From:	Cameron La Follette
To:	Planning Department
Cc:	Sean Malone
Subject:	ORCA Additional Testimony re HBCU-22-001 (New River golf course)
Date:	Friday, December 9, 2022 11:19:16 AM
Attachments:	ORCA to Coos PC re New River Golf Course add"l Dec 2022.pdf

This Message originated outside your organization.

Dear Mr. MacWhorter,

Attached please find the additional testimony of Oregon Coast Alliance in the matter of the proposed New River golf course (HBCU-22-001), for the open record period of testimony.

Please let ORCA know you received this testimony, opened it and placed it in the record for this matter.

Thanks,

Cameron
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December 9, 2022

Via Email

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

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

Dear Coos County Planning Commission,

On behalf of Oregon Coast Alliance (ORCA), please accept this open record testimony for the above-entitled application.

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

> "In addition to that land described in subsection (1) of this section, for purposes of ORS 215.705, high value farmland, if outside the Willamette Valley, includes tracts growing specified perennials as demonstrated by the most recent aerial photography of the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture taken prior to November 4, 1993. For purposes of this subsection, 'specified perennials' means perennials grown for market or research purposes including, but not limited to, nursery stock, berries, fruits, nuts, Christmas trees or vineyards but not including seed crops, hay, pasture or alfalfa."

In response to this criterion, the applicant concedes that: "Aerial photographs confirm that on December 6, 2007 [195.300(10)(a)], the segment of the applicant's ownership upon which the golf course is proposed, does contain lands growing specified perennials." Applicant's Exhibit A, Page 3. Indeed, the 93.56-acre parcel identified as map no. 29S15W251000 is plainly in farm use according to aerial photos in the staff report. The applicant, therefore, concedes that the subject property contains high-value farmland. Because the subject properties are in common ownership, the entirety of the subject property is considered high-value farmland. Golf courses are not permitted on high-value farmland, except for limited circumstances that do not apply here. *See e.g.,* OAR 660-033-0130(18)(c). The application must, therefore, be denied. If the applicant wishes to pursue a golf course on this property, he must apply for an Exception. Absent an approved Exception, no golf course is permitted on any portion of the applicant's property, due to it being high-value farmland.

Even assuming that the golf course could be placed on the subject property, the applicant's showing under ORS 215.296 is clearly inadequate. Under ORS 215.296(1), a non-farm use on EFU land must not force a significant change in accepted farm practices or significantly increase the cost of those farm practices on surrounding agricultural lands. Case law demonstrates that the review under ORS 215.296 must be applied on a farm-by-farm basis a farm-practice-by-farm-practice basis. The test is not a conversion (i.e., supply of land) or profitability test. If a farmer must change accepted farming practices, even if there is no increased costs or reduced profitability, the nonfarm use cannot satisfy ORS 215.296. ORS 215.296(2) allows counties to impose conditions of approval. Those conditions of approval must be measured by how the condition prevents the loss of agricultural land and not on how the condition might preserve the overall profitability of a farm use. The conditions must also measure the ability of the farmer to engage in an accepted farming practice. Moreover, the applicant must address the cumulative impacts of the individual impacts.

For the analysis of the Farm Impacts Test, pursuant to ORS 215.296, the applicant contends that the development and maintenance of a golf course involves similar or the same practices as what is involved in a farm use, and, therefore, there would be no impacts. ORCA strenuously disagrees. The applicant has not provided a discussion of the post-development land uses and the impacts that they may have on area farm uses. The applicant's contention that agronomic practices of the golf course management are compatible with farm use is simply conclusionary. The applicant offers no support for this bare allegation. Farm use is defined to include an intent to make a profit in money (*i.e.*, commercial agriculture). A golf course has no intent to make a profit in money by

conducting agricultural operations. Golf course maintenance involves significant water use, which can have a drawdown effect on surrounding agricultural water use, and golf courses typically use pesticides that can adversely affect surrounding farm uses. ODFW noted that the area is suffering from significantly low stream flows and increased water temperatures. The applicant's allegation that it has no conclusion regarding future well development impacts is inadequate in light of the likelihood of impacts to surrounding wells and farm practices. The applicant proposes testing over time but the impacts need to be addressed now, not later. As such, it is likely that some undetermined amount of water proposed for use will exacerbate the issue. Alteration of the landform in the development of the golf course can impact drainage and runoff, air flow, and so forth, which can adversely affect adjacent farm uses.

As noted in the staff report, EFU parcels are located to the north, south, and east. Staff identified nine separate cranberry farms in the nearby area and two nearby ranches with livestock and hay production actively occurring. The staff report identified numerous lands that contained farm uses that were apparently overlooked by the applicant. The applicant must supplement its analysis and provide a serious attempt at complying with ORS 215.296.

The generalized plan for the golf course is already obviously flawed because it will not satisfy OAR 660-033-0130(20)(d)(B), which requires that "[a]n accessory use that provides commercial services (e.g., pro shop, etc.) shall be located in the clubhouse rather than in a separate building." The plan for the golf course plainly shows the "pro shop/offices & storage" in a separate building than the "restaurant." As with many criteria, the applicant has not provided a serious attempt at complying with the criteria. As noted in prior testimony, the applicant has not demonstrated compliance with the relevant design capacity criterion.[1] Because the applicant has not complied with the design capacity requirements in any meaningful way, the applicant must seek approval for an exception "pursuant to ORS 197.732 and OAR chapter 660, division 4[.]" OAR 660-033-0130(2)(a). However, because the applicant concedes that the subject tract is high-value farmland and does not satisfy OAR 660-033-0130(18)(c), a golf course is prohibited. Without submitting the required information, the applicant alleges that "the decision as to whether proposed structures meet the 100-person design capacity threshold can be made based upon the submitted clubhouse/restaurant design, its seating capacity

[1] The completeness letter alleges that the applicant feels that it has a "good handle on the design capacity and enclosed structure separation provisions," but that is hardly evidence to support a finding of compliance. As of yet, the applicant has not provided any such evidence of compliance with the design capacity requirement. Indeed, what has been proffered indicates that the applicant cannot satisfy the criteria.

and institutional knowledge of the needs necessary to serve the patrons of a single golf course." The applicant is mistaken, and the applicant's position is contrary to established case law.

The applicant is also mistaken about the type of condition of approval that can be used to determine compliance with the design capacity requirement. The applicant alleges that "a condition of approval shall be imposed that requires verification from a professional structural designer that the final design for all structures maintains a design capacity of 100-persons or less." That is not sufficient. The condition of approval must provide for a new process, the same as which has been provided here, including notice, opportunity for comment, and opportunity for appeal. The reason for this is that opponents can disagree about the evidence submitted in support of the design capacity requirement and opponents should be able to submit their own evidence in support. Absent that, the applicant and the County will violate the holding in *Rhyne v. Multnomah County* and its progeny. The County cannot leave determination of this criterion to a process that does not include the public.

ORCA disagrees with the applicant's allegation that there can be more than one group of structures, each with its own 100-person design capacity. That is expressly contrary to the administrative rule's requirements. The rule requires a strict 100-person design capacity overall.

The applicant's hydrogeology report concludes that the applicant is unlikely to achieve their desired pumping rate of 400 gpm with one well. The report suggests that three or likely more wells producing lower pump rates would be necessary. The report also indicates that drawdown is expected from pumping. The applicant must account for the impact to surrounding cranberry bogs as a result of this drawdown, as well as Bandon State Natural Area. The report also acknowledges that impacts to groundwater quality are expected from seawater intrusion. In fact, the report acknowledges that there is limited publicly available groundwater quality within the project area and the Bandon area. The report is also far from complete, conceding numerous data gaps, including information on aquifer properties, groundwater quality, hydraulic connection, and so forth. The report's recommendations for future action indicate that much more work is necessary for this project.

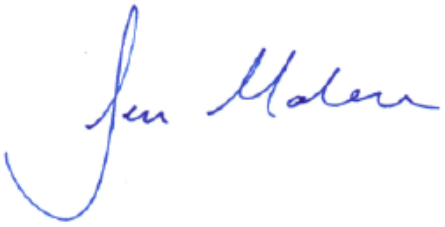
As for the County's geotechnical requirements, the September 15, 2022, Stuntzer Engineering letter alleges that the "geotechnical issues can be resolved through conditions of approval and future conditional use applications with notice, when necessary information becomes available." The geotechnical requirements may affect

other criteria, and, therefore, any criteria that are affected by the geotechnical analysis will have to be deferred in addition to the geotechnical criteria. Deferring these issues requires that the very same process as provided here will have to be provided, along with notice, opportunity for comment, and opportunity for appeal. The applicant cannot evade the applicable criteria by deferring their application.

The completeness letter alleges that "Cascadia Geoservices has visited the site and has determined that structures can be established in the general locations proposed on the master plan," but those locations are inconstant with the administrative rules, as noted above. The applicant appears to concede that the layout of structures and the course will not be known until a later time. The applicant is putting the cart before the horse, and fails to present a means by which to determine whether the criteria can be satisfied.

For all the reasons above, the planning commission must deny this application for a golf course; it is in many ways incomplete, failing to satisfactorily address and meet the requirements of both case law and state legal requirements.

Sincerely,



Sean T. Malone
Attorney for Oregon Coast Alliance

Cc:
Client