness, depth to bedrock, shrink-swell potential, etc., as they affect foundations, roads, utilities, and natural hazards.

The Development Suitability map (contained in the Soils Survey of Lane County) shows where development should be encouraged and where development will be most difficult and expensive. Some areas may require more than one acre in order to meet setback and development requirements, i.e., setbacks, drainfield and water requirements, roads, etc. (Refer to Appendix F)

(iv) Subsurface disposal suitability. Since there is no public sewage system in Dunes City, subsurface disposal systems (septic tanks and drain fields) are the only available means of waste water treatment. The need to protect groundwater, lakes, and streams establishes a carrying capacity of about one residential unit per acre (see Sewage Disposal).

In addition, the availability or absence of approvable septic drain field soils will determine where development can or cannot occur. The Subsurface Disposal Suitability map was drawn from a soils map furnished by the Lane County Water Pollution Control Division. (Refer to Appendix K) The rating system for septic tank filter fields is based on permeability, hydraulic conductivity, percolation rate, and flooding hazard. Soils are rated according to the chance of system failure: slight, moderate, severe, and unsuitable.

In cases where conditions may be moderate to severe, there may be pockets of approvable soils. Land on totally unsuitable soil will remain undeveloped unless an alternative sewage disposal system is approved by the State Department of Environmental Quality and the County Department of Environmental Management.

B. The Man-Made Environment

1. Culture and History

a. Cultural aeas. There is no evidence of a site in the city characterizing an ethnic, religious, or social group with distinctive traits, beliefs, or social forms. The Historical and Archaeological Site Inventory (Preliminary) of the Oregon Coastal Conservation and Development Commission listed no sites in Dunes City.

b. Historic aeas. There are no historical sites in Dunes City listed in the Statewide Register of Historic Places. Some pilings just south of Fishmill Lodge in south Westlake are all that remain of the original sawmill. Robinson's Landing is in Honeyman State Park.

Parts of a train wreck are still located in 40 feet of water near the outlet of Woahink Lake. At one time, trains were barged across the lake. Now, scuba divers find it an interesting underwater landmark.

2. Public Utilities, Services, and Facilities

a. Air, water and land quality

(i) Sewage disposal. By limiting the density to one family unit per acre, plus the requirement that each unit have sufficient area to support a permanent subsurface system, the danger of water pollution can be avoided and the health of the citizens protected. This protection is essential considering that many Dunes City residents use water from the lakes.

The Lane County Coastal Resource Inventory (Wilsey and Ham, pp. II-32) concurs in the need to maintain low-density development in the coastal lakes areas:

Septic tank systems can be an economical and efficient means of sewage treatment for relatively low density development. However, reliance on septic tanks in areas of high density can cause severe problems including well contamination....The cost of installation of a sanitary sewer system is well beyond the means of the local communities in the lakes study area.

To improve air quality standards in Oregon, after July 1, 1986, all new woodstoves and fireplace insert models sold in Oregon will have to be certified to meet DEQ emission standards. They will also be required to display labels that give their efficiency and emission ratings.

(vi) Nonpoint source pollution. Nonpoint Source Pollution (NPS) can be defined as discharged pollution (such as suspended solids, sediments, and nutrients) which enter surface water and groundwater in a diffuse manner that degrades water quality. NPS is often caused by poor land use practices and can include erosion, improper use of herbicides and pesticides, polluted urban runoff, and poor maintenance of septic tanks. The degradation occurs with the accumulation of many small actions but the combined cumulative impact can be serious. NSP is one of the major sources of contamination the city will have to address.

(vii) Noise. Sources of noise, such as barking dogs, aircraft and loud power boats on the lakes, have been identified. The city has a nuisance ordinance which can be used to control unreasonably loud, disturbing, or unnecessary noise within the city. The Oregon Department of Environmental Quality has established noise standards and will work with the city to help resolve such problems.

Less clear is the ability of the City to control noise on the lakes, which are only partially inside the city. At any rate, it is likely that the State Water Resources Board has jurisdiction on the water; the City has little chance of enforcing regulations regarding use of the lakes on its own.

Significant noise problems in Dunes City have at times resulted from off-road vehicles in the Oregon Dunes National Recreation Area. However, the Oregon Dunes National Recreation Area has worked effectively with residents to address these problems. The city appreciates their efforts and looks forward to continued efforts in this regard.

b. Public facilities and services

(i) Police protection. Police protection is provided by Lane County Sheriffs' Office and the Oregon State Police.

(ii) Fire protection. Fire protection for Dunes City and surrounding areas is provided by the Siuslaw Rural Fire District #1, a volunteer department. All property within five miles of the station is in Fire Insurance Rating Class 4. Having a sufficient number of volunteers is the main concern for providing adequate fire protection. Another concern is the hazard of driving heavy equipment, such as fire trucks over poorly-maintained private roads.

Backup in large fires would come from Station #1 in Florence. Trucks could also come from the Florence Fire Department, Gardiner, State Forestry and Oregon Dunes National Recreation Area under mutual aid agreements.

Policy I-8. Commercial building size, location, and lot coverage regulations shall comply with aesthetic and scenic values contained in the plan and ordinances.

Policy I-9. Commercial activity in residential districts shall be limited to the home occupation listed in the applicable zoning ordinance.

Policy I-10. Commercial properties shall have adequate sewage disposal systems and be in harmony with their natural surroundings.

Policy I-11. Buffer zones or adequate screening or fencing must separate commercial enterprises and trailer parks from residential properties.

Policy I-12. Dunes City will establish controls for outdoor advertising and other detracting features.

Policy I-13. Dunes City will use policies and ordinances to implement this Comprehensive Plan.

Policy I-14. As provided in the Dunes City Zoning Ordinance, all commercial facilities shall provide off-street parking on their sites or within 200 feet of their location.

J. Industrial Land Use

Industrial Policies

Policy J1. Dunes City shall preserve the rural and scenic character of Dunes City by excluding any major industry by allowing only small-scale industry which is compatible with residential uses and which would not produce excessive noise or pollution.

K. Coastal Shorelands

Shorelands Policies

Policy K1. As defined by the Oregon Division of State Lands, the ordinary high water line of Siltcoos Lake is 12' above mean sea level and the ordinary high water line of Woahink Lake is 39.8' above mean sea level. The shorelands area is 50 feet measured horizontally from these points. Shoreland uses and development should avoid physical alterations of the shore, such as dredging, filling, rip rap, and channelization.