



CURRY COUNTY BOARD OF COMMISSIONERS

SPECIAL MEETING

Wednesday, January 17, 2018 at 2:30PM Commissioners'

Hearing Room, Courthouse Annex

94235 Moore Street, Gold Beach, Oregon

www.co.curry.or.us

AGENDA

Items may be taken out of sequence to accommodate staff availability and the public.

For public comment, a completed speaker's slip must be submitted.

**** Please note – The Special Meeting begins at 2:30PM ****

1. CALL TO ORDER

2. de novo PUBLIC HEARING

A de novo public hearing for Board review, public comment and Board action on an appeal of a Planning Commission decision to deny an Elk River Property Development, (land use application AD-1705) for the analysis of alternative routes for a pipeline and ancillary facilities to deliver recycled wastewater located for irrigation of a golf course.

- A. Identify and follow the hearing procedure specified in Zoning Ordinance 2.140(2a-d)
- B. Receive the staff report
- C. Accept testimony from parties in favor of the application
- D. Accept testimony from other parties
- E. Allow the parties to offer rebuttal evidence and testimony
- F. If requested by the Board, continue the hearing to a date certain no later than January 31, 2018.
- G. Conclude the hearing; the Board should determine whether to leave the record open.
- H. Deliberate among the Board of Commissioners and, if desired, direct questions to County staff.
- I. Discuss findings and direct staff to bring back a final order no later than January 31, 2018.

3. ADJOURN

Curry County does not discriminate against individuals with disabilities and all public meetings are held in accessible locations. Auxiliary aids will be provided upon request with 48 hours advance notification. Please call 541-247-3296 if you have questions regarding this notice.

CURRY COUNTY BOARD OF COMMISSIONERS
AGENDA ITEM ROUTING SLIP
FORM 10-001.1 Rev. 1-5-2018

PART I – SUBMITTING DEPARTMENT: RETURN TO [BOC OFFICE@CO.CURRY.OR.US](mailto:BOC_OFFICE@CO.CURRY.OR.US)

PROPOSED AGENDA ITEM TITLE: A de novo public hearing for Board review, public comment and Board action on an appeal of a Planning Commission decision to deny an Elk River Property Development, (land use application AD-1705) for the analysis of alternative routes for a pipeline and ancillary facilities to deliver recycled wastewater located for irrigation of a golf course on or over Assessor map 32-15-29C, lot numbers: 103, 104, 105, 106, 107, 108, 118, 120 and 121 and extending to the property commonly known as the Knapp Ranch. (Sections 19, 29 & 30 of Township 32 S., Range 15 W., W.M. Tax lot 4400, and Section 29c of Township 32 S., Range 15 W., W.M. Tax lot 500)

TIMELY FILED Yes No

If No, justification to include with next BOC Meeting

AGENDA DATE^a: January 17, 2018 **DEPARTMENT:** Community Development

TIME NEEDED: 1.5 hours

(^aSubmit by seven days prior to the next General Meeting (eight days if a holiday falls within that seven day period))

MEMO ATTACHED Yes No If no memo, explain:

CONTACT PERSON: Carolyn Johnson **PHONE/EXT:** 3228

TODAY'S DATE: January 5, 2018

BRIEF BACKGROUND OR NOTE: See attached memo

FILES ATTACHED:

- (1) Staff report
- (2) Eleven Exhibits
- (3)

QUESTIONS:

- 1. Would this item be a departure from the Annual Budget if approved? Yes No
(If Yes, brief detail)
- 2. Does this agenda item impact any other County department? Yes No
(If Yes, brief detail)
- 3. Does Agenda Item impact County personnel resources? Yes No
(If Yes, brief detail)

INSTRUCTIONS ONCE SIGNED:

No Additional Activity Required

OR

File with County Clerk

Name:

Send Printed Copy to:

Address:

Email a Digital Copy to:

City/State/Zip:

Other

Phone:

***Note: Most signed documents are filed/recorded with the Clerk per standard process.**

PART III - FINANCE DEPARTMENT REVIEW

EVALUATION CRITERIA 1-4:

- 1. Confirmed Submitting Department's finance-related responses Yes No N/A
Comment:
- 2. Confirmed Submitting Department's personnel-related materials Yes No N/A
Comment:
- 3. If job description, Salary Committee reviewed: Yes No N/A
- 4. If hire order requires a Personnel Action Form (PAF)? Pending N/A No HR

PART IV – COUNTY ADMINISTRATOR REVIEW

APPROVED FOR ___01/17/18___ **BOC MEETING** **Not Approved for BOC Agenda**
because

LEGAL ASSESSMENT: Does this agenda item have a legal impact?

Yes No

(If Yes, brief detail)

ASSIGNED TO: ORDER

PART V – BOARD OF COMMISSIONERS AGENDA APPROVAL

COMMISSIONERS' REQUEST TO ADD TO AGENDA:

Commissioner Sue Gold Yes No

Commissioner Thomas Huxley Yes No

Commissioner Court Boice Yes No



Board of Commissioners Staff Report

Meeting Date: January 17, 2018

Prepared by: Carolyn Johnson, Community Development Director

Agenda Item. A de novo public hearing for Board review, public comment and Board action on an appeal of a Planning Commission decision to deny an Elk River Property Development, (land use application AD-1705) for the analysis of alternative routes for a pipeline and ancillary facilities to deliver recycled wastewater located for irrigation of a golf course on or over Assessor map 32-15-29C, lot numbers: 103, 104, 105, 106, 107, 108, 118, 120 and 121 and extending to the property commonly known as the Knapp Ranch. (Sections 19, 29 & 30 of Township 32 S., Range 15 W., W.M. Tax lot 4400, and Section 29c of Township 32 S., Range 15 W., W.M. Tax lot 500)

Hearing Procedure:

1. Identify and follow the hearing procedure specified in Zoning Ordinance 2.140(2a-d)
2. Receive the staff report
3. Accept testimony from parties in favor of the application
4. Accept testimony from other parties
5. Allow the parties to offer rebuttal evidence and testimony
6. If requested by the Board, continue the hearing to a date certain no later than January 31, 2018.
7. Conclude the hearing, the Board should determine whether to leave the record open.
8. Deliberate among the Board of Commissioners and, if desired, direct questions to County staff.
9. Discuss findings and direct staff to bring back a final order no later than January 31, 2018.

Proposed Board Options:

- 1) Reach a decision to uphold the Appeal. Direct staff to prepare a Board Final Order for action on January 31, 2018.
- 2) Reach a decision to deny the appeal and direct staff to prepare a Board Final Order for action on January 31, 2018.

Staff recommendations:

1. Accept Oral report from staff, hear testimony from parties with standing and the public, close the public hearing and deliberate.
2. Reach a decision to uphold the Appeal. Direct staff to prepare a Board Final Order for action on January 31, 2018.
3. If the January 17, 2017 de novo public hearing includes additional public suggested alternatives, with sufficient specificity to merit written response from the applicant (as per ORS 215.246), then the public hearing should be closed but the record remain open for written responses by the applicant and review by the Board at a future date but no later than January 31, 2018.

I. Application Information:

Applicant/Agent: Elk River Development Corporation LLC (ERCD)/Bill Kloos Esq.

Zoning: Exclusive Farm Use (EFU)

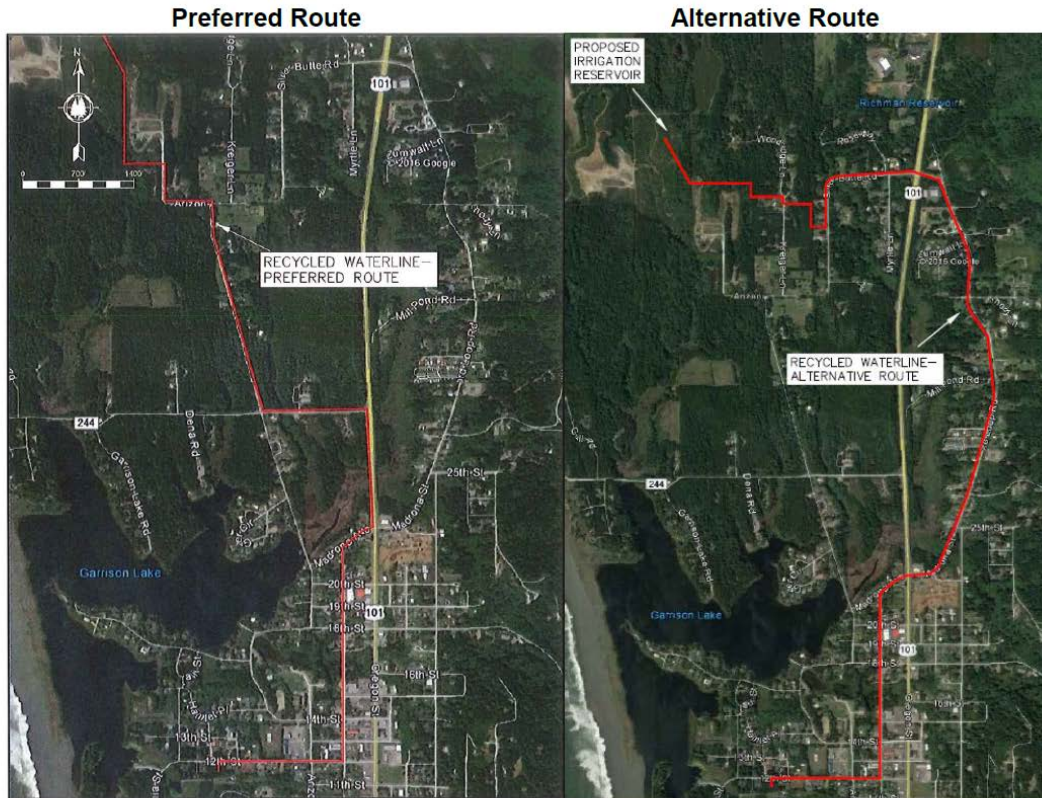
Project Description/Location: ERCD seeks to extend a recycled wastewater pipeline and ancillary facilities ¹ outside the Port Orford city limits to the future Pacific Gales golf course. ² The two pipeline routes under consideration can generally be described as:

- 1) Running north along Arizona Street and thence west and north across land owned by Knapp Ranches Inc,; and
- 2) Running north along Madrona Ave, until travelling west (partially through private property, with the landowners permission) to land owned by Knapp Ranches.

The proposed alternative routes are noted on Attachment 2 and the following page of this report.

¹ A pond that will store water, pumps and a small pumphouse that will shelter the irrigation equipment.

² Board Order 20255 (In the Matter of Remand Proceedings for Application AD-1411) and affirmed by LUBA opinion Or LUBA 2015-080, January 27, 2016.



II. Background: In January of 2015, the Board of Commissioners approved a Conditional Use Permit (CUP-1411) for the Pacific Gales Golf Course located in an Exclusive Farm Use (EFU) zoning district. The applicant seeks to extend a recycled wastewater pipeline to the golf course site for irrigation. The Zoning Ordinance is silent on a definition of recycled and/or reclaimed water³ permitting requirements. However Oregon State Statute (ORS) 215.283(1)(v) notes that subject to a license or permit⁴ by the Department of Environmental Quality (DEQ), recycled water for irrigation is a permitted use in an EFU zone. Prior to issuance of the subject permits, ORS 215.246⁵ notes that DEQ requires an applicant to identify alternatives through a local government process for the recycled wastewater pipeline location. After the local government process of reviewing alternatives is complete, DEQ will complete processing of the necessary DEQ permits for the applicant to proceed with the project. The County's Zoning Ordinance⁶ identifies the Planning Commission as the County's decision maker to analyze these alternatives.

ERCD made an application (AD-1705) for Planning Commission review of the alternative routes for the pipeline. The Planning Commission reviewed the application on September 21 and October 19, and denied the application on November 7, 2017. Attachment 11 provides additional information on the Planning Commission process. Planning Commission decisions can be appealed to the Board of Commissioners. ERCD appealed

³ The proposed pipeline would transport reclaimed water meeting the ORS 537.131 criteria as described in the July 27, 2017 memo from County Council. (Attachment 9) Reclaimed water is referred to as recycled water by DEQ.

⁴ The applicant has submitted applications to DEQ for a Wastewater Pollution Control Facility Permit and a Recycled Water Use Permit

⁵ ORS 215.246 -Approval of land application of certain substances; subsequent use of tract of land; consideration of alternatives

⁶ 2.060(2)(d) Article II. Procedures for Making Land Use Decisions

the Planning Commission's application denial to the Board pursuant to Zoning Ordinance Section 2.170 (Appeal of a land use decision) which states:

*"Appeals of the decision making body shall take up the appeal as a de novo issue **and** the final written order or conclusions of the lower decision making body being appealed shall not be considered in the appellate review."*

In this case, the "decision making body" is the Board of Commissioners. "De Novo" means the Board is to review the ERCD application without giving deference to the Planning Commission's denial. "Lower decision making body" means the Planning Commission. "Appellate review" means review by the Board of Commissioners.

III. Applicable Criteria and Discussion

Curry County procedure to review the proposal

A. CCZO Section 2.060(2)(d) identifies the Planning Commission as the decision making body for subdivisions, interpretations of Planning Director decisions and "other land use actions".

Consistent with CCZO Section 2.060(2)(d), the Planning Commission acted as the decision making body for Application AD-1705.

B. CCZO Section 2.170 (1) and (7) – Appeal of a Land Use Decision

1. *In the matter of all appeals, the decision making body shall take up the appeal as a **de novo** issue and the final written order or conclusions of the lower decision making body being appealed shall not be considered in the appellate review*

7. *Requires the notice of appeal to include a statement demonstrating that the appeal issues were raised during the public comment period.*

Discussion: The Planning Commission's November 7, 2017 decision was appealed. The Final Order was released on November 8, 2017. An appeal of the Planning Commission's decision, (Attachment 5a) from the applicant's representative Bill Kloos was received on November 10, 2017. The Planning Commission revisited and approved an expanded Final Order on December 14, 2017. An appeal to the second Final Order Planning Commission decision, (Attachment 5a) was received on December 20, 2017.

Consistent with CCZO Section 2.170 (1), the Board of Commissioners January 17, 2018 hearing is procedurally being held as a de novo hearing for the Planning Commission's two Final Orders. The Board of Commissioners is to review Application AD-1705 without giving deference to the Planning Commission's actions as further described in a November 27, 2017 memo from County Counsel (Attachment 9):

"The Board considers this review "de novo". That means this is a new hearing and the Board is not bound by, and cannot give any deference or weight to, the Planning Commission's work or decision. Nevertheless, that material is part of the record for the

Board's review. CCZO Section 2.170 (1) states: In the matter of all appeals, the decision making body shall take up the appeal as a de novo issue and the final written order or conclusions of the lower decision making body being appealed shall not be considered in the appellate review."

Consistent with CCZO Section 2.170 (7), The Notice of the Appeal (Attachment 4) included arguments and evidence raised during the public comment period.

C. CCZO Section 2.172(6) – Land Use Appeal Procedures

6. The decision making body shall render a decision, may affirm, reverse or modify the action of a lesser authority and may reasonably attach conditions necessary to carry out the Comprehensive Plan...

Consistent with CCZO Section 2.172(6), the Curry County Board of Commissioners is to render a decision regarding application AD-1705.

Oregon statutes regarding the proposal

D. ORS 215.246(1a) and (3)

(1) The uses allowed under ORS 215.213 ... (a) Require a determination by the Department of Environmental Quality, in conjunction with the department's review of a license, permit or approval, that the application rates and site management practices for the land application of reclaimed water, agricultural or industrial process water or biosolids ensure continued agricultural, horticultural or silvicultural production and do not reduce the productivity of the tract.

(3) When a state agency or a local government makes a land use decision relating to the land application of reclaimed water, agricultural or industrial process water or biosolids under a license, permit or approval by the DEQ, the applicant shall explain in writing how alternatives identified in public comments on the land use decision were considered, and if the alternatives are not used, explain in writing the reasons for not using the alternatives. The applicant must consider only those alternatives that are identified with sufficient specificity to afford the applicant an adequate opportunity to consider the alternatives. A land use decision relating to the land application of reclaimed water, agricultural or industrial process water or biosolids may not be reversed or remanded under this subsection unless the applicant failed to consider identified alternatives or to explain in writing the reasons for not using the alternatives.

ORS 215.246(1) requires the DEQ permit process to include "application rates and site management practices for the land application of reclaimed water, agricultural or industrial process water or biosolids ensure continued agricultural, horticultural or silvicultural production and do not reduce the productivity of the tract." Accordingly, the applicant is required to meet ORS 215.246(1) requirements as a part of the DEQ processing of their

Recycled Water Use Permit. The applicant has submitted an application for the DEQ permit; however the permit will not be issued until the County review process is completed.

If the Board authorizes the subject proposal, AD-1705 Condition of Approval #1 is a requirement to meet the standards of ORS 215.246(1a). Condition of Approval 1 states: *“Receive approval from the Oregon State Department of Environmental Quality for a Recycled Water Use Permit for the proposed use prior to pipeline construction.”*

ORS 215.246(3) requires an applicant to explain how public comments on the alternatives have been addressed and explain reasons for not using any identified (and adequately detailed) alternatives.

After the public hearing, if the Board of Commissioners finds that the applicant has adequately considered public comment related to identified alternatives, then the applicant has satisfied this statutory requirement. Public comments, and the applicants responses to those comments, have been received at the writing of this report (see Attachments 5 and 10) If public comments are received as a result of this hearing, which introduce new evidence related to identified alternatives, then the applicant must be granted an opportunity to evaluate them.

E. ORS 215.246(4)(a): *The uses allowed under this section include: The treatment of reclaimed water, agricultural or industrial process water or biosolids that occurs as a result of the land application;*

The project includes the treatment of reclaimed water consistent with ORS section 215.246(4)(a) by use of a pond to expose the reclaimed water to natural soil microbes that will digest a trace amount of nutrients and other substances.

It is the applicant’s position that natural processes will lead to continued improvements in water quality such as exposure to UV light while the water is impounded in a pond at the golf course.

As stated in the proposal application, all water quality treatments will occur at existing Port Orford sewage treatment plant. Some degree of water quality improvement is expected to occur incidentally to storing the recycled water in the pond, and its application to the golf course, where it will be exposed to soil microbes and other natural processes. Water currently being discharged from sewage treatment plant is already treated to such a high level that it is permitted to be discharged directly into the ocean. The applicant has stated that it is more environmentally sustainable to use the City’s effluent for irrigation, (where any trace containments will be broken down by exposure to air and UV light during the pond storage period, and by soil microbes after it is applied as irrigation), as opposed to discharging it directly into the marine environment.

F. ORS 215.246(4)(b) *The establishment and use of facilities, including buildings, equipment, aerated and nonaerated water impoundments, pumps and other irrigation equipment, that are accessory to and reasonably necessary for the land application to occur on the subject tract;*

ERCD has proposed improvements that will include a portion of the pipe that delivers treated water, a pond that will store water, pumps and irrigation equipment, and a small pumphouse that will shelter the irrigation equipment. Consistent with ORS 215.246(4)(b), the project includes improvements that will be reasonably necessary for the use of recycled wastewater for irrigation on the Pacific Gales golf course.

G. ORS 215.246(4)(c) *The Establishment and use of facilities, including buildings and equipment, that are not on the tract on which the land application occurs for the transport of reclaimed water, agricultural or industrial process water or biosoils to the tract on which the land application occurs if the facilities are located within: (A) a public right of way; or (B) Other land if the landowner provides written consent and the owner of the facility complies with ORS 215.275(4); and (d) the transport by vehicle of reclaimed water on which the water will be applied.*

ERDC proposes ancillary facilities necessary for the use of recycled wastewater on lands outside of the tract where irrigation will occur, primarily in the right of way. In limited instances where pipeline is to cross land that is not within right of way, written consent from land owners is required to cross property for the project. ERCD has secured the referenced written consent. (Attachment 6)

H. ORS 215.283(1)(v): *(1) The following uses may be established in any area zoned for exclusive farm use: (v) Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695... 459.205...468B.050... 468B.053...468B.055...468B.095... the land application of reclaimed water, agricultural or industrial process water or biosolids for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zone under this chapter.”*

Oregon Statute requires the land application of reclaimed water to have a license, permit, or other approval from DEQ. DEQ has indicated the processing of the Recycled Water Use Permit for the project cannot be completed without the County’s review and authorization of the Alternatives analysis, the subject of this staff report.

IV. Conclusion

Related to ORS 215.283

The proposed recycled water pipeline and it’s ancillary features for irrigation in an EFU zone appears consistent with ORS 215.283. Reclaimed water can be used for irrigation related to an allowed use in the EFU zone. County Counsel notes in his October 11, 2017 memo (Attachment 9) that it is his opinion that a valid existing CUP for a golf course is not required for the County to authorize AD-1705.

The irrigation use in this case is proposed for use on the Pacific Gales golf course. The Board of Commissioners approved a Conditional Use Permit for the golf course project and the Land Use Board of Appeals affirmed the approval in 2016.⁷ The applicant's representative has provided evidence that the Conditional Use Permit has been initiated and is therefore valid. (Page 10 of Attachment 5)

ORS 215.283(v) specifies DEQ's approval of a Wastewater Control Facility Permit and a Recycled Water Use Permit to satisfy ORS 215.246. DEQ⁸ has identified the steps (Page 2 of Attachment 1) required for the applicant to secure the required DEQ permits:

- 1) The applicant obtains the required DEQ application and Land Use Compatibility Statement (LUCS) form to the County Planning Office for review and approval.
- 2) The County conducts its land use review process. Pertinent to this step, Board approval of the proposal would include the following Condition #1: *Receive approval from the Oregon State Department of Environmental Quality for a Wastewater Pollution Control Facility Permit and a Recycled Water Use Permit for the proposed use prior to pipeline construction*
- 3) The County completes the LUCS form and returns it to the applicant with appropriate findings.
- 4) The applicant submits the DEQ application and approved LUCS for processing.

The balance of the requirements to secure the required are required by Oregon State DEQ. The applicant has submitted the LUCS Statement to the Community Development Department/Planning division. Following a Board action to authorize the subject application, the LUCS will be completed and returned to the applicant for their submittal of the required permits to DEQ for the proposal.

Further information can be found in the October 24, 2017 County Counsel memo (Attachment 9).

Related to ORS 215.246 (1), (3), and (4c)

The applicant is required to meet ORS 215.246(1) requirements as a part of the DEQ processing of a Recycled Water Use Permit. AD-1705 Condition of Approval #1 specifies said compliance as follows: *Receive approval from the Oregon State Department of Environmental Quality for a Wastewater Pollution Control Facility Permit and a Recycled Water Use Permit for the proposed use prior to pipeline construction.*

⁷ Board Order 20255 and LUBA Opinion Or LUBA 2015-080

⁸ November 21, 2017 e-mail from by Ranei Nomura, Manager, Water Quality Permitting and Compliance DEQ Western Region to Jacob Callister, LCOG contract planner

ORS 215.246(3) requires an applicant to explain how public comments on the alternatives have been addressed and explain reasons for not using any identified (and adequately detailed) alternatives. The applicant has met the requirements specified in ORS 215.246 and (3) by specifying how alternatives identified in public comments on the land use decision were considered, and the reasons for not using the alternatives.

Related to ORS 215.246(4)(a)

The project includes the treatment of reclaimed water consistent with ORS 215.246(4)(a) by use of a pond to expose the reclaimed water to natural soil microbes that will digest a trace amount of nutrients and other substances.

Related to ORS 215.246(4)(b)

The project includes improvements that will be reasonably necessary for the use of recycled wastewater for irrigation on the Pacific Gales golf course.

Related to ORS 215.246(4c)

For both the preferred and alternate routes, the applicant has obtained easements with land owners where the pipeline can pass through private property.

V. Public Comments⁹ - Public comments can be found on Attachment 10 and include:

- October 18, 2017 Transmittal from the Oregon Coastal Alliance (ORCA)
- September 5 and December 14, 2017 letter from Beverly Walters
- December 20, 2017 letter from Jim Auburn
- December 14, 2017 letter from the Karen Jennings representing the Port Orford Main Street Revitalization Program
- December 14, 2017 letter from Karen Auburn

Attachments

- 1 – Electronic transmittal regarding DEQ permitting process.
- 2 - Proposed preferred and alternative routes of pipeline.
- 3 – Detailed description of alternatives (including routes and plans)
- 4 – Public notice for BOC January 17, 2018 public hearing
- 5 – Applicant’s written statements
- 5a – Applicant’s November 10 and December 14 appeals
- 6 – Easement agreements and written consent of property owners for use of property for pipeline
- 7 – Application to County
- 8 - November 8, 2017 and December 14, 2017 Planning Commission Final Orders
- 9 - July, October 11, October 24 and November 27 County Counsel memos
- 9a – November 7, 2107 Planning Commission meeting transcript
- 10 - Public comments
- 11- Planning Commission denial process

⁹ Received by 5 PM, January 3 for inclusion in the Board 01.17.2018 de novo hearing packet.

BOARD OF COMMISSIONERS PUBLIC HEARING PUBLIC NOTICE

Notice is hereby given that the Curry County Board of Commissioners (Board) will hold a special de novo public hearing on Wednesday, January 17, 2018 at 2:30 PM in the Commissioners' Hearing Room at the Curry County Courthouse Annex Building located at 94235 Moore Street, Gold Beach, Oregon pursuant to ORS 197.763(2)(a) and Curry County Zoning Ordinance 2.070(1). The hearing purpose is for Board review, public comment and Board action on an appeal of a Planning Commission decision to deny an Elk River Property Development application (submitted pursuant to ORS 215.246) for the analysis of alternatives routes for a pipeline and ancillary facilities to deliver recycled wastewater located for irrigation of a golf course on or over Assessor map 32-15-29C, lot numbers: 103, 104, 105, 106, 107, 108, 118, 120 and 121. The proposed alternatives are primarily within Curry County and Oregon Department of Transportation public rights of way leaving the northerly Port Orford urban growth boundary and extending to the a golf course development site located on the property commonly known as the Knapp Ranch. (Sections 19, 29 & 30 of Township 32 S., Range 15 W., W.M. Tax lot 4400, and Section 29c of Township 32 S., Range 15 W., W.M. Tax lot 500)

State your comments to the Board at the public hearing and/or submit your comments for the record by e-mail to johnsonc@co.curry.or.us (with A-1701 in the subject line) or United States Postal Service to the Curry County Community Development Department, Curry County Annex, 94235 Moore St, Suite 113 Gold Beach, OR 97444, Attention: Carolyn Johnson. For written comments to be included in the Board packet, they must be received by 3 PM on Wednesday, January 3, 2018. Written comments received after that time will be presented for the record at the Board's January 17, 2018 public hearing. A copy of the application, all documents and evidence relied upon by the applicant and applicable criteria are available now for viewing and download at no cost at: www.co.curry.or.us/departments/Community-Development/Planning-Commission and are located at 94235 Moore St, Suite 113 Gold Beach Oregon for purchase at reasonable cost. The Board of Commissioners staff report will be available after 5 p.m. on Friday, January 5, 2018 at <http://www.co.curry.or.us/Board-of-Commissioners>.

Should the action of the Board be appealed, the appeal shall be limited to the application materials, evidence and other documentation, and specific issues raised in the comments by interested parties leading up to the Board's action. Failure to provide sufficient specificity to afford the Board an opportunity to respond to an issue that is raised precludes appeal to Oregon Land Use Board of Appeals based on that issue.

From: CALLISTER Jacob (LCOG) [mailto:jcallister@lcog.org]
Sent: Monday, November 27, 2017 8:37 AM
To: Carolyn Johnson
Cc: John HuttI
Subject: FW: Land use hearing in Curry County tonight -- request for quick DLCD insights

FYI...

From: NOMURA Ranei [mailto:RANEI.NOMURA@state.or.us]
Sent: Tuesday, November 21, 2017 2:21 PM
To: CALLISTER Jacob (LCOG)
Cc: HEARLEY Henry O
Subject: RE: Land use hearing in Curry County tonight -- request for quick DLCD insights

Jacob,

Diane Baird with the Oregon Department of Justice was not available to review the documents from Curry County I received from Mr. Klingensmith before the due date.

I think I understand your chicken and egg question but please see p. 16 of the *Report to the Legislature: Implementation of Senate Bill 212, A Joint Report of the Department of Environmental Quality, Department of Land Conservation and Development, Department of Agriculture, and Health Services of the Department of Human Services* at <https://digital.osl.state.or.us/islandora/object/osl%3A21123/datastream/OBJ/view> .

I've excerpted the process in this report laid out by DEQ, DLCD, ODA, and OHS below. Please let me know if you have any additional questions.

Ranei

Ranei Nomura
Manager
Water Quality Permitting and Compliance
DEQ Western Region
503-378-5081

Process for Land Application Proposals: As the State Agency that issues environmental approval for land application practices, DEQ has consulted with the DLCD, ODA, and Department of Human Services (DHS) to ensure that its process meets the intent of the new Act. The following steps described below apply to:

- New land application proposals (except those involving vehicle transport of biosolids).
 - Significant modifications to permits, approvals and permit renewals, e.g. use of additional lands.
1. The applicant obtains the required DEQ application and LUCS forms, and submits the LUCS to the county planning office for its review and approval.
 2. The county conducts its land use review process in accordance with the requirements under the Act.
 3. The county completes the LUCS form and returns it to the applicant with the attached findings:
 - The proposed activity constitutes land application for purposes of agricultural, horticultural, silviculture production, or for irrigation in connection with a use allowable in EFU zoned land under ORS 215.
 - Any proposed facilities necessary for the land application practice to occur on the subject site are accessory to and reasonably necessary as allowed by the Act.
 - Approval of the LUCS is subject to DEQ's issuance of the necessary environmental approvals or permits.
 4. The applicant submits the DEQ application and approved LUCS to DEQ for processing. DEQ processes the application and conducts a technical review in accordance with its rules. The review, depending on what material is applied to the land, may include the following:
 - Pollutant and nutrient testing
 - Determination of agronomic rate
 - Determination of agronomic or pollutant loading
 - Determination of water assimilation capacity
 - Site assessment and evaluation
 - Crop type and cropping system
 - Application methods and equipment requirements
 - Site access and harvest restrictions
 - Monitoring requirements
 - A written determination that the land application activity will not reduce the productivity of the land in question.
 5. DEQ submits all Reclaimed Water Reuse Plans to the DHS for comment (OAR 340-055-0015(2)), and consults with DHS on any effluent quality limitations (OAR 340-055-0015(4)).
 6. Applicants intending to land apply reclaimed water are required to submit a "Registration of Reclaimed Water Use" form (<http://wrd.state.or.us/publication/pdfs/reclaimform96.pdf>) to the Water Resources Department (ORS 537.131, 537.132 and 537.610(h)). Either agency can supply applicants with this form, however it requires a DEQ signature.
 7. DEQ issues an approval or denial to the applicant, and provides a copy to the county planning office.

From: CALLISTER Jacob (LCOG) [mailto:jcallister@lcog.org]

Sent: Sunday, November 19, 2017 5:53 PM

To: NOMURA Ranei <ranei.nomura@state.or.us>

Cc: HEARLEY Henry O <HHEARLEY@Lcog.org>

Subject: Re: Land use hearing in Curry County tonight -- request for quick DLCD insights

Hello Ranei,

My name is Jacob Callister. I work for the Lane Council of Governments in Eugene Oregon and am the contract planner working on Elk River Development's application for the application of reclaimed wastewater on a golf course in Curry County.

I am responsible for providing a recommendation to the County Board of Commissioners on the application.

The Curry County Planning Commission denied the application partly because of sequencing related to the required DEQ "determination" outlined at ORS 215.246(a):

The uses allowed under ORS [215.213 \(Uses permitted in exclusive farm use zones in counties that adopted marginal lands system prior to 1993\) \(1\)\(y\)](#) and [215.283 \(Uses permitted in exclusive farm use zones in nonmarginal lands counties\) \(1\)\(v\)](#):

(a) Require a determination by the Department of Environmental Quality, in conjunction with the department's review of a license, permit or approval, that the application rates and site management practices for the land application of reclaimed water, agricultural or industrial process water or biosolids ensure continued agricultural, horticultural or silvicultural production and do not reduce the productivity of the tract.

My question essentially echoes the others in the correspondence below. I really need to know if approval of the permits that Elk River has pursued with DEQ will objectively satisfy ORS 215.246(a). This is because we are adding DEQ approval of the permits as a "Condition of Approval" for the application. In order to do that, we need to know that the DEQ permit approvals represent an objective satisfaction of ORS 215.246(a). We will have a chicken and egg issue if we cannot figure this out (both permits needing to be approved before the other).

I am out of the office starting tomorrow, but I will be checking email and have a colleague at Lane Council of Governments, Henry Hearley, who is helping move things along in my absence (He is cc'd to this email). If you or Dianne Baird could get in touch with some insights, this would be extremely helpful for our next steps --

There is a Curry County Board of Commissioners meeting on December 6th to review this matter. The staff report for the hearing is due a week prior (November 29th). We are hoping to have some direction on this in order to appropriately address DEQ's statutory requirement related to this application.

Please let me know what else I can provide or do to get some clarity.

Thanks Ranei,

Jacob Callister
Senior Planner
Lane Council of Governments
541-682-4114

From: NOMURA Ranei <ranei.nomura@state.or.us>

Sent: Thursday, September 28, 2017 9:09 AM

To: Nick Klingensmith

Subject: Re: Land use hearing in Curry County tonight -- request for quick DLCD insights

Let me check with Diane Baird to see if she is available to review. She is the DOJ assistant attorney general assigned to DEQ's water quality program and also has a background in Oregon

land use law. I'll let you know what she thinks.

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: Nick Klingensmith <nickklingensmith@landuseoregon.com>

Date: 9/28/17 8:35 AM (GMT-08:00)

To: NOMURA Ranei <ranei.nomura@state.or.us>

Subject: RE: Land use hearing in Curry County tonight -- request for quick DLCD insights

I understand. This situation is a little unique, however, as the local government Planning Commission isn't applying any local standards in this decision – they are directly applying ORS 215.246, which is statute that you and Bill Kloos and Larry Knudsen and I discussed on the phone a year ago.

Because the county code doesn't have any local regulations that implement this statute, the Planning Commissioners aren't sure what to make of it. County staff has a good grasp of things, but the Planning Commissioners are a little confused by this task of applying standards directly from statute.

Rather than weighing in on the substantive question of whether the application meets the approval criteria, we were merely hoping for some indication, from DEQ's perspective, as to whether the local procedure that the county is providing is what the statute had in mind. We have already tried to explain to the Planning Commission that the county's approach to this was developed with the input of DEQ and DLCD, but I get the impression that the Commission remains uncertain.

If DEQ can't comment at all, I understand. If there's any more info I can provide, please let me know. Thanks very much,

Nick Klingensmith

Law Office of Bill Kloos, PC

375 W. 4th Avenue, Suite 204

Eugene, OR 97401

Phone: (541) 912-5280

Fax: (541) 343-8702

e-mail: nickklingensmith@landuseoregon.com <<mailto:nickklingensmith@landuseoregon.com>>

Web www.LandUseOregon.com <<http://www.landuseoregon.com/>>

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intended only for the addressee. If you have received this e-mail in error, please call immediately at the phone number above. Also, please notify me by e-mail. Thank you.

From: NOMURA Ranei [<mailto:ranei.nomura@state.or.us>]
Sent: Wednesday, September 27, 2017 4:54 PM
To: Nick Klingensmith <nickklingensmith@landuseoregon.com>
Subject: RE: Land use hearing in Curry County tonight -- request for quick DLCD insights

Nick,

DEQ does not get involved in the land use zoning process so we would not want to comment (or have any authority to comment) but I'll take a quick look. If we do have any input unless, it would only be with respect to DEQ permitting requirements.

Hope that makes sense. Thank you for your patience!

Ranei

Ranei Nomura
Water Quality Program Manager
DEQ Western Region
503-378-5081 Salem Office
503-373-7944 fax

From: Nick Klingensmith [<mailto:nickklingensmith@landuseoregon.com>]
Sent: Tuesday, September 26, 2017 9:04 AM
To: NOMURA Ranei <ranei.nomura@state.or.us<<mailto:ranei.nomura@state.or.us>>>
Subject: RE: Land use hearing in Curry County tonight -- request for quick DLCD insights

Hi Ranei, I hope you had a great vacation.

Yes, DEQ feedback would still be most welcome. The county hearing on this application was continued until October 19, and there likely will be an "open record" period of seven days following the close of the October hearing. If DEQ thought it was appropriate, your input on these questions of local procedure would not need to be extensive. When asked this same question, Dave Perry, the local DLCD rep, gave a the following succinct response:

"The Statute requires that the County hold a hearing on the matter and the process outlined would meet the statutory requirement. We have no concerns regarding the County's approach to this issue."

Of course, if DEQ wanted to say more, that is welcome also.

Thanks again.

Nick Klingensmith
Law Office of Bill Kloos, PC
375 W. 4th Avenue, Suite 204
Eugene, OR 97401
Phone: (541) 912-5280
Fax: (541) 343-8702
e-mail: nickklingensmith@landuseoregon.com<<mailto:nickklingensmith@landuseoregon.com>>
Web www.LandUseOregon.com<<http://www.landuseoregon.com/>>

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From: NOMURA Ranei [<mailto:ranei.nomura@state.or.us>]
Sent: Monday, September 25, 2017 9:46 PM
To: Nick Klingensmith
<nickklingensmith@landuseoregon.com<<mailto:nickklingensmith@landuseoregon.com>>>
Subject: Re: Land use hearing in Curry County tonight -- request for quick DLCD insights

Nick,

I'm sorry I missed your request while I was on vacation. Do you still need DEQ feedback? If yes, by when?

Ranei

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: Nick Klingensmith
<nickklingensmith@landuseoregon.com><<mailto:nickklingensmith@landuseoregon.com%3e>>
Date: 9/21/17 5:56 PM (GMT-08:00)
To: NOMURA Ranei
<NOMURA.Ranei@deq.state.or.us><<mailto:NOMURA.Ranei@deq.state.or.us%3e>>
Cc: "Chris Hood (hoodc@stuntzner.com<<mailto:hoodc@stuntzner.com>>)"
<hoodc@stuntzner.com><<mailto:hoodc@stuntzner.com%3e>>, "Jim Haley

(jmhaley@aol.com<<mailto:jmhaley@aol.com>>)"
<jmhaley@aol.com><<mailto:jmhaley@aol.com%3e>>, "Troy Russell
(troyerussell@gmail.com<<mailto:troyerussell@gmail.com>>)"
<troyerussell@gmail.com><<mailto:troyerussell@gmail.com%3e>>, "Carolyn Johnson
(johnsonc@co.curry.or.us<<mailto:johnsonc@co.curry.or.us>>)"
<johnsonc@co.curry.or.us><<mailto:johnsonc@co.curry.or.us%3e>>, John Huttli
<huttli@co.curry.or.us><<mailto:huttli@co.curry.or.us%3e>>
Subject: FW: Land use hearing in Curry County tonight -- request for quick DLCD insights

Hello Ranei,

A lot of time has passed since we last spoke on the subject of the reclaimed water for the Pacific Gales golf course, but tonight Curry County will be holding a hearing to get public comments on the proposal, in order to support the alternatives analysis called for in ORS 215.246(3).

A member of the Planning Commission asked county staff to get DLCD's feedback as to whether we are procedurally on the right track. Earlier today, county staff suggested to me it would also be a good idea to ask for DEQ's input on the matter. The email chain below started with the County's contract planner, and was directed to Dave Perry, at DLCD. DLCD has responded favorably to our approach.

I've attached the entire packet that will be submitted to the Planning Commission, including the application. It's a big file, so I understand you might not have the bandwidth to review the whole thing. The first email in this chain does a great job of summarizing how the public process has been set up.

I'm happy to answer any questions. Thanks very much for any feedback you can provide.

Nick Klingensmith
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375 W. 4th Avenue, Suite 204
Eugene, OR 97401
Phone: (541) 912-5280
Fax: (541) 343-8702
e-mail:
nickklingensmith@landuseoregon.com<<mailto:nickklingensmith@landuseoregon.com>><<mailto:nickklingensmith@landuseoregon.com%3e>>
Web
[www.LandUseOregon.com](http://www.landuseoregon.com/)<<http://www.landuseoregon.com/>><<http://www.landuseoregon.com/%3e>>

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From: John HuttI [<mailto:huttli@co.curry.or.us>]
Sent: Thursday, September 21, 2017 10:08 AM
To: Carolyn Johnson <johnsonc@co.curry.or.us><<mailto:johnsonc@co.curry.or.us%3e>>; Nick Klingensmith <nickklingensmith@landuseoregon.com><<mailto:nickklingensmith@landuseoregon.com%3e>>
Subject: RE: Land use hearing in Curry County tonight -- request for quick DLCD insights

Nick

You may want to share the below email with DEQ to ask them to review the county staff report (like DLCD did) to confirm the process the county is using meets the DEQ concerns.

John

From: Carolyn Johnson
Sent: Thursday, September 21, 2017 10:01 AM
To: Nick Klingensmith <nickklingensmith@landuseoregon.com><<mailto:nickklingensmith@landuseoregon.com>><<mailto:nickklingensmith@landuseoregon.com>><<mailto:nickklingensmith@landuseoregon.com%3e>>
Cc: John HuttI
Subject: FW: Land use hearing in Curry County tonight -- request for quick DLCD insights

From: Perry, Dave [<mailto:dave.perry@state.or.us>]
Sent: Thursday, September 21, 2017 9:51 AM
To: 'CALLISTER Jacob (LCOG)'
Cc: Carolyn Johnson
Subject: RE: Land use hearing in Curry County tonight -- request for quick DLCD insights

Jacob,

The Statute requires that the County hold a hearing on the matter and the process outlined would meet the statutory requirement. We have no concerns regarding the County's approach to this issue.

[BeachBillLogo]

David R. Perry | So. Coast Regional Representative
Department of Land Conservation and Development
Ocean and Coastal Services Division
810 SW Alder St., Ste. B | Newport, OR 97365

sufficient specificity to afford the applicant an adequate opportunity to consider the alternatives. A land use decision relating to the land application of reclaimed water, agricultural or industrial process water or biosolids may not be reversed or remanded under this subsection unless the applicant failed to consider identified alternatives or to explain in writing the reasons for not using the alternatives.

The County has determined to review the application with a quasi-judicial process/hearing. Notice has been sent and published. There is a Planning Commission hearing tonight in Gold Beach. The County has provided an opportunity for the public to provide alternatives, and for the applicant to receive those (as per ORS 215.246(3)).

It is our anticipation that the hearing will be closed, but that the record will remain open in order to, at a minimum, allow the applicant to provide adequate responses to the alternatives (as per ORS 215.246(3)).

A Planning Commissioner expressed interest in what DLCDC might think about this process. We thought it would be helpful if we have a response to this question ready at the hearing. In my experience, DLCDC does concern itself directly with matters such as this. The site does have some history (including a LUBA remand LUBA-2015-080), and so we felt it most thorough to reach out.

I have attached the application packet. I do not expect that you will have time to read it. I have summarized the key issue above. We would be interested in any reassurance or acknowledgement of your awareness of the process, or any concerns you have that we can/should consider this evening, and going forward.

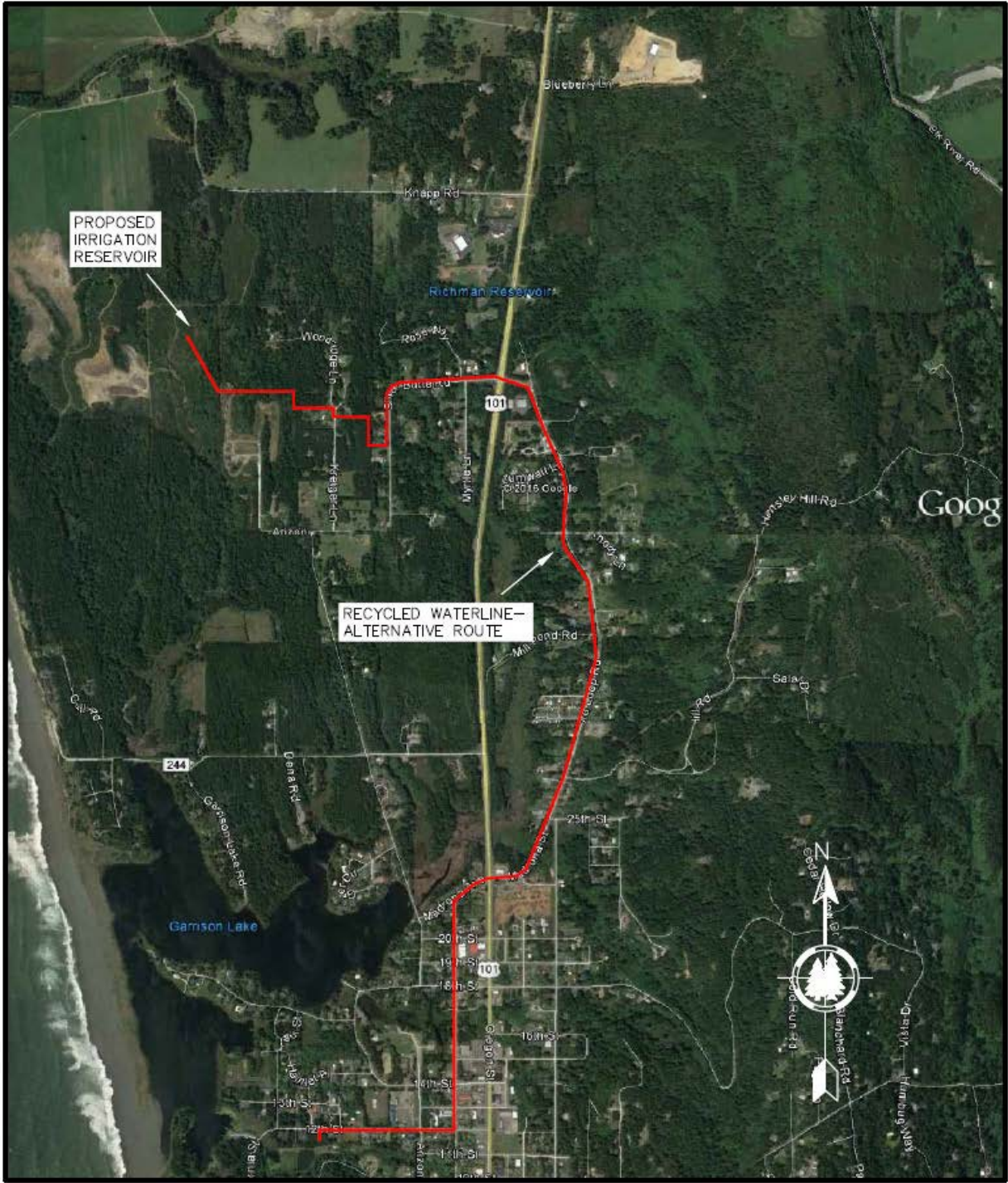
Thank you for your time,

Jacob L. Callister
Senior Planner
Lane Council of Governments
541-682-4114

ATTACHMENT 2
PROPOSED PREFERRED AND ALTERNATIVE ROUTES OF PIPELINE



 <p>Stuntzner Engineering & Forestry, LLC</p>	<p>Stuntzner Engineering & Forestry, LLC</p> <p>ENGINEERING • LAND SURVEYING • FORESTRY LAND PLANNING • WATER RIGHTS</p>	DESIGNED BY: CDH
		DRAWN BY: AER
<p>* COOS BAY * DALLAS * * FOREST GROVE *</p>	<p>705 SOUTH 4TH STREET PHONE: (541) 287-2872 P.O. BOX 118 FAX: (541) 287-0558 COOS BAY, OREGON 97420 www.stuntzner.com</p>	CHECKED BY: CDH
		DATE: NOV. 2016
		REVISED:
		JOB NAME: Project
		JOB NO: XX-X-XXX SHEET: 3 of 4



Stuntzner Engineering & Forestry, LLC

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LAND PLANNING * WATER RIGHTS

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P.O. BOX 118
COOS BAY, OREGON 97420

PHONE: (541) 267-2872
FAX: (541) 267-0588
www.stuntzner.com

Aerial-Preferred Route	
JOB NAME: HIGHLAND GOLF	
DATE: APRIL 2017	
JOB NO: 116-042	DESIGN BY: CDH
PAGE: 2 OF 4	DRAWN BY: AER

**Attachment 3 – Detailed description of alternatives
(including routes and plans)**

WRITTEN STATEMENT

REQUEST SUMMARY:

Elk River Property Development, LLC (referred to hereafter as “ERPD”) is proposing to use recycled wastewater for irrigating a golf course on the property commonly known as the Knapp Ranch, which is zoned Exclusive Farm Use. The use of recycled wastewater includes the development of a pipeline that originates at the City of Port Orford municipal wastewater treatment plant, the creation of a reservoir adjacent to the ultimate place of use, and development of ancillary facilities, such as pumps. This application requests the county to conduct a public process required by statute when uses of this nature are proposed.

Although the application of recycled water for irrigation is allowed-outright in EFU zones, pursuant to ORS 215.283(1)(v), the statutory framework for this use includes a requirement for public comment and an analysis of alternatives.

The alternatives analysis that the applicant is now proposing comes directly from ORS 215.246, discussed in detail below. There are no local regulations in the Curry County code that implement this statute. Therefore, the statute will need to be applied directly. This application will be reviewed by the Curry County Planning Commission pursuant to CCZO 2.060(2)(d), which provides that the Planning Commission has authority over “other land use actions” not specifically listed in adjacent code provisions.

The entire text of ORS 215.246 is included below, but in summary, the statute requires the applicant to explain what it proposes, to consider public comment in response to the proposal, and to conduct a rigorous analysis of alternatives. The statute’s requirement for a robust alternatives analysis will ensure that the ultimate development has been rigorously evaluated.

The current proposal includes the placement of a pipe under public rights-of-way (with alternative routes to be considered), the development of a pond at the golf course that would contain the treated water at the golf course, the use of this water for irrigation during the appropriate seasons, and the development of ancillary components of the system, such as a pump station and valves. A detailed description of the proposed irrigation system and the alternative pipeline routes have been prepared, and are attached as components of Exhibit A.

Although a portion of the proposed system will be located inside the city limits of Port Orford (primarily consisting of a pump and pipeline that originates at the city’s sewage treatment plant) this application is primarily focused on the portions of the irrigation system that will be developed in the county. As noted above, the applicant has obtained separate development approval for portions of the project that will be located in areas inside the city of Port Orford’s jurisdiction.

Discussion of approval standards:

Approval standards are shown in *Italic* font. The applicant's response and proposed findings are labeled as such and shown in regular font.

ORS 215.283(1) The following uses may be established in any area zoned for exclusive farm use:

[...]

(v) *Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695 (License required to perform sewage disposal services), 459.205 (Permit required), 468B.050 (Water quality permit), 468B.053 (Alternatives to obtaining water quality permit) or 468B.055 (Plans and specifications for disposal, treatment and sewerage systems), or in compliance with rules adopted under ORS 468B.095 (Use of sludge on agricultural, horticultural or silvicultural land), and as provided in ORS 215.246 (Approval of land application of certain substances) to 215.251 (Relationship to other farm uses), the land application of reclaimed water, agricultural or industrial process water or biosolids for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zone under this chapter.*

Applicant's response: the types of uses listed in ORS 215.283(1) are those uses allowed outright. Sub-section (v) includes "the land application of reclaimed water [...]". The use proposed in this instance can be described as the land application of reclaimed water "as provided in ORS 215.246." The statute requires the land application of reclaimed water to have a license, permit, or other approval from DEQ. The applicant is in the process of obtaining the necessary "recycled wastewater use permit," or "RWUP" from DEQ. This statute also makes reference to ORS 215.246, which imposes a requirement to conduct an alternatives analysis. DEQ cannot issue its RWUP until the alternatives analysis has been completed. The remainder of this narrative addresses the provisions of ORS 215.246, including the alternatives analysis.

ORS 215.246 Approval of land application of certain substances; subsequent use of tract of land; consideration of alternatives. (1) The uses allowed under ORS 215.213 (1)(y) and 215.283 (1)(v):

(a) *Require a determination by the Department of Environmental Quality, in conjunction with the department's review of a license, permit or approval, that the application rates and site management practices for the land application of reclaimed water, agricultural or industrial process water or biosolids ensure continued agricultural, horticultural or silvicultural production and do not reduce the productivity of the tract.*

Applicant's response: DEQ is currently reviewing the ERPD's application for a Wastewater Pollution Control Facility Permit (WPCF) and a Recycled Water Use Permit (RWUP). The state agency review looks at the proposed application rate, site practices, water quality, and other criteria, and it will ensure the continued productivity of the land will not be harmed by this proposal. DEQ's review is being conducted concurrently with this county review. At the

completion of the county's review, development of the project requires the applicant to obtain all necessary permits, including those issued by DEQ. County completion of its review can be made explicitly contingent on the requirement for DEQ to grant its approvals before the applicant begins to develop or use its proposal for a recycled wastewater irrigation system.

(b) Are not subject to other provisions of ORS 215.213 or 215.283 or to the provisions of ORS 215.274, 215.275 or 215.296.

Applicant's response: this provision requires the applicant to demonstrate that there are not additional statutes that apply to the proposal, or, if there are, that the proposal complies with them. As explained below, the proposed use of recycled wastewater is not "subject to other provisions" of any of the listed statutes.

ORS 215.213 does not apply in the current context, because it applies only in marginal lands counties, which Curry County is not.

ORS 215.283 applies to non-marginal lands counties, such as Curry County, and that statute includes a list of uses allowed outright in EFU-zoned lands, including "the land application of reclaimed water". The only "other provision" imposed on this type of use by ORS 215.283 is the review required under ORS 215.246. In this situation, ORS 215.283(1)(v) and ORS 215.246(1)(b) make circular references to each other. This land use application initiates the review required by ORS 215.246.

ORS 215.274 does not apply to the current application, as it deals solely with electrical transmission lines.

ORS 215.275 applies only to "utility facilities necessary for public service." Those types of utility facilities are specifically defined and regulated by ORS 215.283(1)(c)(A). These "utility facilities necessary for public service" do not include the private wastewater utility facility that is proposed in this instance, which is separately regulated by ORS 215.283(1)(v).

ORS 215.296 applies only to the uses that can be conditionally approved within the scope of ORS 215.283(2). The proposal is one of the uses allowed outright under ORS 215.283(1), and is not subject to ORS 215.283(2).

In summary, the statutes listed in section (1)(b) of the statute do not impose "other provisions" on the proposed use, aside from the provisions of ORS 215.246, which this application has been submitted to address.

(2) The use of a tract of land on which the land application of reclaimed water, agricultural or industrial process water or biosolids has occurred under this section may not be changed to allow a different use unless:

[subsections (a) through (d) omitted for brevity.]

Applicant's response: ORS 215.246(2) applies only to lands where application of "reclaimed water, agricultural or industrial process water or biosolids" has already occurred, and where a change of use has subsequently been proposed for those lands. This standard is not applicable to the current situation. Instead, the applicant is proposing to begin irrigating the lands with reclaimed water.

(3) When a state agency or a local government makes a land use decision relating to the land application of reclaimed water, agricultural or industrial process water or biosolids under a license, permit or approval by the Department of Environmental Quality, the applicant shall explain in writing how alternatives identified in public comments on the land use decision were considered and, if the alternatives are not used, explain in writing the reasons for not using the alternatives. The applicant must consider only those alternatives that are identified with sufficient specificity to afford the applicant an adequate opportunity to consider the alternatives. A land use decision relating to the land application of reclaimed water, agricultural or industrial process water or biosolids may not be reversed or remanded under this subsection unless the applicant failed to consider identified alternatives or to explain in writing the reasons for not using the alternatives.

Applicant's response: This provision of the statute is the core substantive standard that must be addressed in this application. ORS 215.246(3) requires an applicant for this type of development to consider "alternatives identified in public comments." Implicit in that requirement is the assumption that the proposal will be noticed to the public, with an opportunity for the public to provide comment. Following that public comment period, the applicant is required to consider the alternatives proposed in the public comments. Following the applicant's analysis of alternatives, the county can issue a final decision on the proposal.

At the end of this three-step process, the statute clarifies that an application that has been subjected to this type of alternatives analysis cannot be reversed or remanded unless the applicant failed to consider any of the proposed alternatives or if it did an inadequate job in explaining why it did not use any of the proposed alternatives. This last provision imposes a procedural obligation for a specific type of analysis, and it is satisfied so long as that analysis is conducted correctly.

The applicant recognizes there will likely be benefit to performing this analysis. It is possible that the public comments will provide perspectives that the applicant had not considered, and it provides the applicant with the opportunity to incorporate those alternatives if they would make for a better proposal. This decision-making process involves a rigorous exploration of the alternatives proposed in the public comments, and gives the applicant the opportunity to incorporate any alternatives that will make for a better project.

At the end of this written narrative discussing the approval standards found in the statute, the applicant has provided Exhibit A, which includes a more detailed explanation of what it is proposing, and also relevant graphics.

The main proposal, described generally, involves the movement of recycled wastewater to the golf course, where it can be used for irrigation. However, the applicant realizes there are multiple variations on how that proposal can be achieved. In order to start out the conversation on alternatives, the applicant's materials include a proposed "preferred route" and an "alternative route."

The applicant expects that these diagrams and detailed explanation will set the stage for the alternatives analysis. Once the county has invited public comment on the proposal, the applicant will diligently review and respond to that public comment, and will incorporate public testimony in fine-tuning the proposal, as needed and appropriate. At the end of that process, the applicant understand the Planning Commission will render a decision that attests to the completion of the analysis required by statute.

(4) The uses allowed under this section include:

(a) The treatment of reclaimed water, agricultural or industrial process water or biosolids that occurs as a result of the land application;

Applicant's response: ORS 215.246(4) lists the types of uses and developments fall within the scope of this process.

Pursuant to subsection (a), and in addition to the water quality treatments conducted at the Port Orford sewage treatment plant, natural processes will lead to continued improvements in water quality, such as exposure to UV light while the water is impounded in the pond at the golf course, and exposure to natural soil microbes that will digest nutrients and other substances found in trace amounts in the treated water. This will amount to passive "treatment" of the reclaimed water that occurs as a result of the land application.

(b) The establishment and use of facilities, including buildings, equipment, aerated and nonaerated water impoundments, pumps and other irrigation equipment, that are accessory to and reasonably necessary for the land application to occur on the subject tract;

Applicant's response: Pursuant to subsection (b), the applicant is proposing improvements that will be necessary for the use of recycled wastewater on the tract where the irrigation will occur. These improvements will include a portion of the pipe that delivers the treated water, a pond that will store water, pumps and irrigation equipment, and a small pumphouse that will shelter the irrigation equipment.

(c) The establishment and use of facilities, including buildings and equipment, that are not on the tract on which the land application occurs for the transport of reclaimed water, agricultural or industrial process water or biosolids to the tract on which the land application occurs if the facilities are located within:

(A) A public right of way; or

(B) Other land if the landowner provides written consent and the owner of the facility complies with ORS 215.275 (4); and

(d) The transport by vehicle of reclaimed water or agricultural or industrial process water to a tract on which the water will be applied to land.

Applicant's response: Pursuant to subsection (c), the applicant is proposing ancillary facilities necessary for the use of recycled wastewater that will be developed on lands outside of the tract where the irrigation will occur, consisting primarily of the placement of a pipeline along public rights of way. In the limited instances where the pipeline is proposed to cross land that is not within a public right of way, the applicant understands that this statutory standard requires "written consent" from the land owner.

The proposed pipeline will also cross privately-owned land at the location between the wastewater treatment plant and the public right of way. Initially, the applicant obtained an easement to place its facilities on private lot between the treatment plant and the public right of way, but the applicant has subsequently purchased this lot, obviating the need for an easement.

The "alternative route" for the pipeline, depicted at Exhibit A, will also require the pipeline route to leave the public right of way and to cross private property. The applicant has the written authorization from the necessary private property owners, shown as Exhibit B.

(5) Uses not allowed under this section include:

(a) The establishment and use of facilities, including buildings or equipment, for the treatment of reclaimed water, agricultural or industrial process water or biosolids other than those treatment facilities related to the treatment that occurs as a result of the land application; or

(b) The establishment and use of utility facility service lines allowed under ORS 215.213 (1)(x) or 215.283 (1)(u).

Applicant's response: as explained in response to ORS 215.246(4), above, all water quality treatments will occur at the existing site of the Port Orford sewage treatment plant. Some degree of water quality improvement that is expected to occur incidentally to storing the recycled water in the pond and then applying it to the golf course, where it will be exposed to soil microbes and other natural processes. In reality, the water that is currently being discharged from the City of Port Orford's treatment plant is already treated to such a high level that it is permitted to be discharged directly into the ocean. Even though the reclaimed water coming from the treatment plant is treated to a high level, the applicant strongly believes that it is more environmentally sustainable to use the city's treated effluent for irrigation, where any trace contaminants will be broken down by the exposure to air and UV light during the pond storage period, and by soil microbes after it is applied as irrigation, as opposed to discharging it directly into the fragile marine environment.

In response to subsection (b), above, the applicant is not proposing any utility facility service lines. The current proposal involves the delivery, storage and use of recycled wastewater, as specifically allowed by ORS 215.283(1)(v) and ORS 283.246(3). The pipeline delivering the recycled wastewater is not a "utility service line" within the meaning of this statute because it is one of the necessary "facilities [...] for the transport of reclaimed water," specifically allowed under ORS 283.246(4)(c).

Conclusion

The statutory standards contained in ORS 215.246 have been addressed above. Attached as Exhibit A is a detailed description of the system that the applicant is proposing. It includes diagrams showing the proposed route and the alternative route, as well as a narrative section that explains the methods and materials of construction. If the county provides notice and an opportunity for public comment, the applicant will consider and respond to any alternatives that may be suggested, pursuant to ORS 215.246(3).

Exhibit A –

detailed description of proposal to develop and use a system for irrigating Pacific Gales Golf Course with recycled wastewater.

The applicant proposes to pipe recycled wastewater from the City of Port Orford wastewater treatment plant to the Pacific Gales Golf Course, and to use that water for irrigation. The proposed pipeline routes (including a preferred route and an alternative route) are shown on the diagrams attached to this exhibit. Only one of these two pipelines will be built.

The pipeline will primarily be placed using horizontal boring when it is located under city right of ways, in order to minimize surface disruption and impacts to tree roots. For portions of the pipe that are proposed to be located in the county, it will primarily be placed on the shoulder of the public right of way, using a standard trenching technique that will restore soil surface and paving surfaces to their original condition. The pipe will be placed using horizontal boring anywhere along the length of the pipeline when it is necessary to pass below certain existing utility facilities, such as cables or pipes.

The pipe material is 6" HDPE that will employ fused joints. A fusion-joined pipeline may be thought of as a continuous pipeline without joints. HDPE "DR11" pipe has an expected service life of 50-100 years. HDPE pipe has a fatigue life of 10,000,000 pump cycles, or in excess of 100 years. The combination of pipe and pump will be capable of moving 200 gpm. However, the pump that charges the pipeline will operate intermittently, as the wastewater treatment plant produces an average of 69.4 gpm. The recycled wastewater will be held in a 10,000 gallon accumulating tank located at tax lot 1011, adjacent to the treatment plant, until the quantity is sufficient to operate the pipeline.

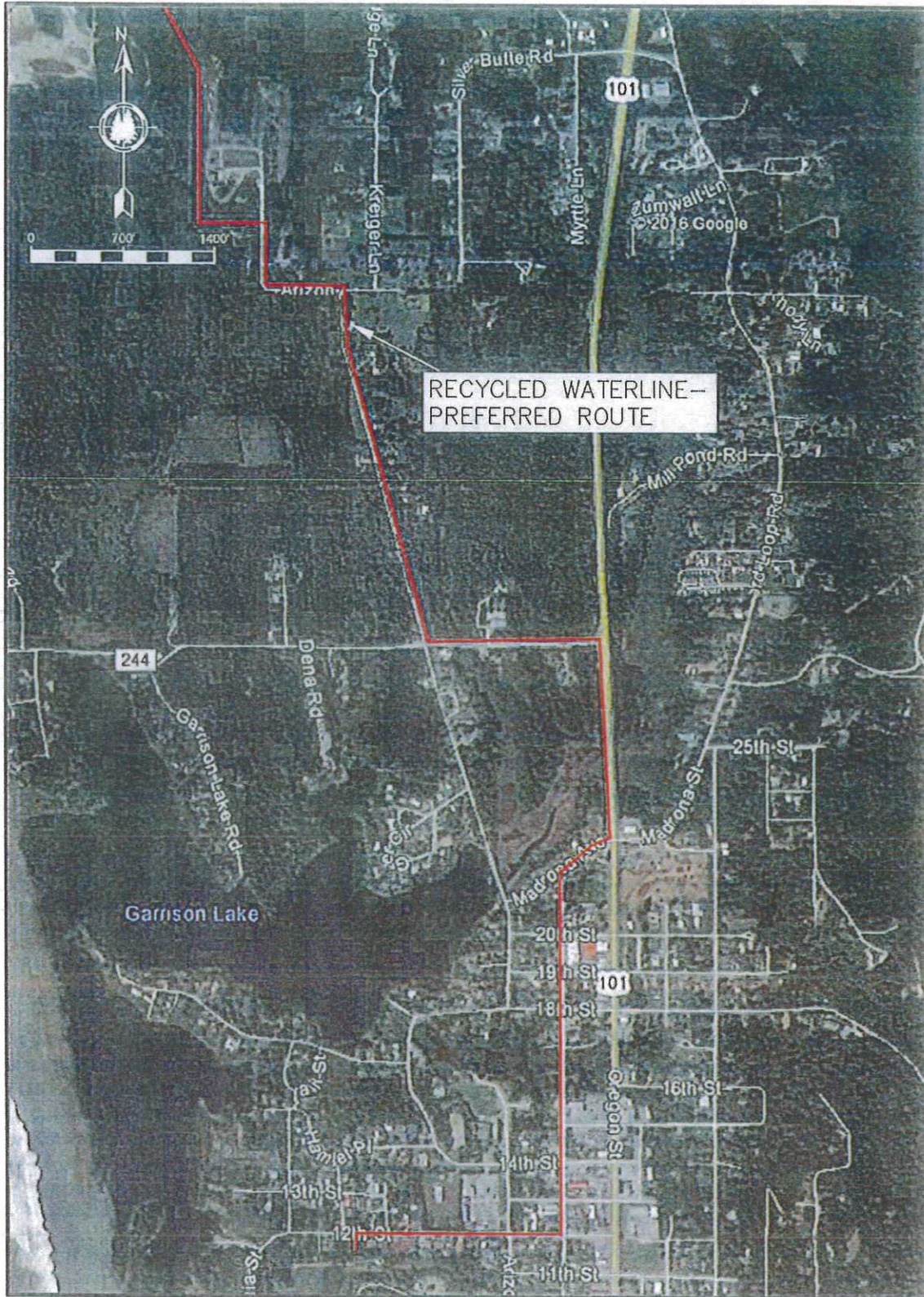
The recycled water that will be obtained from the Port Orford treatment plant will be treated to DEQ Class C or higher. Despite the very high level of treatment already being conducted at the treatment plant, the water will undergo additional passive water quality improvements as it resides in the reservoir on the golf course, and again, as it percolates through the turf and soil.

At the northern terminus of the pipeline, it will discharge into an irrigation reservoir, as shown on page 2 of the attached irrigation plan. The reservoir is anticipated to cover an area of approximately seven acres, and will hold approximately 100 acre-feet. The reservoir will be designed and constructed according to the specifications established by the Water Resources Department's dam safety division.

The place of use for the recycled wastewater is shown on pages 1 and 2 of the attached irrigation plan. This plan shows the proposed irrigation system plumbing. In addition, the applicant proposes to use the water to grow and maintain turf and landscaping anywhere on the leased premises. The golf course management plan involves an adaptive system of monitoring soil moisture and applying irrigation as needed, given climatic conditions and growing season, in order to prevent erosion and maximize soil and landscaping health.

The total volume of recycled wastewater that is proposed to be pumped through the pipeline and

applied as golf course irrigation will likely not exceed 110 acre-feet per year, but that figure cannot yet be provided with certainty, as the applicant is still in discussions with the City of Port Orford to reach an agreement that will provide the applicant with recycled wastewater.



 <p>Stuntzner Engineering & Forestry, LLC</p> <p>* COOS BAY * DALLAS * * FOREST GROVE *</p>	<p>Stuntzner Engineering & Forestry, LLC</p> <p>ENGINEERING * LAND SURVEYING * FORESTRY LAND PLANNING * WATER RIGHTS</p> <p>705 SOUTH 4TH STREET PHONE: (541) 267-2872 P.O. BOX 118 FAX: (541) 267-0588 COOS BAY, OREGON 97420 www.stuntzner.com</p>	<p>DESIGNED BY: CDH</p> <p>DRAWN BY: AER</p> <p>CHECKED BY: CDH</p> <p>DATE: NOV. 2016</p> <p>REVISED:</p> <p>JOB NAME: Project</p> <p>JOB NO: XX-X-XXX SHEET: 3 of 4</p>
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**Stuntzner Engineering
& Forestry, LLC**

ENGINEERING * LAND SURVEYING * FORESTRY
LAND PLANNING * WATER RIGHTS

705 SOUTH 4TH STREET
P.O. BOX 118
COOS BAY, OREGON 97420

PHONE: (541) 267-2872
FAX: (541) 267-0588
www.stuntzner.com

Aerial-Preferred Route

JOB NAME: HIGHLAND GOLF

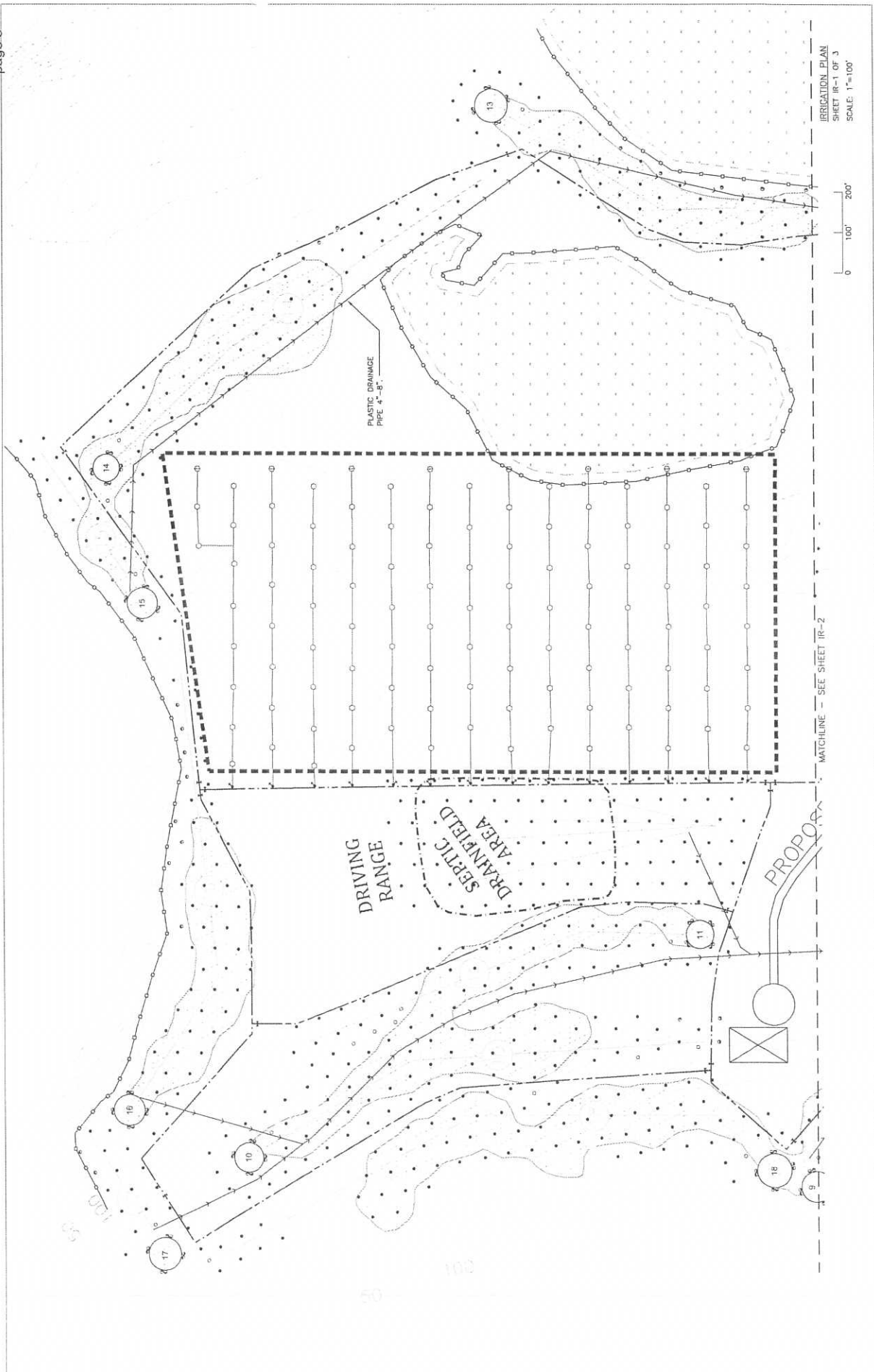
DATE: APRIL 2017

JOB NO: 116-042

DESIGN BY: CDH

PAGE: 2 OF 4

DRAWN BY: AER



MATCHLINE - SEE SHEET IR-1

SED

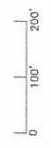
ROAD

MAINTENANCE
BLDG.
&
PARKING
AREA

SHEDDING PUMP

PROPOSED
IRRIGATION
POND

PLASTIC DRAINAGE
PIPE 4'-6"



IRRIGATION NOTES:

SOIL MOISTURE MONITORING: USING THE TORO, TUBE GUARD, WIRELESS SOIL MONITORING SYSTEM. THIS SYSTEM IS WIRELESS FROM THE MONITORING PROBES TO THE REPEATER, A DISTANCE OF UP TO 500 FEET. THE REPEATER IS WIRELESS TO THE MONITORING PROBES IN A CENTRAL COMPUTER. THE DATA RECEIVED AT THE CENTRAL COMPUTER CONSISTS OF SOIL TEMPERATURE, SOIL MOISTURE (VOLUMETRIC SOIL MOISTURE CONTENT) AND SALINITY BASED ON SOIL CONDUCTIVITY. THE MONITORING PROBES ARE PLACED IN THE CRITICAL ROOT ZONE LEVEL IN THE SOIL WITH A SECOND PROBE 5" LOWER. EACH LEVEL MONITORS HISTORICAL DATA AND ALSO DELIVERS CURRENT READINGS. COMPARES HISTORICAL DATA AND ALSO DELIVERS CURRENT READINGS. THE MONITORING PROBES ARE PLACED IN THE CRITICAL ROOT ZONE LEVEL IN THE SOIL WITH A SECOND PROBE 5" LOWER. EACH LEVEL MONITORS HISTORICAL DATA AND ALSO DELIVERS CURRENT READINGS. COMPARES HISTORICAL DATA AND ALSO DELIVERS CURRENT READINGS. SENSOR READINGS ARE SENT BACK TO THE COMPUTER EVERY 5 MINUTES. WE HAVE ESTIMATED STARTING WITH 24 SENSORS INSTALLED ACROSS THE SITE.

IRRIGATION LEGEND:

SYMBOL	DESCRIPTION
●	FULL CIRCLE VALVE-IN-HEAD SPRINKLER 65' RADIUS
○	FULL CIRCLE VALVE-IN-HEAD SPRINKLER 40' RADIUS
◐	PART CIRCLE VALVE-IN-HEAD SPRINKLER 65' RADIUS
◑	FULL CIRCLE VALVE-IN-HEAD SPRINKLER 90' RADIUS
⊥	MAIN LINE GATE VALVE
—	MAIN LINE: (500 PSI) PURPLE PVC PLASTIC DIAPHRAGM GATE VALVE IRON FITTINGS. SIZES - 4"-12"
—	LATERAL LINE: 40' PURPLE PVC PLASTIC SCHEDULE 80 IRON FIELD SCHEDULE 80 PVC PLASTIC FITTINGS.
—	PLASTIC DRAINAGE PIPE

Agreement to convey easement for privately-owned water pipeline across Kreiger Lane

This agreement is between Jeffrey C. Loan, Richard Seagrave, Russell Gibson, Michael Shields, Duane Eckoff, Edward Cottor, James Johnson and Heather Barton ("Grantors") and Elk River Property Development, LLC ("ERPD"). Grantors are the joint owners of a private street known as Kreiger Lane in Curry County, Oregon. This agreement will provide a route for a private water pipe that will deliver treated wastewater from the City of Port Orford wastewater treatment facility to the Pacific Gales Golf Course, for purposes of irrigation.

Agreement limited to private water pipeline. The utility easement described in this agreement will be used only for a private water pipeline. This agreement specifically does not authorize construction of any other public or private utilities, or any use of the subject property beyond the specific terms contained herein.

Agreement will result in recorded easement. After ERPD obtains all permits necessary to being installation of the pipeline, and prior to commencing any physical construction, Grantors agree to grant an easement, consistent with the terms contained herein, which will be recorded in the deeds and records of Curry County, Oregon. If ERPD is unable to obtain necessary permits within 12 months of the execution of this agreement, this agreement will automatically expire and will be thereafter null and void. Should that occur, the parties to this agreement may negotiate an extension to this agreement, or a replacement to this agreement

Location of easement and pipeline. The exact location of the pipeline will be recorded in easement prior to construction. The pipeline will cross Kreiger Lane in the approximate area between Russell Gibson and Jeffrey Loan Property. During construction, a temporary 20-foot wide easement will be required to allow for access to the construction area. After the pipeline is complete, the permanent easement will be limited to an area 10 feet wide. The pipeline will be placed at a depth at least 3 feet below native grade of the soil.

Method of construction. The pipeline that is authorized under this agreement will be installed by method of horizontal boring, which is intended to minimize disturbance of the surface of the soil. If any soil disturbance is required, ERPD will restore the soil surface to a reasonable approximation of its original, pre-construction condition. ERPD will restore the road surface to a condition equal to, or better than its original, preconstruction condition. ERPD will minimize disturbance or removal of existing vegetation, and will restore or replace vegetation to a condition that closely approximates the original condition.

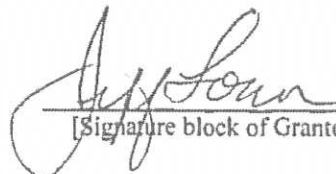
Brokers. No licensed real estate brokers have represented any parties in this transaction. The parties to this agreement are not liable for any brokerage fees or commissions. This Agreement has been prepared by ERPD.

Executed this 15 day of FEB, 2017, by ERPD:

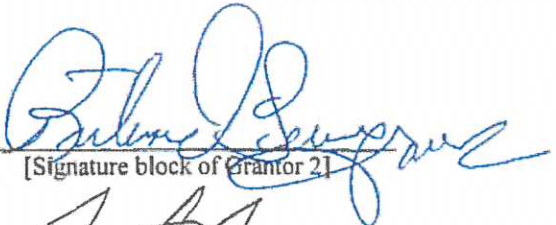

[Signature block for ERPD]

GRANTORS' ACCEPTANCE: Grantor accepts the ERPD's offer this 12 day of Feb, 2017.

Jeffery C. Loan
Lot 3215-29C #00103

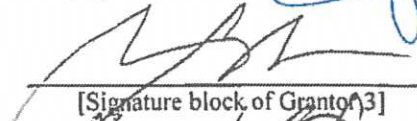

[Signature block of Grantor 1]

Richard Seagrave
Lot 3215-29C #00118



[Signature block of Grantor 2]

Russell A. Gibson
Lots 3215-29C # 00108 & 00120



[Signature block of Grantor 3]

Michael F. Shields
Lot 3215-29C # 00104



[Signature block of Grantor 4]

Duane K. Eckoff
Lot 3215-29C #00105



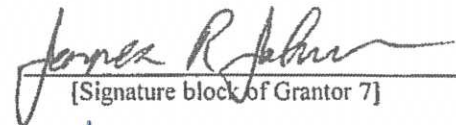
[Signature block of Grantor 5]

Edward A. Cottor
Lot 3215-29C #00106



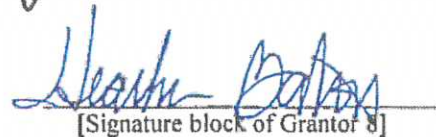
[Signature block of Grantor 6]

James Johnson
Lot 3215-29C #121



[Signature block of Grantor 7]

Heather Barton
Lot 3215-29C #00107



[Signature block of Grantor 8]



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PHONE: (541) 267-2872
FAX: (541) 267-0588
www.stuntzner.com

PROPOSED WATERLINE

JOB NAME	Job Name		
DATE	NOVEMBER 2016		
JOB NO	XX-XXX	DESIGN BY	CDH
PAGE	1 OF 1	DRAWN BY	AER

Agreement to convey easement for privately-owned water pipeline

This agreement is between Jeffery C. Loan and Elk River Property Development, LLC ("ERPD"). Grantor is the owner of property in Curry County, Oregon, known as 3215-29C lot # 00103. This agreement will provide a route for a private water pipe that will deliver treated wastewater from the City of Port Orford wastewater treatment facility to the Pacific Gales Golf Course, for purposes of irrigation.

Agreement limited to private water pipeline. The utility easement described in this agreement will be used only for a private water pipeline. This agreement specifically does not authorize construction of any other public or private utilities, or any use of the subject property beyond the specific terms contained herein.

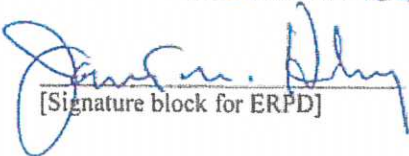
Agreement will result in recorded easement. After ERPD obtains all permits necessary to being installation of the pipeline, and prior to commencing any physical construction, Grantor agrees to grant an easement, consistent with the terms contained herein, which will be recorded in the deeds and records of Curry County, Oregon. If ERPD is unable to obtain necessary permits within 12 months of the execution of this agreement, this agreement will automatically expire and will be thereafter null and void. Should that occur, the parties to this agreement may negotiate an extension to this agreement, or a replacement to this agreement

Location of easement and pipeline. The exact location of the pipeline will be recorded in easement prior to construction. In general, the parties agree that the pipeline will be placed as close as possible to property lines, in order to minimize interference with Grantor's other uses of the property. During construction, a temporary 20-foot wide easement will be required to allow for access to the construction area. After the pipeline is complete, the permanent easement will be limited to an area 10 feet wide. The pipeline will be placed at a depth at least 3 feet below native grade of the soil.

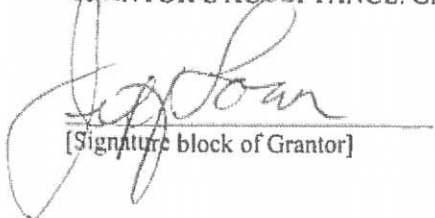
Method of construction. The pipeline that is authorized under this agreement will be installed by method of horizontal boring, which is intended to minimize disturbance of the surface of the soil. If any soil disturbance is required, ERPD will restore the soil surface to a reasonable approximation of its original, pre-construction condition. ERPD will minimize disturbance or removal of existing vegetation, and will restore or replace vegetation to a condition that closely approximates the original condition.

Brokers. No licensed real estate brokers have represented any parties in this transaction. The parties to this agreement are not liable for any brokerage fees or commissions. This Agreement has been prepared by ERPD.

Executed this 12 day of FEB, 2017, by ERPD:


[Signature block for ERPD]

GRANTOR'S ACCEPTANCE: Grantor accepts the ERPD's offer this 12 day of Feb, 2017.


[Signature block of Grantor]

Agreement to convey easement for privately-owned water pipeline

This agreement is between Jeffery C. Loan and Elk River Property Development, LLC ("ERPD"). Grantor is the owner of property in Curry County, Oregon, known as 3215-29C lot # 00103. This agreement will provide a route for a private water pipe that will deliver treated wastewater from the City of Port Orford wastewater treatment facility to the Pacific Gales Golf Course, for purposes of irrigation.

Agreement limited to private water pipeline. The utility easement described in this agreement will be used only for a private water pipeline. This agreement specifically does not authorize construction of any other public or private utilities, or any use of the subject property beyond the specific terms contained herein.

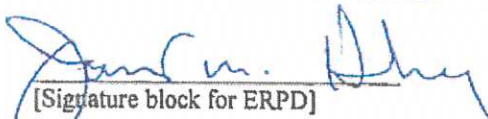
Agreement will result in recorded easement. After ERPD obtains all permits necessary to being installation of the pipeline, and prior to commencing any physical construction, Grantor agrees to grant an easement, consistent with the terms contained herein, which will be recorded in the deeds and records of Curry County, Oregon. If ERPD is unable to obtain necessary permits within 12 months of the execution of this agreement, this agreement will automatically expire and will be thereafter null and void. Should that occur, the parties to this agreement may negotiate an extension to this agreement, or a replacement to this agreement

Location of easement and pipeline. The exact location of the pipeline will be recorded in easement prior to construction. In general, the parties agree that the pipeline will be placed as close as possible to property lines, in order to minimize interference with Grantor's other uses of the property. During construction, a temporary 20-foot wide easement will be required to allow for access to the construction area. After the pipeline is complete, the permanent easement will be limited to an area 10 feet wide. The pipeline will be placed at a depth at least 3 feet below native grade of the soil.

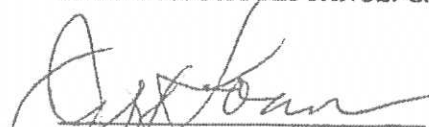
Method of construction. The pipeline that is authorized under this agreement will be installed by method of horizontal boring, which is intended to minimize disturbance of the surface of the soil. If any soil disturbance is required, ERPD will restore the soil surface to a reasonable approximation of its original, pre-construction condition. ERPD will minimize disturbance or removal of existing vegetation, and will restore or replace vegetation to a condition that closely approximates the original condition.

Brokers. No licensed real estate brokers have represented any parties in this transaction. The parties to this agreement are not liable for any brokerage fees or commissions. This Agreement has been prepared by ERPD.

Executed this 12 day of FEB 2017, by ERPD:


[Signature block for ERPD]

GRANTOR'S ACCEPTANCE: Grantor accepts the ERPD's offer this 12 day of Feb, 2017.


[Signature block of Grantor]

Agreement to convey easement for privately-owned water pipeline

This agreement is between Russell A. Gibson and Elk River Property Development, LLC ("ERPD"). Grantor is the owner of property in Curry County, Oregon, known as 3215-29C lot # 00108. This agreement will provide a route for a private water pipe that will deliver treated wastewater from the City of Port Orford wastewater treatment facility to the Pacific Gales Golf Course, for purposes of irrigation.

Agreement limited to private water pipeline. The utility easement described in this agreement will be used only for a private water pipeline. This agreement specifically does not authorize construction of any other public or private utilities, or any use of the subject property beyond the specific terms contained herein.

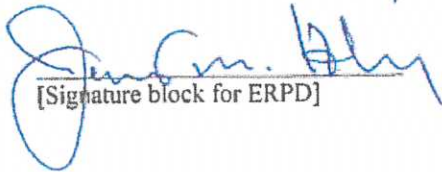
Agreement will result in recorded easement. After ERPD obtains all permits necessary to being installation of the pipeline, and prior to commencing any physical construction, Grantor agrees to grant an easement, consistent with the terms contained herein, which will be recorded in the deeds and records of Curry County, Oregon. If ERPD is unable to obtain necessary permits within 12 months of the execution of this agreement, this agreement will automatically expire and will be thereafter null and void. Should that occur, the parties to this agreement may negotiate an extension to this agreement, or a replacement to this agreement

Location of easement and pipeline. The exact location of the pipeline will be recorded in easement prior to construction. In general, the parties agree that the pipeline will be placed as close as possible to property lines, in order to minimize interference with Grantor's other uses of the property. During construction, a temporary 20-foot wide easement will be required to allow for access to the construction area. After the pipeline is complete, the permanent easement will be limited to an area 10 feet wide. The pipeline will be placed at a depth at least 3 feet below native grade of the soil.

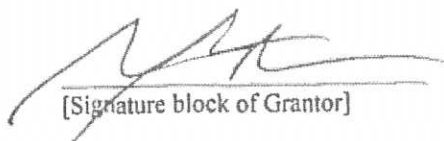
Method of construction. The pipeline that is authorized under this agreement will be installed by method of horizontal boring, which is intended to minimize disturbance of the surface of the soil. If any soil disturbance is required, ERPD will restore the soil surface to a reasonable approximation of its original, pre-construction condition. ERPD will minimize disturbance or removal of existing vegetation, and will restore or replace vegetation to a condition that closely approximates the original condition.

Brokers. No licensed real estate brokers have represented any parties in this transaction. The parties to this agreement are not liable for any brokerage fees or commissions. This Agreement has been prepared by ERPD.

Executed this 5 day of April 2017, by ERPD:


[Signature block for ERPD]

GRANTOR'S ACCEPTANCE: Grantor accepts the ERPD's offer this 3 day of 31, 2017.


[Signature block of Grantor]

Agreement to convey easement for privately-owned water pipeline

This agreement is between **Bret C. & Dalia G O'Brien** ("Grantor") and **Elk River Property Development, LLC** ("ERPD"). Grantor is the owner of property in Curry County, Oregon, known as **3215-29D lot # 00621**. This agreement will provide a route for a private water pipe that will deliver treated wastewater from the City of Port Orford wastewater treatment facility to the Pacific Gales Golf Course, for purposes of irrigation.

Agreement limited to private water pipeline. The utility easement described in this agreement will be used only for a private water pipeline. This agreement specifically does not authorize construction of any other public or private utilities, or any use of the subject property beyond the specific terms contained herein.

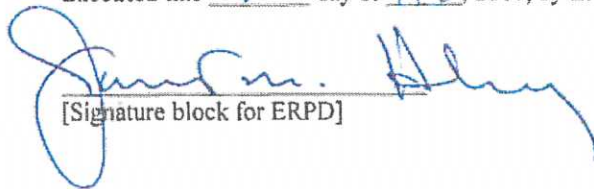
Agreement will result in recorded easement. After ERPD obtains all permits necessary to being installation of the pipeline, and prior to commencing any physical construction, Grantor agrees to grant an easement, consistent with the terms contained herein, which will be recorded in the deeds and records of Curry County, Oregon. If ERPD is unable to obtain necessary permits within 12 months of the execution of this agreement, this agreement will automatically expire and will be thereafter null and void. Should that occur, the parties to this agreement may negotiate an extension to this agreement, or a replacement to this agreement

Location of easement and pipeline. The exact location of the pipeline will be recorded in easement prior to construction. In general, the parties agree that the pipeline will be placed as close as possible to property lines, in order to minimize interference with Grantor's other uses of the property. During construction, a temporary 20-foot wide easement will be required to allow for access to the construction area. After the pipeline is complete, the permanent easement will be limited to an area 10 feet wide. The pipeline will be placed at a depth at least 3 feet below native grade of the soil.

Method of construction. The pipeline that is authorized under this agreement will be installed by method of horizontal boring, which is intended to minimize disturbance of the surface of the soil. If any soil disturbance is required, ERPD will restore the soil surface to a reasonable approximation of its original, pre-construction condition. ERPD will minimize disturbance or removal of existing vegetation, and will restore or replace vegetation to a condition that closely approximates the original condition.

Brokers. No licensed real estate brokers have represented any parties in this transaction. The parties to this agreement are not liable for any brokerage fees or commissions. This Agreement has been prepared by ERPD.

Executed this 4 day of Feb, 2017, by ERPD:


[Signature block for ERPD]

GRANTOR'S ACCEPTANCE: Grantor accepts the ERPD's offer this 4 day of Feb, 2017.


[Signature block of Grantor]

Agreement to convey easement for privately-owned water pipeline

This agreement is between **Bret C. & Dalia G O'Brien** ("Grantor") and **Elk River Property Development, LLC** ("ERPD"). Grantor is the owner of property in Curry County, Oregon, known as 3215-29D lot # 00621. This agreement will provide a route for a private water pipe that will deliver treated wastewater from the City of Port Orford wastewater treatment facility to the Pacific Gales Golf Course, for purposes of irrigation.

Agreement limited to private water pipeline. The utility easement described in this agreement will be used only for a private water pipeline. This agreement specifically does not authorize construction of any other public or private utilities, or any use of the subject property beyond the specific terms contained herein.

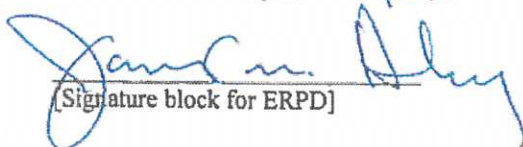
Agreement will result in recorded easement. After ERPD obtains all permits necessary to being installation of the pipeline, and prior to commencing any physical construction, Grantor agrees to grant an easement, consistent with the terms contained herein, which will be recorded in the deeds and records of Curry County, Oregon. If ERPD is unable to obtain necessary permits within 12 months of the execution of this agreement, this agreement will automatically expire and will be thereafter null and void. Should that occur, the parties to this agreement may negotiate an extension to this agreement, or a replacement to this agreement

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Method of construction. The pipeline that is authorized under this agreement will be installed by method of horizontal boring, which is intended to minimize disturbance of the surface of the soil. If any soil disturbance is required, ERPD will restore the soil surface to a reasonable approximation of its original, pre-construction condition. ERPD will minimize disturbance or removal of existing vegetation, and will restore or replace vegetation to a condition that closely approximates the original condition.

Brokers. No licensed real estate brokers have represented any parties in this transaction. The parties to this agreement are not liable for any brokerage fees or commissions. This Agreement has been prepared by ERPD.

Executed this 4 day of Feb, 2017, by ERPD:


[Signature block for ERPD]

GRANTOR'S ACCEPTANCE: Grantor accepts the ERPD's offer this 4 day of Feb, 2017.


[Signature block of Grantor]



Stuntzner Engineering & Forestry, LLC

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LAND PLANNING * WATER RIGHTS

705 SOUTH 4TH STREET
P.O. BOX 118
COOS BAY, OREGON 97420

PHONE: (541) 267-2872
FAX: (541) 267-0588
www.stuntzner.com

PROPOSED WATERLINE

JOB NAME: Job Name	
DATE: NOVEMBER 2016	
JOB NO: XX-XXX	DESIGN BY: CDH
PAGE 1 OF 1	DRAWN BY: AER

ATTACHMENT 4
PUBLIC NOTICE FOR BOC JANUARY 17, 2018 PUBLIC HEARING
INCLUDES 20 DAY NOTICE TO PROPERTY OWNERS (4 PAGES)
AND
PUBLIC HEARING NOTICE FOR NEWSPAPERS (1 PAGE)



**Board of Commissioners Special De Novo public Hearing for A-1701
An Appeal of Planning Commission Action on Application AD-1705
Pursuant to ORS 197.763(2)(a) and Curry County Zoning Ordinance 2.070(1).**

Board of Commissioners Hearing: The Board of Commissioners will hold a special de novo public hearing to hear an appeal of Curry County Planning Commission's decision(s) on the Elk River Property Development LLC land use proposal described further in this notice. The special de novo public hearing will be held at 2:30 PM on Wednesday, January 17, 2018 in the Board of Commissioners chambers on the upper level of the County Courthouse Annex in Gold Beach located at 94235 Moore Street. The special de novo public hearing is being provided to solicit public commentary on land use alternatives described further in this Notice.

Applicant/Agent : Elk River Property Development, LLC/ Law Office of Bill Kloos, P.C.

Property/Owner and the Proposal: An application was submitted for the analysis of alternatives and approval of proposal to use recycled wastewater for irrigation of golf course, including the development of pipeline and ancillary facilities. Two alternate pipeline routes have been proposed to be developed , these two routes can be found on Assessor map 32-15-29C, lot numbers: 103, 104, 105, 106, 107, 108, 118, 120 and 121. The pipeline will primarily be located within public rights of way, owned by either Curry County or the Oregon Department of Transportation. Generally, both routes under consideration leave the Port Orford urban growth boundary on the north side of Port Orford, and travel northward to the golf course development site located on the property commonly known as the Knapp Ranch where the ultimate place of use of the recycled wastewater will occur. (Sections 19, 29 & 30 of Township 32 S., Range 15 W., W.M. Tax lot 4400, and Section 29c of Township 32 S., Range 15 W., W.M. Tax lot 500)

Background: On November 7, 2017 Planning Commission denied the proposal; the applicant appealed the Planning Commission decision. On November 10, 2017 the applicant appealed the Planning Commission decision and requested a Board of Commissioners consideration of the proposal at a de novo public hearing. The Board of Commissioners de novo hearing then was put on hold at the request of the applicant pending a December 14, 2017 Planning Commission review. On December 14, 2017, the Planning Commission again denied the subject proposal. The applicant on December 18, 2017 appealed the Planning Commission's December 14, 2017 decision and again requested a Board of Commissioners de novo hearing to appeal the Curry County Planning Commission decision(s). The appeals will be consolidated for the purpose of the Board of Commissioners January 17, 2018 special de novo public hearing.

Applicable Criteria:

Oregon Revised Statutes (ORS) section 215.246(3) which requires an applicant to consider proposal alternatives as follows: *(3) When a state agency or a local government makes a land use decision relating to the land application of reclaimed water, agricultural or industrial process water or biosolids under a license, permit or approval by the Department of Environmental Quality, the applicant shall explain in writing how alternatives identified in public comments on the land use decision were considered and, if the alternatives are not used, explain in writing the reasons for not using the alternatives. The applicant must consider only those alternatives that are identified with sufficient specificity to afford the applicant an adequate opportunity to consider the alternatives. A land use decision relating to the land application of reclaimed water, agricultural or industrial process water or biosolids may not be reversed or remanded under this subsection unless the applicant failed to consider identified alternatives or to explain in writing the reasons for not using the alternatives.*

Curry County Zoning Ordinance section 2.170(7c and 7d): *Every Notice of Appeal shall be on a form supplied by the Director and contain the following information:*

(c) A statement explaining the specific issues being raised on the appeal(s). The applicant has identified the specific issues identified as findings for the proposal denial by the Planning Commission as follows:

Related to the appeal of the November 7, 2017 Planning Commission action and the specific issues identified:

a) No permitted use has been established under ORS 215.283(1)(v) because the statute requires the irrigation to be for a different approved use under section ORS 215.283(1)(v) which has not been identified. b) An approved use under (sic) 215.283(1)(v), is "subject to" ORS 215.246, which means the use is not permitted until the Oregon Department of Environmental Quality (DEQ) has completed its determination pursuant to ORS 215.246(1)(a); DEQ has not completed the subject determination.

Related to the appeal of the December 14, 2017 Planning Commission action and the specific issues identified:

a) Conditional Use Permit AD-1411 expired on January 16, 2016 because Condition of Approval 1 for AD-1411, imposed by the Board on January 1, 2015, required the Applicant to apply for and receive an extension for Conditional Use Permit AD-1411 within one year, and allowed no other method by which the Applicant can extend the one year time limit on the permit. Applicant did not request and receive an extension for Conditional Use Permit AD-1411 and b) the applicant failed to establish that ORS 215.283 (1)(v) served as a basis to justify the permit requested in AD-1705 to use effluent to irrigate the golf course because: a. Applicant did not provide proof of a "use[s] permitted in exclusive farm use zones"; b. The Department of Environmental Quality has not yet provided an approval; c. ORS 215.283(1)(v) is subject to ORS 215.246(1)(a); d. ORS 215.246.(1)(a) requires that a permitted use be established before an approval for the land application of effluent can be considered; e. Applicant has no established or permitted use because Conditional Use Permit AD-1411 expired on January 16, 2016, and thus Applicant cannot establish a permitted use required by ORS 215.246(1)(a).

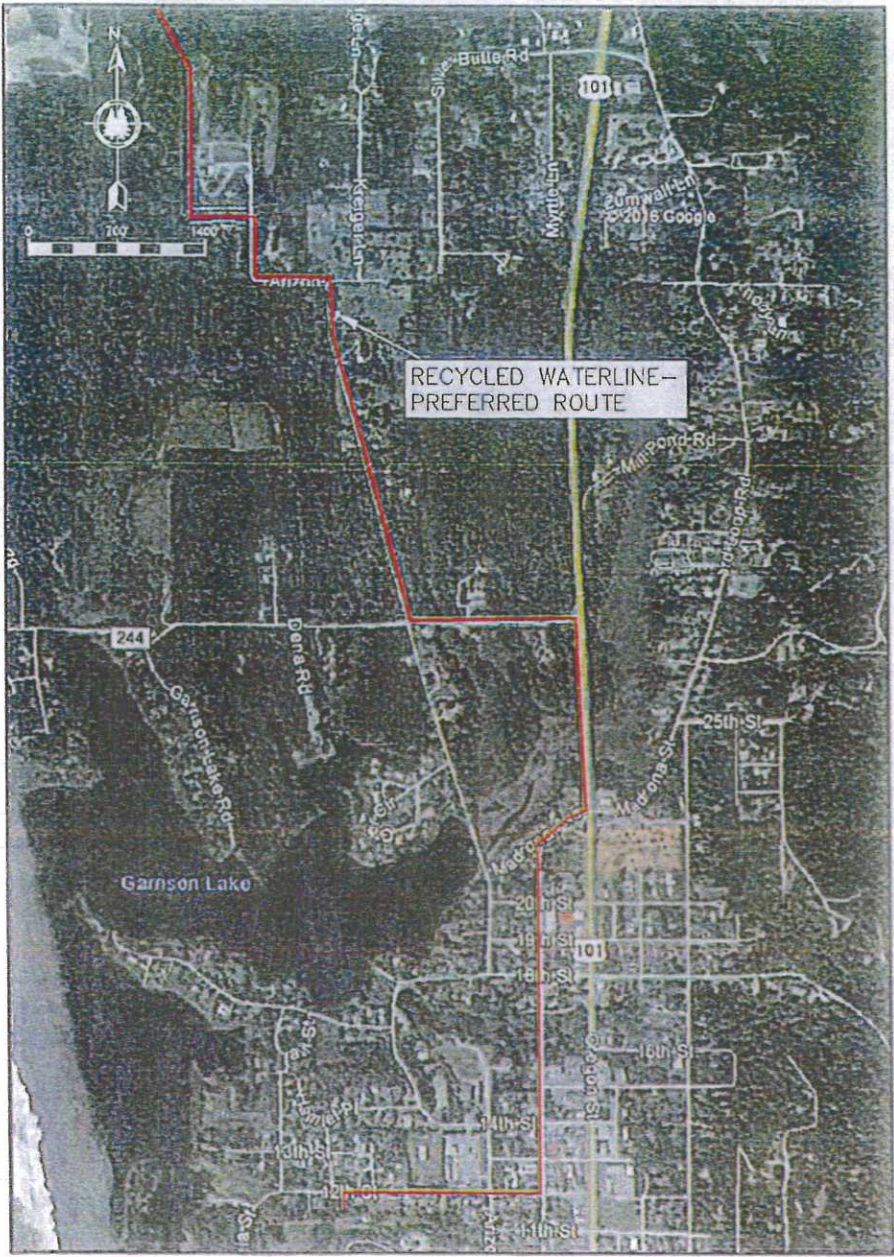
(d) A statement demonstrating that the appeal issues were raised during the public comment period. **Related to the public comment periods for the November 7, and December 14, 2017 Planning Commission meetings:** The appeal issues were raised during the public comment period; the record of the Planning Commission meeting reflects that the applicant presented the Planning Commission with arguments and evidence that the subject property is the site of an approved golf course that, pursuant to ORS 215.283(1)(v), is entitled to receive reclaimed water and also that DEQ's analysis of the agricultural productivity does not need to be completed in order for the County to consider the alternatives analysis.

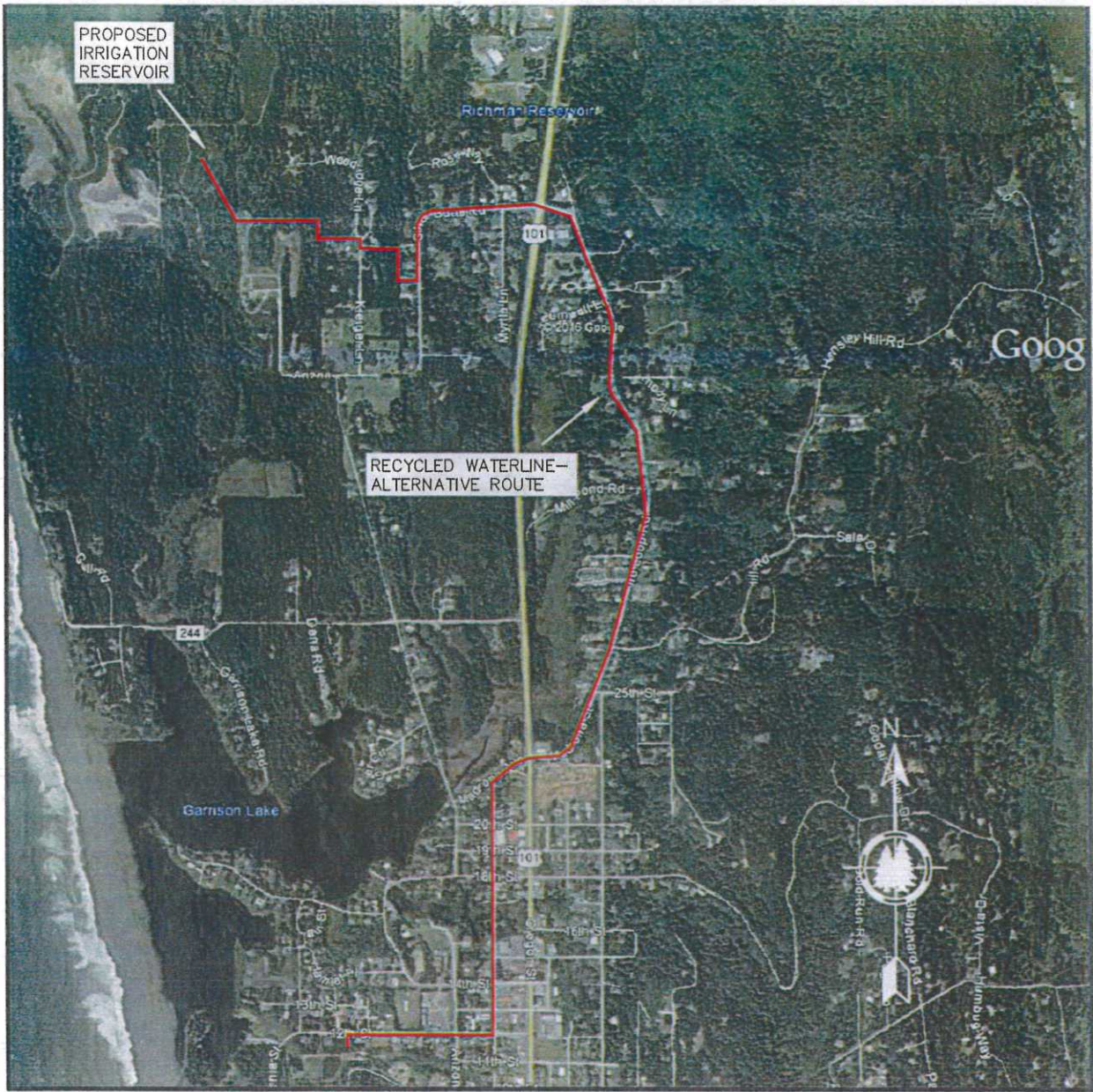
Required Statutory Notice: ORS 197.763 (3)(e) states that failure to raise an issue either in person or by letter or failure to provide statements or evidence sufficient to allow the decision maker an opportunity to respond to the issue precludes appeal to a higher judicial review based on that issue. Failure to provide sufficient specificity to afford the decision maker an opportunity to respond to an issue that is raised precludes appeal to LUBA based on that issue.

Documents and Staff report:

See the project application, the Applicant appeals and related documents at: www.co.curry.or.us/departments/Community-Development/Planning-Commission. See the January 17, 2018 staff report prepared for the Board of Commissioners special de novo public hearing at www.co.curry.org.us/Board-of-Commissioners on Friday, January 5, 2018 no later than 5 PM.

Your comments: Testimony, arguments, and evidence must be directed toward the criteria described in the Applicable Criteria section of this notice. You may submit written testimony prior to or at the hearing. Please include Appeal number A-1701 on your written testimony. Testimony may be submitted via email, fax, or by USPS mail. You may contact Jacob Callister at 541-682-4114 or jcallister@lcog.org to submit your comments; please put A-1701 in the subject line. Comments may be also be mailed to the Curry County Community Development Department, Curry County Annex, 94235 Moore St, Suite 113 Gold Beach, OR 97444, Attention: Carolyn Johnson. For your written comments to be included in the record prior to the hearing, they must be received by 3 PM on Wednesday, January 3, 2018. After that time your comments can be submitted but will be presented for the record at the January 17, 2018 Board of Commissioners special de novo public hearing. Should the action of the Board of Commissioners be appealed, the appeal shall be limited to the application materials, evidence and other documentation, and specific issues raised in the comments by interested parties leading up to the Board's action.





**BOARD OF COMMISSIONERS
PUBLIC HEARING PUBLIC NOTICE**

Notice is hereby given that the Curry County Board of Commissioners (Board) will hold a special de novo public hearing on **Wednesday, January 17, 2018 at 2:30 PM** in the Commissioners' Hearing Room at the Curry County Courthouse Annex Building located at 94235 Moore Street, Gold Beach, Oregon pursuant to ORS 197.763(2)(a) and Curry County Zoning Ordinance 2.070(1). The hearing purpose is for Board review, public comment and Board action on an appeal of a Planning Commission decision to deny an Elk River Property Development application (submitted pursuant to ORS 215.246) for the analysis of alternatives routes for a pipeline and ancillary facilities to deliver recycled wastewater located for irrigation of a golf course on or over Assessor map 32-15-29C, lot numbers: 103, 104, 105, 106, 107, 108, 118, 120 and 121. The proposed alternatives are primarily within Curry County and Oregon Department of Transportation public rights of way leaving the northerly Port Orford urban growth boundary and extending to the a golf course development site located on the property commonly known as the Knapp Ranch. (Sections 19, 29 & 30 of Township 32 S., Range 15 W., W.M. Tax lot 4400, and Section 29c of Township 32 S., Range 15 W., W.M. Tax lot 500)

State your comments to the Board at the public hearing and/or submit your comments for the record by e-mail to johnsonc@co.curry.or.us (with A-1701 in the subject line) or United States Postal Service to the Curry County Community Development Department, Curry County Annex, 94235 Moore St, Suite 113 Gold Beach, OR 97444, Attention: Carolyn Johnson. For written comments to be included in the Board packet, they must be received by 3 PM on Wednesday, January 3, 2018. Written comments received after that time will be presented for the record at the Board's January 17, 2018 public hearing. A copy of the application, all documents and evidence relied upon by the applicant and applicable criteria are available now for viewing and download at no cost at: www.co.curry.or.us/departments/Community-Development/Planning-Commission and are located at 94235 Moore St, Suite 113 Gold Beach Oregon for purchase at reasonable cost. The Board of Commissioners staff report will be available after 5 p.m. on Friday, January 5, 2018 at <http://www.co.curry.or.us/Board-of-Commissioners>

Should the action of the Board be appealed, the appeal shall be limited to the application materials, evidence and other documentation, and specific issues raised in the comments by interested parties leading up to the Board's action. Failure to provide sufficient specificity to afford the Board an opportunity to respond to an issue that is raised precludes appeal to Oregon Land Use Board of Appeals based on that issue.

WRITTEN STATEMENT

REQUEST SUMMARY:

Elk River Property Development, LLC (referred to hereafter as “ERPD”) is proposing to use recycled wastewater for irrigating a golf course on the property commonly known as the Knapp Ranch, which is zoned Exclusive Farm Use. The use of recycled wastewater includes the development of a pipeline that originates at the City of Port Orford municipal wastewater treatment plant, the creation of a reservoir adjacent to the ultimate place of use, and development of ancillary facilities, such as pumps. This application requests the county to conduct a public process required by statute when uses of this nature are proposed.

Although the application of recycled water for irrigation is allowed-outright in EFU zones, pursuant to ORS 215.283(1)(v), the statutory framework for this use includes a requirement for public comment and an analysis of alternatives.

The alternatives analysis that the applicant is now proposing comes directly from ORS 215.246, discussed in detail below. There are no local regulations in the Curry County code that implement this statute. Therefore, the statute will need to be applied directly. This application will be reviewed by the Curry County Planning Commission pursuant to CCZO 2.060(2)(d), which provides that the Planning Commission has authority over “other land use actions” not specifically listed in adjacent code provisions.

The entire text of ORS 215.246 is included below, but in summary, the statute requires the applicant to explain what it proposes, to consider public comment in response to the proposal, and to conduct a rigorous analysis of alternatives. The statute’s requirement for a robust alternatives analysis will ensure that the ultimate development has been rigorously evaluated.

The current proposal includes the placement of a pipe under public rights-of-way (with alternative routes to be considered), the development of a pond at the golf course that would contain the treated water at the golf course, the use of this water for irrigation during the appropriate seasons, and the development of ancillary components of the system, such as a pump station and valves. A detailed description of the proposed irrigation system and the alternative pipeline routes have been prepared, and are attached as components of Exhibit A.

Although a portion of the proposed system will be located inside the city limits of Port Orford (primarily consisting of a pump and pipeline that originates at the city’s sewage treatment plant) this application is primarily focused on the portions of the irrigation system that will be developed in the county. As noted above, the applicant has obtained separate development approval for portions of the project that will be located in areas inside the city of Port Orford’s jurisdiction.

Discussion of approval standards:

Approval standards are shown in *Italic* font. The applicant's response and proposed findings are labeled as such and shown in regular font.

ORS 215.283(1) The following uses may be established in any area zoned for exclusive farm use:

[...]

(v) Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695 (License required to perform sewage disposal services), 459.205 (Permit required), 468B.050 (Water quality permit), 468B.053 (Alternatives to obtaining water quality permit) or 468B.055 (Plans and specifications for disposal, treatment and sewerage systems), or in compliance with rules adopted under ORS 468B.095 (Use of sludge on agricultural, horticultural or silvicultural land), and as provided in ORS 215.246 (Approval of land application of certain substances) to 215.251 (Relationship to other farm uses), the land application of reclaimed water, agricultural or industrial process water or biosolids for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zone under this chapter.

Applicant's response: the types of uses listed in ORS 215.283(1) are those uses allowed outright. Sub-section (v) includes "the land application of reclaimed water [...]". The use proposed in this instance can be described as the land application of reclaimed water "as provided in ORS 215.246." The statute requires the land application of reclaimed water to have a license, permit, or other approval from DEQ. The applicant is in the process of obtaining the necessary "recycled wastewater use permit," or "RWUP" from DEQ. This statute also makes reference to ORS 215.246, which imposes a requirement to conduct an alternatives analysis. DEQ cannot issue its RWUP until the alternatives analysis has been completed. The remainder of this narrative addresses the provisions of ORS 215.246, including the alternatives analysis.

ORS 215.246 Approval of land application of certain substances; subsequent use of tract of land; consideration of alternatives. (1) The uses allowed under ORS 215.213 (1)(y) and 215.283 (1)(v):

(a) Require a determination by the Department of Environmental Quality, in conjunction with the department's review of a license, permit or approval, that the application rates and site management practices for the land application of reclaimed water, agricultural or industrial process water or biosolids ensure continued agricultural, horticultural or silvicultural production and do not reduce the productivity of the tract.

Applicant's response: DEQ is currently reviewing the ERPD's application for a Wastewater Pollution Control Facility Permit (WPCF) and a Recycled Water Use Permit (RWUP). The state agency review looks at the proposed application rate, site practices, water quality, and other criteria, and it will ensure the continued productivity of the land will not be harmed by this proposal. DEQ's review is being conducted concurrently with this county review. At the

completion of the county's review, development of the project requires the applicant to obtain all necessary permits, including those issued by DEQ. County completion of its review can be made explicitly contingent on the requirement for DEQ to grant its approvals before the applicant begins to develop or use its proposal for a recycled wastewater irrigation system.

(b) Are not subject to other provisions of ORS 215.213 or 215.283 or to the provisions of ORS 215.274, 215.275 or 215.296.

Applicant's response: this provision requires the applicant to demonstrate that there are not additional statutes that apply to the proposal, or, if there are, that the proposal complies with them. As explained below, the proposed use of recycled wastewater is not "subject to other provisions" of any of the listed statutes.

ORS 215.213 does not apply in the current context, because it applies only in marginal lands counties, which Curry County is not.

ORS 215.283 applies to non-marginal lands counties, such as Curry County, and that statute includes a list of uses allowed outright in EFU-zoned lands, including "the land application of reclaimed water". The only "other provision" imposed on this type of use by ORS 215.283 is the review required under ORS 215.246. In this situation, ORS 215.283(1)(v) and ORS 215.246(1)(b) make circular references to each other. This land use application initiates the review required by ORS 215.246.

ORS 215.274 does not apply to the current application, as it deals solely with electrical transmission lines.

ORS 215.275 applies only to "utility facilities necessary for public service." Those types of utility facilities are specifically defined and regulated by ORS 215.283(1)(c)(A). These "utility facilities necessary for public service" do not include the private wastewater utility facility that is proposed in this instance, which is separately regulated by ORS 215.283(1)(v).

ORS 215.296 applies only to the uses that can be conditionally approved within the scope of ORS 215.283(2). The proposal is one of the uses allowed outright under ORS 215.283(1), and is not subject to ORS 215.283(2).

In summary, the statutes listed in section (1)(b) of the statute do not impose "other provisions" on the proposed use, aside from the provisions of ORS 215.246, which this application has been submitted to address.

(2) The use of a tract of land on which the land application of reclaimed water, agricultural or industrial process water or biosolids has occurred under this section may not be changed to allow a different use unless:

[subsections (a) through (d) omitted for brevity.]

Applicant's response: ORS 215.246(2) applies only to lands where application of "reclaimed water, agricultural or industrial process water or biosolids" has already occurred, and where a change of use has subsequently been proposed for those lands. This standard is not applicable to the current situation. Instead, the applicant is proposing to begin irrigating the lands with reclaimed water.

(3) When a state agency or a local government makes a land use decision relating to the land application of reclaimed water, agricultural or industrial process water or biosolids under a license, permit or approval by the Department of Environmental Quality, the applicant shall explain in writing how alternatives identified in public comments on the land use decision were considered and, if the alternatives are not used, explain in writing the reasons for not using the alternatives. The applicant must consider only those alternatives that are identified with sufficient specificity to afford the applicant an adequate opportunity to consider the alternatives. A land use decision relating to the land application of reclaimed water, agricultural or industrial process water or biosolids may not be reversed or remanded under this subsection unless the applicant failed to consider identified alternatives or to explain in writing the reasons for not using the alternatives.

Applicant's response: This provision of the statute is the core substantive standard that must be addressed in this application. ORS 215.246(3) requires an applicant for this type of development to consider "alternatives identified in public comments." Implicit in that requirement is the assumption that the proposal will be noticed to the public, with an opportunity for the public to provide comment. Following that public comment period, the applicant is required to consider the alternatives proposed in the public comments. Following the applicant's analysis of alternatives, the county can issue a final decision on the proposal.

At the end of this three-step process, the statute clarifies that an application that has been subjected to this type of alternatives analysis cannot be reversed or remanded unless the applicant failed to consider any of the proposed alternatives or if it did an inadequate job in explaining why it did not use any of the proposed alternatives. This last provision imposes a procedural obligation for a specific type of analysis, and it is satisfied so long as that analysis is conducted correctly.

The applicant recognizes there will likely be benefit to performing this analysis. It is possible that the public comments will provide perspectives that the applicant had not considered, and it provides the applicant with the opportunity to incorporate those alternatives if they would make for a better proposal. This decision-making process involves a rigorous exploration of the alternatives proposed in the public comments, and gives the applicant the opportunity to incorporate any alternatives that will make for a better project.

At the end of this written narrative discussing the approval standards found in the statute, the applicant has provided Exhibit A, which includes a more detailed explanation of what it is proposing, and also relevant graphics.

The main proposal, described generally, involves the movement of recycled wastewater to the golf course, where it can be used for irrigation. However, the applicant realizes there are multiple variations on how that proposal can be achieved. In order to start out the conversation on alternatives, the applicant's materials include a proposed "preferred route" and an "alternative route."

The applicant expects that these diagrams and detailed explanation will set the stage for the alternatives analysis. Once the county has invited public comment on the proposal, the applicant will diligently review and respond to that public comment, and will incorporate public testimony in fine-tuning the proposal, as needed and appropriate. At the end of that process, the applicant understands the Planning Commission will render a decision that attests to the completion of the analysis required by statute.

(4) The uses allowed under this section include:

(a) The treatment of reclaimed water, agricultural or industrial process water or biosolids that occurs as a result of the land application;

Applicant's response: ORS 215.246(4) lists the types of uses and developments that fall within the scope of this process.

Pursuant to subsection (a), and in addition to the water quality treatments conducted at the Port Orford sewage treatment plant, natural processes will lead to continued improvements in water quality, such as exposure to UV light while the water is impounded in the pond at the golf course, and exposure to natural soil microbes that will digest nutrients and other substances found in trace amounts in the treated water. This will amount to passive "treatment" of the reclaimed water that occurs as a result of the land application.

(b) The establishment and use of facilities, including buildings, equipment, aerated and nonaerated water impoundments, pumps and other irrigation equipment, that are accessory to and reasonably necessary for the land application to occur on the subject tract;

Applicant's response: Pursuant to subsection (b), the applicant is proposing improvements that will be necessary for the use of recycled wastewater on the tract where the irrigation will occur. These improvements will include a portion of the pipe that delivers the treated water, a pond that will store water, pumps and irrigation equipment, and a small pumphouse that will shelter the irrigation equipment.

(c) The establishment and use of facilities, including buildings and equipment, that are not on the tract on which the land application occurs for the transport of reclaimed water, agricultural or industrial process water or biosolids to the tract on which the land application occurs if the facilities are located within:

(A) A public right of way; or

(B) Other land if the landowner provides written consent and the owner of the facility complies with ORS 215.275 (4); and

(d) The transport by vehicle of reclaimed water or agricultural or industrial process water to a tract on which the water will be applied to land.

Applicant's response: Pursuant to subsection (c), the applicant is proposing ancillary facilities necessary for the use of recycled wastewater that will be developed on lands outside of the tract where the irrigation will occur, consisting primarily of the placement of a pipeline along public rights of way. In the limited instances where the pipeline is proposed to cross land that is not within a public right of way, the applicant understands that this statutory standard requires "written consent" from the land owner.

The proposed pipeline will also cross privately-owned land at the location between the wastewater treatment plant and the public right of way. Initially, the applicant obtained an easement to place its facilities on private lot between the treatment plant and the public right of way, but the applicant has subsequently purchased this lot, obviating the need for an easement.

The "alternative route" for the pipeline, depicted at Exhibit A, will also require the pipeline route to leave the public right of way and to cross private property. The applicant has the written authorization from the necessary private property owners, shown as Exhibit B.

(5) Uses not allowed under this section include:

(a) The establishment and use of facilities, including buildings or equipment, for the treatment of reclaimed water, agricultural or industrial process water or biosolids other than those treatment facilities related to the treatment that occurs as a result of the land application; or

(b) The establishment and use of utility facility service lines allowed under ORS 215.213 (1)(x) or 215.283 (1)(u).

Applicant's response: as explained in response to ORS 215.246(4), above, all water quality treatments will occur at the existing site of the Port Orford sewage treatment plant. Some degree of water quality improvement that is expected to occur incidentally to storing the recycled water in the pond and then applying it to the golf course, where it will be exposed to soil microbes and other natural processes. In reality, the water that is currently being discharged from the City of Port Orford's treatment plant is already treated to such a high level that it is permitted to be discharged directly into the ocean. Even though the reclaimed water coming from the treatment plant is treated to a high level, the applicant strongly believes that it is more environmentally sustainable to use the city's treated effluent for irrigation, where any trace contaminants will be broken down by the exposure to air and UV light during the pond storage period, and by soil microbes after it is applied as irrigation, as opposed to discharging it directly into the fragile marine environment.

In response to subsection (b), above, the applicant is not proposing any utility facility service lines. The current proposal involves the delivery, storage and use of recycled wastewater, as specifically allowed by ORS 215.283(1)(v) and ORS 283.246(3). The pipeline delivering the recycled wastewater is not a "utility service line" within the meaning of this statute because it is one of the necessary "facilities [...] for the transport of reclaimed water," specifically allowed under ORS 283.246(4)(c).

Conclusion

The statutory standards contained in ORS 215.246 have been addressed above. Attached as Exhibit A is a detailed description of the system that the applicant is proposing. It includes diagrams showing the proposed route and the alternative route, as well as a narrative section that explains the methods and materials of construction. If the county provides notice and an opportunity for public comment, the applicant will consider and respond to any alternatives that may be suggested, pursuant to ORS 215.246(3).

Exhibit A –

detailed description of proposal to develop and use a system for irrigating Pacific Gales Golf Course with recycled wastewater.

The applicant proposes to pipe recycled wastewater from the City of Port Orford wastewater treatment plant to the Pacific Gales Golf Course, and to use that water for irrigation. The proposed pipeline routes (including a preferred route and an alternative route) are shown on the diagrams attached to this exhibit. Only one of these two pipelines will be built.

The pipeline will primarily be placed using horizontal boring when it is located under city right of ways, in order to minimize surface disruption and impacts to tree roots. For portions of the pipe that are proposed to be located in the county, it will primarily be placed on the shoulder of the public right of way, using a standard trenching technique that will restore soil surface and paving surfaces to their original condition. The pipe will be placed using horizontal boring anywhere along the length of the pipeline when it is necessary to pass below certain existing utility facilities, such as cables or pipes.

The pipe material is 6" HDPE that will employ fused joints. A fusion-joined pipeline may be thought of as a continuous pipeline without joints. HDPE "DR11" pipe has an expected service life of 50-100 years. HDPE pipe has a fatigue life of 10,000,000 pump cycles, or in excess of 100 years. The combination of pipe and pump will be capable of moving 200 gpm. However, the pump that charges the pipeline will operate intermittently, as the wastewater treatment plant produces an average of 69.4 gpm. The recycled wastewater will be held in a 10,000 gallon accumulating tank located at tax lot 1011, adjacent to the treatment plant, until the quantity is sufficient to operate the pipeline.

The recycled water that will be obtained from the Port Orford treatment plant will be treated to DEQ Class C or higher. Despite the very high level of treatment already being conducted at the treatment plant, the water will undergo additional passive water quality improvements as it resides in the reservoir on the golf course, and again, as it percolates through the turf and soil.

At the northern terminus of the pipeline, it will discharge into an irrigation reservoir, as shown on page 2 of the attached irrigation plan. The reservoir is anticipated to cover an area of approximately seven acres, and will hold approximately 100 acre-feet. The reservoir will be designed and constructed according to the specifications established by the Water Resources Department's dam safety division.

The place of use for the recycled wastewater is shown on pages 1 and 2 of the attached irrigation plan. This plan shows the proposed irrigation system plumbing. In addition, the applicant proposes to use the water to grow and maintain turf and landscaping anywhere on the leased premises. The golf course management plan involves an adaptive system of monitoring soil moisture and applying irrigation as needed, given climatic conditions and growing season, in order to prevent erosion and maximize soil and landscaping health.

The total volume of recycled wastewater that is proposed to be pumped through the pipeline and

applied as golf course irrigation will likely not exceed 110 acre-feet per year, but that figure cannot yet be provided with certainty, as the applicant is still in discussions with the City of Port Orford to reach an agreement that will provide the applicant with recycled wastewater.

LAW OFFICE OF BILL KLOOS, PC

OREGON LAND USE LAW

375 W. 4TH AVE, SUITE 204
EUGENE, OR 97401
TEL: (541) 912-5280
FAX: (541) 343-8702
E-MAIL: NKLINGENSMITH@LANDUSEOREGON.COM

January 2, 2018

Curry County Board of Directors
94235 Moore Street, Suite 122
Gold Beach, OR 97444

Submitted via email to: Carolyn Johnson at johnsonc@co.curry.or.us

Re: AD-1705; permitholder's testimony regarding initiation of development activity

Dear Commissioners:

This letter is submitted on behalf of Elk River Property Development, LLC. It provides additional detail as to the development work that the permitholder has already performed, pursuant to the conditional use permit approval. The relevant provision in the Curry County Zoning Ordinance requires that development work for this type of permit be initiated within a specific period of time, and this letter will show that development activities were initiated within that period.

CCZO 7.050(4) governs discretionary decisions approving development on agricultural or forest land, and it requires development to be initiated within a prescribed time period. Typically, this code provision provides two years for a permitholder to initiate development activity, but in this case, the CUP approval had a condition that gave the applicant only one year. CCZO 7.050(4) provides, in relevant part:

“A discretionary decision approving development on agricultural or forest outside an Urban Growth Boundary (UGB) is void two years from the date of the final decision if the development is not initiated in that period.”

This letter contains photos, receipts, and banking records to show that development activity was initiated during the one-year period following the issuance of the CUP on January 15, 2015. “Development activity,” is defined by CCZO 1.030(34) as follows:

“(34) Development Activity. Any use or proposed use of land that requires disturbance of the vegetation or soils or which requires action of the Planning Division or Building Division to allow the construction or modification of structures or other improvements or to allow the division of the land.”

The documentation included in this letter demonstrates that the permit holder has engaged in development activity, in a manner consistent with the activity authorized by the CUP. This information includes:

- Photos from March 3, 2015, showing heavy equipment (bulldozers, excavators, fuel trucks) performing the removal of invasive gorse on the golf course development site. Removal of invasive plants was an essential and required element of the original CUP approval. These photos (along with the date-stamped emails) are included as exhibits A – F.

- Equipment costs for the two bulldozers and two excavators that were used in performing this ground-clearing. The heavy equipment is owned by the permitholder, but the equivalent rental costs can be used as a way to approximate the permitholder's expense in the depreciation and wear-and-tear that this type of work places on the equipment. These calculations are included as Exhibit G.
- Checkbook register from Highland Golf Services Inc. (a company owned by members of Elk River Property Development, LLC) showing it paid \$16,459.06 from the period of February, 2015 to June, 2015 for fuel and heavy equipment operator services provided by Jeff Knapp. This record is included as Exhibit H.
- An invoice from Bandon Well & Pump Co., showing the drilling of two wells on the property at a cost of \$12,303.80. These wells will likely be used for supplying the potable water to the golf course club house, pursuant to the original land use proposal, and pursuant to ORS 537.545(1)(f). This invoice is included as Exhibit I.

Collectively, this information shows that the permitholder has spent substantial sums of money and has initiated the development activity authorized by the CUP within the one-year period following the January 15, 2015 date that the CUP was issued. Because the permitholder initiated this development activity within the required time period, the permit has not lapsed, and it is vested, under CCZO 7.050(4).

Thank you for your attention to this issue. If the Board has any questions about the development activities conducted on the development site, pursuant to the CUP approval, the permitholder looks forward to answering them.

Sincerely,



Nick Klingensmith

Nick Klingensmith

From: Jim Haley <jmhaley@aol.com>
Sent: Friday, December 29, 2017 12:10 PM
To: Nick Klingensmith; Bill Kloos
Subject: Fwd:
Attachments: ATT00001.htm; 20150302_123422.jpg

Nick,

I am forwarding 5 or 6 emails with photos of clearance underway at Pacific Gales

Jim Haley
219-670-4224



-----Original Message-----

From: Troy Russell <troyerussell@gmail.com>
To: Jim Haley <jmhaley@aol.com>
Sent: Tue, Mar 3, 2015 8:44 am

Total Control Panel

[Login](#)

To: [Remove](#) this sender from my allow list
nickklingensmith@landuseoregon.com
From: jmhaley@aol.com

You received this message because the sender is on your allow list.



Nick Klingensmith

From: Jim Haley <jmhaley@aol.com>
Sent: Friday, December 29, 2017 12:14 PM
To: Nick Klingensmith; Bill Kloos
Subject: Fwd:
Attachments: ATT00001.htm; 20150302_123411.jpg

Dozer grubbing.

Jim Haley
219-670-4224



-----Original Message-----

From: Troy Russell <troyerussell@gmail.com>
To: Jim Haley <jmhaley@aol.com>
Sent: Tue, Mar 3, 2015 8:44 am

Total Control Panel

[Login](#)

To: nickklingensmith@landuseoregon.com [Remove](#) this sender from my allow list
From: jmhaley@aol.com

You received this message because the sender is on your allow list.



Nick Klingensmith

From: Jim Haley <jmhaley@aol.com>
Sent: Friday, December 29, 2017 12:26 PM
To: Nick Klingensmith; Bill Kloos
Subject: Fwd:
Attachments: ATT00001.htm; 20150302_123416.jpg

Jim Haley
219-670-4224



-----Original Message-----

From: Troy Russell <troyerussell@gmail.com>
To: Jim Haley <jmhaley@aol.com>
Sent: Tue, Mar 3, 2015 8:44 am

Total Control Panel

[Login](#)

To: nickklingensmith@landuseoregon.com [Remove](#) this sender from my allow list
From: jmhaley@aol.com

You received this message because the sender is on your allow list.



Nick Klingensmith

From: Jim Haley <jmhaley@aol.com>
Sent: Friday, December 29, 2017 12:29 PM
To: Nick Klingensmith; Bill Kloos
Subject: Fwd:
Attachments: ATT00001.htm; 20150302_124828.jpg

Big Dozer and Fuel Truck

Jim Haley
219-670-4224



-----Original Message-----

From: Troy Russell <troyerussell@gmail.com>
To: Jim Haley <jmhaley@aol.com>
Sent: Tue, Mar 3, 2015 8:44 am

Total Control Panel

[Login](#)

To: [Remove](#) this sender from my allow list
nickklingensmith@landuseoregon.com
From: jmhaley@aol.com

You received this message because the sender is on your allow list.



Nick Klingensmith

From: Jim Haley <jmhaley@aol.com>
Sent: Friday, December 29, 2017 12:42 PM
To: Nick Klingensmith; Bill Kloos
Subject: Fwd:
Attachments: ATT00001.htm; 20150302_122436.jpg

Nick,

I have more but this should do the trick, Two excavators and one dozer working

Jim Haley
219-670-4224



-----Original Message-----

From: Troy Russell <troyerussell@gmail.com>
To: Jim Haley <jmhaley@aol.com>
Sent: Tue, Mar 3, 2015 8:41 am

Total Control Panel

[Login](#)

To: nickklingensmith@landuseoregon.com [Remove](#) this sender from my allow list
From: jmhaley@aol.com

You received this message because the sender is on your allow list.



Nick Klingensmith

From: Jim Haley <jmhaley@aol.com>
Sent: Friday, December 29, 2017 11:47 AM
To: Nick Klingensmith; Bill Kloos
Subject: Fwd: Pacific Gales east-view photos
Attachments: ATT00001.htm

Here are photos taken pre clearance.

Jim Haley
219-670-4224

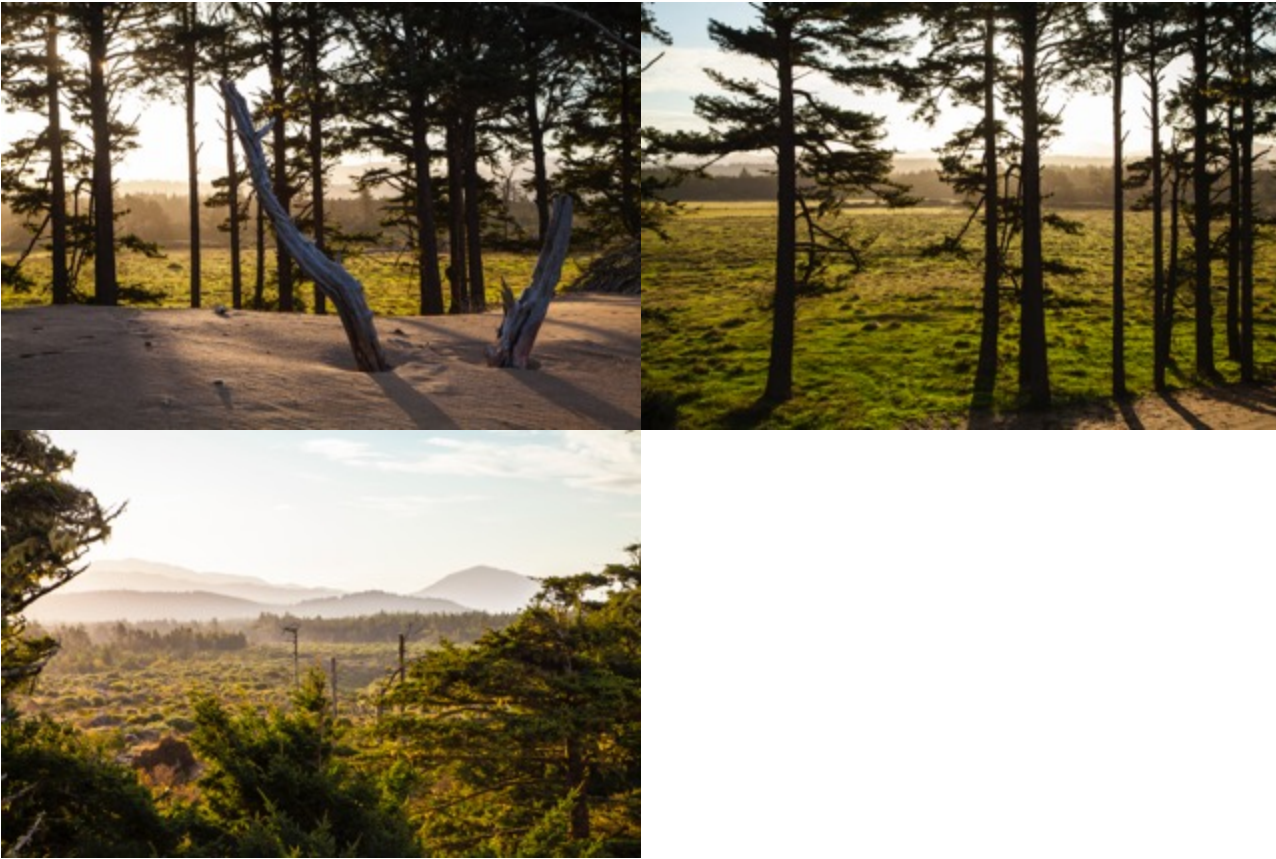


-----Original Message-----

From: Darin Bunch <darinbunch@mac.com>
To: Jim Haley <jmhaley@aol.com>
Sent: Mon, Dec 18, 2017 12:38 am
Subject: Pacific Gales east-view photos

[Download full resolution images](#)
[Available until Jan 16, 2018](#)

Hey Jim, let me know if any of these work for what you're looking for. —D



Total Control Panel

[Login](#)

To: nickklingsmith@landuseoregon.com [Remove](#) this sender from my allow list

From: jmhaley@aol.com

You received this message because the sender is on your allow list.

Nick Klingensmith

From: Jim Haley <jmhaley@aol.com>
Sent: Friday, December 29, 2017 1:02 PM
To: Nick Klingensmith
Subject: clearence costs
Attachments: ATT00001.htm; clearence cost.pdf

Nick,

I have included the check register for Highland Golf Services, These were for fuel and additional labor for clearance of gorse at the Pacific Gales golf course. I also want to include the typical rental rates for our excavators and dozers.

2	D-5G's (dozer)	\$5,200.00 per month	X 3.5	\$36,400.00
1	315cl (excavator)	\$8,500.00 per month	X 3.5	\$22,750.00
1	200 Kobelco (excavator)	\$12,000.00 per month	X3.5	\$42,000.00

Jim Haley
219-670-4224



Total Control Panel

[Login](#)

To: [Remove](#) this sender from my allow list
nickklingensmith@landuseoregon.com
From: jmhaley@aol.com

You received this message because the sender is on your allow list.

Highland Golf Services, Inc.
Check Detail
January 15, 2015 through January 15, 2016

Type	Num	Date	Name	Account	Paid Amount	Original Amount	Calculated Amount
Check	1049	02/03/2015	Jeff Knapp	1000 · First Nationa...		-348.00	
			Knapp Ranch	1700 · Prepaid Knap...	-348.00	348.00	
TOTAL					-348.00	348.00	
Check	1054	02/13/2015	Jeff Knapp	1000 · First Nationa...		-615.00	
			Knapp Ranch	1700 · Prepaid Knap...	-615.00	615.00	
TOTAL					-615.00	615.00	
Check	1057	02/24/2015	Jeff Knapp	1000 · First Nationa...		-2,562.50	
			Knapp Ranch	1700 · Prepaid Knap...	-2,562.50	2,562.50	
TOTAL					-2,562.50	2,562.50	
Check	1056	03/11/2015	Jeff Knapp	1000 · First Nationa...		-6,595.56	
			Knapp Ranch	1700 · Prepaid Knap...	-6,595.56	6,595.56	
TOTAL					-6,595.56	6,595.56	
Check	1058	03/24/2015	Jeff Knapp	1000 · First Nationa...		-1,960.00	
			Knapp Ranch	1700 · Prepaid Knap...	-1,960.00	1,960.00	
TOTAL					-1,960.00	1,960.00	
Check	1092	04/04/2015	Jeff Knapp	1000 · First Nationa...		-1,403.00	
			Knapp Ranch	1700 · Prepaid Knap...	-1,403.00	1,403.00	
TOTAL					-1,403.00	1,403.00	
Check	1094	04/23/2015	Jeff Knapp	1000 · First Nationa...		-1,405.00	
			Knapp Ranch	1700 · Prepaid Knap...	-1,405.00	1,405.00	
TOTAL					-1,405.00	1,405.00	
Check	1098	05/13/2015	Jeff Knapp	1000 · First Nationa...		-400.00	

2:42 PM
12/29/17

Highland Golf Services, Inc.
Check Detail
January 15, 2015 through January 15, 2016

Exhibit H

<u>Type</u>	<u>Num</u>	<u>Date</u>	<u>Name</u>	<u>Account</u>	<u>Paid Amount</u>	<u>Original Amount</u>	<u>Calculated Amount</u>
			Knapp Ranch	1700 · Prepaid Knap...	-400.00	400.00	
TOTAL					-400.00	400.00	
Check	1403.00	06/19/2015	Jeff Knapp	1000 · First Nationa...		-1,170.00	
			Knapp Ranch	1700 · Prepaid Knap...	-1,170.00	1,170.00	
TOTAL					-1,170.00	1,170.00	

JM

QTY.	MATERIAL	PRICE	AMOUNT
	Hole # 2-1026132	- L	116519
181'	Drilling 6" Testhole	18.50/ft	3348 50
202'	6" .250 Steel Casing @	19 00/ft	383 15
20	5x Bentonite @	10.50/sx	210 00
5	Sand Analysis	85 00/ea	425 00

Bandon Well & Septic Co., Inc. dba

BANDON WELL & PUMP CO.

Jim Mack, Sr. - MGWC-Owner

47530 Hwy 101

Bandon, Oregon 97411

(541) 347-7867



INVOICE No 14572

JOB PHONE	DATE OF ORDER
	4-10-2015
JOB NAME/LOCATION	
NO # end of Knapp Rd.	
#1 32-15-29 NW SW 1/4 20	
#2 32-15-30 NE SE 1/4 20	

TO: Knapp Ranches Inc. c/o Pacific Gates

PO BOX 790

Port Orford OR 97465

PHONE

541-297-1078

ORDER TAKEN BY

Chris

PAYMENT DUE UPON COMPLETION

#	DESCRIPTION OF WORK	AMOUNT
# 1026132	Oregon State Start Card x 2 @ 250 00 ea	500 00
	MOBILIZATION x 2 @ 750 00 ea	1500 00
	Hole #1 L116515	
	240' Drilling 6" Test hole @ 18.50/ft	4440 00
	20'-2" of 6" .250 Steel Casing @ 19 00/ft	383 15
	18 5x Bentonite @ 10.50/sx	189 00
	5-sand Analysis @ 85 00/ea	425 00

LABOR	HOURS	RATE	AMOUNT	TOTAL MATERIAL
Grouting 1x2	4	125 00	500 00	11803 80
				TOTAL LABOR
				500 00
				12303 80
				Deposit CK # 1030
				6705 00

WORK ORDERED BY: *Tom Russell - Pacific Gates* DATE COMPLETED: *4/10/2015*

CUSTOMER SIGNATURE (I hereby acknowledge the satisfactory completion of the above described work.)

DISPOSAL CHARGE TAX

Thank You!

PAY THIS AMOUNT UPON COMPLETION

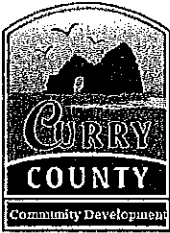
5598 80

TERMS: BILLING DISPUTES MUST BE REPORTED TO OFFICE WITHIN 48 HRS

All open accounts will incur a \$15.00 credit handling fee. A 2% MONTHLY FINANCE CHARGE (24% ANNUAL PERCENTAGE RATE) will be charged on accounts not paid within 10 days. Minimum Finance Charge of \$2.50 per month.

In case suit or action is commenced to recover the amount due and signed for hereunder, the company/person promises to pay the cost of such reasonable costs as the court may adjudge as and for attorney's fees and other costs and disbursements.

ATTACHMENT 5a
APPLICANT'S NOVEMBER 10 AND DECEMBER 20 APPEALS



CURRY COUNTY COMMUNITY DEVELOPMENT

94235 MOORE STREET, SUITE 113
GOLD BEACH, OREGON 97444

Carolyn Johnson
Planning Director

Phone (541) 247-3284
FAX (541) 247-4579

FOR OFFICE USE ONLY

Date Received: 12.20.2017

NOTICE OF APPEAL

This is a request to appeal the following decision by Curry County

Land Use Decision by the Curry County Planning Commission

Land Use Decision by the Planning Director

DECISION INFORMATION

Decision Date: December 14
November 8, 2017 Application File # AD-1705

Applicants Name(s): Elk River Property Development, LLC

APPELLANT INFORMATION

STANDING: I have standing because (check one)

I am the applicant or agent of the applicant

I participated in the decision orally at the hearing or with written testimony

I represent an agency that is affected by the decision and have standing through participation in the hearing process

Appellant Name(s): Elk River Property Development, LLC

Mailing Address: (agent address) Law Office of Bill Kloos, 375 W. 4th Ave, suite 204, Eugene, OR 97401

Phone: (541)343-8596; (541)912-5280 E-mail: billkloos@landuseoregon.com

nklingsmith@landuseoregon.com

NOTE: An appeal of a decision will be heard by the appeals body specified in the relevant ordinance as a de novo (or entirely new) hearing. Appeals must be filed within the appeal period specified following the initial decision to be considered by the appeals body. The required fee, in currency or negotiable instrument must accompany this notice in order for it to be accepted as an appeal by the county.

LAW OFFICE OF BILL KLOOS, PC

OREGON LAND USE LAW

375 W. 4TH AVE, SUITE 204
EUGENE, OR 97401
TEL: (541) 912-5280
FAX: (541) 343-8702
E-MAIL: BILLKLOOS@LANDUSEOREGON.COM

December 18, 2017

Curry County Board of Commissioners

Submitted via email to:

Carolyn Johnson, Planning Director: johnsonc@co.curry.or.us

John Huttli, County Attorney: huttli@co.curry.or.us

Re: AD-1705

Applicant's appeal of Planning Commission denial for reclaimed water
alternatives analysis

Dear County Board:

This letter is submitted on behalf of the Elk River Property Development, LLC, the applicant for the alternatives analysis requested in application AD-1705. The Planning Commission's order denying the application was signed on December 14, 2017.

This is an appeal of the Planning Commission's remade decision. The first decision is also on appeal. We expect that these appeals will be consolidated for hearing at the Board. With this letter we explicitly incorporate into this appeal the issues and discussion in my November 10 appeal letter. We also expect that the notice for the appeal hearing will inform potential parties that is the situation with language along the following lines:

The applicant appealed the November 8 decision of the Planning Commission, and that appeal was put on hold at the request of the applicant. The applicant then appealed the amended decision of the Planning Commission signed on November 14. Both appeals will be consolidated for purposes of hearing by the County Board. The de novo appeal hearing at the County Board will be on January __, 2018, at __ PM at _____.

In addition to the appeal form, this letter provides supplemental information required by Curry County Zoning Ordinance 2.170(7)(c) and (d). Those code provisions require a notice of appeal to include:

“(c) A statement explaining the specific issues being raised on appeal.

“(d) A statement demonstrating that the appeal issues were raised during the public comment period.”

The issues stated here were raised in the proceeding before the Commission, as reflected in the transcript and record materials.

The applicant's response to the first of those provisions is:

The Planning Commission denied the request for reclaimed water alternatives analysis for two reasons. Each of the reasons is in error and is contrary to the law and the evidence.

First, the Commission denied the use because it found that the permit for the golf course to be served had expired. It reasoned there was an absolute requirement to apply for an extension of the permit within one year in order for the land use approval to continue to be valid.

The Planning Commission erred in this finding, because the subject property is the site of a golf course that was previously approved by the Curry County Board of Commissioners. Development of that golf course has commenced. Golf courses are among the list of land uses that can receive reclaimed, pursuant to ORS 215.283(1)(v). The applicant looks forward to providing detailed information to the County Board that it initiated development during the first year and thus vested the golf course use.

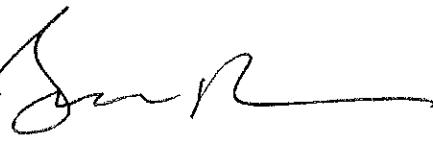
Second, the Commission found that ORS 215.283(1)(v) can't provide the basis for issuance of the permit requested here.

This finding misreads state law. It is true that the applicant cannot commence construction or use of its reclaimed water project until it has approval from both the county and DEQ, but there is nothing in the statute that suggests a particular sequence as to which of those approvals must come first; they are both required. ORS 215.246 anticipates that the county will conduct its part of the statutory alternatives analysis, and that DEQ will review the technical questions of how use of reclaimed water will ensure continued agricultural productivity of the site. The Planning Commission should have completed its portion of the alternatives analysis and made its decision contingent on DEQ's completion of the agricultural productivity analysis.

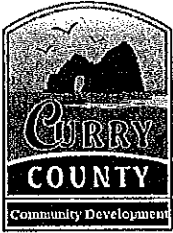
Finally, CCZO 2.170(7)(d) requires the notice of appeal to include a statement demonstrating that the appeal issues were raised during the public comment period. The record of the Planning Commission will reflect that the applicant presented the Planning Commission with arguments and evidence that the subject property is the site of an approved golf course that, pursuant to ORS 215.283(1)(v), is entitled to receive reclaimed water, and also that DEQ's analysis of agricultural productivity does not need to be completed in order for the county to consider the alternatives analysis.

We look forward to participating the *de novo* review of this decision. Thank you very much for your attention to this matter.

Sincerely,

Bill Kloos 

Bill Kloos



CURRY COUNTY COMMUNITY DEVELOPMENT

94235 MOORE STREET, SUITE 113
GOLD BEACH, OREGON 97444

Carolyn Johnson
Planning Director

Phone (541) 247-3284
FAX (541) 247-4579

FOR OFFICE USE ONLY

Date Received: 11-10-2017

NOTICE OF APPEAL

This is a request to appeal the following decision by Curry County

Land Use Decision by the Curry County Planning Commission

Land Use Decision by the Planning Director

DECISION INFORMATION

Decision Date: November 8, 2017 Application File # AD-1705

Applicants Name(s): Elk River Property Development, LLC

APPELLANT INFORMATION

STANDING: I have standing because (check one)

I am the applicant or agent of the applicant

I participated in the decision orally at the hearing or with written testimony

I represent an agency that is affected by the decision and have standing through participation in the hearing process

Appellant Name(s): Elk River Property Development, LLC

Mailing Address: (agent address) Law Office of Bill Kloos, 375 W. 4th Ave, suite 204, Eugene, OR 97401

Phone: (541)343-8596; (541)912-5280 E-mail: billkloos@landuseoregon.com

nklingensmith@landuseoregon.com

NOTE: An appeal of a decision will be heard by the appeals body specified in the relevant ordinance as a de novo (or entirely new) hearing. Appeals must be filed within the appeal period specified following the initial decision to be considered by the appeals body. The required fee, in currency or negotiable instrument must accompany this notice in order for it to be accepted as an appeal by the county.

LAW OFFICE OF BILL KLOOS, PC

OREGON LAND USE LAW

375 W. 4TH AVE, SUITE 204
EUGENE, OR 97401
TEL: (541) 912-5280
FAX: (541) 343-8702
E-MAIL: BILLKLOOS@LANDUSEOREGON.COM

November 10, 2017

Curry County Board of Commissioners

Submitted via email to:

Carolyn Johnson, Planning Director: johnsonc@co.curry.or.us

John Huttli, County Attorney: huttlij@co.curry.or.us

Re: AD-1705

Applicant's appeal of Planning Commission denial for reclaimed water alternatives analysis

Dear County Board:

This letter is submitted on behalf of the Elk River Property Development, LLC, the applicant for the alternatives analysis requested in application AD-1705. The Planning Commission's order denying the application was signed and mailed on November 8, 2017. In addition to the appeal form and appeal fee, this letter provides supplemental information required by Curry County Zoning Ordinance 2.170(7)(c) and (d). Those code provisions require a notice of appeal to include:

- “(c) A statement explaining the specific issues being raised on appeal.
- “(d) A statement demonstrating that the appeal issues were raised during the public comment period.”

The applicant's response to the first those provisions is:

The Planning Commission denied the request for reclaimed water alternatives analysis for two reasons. The first reason provided in the Planning Commission findings states:

- “(a) No permitted use has been established under ORS 215.283(1)(v) because the statute requires the irrigation to be for a different approved use under section ORS 215.283(1)(v) which has not been identified.”

That finding is cryptic, at best. To the extent that the applicant understands it, it appears that the Planning Commission was implying that the subject property does not currently have one of the approved uses on it that could be the place of use for reclaimed water, as governed by ORS 215.283(1)(v). The Planning Commission erred in this finding, because the subject property is the site of a golf course that was previously approved by the Curry County Board of Commissioners. Development of that golf course has commenced. Golf courses are among the list of land uses that can receive reclaimed, pursuant to ORS 215.283(1)(v).

The second basis for denial provided in the Planning Commission findings states:

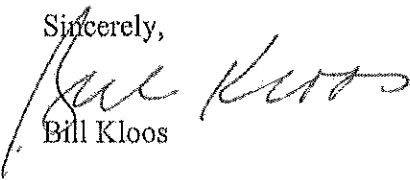
“(b) an approved use under (*sic*) 215.283(1)(v), is “subject to” ORS 215.246, which means the use is not permitted until the Oregon Department of Environmental Quality (DEQ) has completed its determination pursuant to ORS 215.246(1)(a); DEQ has not completed the subject determination.”

This finding simply misreads state law. It is true that the applicant cannot commence construction or use of its reclaimed water project until it has approval from both the county and DEQ, but there is nothing in the statute that suggests a particular sequence as to which of those approvals must come first; they are both required. ORS 215.246 anticipates that the county will conduct its part of the statutory alternatives analysis, and that DEQ will review the technical questions of how use of reclaimed water will ensure continued agricultural productivity of the site. The Planning Commission should have completed its portion of the alternatives analysis and made its decision contingent on DEQ’s completion of the agricultural productivity analysis.

Finally, CCZO 2.170(7)(d) requires the notice of appeal to include a statement demonstrating that the appeal issues were raised during the public comment period. The record of the Planning Commission will reflect that the applicant presented the Planning Commission with arguments and evidence that the subject property is the site of an approved golf course that, pursuant to ORS 215.283(1)(v), is entitled to receive reclaimed water, and also that DEQ’s analysis of agricultural productivity does not need to be completed in order for the county to consider the alternatives analysis.

We look forward to participating the *de novo* review of this decision. Thank you very much for your attention to this matter.

Sincerely,


Bill Kloos

**Attachment 6
Easement Agreements**

Agreement to convey easement for privately-owned water pipeline across Kreiger Lane

This agreement is between Jeffrey C. Loan, Richard Seagrave, Russell Gibson, Michael Shields, Duane Eckoff, Edward Cottor, James Johnson and Heather Barton ("Grantors") and Elk River Property Development, LLC ("ERPD"). Grantors are the joint owners of a private street known as Kreiger Lane in Curry County, Oregon. This agreement will provide a route for a private water pipe that will deliver treated wastewater from the City of Port Orford wastewater treatment facility to the Pacific Gales Golf Course, for purposes of irrigation.

Agreement limited to private water pipeline. The utility easement described in this agreement will be used only for a private water pipeline. This agreement specifically does not authorize construction of any other public or private utilities, or any use of the subject property beyond the specific terms contained herein.

Agreement will result in recorded easement. After ERPD obtains all permits necessary to being installation of the pipeline, and prior to commencing any physical construction, Grantors agree to grant an easement, consistent with the terms contained herein, which will be recorded in the deeds and records of Curry County, Oregon. If ERPD is unable to obtain necessary permits within 12 months of the execution of this agreement, this agreement will automatically expire and will be thereafter null and void. Should that occur, the parties to this agreement may negotiate an extension to this agreement, or a replacement to this agreement

Location of easement and pipeline. The exact location of the pipeline will be recorded in easement prior to construction. The pipeline will cross Kreiger Lane in the approximate area between Russell Gibson and Jeffrey Loan Property. During construction, a temporary 20-foot wide easement will be required to allow for access to the construction area. After the pipeline is complete, the permanent easement will be limited to an area 10 feet wide. The pipeline will be placed at a depth at least 3 feet below native grade of the soil.

Method of construction. The pipeline that is authorized under this agreement will be installed by method of horizontal boring, which is intended to minimize disturbance of the surface of the soil. If any soil disturbance is required, ERPD will restore the soil surface to a reasonable approximation of its original, pre-construction condition. ERPD will restore the road surface to a condition equal to, or better than its original, preconstruction condition. ERPD will minimize disturbance or removal of existing vegetation, and will restore or replace vegetation to a condition that closely approximates the original condition.

Brokers. No licensed real estate brokers have represented any parties in this transaction. The parties to this agreement are not liable for any brokerage fees or commissions. This Agreement has been prepared by ERPD.

Executed this 15 day of FEB, 2017, by ERPD:

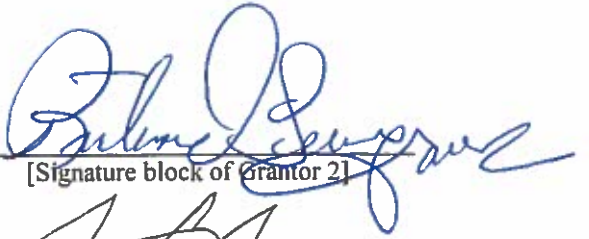

[Signature block for ERPD]

GRANTORS' ACCEPTANCE: Grantor accepts the ERPD's offer this 12 day of Feb, 2017.

Jeffery C. Loan
Lot 3215-29C #00103

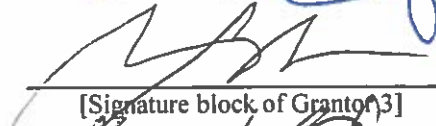

[Signature block of Grantor 1]

Richard Seagrave
Lot 3215-29C #00118



[Signature block of Grantor 2]

Russell A. Gibson
Lots 3215-29C # 00108 & 00120



[Signature block of Grantor 3]

Michael F. Shields
Lot 3215-29C # 00104



[Signature block of Grantor 4]

Duane K. Eckoff
Lot 3215-29C #00105



[Signature block of Grantor 5]

Edward A. Cottor
Lot 3215-29C #00106



[Signature block of Grantor 6]

James Johnson
Lot 3215-29C #121



[Signature block of Grantor 7]

Heather Barton
Lot 3215-29C #00107



[Signature block of Grantor 8]



Stuntzner Engineering & Forestry, LLC

ENGINEERING * LAND SURVEYING * FORESTRY
LAND PLANNING * WATER RIGHTS

705 SOUTH 4TH STREET
P.O. BOX 118
COOS BAY, OREGON 97420

PHONE: (541) 267-2872
FAX: (541) 267-0588
www.stuntzner.com

PROPOSED WATERLINE

JOB NAME: Job Name	
DATE: NOVEMBER 2016	
JOB NO: XX-XXX	DESIGN BY: CDH
PAGE: 1 OF 1	DRAWN BY: AER

Agreement to convey easement for privately-owned water pipeline

This agreement is between Jeffery C. Loan and Elk River Property Development, LLC ("ERPD"). Grantor is the owner of property in Curry County, Oregon, known as 3215-29C lot # 00103. This agreement will provide a route for a private water pipe that will deliver treated wastewater from the City of Port Orford wastewater treatment facility to the Pacific Gales Golf Course, for purposes of irrigation.

Agreement limited to private water pipeline. The utility easement described in this agreement will be used only for a private water pipeline. This agreement specifically does not authorize construction of any other public or private utilities, or any use of the subject property beyond the specific terms contained herein.

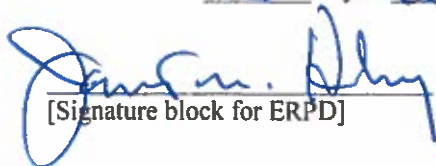
Agreement will result in recorded easement. After ERPD obtains all permits necessary to being installation of the pipeline, and prior to commencing any physical construction, Grantor agrees to grant an easement, consistent with the terms contained herein, which will be recorded in the deeds and records of Curry County, Oregon. If ERPD is unable to obtain necessary permits within 12 months of the execution of this agreement, this agreement will automatically expire and will be thereafter null and void. Should that occur, the parties to this agreement may negotiate an extension to this agreement, or a replacement to this agreement

Location of easement and pipeline. The exact location of the pipeline will be recorded in easement prior to construction. In general, the parties agree that the pipeline will be placed as close as possible to property lines, in order to minimize interference with Grantor's other uses of the property. During construction, a temporary 20-foot wide easement will be required to allow for access to the construction area. After the pipeline is complete, the permanent easement will be limited to an area 10 feet wide. The pipeline will be placed at a depth at least 3 feet below native grade of the soil.

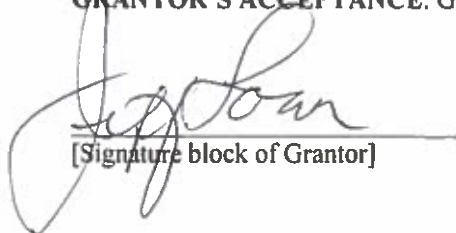
Method of construction. The pipeline that is authorized under this agreement will be installed by method of horizontal boring, which is intended to minimize disturbance of the surface of the soil. If any soil disturbance is required, ERPD will restore the soil surface to a reasonable approximation of its original, pre-construction condition. ERPD will minimize disturbance or removal of existing vegetation, and will restore or replace vegetation to a condition that closely approximates the original condition.

Brokers. No licensed real estate brokers have represented any parties in this transaction. The parties to this agreement are not liable for any brokerage fees or commissions. This Agreement has been prepared by ERPD.

Executed this 12 day of FEB, 2017, by ERPD:


[Signature block for ERPD]

GRANTOR'S ACCEPTANCE: Grantor accepts the ERPD's offer this 12 day of Feb, 2017.


[Signature block of Grantor]

Agreement to convey easement for privately-owned water pipeline

This agreement is between Jeffery C. Loan and Elk River Property Development, LLC ("ERPD"). Grantor is the owner of property in Curry County, Oregon, known as 3215-29C lot # 00103. This agreement will provide a route for a private water pipe that will deliver treated wastewater from the City of Port Orford wastewater treatment facility to the Pacific Gales Golf Course, for purposes of irrigation.

Agreement limited to private water pipeline. The utility easement described in this agreement will be used only for a private water pipeline. This agreement specifically does not authorize construction of any other public or private utilities, or any use of the subject property beyond the specific terms contained herein.

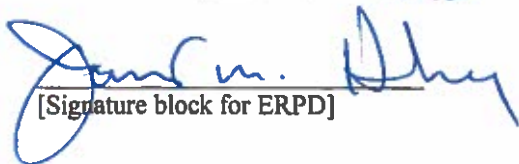
Agreement will result in recorded easement. After ERPD obtains all permits necessary to being installation of the pipeline, and prior to commencing any physical construction, Grantor agrees to grant an easement, consistent with the terms contained herein, which will be recorded in the deeds and records of Curry County, Oregon. If ERPD is unable to obtain necessary permits within 12 months of the execution of this agreement, this agreement will automatically expire and will be thereafter null and void. Should that occur, the parties to this agreement may negotiate an extension to this agreement, or a replacement to this agreement

Location of easement and pipeline. The exact location of the pipeline will be recorded in easement prior to construction. In general, the parties agree that the pipeline will be placed as close as possible to property lines, in order to minimize interference with Grantor's other uses of the property. During construction, a temporary 20-foot wide easement will be required to allow for access to the construction area. After the pipeline is complete, the permanent easement will be limited to an area 10 feet wide. The pipeline will be placed at a depth at least 3 feet below native grade of the soil.

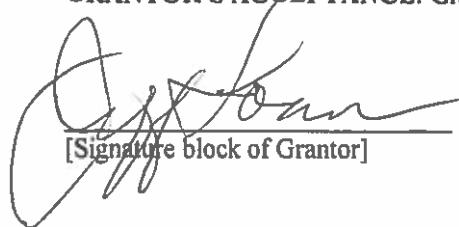
Method of construction. The pipeline that is authorized under this agreement will be installed by method of horizontal boring, which is intended to minimize disturbance of the surface of the soil. If any soil disturbance is required, ERPD will restore the soil surface to a reasonable approximation of its original, pre-construction condition. ERPD will minimize disturbance or removal of existing vegetation, and will restore or replace vegetation to a condition that closely approximates the original condition.

Brokers. No licensed real estate brokers have represented any parties in this transaction. The parties to this agreement are not liable for any brokerage fees or commissions. This Agreement has been prepared by ERPD.

Executed this 12 day of FEB 2017, by ERPD:


[Signature block for ERPD]

GRANTOR'S ACCEPTANCE: Grantor accepts the ERPD's offer this 12 day of Feb, 2017.


[Signature block of Grantor]

Agreement to convey easement for privately-owned water pipeline

This agreement is between **Russell A. Gibson and Elk River Property Development, LLC ("ERPD")**. Grantor is the owner of property in Curry County, Oregon, known as **3215-29C lot # 00108**. This agreement will provide a route for a private water pipe that will deliver treated wastewater from the City of Port Orford wastewater treatment facility to the Pacific Gales Golf Course, for purposes of irrigation.

Agreement limited to private water pipeline. The utility easement described in this agreement will be used only for a private water pipeline. This agreement specifically does not authorize construction of any other public or private utilities, or any use of the subject property beyond the specific terms contained herein.

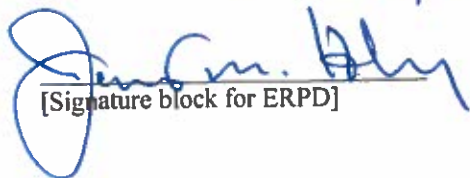
Agreement will result in recorded easement. After ERPD obtains all permits necessary to being installation of the pipeline, and prior to commencing any physical construction, Grantor agrees to grant an easement, consistent with the terms contained herein, which will be recorded in the deeds and records of Curry County, Oregon. If ERPD is unable to obtain necessary permits within 12 months of the execution of this agreement, this agreement will automatically expire and will be thereafter null and void. Should that occur, the parties to this agreement may negotiate an extension to this agreement, or a replacement to this agreement

Location of easement and pipeline. The exact location of the pipeline will be recorded in easement prior to construction. In general, the parties agree that the pipeline will be placed as close as possible to property lines, in order to minimize interference with Grantor's other uses of the property. During construction, a temporary 20-foot wide easement will be required to allow for access to the construction area. After the pipeline is complete, the permanent easement will be limited to an area 10 feet wide. The pipeline will be placed at a depth at least 3 feet below native grade of the soil.

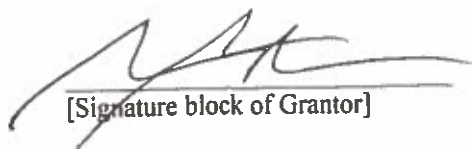
Method of construction. The pipeline that is authorized under this agreement will be installed by method of horizontal boring, which is intended to minimize disturbance of the surface of the soil. If any soil disturbance is required, ERPD will restore the soil surface to a reasonable approximation of its original, pre-construction condition. ERPD will minimize disturbance or removal of existing vegetation, and will restore or replace vegetation to a condition that closely approximates the original condition.

Brokers. No licensed real estate brokers have represented any parties in this transaction. The parties to this agreement are not liable for any brokerage fees or commissions. This Agreement has been prepared by ERPD.

Executed this 5 day of April 2017, by ERPD:


[Signature block for ERPD]

GRANTOR'S ACCEPTANCE: Grantor accepts the ERPD's offer this 3 day of 31, 2017.


[Signature block of Grantor]

Agreement to convey easement for privately-owned water pipeline

This agreement is between **Bret C. & Dalia G Obrien** ("Grantor") and **Elk River Property Development, LLC** ("ERPD"). Grantor is the owner of property in Curry County, Oregon, known as **3215-29D lot # 00621**. This agreement will provide a route for a private water pipe that will deliver treated wastewater from the City of Port Orford wastewater treatment facility to the Pacific Gales Golf Course, for purposes of irrigation.

Agreement limited to private water pipeline. The utility easement described in this agreement will be used only for a private water pipeline. This agreement specifically does not authorize construction of any other public or private utilities, or any use of the subject property beyond the specific terms contained herein.

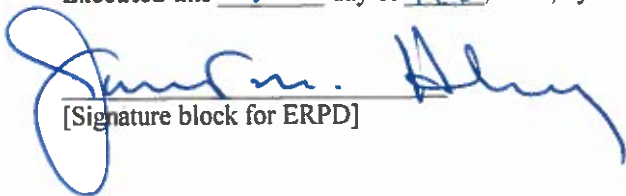
Agreement will result in recorded easement. After ERPD obtains all permits necessary to being installation of the pipeline, and prior to commencing any physical construction, Grantor agrees to grant an easement, consistent with the terms contained herein, which will be recorded in the deeds and records of Curry County, Oregon. If ERPD is unable to obtain necessary permits within 12 months of the execution of this agreement, this agreement will automatically expire and will be thereafter null and void. Should that occur, the parties to this agreement may negotiate an extension to this agreement, or a replacement to this agreement

Location of easement and pipeline. The exact location of the pipeline will be recorded in easement prior to construction. In general, the parties agree that the pipeline will be placed as close as possible to property lines, in order to minimize interference with Grantor's other uses of the property. During construction, a temporary 20-foot wide easement will be required to allow for access to the construction area. After the pipeline is complete, the permanent easement will be limited to an area 10 feet wide. The pipeline will be placed at a depth at least 3 feet below native grade of the soil.

Method of construction. The pipeline that is authorized under this agreement will be installed by method of horizontal boring, which is intended to minimize disturbance of the surface of the soil. If any soil disturbance is required, ERPD will restore the soil surface to a reasonable approximation of its original, pre-construction condition. ERPD will minimize disturbance or removal of existing vegetation, and will restore or replace vegetation to a condition that closely approximates the original condition.

Brokers. No licensed real estate brokers have represented any parties in this transaction. The parties to this agreement are not liable for any brokerage fees or commissions. This Agreement has been prepared by ERPD.

Executed this 4 day of Feb, 2017, by ERPD:


[Signature block for ERPD]

GRANTOR'S ACCEPTANCE: Grantor accepts the ERPD's offer this 4 day of Feb, 2017.


[Signature block of Grantor]

Agreement to convey easement for privately-owned water pipeline

This agreement is between **Bret C. & Dalia G Obrien** ("Grantor") and **Elk River Property Development, LLC** ("ERPD"). Grantor is the owner of property in Curry County, Oregon, known as **3215-29D lot # 00621**. This agreement will provide a route for a private water pipe that will deliver treated wastewater from the City of Port Orford wastewater treatment facility to the Pacific Gales Golf Course, for purposes of irrigation.

Agreement limited to private water pipeline. The utility easement described in this agreement will be used only for a private water pipeline. This agreement specifically does not authorize construction of any other public or private utilities, or any use of the subject property beyond the specific terms contained herein.

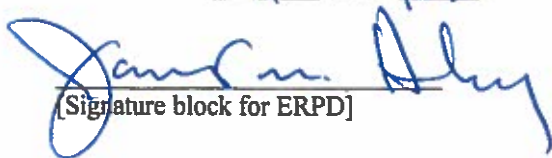
Agreement will result in recorded easement. After ERPD obtains all permits necessary to being installation of the pipeline, and prior to commencing any physical construction, Grantor agrees to grant an easement, consistent with the terms contained herein, which will be recorded in the deeds and records of Curry County, Oregon. If ERPD is unable to obtain necessary permits within 12 months of the execution of this agreement, this agreement will automatically expire and will be thereafter null and void. Should that occur, the parties to this agreement may negotiate an extension to this agreement, or a replacement to this agreement

Location of easement and pipeline. The exact location of the pipeline will be recorded in easement prior to construction. In general, the parties agree that the pipeline will be placed as close as possible to property lines, in order to minimize interference with Grantor's other uses of the property. During construction, a temporary 20-foot wide easement will be required to allow for access to the construction area. After the pipeline is complete, the permanent easement will be limited to an area 10 feet wide. The pipeline will be placed at a depth at least 3 feet below native grade of the soil.

Method of construction. The pipeline that is authorized under this agreement will be installed by method of horizontal boring, which is intended to minimize disturbance of the surface of the soil. If any soil disturbance is required, ERPD will restore the soil surface to a reasonable approximation of its original, pre-construction condition. ERPD will minimize disturbance or removal of existing vegetation, and will restore or replace vegetation to a condition that closely approximates the original condition.

Brokers. No licensed real estate brokers have represented any parties in this transaction. The parties to this agreement are not liable for any brokerage fees or commissions. This Agreement has been prepared by ERPD.

Executed this 4 day of FEB, 2017, by ERPD:


[Signature block for ERPD]

GRANTOR'S ACCEPTANCE: Grantor accepts the ERPD's offer this 4 day of Feb, 2017.


[Signature block of Grantor]



Attachment 7
Application to County

CURRY COUNTY COMMUNITY DEVELOPMENT
94235 MOORE STREET, SUITE 113
GOLD BEACH, OREGON 97444

Carolyn Johnson
Planning Director

Phone (541) 247-3284
FAX (541) 247-4579

File # _____ Fee \$ _____ Receipt # _____ Accepted by _____

LAND USE DECISION APPLICATION FORM

Application Type (Check One)

- Comp Plan/Zone Change
 Conditional Use
 Variance
 Partition
 Subdivision
 Other

Application Date: _____ Hearing / Decision Date: _____

APPLICANT: Please complete all parts of this form. The attached application checklist will be marked by staff to reflect the information and supporting items required for this request. Please return this prepared checklist, the completed application form and required fee at the time of submission. Please note that your application cannot be reviewed or processed until all the required items have been provided.

1. PROPERTY OWNER OF RECORD

Name public right-of-way, owned by Curry County and ODOT, as shown on exhibit. Private property owned by Knapp Ranches, Inc.

Mailing Address: (for Knapp Ranches) 92373 Knapp Rd

City, State, ZIP: Port Orford, OR 97465

Telephone #: _____ E-Mail bknapp@2cj.com

2. AGENT (If Any)

Name: Nick Klingensmith, Law Office of Bill Kloos, P.C.

Mailing Address: 375 W. 4th Ave, suite 201,

City, State, ZIP: Eugene OR, 97401

Telephone # 541-912-5280 E-Mail nklingensmith@landuseoregon.com

3. BASIC PROPOSAL (Briefly describe your proposed land use)

The applicant proposes to develop a pipeline to deliver recycled wastewater, and a reservoir, in order to irrigate the Pacific Gales golf course. The pipeline will be developed inside public rights of way, and also on private property. There are two alternative routes under consideration. The reservoir will be developed on private property. Please see attached narrative that addresses relevant approval standards.

4. PROPERTY INFORMATION

Assessor Map # See attached narrative Tax Lot (s) _____

Zoning: _____ Total Acreage _____

5. PROPERTY LOCATION

Address (if property has a situs address) _____

Description of how to locate the property The two pipeline routes under consideration are depicted in attached exhibits. They can generally be described as (1) running north along Arizona St, and thence west and north across land owned by Knapp Ranches Inc.; and (2) running north along Madrona Ave., until travelling west (partially through private property, with the landowner's permission) to land owned by Knapp Ranches, Inc.

6. EXISTING LAND USE (briefly describe the present land use of the property)

Vacant Developed; Describe existing development The subject property is a mixture of vacant and developed. The public rights of way are developed with roadbed and pavement. Portions of the private property along both routes have varying degrees of existing low-density residential development. The property known as the Knapp Ranch is vacant, and is primarily used for cattle grazing.

7. SURROUNDING LAND USES (Briefly describe the land uses on adjacent property)

Land uses adjacent to the proposed pipeline include low-density residential uses, and vacant lands, as depicted in the attached exhibits.

8. SERVICE AND FACILITIES AVAILABLE TO THE PROPERTY

Please indicate what services and facilities are available to the property. If on-site sewage disposal and/or water source is proposed, a copy of the approved site evaluation or septic system permit and a copy of any water rights or well construction permit must be submitted with this application.

The proposed development is a pipeline that will carry recycled wastewater. None of the services and facilities in this list are needed for the use, and none of them are germane to relevant approval criteria.

Water Source _____

Sewage Disposal _____

Electrical Power _____

Telephone Service _____

Fire Department/District _____

School District _____

9. ROAD INFORMATION

Nearest Public Road See attached narrative

Private Roads Serving the Property See attached narrative

Road Condition _____

Legal Status _____

Ownership: I own the road Easement on others property Joint Owner

Please submit record of ownership (i.e. deeds, easement, plat dedication, etc)

Proposed New Roads/Driveways (Briefly describe any new road construction related to this application)

10. PHYSICAL DESCRIPTION OF THE SUBJECT PROPERTY

Topography (Briefly describe the general slope and terrain of the property)

The land where the proposed pipeline will be developed is relatively flat, for both routes under consideration, with a gentle upward slope as the pipeline advances to the north.

Vegetation (Briefly describe the vegetation on the property) For the portion of the pipeline that will be developed within public rights of way, there is no vegetation. For the portion of the pipeline that will be developed across the Knapp Ranch, the vegetation is a mix of low timber and scrub.

11. FINDINGS OF FACT

Oregon Statute and the zoning ordinance requires that land use decisions be supported by factual findings. The burden of proof is on the proponent therefore it is required that the application provide findings to support the request in this application. The standards and criteria that are relevant to this application will be provided by the staff and are considered to be a part of this application form. Please read the standards and criteria carefully and provide factual responses and evidence to address each standard. These findings must be sufficiently specific to allow the decision maker to determine whether your request meets the relevant standard. Please attach your written findings and supporting evidence to this application.

FAILURE TO PROVIDE THE REQUIRED FINDINGS WILL PREVENT THE APPLICATION FROM BEING PROCESSED AND IT WILL BE RETURNED AS BEING INCOMPLETE.

12. APPLICANT'S SIGNATURE AND STATEMENT OF UNDERSTANDING

(Please read the statement below *before* signing the signature blank)

I (We) _____ ;

_____ ; have filed this application for


With the Curry County Department of Community Development-Planning Division to be reviewed and processed according to State of Oregon and county ordinance requirements. My (our) signature (s) below affirms that I (we) have discussed the application with the staff, and that I (we) acknowledge the following disclosures:

- (a) I (we are stating all information and documentation submitted with this application is true and correct to the best of my (our) knowledge.

- (b) I (we) understand that if false information and documentation has been submitted and the decision is based on that evidence, the decision may be nullified and the county may seek all legal means to have the action reversed.
- (c) I (We) understand any representations, conclusions or opinions expressed by the staff in pre-application review of this request do not constitute final authority or approval, and I (we) am (are) not entitled to rely on such expressions in lieu of formal approval of my (our) request.
- (d) I (We) understand that I (we) may ask questions and receive input from staff, but acknowledge that I (we) am (are) ultimately responsible for all information or documentation submitted with this application. I (We) further understand staff cannot legally bind the county to any fact or circumstance which conflicts with State of Oregon or local ordinance, and in event a conflict occurs, the statement or agreement is null and void.
- (e) I (We) understand that I (we) have the burden of proving that this request meets statutory and Ordinance requirements, and I (we) must address all of the criteria that may apply to the decision being made. The criteria for approving or denying this request have been provided to me (us) as a part of the application form.
- (f) I (We) understand the staff is entitled to request additional information or documentation any time after the submission of this application if it is determined as such information is needed for review and approval.
- (g) I (We) understand this application will be reviewed by the Oregon Department of Land Conservation & Development (DLCD) and possibly other state agencies as part of the statewide land use coordination process. I (We) understand that agencies that participate in the review process have the legal right to appeal the approval of the request.
- (h) I (We) understand that it is my (our) responsibility, and not the county's, to respond to any appeal and to prepare the legal defense of the county's approval of my (our) request. I (We) further realize it is not the county's function to argue the case at any appeal hearing.
- (i) I (We) understand that I (we) am (are) entitled to have a lawyer or land use consultant represent me (us) regarding my application and to appear with me (or for me) at any appointment, conference or hearing relating to it. In light of the complexity and technical nature of most land use decisions, I (we) understand that it may be in my best interests to seek professional assistance in preparation of this application.
- (j) The undersigned are the owner (s) of record for the property described as:

Assessor Map(s) _____
 and Tax Lot(s) _____
 in the records of Curry County.

This application MUST BE SIGNED BY ALL PROPERTY OWNERS OF RECORD, or you must submit a notarized document signed by each owner of record who has not signed the application form, stating that the owner has authorized this application.

- (1) Signature 
 Print Name Nick Klingensmith, attorney for Elk River Property Development, LLC
- (2) Signature _____

(3) Signature _____

Print Name _____

(4) Signature _____

Print Name _____

ADDITIONAL NOTES:

All fees must be paid at the time your application is filed. Staff will examine the application when filed to check for completeness and will not accept it if required items are missing. A final completeness check will be made prior to doing public notice regarding the pending decision. If it is determined to be incomplete or the findings are insufficient you will be notified and you must provide the required information in a timely manner to avoid denial of the request.

ORS 215.427 required the county to take final action on a land use application (except for plan/zone changes) including all local appeals within 120 days if inside an Urban Growth Boundary (UGB) or 150 days if outside a UGB once the application is deemed complete.

PLOT PLANS:

All applications require that a plot plan of the subject property be included with the application form. The plot plan is an understandable map of your property and its relationship to adjacent properties. The plot plan must show certain essential information that is needed for the staff and the decision makers in the evaluation of your request. The plot plan is also incorporated into the public notice sent to adjacent property owners and affected agencies. The plot plan should be prepared on a single sheet of paper (preferable 8 ½ x 11”) so copies can easily be reproduced for review.

An example plot plan is attached to this form to give you an idea of what information should be included on your plan and how it should be drawn. The plot plan **does not** have to be prepared by a surveyor or engineer, and can generally be prepared by the applicant from the Assessor map of the property. The dimensional information included on the plot plan must be accurate and drawn to scale so that the plot plan reasonably represents the subject property and any development therein. If your application is for a land partition or subdivision Oregon Statute required that plat maps must be prepared by a surveyor licensed by the state.

ATTACHMENT 8

**November 8 and December 14, 2017 Planning Commission Final orders
(attachments to the Orders can be viewed at the Community Development Department at
94235 Moore Street #113 in Gold Beach Oregon)**

**BEFORE THE PLANNING COMMISSION
CURRY COUNTY, OREGON**

In the matter of a Conditional Use Permit (AD-1705))
Denying the Elk River Property Development LLC)
Application to develop a pipeline to deliver recycled) **FINAL ORDER**
wastewater in order to irrigate the Pacific Gales) and Findings of Fact
golf course. File #: AD-1705.)

ORDER in the **DENIAL** of a Conditional Use Permit (CUP) application (AD-1705) for development of a pipeline to deliver recycled wastewater in order to irrigate the Pacific Gales golf course. The subject property is located on Map/TL: Sections 19, 29 & 30 of Township 32 S., Range 15 W., M. Tax lot 4400, and Section 29c of Township 32 S., Range 15. W., W. M. Tax lot 500, and additional property and public right of way in Curry County, Oregon.

WHEREAS: This matter came before the Curry County Planning Commission as application AD -1705 for a CUP authorizing the construction of a development of a pipeline to deliver recycled wastewater in order to irrigate the Pacific Gales golf course.

A public hearing on the application was held before the Planning Commission on September 21 and October 19, 2017 as a matter duly set upon the agenda of each regular meeting after giving public notice to affected property owners as set forth in Section 2.070.

At the September 21 and October 19, 2017 public hearings on the CUP application, evidence and testimony was presented by the Community Development Director and her designee in the form of Findings of Fact, Conclusions, and exhibits. The hearings were conducted according to the rules of procedure and conduct of hearings on land use matters as set forth in Section 2.140(2) of the Curry County Zoning Ordinance. The Planning Commission received oral and written evidence concerning this application. After receiving public testimony on September 21, 2017, the Planning Commission continued the public hearing to October 19, 2017.

After receiving public testimony at the October 19, 2017 public hearing, the public hearing was closed and the Planning Commission continued its deliberations to November 7, 2017.

On November 7, 2017, the Planning Commission deliberated on the application based on evidence submitted into the record. Upon a motion duly made and seconded, the Planning Commission voted to **DENY** CUP application AD -1705.

FINDINGS OF FACT:

The Planning Commission considered the findings in Staff Report dated September 19, October 21 and November 7, 2017 (Exhibit 1) *Supplemental Information on AD-1705* (Exhibit 2) as well as both written and oral testimony submitted into the public hearing record as the basis for this decision.

CONCLUSIONS OF LAW

1. The burden of proof is upon the Applicant in proving that the proposal fully complies with applicable ordinance criteria, Oregon State Statutes and Oregon Administrative Rules as set forth in Section 2.100(1)(a).
2. The Planning Commission finds that Exhibit 1, Findings of Fact and Conclusions; Exhibit 2, and evidence and testimony presented at the hearings of September 21, and October 19, 2017 addressed the relevant comprehensive plan policies and standards of the zoning ordinance, but did not sufficiently address Oregon State Statute and Administrative Rules sufficiently to support the burden of proof needed to approve the Conditional Use Permit application for development of a pipeline to deliver recycled wastewater construction.

NOW THEREFORE LET IT HEREBY BE ORDERED that AD-1705, a request for a CUP to develop a pipeline to deliver recycled wastewater construction is **DENIED** with the following findings:

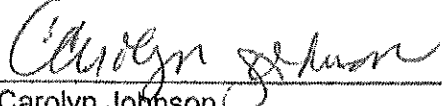
1. The applicant has not met the burden of proof to support approval of the proposed Elk River Property Development LLC Application AD-1705 because:
 - a) No permitted use has been established under ORS 215.283(1)(v) because the statute requires the irrigation to be for a different approved use under section ORS 215.283(1)(v) which has not been identified.
 - b) An approved use under 215.283(1)(v), is "subject to" ORS 215.246, which means the use is not permitted until the Oregon Department of Environmental Quality (DEQ) has completed its determination pursuant to ORS 215.246(1)(a); DEQ has not completed the subject determination.

This order in **DENYING** CUP Application AD-1705 was reviewed and **APPROVED** this 8th day of November, 2017.

CURRY COUNTY PLANNING COMMISSION



John Brazil, Chairperson
Planning Commission



Carolyn Johnson
Community Development Director

2.140(2) of the Curry County Zoning Ordinance, The Planning Commission received oral and written evidence concerning this application.

After receiving public testimony on September 21, 2017 and October 19, 2017, the hearing portion of the proceedings was closed and the Planning Commission voted to reconvene on November 7, 2017 for deliberation only. The written record was left open until 5:00 pm on October 26, 2017 for final arguments by the Applicant.

On November 7, 2017, the Planning Commission resumed the proceedings for deliberation based on evidence submitted into the record as outlined above. No new testimony was taken.

At the conclusion of the public hearing, after consideration and discussion of the evidence and testimony, and upon a motion duly made and seconded, the Planning Commission voted to DENY the request as set forth above and proposed in Application AD-1705 based on decision criteria, findings of fact, and conclusions of law as set forth in this order.

FINDINGS OF FACT:

The Planning Commission considered the findings in the Staff Report with Exhibits dated September 21, 2017 (Exhibit "A"), the Staff Report with Exhibits and supplemental information packet dated October 19, 2017, (Exhibit "B") and staff report with exhibits dated November 7, 2017, (Exhibit "C") that are attached hereto and incorporated herein by reference, and both written and oral testimony submitted into the public hearing record prior to and on October 19, 2017 as the basis for this decision.

CONCLUSIONS OF LAW:

1. The burden of proof is upon the Applicant in proving that the proposal fully complies with applicable ordinance criteria, Oregon State Statutes and Oregon Administrative Rules.
2. The Planning Commission finds that Exhibits "A", "B" and "C" addressed the relevant comprehensive plan policies and standards of the zoning ordinance, but did not address Oregon State Statutes and Administrative Rules sufficiently to support the burden of proof needed to approve application AD-1705.
3. The Planning Commission finds that the Applicant has not met the burden of proof to support approval of the proposed application.

ANALYSIS OF APPROVAL CRITERIA:

1. Conditional Use Permit AD-1411 expired on January 16, 2016.

AD-1705 involves an application to use recycled waste-water to irrigate a golf course. However, a golf course is not a use permitted outright in an Exclusive Farm Use Zone in the Curry County Zoning Ordinance (CCZO). The conditional use permit approved pursuant to AD-1411 is not a valid basis upon which to authorize the actions of AD-1705 because it has expired.

In Planning Commission Staff Report, September 21, 2017, Attachment 4, County Counsel Memo, July 2017, county counsel referenced *Oregon Coast Alliance v. Curry County (Oregon Coast Alliance v.*

Curry County Or 22 LUBA 080 (2016)), and suggested that this opinion found that a golf course is a permitted use in an Exclusive Farm Use Zone. The Commission found that the case referenced was incorrect and the LUBA decision referenced was limited to a certain structure on an already approved use, and the opinion did not address the question of whether or not a golf course is a permitted use.

The Commission therefore considered whether the conditional use permit for the golf course authorized under AD-1411 would serve to support AD-1705, but found that the permit had expired. In the Curry County Board of Commissioners ("Board") resolution and order 20127 (01/16/2015) regarding appeal A-1403 challenging Planning Commission file AD-1411 approving a golf course in an Exclusive Farm Use Zone, the Board considered conditional use permit application AD-1411, de novo. When considering CCZO Article VII, Section 7.050 Time Limit on a Permit for Conditional Uses, the Board approved AD-1411 subject to conditions of approval, including:

1. *This conditional use permit is valid for one (1) year unless Applicant applies for and receives an extension of this approval.*

It is clear that in their analysis of applicable standards and criteria in Board Order 20127, the Board was aware of the full text of CCZO Article VII, Section 7.050 Time Limit on a Permit for Conditional Uses, and in their analysis and findings decided that Conditional Use Permit AD-1411 would be valid for one year unless Applicant applied for and received an extension of the Board's approval.

In considering AD-1705, Planning Commission Staff Report, October 19, 2017, confirmed that permit AD-1411 had expired because the Applicant did not apply for and receive an extension.

From the Staff Report for the Planning Commission hearing on October 19, 2017:

The Planning Commission asked whether a time extension had been filed for the Conditional Use Permit AD-1411 related to the Pacific Gales Golf course. The answer to that question is no.

The Applicant then proposed that the Board had approved a discretionary decision approving development on agricultural lands, however the Commission found that the language of Condition 1 in Board Order 20127 was clear - the applicant must apply for and receive an extension to the permit within one year -and found that the Commission cannot read a different meaning into the condition language.

Applicant then argued that site clearing that began in February 2015 satisfied the conditions of approval. We do not accept Applicant's argument and find that the more restrictive conditions of approval imposed by the Board are within the Board's authority to apply conditions that are more restrictive than other provisions in the CCZO.

CCZO Article X, Section 10.040 Interpretations states in part:

The provisions of this ordinance shall be held to the minimum requirements fulfilling its objectives. Where the conditions imposed by a provision of this ordinance are less restrictive than comparable conditions imposed by any other provision of this ordinance or of any other ordinance, resolution or regulation, the provisions which are more restrictive shall govern.

2. Use of effluent/reclaimed water for irrigation in exclusive farm use zones.

Applicant and county counsel argue that Oregon Revised Statutes, Volume 6, Chapter 215 allows the Planning Commission to approve AD-1705 absent an identified use, relying on wording in ORS 215.283(1)(v):

215.283 Uses permitted in exclusive farm use zones in nonmarginal lands counties; rules. (1) The following uses may be established in any area zoned for exclusive farm use: (v) Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695 (License required to perform sewage disposal services), 459.205 (Permit required), 468B.050 (Water quality permit), 468B.053 (Alternatives to obtaining water quality permit) or 468B.055 (Plans and specifications for disposal, treatment and sewerage systems), or in compliance with rules adopted under ORS 468B.095 (Use of sludge on agricultural, horticultural or silvicultural land), and as provided in ORS 215.246 (Approval of land application of certain substances) to 215.251 (Relationship to other farm uses), the land application of reclaimed water, agricultural or industrial process water or biosolids for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zone under this chapter.

The Commission rejected this argument as incomplete.

First, if an applicant is to use subsection (v) as a basis to irrigate something, it must be irrigating something that is itself an allowed use in an Exclusive Farm Use Zone, noting: "*irrigation in connection with a use allowed in an Exclusive Farm Use Zone under this chapter.*" As established above, the applicant plans to irrigate a golf course. The golf course, while a possible allowed use is a conditional use, not an outright use, and the conditional use permit the applicant obtained under AD-1411 expired. Thus, no specific permitted or allowed use has been established under ORS 215.283(1)(v).

Second, ORS 215.283(1)(v) specifically reads that issuance of a permit is:

Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695 (License required to perform sewage disposal services), 459.205 (Permit required), 468B.050 (Water quality permit), 468B.053 (Alternatives to obtaining water quality permit) or 468B.055 (Plans and specifications for disposal, treatment and sewerage systems), or in compliance with rules adopted under ORS 468B.095 (Use of sludge on agricultural, horticultural or silvicultural land), and as provided in ORS 215.246 (Approval of land application of certain substances) to 215.251 (Relationship to other farm uses).

The Commission found that no permit can be issued unless the items following the words "*subject to*" have been satisfied, and what follows is an approval by Department of Environmental Quality (DEQ). However, in this case the DEQ has not investigated and provided an approval for using effluent to irrigate the golf course and therefore the Commission is not authorized to approve the use.

Further, the Commission finds that ORS 215.283(1)(v) is subject to ORS 215.246(1)(a):

215.246 Approval of land application of certain substances; subsequent use of tract of land; consideration of alternatives. (1) The uses allowed under ORS 215.213 (1)(y) and 215.283 (1)(v):

(a) Require a determination by the Department of Environmental Quality, in conjunction with the department's review of a license, permit or approval, that the application rates and site management practices for the land application of reclaimed water, agricultural or industrial process water or biosolids ensure continued agricultural, horticultural or silvicultural production and do not reduce the productivity of the tract.

We find that without an existing “*license, permit or approval*” as required by ORS 215.246(1)(a), the Planning Commission cannot approve AD-1705 because the proposed use of reclaimed water for irrigation is not in connection with a specific application site and an identified use. The applicant has no valid permit or approval for any identified use because permit AD-1411 has expired.

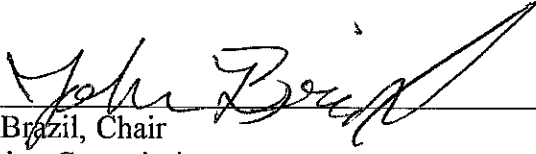
The Commission determined that the applicant failed to establish that ORS 215.283(1)(v) served as a basis to justify approval of the use of effluent to irrigate the golf course because (1) it did not provide proof of a “*use[s] permitted in exclusive farm use zones*” and (2) because the Department of Environmental Quality has not yet provided an approval.

FINDINGS:

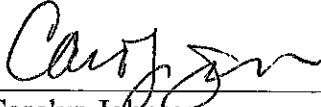
1. Conditional Use Permit AD-1411 expired on January 16, 2016 because:
 - a. Condition of Approval 1 for AD-1411, imposed by the Board on January 1, 2015, required the Applicant to apply for and receive an extension for Conditional Use Permit AD-1411 within one year, and allowed no other method by which the Applicant can extend the one year time limit on the permit.
 - b. Applicant did not request and receive an extension for Conditional Use Permit AD-1411.
2. The applicant failed to establish that ORS 215.283(1)(v) served as a basis to justify the permit requested in AD-1705 to use effluent to irrigate the golf course because:
 - a. Applicant did not provide proof of a “*use[s] permitted in exclusive farm use zones*”
 - b. The Department of Environmental Quality has not yet provided an approval.
 - c. ORS 215.283(1)(v) is subject to ORS 215.246(1)(a).
 - d. ORS 215.246(1)(a) requires that a permitted use be established before an approval for the land application of effluent can be considered.
 - e. Applicant has no established or permitted use because Conditional Use Permit AD-1411 expired on January 16, 2016, and thus Applicant cannot establish a permitted use required by ORS 215.246(1)(a).

This ORDER in DENIAL of Application AD-1705 was reviewed and approved by the Planning Commission on this 14th day of December, 2017.

CURRY COUNTY PLANNING COMMISSION



John Brazil, Chair
Planning Commission



Carolyn Johnson
Planning Director

EXHIBIT A
Staff Reports with Exhibits dated September 21, 2017

EXHIBIT B

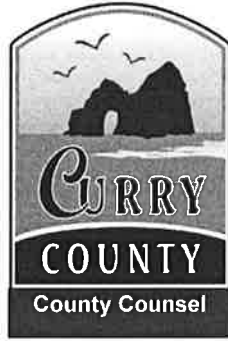
Staff Report with Exhibits and supplemental information packet dated October 19, 2107

EXHIBIT C
Staff Report with Exhibits dated November 7, 2017

Attachment 9

November 27, 2017 Legal memorandum to the Board

July, 2017, October 11 and October 24 memos to the Planning Commission



MEMORANDUM

FROM John R. Hutt, Curry County Counsel

TO Curry County Board of Commissioners

RE: Appeal of Denial for Permit to Irrigate with Treated Water

DATE: November 27, 2017

Introduction

This memorandum provides advice for the Board when considering the issues in this appeal.

The application was for the County to consider the applicant's response to public comments on applicant's plan to irrigate a planned golf course with treated water piped from the Port Orford water treatment plant.

The Planning Commission denied the application because (1) it decided state law required a valid existing use, and there was insufficient evidence of that; and (2) it decided state law required a DEQ approval before it could consider the application.

The applicant appealed from that decision. As set forth below, the Board is not bound by, and cannot give any weight to the Planning Commission's work or decision.

Discussion

Standard of Review

The Board considers this review "de novo." That means this is a new hearing and the Board is not bound by, and cannot give any deference or weight to, the Planning Commission's work or decision. Nevertheless, that material is part of the record for the Board's review.

Curry County Zoning Ordinance 2.170(1) states:

In the matter of all appeals, the decision making body shall take up the appeal as a de novo issue and the final written order or conclusions of the lower

decision making body being appealed shall not be considered in the appellate review.

In Johnson v Clackamas County, the Oregon Land Use Board of Appeals (LUBA) sustained a claim of error by an applicant when a county hearings officer, on “de novo” review, discounted evidence submitted that was not provided below, and accorded deference to the Planning Director’s decision under review. LUBA held that the hearings officer committed legal error. LUBA 98-216, pp. 4-5 (1999). Thus, the Board must conduct a hearing “de novo” and treat all evidence equally and must not show any deference to the Planning Commission’s efforts.

Questions for Review

A) Preliminary Issue: Whether there was a final order for purposes of appeal under our code.

Based on the proceedings below, the Board must determine whether there is a final order for it to review on appeal. The Board may conclude that the Planning Commission issued a final order in this case. If not, the Board should dismiss this appeal. In that case, the Planning Commission would need to continue with its actions and issue a final order per the code.

Curry County Zoning Ordinance regarding Planning Commission Final Orders

CCZO section 2.140(2) (m) & (n) state:

(m) Conclusion and findings.

At the conclusion of the hearing, the decision making body shall make its decision with a motion, duly seconded which shall pass with a majority vote of the members present to constitute a quorum of the decision making body. The decision making body may state findings which may incorporate findings proposed by any party, or the Director, or may take the matter under advisement. The decision making body may request proposed findings and conclusions from any party to the hearing. The decision making body, before finally adopting findings and conclusions may circulate the same in proposed form to the parties for written comment. All actions taken by the decision making body pursuant to adopting findings and conclusions shall be made a part of the record. The decision making body shall announce the time, date and place that it will adopt its final written order regarding the matter being heard at the conclusion of the hearing.

(n) Decision.

The decision, findings and conclusions which support the decision shall not be final until reduced to writing and approved by a vote of the majority of the members present to constitute a quorum of the decision making body. The written decision shall be signed by the Chair of the commission or majority of the Board whichever is applicable. The Director shall send a copy of the final decision notice of the commission or Board to all parties with standing in the matter who have provided a proper mailing address and have indicated that they want a copy of the notice and shall, at the same time, file a copy of the final written order in the records of the County. A copy of the final written order shall be provided to the applicant and appellant who have paid an

application or appeal fee. Others who request a copy of the order shall pay a copy fee for the document.

In this case, the decision making body closed its public hearing and decided to consider the matter at a future date. On October 26, 2017, Planning Staff issued an email with the November 7, 2017 Planning Commission staff report. The report included a written final order, and concluded with options:

The Commission may:

- a. Deliberate and continue action to another date certain. The following dates are available for continued deliberation: November 20 – 22; 27-30; December 4-7, 11-14, and January 18.
- b. Deliberate and Approve application AD-1705 by adopting Resolution 2017-AD-1705 as found on exhibit 1.

Staff Recommendation:

- 1) Deliberate and Approve application AD-1705 by adopting Resolution 2017-AD-1705 (Attachment 1).
- 2) If direction is provided to continue the meeting to a date certain to bring back a resolution for denial, the Planning Commission must identify findings for denial for inclusion in the resolution.

Exhibit One and Attachment One were the final order and resolution for approval.

The Planning Commission neither voted for approval, nor continued the matter to a date to consider resolution for denial. Instead, it deliberated and voted. It debated whether the existence of Conditional Use Permit approving Pacific Gales Golf Course (AD 1411) was expired or not. Below are excerpts from the Transcript, the entirety of which is an Exhibit in the record.

Planning Commissioner McHugh (Transcript, p. 13, lines 10-25) (describing the Board of Commissioner's Final Order in AD 1411):

“Authorization of conditional use permit in general shall become null and void after one year unless substantial construction has taken place or an extension has been granted under section 7.050(4). Substantial construction in this case means obtaining all necessary permits required by governmental agencies to commence construction of any structures or to commence the principal activity permitted by the conditional use permit.

* * *

This conditional use permit approval is valid for one year unless the applicant applies for and receives an extension of this approval.”

McHugh concluded (Transcript p. 19, lines 1-14):

If the conditional use permit is not valid at this point in time, then the reservoir system on the Knapp Ranch property would be part of a new conditional use permit application as opposed to this.

This particular process, this application, as it states, can't be reviewed, can't be appealed, can't be remanded, can't be changed.

And so we need to stick to the central question that was presented to us and determine what to do with these other parts. That's where the validity of the conditional use permit becomes important.

Planning Commissioner Morrow (Transcript p. 19 line 17 to page 20, line 12):

I'd like to point out the agenda that we approved for today. This speaks clearly to in order to irrigate the Pacific Gales golf Course.

Chief Brazil: And I agree.

Morrow: And the question of if that is in fact expired or not is extremely valid, and substantial construction is the core of that section that was cited earlier, and it's all necessary permits.

We just heard the DEQ is not included as an 'all necessary' permit, and it's over a year past. Moving some Gorse in not substantial. Permits here are lacking.

Chair Brazil: Carolyn, have any building permits actually been filed for or in process?

Director Johnson: No. No.

Planning Commissioner Freeman (Transcript p. 20, line 16 – 25):

Normally on golf courses they do the groundwork and then they site the building. Normally that's the way it works. And I've only been involved with one from beginning to end and that's on Salmon Run.

Then on this Gorse issue, I have I'm pretty familiar with area and that's pretty inundated with Gorse, which is probably a pretty substantial deal for anybody to remove that.

Planning Commissioner St. Marie (Transcript p. 14, lines 21-22):

I am seeing this as a total separate issue.

Planning Commissioner St. Marie explained (Transcript p. 21, line 16 to p. 22, line 2):

In re-reading the agenda from September 21st, the application is a request to develop a pipeline over multiple properties to deliver recycled wastewater and a reservoir in order to irrigate the Pacific Gales Golf Course.

Now it doesn't say that it exists. It doesn't say, you know, that's -- the goal is to get the water out there for this potential development. That's what we're supposed to be focused on, not what the status of this potential development is in my opinion.

Chair Brazil summarized Planning Commissioner Pagano's point (Transcript page 27 lines 14-17):

That if we don't have an active permit, then it's not an outright use.

Planning Commissioner Pagano: And that's what I'm thinking.

At the end of deliberations, a motion to deny the application was made. Planning Commissioner McHugh (Transcript, page 32, lines 9 -13):

"I am going to make a motion that we deny AD-1705 based on the absence of a valid conditional use permit, and then all the reasons that Shannon explained but I didn't write down."

Planning Commissioner Pagano (Transcript, page 32, lines 14-15):
"I'll email them to Carolyn."

During Deliberation it was discussed how to word the order: (Transcript Page 32)

Chair Brazil (Transcript, page 32, lines 16-22): .

We – okay. We used this one here.

* * *

"This as written on page 4 is to include this."

Director Johnson

"Substitute that word."

The Chair then restated the motion before the vote:

Chair Brazil (Transcript, page 33, lines 5–11):

OK I have a motion on the floor to deny AD-1705 and it will be that Curry County Planning Commission hereby denies the Elk River Property Development, LLC, application AD-1705 to develop a pipeline for recycled water in order to irrigate the Pacific Gales golf Course with the description of the properties.

After deliberation the Planning Commission denied the application by a 4-3 vote. (Transcript page 33-line 13 to page 34 lines 11).

Planning Commissioner Pagano e-mailed the findings to Director Johnson, who amended the final order and included those findings, and had the Chair sign the final order. The final order was issued to the applicant, who filed this appeal.

The question is whether the code requires a different procedure than was followed to meet the requirement that the “decision, findings and conclusions which support the decision” be “reduced to writing and approved by a vote of the majority of the members present to constitute a quorum.”

When reaching its decision, the Board should understand that our code allows flexibility when considering technical procedural issues. Curry County Zoning Ordinance 2.140(5) states:

(b) Substantial, not technical compliance with these rules is required.

(c) Any rule of procedure not required by law may be amended, suspended, or repealed at any time by majority vote of those Board members present and voting.

The Board can find that the final order was reduced to writing, then amended to include findings and conclusions by a majority vote of the Planning Commission, then signed by the Chair. Further, the record in this case includes a transcript of the deliberations of the Planning Commission. Therefore, the specific reasons for the decision are included in the record.

Based on all the facts and circumstances surrounding the publication of the order, the motion, deliberation, vote, inclusion of findings as directed, reduction to writing and signature by the Chair, the Board can find that our CCZO 2.140(2)(m)&(n) were complied with.

In the alternative, to the extent CCZO 2.140(2)(m)&(n) were not technically complied with, there has been substantial compliance, and there is a final order for appeal. CCZO 2.140(5)(b).

Further, if it was not technically complied with, pursuant to CCZO 2.140(5)(c) the Board can suspend the portion of the rule that requires the decision, findings and conclusions to be reduced to writing before being voted on by a majority of the members constituting a quorum,” and we have a final order for this appeal.

B) Issues Identified in the Appeal

Two issues were identified in the notice of appeal.

- 1) The appellant has claimed error in the Planning Commission’s reasoning that there is not the required use identified under the statute in question; and
- 2) The appellant has claimed error in the Planning Commission’s reasoning that the Department of Environmental Quality (DEQ) must complete its determination before the County can consider the application.

From County Counsel perspective, these two issues were already addressed in separate memorandum to the Planning Commissioners. First, there is no need to have a CUP to approve

the application, because the “allowed use” in the zone is an abstract concept. For the second issue, the DEQ needs the County to make its decision first, then DEQ reviews the County’s decision. The Board can review County Counsel’s prior memoranda to Planning Commission in the record.

If the Board determines that the statute requires a valid use – in this case that the Pacific Gales Conditional Use Permit AD 1411 is valid – then it can hear from the applicant why the Board should decide that its permit has not expired. The standard in the Board’s final order approving Pacific Gales is taken from the Zoning Ordinance.

Section 7.050. Time Limit on a Permit for Conditional Uses.

1. Authorization of a conditional use, in general, shall become null and void after one year unless substantial construction has taken place or an extension has been granted under Section 7.050 (4). Substantial construction in this case means obtaining all necessary permits required by governmental agencies to commence construction of any structures or to commence the principal activity permitted by the conditional use permit.

Section 1.030 Definitions

34. Development Activity. Any use or proposed use of land that requires disturbance of the vegetation or soils or which requires action of the Planning Division or Building Division to allow the construction or modification of structures or other improvements or to allow the division of the land.

58. Golf Course. An area of land with highly maintained natural turf laid out for the game of golf with a series of 9 or more holes, each including a tee, a fairway, a putting green, and often one or more natural or artificial hazards. A golf course on land zoned AFD or EFU means a 9 or 18 hole regulation golf course consistent with the following:

(a) A regulation 18 hole 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.

(b) A regulation 9 hole golf course is generally characterized by a site of about 65 to 90 acres of land, has a playable distance of 2,500 to 3,600 yards, and a par of 32 to 36 strokes.

(c) Non-regulation golf courses are not allowed uses within the AFD and EFU zones.

Non-regulation golf course means a golf course or golf course-like development that does not meet the definition of golf course given above, including but not limited to executive golf courses, Par 3 golf courses, pitch and put golf courses, miniature golf courses and driving ranges.

(d) Uses accessory to a golf course in the AFD and EFU zones shall be limited by the following standards:

(A) An accessory use to a golf course is a facility or improvement that is incidental to the operation of the golf course and is either necessary

for the operation and maintenance of the golf course or that provides goods or services customarily provided to golfers at a golf course. An accessory use or activity does not serve the needs of the non-golfing public. Accessory uses to a golf course may include: parking; maintenance buildings; cart storage or repair; practice range or driving range; clubhouse; restrooms, lockers and showers; food and beverage service; pro shop; a practice or beginners course as part of an 18 hole or larger golf course. 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.

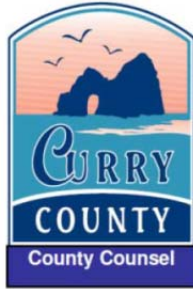
(B) Accessory uses shall be limited in size and orientation on the site to serve the needs of the persons and their guests who patronize the golf course to golf. An accessory use that provides commercial services (e.g. food and beverage service, pro shop, etc.) shall be located in the clubhouse rather than in separate buildings.

Based on the above, the Board should consider whether upon the evidence presented the applicant has performed substantial development on its golf course development project under AD-1411.

Let me know if you have any questions.



John R. Huttel
Curry County Counsel



MEMORANDUM

FROM: John R. Hutt, Curry County Counsel

TO: Curry County Planning Commission AD 1705

RE: Staff Response to ORCA submittal

DATE: October 24, 2017

Introduction

On October 18, 2017, ORCA submitted documents to the Planning Commission arguing three points. First, that the language “in connection with” required an existing or approved use; second, that a permit from the Oregon Department of Environmental Control was required before the Planning Commission could consider the application; and third, that the Conditional Use Permit required an amendment before the Planning Commission can consider the application.

As set forth below, the Board can reject all of ORCA’s arguments.

Discussion

I. Whether a valid CUP must exist given statutory language “in connection with”

In a memorandum to the Board, I advised that the language of ORS 215.283(1) did not require that an existing golf course or even a valid approved golf course was required before the Planning Commission could consider the application to consider alternatives to using treated water to irrigate a golf course.

ORCA’s position is that the language in the statute “in connection with” requires an existing or otherwise validly permitted allowed use in the zone, and that I was remiss in some way in omitting that language from my memorandum.

I was aware of that language when I wrote my memorandum, and considered that language immaterial to my analysis, and therefore did not include it as it does not change my analysis.

The Planning Commission ultimately decides whether the language is material and its meaning and effect on this application.

In the alternative, if the Planning Commission decides that a valid permit is required, the applicant has submitted documentation and argument as to why it has satisfied the requirement to commence development activities as contemplated by our code. If it determines that a valid approval must be in effect, the Planning Commission can accept applicant's arguments, or provide reasons why it declines to do so.

2. Whether the statute requires approval by the Department of Environmental Quality (DEQ) before it can consider the application.

ORCA argues that the language of ORS 215.246 requires that the DEQ must approve the use before the Planning Commission can consider the application. The statute says, in pertinent part:

215.246 Approval of land application of certain substances; subsequent use of tract of land; consideration of alternatives. (1) The uses allowed under ORS 215.213 (1)(y) and 215.283 (1)(v):

(a) Require a determination by the Department of Environmental Quality, in conjunction with the department's review of a license, permit or approval, that the application rates and site management practices for the land application of reclaimed water, agricultural or industrial process water or biosolids ensure continued agricultural, horticultural or silvicultural production and do not reduce the productivity of the tract.

* * *

(3) When a state agency or a local government makes a land use decision relating to the land application of reclaimed water, agricultural or industrial process water or biosolids under a license, permit or approval by the Department of Environmental Quality, the applicant shall explain in writing how alternatives identified in public comments on the land use decision were considered and, if the alternatives are not used, explain in writing the reasons for not using the alternatives. The applicant must consider only those alternatives that are identified with sufficient specificity to afford the applicant an adequate opportunity to consider the alternatives. A land use decision relating to the land application of reclaimed water, agricultural or industrial process water or biosolids may not be reversed or remanded under this subsection unless the applicant failed to consider identified alternatives or to explain in writing the reasons for not using the alternatives.

On its face, the statute contemplates approval by both the DEQ and the County before treated water can be applied to lands for uses allowed in the zone. The statute could do a better job of describing the timing of the two approvals.

Nevertheless, when looking at subsection (3), an applicant to the DEQ is required to tell the DEQ what alternatives were considered at the local level. Therefore a reasonable reading of the statute allows that the local government decision be made first.

The Planning Commission ultimately decides the language and its meaning and effect on this application.

3. Whether the previously approved conditional use permit requires a revision to approve the activity described in this current application.

ORCA submitted with its correspondence the previously-approved Conditional Use Permit as approved by the Curry County Board of Commissioners. That decision approved irrigation using existing water rights or some other source. Because this application proposes irrigation, it does not deviate from the condition in the prior approval. Also, because the prior approval allowed alternative sources for the irrigation, and this application is an alternative source, the Planning Commission can determine that a revision to the previously-approved CUP is not required.

Conclusion

As set forth above, the Planning Commission can decline to adopt the arguments made in ORCA's October 18, 2017 submittal. The Commission's decision interpreting any state law one way or the other will not be given any deference by any reviewing authority.

If you have any questions, please let me know.

/s/ John

John R. Hutt
Curry County Counsel



MEMORANDUM

FROM John R. Huttel, Curry County Counsel

TO Curry County Planning Commission AD 1705

RE: Treated Water Use and Pipeline Application Follow Up

DATE: October 11, 2017

Introduction

This memorandum provides analysis to assist the Planning Commission answer questions raised at the September 21, 2017 public hearing on the above-referenced application.

Briefly, County legal counsel is not of the opinion that the Board needs to find that a valid CUP exists for the underlying use before it can decide the question on the application to land-apply treated water on the property. Second, while the applicant is not proposing a public utility, that does not prevent the state law from requiring utility-related standards from applying to the applicant's proposed pipeline.

Discussion

1. Whether a valid CUP must exist

For the first question, whether a valid CUP permit must exist in order for the Planning Commission to decide whether it can approve the application to land-apply treated water for golf course purposes, it is important to look at the statute, and consider rules for interpreting statutes.

The applicant is requesting approval to apply treated water to land for the purpose of irrigating a golf course. To do so, per ORS 215.246, they need a local land use decision after a public comment period. ORS 215.246 refers to ORS 215.283(1)(v) which requires the treated water be used:

for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zone under this chapter.

The applicant proposes using the treated water for irrigating a golf course. The question was whether the uses described in ORS 215.283(1)(v) needed to have a valid Conditional Use Permit before the Planning Commission could consider approving the permit requested in AD-1705.

My opinion is that a valid existing CUP for a golf course is not required for the Commission to approve the current permit request in AD-1705.

First, the law understands that more than one permit may be required to complete development. Therefore it is not required to have a valid permit when applying for another permit.

Second, because the statute only speaks of allowed uses in the zone, and not “existing uses” or more specifically “currently permitted uses” it is improper to require such when considering this application. The rules for interpreting statutes are that the courts do not insert language that is not in the statute, nor do they omit language that is in the statutes.

174.010 General rule for construction of statutes. In the construction of a statute, the office of the judge is simply to ascertain and declare what is, in terms or in substance, contained therein, not to insert what has been omitted, or to omit what has been inserted; and where there are several provisions or particulars such construction is, if possible, to be adopted as will give effect to all.

In this matter, the applicant proposes to establish a use – “the land application of reclaimed water” “for irrigation in connection with a use allowed in an exclusive farm use zone under this chapter.”

The applicant proposes to irrigate a golf course. The statute does not say that a use must exist, or that a permit for the use be valid, only that it be allowed. The Commission is on notice that a golf course is allowed in the zone. Therefore the Commission can conclude that the land application of the treated water satisfies ORS 215.283(1)(v).

2. Use of utility standards for non-utility pipeline.

ORS 215.246, which talks about land application of reclaimed water, explains that other facilities are allowed to enable use of reclaimed water for land application purposes.

(4) The uses allowed under this section include:

(a) * * *

(b) * * *

(c) The establishment and use of facilities, including buildings and equipment, that are not on the tract on which the land application occurs for the transport of reclaimed water, agricultural or industrial process water or biosolids to the tract on which the land application occurs if the facilities are located within:

(A) A public right of way; or

(B) Other land if the landowner provides written consent and the owner of the facility complies with ORS 215.275 (4); and

(d) The transport by vehicle of reclaimed water or agricultural or industrial process water to a tract on which the water will be applied to land.

The Board can find from the consent documents in the file that the applicant has complied with the statutory requirement for written consent.

Second, ORS 215.275(4), states:

The owner of a utility facility approved under ORS 215.213 (1)(c)(A) or 215.283 (1)(c)(A) shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility.

By its terms, it speaks to utility facilities approved in a different section of statutes, so it does not apply to this action. Another rule for statutory construction is that when a statute uses two different words, it means two different things. Because ORS 215.246 does not use the word “utility” when explaining that uses allowed include “facilities,” the Commission can conclude that, notwithstanding the reference to ORS 215.275 (“Utility facilities necessary for public service; criteria; rules; mitigating impact of facility”), it should not interpret the requirement that the pipeline is a public utility.

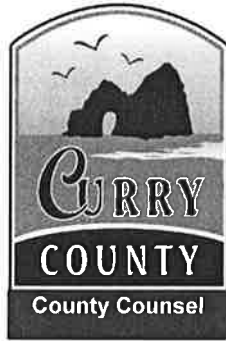
Also, by referring to utility facilities, it does turn applicant’s proposed pipeline into a utility. Further, even if that statutory subsection turned applicant’s pipeline into a utility, ORS 215.275(4) requires the applicant to restore agricultural land that gets damaged. The land that the pipeline is passing on is not agricultural land as contemplated in that statute. So ORS 215.275(4) does not provide a basis to deny or condition this application.

Lastly, the Commission’s decision interpreting any state law will not be given any deference by the reviewing authority.

If you have any questions, please let me know.

/s/ John

John R. Hutt
Curry County Counsel



MEMORANDUM

FROM John R. Huttli, Curry County Counsel
TO Curry County Planning Commission
RE: Elk River Property Development
DATE: July 2017

Introduction

This memorandum addresses the legal standards for processing the above referenced application.

It will describe the laws and ordinances that govern the Commission's analysis of the application, the process involved, and describe possible outcomes given the facts of the application as well as those that develop at the hearing.

Facts

The applicant proposes piping treated water from the Port Orford Municipal Wastewater Treatment Plant to the Knapp Ranch for purposes of irrigating a golf course development.

I. Applicable Law

Applications must meet applicable land use criteria, found in statewide Land Use Goals and statutes, as well as County comprehensive plans and ordinances.

Statewide land use goals and county comprehensive plan are carried out by the statutes and local ordinances. The local ordinance does not contain any provisions that apply to proposals to use treated water for irrigation. However, this type of use is allowed under state statute. Therefore we examine the state statutes.

A. Statutes

Two state statutes, ORS 215.283(1)(v) and ORS 215.246, inform the Commission's analysis.

///

1. ORS 215.283

ORS 215.283 explains

(1) The following uses may be established in any area zoned for exclusive farm use:

* * *

(v) Subject to issuance of a license, permit or other approval by the Department of Environmental Quality under [list of statutes omitted for brevity], and as provided in ORS 215.246 to 215.251, the land application of reclaimed water, agricultural or industrial process water or biosolids for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zone under this chapter.

Fairly summarized, reclaimed water can be used for irrigation in connection with an allowed use in an EFU.

Is this reclaimed water? Yes. The county does not have a definition of reclaimed water. The word is used in a state statute. ORS 537.131 describes reclaimed water as water that has been used for municipal purposes and has been treated in a treatment works and as a result of treatment is suitable for a direct beneficial purpose or controlled use that could otherwise not occur. Reclaimed water also known as recycled water by the DEQ is water that has been used for municipal purposes and treated in a municipal treatment plant.

The facts in the record show that water in this application is reclaimed water and we interpret that term to also include recycled water as used by the DEQ.

Is the proposed used for irrigation? Yes. The applicant proposes to use reclaimed water to irrigate the Pacific Gales golf course.

Is the golf course allowed in an EFU? Yes. The golf-course is an allowed use in the EFU zone, and has been approved by the County and affirmed by the Land Use Board of Appeals (LUBA). The County Board of Commissioners decision is found in Order 20255 (In the Matter of Remand Proceedings for Application AD-1411) and was affirmed by LUBA opinion Or LUBA 2015-080, January 27, 2016.

Therefore, the Commission can determine the use is allowed under ORS 215.283(1)(v).

2. ORS 215.246

ORS 215.246 requires an applicant to explain to the DEQ how alternatives to the land application of reclaimed water were identified in public comments at the local land use hearing, and explain reasons for not using identified alternatives.

(3) When a state agency or a local government makes a land use decision relating to the land application of reclaimed water, agricultural or industrial process water or biosolids under a license, permit or approval by the Department of Environmental Quality, the applicant shall explain in writing how alternatives identified in public comments on the land use decision were considered and, if the alternatives are not used, explain in writing the reasons

for not using the alternatives. The applicant must consider only those alternatives that are identified with sufficient specificity to afford the applicant an adequate opportunity to consider the alternatives. A land use decision relating to the land application of reclaimed water, agricultural or industrial process water or biosolids may not be reversed or remanded under this subsection unless the applicant failed to consider identified alternatives or to explain in writing the reasons for not using the alternatives.

The last sentence of the statute is not an approval criteria for the County, other than it implies an applicant must show the County in the first instance how the applicant has considered identified alternatives. But to hear alternatives, we need to hold the public hearing. So the alternatives analysis is not included in the application, but will be submitted after the public hearing.

After the public hearing, if the Planning Commission finds that the applicant has considered identified alternatives, then the applicant has satisfied this statutory requirement.

The Commission's review standard is "substantial evidence." That is a lesser quantum of evidence than preponderance. Preponderance is a more-likely-than-not standard. The Commission would not be required to show any consideration by the applicant was more-likely-than-not, only that there is substantial evidence in the record to show the applicant considered alternatives.

Any reviewing authority would not need to agree with the Commission's decision. It would only look to see if there was substantial evidence presented to the Commission that the applicant has considered the range of identified alternatives.


Summary

As set forth above, the statutes in question primarily describe a procedural requirement more than a substantive requirement. If the applicant has shown with substantial evidence that its project fits within the statutory category of project, and that it has followed the process and considered alternatives, then the Commission can approve the application.

To the extent the Planning Commission decides it is required to find that the applicant must address substantively any issues regarding the impacts of the proposed use, and the Commission decides to approve the application, then the Commission should adopt and incorporate by reference the applicant's findings.

Lastly, any approval should be subject to the conditions that the applicant (1) receive approval from the Oregon State Department of Environmental Quality, as well as (2) receive any and all local permits from the County with respect to installing facilities in County right of way.

Let me know if you have any questions.



John R. Hutt
Curry County Counsel

ATTACHMENT 9a

November 7, 2017 Planning Commission meeting transcript

November 7, 2017

Curry County Planning Commission Meeting



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CURRY COUNTY PLANNING COMMISSION MEETING

TUESDAY, NOVEMBER 7, 2017; 5:30 P.M.

-o0o-

CHAIR BRAZIL: November the 7th, 2017. The time is 5:30 p.m. We're meeting here in Gold Beach at the County Annex Building. I'd like to call this meeting to order.

Carolyn, could you do roll call, please?

DIRECTOR JOHNSON: Certainly. Commissioner McHugh.

COMMISSIONER MCHUGH: Here.

DIRECTOR JOHNSON: Commissioner St. Marie.

COMMISSIONER ST. MARIE: Here.

DIRECTOR JOHNSON: Commissioner Pagano.

COMMISSIONER PAGANO: Here.

CHAIR BRAZIL: Very good.

DIRECTOR JOHNSON: Commissioner Morrow.

COMMISSIONER MORROW: Present.

DIRECTOR JOHNSON: Commissioner Brazil.

1 CHAIR BRAZIL: Here.

2 DIRECTOR JOHNSON: Commissioner
3 Kennedy.

4 COMMISSIONER KENNEDY: Here.

5 DIRECTOR JOHNSON: Commissioner
6 Freed -- Freeman. Sorry.

7 COMMISSIONER FREEMAN: Here.
8 Whatever works.

9 DIRECTOR JOHNSON: Mix you up with
10 my husband. All present.

11 CHAIR BRAZIL: All right. Very
12 good. Thank you.

13 If you wouldn't mind standing and
14 facing the flag, we'd like to pledge to the
15 allegiance.

16 (Pledge of Allegiance recited.)

17 CHAIR BRAZIL: Thank you. Hopefully
18 everyone has a copy of the agenda and --

19 COMMISSIONER MORROW: Are you going
20 to need this?

21 CHAIR BRAZIL: Basically have two
22 items on the agenda this evening as far as agenda
23 point items. Are we willing to accept the agenda?
24 Do I hear a motion?

25 COMMISSIONER MCHUGH: I so move.

1 COMMISSIONER ST. MARIE: Second.

2 CHAIR BRAZIL: Motion has been made
3 by Kevin and seconded by Diana to accept the
4 agenda as written.

5 Carolyn.

6 DIRECTOR JOHNSON: Mr. McHugh.

7 COMMISSIONER MCHUGH: Aye.

8 DIRECTOR JOHNSON: Commissioner St.
9 Marie.

10 COMMISSIONER ST. MARIE: Aye.

11 DIRECTOR JOHNSON: Commissioner
12 Pagano.

13 COMMISSIONER PAGANO: Yes.

14 DIRECTOR JOHNSON: Commissioner
15 Morrow.

16 COMMISSIONER MORROW: Aye.

17 DIRECTOR JOHNSON: Commissioner
18 Brazil.

19 CHAIR BRAZIL: Aye.

20 DIRECTOR JOHNSON: Commissioner
21 Kennedy.

22 COMMISSIONER KENNEDY: Aye.

23 DIRECTOR JOHNSON: Commissioner
24 Freeman.

25 COMMISSIONER FREEMAN: Yes.

1 DIRECTOR JOHNSON: Thank you.

2 CHAIR BRAZIL: All right. Public
3 comment for the items not on the agenda. Do we
4 have any comment at this time from the public?

5 Seeing none, we'll move to agenda
6 item No. 5. 5-A is dealing with the application
7 AD-1705. The public hearing is closed, but
8 Planning Commission deliberations are continued
9 from the previous meeting of September 21st and
10 October 19th.

11 This is for a request to develop a
12 pipeline over multiple properties to deliver
13 recycled wastewater and a reservoir in order to
14 irrigate a Pacific Gales Golf Course. The
15 pipeline could be located on land owned by
16 multiple owners on property located on assessor's
17 map, various lot numbers as described in the
18 agenda. The applicant is Elk River Property
19 Development, LLC.

20 Again, with the -- with this
21 particular item, the goal tonight is to deliberate
22 on this. I would ask is there specifically any
23 additional -- anything that you would like to say
24 at this time? Carolyn?

25 DIRECTOR JOHNSON: No, sir. I think

1 the -- my comments are in the staff report and in
2 the record. I really don't have anything more to
3 add.

4 I would like to point out that
5 County Counsel did provide (inaudible) that is
6 also included in here.

7 CHAIR BRAZIL: Yeah.

8 DIRECTOR JOHNSON: Oh, one other
9 point I'd like to make and correction in the staff
10 report on page 2 of 10, and I'd like to thank
11 Commissioner McHugh for pointing this out to me.

12 There was a comment that I made that
13 if county action isn't completed by March 4, 2018,
14 the project would -- this project would be
15 considered approved, and I'd like to just read
16 from this.

17 There is language in the ORS noting
18 that if county action has not been completed in
19 150 days, which is what I referenced in this
20 paragraph page 2, applicant can petition for a
21 writ of mandamus to have the decision made by the
22 Circuit Court or the applicant can (inaudible) for
23 which they have applied.

24 If the applicant has not petitioned
25 for a writ of mandamus, the county retains the

1 ability to continue proceedings on the application
2 for 14 additional days or until the applicant
3 files for a writ, whichever occurs first. And
4 that is clearly different than what I stated in
5 this paragraph. So timing is somewhat important.
6 (Inaudible) and I'm just clarifying.

7 Thank you, Planning Commissioners.

8 CHAIR BRAZIL: Okay. Is there --
9 any commissioner have any additional questions
10 concerning that change?

11 MR. HUTTL: So what exactly does
12 that mean, Carolyn?

13 DIRECTOR JOHNSON: Well, John could
14 jump in anytime, but it sounds to me like what it
15 means is that at the end of that March 4th time
16 period, there would be -- have to be some
17 paperwork filed with the Circuit Court to -- John,
18 you could explain this, because I don't quite get
19 it, but it sounded really good.

20 CHAIR BRAZIL: It does.

21 DIRECTOR JOHNSON: And there's a
22 (inaudible).

23 MR. HUTTL: Because right now it's
24 150 days and it's approved if we're silent.

25 DIRECTOR JOHNSON: Well, that's what

1 I'd like John to --

2 MR. HUTTL: So right.

3 CHAIR BRAZIL: Shannon, can you
4 hear?

5 COMMISSIONER PAGANO: I can. Thank
6 you.

7 CHAIR BRAZIL: Okay.

8 MR. HUTTL: Thank you. So not so
9 much sure it's approved, but they have the option
10 of taking it away from you and having the Circuit
11 Court approve it or they could proceed with the
12 Planning Commission in another 14 days. I don't
13 have the actual text of the statute in front of
14 me.

15 CHAIR BRAZIL: Okay.

16 COMMISSIONER PAGANO: I'm sorry.
17 Who's talking? Is that John?

18 CHAIR BRAZIL: That's John Huttli.

19 COMMISSIONER PAGANO: Okay.

20 CHAIR BRAZIL: County Counsel.

21 COMMISSIONER PAGANO: I just need
22 you to talk just a little louder at the end of
23 your sentences, John, just because you're trailing
24 off just a bit.

25 MR. HUTTL: Very good.

1 COMMISSIONER PAGANO: Thank you.

2 MR. HUTTL: I'll try to do better.

3 But essentially what I said was that at the end of
4 150 days, they -- the applicant has an option
5 under the law to go to Circuit Court and take --
6 take the decision away from you or to proceed with
7 you for at least another 14 days.

8 COMMISSIONER PAGANO: Okay. I heard
9 you. Thank you.

10 CHAIR BRAZIL: All right. So at
11 this point here we're open for comment and
12 deliberation amongst commissioners. The -- we
13 have in front of us on page 4, a -- a proposed
14 resolution that we can be evaluating in our
15 discussion. So does anyone --

16 COMMISSIONER MCHUGH: John --

17 CHAIR BRAZIL: Kevin, you want to
18 start?

19 COMMISSIONER MCHUGH: Yes. Before
20 we begin, could we settle the issue of whether the
21 conditional use permit AD-1411 is dead or not? In
22 the Board of Commissioners hearing on appeal, they
23 clearly stated the standard that they're using
24 when they said that the conditional use permit
25 will expire in one year. It has nothing to do

1 with clearing a little gorse. It has everything
2 to do with whether or not all the permits
3 necessary to proceed or to operate have been
4 obtained or the applicant must file a request for
5 an extension.

6 We have Director Johnson's statement
7 to us that no requests for any time extension have
8 been filed. So it seems that that's -- the
9 conditional use permit has expired. It's dead.
10 But since the applicants put up an argument on
11 that, I think we ought to decide that first before
12 we do anything else.

13 MR. HUTTL: Mr. --

14 MR. MCHUGH: We're in deliberations,
15 Mr. Hutt.

16 MR. HUTTL: I haven't heard a motion
17 at all.

18 COMMISSIONER MCHUGH: Okay. We're
19 in deliberations. We'll ask you questions.

20 CHAIR BRAZIL: We --

21 MR. HUTTL: I'm asking to be
22 recognized.

23 CHAIR BRAZIL: At this time, John --
24 so what Kevin is saying is that we want to see how
25 we feel as far as the bearing is if the

1 applicant -- the applicant use permit request is
2 active or not.

3 COMMISSIONER MCHUGH: Correct.

4 CHAIR BRAZIL: And if that makes a
5 difference or not. So I kind of hear that in a
6 two-part question.

7 MR. HUTTL: There's been no motion,
8 no second.

9 CHAIR BRAZIL: So what we're talking
10 about here is asking for open communications on
11 that issue. Right? So on that, do we have any
12 other open comment with that?

13 COMMISSIONER MORROW: I'd like to
14 note that in the last staff report it was noted
15 that this was in fact dead.

16 MR. HUTTL: Was what? Dead?

17 COMMISSIONER MORROW: Yeah. I'll
18 give you the exact wording here.

19 MR. HUTTL: Well, I didn't
20 understand.

21 COMMISSIONER MORROW: Yeah. The
22 October staff report.

23 MR. HUTTL: This issue was dead or
24 the (inaudible) conditional use was.

25 COMMISSIONER MORROW: No. The

1 AD-1410 had expired. The conditional use permit
2 had expired.

3 MR. HUTTL: I must have missed the
4 meeting. I heard that because they had done some
5 work on the Gorse, it was kind of working towards
6 that goal. It was in place.

7 COMMISSIONER MORROW: No. That was
8 the applicant's position. I believe staff report
9 stated that it had expired.

10 MR. HUTTL: I must have missed that.

11 COMMISSIONER MORROW: Yeah. It was
12 in the staff report, I'm pretty sure. Let me see.
13 I can pull it up here. Do you have -- no.

14 DIRECTOR JOHNSON: The Planning
15 Commission asked whether a time extension could be
16 filed for conditional use permit. The answer to
17 that question is no. They did not file an
18 application, a time extension application.

19 COMMISSIONER MORROW: Which was one
20 of the conditions initially placed on that.

21 DIRECTOR JOHNSON: The condition was
22 that the -- the conditional permit was valid for
23 one year unless they received an extension, but
24 the --

25 COMMISSIONER PAGANO: Carolyn, can

1 you repeat that, the condition?

2 DIRECTOR JOHNSON: The conditional
3 use permit approval is valid for one year unless
4 the applicant applies for and receives an
5 extension of this approval. This language is
6 grounded in the zoning code that talks about a
7 one-year life of the conditional use permit.

8 COMMISSIONER PAGANO: Thank you.

9 CHAIR BRAZIL: Great.

10 DIRECTOR JOHNSON: And how -- what
11 inaugurates or initiates the permit.

12 I would like -- could I ask a
13 question of County Counsel --

14 CHAIR BRAZIL: So --

15 DIRECTOR JOHNSON: -- on this?

16 CHAIR BRAZIL: -- I just want to
17 make sure everyone's got the question clear and --
18 and what -- if there's -- the conditional use
19 permit is for a year if there's no action taken.
20 The project doesn't have to be completed at the
21 end of a year.

22 MR. MCHUGH: No.

23 CHAIR BRAZIL: That's not correct.

24 COMMISSIONER MCHUGH: That's not how
25 it reads, Mr. Chair. If you -- this big

1 supplemental packet that we got last month,
2 somewhere in here they attached the Board of
3 Commissioners' findings and the conditions of
4 approval. And it's -- you know, it's like 36 in
5 this big packet, but it's numbered page 22 of 27.
6 It's their finding No. 6, and here's where this is
7 the wording that's in our zoning ordinance too,
8 but it's incorporated in its entirety in their
9 findings.

10 "Authorization of conditional use
11 permit in general shall become null and void after
12 one year unless substantial construction has taken
13 place or an extension has been granted under
14 section 7.050 (4).

15 "Substantial construction in this
16 case means obtaining all necessary permits
17 required by governmental agencies to commence
18 construction of any structures or to commence the
19 principal activity permitted by the conditional
20 use permit."

21 That's all well and good, but the
22 findings in finding No. 1 is, "This conditional
23 use permit approval is valid for one year unless
24 the applicant applies for and receives an
25 extension of this approval."

1 That's the binding sentence. It
2 doesn't matter what they argue about any other
3 part of whether they cleared Gorse, whether it's a
4 two-year -- they claim it as two years, the
5 legally binding condition is No. 1, which is it's
6 good for a year unless they request an extension.

7 MR. HUTTL: For the record, I
8 disagree with that. This is County Counsel
9 speaking.

10 CHAIR BRAZIL: John, what -- what
11 Kevin's reading is printed so --

12 MR. HUTTL: He left out some words.
13 Do you want me to include the words he left out?

14 CHAIR BRAZIL: And the printed
15 document is what we've all had to review.

16 Just -- just a second. Okay? Hang
17 on.

18 Based off of -- based off of that
19 language, Ted, you had something? Diane, do you
20 have anything to add at this particular point?

21 COMMISSIONER ST. MARIE: I am seeing
22 this as a total separate issue.

23 CHAIR BRAZIL: Okay. Do you have
24 anything to add?

25 DIRECTOR JOHNSON: (Inaudible) I

1 agree with (inaudible).

2 CHAIR BRAZIL: Okay. Counsel, would
3 you go ahead and interpret what the wording
4 where -- was that you believe was missing?

5 MR. HUTTL: Thank you, Mr. Chair.
6 First of all, in speaking to Commissioner Pagano
7 and (inaudible) comments, and I'll reiterate my
8 earlier point made in prior submittals to the
9 board and to the Planning Commission, the -- the
10 statute under consideration for the permit
11 application that's before you just requires that
12 the use being contemplated is permitted in the
13 zone, and the use that they propose is permitted
14 in the zone.

15 The statute does not specify --

16 CHAIR BRAZIL: What, John --

17 MR. HUTTL: -- it needs a valid
18 conditional use permit.

19 CHAIR BRAZIL: Wait a minute. Wait
20 a minute, John. What we're asking right now is
21 just comment as to the question: Is the permit,
22 the special use permit that was issued, valid at
23 this time or has it expired?

24 MR. HUTTL: Here's what it says
25 under the findings on page 22 of 27. This is the

1 part that Commissioner McHugh left out.

2 It says, "The applicant must have
3 initiated substantial construction" -- this is
4 findings. This is under -- it says "Findings" in
5 all caps in bold. And it says, "The applicant
6 must have initiated substantial construction on
7 the approved use within one year of the date of
8 this approval unless the property owner applicant
9 applies for and receives an extension of this
10 approval."

11 Then it says, "Therefore, as a
12 condition of approval, the conditional use permit
13 is valid for one year unless the applicant applies
14 for and receives an extension of approval."

15 That could be interpreted to allow
16 for -- that they have a valid permit if they have
17 initiated substantial construction on the approved
18 use within one year.

19 So it's not as Commissioner McHugh
20 argues it's legally binding. That's his position
21 and his interpretation. You're entitled to
22 interpret it that way, but you don't have to.

23 CHAIR BRAZIL: Okay. The --

24 COMMISSIONER MCHUGH: John, if I
25 might.

1 CHAIR BRAZIL: The -- if we have --
2 if we have that in place or not is not really
3 what's in front of us here, though. Right?

4 What's in front of us is --

5 COMMISSIONER MCHUGH: Actually, it
6 is --

7 CHAIR BRAZIL: -- a request for
8 action to develop a water supply from point A to
9 point B, so to speak.

10 COMMISSIONER MCHUGH: If we remain
11 in that single statute, but we have in here
12 references off to water law in Oregon, we have
13 references off into the DEQ, and the DEQ requires
14 absolute specificity on where the effluent -- and
15 how it's going to be used.

16 CHAIR BRAZIL: In order for DEQ to
17 issue a permit.

18 COMMISSIONER MCHUGH: True.

19 CHAIR BRAZIL: Okay. So -- and we
20 are not DEQ at this point. Right?

21 COMMISSIONER MCHUGH: No.

22 CHAIR BRAZIL: Okay.

23 COMMISSIONER MCHUGH: But it's part
24 of our consideration.

25 CHAIR BRAZIL: Yeah. All right. I

1 think the fact that what's going to happen at the
2 far end of this thing is somewhat irrelevant to
3 what's in front of us right here, right now, which
4 is odd, but --

5 COMMISSIONER MCHUGH: I don't think
6 so, Mr. Chair, and let me explain that. That we
7 have here not just an application to allow -- to
8 approve the use of -- well, to approve applicant's
9 request to use effluent based on there are no
10 public comments of alternates. That's really the
11 decision that we have to make.

12 Did we receive any public comment
13 suggesting an alternative method of irrigating the
14 Knapp Ranch property and did the applicant
15 properly respond to it? And all the other --

16 CHAIR BRAZIL: Okay.

17 COMMISSIONER MCHUGH: -- well, what
18 we've had wrapped into this, John, is we've had
19 structural. We've had pipelines. We've had
20 things that are completely superfluous to the base
21 question that the DLCD require that we answer, and
22 all of those, then, hinge on whether there's those
23 parts, those extra parts are what hinge on whether
24 or not we have a conditional use permit valid at
25 this point in time.

1 If the conditional use permit is not
2 valid at this point in time, then the reservoir
3 system on the Knapp Ranch property would be part
4 of a new conditional use permit application as
5 opposed to this.

6 This particular process, this
7 application, as it states, can't be reviewed,
8 can't be appealed, can't be remanded, can't be
9 changed.

10 And so we need to stick to the
11 central question that was presented to us and
12 determine what to do with these other parts.
13 That's where the validity of the conditional use
14 permit becomes important.

15 MR. HUTTL: I'd like to point out --

16 CHAIR BRAZIL: Go ahead.

17 MR. HUTTL: I'd like to point out
18 the agenda that we approved for today. This
19 speaks clearly to in order to irrigate the Pacific
20 Gales Golf Course.

21 CHAIR BRAZIL: And I agree.

22 MR. HUTTL: And the question of if
23 that is in fact expired or not is extremely valid,
24 and substantial construction is the core of that
25 section that was cited earlier, and it's all

1 necessary permits.

2 A VOICE: We just heard the DEQ is
3 not included as an all necessary permit, and it's
4 over a year past. Moving some Gorse is not
5 substantial. Permits are lacking.

6 CHAIR BRAZIL: Have we
7 asked --

8 COMMISSIONER MORROW: John.

9 CHAIR BRAZIL: -- Carolyn, have any
10 building permits actually been filed for or in
11 process?

12 DIRECTOR JOHNSON: No. No.

13 CHAIR BRAZIL: For this development?

14 DIRECTOR JOHNSON: No.

15 CHAIR BRAZIL: Okay. Ted.

16 COMMISSIONER FREEMAN: Normally on
17 golf courses they do the groundwork and then they
18 site the building. Normally that's the way it
19 works. And I've only been involved with one from
20 beginning to end and that's on Salmon Run.

21 Then on this Gorse issue, I have --
22 I'm pretty familiar with the area and that's
23 pretty inundated with Gorse, which is probably a
24 pretty substantial deal for anybody to remove
25 that. And --

1 COMMISSIONER MORROW: Substantial.

2 COMMISSIONER FREEMAN: I hadn't seen
3 it, though. Hadn't seen the site. So I don't
4 know for positive or sure if it (inaudible)
5 covered a course. Much of that property up that
6 way it's --

7 COMMISSIONER MORROW: Yes. I've
8 been up there fishing and it is, as you said,
9 substantially covered with Gorse.

10 COMMISSIONER FREEMAN: Well, that in
11 itself, is probably -- in my opinion, is enough
12 for me to work on that. We're going to end up
13 doing something.

14 CHAIR BRAZIL: Commissioner St.
15 Marie.

16 COMMISSIONER ST. MARIE: In
17 rereading the agenda from September 21st, the
18 application is a request to develop a pipeline
19 over multiple properties to deliver recycled
20 wastewater and a reservoir in order to irrigate
21 the Pacific Gales Golf Course.

22 Now, it doesn't say that it exists.
23 It doesn't say, you know, that's -- the goal is to
24 get the water out there for this potential
25 development. That's what we're supposed to be

1 focused on, not what the status of this potential
2 development is, in my opinion.

3 MR. HUTTL: So are we supposed to
4 approve a pipeline out to a space that doesn't
5 exist in the hopes that at some point in the
6 future it might actually become viable five years
7 or 50 years or something?

8 COMMISSIONER ST. MARIE:
9 Theoretically, it could --

10 MR. HUTTL: It could be a 2 and a
11 half mile ditch that goes to nowhere.

12 COMMISSIONER ST. MARIE: Let me ask
13 it this way. Theoretically, could the applicant
14 have applied to build this pipeline to the Knapp
15 Ranch for irrigation, period.

16 MR. HUTTL: It's a possibility. But
17 they did not do that.

18 COMMISSIONER ST. MARIE: They did
19 not do that.

20 MR. HUTTL: Right.

21 COMMISSIONER ST. MARIE: But you
22 don't know if they're irrigating or not irrigating
23 or what they're doing. And, to me, it is -- it's
24 kind of the same thing.

25 COMMISSIONER MCHUGH: But we're -- I

1 think they're supposed to work off of facts and
2 not, you know, speculation (inaudible). It's what
3 do we have in hand right now. What we have in
4 hand is we have the Knapp property. We have a
5 request to run a pipe out to water -- to irrigate
6 something that doesn't exist, may never exist.

7 COMMISSIONER ST. MARIE: It's a
8 posed [sic] project.

9 COMMISSIONER MCHUGH: Yes. But what
10 we do by doing that is if the conditional use
11 permit is dead, that's the (inaudible) speaking, a
12 new application comes in. We've now bound
13 ourselves if that Planning Commission that hears
14 that says we don't want effluent used on that
15 property. That could be a condition of approval.
16 But if we do this, we limit a decision of a future
17 Planning Commission. I don't think that's what
18 our job is supposed to be right now.

19 Nevertheless, the question about
20 whether it exists or not has to do with the
21 reservoir and the pipeline, because those would
22 have to be dealt with in a new conditional use
23 permit and stripped out of this. That doesn't
24 alter the fact that someone wants to put effluent
25 up there. We don't care how they get it. They

1 could truck it up there. And the question is can
2 they use it on that property. And these other
3 things are superfluous to that. So in answering
4 that question -- sorry, Shannon.

5 CHAIR BRAZIL: Shannon, can you hear
6 us?

7 COMMISSIONER PAGANO: Yeah. Yeah, I
8 can. And I don't know how -- Commissioners, I
9 have a comment or a question. I don't want to
10 interrupt people. Should I just kind of say
11 "comment," or just say, "question," and then when
12 you're ready, you can call on me? Would that
13 work?

14 CHAIR BRAZIL: That would work.

15 COMMISSIONER PAGANO: Okay. Thank
16 you.

17 CHAIR BRAZIL: All right.

18 COMMISSIONER MORROW: (Inaudible) do
19 you have anything now?

20 CHAIR BRAZIL: Go ahead, Shannon.

21 COMMISSIONER PAGANO: Okay. Be
22 patient with me, because the way I see this issue,
23 we're going to get to where you're going, Kevin,
24 but I need to make a couple detours first.

25 So for me, this is how I see -- I

1 see the issue, and if -- I want to just get it out
2 there for discussions and communications.

3 So when I -- when I'm looking at
4 this, what I see is that the argument is that
5 under 215.283 1(V) the use is an outright use.
6 That's what's being argued. But when I read that
7 section, it's not clear to me that it is an
8 outright permitted use because the section reads
9 that it requires the irrigation to be for a
10 different use under the section.

11 If you're going to rely, therefore,
12 on subsection V, it seems you need to hook it on
13 another subsection, and none of the other
14 subsections, in my reading of this, would allow a
15 golf course, nor (inaudible).

16 So what I'm -- what I'm wondering is
17 if the conditional use permit is the hook that
18 they're arguing is the other permitted use under
19 the section, and if that is the argument, then I
20 very much think it's relevant, because the only
21 way, in my understanding of this, if this is an
22 outright use to do the irrigation is if there's
23 already a use that the irrigation is for that's
24 been permitted under that section, and there is
25 none, in my understanding, unless a conditional

1 permit was given previously to what's proposed to
2 being built. And if that's the permit that's
3 potentially expired, I do think it's relevant.

4 So at this time, that's my comment
5 and my questions regarding what I think is
6 relevant or not.

7 So I guess -- so I guess it's a
8 question. So it's a conditional use permit, the
9 hook that is being used for this section V to, you
10 know, make the argument that the irrigation that
11 the golf course uses is an outright use under
12 section V.

13 CHAIR BRAZIL: Okay. Was everybody
14 able to hear Shannon okay?

15 COMMISSIONER ST. MARIE: I'm not
16 sure I was understanding everything that she was
17 saying, though.

18 CHAIR BRAZIL: 215.283 (D). Is that
19 correct, Shannon?

20 COMMISSIONER PAGANO: V as in
21 Velcro.

22 CHAIR BRAZIL: V.

23 COMMISSIONER PAGANO: And I can -- V
24 as in Velcro. Yeah. And I can -- we can go back
25 and read that. As I'm reading Mr. Huttl's

1 memorandum about what was being argued -- and I
2 think what's being argued is that we don't need to
3 worry about Kevin's concern about the conditional
4 use permit because it's an outright use already.
5 We don't need to worry about it.

6 But as I read the statute, I read it
7 differently. If we go to that statute -- and, of
8 course, I just lost it (inaudible).

9 COMMISSIONER MCHUGH: I have it here
10 if you want me to read it, Shannon.

11 COMMISSIONER PAGANO: Could you,
12 please? And could you -- could you read where it
13 says --

14 CHAIR BRAZIL: If we don't have an
15 active permit, then it's not an outright use.

16 COMMISSIONER PAGANO: And that's
17 what I'm thinking. Because as you read that
18 section V, it says "irrigate" -- at the end, it
19 says, "Irrigation used -- used to" -- you know,
20 irrigate something that's already been permitted
21 somewhere in that ordinance to the 215.283, so it
22 has to be for something that's already been
23 approved.

24 And if it's a golf course, if that
25 irrigation system is for the golf course, then the

1 golf course needs to be approved under the
2 section. And if it doesn't have a valid permit,
3 then I do -- I don't think that that's -- that
4 that's an outright use anymore.

5 CHAIR BRAZIL: Okay.

6 COMMISSIONER PAGANO: A couple other
7 things really quick since I've got the mic here,
8 and I don't want to interrupt anyone. Looking at
9 the beginning of that section V as in Velcro, it
10 says, "An approved use under this section is
11 subject to 215.246," and that is the provision
12 that Mr. Hutt1 was referring to in his memorandum
13 that requires DEQ to do analysis on the use of the
14 reclaimed water.

15 But -- so what that says is the
16 approved use under V is subject to that 215.246,
17 which means that DEQ has those already -- in my
18 reading of it, already has to have made its
19 determination in order for the use to be approved
20 as -- as a use under other subsection -- under
21 subsection D.

22 And then also when I go to 215.246,
23 it says 215.246, which is the DEQ, you know,
24 basically it looks into to make sure that the
25 construction isn't going to have any detrimental

1 use on the (inaudible) farmland. It says --

2 COMMISSIONER MORROW: Shannon, what
3 section of 215.246 again, please?

4 COMMISSIONER PAGANO: The 215.246.
5 I'm actually not sure off the top -- it's the one
6 that -- I think it's right in the beginning.

7 COMMISSIONER MORROW: A(1)(a)?

8 COMMISSIONER PAGANO: Yeah. Does
9 that -- is that the one that we --

10 COMMISSIONER MORROW: That
11 Department of Environmental Quality, in
12 conjunction with department's review of license,
13 permit, or approval. Yeah.

14 COMMISSIONER PAGANO: Can you read
15 the whole thing?

16 COMMISSIONER MORROW: Yeah. This is
17 1(a), "Require a determination by the Department
18 of Environmental Quality, in conjunction with the
19 department's review of a license, permit, or
20 approval, that the application rates and site
21 management practices for the land application of
22 reclaimed water, agriculture or industrial process
23 water, or biosolids ensure continued agricultural,
24 horticultural, or silvicultural production and do
25 not reduce the productivity of the tract."

1 So it's like a beneficial use
2 situation there.

3 COMMISSIONER PAGANO: Yeah. So when
4 you go back to 215.283, it says that in order to
5 find a use permitted, so an outright use, for to
6 say that, you know, that conditional use permit,
7 if that's going to be permitted, they're required
8 for this analysis by OEQ [sic] has been performed
9 is my reading of the statute.

10 And since -- I think what John was
11 with saying in his -- Mr. Hutt1 was saying in his
12 memorandum is that we don't have to wait until OEQ
13 makes that determination because you could
14 possibly read the statute that it requires public
15 comment or like they have to (inaudible) put a
16 (inaudible) in the tract. But I don't think
17 that's the only way you can review it.

18 It's you look -- you can read it.
19 If you look to the section 215.283(V), it
20 specifically says OEQ is subject -- that the
21 outright use is subject to the OEQ analysis.

22 So I think the only way that you can
23 read it is that that environmental analysis has to
24 be done before the use is accepted, and in just
25 thinking about this common sense, that makes sense

1 to me. Because why would we approve this use and
2 then later on OEQ says, Well, it's going to have
3 all this detrimental harm. I mean, that just
4 doesn't make any sense. So --

5 CHAIR BRAZIL: Okay.

6 COMMISSIONER PAGANO: It makes
7 sense -- more common sense to me that we would
8 hear from OEQ that there's not going to be any
9 environmental impact before we pass -- you know,
10 pass on the (inaudible).

11 COMMISSIONER MORROW: It sounds like
12 cart before the horse.

13 COMMISSIONER PAGANO: Right. Right.

14 COMMISSIONER MORROW: Yeah. And
15 that could be --

16 COMMISSIONER PAGANO: I know there's
17 a lot, but (inaudible) that's all I --

18 CHAIR BRAZIL: It is. And that's
19 for -- I think we can kind of decide on that
20 either way. Shannon, very good.

21 COMMISSIONER PAGANO: Thank you.

22 COMMISSIONER MORROW: And if you
23 lose something and you can't hear somebody
24 speaking, go ahead and speak up also, please.
25 You're --

1 COMMISSIONER PAGANO: Okay.

2 COMMISSIONER MORROW: -- on a modest
3 phone.

4 CHAIR BRAZIL: Do you have anything?

5 DIRECTOR JOHNSON: No.

6 CHAIR BRAZIL: No. All right. Do
7 I -- do I hear a motion for the resolution for
8 AD-1705 as it appears on page 4?

9 COMMISSIONER MCHUGH: I am going to
10 make a motion that we deny AD-1705 based on the
11 absence of a valid conditional use permit, and
12 then all the reasons that Shannon explained but I
13 didn't write down.

14 COMMISSIONER PAGANO: I'll email
15 them to Carolyn.

16 CHAIR BRAZIL: We -- okay. We used
17 this one here (inaudible).

18 DIRECTOR JOHNSON: (Inaudible.)

19 CHAIR BRAZIL: Hmm?

20 DIRECTOR JOHNSON: (Inaudible.)

21 CHAIR BRAZIL: Yeah. This as
22 written on page 4 is to include this.

23 DIRECTOR JOHNSON: (Inaudible.)

24 Substitute that word.

25 CHAIR BRAZIL: And so we can

1 substitute that word for (inaudible) basically.

2 All right. Do I hear a second on
3 the motion that's on the floor?

4 COMMISSIONER PAGANO: I second that.

5 CHAIR BRAZIL: Okay. I have a
6 motion on the floor to deny AD-1705, and it will
7 be that Curry County Planning Commission hereby
8 denies the Elk River Property Development, LLC,
9 application, AD-1705, to develop a pipeline for
10 recycled water in order to irrigate the Pacific
11 Gales Golf Course with the description of the
12 properties.

13 Carolyn, could you call for a vote,
14 please?

15 DIRECTOR JOHNSON: Commissioner
16 McHugh.

17 COMMISSIONER MCHUGH: Aye.

18 DIRECTOR JOHNSON: Commissioner
19 Pagano.

20 COMMISSIONER PAGANO: Aye.

21 DIRECTOR JOHNSON: Commissioner St.
22 Marie.

23 COMMISSIONER ST. MARIE: No.

24 DIRECTOR JOHNSON: Commissioner
25 Morrow.

1 COMMISSIONER MORROW: Aye.

2 DIRECTOR JOHNSON: Commissioner
3 Brazil.

4 CHAIR BRAZIL: Aye.

5 DIRECTOR JOHNSON: Commissioner
6 Kennedy.

7 COMMISSIONER KENNEDY: No.

8 DIRECTOR JOHNSON: Commissioner
9 Freeman.

10 COMMISSIONER FREEMAN: No.

11 DIRECTOR JOHNSON: Motion carries.

12 CHAIR BRAZIL: The motion is
13 carried. On AD-1705, as presented and written,
14 has therefore been denied.

15 Okay. Second on our agenda item 5B,
16 application AD-1708, Planning Commission
17 authorization of a similar use for parks and/or
18 recreational facilities and/or use on county-owned
19 properties that are not zoned public facility.
20 The applicant is Curry County. If we could have
21 Carolyn go ahead and give us a staff report on
22 that, please.

23 DIRECTOR JOHNSON: Sure.

24 (Other matters discussed.)

25 DIRECTOR JOHNSON: No motions. This

1 next few months is going to be very busy, and I'm
2 anticipating that we would all be okay with
3 canceling your December meeting. We don't have
4 any pending applications that I need to bring to
5 you, and January and February, looking through,
6 are very robust citizen involvement committee work
7 effort to get the word out on the wild -- wildfire
8 hazards section that you looked at last year, as
9 well as all the resource zones. There's four of
10 them that I need to take to the board of
11 commissioners.

12 So I'm anticipating that that will
13 be a very busy time, and unless an application
14 comes in that we must review in front of Planning
15 Commission, I wouldn't anticipate that we'd meet
16 in January or February.

17 So that's kind of a long time to not
18 connect but -- in person, but I would certainly
19 keep you in the loop if something came up that we
20 did need to meet. I'd probably put out a Doodle
21 Pad asking for times that you would be available.

22 But as of right now on the horizon,
23 there's just a lot of things going that are really
24 going to kind of (inaudible) ongoing committees.
25 It's a lot of cleanup that you did last year that

1 I'm now going to have to take on to the
2 (inaudible).

3 For the first part of next year
4 after you come back again, I'm going to be
5 bringing to you four residential zoning districts,
6 and two or three, maybe four commercial districts
7 where we're looking to add new land uses.

8 If you remember back last year, you
9 adopted a whole new conditional use permit section
10 in the zoning union that I didn't (inaudible) than
11 what are allowed now, and it looks really good in
12 the code, but only 50 percent of the work is done
13 because the areas that you've said (inaudible) to
14 happen, we have to change those zoning pieces yet
15 to enable conditional use permits (inaudible).

16 So that's where we're at. And next
17 up is going to be the residential (inaudible)
18 zoning.

19 Beyond that, we recently submitted a
20 grant application to DLCD for an update on the
21 comprehensive plan recreation element and to
22 implement that (inaudible) master plan that went
23 in a little at last month. So if that is awarded,
24 we can maybe do some double duty with -- with
25 that. But (inaudible) piece of --

1 CHAIR BRAZIL: But that wouldn't be
2 until second quarter at least or --

3 DIRECTOR JOHNSON: Probably not. By
4 the time we get the funding and sign the
5 paperwork -- you know, fingers crossed that it
6 comes through. If the grant award does not --
7 doesn't happen, I still want to see if we can
8 figure out a way to pursue it (inaudible), but
9 probably wouldn't for my -- from where I'm
10 sitting, probably wouldn't be until next year.

11 Next budget year I'd go to the board
12 at the budget time and say, Can we throw some
13 money at -- yeah. And that's something I would
14 definitely want to consult with you. But, anyway,
15 that's looking ahead, 2018.

16 CHAIR BRAZIL: Okay. Very good. My
17 last comment is that the Citizens Involvement
18 Committee will be holding some meetings, and if
19 you happen to be in the area and you want to go
20 and listen, it might be a good idea, but --

21 COMMISSIONER ST. MARIE: When are
22 they held?

23 CHAIR BRAZIL: They will be
24 announced.

25 COMMISSIONER ST. MARIE: Okay.

1 (Inaudible) noticed.

2 DIRECTOR JOHNSON: End of February,
3 early March.

4 CHAIR BRAZIL: Yeah. February and
5 March. And they're planning on doing that one in
6 the north, one in central, one in the south type
7 of thing. So if you need an excuse to get out of
8 the house and to go join the pleasant evening, it
9 might be enjoyable.

10 That will conclude the Curry County
11 Planning Commission for this date, and the time
12 is -- looks like about 7:19 p.m.

13 (Meeting adjourned.)

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C E R T I F I C A T E

STATE OF OREGON)
)
County of Lane)

I, JAN R. DUIVEN, Certified Shorthand Reporter for the State of Oregon, in and for the County of Lane, do hereby certify that the foregoing pages 1 to 38, comprise a complete, true, and correct transcript, transcribed from audio CD to the best of my ability, of the proceedings held in the above-entitled matter on TUESDAY, NOVEMBER 7, 2017.

Dated at Eugene, Oregon, this 21st day of November, 2017.



JAN R. DUIVEN, CSR, FCRR, CRC
Certified Shorthand Reporter

ATTACHMENT 10

October 18, 2017 Transmittal from the Oregon Coastal Alliance (ORCA)

September 5 and December 14, 2017 letter from Beverly Walters

December 20, 2017 letter from Jim Auburn

December 14, 2017 letter from the Karen Jennings representing the Port Orford Main Street Revitalization Program

December 14, 2017 letter from Karen Auburn

From: James Auborn [mailto:jimauborn@me.com]
Sent: Wednesday, December 20, 2017 3:33 PM
To: CALLISTER Jacob (LCOG)
Subject: Appeal number A-1701

TESTIMONY TO BOARD OF COMMISSIONERS FOR APPEAL A-1701 HEARING

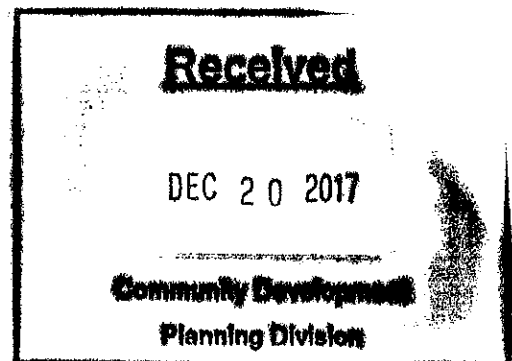
A threat to positive economic development, our environment, health and well-being of our citizenry is the unfortunate decision of the Curry County Planning Commission to deny the continuation of the conditional use permit for Elk River Properties to extend the city approved treated and wastewater effluent line past the city limits to the proposed Pacific Gales golf course at the Knapp Ranch. Although I was a Port Orford City Councilor for two years, Mayor for twelve years, and am presently again a City Councilor, I am providing this testimony on my own as a resident and concerned citizen.

The availability of an environmentally acceptable means of disposal of our treated wastewater effluent by irrigating the proposed golf course is vital to the economy of the City of Port Orford and our rate paying citizenry. We are now using the third system for effluent disposal in the eighteen years I have resided here. The system that existed when I arrived was replaced by one that discharged into the sand dunes. This system was washed out by storms and resulted in a building moratorium that hurt property owners and hampered economic growth. The present system was constructed at considerable expense and discharges into the open ocean. We just completed paying for the first system and are still paying for the washed out sand dune and open ocean systems. The open ocean system will not last and will eventually have to be replaced. That solution may not then be environmentally acceptable.


At the time the sand dune system washed out we considered constructing a system that would send our treated effluent out to the Knapp Ranch to irrigate their crops. Although we were prepared to pay for this system and compensate the Knapp's for taking our effluent we could not come to an acceptable agreement and settled on the open ocean disposal system. Now, thanks to Pacific Gales, we have the opportunity to have them construct a secondary treated effluent system and accept our discharge at no cost to the City. This environmentally preferable system would be available immediately and capable of replacing the open ocean discharge system should it wash out due to storm damage or no longer remain environmentally acceptable.

I may not be able to be present when the county commissioners hear the appeal to the planning commission decision to deny extension of the Pacific Gales conditional use permit to extend the treated effluent lines from the city limits out to the Knapp Ranch and am submitting this written testimony. I urge you to consider the best interest of the citizens and ratepayers of Port Orford, our environment, and economic well being, and favor the appeal by Pacific Gales in our overall best interest. Thank you for your consideration.

Jim Auborn, 725 King Street South, Port Orford



RECEIVED
DEC 14 2017

BY -----

Beverly Walters

P. O. Box 262Sixes, OR 97476
(541)332-2914

December 14, 2017

Curry County Community Development Department
Curry County Annex
94235 Moore Street, Suite 113
Gold Beach, OR 97444

Subject: AD-1705 Closed Meeting December 14, 2017

Gentlemen,

The Notice of the above referenced meeting was very confusing, both as to whom may attend, whether written comment is welcome and whether the action to be taken was final. I am not able to attend this meeting.

I wish to express my continuing support of the Pacific Gales Golf Course Project. It is very difficult to understand why Curry County, nearly bankrupt, and Port Orford, also in economic decline, would not roll out the "Red Carpet" for a First Class Project such as Pacific Gales.

1. The golf course would be an attraction to encourage travelers to stay rather than pass through the County and Port Orford; golfers would come to play the beautifully designed course, as they come to Bandon Dunes, year round.

2. Construction and golf course operation jobs are welcome in a depressed economy town such as Port Orford. Employment opportunities for the youth of the community, as caddies or other, are a possibility, as High School youth are employed at Bandon Dunes. Fishing and timber jobs have declined greatly in the past years. The loss of family wage jobs is evident with the decline of enrollment in the Langlois-Port Orford school district; over 500 students enrolled in 1995 to today's enrollment of about 180.

4. An alternative to treated wastewater disposal in the ocean is offered by Elk River Properties Development. Studies have shown that it is far better to use treated wastewater on land rather than dumping it into the ocean. Perhaps, it is forgotten that Port Orford's unpaid for sewer vault and ocean outfall were destroyed by a severe storm and had to be rebuilt. This occurred in the past two decades. The cost of the infrastructure would not be a burden to the taxpayer but funded by the golf course project.

I strongly urge support and approval for this project.

Sincerely yours,



Received @ PC meeting
12.14.2017



We ask for your support to use Port Orford's treated waste water on the proposed golf course and other properties. We believe this is an economic issue. One of the goals of our Main Street organization is economic vitality.

We have an opportunity to avert an economic risk to Port Orford if our direct ocean outfall of treated effluent were to fail. A precious failure of our system that dumped treated effluent into the sand dunes failed due storm damage. The result was significant loss to the city including a large debt to the city and a moratorium on building. We have an alternate way to deal with effluent.

Because our organizations writes Main Street Revitalization grants we are keenly aware of our current economy. This information is required for grants such as our grant to rehab a derelict property in the heart of Port Orford:

1. Proportion of the households at or below federal poverty rate in the city, town or urban neighborhood where the designated downtown district is located. The federal poverty rate is 36.1% for households in Port Orford
2. Area median income in the city, town or urban neighborhood where the designated downtown district is located. The average household income in Port Orford is \$30,296.

Please consider approving this opportunity to avert a possible economic disaster.

Karen Jennings
Board Member
Port Orford Main Street Revitalization Association

A large, flowing handwritten signature in black ink that reads "Karen Cooley Jennings". The signature is written over the typed name and extends to the right, ending in a large, decorative loop.

POMSRA is 503 1c - Part of the Oregon Main Street Program

14 Dec 2017

Reviewed @ PC meeting
12-14-2017

Re: Application AD-1705

Karen Auburn, PhD

I am here to support this application as a scientist.

My credentials are:

BS & MS in Microbiology, Oregon State University, Corvallis, OR

PhD Molecular in Microbiology, Rutgers University, Piscataway, NJ

Post Doc, Columbia University, New York City, NY

My reasons:

1. This property turns a section of land covered with the invasive plant *Gorst* that would be removed as a result turning this property into a golf course.
2. This property as a golf course will be a bioswale for filtering effluent from the City of Port Orford.
3. The effluent from the city would no longer be pumped into the ocean adding to ocean warming. It is only a matter of time before dumping waste water into the ocean will no longer be allowed.

For these reasons, the application should be allowed for environmental reasons.

Karen Auburn

Dec 14, 2017

Beverly Walters

P. O. Box 262
Sixes, OR 97476
(541)332-2914

September 5, 2017

Curry County Community Development Department
Curry County Annex
94235 Moore Street, Suite 113
Gold Beach, OR 97444

Subject: AD-1705

Attention: Carolyn Johnson

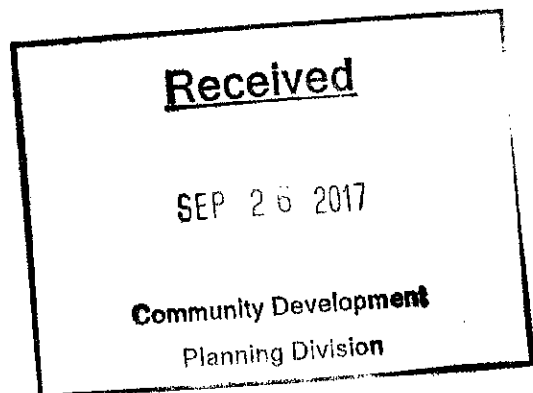
Dear Ms. Johnson,

I wish to express support for approval of the pipeline infrastructure construction to transport reclaimed wastewater from the Port Orford treatment facility to the property known as the Knapp Ranch. Both proposed routes pass directly by property owned my family trust; it would appear the shorter more direct route would be the better choice of the two proposals.

Use of reclaimed wastewater on land for irrigation is a far better alternative than dumping the treated wastewater into the ocean.

Sincerely yours,


Beverly Walters



Supplemental Information

<u>Page</u>	<u>Description</u>
1 – 2	E-mail dated October 13, 2017 and attached letter from ODOT
3 – 7	Letter dated October 18, 2017 from Law Office of Bill Kloos
8 – 54	E-mail and attachments dated October 19, 2007 from Sean T. Malone

Nancy Chester

From: MCDONALD John <John.MCDONALD@odot.state.or.us>
Sent: Friday, October 13, 2017 2:10 PM
To: Nancy Chester
Subject: RE: PC Meeting - 10-19-2017 Packet
Attachments: AD 1705 Letter.pdf

Nancy,

Left you a voice mail about the attached letter. May we request it be entered into the record and the conditions added?

Sincerely,

John McDonald
Development Review Planner
ODOT Southwestern Region
541-957-3688

From: Nancy Chester [<mailto:ChesterN@co.curry.or.us>]
Sent: Thursday, October 12, 2017 10:51 AM
To: A Vileisis -2; Ann Vilisis; Bob Morrow; Cameron LaFollette; Courtney Johnson; PERRY Dave; Diana StMarie (dstmarie65@gmail.com); John Brazil ; MCDONALD John; Karen Kennedy (goldbeachkaren@gmail.com); Kevin McHugh; Kim Hall; Lyn Boniface (bonilyn@hughes.net); Peg Reagan; Ted Freeman; Tyler Krug
Subject: PC Meeting - 10-19-2017 Packet

The packet can also be viewed on our web page

<http://co.curry.or.us/Departments/Community-Development/Planning-Commission>

Nancy Chester – Planner
Curry County Community Development
Planning Division
94235 Moore Street, Suite 113
Gold Beach, Or 97444
541 247-3284

*It's nice to be important, but it is more important to be nice.
~Author Unknown~*



Oregon

Kate Brown, Governor

Department of Transportation
Region 3 Planning and Programming Unit
3500 NW Stewart Parkway
Roseburg, OR 97470
Phone: (541) 580-6178

Nancy Chester
Curry County Community Development
94235 Moore Street, Suite 113
Gold Beach, OR 97444

RE: AD-1705 Elk River Property Development LLC

Dear Mrs. Chester,

Please enter this letter into the record.

We request the following conditions of approval for AD-1705:

- Applicant shall secure all necessary permits, for all pipeline locations within state right-of-way, from ODOT; and
- Applicant shall submit to and secure approval from ODOT regarding all locations, and construction means and methods (i.e. plans reviews), prior to construction.

Please contact me if you have any questions.

Sincerely,

John McDonald
Development Review Planner

October 18, 2017

Curry County Planning Director
Curry County Annex
94235 Moore St, Suite 113
Gold Beach, OR 97444

Submitted via email to: Carolyn Johnson at johnsonc@co.curry.or.us

Re: AD-1705; alternatives analysis to use recycled wastewater at Pacific Gales
Supplemental testimony for continued hearing

Dear Ms. Johnson:

This letter is submitted on behalf of the applicant, Elk River Property Development, LLC. It contains supplemental testimony for the Planning Commission. Please provide this letter to the Planning Commissioners, and have it entered into the record.

Introduction

There were two topics that were discussed at the public hearing of September 21, 2017 where the Planning Commission had some questions. The first topic involved the timeline for development of the Pacific Gales golf course, approved by the County Board in decision AD-1411 on January 15, 2015. The second topic involves the extent to which the statutory standards being applied in this alternatives analysis incorporate standards applicable to “utility facilities,” which are regulated by additional statutes. These topics are addressed in turn.

The CUP approval in AD-1411 is alive and valid, but that’s not relevant to the approval standards that are applicable here.

The approval for the golf course is alive, and the land use entitlements are secure, because the applicant initiated development within the one-year period following the approval of the conditional use permit. The golf course that was approved in AD-1411 constitutes a “A discretionary decision approving development on agricultural or forest outside an Urban Growth Boundary,” and, as such, is regulated by the timelines imposed by CCZO 7.050(4). That code provision says, in relevant part:

“A discretionary decision approving development on agricultural or forest outside an Urban Growth Boundary (UGB) is void two years from the date of the final decision if the development is not initiated in that period.”

This provision typically gives permit-holders two years to initiate development, but, in this case, the decision approving the CUP included a condition of approval that gave the applicant only one year. Accordingly, in keeping with the requirements of CCZO 7.050(4) that say a permit will expire if development activity is not initiated within the timeframe, the applicant initiated development within the one-year period following the approval of the permit. The term “Development activity” is defined by CCZO 1.030(34) as:

“Development Activity. Any use or proposed use of land that requires disturbance of the vegetation or soils or which requires action of the Planning Division or Building Division to allow the construction or modification of structures or other improvements or to allow the division of the land.”

In this instance, the applicant initiated the development activity on the subject property when it started removing the invasive gorse from the site, as proposed in the land use application. The primary work of removing large swaths of invasive gorse from the subject property occurred from February 2015 to August 2016. Jim Haley, the managing partner of Elk River Property Development, LLC estimates that, his company spent more than \$16,000 on site improvement activities (primarily invasive species removal) during the one-year period following the issuance of the CUP approval on January 15, 2015. The attached email provides more detail on these expenses. Removal of the vast expanse of invasive gorse was an activity described in the CUP application, and it was a necessary first step before many parts of the subject property could even be accessed by surveyors and golf course designers. The applicant also has financial records to show that it was involved in forestry management activities during this period, in order to prepare the site for subsequent golf course build-out. This activities constitute “development activity,” within the meaning of CCZO 7.050(4).

In sum, CCZO 7.050(4) and the conditional use approval required development activity to be initiated within one year of the approval, and that development was initiated within the one year timeline. Development of the project has not yet been completed, but neither the zoning code or the conditions of approval impose a date by which construction is required to be completed. Site design and vegetation management activities continue on the property, and the final build-out of the project will take some additional time. Therefore, it would be a mistake for anyone to think that the applicant would now need to ask for a permit extension, as the development was timely initiated, development activities continue to proceed, and an extension was not needed.

ORS 215.283 and ORS 215.246 do not inquire into the status of underlying land use approvals; they only ask if the use of reclaimed water is “in connection with a use allowed” in an EFU zone.

Despite the explanation above that shows the development was initiated within the required timeframe, the status of the land use approvals is not relevant to the approval standards imposed by ORS 215.283(1)(v) or ORS 215.246. These statutes governing the use of reclaimed wastewater on EFU-zoned land do not establish any standards that ask about the status of the underlying land use approvals. ORS 215.283(1)(v) simply states that (in addition to DEQ review) the land application of reclaimed water is allowed “for irrigation in connection with a use allowed in an exclusive farm use zone under this chapter.”

There is no doubt that a golf course, approved in a manner consistent with ORS 215.283(2)(f), is “a use allowed in an EFU zone.” That is exactly what the county approved in AD-1411. Because golf courses are uses allowed in the EFU zone, the proposal to use reclaimed water there is consistent with ORS 215.283(1)(v).

Consider, for instance, if the applicant had combined its initial application for land use approval with this request for alternatives analysis to use reclaimed water for irrigation. The two applications would be processed at the local level simultaneously, and neither would have an

approval in place until the local process was completed. The Planning Commission would be conducting this alternatives analysis for reclaimed water use with no golf course approval in place – at least not yet. There is nothing to suggest that doing so would be inconsistent with the statute. In that situation, the Planning Commission could simply find that a golf course is one of the many uses allowed in an EFU zone, and review the applications simultaneously.

In sum, if the Planning Commission adopts any findings on the status of the underlying land use approvals for the golf course as part of this alternatives analysis, they would simply be surplus findings, going beyond the scope of any approval standard found in the statutes that the Planning Commission is currently applying.

The reference to ORS public utility standards in ORS 215.275 is not applicable to the current application.

It also appears that the Planning Commission discussed the question of whether standards applicable to public utilities need to be addressed in this alternatives analysis, due to the fact that ORS 215.246(4)(c)(B) makes reference to ORS 215.275(4). As a threshold issue, the answer is no, because that would involve conflating two different use categories that are each allowed in EFU zones under different sets of approval standards – ORS 215.283(1)(v) and ORS 215.246 regulate use of reclaimed water, whereas public facilities are regulated by ORS 215.283(1)(c) and ORS 215.275. They are distinct uses, and the simple fact that the law regulating use of reclaimed water incorporates one of the standards from the statutes applicable to public facilities does not convert a proposal to use reclaimed water into a proposal for a public utility.

But on an even more basic level, the individual standard that the reclaimed water statute borrows from the public utility statutes isn't applicable in our current circumstances, as, by its own terms, that standard applies only to agricultural land.

To paraphrase, ORS 215.246(4) says, in addition to using reclaimed wastewater, it's also ok to establish facilities, including buildings and equipment (in our case, that would be the pipeline) that are not on the tract on which the reclaimed water will be used, so long as those facilities are located in public rights of way or other land, or so long as the owner of "other land" provides written consent, and so long as the owner of the facility complies with ORS 215.275(4). It's that last statute that comes from the laws pertaining to public utilities. However, ORS 215.275(4) only applies to agricultural lands, according to its own terms. It says, in relevant part:

“The owner of a utility facility approved under ORS 215.213 (Uses permitted in exclusive farm use zones in counties that adopted marginal lands system prior to 1993) (1)(c)(A) or 215.283 (Uses permitted in exclusive farm use zones in nonmarginal lands counties) (1)(c)(A) shall be responsible for restoring, as nearly as possible, to its former condition any agricultural land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility.” (emphasis added.)

In the current application, there is no instance where the pipeline would cross "other lands" (*i.e.*, lands that would require landowner consent for the pipeline to cross) that are agricultural. The only place where the proposed pipeline would leave the public right of way and cross into land

requiring landowner consent is on the northern portion of the “alternative route,” which is entirely comprised of residential lands.

Therefore, because ORS 215.275(4) applies only to agricultural lands, and because the proposal would not cross “other lands” that are agricultural, it’s not applicable to the current application.

Conclusion

Hopefully this analysis clears up the issues that the Planning Commission was discussing in September. We look forward to answering any questions you may have at the continued hearing.

Best regards,

A handwritten signature in black ink, appearing to read "Nick Klingensmith". The signature is fluid and cursive, with a prominent initial "N" and a stylized "K".

Nick Klingensmith

From: [Jim Haley](#)
To: [Nick Klingensmith](#)
Subject: development costs
Date: Wednesday, October 18, 2017 11:31:09 AM
Attachments: [ATT00001.htm](#)

Nick,

Further to our conversation regarding costs associated with gorse clearance at Pacific Gales., after a quick review of checks written between 1/15/2015 and 1/15/2016 there was at least \$16,000 dollars spent on fuel and additional labor.

There are no equipment costs associated with this number, nor my own time, as I own my equipment and had it hauled to the site from Wenatchee, WA, were it was being stored. There where also additional costs for transportation and lodging, flights between Omaha, Ne and Eugene, OR and vacation rentals, those will take some time to hunt down as those were billed to a credit card.

Jim Haley
219-670-4224



Total Control Panel

[Login](#)

To: [Remove](#) this sender from my allow list
nickklingensmith@landuseoregon.com
From: jmhaley@aol.com

You received this message because the sender is on your allow list.

From: [Carolyn Johnson](#)
To: [Sean Malone](#)
Subject: FW: ORCA testimony for AD-1705, request to develop pipeline
Date: Thursday, October 19, 2017 7:52:00 AM

Mr. Malone,

Received. Your transmittal will be added to the public record for the October 19, 2017 Planning Commission meeting.

Sincerely,

Carolyn Johnson

Carolyn Johnson
Community Development Director
Curry County Oregon
541-247-3228

From: Sean Malone [mailto:seanmalone8@hotmail.com]
Sent: Thursday, October 19, 2017 7:29 AM
To: Carolyn Johnson; Cameron La Follette
Subject: ORCA testimony for AD-1705, request to develop pipeline

Ms. Johnson,

Please find attached testimony, as well as exhibits A through C for File No. AD-1705. Please respond indicating you've received this material and that it has been added to the record.

Thank you,

Sean Malone
Attorney at Law
259 E. Fifth Ave.
Suite 200-C
Eugene, OR 97401
ph. 303.859.0403
seanmalone8@hotmail.com

From: Sean Malone
To: [Carolyn Johnson](#); [Cameron La Follette](#)
Subject: ORCA testimony for AD-1705, request to develop pipeline
Date: Thursday, October 19, 2017 7:31:48 AM
Attachments: [Ex. A-1403 - AD-1411 PacGales Final Order.pdf](#)
[Ex. B - confirmation with county.pdf](#)
[Ex. C - Knapp Ranch BOC Approval Final Order Oct 15.pdf](#)
[Malone to Curry County re knapp 10.19.17 - Final.pdf](#)

Ms. Johnson,

Please find attached testimony, as well as exhibits A through C for File No. AD-1705. Please respond indicating you've received this material and that it has been added to the record.

Thank you,

Sean Malone
Attorney at Law
259 E. Fifth Ave.
Suite 200-C
Eugene, OR 97401
ph. 303.859.0403
seanmalone8@hotmail.com

Sean T. Malone
Attorney at Law

259 E. Fifth Ave.,
Suite 200-G
Eugene, OR 97401

Tel. (303) 859-0403
Fax (650) 471-7366
seanmalone8@hotmail.com

October 19, 2017

Via Email

Carolyn Johnson: johnsonc@co.curry.or.us

Curry County
Planning Commission
94235 Moore St
Gold Beach OR 97444



Re: ORCA Post-Hearing Testimony for Application AD-1705, a request to develop a pipeline over multiple properties to deliver effluent and a reservoir to irrigate a proposed golf course.

Please accept this testimony on behalf of Oregon Coast Alliance (ORCA) on the above-referenced application. As demonstrated below and in prior testimony, the application must be denied.

- I. The golf course approval has expired and therefore the subject application cannot be approved

Condition of approval 1 from the January 2015 approval stated that “[t]his conditional use permit approval is valid for one (1) year unless the Applicant applies for and receives an extension of this approval.” See Exhibit A at 25. Because the golf course approval has long-since expired, and no request for extension has been requested, see Exhibit B, the current application is speculative. Notably, on remand, the October 6, 2015, approval does not amend condition of approval 1, only condition of approval 3. See Exhibit C at 12 (“The original conditions of approval that the Board adopted in Order 20127 remain in effect for the approved application with the exception of Condition No. 3, which pertained to the subject of ‘design capacity.’”). Until the applicant re-applies and receives approval, the current application to develop a pipeline is not anchored in any approved use of land. It is a pipeline to nowhere.

County counsel has taken the position in a memo to the Board of Commissioners that it is not necessary to find that a valid CUP exists for the underlying use before it can issue a decision for application to apply treated water on the property. The memo ignores the requirement under both ORS 215.246 and 215.283(1)(v) that requires that the DEQ review an approval. *See* ORS 215.246(1)(a) (“Require a determination by the Department of Environmental Quality, in conjunction with the department’s review of a license, permit, or approval, that the application rates and site management practices for the land application of reclaimed water, agricultural or industrial process water or biosolids ensure continued agricultural, horticultural or silvicultural production and do not reduce the productivity of the tract.”). DEQ’s inquiry is intertwined with the underlying permit for the golf course. DEQ cannot satisfy that inquiry absent some existing approval for a use of the land, and ORS 215.246 is contingent upon that DEQ approval. ORS 215.283(1)(v) is no different, requiring: “Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality” Again, the DEQ approval is critical to the approval under both ORS 215.246 and 215.283(1)(v).

ORS 215.283(1)(v) also expressly provides that the land application of reclaimed water for irrigation would be “in connection with a use allowed in an exclusive farm use zone under this chapter.” While a golf course may be an abstract use allowed in the zone, there is no current valid authorization for that particular use. The County counsel memo is ignoring that the use must be “in connection with” the base use (i.e., the golf course), which, at this time, is purely theoretical. The memo violates ORS 174.010 because it reads out of the statute the phrase “in connection with.” The County must give effect to all the words in the statute. More importantly, that base use (i.e., the golf course) dictates numerous factors, including how much reclaimed water is necessary, what the carrying capacity of the land may be, and so forth. These issues cannot be accurately identified without an existing approval. Again, the proposed use before the County in this application is not anchored to any actual approval. Therefore, the County must require that the base application for the proposed use be approved, at the very least, concurrently, or before an application for land application of reclaimed water can be approved.

Even if the permit for the golf course had not yet expired, a necessary change to that application would be necessary. The expired application requested groundwater for irrigation. Now that the applicant has abandoned that use of water, the expired application was, therefore, premised on faulty information. The criteria contained in the base application (i.e., the golf course) never contemplated that such a use of reclaimed water would occur on the subject property, and, therefore, was not considered during that

application process (regardless of the fact that it is now expired). *See* Ex. A at 20 (“The Applicants, on the other hand, have indicated that, in reaching a tentative agreement with the Knapp Ranch to transfer a portion of the ranch’s water rights, the Applicant will assist the Knapp Ranch in upgrading its existing irrigation system, which will allow the Knapps to continue to irrigate in a much the same fashion as they have previously, albeit more economically and with fewer stoppages from equipment malfunction.”); *id.* at 21 (“The Applicants have explained that, if the water rights transfer becomes unworkable, the Applicants will rely instead on new permits for groundwater or for storage of winter surface flows, to create a source of stored water for summer use.”). The allegations of using groundwater and surface water were simply wrong and therefore the expired approval rested on unfounded statements. The applicant’s change in course, therefore, dramatically changes the initial approval. Moreover, the application to use reclaimed water now includes a pond that was never contemplated in the first application. Therefore, regardless of its expiration, and certainly in the wake of it, the applicant is obligated to seek a new approval from the County to address the changed circumstances.

II. The DEQ determination is a necessary part of the application and cannot be deferred by a condition of approval

The DEQ determination is a necessary part of the application that cannot be deferred as part of a condition of approval. Because that determination requires a finding of the “continued agricultural, horticultural or silvicultural production and do not reduce the productivity of the tract,” it is very likely that the applicant could not satisfy this requirement. It is a discretionary criterion, and, therefore, it cannot simply be relegated to a condition of approval.

Conditions of approval are not findings. They cannot substitute for, or be used to avoid, demonstrating compliance with approval criteria/standards. If a condition were imposed that effectively postpones satisfaction of these requirements, then the County must provide for a further land use Hearing with notice and an opportunity for public comment. *See, Stockwell v. Benton County*, 38 Or LUBA 621 (2000) (deferred findings of compliance must observe statutory notice and hearing requirements).

The requirement for a further Hearing must be incorporated as a Condition of approval. Absent such a condition – one that requires a notice and an opportunity to be heard – the application cannot be approved because the Condition “ignores the possibility that the applicant actually might not be able to comply with [the criteria] and preclude[s] other interested persons from establishing precisely that fact” *Hodge Oregon Properties, LLC v. Lincoln County*, 194 Or App 50, 55, 93 P.3d 93 (2004); *Gould v.*

Deschutes County, 216 Or App 150, 161-163, 171 P.3d 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). Moreover, “feasibility” 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 P.2d 741, *rev. den.* 297 Or 82 (1984). Here, there has been no demonstration by the applicant of the “continued agricultural, horticultural or silvicultural production” or that the productivity of the tract would not be reduced. Therefore, much like the first issue presented above, the applicant must first obtain the DEQ approval first, and then proceed with the subject application. There is simply no way of satisfying these the criteria for the DEQ application without knowing basic information related to the base use (i.e., the proposed but expired golf course).

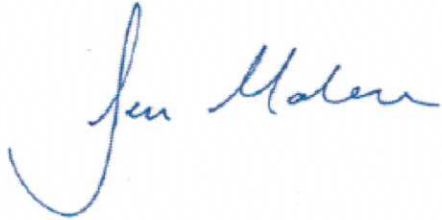
III. An exception to Goal 11 is necessary

The definition of public facilities includes “water, sewer, and transportation facilities.” This application is a water facility that is extended from the City of Port Orford into Curry County. As a result, the applicant will be required to obtain an exception goal 11. See *Foland v. Jackson County*, 61 Or LUBA 264, 314 (2010), *aff’d* 239 Or App 60, 243 P.3d 830 (2010) (explaining that an exception to Goals 3, 11, and 14 would be required to place public facilities with urban levels of use on farmland); *Foland v. Jackson County*, __ Or LUBA __ (LUBA No. 2013-082, January 30, 2014); *Foland v. Jackson County*, 64 Or LUBA 265 (2011) (if a particular urban use of rural land authorized under an exception to Goal 14 does not require urban levels or sources of water, it is consistent with Goal 11 to allow the urban use to be served with non-urban levels or sources of water, and no exception to Goal 11 is required; where the extension of a water system onto rural lands is proposed to facilitate an urban use of that land, the extension is prohibited without an exception to Goal 11). Here, the applicant has not demonstrated that the amount of reclaimed water at issue is not indicative of urban levels of water use. The applicant has not pointed to any provision that waives the overarching requirements imposed by the Statewide Planning Goals, and, therefore, the applicant must take an exception to Goal 11 before an application is approved. Indeed, the applicant has not yet demonstrated that a Goal 11 exception is also not necessary for the proposed use. For service of water to rural lands, whether the applicant attempts to characterize the utility as private or public is irrelevant. See 660-011-0065(1)(1).

IV. Conclusion

For the foregoing reasons, I respectfully request that the Planning Commission deny the applications.

Sincerely,

A handwritten signature in blue ink that reads "Sean T. Malone". The signature is written in a cursive style with a large, looping initial "S".

Sean T. Malone
Attorney for ORCA

Cc:
Client

Enclosures: Exhibits A, B, C

BEFORE THE BOARD OF COUNTY COMMISSIONERS
IN AND FOR THE COUNTY OF CURRY, OREGON

In the matter of Planning Commission file)
AD-1411 for conditional use approval to)
develop an 18-hole golf course with accessory)
uses on a portion of property having a zoning)
designation of Exclusive Farm Use (EFU))
and identified on the Curry County Assessor's)
Map No. 32-15-00, Tax Lot 04400 and Map)
No. 32-15-29C, Tax Lot 00300 filed by)
Chris Hood, Stuntzner Engineering)
& Forestry, LLC, on behalf of Elk River)
Property Development LLC and Knapp)
Ranches, Inc.)

ORDER No. 20127

This matter came before the County on an application by Elk River Property Development, LLC and Knapp Ranches, Inc., seeking approval of a Conditional Use Permit to develop an 18-hole golf course, together with accessory uses, on a property with zoning designation of Exclusive Farm Use (EFU), identified as Curry County Assessor's Map No. 32-15-00; Tax Lot 04400 and Assessor's Map No. 32-15-29C-00300. The Applicant was represented by Stuntzner Engineering & Forestry, LLC and the Law Office of Bill Kloos, PC.

Following procedures as required by law, the Planning Commission approved the application on October 23, 2014, and on November 3, 2014, a Notice of Appeal was filed by Sean Malone, Attorney at Law, on behalf of Oregon Coast Alliance ("ORCA"). Thereafter, the matter was taken up on appeal by the Board of Curry County Commissioners. Following appropriate notice as required by law, the Board held a *de novo* hearing on December 11, 2014 and provided additional opportunities for parties to submit testimony to the record. On January 7, 2015, the Board orally approved the application and continued the matter until January 15, 2014, for adoption of a final written order.

NOW, THEREFORE, THE BOARD OF CURRY COUNTY COMMISSIONERS HEREBY ORDERS that Application File No. AD-1411 is approved, and the appeal in File No. A-1403 is denied, based on the findings outlined in Exhibit "A" and the conditions outlined in Exhibit "B" that are attached hereto and incorporated by reference.

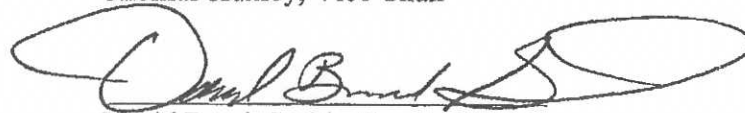
15

Dated this 15th day of January, 2015.

CURRY COUNTY BOARD OF COMMISSIONERS


Susan Brown, Chair

Abstained
Thomas Huxley, Vice Chair


David Brock Smith, Commissioner

Approved as to Form:

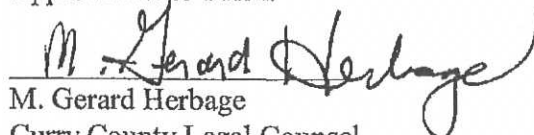

M. Gerard Herbage
Curry County Legal Counsel

EXHIBIT A**CURRY COUNTY BOARD OF COMMISSIONERS
FINDINGS OF FACT AND CONCLUSIONS****AD-1411: REQUEST FOR A CONDITIONAL USE PERMIT TO DEVELOP 18-HOLE GOLF
COURSE TOGETHER WITH ACCESSORY USES ON A PORTION OF THE PROPERTY
WITH ZONING DESIGNATION OF EXCLUSIVE FARM USE.****I. INTRODUCTION**

This document supports the decision of the Curry County Board of Commissioners in File Nos. A-1403 and AD-1411, approving the Conditional Use Permit for an 18-hole golf course on EFU-zoned land.

The Board finds that the proposed golf course will enhance and diversify the outdoor recreational activities offered in the County, on one of Southern Oregon's most scenic locations. It will create numerous employment opportunities and will contribute to the economic growth in the region. The Board further finds that the golf course will be a leader in environmental sustainability and will not have adverse impacts on farming, forestry practices or on environmental and natural resources in the area. In order to ensure compliance with applicable approval criteria, the Board utilizes conditions of approval, where appropriate.

Except for instances where this decision modifies or departs from the findings, analysis and conditions of approval contained in the decision of the Planning Commission, the staff report, and the Applicant's submittals, are hereby adopted as supporting findings, and are incorporated into this decision by reference.

II. APPLICANT.

The Applicant is Elk River Property Development, LLC. The subject property is owned by Knapp Ranches, Inc.

III. DESCRIPTION OF SITE AND PROPOSAL

The subject property consists of approximately 354 acres of a 1,008 acre tract of land owned by Knapp Ranches, Inc. which is located between US Hwy 101 to the east and the Pacific Ocean to

the west and Port Orford to the south. The Applicant is requesting conditional use approval to allow the development of an 18-hole golf course on an approximately 198 acre portion of the subject property. The proposed development area has an EFU zoning designation. In addition to the golf course, the development will include a clubhouse, equipment storage and office facility, restaurant, lounge, parking lots, and water improvements (irrigation).

The subject property is identified as Curry County Assessor's Map No. 32-15-00; Tax Lot 04400 and Assessor's Map No. 32-15-29C; Tax Lots 00300 and 500. Although Assessor's Map No. 32-15-29C; Tax lot 00500 is part of the subject property, it is not within the proposed golf course development area. This parcel consists of approximately 1.52 acres; is zoned Residential Two (R-2); and is located within the Port Orford Urban Growth Boundary.

The subject property abuts the City of Port Orford Urban Growth Boundary along its south and east boundaries, the Pacific Ocean along its west boundary and the remainder of the Knapp ownership along its north boundary.

The subject property is situated on a bench that is elevated approximately 100 feet above the adjacent resource land to the north, the Pacific Ocean to the west and a forested area to the south.

The northeasterly portion of the subject property contains approximately 111 acres of pasture and forest land that are relatively flat with a south/southeast slope of less than one percent. There is a sand dune formation approximately 500 feet in width that extends north and south along the westerly portion of the subject property. The dune formation ascends westerly from the pasture for approximately 50 feet at an average slope of 50 percent and then descends westerly as a partially solidified rolling formation with an overall average slope of 12 to 15 percent. The southerly area was historically forestland that was logged approximately 6 years ago.

IV. COUNTY PROCEDURES

The application for Conditional Use approval was filed pursuant to Curry County Zoning Ordinance ("CCZO") Section 3.072(25), governing golf courses on EFU-zoned land. This application initially came before the Curry County Planning Commission as an application for a conditional use approval in accordance with CCZO Section 2.060(2) (c).

On September 11, 2014, a public hearing was held before the Planning Commission as a matter duly set upon the agenda of its regular meeting after giving public notice to affected property owners and publication in the local newspaper.

After receiving public testimony on September 11, 2014, the hearing portion of the proceedings was closed and the Planning Commission voted to reconvene on October 23, 2014, for deliberation only. The written record was left open until 5:00 pm on September 29, 2014, for submission of new testimony/material; until 5:00 pm, October 6, 2014, for rebuttal testimony from anyone on material submitted that was submitted in the prior two week period; and until

October 13, 2014, for submission of final arguments by the Applicant.

On October 23, 2014, after consideration and discussion of the evidence and testimony, the Planning Commission voted to approve the request. The Final Order of the Planning Commission, which was based on decision criteria, findings of fact and conclusions of law, was signed on October 23, 2014.

On November 3, 2014, a Notice of Appeal of the Planning Commission decision was filed by Sean Malone, Attorney at Law, on behalf of Oregon Coast Alliance ("ORCA"). Pursuant to CCZO 2.170, the matter was taken up on appeal by the Board of Curry County Commissioners. Following appropriate notice as required by law, the Board held a *de novo* hearing on December 11, 2014 and provided additional opportunities for parties to submit testimony to the record. On January 7, 2015, the Board orally approved the application and continued the matter until January 15, 2015, for adoption of a final written order.

V. APPLICABLE STANDARDS AND CRITERIA

This application involves siting and development of a golf course on EFU-zoned property. Under Oregon's land use statutes and goals, the application must be found to comply with Curry County land use standards and criteria, including the following:

STATUTES

ORS 215.283 - Uses permitted in exclusive farm use zones in nonmarginal lands; rules.

ORS 215.296 Standards for approval of certain uses in exclusive farm use zones; violation of standards; complaint; penalties; exceptions to standards.

OREGON ADMINISTRATIVE RULES (OAR)

OAR 660-033-0120

OAR 660-033-0130

Curry County Comprehensive Plan

Section 6.4.1 Existing Disposal Sites (Solid Waste)

Section 6.6 Plan Policies for Air, Land, Water Resource Quality

Curry County Zoning Ordinance

Section 3.070 Exclusive Farm Use Zone (EFU).

Section 3.072 Conditional Uses Subject to Administrative Approval by the Director

Section 3.073 High-Value Farm Land.

Section 3.252 Development in Areas of Geologic Hazards

Section 7.040 Standards Governing Conditional Uses

Section 7.050 Time Limit on a Permit for Conditional Uses

Additional standards may have previously been addressed in this proceeding. If any additional applicable standards were addressed that were not among those standards listed above, the Board adopts the findings, analysis and conditions of approval contained in the decision of the Planning Commission, the staff report, and the Applicant's submittals.

VI. ANALYSIS OF APPLICABLE STANDARDS AND CRITERIA AND FINDINGS OF COMPLIANCE

1. STATUTES

ORS 215.283 - Uses permitted in exclusive farm use zones in nonmarginal lands; rules.

(2) The following non-farm uses may be established, subject to the approval of the governing body or its designee in any area zoned for exclusive farm use subject to ORS 215.296:

(f) Golf courses on land determined not to be high-value farmland, as defined in ORS 195.300.

FINDING: This statute applies because Curry County is a non-marginal lands county and the subject property is zoned EFU. ORS 195.300(10) defines high-value farmland as including, in relevant part:

"Land that is in an exclusive farm use zone or a mixed farm and forest zone and that on June 28, 2007, is:

“(A) Within the place of use for a permit, certificate or decree for the use of water for irrigation issued by the Water Resources Department;”

FINDING: Appellant testified that the application could not be approved because a portion of the development site had been depicted as within the place of use for an irrigation permit. The Applicant has demonstrated that its site plan for the proposed development would avoid the area on the subject property that had been depicted as a “place of use” for irrigation. Exhibit A to the application, titled “PROPOSED COURSE LAYOUT” includes an area titled “excluded area,” which excludes from the golf course development site the acreage that was illustrated as being within the place of use for irrigation by Permit S-53648. The Applicant explained in its application narrative that the 27 acre “excluded area” was never developed with irrigation within the timeframe required by the permit, with the result that this portion of the of the ranch did not appear to have been “within the place of use” for an irrigation permit that was effective on June 28, 2007. Nonetheless, the Applicant’s narrative explained that it “has chosen to avoid that area with the proposed golf course and leave the land available for farm use.”

Because the proposed development would avoid the area that might have arguably been within the place of use for an irrigation permit, none of the proposed golf course is within “high value farmland,” as that term is defined by ORS 215.283(2)(f).

The opponents of the proposed golf course have also argued that the entire tract must be considered high value farmland if any portion of that tract includes high value farmland. See, e.g., the Appellant’s filing of November 3, 2014, arguing that “the entire tract is high value farmland.” The Appellant looks to ORS 215.705 for this expansive definition of “high value farmland.” That statute governs dwellings in farm and forest zones. By their own terms, the statutes governing farm and forest dwellings expressly limit the context in which they apply. ORS 215.710(1) provides: “[f]or purposes of ORS 215.705, high-value farmland is land in a tract composed predominantly of soils that, at the time of the dwelling...”

In this case, the application is not for a dwelling in farm or forest zones, and for purposes of conditional uses allowed in EFU zones, the applicable definition of “high value farmlands” comes from under ORS 215.283, not ORS 215.705. Therefore, the Board is not persuaded to import an inapplicable statute when the applicable statute is clear: under ORS 215.283(2)(f), high value farmland is measured according to specific locations of certain soil types and the “place of use” of irrigation. The extent of “high value farmland” in the current context is not measured by tract or property ownership boundaries.

Therefore, because the proposed golf course is not on “high value farmland,” this application can be approved, pursuant to ORS 215.283(2)(f).

ORS 215.296 Standards for approval of certain uses in exclusive farm use zones; violation of standards; complaint; penalties; exceptions to standards.

(1) A use allowed under ORS 215.213 (2) or (11) or 215.283 (2) or (4) may be approved only where the local governing body or its designee finds that the use will not:

(a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or

(b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

(2) An Applicant for a use allowed under ORS 215.213 (2) or (11) or 215.283 (2) or (4) may demonstrate that the standards for approval set forth in subsection (1) of this section will be satisfied through the imposition of conditions. Any conditions so imposed shall be clear and objective.

FINDING: Pursuant to ORS 215.283(1)(2)(F), a golf course is a permitted use in the exclusive farm use zone on land determined not to be high-value farmland, as defined in ORS 195.300, subject the standards found at ORS 215.296. The provisions of ORS 215.296 are implemented by CCZO 7.040(16), and are therefore addressed under that section below.

2. OREGON ADMINISTRATIVE RULES

OAR 660-033-0120 - Uses Authorized on Agricultural Lands

FINDING: As explained in the staff report and Applicant's submittals, OAR 660-033-0120 separates uses allowed on high-value farmland (HV farmland) and those lands determined not to be high-value farmland (All Others). Because the subject property does not include the soil types designated as high-value farmland, and because the development area does not involve any "place of use" for an irrigation permit, the proposal does not include "high value farmland." A golf course can be approved on agricultural lands after notice and the opportunity for a hearing, and after demonstrating compliance with the provisions of 660-033-0130 (2), (5) and (20) addressed below.

The Board finds that, pursuant to administrative rule, the proposed golf course is not on high-value farmland, and can therefore be approved pursuant to the procedural requirements and the minimum standards found at OAR 660-033-0130.

660-033-0130 - Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses

(2)(a) No enclosed structure with a design capacity greater than 100 people, or group of structures with a total design capacity of greater than 100 people, shall be approved in connection with the use within three miles of an urban growth boundary, unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4, or unless the structure is described in a master plan adopted under the provisions of OAR chapter 660, division 34.

FINDING: Generally, the Appellant has argued that "design capacity" means the maximum number of people who could fit in the building at once, equivalent to "maximum occupancy," as the term is used in building and fire codes. The Applicants, on the other hand, have explained that the Rule would have simply used the term "maximum occupancy" if that is what it had meant, and that by using the term "design capacity," the drafters of the rule must have intended a concept of how many people the building was designed to accommodate, in light of the overall use proposed.

Throughout the local proceedings, the Appellant and the Applicant have exhaustively analyzed

this ambiguous Rule, and the Board is tasked with choosing which of these interpretations is most consistent with the Rule and the statute it implements. The Board concludes the interpretation proposed by the Applicants is reasonable, practical, and consistent with the Rule, whereas the alternative interpretation proposed by the Appellant leads to absurd results that would effectively prohibit this type of use from ever being developed in farm zones, contrary to a statute that says the use is permissible.

The Applicants have explained that the number of people who could be in the clubhouse is necessarily limited by the number of people who are playing the golf course, as the clubhouse will only be open to patrons of the golf course. Given that the 18-hole golf course has a finite capacity for the number of golfers who will be using the course at any time, the nature of the larger use places a practical limit on the number of people who could be expected to be in the buildings at any time. The Applicant has explained its numerical projections for the number of people on the golf course, the number of players who would be expected to be using the clubhouse before and after a game of golf, and the number of staff necessary to support these operations. This analysis is provided on page 8 of the application narrative, and is elaborated in the Applicant's rebuttal testimony of January 2, 2015. The Board is particularly persuaded by the explanation on page 2 of the Applicant's submittal from January 2, 2015, where the Applicant describes typical flow of golfers through the golf course and through the building, illustrating that when the building is viewed in context of the larger use, it will be designed to have a capacity of no more than 100 persons. The Board views the estimated square footage for the different rooms in the proposed buildings (as described at page 10 and 11 of the application narrative) to be a reasonable and persuasive illustration of a building that is designed to accommodate fewer than 100 persons in its projected operations.

The Rule requires the cumulative capacity of all buildings to be accounted for. The Applicant has explained that, aside from the main clubhouse, the proposed accessory buildings are either designed to provide very small capacity (such as a reception facility at the entrance road that will have one or two staff persons, and a refreshment stand that will have one or two staff persons) or they will not be designed to provide "capacity" for persons at all (such as extensive storage areas within the clubhouse for golf carts, patio furniture, etc., and a large equipment and maintenance building that will, at times, have one or two mechanics working in it.) The Board agrees with the characterization of the maintenance/storage building as a space that, in context of the larger proposed use, would not be designed for "capacity" within the meaning of this Rule.

In review of the Appellant's alternative theory, the Board is not persuaded because this approach would necessarily lead to absurd results, and the Board assumes the drafters of this Rule did not intend for the Rule to lead to a result where a very small building might accommodate 100 people, if every room is filled to the Fire Marshall's maximum occupancy. The Appellant has argued that the number of people who could fit in every room inside the buildings must be tallied, and that number must always be below 100. In the words of the Appellant, this means counting the people who could fit in a "two-story clubhouse, workshop, restaurant, kitchen, equipment storage, office facility, locker rooms with showers, pro-shop, administrative offices

for a chef, golf pro, and manager, reception (check-in), mechanic's shop, maintenance facility, repair shop, storage facility and banquet area for tournaments, and accessory facility."

If "design capacity" is read to mean the same thing as "maximum occupancy", a single maintenance building may have enough space for 100 persons. It is the Board's view that a maintenance building/equipment barn is not an optional structure for a golf course; without the ability to protect fragile greenskeeping equipment, bags of fertilizer, and other sensitive supplies, a golf course would simply not be able to operate. Under the Appellant's theory, the maintenance building/equipment barn would likely consume the entire allotment for 100 person capacity, and foreclose the possibility of developing the other buildings and accessory uses that are specifically allowed for by the Rule. An interpretation of the Rule that would make it impossible to develop the types of buildings that are essential for operation of a golf courses would have the practical result of prohibiting golf courses. This would be contrary to statute, as ORS 215.283(2)(f) generally allows golf courses in farm zones, subject to certain conditions. The Board believes it must interpret this Rule in a manner that is consistent with the statute.

The meaning of the term is a question of state law, and there appears to be a shortage of caselaw that could guide the Board's analysis of this issue. Both parties have raised the example of ORS 420.005(1), which also uses the term "design capacity" in the same context of building design. In ORS 420.005(1), the term is used to measure the number of inmates that can be housed in correctional facilities, as opposed to size of structures for conditional uses allowed in EFU zones.. *Capps v. Atiyeh*, 495 F. Supp. 802 (1980) is a case that both parties have also raised, and it appears to be the only case to have construed "design capacity" in the general context of how many people a building or buildings are designed to accommodate. The Board is persuaded that *Capps* supports the Applicant's proposed interpretation, as that case looked to "design capacity" as the number of people the buildings were designed to accommodate in terms of cells or bunks. For the reasons explained by the Applicant in its filings of December 23, 2014, and January 2, 2015, it would have defeated the purpose of the statute if "design capacity" had meant the number of people who could potentially squeeze into every room in the building all at once. The Board specifically adopts the following analysis from Applicant's submittal of January 2, 2015:

"So, if the current application involved a prison, instead of a clubhouse, and if it was prohibited from having a 'design capacity' that exceeded 100 people, the *Capps* metric would allow between 5,500 and 8,000 square feet of cell space. But that's just for the cells. That doesn't count the cafeteria, the kitchen, the bathrooms, and any recreational space that prisoners might be afforded. A 10,000 square foot prison for 100 prisoners starts to look pretty cramped in this light. Under *Capps*, 10,000 square feet might be closer to the *minimum* size that could accommodate 100 people.

Finally, while the Board has endeavored to correctly interpret this ambiguous rule, the Board recognizes it will not be afforded deference on interpretations of state law. The Board has concluded that "design capacity" is intended to invoke a more flexible concept than "maximum

occupancy,” and the Applicant has demonstrated that, under normal operation, the buildings will not be used to accommodate more than 100 people at any given time. However, if LUBA or some other appellate review authority determines that the Board has not correctly interpreted this rule, and that “design capacity” should instead be interpreted to be synonymous with “maximum occupancy,” the Board hereby adopts an additional, contingent condition of approval, intended to anticipate and resolve this scenario in advance, so as to avoid having the issue resolved in multiple rounds of appeals.

Therefore, if the Board’s findings and analysis supporting its interpretation of “design capacity” are not upheld on appeal, the Board hereby approves the conditional use permit under the contingent condition of approval that the golf course’s enclosed structures are to have a cumulative *maximum occupancy* of no more than 100 persons, as determined by uniform building and fire codes.

(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;

(b) A regulation nine hole golf course is generally characterized by a site of about 65 to 90 acres of land, has a playable distance of 2,500 to 3,600 yards, and a par of 32 to 36 strokes;

(c) Non-regulation golf courses are not allowed uses within these areas. "Non-regulation golf course" means a golf course or golf course-like development that does not meet the definition of golf course in this rule, including but not limited to executive golf courses, Par three golf courses, pitch and putt golf courses, miniature golf courses and driving ranges;

FINDING: The Board finds that the proposed golf course is consistent with the standards found in this Administrative Rule. Specifically, the Board finds that the description of an 18-hole golf course found at OAR 660-033-0130(20)(a) is illustrative of a typically-sized regulation golf course, and does not establish a strict maximum size limit. The Rule uses flexible terms such as “generally characterized by” and “a site of about 120 to 150 acres of land.” The approximate description contained in this rule is flexible enough to include the natural “links style” course

that has been proposed here, which has been described as including an approximate 198 acre development area within a larger leased property of 354 acres.

In the document labeled "GOLF COURSE SIZE DISCUSSION," attached to the Applicant's initial application submittal, the Applicant's golf course designer explained that the industry standard for existing modern 18-hole golf courses on the Southern Oregon coast is between 225 and 305 acres. The Applicant further explained that unique site features, such as existing topography and vegetation, can require a particular course layout in order to ensure a safe, functional course. In light of the additional evidence in the record about the steep slopes and the Applicant's commitment to avoid impacts to wetlands, and in light of the condition the Board is imposing that will require the Applicant to keep golfers away from bluff areas, the Board finds that the proposed 198 acre development area is entirely consistent with the flexible definitions provided by 660-033-0130(20)(a).

OAR 660-033-0130(20) [continued]

(d) Counties shall limit accessory uses provided as part of a golf course consistent with the following standards:

(A) An accessory use to a golf course is a facility or improvement that is incidental to the operation of the golf course and is either necessary for the operation and maintenance of the golf course or that provides goods or services customarily provided to golfers at a golf course. An accessory use or activity does not serve the needs of the non-golfing public. Accessory uses to a golf course may include: Parking; maintenance buildings; cart storage and repair; practice range or driving range; clubhouse; restrooms; lockers and showers; food and beverage service; pro shop; a practice or beginners course as part of an 18 hole or larger golf course; or golf tournament. 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;

(B) Accessory uses shall be limited in size and orientation on the site to serve the needs of persons and their guests who patronize the golf course to golf. An accessory use that provides commercial services (e.g., pro shop, etc.) shall be located in the clubhouse rather than in separate buildings; and

(C) Accessory uses may include one or more food and beverage service facilities in addition to food and beverage service facilities located in a clubhouse. Food and beverage service facilities must be part of and incidental to the operation of the golf course and must be limited in size and orientation on the site to serve only the needs of persons who patronize the golf course and their guests. Accessory food and beverage service facilities shall not be designed for or include structures for banquets, public gatherings or public entertainment.

FINDING: The Board finds that the accessory uses proposed are consistent with this rule. As the Applicant has stated, accessory commercial uses are allowed, so long as they provide goods or services customarily provided to golfers, and that they do not serve the non-golfing public. The Applicant has explained that only customers who pay for golfing privileges will be able to proceed farther into the site than the small reception building. The clubhouse and other amenities will not be open to the non-golfing public.

Food and beverage service is included in the Rule as an example of this type of permitted use. In addition, the Rule specifically provides that “Accessory uses may include one or more food and beverage service facilities in addition to food and beverage service facilities located in a clubhouse.” (emphasis added). Therefore, the small refreshments stand is an accessory use that is allowed outright.

3. CURRY COUNTY COMPREHENSIVE PLAN

The Applicant submitted findings regarding conformance with the Curry County Comprehensive Plan – Section 6.4.1 Existing Disposal Sites (Solid Waste) and Section 6.6 Plan Policies for Air, Land, Water Resource Quality

FINDING: According to the Applicant, a portion of the subject property (Tax Lot 300 Section 29C) is encumbered by the groundwater area potentially affected by the Port Orford Landfill Site. No development is proposed within the Port Orford groundwater area. A map is attached to the Applicant’s supplemental exhibits showing that the boundary of the golf course development area is located approximately 600 feet north of the Groundwater Area Boundary. Therefore, The Curry County Comprehensive Plan Ground Water Hazard Policies do not apply to the golf course development area. As explained in the Applicant’s submittal of December 10, the current application is not the type of application that would trigger direct application of this Plan Policy, as it applies to development proposals that propose development within a mapped groundwater monitoring area, or extraction of groundwater within that groundwater monitoring area. The Board finds the proposed development site avoids the groundwater monitoring area, as depicted by the diagram labeled “PORTION OF GOLF COURSE DEVELOPMENT AREA WITHIN TAX LOT 300” included with the Applicant’s initial application materials.

Appellant has raised issues related to additional Plan Policies. Although they have limited relevance to the application at issue here, they are addressed below.

In their submittal of November 3, 2014, the Appellant alleged that the application fails to comply with Comprehensive Plan Policy 15, specifically policies that apply in “beaches and dunes” areas. The Applicants explain in its submittal of December 10, 2014 that provisions of Plan Policy 15 cited by the Appellant apply only applies to “Coastal shorelands – beaches and dunes,”

and that the development area is not within a “beaches and dunes” area relevant to Goals 17 and 18. Section 15.3 of the Curry County Comprehensive Plan defines the Coastal Shorelands Boundary. The boundary for the Coastal shorelands in the vicinity of the development area is called “Segment 6” in Section 15.3 of the Comprehensive Plan and is defined as: “The shoreline boundary in this segment is defined as following the top of the cliff to the northerly end of the Lake Garrison spit;” Because the development area is easterly of “top of the cliff,” it is outside of the Coastal shorelands area, and the plan policies that apply to this area do not apply to the subject application.

Likewise, the Appellant advanced an argument based on Comprehensive Plan policies that apply to “beaches and dunes,” but the Board also finds that the subject property is not within a “beaches and dunes” area. Comprehensive Plan Policy 15.7 provides a description of beaches, and Comprehensive Plan Policy 15.8 provides a description of dune areas. Based on these descriptions, the Board finds that there are dunes and beaches to the west of the development site, but the development site itself contains no beaches or dunes to which these Plan Policies might apply. Further, the Board finds that Comprehensive Plan Policy 15.10(15) (cited by the appellants) does not apply directly to quasi-judicial applications, and that it has been implemented by policies in the Curry County zoning code, including Section 7.040(13). That code section applies to development applications in the Beaches and Dunes Conservation (CON) zone, which does not apply to the subject property, as demonstrated by the Curry County Zoning Map.

4. CURRY COUNTY ZONING ORDINANCE

Section 3.070. Exclusive Farm Use Zone (EFU).

Purpose of Classification: The purpose of the zone is to encourage the preservation of farm use lands in the county where the land owner desires the protection of Exclusive Farm Use Zoning under the provisions of ORS 215.203. The intent of this zone is to implement the requirements of the Curry County Comprehensive Plan and Statewide Planning Goal 3 with respect to agricultural lands in the county.

FINDING: The relevant approval criteria implementing this purpose statement are addressed below.

Section 3.072 Conditional Uses Subject to Administrative Approval by the Director

25. Golf Courses except on high-value farm land (16a,b)

FINDING: As explained above in context of ORS 215.283 and ORS 195.300, the subject property does not include high-value farmland. A golf course may therefore be approved on EFU lands if the application demonstrates compliance with the standards for Conditional Uses.

Section 3.252 Development in Areas of Geologic Hazards

Those areas identified as geologic hazard areas shall be subject to the following requirements at such time as a development activity application is submitted to the Director.

1. *The Applicant shall present a geologic hazard assessment prepared by a geologist at the Applicant's expense that identifies site specific geologic hazards, associated levels of risk and the suitability of the site for the development activity in view of such hazards. The geologic hazard assessment shall include an analysis of the risk of geologic hazards on the subject property, on contiguous and adjacent property and on upslope and downslope properties that may be at risk from, or pose a risk to, the development activity. The geologic hazard assessment shall also assess erosion and any increase in storm water runoff and any diversion or alteration of natural storm water runoff patterns resulting from the development activity. The geologic hazard assessment shall include one of the following:*
 - a) *A certification that the development activity can be accomplished without measures to mitigate or control the risk of geologic hazard to the subject property or to adjacent properties resulting from the proposed development activity.*
 - b) *A statement that there is an elevated risk posed to the subject property or to adjacent properties by geologic hazards that requires mitigation measures in order for the development activity to be undertaken safely and within the purposes of Section 3.250.*
2. *If the assessment provides a certification pursuant to Section 3.252 (1) (a), the development activity may proceed without further requirements of this Section*
3. *If the assessment provides a statement pursuant to Section 3.252 (1) (b), the Applicant must apply for and receive an Administrative Decision prior to any disturbance of the soils or construction.*

FINDINGS: The Applicant commissioned A "Geologic Hazard Assessment Letter Report." As a threshold matter, the Board finds that the Applicant may have gone beyond what was required of it in this instance, as these standards apply to "areas identified as geologic hazard areas," and the subject property is not identified as a natural hazard area by the Curry County Comprehensive

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Plan.

In addition, assuming that these standards might apply to the current application, the geologic hazard assessment report states that the subject property "is suitable for the proposed development activity and that development can be accomplished without measures to mitigate or control the risk of geologic hazards to the subject property or to adjacent properties." The report includes detailed geologic investigation. The Board finds this evidence and the report's conclusion persuasive. Accordingly, the proposed development complies with CCZO 3.252(1)(a), in that it has been certified that the development activity can be accomplished without measures to mitigate or control the risk of geologic hazard to the subject property or to adjacent properties resulting from the proposed development activity.

The Appellant of the proposed golf course has argued that the best practices outlined in the report (such as monitoring irrigation, ground saturation, and prohibiting golfers from approaching the cliff's edge) must be viewed as "mitigation measures," in the meaning of CCZO 3.252(1)(b), and that the presence of "mitigation measures" establishes that the geologic hazard assessment report implicitly includes a "statement that there is an elevated risk posed to the subject property or to adjacent properties." However, the Board does not interpret its code in the manner proposed by Appellant. There is no statement in the geologic hazard assessment report that the proposal would lead to an elevated risk, and including a description of best practices as part of a thorough geologic hazards report is not the equivalent of a statement that there is an elevated risk.

In addition, CCZO 3.252(1)(a) speaks of mitigating or controlling the risk of geologic hazard to the subject property or to adjacent properties *resulting from* the proposed development activity. This standard does not require geologic hazard to be measured according to an absolute value; it requires measurement of the relative change in geologic hazard. In other words, would the proposed development result in the situation becoming more or less safe than it was to begin with? In light of the Applicant's geologic report, the pre-development situation includes actively eroding sea cliff, embayments, and erosion-aggravating invasive gorse plants, and these existing conditions are likely to present greater geologic hazards than will exist on the property after the proposed management strategies are implemented, including re-vegetation with native plants, careful monitoring of irrigation saturation, and installation of bioswale to detain surface runoff and discharge it in a controlled, non-erosive manner. The Board finds that the proposed development activity will result in a lower geologic hazard than currently exists on the subject property.

Finally, the Board notes that the Appellant submitted a Geologist's opinion to critique the Applicant's Geologic Hazards Assessment. The Appellant's geologist refers to the Applicant's proposed management strategies as "mitigation" for the Applicant's development impacts. As explained above, the Board has concluded the overall result of the proposed development would be a reduction in geological hazard, as opposed to an elevated risk, and the Board declines to adopt the Appellant's view that the proposed land management practices necessarily amount to "mitigation," within the meaning of CCZO 3.252(1)(b).

In summary, the Board's initial conclusion is this standard does not apply because the development site is not within an identified geologic hazard areas. In addition, the Board finds that the Applicant's Geologic Hazard Report would constitute "a certification that the development activity can be accomplished without measures to mitigate or control the risk of geologic hazard."

The Board also notes that the Applicant's initial submittal included a letter from the Ocean Shores Coordinator at the Oregon Parks and Recreation Department. In regard to "coastal hazard awareness and responsible oceanfront development," this letter was generally supportive of the proposal. The Board finds this analysis leads to a conclusion that is consistent with the board's interpretation of CCZO 3.252.

Section 7.040 - Standards Governing Conditional Uses

In addition to the standards of the zone in which the conditional use is located and the other standards in this ordinance, conditional uses must meet the following standards:

1. Conditional Uses Generally

- a) The County may require property line set-backs or building height restrictions other than those specified in Article IV in order to render the proposed conditional use compatible with surrounding land use.*

FINDINGS: The board finds that all structural development that is subject to setbacks will exceed the requirements of the Curry County Zoning Ordinance and Comprehensive Plan. The primary structure/clubhouse will be located approximately 400 feet from shoreline of the Pacific Ocean. None of the other proposed structures will be adjacent to property boundaries, natural features or uses that will require setbacks to achieve compatibility. The setbacks associated with Riparian Vegetation in CCZO 4.011 do not apply to non-riparian, isolated wetlands.

- b) The County may require access to the property, off-street parking, additional lot area, or buffering requirements other than those specified in Article IV in order to render the proposed conditional use compatible with surrounding land uses.*

FINDINGS: The Board finds that sufficient parking for the proposed golf course will be located conveniently on the subject property at the entrance to the course. The parking area will not be located near other non-compatible uses on adjacent lands.

- c) The County may require that the development be constructed to standards more restrictive than the Uniform Building Code or the general codes in*

order to comply with the specific standards established and conditions imposed in granting the conditional use permit for the proposed use.

FINDINGS: The proposed structures are necessary for the successful operation of the golf course. The structures and the proposed uses contained within those structures are described throughout the application. All structures will be designed and engineered as needed to meet uniform standards for public health and safety.

- d) *If the proposed conditional use involves development that will use utility services; the Applicant shall provide statements from the affected utilities that they have reviewed the Applicant's proposed plans. These statements shall explicitly set forth the utilities' requirements, terms and conditions providing or expanding service to the proposed development and shall be adopted by the Commission or Director as part of the conditional use permit.*

FINDINGS: According to the Applicant, the proposed conditional use does not involve development that will use utility services other than Coos-Curry Electric Cooperative, Inc. which already serves the subject property. The required site evaluation permit from the Curry County Sanitarian has been submitted along with letters from Coos-Curry Electric Cooperative, the Oregon Department of Transportation and the Curry County Road Department. Therefore, this standard is satisfied.

- e) *If the proposed conditional use involves the development or expansion of a community or non-community public water system, the Applicant shall submit a water right permit(s) or documentation that a permit is not required from the Oregon Water Resources Department which indicates that the Applicant has the right to divert a sufficient quantity of water from the proposed source to meet the projected need for the proposed use for next twenty year planning period.*

FINDINGS: There are no proposals for the expansion of a community water system. This standard does not apply.

- f) *If the proposed conditional use involves the development or expansion of a community or non-community public water system, the Applicant shall install a raw water supply flow monitoring device (flow meter) on the water system and shall record the quantity of water used in the system on a monthly basis. The monthly record of water usage shall be reported to the Curry County Department of Public Services-Planning Division and Health Department Sanitarian on an annual basis.*

FINDINGS: There are no proposals for the creation or expansion of a community or non-

community public water system. This standard does not apply.

- g) *If the proposed conditional use included the development or expansion of a community or non-community public water system and the use is located within the service area of a city or special district water system the Applicant shall utilize the city or special district water system rather than developing an independent public water system. An independent community or non-community public water system can be developed for the use if the Applicant can prove that it would be physically or economically not feasible to connect to the city or special district water system. The city or special district must concur in the conclusion that connection of the proposed use is not feasible.*

FINDINGS: The proposed development of the subject property for an 18 hole golf course does not involve the development or expansion of a community or non-community public water system. This standard does not apply.

5. **Section 7.040 (16) Uses on resource land.**

- a) *The proposed use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agricultural or forest land.*

FINDINGS: The subject property located south and east of the proposed golf course is within the Urban Growth boundary for the City of Port Orford. Urban Growth boundaries are exempt from the requirements of Goal 3 agricultural and Goal 4 forest. Conversely, farm and forest uses in that district are not a consideration. West of the proposed golf course is a beach area, followed by the Pacific Ocean, which are also exempt with regard to farm and forest uses.

The land to the North is zoned Exclusive Farm Use and is currently in farm production. That farmland to the north is owned in common with the land upon which the golf course is proposed. The owner currently utilizes the land north of the golf course for hay production and cattle grazing.

The area proposed for the golf course has been described as sitting atop a bench that is elevated approximately 100 feet above the farm land to the north. The farmland, excluding the proposed golf course, contains approximately 650 acres and abuts Elk River to the north, the Pacific Ocean to the west, and the Port Orford Urban Growth Boundary to both the south and east. There is an operational rock quarry located centrally within the bottomland pasture and continuing farmland stretching easterly through the Elk River valley.

Because the proposed golf course will be elevated a considerable distance above the existing farm use, that natural buffer will separate the two uses and eliminate conflicts associated with

direct contact. The activities associated with a golf course such as mowing, watering, vehicular and pedestrian traffic and golfing in general will not inhibit standard farm practices such as irrigating, mowing, baling, fencing and grazing cattle. The natural separation will also assure that the farm use will not conflict with the use of the golf course.

The development site is a leaseholding within the larger Knapp Ranch. The Knapp Ranch is the only adjacent neighbor to the golf course. Based on the Board's review of the Curry County Zoning Map, the Knapp Ranch appears to be the only property that is in the immediate vicinity of the Golf Course that is zoned for farm or forest uses. There is more EFU-zoned land to the north of the Elk River, but it would be insulated from any potential impacts by this geographic separation. Land to the east and south of the Knapp Ranch is primarily committed to rural residential use, with small commercial zones adjacent to Hwy 101. Therefore, the Board finds that, in the current situation, this standard primarily requires analysis of the potential impacts to the farming practices and farming costs on the portion of the Knapp Ranch that will remain in farm use. The Board finds that the most persuasive evidence on the question of potential impacts to farming comes directly from the representative of Knapp Ranches, Inc., in the form of a letter included with the application submittal. The Board notes this letter analyses a range of potential impacts to farming. It observes that the land management activities of growing grass for a golf course and growing hay for cattle involve more similarities than differences. It concludes that even with an increased presence of people on the golf course, the topography of the site creates a natural separation between the golf course and the portion of the ranch where most farming activities occur.

Appellant argued that the use would need to transfer existing water rights from the lower Knapp Ranch in order to irrigate the golf course place of use. Appellant believes this would inevitably force a change to farm use, as a portion of the water right previously in use on the ranch would no longer be available for ranching. The Board finds that argument overly speculative. The Appellant has not submitted any evidence to illustrate its assertion that a partial transfer of the Knapp Ranch's irrigation or mining rights would necessarily result in "a significant change in, or significantly increase the cost" of farming practices.

The Applicants, on the other hand, have indicated that, in reaching a tentative agreement with the Knapp Ranch to transfer a portion of the ranch's water rights, the Applicant will assist the Knapp Ranch in upgrading its existing irrigation system, which will allow the Knapps to continue to irrigate in much the same fashion as they have previously, albeit more economically and with fewer stopages from equipment malfunction. This conclusion is supported by the letter from Knapp Ranches, Inc., which states

"Although the availability of water for irrigation will be somewhat decreased, Elk River Property Development has agreed to assist Knapp Ranches to improve the efficiency of our existing irrigation system. It is well known that technical advances in highly efficient irrigation systems can actually improve pasture production while conserving water. We therefore anticipate that there will be no

negative impacts with regard to our ability to farm or with regard to the cost of farming as a result of the proposed golf course.”

A letter from the Water Resources Department, included along with the application submittal, indicated that a portion of the Knapp Ranch’s irrigation rights could be transferred to the golf course development area. The Applicants have also explained in their letter of December 23, 2014, that the proposed transfer of the Knapp Ranch is not even certain to occur, as it may prove too slow and burdensome to complete the administrative process at the Department of Water Resources. As reflected by the joint letters submitted in this hearing from the Appellant and from an organization called “WaterWatch,” the Board notes that the Appellant in this case is also currently opposing the Knapp Ranch’s application at the Water Resources Department for an extension of time for perfecting existing water rights permits. It appears to the Board that the one factor in this dispute that may actually lead to increased farming costs is the Appellant’s opposition to the irrigation permit extension, and not the proposed golf course.

The Applicants have explained that, if the water rights transfer becomes unworkable, the Applicants will rely instead on new permits for groundwater or for storage of winter surface flows, to create a source of stored water for summer use. The Applicants submitted well logs from recently drilled wells in the immediate vicinity, demonstrating that there is adequate supply and availability of groundwater, should the Applicant resort to that source.

In summary, the Board finds that the similarities between managing a golf course and managing cattle pastures will prevent impacts on the surrounding agricultural lands. Further, the golf course development area and the area where farming activities are concentrated will be separated by adequate physical and geographic separation to prevent impacts to agricultural lands. Finally, if the Applicant transfers a portion of the water allowed under the water rights permit for irrigation use, it will be done so in a way that avoids impacts or increased costs to the farm. The appellants’ argument merely speculates that this would bring a change or an increased cost to farming, without elaborating how.

Further, as there are no commercial forest uses occurring on adjacent lands, there will be no forest related impacts associated with the golf course. Therefore, this standard is satisfied.

b) The proposed use will not significantly increase fire suppression costs or significantly increase the risks to fire suppression personnel.

FINDINGS: The application describes a Scottish style golf course, consisting of land that is contoured and seeded with various grasses that are maintained at various lengths. The property will be easily accessible and will be fully equipped with an underground irrigation system. Because the course will be lightly irrigated through the summer months and will be mowed, there will be no dry grass to fuel a potential fire. There will be a pond with direct access that can be utilized to assist with fire suppression within the subject property or on adjacent lands. There is currently a gorse infestation on portions of the property and gorse is known to be a fire threat.

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Upon completion of the golf course, the gorse will have either been completely eradicated or isolated and controlled in small quantities. The Applicant's *Management Plan for Water, Nutrients and Pesticides* includes gorse management. The conditions of approval include a fire safety protection plan. With consideration given to the fact that the golf course will provide an overall reduction in fuel loads, fuel-free fire breaks, access to water, and potential fire access to adjacent lands, the Board concludes that costs of fire suppression and the risks to fire suppression personnel will be significantly decreased by the proposal, relative to the preexisting condition.

- c) *A written statement be recorded with the deed or written contract with the county or its equivalent shall be obtained from the land owner which recognizes the rights of adjacent and nearby land owners to conduct forest operations consistent with the Oregon Forest Practices Act and related Oregon Administrative Rules for uses authorized in Section 3.042 (8), (12), (13), (14), (15), (16), (21) and Section 3.052 (8), (12), (13), (14), (16), (17), (22).*

FINDINGS: The Applicant has agreed to record the applicable Curry County Waiver of Right to object to standard farm and forest practices.

6. **Section 7.050 (4) Time Limit on a Permit for Conditional Uses**

- 1. *Authorization of a conditional use, in general, shall become null and void after one year unless substantial construction has taken place or an extension has been granted under Section 7.050 (4). Substantial construction in this case means obtaining all necessary permits required by governmental agencies to commence construction of any structures or to commence the principal activity permitted by the conditional use permit.*

FINDINGS: the Applicant must have initiated substantial construction on the approved use within one year of the date of this approval unless the Property Owner/Applicant applies for and receives an extension of this approval. Therefore, as a condition of approval, the conditional use permit approval is valid for one (1) year unless the Applicant applies for and receives an extension of this approval.

VII. ISSUES RAISED IN OPPOSITION TESTIMONY

The following is a summary of issues based on written and oral comments opposing the application that were addressed during the public hearing process. In addition, the Board notes the majority of comments received were in favor of the proposed development. Further, the Board notes that the primary opponent of the proposal and the appellant of the Planning Commission decision provided voluminous testimony and evidence, some of which had only questionable relevance to the proposal or the relevant approval criteria. This was burdensome for all parties, and is difficult to respond to.

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1. Impacts to the Elk River and Unnamed Tributary, particularly in regard to salmon

The Board reviewed testimony that was concerned with possible impacts the proposed golf course could have on the nearby Elk River watershed. The Appellant has included significant documentation on the status of Oregon Coastal Coho salmon, which is a federally protected species. The Board appreciates that Section 9 of the Endangered Species Act prevents any person (including local governments) from engaging in activity that results in "take." Despite the vast amount of biological background material introduced into the record by the Appellant, the Appellant has not attempted to explain why this approval would, in fact result in take, or that it would even present the likely risk of take. The evidence in the record suggests otherwise: the proposal involves a continuation of the primary activity already being conducted on the property: growing grass. The proposal would likely lead to the relocation of "the place of use" for a portion of irrigation water, but it would not lead to increases of the amount of water that is already permitted to be diverted from the "unnamed tributary of the Elk River." The proposal, with its emphasis on gorse management and native grass establishment, would lead to *decreased* erosion, relative to the status quo. The proposal has self-imposed a *Management Plan for Water, Nutrients and Pesticides* that includes restrictions on pesticide application that are certainly more restrictive than are currently allowed on a cattle ranch. In short, with the exception of the Appellant's speculation, the vast majority of the evidence suggests the overall impact of the golf course development would be a net improvement for the wellbeing of the salmon.

Finally, ORS 215.416(8)(a) requires the county to base its decisions on applicable approval standards. Even if the Appellant had gone beyond merely speculating that take would occur, the Appellant has not indicated which approval standard would be relevant in this instance.

2. Impacts to water quality

The Board reviewed testimony that raised concerns with water quality, nutrient loading, and infiltration into groundwater. The Board notes that the Applicant's proposal includes bioswale catch-basins, which are intended to detain stormwater (thereby reducing erosion) and to allow for sediment collection and bio-filtration of pollutants (thereby reducing discharge of pollutants.) As reflected in the conditions of approval, the Applicant has agreed to construct a bioswale on the southwest portion of the site to manage erosion and water quality associated with stormwater that will discharge toward the beach. The Board further notes that the Applicant has committed to follow its *Management Plan for Water, Nutrients and Pesticides*, which calls for a natural landscape, use of native, drought-hardy grasses, and minimal applications of pesticides and fertilizers. The Board further notes that current agricultural practices are likely to

involve the application of fertilizer and other agrichemicals, raising the risk of nutrient-loading and other water quality issues, without the benefit of a comprehensive stormwater systems utilizing bio-swales. For these reasons, the Board finds that the proposed golf course will be compatible with surrounding uses, and will have minimal impacts in regard to water quality.

3. Wildlife impacts

The Board believes that the wildlife concerns, including the specific concerns raised in the letter from Kalmiopsis Audubon Society, dated September 11, 2014, submitted to the Planning Commission, have been addressed, primarily through the voluntary actions of the Applicant. The Applicant agreed to the use of "dark sky" lighting systems, and has agreed to amend its *Management Plan* to include rodent- and bear-, and wind-proof trash containers, and to generally include methods to avoid animal disturbance and fugitive trash. The Applicant's proposed methods to resolve these concerns are consistent with the "Best Management Practices" outlined in the letter from the Oregon Department of Fish and Wildlife, dated November 20, 2013, included with the application submittal. For these reasons, the Board finds that the proposed golf course will be compatible with surrounding uses, and will have minimal impacts on wildlife.

4. Generalized concerns about water availability

Both the Appellant and the Applicant have engaged in extensive discussion about the availability of water, and the potential ramification of the Appellant's opposition to the application for extension of time to complete certification of the Knapp Ranch's water use permit. The Board believes this discussion should be reined in somewhat, and re-focused toward the specific approval criteria that apply to this application. The Board believes the question of water supply is relevant to the discussion of complying with CCZO Section 7.040 (16)(a) and (b), which look at potential impacts of the proposal to farming costs and practices, and the potential impacts to fire suppression costs and risks. The Board has considered the issue of water availability in regard to those standards, above. Finally, it appears to the Board that the chances of the Applicant successfully obtaining a partial transfer of the Knapp Ranch's irrigation rights seem reasonably likely to succeed, and, if that effort fails, the Board has reviewed the well logs the Applicant has provided, and has concluded that there are adequate secondary sources of water available to serve the proposed development.

EXHIBIT B

CONDITIONS OF APPROVAL APPROVED BY THE
CURRY COUNTY BOARD OF COMMISSIONERS.**CONDITIONS OF APPROVAL**

1. *This conditional use permit approval is valid for one (1) year unless the Applicant applies for and receives an extension of this approval.*
2. *The 18-hole golf course development site shall be limited to the EFU zoned portion of the subject property, consisting of approximately 198 acres, and shall exclude the County "Ground Water Monitoring Area" and the slopes below the top of bluff along the Northerly and Westerly portions of the subject property.*
3. *The Board has concluded that "design capacity" is intended to invoke a more flexible concept than "maximum occupancy," and the Applicant has demonstrated that, under normal operation, the buildings will not be used to accommodate more than 100 people at any given time. However, if LUBA or some other appellate review authority determines that the Board has not correctly interpreted this rule, and that "design capacity" should instead be interpreted to be synonymous with "maximum occupancy," the Board hereby adopts an additional, alternative condition of approval, intended to anticipate and resolve this scenario in advance.*

Therefore, if the Board's findings and analysis supporting its interpretation of "design capacity" are not upheld on appeal, the Board hereby approves the conditional use permit under the condition of approval that the golf course's enclosed structures are to have a cumulative maximum occupancy of no more than 100 persons, as determined by uniform building and fire codes.

4. *An erosion control and sediment prevention plan will be developed by a specialist in erosion control in conjunction with greens personnel. Consistent with the Management Plan for Water, Nutrients and Pesticides, the area along the bluff and ephemeral drainages shall be planted in a manner that*

- emphasizes native vegetation and erosion prevention. The area shall not be developed with structures.*
5. *There shall be no playable golf surface or walkable areas within 25 feet of the bluff edge or the edge of ephemeral drainages. Barriers shall be constructed and warning signs shall be posted along these areas.*
 6. *Areas of potential instability shall be monitored by a professional geologist prior to and during construction. The geologist shall assist in developing a bluff monitoring procedure and training guide.*
 7. *Areas of potential instability shall be regularly monitored by a trained golf course attendant weekly and after high surf or high precipitation events. Training shall be in accordance with a bluff monitoring procedure and training guide developed by a professional geologist.*
 8. *Irrigation along bluff edges shall be closely monitored to prevent excessive absorption and weakening of the hardpan layer along the bluff per the monitoring procedure and training guide.*
 9. *Geotechnical analysis shall be conducted in conjunction with all structural development on the subject property.*
 10. *An onsite inspection by a qualified wetland consultant shall be conducted prior to ground disturbing activities and site development to determine if the proposed project may impact wetlands. Where wetlands are present, wetland delineation is needed to determine precise wetland boundaries and setbacks.*
 11. *The wetland delineation report shall be submitted to Department of State Lands (DSL) for review and approval.*
 12. *The services of a professional archaeologist shall be engaged to conduct an archaeological survey of the property.*
 13. *The archaeologist shall consult with the affected tribes (Coquille, Siletz) to decide the appropriate archaeological investigation to determine site boundaries and characterization.*
 14. *The Applicant shall work in good faith with the affected tribes and the State Historical Preservation Office (SHPO) to develop an archaeological mitigation and monitoring plan.*
 15. *The principles and practices of operation as set forth in the Management Plan/or Water, Nutrients, and Pesticides shall be followed and include twice-per-year water quality monitoring in spring and fall to assure that goals are actually met. A copy of water quality reports shall be provided to the county.*

16. *A bioswale shall be designed and constructed on the southwestern portion of the site to detain and filter chemicals used to maintain the golf course. A culvert at the outlet of this bioswale shall be used, if necessary to ensure that the discharge does not occur on the most erosion-prone portions of the slope.*
17. *The Management Plan shall be amended to specify principles for careful trash management, which should include the commitment to keep trash stored in rodent- and bear-, and wind- proof containers, and provisions for strict maintenance to avoid the problems of animal disturbance or trash blowing in the wind.*
18. *Any outdoor light shall be shielded to illuminate downward.*
19. *A preliminary fire safety protection plan shall be adopted that, at a minimum, includes the following:*
 - a. *Proposed fire prevention measures;*
 - b. *Preliminary location of fire safe area(s) in which golfers and their guests can gather in the event of a fire, and proposed measures to maintain such areas;*
 - c. *A fire evacuation plan; and*
 - d. *Proposed on-site pre-suppression and suppression measures, which must include a provision for trained personnel capable of operating all fire suppression equipment during designated periods of fire danger. This requirement may be waived if the golf course is within a fire district that provides structural fire protection and the fire district indicates in writing that on-site fire suppression is not needed.*
20. *The Management Plan shall be amended to include recommendations from ODFW regarding:*
 - a. *Intake pumps meeting fish screening criteria;*
 - b. *Retention of native vegetation wherever possible; and*
 - c. *A golf course design that integrates wildlife habitat and connectivity.*
21. *A gorse management plan shall be developed by an invasive plant specialist that will include control of spread during site development, eradication methods and chemical control, and monitoring for long term effectiveness. Native vegetation and a diverse population of native grasses will be emphasized in area of gorse removal.*

EXHIBIT B

From: Carolyn Johnson <johnsonc@co.curry.or.us>

Subject: return on your call and e-mails - time extension application filed for AD-1411.

Date: October 10, 2017 at 3:54:40 PM PDT

To: Cameron La Follette <cameron@oregoncoastalliance.org>

Cc: Nancy Chester <ChesterN@co.curry.or.us>

Hello Cameron,

I received your October 5 and 9 e-mails and your phone message today with the question: "Did ERPD, Stuntzner and Knapp Ranches LLC apply for, and receive, an extension from Curry County for AD-1411 on or before January 15, 2016?"

There has not been a time extension application filed for AD-1411.

Sincerely,
Carolyn

BEFORE THE BOARD OF COUNTY COMMISSIONERS
IN AND FOR THE COUNTY OF CURRY, OREGON

In the matter of remand proceedings for)
application AD-1411 for conditional use approval)
to develop an 18-hole golf course with accessory)
uses on a portion of property having a zoning)
designation of Exclusive Farm Use (EFU))
and identified on the Curry County Assessor's)
Map No. 32-15-00, Tax Lot 04400 and Map)
No. 32-15-29C, Tax Lot 00300 filed by)
Chris Hood, Stuntzner Engineering)
& Forestry, LLC, on behalf of Elk River)
Property Development LLC.)

ORDER No. 20255

This matter came before the Board of County Commissioners following a decision from the Land Use Board of Appeals ("LUBA") which remanded the county's earlier decision that had approved an application by Elk River Property Development, LLC, seeking approval of a Conditional Use Permit to develop an 18-hole golf course, together with accessory uses, on a property with zoning designation of Exclusive Farm Use (EFU), identified as Curry County Assessor's Map No. 32-15-00; Tax Lot 04400 and Assessor's Map No. 32-15-29C; Tax Lot 00300. The Applicant was represented by Stuntzner Engineering & Forestry, LLC and the Law Office of Bill Kloos, PC.

The application was originally approved by the Board on January 15, 2015, by Order No. 20127. Earlier procedural history for this application can be found in that Order. Following the Board's approval of the application, the Oregon Coast Alliance ("ORCA") appealed the county decision to LUBA on January 21, 2015. ORCA initially raised five assignments of error, but withdrew one of its assignments of error at oral argument before LUBA on April 16, 2015. On May 15, 2015, LUBA issued Order No. 2015-006, which affirmed the county decision on three of the remaining four assignments of error, and remanded for further proceedings on one assignment of error, pertaining to the county's findings of compliance with OAR 660-033-0130(2)(a). As explained below, this administrative rule applies to certain buildings within three miles of an urban growth boundary, and it imposes on these buildings a limitation of the "design capacity" of 100 people. Following LUBA's remand, the applicant submitted supplemental testimony on July 27, 2015. This testimony included architectural renderings, an architect's analysis of how the building designs related to the legal standard of "design capacity," and legal analysis from the applicant's attorney explaining LUBA's construction of the approval standard. ORCA, the original appellant, submitted testimony to dispute the applicant's conclusions. On August 31, 2015, the Board held a public hearing, limited in scope to the remand issue of "design capacity" in OAR 660-033-0130(2)(a). Additional testimony, both written and oral, was

Order on Remand _____ Elk River Property Development LLC

Page 1 of 12

October 06, 2015

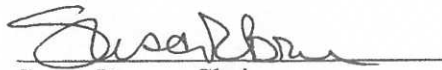
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received at this hearing. The Board left the record open for written materials rebutting new testimony received prior to and during the hearing, until September 4, 2015. On September 9, 2015, the Board orally approved the application, subject to conditions of approval, and continued the matter for adoption of a final written order.

NOW, THEREFORE, THE BOARD OF CURRY COUNTY COMMISSIONERS HEREBY ORDERS that Application File No. AD-1411 is approved, based on the findings outlined in Exhibit "A" and the conditions outlined in Exhibit "B" that are attached hereto and incorporated by reference.

Dated this 10-6-, 2015.

CURRY COUNTY BOARD OF COMMISSIONERS


Susan Brown, Chair

[abstained]
Thomas Huxley, Vice Chair


David Brock Smith, Commissioner

Approved as to Form:

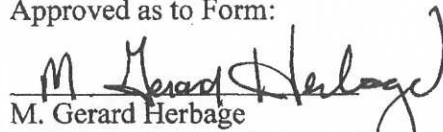

M. Gerard Herbage
Curry County Legal Counsel

EXHIBIT A

**CURRY COUNTY BOARD OF COMMISSIONERS
FINDINGS OF FACT AND CONCLUSIONS ON REMAND
AD-1411: REQUEST FOR A CONDITIONAL USE PERMIT TO DEVELOP 18-HOLE GOLF
COURSE TOGETHER WITH ACCESSORY USES ON A PORTION OF THE PROPERTY
WITH ZONING DESIGNATION OF EXCLUSIVE FARM USE.**

I. INTRODUCTION

This document supports the decision of the Curry County Board of Commissioners in File No. AD-1411, approving the Conditional Use Permit for an 18-hole golf course on EFU-zoned land.

Except for instances where this decision modifies or departs from the findings, analysis and proposed conditions of approval contained in the staff report and the Applicant's submittals, those documents are hereby adopted as supporting findings, and are incorporated into this decision by reference. In order to ensure compliance with applicable approval criteria, the Board utilizes conditions of approval, where appropriate.

II. APPLICANT.

The Applicant is Elk River Property Development, LLC. The subject property is owned by Knapp Ranches, Inc.

III. DESCRIPTION OF SITE AND PROPOSAL

The subject property and larger proposal were summarized in Board Order 20127. In this remand proceeding, the scope is limited to the "design capacity" of the proposed buildings, as explained below. As described by the applicant's materials, the proposal includes four buildings: a clubhouse that is slightly smaller than 10,000 square feet, a maintenance/shop building, a refreshment kiosk located mid-course, and a reception office at the parking lot near the entrance.

IV. COUNTY PROCEDURES

The procedures followed in the initial processing of this application are summarized in Board Order 20127. Following LUBA's remand of that decision in LUBA order 2015-006, the applicant and other parties submitted written testimony to the county. On August 31, 2015, the Curry County Board of Commissioners held an evidentiary hearing, during which additional testimony was received. Following the hearing, the Board held the record open, for rebuttal purposes only, until September 4, 2015. On September 9, 2015, the Board orally approved the application, subject to conditions of approval, and continued the matter for adoption of a final written order.

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V. APPLICABLE STANDARDS AND CRITERIA

The sole standard applicable to this remand proceeding is OAR 660-033-0130(2)(a), as it has been construed in LUBA Order No. 2015-006.

VI. ANALYSIS OF APPLICABLE STANDARDS AND CRITERIA AND FINDINGS OF COMPLIANCE

OAR 660-033-0130 - Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses

(2)(a) No enclosed structure with a “design capacity” greater than 100 people, or group of structures with a total “design capacity” of greater than 100 people, shall be approved in connection with the use within three miles of an urban growth boundary, unless an exception is approved pursuant to ORS 197.732 and OAR chapter 660, division 4, or unless the structure is described in a master plan adopted under the provisions of OAR chapter 660, division 34.

FINDINGS:

The applicant has described its proposed buildings as including a clubhouse, a shop, a small concession kiosk, and a reception stand. The clubhouse, which was the only enclosed structure intended to be occupied by golfers, was described as a two-story, 10,000-square-foot building that would include a restaurant, lounge, pro shop, locker rooms, administrative offices and storage for golf carts, etc.

Initially, the applicant explained that the “design capacity” standard should be viewed in context of the larger use, and the playable capacity of the golf course would function to restrict the number of people who would use the building. At that point, the Board agreed that the “bottleneck” created by the playable capacity of the golf course was sufficient to demonstrate compliance with this standard. The appellant, on the other hand, argued that “design capacity” required the applicant to provide designs of the proposed buildings and an accounting of the theoretical maximum number of people who could fit inside all of the buildings. On appeal, LUBA did not agree with either of these interpretations.

LUBA reviewed the legislative history surrounding the original drafting of the “design capacity” rule. Among other points, this legislative history led LUBA to conclude that the applicant needed to make a specific showing that the buildings would not be designed to accommodate more than 100 people, and the applicant’s initial description of the number of people anticipated under normal circumstances was not sufficient. The key elements of LUBA’s ruling can be summarized as:

- Design capacity and maximum occupancy are separate concepts. LUBA Op. at pg. 16, line 15; pg. 20, line 1.
- A building that has a maximum occupancy calculated according to building and fire codes that exceeds 100 people can still comply with the “design capacity” standard, so long as the “design capacity” does not exceed 100 people. LUBA Op. at pg. 20, line 1.
- An applicant under this standard will likely have to provide architectural drawings or other testimony from a design professional demonstrating that the specific buildings proposed will actually be designed to accommodate no more than 100 people. LUBA Op. at pg. 20, line 7.
- Portions of the buildings that are not designed primarily for human occupancy or assembly do not need to be included in “design capacity” calculations. LUBA Op. at pg. 21, line 18.
- A condition of approval may be necessary to ensure that no more than 100 people occupy a building or collection of buildings in situations where the maximum occupancy may be greater than 100 people. LUBA Op. at pg. 19, line 8.

Following LUBA’s ruling on this matter, the applicant hired a commercial architect who prepared preliminary drawings of the proposed clubhouse, and who provided a narrative explanation of the methodology behind the calculations of design capacity. The drawings and narrative show the clubhouse has a “design capacity” of 92 people. The concessions kiosk and reception stand have a “design capacity” of a single staff person per building. The maintenance building is described as having a “design capacity” of two staff people. The applicant did not provide a drawing of the maintenance building, but the applicant has been candid that this building will be mostly devoted to an open floor plan that could potentially fit a greater number of people. Therefore, the applicant has proposed a condition of approval that would limit the number of people allowed inside this building, as well as the other buildings. This condition of approval is discussed in more detail below.

The applicant’s testimony is consistent with LUBA’s instructions that only portions of the buildings designed primarily for human occupancy or assembly are to be included in the “design capacity” calculations. As explained in the applicant’s attorney’s testimony from July 27, 2015, the areas of the clubhouse that have been included in the “design capacity” calculation consist of the dining area, the lounge/seating area, the bar, the kitchen, the golf shop, the business office, the staff office, the reception counter, and locker rooms. The applicant has not included areas in this calculation if they are not primarily designed for human occupancy or assembly, including the hallways, storage areas, and restrooms. Collectively, the testimony from the applicant’s architect and attorney constitute substantial evidence showing that the buildings have been designed to accommodate less than 100 people. The appellant submitted conflicting evidence on this point, which the Board finds to be unpersuasive and primarily focused on the inapplicable standard of “maximum occupancy.” As the LUBA decision made clear, “maximum occupancy” is not the appropriate method for determining “design capacity.”

The applicant's architect used the amount of planned seating as the primary metric for counting "design capacity" for most of the areas designed for human occupancy. In its submittal of July 27, 2015, the applicant explained that the spacious layout of the clubhouse, including the layout of the seating in the restaurant, lounge and bar area, is essential to providing the level of comfort and ambiance that are to be central characteristics of this facility. The applicant has been frank in its acknowledgements that these spaces could potentially be populated by more furniture and smaller furniture than what has been depicted in the drawings. The Board is aware that furniture could be moved, more seats could be provided, and additional guests could be provided with "standing room only," such that the actual number of people that might theoretically fit in these spaces could be higher than these spaces have initially been designed to accommodate. For this reason, the applicant has proposed a condition of approval that will limit the total number of people allowed inside the four proposed buildings to be no greater than 100 people at any time. Because the approval standard is so subjective and could be circumvented simply by rearranging furniture, a condition of approval that limits the number of people allowed inside the buildings is the best and most practical way to provide certainty that the buildings will actually be used in the manner originally proposed.

The appellant's letter of August 27, 2015 objects to the feasibility of the proposed condition of approval that would limit the cumulative occupancy of the buildings to 100 people. The appellant merely speculates that the condition is unfeasible, without explaining why it believes that to be the case. The Board agrees with the applicant's response on this subject from its letter of August 31, 2015, which explains that conditions of approval limiting the number of people allowed in buildings (or in specific rooms in buildings) are commonly used, are routinely enforced, and are entirely feasible.

The appellant's letter of September 4, 2015 reiterates the opinion that it would be impossible for the applicant to keep track of the number of guests in the building. The applicant has explained that specific employees would be tasked with maintaining head-counts for guests within designated portions of the building. The applicant also indicated there were technological solutions for maintaining these head counts. Regardless of the method the applicant employs to keep track of the number of building occupants, the Board finds this condition operates in a manner that is essentially no different from a "maximum occupancy" rating. Compliance with this condition is entirely feasible.

The Board also notes that the legislative history LUBA relied on in construing this standard addresses this issue and establishes that a condition of approval of this sort is an appropriate mechanism for ensuring compliance with the standard. LUBA characterized this legislative history as follows:

"The advisory committee also discussed circumstances where maximum occupancy under fire and safety codes may differ from 'design capacity,' and noted that a condition of approval may be necessary to limit occupancy to 'design capacity' in circumstances where actual or permitted occupancy may be greater

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than 100 persons.”

LUBA op. at pg. 19 line 6-10.

The Board notes that the applicant’s letter of July 27, 2015 suggested the 100 person limit could be apportioned among the buildings, with specific fractions of the total design capacity assigned to each building. The Board views this additional requirement as unnecessary and overly complicated. There may be times when the applicant needs to have more than two employees inside the maintenance shop, such as during meetings of grounds-keeping staff. Doing so would be acceptable, so long as it did not cause the cumulative number of occupants in all buildings at that time to rise above 100. The Board is ultimately confident that the applicant will be capable of maintaining an accurate cumulative “head count” of the number of people inside the buildings, and the Board declines to impose this additional restriction on how those people are to be distributed amongst the buildings.

The Board further notes that the appellant’s submittals have taken contradictory approaches to the relationship between “design capacity” and “maximum occupancy.” In its letter of August 27, 2015, the appellant objected to the fact that the applicant and the staff report had previously characterized the appellant’s position as arguing that “design capacity” is synonymous with “maximum occupancy.” However, in its letter of August 31, 2015, the appellant argued that “design capacity” is synonymous with “maximum occupancy.”

To support this argument, the appellant included testimony from a design consultant who measured the “maximum occupancy” of the proposed clubhouse, according to the occupant load factors found in the Oregon Structural and Specialty Code. However, the Board cannot consider the appellant’s argument that “design capacity” is to be measured by the building code’s occupant load factors, because LUBA has already ruled against the appellant on this issue. LUBA held that “design capacity” and “maximum occupancy” are similar, but distinct concepts. LUBA Op. at pg. 20, line 1-2. LUBA further explained:

“In sum, we agree with the county and intervenor that ‘design capacity’ as that term is used in OAR 660-033-0130(2)(a) is not equivalent to ‘maximum occupancy’ as that term is used in building and fire codes. To the extent petitioner argues otherwise under this assignment of error, we reject those arguments.”

LUBA Op. at Pg. 22, beginning at line 25.

Therefore, as stated in the Applicant’s letter of September 4, 2015, the appellant is precluded by the “law of the case” from revisiting arguments that LUBA has already decided.

The Board also notes that in the appellant’s renewed efforts to argue that “design capacity” should be synonymous with “maximum occupancy,” the appellant altered a quotation of the relevant legislative history in its letter of August 31, 2015. As explained in the applicant’s letter of September 4, 2015, this alteration to the quoted text had the effect of misrepresenting what the

quotation meant in its original context. However, despite that misrepresentation, the Board finds this testimony (including the supporting letter from the appellant's design consultant) to be entirely focused on "maximum occupancy," and "occupant load factors" derived from the building code. As explained above, those concepts are not the applicable standards in this instance. Therefore, this testimony is not relevant to applicable approval standard.

As noted above, LUBA instructed that only spaces designed primarily for human occupancy or assembly were to be included in the "design capacity" calculations. The applicant views storage areas, hallways, and bathrooms as areas that are not primarily designed for human occupancy or assembly.

The Board agrees with the applicant that storage areas are clearly a type of interior space designed for purposes other than human occupancy or assembly. As noted repeatedly in the applicant's materials, the remote location and the seasonal nature of the use require ample storage for items such as golf carts, patio furniture, food, wine, linens and other supplies.

The Board also agrees with the applicant that bathrooms play a supporting, ancillary role to the primary occupied areas (such as dining rooms and lounges) and they are not primarily designed for human occupancy or assembly. For example, the Board agrees with the applicant that the capacity of the restaurant cannot be increased by shuffling diners through the bathrooms.

The Board further agrees with the applicant that hallways are "conduits for pedestrian transit" from one part of the building to the other, and they do not increase the total number of people the building is designed to accommodate. The Board agrees with the applicant's observation in its September 4, 2015 letter that the portions of the hallways labeled "view areas" are simply hallways that happen to be arranged in a way that maximizes the views of the coast and mountains, to enhance the experience for people walking down the hallways, and that nothing in the floorplan indicates these areas are designed for people to linger or assemble there.

The Board disagrees with the appellant's testimony of August 27, 2015 that argues hallways and bathrooms are primarily intended for human occupancy and assembly and must be included in the "design capacity" calculations. The Board further disagrees with the testimony of the appellant's attorney and the appellant's design consultant from September 4, 2015, which takes issue with the proportion of the clubhouse dedicated to hallways and corridors. The appellant objects to the lack of a condition of approval that would prevent the placement of furniture in the hallways. Because these spaces will be operating under the overarching condition of approval that limits the cumulative occupancy of all of the buildings to no more than 100 people, there is no basis to require such a specific condition. Because the architect's drawings do not show the hallways playing any role in providing occupancy or assembly, there is no basis to conclude that these spaces must be individually accounted for in the "design capacity" calculations.

The Board is reminded of the testimony provided by the applicant's architect during the public hearing, where the design of a hypothetical school building was discussed. The architect

explained that if a school building had an enrollment of 100 students, it would need a design capacity of 100. There would likely be four classrooms with a design capacity of twenty five students for each room. However, the school would also need a cafeteria/multi-purpose room and it would need to accommodate all 100 students for lunch. While the addition of a cafeteria might have the practical result of doubling the "maximum occupancy" of the building, it is clear that a school with an enrollment of 100 students is *designed for* 100 students when it has both adequate classroom space for those students, and adequate cafeteria space. This example underscores the need to consider the underlying purpose for which the building is designed as part of calculating "design capacity." This example as illustrates the flawed reasoning in conflating "design capacity" with "maximum occupancy."

On the other hand, the Board agrees with the applicant that the locker rooms do need to be included in the "design capacity" calculation, as they may conceivably be in use by golfers at the same time the restaurant and bar are operating at "full house." The Board agrees with the explanations provided by the applicant's architect and its attorney that each of the locker rooms is designed to accommodate a standard "foursome" of golfers. The small benches depicted in each locker room could not plausibly accommodate more than four golfers at a time. The appellant argued in its letter of August 27, 2015 that the number of lockers depicted in each room should be viewed as the indicator of how many people each room is designed to accommodate. As noted by the applicant in its testimony of August 31, 2015, the appellant's argument is premised on the idea that every locker will be in use simultaneously, with dozens of golfers changing clothes at once. It should be obvious from both the drawings and the larger context of the proposed use that small groups of golfers will transit through the locker rooms, and that these rooms have been designed accordingly.

The Board understands LUBA's instructions on this point preclude the Board from looking at the applicant's projected number of people expected to use the spaces under normal operations, and to instead look at how many people the spaces are actually designed to accommodate. That is, however, a different exercise than what the appellant has proposed, which asks how many people could theoretically fit into the locker room, standing shoulder-to-shoulder. The appellant's argument that the room has a "design capacity" that exceeds the seating on the benches is no different than if appellant were arguing that the "design capacity" for the restaurant space should be measured as if that area were entirely occupied by people in a "standing room only" situation. While that is theoretically a possibility, it misses the point of *the purpose for which this space has been designed*. Based on the small benches and the proposed purpose of the locker rooms, the Board finds that each locker room is designed to accommodate no more than four people.

The Board notes that the LUBA opinion left open the question as to whether employees are to be accounted for in the "design capacity" calculation. The applicant has elected to include employees in the calculation. The Board views this as a conservative and sensible approach that is consistent with the language of the standard that speaks only of "people," and that does not distinguish between staff and guests.

The appellant's letter of August 27, 2015 also objects to the possibility that the applicant may need to resort to temporary non-enclosed structures, such as tents, if the applicant were to host an event with more than 100 people. The appellant's argument is based on the premise that the applicant will inevitably enclose these tents, despite the fact that the applicant's discussion of temporary structures specifically provided they would be non-enclosed. Nonetheless, the Board will require a condition that any temporary structures the applicant may deploy must remain non-enclosed.

Additionally, in its letter of August 27, 2015, the appellant objects to the possibility that the applicant might provide a shuttle service for its guests. As a threshold matter, the Board finds this argument to be outside the scope of the remand, which is limited solely to establishing the "design capacity" of the proposed buildings. Further, as noted by the applicant's testimony of August 31, 2015, the shuttle service had been mentioned in a previous submittal. Although there was only passing mention of this service in the original application, it was sufficient to give appellant reasonable notice of this aspect of the proposed use, and the appellant has failed to preserve any objection to this issue.

The appellant has also objected in its letter of August 27, 2015 to the fact that the applicant's original description of the clubhouse proposed an office for a golf pro, but the drawings submitted in these remand proceedings do not provide that office. The appellant argues this amounts to a modified application that must be filed anew. The Board finds this minor revision to the plans to be inconsequential, and it views both the clubhouse and the larger proposed use of the golf course to be substantially unchanged from what was originally proposed, despite the fact that the applicant is now considering that it might not hire a golf pro after all, or, if it does, that the golf pro will have to endure without her own office.

The appellant raised additional arguments in its testimony of August 27, 2015 that go beyond the scope of the applicable standards in this remand proceeding. These arguments, concerning the applicant's inquiries into the possible use of reclaimed wastewater, and the applicant's discussions with the county over a separate piece of property for a different potential development proposal, are unrelated to the "design capacity" of the proposed buildings for the golf course.

The Board notes that the applicant has been candid that the drawings it provided are preliminary, and that it likely will need to retain the flexibility to make minor modifications to these plans before they can be finalized for building permit approval. In the applicant's submittal of July 27, 2015, it explained:

"Given that the building designs may need to be modified slightly in response to site-specific engineering reports, and given that aesthetic considerations may still need to be 'fine tuned,' the applicant would accept a condition that requires the interior square footage of the clubhouse to be no greater than the square footage depicted in this conceptual design."

That condition would limit the overall size of the clubhouse to no more than 10,000 square feet.

Continuing on this subject, the applicant orally proposed an additional condition of approval during the hearing of September 4, 2015. The new condition was in recognition that only the portion of the clubhouse primarily intended for human occupancy and assembly is being analyzed under the "design capacity" standard, and that area must be fixed in size in order to ensure continued compliance with this standard. The applicant's new condition provided that the interior area in the clubhouse that is designed primarily for human occupancy or assembly shall be no larger than what is illustrated and listed by the architect in the conceptual drawings and the "design capacity" table that were submitted as part of this proceeding. Specifically, this area includes the dining room, the lounge/sitting areas, the kitchen, the bar seating area, the golf shop, the office areas, the reception area, and the lower floor locker rooms. Collectively, these areas comprise less than half, or approximately 4,500 square feet of the total building area. The applicant's proposed condition would require that final plans submitted for building permit review must clearly identify these areas in a manner that corresponds with the architectural drawings submitted as part of the Conditional Use Permit remand proceedings.

With this additional condition of approval, minor revisions may be made to the design, and the spaces designed primarily for human occupancy or assembly (as listed above) may be rearranged or reconfigured, but the amount of building space devoted to these areas will be no larger than the areas illustrated in the conceptual design drawings and listed in the "design capacity" table.

The Board recognizes this standard requires the applicant to demonstrate a subjective "design capacity" before the building has been completed and assigned a maximum occupancy by the fire marshal or other building official. This condition of approval will provide the applicant with the flexibility needed to finalize its building design without falling out of compliance with the "design capacity" standard.

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EXHIBIT B

CONDITIONS OF APPROVAL APPROVED BY THE
CURRY COUNTY BOARD OF COMMISSIONERS.

**CONDITIONS OF APPROVAL
RELATING TO "DESIGN CAPACITY"**

The original conditions of approval that the Board adopted in Order 20127 remain in effect for the approved application, with the exception of Condition No. 3, which pertained to the subject of "design capacity." Condition #3 is replaced and superceded by the following conditions of approval:

- 22. Cumulatively, the four proposed buildings (clubhouse, maintenance shop, refreshment kiosk, and reception stand) shall have no more than 100 people allowed inside at one time, regardless of post-construction "occupant loads" that may be assigned by the fire marshal or other building official.*
- 23. The clubhouse shall include no more than 10,000 square feet of enclosed interior space.*
- 24. Collectively, the interior spaces in the clubhouse that are designed primarily for human occupancy or assembly shall be no larger than what has been illustrated and listed by the applicant's architect in the drawings and the "design capacity" table submitted during Conditional Use Permit remand proceedings. Specifically, these areas include the dining room, the lounge/sitting areas, the kitchen, the bar seating area, the golf shop, the office areas, the reception area, and the lower floor locker rooms. These areas comprise approximately 4,500 square feet of the total building area. Final plans submitted for building permit review must clearly identify these areas in a manner that corresponds with the architectural drawings submitted as part of the Conditional Use Permit remand proceedings.*
- 25. If the applicant uses any additional, temporary structures (such as tents) for a golf tournament or any other reason, those structures are to remain non-enclosed.*
- 26. All non-enclosed areas depicted in the applicant's drawings, such as patios, are required to remain non-enclosed.*

ATTACHMENT 11
Planning Commission action/background

A public hearing on Application AD-1705 was held before the Planning Commission on September 21 and October 19, 2017. The hearings were conducted according to the rules of procedure and conduct of hearings on land use matters as set forth in Section 2.140(2) of the Curry County Zoning Ordinance. The Planning Commission received oral and written evidence concerning this application. After receiving public testimony on September 21, 2017, the Planning Commission continued the public hearing to October 19, 2017. After receiving public testimony at the October 19 public hearing, the public hearing was closed and the Planning Commission continued its deliberations to November 7.

On November 7 the Planning Commission deliberated on the application based on evidence submitted into the record. Upon a motion duly made and seconded, the Planning Commission voted to deny application AD -1705 on a 4-3 vote (Attachment 9a, see line 33 - line 13 to page 34 line 11) On November 8 Planning Commission Chair John Brazil signed the Final Order (Attachment 8) denying the application. The applicant appealed the November 8, 2017 Final Order.

Following November 8 Planning Commission meeting, Commissioners Brazil, McHugh and Morrow questioned the validity of the November 8 Final Order as, in their opinions, the procedure by which the Final Order was issued was flawed and did not comply with the procedures for issuance of Final Orders outlined in Zoning Ordinance section 2.140(2)(m)&(n). A November 27, 2017 (Attachment 9) County Counsel memo (pages 5 & 6) expands further on the validity of the November 8 Final Order. The underlined sections of the citations below were the subject of the Commissioners concerns. Section 2.140(2)(m)&(n) state:

(m) Conclusion and findings.

At the conclusion of the hearing, the decision making body shall make its decision with a motion, duly seconded which shall pass with a majority vote of the members present to constitute a quorum of the decision making body. The decision making body may state findings which may incorporate findings proposed by any party, or the Director, or may take the matter under advisement. The decision making body may request proposed findings and conclusions from any party to the hearing. The decision making body, before finally adopting findings and conclusions may circulate the same in proposed form to the parties for written comment. All actions taken by the decision making body pursuant to adopting findings and conclusions shall be made a part of the record. The decision making body shall announce the time, date and place that it will adopt its final written order regarding the matter being heard at the conclusion of the hearing.

(n) Decision.

The decision, findings and conclusions which support the decision shall not be final until reduced to writing and approved by a vote of the majority of the members present to

constitute a quorum of the decision making body. The written decision shall be signed by the Chair of the commission or majority of the Board whichever is applicable. The Director shall send a copy of the final decision notice of the commission or Board to all parties with standing in the matter who have provided a proper mailing an address and have indicated that they want a copy of the notice and shall, at the same time, file a copy of the final written order in the records of the County. A copy of the final written order shall be provided to the applicant and appellant who have paid an application or appeal fee. Others who request a copy of the order shall pay a copy fee for the document.

The Planning Commission held a meeting on December 14, 2017 and reviewed a second Final Order prepared by Commissioner Morrow. The second Final Order was adopted by the Planning Commission 7-0. An appeal to the second Planning Commission Final Order (Attachment 5a) from the applicant's representative Bill Kloos was received on December 20, 2017. The Planning Commission's November 7 and December 14th Final Orders can be found in Attachment 8. ¹

¹ The attachments to the Final Order are on file at the Community Development Department in the AD-1750 project file and are a part of the public record for this proposal.