Coos County Community Development

DATE OF REPORT: October 16, 2024

FILE NUMBER: AP-24-004 OF HBCU-24-001

HEARING DATE: Wednesday, October 23, 2024 @ 1:30 pm

HEARING LOCATION: 201 N. Adams Street, Coquille Oregon 97423
This meeting can be attended virtually at:
https://meet.goto.com/964495293
You can also dial in using your phone.
Access Code: 964-495-293
United States: +1 (571) 317-3122

APPLICANT(s): Ocean River LLC
57744 Round Lake Road
Bandon OR 97411

APPELLANT Sean Malone, Attorney
PO Box 1499
Eugene, OR 97440

Oregon Coast Alliance
PO Box 857
Astoria, OR 97103

STAFF CONTACT: Jill Rolfe, Planning Director
Phone: 541-396-7770
Email: planning@co.coos.or.us

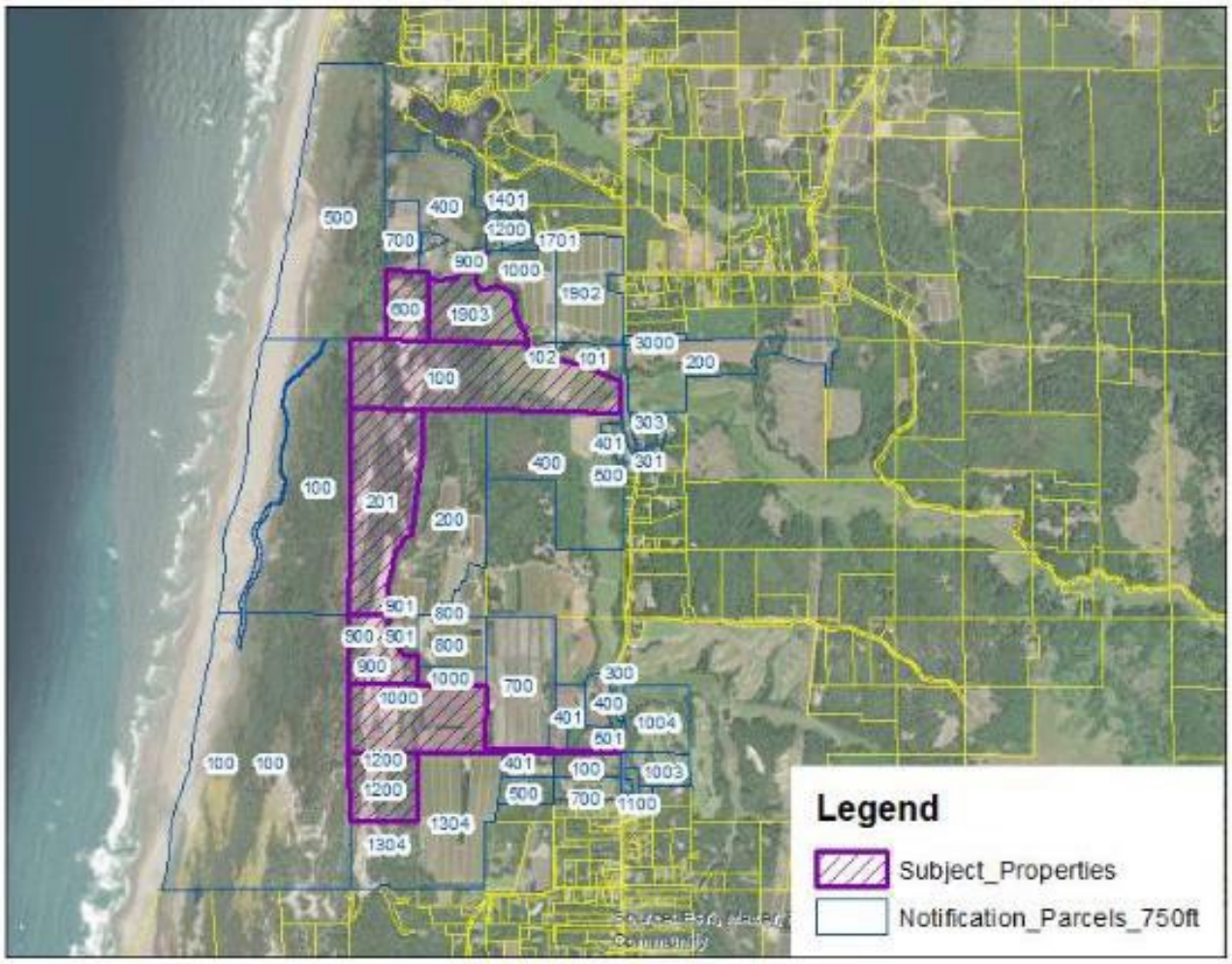
HEARINGS BODY: Board of Commissioners

MAP NUMBER:

Township 29 S, Range 15 W Section 13
Tax Lot 600 Account #1239601
Tax Lot 1903 Account #1239606

Township 29 S, Range 15 W Section 24
Tax Lot 100 Account #1240300
Tax Lot 201 Account #1240601

Township 29 S, Range 15 W Section 25
Tax Lot 900 Account #1241700
Tax Lot 1000 Account #1241601
Tax Lot 1200 Account #1241602



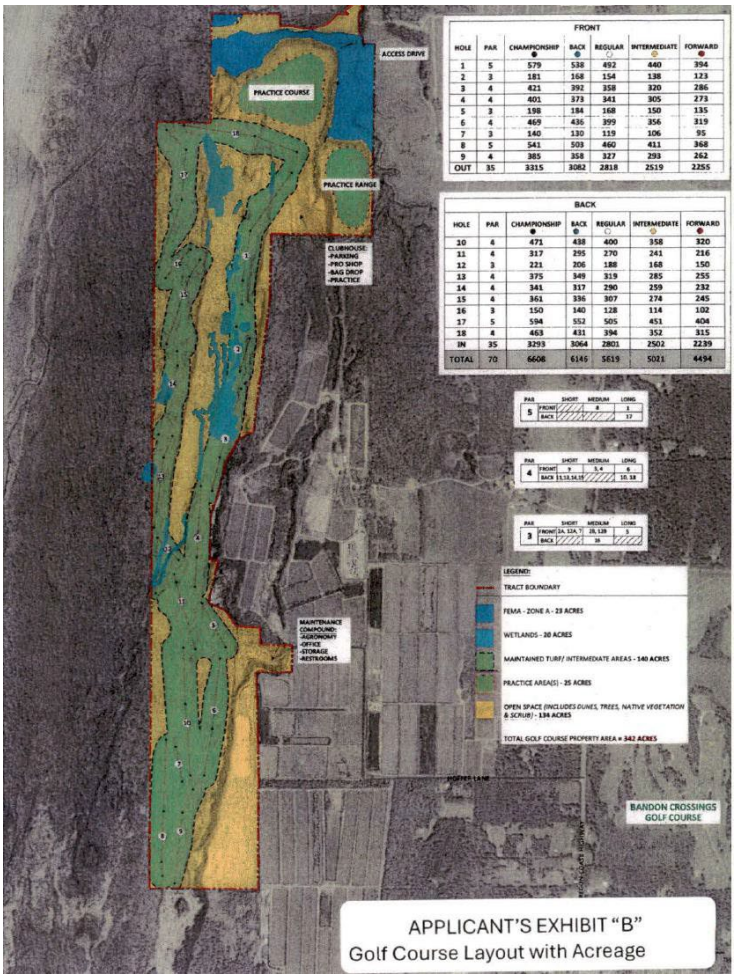
ZONING: The applicant's entire tract (parcels identified above) is zone Exclusive Farm Use (EFU) and Minor Estuary Shoreland (MES) at the north end of the tract along Two Mile Creek. There is no development proposed within the MES district at this time.

HAZARD OVERLAYS: Segments of the property contain identified Hazard overlays, including Flood, Liquefaction, and Wildfire. The tract also contains special consideration areas including Beaches and Dunes Limited Development Suitability, Wetlands, and a Coastal Shoreland Boundary.

SUMMARY/REQUEST: This application is for a Conditional Use to allow a regulation 18-hole golf course with accessory uses in the Exclusive Farm Use (EFU) zone district. The accessory uses, which are described in more detail below, consist of a clubhouse/restaurant, an agronomy center/maintenance facility, a turn-stand (combination restrooms/vendor's facility), a minimum of two stand-alone restrooms, a caddy shack, a driving range, a practice course, and the necessary parking/drop-off areas. The tract consists of 342 acres. According to the application approximately 165 acres will contain the regulation golf course, practice course, and driving range. Approximately 115 acres of the regulation course, practice course and driving range will contain tees, greens, and/or fairways, consisting of vegetated turf (fescue grass) that is meticulously maintained (mowed and irrigated) for their intended use. Approximately 50 acres of the regulation course will

consist of intermediate areas (roughs) that also act as safety corridors. The intermediate areas are initially contoured and then minimally maintained as open sand dune areas, tall grasses, and selected native vegetation. There will be approximately 134-acres of open space land that contain natural dune formations partially covered with native vegetation, approximately 20 acres of wetlands, and approximately 23 acres of identified flood areas. While not utilized for golf, the open space, wetland and flood areas provide the appropriate setting for a Scottish Links Golf Course, while supporting dune land vegetation and habitat for native plants and wildlife.

Access to the property is by way of Boak Lane, which extends approximately one-half mile West from US Highway 101 to the subject property. The first quarter mile of Boak Lane consists of a public right-of-way, and the second quarter mile is a private access easement. The clubhouse/restaurant, practice range, caddy facility and parking are all proposed at the north end of the course, with a turn-stand and restrooms located strategically throughout the course. The agronomy/maintenance center will be located in the southerly half of the course along the easterly boundary of the tract. The facility will be accessed via Hoffer Lane, which is located south of Boak Lane and extends from Highway 101 to the golf course tract. Hoffer Lane is entirely owned by the applicant under Bandon Biota, LLC.

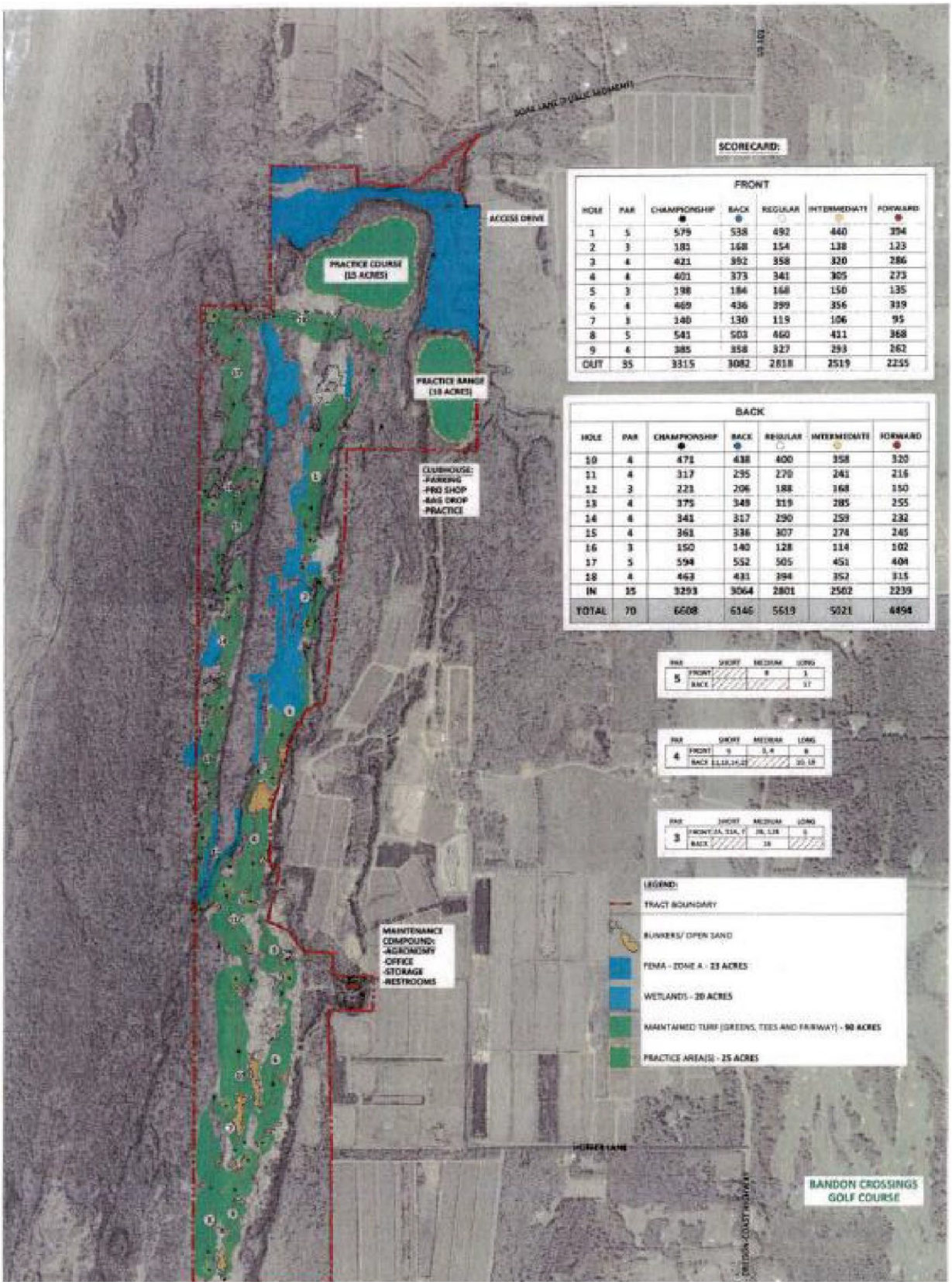


FRONT

HOLE	PAR	CHAMPIONSHIP ●	BACK ◆	REGULAR ◇	INTERMEDIATE ◎	FORWARD ●
1	5	579	538	492	440	394
2	3	181	168	154	138	123
3	4	421	392	358	320	286
4	4	401	373	341	305	273
5	3	198	184	168	150	135
6	4	469	436	399	356	319
7	3	140	130	119	106	95
8	5	541	503	460	411	368
9	4	385	358	327	293	262
OUT	35	3315	3082	2818	2519	2255

BACK

HOLE	PAR	CHAMPIONSHIP ●	BACK ◆	REGULAR ◇	INTERMEDIATE ◎	FORWARD ●
10	4	471	438	400	358	320
11	4	317	295	270	241	216
12	3	221	206	188	168	150	
13	4	375	349	319	285	255
14	4	341	317	290	259	232
15	4	361	336	307	274	245
16	3	150	140	128	114	102
17	5	594	552	505	451	404
18	4	463	431	394	352	315
IN	35	3293	3064	2801	2502	2239
TOTAL	70	6608	6146	5619	5021	4494



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PUBLIC NOTICE: This application is a Hearings Body Conditional Use (HBCU) governed by CCZLDO Section 5.0.900. Notice was mailed to property owners in compliance with CCZLDO Section 5.0.900.1 Notice of Public Hearings. The notice was amended as the property owner had changed but the assessment rolls were not updated to show the change at the time the original notice was provided. The change in ownership was completed through deed document 2024-01964 recorded on April 1, 2024.

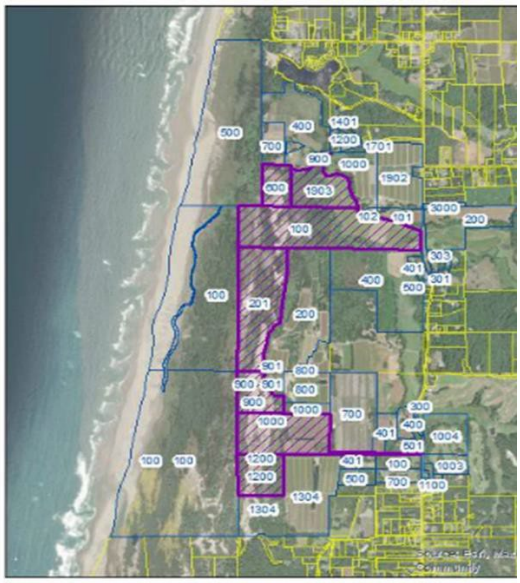
Request for comments were provided to Local Tribes, Oregon Department of State Lands and Oregon Department of Fish and Wildlife. There have been no comments received to date. If comments are received, they will be incorporated into the decision.

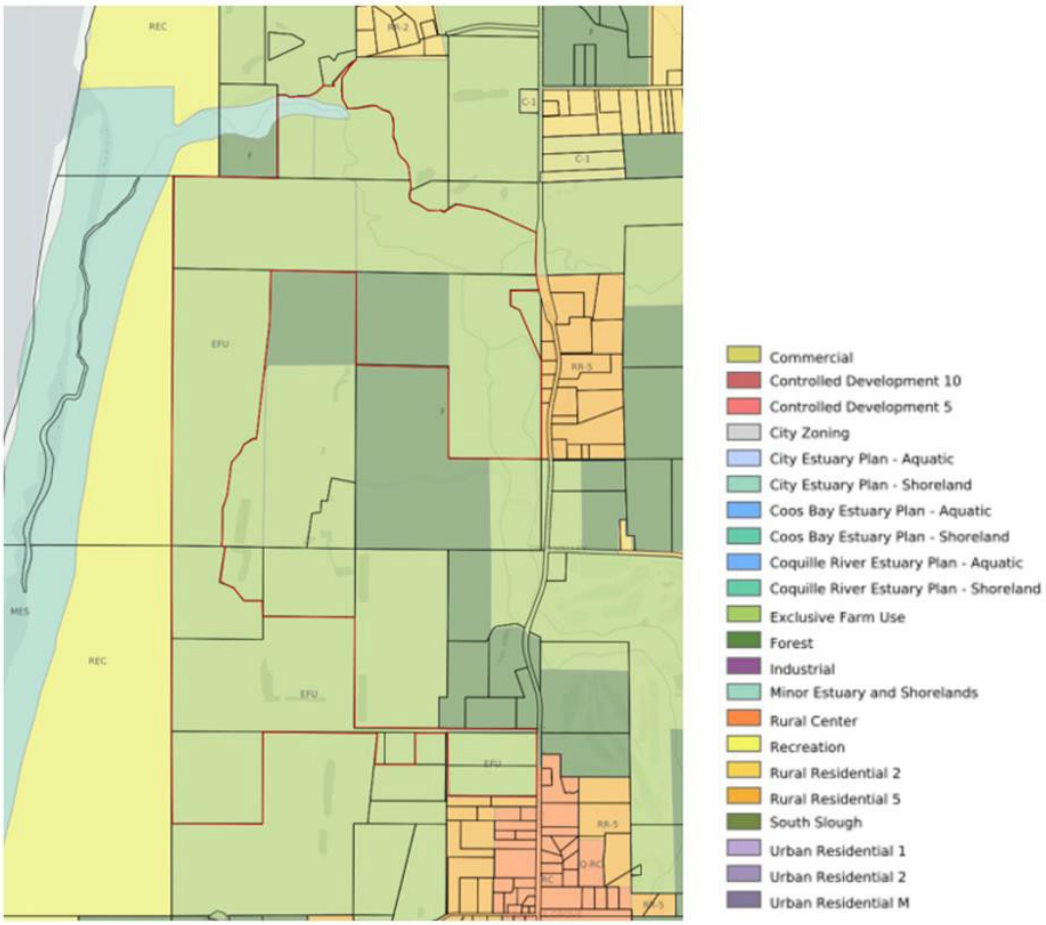
SURROUNDING USES: The golf course tract consists of approximately 342 acres of vegetated sand dunes stretching north and south for approximately two miles. There are 11 soil types within the tract that primarily consist of either sand or sandy complex soil types. The vegetation on the upland dunes primarily consists of the invasive species "gorse," with a mixture of dune grasses and other dune-type vegetation. The primary tree type is Shore Pine intermingled with various types of conifers (primarily spruce) that are more predominant in the north half of the tract where the topography splits the course. Land clearing for the course has restored open sand dune areas that existed prior to the invasion of gorse.

The property is surrounded by Exclusive Farm Use, Forest Mixed Use, Rural Residential, and Recreational Zoned properties. There appears to be farming and forest practices occurring on adjacent farm and forest zoned properties. During the criteria assessment portion of the review, more details will be provided about surrounding uses and impacts.

There are Rural Residential-2 zoned parcels located near the proposed public entrance of the golf course. There are Rural Residential-5 zoned parcels located east of section 24 – tax lot 400 on the east side of Highway 101. There is a combination of Rural Center and Rural Residential-5 zoned parcels located south of the subject tract off Hoffer Lane. Hoffer Lane is the proposed employee entrance for the golf course. The rural center of Laurel Grove is located in this area.

There are Recreation zoned parcels located west of the subject tract. These parcels consist of the Bandon State Natural Area and are managed by the Oregon Department of Parks and Recreation.




REC
RR-2
F
C-1
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EFU
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MES
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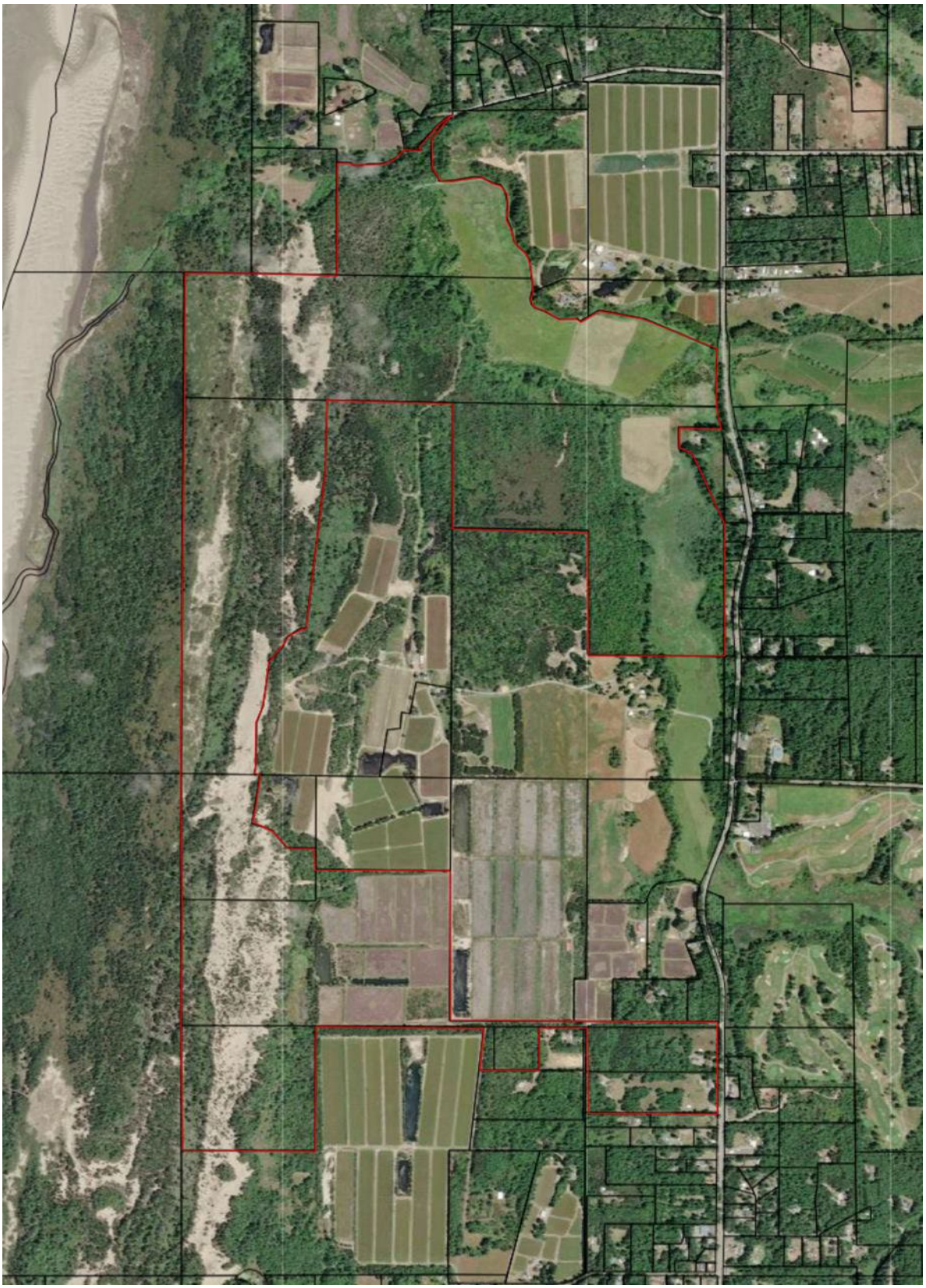
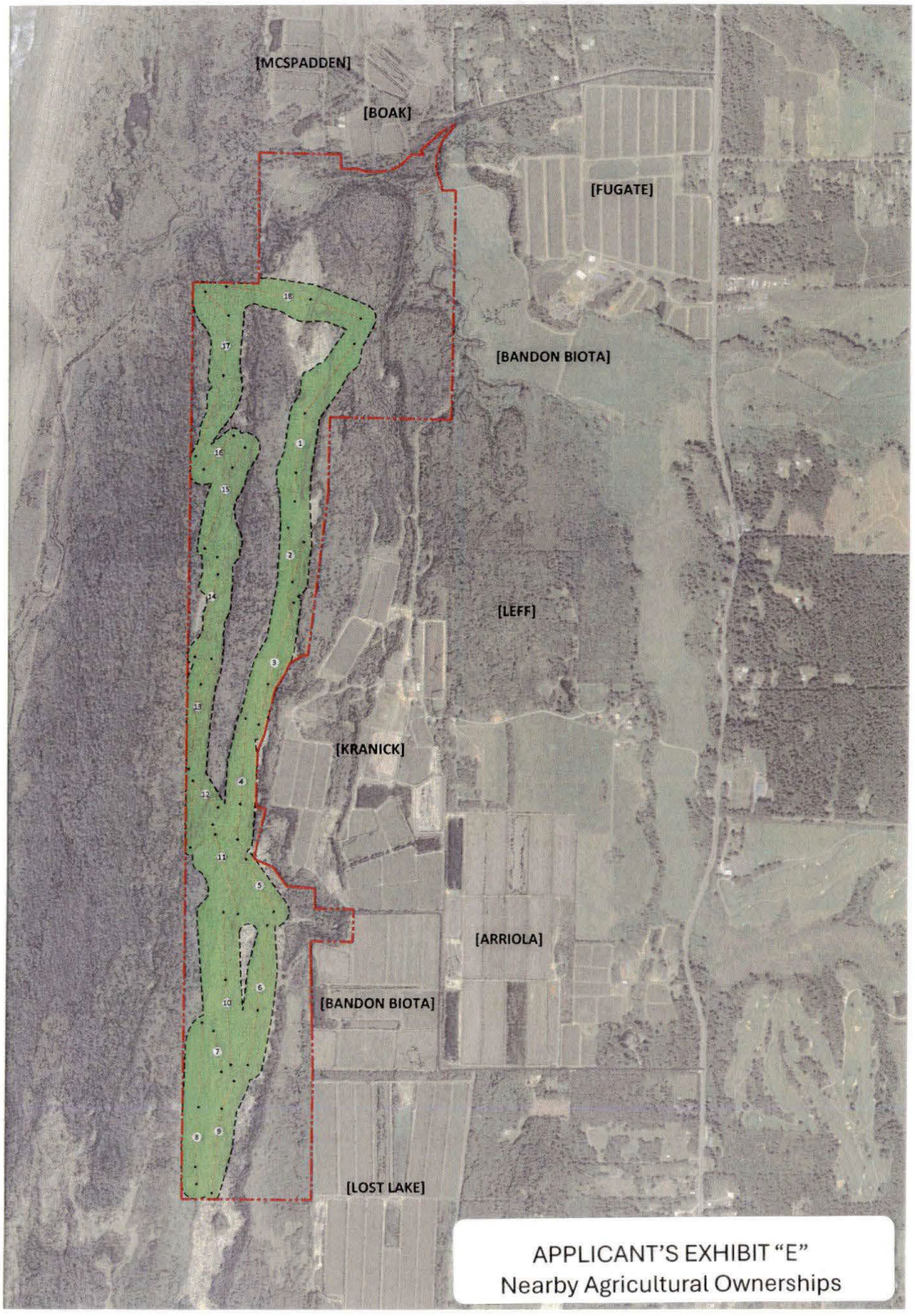
EFU
EFU
RR-5
Q-RS
C
RR-5
Commercial
Controlled Development 10
Controlled Development 5
City Zoning
City Estuary Plan - Aquatic
City Estuary Plan - Shoreland
Coos Bay Estuary Plan - Aquatic
Coos Bay Estuary Plan - Shoreland
Coquille River Estuary Plan - Aquatic
Coquille River Estuary Plan - Shoreland
Exclusive Farm Use
Forest
Industrial
Minor Estuary and Shorelands
Rural Center
Recreation
Rural Residential 2
Rural Residential 5
South Slough
Urban Residential 1
Urban Residential 2
Urban Residential M




[MCSPADDEN]
[BOAK]
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[BANDON BIOTA]
[LEFF]
[KRANICK]
[ARRIOLA]
[BANDON BIOTA]
[LOST LAKE]
APPLICANT'S EXHIBIT "E"
Nearby Agricultural Ownerships
DAVID McCLAY KIDD

REVIEW CRITERIA: The applicable review criteria are found in Coos County Zoning and Land Development (CCZLDO) 4.6.200 Table 2 identifies the uses and activities in the Exclusive Farm Use zone. The tables describe the use, type of review, applicable review standards. Table 2 of CCZLDO Section 4.6.200.67 defines the relevant criteria for Golf Courses not on high-value farmland as defined in ORS 195.300 subject to an HBCU, Section 4.6.200 Minimum Standards Applicable to the Schedule of Permitted and Conditional Uses (2)(5)(20). Development shall also comply with Section 4.6.210 Development and Use Standards for the Exclusive Farm Use Zone. Properties that are in a Special Development Consideration and/or overlays shall comply with the applicable review process identified by that Special Development Consideration and/or overlay located in Article 4.11 prior to development. This proposal is subject to review under Natural Hazards Section 4.11. The appeal is subject to procedures of Article 5.8.

PROCESS BACKGROUND:

- The Planning Commission held a public hearing on July 11, 2024, during which the record was kept open for additional testimony and evidence in three phases (new testimony, rebuttal, and final argument).
- On August 8, 2024, the Planning Commission rendered a final decision with conditions, finding that the application met the required criteria.
- Following the issuance of the written decision, the notice of decision and appeal rights were mailed to all parties. An appeal was filed on August 27, 2024, by the Oregon Coast Alliance, within the appeal period (August 29, 2024).

APPEAL PROCEDURE AND CRITERIA :

Staff appeared before the Board of Commissioners during a regular public meeting on October 1, 2024, to seek guidance on accepting and reviewing the appeal. The options under Article 5.8 were presented.

The Board of Commissioners accepted the appeal and agreed to review the record with arguments from the parties involved. The hearing was scheduled for October 23, 2024, and notice was provided on October 3, 2024.

SECTION 5.8.170 APPEAL PROCEDURES:

An appellant shall file the appeal for review on the appropriate county form and the form shall be completely filled out as required by this section. If an appellant fails to correctly fill out the form, and there has already been a public hearing on the matter, the Board of Commissioners may deny the appeal based on failure to comply with this section. In the event the appeal is denied based on a failure to comply with this section, a refund of unexpended fees shall be returned to the appellant.

The appeal form shall contain the following:

1. The name of the applicant and the County application file number;
2. The name and signature of each petitioner and a statement of the interest of each petitioner to determine party status. Multiple parties shall join in filing a single petition for review, but each petitioner shall designate a single Contact Representative for all contact with the

Planning Department. All communications regarding the petition, including correspondence, shall be with the Contact Representative;

3. The appellant must explain how they have achieved party status pursuant to the applicable sections of 5.8.150 or 5.8.160;
4. The date that the notice of the decision was mailed as written in the notice of decision;
5. The nature of the decision and the specific grounds for appeal citing specific criteria from the Coos County Zoning and Land Development Ordinance, Comprehensive Plan, Statute or Rule.
6. The appellant must explain in detail, on the appeal form or attached to the appeal form, how the application did not meet the criteria in the case of an approval or why the criteria should or should not apply; or, in the case of a denial the appellant shall explain why the application did meet the criteria or why certain criteria did not apply to the application.
7. Appeals of Planning Director's decision will be de novo;
8. Appeals of Planning Commission's or appointed Hearings Officer(s) decision shall be reviewed by the Board of Commissioners or Hearings Officer if the Board of Commissioners so chooses. The Board of Commissioners shall, provided there has been an initial evidentiary hearing:
   a. Decline to hear the matter and enter an order affirming the lower decision; or
   b. Accept the appeal and:
      i. Make a decision on the record without argument;
      ii. Make a decision on the record with argument;
      iii. Conduct a hearing de novo; or
      iv. Conduct a hearing limited to specific issues.

c. In the decision, the Board shall affirm, modify, or reverse the lower decision, and accept any or all of the findings and conditions in the Hearings Body decision, or modify or adopt new findings and conditions on a permit.
d. If the Board allows argument only on the record, no new evidence shall be submitted.
e. Any legal issues not specifically raised are considered waived for purposes of appeal to the Land Use Board of Appeals (LUBA).
f. Where a hearing is limited to specific issues, any evidence or argument submitted must be relevant to the specific issue.
g. All items to be submitted to the County must actually be received by the County Planning Department no later than 5:00 p.m. on the on the last day of the appeal period. If the last day of the appeal period falls on a weekend or County holiday, then the item must actually be received by the County Planning Department no later than 12:00 p.m. on the next County business day following the deadline date. All items to be mailed to another party must be postmarked no later than the end of the appeal period.
h. The decision of the Board of Commissioners shall not be final for the purpose of appeal until reduced to writing and signed by the Board.

SECTION 5.8.230 BOARD OF COMMISSIONERS ACTION

1. The Board of Commissioners shall affirm, modify, or reverse all or part of the action of the Hearings Body or shall remand the matter for additional review or information. [OR 04 12 013PL 2/09/05]
2. A final decision by the Board of Commissioners or Hearings Officer shall be appealed to the Land Use Board of Appeals (LUBA).

FINDINGS: The appeal was filed by Sean Malone, the legal representative for Oregon Coast Alliance. They had submitted testimony during the Planning Commission review, making them an eligible party to file the appeal. The appeal was filed within the appropriate deadline. The Board of Commissioners accepted the appeal and made a decision to take argument on the record only.

APPEAL ISSUES RAISED IN THE APPEAL:

In summary here's a brief summary of all the issues raised and how they have been addressed, are not relevant, or can be conditions of approval:

1. **Acreage Limitation (OAR 660-033-0130):**
   - **Addressed:** The findings clarify that while the rule suggests a typical acreage of 120 to 150 acres, this calculation does not account for necessary amenities and safety areas. The proposed golf course size, including fairways and accessory facilities, is consistent with the administrative rules.
2. **Use by the Non-Golfing Public (OAR 660-033-0130(20)(d)(A)):**
   - **Can be Conditioned:** The Board can impose conditions of approval to restrict non-golf-related uses and ensure that accessory uses serve only the golfing public, in line with the rule prohibiting facilities such as housing, public entertainment, and sporting facilities unrelated to golf.
3. **Beaches and Dunes Compliance (CCZO 4.11.129):**
   - **Can be Conditioned:** The Board can place a condition of approval requiring a conditional use application to address the Beaches and Dunes overlay before a zoning compliance letter is issued, ensuring the application complies with the necessary environmental protections.
4. **Residential Dwellings on Golf Course (OAR 660-033-0130(20)(d)(A)):**
   - **Addressed:** Housing cannot be an accessory use to a golf course, and the findings will reflect this. The applicant cannot include the existing residential dwellings as part of the golf course operations.
5. **Farm Impacts Test (ORS 215.296 and CCZO 4.6.120(5)(a) and (b)):**
   - **Addressed:** The applicant has satisfied the farm impacts test by considering both case-by-case and cumulative impacts on surrounding agricultural operations, in line with the Oregon Supreme Court's ruling in *Stop the Dump Coalition*.

6. **Water Rights:**
    - **Not Relevant:** Speculative future water rights or impacts are not relevant under *Stop the Dump Coalition*. The findings focus on current water rights and impacts, ensuring compliance with existing rules and regulations.
7. **Design Capacity Misinterpretation (OAR 660-033-0130(2)):**
    - **Addressed:** The applicant's interpretation of design capacity was incorrect, and the findings will be updated to reflect the correct limitation on the number of people served by the golf course.

In summary, the issues raised have either been addressed directly in the findings, are not relevant to the application, or can be resolved by imposing conditions of approval to ensure compliance with state law and applied through Coos County Zoning and Land Development Ordinance.

Below are the a more detailed listing of the arguments and responses:

- **First Issues - The application has not demonstrated that the subject lots and parcels were lawfully created**

The application and findings did not demonstrate that the subject lots and parcels were lawfully created. Under CCZO 4.6.210, "[t]he size of the parcel will not prohibit development as long as it was lawfully created or otherwise." The applicant and findings have failed to demonstrate that the parcels are lawfully established. The applicant must submit deed histories, property description cards, or other documentation that establishes the lots as lawfully created.

If any of the lots or parcels were unlawfully divided after land use laws were enacted, which is a common occurrence, then those resulting lots or parcels are not considered legal or lawfully established units of land.

Misunderstanding Regarding Property Line Adjustments:

The applicant seems to believe that property line adjustments create new parcels or land in the sense that a property line adjustment results in a lawfully established unit of land. For example, the applicant alleges that "[t]he area in yellow was created by Property Line Adjustment Deed 2003-6462 following approval of the adjustment by Coos County." This is incorrect. Property line adjustments merely modify boundaries; they do not create new parcels.

As established in *Meyer v. Jackson County*, *Or LUBA* (LUBA No. 2014-005, April 24, 2014), property line adjustments do not result in newly created properties. New properties can only be created through a partition or subdivision process. If properties were not created in conformance with all applicable land use laws, they are considered unlawful.

Additionally, the applicant references D-23-002/ACU-23-037, but that application is not included in the record. It is necessary for the applicant to provide supporting documentation to establish whether the lots and parcels are lawful.

RESPONSE: The relevant criteria in this matter from the Coos County Zoning and Land Development ordinance states: ***The size of the parcel will not prohibit development as long as it was lawfully created or otherwise required to be a certain size in order to qualify for a use.*** **This criterion means that the size of a parcel of land, by itself, will not prevent development from occurring as long as one of the following conditions is met:**

1. **Lawfully Created: The parcel must have been created in compliance with applicable land use laws and regulations at the time it was divided or established. If the parcel meets these legal requirements, its size will not be a barrier to development.**
2. **Otherwise Required: If the parcel was required to be a certain size due to specific regulations, zoning, or land use laws that mandate minimum or maximum parcel sizes for a particular use, the parcel qualifies for development as long as it meets those criteria.**

In essence, this condition allows for development as long as the parcel's creation complied with legal standards or if the parcel was required to be a certain size to meet zoning or land use requirements for a specific use. The parcel's size, in itself, is not a limitation, provided these legal or regulatory conditions are met.

During the record period, the appellant alleged that the applicant had not addressed whether the parcels were lawfully established. Both the applicant and staff initially addressed this by stating that the parcels were created through property decisions. However, the argument has since been expanded to claim that the applicant and the findings failed to provide evidence to support this statement, which constitutes a "new argument."

Staff will clarify that file number D-23-002 refers to a "discrete parcel determination" review, during which the county applies the standards outlined in Article 6.1: Lawfully Created Lots and Parcels. This review process includes issuing a notice of decision, which was appealable. This determination had to be completed prior to the property line adjustments referenced by the applicant. The lawfully created property argument was also address in the Planning Commission's final decision under "Summary of Testimony Received and Response" number 6 states the following: "Lawfully Created Property: The property in question was lawfully created through a prior land use action involving Property Line Adjustments, as consistent with CCZLDO Section 6.1.125(b). This confirms the legal status of the property, and the issue raised by the Oregon Coast Alliance regarding the legality of the property's creation has been addressed appropriately".

- **Second Issue Raised: Geologic Assessment Review**

The application must be subject to a condition of approval requiring the applicant to submit and receive approval for a geologic assessment review. However, the findings did not impose this condition of approval. According to *Rhyne* and its progeny, the process for the geologic assessment

review must allow for the same review process with the same procedural and substantive rights as provided in this application.

Because the applicant does not have the necessary details regarding the location of the structures, it cannot feasibly carry out the geologic assessment review. The findings state:

"The concern about the geologic assessment is not applicable at this stage, as the assessment is specifically tied to structural development. The use impacts under discussion pertain to the entire project, not just the structures. A geologic assessment can be applied for through a subsequent permit, which means that this issue does not undermine the current application and is not a valid argument against the proposal."

The findings fail to properly condition the approval by essentially deferring findings to another stage of the approval process without ensuring the same procedural and substantive rights, as required under *Rhyne* through a condition of approval.

The applicant alleges that they do not have the necessary details regarding the location of the structures to carry out the geologic assessment review. The findings did not respond to this issue. If the applicant does not know the location of the structures, they cannot reasonably demonstrate compliance with all the approval criteria, including the impacts related to the farm impacts test under **ORS 215.296**.

The appellant further alleges:

- "The structures proposed in conjunction with the golf course have not been architecturally designed, and while the location of structures is generally known, the exact location of each structure is subject to change as development of the course proceeds."
- "Because the majority of the structures associated with the golf course have not been designed, and the exact location is unknown, it will be necessary to address ordinance requirements for liquefaction at a later date. Because the standards of **Section 4.11.115** will be addressed under a quasi-judicial land process with notice, it is not required that the standards be addressed at this time."

If the applicant does not know the location of the buildings, they cannot fully assess the impacts of the proposed use. The restaurant and clubhouse, for example, will have impacts related to the number of visitors and golfers, the amount of garbage produced, traffic, trespassing, the attraction of corvids, and other factors. Without knowing the building locations, the applicant cannot accurately define the baseline for the farm impacts analysis, as conceded by the applicant. The findings did not address this issue.

RESPONSE: The findings did address the geologic assessment. According to Section 4.11.150, applications for a geologic hazard review may be made concurrently with any other type of application required for the proposed use or activity, but they are not required to be submitted at the same time. A review of the property must be conducted prior to any ground disturbance.

Additionally, the criteria for the use of a golf course are not dependent on the geologic assessment. The purpose of the assessment is to address the overlay zone, not to determine the appropriateness of the golf course use itself. The applicant can still provide findings on the impacts based on their understanding of the necessary development and infrastructure for a golf course of this type and size. To make it clear that additional reviews are required a condition of approval can be added to the Board of Commissioners decision.

- **Issue Three: High-Value Farmland and Non-Farm Use**

The proposed golf course is located on high-value farmland, and the applicant has not satisfied the requirements outlined in the land use tables, administrative rules, and CCZLDO.

The applicant is proposing a non-farm use on farmland, specifically high-value farmland, which alone is a significant obstacle to the application. The Oregon Legislature has identified a clear policy in favor of retaining agricultural lands. As stated by the Oregon Supreme Court in *Stop the Dump Coalition v. Yamhill County*, 364 Or 432, 442 (2019), "the legislature has declared that preservation of agricultural land, particularly in large blocks, is an important statewide policy and that limitations on urban expansion into, and alternative uses of, agricultural and forest lands are necessary and a matter of statewide concern." This policy is further supported by **ORS 215.243**, which underscores the importance of preserving agricultural land for natural resource conservation, economic benefit, and maintaining a healthy food supply.

While a golf course may be an allowed use on non-high-value farmland, this application involves high-value farmland, which is prohibited for golf courses under **ORS 195.300(10)** and **ORS 215.710**. High-value farmland includes land in exclusive farm use (EFU) or mixed farm and forest zones that is used for growing specific perennials, as demonstrated by aerial photography taken before November 4, 1993, per **ORS 215.710(2)**. Additionally, high-value farmland encompasses land with water rights for irrigation, as established by the Oregon Water Resources Department.

Key Points on High-Value Farmland:

1. **Definition of a Tract:** The property containing the golf course is in common ownership, which means the entire property is considered a "tract" under **OAR 660-033-0020(14)**. Even if only portions of the land are currently used for high-value farming activities, the entire tract is classified as high-value farmland. The staff report acknowledges water rights for irrigation in the project area, further supporting this classification.
2. **Contradictory Positions on Property Line Adjustments:** The applicant has taken inconsistent positions regarding whether the property contains high-value farmland. At the hearing, the applicant alleged that the area designated for the golf course does not contain land used for specified perennials or high-value crops. However, this contradicts earlier statements, and the findings do not adequately address these discrepancies.
3. **Water Rights and High-Value Farmland Classification:** According to **ORS 195.300(10)(c)(A)**, high-value farmland includes land with water rights for irrigation. The applicant has submitted documentation, including a Permit to Appropriate Public Waters (G-13208) and a Certificate of Water Right for cranberry operations on 28 acres. However, it is

unclear whether this water right applies to the portion of land designated for the golf course. The findings do not clarify whether the property in question remains part of the contiguous ownership and retains its high-value farmland classification.

4. **Lack of Clarity in Findings:** The findings are ambiguous regarding the "footprint" of the golf course. While they state that certain water rights do not apply to the course's footprint, they fail to define the exact boundaries of the golf course or the acreage considered part of the overall project. The findings rely on a map that does not clearly indicate the specific locations of the water rights in relation to the golf course area.
5. **Insufficient Evidence in Findings:** The findings do not contain substantial evidence to support the applicant's claims. They fail to respond adequately to appellant's arguments regarding high-value farmland and water rights. Additionally, the reliance on potentially outdated tax lot data to refute the high-value farmland designation does not address the current status of the land's use or ownership.

The main overview is that the golf course proposal is incompatible with the classification of high-value farmland. Without clearer evidence and a more thorough evaluation of water rights, land use, and the definition of the property as a "tract," the findings remain insufficient to support approval of the application. The applicant must provide additional documentation, including property line adjustments and water right details, to clarify the extent of the high-value farmland and address the concerns raised in this appeal.

Staff Response to Appellant's Allegation Regarding High-Value Farmland: As explained in the staff report and findings, high-value farmland is defined differently depending on the use and specific sections referenced in Oregon law. In this case, the applicable portions of ORS 195.300 for golf courses are subsections (b) and (c). ORS 215.710 applies to dwellings described in ORS 215.705, but subsection (b) of ORS 195.300 does require consideration of defined soils listed in ORS 215.705. Additionally, subsections (d) through (f) of ORS 195.300 apply to specific agricultural uses like grapes and viticultural areas, which are not relevant here.

Relevant Statutory Soil and Water Rights Considerations:

- **ORS 195.300(10)(b): This section pertains to land west of U.S. Highway 101 composed predominantly of Class III or IV soils or a combination of soils listed in ORS 215.710. For this project, specific soil classifications such as Ettersburg Silt Loam, Croftland Silty Clay Loam, and Huffling Silty Clay Loam are considered.**
- **ORS 195.300(10)(c): This subsection concerns land within an exclusive farm use (EFU) zone or a mixed farm and forest zone that, on June 28, 2007, was within the place of use for a permit, certificate, or decree for the use of water for irrigation.**

Additionally, ORS 215.705 defines prime, unique, Class I, and Class II soils for agricultural purposes. Land growing specified perennials, such as berries, fruits, and nursery stock, also qualifies as high-value farmland based on historical aerial photography prior to November 4, 1993.

Soil Analysis:

Based on the soil study provided for this project, the following areas within the 342-acre tract have been identified:

- **Prime, unique, or Class I/II soils (totaling 96.3 acres):**
  - **2C and 5B Bandon-Blacklock complex (2.5 acres)**
  - **8B and 8C Bullards sandy loam (17.8 acres)**
  - **28 Heceta fine sand (40.5 acres)**
  - **29B Heceta-Waldport fine sands (24.7 acres)**
  - **34 Langlois Silty Clay loam (10.8 acres)**
- **Soils not classified as prime, unique, or Class I/II farmland (totaling 246.8 acres):**
  - **8E Bullards sandy loam (5.8 acres)**
  - **16 Dune land (128.3 acres)**
  - **59D and 59E Waldport fine sand (56.2 acres)**
  - **60D Walport-Dune land complex (20.5 acres)**
  - **61D Waldport-Heceta fine sand (36 acres)**

Thus, 28% of the total study area (approximately 96.3 acres) is classified as high-value farmland, while the remaining 246.8 acres (72%) are not.

Water Rights Consideration:

In evaluating water rights, it was determined that two points appear to have permits, certificates, or decrees for the use of water for irrigation, as issued by the Oregon Water Resources Department. However, these water rights are not within the footprint of the proposed golf course. The applicant has provided further information, including a memo from CwM-H2O, which pertains to future water rights rather than current water usage. This memo provides additional discussion for those concerned about impacts on existing water rights.

Based on the analysis of soils, zoning maps, aerial images, assessment records, and water rights, the majority of the area is not classified as high-value farmland. Only 28% of the project area falls under this classification, while the rest consists of non-high-value land. Therefore, the golf course proposal complies with the applicable land use requirements.

The next step is to review the project according to the relevant criteria outlined in Section 4.6.200(2), (5), and (20), as applicable to this specific proposal and soil analysis.

Furthermore, addressing the Supreme Court's Argument in *Stop the Dump Coalition v. Yamhill County*:

In *Stop the Dump Coalition v. Yamhill County*, the Oregon Supreme Court reaffirmed the Legislature's policy on the preservation of agricultural land, stating that the "preservation of agricultural land, particularly in large blocks, is an important statewide policy." The Court emphasized that limiting urban expansion and alternative uses of agricultural and forest lands is a matter of statewide concern, particularly to conserve agricultural resources.

In this case, the proposed golf course is located on a tract of land that includes some high-value farmland. However, detailed analysis shows that only 28% of the project area is classified as high-value farmland, with the majority of the land (72%) not meeting this classification. Furthermore, the water rights associated with the project do not overlap with the golf course footprint, and the soil analysis confirms that much of the land does not consist of prime, unique, or Class I/II soils.

Although *Stop the Dump Coalition* underscores the importance of retaining agricultural land, it does not prohibit all alternative uses of farmland, particularly when large portions of the property do not meet the definition of high-value farmland. The Oregon land use system allows for certain non-farm uses on agricultural land if they comply with state and local criteria. In this instance, the proposed golf course complies with the applicable provisions of ORS 195.300 and ORS 215.710, which allow for careful evaluation of soil types, water rights, and existing use.

While Oregon law emphasizes the preservation of agricultural land, non-farm uses are permissible under specific conditions. In this case, the majority of the project site does not meet the high-value farmland criteria, and the proposed golf course aligns with land use tables and the administrative rules governing non-farm uses. The proposed development, therefore, fits within the allowable uses on this type of land, while still respecting the broader legislative policy to conserve agricultural resources where applicable.

The Board could consider a condition to restrict development to the areas the 72% of the area that does not meet the standard for high-value farmland.

- **Issue four regarding Acreage Limitation and Inconsistency with Preservation of Farmland**

The appellant argues that the proposed golf course exceeds the acreage limitation, is inconsistent with the rules governing the definition of a golf course, and is contrary to the legislative policy for preserving farmland.

Under **OAR 660-033-0130(20)(a)**, a regulation 18-hole golf course is typically "characterized by a site of about 120 to 150 acres of land, with a playable distance of 5,000 to 7,200 yards, and a par of 64 to 73 strokes." While this rule allows some flexibility in terms of acreage, the appellant argues that the proposed size of the golf course, at 165 acres, significantly exceeds the general guideline of 120 to 150 acres. The appellant claims that although the rule does not set a strict upper limit, it cannot be stretched to justify the use of over 340 acres of farmland, with 165 acres allocated directly to the golf course and the rest not actively used for farming or golf-related purposes.

The appellant further contends that the **legislative policy for preserving farmland**, as emphasized in various Oregon statutes and case law, does not support the use of such a large tract of high-value farmland for non-agricultural purposes. The proposed golf course is inconsistent with the intent of **OAR 660-033-0130**, which allows for the development of golf courses but within a reasonable scope that does not unnecessarily impact agricultural land.

Additionally, the appellant raises the issue that the applicant's claim is contradictory. On one hand, the applicant suggests that the entire 342-acre property is dedicated to the golf course, while on the other hand, they acknowledge that not all of this land is utilized for the golf course itself. According to the definition of a "golf course"—an area of land laid out specifically for the game of golf, including tees, fairways, and greens—the applicant cannot justify taking 165 acres out of farm production that is not actively used for the golf course. This use of farmland, which goes beyond the essential area for the game of golf, violates the intent of **OAR 660-033-0130(20)** and undermines the state's legislative policy to protect agricultural land.

In summary, while there is flexibility in the acreage guideline for golf courses, the proposed size in this case doubles the upper limit and unnecessarily removes high-value farmland from agricultural use. The application of **OAR 660-033-0130(20)** should not allow such extensive land to be repurposed for non-farming activities, and the proposed development is inconsistent with the rule and broader legislative goals.

Response to Acreage Limitation Argument: The findings clarify that when interpreting a provision, especially one with subjective elements, it is essential to consider the provision as a whole. In this case, the subjective standard defines a regulation golf course as having a playable distance of 5,000 to 7,500 yards, with a par of 64 to 73 strokes.

The average width of a golf course fairway, which consists of maintained turf, is typically 200 to 300 feet (approximately 100 yards). A course with a length of 7,500 yards, with fairways 100 yards wide, would occupy approximately 150 acres of land. However, this calculation does not account for additional elements such as intermediate areas, safety corridors, access roads, open spaces, or cart paths, all of which are necessary components of a fully functioning golf course.

Furthermore, the 150-acre estimate for playable area does not consider the need for amenities that are standard for golf courses, such as a clubhouse, maintenance facilities, irrigation reservoirs, driving ranges, practice areas, or parking lots. These facilities are all explicitly allowed under the Administrative Rule for golf courses on Exclusive Farm Use (EFU) land.

Therefore, while the playable area of the course may be around 150 acres, the total land use, including these necessary amenities and safety features, justifies the use of additional acreage beyond the 150 acres initially calculated for playable area alone. The overall size of the golf course is consistent with the definition and allowances for golf courses on EFU land under the applicable rules. The Board of Commissioner can consider making it clear to limit the developed are to 150 acres.

Issue five prohibition of Use by the Non-Golfing Public:

The appellant raises concerns regarding the use of the golf course facilities by the non-golfing public, citing **OAR 660-033-0130(20)(d)(A)**, which states that "[a]n accessory use or activity does not serve the needs of the non-golfing public." The rule further specifies what cannot be included as accessory uses, such as sporting facilities unrelated to golf (e.g., tennis courts, swimming pools, weight rooms), wholesale or retail operations aimed at the non-golfing public, or housing. Additionally, banquets,

public gatherings, and public entertainment must be prohibited, and the restaurant cannot serve the general public, as the applicant had previously proposed.

RESPONSE: This issue was addressed in the record, and the Board has the authority to impose a condition of approval that ensures accessory uses are limited to serving the golfing public only. The Board can restrict non-golf-related activities and enforce the rule to comply with OAR 660-033-0130(20)(d), ensuring that no amenities or services are provided for the non-golfing public.

- **Sixth issue raised is the Applicant does not comply with the Beaches and Dunes requirements in CCZO 4.11.129 and fails to include a condition of approval to defer findings.**

Response to Beaches and Dunes Compliance: The appellant argues that the application does not comply with the Beaches and Dunes requirements outlined in CCZO[1] 4.11.129 and failed to include a condition of approval to defer findings.

This is similar to the argument made regarding natural hazards. While the ordinance provides clear protections and additional review processes for areas affected by Beaches and Dunes overlays, the Board has the authority to impose a condition of approval. This condition would require the applicant to submit a conditional use application addressing the Beaches and Dunes overlay prior to obtaining a zoning compliance letter. This ensures that all necessary reviews and protections are in place before any development proceeds. This is not a deferral of findings as a new conditional use is required with separate criteria and findings. As explained before it is not required to be submitted concurrently and may be submitted prior to any ground disturbing activities.
Seventh issue rasied The applicant has not satisfied the criteria for the golf course and design capacity,

- **Seventh issued raised - the applicant has not satisfied the criteria for the golf course and design capacity, pursuant to OAR 660-033-0130.**

Response to Criteria for Golf Course Design Capacity and Residential Dwellings:

The appellant argues that the applicant has not satisfied the criteria for golf course design capacity, particularly with respect to residential dwellings located within the boundaries of the proposed golf course, pursuant to OAR 660-033-0130.

The applicant acknowledges that the ownership includes two residential dwellings currently being utilized as month-to-month rentals, and the appellant contends that these dwellings will likely be used by golfers. However, OAR 660-033-0130(20)(d)(A) clearly states that accessory uses to a golf course "do not include housing." Therefore, the inclusion of residential dwellings as part of the golf course's operations is not permissible under the rule. The findings must

[1] **For clarification the abbreviation should be CCZLDO – Coos County Zoning and Land Development Ordinance.**

acknowledge this limitation, as the use of these dwellings for housing on the golf course property cannot be approved.

Additionally, the appellant raises concerns regarding the applicant's interpretation of design capacity. The appellant is correct in pointing out that the applicant's assertion of a new design capacity of 100 people every half mile is a misinterpretation of the rule. OAR 660-033-0130(2) limits the design capacity to 100 people unless the land is part of a contiguous tract as of a particular date. This does not permit the applicant to expand the design capacity beyond the prescribed limit. This is addressed in the findings but, the Board can condition the approval to ensure that the application complies with the restrictions on accessory uses and the design capacity outlined in OAR 660-033-0130. The findings will be updated to reflect that housing is not allowed as part of the golf course, and the design capacity will be adjusted to align with the correct interpretation of the rule.

- **Issue eight raised was that the applicant has not satisfied the farm impacts test. pursuant to state law (ORS 215.296) and CCZLDO (CCZO 4.6.120(5)(a) and (b))**

Response to Farm Impacts Test under ORS 215.296 and CCZLDO 4.6.120(5)(a) and (b):

The appellant argues that the applicant has not satisfied the farm impacts test as required by ORS 215.296 and CCZO 4.6.120(5)(a) and (b). While the appellant cites the *Oregon Supreme Court Case Stop the Dump Coalition v. Yamhill County, 364 Or 432, 442 (2019),* which clarified that farm impacts must consider not only individual property assessments but also the cumulative impact on surrounding agricultural lands, this issue was extensively addressed in the findings.

The applicant thoroughly reviewed and analyzed the farm and forest uses surrounding the proposed golf course. The farm impacts test requires an evaluation of whether the proposed non-farm use would significantly change accepted farming practices on surrounding lands, or materially increase the cost of those farming practices. The findings considered the case-by-case impacts on adjacent properties and ensured that the proposed golf course would not interfere with or negatively affect surrounding farm operations.

Furthermore, while Stop the Dump Coalition highlights the importance of considering cumulative impacts, the applicant addressed this aspect in their analysis by reviewing the broader context of farm and forest uses in the area. The findings supported the conclusion that the cumulative impact of the golf course would not disrupt farming practices or materially increase the cost of farming in the surrounding area.

In conclusion, the applicant has satisfied the requirements of the farm impacts test by addressing both individual and cumulative impacts on nearby farm and forest uses. The findings reflect a careful consideration of the relevant state law and CCZLDO provisions.

The appellant makes a lot of assumptions about potential for future uses or transfer of water rights that have not happened yet, but that is not an accept standard or consistent with the

intent of the law. In *Stop the Dump Coalition v. Yamhill County*, the Oregon Supreme Court emphasized that the farm impacts test must consider both the direct and cumulative impacts of a proposed non-farm use on surrounding agricultural operations. However, the focus is on current or reasonably foreseeable impacts based on the existing circumstances at the time of the application.

The Court did not suggest that speculative or hypothetical future uses or water impacts, which are not in place at the time of the application, should be considered as part of the farm impacts test. Instead, the case clarified that the impacts must be grounded in what is already happening or what can reasonably be expected in the near term.

Therefore, future impacts that are speculative or not reasonably foreseeable based on the current use of land and water resources are generally not relevant to the farm impacts test, as established in *Stop the Dump Coalition*. The decision-making process should focus on existing conditions and impacts likely to arise from the proposed development at the time of application.

In order for a water right transfer to occur, it must comply with the requirements set forth in OAR 690-005-0035(4)(b)-(c). These provisions ensure that the transfer does not result in harm to existing water rights or negatively impact the public interest.

Specifically:

- **OAR 690-005-0035(4)(b): The transfer must not result in injury to existing water rights. This means that the transfer cannot reduce the amount of water available to other legal water users or impair their ability to exercise their rights.**
- **OAR 690-005-0035(4)(c): The transfer must be consistent with the public interest. This involves ensuring that the transfer aligns with state water policy goals, which include the protection of water quality, sustainable water use, and the overall management of water resources for the benefit of the public.**

In summary, for a water right transfer to be approved, it must both protect existing water rights from harm and serve the public interest, as defined under these sections of the administrative rule. There is no guarantee that a water right transfer will happen and if it does it cannot be enlarged. If you are transferring a water right then it will be same amount of water but will potentially change the location. Again, referenced in the record and addressed.

- **Response to Allegations Regarding Misconstruction and Lack of Substantial Evidence:**

The appellant's claims that the applicant or the county's findings "misconstrue the standard," are "inadequate," and "lack substantial evidence" have not been adequately in most issues to explain what the issue actually has not been addressed. While such allegations are made, the appellant fails to provide specific details or examples of how the standards have been misconstrued or how the findings are inadequate. Under ORS 197, the standard for "failure to raise an issue with specificity" means that if a party does not raise a concern or objection with clear and detailed specificity during the land use proceeding, they may not later appeal on that

issue. This provision exists to ensure that decision-makers have a full and fair opportunity to address the raised concerns.

In this case, although the appellant has raised arguments throughout the proceeding, they have not consistently provided the level of specificity required to substantiate their claims. Simply stating that the findings are inadequate or lack substantial evidence without further elaboration does not meet the legal requirement to clearly outline the concern. ORS 197 ensures that parties must provide enough detail to allow the other side to respond effectively, which has not been the case in several of the appellant's claims.

The appellant's arguments, while consistently raised, often lack the specificity required under ORS 197 to clearly identify how standards were allegedly misconstrued or how the findings are inadequate. As a result, these vague objections do not provide sufficient grounds for a valid appeal on those issues.

RECORD OF THE MATTER: Links to the record have been provided and paper copies available upon request:

HBCU-24-001

- The application for the requested action; and
- The staff report on the request and supplemental report and exhibits; and
- Final Argument;
- Hearings Body's decision; and,
- The notice of intent to appeal.