Coos County Community Development
Mailing Address: 250 N. Baxter, Coquille, Oregon
60 E. Second St., Coquille OR 97423
Planning, Building and Enforcement
Phone: 541-396-7770
Fax: 541-266-1146
www.co.coos.or.us
TDD (800) 735-2900

DATE: July 25, 2024

TO: Planning Commission

FROM: Jill Rolfe, Community Development Director

RE: HBCU-24-001 Continuation for Ocean River LLC

The record for HBCU-24-001 Ocean River LLC is closed unless the Planning Commission reopens the matter for additional testimony.

ITEM A – File # HBCU-24-001 – CONTINUATION The applicant/property owner is Ocean River LLC. The proposal is for a regulation 18-hole golf course with accessory uses in the Exclusive Farm Use (EFU) zoning district. The accessory uses consist of a clubhouse/restaurant, an agronomy center/maintenance facility, a turn-stand (combination restrooms/vendor facility), a minimum of two stand-alone restrooms, a caddy shack, a driving range, a practice course, and the necessary parking/drop off areas. The subject properties are identified as Map Number Township 29S, Range 15W, Sections 13/24/25, Tax Lots 600, 1903 / 100, 201 / 900, 1000, 1200, Tax Account Numbers 1239601, 1239606, 1240300, 1240601, 1241700, 1241601, 1241602

Criteria

- Coos County Zoning and Land Development Ordinance (CCZLDO)
  - § 4.3.200(50) - Zoning Tables – Minor Estuary – Golf Courses
  - § 4.6.200(67) – Exclusive Farm Use – Use Tables - Golf courses not on high-value farmland as defined in ORS 195.300. (new golf course prohibited on High Value)
  - § 4.11.128 – Historical, Cultural, and Archaeological Resources, Natural Areas and Wilderness
  - § 4.11.129 – Beaches and Dunes
  - § 4.11.130 – Non- Estuarine Shoreland Boundary
  - § 4.11.131 – Significant Wildlife Habitat
    - Wetlands
    - Bird Habitat Sites (Goal #5 "5c" resources)
  - § 4.11.132 – Natural Hazards

        - Landslides and Earthquakes
            - Liquefaction Potential
        - Tsunamis
        - Erosion – Coastal – Wind
        - Wildfire
    - § 4.11.150 – Geological Hazards Special Development Review Standards
    - § 4.11.155 Geological Assessment Review

The applicant has addressed all of the valid criteria with the exception of the Geological Assessment Review which will be required to be completed prior to issuance of a Zoning Compliance Letter.

If the Planning Commission finds that the applicant has addressed the criteria the following conditions should be considered:

1. Conditions of approval – The applicant shall comply with the following conditions of approval, understanding that all costs associated with complying with the conditions are the responsibility of the applicant(s), and that the applicant(s) are not acting as an agent of the county. If the applicant fails to comply or maintain compliance with the conditions of approval, the permit may be revoked as allowed by the Coos County Zoning and Land Development Ordinance.
2. Shall comply with all applicable development standards in Section 4.6.210.
3. Shall comply with Oregon Department of Transportation requirements.
4. Shall submit a traffic plan including parking for the County Road Department to review and approve.
5. Shall address the Beaches and Dunes with Limited Suitability and Geohazard review for any structures.
6. The applicant shall obtain a Zoning Compliance Letter once the land use conditions have been completed.
7. All applicable federal, state, and local permits shall be obtained prior to the commencement of any development activity. If there were comments from any other agency were provided as part of this review, it is the responsibility of the property owner to comply. The applicant shall comply with the comments raised by Oregon Department of Fish and Wildlife, Oregon Department of Transportation, Coquille Tribes and Department of State Lands.

All testimony is attached along with the agenda and minutes.

Cassidy Carr

From: Planning Department
Subject: FW: HBCU-24-001 Ocean River LLC request for comments

From: HOROWITZ Micah <Micah.HOROWITZ@odot.oregon.gov> **On Behalf Of** ODOT Region 3 Development Review
Sent: Tuesday, July 2, 2024 1:58 PM
To: Planning Department <Planning@co.coos.or.us>; Permits <Permits@co.coos.or.us>
Subject: RE: HBCU-24-001 Ocean River LLC request for comments

This Message originated outside your organization.

Thanks Cassidy, we are reviewing this proposal. During a previous iteration of this project, we had agreed to a proposed southbound Right Turn Lane at Boak Ln and Highway 101 so I am checking with ODOT staff to see if that recommended condition of approval still stands.

Best regards,
Micah

Micah Horowitz | Development Review Planner
ODOT Region 3 | Southwest Oregon (Coos, Curry, Douglas, Jackson & Josephine Counties)
c: 541.603.8431 |e: micah.horowitz@odot.oregon.gov

From: Planning Department <Planning@co.coos.or.us>
Sent: Monday, July 1, 2024 10:33 AM
To: Permits <Permits@co.coos.or.us>; ODOT Region 3 Development Review <R3DevRev@odot.oregon.gov>; HOROWITZ Micah <Micah.HOROWITZ@odot.oregon.gov>
Cc: Planning Department <Planning@co.coos.or.us>
Subject: HBCU-24-001 Ocean River LLC request for comments

Good morning,

Attached please find application HBUC-24-001. Can you please submit comments for this application for a gold course at your earliest convenience?

Thank you,
Cassidy Carr
Planner I
Coos County Community Development
541-396-7770

Disclaimer

Wetland Land Use Notice Response

Response Page

Department of State Lands (DSL) WN# *

WN2024-0448

Responsible Jurisdiction

Staff Contact	Jurisdiction Type	Municipality
Cassidy Carr	County	Coos

Local case file #	County
HBCU-24-001	Coos

Activity Location

Township	Range	Section	QQ section	Tax Lot(s)
29S	15W	13		600, 1903

Street Address

Address Line 2

City

State / Province / Region

Postal / Zip Code

Country

Coos

Latitude	Longitude
43.055537	-124.409103

Township	Range	Section	QQ section	Tax Lot(s)
25S	15W	24		100, 201

Street Address

Address Line 2

City

State / Province / Region

Postal / Zip Code

Country

Latitude	Longitude
43.045377	-124.433184

Township	Range	Section	QQ section	Tax Lot(s)
29S	15W	25		900, 1000, 1200

Street Address

Address Line 2

City

State / Province / Region

Postal / Zip Code

Country

Latitude
43.034526

Longitude
-124.430877

Wetland/Waterway/Other Water Features

- There are/may be wetlands, waterways or other water features on the property that are subject to the State Removal-Fill Law based upon a review of wetland maps, the county soil survey and other available information.
- The National Wetlands Inventory shows wetland, waterway or other water features on the property
- The National Hydrography Dataset shows wetland, waterway or other water features on the property
- The county soil survey shows hydric (wet) soils on the property. Hydric soils indicate that there may be wetlands.
- The property includes or is adjacent to designated Essential Salmonid Habitat.

Your Activity

- It appears that the proposed project **may** impact Essential Salmonid Habitat and, therefore, **may** require a State permit.
- It appears that the proposed project **may** impact wetlands and **may** require a State permit.
- An onsite inspection by a qualified wetland consultant is recommended prior to site development to determine if the site has wetlands or other waters that may be regulated. The determination or delineation report should be submitted to DSL for review and approval. Approved maps will have a DSL stamp with approval date and expiration date.

Applicable Oregon Removal-Fill Permit Requirement(s)

- A state permit is required for 50 cubic yards or more of fill removal or other ground alteration in wetlands, below ordinary high water of waterways, within other waters of the state, or below highest measured tide.
- A state permit is required for any amount of fill, removal, and/or other ground alteration in Essential Salmonid Habitat and within adjacent off-channel rearing or high-flow refugia habitat with a permanent or seasonal surface water connection to the stream.

DSL Review

Wetland Ecologist Comments

Based on a review of the available information, the proposed project may impact wetlands and jurisdictional waters. A wetland delineation is recommended prior to construction. This site may contain interdunal swales, an Aquatic Resource of Special Concern. For questions on the wetland delineation process, please contact Matt Unitis at (503) 910-1559

This is a preliminary jurisdictional determination and is advisory only.

This report is for the State Removal-Fill law only. City or County permits may be required for the proposed activity.

☑ A Federal permit may be required by The Army Corps of Engineers: (503)808-4373

Contact Information

- For information on permitting, use of a state-owned water, wetland determination or delineation report requirements please contact the respective DSL Aquatic Resource, Proprietary or Jurisdiction Coordinator for the site county. The current list is found at: http://www.oregon.gov/dsl/ww/pages/wwstaff.aspx
- The current Removal-Fill permit and/or Wetland Delineation report fee schedule is found at: https://www.oregon.gov/dsl/WW/Documents/Removal-FillFees.pdf

Response Date

7/8/2024

Response by:

Chris Stevenson

Response Phone:

503-798-7622

For Official Use Only

For Official Use Only

This section will be hidden on the form sent out with the response.

Maps

NewRiverDunesTidal.pdf	805.43KB
NewRiverDunesStreams.pdf	904.85KB
NewRiverDunesNWI.pdf	26.04MB
NewRiverDunesLiDAR.pdf	1019.97KB

Request Received

6/27/2024

There was an Onsite Visit *

○ Yes ◉ No

Has Wetlands *

Yes

Permit Required *

Maybe

Delineation Required *

Yes

ESH *

Yes

Wild and Scenic *

No

State Scenic *

No

State-owned Water

No

Coast Zone *

Yes

Adjacent Waterbody

Two Mile Creek

Business Process Info

JC Email

chris.stevenson@dsl.oregon.gov

Applicant Name

Ocean River LLC

Applicant Email

iremy@bandondunesgolf.com

Property Owner Name

Bandon Biota LLC

Property Owner Email

Staff Contact Email

planning@co.coos.or.us

Site ID

146857

Notification Link

Oregon
Tina Kotek, Governor

Oregon Department of Fish and Wildlife
Umpqua Watershed District Office
4192 N Umpqua Highway
Roseburg, OR 97470
(541) 440-3353
FAX (541) 673-0372

July 8, 2024

Coos County Planning Division
225 N. Adams St.
Coquille, OR 97423

RE: Coos County HBCU-24-001

Dear Coos County Planning Commission,

The Oregon Department of Fish and Wildlife (department) appreciates the opportunity to submit comment on the Hearing Body Condition Use application 24-001, for a proposed golf course on 342 acres. The department's interest is with Oregon's wildlife, which is the property of the state,[1] and the state's Wildlife Policy that wildlife shall be managed to prevent serious depletion of any indigenous species and to provide the optimum recreational and aesthetic benefits for present and future generations of the citizens of Oregon.[2]

The department submitted comments on a similar application submitted by Bandon Biota, LLC in 2022 on this same property (HBCU-22-001). Conditions applied to the Planning Commission decision on that application, prior to the applicant's withdrawal of said application in January 2023, included Condition 6, "Applicant shall comply with conditions set out in Exhibit 6 (Oregon Department of Fish and Wildlife)." This references the previously submitted department comment letter in entirety. Since the last application was withdrawn, the department has received no consultation requests from the applicant in relation to previously submitted comments. The department has included those previously submitted comments and expanded on some based on new application information and updates that have occurred in Oregon rules since the previous application.

In accordance with the department's mission and Fish and Wildlife Habitat Mitigation Policy (OAR 635-415), staff submit the following preliminary comments and recommendations in relation to this proposal. Please include these comments for the record.

- It is unclear if surveys have been conducted to assess what wildlife species may be present on the property. Given the type of habitat, location, and scale of the project, the department recommends wildlife surveys be conducted to identify more specific recommendations for avoidance, minimization, and mitigation measures. It is recommended the applicant hire a biologist to conduct surveys. The department would be willing to provide technical guidance on methods and timing.
- The siting location immediately abuts, and shares similar habitat characteristics with, designated critical habitat for the federally listed coastal distinct population segment of pacific marten (*Martes caurina*, federal status: Threatened). Selection criteria[3] used by the United States Fish and Wildlife Service (USFWS) to determine critical habitat suggest that there is a high likelihood

[1] ORS 498.002.
[2] ORS 496.012.

3 https://www.federalregister.gov/documents/2021/10/25/2021-22994/endangered-and-threatened-wildlife-and-plants-designation-of-critical-habitat-for-the-coastal

of use by this species in the Bandon Dunes Natural Area. There are also known use areas immediately adjacent to the project area for other listed species. As such, the department suggests the county and/or applicant reach out to USFWS for guidance on minimizing impacts and to inquire on the potential need for an Incidental Take permit.

- Twomile creek is listed by the Oregon Department of State Lands (DSL) as Essential Salmon Habitat for Fall chinook, winter steelhead, and coho. If there are any new stream crossings (e.g. bridges, culvert installations, etc) associated with this project compliance with Oregon's fish passage laws (ORS 509.585 – ORS 509.910) is required.
    - All new and replaced stream crossings need to meet or exceed state of Oregon Fish Passage guidelines as defined under OAR 635-412. OAR 635-412-0035 (3) specifies that: "Requirements for fish passage at road-stream crossing structures such as bridges and culverts are:
      (a) Stream Simulation Option (preferred design alternative) where:
      (A) Open-bottomed and closed-bottom road-stream crossing structures shall have beds under or within the structure that:
      (i) Are equal to or greater than the active channel width multiplied by 1.2 plus 2 feet, as measured at sufficient locations outside the influence of any artificial or unique channel constrictions or tributaries both upstream and downstream of the site.
    - If there is any planned in-stream work (such as culvert replacement or bridge installation) associated with this project, it is advised that the applicant adheres to the Oregon Guidelines for Timing of In-Water Work for the associated stream. The instream work period for Twomile Creek is July 15th-September 30th. Exemptions to this time must be approved by ODFW.
- Per the County Comprehensive Plan, a 50 foot or greater riparian buffer is the recommended standard to protect stream habitats. Given the significant low stream flows and increased water temperatures that many watersheds in southwest Oregon have been experiencing, it is of great importance to Oregon's fish populations that protection of riparian buffers are maintained and supported. The department would be interested in reviewing any plans for work within a riparian area and can provide guidance on habitat improvements and minimization of detrimental impacts within riparian buffers.
    - The department is retaining this comment from the original 2022 comments for posterity. The department recognizes that the applicant addresses on pages 25-26 (10 a-i) ordinances pertaining to riparian vegetation and the minimum riparian vegetation setback. The applicant states that "All riparian vegetation shall be protected in conjunction with the development of the golf course.", "Any development proposed near a wetland or other waterway will maintain a minimum 50-foot setback.", and the other provisions do not apply to construction plans or will comply with local, state, and federal regulations. If this application is approved, and construction plans change in the future so as there may be riparian impacts due to structural development, the department would recommend mitigation actions in alignment with the department's Mitigation Policy.
- The department recommends additional details on management plans for water use and methods to reduce impacts to water quality. The new application does not add any new clarification to water use needs, only that they would be applying to utilize groundwater and wells. The section on drainage seems to rely primarily on existing wetlands to support water quality protection. There is no detail supporting the capacity of existing wetlands to handle the change in management activities that may alter the amount of run-off contaminants and nutrient influx from

fertilizers, chemicals, increased vehicle use on non-porous surfaces that currently do not exist on the site. The department recommends planting of additional vegetation surrounding the wetland habitats to create a better filtration buffer and a substantive stormwater management plant to prevent contamination of nearby waterways and wetlands.

- There is conflicting information in the application narrative to the maps. In the narrative the applicant states that no part of the course will be going through wetlands (page 1), however the maps of the course design seem to indicate that the course does potentially go through the wetlands associated with holes 2, 3, and 12.
- On page 30 of the application, the applicant addresses Section 4.1.131 of the Coos County comprehensive plan (Significant Wildlife Habitat) by stating "no portion of the course is within an identified Significant Wildlife Area". This section of the chapter specifically addresses: "Sensitive Big-game Range", Salmonid Spawning and Rearing Areas, and Bird Habitat Sites.
    - The property is within Year-round Peripheral Big Game Habitat. Per the mitigation policy, this habitat is Category 3: essential and not limited habitat or important and limited habitat. The Mitigation Policy goal for mitigation is "no net loss of habitat quantity or quality" with a strategy of "in-kind, in-proximity mitigation". The county comprehensive plan addresses impacts to big game habitat in relation to dwelling density and there are no dwellings proposed in this application. However, the department highlights the concerns with wildlife conflict below which could be reduced by maintaining and supporting quality habitat on adjacent/in-proximity lands and planning ahead by integrating management practices and designs to reduce the potential for wildlife conflict before they occur. The department offers the applicant the technical advice expertise of our local staff.
    - There is a plan identified raptor site less than 2 miles of the property and likely others that we do not know about. In order to ensure protection of any nest sites, and in line with the Forest Practices Act (629-665-0020); When a landowner, timber owner or operator proposes an operation near a resource site that requires special protection, the State Forester shall inspect the resource site with the landowner or landowner's representative, the operator and when available, the appropriate representative of the Department of Fish and Wildlife." This notification should apply to any nesting sites within one-half mile of the property. At that time a site inspection will be completed by our agency to determine to risk associated with construction activities.
      The US Fish and Wildlife Service oversees the protection of eagles and migratory birds outside of forestry actions, through the Migratory Bird and Habitat Program. Both eagles and their nests are protected. They provide guidance on when a take permit may be needed: https://www.fws.gov/story/do-i-need-eagle-take-permit.
    - As previously mentioned, Two-mile creek is designated by DSL as Essential Salmon Habitat.
- There are additional indirect effects associated with the placement of a golf course at this location, including:
    - The proposed area is adjacent to productive western snowy plover (*Charadrius nivosus nivosus,* state and federal status: Threatened) habitat and a habitat restoration area for the species. Increased public traffic during the sensitive nesting season may potentially decrease nesting success. Relatedly, garbage generated in areas of human activity has been shown to contribute to increased attraction of natural predators of plovers such as crows, ravens, and other natural prey species for the non-native red fox. Red fox will also

be attracted to the area with the creation of a series of open meadow environments interspersed with taller grass cover (like a Scottish Links course).
    - There is typically little tolerance for waterfowl and big game on golf courses, and actions to exclude or haze these species can cause detrimental impacts to these species and surrounding properties. Migrating birds are expending large amounts of biological resources on their journey and may be attracted to ideal conditions artificially created by the golf course and adjacent cranberry bogs. Additionally, the management practices of the greens typically create attractive, nutrient rich forage that attracts big game species. The soil disturbance on the green can cause significant damage depending on the big game species. Surrounding agriculture properties may experience additional wildlife conflict, as these practices can also create attractive conditions.
    - Additionally, the increased human presence in combination with highly desirable forage often leads to habituation of game species, which ultimately can create unsafe conditions for both humans and the habituated animal.
    - While some songbirds and raptors may still be able to utilize the heavily fragmented open space through the course, other wildlife species like some small mammals, waterfowl, and big game may be excluded (via active hazing, other human use exclusion, or lethal removal) due to the aforementioned conflicting uses. The department acknowledges that the habitat will be improved by the removal of the non-native vegetation and enhancement of native vegetation, but that value is tempered if wildlife are unwelcome to utilize it either spatially or temporally. Impacts from this loss for some species could be improved through mitigation in alignment with the mitigation policy for the respective habitat types on the property and their condition. The department recommends the applicant engage in discussions with the department on a course of action for appropriate mitigation.
- Based on the department's cursory review of the application, it appears that a water right will be required. However, the applicant should be aware that the department will be required, as part of the Oregon Water Resources Department (OWRD) process, to review new proposed uses of water (including groundwater which has a potential substantial interference with surface water) that may result in detrimental impacts to sensitive, threatened, or endangered fish. If the department's assessment reveals flow within the impacted reach are or are assumed to be entirely or partially below those essential to support the biological needs of fish, wildlife, or habitats and/or the proposed use will otherwise impact habitat recommendations to OWRD may reflect that assessment indicating that the proposed use may diminish physical habitat and alter the flow regime to which fish and wildlife are naturally adapted. These changes would be considered to negatively affect fish/wildlife distribution, productivity, and abundance. In these instances, where further reduction in flow or alteration of habitat from a proposed water use would impair or be detrimental to fish, wildlife, and/or their habitat mitigation may be required. The department recommends that the applicant contacts OWRD for more information on the water right permitting process.
    - The department has reviewed an OWRD application for a water right and diversion transfer request for properties owned by the applicant near this property and made recommendations in alignment with the form, but no new water right applications.

The department encourages pre-planning coordination for projects that may affect fish, wildlife and their habitats. The department recommends additional collaboration with the applicant to discuss and address the concerns and recommendations raised in this letter.

If there are any questions related to the department's comments, or the County and/or applicant would like to coordinate further with the department regarding the proposal, please contact me at 541-464-2399 or amy.e.darr@odfw.oregon.gov. Thank you for your consideration of the department's comments regarding Oregon's fish, wildlife, and habitats.

Sincerely,

Amy E. Darr
Regional Habitat Biologist
Oregon Department of Fish and Wildlife

Cassidy Carr

From: Planning Department
Subject: FW: Ocean River LLC application

From: Brett Johnson <brett@thebandonhouse.com>
Sent: Wednesday, July 10, 2024 11:31 AM
To: Planning Department <Planning@co.coos.or.us>
Subject: Ocean River LLC application

This Message originated outside your organization.

Staff Planning, Coos county commissioners

I am in support of this development
We have 2 choices
Let the gorse grow 24' tall where no one can benefit let alone see the ground or walk out there.

Or let Mike Keiser develop with a known community minded track record.
Creating needed jobs for the county.
We do not have very many opportunities like this, please do not pass this one up, he has done his homework.

Please approve the project and let the man do what he does well.

Brett Johnson
Bandon, Or
541-808-1999

Exhibit 5

Cassidy Carr

From: Planning Department
Subject: FW: Comments for HBCU-24-001 Ocean River LLC CU application

To: Jill Rolfe, Planning Director

Please include these comments into the hearing record for the
Ocean River LLC Conditional Use application HBCU-24-001
Also please let me know you have received this today, thank you.

I am concerned that the proposed application is incompatible with the adjacent Bandon State Natural Area (BSNA) and the Snowy Plover Management Area, (SPMA) and will have devastating effects on the ongoing federal efforts for plover recovery.

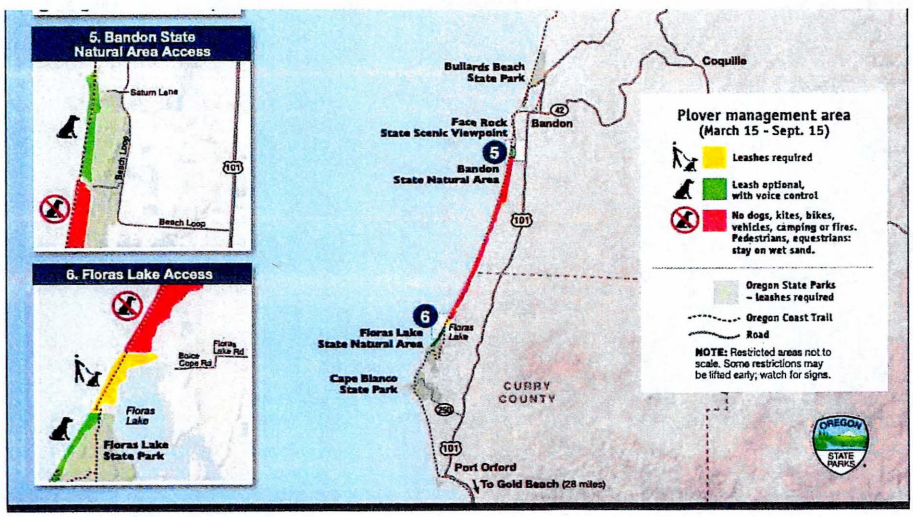
Bandon Snowy Plover Management Area, (SPMA), "**is an extremely important nesting area...**"
See: p. 21 The Distribution and Reproductive Success of the Western Snowy Plover along the Oregon Coast - 2020 https://inr.oregonstate.edu/sites/inr.oregonstate.edu/files/2021-06/snpl-2020-report.pdf

The proposed application site is currently low-intensive Exclusive Farm Use (EFU), and remains a relatively natural barrier adjacent to the BSNA existing all along the entire western border of the proposed development site. The proposed intensive development and continued intensive use being proposed is incompatible compared to the permitted use that exists on the property now.

This intensive use and development proposal will alter and clear the landscape and open up the remote BSNA and the SPMA to increased disturbance, recreational access, and predation pressure, making federally protected plover nesting areas more vulnerable to nest abandonment and destruction. Currently this is a rather remote area important for nesting and recovery efforts.

Below shows the Lower portion of the South Coast brochure from Oregon State Parks —
which is located entirely along the applicant's western border —with very restrictive rules for most of the year.

"No dogs, kites, bikes, vehicles, camping or fires. Pedestrians, equestrians: stay on wet sand."



https://stateparks.oregon.gov/index.cfm?do=main.loadFile&load=_siteFiles%2Fpublications%2F%2FSouth_Coast_plover_map_-_web014205.pdf

Staff report, p. 34 Coastal Shoreland Boundary Purpose Statement [in part] —
Coos County shall provide special protection to ... significant wildlife habitat ...

A conditional use is a use that would generally not be appropriate but for imposing conditions to ensure the use would not be detrimental to other permitted uses on surrounding properties. The application fails to compare intensities of uses and fails to consider compatibility with the Bandon State Natural Area (BSNA). As such the application is incomplete and the application should be denied.

Thank you for your careful consideration.

Sincerely,
Vickie Crowley
1425 Beach Loop
Bandon, Oregon 97411

Exhibit 6

Amy Dibble

From: Cameron La Follette <cameron@oregoncoastalliance.org>
Sent: Thursday, July 11, 2024 2:24 PM
To: Planning Department
Cc: Sean Malone
Subject: ORCA testimony re HBCU 24-001, New River golf course
Attachments: ORCA to Coos PC re New River Golf Course July 2024.pdf; ORCA to WRD re Bandon Biota Transfer Applications May 2024.pdf

This Message originated outside your organization.

Dear Coos County,

Attached please find the testimony of Oregon Coast Alliance in the matter of New River golf course, HBCU 24-001, before the Coos County Planning Commission. Attached also are the comments of Oregon Coast Alliance to the Water Resources Department in the matter of the application by Bandon Biota for three water transfers relating to the proposed golf course.

Please note that if the hearing is not continued, ORCA requests the record be left open for at least **14 days**.

Please let me know you received both these attachments, opened them and placed them into the record for this matter.

Thank you,

Cameron

—

Cameron La Follette
Oregon Coast Alliance
Executive Director
www.oregoncoastalliance.org

Sean T. Malone

Attorney at Law

PO Box 1499 Tel. (303) 859-0403

Eugene, OR 97440 seanmalone8@hotmail.com

July 11, 2024

Via Email

Coos County Planning Commission
c/o Coos County Planning Department
Coos County Courthouse
250 N. Baxter
Coquille, OR 97423
planning@co.coos.or.us

Re: Oregon Coast Alliance testimony for the proposed New River Dunes Golf Course application (HBCU-24-001).

Dear Coos County Planning Commission,

On behalf of Oregon Coast Alliance (ORCA), please accept this testimony for the above-entitled application. ORCA aims to protect the Oregon coast by working with coastal residents for sustainable communities; protection and restoration of coastal and marine natural resources; providing education and advocacy on land use development; and adaptation to climate change. ORCA requests that the application be denied given the flaws identified below.

The applicant requests a conditional use permit to allow a regulation 18-hole golf course with accessory uses in the EFU zone. The accessory uses include a clubhouse/restaurant, an agronomy center/maintenance facility, a turn-stand, at least two stand-alone restrooms, a caddy shack, a driving range, a practice course, and the necessary parking/drop-off areas. The proposed golf course is directly adjacent to Recreation (Rec) zoned land to the west (Bandon State Park) and privately owned EFU land to the north, south, and east. The state ownership to the west contests of vacant open space land.

I. The application has not demonstrated that the subject lots and parcels were lawfully created

The application has not demonstrated that the subject lots and parcels were lawfully created. Under CCZO 4.6.210, "[t]he size of the parcel will not prohibit development as long as it was lawfully created or otherwise." The applicant has not demonstrated that the parcels are lawfully established. The applicant must submit deed histories, property description cards, or other information establishing that the lots are lawfully established. If any of the lots/parcels were unlawfully divided after land use laws were in place, which commonly occurs, then the resulting lots/parcels are not legal lots or lawfully established units of land.

II. Geologic Assessment Review

The applicant alleges that it does not have the details needed for the location of structures to carry out the geologic assessment review. As noted below, the condition of approval must provide for the same substantive and procedural rights that have been provided here. Moreover, if the applicant does not know the location of the structures, then the applicant cannot reasonably demonstrate compliance with all of the approval criteria. For example, the applicant cannot reasonably determine whether the impacts

III. The golf course is located on high value farmland

The golf course is prohibited because the golf course is located on high value farmland.[1] Under ORS 195.300(10), high-value farmland includes high-value farmland as described in ORS 215.710 that is land in an exclusive farm use zone or a mixed farm and forest zone, except that the dates specified in ORS 215.710 (2), (4) and (6) are December 6, 2007." ORS 215.710(2) provides as follows::

> "In addition to that land described in subsection (1) of this section, for purposes of ORS 215.705, high-value farmland, if outside the Willamette Valley, includes tracts growing specified perennials as demonstrated by the most recent aerial photography of the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture taken prior to November 4, 1993. For

[1] Golf courses are not permitted on high-value farmland, except for limited circumstances that do not apply here. *See e.g.,* OAR 660-033-0130(18)(c).

purposes of this subsection, "specified perennials" means perennials grown for market or research purposes including, but not limited to, nursery stock, berries, fruits, nuts, Christmas trees or vineyards but not including seed crops, hay, pasture or alfalfa."

See also OAR 660-033-0020(8)(b); ORS 215.710(2). The property containing the golf course is in common ownership, which means that the property containing the golf course is a "tract." *See* OAR 660-033-0020(14) (definition of "tract"). The staff report acknowledges that there are two points that appear to be permitted, have a certificate, or a decree for the use of water for irrigation issued by the Water Resources Department in the project area. Given that some portion of that land contains high-value farmland, the entire tract is considered "high-value farmland." The staff report fails to appreciate the import of the defined term "tract," alleging that the aforementioned two points are not within the footprint of the course. That contention is inconsistent with state law and its definition of high value farmland and tract.

IV. Impacts to Surrounding Farmland

The applicant has not submitted a sufficient farm impacts analysis. State law requires that the proposal not force a significant change in accepted or forest practices on surrounding lands devoted to farm or forest uses and a significant increase in the cost of an accepted farm or forest practices on surrounding land devoted to farm and forest use:

> *(5) APPROVAL CRITERIA Approval requires review by the governing body or its designate under ORS 215.296. Uses may be approved only where such uses:*
>
> > *(a) Will not force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; and*
> >
> > *(b) Will not significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use."*

Even assuming that the golf course could be placed on the subject property, the applicant's showing under ORS 215.296 is clearly inadequate. Under ORS 215.296(1), a non-farm use on EFU land must not force a significant change in accepted farm practices or significantly increase the cost of those farm practices on surrounding agricultural lands. Case law demonstrates that the review under ORS 215.296 must be applied on a farm-by-farm basis and farm-practice-by-farm-practice basis. The test is not a conversion (i.e., supply of land) or profitability test. If a farmer must change accepted farming practices, even if there is no increased costs or reduced profitability, the nonfarm

use cannot satisfy ORS 215.296. ORS 215.296(2) allows counties to impose conditions of approval. Those conditions of approval must be measured by how the condition prevents the loss of agricultural land and not on how the condition might preserve the overall profitability of a farm use. The conditions must also measure the ability of the farmer to engage in an accepted farming practice. Moreover, the applicant must address the cumulative impacts of the individual impacts. As noted in the staff report, the lands to the north, south, and east are all zoned EFU. The EFU land directly adjacent to the golf course tract contains two active cranberry operations. There are also two cranberry operations further east and northeast of the proposed course. There are also blueberry operation to the east, and pastureland that is owned by the applicant under Bandon Biota, LLC.

The applicant alleges that a golf course would not bring about any greater impact to the surrounding farm uses than other farm uses would. This is obviously incorrect because the golf course is designed to draw in untold numbers of people to golf, work, and dine on the subject property far more than maintaining the existing farm-oriented land use pattern would. Increased human presence will result in increased attraction of scavengers as a result of human activity and waste, increase in traffic, increase in trespass, and so forth.

Golf courses consume significant amounts of water. The applicant is in the process of filing for a new groundwater right, storage, irrigation, pond maintenance, and a surface water right for diversion of water during the storage season. The applicant disclaims any impacts to surrounding farm operations because of Oregon's priority date ("first in time, first in right") system for water rights. The applicant cannot obviate an analysis of impacts to surrounding farm uses. ORCA has submitted comments on the water rights applications (T-14438, T-14439, T-14440, *see* attached comments). ORCA notes that these water rights transfers cannot be approved for the reasons set forth in the attached comments, and ORCA incorporates those comments as testimony for the golf course application.

Prior reports have identified that there is limited publicly available groundwater within the project area and the Bandon area, likely due to seawater intrusion. The applicant must account for the impact to surrounding cranberry bogs because of drawdown. Moreover, the surface-level distance is not determinative of whether there are impacts. The applicant must submit a hydrology report to ensure that there will be no significant impacts to surrounding farm uses, groundwater, wells, and so forth.

V. <u>The golf course exceeds the acreage limitation</u>

Under a 660-033-0130(20)(a), "[a] regulation 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." While there is no strict upper limit in terms of acreage, the 120 to 150-acre provision cannot be stretched to the proposed size in excess of that requirement. There is flexibility in the rule, but the rule is also capable of being broken. The applicant does not have a blank check to create a golf course of whatever acreage it would like, and the entire golf tract is more than 340 acres. It is not clear that the rule was intended to allow such a significant area – all of which is high value farmland – to be devoted to non-golf course uses in support of a golf course. ORCA believes that doubling the upper limit exceeds what is allowed under the 120 to 150-acre limitation.

VI. Use by the non-golfing public must be prohibited

Under OAR 660-033-0130(20)(d)(A), "[a]n accessory use or activity does not serve the needs of the non-golfing public." That rule goes on to articulate what cannot be included as accessory uses. The County must, therefore, impose a condition of approval that prohibits uses for the non-golfing public, including sporting facilities unrelated to golfing, including but not limited to tennis courts, swimming pools, and weight rooms; wholesale or retail operations oriented to the non-golfing public; or housing. No banquets, public gatherings, or public entertainment. The restaurant cannot be used by the general public, as was previously maintained by the applicant.

VII. Beaches and Dunes

The applicant has not addressed the structural impacts that may need to be completed. The applicant alleges that a subsequent conditional use application can address the structural development component. If the applicant would like to postpone satisfaction of the structural development component standard, then the applicant would be required to satisfy that standard at a later time, with a process that provides the same rights of participation and opportunity for appeal as is provided here. A decision to approve an application must demonstrate that compliance with all discretionary approval criteria is "feasible." *Meyer v. City of Portland*, 7 Or LUBA 184 (1983), *aff'd,* 67 Or App 274 (1984). Conditions of approval can be used by a local government to ensure compliance will be achieved. "[F]easibility means that 'substantial evidence supports findings that solutions to certain problems ... are possible, likely and reasonably certain

to succeed.'" *Meyer v. Portland*, 67 Or App 274, 280 n. 6, 678 P2d 741, *rev. den.* 297 Or 82 (1984).

In *Rhyne v. Multnomah County*, 23 Or LUBA 442, 447 (1992), LUBA noted that:

> "Assuming a local government finds compliance, or feasibility of compliance, with all approval criteria during a first stage (where statutory notice and public hearing requirements are observed), it is entirely appropriate to impose conditions of approval to assure those criteria are met and defer responsibility for assuring compliance with those conditions to planning and engineering staff as part of a second stage."

23 Or LUBA at 447; *see, Stockwell v. Benton County*, 38 Or LUBA 621 (2000) (deferred findings of compliance must observe statutory notice and hearing requirements). While "[t]hese principles are relatively simple and straightforward in the abstract, [they] prove more complex in the context of specific permit approval requests." *Rhyne,* 23 or LUBA at 447. Local governments may "impose conditions if necessary' to ensure that those feasible solutions are later developed and implemented. That is an option that is available to the local government when the evidentiary record supports such findings, ..." *Gillette v. Lane County,* __ Or LUBA __, (LUBA No. 2006-001, June 5, 2006) (slip op at 6).

However, if compliance with approval criteria is unclear or uncertain, then the request must be denied, postponed, or made more certain by a condition of approval requiring a further public hearing regarding discretionary approval:

> "Where the evidence presented during the first stage approval proceedings raises questions concerning whether a particular approval criterion is satisfied, a local government essentially has three options potentially available. First, it may find that although the evidence is conflicting, the evidence nevertheless is sufficient to support a finding that the standard is satisfied or that feasible solutions to identified problems exist, and impose conditions if necessary. Second, if the local government determines there is insufficient evidence to determine the feasibility of compliance with the standard, it could on that basis deny the application. Third, if the local government determines that there is insufficient evidence to determine the feasibility of compliance with the standard, instead of finding the standard is not met, it may defer a determination concerning compliance with the standard to the second stage. In selecting this third option, the local government is not finding all applicable approval standards are complied with, or that it is feasible to do so, as part of the first stage approval (as it does under the first option described above). Therefore, the local government must assure that the second stage approval process to which the decision making is deferred provides the statutorily

> required notice and hearing, even though the local code may not require such notice and hearing for second stage decisions in other circumstances."

Rhyne, 23 Or LUBA 447-48; *Gould v. Deschutes County*, 216 Or App 150, 161-163, 171 P3d 1017 (2007) (conclusion that it was feasible to prepare a wildlife mitigation plan was not sufficient to conclude that the plan would actually result in adequate mitigation).

The local government may not delegate or defer demonstration of compliance with a discretionary review standard to an administrative or ministerial decision-maker. *See Hodge Oregon Properties, LLC v. Lincoln County*, 194 Or App 50, 55, 93 P3d 93 (2004) (conditions were actually approval criteria that had to be satisfied before approval of the development application). In *Hodge Oregon Properties,* 194 Or App 50, the Court of Appeals affirmed LUBA's remand and expanded on its and LUBA's understanding of "discretionary conditions of approval," stating that:

> "approval is not permissible unless the conditions have been satisfied. By treating the conditions as siting or performance standards that would be subject to review by county staff, LUBA noted that, the county effectively ignore the possibility that the applicant actually might not be able to comply with them and precluded other interested persons from establishing precisely that fact through the hearings process that is required concerning conditions of approval."

See also Township 13 Homeowners Association, Inc. v. City of Waldport, __ Or LUBA __ (LUBA Nos. 2006-171/172, Jan. 18, 2007) (Slip op *7-8) ("Under *Rhyne*, it was impermissible for the city to completely defer the analysis required by [the local code] to a later stage of the approval process where no notice or opportunity for comment is provided"). The County must include a condition of approval that would require, in essence, a round 2 for this application, which would include all of the procedural and substantive protections that have been provided here.

VIII. Request to Leave the Record Open

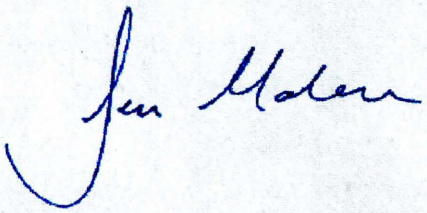
Given the repeatedly failure to present sufficient information to satisfy the approval criteria, it is likely that the hearing will be continued. However, in the event it is not continued, ORCA respectfully requests that the record be left open for a minimum of 14 days.

IX. Conclusion

Like staff, ORCA believes the applicant has not satisfied numerous criteria necessary for approval of the application. The applicant has presented the County with a

half-baked application, and it is not a serious attempt to gain approval. Accordingly, the Planning Commission should deny the application.

Sincerely,



Sean T. Malone
Attorney for Oregon Coast Alliance

Cc:
Client

Sean T. Malone

Attorney at Law

PO Box 1499 Tel. (303) 859-0403

Eugene, OR 97440 seanmalone8@hotmail.com

May 23, 2024

Via Email

Oregon Water Resources Department
Transfer Section
725 Summer St NE
Salem OR 97301
Lisa.J.Jaramillo@water.oregon.gov
Dante.J.Luongo@water.oregon.gov
(503) 986-0900

Re: ORCA comments on applications T-14438, T-14439, T-14440

Dear Ms. Jaramillo,

On behalf of Oregon Coast Alliance (ORCA), please accept these comments for Transfers T-14438, T-14439, and T-14440. These comments are for all three applications, except where otherwise specified. ORCA is concerned about enlargement that will result from the transfers and the reduced water availability in the area.

As it relates to all three applications, water right transfer decisions are actions that must be coordinated with local land use governments to protect important local water resources. OAR 690-005-0025(3); OAR 690-005-0035. The transfer applicant, Bandon Biota LLC, withdrew its application for a golf course with the Coos County Planning Department on February 1, 2023. Attached is Coos County's notice of Bandon Biota's application withdrawal. The approval by the Planning Commission is no longer valid, as a result of the withdrawal. To the extent that a new application for a golf course has been submitted, it has not been noticed for public review or hearings, nor has it been deemed complete. At this point, the applicant has no existing approval from Coos County for the proposed golf course.

OAR 690-005-0035(4)(a) requires that "land use information be submitted with applications or requests, or as otherwise specified prior to taking action on the water use

approval. The information shall be sufficient to assess compatibility as specified on forms contained in the department's Land Use Planning Procedures Guide[.]" The necessary information was not, apparently, provided by the applicant. OAR 690-005-0035(4)(c), in turn, requires that an applicant submit land use information prior to use of water and associated construction:

> "If local land use approvals are pending, place conditions on a permit or other approval to preclude use of water and any associated construction until the applicant obtains all required local land use approvals; or, withhold issuance of the water use permit or approval until the applicant obtains all required local land use approvals."

Because the land use application has neither been noticed nor deemed complete, the agency has no approval that the agency can rely upon. The previous application experienced significant opposition, and it is likely the new application will experience similar opposition, which could create a protracted process. The County should remedy the blatantly false Land Use Compatibility Statement that states that the applicant has received an approval when that application has been withdrawn.

Furthermore, as it relates to all three applications, they fail to include Exhibit 3 water use plan that as of early 2023 included year-round pumping of 600cfs without reclamation for reuse.[1] No specific information about the site wells within the proposed golf course were provided, including their depth and the hydrology of the area, amongst others. This is important because most shallow wells have been going dry during recent summers.

For T-14438, ORCA submits that it would result in enlargement because a golf course is a more consumptive use than irrigation and temperature control for cranberry production. Not only are cranberry operations typically lined and the water is recycled but it also occurs in a small area (17.4 acres), much smaller than the proposed irrigation area (26.4 acres), which will result in enlargement.

For T-14438, ORCA submits that the certificates 86449 (primary) and 86448 (secondary) are not eligible for transfer because they were not used according to the terms of the certificate. The applicant has not established the requisite use for the full

---

[1] Unlike a golf course, cranberries use reclamation and use less water per acre. The majority of the proposed water rights to be transferred are those assigned to both irrigation and temperature control of cranberries. The irrigation of cranberries is collected and reused before being lost to evaporation. Golf courses, on the other hand, use fertilization and irrigation that is not reclaimed. Moreover, majority winter-applied water to mitigate freeze events (and summer-applied for temperature control) is not equivalent to summer-applied irrigation to turf grass.

time from 2014 through 2019. No water use is posted on WRIS for either certificate for any year. The terms of the certificate appear to have been violated because both certificates require annual reporting for temperature control but none is available.

For T-14438, the application must be denied because the source is from an unlawful reservoir. ORS 537.130(2) restricts anyone from storing "any waters" without a permit. WRD cannot allow an unlawful reservoir to continue and the transfer must be denied because it relies on an unpermitted reservoir.

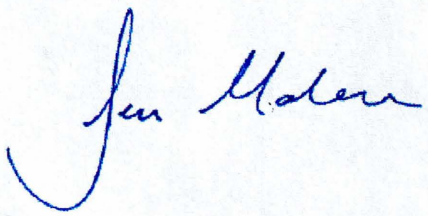
For T-14439, ORCA submits that the transfer will reduce stream flows and Instream Water Right Certificate 76268 on Twomile Creek. T-14439 proposes to change the place of use and add a point of diversion for Certificate 73636. The current place of use is 53 acres of land directly north and adjacent to Twomile Creek. The current points of diversion are four portable pumps located within Twomile Creek and adjacent to the irrigated land. Certificate 73636, however, has been leased instream intermittently since 2001 under IL-107, with the current lease agreement in place from 2021 to 2025. The proposed place of use is the new golf course which is not adjacent to Twomile Creek but spread out over six quadrants south of the creek. The proposed new point of diversion is at a fixed location in Twomile Creek in a different quadrant and further down the river from the portable pumps. This proposed transfer would therefore cause significant changes to the flows within Twomile Creek and any return flows it received when the land under the certificate was being irrigated. This is important because Twomile Creek within this reach is protected by an instream water right. ISWR Certificate 76268 exists to provide required stream flow for anadromous fish migration, spawning, egg incubation, fry emergence, and juvenile rearing, and flows are protected throughout the reach. Additionally, Twomile Creek is listed by the Oregon Department of State Lands as Essential Habitat for Fall chinook, winter steelhead, and coho. It appears likely that the proposed transfer would injure the instream water right's flows and purpose.

For T-14439, ORCA submits that the transfer will cause injury to other water rights, including certificates 26397, 90113, and 90096. These water rights' source of water from Twomile Creek will not receive return flows from irrigation of the original land under Certificate 73636 if the place of use is changed to a large golf course. Furthermore, the proposed additional point of diversion would be located further downstream from the diversion points for Certificate 26397, 90113, and 90096, where as the points of diversion are located upstream. New pumping by a senior water right at this location may case injury to junior water rights.

For T-14440, ORCA submits that the transfer will also result in enlargement. T-14440 proposes changes to certificates 89934 which allows beneficial use for irrigation, temperature control, and flood harvesting of 13.8 acres of cranberry bogs. The proposed transfer changes the place of use for the irrigation portion. The proposed transfer also changes the character of use for the temperature control portion to irrigation and changes

its place of use. These changes will result in enlargement issues because irrigation of golf courses, which typically use thirsty turf grass, is a much more consumptive use than irrigation and temperature control for cranberry operations, especially since cranberry bogs are typically lined and they recycle water. The current cranberry operations also occur on a compact area of land; the irrigation and temperature control occur on the same 13.8 acres. The proposed irrigation will spread out over 20.9 acres across four quadrants. This change from an overlap of use and size of the place of use will result in enlargement of the water right.

Sincerely,



Sean T. Malone
Attorney for Oregon Coast Alliance

Cc:
Client

Exhibit 7

11 July 2024
Written Commentary on HBCU-24-001
Coos County Community Development

Marie Richie
47651 Hwy. 101
Bandon, OR 97411

sillydogfarms@gmail.com

There are several serious concerns regarding the application for siting a golf course West of Laurel Grove and Dew Valley, as represented by Ocean River, LLC (Application HBCU-24-001). The rate of water usage for that recreational site, as reported in the previous Bandon Biota Appliaton of 2022 (Exhibit C, as prepared by Golder in 2018, of that proposal, is on file with the Coos County Development Planning Department and found on pages 59-69 and can be accessed at https://www.co.coos.or.us/sites/default/files/fileattachments/planning/page/23604/hbcu-22-001_bandon_biota.pdf) was estimated at 400 cubic feet per second (cfs) / 149,492 gallons per minute (gpm) without seasonal restriction. That level of usage, presumably using the 17 un-righted wells already dug on the property that tap into the mid-level aquifer (50-100 feet) , will seasonally drain the entire basin, dry up surrounding wells, ponds, creeks and entire lakes in the area, causing an avoidable human, economic and environmental crisis.

Exhibit C of Bandon Biota's previous application states that it was compiled with nearby inferred information and that no comprehensive survey of the mid-level aquifer has ever been made; only preliminary testing was done in the 1980s. In practice, wells in this area are either shallow (less than 35 feet) or mid-level. The Exhibit 3 report does not differentiate between these, instead calling everything above 130ft as being shallow. In practice, the difference

between these two depths has hugely important during cranberry harvest, when the water table routinely drops below that 35 foot mark. A majority of the older residential wells and many of the local agricultural wells are less than 35 feet deep. It is common for older residential wells to run dry during and throughout the cranberry harvest season, despite re-using that water several times over to complete the harvest process.

Without knowing the nature, range and capacity of the surface and mid-level water tables, the proposed non-food horticultural use (turf-grass on sand without underlying peat or reclamation) of the proposed venture will overwhelm the local capacity to recharge both upper and mid-level aquifers. The deep aquifer is not sufficient to make up the difference according to their own well tests. The end result of such a disaster would be the loss of hundreds of acres of productive family farms that have been in the area for over 100 years. These farms contribute cattle, hay, pasture, horses, cranberries, blueberries, nursery crops, honey and a livelihood to scores of long-time locals. Indeed, my own agricultural operations are dependent upon a 55ft well that is in very real danger of being dried up by this development.

Moreover, with the proposed water use, it would be a matter of just a few years to drop the water level of both extremely shallow lakes enough to have significant impact on property values and the unique coastal ecosystem in the public lands served by Lost Lake. A similar situation has already happened when the already existing, adjacent Golf Course, Bandon Crossings, diverted creeks to keep their greens. It took 5 years for one of the creeks for which Twin Creek Ranch was named to dry up and the other to swell and flood out its banks with as little as a single inch of rain. Despite trapping people in three residences with these flood waters, there has been no action or compensation. And, despite having water rights that pre-date any others in the watershed, Mr. Leff had no actual recourse, instead getting

passed around from one agency to another on a yearly basis ever since, despite significant damage to the low-lands of his property. Approving this project would create this kind of damage multiplied by dozens of affected landowners and farmers.

It is also significant that a change from the proposed (and industry standard practice) turf-greens on sand with no reclamation ponds would make a significant difference in the amount of water required to irrigate this project. A proposed 17.45 cfs / 6,512 gpm transfer from these nearby agricultural lands represents just 4.3% of the proposed use. While the historical usage of 17.45 cfs is supported by the watershed in most years of normal rainfall, increasing the withdrawal from the local watershed by 2,300% to meet their proposed demand, would decimate the resource, even if the seasonal average of 60 inches were still normal. It has been well short of that for 7 of the last 10 years.

It is also highly concerning how much agricultural land has already been proposed to be taken permanently out of production with the transfer of water rights from cranberry and pasture operations. Moreover, Agriculture in the area is not limited to commodity production of cranberries. Other local farms have profitably diversified, as evidenced by the U-pick Blueberry Farms that have been planted in the past decade. There is certainly no lack of local demand for other crops or hay. There has been no decrease in the market value of either of those crops – low cranberry prices being the given reason for why they do not believe these lands are of High Value.

Indeed, lands owned by interests of the Kaisers have been left to suffer. Letting them lie fallow has resulted in the encroachment of certain noxious weeds that are of concern to everyone. In fact, lands that have been set aside for this project for as long as 40 years by

are significantly impacted by neglect and have grown up impenetrable stands of gorse. These are currently large enough to constitute a local fire hazard, cause adjacent landowners to address that threat their own fire plans and can be seen from space.

Perhaps most at the heart of this issue is a problem with the equivalency regarding the "crops" in question. The majority of the proposed water rights to be transferred are those assigned to both irrigation, "temperature control" and harvest of cranberries. In practice, all these waters are collected and reused many times over before being lost to evapo-transpiration (ET), which is the portion of water collectively lost to those processes in field agriculture. Standard operating procedure for recreational lands and golf courses in the area is to use relatively high rates of fertilization and irrigation, using coarse sand a substrate without the peat layer commonly found at the bottom of a cranberry bog specifically to retain moisture.

It is true that the Head of Horticulture for the project testified before the Planning Commission that they intend to use foliar fertilization on their cool-season turf-grasses to decrease the amount leaching into the water supply (as opposed to injecting fertilizers into the irrigation water, aka fertigation). However, this does nothing to impact the massive losses of uncollected water to the sea. These crops, as grown, are wildly dissimilar in their water needs.

Cranberries are a useful crop for this area because they are a water-wise plant that is tolerant of very low pH. While flood harvesting and bog cultivation seems like highly intensive uses of water, they are actually highly conservative. ET rates are determined by quite a few characteristics such as:

1. soil texture and underlyment
2. soil moisture levels
3. effective rooting zone
4. dormancy
5. growth rate
6. plant habit (sprawling vs. tall)
7. plant morphology (leaf shape and leaf surface)
8. wind levels
9. solar incidence
10. relative humidity

The proposed system would produce a plant without waxy leaves, shallow roots, high growht rate and no dormant season in a highly windy area that has very high solar incidence during the May-October irrigation season without reclamation. This differs in every way from how cranberries grow and function.

Additionally, I do not understand how a contiguous parcel that contains a significant amount (well over 20%) of High Value Farmland (HVF) could ever contain a Golf Course according to the stated rules. The purpose of that law is, pure and simple, to preserve farmland. Even if the areas designated as HVF are not actively being "golfed," that land is forever unavailable to actual farming. It is very likely that the entire tract will be classified as HVF should the issue ever be appealed to the courts. That high-value crops can be farmed profitably on these lands has been proven for a century.

It is for these reasons that I respectfully request that you deny land use exemption application from Ocean River, LLC. / Michael Kaiser, in an effort to preserve both water and farmland for both residents and farmers.

Most Sincerely,

Marie B. Richie, Arnold J. Richie and Arles B. Richie

47651 Highway 101; Bandon, Ore.

Exhibit 8

Oregon
Tina Kotek, Governor

Department of Transportation
Region 3 Planning and Programming
100 Antelope Drive
White City, Oregon 97503
Phone: (541) 774-6299

July 11, 2024
Ms. Cassidy Carr
Coos County Planning Department
250 North Baxter Street
Coquille, OR 97423

RE: HBCU-24-001, New River Dunes Golf Course

Dear Ms. Carr,

Thank you for providing the Oregon Department of Transportation (the "Department" or "ODOT") with the opportunity to provide comments associated with the application for a Conditional Use Permit to allow an 18-hole golf course and supporting structures (the "Proposal") on about 300 acres of EFU zoned land near Boak Lane ("Subject Property").

A traffic study is not required under ODOT's evaluation criteria as the Proposal is not a map amendment and is not taking direct access to an ODOT managed facility via private access. ODOT and the applicant have discussed the benefit of a southbound right turn lane at the intersection of US 101 and Boak lane. ODOT staff have performed an engineering investigation into the concept of the right turn lane and will recommend approval by the Regional Traffic Engineer upon review and approval of plans and associated documents which meet our design standards.

ODOT supports the proposal with conditions described below which have been discussed with the applicant.

i. The applicant shall design and obtain ODOT approval of plans for a southbound right turn lane at US 101 and Boak Lane (the "Right Turn Lane").
ii. The applicant shall be responsible for fully funding the design, construction, and any other costs associated with installation of the southbound Right Turn Lane.
iii. The applicant shall obtain written approval prior to any disturbance within the State ROW. a. This may be via misc./utility permit, Development Agreement or other ODOT instrument.
iv. The Right Turn Lane shall be installed prior to issuance of Certificate of Completion for structures associated with the Proposal.

Please feel free to contact me at Micah.HOROWITZ@odot.state.or.us or 541-774-6331 should you have any questions or concerns.

Sincerely,

Micah Horowitz

Micah Horowitz,
Senior Transportation Planner

Exhibit 9

Cassidy Carr

From: Planning Department
Subject: FW: Bandon proposed third golf course

-----Original Message-----
From: 53emdtl@gmail.com <53emdtl@gmail.com>
Sent: Thursday, July 11, 2024 4:59 PM
To: Planning Department <Planning@co.coos.or.us>
Subject: Bandon proposed third golf course

This Message originated outside your organization.

Sent from my iPhone
This E Mail is to register my strong opposition to #HBCU-24-001, the proposed golf course construction. This project will ruin fertile farmland, which will not benefit the residents of Bandon. Only wealthy golfers that reside elsewhere will utilize this project. I OPPOSE THIS PLAN.
Thank You
Eileen Duffy
Beach Loop Rd.
Bandon Or. 97411

Exhibit 10

Cassidy Carr

From: Planning Department
Subject: FW: Keiser golf courses: please send this to the county

On Jul 11, 2024, at 3:56 PM, Jacquelyn Dillman <jbeaudill@sbcglobal.net> wrote:

Hi,
We live on Seven Devils Road, for about 23 years now. We appreciate the Bandon Dunes Resort overall development and Michael Keiser's support of local facilities such as Bandon High School and for various scholarship activities.

However, we are opposed to further golf course development along the coast in the Bandon and south of Bandon area. How many golf courses are enough golf courses? Leave room for agricultural improvements, other sorts of resorts, art, glass, and sculpture colonies, and other endeavors.

We might change our opinions over time, but this is how we feel about this proposed Keiser development at the moment. And the water issues must be addressed given that 'water is the new gold!" and climate change within Oregon as well.

Thanks for the opportunity to give our opinions.

Robert O. and Jacquelyn B. Dillman
Bandon, Oregon 97411
jbeaudill@sbcglobal.net

Cassidy Carr

From: Planning Department
To: Garden Valley Water Association; Planning Department
Subject: RE: HBCU-24-001

From: Garden Valley Water Association <cvgvwa@gmail.com>
Sent: Friday, July 12, 2024 6:14 PM
To: Planning Department <Planning@co.coos.or.us>
Subject: HBCU-24-001

This Message originated outside your organization.

I stand with the development of this land. It is surrounded by state park and recreation land that has been literally taken over by an extremely invasive species Ulex aka Gorse. Once the Gorse takes over the land is absolutely worthless to anyone that would like to use it. Unfortunately the state parks have done nothing to stop it's spread and it will take over the land that is being proposed to be developed without human intervention. The land owners team has extensive background in the eradication of such invasive species on their land being that previous built golf course were in even worse conditions from the same invasive species. The underground aquifer is part of new river and is flowing toward the ocean that is only 1/2 to 1/4 mile away from the edge of the property with no human inhabitants between the property and the ocean. Think of it like the last user before it becomes salt water. All of the water that is used will either go back into the water table or evaporate and become clouds eventually becoming rain and speeding up the process of recharging our rivers inland. We should keep our comments for our area and hold them higher than some dingbat from Astoria, Portland, Salem, Eugene, or Bend. I really don't care what they think but this small town can use more income and more family wage jobs in the area.

Sincerely,
Ryan Sherman
36 year Bandon Resident and Bandon Native

Exhibit 12

PERK
DEVELOPMENT

Coos County Planning Department
c/o Jill Rolfe, Planning Director
250 North Baxter
Coquille, OR 97423

July 11, 2024

Distinguished Commissioners of Coos County and Respected Staff,

On behalf of Perk Development, I would like to express my **SUPPORT** for the **APPROVAL** of Coos County Conditional Use Land Use Application HBCU-24-001, for a new regulation golf course dubbed *"New River Dunes Golf Course"*, just south of Bradley Lake, located off of Boak Lane within the county's jurisdiction in Bandon, Oregon.

My team and I have spent considerable time reviewing the application and its findings and have concluded that the proposed project **MEETS THE STANDARDS AND CRITERIA SET FORTH BY COOS COUNTY'S LAND-USE CODE & ORDINANCES**. After additional further review, we have also concluded that the application **MEETS THE STANDARDS AND CRITERIA OF THE CONDITIONAL USE CRITERIA SET FORTH BY OREGON STATUTE**.

Subsequently, this proposed project **FULFILLS OREGON STATEWIDE LAND USE PLANNING GOALS** and provides tremendous economic incentive for the residents of Bandon and Coos County.

As a fellow native of Coos County and vested partner and property owner in the City of Bandon and in Coos County, I am extremely proud of the success that the Keiser's and the Bandon Dunes Golf Resort Family have brought to this area. It has been a badge of honor to tell friends and colleagues from across the country that I am from this specific area on the Oregon Coast.

Since the introduction of links-style golf in Coos County in the late 1990's, the area has benefited greatly from tourism. Tourism has been the main economic driving force to the area, since 1990. It provides much needed indirect jobs in retail, hospitality, dining, property management and travel. Additionally, tourism has provided direct well-paying jobs in golf course management, hospitality management and caddy services.

BANDON GOLF HAS BEEN THE CORNERSTONE FOR ECONOMIC VITALITY to this area. Other sectors have flourished and benefited greatly due to the demand. It is no surprise that both commercial and residential real estate sales in Coos County have boomed over the last few years, and the demand for housing and additional hospitality offerings have lifted-up architectural, engineering, development and construction industries (to name a few).

PERK
DEVELOPMENT

The applicant has also spent considerable resources in addressing issues that are important to many in the county. The Bandon Dunes Charitable Foundation is and has been committed to fund projects on the South Coast of Oregon focused on the triple-bottom-line (conservation, community, and economy) with approaches that blend innovative ecological initiatives and economic opportunities as well as projects that encourage healthy and vibrant communities. Projects that promote healthy fish and species habitats, working landscapes and seascapes, sustainable tourism, community collaboration, sustainable businesses, community health and well-being, accessible childcare, education and student scholarships, workforce housing, and local golf programs.

To conclude, the applicant has met or exceeded all of the required standards and criteria set forth by the County and the State. Therefore, I urge you to **APPROVE** the application.

I look forward to seeing this project come to fruition and look forward to it benefiting the community, as the previously approved course have.

Regards,

Brett Perkins
Managing Member
Perk Development
E. brett@perkdevelopmentgroup.com
M. 805.637.3350

Exhibit 13

18 July 2024
Rebuttal Testimony Re: 11 July Hearing
HBCU-24-001 Golf Course

Marie Richie
47651 Hwy. 101
Bandon, Ore.

I appreciate and thank the Planning Commission for continuing this issue and receiving clarifying testimony regarding the hearing on 11 July 2024.

- With regards to citizen testimony given regarding the timely receipt of notification letters, I can attest that my letter, dated 21 June 2024, was postmarked 2 July in Portland and received 8 July at my PO Box in Bandon. If I hadn't been otherwise made aware of the application, it would have been difficult to prepare meaningful remarks in just 3 days.

- The property listed on the application as owned by Bandon Biota to the North of Twin Creek Ranch (a century-old farm incorrectly listed in the application as Leff Enterprises) has been entirely unmaintained and unirrigated for at least the past 13 years that I've been observing it. The gorse abutting Twin Creek is easily 12 feet tall (see below) and impenetrable. While gorse mitigation is a fact of life around Bandon, the applicant has allowed dozens of acres of it to grow up causing their neighbors to work that much harder at controlling it on their own boundaries.

Lands also owned by the applicant across the highway from my property to the West have also been left to grow gorse up along Highway 101 (see below) for at least 4 years. Only a thin strip is represented on the application as being part of the course, but a handful of surrounding residences are also owned by the applicant and currently used as employee housing. The rarely used building next to the road has attracted theft from drug dealers and squatters.

- The applicant's representative at the 11 July hearing was questioned by a Planning Commissioner if the applicant's was "threatening" to allow gorse to grow up on their properties South of Bandon if the application was not accepted. And, while the applicant's representative assured the commissioner they weren't threatening or extorting the county, he later stated that if there is no financial return, the applicant felt there was no compelling reason to maintain their holdings against wildfire.

- The applicant's representative proposed that irrigated turf grass South of Bandon will protect the city from wildfire, despite the fact that winds during the fire-season are, with rare exception, from the North. Historically, wildfires in this area travel South once they reach The Coast.

- It was mentioned that there was concern about the proposed course being a Snowy Plover nesting area. I can confirm that the plover is a resident of the area. I have observed them nesting West of the proposed course.

- The Applicant's representative stated that they intended to change the site of the service entrance further South on 101 from the previously proposed Hoffer Lane. However, they couldn't quite say where. This leaves two possibilities, neither of which seem any more viable:
    a) Harvey Lane, which they do not appear to own and has many of the same concerns as Hoffer
    b) The turn into an unmarked, private, gravel driveway located 30 feet from my front door, which has even more safety concerns than Hoffer

There is no protection for the residence and no room for a deceleration lane. There have been a series of fatal accidents in the past 4 years within a mile of this location and almost weekly near misses due to traffic already utilizing this driveway.

- The applicant's representatives conceded that water was essential to their being able to do business. However, when making additional remarks, they seemed to be confusing cfm (cubic feet per minute) with gpm (gallons per minute) when estimating how much water the proposed course anticipates using. In their previous application, they expected to use every bit of 400cfm.

400cfm = 2,992gpm * 60 min = 180,000gph
12 hours / day average (rotating sets, 2x per day) = 2.15 million gallons per day
280 days per year average = 603 million gallons per year

300cfm = 2,244gpm * 60 min = 134,000gph
12 hours per day = 1.61 million gallons per day
280 days per year = 452 million gallons per year

Even the smaller figure is enough water to supply the average water needs (300 gal/day) of over 5,300 households in an community of a few dozen households that already has experienced the first signs of salinity in their wells in addition to increasingly routine late-Summer dry-ups.

However, for the sake of argument, let's assume the applicant has reduced their ask to 300gpm, as was stated at the hearing. This is equivalent to roughly 40cfm which is just 10% of the amount estimated to be used in the only submitted plans (2022 Bandon Biota). If true, this must represent a significant change in method from the previous application, given that the same amount of turf is proposed to be irrigated on sand without catch-ponds. Even this figure only constitutes 35% of the rights currently proposed for transfer from nearby High Value Farmland.

- It is notable that in the 11 July hearing, the applicant's representatives admitted that their test wells in the mid-level aquifer on the proposed course did not contain the quantities of water they'd been hoping for. They did not elaborate.

- The yet-to-be-approved transfer of three water rights (for a total of about 14cfm with

seasonal and application restrictions) would include literally running large-diameter pipes from adjacent High Value Farmland (previously part of the proposal) to the currently proposed course parcels. The claim that these necessary parts of operation are somehow not part of the property is tenuous.

Illustration 1: Kaiser Gorge on Twin Creek Property Line #1

Illustration 2: Kaiser Gorse as seen from Twin Creek Property Line, so tall it fell over last Winter

Illustration 3: Kaiser Gorse as seen from my front porch, along Highway 101, now 6 feet tall in places

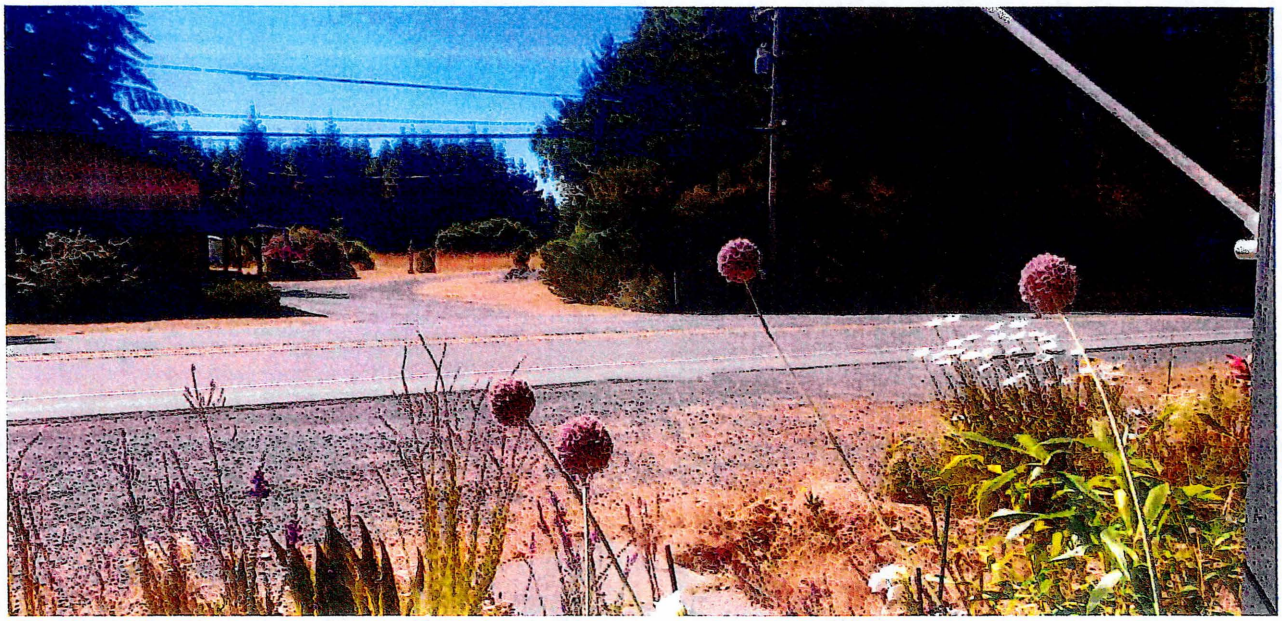


Illustration 4: Presumed Service Entrance, as photographed from my front porch

Sean T. Malone

Attorney at Law

PO Box 1499 Tel. (303) 859-0403

Eugene, OR 97440 seanmalone8@hotmail.com

July 18, 2024

Via Email

Coos County Planning Commission
c/o Coos County Planning Department
Coos County Courthouse
250 N. Baxter
Coquille, OR 97423
planning@co.coos.or.us

Re: Oregon Coast Alliance open record testimony for the proposed New River Dunes Golf Course application (HBCU-24-001).

Dear Coos County Planning Commission,

On behalf of Oregon Coast Alliance (ORCA), please accept this testimony for the above-entitled application. ORCA aims to protect the Oregon coast by working with coastal residents for sustainable communities; protection and restoration of coastal and marine natural resources; providing education and advocacy on land use development; and adaptation to climate change. ORCA requests that the application be denied given that the application fails to satisfy all applicable criteria.

The applicant is proposing a non-farm use on farmland (more specifically, high value farmland, which alone is fatal to the application). The legislature has identified a legislative policy in favor of retaining agricultural lands,[1] or, as the Supreme Court has

[1] ORS 215.243 provides:

"(1) Open land used for agricultural use is an efficient means of conserving natural resources that constitute an important physical, social, aesthetic and economic asset to all of the people of this state, whether living in rural, urban or metropolitan areas of the state.

opined: "the legislature has declared that preservation of agri-cultural land, particularly in large blocks, is an important statewide policy and that limitations on urban expansion into, and alternative uses of, agricultural and forest lands are necessary and a matter of statewide concern." *Stop the Dump Coalition v. Yamhill County*, 364 Or 432, 442 (2019). Thus, despite that a golf course is an allowed use on non-high-value farmland, the application occurs amidst the aforementioned legislative policy.

I. The applicant has not satisfied the criteria for the golf course and design capacity

The applicant acknowledges that the ownership includes two residential dwellings located within the boundaries of the proposed golf course. The applicant alleges that both dwellings are currently being utilized as month-to-month residential rentals. The applicant alleges that they will continue to be rented. Clearly, golfers will want to stay at these dwellings on the golf course, and the applicant needs to establish the design capacity for these dwellings because they are "in connection with the use." OAR 660-033-0130(2). However, accessory uses cannot include "housing." 660-033-0130(20)(d)(A) ("Accessory uses to a golf course do not include: Sporting facilities unrelated to golfing such as tennis courts, swimming pools, and weight rooms; wholesale or retail operations oriented to the non-golfing public; or housing"). The application, therefore, cannot be approved with the housing on the golf course property. Even if that were not the case, the applicant would be required to disclose the design capacity

---

(2) The preservation of a maximum amount of the limited supply of agricultural land is necessary to the conservation of the state's economic resources and the preservation of such land in large blocks is necessary in maintaining the agricultural economy of the state and for the assurance of adequate, healthful and nutritious food for the people of this state and nation.

(3) Expansion of urban development into rural areas is a matter of public concern because of the unnecessary increases in costs of community services, conflicts between farm and urban activities and the loss of open space and natural beauty around urban centers occurring as the result of such expansion.

(4) Exclusive farm use zoning as provided by law, substantially limits alternatives to the use of rural land and, with the importance of rural lands to the public, justifies incentives and privileges offered to encourage owners of rural lands to hold such lands in exclusive farm use zones."

dwellings that will be rented out to golfers. Moreover, the applicant is incorrect to allege that a new design capacity of 100 people applies every ½ mile. The ½ mile limitation applies unless it is a tract as of a particular date, which does not permit the applicant to expand upon the 100-person design capacity.

II. The applicant has not satisfied the farm impacts test

In *Stop the Dump Coalition v. Yamhill County*, 364 Or 432, 442 (2019), the Oregon Supreme Court clarified the farm impacts rule. There, the Court noted that "the farm impacts test [applies] on a farm-by-farm and farm practice-by-farm practice basis and intended to use the ordinary meaning of 'significant' and significantly' in ORS 215.296(1)[.]" "'[S]ignificant' indicates that the change has, or is likely to have, an important influence or effect on the farm or forest practices 'on surrounding lands.'" In essence, the concern in the legislation that resulted in ORS 215.296(1) is the "changes in practices and increases in costs." "The legislature was concerned about the supply of agricultural land, but we conclude that the legislature intended the farm impacts test to focus on forced changes in farming and forest practices and the costs of those practices[.]" As it relates to that the test, the Oregon Supreme Court concluded that:

> "To summarize, when the parties dispute whether a nonfarm use will force a significant change to a particu-lar accepted farm practice or significantly increase the cost of that practice, the farm impacts test in ORS 215.296(1) requires an applicant to prove that the proposed nonfarm use (1) will not force a significant change in the accepted farm practice and (2) will not significantly increase the cost of that practice. A "significant" change or increase in cost is one that will have an important influence or effect on the farm. For each relevant accepted farm practice, if the applicant cannot prove both of those elements without conditions of approval, the local government must consider whether, with conditions of approval, the applicant will meet the farm impacts test."

The Court was not done, however, because it also addressed the "cumulative impacts" under the farm impacts test, which requires such a cumulative analysis and possibly that the cumulative impacts test request also considering more than the aggregate of multiple-less-than-significant impacts on each farm.

Here, there are multiple significant impacts that must be analyzed – farm-to-farm, farm practice-by-farm practice, and in the cumulative – in order to carry the applicant's burden of proof. At this point, however, the applicant has not engaged any such analysis except to allege that the impacts from a golf course are the same, or at least similar, as

from a cranberry bog and other surrounding farm uses. That allegation, however, clearly misconstrues the analysis required by the Oregon Supreme Court.

As noted, the applicant repeatedly alleges that the impacts between bogs and golf courses are the same or similar and that there will be dunes that separate some of the farm uses from the golf course. It is not enough to simply allege[2] – across the board – that the effects and chemicals used in a golf course are the same as in cranberry bogs[3]. The applicant is offered no evidence to support such a statement. Even then, the applicant does not allege that they are the same but just similar – though that contention is without record support.

Some impacts that may occur include trespass from errant golfers or golfers following errant drives, litter, attraction of corvids[4] from trash, impacts from the application of herbicides, pesticides, insecticides and so forth. Golf courses use a variety of chemical applications, including pre-emergent herbicides, fungicides, insecticides, growth regulators, plant stimulants, and so forth.[5] As noted in the footnote, there is a host

---

[2] The applicant alleges that:

> "It is however the applicant's contention, for the purpose of showing compatibility, that the activities associated with maintaining a golf course are very similar, and often the same, as those types of activities performed ill conjunction with existing farm uses in the area."

The applicant also refers to "fertilizers and chemicals" but does not expand. The chemicals used on golf courses can include concerning chemicals such as chlorpyrifos, wich can affect the nervous system in high doses.

[3] Regardless, there are other surrounding farm uses, including blueberry production and pasture on the Leff ownerships.

[4] The issue is apparently so common that some golf courses spray for crows. The applicant has not demonstrated what it expects to use to deter crows or corvids.

[5] Fungicides are biocidal chemical compounds or biological organisms used to kill or inhibit fungi or fungal spores. Phosphite salts can be used as a biodegradable fungicide to protect golf course turfgrass against Pythium root rot and other pathogens of the order Oomycetes. It is primarily used on greens and fairways as a preventative treatment. Plant growth regulators or inhibitors are used to suppress seedheads and leaf growth due to rising mowing costs and danger posed to operators and other personnel. Plant growth regulators are now standard practice for golf course superintendents to enhance overall turf quality, promote a smooth and uniform playing surface, and improve stress tolerance in higher maintenance areas. Post-Emergent Herbicides tackle both perennial and annual broadleaf weeds, and some even control grassy weeds (weeds that resemble grass). Post emergent herbicides can also be used to treat specific problem areas. These include selective, aquatic, and non-selective. Selective herbicides control specific weed species, while leaving golf course turfgrass relatively unharmed. Some of these act by interfering

of chemicals that are applied to typical golf courses, but the applicant has not been straightforward as to what chemicals will be used. At the hearing, the applicant says "we spray lawns" but what is the applicant spraying? Not all of these chemicals are made equally and some can have deleterious affects on farmers and their crops. Moreover, the applicant has not shown – with any evidence – that the farm uses and golf course uses utilize the same chemicals.

One should expect that controlling weeds on 300+ acres would require significant application of chemicals. The applicant has not disclosed how much of any of these chemicals are expected or what is routine for golf courses of this size. The application has not indicated how it will address invasive species, noxious weeds, pest management (i.e., the applicant has not demonstrated which chemicals it expects to use). The public cannot begin to understand the impacts until the applicant discloses the types of herbicides and insecticides.

The applicant also concludes that "the golf course will be physically and visually shielded from the adjacent agricultural use, and vice versa." It is not clear how the applicant believes visual impacts from the golf course would affect the farm uses. Regardless, the applicant completely fails to identify the impacts that are likely to occur. The applicant alleges that there are dunes of a particular height that buffers some surrounding property, but there is no evidence in the record in the form of topographical maps or photographs (other than aerial photographs) to demonstrate the height of any of the surrounding dunes. The applicant also alleges that "the golf course fairways are generally surrounded by elevated dune formations that separate the course from adjacent properties and naturally direct runoff internally." The surrounding dunes – which have not been substantiated by any evidence in the record – are not somehow hermetically sealing the runoff and wastewater on the golf course. Even if it were "generally surrounded by elevated dune formations," a significant concern is the impacts to groundwater and to adjacent bogs (regardless of whether there may be an intervening

---

with the growth of the weed and are often synthetic mimics of natural plant hormones. Aquatic herbicides are chemicals specifically formulated for use in water to kill or control aquatic plants. A non-selective herbicide kills all plants it comes in contact with. From grubs, nematodes, mole crickets, mites, ants, mosquitoes and more - superintendents constantly battle for control of soil and turf inhabiting pests on golf courses. Insecticides can include, but are not limited to, the following: Control Solutions, Nufarm, Syngenta, BASF, Bayer, FMC Corporation, DOW, Valent and other leading manufactures. They include ovicides and larvicides used against insect eggs and larvae, respectively. The applicant has been silent on which types of chemicals it will use and the effects of them.

dune of some unsubstantiated size). The applicant must prepare a hydrologic assessment to determine what the impact from runoff of water and pesticides, fungicides, herbicides, and insecticides. Ironically, at the hearing, the applicant alleged that it has test wells and monitoring wells and it is using that to determine how it will impact adjacent and surrounding properties. Again, this is exactly the type of analysis that must occur for the farm impacts test, but the applicant is not presenting that information here and now. Simply put, the applicant cannot reasonably understand the impacts as it relates to the farm impacts test without this type of analysis, as well as some type of independent review. The application is, therefore, half-baked because the applicant cannot carry its burden of proof as it relates to water usage and how that will affect neighboring and surrounding cranberry bogs. The farm impacts test must be deferred under *Rhyne* and its progeny, as outlined in other testimony, until a later time when the applicant has presented all reasonably relevant information related to farm impacts and increased costs to farmers.

The impacts related to water are not simply resolved by the Oregon Water Resources Department. A typical 150-acre golf course uses 200 million gallons of water a year (without considering the restaurant, clubhouse, and other uses), and it is likely that use of wells or groundwater[6] will result in impacts to adjacent and surrounding bogs. The applicant has not demonstrated how much water is necessary for this golf course, how many golfers (apart from the traffic analysis[7]), and patrons to the restaurant are expected. ORCA submits that the impacts to adjacent bogs and farm uses cannot be evaluated until there is a hydrologic study and geologic hazard assessment that addresses these issues. Indeed, the applicant appears to wholly ignore the likelihood that the chemicals (insecticide, fungicide, herbicide, pesticides, etc., none of which are specifically identified) used on the golf course will enter the bogs through the groundwater and porous, sandy soil.

[6] The applicant alleges that "It is anticipated that the water source for irrigation and domestic use will be from deepwater wells and potentially reservoirs or ponds." ORCA submits that the applicant has not demonstrated that drawdown will not occur by using "deepwater wells," ponds and other means. Indeed, this is simply more evidence that the applicant has failed to complete any kind of relevant analysis.

[7] For example, what is the average number of golfers from other nearby golf courses or a similarly situated golf course? The applicant must determine what the farm impacts from a significant number of golfers.

ORCA also attaches the comments from Waterwatch of Oregon for the Bandon Biota Water Transfers. As noted in those comments, the water rights are not likely to be granted:

> "The water rights involved in these transfer applications may be subject to forfeiture. There is no water use data posted on WRIS for any year for certificates 86449 and 86448. Also, certificates 86449 and 86448 specifically require water use reporting for water used for temperature control, but there is no temperature control water use available on WRIS for either certificate for any year. In determining if a right is subject to transfer, OWRD is required to assess whether the water right was forfeited within the time limit set by ORS 540.610, which covers a five-year time period that ended no more than 15 years before the potential issuance of a notice of cancellation. ORS 540.610(2)(f). The "clock" for OWRD's forfeiture assessment required for review of this transfer, therefore, is not just the previous five-year period but includes this full look-back period. Additionally, OWRD must initiate cancellation proceedings "[w]henever it appears to the satisfaction of the Water Resources Commission upon the commission's own determination… that a perfected and developed water right has been forfeited." ORS 540.631. 3. T-14438 would result in enlargement. These changes would result in enlargement. Enlargement is an expansion of a water right that can occur when the user uses a greater rate or duty per acre than is currently allowed, increases the acreage irrigated under a right, fails to keep the original place of use from receiving water from the same source, or diverts more water at the new point of appropriation or diversion than is legally available at the original point of appropriation or diversion. OAR 690-380-0100(2). The Department shall not approve a transfer application that results in enlargement. OAR 690-380-5000(1)(c). These transfers would result in enlargement because irrigation of golf courses, which typically use thirsty turf grass, is a much more consumptive use than irrigation and temperature control for cranberry operations, especially since cranberry bogs are typically lined and they recycle water."

ORCA incorporates the entirety of the attached comments from Waterwatch, which demonstrate that the applicant is unlikely to obtain water rights sufficient to support a large golf course.

As noted below, the applicant cannot adequately gauge the farm impacts test under ORS 215.296 if the applicant does not know the location of the buildings. The restaurant and clubhouse will have impacts from the number of visitors, the amount of garbage produced, traffic, trespass, attraction of corvids, and so forth. The applicant has not

provided any estimate of the number of golfers expected for the proposed golf course, apart from a traffic estimate. The number of golfers is relevant to these impacts on adjacent farm uses. The applicant cannot readily define the baseline for the farm impacts analysis. There is simply no reason to think that the applicant can satisfy this criterion without knowing where the variety of structures will be placed on the property.

The applicant also alleges that it is "anticipated that on-site sanitary waste will be addressed through an onsite sanitary septic system and drain field." The applicant, however, does not disclose the potential effects, likely because the applicant does not even know if it will use a septic system and drain field. This is yet another issue that is half-baked. Nitrogen pollution from septic systems and drain fields is common.

According to testimony at the hearing, the applicant misidentified the Twin Creek farm operation. The testimony also noted that Bandon Biota has not adequately managed their properties to reduce wildfire concerns. The testimony also noted that the applicant has not provided any studies associated with water drawdown or otherwise.

Of particular concern is the Kranick Cranberry Farm, given that is directly adjacent and centrally located on the eastside of the proposed golf course. The applicant acknowledges that the ridge of the intervening dune (again, no topographical map has been submitted to verify these allegations) is, at times, only 10 feet tall. The potential impacts identified above are particularly acute as it relates to the Kranick Cranberry Farm. As with all other farms, the applicant copies-and-pastes the same statement that the golf course and bogs utilize the same "irrigation, fertilizing, mowing." This is clearly disingenuous, because the applicant has not even conceded in the farm impacts test for the closest farm that there will be chemicals applied. Moreover, there is no evidence to demonstrate that the chemicals used are the same across the bogs and the golf course.

Finally, the applicant has failed to engage in a cumulative impacts analysis. A cumulative impacts analysis is required, as noted by the Oregon Supreme Court, but the applicant has neither engaged in such an analysis or conceded that such an analysis is applicable. This because the applicant has disclaimed any and all impacts because they are allegedly the same as those of a cranberry bog, which is a wholly unsupported allegation.

III. The proposal is inconsistent with the administrative rules for the definition of a golf course and the legislative policy for preservation of farmland

The applicant's entire ownership appears to be roughly 342 acres, spanning for approximately 2 miles, but the golf course itself is 165 acres. All the 342 acres is

farmland, but the applicant is not utilizing all of that land for the golf course.[8] As noted in the footnote, the applicant cannot have it both ways, alleging on one hand that all of the acreage is for the golf course, but that there is acreage that is not "utilized for golf." The definition of "golf course" notes that it is an "area of land with highly maintained natural turn laid out *for the game of golf* with a series of nine or more holes, each including a tee, a fairway, a putting green, and often one or more natural or artificial hazards." Nothing in that definition allows the applicant to take out of farm production the 165 acres that is not even devoted to the game of golf. As noted above, there is a legislative policy to preserve farmland and the applicant here is using just as much land as is devoted to the golf course to no particular use at all. The applicant is using unnecessary farmland that is not devoted to the game of golf, which violates the rule (e.g., OAR 660-033-0130(20)) and is contrary to the legislative policy.

IV. The golf course is located on high value farmland

The applicant concedes that the definition for high-value farmland applies at ORS 215.710(2), wherein the applicant alleges that: *Aerial photographs confirm that on December* 6, *2007* [195. 3 *00(10)(a)], the subject tract upon which the golf course is proposed, does contain lands growing specified perennials. This criterion is satisfied.*" If all 342 acres are in common ownership, then ORS 215.710(2)'s provision for a "tract" means that the entirety of the ownership is high-value farmland. At the hearing, the applicant has indicated the opposite. Again, the applicant is taking contrary positions on this issue. As of now, there is no underlying evidence supporting the applicant's allegations made at the hearing. The applicant must submit the property line adjustments that allegedly preclude the entire tract from being high-value farmland.

Next, under ORS 195.300(10)(c)(A), the property is high-value farmland. ORS 195.300(10)(c)(A) provides that high-value farmland means "Land that is in an exclusive farm use zone or a mixed farm and forest zone and that on June 28, 2007, is …. Within the place of use for a permit, certificate or decree for the use of water for irrigation issued by the Water Resources Department." ORCA attaches hereto the Permit to Appropriate the Public Waters (G-13208) and Certificate of Water Right for cranberry operations on

[8] This raises the issue that the applicant alleges at times that the non-golf use acreage is part of the golf course and other times not part of the golf course, depending on when it is convenient. For example, the applicant alleges that "134-acres of open space land that contain natural dune formations, partially covered with native vegetation, approximately 20 acres of wetlands, and approximately 23 acres of identified flood areas." The applicant then alleges that "[w]hile not utilized for golf, the open space, wetland and flood areas provide for appropriate setting for a Scottish Links Golf Course[.]"

28.0 acres. The applicant alleges that "segment of the property upon which the golf course is proposed did not contain a water permit, certificate, or decree for the use of water." It is not clear whether this is part of the applicant's contiguous ownership, in which case the golf course, indeed, contains high-value farmland, or whether it has been severed from the property entirely. It appears as though it is part of the golf course but not in active play, but the applicant, again, has not substantiated its allegations with sufficient evidence to obtain an approval. In any event, the golf course is in contiguous ownership with the remainder of the 342 acres now owned by Ocean River LLC.

In addition, all the 342 acres is zoned Exclusive Farm Use except along Twomile Creek, and it is highly likely that those lands are subject to a "place of use" of a water right/certificate for irrigation as required under ORS 195.300. The applicant has not shown which existing water rights as of June 28, 2007 apply to all or part of the 342 acres, whether part of the actual golf course or reserved for "open space" or other use. It would be very odd if 342 acres of EFU land, or even just the 165 acres of EFU land slated for the golf course, were not in the place of use for one, or more likely several, pre-June 2007 water rights for irrigation. The HVF definition under ORS 195.300 applies to contiguous ownership, so even the two locations identified by the staff report that are a place of use for a water right for irrigation, and which appear to be outside the golf course proper, make the entire 342 acres subject to HVF rules prohibiting golf courses. *See* the discussion below concerning lawful creation of parcels by means of PLAs.

V. Geologic Assessment Review

First, this application must be subject to a condition of approval that requires that the applicant submit and receive approval for a geologic assessment review. As noted in prior testimony that explained the holdings in *Rhyne* and its progeny, the process for the geologic assessment review must allow for the same review process with the same procedural and substantive rights that were provided in this application.

Second, the applicant alleges that it does not have the details needed for the location of structures to carry out the geologic assessment review.[9] ORCA submits that

[9] The applicant alleges:

- "The structures, proposed in conjunction with the golf course have not been architecturally designed and, while the location of structures is generally known, the exact location of each structure is subject to change as development of the course proceeds."
- "Because the majority of the structures associated with the golf course have not been designed, and the exact location is unknown, it will be necessary

the applicant cannot adequately gauge the farm impacts test under ORS 215.296 if the applicant does not know the location of the buildings. The restaurant and clubhouse will have impacts due to the number of visitors and golfers, the amount of garbage produced, traffic, trespass, attraction of corvids, and so forth. The applicant cannot readily define the baseline for the farm impacts analysis if the applicant is not aware of where the buildings will be placed, as is conceded by the applicant.

VI. The applicant has not demonstrated that the subject property is lawfully established.

The applicant apparently believes that property line adjustments create land in the sense that a property line adjustment creates a lawfully established unit of land. For example, the applicant alleges that "[t]he area in yellow was created by Property line Adjustment Deed 2003-6462 following approval of the adjustment by Coos County. The applicant is mistaken. Property line adjustments simply adjust boundaries. The resulting property is not newly created, and is not a new parcel. *See Meyer v. Jackson County,* __ Or LUBA __ (LUBA No. 2014-005, April 24, 2014). Properties are newly created via a partition or subdivision. Properties are unlawful if they have not been created in conformance with all applicable land use laws. The applicant references D-23-002/ACU-23-037 but that application is not in the record. Therefore, there is no substantial evidence to support the applicant's allegations as to whether the lots and parcels are lawfully established.

VII. Procedural Objection

At the hearing, staff stated that for the "rebuttal" (or responsive period), no new evidence is allowed. That statement requires clarification because the parties *can* submit new evidence that is responsive to evidence submitted in the open record period. If ORCA is prohibited from submitting responsive argument and evidence, ORCA's substantial rights will be prejudiced.

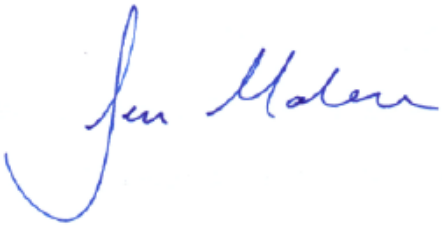
VIII. Conclusion

Consistent with the foregoing, ORCA respectfully requests that the application be denied. The Planning Commission should deny the application.

---

to address ordinance requirements for liquefaction at a later date. Because the standards of Section 4.11.115 will be addressed under a quasi-judicial land process with notice, it is not required that the standards be addressed at this time."

Sincerely,



Sean T. Malone
Attorney for Oregon Coast Alliance

Cc:
Client

Comments Submitted by Waterwatch of Oregon to Water Resources Department on Bandon Biota Water Transfers

May 2024

T-14438

The Department should withhold action on the transfer applications until the land use approval process is completed. Oregon state law requires the coordination of agencies with respect to land use and water management, which are integrally related. ORS 197.180(1); OAR 690-005-0020(1). The Water Resources Commission places a "high priority" on achieving compatibility with state and local goals and land use plans, and state water laws require protection of the "public interest in all waters of the state." OAR 690-005-0020(1). Water right transfer decisions are actions that must be coordinated with local land use governments to protect important local water resources. OAR 690-005-0025(3); OAR 690-005-0035. There is currently no approved land use application for the proposed use. On 2/1/23, the transfer applicant, Bandon Biota LLC, withdrew its land use application with the Coos County Planning Department for approval of the golf course. The land use application had received considerable public opposition largely due to its likely adverse impacts on the local water supply and consequential injuries to other water rights and local industry. Allegedly, a new land use application for the golf course has been submitted, but Coos County has not yet deemed it complete. There is no information publicly available on this application and if or how it differs from the previous application. OAR 690-005-0035(4)(a) requires an applicant to submit land use information prior to the Department taking action on the water use. If local land use approvals are pending, the Department shall withhold issuance of the water use approval until the applicant obtains all required local land use approvals, or place conditions on the approval to preclude use and any associated construction until the applicant obtains all required land use approvals. OAR 690-005-0035(4)(c). At this point, there are many unknowns and uncertainties about the proposed project. Because the prior land use approval process revealed multiple land use and water issues that were controversial and contested by the local community, the current land use process may very likely end in denial. The Department should therefore withhold action on the three transfer applications until the local land use approval process is complete. This will ensure compliance with state law and policy requiring coordination of land use and water management to protect the public interest in state waters. 2. The water rights involved in these transfer applications may be subject to forfeiture. There is no water use data posted on WRIS for any year for certificates 86449 and 86448. Also, certificates 86449 and 86448 specifically require water use reporting for water used for temperature control, but there is no temperature control water use available on WRIS for either certificate for any year. In determining if a right is subject to transfer, OWRD is required to assess whether the water right was forfeited within the time limit set by ORS 540.610, which covers a five-year time period that ended no more than 15 years before the potential issuance of a notice of cancellation. ORS 540.610(2)(f). The "clock" for OWRD's forfeiture assessment required for review of this transfer, therefore, is not just the previous five-year period but includes this full look-back period. Additionally, OWRD must initiate cancellation proceedings "[w]henever it appears to the satisfaction of the Water Resources Commission upon the

commission's own determination… that a perfected and developed water right has been forfeited." ORS 540.631. 3. T-14438 would result in enlargement. These changes would result in enlargement. Enlargement is an expansion of a water right that can occur when the user uses a greater rate or duty per acre than is currently allowed, increases the acreage irrigated under a right, fails to keep the original place of use from receiving water from the same source, or diverts more water at the new point of appropriation or diversion than is legally available at the original point of appropriation or diversion. OAR 690-380-0100(2). The Department shall not approve a transfer application that results in enlargement. OAR 690-380-5000(1)(c). These transfers would result in enlargement because irrigation of golf courses, which typically use thirsty turf grass, is a much more consumptive use than irrigation and temperature control for cranberry operations, especially since cranberry bogs are typically lined and they recycle water. Further, the use of water for temperature control is likely a non-consumptive use. The current cranberry operations also occur on a compact area of land; the irrigation and temperature control occur on the same 17.4 acres in quadrant SENW Section 25. The proposed irrigation will spread out over 26.4 acres across three quadrants. This change from overlap in use and size of the place of use would result in an increase of the acreage irrigated under the right and therefore result in enlargement in violation of OAR 690-380-0100(2). 4. Certificates 86449 (primary) and 86448 (secondary) are not eligible for transfer. Certificates 86449 (primary) and 86448 (secondary) do not appear eligible for transfer because they do not appear to have met the terms of the certificate. Both certificates expressly require annual reporting related to water use for temperature control, but OWRD's online Water Use Reporting database indicates that no reports were filed and states that "No data meets the specified criteria." Therefore, there appears to be noncompliance with the terms of the certificates, rendering the certificates ineligible for transfer. 5. T-14438 should be denied because it proposes to source water from an unpermitted reservoir. The application for T-14438 should be returned, or the transfer denied, because it proposes use of a source that is an unpermitted, illegal reservoir. Certificate 86449 (primary) currently sources water from two sump ponds located within and adjacent to the 17.4 acres of cranberry operations. According to the applicant, there is a pump in each sump pond. The transfer proposes to add a point of appropriation, or another pump, into what is known as sump pond S-1, for a total of two pumps in sump pond S-1 and one in sump pond S-2. (Application p. 4, 9) Water from sump pond S-2 is pumped into distribution by the pump in pond S-1. (Application p. 7). Certificate 86448 (secondary) currently sources water via a surface water pump located on an unnamed stream that flows into Laurel Lake. The pump pushes water through a distribution line into sump pond S-1, which is described as a "bulge in the system." (Application p. 10) However, on the land use maps attached to the transfer application, this sump pond S-1 is labeled as "EXISTING SUMP POND TO BE LINED AND USED AS IRRIGATION RESERVOIR." (Application p. 34, Map "New River Dunes Golf Course Revised" HBCU-22-001, Page 17). Given the intention expressed on this label, and the fact that an additional point of appropriation may require more water to be stored, this pond may become an illegal reservoir. Under Oregon law, a person may not store "any waters" without a permit. ORS 537.130(2). According to the "Aqua Book," the construction of a reservoir or pond of any size to store water requires a water right permit from WRD. (OWRD's Water Rights in Oregon: An Introduction to Oregon's Water Laws, p. 22) To the extent WRD proposes to allow this transfer based on the so-called "bulge in the system" theory, which WaterWatch asserts is unlawful, we request that WRD make explicit findings regarding this reservoir; how WRD finds it be lawful (including addressing WRD Field Operations Manual, Section 03.01, p. 9-11); and how it would be used under this application. In

sum, the Department should not allow illegal reservoirs to persist, should regulate against this one, and should return this transfer application.

T-14439

The Department should withhold action on the transfer applications until the land use approval process is completed. Oregon state law requires the coordination of agencies with respect to land use and water management, which are integrally related. ORS 197.180(1); OAR 690-005-0020(1). The Water Resources Commission places a "high priority" on achieving compatibility with state and local goals and land use plans, and state water laws require protection of the "public interest in all waters of the state." OAR 690-005-0020(1). Water right transfer decisions are actions that must be coordinated with local land use governments to protect important local water resources. OAR 690-005-0025(3); OAR 690-005-0035. On 2/1/23, the transfer applicant, Bandon Biota LLC, withdrew its land use application with the Coos County Planning Department for approval of the golf course. (withdrawal_notice.pdf (coos.or.us)) The land use application had received considerable public opposition largely due to its likely adverse impacts on the local water supply and consequential injuries to other water rights and local industry. Allegedly, a new land use application for the golf course has been submitted, but Coos County has not yet deemed it complete. There is no information publicly available on this application and if or how it differs from the previous application. OAR 690-005-0035(4)(a) requires an applicant to submit land use information prior to the Department taking action on the water use. If local land use approvals are pending, the Department shall withhold issuance of the water use approval until the applicant obtains all required local land use approvals, or place conditions on the approval to preclude use and any associated construction until the applicant obtains all required land use approvals. OAR 690-005-0035(4)(c). At this point, there are many unknowns and uncertainties about the proposed project. Because the prior land use approval process revealed multiple land use and water issues that were controversial and contested by the local community, the current land use process may very likely end in denial. The Department should therefore withhold action on the three transfer applications until the local land use approval process is complete. This will ensure compliance with state law and policy requiring coordination of land use and water management to protect the public interest in state waters. 2. Transfer T-14439 will reduce stream flows and injure Instream Water Right Certificate 76268 on Twomile Creek. Transfer T-14439 proposes to change the place of use for Certificate 73636. Certificate 73636 has been leased instream intermittently since 2001under IL-107, with the current lease agreement in place from 2021 to 2025. The certificate's authorized place of use is 53 acres of land directly north and adjacent to Twomile Creek in three quadrants. The proposed place of use is the new golf course which is not adjacent to Twomile Creek but spread out over six quadrants south of the creek. This proposed transfer would therefore cause significant changes to the flows within Twomile Creek because it would no longer receive the return flows it received when the land under the certificate was being irrigated. When a proposed transfer would result in another, existing water not receiving previously available water to which it is legally entitled, that is an injury. OAR 690-380 0100(3). The Department cannot approve proposed transfers that would result in injury. OAR 690-380-5000(1)(d). This is especially important because Twomile Creek within this reach is protected by an instream water right. ISWR Certificate 76268 exists to provide required stream flow for anadromous fish migration, spawning, egg incubation, fry emergence, and juvenile rearing, and flows are protected

throughout the reach. Additionally, Twomile Creek is listed by the Oregon Department of State Lands as Essential Habitat for Fall chinook, winter steelhead, and coho. 3. Transfer T-14439 will cause injury to other water rights. The application's proposed change in the place of use will most likely cause injury to other water rights, including, but not limited to, certificates 26397, 90113, and 90096. When a proposed transfer would result in another, existing water not receiving previously available water to which it is legally entitled, that is an injury OAR 690-380 0100(3). The Department cannot approve proposed transfers that would result in injury. OAR 690-380-5000(1)(d). These water rights source water from Two Mile Creek, which, as a result of the transfer, will not receive any return flows from irrigation of the original land under Certificate 73636 if the place of use is changed to an expansive golf course south of and further away the creek. This is the example of when the place of use for senior water right "A" is moved to a location where the return flows no longer enter the stream above the diversion for junior water right "B," leading to less water for "B" and potential injury. (Field Operations Manual, Section 11.01, p. 2-3)

T-14440

The Department should withhold action on the transfer applications until the land use approval process is completed. Bandon Biota, LLC is seeking these three transfers for the purpose of irrigating its proposed new golf course located south of Bandon in Coos County in the South Coast Basin. There is currently no approved land use application for the proposed use. Oregon state law requires the coordination of agencies with respect to land use and water management, which are integrally related. ORS 197.180(1); OAR 690-005-0020(1). The Water Resources Commission places a "high priority" on achieving compatibility with state and local goals and land use plans, and state water laws require protection of the "public interest in all waters of the state." OAR 690-005-0020(1). Water right transfer decisions are actions that must be coordinated with local land use governments to protect important local water resources. OAR 690-005-0025(3); OAR 690-005-0035. On 2/1/23, the transfer applicant, Bandon Biota LLC, withdrew its land use application with the Coos County Planning Department for approval of the golf course. (withdrawal_notice.pdf (coos.or.us)) The land use application had received considerable public opposition largely due to its likely adverse impacts on the local water supply and consequential injuries to other water rights and local industry. Allegedly, a new land use application for the golf course has been submitted, but Coos County has not yet deemed it complete. There is no information publicly available on this application and if or how it differs from the previous application. OAR 690-005-0035(4)(a) requires an applicant to submit land use information prior to the Department taking action on the water use. If local land use approvals are pending, the Department shall withhold issuance of the water use approval until the applicant obtains all required local land use approvals, or place conditions on the approval to preclude use and any associated construction until the applicant obtains all required land use approvals. OAR 690-005-0035(4)(c). At this point, there are many unknowns and uncertainties about the proposed project. Because the prior land use approval process revealed multiple land use and water issues that were controversial and contested by the local community, the current land use process may very likely end in denial. The Department should therefore withhold action on the three transfer applications until the local land use approval process is complete. This will ensure compliance with state law and policy requiring coordination of land use and water management to protect the public interest in state waters. 2. The water rights involved in these transfer

applications may be subject to forfeiture. In determining if a right is subject to transfer, OWRD is required to assess whether the water right was forfeited within the time limit set by ORS 540.610, which covers a five-year time period that ended no more than 15 years before the potential issuance of a notice of cancellation. ORS 540.610(2)(f). The "clock" for OWRD's forfeiture assessment required for review of this transfer, therefore, is not just the previous five-year period but includes this full look-back period. Additionally, OWRD must initiate cancellation proceedings "[w]henever it appears to the satisfaction of the Water Resources Commission upon the commission's own determination… that a perfected and developed water right has been forfeited." ORS 540.631. The Evidence of Use Affidavits for certificates 86449, 86448, 89934, offer an explanation for the absence of profitable operations from 2014 -2019, but the evidence of use receipts only indicate energy charges for 2019, with only one charge for 2020. These affidavits do not explain other multiple years of non-use evident in OWRD's online WRIS system. 3. T-14440 would result in enlargement. Transfer application T-14440 proposes changes to certificates 89934 which allows beneficial use for irrigation, temperature control, and flood harvesting of 13.8 acres of cranberry bogs. The proposed transfer changes the place of use for the irrigation portion. The proposed transfer also changes the character of use for the temperature control portion to irrigation and changes its place of use. These changes would result in enlargement. Enlargement is an expansion of a water right that can occur when the user uses a greater rate or duty per acre than is currently allowed, increases the acreage irrigated under a right, fails to keep the original place of use from receiving water from the same source, or diverts more water at the new point of appropriation or diversion than is legally available at the original point of appropriation or diversion. OAR 690-380-0100(2). The Department shall not approve a transfer application that results in enlargement. OAR 690-380-5000(1)(c). These transfers would result in enlargement because irrigation of golf courses, which typically use thirsty turf grass, is a much more consumptive use than irrigation and temperature control for cranberry operations, especially since cranberry bogs are typically lined and they recycle water. Further, the use of water for temperature control is likely a non-consumptive use. The current cranberry operations also occur on a compact area of land; the irrigation and temperature control occur on the same 13.8 acres in quadrants NENW and SENW of Section 25. The proposed irrigation will spread out over 20.9 acres across four quadrants: NWSW Section 24, SWSW Section 24, NWNW Section 25, and SWNW Section 25. This change from overlap in use and size of the place of use would result in an increase of the acreage irrigated under the right and therefore result in enlargement in violation of OAR 690-380-0100(2). 4. Certificate 89934 may not be in compliance with the New River Agreement. Permit G-13022, the permit that was perfected and became Certificate 89934, contained a provision to ensure compliance with the New River Agreement. It states: "Diversion and use of water under this permit must comply with the Clean Water Act and utilize best management practices as identified in the plan developed as specified in the New River Alternative Dispute Resolution Team Agreement on file with the Department." (Page 2) However, Certificate 89934 is missing this permit condition and lacks any reference to the New River Agreement. Presumably, this is a scrivener's error, and we request that WRD immediately correct the certificate to include the permit conditions stated on the permit.

866.853.4653

I'm looking for...

- Golf
- Sports Turf
- Lawn & Landscape
- Resources & Programs
- About

FUNGICIDES

Fungicides are biocidal chemical compounds or biological organisms used to kill or inhibit fungi or fungal spores. Having a solid fungicide program in place to protect your golf course from diseases is essential. Applying well-timed fungicide applications before physical symptoms develop is ideal, with the correct timing. Once a fungal infection such as Brown patch, Grey leaf spot, or Pythium Root Rot has been detected on a golf course, a mixture of fungicides should be applied as quickly as possible to minimize spread of the infection as well as start the healing process on the infected area. Use a contact fungicide to quickly limit the spread of the infection, and a systematic fungicide to protect emerging leaf tissue. Fungicide application intervals should be increased for several weeks following the outbreak to facilitate the turf's recovery.

GOLF

- FERTILIZER
- CHEMICALS
  - Pre-emergent Herbicides
  - Herbicides
  - Fungicides
    - Contact
    - Systemic
    - Phosphites
  - Insecticides
  - Growth Regulators
  - Plant stimulants (hormones)
- SPRAY AIDS
- ACCESSORIES
- SAND AND AGGREGATE

CONTACT

SYSTEMIC

PHOSPHITES

- SEED
- SAFETY EQUIPMENT
- WETTING AGENTS AND PENETRANTS
- TOOLS
- GOLF CLEARANCE

SPORTS TURF

LAWN & LANDSCAPE

GET THE LATEST NEWS, EVENTS & DEALS

Golf Ventures - 5385 Gateway Boulevard, Suite 12, Lakeland, FL. 33811 | Toll Free 866.853.4653 | Fax 863.669.9650

866.853.4653

I'm looking for...

- Golf
- Sports Turf
- Lawn & Landscape
- Resources & Programs
- About

HERBICIDES

Post-Emergent Herbicides tackle both perennial and annual broadleaf weeds (weeds with leaf shapes that don't resemble grass), and some even control grassy weeds (weeds that resemble grass). Browse our online cataloge and select post-emergent herbicides to control existing weeds on golf courses. Post emergent herbicides can also be used to treat specific problem areas.

GOLF

- FERTILIZER
- CHEMICALS
  - Pre-emergent Herbicides
  - Herbicides
    - Selective
    - Non selective
    - Aquatic
  - Fungicides
  - Insecticides
  - Growth Regulators
  - Plant stimulants (hormones)
- SPRAY AIDS
- ACCESSORIES
- SAND AND AGGREGATE

SELECTIVE

NON SELECTIVE

AQUATIC

- SEED
- SAFETY EQUIPMENT
- WETTING AGENTS AND PENETRANTS
- TOOLS
- GOLF CLEARANCE

SPORTS TURF

LAWN & LANDSCAPE

GET THE LATEST NEWS, EVENTS & DEALS

866.853.4653

I'm looking for...

- Golf
- Sports Turf
- Lawn & Landscape
- Resources & Programs
- About

INSECTICIDES

From grubs, nematodes, mole crickets, mites, ants, mosquitoes and more - superintendents constantly battle for control of soil and turf inhabiting pests on golf courses. Golf Ventures carries a full line of insecticides from Control Solutions, Nufarm, Syngenta, BASF, Bayer, FMC Corporation, DOW, Valent and other leading manufactures. They include ovicides and larvicides used against insect eggs and larvae, respectively. Contact your Territory Manager - we will be help you select the most effective and environmentally friendly pesticide, minimizing the use of broad-spectrum pesticides, wherever possible.

GOLF

- FERTILIZER
- CHEMICALS
  - Pre-emergent Herbicides
  - Herbicides
  - Fungicides
  - Insecticides
    - Chemical
    - Microbial
    - Nematicide
  - Growth Regulators
  - Plant stimulants (hormones)
- SPRAY AIDS
- ACCESSORIES
- SAND AND AGGREGATE

CHEMICAL

MICROBIAL

NEMATICIDE

- SEED
- SAFETY EQUIPMENT
- WETTING AGENTS AND PENETRANTS
- TOOLS
- GOLF CLEARANCE

SPORTS TURF

LAWN & LANDSCAPE

GET THE LATEST NEWS, EVENTS & DEALS

Golf Ventures - 5385 Gateway Boulevard, Suite 12, Lakeland, FL. 33811 | Toll Free 866.853.4653 | Fax 863.669.9650

DTE GOLF® · APRIL 21, 2021

Understanding Golf Course Chemical Application

Pesticides, herbicides, and insecticides are all chemicals used to maintain the idyllic appeal of a lush green golf course. To ensure the health and sustainability of turfgrass, different chemical agents have been specially synthesized to promote growth in turfgrass while preventing damage.

Golf Course Chemical Agents

POST-EMERGENT HERBICIDES

Post-emergent herbicides tackle both enduring and yearly broadleaf (weeds with leaf shapes that don't look like grass), and some even control weeds that look like grass. Post-emergent herbicides can likewise be used to treat areas after weeds have already taken hold.

FUNGICIDES

Fungicides are biocide chemical compounds or natural organic entities used to repress or kill fungal growths or parasitic spores. Having a strong fungicide program set up to prevent disease and protect your course is fundamental. Fungus such as Brown Patch, Gray leaf spot, or Pythium Root Rot can easily destroy an entire golf course if left

prevent fungus entirely. Preventative fungicide applica

save you the trouble of battling an active fungal proble

PLANT STIMULANTS

Plant hormones are signal atoms produced inside the plant and occurring in low concentration. Hormones regulate local cellular processes and move to other areas of the plant. Hormones likewise decide the formation of flower, leaves, stem, shedding of leaves, and maturing of fruits. By adding a growth stimulant, we can target these hormones and encourage rapid growth and stronger systems.

CHEMICAL APPLICATIONS AND THE ENVIRONMENT

While pesticides have been a call for concern in the past, modern chemical agents are safer and those applying them must go through rigorous training and certification. Improper usage of pesticides by an untrained and unlicensed professional will however result in damage to your turfgrass as well as potentially posing health hazards. When properly applied, golf course chemical applications are carried out with the health of golfers and workers as the very first priority.

There's a reason DTE Golf® is a trusted name in the industry, and it's because of the quality of our work. When you're ready to make a difference on your course, make it the DTE difference.

COMMENTS (0) Newest First

Preview POST COMMENT...

PREVIOUS
Golf Facility Repairs and Renovations
COURSE CONDITIONS

NEXT
The Grass is Always Greener: Your Guide to Golf Course
COUR

DTE GOLF
GOLF FACILITY SERVICES

DTE GOLF®
2701 MAITLAND CENTER PKWY, SUITE 200
MAITLAND, FL 32751

PHONE: 321-263-2700
FAX: 352-385-7229
CONTACT US

PARTNERS

CONNECT

Terms and Conditions

Follow Us On Social Media!

Click to Connect

Sustainable Water Use for Golf Courses

FLUENCE NEWS TEAM

Brandon Bourdages/123RF

From maintaining water features to irrigating with recycled and desalinated water, sustainable water management is an important aspect of golf course management.

Modular, decentralized solutions can help golf courses minimize use of potable water sources

Golf courses use a great deal of water for irrigation and other purposes. A typical 150-acre golf course uses approximately 200 million gallons of water a year, enough to supply 1,800 residences with 300 GPD of water.

If the golf course is associated with a golf community or resort, domestic water use must also be taken into account. Golf course managers also have to maintain water features like ponds and water hazards, which are highly vulnerable to eutrophication and associated odors, algae, and toxicity.

https://www.fluencecorp.com/golf-course-water-use/

STATE OF OREGON

COUNTY OF Coos

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

DAVE H BROOKS
RT 1 BOX 906
BANDON, OREGON 97411

(541)347-9296

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: G-13208

SOURCE OF WATER: TWO WELLS IN THE FOURMILE CREEK BASIN

PURPOSE OR USE: CRANBERRY OPERATIONS ON 28.0 ACRES

MAXIMUM RATE: 2.0 CUBIC FEET PER SECOND (CFS), BEING 1.0 CFS FROM EACH SUMP WELL

PERIOD OF USE: YEAR ROUND

DATE OF PRIORITY: DECEMBER 7, 1992

POINT OF DIVERSION LOCATION: SE 1/4 NW 1/4, SECTION 25, TOWNSHIP 29 SOUTH, RANGE 15 WEST, W.M.; WELL 1 - 2140 FEET SOUTH & 680 FEET WEST; WELL 2 - 2060 FEET SOUTH & 1180 FEET WEST; BOTH FROM NORTH 1/4 CORNER, SECTION 25

The amount of water diverted for CRANBERRY OPERATIONS, together with amounts secured under any other rights existing for the same lands, is limited as follows: For temperature control, 0.15 cubic foot per second per acre; For flood harvesting or pest control, 0.05 cubic foot per second per acre; For irrigation of cranberries, ONE-FORTIETH of one cubic foot per second and 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year. For the irrigation of any other crop, ONE-EIGHTIETH of one cubic foot per second and 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

NE 1/4 NW 1/4 7.0 ACRES
SE 1/4 NW 1/4 13.0 ACRES
NW 1/4 SW 1/4 8.0 ACRES
SECTION 25
TOWNSHIP 29 SOUTH, RANGE 15 WEST, W.M.

Measurement, recording and reporting conditions:

A. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as

approved by the Director. The permittee shall maintain the meter or measuring device in good working order, shall keep a complete record of the amount of water used each month and shall submit a report which includes the recorded water use measurements to the Department annually or more frequently as may be required by the Director. Further, the Director may require the permittee to report general water use information, including the place and nature of use of water under the permit.

B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

If interference with a senior water right or surface water flows occurs due to withdrawal of water from any well listed on this permit, then use of water from the well(s) shall be discontinued or reduced and/or the schedule of withdrawal shall be regulated until or unless the Department approves or implements an alternative administrative action to mitigate the interference.

Diversion and use of water under this permit must comply with the Clean Water Act and utilize best management practices as identified in the plan developed as specified in the New River Alternative Dispute Resolution Team Agreement on file with the Department.

STANDARD CONDITIONS

The wells shall be constructed in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon. The works shall be equipped with a usable access port, and may also include an air line and pressure gauge adequate to determine water level elevation in the well at all times.

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

Prior to receiving a certificate of water right, the permit holder shall submit the results of a pump test meeting the department's standards, to the Water Resources Department. The Director may require water level or pump test results every ten years thereafter.

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The use of water shall be limited when it interferes with any prior surface or ground water rights.

The Director finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

Actual construction of the well shall begin within one year from permit issuance, and shall be completed on or before October 1, 1999. Complete application of the water to the use shall be made on or before October 1, 2000.

Issued January 31, 1997

Martha O. Pagel, Director
Water Resources Department

assigned
ASSIGNED. See Misc. Rec., Vol. 8 Page 287

Crow Damage

Swango1980 · Dec 4, 2020

Dec 4, 2020 #1

S

Swango1980
Well-known member
Joined: Jul 22, 2019
Messages: 11,737
Location: Lincolnshire
Visit site

No doubt there is a thread on this somewhere, but couldn't find it.

Anyone's course suffering from crow damage. Any good ideas to try and deal with it?

We are having a really bad time with it this year, and I guess little can be done in this weather. Over the year, the owners have tried to have cannons going off every few minutes, and hanging dead crows on trees. Doesn't seem too successful. I hear the stuff they used to use in spraying the greens is either no longer permitted or way too expensive, but it depends who you listen to.

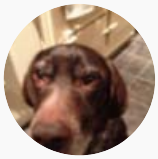
D

Deleted member 3432
Guest

> Swango1980 said:
>
> No doubt there is a thread on this somewhere, but couldn't find it.
>
> Anyone's course suffering from crow damage. Any good ideas to try and deal with it?
>
> We are having a really bad time with it this year, and I guess little can be done in this weather. Over the year, the owners have tried to have cannons going off every few minutes, and hanging dead crows on trees. Doesn't seem too successful. I hear the stuff they used to use in spraying the greens is either no longer permitted or way too expensive, but it depends who you listen to.

Birds digging for grubs is a problem for many clubs and directly linked to greenkeepers not allowed to use certain chemicals

Dec 4, 2020 #3



patricks148
Global Moderator
Moderator
Joined: Jun 9, 2009
Messages: 24,587
Location: Highlands
Visit site

we have it too, a few years ago they distroyed a couple of tee's. thing is the leather jackets they are are digging for do more dammage to the grass that the crows do. Club sprays a bit more the last couple of years and the damange has been much less

KenL

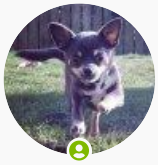
Dec 4, 2020 #4

Shooter McPowick
Head Pro
Joined: Apr 2, 2016
Messages: 1,267
Location: Surrey
Visit site

Got it on a couple of holes on the back 9, crows are total vandals! Greenkeepers fire flares from time to time and we have a fake hawk on a kite string that gets flown on breezy days. They also cored the fairways at about a 2" gap between cores as well - thank heavens for winter rules as you're always in a hole if you end up on the area under repair.

Hopefully now that there's golfers out there from dawn to dusk it'll keep the crows away long enough.

Dec 4, 2020 #5



KenL
Tour Rookie
Joined: Dec 3, 2014
Messages: 6,894
Location: East Lothian
Visit site

> Swango1980 said:
>
> No doubt there is a thread on this somewhere, but couldn't find it.
>
> Anyone's course suffering from crow damage. Any good ideas to try and deal with it?
>
> We are having a really bad time with it this year, and I guess little can be done in this weather. Over the year, the owners have tried to have cannons going off every few minutes, and hanging dead crows on trees. Doesn't seem too successful. I hear the stuff they used to use in spraying the greens is either no longer permitted or way too expensive, but it depends who you listen to.

What club is this?

Dec 4, 2020 #6

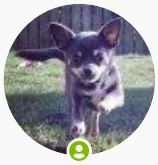
S

Swango1980
Well-known member
Joined: Jul 22, 2019
Messages: 11,737
Location: Lincolnshire
Visit site

> KenL said:
>
> What club is this?

Lincolnshire area. Seen damage at other courses, but ours seems to be particularly bad. Lockdown didn't help, with no golfers to scare them away.

Dec 4, 2020 #7



KenL
Tour Rookie
Joined: Dec 3, 2014
Messages: 6,894
Location: East Lothian
Visit site

> Swango1980 said:
>
> Lincolnshire area. Seen damage at other courses, but ours seems to be particularly bad. Lockdown didn't help, with no golfers to scare them away.

So, not willing to say the course?

Dec 4, 2020 #8

Blue in Munich
Crocked Professional Yeti Impersonator
Joined: Jan 12, 2013
Messages: 14,092
Location: Worcester Park
Visit site

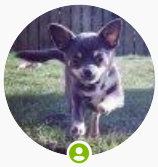
Not suffering course damage from crows but we have been suffering from ones that steal balls on one particular hole. Fortunately they seem to have departed to pastures new during lockdown.

Dec 4, 2020 #9

louise_a
Money List Winner
Joined: Mar 4, 2012
Messages: 7,169
Location: salford
Visit site

We have had crows digging for leatherjackets (cranefly larva), the pesticide that was used to kill leatherjackets was banned about 2 or 3 years ago, so more crows and magpies

Dec 4, 2020 #10



KenL
Tour Rookie
Joined: Dec 3, 2014
Messages: 6,894
Location: East Lothian
Visit site

> louise_a said:
>
> We have had crows digging for leatherjackets (cranefly larva), the pesticide that was used to kill leatherjackets was banned about 2 or 3 years ago, so more crows and magpies

I think it was banned a lot longer ago than that. 10 years?

louise_a

Dec 4, 2020 #11

need_my_wedge
Has Now Found His Wedgie
Joined: Sep 3, 2007
Messages: 6,671
Location: Kingdom of Fife
Visit site

Same, crows and magpies have been tearing some areas around the greens to pieces. We used to have a green keeper that had licence to cull them, he'd set up a sniper post early doors and shoot them. I don't know if he's still with the club or not.

Dec 4, 2020 #12

louise_a
Money List Winner
Joined: Mar 4, 2012
Messages: 7,169
Location: salford
Visit site

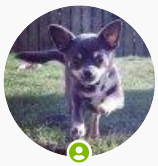
> KenL said:
>
> I think it was banned a lot longer ago than that. 10 years?

Just googled it 2016,

It seems there is an allowable nematode treatment that can killer leatherjackets but has to be done at just the right time of year and in the right conditions.

KenL

Dec 4, 2020 #13

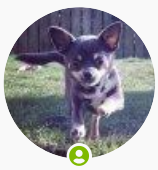


KenL
Tour Rookie
Joined: Dec 3, 2014
Messages: 6,894
Location: East Lothian
Visit site

It is illegal to shoot birds unless for public health reasons or to protect crops. Might even be illegal for the second reason in England now.

This is perhaps a wildlife crime?

Dec 4, 2020 #14



KenL
Tour Rookie
Joined: Dec 3, 2014
Messages: 6,894
Location: East Lothian
Visit site

> need_my_wedge said:
>
> Same, crows and magpies have been tearing some areas around the greens to pieces. We used to have a green keeper that had licence to cull them, he'd set up a sniper post early doors and shoot them. I don't know if he's still with the club or not.

What club is that please?

Dec 4, 2020 #15

jim8flog
Journeyman Pro
Joined: May 20, 2017
Messages: 15,213
Location: Yeovil
Visit site

We tried covering the greens with tarpaulins in the evening which makes all the grubs come to the surface. In the morning all the grubs were swept up and dumped in the trees.

Dannyc and KenL

Dec 4, 2020 #16

D

Deleted member 3432
Guest

> jim8flog said:
>
> We tried covering the greens with tarpaulins in the evening which makes all the grubs come to the surface. In the morning all the grubs were swept up and dumped in the trees.

Not quite practical do it on faiways.

Chafer grubs are another problem on more sandy soils and like leather jackets the wildlife does like digging them up for breakfast, lunch and tea.

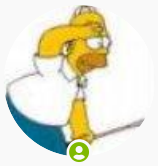
Dec 4, 2020 #17

Imurg
The Grinder Of Pars
(Semi Crocked)
Joined: Mar 15, 2008
Messages: 37,134
Location: Aylesbury Bucks
Visit site

I thought this was about Nick getting upset with one of his persimmons🤔

Dando and PhilTheFragger

Dec 4, 2020 #18



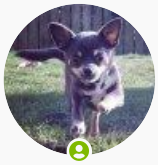
HomerJSimpson
Hall of Famer
Joined: Aug 6, 2007
Messages: 71,273
Location: Bracknell - Berkshire
Visit site

> need_my_wedge said:
>
> Same, crows and magpies have been tearing some areas around the greens to pieces. We used to have a green keeper that had licence to cull them, he'd set up a sniper post early doors and shoot them. I don't know if he's still with the club or not.

We've had some green damage from crows looking for leatherjackets. Seems to be all of the holes nearest the woods (unsurprisingly). Not sure what greenkeepers can do with all the chemical bans.

KenL

Dec 4, 2020 #19



KenL
Tour Rookie
Joined: Dec 3, 2014
Messages: 6,894
Location: East Lothian
Visit site

> Imurg said:
>
> I thought this was about Nick getting upset with one of his persimmons🤔

What does that mean? Was it a pointless post?

Dec 4, 2020 #20

D

Deleted member 15344
Guest

> KenL said:
>
> What club is that please?

Does it matter ?

1 2 3 4 5 Next ▸

You must log in or register to reply here.

Similar threads

Rear ended, but no visible damage. Advice please.
Don Barzini · Apr 28, 2023 · Out of Bounds 2
Replies: 21 Views: 8K
Sep 9, 2023 larmen

R

Membership Suspension
rdowsey1024 · May 10, 2024 · The Lounge 2
Replies: 23 Views: 2K
May 11, 2024 Billysboots

Home › Forums › Golf Monthly Forum › **The Lounge** ›

C

chappers09 · Mar 17, 2024 · Ask the Experts
Views: 787
HomerJSimpson

Terms and rules Privacy policy Help Home

C

Mullion GC - Lizard peninsula
cunnini · Aug 14, 2023 · Post a Review
Replies: 5 Views: 796
Aug 28, 2023 spongebob59

Share:

866.853.4653

I'm looking for...

- Golf
- Sports Turf
- Lawn & Landscape
- Resources & Programs
- About

CHEMICALS

Chemicals Products for Golf Courses. Many products in catalog are for sale to, and used only by Certified Applicators or persons under their direct supervision and only for those covered by the Certified Applicators certification.

PRE-EMERGENT HERBICIDES

HERBICIDES

GOLF

- FERTILIZER
- CHEMICALS
  - Pre-emergent Herbicides
  - Herbicides
  - Fungicides
  - Insecticides
  - Growth Regulators
  - Plant stimulants (hormones)
- SPRAY AIDS
- ACCESSORIES
- SAND AND AGGREGATE
- SEED
- SAFETY EQUIPMENT
- WETTING AGENTS AND PENETRANTS
- TOOLS
- GOLF CLEARANCE

FUNGICIDES

INSECTICIDES

GROWTH REGULATORS

PLANT STIMULANTS (HORMONES)

SPORTS TURF

LAWN & LANDSCAPE

GET THE LATEST NEWS, EVENTS & DEALS

Golf Ventures - 5385 Gateway Boulevard, Suite 12, Lakeland, FL. 33811 | Toll Free 866.853.4653 | Fax 863.669.9650

866.853.4653

I'm looking for...

- Golf
- Sports Turf
- Lawn & Landscape
- Resources & Programs
- About

PRE-EMERGENT HERBICIDES

Pre-emergent prevent the germination of undesirable seeds by inhibiting a key enzyme. Pre-emergents are applied to golf courses in the spring and fall to prevent the germination of weed seeds. They will not affect any established plant.

Sort By: Alphabetical (A to Z) 27 Results View: 15 View All Page 1of 2 >

Atrazine 4L

SKU: 83012369 | **Brand:** Sipcam Agro

SDS Label

Product Label

2 x 2.5

1

ATRAZINE 4L SEASON-LONG CONTROL OF ANNUAL GRASSES AND BROADLEAF WEEDS.

Atrazine 4L flowable herbicide contains 4 lbs. active atrazine per gallon for season-long control of annual grassy and...

GOLF

- FERTILIZER
- CHEMICALS
  - Pre-emergent Herbicides
  - Herbicides
  - Fungicides
  - Insecticides
  - Growth Regulators
  - Plant stimulants (hormones)
- SPRAY AIDS
- ACCESSORIES
- SAND AND AGGREGATE
- SEED
- SAFETY EQUIPMENT
- WETTING AGENTS AND PENETRANTS
- TOOLS
- GOLF CLEARANCE

SPORTS TURF

LAWN & LANDSCAPE

Barricade 4FL

SKU: BARRICA564 | **Brand:** Syngenta

4 x 1 Gal

Active Ingredient:

Prodiamine

For selective preemergene control of grass and broadsleaf weeds in:

established turfgrasses (excluding golf course...

SDS Label

Product Label

1

Barricade 65WG

SKU: BARRICA011 | **Brand:** Syngenta

6 X 5 LB

Barricade® 65WG herbicide controls more than 30 weeds with season-long control at low use rates. The water-dispersible granule provides the ease of handling and reduced packaging of a dry formulation.

Active...

SDS Label

Product Label

1

Bensumec 4 LF (Gal)

SKU: BENSUME642 | **Brand:** PBI Gordon

2 x 2.5 gal

Bensulide - 46%

Bensumec 4LF is a pre-emergent broadleaf herbicide that provides season-long control of broadleaf
For use in Bahiagrass, Bentgrass, Perennial bluegrass, Bermudagrass,...

SDS Label

Product Label

1

Dimension 2 EW

SKU: DIMENSI411 | **Brand:** DOW

2 x 2.5 gal

Active Ingredient: Dithiopyr

DIMENSION 2EW can be applied to landscape and field- and container-grown ornamentals, controlling both grassy and broadleaf weeds without harming desirable plants....

Sell Sheet

1

Dithiopyr 40 WSB

SKU: 83014301 | **Brand:** Quaili Pro

8x(4 x5 Oz)

Pre-emergence and early post-emergence herbicide for weed control in established lawns, commercial sod farms, non-cropland and industrial sites, ornamental turf (including to golf course fairways, roughs,...

SDS Label

1

GALLERY SC (Agency Priced)

SKU: EL11103357 | **Brand:** Corteva

2 x 2 Gal

Season-long control of more than 90 broadleaf weeds

Gallery SC Specialty Herbicide is an easy-to-use suspension concentrate. The new formulation offers excellent plant tolerance and long-lasting...

SDS Label

Product Label

1

Goose & Crabgrass

SKU: GOOSECR521 | **Brand:** Scotts

28.87 lb bag

Goosegrass also referred to as Silver Crabgrass, Wire-grass, Yard-grass, Bullgrass and Crowfoot-grass – is a perennial grassy weed. Eleusine indica is primarily found in disturbed sites, lawns,...

SDS Label

Product Label

1

Isoxaben 75 WG

SKU: 83013493 | **Brand:** Control Solutions

6 x(4 x 1Lb)

Up to 8 months of selective pre-emergent control of broadleaf weeds with a single application. Performance proven on both cool and warm season turfgrass and in the ornamental, landscape and nursery...

SDS Label

Product Label

1

Kerb T&O SC

SKU: KERB002 | **Brand:** DOW

2 x 2.5 gal

Product Label

Sell Sheet

1

Active Ingredient: Pronamide

Profile

Kerb SC T&O specialty herbicide is a versatile tool for golf course superintendents,...

Metricor 75 DF (Tricor / Sencor alternative)

SKU: 48166-SOU | **Brand:** UPI

10 lb Bag

Metricor 75DF Herbicide is a generic version of the Sencor Herbicide, and is proven broad-spectrum...

SDS Label

Product Label

1

Pennant Magnum

SKU: PENNANT095 | **Brand:** Syngenta

30 gal

Pennant Magnum Herbicide

Pennant Magnum® herbicide, containing the active ingredient s-metolachlor, prevents yellow nutsedge, smooth and large crabgrass, and over 20 more turf, ornamental...

SDS Label

Product Label

1

Pennant Magnum

SKU: SY38782 | **Brand:** Syngenta

4 x 1 Gal

Pennant Magnum Herbicide

Pennant Magnum® herbicide, containing the active ingredient s-metolachlor, prevents yellow nutsedge, smooth and large crabgrass, and over 20 more turf, ornamental...

SDS Label

Product Label

1

PRE-SAN 12.5G

SKU: GD6253046 | **Brand:** PBI Gordon

50 lb bag

Active Ingredient: Bensulide

Pre-San Granular 12.5G Herbicide offers dependable pre-emergence control of Poa annua, crabgrass, goosegrass, and other listed annual weeds in turfgrass.
With...

SDS Label

Product Label

1

Princep 4L (Gal)

SKU: PRINCEP323 | **Brand:** Syngenta

2 x 2.5 gal

Princep 4L Herbicide

Princep® 4L is a liquid herbicide that controls more than 40 broadleaf and annual grass weeds in fruits, nuts and corn (see label for specific crops). It's long-lasting...

SDS Label

Product Label

1

1 2 Next »

Exhibit 15

JULY 25, 2024

OCEAN RIVER, LLC GOLF COURSE APPLICATION (HBCU -24-001)

APPLICANT'S REBUTTAL TO EVIDENCE FOR THE WEEK ENDING JULY 18, 2024

The following is rebuttal to evidence submitted during the first open record period ending July 18, 2024. The applicant (Ocean River LLC) did not submit new evidence during the first seven-day open record period, and it is therefore the applicant's right to rebut all prior evidence and submit a final argument.

A summary of evidence submitted in opposition to the application and the applicant's rebuttal is as follows:

Oregon Coast Alliance (ORCA) (Letter dated July 18, 2024)

Opening Argument

- *ORCA opens by citing a legislative policy intended to protect agricultural land, particularly in large blocks, and that limitations on urban expansion and alternative uses of agricultural and forest land are necessary and a matter of statewide concern.*

APPLICANT'S REBUTTAL: The applicant wholly agrees with ORCA's premise that the legislature has established policies intended to protect farm and forest lands for the purpose of maintaining a viable agricultural and forest products economy. However, ORCA also agrees that the same legislature has determined that a golf course is suitable, and therefore allowed on agricultural land subject to meeting specified criteria.

ORCA appears to believe that the legislative policy cited, is intended to cast a cloud over non-farm uses on resource land, regardless of the fact that those uses are is permitted under legislative statute. There are specified criteria that the applicant must comply with; however, the legislative policy cited by ORCA was taken into consideration when the legislature permitted golf courses on agricultural land. Therefore, it is not the Planning Commission's responsibility to consider or apply this policy to uses permitted under statute.

I. The applicant has not satisfied the criteria for the golf course and design capacity.

- *ORCA concludes that the applicant has not satisfied the criteria for design capacity because the two dwellings that exist on the tract were not considered. ORCA states that "clearly golfers will want to stay at these dwellings on the golf course."*

APPLICANT'S REBUTTAL: The applicant has stated in the application that both residential dwellings are currently managed as month-to-month rentals, and that they will continue to be managed as month-to-month rentals after the golf course is constructed. ORCA is speculating, with no verifiable evidence, that the applicant's intent is to utilize the dwellings in conjunction with the golf course. The applicant is very well aware that residential uses cannot, and therefore, will not be utilized in conjunction with the golf course.

ORCA implies that the applicant is attempting to expand on the 100-person design capacity under OAR 660-033-0130(2)(b), which states; "Any enclosed structure or group of enclosed structures described in subsection (a) within a tract must be separated by at least one-half mile. Subsection (a) limits enclosed structures or groups of structures to a design capacity of 100 people. Subsection (b) allows multiple structures or groups of structures that meet the 100-person design capacity standard within a single tract, as long as the structures or groups of structures are separated by 1/2 mile.

Regardless, the applicant has provided evidence showing that all of the combined structures within the golf course tract, will not exceed the 100-person design capacity standard. Therefore, ORCA's point is mute with regard to the ½-mile standard. The applicant has provided evidence in the form of a letter from Architect Scott Edwards (Exhibits "G" and "H"), in which he states that the structures proposed within the golf course will not exceed the 100-person design capacity standard **(See applicant's findings on pages 15-17 of Exhibit "A").**

II. The applicant has not satisfied the farm impacts test

ORCA claims that the applicant has not satisfied the farm impact test in compliance with Oregon court rulings that concludes a farm analysis must be conducted on a farm-by-farm basis in order to determine whether there will be a "significant" impact (injury) to adjacent agricultural uses. ORCA claims that the applicant has not proven that there will be no impact to adjacent farm uses (or farmers) by chemicals utilized in conjunction with maintenance of the golf course. ORCA further claims that the applicant is basing compatibility on the fact that the golf course implements best management practices that are similar and often the same as those management practices conducted on adjacent farmlands.

APPLICANT'S REBUTTAL: **Pages 7 through 12 of the Applicant's Exhibit "A"** address impacts to adjacent farm uses on a farm-by-farm basis. The applicant addresses potential impacts associated with best management practices, as well as potential impacts from spray drift and runoff, drainage, irrigation, and water management.

ORCA's claim that there is a potential for impacts to adjacent farm uses (or farmers) from chemical application on the golf course, is speculation without a hint of evidentiary context. ORCA seems to believe that the application of chemicals (insecticides, fungicides, etc.) is a wild west shoot-out with no regulation. This could not be further from the truth. The application of chemicals can only be implemented by a licensed individual trained and certified by the Oregon Department of Agriculture (ODA) in the use of such chemicals. The application of chemicals must comply with standards established on the label of each chemical, as those labels constitute state law for application. It is required that every chemical application be monitored and reported regularly to the Department of Agriculture through Integrated Pest Management (IPM) Reports.

It is important to note that, unlike standard agricultural practices (farming), no chemical applications occur through the golf course irrigations systems. In other words, application occurs through a controlled process of hand or mechanical sprayers. This process allows for controlled application to specific areas at specific times (no wind or rain) to prevent drift and/or

runoff. It is also important to note that there are chemical monitoring wells on site at the applicant's Bandon Dunes Resort, and that there is regular chemical monitoring of the wells and of the primary creek flowing through the resort. In 25 years of operation, no (zero) chemical residue has been detected in either the monitoring wells or the creek.

ORCA raises the issue of how water use by the golf course could potentially impact adjacent farm uses. It is as if ORCA failed to read the application and specifically the evidence submitted by Robert Long (see Applicant's Exhibit "F"). Mr. Long is a registered Geologist, Licensed Hydrologist, and Certified Water Rights Examiner that works regularly with the Oregon Department of Water Resources. Mr. Long clearly explains that the Oregon Department of Water Resources (ODWR) requires an exhaustive hydrological analysis from water rights applicants, demonstrating no injury to adjacent agricultural or residential uses, aquafers, or surface water sources. ORCA has provided no evidence other than conjecture that refutes Mr. Longs professional testimony.

When determining whether a subjective criterion has been satisfied, the threshold for compliance is measured by what a reasonable person would conclude based upon available evidence. In this application there is sufficient evidence to make a reasonable and informed decision that there will be no significant impact to adjacent farm uses due to management practices conducted at golf course.

> *III The proposal is inconsistent with the Administrative Rules for the definition of a golf course and the legislative policy for the preservation of farmland*
>
> *ORCA makes the argument that the golf course contains 342 acres because the course is sited on a tract that contains approximately 342 acres and the applicant describes the open space, wetlands and FEMA area as an appropriate setting for a Scottish Links style golf course,*

APPLICANT'S REBUTTAL: The Administrative Rule upon which ORCA relies is not intended to create the size or acreage of the ownership upon which a golf course is established. OAR 660-033-0130 (20) and (20)(a) (below) is only intended to establish parameters for the purpose of distinguishing what is or is not a "regulation golf course." In fact, those parameters are not etched in stone with regard to the size of a golf course, as is clear by the language "generally characterized" in subsection (a) below.

> OAR 660-033-0130 (20) "Golf Course" means an area of land with highly maintained natural turf laid out for the game of golf with a series of nine or more holes, each including a tee, a fairway, a putting green, and often one or more natural or artificial hazards. A "golf course" for purposes of ORS 215.213(2)(f), 215.283(2)(f), and this division means a nine or 18-hole regulation golf course or a combination nine and 18-hole regulation golf course consistent with the following:
>
> (a) A regulation 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;

If a regulation golf course is located within an ownership containing five-hundred acres, the size of the golf course is not determined by the size of the ownership, but rather by the size of the "highly maintained natural turf laid out for the game of golf" as cited in the above statute. Although the proposed golf course is contained within an ownership that is larger than the course itself, open space containing natural features is clearly a permitted use on the non-golf EFU zoned segment of the ownership **(See pages 18-20 of the Applicant's" Exhibit "A").**

IV. The golf course is located on high value farmland

ORCA alleges that the golf course is located on high-value farmland based on the applicant's response in the initial submittal that implied that the golf course tract contained land growing high value perennials. ORCA also alleges that the golf course tract "may" be in a place of use for a permit, certificate, or decree for the use of water for irrigation and therefore the golf course contains high-value farmland, and a golf course is not permitted.

APPLICANT'S REBUTTAL: When the application was initially submitted, there was a typo under Exhibit "A" (Top of Page 4) that implied that the golf course tract contained high-value perennials. Prior to the initial Planning Commission hearing, that typo was corrected to reflect that the golf course does "not" contain land growing perennials. The amendment was sent to the Planning Department, and staff placed the amendment online and in the record prior to the hearing. Because the golf course tract does not contain high-value perennials, the tract is not high-value farmland.

The applicant has done their research and has stated that there are no water permits appurtenant to any portion of the proposed golf course. On the other hand, ORCA believes there "may" be permits and that it is "unlikely" that water permits have not been issued for such a large tract. The terms "may" and "unlikely" are speculative at best. Any water permits appurtenant to the property would be of public record and are available for ORCA to research. Short of evidence showing that the area proposed for golf course contains a place of use for a permit, certificate or decree for the use of water for irrigation, no segment of the land proposed for golf can be "assumed" to be high value farmland.

V. Geologic assessment Review

ORCA asserts that there must be a second application processed with full procedural rights addressing geological assessment for structures (clubhouse, restrooms, etc.) that will be established at a later date. ORCA also claims that the applicant cannot adequately address farm impacts without knowing the location of the proposed buildings with emphasis on the clubhouse/restaurant that will have impacts due to the number of visitors, etc...

APPLICANT'S REBUTTAL: With regard to a second hearing with full procedural rights, the applicant agrees with ORCA as stated **on Page 31 of the Applicant's "Exhibit "A."** Such an application will be submitted when the "exact" location is determined for each structure.

With regard to impacts from structural uses (clubhouse/restaurant, etc.) to adjacent farm uses, ORCA's contention is that impacts will occur due to the number of people frequenting the facilities, the garbage produced, traffic, trespass, and the attraction of Corvids (birds). As ORCA very well knows, the statute specifically states that the proposed use will not:

> "Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use."

Significant impacts are impacts that would prevent a farm owner from either conducting standard farm practices or would "significantly" increase the cost of farm practices. ORCA is not clear as to how impacts would occur from the issues raised, however, there is no reason to believe golfers patronizing a clubhouse are going to prevent farm practices from occurring on adjacent lands, or that their dinning habits will increase the cost of farm practices. It is also inconceivable to believe that a world class golf course is incapable of managing their garbage in a manner that does not attract Corvids. It does not appear that traffic has a significant impact to cranberry farming, as cranberry farms are scattered along state highways and local roads throughout the region. As for trespassing due to errant balls, land adjacent to the course will be out of bounds and trespassing to retrieve balls is not permitted.

VI. The applicant has not demonstrated that the subject property is lawfully established

ORCA states that the applicant believes that property line adjustments create a lawfully established unit of land and that is an incorrect assumption.

APPLICANT'S REBUTTAL: The applicant does not believe that a property line adjustment automatically created a lawful unit of land. However, if it is determined that the property line adjustment occurred between two lawfully created units of land, the adjusted parcels resulting from that adjustment are also deemed to be lawfully created units of land. All of the parcels contained within the subject golf course tract are deemed to be lawfully created based upon lawfully created parcel determination applications, and property line adjustment applications that were approved by the Coos County Planning Department. Those approvals were processed with the appropriate public notice, were not appealed, and are now a matter of public record **(see Page 42 of Applicant's Exhibit "A" and the lawfully created tract map at Exhibit "K").**

VII. Procedural Objection

ORCA is concerned that new evidence could be submitted during the first 7-day open record period and that they would not be allowed to submit new evidence in rebuttal during the second week.

APPLICANT'S REBUTTAL: ORCA is correct that they are allowed to submit new evidence during the second week of open record. However, during the second week, new evidence must be in rebuttal to evidence submitted during the first week.

Exhibit 16

Sean T. Malone

Attorney at Law

PO Box 1499 Tel. (303) 859-0403

Eugene, OR 97440 seanmalone8@hotmail.com

July 25, 2024

Via Email

Coos County Planning Commission
c/o Coos County Planning Department
Coos County Courthouse
250 N. Baxter
Coquille, OR 97423
planning@co.coos.or.us

Re: Oregon Coast Alliance responsive testimony for the proposed New River Dunes Golf Course application (HBCU-24-001).

Dear Coos County Planning Commission,

On behalf of Oregon Coast Alliance (ORCA), please accept this rebuttal testimony for the above-entitled application. ORCA aims to protect the Oregon coast by working with coastal residents for sustainable communities; protection and restoration of coastal and marine natural resources; providing education and advocacy on land use development; and adaptation to climate change. ORCA requests that the application be denied given that the application fails to satisfy all applicable criteria.

ORCA agrees with and incorporates the Marie Ritchie letter. First, it appears from the testimony that the applicant has not controlled the gorse on their holdings in the area. This casts doubt on the applicant's allegations about controlling gorse on the subject property. The applicant's primary motive is remuneration, not keeping the community safe from wildfire. Indeed, the property listed on the application as owned by Bandon Biota contains significant gorse, which is documented in the Ritchie letter and in testimony before the Planning Commission. This creates a wildfire risk that has not been addressed by the applicant and it is of the applicant's own making.

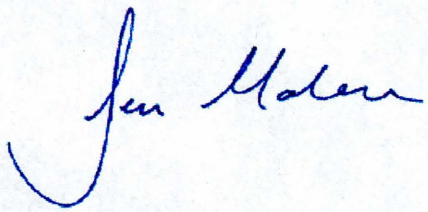
The Ritchie letter is also rightfully concerned about water availability. The water required for the course will be extraordinary. Again, if the applicant has not secured water for the proposed use with the accompanying studies, then the applicant cannot know the true effects of the application. The applicant is not giving the Planning Commission the full picture of the effects of the project, including drawdown to other wells and nearby cranberry bogs. The applicant has put the cart before the horse by proposing to disclose the impacts after the applicant secures an approval when there is no further public process. There needs to be an additional process that provides the public with the same substantive and procedural rights that have been provided here as it relates to any approval criteria that pertain to the effects of significant water usage or reduced water availability. The applicant also conceded that their test wells in the mid-level aquifer on the proposed course did not contain sufficient water. That is evidence that the applicant cannot satisfy its tremendous water needs for the proposed golf course.

Several commenters note that the application will convert farmland. More specifically, the application will remove high-value farmland. As noted in other prior testimony, the applicant has not substantiated its allegations about severing the high-value farmland from the golf course and breaking up the tract. The applicant has also submitted contradictory allegations about whether the application satisfies the definition of high-value farmland. The applicant must support its allegations with evidence from the record, and take a consistent position on whether it has satisfied the applicable criteria.

The applicant's consultant (and "vested partner") unsurprisingly alleges that all criteria have been satisfied, but that is plainly not the case. The applicant has not disclosed the effects from the significant water demand; the applicant does not even know the location of the buildings it proposes to construct; and the applicant has not presented a geologic review assessment, which itself will reveal further impacts associated with the development. Again, it becomes impossible to identify the impacts of the golf course because the applicant has held so much back at this stage. Perk Development is "proud of the success that the Keiser's and the Bandon Dunes Golf Resort Family have brought to this area," but, as noted by those that are not "vested" in the project, the applicant has not maintained the gorse on the surrounding property. If the applicant and Perk Development sincerely cared about the community, then they would maintain their properties and not present a fire hazard to the community. The Perk Development letter is entirely lacking in substance and appears only to be a puffery.

Consistent with the foregoing, as well as prior testimony, ORCA respectfully requests that the application be denied because the applicant has failed to support its application with valid legal theories and substantial evidence.

Sincerely,



Sean T. Malone
Attorney for Oregon Coast Alliance

Cc:
Client

Exhibit 17

APPLICANT'S FINAL ARGUMENT

The applicant has submitted a comprehensive application that discusses the proposal with clarity, and addresses the applicable criteria with substantial evidence, often from professional witnesses. Conversely, our primary opponent, Oregon Coast Alliance (ORCA) argues that the applicant's evidence is flawed, while for the most part, refuting the applicant's evidence with conjecture rather than substantiated evidence. While it is the applicant's burden to provide evidence in support of relevant criteria, when challenging evidence from professional witnesses, it is not enough to make assumptions based on speculation. Case in point, ORCA believes it is better suited to assess potential impacts from water usage than to rely on the state agency (ODWR) assigned to make those decisions based on scientific data. Also, while the method for safe application of chemicals is clearly addressed in the application, including drift and runoff, ORCA intentionally ignores the evidence and implies potential injury to farm uses and farmers. These, and other misguided attempts to "muddy the waters" are distasteful at best.

There was other evidence submitted from local citizens, primarily discussing issues associated with water and traffic. Those issues have been thoroughly addressed in the applicant's submittals and will be resolved through processes with the Oregon Department of Water Resources, the Oregon Department of Transportation and the Coos County Road Department. As was stated in the hearing, those factors are not relevant to this golf course decision. If there is not suitable access or a suitable water source, as determined by the appropriate agencies, it is unlikely that a golf course will be constructed.

Based on the substantial evidence provided in the initial application and subsequent rebuttal, the applicant respectfully requests that the Planning Commission approve the proposed golf course with conditions.

Welcome to the Coos County Planning Commission Meeting 201 N. Adams St., Coquille Oregon August 1, 2024 at 7:00 p.m.

I. CALL MEETING TO ORDER 7:00 P.M. – Introductions of Commissioners and Staff.

II. APPROVAL OF MINUTES – July 11, 2024

III. CITIZEN PARTICIPATION – This is the time for brief comments from the public concerning county planning and zoning matters **not on the agenda.**

IV. PUBLIC HEARING – SEE HEARING PROCESS AND PROCEDURES ATTACHED

ITEM A – File # HBCU-24-001 – CONTINUATION The applicant/property owner is Ocean River LLC. The proposal is for a regulation 18-hole golf course with accessory uses in the Exclusive Farm Use (EFU) zoning district. The accessory uses consist of a clubhouse/restaurant, an agronomy center/maintenance facility, a turn-stand (combination restrooms/vendor facility), a minimum of two stand-alone restrooms, a caddy shack, a driving range, a practice course, and the necessary parking/drop off areas. The subject properties are identified as Map Number Township 29S, Range 15W, Sections 13/24/25, Tax Lots 600, 1903 / 100, 201 / 900, 1000, 1200, Tax Account Numbers 1239601, 1239606, 1240300, 1240601, 1241700, 1241601, 1241602 and is located south of the city of Bandon off of Boak Lane.

Criteria

- Coos County Zoning and Land Development Ordinance (CCZLDO)
  - § 4.3.200(50) - Zoning Tables – Minor Estuary – Golf Courses
  - § 4.6.200(67) – Exclusive Farm Use – Use Tables - Golf courses not on high-value farmland as defined in ORS 195.300. (new golf course prohibited on High Value)
  - § 4.11.128 – Historical, Cultural, and Archaeological Resources, Natural Areas and Wilderness
  - § 4.11.129 – Beaches and Dunes
  - § 4.11.130 – Non- Estuarine Shoreland Boundary
  - § 4.11.131 – Significant Wildlife Habitat
    - Wetlands
    - Bird Habitat Sites (Goal #5 "5c" resources)
  - § 4.11.132 – Natural Hazards
    - Landslides and Earthquakes
      - Liquefaction Potential
    - Tsunamis
    - Erosion – Coastal – Wind
    - Wildfire
  - § 4.11.150 – Geological Hazards Special Development Review Standards
  - § 4.11.155 Geological Assessment Review

V. OTHER BUSINESS

A. Update on workload

b. Staffing Updates

VI. PLANNING COMMISSION COMMENTS

VII. ADJOURNMENT

ADDITIONAL INFORMATION AND HEARING PROCESSES :
For more information on any of these items please contact the Coos County Planning Department by phone at (541) 396-7770, by e-mail at planning@co.coos.or.us, in writing to 250 N. Baxter, Coquille OR 97423 or visit us at 60 E. Second, Coquille OR 97423.

HEARING PROCESS AND PROCEDURES:
There are four ways to participate in this matter by phone; virtually; in person; or in writing.

i. **Virtual or by phone:** This option is only available during the time and date the hearing is scheduled. To participate there GoToMeeting or by phone please provide an email to planning@co.coos.or.us with your name, address, email and phone number for the record and in case there is any technical difficulty.

GoToMeeting Information

Planning Commission
Please join my meeting at:
https://meet.goto.com/940158709
You can also dial in using your phone.
Access Code: 940-158-709
United States: +1 (224) 501-3412

ii. **In Person:** The meeting can be attended in person at the time and date scheduled. The meeting will be held in the Owen Building Large Conference Room 201 N. Adams Street, Coquille OR 97423. If you require assistance to participate in the meeting, please provide 48 hours' notice to the Planning Staff to accommodate the request. planning@co.coos.or.us or 541-396-7770.

iii. **In Writing: Testimony shall be submitted by the deadline provided at the hearing or the close of the record in the forms described below.**

a. **Submission of Written Testimony:** Written testimony and evidenced provided by participants that will not be attending shall be received no later than 5 pm on the day of the hearing. Although it is encouraged to submit the information well in advance to provide the Hearings Body a chance with an in-depth review. Written testimony and evidence to shall be mailed 225 N. Adams, Coquille, OR 97423, dropped off at the planning office at 60 E. Second Street, Coquille or emailed to planning@co.coos.or.us. If the testimony is not received by the 5 pm deadline it will need to be submitted in person at the hearing or it will not be considered. **Please review the additional information regarding submission of written evidence.**

b. **Submission of Written Evidence**

- Petitions: Any party may submit a petition into the record as evidence. The petition shall be considered as written testimony of the party who submitted the petition. A petition shall not be considered to be written testimony of any individual signer. To have standing, a person must participate orally at the hearing or submit other individual written comments.

Anonymous petitions or petitions that do not otherwise identify the party submitting the petition shall not be accepted as evidence.

- Required Number of Copies: Submission of written materials for consideration shall be provided in the form one original hard copy and one exact copy or one original hard copy and one electronic copy. The County may, at its sole discretion, reject any materials that do not contain the requisite number of copies. It may be requested that the County make the requisite number of copies subject to the submitter paying the applicable copy charges.
- E-mail testimony may be submitted; however, it is the responsibility of the person submitting the testimony to verify it has been received by Planning Staff by the applicable Deadline.
- All written testimony must contain the name of the person(s) submitting it and current mailing address for mailing of notice.
- The applicant bears the burden of proof that all the applicable criteria have been met; however, in the case of an appeal, the appellant bears the burden of proving the basis for the appeal, such as procedural error or that applicable criteria have not in fact been met. [Amended OR 08-09-009PL 5/13/09]

iv. **General Meeting Procedure:** The Planning Commission will start the meeting at 7:00 pm unless otherwise noticed. There will be introductions of the Commissioners and Staff, Approval of Minutes if available and Request for any comments from the public on matters not related to the formal hearings scheduled or pending land use matters prior to opening the hearing. Upon opening the public hearing portion of the meeting, the Planning Staff or County Counsel will provide the procedural rules.

The Planning Commission will:

a. Disclose the substance of any prehearing *ex parte* contacts regarding the matter at the commencement of the public hearing on the matter. The member shall state whether the contact has impaired the impartiality or ability of the member to vote on the matter and shall participate or abstain accordingly;
b. Any actual or potential conflicts of interest (financial gain); and
c. Any biases or reason a member will not be participating in the decision making process.

The Planning Commission will ask the audience if there are challenges to any Planning Commission members reviewing the matter. If there are challenges, they shall be brought forward with evidence to substantiate such challenge. There will be a chance for the member of the Commission to rebut the challenge or step down as the decision maker. If the member(s) does not step down the Planning Commission shall make a motion as to remove the member based on the evidence or make the statement that the evidence submitted is not sufficient to create a actual bias or conflict of interest. Once this is complete staff will present the matter and criteria and provide the Planning Commission an opportunity to ask any questions about staff's presentation or material that have been provided.

The Oral testimony will begin:

a. Applicant's presentation (15 minutes)
b. Proponents of the application (3 to 5 minutes)
c. Opponents of the application (3 to 5 minutes)
d. Rebuttal or closing by the applicant. (3 to 5 minutes)

Tips for providing effective testimony[1]

a. State your name and address for the record.
b. Begin by saying you support or oppose a particular agenda item, and briefly explain why.
c. Use facts to verify your statements.
d. Describe how this issue affects you personally, what you suggest as a solution and then summarize your testimony.
e. Be sure to tell the reviewing body exactly what you wish them to do. If you are opposing, your testimony should discuss why the proposal is inconsistent with the controlling law, rules or ordinances.
f. Do not repeat yourself or get off-topic; keep your argument concise

[1] https://www.co.coos.or.us/sites/default/files/fileattachments/planning/page/13051/tesify_at_land_hearing_brochure.pdf

COOS COUNTY PLANNING COMMISSION
MINUTES OF MEETING
July 11, 2024
OWEN BUILDING LARGE CONFERENCE ROOM
201 N. ADAMS ST.
COQUILLE, OREGON 97423

PLANNING COMMISSION

MEMBERS PRESENT
Joe Aguirre, Chair
Charlie Waterman, Commissioner
Todd Goergen, Commissioner
Diana Schab, Commissioner

MEMBERS ABSENT
Todd Buchholz, Vice Chair

MEMBERS PRESENT THROUGH GOTOMEETING
Joann Hansen, Commissioner
Matt Vorderstrasse, Commissioner

STAFF PRESENT
Jill Rolfe, Planning Director
Amy Dibble, Operations Manager
Michelle Berglund, Planning Aide

ITEM I-CALL MEETING TO ORDER
Chair Joe Aguirre called meeting to order at 7:05 p.m. and introductions of the Commission were made.

ITEM II—MINUTES TO APPROVE
Chair Aguirre said he would entertain a motion to approve minutes. Commissioner Charlie Waterman moved to approve Minutes of the June 2024 hearing. Commissioners Diana Schab and Commissioner Matt Vorderstrasse both seconded the meetings. Minutes were unanimously approved.

ITEM III—CITIZEN PARTICIPATION
Chair Aguirre stated this was the time for brief comments from the public concerning County Planning and Zoning matters **not** on the agenda. He asked if anyone in the audience wished to say something about subjects other than the two items scheduled for tonight's meeting.

A community member did step forward with a comment. He introduced himself as Mr. Martin Kuhrt, PO Box 1113, Bandon, OR, 97423. Mr. Kuhrt just wanted to mention that the meeting for

tonight had been difficult for him to find on the County Website and he would recommend someone looks into easier access to the meetings.

The Commissioners acknowledged his comments.

ITEM IV-PUBLIC HEARING

Chair Aguirre presented the oral presentation instructions. He reminded everyone that any oral presentation should begin with the speaker listing their name and address. The speaker should identify the criteria that they will be addressing. The meeting agenda is available at the sign-in table or can be provided upon request. All testimony should be directed toward the decision-makers. Those wishing to testify should focus on the subject of the testimony, address the criteria, and endorse rather than repeat the testimony of others. Clearly state the issues, turn off all cell phones, and be aware that these proceedings are being recorded. All other discussions should take place outside of this room to allow for clear recording. The applicant will receive 15 minutes for their oral presentation. All other parties will have five minutes to testify. The matters before the Planning Commission are de novo, and the applicant has the burden of proof to meet the criteria.

To begin the hearings, Chair Aguirre asked if each Commissioner had received their Staff Reports. All Planning Commissioners said yes. He asked if any of the Commissioners needed to mention any conflicts or biases. None of them did. He inquired if any of the Commissioners needed to abstain from participating in this hearing due to conflicts of interest. No. None of the Commissioners felt the need to abstain from this hearing.

The Chair inquired if there was anyone present who wished to challenge any of the Commissioners from participating in the hearing tonight. The answer was no.

The Director explained Procedural Rights. She said that according to land use procedures pursuant to Coos County Community Development Zoning and Ordinance section 5.7.300 and ORS Ordinance 197.763, a party may either represent themselves or be represented by an attorney. Consultants and other non-attorney professionals may appear as fact witnesses but not legally represent a party. Witnesses testifying on behalf of an organization must provide written documentation that they are authorized by that organization to appear and testify. Testimony and evidence must be directed toward the identified criteria in the application or other matters. The applicant has the burden of proof, which means that all applicable criteria can be met. An issue which may be the basis for an appeal to the Land Use Board of Appeals shall be raised no later than the close of the record at the final evidentiary hearing on the proposal. Failure to raise an issue and present statements or evidence in a manner that allows the Planning Commissioners to respond will preclude an appeal to a land use board of appeals on that issue.

She continued that the first item on the agenda tonight is Item A, a rezone application. The Planning Commissioners will hopefully make a recommendation to the Board of Commissioners, who have the ultimate decision-making responsibility. Notice of this hearing has been posted and published. The first matter before them tonight, Item A, file AM-22-004/RZ-22-003, is to consider Ordinance # 23.01.001-PL in the matter of amending the Coos County Comprehensive Plan designation for property located at 58643 Seven Devils Road in Bandon, identified as map number Township 27S, Range 14W, Section 28B, tax lot 100. The tax account number is 767200, and it is located north of the City of Bandon off Seven Devils Road. The property

contains 13.60 acres. The amendment, if approved, will change the zone from Rural Residential 5 to Rural Residential 2. The applicant will need to comply with Coos County Zoning Ordinance 5.1 for plan amendments. Through the plan amendment process, they also need to comply with Volume 1, Part 1, Section 5.17 Housing; Volume 1, Part 2, Section 4.5 Housing; and Volume 1, Part III exceptions for Rural Housing. If this is approved, it will change the Coos County Comprehensive Plan map #14 zone map from RR-5 to RR-2.

Oregon statewide planning goals and guidelines include:

- Goal 3: Agricultural lands
- Goal 4: Forest lands
- Goal 5: Natural resources, scenic and historic areas, and open spaces
- Goal 6: Air, water, and land resource quality
- Goal 7: Areas subject to natural hazards
- Goal 8: Recreational needs
- Goal 9: Economic development
- Goal 10: Housing
- Goal 11: Public facilities and services
- Goal 12: Transportation
- Goal 13: Energy conservation
- Goal 14: Urbanization

The Director explained that the property owners are Richard and Kathleen Randol. The property has 13 acres. Notices were sent out 35 days prior to the Planning Commission meeting, as required by ORS 197.610. This file was noticed a couple of times. Again, the proposal is to change the designation from Rural Residential 5 to Rural Residential 2. The main criteria for this application can be found on page three of the Staff Report, which details the exception requirements for lands irrevocably committed to other uses, specified in OAR 660-04-0028.

Basically, this is an exception area currently. To change the density, the exception area must be appropriately addressed. DLCD provided some comments on the original application where the applicant may not have provided ample proof, but it appears they may have done so this time. Considerations include adjacent properties and existing public utilities and services, parcel size and ownership patterns, adjacent exception areas and lands, neighboring and regional characteristics, and natural or man-made features that impede separation from the exception area. Physically developed areas and other relevant factors are also considered.

Staff provided some points for consideration, focusing on three main issues:

1. The recently passed accessory dwelling unit law, which increases the density from one single-family dwelling per parcel to two (effective at the end of the month).
2. Suggestions to limit vacation rental prospects due to the housing need.
3. Creating a separation from forest lands.

The application was initially difficult to follow, possibly because it was compiled by more than one person. However, the Director believes enough information has been provided to address the criteria. Staff included the housing study conducted by the City of Bandon, funded by DLCD, which focused on urban growth areas but also encompassed this property. This study provides information on the housing need.

The Director asked if the Commissioners had any questions about the contents of the Staff Report.

Commissioner Aguirre said that it was a good report. He also admitted that he could tell that more than one person had worked on it. There were some copy-and-paste errors, but he appreciated the staff going the extra mile to provide all the necessary documentation. He didn't have any questions at this time and inquired if any of the other Commissioners had any questions so far. There were no questions at this time, so he offered to call up the applicant for testimony.

The gentleman who came forward introduced himself as Consultant Thomas MacIntosh, address 162 Vista Lake St, Oakland, Oregon. He thanked everyone for taking time out of their evening for this meeting. He, along with the property owners, wanted to thank the Planning Commission for taking the time out of their busy schedules to volunteer here on the Commission and go through the large amount of documentation on this file. He also wanted to thank the Planning Staff for all their time and energy in getting this on the agenda for the meeting. He noted that the documentation was sometimes difficult to follow because the criteria were sometimes difficult to follow. He mentioned that they had a couple of people working on this. He praised the Coos County Planning Staff for being very gracious about working with them in the sometimes muddy waters involved in this project. They felt this was a very clear case and that it was very suitable for the area. There was a long list of criteria, and the property owners and consultant feel confident that the proof has been met. Mr. MacIntosh admitted the application itself is 45 pages. He said that if they read it, he was sure they got a full picture, but in case they didn't get through all the documents, he would like to go over some things on the record that they feel ready to address.

They had to address the Coos County Comprehensive Plan and Goals, in addition to the Statewide Planning Goals as they relate to what the Planning Director mentioned and how they relate to all of the relevant goals in their findings. The speaker mentioned that they have those goals in their application materials. The big question is the subject of changing from RR-5 to RR-2. This property is already surrounded by many other properties listed as rural residential. When the County was doing their analysis because of housing patterns that were included, this area was designated as RR-2 and RR-5. So, surrounding the property completely is RR-2 or RR-5, with the exception of one property to the east, which does not necessarily render the property unable to meet requirements. So, when you are changing a five-acre minimum in terms of the zoning designation to a two-acre minimum, as the Planning Director stated, looking at the surrounding area is really important. That was the first factor that they looked at. We used the GIS tool, which Mr. MacIntosh was sure they all are acclimated to, and they did an analysis of all the properties in that area. Ninety-seven out of the one hundred and nine properties are less than five acres, which is 89% of the entire area. Only 11% is five acres or more. So really, you have a precedent there that has been set for some time. In addition to that, the average lot size is 2.34 acres. So essentially, what we are looking at is the precedent of two acres, not necessarily five.

What's interesting about this is that there is a large cache of RR-5 properties that are all 1 or 1.2 acres, essentially attached. He felt that they could say by default that properties around here have houses on them with the exception of that one property to the east, which is 40-60 acres, something like that. The question for that property is this: Is there any active forest use on that property? There is no proof of that at this time. It appears to be a property ownership; at some

point, they may privately harvest the land. The trees grow, but they are not engaged in any commercial harvesting production. So that means that, in addition to lands to the North and the South, is where we are talking about. Forested land would not necessarily be encumbered by adding the four parcels. They have 13.6 acres. They could do a two-parcel land partition with a five-acre minimum. If they transitioned to RR-2, they could essentially do a six-lot subdivision. We are talking about an intensified density of about four lots minimum.

The other question then becomes whether the transition commits the properties to urban uses based on resources such as sewer, water, and the transportation system. Looking at that briefly, this area is otherwise encumbered by septic systems, which are allowed up there. You get residential land, you get a septic approval, you get a drain field installed, and you drill a well. Regarding transportation, it goes directly to the west. This is, and correct me if I am wrong, a minor collector, which has the capacity of 10,000 legal trips a day. The Institute of Transportation Engineers' manual, which is the standard manual used to interpret these standards, dictates that one lot is expected to produce 9.5 daily trips. So, for an additional four lots, you are talking about 57 daily trips in the area. The road has the potential to withstand 10,000 trips, so that is negligible.

In addition, the criteria we were required to cover regarding the DLCD letter, which was very well written by the gentleman who wrote it, were extensively consulted upon. The letter essentially said that while you claim consistency with residential land, the statute in OAR requires you to take an exception. There are two avenues for taking an exception: reason exceptions and irrevocable committed exceptions. His advice to me was that they could probably put both in because there is credence in both directions. If we did that, he said there would be no issue with it. They did not receive any additional response from DLCD. Mr. MacIntosh said they subsequently tried to cover that with additional language that pointed to the reasons for the exception. They are locally committed to it because it fits, as the area is completely surrounded, except for that one property to the east, by residential lands. Intensifying the use for the aforementioned reasons would not necessarily be a detriment to any of the systems for any of the surrounding properties.

Regarding the conflicts that Staff mentioned, Mr. MacIntosh noted in the application that there is something in the statute about spraying for agricultural and forest uses. There are about 21 properties on the eastern side that abut forest properties, which don't necessarily have a buffer area. Because of the terrain on the eastern side of the property, there is no way to put anything close in that regard due to a significant incline. So, we would ask that you execute a zone change. The rural residential zone designation essentially conforms to the other RR-2 properties in the area. Instead of creating an additional buffer that would impose more stringent requirements on the property, we can understand the precedence for vacation rentals. This is definitely an area conducive to that, as many people come to the coast for those purposes. The housing shortage is a very real issue that the applicant is trying to address by maximizing the property's potential to match the surrounding areas.

Essentially, there is the ability to build two houses now, with the potential for up to six houses in the future. We understand the ADU precedent, and many counties are imposing restrictions, calling out vacation rentals as being subordinate. Because of this area, people have the tendency to create vacation rentals. The applicant feels very confident that these would be RR-2 properties—two-acre pieces with the idea of building homes in close proximity to Bandon

Dunes, the beach, and similar attractions. From what I understand, there is no plan to use the property for vacation rentals.

Mr. Macintosh said that he felt very strongly that this application meets this burden of proof. It is consistent with the area, and there is a qualifier for the exception. We encourage you as a Board to make the recommendation to the Board of Commissioners to accept and approve this application. Mr. Macintosh said that with the couple of continuances he again wanted to thank the Staff for all their ongoing patience and hard work. At this point, he offered to take any questions.

The Director mentioned, just for clarification, that the road is actually a major collector.

Chair Aguirre added that the setback for the road would be thirty feet.

The consultant said, "Even better." He also inquired if the applicant, Rick, had any additional comments to add.

The applicant said that he didn't have anything to add but would be happy to answer any questions.

Chair Aguirre inquired if any of the Commissioners had any questions for the property owner.

Commissioner Goergen mentioned that he did have one. There is usually a cycle of 40, 50, or 60 years for timber growth and production. Just because they are not using the forest property for timber production at this time does not mean they will not in the future. There is no guarantee that they will not harvest that timber at some point. So, there may be some practices in the future. Are we looking at dividing the property into squares? Are we dividing it according to topography? A barrier on the east line makes it unlikely that spray or other activities would come over onto the property. He felt they almost needed a topography map for the location. Those were just some of the questions Commissioner Goergen had.

Mr. MacIntosh admitted that he did not know the applicant's intent in terms of lot design. He said that he knew the property owner would try to make the lots as conducive as possible for building a house on each lot, as well as for getting driveways and flat ground to best serve each lot. He understood that at some point, someone might wish to utilize the tree resources in the area to the east. They would only ask that the same precedent be applied as for the large amount of RR-2 to the north that also abuts this property. The undue burden would be the applicant's property having an additional buffer that would be out of order in the whole residential community. Essentially, we see it as a spot zone.

Richard Randol, the property owner with an address of 5403 Stage Wagon Road, mentioned that if they looked at the lot, it is almost the shape of a square. The way they have kind of toyed with it, there would only be two lots in the very back that will be adjacent to the forested property. The forest practices act would protect that property as with any other piece of property; they will be allowed to do that. Plus, everybody on that property line doesn't have a setback. The people running the forested property would have to meander; they would not have any benefit of a setback because they would have to comply with what is next to them. So, probably two lots. Right now, it would be two five-acre pieces. If there were more RR-2 users instead of RR-5, you

would have to make a weird configuration to get more than two lots adjacent to the forested property. The owner did not believe there would be an impact on the forest properties back there. The way their property is situated is pretty flat. There is that line, and then it drops off. Any other practice would have to go through a County road.

Chair Aguirre said, "Oh, the lots to the east drop down?"

The property owner said, "Yes, they are on a decline. They will ingress and egress on the County Road. They didn't feel it would change any of the current methods they use for lumber production."

Commissioner Goergen mentioned that hopefully they wouldn't be putting a house right off of the setback area.

The property owner commented that no one wants to put a house directly off the main road or setback area.

Commissioner Goergen understood that but mentioned that when they harvested the trees from the forest property, they have to replant, and there is a whole process. If they have a house right there, sooner or later they are going to be looking at that clear-cut if you are building close to the line.

The owner said exactly, that is why you would place your house at a different part of the property. He said they would envision a road coming in off of Seven Devils Road and servicing all of the houses so they wouldn't be right on the main road. They were thinking something like a cul-de-sac shape for the houses that would eventually go in at that location. Situating a house at the very back would be a higher cost.

Commissioner Goergen agreed, saying, "Sure, they would need a longer driveway."
"Right," the property owner agreed. "The houses farthest from the main road would need a longer driveway, it would be farther to get utilities, and anything else that would be required."
The property owner also mentioned that setback areas were good places to put drain fields. He said he did not have a crystal ball about the future, but at least in his estimation, that is how things would be done. He inquired about other criteria.

Chairman Aguirre said the only other two criteria were ADU use and the possible restriction of vacation rentals.

The property owner said he has never had an interest in putting in vacation rentals; they are hoping to use the new residences for family homes. This is new ground they are all dealing with, but that is their plan for the properties. They know there are other wells and standard septic systems on the surrounding properties, and they expect the same for these properties if and when they are developed.

Commissioner Goergen said if the water table and soil handle the septic and drain field, he personally doesn't see any reason why they have to be restricted for ADUs.
The owner and his representative agreed with that. They have tanks in the area that are 15-20 gallons and are only down 40-75 feet.

The Director reminded everyone that the only reason the ADU stuff was raised was because they changed the density in the middle of this application, and she hadn't been sure that they had been able to address it. That was the only reason she brought it up—if they felt that the density was too much, maybe they needed to increase it to something else. She wasn't really saying they needed to restrict it.

Commissioner Goergen said right, they were supposed to address housing.

Exactly, the Director agreed. They were supposed to address the compatibility and the set-backs. She reminded that yes, they are supposed to keep a 30-foot area from that forest side.

The property owner enquired if that was the fire break and the Director said yes.

The Director also reminded that when someone goes to build, they have to record a covenant stating that they will not object to forest practices.

Chairman Aguirre offered the example, absolutely, when they put the highline home right up at the top up there, the logging yarder might be right up there. Gotta have those covenants.

Mr. MacIntosh said they are fully expecting that resource management company to sooner or later do something on their property. When you build in that kind of area, you know it is there and could happen sooner or later.

Commissioner Goergen said, "Right, they were supposed to address housing."
"Exactly," the Director agreed. "They were supposed to address the compatibility and the setbacks." She reminded everyone that they are supposed to keep a 30-foot area from the forest side.

The property owner inquired if that was the fire break, and the Director said yes.
The Director also reminded everyone that when someone goes to build, they have to record a covenant stating that they will not object to forest practices.

Chairman Aguirre offered an example, "Absolutely, when they put the highline home right up at the top there, the logging yarder might be right up there. Gotta have those covenants."
Mr. MacIntosh said they are fully expecting that the resource management company will sooner or later do something on their property. "When you build in that kind of area, you know it is there and could happen sooner or later."

Commissioner Goergen pointed out that it is not only the current owners who need to know that but also the next owner and the owner after that. They all need to be aware that timber production property could eventually be put into production. When the property in question is sold and then someday sold again, the covenants keep the cautionary warning about possible timber practices happening on that forest property.

Mr. Randol mentioned that he has a tree farm in the Roseburg area, so he knows about forest practices. They have planted hundreds of thousands of trees, so he understands that aspect of it. He explained that he totally understood the different times forest properties need to do stuff,

whether it be harvesting, thinning, or whatever. He did not believe it was much of a burden on adjacent landowners. He said the activities usually only go on for a week or two, not constantly for years and years.

Chair Aguirre said he thought they had enough information from Mr. Randol. He inquired if there were any other questions. None of the Commissioners had any further questions. He asked if there were any requests to speak on the matter. There didn't appear to be anyone else who had requested to speak on the subject. Therefore, Chairman Aguirre closed the public part of the session and asked for discussion among the Commissioners. He himself mentioned, "Hey, we are trying to get some more housing in the area. These aren't supposed to be vacation rentals. The property has RR-2 around it. It seemed kind of obvious..."

Commissioner Schab said, "Especially when they were using the housing study as part of the information for this discussion, it seems to be a justification for this project and an exception. The State adopted ADUs because of the housing issue and density."

The Director mentioned that the Board of Commissioners adopted the regulation that an ADU cannot be used as a vacation rental.

Commissioner Schab said that because the Board had already said that ADUs were not to be used as vacation rentals, she personally did not feel the need to put that restriction on these properties if they were divided. The Board already covered that for all properties. She also mentioned the required 30-foot zone, saying she wasn't really schooled in that.

Chairman Aguirre said, "With her being in the business for 30 years, we are inclined to consider her an expert on the subject." But he also inquired of Commissioner Waterman, who had also been involved with these subjects for many years, what he thought about the 30-foot zone.

Commissioner Waterman immediately replied, "The more room, the better."

Chairman Aguirre laughed along with everyone else but asked specifically if Commissioner Waterman thought the 30 feet would be enough.

Commissioner Waterman replied that the future homeowners were not going to want to listen to the logging whistles, the jake-brakes, and things like that any closer to their homes than necessary. "The work starts really early in the mornings, the machinery is loud, all that." Commissioner Waterman strongly felt the owners or future owners of the properties in question should have the right to forest practices on any future deeds.

Chair Aguirre asked, "Do you mean that requiring the forest practice restrictive covenants would be a good idea? So the future property owners would be the ones with the problem, not the now or future loggers on the forest-zoned property?

Commissioner Schab seemed to agree that the forest practices disclaimer seemed like a good idea. It seemed like a matter of setting a precedent.

Director Rolfe said it wouldn't really be setting a precedent; it would be about ensuring compatibility. If they thought the covenant and restrictions would be necessary for compatibility, then they would require those conditions.

Commissioner Goergen reminded everyone that the future houses probably weren't going to be right back there anyway.

Chair Aguirre said the current owner of this property had the right idea, anyway. "Put the drain field over there instead of building the house closer to the property line." He inquired if there were any comments from the Commissioners online.

Commissioner Vorderstrasse spoke up, saying that he was just glad to see that they weren't putting too many additional requirements on the housing besides the forest covenants.

When there appeared to be no further discussion, Chair Aguirre said he would entertain a motion.

Commissioner Schab said she would make the motion. She said, "I would like to make a motion to recommend approval to the County Commissioners to approve this case on the condition requiring a covenant to secure forest management practices."

The Director added for clarity, "not to object to them." Commissioner Schab added that terminology to her motion.

Commissioner Goergen seconded the motion.

Chairman Aguirre reminded everyone that the motion is to recommend approval with the only stipulation being adding the restrictive covenant to forest practices.

All Commissioners voted in favor of the motion. No commissioners voted against the motion. The motion passed.

Director Rolfe explained that the Board of Commissioners will hear this recommendation on the 6th of August at 1:30 pm right here in this room.

Chairman Aguirre called the next item on the agenda. He read through the list of questions again for the Commissioners. Did anyone need to disclose a conflict or bias? No one did. Did any of the Commissioners need to abstain from the meeting? No one did. Did anyone in the audience wish to challenge any of the Commissioners' right to participate in the meeting? No one did.

Just as a refresher, the Director reread the procedural rights. Land use procedures pursuant to Coos County Zoning and Land Ordinance 5.7.300 and ORS 197.763 state that a party may either represent themselves or be represented by an attorney. Consultants or other non-attorney individuals may testify as fact witnesses but cannot legally represent a party. Witnesses testifying on behalf of an organization must provide written documentation that they are authorized by the organization to appear and testify. Evidence must be directed toward the criteria relating to the application. The applicant has the burden of proof and needs to demonstrate that all of the applicable criteria have been met. An issue which may be the basis for an appeal to the Land Use

Board of Appeals must be raised no later than the close of the final evidentiary hearing on the proposal. Failure to raise an issue and present statements or evidence clearly in a manner sufficient to allow the Planning Commission and the parties involved to respond shall preclude an appeal to the Land Use Board of Appeals on that issue. Prior to the conclusion of the initial evidentiary hearing, any participant may request to disclose additional evidence, arguments, or testimony regarding the application. We did receive such a request, and we will address that at the end.

The Director explained that this application may look a little familiar. This is Ocean River LLC, not Bandon Biota, which was the applicant last time. Basically, this is Township 29S, Range 15W, Sections 13/24/25, Tax Lots 600, 1903/100, 201/900, 1000, 1200, tax account numbers 1239601, 1239606, 1240300, 1240601, 1241700, 1241601, 1241602, and is located south of the city of Bandon, off of Boak Lane. The Director explained that this is a proposal for a golf course. The applicant is requesting conditional use authorization to construct a regulation 18-hole golf course with accessory uses in the exclusive farm use zone. Accessory uses, which are described in more detail, include a combination of restrooms, restaurants, a clubhouse, a maintenance facility, a turn stand, and everything needed to run a golf course.

According to the application, approximately 165 acres will contain a golf course, forest, and driving range. Approximately 115 acres will be a regulation course driving range, containing trees, greens, and fairways. Approximately 50 acres will contain intermediate areas that also act as safety corridors. The application discusses how this will be accomplished and addresses the main criteria for the actual golf course, including some of the hazard issues. For instance, there are beach and dune areas, which are not necessarily hazard reviews, but they provide details on the structures and how to protect those areas. We do not have the exact location of those structures yet, and that is relevant because you have to have a Geotech report based on the actual structure's location.

In accordance with our Ordinance, you do not have to submit all of your conditional use applications at the same time; you can do them separately. You also received several documents right before this hearing. Unfortunately, the Director herself has not had time to go through all of these documents because she was in another hearing earlier today. She did read through the memo provided and touched on a few objections raised. One objection was about development standards and minimum lot size, arguing that the applicant has to prove these are lawfully created parcels. The Director said they have actually done that, as they were created by deeds. Additional information will be provided to address this.

Another issue was the geological assessment review, where it was argued that without the structures, this cannot be done. However, this can be addressed through an additional conditional use application. There was also an objection to how high-value farmland was referred to, using old track ownership and not the new ownership. The main crux of the arguments is going to be the farm and forest impacts. There was also a comment from another property owner voicing water concerns. The Director mentioned that the property owners will have to go through a process to transfer water rights. She is aware they have not completed that process yet, but they are in the process of doing it.

Site limitations were also listed as an issue, though it was admitted there is no upper size limitation, and the Director agreed. In the Beaches and Dunes designation, it cites the type of use

proposed and the adverse effects that would have on the site and adjacent area, particularly concerning dunes and associated hazards. The Director felt that the applicant had addressed those concerns.

Regarding the geotechnical hazard, it goes back to liquefaction. The Director admitted she was trying to anticipate what the criteria really was, so she may not have a complete grasp of it. The paperwork stopped in the middle of a sentence, and the Director believed the argument was that they would need to have the buildings to determine the impacts. She wasn't really sure if that was his argument.

Chairman Aguirre inquired which one that was again?

The Director explained it was the geohazard one with liquefaction. She pointed out that she could not guarantee that was exactly where the paperwork was going before it cut off. She mentioned that the Commissioners also had in their packets comments from Oregon Fish and Wildlife. Again, she too had just received these comments today, so she had not read all the way through yet. The Director noted there were two OR Fish and Wildlife comments. She wasn't sure why there were two different comments from the same source unless they were requested for two different locations. Ms. Rolfe mentioned that Amy Larson was listening in online to this meeting. The Director suggested that maybe Ms. Larson would be able to provide some testimony. Then the Director mentioned that in some of the paperwork, there were comments for and against the project. The Department of Transportation provided a letter requesting a transportation study. Maria Ritchie was another who had concerns about the water. Vicky Crowley raised issues about the impact this project might have on the adjacent State property. She had some concerns about the snowy plover. She said she believed that was all they had in the new packet besides Mr. Malone's information.

The Director inquired if the Commissioners had any questions to start with, or if they just wanted the applicant to get started.

Chairman Aguirre said he didn't have enough information to have questions yet. He wondered if the Director felt that Mr. Malone had given enough information along with the Alliance to get a continuance.

The Director said that by law, if somebody requests a continuance of a hearing, they have to offer a continuance. She said they would talk at the end of the discussion about what kinds of continuances would be available. She mentioned that Cameron was the one who sent in Mr. Malone's letter.

Chairman Aguirre inquired if any of the other Commissioners had any questions at this time. They did not. Therefore, the Chairman informed Mr. Hood that they were ready for his testimony.

Consultant Chris Hood came forward and introduced himself. He gave his address as PO Box 118, Coos Bay, OR. With him was Mr. Ken Nice, managing director of the Dunes, address 57192 Fahy Rd, Bandon, OR.

Mr. Hood pointed out that the Commissioners had seen this application once before, under a different name, with a lot more property, but essentially the same thing. The area is still the same, and many of the findings are still the same. He said it is essentially the same application. He reminded them that they gave the project unanimous approval last time, knowing there would be continuations and such. Then it was appealed to the Board of Commissioners. In that appeal, an issue was raised that questioned whether they had thoroughly addressed all the applicable criteria. He said they determined that the best course of action was to withdraw the application, do some research, and find the best way to address the criteria that may have been missed.

The criteria in question, just to get through this quickly, is high-value farmland. Under high-value farmland, he said they did not have any high-value farmland on this property, as far as the soils go, or whether the property has been used for dairy cattle. There is a whole list of criteria, things they were trying to protect, including orchards and vineyards, when they created the high-value farmland designation. So, there is a whole list; in fact, they have three or four pages of findings, stating "no, no, no, no." Though there was one part of it that had to do with perennials. Essentially, the rule said if you have a piece of property and you are proposing a new golf course, and you have any type of perennials, including berries or nuts, on the tract, that essentially taints the whole tract and makes it high-value farmland.

What we are saying here is that if you own a thousand acres and want to build a golf course, and your wife has two acres of blueberries that she uses as a hobby farm to sell blueberries for the kids' future education, if she has two acres, that whole thousand acres is tainted and called high-value farmland. So, we said, "Okay, well, as it happens, we had 30 acres of cranberries within our 600-plus acres." That made it all labeled high-value farmland. What are we going to do about that? The owners and consultant came back to the County and proposed a series of adjustments to several property lines. They did two things: one, they separated the cranberries from the golf course property; the other thing they did was eliminate a whole bunch of Bandon Biota property that wasn't going to be part of the golf course. It was just part of the ownership, and we did not need it for the golf course.

Then we had issues raised by Chuck Malone and others, saying we were building a golf course with too much land and that doesn't fit within the criteria for what is standard for a golf course. They not only eliminated the land but got that out of the way. Basically, that part of the property is gone, that part of the map has been eliminated from the project. The land indicated in the application no longer has perennials on the plan and is not considered high-value farmland. We put that property into a different owner's name. It is no longer part of the Bandon Biota tract. So essentially, the farmland in the area is not part of the high-value farmland and not part of this project. That is how they eliminated the issue.

Consultant Hood said he wanted to address the criteria. He inquired if the Commissioners had received the packets he had put together. They had. He said he put those packets together for a specific purpose. Normally, with an application, it is very difficult to flip through during a hearing meeting. Also, there are some large maps included in the back of the packet so they could see the actual golf course and the area where they are proposing to build it. He said he was going to go through the criteria.

He explained that the criteria for a golf course were actually rather simple. There is not much to what you need to do to build a golf course on EFU land. First, you have to show what we just talked about: that this is not high-value farmland. He said they addressed that through pages 3-6 of exhibit "A," which is the main body of the application. There is also a geologist's report at exhibit "D" that shows the type of soil on the property. None of it is now high-value farmland. The one criterion they addressed, as he just spoke about, was resolving the high-value issue. Essentially, there is no high-value farmland on this property. They are not proposing a golf course on high-value farmland. That is criterion number one.

Number two is that there is no significant impact. This is actually a riparian judgment. There is no significant impact on farm or forest uses on adjacent lands. They prepared an analysis of the impact on pages 6-14 of their application. There is an analysis of adjacent lands on exhibit "E" that shows the properties on the large map, showing the properties they did the analysis on. They looked at all the variables that could cause impact to those properties. They concluded that the uses they are implementing for the golf course involve the same practices as the adjacent farmlands. Essentially, they mow lawns, water and irrigate lawns, and weed and spray lawns, just like the other property owners in the area. The use is basically the same as the adjacent use of the surrounding properties.

He further explained that the property to the east of where the golf course is planned actually has a high rise, a high dune, which creates a natural buffer between the golf course and the cranberry bogs on the adjacent properties. There shouldn't be any visibility impacts; they are not going to be able to see each other. Regarding spray, runoff, and other variables, the one potential impact everyone focuses on is water.

The question is whether the golf course is going to draw so much water for irrigation that it will impact water use on the adjacent properties. They have concluded that this is no longer possible for a couple of reasons. One is that submitting a request for a new water application involves a stringent process with the State. They have to show that there will not be impacts on the aquifer or adjacent properties. This involves extensive scientific studies, including experimental wells and monitoring wells, draw-down tests, and recovery analysis. They need to see exactly where the water is coming from and what impact it will have on adjacent lands. They have to demonstrate through scientific analysis that there will be no significant impact.

Another point is that when they request a new water right, they will be a junior water right owner. This means that all the surrounding farms, which have senior water rights, get their water first. If the proposed golf course impacts the water supply in any way, the senior water rights holders can report it, and the State can mandate that the golf course shut down its pumps. This essentially prevents any impact on the surrounding properties' water use.

In fact, the level of analysis they have to do now is much more stringent than what anyone else with senior water rights had to do in the past. This is a new rule that Oregon State has implemented to address water impact concerns. When you submit an application for water rights, the State will send a letter saying that you have not proven there will be no impact on the water table or water rights on adjacent lands. This process could take a couple of years to complete, though they are hoping it won't take that long.

Commissioner Goergen had a question. He inquired about whether, when they apply for water rights, the other water rights holders in the area are notified.

Mr. Hood said that he was not sure about that. What he does know is that it is a public process. It is put online. In fact, they have letters here from some people who have taken note of the application for water rights and the process with the Department of Water Resources.
Commissioner Goergen said that was the only thing he was wondering about. If someone had a water right out there, because if you don't use your water right, you could lose it after a period of time. The impact could be on someone who inadvertently hasn't used their water line and could be coming to an expiration without realizing it could be at risk of losing that right. This is hypothetical.

Consultant Hood agreed that if someone didn't use their water rights, they did run the risk of losing them after a specific period of time. He believed it was five years or something like that.

Commissioner Goergen agreed. It was five years. It has nothing to do with anything other than if whoever it was wasn't using it, they could lose their rights to someone else who does need the water. That again could impact the water table.
Consultant Hood said not necessarily. In the case of streams, if someone doesn't use their water rights and they lose that right, that water does not become available to just anyone. The water reverts to the State, and the State has authority over it.

Commissioner Goergen said priority or whoever has had the longest rights will be the first to have a chance to get those water rights. The Consultant agreed.
Commissioner Waterman had a question. He asked if they preferred to divert out agricultural land in this application, which was cranberry bogs, however, they moved some water rights from different cranberry bogs to the golf course. Some of the same land that had been excluded by removing the cranberry bogs out of the application, they have taken the water rights from for the golf course.

Consultant Hood confirmed that Commissioner Waterman was talking about a water rights transfer. He was, therefore the consultant said that yes, they did transfer water rights from those bogs to the golf course project because they will not be using those bogs to grow cranberries any longer. He said it was taking water that they have a right to and using it for what they wanted. He said the cranberry bogs are actually gone at this point. He said quite simply that they were going to take those water rights from the bogs to use them for the golf course instead. Or at least they are attempting to make that happen. It has not been approved yet.
Commissioner Waterman said again, "You moved the bogs out of the request for water rights, but you are taking the water from that farmland and using it for the golf course."
The Consultant reminded that they still owned that land and could transfer those water rights to whatever project they were doing on the property.

Chairman Aguirre agreed, they owned the water right, they could use it for whatever they wanted.

"Well, within what the water department agreed to," the Director pointed out.

The Consultant said he understood Commissioner Waterman's point. But one of the water rights they are using isn't for the cranberries; it was water they used for irrigation on property they also own. He did understand the point, though. The next criteria he was going to address were the standards for what constitutes a golf course. A golf course is characterized by having a playable area of 120-150 acres, a playable distance of 5200 square yards, and a par of 64 to 72. The reason for that is not to set parameters on the points of the golf course but to make a determination that the golf course is a regulation golf course under the rules. They don't want to say that a practice range or a three-par course isn't allowed in an EFU zone. That is the type of golf course they are building—a regulation golf course.

He pointed out exhibit "B" that shows they are using 140 acres for the golf course, the turf, and the intermediate area. They have 25 acres for the practice area. It is also out there too. It equals about 165 acres, which is in the range, and that is the practice area. A practice area is not included in the parameters of what constitutes a golf course, but it is allowed in conjunction with the golf course. And the other thing that Mr. Hood felt was important was that they still have open space associated with it. There is going to be some property within and on the golf course parcel. It does not mean that they are building a 342-acre golf course. The golf course is basically the area that is turfed, the area they play, intermediate areas, and the practice areas and such. But that open space area is not part of this area that is allowed in the open zone. It's just like saying that passive recreation is allowed in the EFU zone. It is one of those things. If you have five thousand acres, it doesn't mean you are putting in a 5000-acre golf course. It just means that a golf course is on the 5000-acre parcel, and they can have trails, bike trails, and all kinds of things on the rest of the property. But that has nothing to do with the golf course. The only reason he raises that issue is that their opponents in the past have raised the issue, saying, "Oh, they are building a 600-acre golf course, and this is way out of the parameters, blah blah blah." Well, that is not what we are doing. So, the other thing is standards for accessory use. There are things incidental to the golf course. There are certain things that are allowed and certain things that are not. Parking, maintenance buildings, driving ranges, practice courses, food and beverage restaurants, and clubhouses are all allowed. Things that are not allowed are swimming pools, tennis courts, and things that aren't part of the golfing experience. Everything that is part of the golfing experience is allowed. Those are the things we are proposing with this vote for this golf course.

The other standard under the criteria is if you are doing development, you have to meet a 100-person capacity. We discussed this last time. The 100-person design capacity is one of those strange things that really means that the buildings you design on the property have to be designed for a capacity of less than a hundred people if you are within three miles of an urban growth boundary, which we are on this property. The clubhouse and all that will be within that area. So, design capacity has to do with how you are designing this to seat the people that are going to utilize the facility. For instance, in a clubhouse. We have information on pages 14-18 and also exhibit "8". There is an occupancy chart on page 16 if you want to look at that. The capacity of the building is going to be 8 total. In fact, he pulled that up. He pointed out that they included the patrons for the pro shop, the clubhouse restaurant, the wait staff, and the sales in the pro shop, and they addressed the caddies and the staff at the turn stand, the management, the agronomy, and the landscape staff, the people that keep things running. There are going to be facilities for the staff to come to, including offices, that they will work out of. LUBA has said in a prior case that they don't know that you really have to include employees. But we go ahead and do that anyway because that just shows that no matter what, we are under that set amount. The way you

have to look at this is this: Before you build a school in that district, you say, "I am going to build a school for 100 students." When you do, does that mean you have to include every teacher, every staff member, and the administrative staff? Does that have to include the people in the cafeteria?

What they are trying to say is, what building are they trying to build and what capacity will it have? It is the same with a prison. If you are building a prison for 100 inmates, you don't have to include the staff in the count, but of course, you will need that staff there to make the place run safely. It is the hundred beds you are looking at. It is the capacity of the prison. But we included all the staff numbers anyway. So that pretty much covers the criteria for what we are doing. The criteria we have just addressed aren't really necessary for the approval of a golf course, unless you are putting structures on the property, which we are, so that is why we have addressed that. Now, the other things that have to be addressed in conjunction with that are not necessarily things to determine if we qualify to put in the golf course on the property. These are things we have to do because we are putting structures on the property. Special considerations include where we are building. We have wetlands, streams, creeks, coastal shoreland boundaries, beaches, and dunes, and limited suitability. They have addressed the natural hazards on pages 26 through 36. It is pretty substantial because there are natural hazards throughout the County. The State has assured that everything we want to build on is a natural hazard of some kind. We have basically submitted an engineering report.

For beaches and dunes, we submitted an engineering report from Eric Overbent of Cascade Geo-Services. He said that, first of all, the golf course itself is suitable to build on. Building the golf course is not going to cause any substantial impact on the land itself or on adjacent properties. That is really the criteria they are looking at. Are we going to impact the land? Are we going to exacerbate a problem? Are we going to cause erosion? As we build a golf course and open up the sand, we will re-pollinate and replace vegetation as we go. There will not be 300 acres of property sitting there exposed to the elements. We will go back in replanting grass and turf because that is part of what we are going to use for the golf course.

Also, in conjunction with that, we will have to do a 1200-C permit, which is an erosion control permit to make sure there is no erosion, either from wind or water or whatever. Anything that flows off the property onto other people's property or substantially impacts our own property. There are going to be safeguards in place to ensure that we comply with all of these things. The other thing that Eric Overbent said was that because we don't know the exact location of any of the structures, he could not do a geotechnical analysis for the buildings until we know where they are going to go. He needs to see the site, know the moorings, the size of everything, and all that before he can do a geotechnical analysis for the structure. This is okay, as Jill, the Planning Director, said, to wait on that and go through the process as we build structures. We have to come back to the County, we have to go through the conditional use permit process, which sends notice to everyone in the area that we are building and allows for comments. It is not anything we need to do now. We will have to go through a similar process down the road when it comes to the construction of the buildings. That is totally legal and totally legit. The same goes for liquefaction. We can't address the facts until we know where the structures are going to be. Other things associated with the property include fire hazards. The plan is to remove three hundred acres of gorse and put in turf as a buffer, not only between the State Park, which is totally inundated with gorse, and all of the properties to the east that virtually have no protection now. We will be their buffer, and not only will the golf course be their buffer, but we will also

have the ability to establish water on-site, including fire hydrants around the golf course and next to the buildings. The golf course will have the ability, if there is a fire, to actually fight those fires and to help provide access to the Park for fire personnel.

"This is actually going to enhance the ability to fight fires in the area. This is actually a pretty good thing. We are creating a buffer. It is going to be a green irrigated grassy area, and we are getting rid of 300 acres of gorse that are headed for Bandon. The other thing we have to do is deal with ODOT and Coos County regarding any standards that have to be met. One thing about the traffic is that there is a bridge that crosses Two Mile Creek on the way out there. There are questions about that. They had David and his associates come in and give a report, which is under Exhibit 'J.' Essentially, what they said is that it is good for fire trucks, logging trucks, anything anyone wants to haul. The bridge is built well, so that should not be a problem. The Bandon Fire department also approved it. They will have a 1200-C erosion control permit, which has already been addressed. As soon as they start moving dirt and sand, we have to have erosion control permits. And lawfully created tracts. That was actually raised in letters from ORCA. They did a full analysis proving that all of those parcels were lawfully created. The reason we know that is because there has been a history of boundary adjustments in that area, a history of deeding and ownership in the area. The fact that things have been purchased from 4-5 owners in the area and in the process of going through all of this, they had to show before going through the boundary adjustment process that everything was legitimate. So what he did was an analysis anyway. He also exhibited a map under Exhibit 'K' that shows the legal discrete parcels.
Mr. Hood apologized for going over his fifteen minutes of allotted time. He said he tried to go through everything as quickly as he could. He inquired if Mr. Nice had anything he wanted to add?

Mr. Nice said no, not really. There were some details that they could go further into, but just to point out, as far as fire protection, they are in a much better position to provide fire preventative services to the area. Also, he felt it should be noted that he and Mr. Hood met with all the landowners from the access point they were discussing, with sign-off from all of them as well, with the understanding that we will be improving that neighborhood and assisting with fire protection.

Mr. Hood agreed. It will be a fully paved road going into the area. It will be widened a little bit. It will be used to basically slow traffic. They will be providing an additional lane basically because of the traffic. There was originally a very limited access point, with the road being a part of a dip, with limited visibility. With both, we can provide a slow-down lane. It is a limited bit of work we have to do because we own Hoffer Lane. It is private.
Commissioner Waterman said that was his question. Were they going to widen the road, make it a two-lane road out to the highway, so that people could make turns as needed?
Mr. Hood said, "Yes, exactly. A deceleration lane along the highway so that people can get out of the way..."

Someone said, "Wait, that is Boak Lane. They were talking about Hoffer Lane now."
Commissioner Waterman said that the golf course employees are supposed to go onto and off of the highway, and it would be nice to have the turn lanes.

Mr. Hood said that is something that could be targeted later. These same property owners also own the land to the south of that. It might be a good idea to move that access point to a point farther down, where there is better visibility in both directions. That is something we were going to do. Mr. Hood agreed that particular part of the road was pretty nasty.

Commissioner Waterman asked if they were saying that employees would not use Hoffer Lane.

Mr. Nice said employees will not use Hoffer to access or leave the property. They will have their own access point.

Mr. Hood said their access will be farther north, on property under the same ownership. Actually, he was corrected; the access would be further south, not north.

The Director requested that they include the future access in the updated information and with future plans with ODOT.

Mr. Hood said yes. They would have to get an access permit when they move it.

Commissioner Waterman had another question. He asked about a wider buffer in the Two Mile area.

Mr. Hood said they were not planning a gate onto Two Mile Creek.

The Director clarified, "So they would change that from a 110-foot buffer?"

Commissioner Waterman inquired if they investigated the Coastal Lily Plant during their research in that area. He knew that it has been investigated in the Bandon Biota area up north.

Mr. Hood said Mr. Nice knew more about the Coastal Lily than he did.

Mr. Nice said there was no Darlingtonia Lily on that site. For them, it was more of the Silver Vasilia that was an issue. It is a threat to dune species. The one thing that they can demonstrate is that where they have the Silver Vasilia in Bandon Dunes currently, they continue to enhance it there through an environmental initiative. Part of it, when you go into the history of the Dunes, you go into exotic plants, including Scotch broom. By maintaining the working landscape, they have allowed native vegetations to come back, including Silver Vasilia.

"So there is a bank there with a restoration project," Mr. Hood explained.

"This is verified by U.S. Fish and Wildlife," Mr. Nice mentioned.

The Commissioners thanked them for the clarification.

Chairman Aguirre inquired if there were any proponents who wished to speak at this point.

The next speaker was Martin Kuhrt, 87030 Woods Way Lane, Bandon. His property is just south of the proposed project. He wanted to bring up a couple of quick concerns, including the water aquifer. He expressed worries that the project could draw water from their upstream sources and

their aquifer. He pointed out that he lives right on Laurel Lake, which is fed by Lost Lake, which is fed by all the creeks in the area towards Two Mile. Everything in the bogs area feeds into Laurel Lake that he lives on. He is concerned that if they start drawing water from the aquifer for this new project, it could be a different use than if it were just a cranberry bog. He wondered if they would be extracting more water, which could draw down the aquifer and reduce the water feeding into his lake. That was his primary concern. He acknowledged that he did not have an answer at this point, and those proposing the project probably don't either, but it is certainly something that needs to be considered. They are filing applications for their water rights, but since they own the land, it is a matter of it being their water, so they can use it, of course.

He pointed out that on page 4 of the Staff report, it says there are 16 residences in that area, each generating ten trips a day. With 150 golfers and 150 rounds of golf, it will be 150 trips. That's like one trip per foursome, plus caddies and staff. Even if you are using shuttles, perhaps. It is still well below the 100 trips a day threshold. He said he is not worried about the normal daily traffic; he is worried about the extra traffic intermingling with the vacation and tourist traffic on Highway 101. It is an easy road to get on and off of, but even he has a hard time navigating through the continuous stream of traffic, including motor homes and log trucks. The additional traffic during the summer tourist months makes it difficult. He is glad they were able to reroute some of their traffic to the Laurel Road area. The nice thing about that area is it is a straight section, so it might be a little less dangerous. That does add traffic to McKenna, though, which is basically his driveway. He is not happy about that, but that is just his opinion.

He is also worried about Biota's management of the other land they have in the area because, although they are reducing it down to a new LLC that is just for the golf course, they still own a lot of properties on Four Mile and other places. The grass on McKenna is now chin-high. It hasn't been mowed, it is not maintained. There are people squatting in one of the abandoned homes there. They are a big problem. They have been trying to get them out of there for ten weeks. They have started fires, and the sheriffs have been involved. He said he realizes they are trying to build a golf course, but if they are going to have all these other properties, please manage them properly.

Chair Aguirre thanked the speaker and then apologized that he had unintentionally started with opponents instead of proponents. He said he would switch back to proponents at this time. They just had one proponent listed as a request to speak, which was Ken Nice.

The Director pointed out that Mr. Nice had already come forward with Mr. Hood.

Chair Aguirre said, "Oh, then I did it on purpose." Everyone laughed. He said, "Okay, I will call more opponents." He called Marie Richie as the next speaker.

Ms. Richie came forward, introduced herself, and gave her address as 47651 Hwy 101, Bandon. She said she was here tonight with other concerned residents to comment on the proposal for another golf course in this exclusive farm use zone. She wished to address the ability of the local watershed to handle this project as proposed. The key concern here is the surrounding parcels with the same water table with the wells and ponds in the area. She believes caution is warranted, especially since they have had lower than normal rainfall for seven of the last ten years. Approving this project without deference to the local water supply could fundamentally change

the overall survival of adjacent farmland, adjacent state park and recreational needs, and dozens of local residents.

Her primary concern is the amount of groundwater this proposal plans to use in an unrecovered and unrestricted manner. According to the 2022 application submitted by Bandon Biota, the water use was estimated to be at least 400 cubic feet per minute. That is 150 thousand gallons, 24 hours a day, averaging 208 days per year. That is 27 million gallons of water per day. By way of comparison, proposed transfers of 17.4 cubic feet per minute would be used by the nearby parcel discussed earlier. That water, taken out of production, would leave only 4.3 percent of the proposed need. Indeed, the entire proposal is reliant on new water rights being granted, which is an almost unheard-of occurrence. This isn't even scheduled for a hearing at this time. However, based on exhibit "C" of the Bandon Biota application, that seems to remain the plan. A fact that is documented on the County website.

The applicant tells them in this current version of the application that the water impact would allow any farm with older water rights to take precedence. However, the water rights are older than everyone in the area except for the Twin Creek Ranch and Blueberries. This makes them the only ones that can petition; this means all of the other farms and locations are unprotected. While the age of the water rights determines who can petition to get anything done, it is quite another thing to get action when you are trying to save a dry and dying crop of valuable perennials that take 7-10 years to re-establish. This is especially true for golf courses that don't fall under the regulation of the Department of Agriculture. In reality, a petitioning farmer can expect a circular handoff from one agency to another, as Mr. Leff has already experienced with Bandon Crossings. The irreplaceable groundwater resource defines agricultural use in this area. Without it, nothing survives. Increasing water demand in this system by 23 times is untenable. Were the applicant to site a water use plan, things would be different, but evidence suggests the amount of water that the applicant proposes to use will have a severe negative impact on the adjacent parklands and residences. It is for these reasons that I am opposed to the siting of the currently proposed golf course on EFU land, proven high-value farmland. She thanked the Commissioners for their careful consideration. She asked if there were any questions, but there were none at this time.

Chair Aguirre called the next speaker, noted as neutral. The Chairman did remind everyone that they have heard about water, traffic, and land so far. So, if anyone had a comment, please endorse someone else's comment if it is the same, instead of going over the same information again.

Sheri McGrath came forward and introduced herself, giving her address as PO Box 1548, Bandon. She said she believed Chris did an excellent job presenting his application. She did not want to be redundant about any of this. One of the things she had written down was the open space and natural resources act. Getting rid of the gorse is a big deal. It helps so much with fire prevention. They have additional recreation that they don't have at this time. She mentioned that she really appreciated that. One thing, even though it is not listed as part of the criteria, is economic benefit. Bandon Dunes has provided jobs for the area. They have provided scholarships, tourism, and economic growth in the area. She did support this project at this stage. She recommended they approve the application. With that, she thanked the Commissioners and that was the end of her testimony.

The next speaker called was Mike Clausen. He gave his address as 1455 Pelican Place, Bandon, OR. He mentioned that he has been a 25-year resident of the area and an 8-year City Councilor. He has been involved with the transportation system among other things. He wanted to mention the excellent reputation of Bandon Dunes that has been earned over a 20-year period. He said that even when locals or officials have had issues with the Dunes over the years, they are very easy to work with. They would bend over backwards to try to do the right thing. Bandon and the area have benefitted greatly from their stewardship and their precedence in the community. When it comes down to this or that, there are lots of ways for somebody to screw you and you don't even know it. But that isn't the reputation that the Dunes have consistently established with the community. They are just all positive. They deserve fair consideration for this project. Thank you for your consideration.

The Commissioners thanked Mr. Clausen.

The next speaker was Diane Kuhrt. She came forward and gave her address as 87030 Woods Way Lane, Bandon. She said their property was just at the south end of the proposed property. Her primary concern was travel. She feels that a transportation study should be done. She mentioned that she travels McTimmon Lane all the way to Bandon frequently. The amount of traffic has increased, not just in the summer but all year, in the last three years. There have been a lot more accidents in the last few years. Any changes with new people coming in such a big way concern her. She looked at the part of the proposal for the Boak Lane area; if they can route their traffic a different way, that is great. But there should be more studies. She personally has had some close calls at the Bandon Crossing. You have to go slower in that area because people will be driving by and realize they have to turn now. They hit the brakes and turn left, and everyone starts swerving around. Her main concern was transportation.

One other thing, though, was the numbers for how many trips a day. She did not think that was taking into account special events, like a tournament, where you have media, spectators, and participants. It gets crazy. With one main access, it can get hectic. We have talked about secondary access; hopefully, it won't be on McTimmon. But when it comes to additional access, most days it can get crazy. So that is all she wanted to say. She did have water concerns, but she thinks other people have addressed them already. So, thank you all very much.

There was one more person who had signed up to speak. Barbara Lamont was called up. She listed her address as 87432 Cranberry Creek Lane, Oregon. She is from Twin Creek Ranch, which has blueberries and cattle. They have a 158-acre farm. She said the Kaisers now own the Kaiser Park that is connected to their property. There is a gorse area where the gorse is over her head, and it has not been addressed in all the time they have been there. Nor have they watered or cut the hay fields. Her question is maintenance. She said she was just a little farm girl, but if they can't maintain it for fire prevention, the gorse will go crazy. She said they had a small amount of gorse on their property, but it was nothing before they started not maintaining it. Now it is a constant battle for them. That is just nature. They are not complaining about nature. What they want to know is about the water from their aquifer and ponds on her property. They need those ponds for fire suppression in case there is a fire. She said they had a fire on their property 20-something years ago. That fire burned for 10 years because it went underground. It was horrible. They have a big pond, and every year it goes down further and further until it is nothing.

She wondered if their aquifer is an infinite source or if it is finite. She said that is why Oregon wants to own all the rainwater. She said that is why drinking water isn't any good anymore. She wanted assurances that they are not going to run them out of water where all they have is sodium water in their wells. She mentioned that they have a high-end crop of berries. She said they have never been referred to as a spring-fed ranch, even though they have been there for 35 years. They are listed under their paperwork for Leff Enterprises. Can the applicants be accurate with their paperwork? Can they please tighten up their loops? What are the assurances that they are not going to lose all of their water? She pointed out that they had the first water rights on the creek. When the Crossings got done, they used to be Joint Creek Ranch, now they are a singular creek ranch because Bandon Dunes inadvertently created a wetland even though they had approval from the Planning Commission. However, it completely destroyed a creek and a salmon habitat. She said they did have salmon in their creek, and she is concerned that will be impacted. That is her biggest concern. She said no more taking out our salmon. No more for a golf course. She thanked them for allowing her to speak.

Commissioner Waterman asked if he could make a couple of comments. He said Bandon Crossings had to do some mitigation, he believed, which is why it is in wetlands. Then on behalf of Bandon Biota, just west of Highway 101 on Two Mile Lane, they did some restoration projects there, meaning they have to leave it alone. There are setbacks on that. Their hands are tied by the government in certain areas.

Ms. Lamont thanked him for the information but repeated that water is very much her concern. If they can provide studies, if they can do whatever, if they can guarantee everything they are saying, because saying "oh, it is never going to happen"—she just wants to be prepared just in case.

Chairman Aguirre said as a big neighboring rancher, her comments were duly noted. The Chairman then asked for the applicant's rebuttal and closing arguments. He reminded the speaker, Mr. Hood, that the subjects mentioned were water, traffic, maintaining adjacent lands, and the time of enforcement. Say it does go south on the water rights.

Chris Hood said he was just going to jump on the gorse subject real quick. He pointed out that at Bandon Dunes, there were three miles of gorse along the coast that have been eliminated thanks to Bandon Dunes. So, they are doing everything they can. He did believe that members of the gorse removal project have been doing as much of the removal as they can. From their philanthropic endeavors, they may have funds going into that.

Mr. Nice interrupted to add that they work in conjunction with state parks as well as their area along the New River. They have not only mowed the gorse there, but they have also gone back and used herbicide to keep it under control. That is an area where there is snowy plover. Now they have created a much better habitat. They were trying to maintain as much gorse removal as well as maintenance in these areas, not just the golf course. He just wanted to add that.

Chris Hood mentioned that there were some issues raised about some of the lands having grass growing and might need some removal. His thoughts on that were that the best way to ensure all of Bandon Biota's land and all of the golf course property is maintained is to approve this golf course to have people on site. Because if it is approved and there are people on site, all that is

going to be taken care of, because in conjunction with the golf course, they definitely aren't going to allow any eyesores.

Commissioner Goergen felt that was a little offensive. He said if you have a neighbor that has a problem, you should go collaborate with the neighbor to take care of it, rather than make it conditional.

Mr. Hood said, "Oh, absolutely."

Mr. Nice offered that they have talked to the residents of Boak Lane and that they understand they maintain right of ways for the residents as well. This would all be taken care of.

Chairman Aguirre said, "This is all the 114-acre parcel that is adjacent to them. Could they work with them and mow it or something?"

Mr. Nice said, "Yeah, they certainly could. If this was an issue and he was unaware of it, they would go in and take care of it."

Commissioner Goergen said that Bandon Dunes has a stellar reputation and they may not even be aware of this issue.

Mr. Nice said he was not aware of exactly what area she was talking about but they would look into it.

Commissioner Goergen inquired if they were talking about the field right down below the golf course on Two Mile Creek.

Mr. Nice said he thought that was the area they might be talking about.

Commissioner Goergen said if that is the area they are talking about, it is hayed and mowed every year.

Mr. Hood said they hay that area every year. He said the area was fenced and maintained very well.

Commissioner Goergen said not on the former speaker's property, though.

Mr. Hood said he did not know about that. He said he didn't mean to put that comment out there and sound like they were trying to blackmail somebody. They wished only to improve their properties and make them the very best. But it does bring up a very good point. If this golf course is not approved, all of a sudden, there is going to be 300 acres of gorse back on that site. They aren't going to put too much effort into maintaining it if they can't use it for anything.

The final part of this is water. The fact of the matter is, on their water transfer they cannot utilize one drop of water more than what is already allocated to them stated for use on the cranberry bogs. It is based on the acreage of the bogs, not on the acreage of the pasture land. So that is what they would be held to. The amount of water, the area of water, and the acreage they want to irrigate are all from an existing water right that could be utilized tomorrow for that same use. It is

not like they are creating a new source that doesn't already exist or hasn't already existed and been used in the past. That is all he was saying.

Mr. Nice added that part of that water right transfer is from the creek, which they would only be allowed to use that water source for a few months, not even during the irrigation season. One of the things they would most likely do is a storage system. They would utilize that winter water, and in fact, the test wells they have done have indicated there is not a huge amount of water where they have drilled anyway. There is no real possibility of removing too much of that water because there simply isn't much water there.

Mr. Hood mentioned Mr. Nice addressing the one opponent's comments about water.

Mr. Nice said they were looking for about 300 gallons a minute. The math is 24 hours, so they are looking for 300-400 gallons a minute.

Chairman Aguirre asked what would be the gallons per day.

Mr. Nice said he could do a quick calculation.

Commissioner Schab said in any case, what would be used would be what was specified right now.

Mr. Hood agreed, "Exactly, we have a certain amount that we can use right now."

Commissioner Schab explained that if they wanted any more, they would have to get authorization to use any more than the amount they have authority to use now.

Mr. Nice said they already knew it was 400 gallons a minute. That is a half a million gallons a day.

Chris Hood said they would basically have to go through a process that looks at the use of the surrounding area. There is really no way they are going to impact properties that are a half mile away. That would be all the way to Highway 101, and that is just not going to happen.

The Director pointed out to the Chairman that they skipped asking if there was anybody online that might want to submit any additional testimony.

The Chair said, "Oops. The new age world of being online." He apologized to the person waiting online. He pointed out that they had closed the public portion of the comments, but if she had something she wanted to say, she could feel free to re-submit because they were probably going to have a continuance anyway. She will have some additional time to submit her comments later.

The Director said they had received a request to hold the discussion open because they took testimony today and new things were brought up. If there had been no testimony received that had brought up no new issues, then there would be no reason to continue. But there is. So, the way this works is that you Commissioners have a few different options. They could request to hold the record open for a minimum of seven days. No matter what, they had to do a minimum of seven days. They could schedule another hearing and meet again in seven days, if they chose

to. They could do a two seven-day period where they would take rebuttal only to what has already been raised. Then final argument. They could do the three where they allow more argument to come in, rebuttal, and then the final argument from the applicant. Or they could choose to set a hearing 14 days out as long as they were abiding by that minimum of seven days. She said she knew this was a little bit different time frame because they are a week later than they normally would be because of the holiday, so she was not sure what would be best. Do they want written documentation, do they want more oral information, what is their thought process?

Commissioner Waterman said there was an awful lot of information here that he hasn't read yet, so he doesn't know if it has merit or not.

Commissioner Schab asked if there was a time factor to continue it to next week.
The Director said they would not want to continue it and leave it completely open because you might want to set the seven, seven, seven. They could make the next meeting rebuttal, and then they could make it, because she had to give this stuff to them. Or…

Chairman Aguirre inquired, "What if they just held the record open for seven days?"

The Director said, "Well, they would have to continue it and take public testimony at that point. So they could hold it open, but they would have to have another hearing. They could do that for seven days if that is what they want. They could do that for 14 days if that is what they want."
Commissioner Goergen asked, "Could we have another hearing next Thursday night?"

The Director said, "Yes, they could do that. Or they could do 14 or 21." She mentioned that she knew the Chairman was going on vacation in 14 days, so she wanted to make sure they had enough commissioners to have a quorum.

Commissioner Vorderstrasse said 14 days would be good for him.

Chris Hood raised a concern that if they are open for seven days, they are going to allow an opportunity for new evidence submittal. There has to be a rebuttal period. They can't just allow new evidence without a rebuttal.

The Director explained the state law says we have to provide a minimum of seven days which could just be reconvening the meeting in seven days.

Mr. Hood inquired if the Planning Commission would like more information on the project that they did not believe was already covered. He acknowledged there had been a great deal of testimony that he had not had a chance to read and he assumed it was the same for the Planning Commission. He mentioned if they wanted to go a month, or do a seven, seven, seven, it puts them on August first. That is the day of their next hearing date. If they push their hearing back a week and have it on August 8th, basically then they have time to review all the information that comes in.

The Director said she they were looking at calendars to make sure they have a full Planning Commission.

Mr. Hood said he understood.

After discussion among the Commissioners it was decided that they could meet on August 1st.

The Director said if they do that, do they want to leave the record open until the first and allow for oral presentation from the applicant for final argument.

Chairman Aguirre inquired if that would work for the applicants.

Chris Hood said if they went seven, seven, seven, then yes, that would give them time. He said they might just do a rebuttal and a closing argument at the same time but it doesn't matter. Just set it up and then if the Commissioners could meet on the first, that would be great.

The Director said okay, just for clarity, the first seven days allows you to submit any testimony or new evidence. It has to be delivered to the Planning office or received by 5 pm on the 18th. Then rebuttal, no new evidence, is due on the 25th by 5 pm in the Planning Office or in the Planning email. If you email, please make sure the Staff has received it because if it is after the time frame, it will be considered late and will not be accepted. Then the final argument would be due the day that we would do deliberation.

Business Operations Manager Amy Dibble mentioned that Amy Dar from ODFW sent a message through the GoTo Meeting asking if the Commission was unable to review her comments today, would they be reviewing it in the next week.

The Director responded they would. She inquired if everyone was clear on timeline and if both Commissioners online understood the timelines.

All Commissioners indicated that they understood the timelines.

The Director said at each date they would email out all of the comments but then they would follow up with a hard copy so they did not have to print them. That gives them additional time waiting for the mail. Because it is kind of tight.

Chairman Aguirre offered to entertain a motion.

Commissioner Schab said she would make a motion to hold the record open for seven days until July 18th, at 5 pm, then all rebuttals will be submitted on July 25th at 5pm. Final argument will be due on the first of August.

The Director said the record will officially close for public comment by the 25th. Then the final argument follows.

Commissioner Goergen and Commissioner Vorderstrasse seconded the motion.

Commissioner Waterman reminded everyone that they need to give the name of the file, the HBCU-24-001.

Chairman Aguirre called for a vote. All in favor. It was a unanimous vote in favor.

Chairman Aguirre noted that concluded the matter and recessed the meeting for five minutes.

Director Rolfe gave them an update on the text amendment they had discussed last time. The Board of Commissioners took out the vacation rental stuff completely and said they would put it off until they have this work session. They would like to have a joint work session with this Board at some point, so she was looking for some possible dates for that. She mentioned that the BOC typically did their work sessions during the day, so she wasn't sure if this Board could make that happen. If not, the Board of Commissioners might have to come to one of the Planning Board's nighttime meetings.

Commissioner Waterman teased that there were only three County Commissioners, and there were more Planning Commissioners, so they should make the Board of Commissioners come to them.

The Director said she would reach out for some dates for that joint session. She mentioned that there were some other minor changes to the Amendment they had discussed. The Board of Commissioners tentatively approved the Amendment; the final approval will be at a Board of Commissioners meeting at the end of the month.

On to other news, the Director mentioned that staff member Crystal Orr would be leaving within a week or so. She was going into private consulting. They would have an opening for a Planner.

Commissioner Goergen asked the Director if this didn't leave her in a difficult position.

The Director said yes, they would have to try to hire someone. They do have another planner, Cassidy, but she is still learning. She mentioned that Chris McWhorter wasn't with them any longer, so they already had his position open, but they had been reluctant to hire anyone until the budget talks had been decided. Now the budget stuff was all settled, so they are making some amendments to the job description and will see what they get. She mentioned that she had just received an email from Hood River County saying that they have the same two positions open that we do, and they have not got one applicant for those, and they have been open for over 30 days.

There was a discussion about pay and the description of the position. The Chair asked if he could receive a copy of the open positions. The Director stated she would send it to him as soon as it was available.

Chris Hood, who was still sitting in the audience, suggested that when they were getting the Board of Commissioners and the Planning Board together, it would be a great time to have a serious discussion about how to streamline the process and get applications out faster.

The Director explained that was the goal. They have been working through supplemental questionnaires, but she has not had time to complete that task.

Director Rolfe said they did have a new employee on the Building side. This means the building staff positions are filled. The Director mentioned that they are still discussing whether they could take on the on-site septic inspections for the DEQ. That would actually be done by the

Health Dept but our office would be the one that took in the application. We are still running the numbers to see if that one would work. That way the customer would have only one place they bring all their information, and then get their permits all in one spot.

Commissioner Waterman asked for an update on code enforcement.

The Director gave an overview of the enforcement process and the case load.

ITEM V COMMISSIONER COMMENTS

There were no comments.

ITEM VI ADJOURNMENT

Chairman Aguirre called the meeting adjourned at 9:32 p.m.

Submitted by:

Michelle Berglund, Recording Secretary.

_____

Approved by the Planning Commission on _____.

Chair Joe Aguirre_____.

RE: Bandon biota

LD

LUONGO Dante J * WRD <Dante.J.LUONGO@water.oregon.gov>
To Jill Rolfe

Reply | Reply All | Forward | ...

Thu 7/25/2024 4:16 PM

This Message originated outside your organization.

Hello Jill,
In order for the Department to approve a water right Transfer Application, among other things, we must ensure that the proposed change will not injure other existing water rights, nor enlarge the water rights proposed for transfer. The Department must also ensure that the proposed use is compatible with acknowledged local comprehensive land use plans and land use decisions.

Consistent with OAR 690-005-0035 (4)(b)-(c), when local land use approvals for the proposed use have already been obtained or if the proposed use is allowed outright, the Department may issue a final order to approve the Transfer Application. However, if local land use approvals are being pursued but still pending (*which we understand may be done in phases for many large-scale projects such as this*), provided all other requirements for approval of a Transfer Application are satisfied, then the Department may issue a final order to conditionally approve the Transfer by including conditions that preclude the use of water and any associated construction under the Transfer until the applicant obtains all required land use approvals.

For more basic information on water rights and the transfer process, please see the Aquabook in the link below:
https://www.oregon.gov/owrd/WRDPublications1/aquabook.pdf
If you have further questions on the transfer process, please feel free to reach out via this email thread, or by calling me at 971-304-5006.

Best Regards,
Dante Luongo