

**From:** [Cameron La Follette](#)  
**To:** [Planning Department](#)  
**Cc:** [Sean Malone](#)  
**Subject:** ORCA testimony on New River Golf Course proposal  
**Date:** Thursday, December 1, 2022 4:30:17 PM  
**Attachments:** [ORCA to Coos Co PC re New River Golf Course Dec 2022.pdf](#)  
[OPRD BSNA Biota Construction Damages Assessment Oct 15.pdf](#)

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**This Message originated outside your organization.**

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Dear Coos County Planning Department,

Attached please find the testimony of Oregon Coast Alliance on the proposed New River Golf Course, HBCU-22-001. Also attached is an exhibit, an Oregon Parks and Recreation Department report from 2015 concerning Bandon State Natural Area and the effects of Bandon Biota well-rdilling and road construction thereon.

Please let me know you received both of these documents, were able to open them and place them in the record for this application. Please also note that, if the hearing is not continued, **we request the record to be left open for a minimum of fourteen days**, unless the application is simply denied at this December 1st hearing.

Thank you,

Cameron

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December 1, 2022

Via Email: [planning@co.coos.or.us](mailto:planning@co.coos.or.us)

Coos County Planning Commission  
c/o Coos County Planning Department  
Coos County Courthouse  
250 N. Baxter  
Coquille, OR 97423  
[planning@co.coos.or.us](mailto:planning@co.coos.or.us)

Re: Oregon Coast Alliance testimony for the proposed New River Dunes Golf Course application (HBCU-22-001).

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. The application is fundamentally flawed because it fails to present the most basic information for determining whether the approval criteria can be satisfied. For these reasons and those set forth below, the application must be denied.

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. The staff report simply alleges that the lots/parcels were created pursuant to Section 6.1.125.1.e, but no evidence has been submitted to substantiate the allegation. 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. The applicant has not established that design capacity requirement has been satisfied

The applicant is requesting a clubhouse/restaurant with parking, an agronomy center/maintenance facility, a turn-stand (combination restrooms/vendor facility), a minimum of two standalone restrooms, a caddy shack, and a practice range. Pursuant to OAR 660-033-0130(2), the subject property cannot have an “enclosed structure with a design capacity greater than 100 people, or group of structures with a total design capacity greater than 100 people, or group of structures with a total design capacity of greater than 100.” The “design capacity” limitation applies cumulatively, to all enclosed structures. Staff initially deemed the application incomplete because the applicant failed to make an adequate showing under this rule. Simply put, the applicant has not presented credible plans for the enclosed structures. The letter from Scott Edwards, Architect, alleges merely that application “should adequately comply with the required design capacity of 100 persons or less.” The additional letter alleges compliance without any evidence to support the conclusion. This cannot be used in the place of actual evidence, in the form of architectural plans and a condition that the proposed structures will conform to that design capacity. The conceptual plan submitted is far too generalized to determine design capacity. In *ORCA v. Curry County*, LUBA Nos. 2015-006 and -080, LUBA counseled that to satisfy the design capacity requirement, the applicant must include a specific, detailed plan. Perhaps even more importantly, ORCA agrees with staff that “absent [credible and] additional evidence or testimony that the applicant has not sufficiently addressed the capacity or structural requirements,” and the application must be denied.

If the applicant would like to postpone satisfaction of the “design capacity” 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. In essence, there would be a round 2, which would have to be imposed as a condition. *See Rhyne v. Multnomah County*, LUBA No. 92-058.

III. Impacts to Surrounding Farmland

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. The applicant alleges that surrounding properties are not primarily, nor recently, devoted to either farm or forest use. The record, however, demonstrates that several surrounding properties

are dedicated to farm uses. The applicant has simply failed to submit sufficient information to establish compliance with this requirement. More importantly, the applicant has repeatedly shown a lack of candor in the preparation of its application, and, therefore, the public and staff should be skeptical of the applicant's allegations.

The applicant and the staff report appear to believe that the subject property does not contain high value farmland, based on what portion of the property would be subject to development. Pursuant to OAR 660-033-0020(8), high-value farmland outside the Willamette Valley includes *tracts* growing certain perennials. Tax lot 1000 (T29S, R15W, S25 TL1000), 93.56 acres in size, is high-value farmland because a portion of it is in cranberry production. *See* staff report p. 8-9. A tract includes contiguous ownership, and, therefore, the portion of a property subject to development is not the standard. *See* OAR 660-033-0020(14) (definition of "tract"). Moreover, pursuant to ORS 195.300(10)(c)(A), the definition of high value farmland includes land that is in an exclusive farm use zone or mixed farm/forest zone, that also is "within the place of use" for a water permit, certificate or decree from the Water Resources Department. It appears that the golf course cannot be approved, absent an exception, because the subject property falls within high-value farmland as defined in ORS 215.710 and ORS 195.300.

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 (including along Boak and Hoffer Lane), increase in trespass, and so forth. The applicant has simply not presented a serious case in support of its application.

#### IV. The golf course exceeds the acreage limitation

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 300 acres. While the applicant can generally exceed the upper limit of 150 acres, the applicant does not have a blank check to create a golf course of whatever acreage it would like. ORCA believes that doubling the upper limit exceeds what is allowed under the 120 to 150-acre limitation.



V. 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. The pro shop must be within the clubhouse. No banquets, public gatherings, or public entertainment. The restaurant cannot be used by the general public, as was previously maintained by the applicant.

As noted above, if the applicant wishes to postpone satisfaction of approval criteria, then the applicant must go through the same process as is occurring here, which includes all the same rights to participate, comment, and opportunity to appeal. *See Rhyne v. Multnomah County*, LUBA No. 92-058. Therefore, if the applicant is not going to provide building plans, then the County must impose a condition of approval requiring all that process at a later time, with all of the relevant participatory and appeal rights as provided here.

VI. Beaches and Dunes

The entirety of the golf course, though not the entire tract, is within the Beaches and Dunes overlay zone. The applicant included a conclusory review from Cascadia Geoservices without any supporting evidence to substantiate the allegations. The applicant has not presented a serious attempt at a Beaches and Dunes site investigation. The proposal will develop and disturb over 120 acres of Open Dunes Sand, which include active dune formations. The Coos County comprehensive plan imposes a requirement to investigate and make findings for the type of use proposed and the adverse effects it might have on the site and adjacent areas; the need for temporary and permanent stabilization programs and the planned maintenance of new and existing vegetation; the need for methods for protecting the surrounding area from any adverse effects of the development; and hazards to life, public and private property, and the natural environment which may be caused by the golf course. Again, as has been par for the course with this application, the applicant has not submitted sufficient information to satisfy the approval criteria, including those for the Beaches and Dunes overlay. If the applicant intends to delay compliance with these criteria, then the applicant will have to satisfy the criteria at a second stage, with all the same participatory and appeal rights as is provided here.

## VII. Non-Estuarine Coastal Shoreland Boundary Overlay

The applicant alleges that the subject property is not within the non-estuarine coastal shoreland boundary. Staff, however, confirmed that the subject property does contain inventoried coastal shoreland boundary at the northern portion. The applicant needs to submit a traffic plan and ensure that the proposed access road and bridge satisfies the County definition for new commercial roads in the rural area. Bridge construction and road improvements in the floodplain will require approval for a floodplain application for special development in the special floodplain. There is no evidence that the proposed road and bridge could be constructed within the existing single lane.

## VIII. Natural Hazards and Earthquake Hazard Zone

As has been repeatedly the case, the applicant has not been upfront about satisfying or even conceding the applicability of the natural hazards overlay. For example, the proposed access is proposed for Flood Zone A. The applicant must a floodplain application to address the impacts of a commercial road and bridge.

The subject property is also within the earthquake hazard zone where there is potential for earthquake induced liquefaction of the soils, including in the “moderate” and “high” classification zones. The applicant submitted a technical memorandum from a certified engineering geologist. As noted by staff, that document did not meet the standards for geologic assessment reports. An adequate geologic assessment report must be submitted now, or, if late, then the same process with the same rights to participate and appeal must be provided here. This requirement must be memorialized in a condition of approval if the information is not provided at this time.

## IX. Traffic Plan

The applicant must submit a traffic plan that addresses several components, including property boundaries, locations of structures, required parking spaces, current and proposed utilities, and so forth. The applicant, however, has not submitted a plan that addresses the required parking spaces and established all property boundaries. Again, the application is simply lacking. Moreover, the applicant will have to increase Boak Lane to 32 feet wide, which is the minimum standard for the local commercial/industrial road standards.

X. Impacts to water quality

The applicant concedes that its hydrology assessment is deficient. Specifically, the applicant admits that “there is not sufficient information available to absolutely assess potential impacts.” The applicant must assess the impacts to the subject property, as well as the surrounding properties, including Bandon State Natural Area (BSNA). Indeed, there have already been apparent impacts to BSNA. Past trespass into BSNA by Bandon Biota in 2015 (for a prior golf course proposal), resulted in several illegally drilled bore holes/test wells. The #3 well was drilled outside BSNA property but only 64 feet from a major BSNA wetland. Afterwards, park personnel noted that historical wetlands were atypically dry and that wells drilled within and adjacent to the BSNA could have been responsible for the dried wetlands: “Well #3, which is off OPRD property is within 64 feet of the edge of a large wetland complex on OPRD property. The wetland is dry. There are a range of possible causes including this year’s drought and potential draining of the wetland...A Google Earth image from August, 2005 shows water in the wetland during a drought years. We will need a hydrological assessment to determine the effects of well 3 located next to an important wetland complex.” (OPRD Report, “Bandon State Natural Area Disturbance assessment Final Public Draft 2015-10-07,” pp. 17-19). The OPRD report is attached to this testimony. The applicant must consider the impacts to these and other wetlands, as well as adjacent farmland, from proposed future wells that would serve the properties’ many water needs.

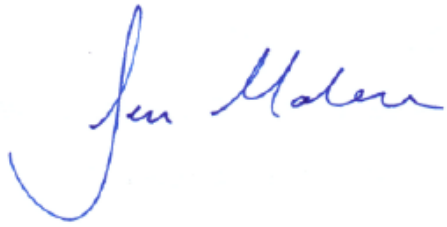
XI. Request to Leave the Record Open

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.

XII. 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,

A handwritten signature in blue ink that reads "Sean T. Malone". The signature is fluid and cursive, with a large initial "S" and "M".

Sean T. Malone  
Attorney for Oregon Coast Alliance

Cc:  
Client

# Bandon State Natural Area

## Disturbance assessment

### Final Public Draft

2015-10-07

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## 1. Executive summary

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The Oregon State Parks and Recreation Commission issued an order in April 2014 approving a request to exchange a portion of the Bandon State Natural Area with a private business, Bandon Biota. In May and June 2014, Bandon Biota entered the portion of the property proposed for exchange and removed vegetation, drilled holes, and disturbed soils. Oregon Parks and Recreation Department (OPRD) staff were not notified in advance of the work; Bandon Biota proceeded under the terms of the exchange agreement dated November 2013. Correspondence starting on page 42 explains this background in greater detail.

OPRD staff hired a surveyor to map the eastern boundary of the proposed exchange area to clearly identify which of the disturbed areas fell within the property boundary (page 4). OPRD staff also reviewed the affected areas and submitted reports covering natural (page 5) and cultural (page 28) resources.

The natural resource evaluation showed 1.68 acres were affected by the disturbance, affecting both existing paths and creating new ones. Within the area, staff identified 93 downed trees (mostly shore pine), including 23 snags. Another 31 trees were damaged, but not felled. The affected acreage is classified as “High Natural Resource Value” and includes individual plant species of concern, and plant communities generally regarded as high conservation priorities. Gorse, an invasive shrub, had spread to slightly less than a quarter acre.

This report does not address three unknown natural resource issues. First, one of the drilled holes employed a bentonite-based compound and left some of this material behind. The exact nature, and therefore effects, of this material is unknown. Second, a wetland within the Bandon State Natural Area boundary is drier than normal, and any relationship between this condition and water being pumped from a well outside the property is likewise unknown. Finally, some signs of natural resource damage may not be detectable for 1-3 years.

No cultural resource damage was noted, though weathering and deposition over the intervening year may obscure cultural materials.

Staff procedures and policies (page 26) can normally eliminate or vastly reduce natural and cultural resource damage. Since these proactive measures were not followed, OPRD staff recommend:

- 1) Removing the gorse.
- 2) Reseeding or replanting native plants, especially those individuals or communities in highest need of conservation.
- 3) Determining why and how the wetland appears stressed, and develop a plan cooperatively with Bandon Biota to restore its normal function.

A final remediation plan, cost estimate, and method of funding this work, have not yet been drafted.

# MAP OF SURVEY

LOCATED WITHIN  
 THE SOUTHEAST QUARTER OF SECTION 26  
 TOWNSHIP 29 SOUTH, RANGE 15 WEST, WILLAMETTE MERIDIAN  
 COOS COUNTY, OREGON

FOR

## OREGON PARKS AND RECREATION DEPARTMENT "BANDON STATE NATURAL AREA"

### SURVEY NARRATIVE

**PURPOSE:** TO DETERMINE THE SOUTH AND EASTBOUNDARY LINES OF THE BANDON STATE NATURAL AREA WITHIN THE SOUTHEAST QUARTER OF SECTION 26, TOWNSHIP 29 SOUTH, RANGE 15 OF THE WILLAMETTE MERIDIAN IN COOS COUNTY, OREGON. PER THE REQUEST OF THE CLIENT.

**PROCEDURE:** THIS SURVEY WAS CONDUCTED USING A LEICA TCRP 1203+ ROBOTIC TOTAL STATION, DISTANCE PRISMS, A LEICA GS15 DATA COLLECTOR AND LEICA GS14 AND TRIMBLE 4000 SSE SURVEY GRADE GPS RECEIVERS. THE BASIS OF BEARING IS GRID, FROM GPS - OREGON COORDINATE REFERENCE SYSTEM (OCRS) - OREGON COAST ZONE (NAD83/2011). ALL MONUMENTS FOUND WERE IN GOOD CONDITION AND HELD AS LOCATED.

### LEGEND

- ⊗ FOUND MONUMENT AS NOTED.
- FOUND REBAR PER SURVEY DATA C.S. 39B57.
- ✕ FOUND T-POST.
- FOUND ORANGE CARSONITE W.P. MARKING PARK BOUNDARY.
- ▲ FOUND WELL HEAD.
- W.P. WITNESS POST.
- ( ) RECORD SURVEY DATA PER C.S. 39B57.
- [ ] RECORD SURVEY DATA PER BUREAU OF LAND MANAGEMENT RESURVEY DATED JULY 24, 1998.
- SUBJECT PROPERTY
- TAX LOT LINE
- - - SECTION LINE
- - - - CENTERLINE OF 12' WIDE SAND ROAD

REGISTERED  
 PROFESSIONAL  
 LAND SURVEYOR

*Jason M. Martin*  
 OREGON  
 MAY 8, 2012  
 JASON M. MARTIN  
 54729

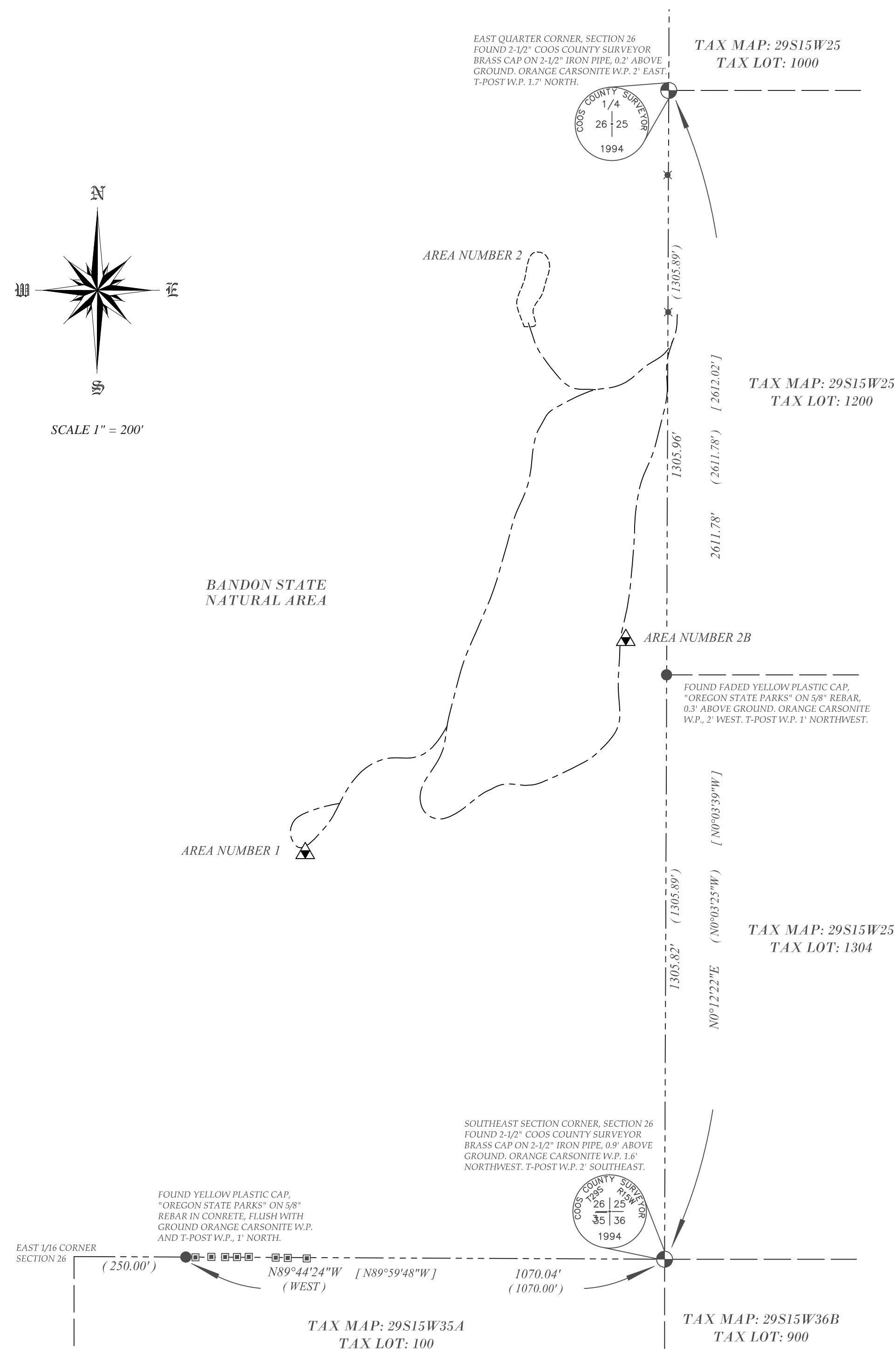
RENEWS: 1/1/2017

SURVEYED BY:  
**TO THE POINT LAND SURVEYING, LLC**  
 P.O. BOX 217  
 GOLD HILL, OR 97525  
 (541) 840-7587

Date: August 25, 2015  
 Project No. 0046-15

### BASIS OF BEARING

THE BASIS OF BEARING FOR THIS SURVEY IS GRID. GPS - OREGON COORDINATE REFERENCE SYSTEM (OCRS) - OREGON COAST ZONE (NAD83/2011).



Assessor's Plat No. 29S15W26, Tax Lot 100

**TO THE POINT LAND SURVEYING**



Bandon State Natural Area

Disturbance report

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### 3. Natural resources assessment

# Oregon State Parks - Bandon State Natural Area (BSNA) Ground and Vegetation Disturbance Assessment

*Sherri Laier, Natural Resources*

I visited BSNA on August 18 and 20, 25 and September 3, 2015 in order to understand the impacts to natural resources from bulldozing of roads and installation of wells. I GPS'd and mapped 1.68 acres of bulldozed roads and 3 wells. I noted and took photos of impacted vegetation and habitats.

<sup>1</sup>The “Vegetation Inventory and Botanical Resource Assessment for the Portion of Bandon State Natural Area under Potential Land Exchange Consideration” by Noel Bacheller, OPRD Botanist was used to determine the level of natural resource concerns relative to bulldozed roads and well sites constructed within the exchange land. See electronic version here:

<http://www.oregon.gov/oprd/Documents/bandon-habitat-inventory-20131029.pdf>

The bulldozing went through, and well sites were drilled in, areas of “high botanical resource value,” areas of “highest conservation priority,” and several plant communities with the highest conservation ranking of G1S1 (see definition pg. 11). In addition, bulldozing occurred in habitat where Silvery Phacelia grows. Silvery Phacelia is a State Threatened plant that occurs along a narrow range of southern Oregon coast. It is a Federal species of concern and the USFWS is considering a petition to protect it under the Endangered Species Act and to designate Critical Habitat for the species.



**Left:** Silvery Phacelia 20' from well one site.

**Right:** Silvery Phacelia.

<sup>1</sup> 2013, Bacheller, N. Vegetation Inventory and Botanical Resource Assessment for the Portion of Bandon State Natural Area under Potential Land Exchange Consideration” by Noel Bacheller, OPRD Botanist On line at: <http://www.oregon.gov/oprd/Documents/bandon-habitat-inventory-20131029.pdf>

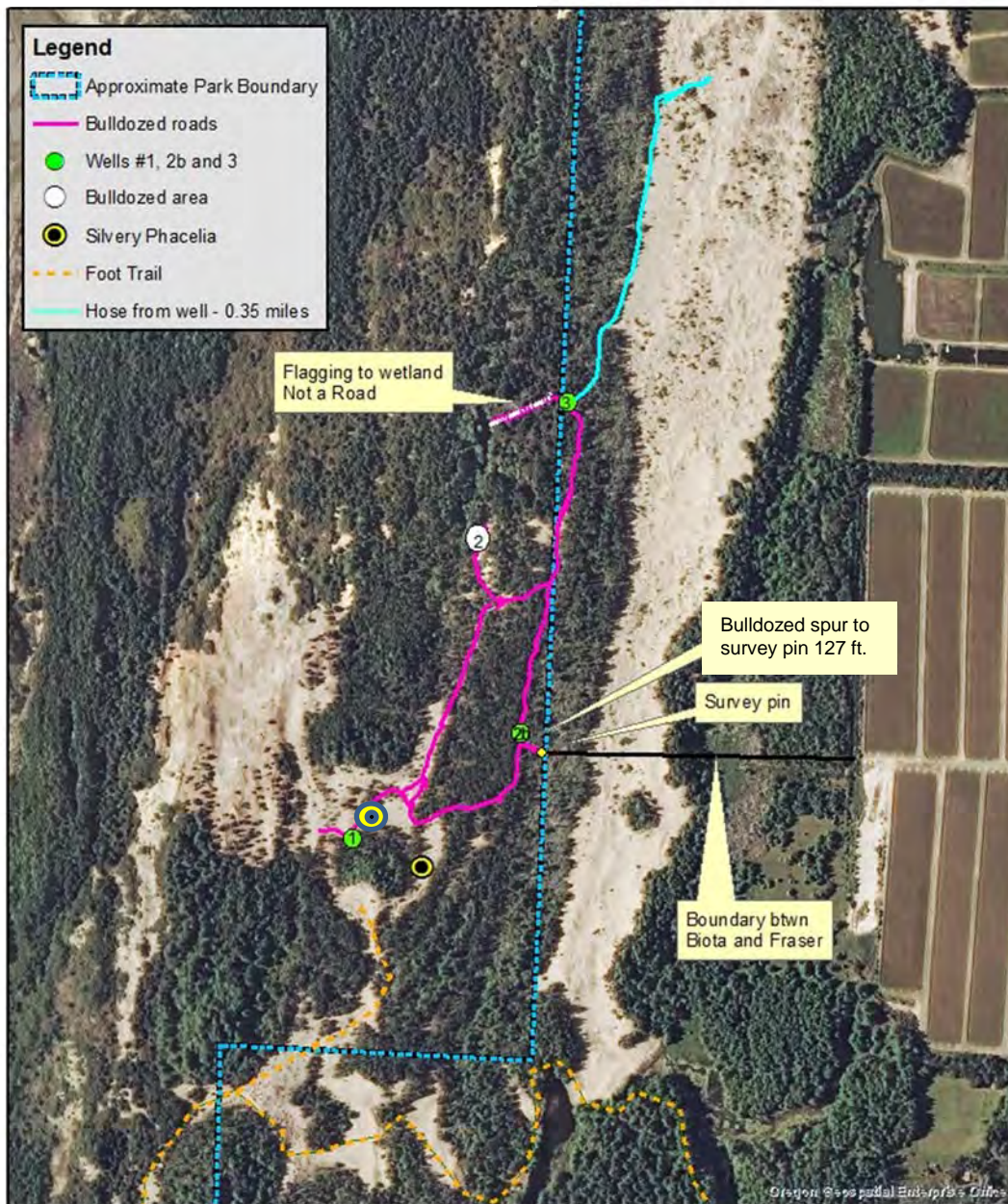


### Ground and Vegetation Disturbance Details

This map is an overview of the GPS'd bulldozing and well placement in the Bandon State Natural Area.

## Bandon State Natural Area Ground & Vegetation Disturbance

Oregon Parks & Recreation Dept  
725 Summer St. NE, Suite C  
Salem OR, 97301



This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.

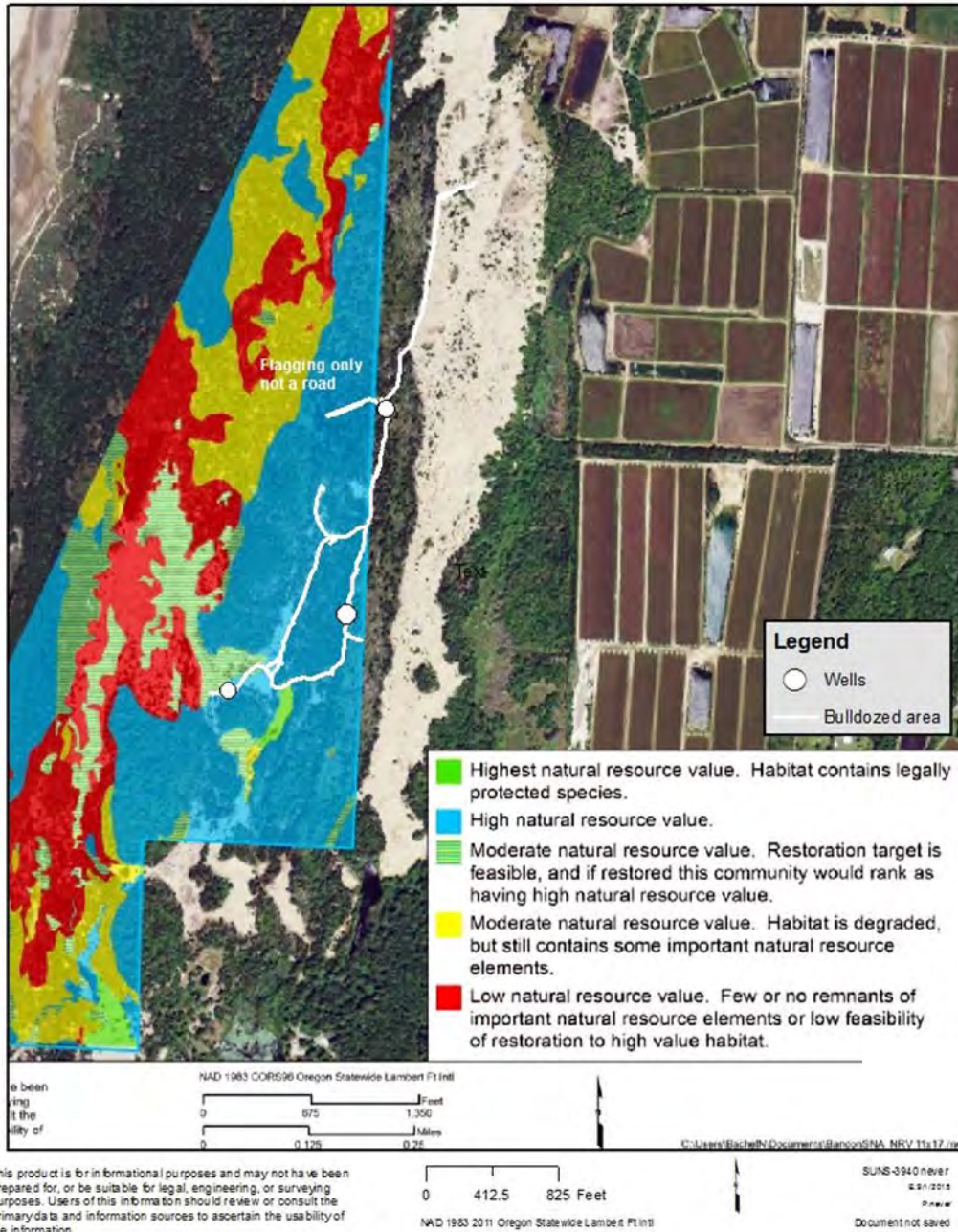


## The Botanical Resource Value

The Botanical Resource Value is a ranking of the ecological importance of a habitat in a landscape and global conservation context. Bulldozing and well drilling is within the area of “high” and “highest conservation priority.”

Botanical Resource Value map showing Ground and Vegetation Disturbance

Oregon Parks & Recreation Dept.  
725 Summer St. NE, Suite C  
Salem OR, 97301

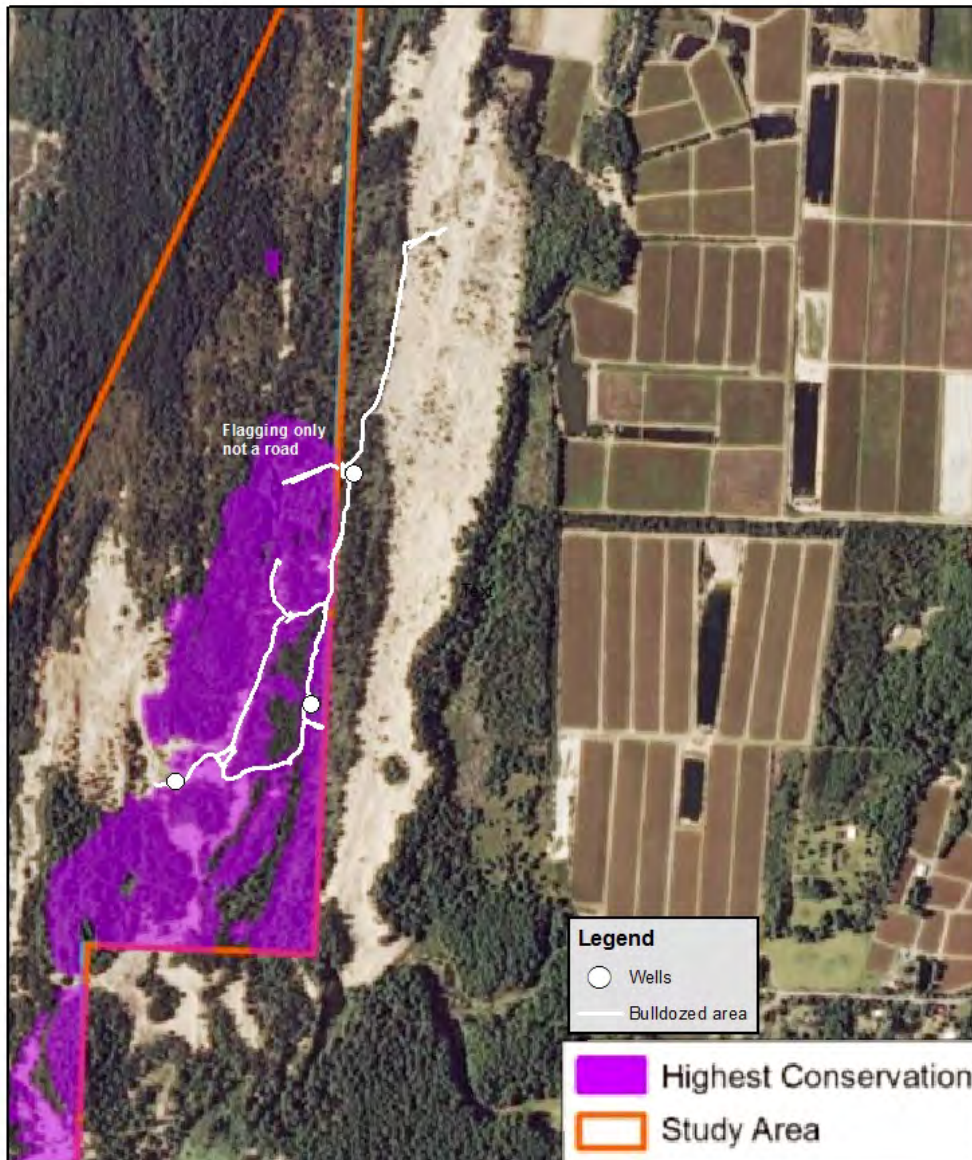


### Highest Priority Conservation Area

The highest priority conservation areas are based upon community rarity and integrity. These are areas that OPRD recommends setting aside from development and disturbance as a reserve. Bulldozing and well drilling occurred only within the highest priority conservation area.

Highest Priority Conservation map showing Ground and Vegetation Disturbance

Oregon Parks & Recreation Dept  
725 Summer St. NE, Suite C  
Salem OR, 97301



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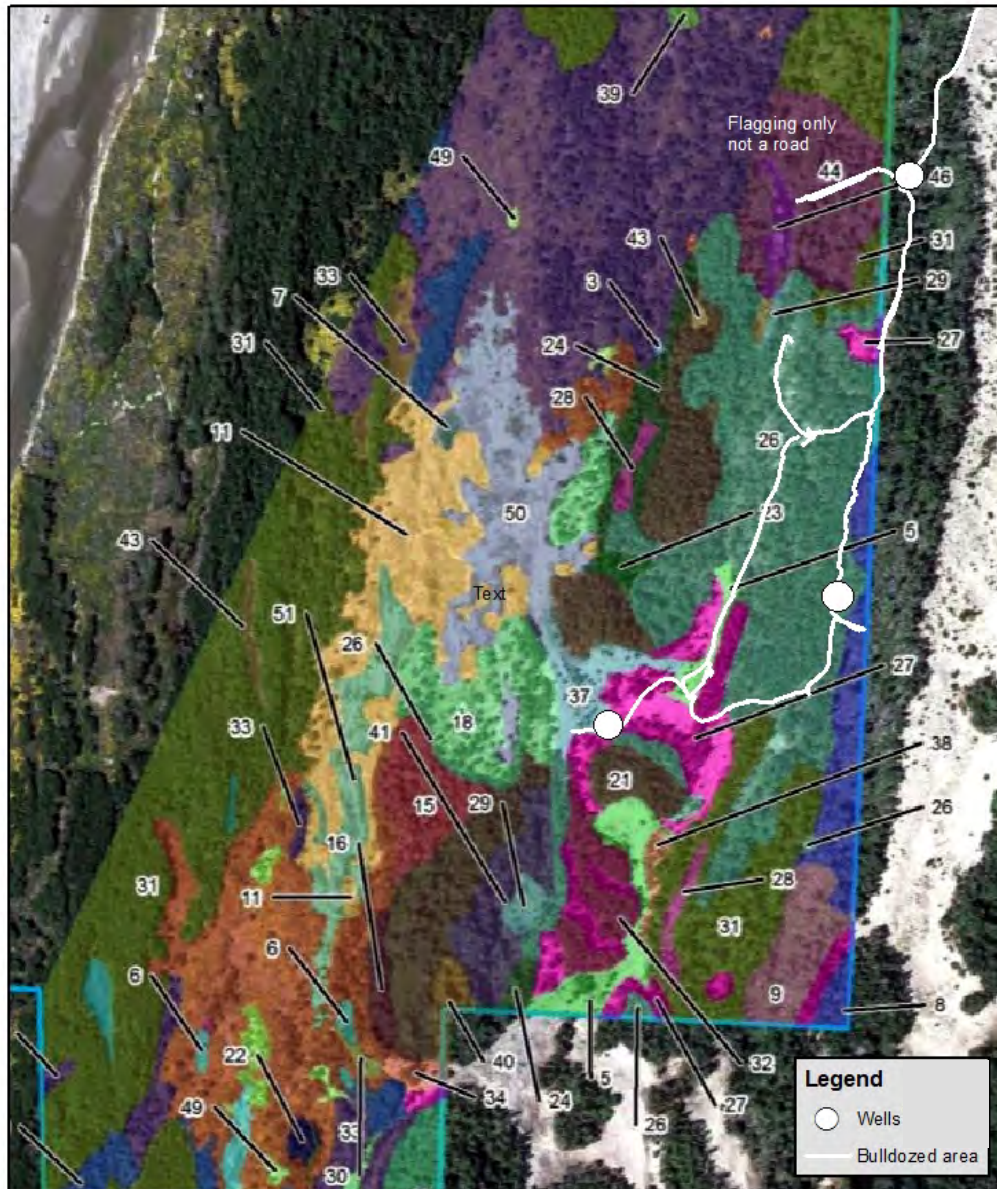


### Current Vegetation/Habitats

Bulldozing and well drilling occurred in sensitive plant communities, most with a conservation ranking of G1S1. This map was enlarged to see detail. The entire map is found in the document link on page 5. See specific list and details of these habitats next page.

Current Vegetation/Habitats map showing Ground and Vegetation Disturbance

Oregon Parks & Recreation Dept  
725 Summer St. NE, Suite C  
Salem OR, 97301



This product is for informational purposes and may not have been prepared for, or be suitable for, legal, engineering, or surveying purposes. Users of this information should review or consult the primary data and information sources to ascertain the usability of the information.

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The following section defines the Plant Community Ranking and Delineation from the “Current Vegetation/Habitats” Map. Bulldozing and well drilling occurred in several sensitive plant communities with a conservation ranking of G1S1.

### **Conservation Rank**

This code is ascribed to a plant community based on the Oregon Biodiversity Information Center’s (ORBIC) “Classification of Native Vegetation of Oregon”. The numbers (1 through 5) following either G (Global rank) or S (State rank ) in the code represent conservation status of each native association, based on ORBIC ranking criteria. The number “1” represents types that are critically imperiled, and “5” represents types that are demonstrably secure. A description of how this ranking system works can be found online at: <http://orbic.pdx.edu/rte-defs.html>

- 27** Pinus contorta / Arctostaphylos uva-ursi  
shore pine / kinnikinnik  
Published equivalent(s): PINCON/ARCUVA  
**Conservation Rank: G1S1**

**Areas impacted include installation (and removal) of well 1, and bulldozed roads.**  
**Area impacted: 0.34 acres.**

This plant community occurs mainly on relatively open woodland flats and toe slopes in the southern portion of the study area. The tree layer is predominantly shore pine. Douglas fir and madrone can be minor components in some areas, particularly at interfaces with communities in which they are dominants. Understory shrubs include waxmyrtle, evergreen huckleberry, and gorse. Herb and subshrub layer components include kinnikinnik, bracken fern, European beachgrass, red fescue, seashore lupine, beach knotweed, spiny sandmat, hairy cats ear, lesser hawkbit, seashore bluegrass, and salt rush. The shore pine/kinnikinnik plant association has the highest conservation ranking, G1S1, and is considered a conservation priority habitat.



Example of habitat.



Beach Sagewort : One of the special concern plants.



27 Pinus contorta / Arctostaphylos uva-ursi (continued)  
shore pine / kinnikinnik  
Published equivalent(s): PINCON/ARCUVA  
**Conservation Rank: G1S1**

**Areas impacted include installation (and removal) of well 1, and bulldozed roads.  
Area impacted: 0.34 acres.**



**Above:** Well 1.



**Center:**  
Habitat with  
well 1.



**Bottom:** Photo  
taken days later  
after well 1 was  
removed and cut  
gorse was found  
in hole.



- 5**     *Ammophila arenaria* with remnant *Poa macrantha* and / or *Festuca rubra*  
community components  
European beachgrass with remnant seashore bluegrass and / or red fescue  
community components  
Published equivalent(s): AMMARE; FESRUB-PTEAQU  
**Conservation Ranks: NA; G3S3**

**Areas impacted include bulldozed road north of area 27 and a portion of the inside loop heading north from well 1.**

***Area Impacted: 0.21 acres.***

Plant communities falling under this aggregated grouping are dominated over most of their area by European beachgrass, but contain vestiges of the seashore bluegrass and/or red fescue dunal associations. Associated species include: European beachgrass, red fescue, seashore bluegrass, beach knotweed, seashore lupine, beach sagewort, bracken fern, salt rush, spiny sandmat, beach evening primrose, beach silvertop, and hairy cat's ear in various quantities.



Bulldozed road in Habitat 5.



- 26** Pinus contorta / Arctostaphylos columbiana  
shore pine / hairy manzanita  
Published equivalent(s): PINCON/ARCCOL -> PINCON-PSEMEN/MYRCAL-  
VACOVA

Conservation Ranks: G1S1; G3S3

**Areas impacted include most of the bulldozed roads.**

**Area impacted 1.03 acres.**

This plant community occurs mainly on relatively open woodland flats and toe slopes in the southern portion of the study area. The tree layer is predominantly shore pine. Douglas fir and madrone can be minor components in some areas, particularly at interfaces with communities in which they are dominants. Understory shrubs include hairy manzanita, waxmyrtle, evergreen huckleberry, gorse, and sometimes coyotebrush. Herb and subshrub layer components include kinnikinnik, bracken fern, European beachgrass, red fescue, and salt rush. The shore pine/hairy manzanita plant association has the highest conservation ranking, G1S1, and is considered a conservation priority habitat.



**Above Left:** Bulldozed road to well 2b.

**Above Right:** Well 2b.



**Below Left:** Dozens of hairy manzanita shrubs found bulldozed along road edges.



- 8 Chamaecyparis lawsoniana / Vaccinium ovatum  
Port Orford cedar / evergreen huckleberry  
Published equivalent(s): CHALAW/VACOVA  
**Conservation Rank: G1S1**

**Areas impacted include the 127 foot bulldozed spur from bulldozed road to property boundary with Landowner Fraser. It is east of well 2b.**

**Area Impacted: 0.07acres.**

This community grouping is variable. Overstory species always include Port Orford cedar, but the other trees species present vary by stand. Other tree species occurring with Port Orford cedar in this grouping include: douglas-fir, shore pine, red alder, and madrone. Evergreen huckleberry is always present in the shrub layer, but the presence of salal, waxmyrtle, and hairy manzanita are less constant. Forb layer species include bracken fern, California sweet grass, rattlesnake plantain, kinnikinnik, trailing blackberry, yerba Buena, and honeysuckle.



**Above:** 127 foot bulldozed spur property boundary with Landowner Fraser.

**Bottom Left:** habitat behind survey pin. **Bottom right:** Close up showing Port Orford Cedar and Hemlock trees.





- 37** Pinus contorta / Ulex europaeus / Ammophila arenaria with remnant Festuca rubra dune community components  
shore pine / gorse / European beachgrass with remnant red fescue dune community components  
Published equivalent(s): AMMARE WITH REMNANT FESRUB DUNE COMMUNITY  
**Conservation Ranks: NA; G1S1**

**Area impacted includes a small area west of well 1.**

**Area Impacted: 0.03 acres.**

This degraded community is characterized by scattered shore pine, underlain by the European beachgrass and some gorse. Gorse is sporadically interspersed with European beachgrass sandy habitat. European beachgrass areas contain vestiges of the native red fescue dunal community, which has the highest conservation ranking. Besides European beachgrass and red fescue, other herbs present include beach knotweed, seashore lupine, hairy cat's-ear, and seashore bluegrass.



Habitat 37 showing well 1 in background.

**Well site 3 is off OPRD property, however there are flags leading to the wetland described below. The well is 64 feet from the edge of the wetland. This OPRD wetland is extremely dry and Bog Blueberry in the pond is severely stressed. A hose from the well on Biota's property was moving water from the pump to a new wellsite throughout my visit on August 20. The hose, current well, and new wellsite are on property owned by Bandon Biota. Area impacted: unknown.**

- 44** Salix hookeriana / Carex obnupta - Argentina egedii; Vaccinium uliginosum  
/ Carex obnupta  
hooker willow / slough sedge - Pacific silverweed; bog blueberry / slough  
sedge  
Published equivalent(s): SALHOO / (ARGEGE) - CAROBN; VACULI/CAROBN  
**Conservation Ranks: G4S4; G2S2**

This very important wetland community occurs in a single location along the eastern edge of the study area. Portions of the mapping unit are identical to the hooker willow / slough sedge - Pacific silverweed associations, but there are also small, unmappable inclusions of the bog blueberry/slough sedge association. Deeper water portions of this mosaic habitat are captured under mapping unit 46:

- 46** Salix hookeriana / Carex utriculata - Carex obnupta - Argentina egedii  
hooker willow / beaked sedge - slough sedge - Pacific silverweed  
Published equivalent(s): SALHOO / (ARGEGE) - CAROBN  
**Conservation Ranks: G4S4; G5S4**

This wetland community occurs in areas that are inundated more deeply and for a longer time than most of the wetlands in the study area. It occurs in the midst of the hooker willow / slough sedge - Pacific silverweed; bog blueberry / slough sedge association. Hooker willow is patchy within this mapping unit. When Douglas spiraea is present it mostly occurs in the understory of the hooker willow clumps. The herb layer is variable according to water depth, but beaked sedge, slough sedge, and Pacific silverweed are fairly constant. Muddier areas (which indicate longer and deeper inundation) contain the additional species of northern water starwort and creeping spikerush.



Wetland in February - 2012.



Same wetland in Aug., 2015 with one of many flags leading to well 3.



Google Earth Images of BSNA wetland complex over time.



**Above:** Wetland in May, 2015

**Below:** Wetland in August, 2005. Note: water is present in August. In 2004-2005 Coos Co. declared a primary natural disaster area due to drought. (2015 Bruce, J. and E. Kettell)<sup>2</sup>



<sup>2</sup> 2015, Bruce, J. and E. Kettell. Hazard Histories, memo to Coos County NHMP Update Steering Committee. On line at: [https://opdr.uoregon.edu/sites/opdr2.uoregon.edu/files/downloads/CoosCounty/Hazard%20History%20Coos\\_2%202010.pdf](https://opdr.uoregon.edu/sites/opdr2.uoregon.edu/files/downloads/CoosCounty/Hazard%20History%20Coos_2%202010.pdf)

## Summary

Bulldozing of roads and well drilling occurred only within areas ranked: **High Botanical Value, High Natural Resource Value and High Conservation Rank**. Consequences of these impacts include modification, fragmentation, and reduction of habitat; and mortality of biota.

Silvery Phacelia habitat was disturbed by road construction. Mature trees were uprooted and others were damaged. There is increased invasion by gorse into areas that are relatively gorse free (See photo next page).

This survey found:

- 1.68 total acres impacted
- 93 total trees newly downed
- 23 total snags newly downed (important wildlife trees)
- 31 total standing trees damaged by bulldozer (scraped bark, limbs ripped off)
- 0.22 total acres of introduced gorse.

Introduced gorse by habitat type:

- 0.11 acres shore pine / kinnikinnik **habitat #27** Conservation Rank: G1S1
- 0.11 acres shore pine / hairy manzanita **habitat #26** Conservation Ranks: G1S1; G3S3

Impacted Habitats by Acreage

- 0.34 acres shore pine / kinnikinnik **habitat #27** Conservation Rank: G1S1
- 0.21 acres European beachgrass with remnant seashore bluegrass and/or red fescue **habitat #5** Conservation Ranks: NA; G3S3
- 1.03 acres shore pine / hairy manzanita **habitat #26** Conservation Ranks: G1S1; G3S3
- 0.07 acres Port Orford cedar / evergreen huckleberry **habitat #8** Conservation Rank: G1S1
- 0.03 acres shore pine / gorse / European beachgrass with remnant red fescue dune community components **habitat #37** Conservation Ranks: NA; G1S1

Well #3, which is off OPRD property is within 64 feet of the edge of a large wetland complex on OPRD property. The wetland is dry. There are a range of possible causes including this year's drought and potential draining of the wetland. On August 20, the pump was running during my entire visit. Of note was the desiccation of the plant bog blueberry (*Vaccinium uliginosum*). Bog blueberry flowers from June to early July; fruits ripen from late July through September. The fruiting season is on schedule in other areas. A Google Earth image from August, 2005 shows water in the wetland during a drought year. We will need a hydrological assessment to determine the effects of well 3 located next to an important wetland complex.

We will need to monitor the areas where drilling mud was deposited and in particular the area where well 1 was removed; there is runoff of drilling mud into a seasonal wetland. We do not know the consequences of the drilling mud that is still in the ground and on the surface near seasonal wetlands. Some potential negative effects may not be apparent immediately, but should become apparent in 1-3 years.



**Summary Photos**



Silvery Phacelia habitat showing bentonite clay after removal of well 1.



Silvery Phacelia habitat showing gorse seedlings.



**Above Left:** Bog blueberry photographed in February, 2012.



**Above Right:** Bog blueberry photographed in August 2015.



### **5000NATURAL RESOURCES APPENDIX C<I gct**

Keith Saylor with OPRD was asked to walk the area on August 10, 2015. He heard heavy equipment operating nearby, possibly on OPRD property. At his supervisor's direction, he walked to where equipment was being set up to dig a well.

Saylor noted Bandon Well and Pump equipment and staff, and Bandon Dunes staff, setting up just outside the Bandon State Natural Area boundary. Asked whether the same equipment was used in June 2014 to work inside the Natural Area boundary, Chris Kersey with Bandon Well and Pump affirmed that it was, and that the work was completed at the direction of Bandon Biota.

Photos of the motorized equipment and vehicles are attached to illustrate the gear used to disturb ground inside the Bandon State Natural Area in 2014.



Area Four Staging Site.



Left to Right - Chris Kersey of Bandon Well and Pump. Doug Richert of Bandon Dunes. I did not ask the name of the young employee.





Location of well digging.







Bulldozer used to plow and cut trails and push down trees and shrubs.



Road cut by bulldozer to help trucks enter area.



Area of Well Site staging. Does not look to be within Bandon State Natural Area.

Prepared by Keith F. Saylor 8/10/2015



### **3.B. NATURAL RESOURCES APPENDIX B: Policies**

OPRD Policy COM 20-0, adopted in 1995 and revised in 2004, sets out many goals, but three in particular apply to ground-disturbing activities:

1. Manage OPRD properties to preserve and protect Oregon's natural landscape; manage park properties to enhance the natural ecological processes that sustain natural resources in balance with current and future outdoor recreation interests.
2. Manage natural resources in a manner emphasizing ecosystem-based approaches that protect the integrity of the natural environment and promote ecosystems that favor biodiversity, reduce ecological fragmentation, and promote native species.
3. Comply with all applicable federal, state, and local rules and regulations, and seek ways to avoid or minimize ecological impacts that may occur as part of the implementation of operations and business systems. Where such impacts are unavoidable, OPRD will mitigate for such impacts.

OPRD Stewardship staff follow this policy and a combination of state and federal laws, internal procedures, and best management practices to achieve eleven objectives:

1. Protect all existing high quality, healthy, native Oregon ecosystems found within OPRD properties.
2. Generally restore/enhance existing low quality OPRD resources, to a desired ecosystem type and condition, based on consultation with ecosystem agencies as to what a desired ecosystem should be for the park, and for the region of the parks. Retain some low quality areas for future recreational use and development, as identified in the master plan.
3. Manage all OPRD properties to protect existing occurrences of state or federally listed candidate species to the approval of jurisdictional agencies.
4. Manage all OPRD lands and uses to keep erosion, sedimentation, and other impacts on important resources low.
5. Identify and acquire additional land or enter into management partnerships with landowners, to provide long term viability for important natural resources found within OPRD properties.
6. In areas of high quality ecosystem or habitats, endeavor to provide opportunities for the public to experience: Sights, sounds, smells and feeling of representative ecosystems.
7. In selected areas of low quality natural resources, manage for:
8. Place, design, and construct facilities for public access to high quality ecosystems or habitats to avoid significant impacts on the ecosystems.
9. For those OPRD properties or sites which are historically significant and which have been identified by the departments priority sites for emphasizing cultural resource protection, management and interpretation, manage the natural resources in the cultural resource areas to support cultural resource interpretation, unless this would result in unacceptable conflicts with protected species or areas of special resource concern.
10. Protect OPRD natural resources from threats from adjacent or nearby properties.
11. Limit the use of non-native plants to developed facility areas or intensive use areas, and as is needed to withstand intensive use and to provide desired amenities such as shade, wind breaks etc. Wherever possible, use native species in landscaping developed sites.

As an example of the way Stewardship staff\* apply these policies and objectives to protecting plants during project work, they routinely:

1. Survey of the proposed road alignments for rare and listed plants. This is required by Oregon Endangered Species Act in the case of listed species, and by OPRD's mission in the case of rare and sensitive plant species. Where listed or rare plants are found in the course of pre-project surveys, alternate routes are formulated to avoid impacts. Where impacts cannot be avoided, consultation with the Oregon Department of Agriculture's Plant Conservation Program is required by the state Endangered Species Act for plants. If the project has a federal nexus, Federal consultation is required for impacts to federally listed plants or their critical habitat.
2. Survey for listed plants in wetlands that could be impacted by water draining, etc.
3. Avoid mapped important ecological types/habitats (as presented in the botanical inventory of 2012) to the maximum extent possible. When proposed road and trail alignments or development footprints are submitted for review, provide alternate routes and sites that use existing roads, development, and low-value habitats for as much as possible of their footprint.
4. Require pre-mobilization equipment cleaning. Standard engineering construction and contracting specs include equipment cleaning requirements. Equipment brought in to do work on OPRD property has to be cleaned of weed seeds and propagules to minimize introduction of invasive species.
5. Restoration of damaged areas. Seeding or other repair, as necessary. Part of standard spec, but adapted as needed to habitats present in project area.
6. Contain contaminants. Best management practices for contamination and sediment are part of standard contract specs. This would be relevant to the well casing sealant and drilling solutions.
7. Strategic routing, timing, and siting of impacts to avoid tracking weed infestations.
8. Where projects require removal or fill and they pass through wetlands, permits from the US Army Corps of Engineers and/or DSL are often required.
9. Require other permits depending on scope and particulars of project.

Not every step is required for every project, and some of these examples do not apply to the Bandon State Natural Area.

\*Source: Noel Bacheller 2015 by email.

Bandon State Natural Area

Disturbance report

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## 4. Cultural resources assessment





## Oregon State Parks (OPRD) -Bandon State Natural Area Pedestrian Archaeological Survey of Ground Disturbance

Nancy Nelson, Cultural Resources

County: Coos  
T/R/S: 29S 15W Section 26  
USGS Quad: Bandon  
Project Type: Pedestrian Survey  
Project Acres: 1.80 Acres  
Acres Surveyed: 1.80 Acres  
Precontact:0 Historic:0 Isolates:0  
Field Notes Location: OPRD

### Introduction

In an attempt to document possible damage to archaeological resources at Bandon State Natural Area due to ground disturbing activity within the park, a pedestrian archaeological survey was conducted on August 31, 2015 by OPRD archaeologists, Nancy Nelson and Leslie O'Rourke (Figure 1).

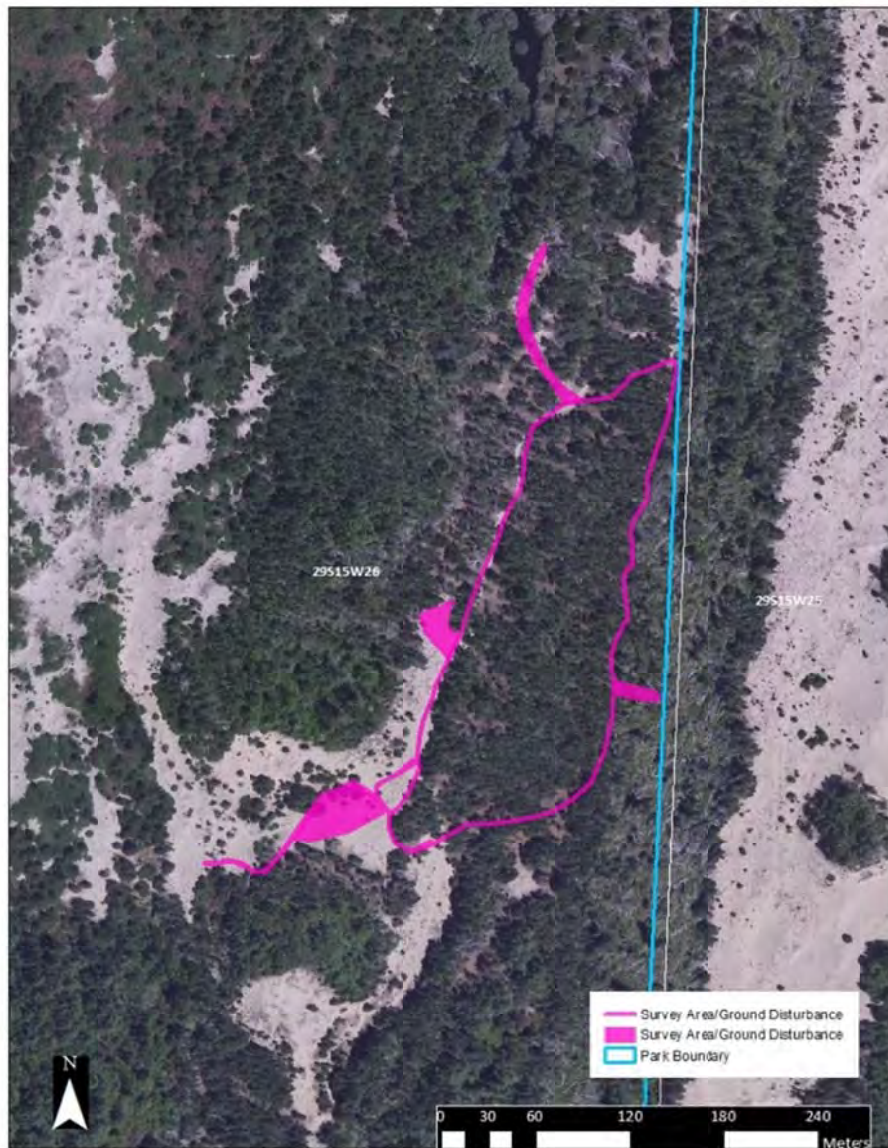


Figure 1. Area of ground disturbance and survey.



**Project Setting**

Bandon State Natural Area is located in Coos County and the area of potential effect (APE) is in the SE quadrant of Sections 26 of Township 29 South, Range 15 West. The park consists of 878.81 acres of coastal beach foredune on a low sandy bench and includes the mouths of three creeks including Crooked Creek, China Creek, and Twomile Creek. The APE is approximately .80 linear miles of road and a total 1.80 acres, which was cleared of all vegetation and includes three well locations.



Figure 2. Survey area looking south.



Figure 3. Survey area looking south.



Figure 4. Survey area looking north.

**Previous Archaeological Examinations and Affected Tribes**

A search of the State Historic Preservation Office (SHPO) database of archaeological survey records and maps indicates that a total four archaeological sites have been documented within one mile of the APE (Table 1; Appendix A). Numerous surveys have been conducted within the park and adjacent to the APE (Byram and Ivy 2004; Erlandson and Moss 1994; Minor 1986; Ross 1976; Tasa et al. 2004). In addition, a recent cultural resources overview of a portion of the APE was prepared to assure that undocumented archaeological resources would be protected from future development (Appendix B). The overview indicated that Bandon State Natural Area is within the ancestral homelands of the Coquille Indian Tribe and the Confederated Tribes of the Siletz Indians.

| Site    | Description  | National Register of Historic Places Status |
|---------|--|---|
| 35CS35  | Lithic Scatter: chert, basalt and quartzite flakes, broken cobbles and fire cracked rock   | Unevaluated                                 |
| 35CS38  | Lithic Scatter: chert, basalt and quartzite flakes, fire cracked rock and broken cobbles exposed on red subsoil  | Unevaluated                                 |
| 35CS208 | Multi component historic material and lithic scatter: large chert flakes, cores, fire cracker rock; historic bottle glass possibly associated with black sand mining | Unevaluated                                 |
| 35CS210 | Lithic scatter and remains of a substantial village or long-term camp: fire cracked rock, cobble choppers, and cryptocrystalline (CCS), schist and quartzite flakes  | Unevaluated                                 |

Table 1. Documented archaeological sites within one mile of the APE.

**Methods, Findings and Discussion**

A pedestrian archaeological survey of approximately 1.80 acres was conducted of areas of ground disturbance in < 5 meter transects within the park. Visibility was good given that vegetation had been removed from the ground disturbing activity. No cultural resources were documented. However, this area of the Oregon coast is perceived by professional archaeologists, as well as the affected tribes, to be an area of high probability that archaeological sites could be found subsurface. It is understood that a year has elapsed since the ground disturbance occurred and in a dune environment, it is possible that cultural material/artifacts could have been exposed and reburied over this time period. In addition, a recent cultural resources overview of a portion of the APE recommended protective covenant language to assure the protection and preservation of undocumented archaeological sites *before* ground disturbance occurred, which included conducting pedestrian archaeological surveys to identify new archaeological sites and in the event that there is minimal visibility, subsurface archaeological testing would be required with an Oregon archaeological permit.

### ***References Cited***

Byram, R. Scott and Donald B. Ivy

2004 *South Coast Archaeological Survey Project*. On file at the Oregon State Historic Preservation Office. Salem, Oregon.

Minor, Rick

1986 *An Evaluation of Archaeological Site on State Park Lands along the Oregon Coast*. Report to the Oregon State Historic Preservation Office, Salem, Oregon. Heritage Research Associates, Eugene, Oregon.

Moss, Madonna L. and Jon M. Erlandson

1994 *An Evaluation, Survey and Dating Program for Archaeological Sites on State Land of the Southern Oregon Coast*. Report submitted to the Oregon State Historic Preservation Office. Department of Anthropology, University of Oregon, Eugene, Oregon.

Ross, Richard E.

1976 *Archaeological Survey of the State Park Lands along the Oregon Coast*. Report submitted to State Parks and Recreation Department, Salem, Oregon. Oregon State University, Corvallis, Oregon.

Tasa, Guy L., Julie A. Knowles and Jenna Peterson

2004 *Archaeological Resource Evaluation of Area 1 and Area 4, Oregon State Parks, 2003/2004 Surveys*. University of Oregon Museum of Natural and Cultural History. Report 2004-7. On file at the State Historic Preservation Office, Salem, Oregon.

## **Appendix A**

The archaeological data in this appendix is confidential and not for public use.

## **Appendix B**

The archaeological data in this appendix is confidential and not for public use.

Bandon State Natural Area

Disturbance report

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## 5. Correspondence





# Oregon

Kate Brown, Governor

## Parks and Recreation Department

Headquarters  
725 Summer St NE Ste C  
Salem, OR 97301-1266  
(503) 986-0980  
Fax (503) 986-0794  
[www.oregonstateparks.org](http://www.oregonstateparks.org)



August 6, 2015

Steve Corey  
Corey, Byler & Rew, LLP  
Attorney for Bandon Biota LLC  
PO Box 218  
Pendleton, OR 97801

Dear Mr. Corey:

I am writing to ask for your help with a pair of requests.

First, as you observed at its June 2015 meeting, the Oregon State Parks and Recreation Commission agreed to extend the deadline for closing from June 2015 to December 31, 2016 on the Exchange Agreement with Bandon Biota, LLC that it approved in April 2014. The Commission was clear that they are not inclined to extend the closing deadline further.

To get to closing under the Exchange Agreement, the Department of Interior, Bureau of Land Management (BLM) must review and approve this Department's request to transfer ownership of the 280-acre portion of Bandon State Natural Area to a non-profit corporation and change the use to outdoor recreation. At the pre-application conference in June 2014, BLM clarified that the Department must submit the application. In order to submit that application, we need the following from Bandon Biota:

- Articles of incorporation (or charter, etc.) for the Chic Evans Park at Bandon Links;
- Management plan;
- Development schedule (which may be incorporated into the management plan); and
- Site plan (drawing).

We anticipate that the BLM review and decision will take several months, or perhaps a year or longer. For the exchange to proceed to closing, it is critical to submit the Department's application with these necessary documents provided by Bandon Biota without further delay. Please provide us with a firm date when we can expect delivery of the articles of incorporation, management plan, development schedule, and site plan.

Once we have received all of your complete documents, barring unforeseen issues, we anticipate submitting our application to the BLM within seven (7) working days; we will provide you a copy of the complete application submittal. The Department's role will then become subservient to the BLM's process. We may be asked to provide additional information to equip BLM to



conduct its review, and if those requests require information from Bandon Biota, the Department will need Bandon Biota to be prompt in providing requested information. There may also be a role for the Department as the landowner to assist BLM during a required public comment period prompted by the BLM review process. While we will continue to post information about the status of the exchange proposal online at <http://www.oregon.gov/oprd/Pages/commission-bandon.aspx>, we will only be involved in the BLM review process at their request.

We appreciate that Bandon Biota has fulfilled the Exchange Agreement so far by contributing \$450,000 to match a grant to bring a portion of Whale Cove into public ownership, providing the first two of five annual payments of \$60,000 each to support state park gorse management on the southern Oregon coast, and depositing \$2.5 million into escrow to fund a major new state park should the BLM approve the application. These are actions that provide the foundation for ultimately satisfying the Commission's standard that exchange proposals of this type provide overwhelming benefits to the Oregon state park system. However, Bandon Biota's satisfaction of these requirements does not portend the BLM's approval of our application. Based on its review and evaluation, BLM may approve or disapprove any application in whole or in part, or require its revision. Thus, it is in the interest of the parties to the Exchange Agreement to continue as soon as possible the BLM process by submitting a complete application. Please let me know at your earliest convenience when we can expect the required documents.

Second, we have recently discovered evidence of ground-clearing, and placement of what appears to be a well or capped pit and other above ground structures on the portion of the Bandon State Natural Area being considered as part of the exchange. I am attaching a map and photos to illustrate. Section 7 of the Commission's order does say Bandon Biota may "conduct **non-intrusive testings** on the Bandon Parcel in connection with its project, including without limitation golf course layout, environmental testings, soil suitability testings, water well testings, and wildlife habitat testings, **necessary for land use and other regulatory permitting as required by the county, state and federal governments.**"

If Bandon Biota or any of its agents were involved in this activity, please send me your understanding of how these actions are both non-intrusive, and necessary for county, state or federal regulatory permitting.

Sincerely,



Lisa Sumption  
Director

Enclosure

Cc: Steve Shipsey, Department of Justice  
Cal Mukumoto, Oregon Parks and Recreation Commission Chair

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\*Admitted in Oregon and Washington

\*Admitted in Oregon and California

August 24, 2015

Ms. Lisa Sumption  
Director  
Oregon Parks and Recreation Department  
725 Summer Street N.E., Suite C  
Salem, OR 97301-1266

Re: Bandon Biota, LLC

Dear Director Sumption:

I respond on behalf of Bandon Biota to your letter to me of August 6, 2015.

Bandon Biota intends to have its portion of the BLM application materials to your Department in September.

Bandon Biota, through a local contractor, did enter upon the Bandon Parcel in May and June, 2014, in performance of its due diligence to conduct water well testing. Under Section 7 of the Exchange Agreement, State Parks gave Bandon Biota the right to conduct water well testings, golf course layout, environmental testings, soil suitability testings, and wildlife habitat testings. Testings are necessary in order to establish project feasibility, and an important preliminary step in preparing, submitting, and gaining county, state, and federal approval for the project. Notice to State Parks for entry and testing is not required by the Exchange Agreement. The words "non-intrusive testings" were not meant to mean Bandon Biota could not do the testings set forth in the same sentence, but to remind State Parks and Bandon Biota that the testings should occur in a reasonable fashion without undue disturbance of the terrain.

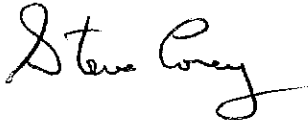
You inquired on August 18, 2015, whether the parties should add an addendum to the Exchange Agreement to address the issues

Ms. Lisa Sumption  
August 24, 2015  
Page 2

State Parks would like to add to the agreement, such that preliminary to the testings State Parks has an opportunity itself to look at the areas where the testings will occur and comment to Bandon Biota on the natural and cultural resources, if any, that may require protection. You also asked whether Bandon Biota would join State Parks in each naming a local point of contact, to enhance communication. Bandon Biota is more than willing to enter into additional discussions with State Parks to address these present issues of State Parks that were not incorporated into the original Exchange Agreement.

Assuming State Parks desires to further address these issues, please have Steve Shipsey, your attorney, telephone me and we promptly will arrange a mutually convenient time to get together.

Sincerely yours,

A handwritten signature in cursive script that reads "Steve Corey". The signature is written in black ink and is positioned above the printed name.

Steven H. Corey

SHC:m  
cc: Mr. Steve Shipsey



# Oregon

Kate Brown, Governor

## Parks and Recreation Department

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August 28, 2015



Bandon Biota, LLC  
c/o Steven H. Corey, Esq.  
Corey, Byler, Rew, Lorenzen, & Hojem  
PO Box 218  
Pendleton OR 97801

Dear Mr. Corey,

Thank you for your letter dated August 24, 2016 on behalf of Bandon Biota responding to the department's request for information about ground disturbances inside the Bandon State Natural Area. The department now understands that Bandon Biota representatives and contractors entered the property in May and June 2014, without notice to the department, removed vegetation, and excavated two holes. The Geotechnical Hole Reports filed with the Oregon Water Resources Department for these holes, one 169 feet deep and the other 234 feet deep, identify their purpose as geologic formation investigations. The department has determined that a third hole for a well was excavated outside the Bandon State Natural Area boundary, and, as such is not of concern to this department.

The department understands and accepts Bandon Biota's assertion that section 7 of the Exchange Agreement that we entered into in November 2013 affords Bandon Biota access to conduct these activities. Section 7 provides:

*"Possession of the real property exchanged under this Agreement will pass to the other party upon Closing. Notwithstanding, pursuant to this Agreement, Biota, at its expense, may conduct non-intrusive testings on the Bandon Parcel in connection with its project, including without limitation golf course layout, environmental testings, soil suitability testings, water well testings, and wildlife habitat testings, necessary for land use and other regulatory permitting as required by the county, state, and federal governments."*  
[emphasis added]

While the department has agreed to allow Bandon Biota to perform certain tests and other activities as described in section 7 in a non-intrusive way, arranging any action under section 7 within the Bandon State Natural Area will require close cooperation between our field staffs. Such coordination did not occur before Bandon Biota entered the property in May and June 2014.

Unless and until the property is transferred out of public ownership, it is state park property. The department has a responsibility to treat the natural and cultural resources with care, and has policies and procedures in place to further those objectives. The department has agreed to allow Bandon Biota to enter the property as necessary to gather information for certain purposes, including its part of an upcoming federal application, but any time Bandon Biota intends to engage in activities pursuant to section 7, it must first notify local state park staff and afford the department the opportunity to follow our established policies and procedures in order to protect the natural and cultural resources of the Bandon State Natural Area. Working together with local field staff, Bandon Biota may carry out activities pursuant to section 7 while avoiding sensitive natural and cultural resources.

A notification condition should have been expressly included in the original agreement, and the department appreciates Bandon Biota's expressed willingness to add such an addendum to the Exchange Agreement. I have instructed the Department of Justice to prepare an amendment for these notice and operations clarifications as provided in section 15 of our agreement.

I have also dispatched natural and cultural resource staff to the site to examine the disturbed areas. The department will share the results of that examination with Bandon Biota and will expect to work cooperatively as necessary to address any concerns identified. Finally, within three days of receipt of this letter, please identify a local Bandon Biota field contact. All future Bandon Biota entry to the Bandon State Natural Area will be coordinated between your contact and District Manager Larry Becker, 541-888-9268 ext. 222, [larry.becker@oregon.gov](mailto:larry.becker@oregon.gov).

Our department remains committed to the Exchange Agreement and the exchange order signed by the Oregon State Parks and Recreation Commission in April 2014. The public benefit to the State Parks system from this proposal remains strong. We must not lose sight of the fact that Bandon State Natural Area is public property, however, and that any activity under the agreement must follow department policies and procedures established to protect its natural and cultural resources. We look forward to receiving both the local field contact information and the management plan document from Bandon Biota so we may submit this application to the Bureau of Land Management.

Sincerely,

A handwritten signature in cursive script that reads "Lisa Sumption".

Lisa Sumption, Director  
Oregon Parks and Recreation Department

Cc:  
Governor Kate Brown, c/o Natural Resource Policy Office  
Coos County Commission  
Representative Krieger  
Senator Kruse  
Senator Roblan  
BLM District office