

Bayshore Beach Club, Inc. Board of Directors Special Meeting

March 10, 2012 1 PM

President Fernandes introduced Glen Morris and turned the meeting over to him. Glen gave this report:

SUBJECT: Status Report on Sand

Good afternoon. Thank you for having a special meeting to discuss the sand situation. My purpose today is two-fold. One to bring you up-to-date on what is happening concerning the sand and the second is to get your approval for specific actions. I would ask that you hold all questions until I have completed my presentation. Then, I will try to answer as many questions as I can.

If there is no money from FEMA, not much is going to happen over what the condition is now. The Bayshore Special Road District, in conjunction with the Seal Rock Water District and the Seal Rock Fire District, have applied for emergency funds from FEMA. The project is to clear the road, the shoulders on both sides of the road to uncover the water lines.

The project, now estimated at \$200,000 - \$400,000 will include money from FEMA, OEM (Oregon Emergency Management), Seal Rock Water, Seal Rock Fire, and some very limited funds from the Road District for matching purposes. While the Road District does not have responsibility for the sand removal, it is the government agency best suited to obtain the grant moneys and, on a one-time basis, provide what is needed for that part of Bayshore.

I would like to now tell you what the tentative plan is and what your part is in making the plan a reality. There are approximately 20,000 cubic yards of sand that need to be moved from area and to the beach. This is sand on the right-of-way, not around houses, which is the property owner's responsibility.

As you know, there are very few places with access to the beach, and fewer still that can accommodate heavy equipment. A few years back when several houses were in danger of falling into the ocean, access was made across an empty lot to allow riprap to be placed.

A property owner at 230 Oceania, who owns the vacant lot adjacent to an uncleared beach access, has given the Road District permission to cross his lot, remove sand as needed, to clear the beach access which is on the north side of his lot and abutting 302 Oceania, and to transit his property with equipment to haul the sand to the beach and to spread the sand. This beach access is the best spot to access the beach with heavy equipment and to spread the sand.

The Road District will contract with Gary Nyhus to shoot the average original grade of the lot, the intermediate grades across the lot and to find the corner stakes of the beach access.

The property owner should not suffer any negative impact from providing a needed public service for the other property owners in the area. His ability to build a house at a later time should not be curtailed in any manner. This lot is in the AO flood plain according to the County Planning Dept., as well as the V flood plain. While the C&R's talk about not doing anything to a lot prior to building, this is clearly something that needs to be done. Any sand removed will be due to sloughing and to gain access to the beach access from the road. The eastern most (road side) of the lot is not in the flood plain.

The project will include clearing the beach access. The Homeowner's Board is being asked to approve this part of the project because a) the removal of sand from an undeveloped lot before building requires an exemption and clearing the beach access is not in the purview of the Planning Committee. ALL paperwork must be in FEMA's hands by April 2, 2012 or no funds will be available. Your action today is being asked in order for the County to begin the emergency bid process and start the project as soon as possible.

So, exactly what has happened so far?

A very preliminary estimate of \$150,000 from the Road District was submitted to FEMA on January 27th as part of the disaster request from the State and County. FEMA came out and inspected the area on February 7th.

Earlier this month, and as recent as yesterday morning, there have been extensive meetings between the Road District, Lincoln County, State Parks and Recreation and DLCD. Sand on the beach is covered by DLCD Rule

18, which severely limits on what can be done, when it can be done, and how it can be done. As of 4:00 P.M. last night, new conditions were made by the State.

Very quickly it became apparent that the scope of this project, which includes both the Water District and the Fire District, was more than any of the affected districts was prepared to handle. The legal requirements for bidding, monitoring the bids, compliance with State, and did I forget to mention, federal rules, was beyond the experience of any of the agencies.

After a number of meetings with Jim Buisman, the Public Works Director of the County, he agreed that the County should be the coordinating agency. Not only do they also have claims under FEMA, but they have dealt with FEMA in the past and understand how that agency works. The Road District, Water District, and Fire District are able to sign Intergovernmental Agreements with the County to allow the County to manage the project. This ultimately makes it cheaper because the entire project will be handled by one agency, rather than have several bids going out, possibly more than one contractor in the area at the same time, and a general opportunity for things to really get fouled up.

What is the right-of-way and who is responsible for it? The right-of-way is that land between the property owner's property line and center of road. IF the road were to be vacated, then that area would be added to the property immediately adjacent to the road. A number of agencies use the right-of-way, including the road district, water district, fire district, PUD, Charter, and Pioneer Telephone to name just a few

It is important to remember that the maintenance of the right-of-way is the responsibility of the homeowner. Anything placed in the right-of-way is subject to removal without compensation restoration by any agency that has the right to use the right-of-way. It is possible during this project that some damage may occur. The affected property owner's will receive prior notification and should remove anything in the right-of-way that they don't want to risk losing. Every effort will be made to not cause damage, but very big equipment will be used and it is kind of like have a dentist fill your teeth with a jackhammer. It is not too good for fine work.

The County and State rules that must be followed are as follows:

The work will be conducted during March and April, 2012, with continuing seasonal storm activity, high surf and peak tides. Waves and wind will quickly redistribute any piles of sand that may be a hindrance to pedestrian or vehicle travel along the ocean shore. The timing of the project will minimize the length of time before the material is distributed.

The proposed project involves removing sand from the roadway and right-of-way along Oceania Avenue, using heavy equipment. Roadside sand will be scraped, loaded and transported onto the beach and spread out in a manner that will allow easy disbursement by high tides and it's redistribution within the littoral cell. The placement of sand will be conducted along 2,000 feet of beach below the high tide line, on an area estimated at 20-25 acres. The precise location and extent of sand distribution will be dependent upon the beach width and profile at the time of placement and consultation with OPRD staff. The applicant will submit an application to OPRD for a "Motor Vehicle on the Ocean Shore" Permit.

OPRD "Motor Vehicle on the Ocean Shore" Permit Conditions

1. Signs shall be posted at the Oceania Drive beach access and north and south points along the ocean shore to notify beachgoers of the project. People walking along that section of beach will need to stay clear of the equipment in operation; otherwise, beach use will be unrestricted.
2. While use of heavy equipment is occurring, personnel shall be available to keep onlookers a safe distance away and to ensure that public safety is not compromised.
3. The project shall be constructed in accordance with the submitted plans and descriptions for implementing the project.
4. Use of public beach access routes, construction of any roads or other temporary access improvements shall remain open for pedestrian and emergency access. Upon completion of the project, the beach access shall be returned to its pre-existing condition.
5. All material placed on the beach shall be placed between the most recent high tide line and the surf line so that material will be redistributed during the next high tide. Sand placed on the beach will be spread and leveled out at a height of no more than 2 feet. To facilitate the efficiency of the operation, sand may be temporarily

piled up near the high tide line, with spreading and leveling to be completed by the following day. In no circumstance, shall temporary sand piles block public access north and south along the ocean shore.

6. Sand transferred onto the beach shall be free of soil, gravel, rocks or other debris and vegetation.
7. The Permittee shall contact and be responsible for obtaining any required permit approvals from the U.S. Army Corps of Engineers and the Oregon Department of Fish and Wildlife, if applicable to this project.
8. If an extension is necessary, OPRD staff will determine the length of the time extension, and review the conditions of approval to determine whether changes to the conditions are needed.
9. All applicable state and local codes shall apply.

During road construction across the dune, the existing European Beach grass can be removed in clumps and placed aside for replanting. Upon completion of the project, beach grass can be replaced in the restored area.

If road fill material placed across the ocean shore area, the contractor shall use filter fabric as a base to contain the loss of road fill material when the road is removed.

At the end of the project, the lot and the beach access are to be restored to their prior condition. In addition, there may be additional conditions from the Corps of Engineers and Fish & Wildlife. If FEMA funds are not available, or if the Homeowner's Board does not approve the request concerning the lot at 230 Oceania and clearing the beach access, the sand will not be removed from Oceania. The Road District does not have the responsibility, nor the money, to remove the sand.

President Fernandes asked what exactly was needed from the Bayshore Board of Directors. Glen said two decisions needed to be made; to approve sand removal at 230 NW Oceania even though there is a home on the property and to remove sand from the beach access to allow for huge machines to move the sand from the road and rights-of-way back to the beach.

MSP unanimously to approve sand to be moved from the lot at 230 NW Oceania Dr. to the beach as directed by Lincoln County and valid for the year of 2012.

MSP to give permission to remove sand from the beach access between 230 NW Oceania Dr and 302 NW Oceania Dr. for the purpose of sand removal as directed by Lincoln County and valid for the year of 2012.

A question and answer time followed.

History and Rational for Fine For Dumping Sand On The Right Of Way

History

2013

Bayshore Rd. Dist. applied for and was awarded a FEMA grant to clear sand off of right of way on Oceania between Marineview and Alsea Bay including feeder streets. Also cleared sand off of road ways. (The Bayshore Road District applied for the grant since it was the only government entity in Bayshore that could apply for the grant under federal guidelines.)

2013

Roads were cleared and then repaved. Within a few weeks some property owners on the west side of Oceania were clearing sand off their driveways and around their homes and dumping it on the right of way. This sand, along with blowing sand, soon covered the cleared roadway and right of way.

3/17/14

Letter sent to Lincoln County Commissioners from the BOD asking for assistance in helping structure sand removal guidelines so Oceania could be kept clear.

10/17/15

Letter from BOD sent to Bill Hall, Lincoln County Commission, asking for assistance in the matter.

Rational The current fine for Unkempt Lot is \$100. There is another provision that would allow giving the property owner notice that the Bayshore BOD is going to clear the property and then bill the property owner. If this isn't paid, it would become a lien on the property.

11/21/15

A meeting with Bill Hall, Onno Husing, Wayne Belmont, Bayshore Planning Committee members and BOD members met to discuss solutions

to the sand problem on Oceania. It was recommended a Sand District be formed. A committee was assigned the task to look at the possibility for a Sand District. The committee decided not to pursue the Sand District but try other means of keeping Oceania clear.

PROPOSED FINE--DUMPING SAND ON THE RIGHT OF WAY

Bayshore Planning Committee

2006, 2010 & 2014

Oceania are very high dunes, with sand sluffing off onto right of way and roadway.

6/24/15

The Bayshore Planning Committee sent a letter to the property owner of 206 and 210 Oceania suggesting the dunes be lowered.

1/12/16

A second letter was sent to the same property owner, same subject matter.

2/3/16

Violation letter for Unkempt Lot with the costs to lower the dunes and mat was sent to the property owner. He was given 14 days to respond. He began negotiations to sell lots.

2014

Oceania was owned by another individual who had plans to lower his lot and build a home. He has now purchased 210 Oceania.

11/23/16

Seal Rock Water District completed clearing the right of ways along Oceania between Marineview and Alsea Bay after the new water lines had been installed. Most of the right of way is cleared 5 – 10 feet back from the pavement.

11/26/16 –12/3/16

Sand was cleared off of driveway at 118 Oceania and dumped on right

of way. This property owner has been told repeatedly not to put sand on the right of way but continues to do so. Water district employees, a Planning Committee, a Bayshore Road District member as well as someone clearing sand off of other properties, using the correct procedure, have witnessed the property owner dumping sand on right of way. He has a piece of equipment that is either stored in his garage or is transported with him for this purpose. The property owner at 34 Oceania has cleared off his driveway and dumped the sand on the right of way in front of his property as well as on the east side of Oceania. This has happened twice since the Seal Rock Water District cleared the right of ways in November.

Dumping Sand Fine On Right-Of-Way Rational

The current fine for Unkempt Lot is \$100. There is another provision that would allow giving the property owner notice that the Bayshore BOD is going to clear the property and then bill the property owner. If this isn't paid, it would become a lien on the property.

The Bayshore Planning Committee believes a higher fine is needed for those dumping sand on the right of way along Oceania. A fine of \$2000 per occurrence is recommended. It would be the property owner's responsibility to get the proper permit and pay to have the sand taken back to the beach. It's our belief that sand on the right of way in front of a property is the property owner's responsibility. The owner would be responsible unless they can prove someone else put the sand on their property.

Could also do graduated fine--west side higher than east side.

- A Bayshore Beach Club, Inc Planning Committee as described in the Bylaws, Article V, Section 5 and the Declarations Article II, Section 7, requests an addition to the existing Declarations Violations and Fine System
- B The Bayshore Beach Club, Inc. Guideline Determinations state that Right of Ways established by the LCBD are a given distance from the center of the road and is provided to permit public utilities to install and service buried or overhead wiring and piping and for road and road maintenance Property owners are responsible for the care and maintenance of Right of Ways on their property.
- C. Illegal disposal of sand in the public Right of Ways creates a hazard for emergency vehicles and others using the roadways.

NOW, THEREFORE IT IS RE- SOLVED, that the Policies & Procedures Committee believes it is in the best interests of Bayshore Beach Club, Inc. to impose a fine, to be determined by the Board of Directors, on those who place sand on the Right of Ways.

NOW, BE IT FURTHER RESOLVED that a copy of this resolution shall be sent to owners at last known address WHEREAS, the [Planning] Com- mittee deems it in the best interest of the Association to change the text of Section C-1d, of the Poli- cies and Procedures, How are Violations Dealt With relating to num- bers and types of letters sent and the timeline of the Fine Schedule.

- The first letter shall be a Noti- cation of Violation letter that will be sent via rst class mail and giving 21 days to respond.
- If 21 days expires with no re- sponse, a Notice of a Fine Let- ter will be sent via certi ed mail and the same letter will be sent via 1rst class mail.
- If 21 days expires without a response, the Planning Committee will make a recommendation to the Board of Directors to issue a Fine A person receiving a Fine issued by the Board of Directors will be given until the next scheduled Board meeting to appeal the decision.
- NOW THEREFORE IT IS RE- SOLVED that for violations of Placing Sand on the Right of Ways, the rst letter shall be a Notice of a Fine Letter that will be sent via certi ed mail and the same letter will be sent via rst class mail.
- If 21 days expires without a response, the Planning Com- mittee will make a recommen- dation to the Board of Direc- tors to issue a Fine A person receiving a Fine issued by the Board of Directors will be given until the next scheduled Board meeting to appeal the decisions.
- NOW IT THEREFORE BE RESOLVED that a copy of this Resolution shall be mailed to all Owners at their last known address

MSP unanimously to send the proposed Resolutions (above) to the attorney for a timely review before the Board made a decision.

**Bayshore Beach Club, Inc. Board of Directors Meeting February 18, 2016
SAND FINE RESOLUTIONS**

Bayshore’s attorney has submitted his opinion on the Resolutions, and the Board discussed his recommen- dations. As per Janet Golway of the Sand Lobby, residents living on the east side of NW Oceania Drive who have sand accumulating on their own property can have that sand hauled away without a permit.

MS to approve both Resolutions, with a \$2,000.00 ne and using the recom- mendations made by the attorney. MSA to change LCBD to Lincoln County Building Department, then it was further amended to add twenty- one (21) days as the timeline in which to appeal.