

**EXHIBIT A**  
**FINDINGS OF FACT IN SUPPORT OF ORDINANCE NO. 228**

**CONSISTENCY WITH DUNES CITY CODE**

**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 proposal is 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 proposal is 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 October 8, 2015, at least 20 days and not more than 40 days before the first public hearing before the Planning Commission on October 29, 2015. 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:** Notices of the October 29, 2015 Planning Commission public hearing were published in the Siuslaw News on October 10 and 14, 2015. Notices of the April 14, 2016 City Council public hearing were published in the Siuslaw News on March 30 and April 2, 2016. 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 proposal is 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 proposal is consistent with this criterion because a notice was sent to DLCD on August 18, 2015, at least 35 days prior to the first evidentiary hearing with the Planning Commission on October 29, 2015. This criterion is met.

## **CONSISTENCY WITH 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 proposal is consistent with this policy 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. 228 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. This criterion has been 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 proposal is 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**

**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:** Dunes City has established a Water Quality Committee that has provided the Planning Commission and City Council with information and recommendations regarding water quality over the years.

The proposal is consistent with this policy because no clear correlation has been established between septic system effluent and the water quality of Siltcoos and Woahink Lakes. However, Ordinance No. 228 is intended to improve upon the existing state regulatory requirements for septic system maintenance for the benefit of all residents in Dunes City.

**Finding:** The EPA has adopted voluntary national guidelines for the management of onsite wastewater treatment systems.<sup>1</sup> Where sustained performance of treatment systems is critical to protect public health and water quality, individual owners of wastewater treatment systems must demonstrate that routine maintenance is performed in a timely manner and that the condition of the system be inspected periodically. Ordinance No. 228 is consistent with these guidelines in that it requires periodic inspection and pumping, when necessary, of individual wastewater treatment systems.

This criterion is met.

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<sup>1</sup> U.S. Environmental Protection Agency, *Voluntary National Guidelines for Management of Onsite and Clustered (Decentralized) Wastewater Treatment Systems*, March 2003.

## **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:** Water quality in Siltcoos Lake has been declared to have been “impaired” due to weeds and algae by the EPA since the 1960’s and DEQ has placed it on their list of impaired water bodies in 2006. Water quality data has shown a decrease in phosphorus levels beginning in January of 2010, when the statewide ban on cleansing agents containing phosphate went into effect.

**Finding:** The proposal is consistent with this policy because it is consistent with the septic system requirements established by DEQ and administered by Lane County. These regulations ensure adequate sewage disposal systems are created, which preserve the quality of land and water resources in the city. Samples have been collected from Siltcoos and Woahink Lakes and while it is a scientific fact that septic system effluent may degrade water quality there has been no correlation established between water quality and erosion or septic system effluent in either Siltcoos or Woahink Lakes. To address the maintenance of septic systems, the proposal improves upon the existing state regulatory requirements by requiring periodic inspections and, if necessary, maintenance, for septic systems in an effort to preserve the quality of the water resources of the 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 proposal is consistent with this policy because it is consistent with the septic system requirements established by DEQ and administered by Lane County, which ensure adequate sewage disposal systems are created.

**Finding:** The proposal is consistent with this policy because the DEQ certified inspectors are aware of and trained to comply with DEQ requirements for septic installation, maintenance and inspection.

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 proposal is consistent with this policy because it is consistent with the septic system requirements established by DEQ and administered by Lane County. These regulations ensure adequate sewage disposal systems are constructed that do not exceed the carrying capacity nor degrade the quality of the land and water resources in the city. Ordinance No. 228 operates to monitor these systems through inspection to ensure that



they are maintained to operate efficiently. While onsite sewage disposal systems have the potential to contaminate surface water and groundwater sources, samples collected from Siltcoos and Woahink Lakes have demonstrated no clear correlation between water quality and erosion or septic system effluent other than a decrease in phosphorus levels and an increase in clarity that coincides with the effective date of the statewide ban on cleaning agents that contain phosphates. To address the maintenance of septic systems, the proposal improves upon the existing state regulatory 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 proposal is consistent with this policy because it is consistent with the septic system regulations established by DEQ and administered by Lane County. These regulations require that adequate sewage disposal systems are constructed, which ensure the short-term capabilities of the available natural resources are preserved. While onsite sewage disposal systems have the potential to contaminate surface water and groundwater sources through failure, samples collected from Siltcoos and Woahink Lakes have demonstrated no current correlation between water quality and erosion or septic system effluent other than a decrease in phosphorus levels and an increase in clarity that coincides with the effective date of the statewide ban on cleaning agents that contain phosphates. The proposal improves upon the existing state regulatory requirements for septic system maintenance to address the long-term capabilities of the available natural resources (surface water quality) and to reduce future man-made pollutants due to inefficient onsite wastewater systems.

This criterion is met

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

**Finding:** The proposal is 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.

**Finding:** To ensure coordination with appropriate agencies, referrals were sent to the Dunes City Building Official, Lane County Sanitation Department, DEQ and to DLCD 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:** Ordinance No. 203 placed the City's septic system maintenance procedures in Title XV of the Dunes City Code, which contains the City's land use regulations. Ordinance No. 228 more appropriately places the City's septic system maintenance procedures in Title XIV of the Dunes City Code, which addresses all water resources, including groundwater. Thus, if a septic system fails near a well, the City would need to ensure that groundwater as well as surface water are protected.

Under Title XV, the City would have to hold a public hearing before accepting a recommendation regarding pumping frequency from a qualified licensed licensed inspector. This requirement would be time consuming and costly and would not be for the benefit of the residents of Dunes City.

**Finding:** The Environmental Quality Commission has adopted administrative rules for onsite wastewater treatment systems. (OAR Chapter 340, Division 71). These rules provide for a site evaluation prior to the construction of a new onsite wastewater treatment system, standards regarding the placement and construction of these systems and mandatory repair of failing systems. These rules are implemented through a permit system and, in Lane County, the DEQ has delegated the issuance of these permits to Lane County. Neither the EQC rules nor Lane County regulations require mandatory inspection or pumping of onsite wastewater treatment systems. Records of system inspection and pumping are not kept by the DEQ or Lane County unless they involve a failing system that has been repaired or replaced.

The City Council of Dunes City interprets Policy E6 to require the adoption of a program that improves maintenance of septic systems beyond the regulatory floor set by state law. The proposal is consistent with this policy because it improves upon the existing state regulatory requirements by requiring mandatory inspection and a maintenance schedule 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, as system pumping needs vary with individual systems, and therefore has 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 DLCD notifying them of the proposed amendments. In response, the representative of the Lane County Sanitation Department commented that he liked "the idea of recognizing the various occupancy loads and frequency of use of the septic systems." 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 proposal is consistent with this policy because it is 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.

### **CONSISTENCY WITH OREGON REVISED STATUTES**

***ORS 197.610(1) Before a local government adopts a change, including additions and deletions, to an acknowledged comprehensive plan or a land use regulation, the local government shall submit the proposed change to the Director of the Department of Land Conservation and Development. The Land Conservation and Development Commission shall specify, by rule, the deadline for submitting proposed changes, but in all cases the proposed change must be submitted at least 20 days before the local government holds the first evidentiary hearing on adoption of the proposed change. The commission may not require a local government to submit the proposed change more than 35 days before the first evidentiary hearing.***

**Finding:** Notice of the adoption of Ordinance No. 228, which amends the Dunes City Code, was submitted to the Oregon Department of Land Conservation and Development on August 18, 2015, 72 days prior to the first evidentiary hearing before Planning Commission. This criterion is met.

***ORS 227.186(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.***

**Finding:** In accordance with ORS 227.186 (Ballot Measure 56), notice of the proposed changes to the Dunes City Code was mailed to owners of real property in Dunes City on September 28, 2015; more than 20 days but less than 40 days prior to the first evidentiary hearing on October 29, 2015. This criterion is met.

***ORS 454.615 and 454.625 require the Environmental Quality Commission (EQC) to adopt rules regarding the operation and maintenance and the pumping out or cleaning of subsurface sewage disposal systems.***

**Finding:** The EQC has adopted these rules in Chapter 340, Division 71 of the Oregon Administrative Rules and Ordinance No. 228 has incorporated mandatory procedures to implement these rules. This criterion is met.

## CONSISTENCY WITH OREGON ADMINISTRATIVE RULES

*The Land Conservation and Development Commission has not adopted an administrative rule to implement Statewide Planning Goal #6. However, OAR 660–015–0000 adopts Statewide Planning Goals and Guidelines #1 through #14.*

**Finding:** Chapter 340, Division 71 of the Oregon Administrative Rules addresses EQC rules for septic tank systems. Proposed Section 142.030.B. requires existing onsite wastewater disposal systems to be inspected and evaluated by a qualified inspector. This is consistent with OAR 340-071-0155(1)(a), which lists the qualifications necessary to evaluate an existing onsite wastewater disposal system.

**Finding:** Proposed Section 142.060.A. of the Dunes City Code requires that inspections and evaluation standards shall meet those as required by ORS Chapter 454 and Oregon Administrative Rules. This is consistent with OAR 340-071-0155(1)(b), which lists what must be included in the evaluation of an existing onsite wastewater disposal system.

This criterion is met.

## CONSISTENCY WITH STATEWIDE PLANNING GOALS

### Statewide Planning Goal 2: Land Use Planning (OAR 660–015–0000(2))

*Opportunities shall be provided for review and comment by citizens and affected governmental units during preparation, review and revision of plans and implementation ordinances.*

**Finding:** Referrals were sent to the Dunes City Building Official, Lane County Sanitation Department, DEQ and to DLCD notifying them of the proposed amendments, public hearing dates and requesting comments.

### Statewide Planning Goal 6: Air, Water and Land Resources Quality. (OAR 660–015–0000(6))

*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.*

**Finding:** Statewide Planning Goal 6 requires the development of plans that have (1) methods and devices for implementing the goal; (2) that detail the implementation roles and responsibilities for carrying out this goal and; (3) that manage conservation and development activities in a manner that accurately reflects the community's desires for a quality environment and a healthy economy and is consistent with state environmental quality statutes, rules, standards and implementation plans.

**Finding:** Many of the residents of Dunes City take their water supplies directly from the surface waters of Woahink and Siltcoos Lakes. Dunes City does not have a sewage system and the residents rely upon subsurface sewage disposal systems for the treatment of their sewage. The U.S. Environmental Protection Agency (EPA) has noted that subsurface sewage disposal systems that are sited in densities that exceed the treatment capacity of regional soils and systems that are poorly designed, installed, operated or maintained can cause problems. The most serious documented problems involve contamination of surface waters and ground water with disease-causing pathogens and nitrates. Other problems include excessive nitrogen discharges to sensitive coastal waters and phosphorus pollution of inland surface waters, which increases algal growth and lowers dissolved oxygen levels. The EPA has estimated that 168,000 viral illnesses and 34,000 bacterial illnesses occur each year as a result of consumption of drinking water from systems that rely on improperly treated ground water.<sup>2</sup>

**Finding:** In regards to water quality, Dunes City's plan for implementing Goal 6 will rely upon Ordinance No. 228's septic tank management and inspection program. This ordinance requires an initial inspection of onsite wastewater disposal systems by qualified inspectors. Subsequent pumping is dependent upon the assessment of the inspector. The City will maintain inspection and pumping records and a map of the location of each system.

This criterion is met.

## **OTHER FINDINGS IN SUPPORT OF ORDINANCE NO. 228**

**Finding:** The Department of Environmental Quality has determined that a properly functioning septic system treats sewage to minimize groundwater and surface water pollution and that a malfunctioning system is a health hazard to the community and will harm natural resources. (DEQ Website).

**Finding:** DEQ's website cites some important questions for determining whether a septic tank system is operating efficiently. These questions include:

- Was the onsite wastewater disposal system installed with a permit?
- Is the onsite wastewater disposal system properly sized depending upon its usage?
- How old is the onsite wastewater disposal system and has it been properly maintained?

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<sup>2</sup> U.S. Environmental Protection Agency, *40 CFR Parts 141 and 142; National Primary Drinking Water Regulations; Ground Water Rule; Proposed Rules*, Federal Register, May 10, 2000.

- Have there been problems or complaints in the past regarding the onsite wastewater disposal system?
- Who is a qualified inspector.

Ordinance No. 228 creates a record-keeping system that answers these questions and provides for necessary inspection and evaluation of existing onsite wastewater disposal systems in Dunes City.

**Finding:** The pumping frequency adopted by proposed Section 142.110, the Oregon State University Extension Service Septic Tank Maintenance Table, is almost identical to that adopted by the Eugene Water and Electric Board (EWEB) and AAA Septic Tank Pumping, Installation, and Repair LLC.