

APPLICANT'S CLOSING ARGUMENTS  
BANDON BIOTA, LLC GOLF COURSE APPLICATION  
HBCU-22-001  
CONTINUATION (THIRD SEVEN DAYS)

The following contains the applicant's Closing Argument to the Coos County Planning Commission, regarding HBCU-22-001 for the proposed Bandon Biota Golf Course.

The first seven days of the continuation period was for additional testimony and evidence by all parties. The second seven days of the open record was intended to rebut evidence submitted during the first seven-day period. The third seven days of the open record period is for the Applicant's Closing Argument, during which no new evidence has been submitted.

CLOSING ARGUMENT

As stated during the applicant's public testimony at the initial Planning Commission hearing, there are several primary statutory, administrative rule, and ordinance criteria applicable to a golf course in the EFU zone.

- Is the proposed course a standard 9-hole or 18-hole golf course?
- The land upon which the golf course is located is not High Value Farmland.
- Will the proposed golf course force a significant change in, or significantly increase the cost of accepted farm or forest practices on surrounding lands?

Other criteria applies when accessory uses (clubhouse, restaurant, pro-shop, etc.) are proposed in conjunction with the proposed golf course:

- Does a structure, or group of structures, within three miles of an Urban Growth Boundary (UGB) comply with the 100-person Design Capacity standard?
- Do all proposed structures comply with all special considerations (development in the coastal shoreland boundary) and natural hazards (Beaches and Dunes and liquefaction zone.)

These criteria have been separated to simplify the decision-making process and to assist with the implementation of conditions that assure compliance, and allow approval of the application.

GOLF COURSE CRITERIA

**Is the proposed course a standard 9-hole or 18-hole golf course?**

Oregon Administrative Rule states that an 18-hole golf course "is generally characterized" by a site of "about" 120 to 150 acres of land, has a "playable" distance of 5,000 to 7,200 yards and a

par of 64 to 73 strokes. It is clear (and LUBA concurs) that the intent of this rule is to generally describe an 18-hole golf course and separate a standard course from other golf activities, such as three-par courses, driving ranges, or miniature golf courses, that are not allowed in the EFU zone.

The opponents argue that all the applicant's ownership surrounding the golf course should be included in the overall acreage of the course. However, lands surrounding the golf course are clearly not part of the "playable" area and that non-playable land is permitted as open space in the EFU zone. This issue was raised by ORCA, in *ORCA v. Curry County*, and LUBA ruled in favor of the golf course applicant based on the "generally characterized" language in the rule.

**The land upon which the golf course is located, is not High Value Farmland.**

The opponents have continuously contended that the applicant's property consist of High Value Farmland. The opponent's assertion is based on language found in ORS 215.710.

***215.710 High-value farmland description for ORS 215.705.***

*(1) For purposes of ORS 215.705, high-value farmland is land in a tract composed predominantly of soils that, at the time the siting of a dwelling is approved for the tract, are:*

As states: High Value Farmland as defined under 215.710 for the purpose of ORS 215.705

***215.705 Dwellings in farm or forest zone; criteria; transferability of application.***

*(1) A governing body of a county or its designate may allow the establishment of a single-family dwelling on a lot or parcel located within a farm or forest zone as set forth in this section and ORS 215.710, 215.720, 215.740 and 215.750 after notifying the county assessor that the governing body intends to allow the dwelling. A dwelling under this section may be allowed if:*

The statutory provisions that the opponent relies on are intended to address dwellings in the Farm (EFU) zone and not golf courses.

**Will the proposed golf course force a significant change in, or significantly increase the cost of accepted farm or forest practices on surrounding lands?**

As requested by staff, in the first seven days of the continuation period, the applicant submitted a more thorough analysis of potential golf course impacts to the individual farm and forest uses on adjacent and nearby properties (see pages 1 through 9 of that document).

Both staff and the opponent contended that the applicant's use is not farm related. The applicant agrees and is aware that a golf course is permitted in the EFU zone as a "non-farm" use under statute. The applicant's intent is only to demonstrate that the activities associated with

maintaining a golf course are very similar, if not the same, as those activities conducted in conjunction with a farm use. The time-tested method for determining whether one use is compatible with another use is to compare the activities that occur in conjunction with each use. If the uses are generally the same, then a reasonable conclusion can be made that the uses are compatible.

It is important to note that the threshold regarding impacts under the rule is that there is not a “significant impact” to farm or forest uses. It does not mean that there will be no impact. It is also important to note that the determination of an impact under law, need not be absolute, but rather “what a reasonable person” would conclude is factual.

Consideration should also be given the fact that notice was sent to adjacent and nearby property owners, and not one farm operator participated in the application process. Potential impacts to adjacent farm uses does not appear to be an issue with those that could be affected.

### **Impacts Associated with Water Usage**

Several important findings were included in the applicant’s submitted Hydrology Report, as follows:

- It is likely that the lower water table from which the applicant will procure water, is not connected to the upper water table utilized by adjacent farm uses.
- The deeper MTAS zone is bounded to the east by low permeability bedrock.”

This suggests that most of the water pumped at wells completed in the deeper zone may come from the west, away from the easterly farm uses.

Regardless of what is currently known or not known, the applicant has submitted significant evidence demonstrating that any use of water permitted by the Oregon Water Resources Department will be regulated and monitored. Oregon’s water laws are based on the doctrine of prior appropriation. This means that the first person to obtain a water right on a stream (or groundwater) is the last to be shut off during times of low availability.

Based upon water rights law protecting senior water rights, the proposed golf course cannot, and will not, impact the viability of an existing agricultural use resulting from its water usage. Therefore, based on Oregon water law and monitoring requirements, it is reasonable to conclude that water use by the golf course will not force a significant change in accepted farm practices on surrounding lands devoted to farm use.

## ACCESSORY USES IN CONJUNCTION WITH A GOLF COURSE

### **100-Person Design Capacity Standard**

The applicant has committed to using the Bandon Trails Clubhouse design (no longer conceptual) and has submitted (first seven day continuation period) a revised design capacity

analysis by Scott Edwards Architecture. While the opponent disagrees that the evidentiary threshold of evidence has been achieved, the Land Use Board of Appeals has put this issue to rest by accepting the same level of evidence provided herein.

If the applicant utilizes the Bandon Trails Clubhouse, the evidence provided is sufficient for approval of this standard. The primary structure for consideration is the clubhouse, restaurant and pro-shop that will be occupied by the golfing public. Although employees may not need to be counted, they too have been counted based on institutional knowledge of how many employees it takes to run a single 18-hole golf course. It is just not necessary to show every office and every space that employees will occupy on a temporary basis.

**NOTE:** If the applicant chooses a different design for the clubhouse and restaurant, “Design Capacity” can be addressed through a future conditional use process. If the Planning Commission determines that design capacity does need to include the design of all structures, design capacity can be a condition of approval, when the design of all structures is known. The design standard can be addressed at the same time as the required natural hazard, and beaches and dunes conditional use applications addressed below.

## **Special Considerations, Natural Hazards, Beaches and Dunes**

### **Structures**

As addressed in the original application and subsequent continuation evidence documents, it is impracticable to spend hundreds of thousands of dollars designing accessory structures prior to knowing whether a golf course has been approved. However, the process for natural hazards (liquefaction) and beaches and dunes (limited development suitability), are processed through a conditional use with public notice. Therefore, those standards can be addressed later in conjunction with a separate application process.

### **Golf Course**

Potential impacts associated with the construction/development of the golf course is addressed in the Cascadia Geoservices report included with the application. The report cites that “based on a site evaluation and experience working in the area” a conclusion was made that there will be no hazards to either life, public and private property, or to the natural environment by the proposed development of a golf course.

In conjunction with the development of the course, it will be required that the project receive a DEQ 1200-C Erosion Control Permit. The permit will require that best management practices be implemented regarding erosion control and stormwater management, before and after development. The permit is regulated through periodic inspections and regular site visits during storm events.

### **Drainage**

There will likely be drainage systems installed at various locations throughout the golf course, and all collected stormwater runoff will be contained on-site. There are various wetlands

throughout the proposed course that currently act as stormwater drainage basins. It is practical for the golf course and beneficial to the wetlands, that the basins continue to be utilized for the disbursement of stormwater.

### **Coastal Shoreland Boundary**

There is an existing single lane bridge that currently crosses Two-Mile Creek and is contained within the Coastal Shoreland Boundary (CSB). Because the applicant wishes to protect the creek and adjacent wetlands, they are proposing to utilize the existing bridge for access to the golf course. The local Fire Marshall has inspected the bridge and determined it was adequate for emergency response. The applicant is in the process of having the bridge inspected by a structural engineer to establish load capacity for compliance with county road standards.

There will be no development within the Coastal Shoreland Boundary, and therefore no impacts to CSB resources.

### **Other Development Factors**

#### Roads and Highway

Access onto Boak Lane from Highway 101 has been addressed through a letter provided by the Oregon Department of Transportation (ODOT). Access for employees on to Hoffer Lane or at the applicant's driveway further south, will also be permitted by ODOT. Although access is necessary for development, it is based upon standards that must be complied with by the applicant.

The same is true regarding county road standards for roads proposed in conjunction with the golf course. These are not subjective criteria; the applicant must comply with the roadmaster's standards, or development permits will not be issued for the development of the course.

### CONCLUSION:

Throughout this process, the opponents have attempted to complicate the process by exaggerating or falsely framing requirements of law and case law, or by simply making unsubstantiated and salacious assertions regarding the applicant's reputation. Their theory seems to be that the more boldly you say something, and the more times you repeat yourself, the more likely it is to be accepted as the truth. Case in point, with no evidence from an independent engineer, the opponent repeatedly claims that the applicant's licensed geotechnical engineer has not provided substantial evidence.

In this closing argument, the applicant is attempting to simplifying the process and criteria for qualifying a golf course in the Exclusive Farm Use zone. Evidence does not need to be overly technical or complicated to be substantial. In the end, the burden of proof is what a reasonable person would conclude to be factual.

## SUGGESTED CONDITIONS OF APPROVAL

Based upon evidence submitted in the application, the applicant suggests that the following or some likeness be imposed as conditions or approval.

1. If the applicant changes the design of the submitted clubhouse (Bandon Trails Clubhouse), the 100-person design capacity shall be addressed through a separate application process with notice.
2. The applicant shall be required to address geotechnical issues for all structures developed within the Natural Hazard Liquefaction and Beaches and Dunes overlays. The submitted geotechnical analysis will be processed as a separate conditional use with notice.