BOARD OF COMMISSIONERS
COUNTY OF COOS
STATE OF OREGON

IN THE MATTER OF UPHOLDING THE APPROVAL OF THE HEARINGS BODY CONDITIONAL USE FOR GOLF COURSE AND ASSOCIATED USES (FILE NUMBER HBCU-24-001 OCEAN RIVER LLC) AND DENYING THE APPEAL (AP-24-001 FILED BY OREGON COAST ALLIANCE)	)))))))	FINAL DECISION AND ORDER NO. 24-10-049

NOW BEFORE the Board of Commissioners, sitting for the transaction of County business on the 17th day of December, 2024, is the matter of an appeal filed by the Oregon Coast Alliance (AP-24-001) opposing the Planning Commission's approval of a Hearings Body Conditional Use application (HBCU-24-001) submitted by Ocean River, LLC.

WHEREAS the application was for a Conditional Use to allow an 18-hole regulation golf course with accessory uses in the Exclusive Farm Use (EFU) zone. Accessory uses include a clubhouse/restaurant, agronomy center/maintenance facility, turn-stand (combined restroom/vendor facility), a minimum of two standalone restrooms, a caddy shack, a driving range, a practice course, and necessary parking/drop-off areas. The tract comprises 342 acres, with approximately 165 acres designated for the golf course, practice course, and driving range. About 115 acres include tees, greens, and fairways featuring meticulously maintained fescue grass turf, which will be mowed and irrigated for their intended use. Approximately 50 acres of intermediate areas (roughs) will function as safety corridors, minimally maintained as open sand dunes, tall grasses, and selected native vegetation. Approximately 134 acres consist of open spaces with natural dune formations partially covered by native vegetation, around 20 acres of wetlands, and approximately 23 acres identified as flood areas. While not utilized for golf, these open spaces, wetlands, and flood areas provide a suitable setting for a Scottish Links Golf Course and support native dune vegetation, plants, and wildlife habitats.

WHEREAS the Planning Commission held a hearing on this matter on July 11, 2024, and left the record open for additional testimony and final argument. The Planning Commission reconvened on August 1, 2024, during which a final decision to approve the golf course with conditions was rendered. This decision was reduced to writing and mailed on August 8, 2024.

FURTHERMORE, the decision was appealed by the Oregon Coast Alliance within the appropriate timeframe. The Board of Commissioners reviewed the appeal, determining it met the requirements for an appeal pursuant to Section 5.8.150 of the Coos County Zoning and Land Development Ordinance (CCZLDO) on October 1, 2024. The hearing was formally scheduled for October 23, 2024, and the matter was to be heard based on the record pursuant to Section 5.8.170.8.b.ii of the CCZLDO.

NOW, THEREFORE, the Board of Commissioners reviewed the matter on the record with argument and decided to uphold the Planning Commission's decision to approve HBCU-24-

001 with conditions, adding an additional condition, and denied the appeal. The Board further directed staff to work with the applicant and County Counsel to draft findings for this decision, to be presented for Board approval at the regular Board meeting scheduled for ~~November 5~~ December 17, 2024.

IT IS HEREBY ORDERED that the Hearings Body Conditional Use approval for Ocean River, LLC's application (HBCU-24-001) for the development of a golf course and associated uses is upheld, and the appeal filed by the Oregon Coast Alliance is denied. The Board of Commissioners further adopts the Findings of Fact attached hereto as "Attachment A" and incorporated by reference herein.

COMMISSIONER

COMMISSIONER

absent
COMMISSIONER

EXHIBIT A
FINAL DECISION AND ORDER
Application File: HBCU-24-001
Appeal File: AP-24-001

A. Scope and Procedure for this Appeal

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.

The application is for a Conditional Use to allow an 18-hole regulation golf course with accessory uses in the Exclusive Farm Use (EFU) zone. Accessory uses include a clubhouse/restaurant, agronomy center/maintenance facility, turn-stand (combined restroom/vendor facility), a minimum of two standalone restrooms, a caddy shack, a driving range, a practice course, and necessary parking/drop-off areas.

The decision of the Planning Commission approving the use subject to nine conditions was dated August 13, 2024. It was appealed to the Board of Commissioners by Oregon Coast Alliance ("ORCA") on August 27, 2024. The Staff Report to the Board was issued on October 16, 2024.

The applicant in this appeal was represented by Chris Hood of Stuntzner Engineering. The appellant was represented by Sean Malone, Attorney. Neither party has raised any procedural objections to the conduct of this proceeding before the Planning Commission or this Board.

The code requires that the appeal "form shall be completely filled out" (CCZLDO 5.8.170) and "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;" CCZLDO 5.8.170.6. Based on the above, the issues on appeal are limited to those issues stated in detail on the appeal form and the documents that are explicitly incorporated by the content of the appeal form.

This appeal was conducted on the record made before the Planning Commission, was limited to the issues raised by ORCA in its August 27, 2020, statement of appeal, and with argument by the parties made before the Board of Commissioners on November 5, 2024. CCZLDO 5.8.170.8.b.ii.

B. Incorporation of Planning Commission Findings and Staff Reports

The Planning Commission adopted 43 pages of findings in support of its decision approving this application. Those findings are incorporated here. The findings made here supplement those of

the Commission in order to address the issues on appeal. These findings control over the findings of the Commission to the extent of any inconsistencies.

Similarly, there were Staff Reports issued in the course of this application and appeal. Each addressed standards for the decision based on the record. The Staff Reports are adopted as supplemental findings of the Board to the extent those Staff Reports are not inconsistent with the findings made by the Planning Commission and the findings made here.

C. Decision

The appeal is denied, and the decision of the Planning Commission is affirmed, based on the restated list of conditions and detailed findings below.

D. Restated Conditions of Approval

The Planning Commission applied nine conditions to the approval. Those are restated here together, with editorial changes, and with a tenth condition imposed by the Board for the reasons explained below:

1. A conditional use will be required for the development in the Beaches and Dunes and hazard overlays.

2. A traffic plan and parking plan will need to be submitted and approved by the County Roadmaster.

3. The applicant shall comply with requirements from Oregon Department of Transportation.

4. The applicant shall comply with any wetland requirements identified by Department of State Lands.

5. The applicant shall comply with any protection measures identified by ODFW to project the inventoried bird site.

6. The applicant shall obtain any required permits from Oregon Water Resources and include monitoring wells to ensure impacts are monitored and mitigated prior to having a negative impact on other water right holders.

7. Development Transferability - Unless otherwise provided in the approval, a land use approval that was obtained through a conditional use process shall be transferable, provided the transferor files a statement with the Planning Director signed by the transferee. This document shall be recorded in the chain of title of the property, indicating that the transferee has been provided a copy of the land use approval containing all conditions or restrictions understands the obligation, and agrees to fulfill the conditions, unless a modification is approved as provided in this ordinance. The property owner is

responsible for ensuring compliance, and land use authorization shall remain recorded in the chain of title to alert a purchaser that development was approved subject to conditions and possible restrictions.

8. The applicants shall acknowledge and file in the deed record of Coos County, a Farm/Forest Management Covenant. The Forest Management Covenant shall be filed prior to issuance of a Zoning Compliance Letter.

9. Obtain Zoning Compliance Letter from the County once all conditions related to the land use authorization have been completed. This will allow for structural and sanitation permits to be obtained.

10. Prior to the start of construction on any new structure (e.g., clubhouse and restaurant), the Administrative Conditional Use process shall be applied to determine the suitability of the proposed structures based on the standards in CCZLDO § 4.11.155 Geological Assessment Review. Consistent with CCZLDO § 4.11.155.3, '[a]pplications for a Geologic Assessment Review may be made prior to or concurrently with any other type of application required for the proposed use or activity.'

E. General Findings Related to Appeal Statement

The appellant has the burden to raise issues in this appeal. That requires explaining in detail how the application did not meet the criteria. That showing must be based on the existing record. Any factual allegations contained in the allegations of noncompliance in the appeal must be founded on evidence already in the record. Any allegations of error based on new evidence or new allegations not in the existing record must be disregarded.

The appeal statement includes a letter of 28 pages in length raising issues under eight highlighted topics. Each of these topics is accompanied by one or more pages of discussion.

Attached to the 28-page appeal letter are several letters submitted as argument by ORCA to the Planning Commission. This includes: A July 11, 2024, letter from Attorney Malone; a July 18, 2024, letter from Attorney Malone; and a July 25, 2024, letter from Attorney Malone. Although these three resubmittals to the Planning Commission are explicitly incorporated into the appeal, it is difficult to determine whether these earlier submittals are intended to raise additional issues to the eight in the appeal letter, or simply to further support those eight appeal issues. The points made in the new appeal letter of August 27 are not well integrated with the issues in the resubmitted letters to the Planning Commission.

Because the code requires that any appeal issue must be stated with particularity in the appeal, the Board considers the appeal issues properly raised to be limited to those newly stated in the appeal letter. Earlier letters, submitted to the Planning Commission, may elaborate on appeal issues, as referenced. However, the earlier letters submitted to the Planning Commission are not a source for discrete appeal issues that may be considered by the Board.

In these findings the Board has considered all materials submitted with the appeal letter of August 27. The Board has attempted to honor and address the discrete allegations of failure to comply that are sufficiently stated to present a detailed explanation of how the application does not meet the criteria.

F. Findings Related to Specific Issues:

1. Legal Lot Issue:

"The application has not demonstrated that the subject lots and parcels were lawfully created. Under CCZO 4.6.210, '[t]he size of the parcel will not prohibit development as long as it was lawfully created or otherwise.' The applicant and the findings have not demonstrated that the parcels are lawfully established. The applicant must submit deed histories, property description cards, or other information establishing that the lots are lawfully established. If any of the lots/parcels were unlawfully divided after land use laws were in place, which commonly occurs, then the resulting lots/parcels are not legal lots or lawfully established units of land. * * * * There is no substantial evidence to support the applicant's allegations as to whether the lots and parcels are lawfully established." Appeal letter pages 2-3.

This allegation was raised in ORCA testimony to the Planning Commission, albeit with less detail and argument. See Malone July 11 letter at page 2; Malone July 18 letter at page 11.

The starting point for addressing this allegation of error is Code section referenced by Mr. Malone – CCZO 4.6.210. That code section is: "Section 4.6.210 Development and Use Standards for the Exclusive Farm Use Zone." The language quoted in the allegation appears in the last sentence of subsection 1. Subsection 1, therefore, is the relevant context of the allegation. The relevant part of Section 4.6.210 is:

> Section 4.6.210 Development and Use Standards for the Exclusive Farm Use Zone.
>
> "Development Standards All dwellings and structures approved shall be sited in accordance with this section.
>
> 1. Minimum Lot Size: The minimum parcel size shall be at least 80 acres. Land divisions involving a house that existed prior to June 1, 1995 see § 4.6.210(5)(a). For land divisions where all resulting parcels are at least 80 acres, a conditional use is not required. However, the applicable standards in Chapter VI must be met. [OR96-06-007PL 9/4/96]
>
>   New lots or parcels for dwellings not in conjunction with farm use may be allowed when the requirements of § 4.6.210(3), § 4.6.210(4)(a or b) and § 4.6.210(5) are met. In addition, the creation of new parcels for nonfarm uses may be allowed only when such new parcel is the minimum size needed to

accommodate the use in a manner consistent with other provisions of the Ordinance.

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."

The code language quoted in the ORCA appeal letter is in *italics* above.

Failure to sufficiently state an issue for appeal: Initially, the language quoted above is about lot size as a development standard in the EFU zone. Other development standards addressed in the same section include "setbacks," "structure height," "lot coverage," "minimum road frontage/lot width," and the like. Based on the plain language, this code section does not require that every lot proposed for a conditional use in the EFU zone be proven to be "lawfully created." It sets a default minimum lot size; "the minimum parcel size shall be at least 80 acres." That default standard is followed by exceptions. The language relied upon in the ORCA appeal is another exception. It means that parcel size is not relevant to the right to develop if the unit of land was lawfully created, or the use proposed otherwise requires parcels of a certain size.

Based on the above, legal lot status (whether a unit of land was lawfully created) is only relevant in conjunction with meeting the parcel size development standard. In order to raise a valid issue on appeal under the code section relied upon by ORCA, the allegation of error necessarily would have to be: (1) the subject property includes units of land that are smaller than the default 80-acre minimum development standard; (2) there is no other code provision that would allow units of land smaller than 80 acres; and (3) one or more units of land that are smaller than 80 acres were not lawfully created.

The ORCA appeal is not sufficiently articulated to state an allegation of error under this code section. The appeal does not point to one or more units of land involved here, that is alleged to be under 80 acres in size and which is not otherwise authorized to be under acres in size. Having failed to make this showing in its appeal statement, ORCA has not sufficiently stated an issue that may be addressed in this appeal. The error alleged by ORCA is simply stated. It is premised on the assumption that each unit of land involved in this application must be demonstrated to have been lawfully created. The standard that the ORCA appeal points to does not say that. Rather, it states a development standard about minimum lot size for development in this zone. Because ORCA is relying on the lot size as a development standard, it must allege that a specific unit of land is less than 80 acres, and that it is not otherwise entitled to be less than 80 acres. If a unit of land has both those qualities, then it must be shown to be "lawfully created." ORCA has not sufficiently articulated an allegation that invokes this lot size standard as a basis for error in the decision.

The further discussion below is premised on the assumption that the ORCA appeal has sufficiently stated an allegation of error under section 4.6.210.1.

ORCA has not alleged these units of land are not lawfully created. It has only alleged that there is not sufficient supporting information that they are lawfully created.

Because the relevant standard is that the subject property must be "lawfully created," an allegation of error that is sufficiently stated must assert that the units of land "are not lawfully created." The ORCA appeal does not make that allegation. ORCA has not stated in any fashion that any unit of land involved here is not lawfully created. Presumably, ORCA did some research into the legal lot status of the subject property. If it saw any evidence in its research that any part of the property was not lawfully created, it easily could have, (and logically would have) asserted that there is evidence of illegal lots. It would have made some allegation of illegality based on some scant evidence, some scintilla of fact, and/or some mote of data. Such an allegation does not appear in its appeal statement and is not incorporated into its appeal statement.

Because the standard is whether the units of land are lawfully created, but ORCA has not alleged that the contrary is true, it has not met the standard in the code that the application does "not meet the criteria" for an approval. A mere allegation of insufficiency of evidence is not enough to raise an issue on appeal that must be addressed.

There is evidence in the record that the units of land involved here are lawfully created. The record includes evidence that the units of land involved here were approved for a publicly noticed, final property line adjustment decision made by the County in 2023. That is evidence that the units of land were lawfully created. More evidence than that is not required to support the current application.

The applicant documented the status of its property as being made up of lawfully created parcels at page 42 of the narrative in Exhibit A to its application. Exhibit K to the application is a map of the current ownership, showing the respective units of land in different colors. The narrative explains, with reference to deeds and property line adjustment approvals, how the respective units of land were lawfully created. The most recent property line adjustment approval (in D-23-00/ACU-23-037 on Nov. 21, 2023) was referenced.

Based on the application, the July 3 Staff Report to the Planning Commission at page 27 found compliance with the Lot Size standard at code section 4.6.210.

The Attorney Malone testimony to the Commission on July 11 discussed legal lot information. However, as noted above, it did not provide evidence or allege that the subject property did not consist of legal lot(s); instead, it just asserted a lack of evidence demonstrating legal lot status; he asserted a need for "deed histories, property description cards, or other information establishing that the lots are lawfully established" (Malone letter, July 11, 2024, page 2). Presumably, the Malone letter was demanding more information relevant to the property line adjustment approval.

The Attorney Malone July 18 letter at page 11, stated that the property line adjustment decision in file D-23-002/ACU-23-037 is not in the record and, therefore, there is no evidence that the subject property consists of legal lots.

The August 13 Planning Commission decision at page 35 addressed this issue, confirming that the current parcel size and configuration resulted from property line adjustments done consistent with code requirements. The finding is:

> "**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)(*sic*). 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."

To summarize, the Commission found that the property in question consists of legal lots based on the application, explaining that the subject property has been reviewed in the referenced property line adjustment decision in compliance with the code and subject to public notice.

The County provided what ORCA requested, which was "deed histories, property description cards, or other information establishing that the lots are lawfully established." The applicant provided "other information" in the application's summary of the previous land use decision approving the property line adjustment. The Commission relied on that evidence.

It is important to note, again, that ORCA has not alleged in the appeal that subject property does not consist of legal lots. Neither has ORCA taken issue with the evidence provided by the application to the Commission that the property was the subject of a property line adjustment approved by the County in a public process.

The Commission's finding of legal lot status is supported by the application explaining that the current tax lot configuration resulted from a public property line adjustment decision made in the referenced proceeding (file D-23-002/ACU-23-037) under CCZLDO Article 6.1. That article explains in its second paragraph: "If a parcel or lot is reconfigured by a property line adjustment that becomes the new discrete lot or parcel and the official date of creation."

Property line adjustments are provided for in CCZLDO Article 6.3, which provides that, consistent with state statutes,

> "[T]he common boundary line between lawfully created units of land may be adjusted in accordance with this section without the replatting procedures in ORS 92.180 and 92.185 or the vacation procedures in ORS Ch. 368. Once a boundary line has been adjusted, the adjusted line shall be the boundary or property line, not the original line."

The code language above provides that a valid property line adjustment must begin with lawfully created units of land, and it concludes with lawfully created units of land.

The "deed histories" and "property description cards" that ORCA wants to see in this proceeding record, were necessarily a part of the property line adjustment proceeding, as required by CCZLDO Article 6.3.

The full record of the property line adjustment proceeding is not relevant to this proceeding. The merits of the property line adjustment proceeding are not relevant or material to this proceeding. The validity of the property line adjustment may not be challenged at this time; that would amount to a collateral attack on a final county and use decision.

In summary, ORCA has not challenged the validity of the legal lot status of the subject property; it has only requested more information on the history of land use decisions related to the subject property, which is not adequate to raise an issue in this appeal. Carried to its logical extension, ORCA's argument would be that the entirety of the county record of the property line adjustment proceeding would have to be carried forward into this proceeding. That position is not supported by the language or the code, much less common sense. Furthermore, the subject property consists of legal lots, which is a necessary conclusion based on the recent property line adjustments for the subject property.

This allegation of error, demanding more information than was submitted to show legal lot status, is denied.

2. **Geologic Assessment Issue:**

> ***"The application must be subject to a condition of approval that requires the applicant submit and receive approval for a geologic assessment review. However, the findings did not impose this condition of approval.*** * * * * * * * *
>
> ***"The applicant alleges that it does not have the details needed for the location of 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, then the applicant cannot reasonably demonstrate compliance with all of the approval criteria, including the impacts related to the farm impacts test under ORS 215.296. 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."***

There are two parts to this allegation of noncompliance. The first asserts that lack of final location information about buildings prevents a finding of compliance with the geotechnical standard in the overlay zone. The second asserts that lack of final location information about buildings prevents a finding of compliance with the farm impacts standard. The first allegation

is also the subject of the Malone letter of July 11 at page 2 and his July 18 letter at page 10. The second allegation is also the subject of the Malone letter of July 18 at page 7.

As explained in the Application, Exhibit A pages 26-31, and the Staff Report to the Board at page 13-14, the required geotechnical analysis for proposed structures, required by CCZLDO § 4.11.155 Geological Assessment Review, cannot be completed until the final location of the structures is determined. As recommended by the Planning Commission and the applicant, the following condition 10 is hereby added to the list of nine conditions imposed by the Commission:

> "Prior to the start of construction on any new structure (e.g., clubhouse and restaurant), the Administrative Conditional Use process shall be applied to determine the suitability of the proposed structures based on the standards in CCZLDO § 4.11.155 Geological Assessment Review. Consistent with CCZLDO § 4.11.155.3, '[a]pplications for a Geologic Assessment Review may be made prior to or concurrently with any other type of application required for the proposed use or activity.'"

Contrary to the statement in the appeal, the applicant has not conceded that farm impacts cannot be determined without knowing the exact location of future buildings (Appeal letter at page 4 para 1). ORCA contends that the location of the buildings will be relevant and material to the issue of whether the use will "force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use."

Significant impacts are those that would prevent a farm owner from either conducting standard farm practices, or significantly increase the cost of farm practices. ORCA asserts impacts associated with building location due to people (visitors and golfers), garbage, traffic, trespass and crows (Appeal letter at page 4 para 1).

As the applicant points out, what is missing from the ORCA allegation is any hint of an explanation as to why or how any of these aspects of building location would relate to the statutory standard. All of these things (people, garbage, traffic, trespass and birds) typically exist in proximity to any farming operation. In this instance, regardless of where on the golf course structures are located, the buildings will be remote from any farming operation, including by being buffered by the open space around the course in the same ownership.

It is not the job of the applicant or the staff or the Board to hypothesize possible adverse impacts, impute them to ORCA as evidence and arguments, and then analyze them under the standards. ORCA has an obligation to develop an argument based on the evidence in the record and explain in detail why the Planning Commission decision is erroneous. ORCA has not done that in this appeal.

This allegation is denied for failure to be sufficiently developed.

3. High Value Farmland Issue

"The golf course is located on high value farmland and the applicant has not satisfied the requirements contained in the land use tables, administrative rules, and local code."

The ORCA appeal makes several arguments that the approval is prohibited because the subject property is high value farmland, which prohibits the location of a golf course. The several arguments are addressed below. In summary, the entirety of the 342-acre tract, which is in the ownership of the applicant, Ocean River, LLC, has been demonstrated by the applicant to not be high value farmland.

Initially, the subject property is mapped in Exhibit K to the application, and is described in the Quit Claim Deed to the applicant following that exhibit. The footprint of the course is shown inside the entirety of the tract in the same ownership, as shown in the graphic in Exhibit B. The location of the golf course and ownership tract is also shown in relationship to the nearby agricultural ownerships in Exhibit E to the application.

ORCA alleges: "[t]he golf course is prohibited because the golf course is located on high value farmland" (Appeal Letter page 5 para 1). ORCA correctly notes that the entirety of the 342-acre ownership constitutes a tract for purposes of applying the high value test (Appeal page 5 para 3).

The golf course tract does not contain high-value farmland.

Land with soil types without irrigation: The tract is high value farmland if it consists predominantly of soils "not irrigated and classified prime, unique, Class I or Class II." ORS 215.710(1)(b). It is not so classified. The Staff Report to the Board summarizes the soil type information from the record and shows that, for the entire 342-acre tract, there are 96.3 acres of Prime, unique, or Class I/II soils, but there are 246.8 acres of other soils – not classified as prime, unique or ClassI/II soils. Thus, looking just at soil types, 28% is classified as high-value, and 72% is classified as not high-value. Based on soil types, the entire subject property is predominantly not high-value land. See Staff Report at page 16-17.

Land with soil types with irrigation: The tract is also high value farmland if it consists predominantly of soils "irrigated and classified prime, unique, Class I or Class II." ORS 215.710(1)(a). It is not so classified. Irrigation can boost the classification of a soil type from not high-value to high-value.

ORCA alleges that "there are two points that appear to be permitted, have a certificate, or a decree for the use of water for irrigation issued by the Water Resources Department in the project area." This is restated in the Malone July 11 letter at page 3. It is also restated in the Malone July 18 letter at page 9, and that discussion references an attached "Permit to Appropriate the Public Waters (G-13208) and Certificate of Water Right for cranberry operations on 28.0 acres." (Note, there is no permit or certificate attached to the filing made with the appeal to the Board.) The July 18 Malone letter then continues with an admission that ORCA is uncertain about the footprint of the water right. "It is not clear whether this is part of the

applicant's contiguous ownership, in which case the golf course, indeed, contains high-value farmland, or whether it has been severed from the property entirely." ORCA's speculation about water rights continues on the same page: "It would be very odd if 342 acres of EFU land, or even just the 165 acres of EFU land slated for the golf course, were not in the place of use for one, or more likely several, pre-June 2007 water rights for irrigation."

To summarize the argument above: ORCA provided documentation of a water right, but said it is uncertain whether the place of use is on the 342-acre subject tract. It then said it would be "very odd" if there were not water rights attached to some part of the 342-acre tract. That is it.

The ORCA allegations above state an uncertainty about water rights in relation to the subject property. That is not sufficient to constitute an allegation that there are water rights attached to any of the 342 acres, which might boost the classification of those irrigated soils for purposes of this application.

Land with water rights: Land is high-value farmland if it is zoned EFU or for mixed farm and "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." ORS 195.300(10)(c). The application states that: "On June 28, 2007, the segment of the property upon which the golf course is proposed did not contain a water permit, certificate, or decree for the use of water." The existence of water rights on any piece of land is documented by the Water Resources Department. If ORCA believes the golf course acreage has water rights, it could provide that information for the record. It has not done that. The appeal does not explain in detail why this standard is not met; hence, the ORCA appeal does not raise an issue that is adequate to be addressed here. To the extent ORCA may have raised this issue, it has failed to support its allegation with any readily available public documents of the Water Resources Department.

Land with specified perennials: A tract is also considered high value under ORS 215.705 if it is located outside the Willamette Valley and air photos of the Agricultural Stabilization and Conservation Service of the USDA taken prior to December 6, 2007, show that any acreage in the tract is growing specified perennials, including cranberries. ORS 215.710(2); ORS 195.300(10). ORCA alleges the application fails to comply with this standard because the application materials conflict on this issue (Malone appeal letter pages 5-6). This is restated in the Malone July 11 letter at pages 2-3, and the Malone July 18 letter at page 9 para 2.

Initially, the application materials do not conflict on this issue. The original application contained a substantive typo, omitting the word "not" from the narrative saying the tract is not high-value farmland under this standard. That typo was corrected before the hearing. The applicant's corrected statement in Exhibit A page 4 states plainly that there were not specified perennials on the subject tract on December 6, 2007, based on the USDA air photos.

The presence of a typo in the initial submittal, which was corrected before the Planning Commission hearing, does render the applicant's evidence related to the standard as "conflicting," and it does not support the applicant having taken "contrary positions" in this proceeding. It is disingenuous for ORCA to argue that a corrected typo creates conflicting

evidence. The applicant's evidence that the tract did not contain any of the specified perennials on December 6, 2007, is unequivocal.

Relatedly, ORCA also alleges that if the applicant wishes to take the position that acreage growing perennials on December 6, 2007, was eliminated from the current tract by the recent property line adjustments, then "[t]he applicant must submit the property line adjustments that allegedly preclude the entire tract from being high-value farmland" (Malone July 18 letter at 9 para 2). This is not sound reasoning. The property line adjustment decisions that resulted in the current "tract" configuration are documented in the record with the file numbers for the county's decision. The property line adjustment decision itself does not need to be in the record. Making that demand suggests a challenge to the validity of the property line adjustment decision itself. As discussed above, that kind of challenge would be an unpermitted collateral attack on the property line adjustment decision itself. The validity of the property line adjustment decision cannot be challenged in this proceeding.

In summary, the ORCA challenges to the approval based on several standards relating to high-value farmland are denied. (1) The entire tract, taken as a whole, is not predominantly high-value farmland based on the soil types, or based on non-irrigated soil types. (2) Similarly, it is not predominantly high-value farmland based on irrigated soil types, as the preponderance of the evidence does not support there being soils with irrigation rights. (3) The preponderance of the evidence does not show that there were specified crops growing anywhere on the tract on December 6, 2007, which would make the entirety of the tract high-value farmland. The several parts to this appeal issue are denied.

4. Consistency with golf course acreage, definition, and legislative policy.

"The golf course exceeds the acreage limitation, is inconsistent with the rules for the definition of a golf course, and inconsistent with the legislative policy for preservation of farmland."

This issue is stated at pages 7-8 of the Malone August 27 appeal letter.

As explained in the Application Exhibit A, the following facts about the golf course are undisputed:

- The entire ownership tract is 342 acres.
- The regulation golf course will include 115 acres of developed area – tees, greens, fairways and the like.
- The regulation golf course will also contain 50 acres of "roughs" and safety corridor areas.
- The balance of the 342-acre tract (about 134 acres) will be open space with natural dune formations, wetlands, and flood hazard areas – all to be left in their natural state.
- The 134 acres of natural area is the setting for the golf course, but the proposal does not include using or managing the surrounding 134 acres in connection with the golf course.

ORCA cites the definition of a "golf course" in OAR 660-033-0130(20)(a):

"(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;"

ORCA's allegation of error is not clearly stated. It is clear that ORCA believes that the entire tract will function as a golf course, and that is too much to be consistent with the rule. That is too much land to take out of farm production. And that situation violates the OAR quoted above. What is missing from the allegation of error is a clear articulation of how the proposal violates the rule.

ORCA does not take issue with the 165 acres proposed to be put to a developed course areas (115 acres) and associated roughs and safety corridors (50) acres.

ORCA asserts that the balance of 134 acres in the tract ownership must be considered to be part of the golf course. Thus, the golf course is actually 342 acres in size, and this violates the acceptable size range in the rule. As explained in the application and the recital of facts above, the 134 acres consists of natural dune formations, wetlands, and flood hazard areas. These are not intended for use in conjunction with the golf course in any fashion. They are just balance of the ownership in the tract. The application has described this acreage as creating the setting for the golf course. Other adjacent ownership, not in this tract, also contributes to the setting of the golf course.

If ORCA believes the rule does not allow extra acreage to be included in the tract that contains the golf course, that legal position is not contained in the language of the rule. This might have been written to say that golf course acreage must be on its own discrete tract or legal lot; however, it does not.

ORCA argues that the definition of golf course does not allow the applicant to take out of farm production the extra acreage that is not devoted to the golf course itself. Presumably ORCA is referring to the extra 134 acres in the tract – the natural dune formations, wetlands, and flood hazard areas. ORCA asserts existing farm production on these 134 acres without pointing to any evidentiary basis for that assertion. There is none in the record; this appeal is limited to the record; ORCA may not make that evidentiary assertion in this appeal. Regardless, the golf course rule is silent about non-golf course acreage in the golf course tract, regardless of its use.

The extent that a detailed argument might be read into this ORCA allegation of error, it has not stated a basis for error in the decision.

5. Use by non-golfing public.

"The county must, therefore, impose a condition of approval that prohibits use for the non-golfing public."

This demand is stated at page 8 of the Malone appeal letter. This is a restatement from the Malone July 11 letter at page 5.

This is a request for a specific condition to be imposed on the approved use. It does not allege an error in the decision of the Commission for failing to include the condition requested here. It does not, therefore, state an appeal issue that is sufficient for the Board to address here.

Furthermore, this request would not be appropriate for a condition of approval. Conditions are appropriate to apply to ensure that the development meets the standards for the uses. The proposal is for a golf course to be operated consistent with the definition of golf course in state law and the code. When approved by the County, the use must operate consistent with the standards for approving the use and the definition of the use itself. A condition is not needed or appropriate to ensure that the use can operate consistent with the law that applies to it. ORCA may be concerned about future enforcement situations: say for example, if the clubhouse is rented for an event put on by the local PTA. ORCA could then point to the condition it requests in support of its demand to the County that it enforce against the golf course operator for conducting a non-accessory use. The existence of the condition, however, would not add to the basis for an enforcement action against the golf course for allowing the PTA to visit. That enforcement potential is inherent in the language and standards of the OAR and the code.

This appeal issue is denied; the condition is not needed to demonstrate the standards for approval are met.

6. **Violation of Beaches and Dunes standard in CCZO 4.11.129 and lack of future hearing opportunity.**

   "The application does not comply with the Beaches and Dunes requirements in CCZO4.11.129 and failed to include a condition of approval to defer findings.
   * * * *
   Neither the applicant nor the findings address the structural impacts that may need to be completed. The applicant alleges that a subsequent conditional use application can address the structural development component. If the applicant would like to postpone satisfaction of the structural development component standard, then the applicant would be required to satisfy that standard at a later time, with a process that provides the same of participation and opportunity for appeal as is provided here."

This issue appears at pages 8-11 of the August 27 appeal letter. It appears to be lifted substantially verbatim from the Malone letter of July 11 to the Planning Commission at page 5.

Review of the Planning Commission decision and the conditions it imposed on the approval indicates the Commission was fully aware of this issue and imposed a condition, as requested by ORCA in the July 11 Malone letter, to ensure that final compliance with the Beaches and Dunes standards, as they relate to structures, will require a full conditional use process by the County,

which necessarily will involve public notice and hearing, and opportunity for appeal. That is what ORCA is requesting in this allegation of error.

The Commission's review on the Beaches and Dunes standards begins in the Commission's findings at PDF page 22 and concludes at PDF page 27. The findings discuss the evidence of the applicant's consultant, Eric Oberbeck, CEG #1332, of Cacadia Geoservices. The findings summarize his work at PDF page 26-27:

> "The technical report states the area proposed for development consists primarily of open dune sand areas. Based on the site evaluation and his experience working in this region, it was his opinion that developing the site into a golf course will not have an adverse impact on either the site or adjacent areas. Furthermore, he stated by providing and maintaining permanent vegetation in conjunction with the golf course, will stabilize the younger open dunes from further wind erosion. This permanent
> stabilization will occur after final shaping, eliminating the need for temporary stabilization measures.
>
> "As with other development projects in windy areas, erosion and sediment control measures should be adopted during the clearing and shaping of the site in accordance with DEQ's Best Management Practices.
>
> "The technical report goes on to explain that there will be no hazards to life, public and private property, or the natural environment posed by the proposed development. Finally, it is Mr. Oberbeck's professional opinion that the proposed development will not cause excessive destruction of desirable vegetation, including inadvertent destruction by moisture loss or root damage, exposure of stable and conditionally stable areas to erosion, or modification of current air wave patterns leading to beach
> erosion.
>
> "As part of the proposed golf course development, a restaurant and clubhouse will be constructed, along with other ancillary structures. These will be wood-framed structures supported on conventional shallow foundations. We have observed these building sites and it is our opinion that the sites are suitable for the proposed development. Prior to finalizing the design, CGS should be retained to perform site-specific geotechnical evaluations of the sites. These evaluations should include subsurface explorations, laboratory testing, and, if required, a slope stability analysis. The report should provide geotechnical design parameters for the soils encountered and recommend special siting measures, including setbacks."

The Planning Commission concluded at findings PDF page 27:

> "The report addresses the impacts to the land and does not specifically address the structural impacts that may need to be completed. Therefore, the applicant has

> suggested a conditional use application addressing "structural development" will be required when designed and exact location is determined. Staff finds this acceptable and would suggest that condition of approval."

The condition of approval appears as Condition 1: "A conditional use will be required for the development in the Beaches and Dunes and hazard overlays."

It may be that ORCA simply carried its July 11 request for a conditional use process forward into this appeal without appreciating that the process they are demanding is provided by Condition 1. If that is not the situation, and ORCA actually wants something more in this appeal, then its appeal letter is insufficient to state an allegation of error sufficiently detailed to be addressed here.

This alleged error is not sufficient to articulate an error that can be considered by the Board.

7. **Allegation of illegal residential use in conjunction with the golf course and failure to meet the "design capacity" standard in OAR 660-033-0130.**

"The applicant alleges that both dwellings are currently being utilized as month-to-month residential rentals. The applicant alleges they will continue to be rented. Golfers will want to stay at these rentals on the golf course, and the applicant needs to establish the design capacity for these dwelling * * * * Regardless, accessory uses cannot include 'housing'."

This alleged error appears at page 11 of the appeal letter. It also appears at page 2 of the Malone July 18 letter.

The application narrative, Exhibit A page 17, explains that the existing dwellings are long-term rental units and will not be a part of the golf course use.

> "There are two residential dwellings located within the boundaries of the proposed golf course. Both dwellings are currently being utilized as month-to-month residential rentals. It is the intent of the applicant to continue the monthly rental of both units. In other words, the dwellings will not be utilized in conjunction with the golf course."

There is no conflicting evidence in the record to refute these facts stated in the application. Mr. Malone speculates about what golfers will want to do when they see these residences – they "will want to stay at these dwellings on the golf course." What golfers might want to do when they see dwellings on the golf course is irrelevant to the specifics of the proposal – to continue long-term residential use of the existing dwellings. What Mr. Malone thinks golfers may be thinking about when they see dwellings is another layer of speculation upon speculation. The golfers seeing the dwellings might instead be thinking about having a beer on "Hole 19."

Changing the existing long-term residential use to short-term rental for golfers is not a part of the proposal; there is no basis for reading it into the proposal. As a result, there is no basis for finding an illegal accessory residential use, much less imputing a "design capacity" number for a use that is not proposed.

The Planning Commission findings rejected this theory initially pitched by Mr. Malone (Findings at PDF page 39). The appeal letter states no basis for error in those findings.

8. Failure to satisfy the farm and forest uses test in ORS 215.296 and CCZO 4.6.120(5)(a) and (b).

This allegation of error occupies pages 11-27 of the August 27 appeal letter. It was raised in the July 11 Malone letter at pages 3-4, and at pages 3-8 of the July 18 Malone letter.

The standard stated in ORS 215.296(1) is:

> **"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."

The applicant's narrative discussing compliance with the farm impacts standard appears at pages 7 through 12 of Exhibit A to the application. That discussion and evidentiary statement is made by the applicant's professionals at Stuntzner Engineering. Exhibit E to the application shows and labels, on an air photograph, the adjacent farming operations to the north and east of the tract. The applicant's statements about topography are supported by a topographic map it placed in the record. Exhibit G to the application is a discussion of water rights and water supply for the golf course submitted by the applicant's expert, geologist Robert Long, RG, LHG, CWRE. Exhibit H to the application is a report by the applicant's consulting geologist, Eric Oberbeck, RG. CEG, addressing the geotechnical suitability of the site for the use.

(a) Planning Commission findings of compliance with the standards for farm impacts are at PDF pages 12-18 of the Planning Commission decision.

To summarize the findings of farm impacts made by the Planning Commission:

- The surrounding area does not contain forest uses, based on air photos.
- The land to the south and west does not contain farm uses.

- There are several historically used farm lands to the north and east. Potential impacts to these are discussed for each farm.

    - Lost Lake Cranberry Farms LLC: Located on the southeast of the golf course, with the bogs about 750 feet from the course – about 2.5 football fields distant, and separated by a vegetated dune about 30 feet high. The golf course maintenance activities will be similar to farming activities.

    - Kranick Cranberry Farm: Located adjacent and to the east of the golf course, with the bogs about 200 feet from the golf course. There is a vegetated dune between the two uses, with the dune being 30-40 feet above the bogs. As with the above, the golf course maintenance activities will be similar to farming activities. A golf course agronomy and maintenance building will be located about 500 feet from the bogs. It is also buffered by woodland. The uses of the golf course barn will have no emissions, will not be visible, and will be similar go any agricultural facility.

    - McSpadden and Boak Cranberry Farms: These are not currently operating but could resume operation in the future. These are adjacent to the north by both Two Mile Creek and the Boak Lane access easement. The former bogs are about 1,000 feet from the golf course – 3+ football fields away. There is a 40-foot high vegetated dune between the uses.

    - Fugate Cranberry Farm: This farm is 2000 feet from the golf course and is separate by a north/south ridgeline, and pastureland in Two Mile Creek Valley. The valley is farmed by a conservation owner.

    - Arriola Cranberry Farm: The bogs are over 1600 feet from the golf course. A generally 20-foot high dune formation lies between.

    - Leff Ownerships: This lies east of the Kranick farm and north of the Arriola farm. It is in farm use and blueberry uses, with those uses being 2000 and 2500 feet distant, respectively.

- The findings explain how Best Management Practices will be used to control spray drift from fertilizer and chemical spray activity on the golf course.

- The findings explain that the stormwater drainage system is designed to keep all stormwater onsite.

- The findings explain how the state's permitting system for water rights will ensure that any such rights issued for the golf course will not adversely impact the surrounding agricultural uses.

(b) ORCA's attorney, Mr. Malone, made several submittals in opposition.

The record includes his letter to the Planning Commission dated July, a letter dated July 18, and a letter dated July 25. In summary:

- The Malone July 11 letter raises legal arguments that the standards for approval are not met based on the evidence already in the record. This letter is not accompanied by any new evidence or expert evidence submitted on behalf of ORCA.

- The Malone July 18 letter raises additional legal argument and develops legal arguments previously made in greater depth. This letter also makes some factual allegations, primarily in footnotes. For example:

    - FN 2: ("The chemicals used on golf courses can include concerning chemicals such as chlorpyrifos, which can affect the nervous system in high doses.");

    - "Some impacts that may occur include trespass from errant golfers or golfers following errant drives, litter, attraction of corvids from trash, impacts from the application of herbicides, pesticides, insecticides and so forth." FN 4: "The issue is apparently so common that some golf courses spray for crows."

    - "Golf courses use a variety of chemical applications, including pre-emergent herbicides, fungicides, insecticides, growth regulators, plant stimulants, and so forth." FN 5 to this statement is a half-page, single spaced statement of fact about what chemicals may be used on golf courses, for what purposes, and who manufactures them.

    - "Not all of these chemicals are made equally and some can have deleterious affects (*sic*) on farmers and their crops. Page 5

    - "[T]he applicant completely fails to identify the impacts that are likely to occur." Page 5.

    - "[A] significant is the impact to groundwater and to adjacent bogs * * * " Page 5.

    - "The applicant must prepare a hydrologic assessment to determine what the impact from runoff of water and pesticides, fungicides, herbicides and insecticides. (*sic*) Page 6.

    - "[I]t is likely that use of wells or groundwater will result in impacts to adjacent and surrounding bogs" Page 6.

    - "[T]he applicant appears to wholly ignore the likelihood that the chemicals * * * used on the golf course will enter the bogs through the groundwater and porous, sandy soil." Page 6.

- Mr. Malone attaches comments, made by a different opponent to a proposed water rights transfer for different property than is at issue here, in support of his contention that a water right is unlikely to be issued for this golf course. Page 7.

- Mr. Malone asserts that the location of buildings on the golf course must be known before impacts on farming from visitors, trash, trespass and crows can be known. Page 8.

- "Nitrogen pollution from septic systems and drain fields is common." Page 8.

(c) Discussion:

The applicant's narrative in Exhibit A was prepared by professionals at Stuntzner Engineering. Its description of relevant nearby farm practices begins at page 7. Major farms are described in detail, including their distance from the golf course and whether and to what extent the existing topography separates or buffers the farms from the golf course. Based on the professional character of the applicant's consultant, the Board finds the factual description therein, and the professional judgments about impacts contained therein, to be credible and reliable.

The applicant's consultant concludes that in terms of evaluating impacts, managing a golf course involves many activities similar to managing a farm use. That conclusion is sound.

The applicant's consultant states that the application of fertilizers and chemical sprays in managing the golf course is done following best management practices (BMPs). The applicant explained that application of chemicals can only be implemented by a licensed individual trained and certified by the Oregon Department of Agriculture (ODA) in the use of such chemicals. The application of chemicals must comply with standards established on the label of each chemical, as those labels constitute state law for application. It is required that every chemical application be monitored and reported regularly to the Department of Agriculture through Integrated Pest Management (IPM) Reports. The application further explains that, unlike standard agricultural practices (farming), no chemical applications occur through the golf course irrigations systems. In other words, chemical application occurs through a controlled process of hand or mechanical sprayers. This process allows for controlled application to specific areas at specific times (no wind or rain) to prevent drift and/or runoff.

The Board accepts the applicant's description above as a fact in terms of evaluating potential impacts on farming.

The applicant's consultant explains that stormwater will be collected and retained on site. The Board adopts this as a fact related to potential mpacts on farming.

ORCA alleges that the golf course will attract people and traffic and waste and scavengers (like crows), and those activities will adversely impact farming. ORCA has pointed to no evidence that uses on the golf course will bring scavengers or harmful traffic or "so forth" to bear on existing farm operations given the distances and natural features that buffer the golf course from

nearby farming. No farmer made such allegations. The allegations are attorney speculation. As discussed in the findings above, the distances and topography between the golf course and the farms will buffer each farm from the potential for any such impacts.

The ORCA appeal challenges the explanation by the applicant's consultant that the long distances between the golf course and the topographical buffers between the uses will ensure that there are no adverse impacts to farm uses, which the applicant's consultant has listed and examined in the application narrative. ORCA characterizes this analysis as mere allegations. On the contrary, the applicant's description of the geographical context are factual statements that are founded in the evidence that it placed in the record and which the Board finds convincing. This is particularly so in light of the failure of ORCA to provide any contrary evidence of adverse impacts – in particular a failure to provide any evidence from farmer in the surrounding area or experts evaluating those farming operations in connection with the golf course proposal. The Board will not reach conclusion about facts based on mere allegations by ORCA's attorney, and the record and this appeal appear to be largely based on attorney allegations.

The ORCA attorney alleges that the quantity of water needed for the golf course will adversely impact farming operations. The applicant's narrative explains its approach to water rights for irrigation at page 37 of its Narrative in Exhibit A to the application:

> "It is anticipated that the water source for irrigation and domestic use will be from deepwater wells and potentially reservoirs or ponds. Any groundwater irrigation sources developed in conjunction with the golf course will require water permits through the Oregon Water Resources Department (OWRD). Water permits will not be issued by the state unless it can be demonstrated by the applicant that there will be no injury to other users (agricultural or otherwise), or surface water and ground water sources."

Furthermore, the applicant's expert, a registered geologist and Certified Water Rights Examiner, explained in Exhibit F to the application how the water rights permitting system works and how any water rights acquired by the applicant for the golf course cannot and will not adversely impact the viability of existing agricultural uses. The Board finds this evidence to be credible and a basis for finding, in the absence of conflicting evidence, that permitted water use by the golf course will not negatively affect farming.

ORCA's allegation that water rights for the golf course will adversely impact nearby farms is an attorney's speculation that is not supported by evidence in the record. No farmer stated evidence supporting this allegation. The applicant's expert on water rights stated his opinion about how the state's program for evaluating and issuing groundwater water rights is designed to protect existing holders of senior water rights. That evidence is credible and relied upon by the Board here to support a finding that the need for water rights for this golf course does not pose a risk to farming costs or practices under the statutory impact standard.

ORCA's submission of testimony opposing a water right on different property is not relevant, material evidence for this proceeding's inquiry into the ORS 215.296 impact factors.

ORCA's allegations about the adverse impacts on farming from the use on the golf course fertilizers and chemicals is based on its attorney's speculation. Best Management Practices will be used in managing the golf courses. The applicant's consultant explains that the distances and topography between the golf course and the farms will prevent ORS 215.296 impacts. ORCA's attorney arguments include long discussions about fungicides and pesticides and what adverse impacts such chemicals could have. Missing, however, is any objection from any farmer. Missing, too, is any evidence submitted by any qualified person about potential impacts across the distances and topography involved. The applicant needs to respond to credible evidence submitted by knowledgeable persons, not to unsupported factual allegations from attorneys.

ORCA's allegations include a statement of fears by its attorney that chemicals used on the golf course will hit the groundwater and travel thousands of feet to the north and east and adversely impact cranberry bogs and other farming uses. There is no evidence supporting this kind of transmission via groundwater or what kind of impacts to farming cost or practices there might be. The applicant needs to respond to credible evidence submitted by knowledgeable persons, not to unsupported factual allegations from attorneys.

ORCA's attorney's objection to the potential impacts from a septic system and drainfield is not a basis to fault the applicant under the farming impacts test. The Board finds that a septic system that meets DEQ standards on the golf course can be expected to provide adequate protection to adjacent farms located thousands of feet to the east and north of the golf course, just as the DEQ standards can protect the farms themselves from adverse impacts from septic systems serving those farms.

ORCA incorporates lengthy comments by ODFW about the proximity of various natural resources in the area worthy of protection. However, the ORCA appeal does not explain how the presence of these resources relates to the farm impacts test.

In summary, the application, prepared by several experts in their respective fields, adequately addresses the relationship between the proposed use and the nearby farm uses. The Board concludes that the farming costs and farming practices parts of the test are met. ORCA's opposing testimony is, almost wholly, allegations of a speculative nature made by its attorney without supporting evidence, much less evidence from any experts qualified in the various fields that might be relevant.

9. **ORCA challenges to conditions imposed.**

These appear at page 27 of the appeal letter.

Condition 1: ORCA objects to Condition 1 for failure to ensure procedural and substantive rights.

> Condition 1 is: "A conditional use will be required for the development in the Beaches and Dunes and hazard overlays."

This condition ensures full compliance with the conditional use process in the code. That process includes public notice, an opportunity to participate, and a right of appeal.

Conditions 3, 4 and 5:

> 3. The applicant shall comply with requirements from Oregon Department of Transportation.
>
> 4. The applicant shall comply with any wetland requirements identified by Department of State Lands.
>
> 5. The applicant shall comply with any protection measures identified by ODFW to project the inventoried bird site.

ORCA complains these conditions are unconstitutionally vague. This objection fails because ORCA has not alleged or explained how any one of these conditions is necessary to find compliance with the standards for this decision. They are not.

Condition 6:

> 6. The applicant shall obtain any permits from Oregon Water Resources required and include monitoring wells to ensure impacts are monitored and mitigated prior to having a negative impact on other water right holders.

ORCA complains that this monitoring condition is an inadequate substitute for evidence and findings of no significant impact made in this proceeding.

Condition 6 is surplus to the findings made here that, to the extent the water rights issue may be relevant to the farm impacts test, the state's water permitting system will provide adequate protection to ensure that water withdrawals will not significantly impact farming costs and practices. This approval is not depending on future monitoring wells to support its finding of compliance with the ORS 215.296 impact standards.

Condition 9:

> 9. Obtain Zoning Compliance Letter from the County once all conditions related to the land use authorization have been completed. This will allow for structural and sanitation permits to be obtained.

ORCA objects that this condition "cannot be satisfied because of the above deficiencies" alleged for other conditions. The Board understands this argument to be derivative of ORCA's objections to conditions 3, 4 and 5. As explained above, none of those conditions objected to by ORCA is essential to finding compliance with any mandatory standard for this approval. As a result, the method for documenting compliance with those conditions, as stated in Condition 9, is not a basis for objecting to this condition.