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March 16, 2023

Via Email

Tillamook County Board of Commissioners
c/o Tillamook Community Development
1501-B Third St.
Tillamook, OR 97141

Re: Oregon Coast Alliance Remand Testimony regarding conditional use permit request for 19-site campground in Tierra Del Mar, #851-21-000416-PLNG.

Dear Chair Skaar and Members of the Board,

On behalf of Oregon Coast Alliance (ORCA), please accept this testimony on the above-entitled application. Due to several shortcomings, outlined below, I respectfully request that the Board of Commissioners deny the application.

Attached is ORCA's petition for review on remand from LUBA. ORCA incorporates its arguments from the petition for review.

Under TCLUO 10.020(6)(f)(iii), the applicant has not satisfied the criteria for a "minor modification." The applicant alleges that the changes are minor but those changes are, apparently, enough to demonstrate that criteria are allegedly satisfied. Moreover, the introduction of a geologic report and wetlands report are significant enough to qualify as more than "minor modifications" under state law. Contrary to the findings, the new evidence and changes require significant alteration in the approval criteria and development standards. In addition, the revised plan includes three fire hydrants and a sprinkler system. This will affect the amount of water necessary for the use. The proposed changes also include propane-fueled fire pits and staff-controlled wood fire pits. These additions are only as good as the applicant's staff and their attention. Indeed, the new application is silent on whether there will be 24/7 staff on

site, which appears to be necessary if the staff-controlled propane and wood fire pits will be maintained.¹

Apart from TCLUO 10.020(6)(f)(iii), the changes in the application require that a new application be submitted, or that the remand not be limited because the new evidence raises new issues that affect other criteria.

The property is located in a High Landslide area. Section 4.130 requires a “Geologic Hazard report prior to approval of planned developments, coast resorts, subdivisions, and partitions...” Under the geologic hazard requirements, the proposed findings allege that the vegetation will be the minimum necessary but the findings fail to allege exactly how much vegetation removal will occur. To provide the public with enough information to ascertain satisfaction of the criterion, as well as other related criteria², the public needs to know how much vegetation removal will occur.

Under TCLUO 6.040(3), an application for a conditional use must demonstrate that: “[t]he parcel is suitable for the proposed use considering its size, shape, location, topography, existence of improvements, and natural features.” Here, the use is not suitability based upon the geologic hazards and wetlands. The proposed use is not suitable given the natural features, including the presence of wetlands, Aquatic Resources of Special Concerns, and geologic hazards. The neighboring property has a wetland identified as “mature, forested wetland, and therefore, part or all of this wetland may meet the state’s criterion for Aquatic Resources of Special Concern³, which can affect the eligibility protocols for compensatory mitigation if a DSL Permit is required. Given that the onsite wetland is a continuation of the neighboring property, it is likely that the subject property also contains Aquatic Resources of Special Concern, and that

¹ Previously, ORCA requested clarification on whether applicant was going to use an onsite host as a condition of approval:

“Next, it is imperative that the applicant retain some onsite host or security to address issues that will inevitably arise. This assurance must be included as a condition of approval. Without someone to check with and have supervision over the campsite, there is little to no chance that the conditions imposed if the application is approved and rules for the campsite will be enforced to the detriment of the neighboring property owners’ livability.”

² For example, the geologic hazard report may implicate other criteria – such as suitability – that were not at issue previously because there was no report until now.

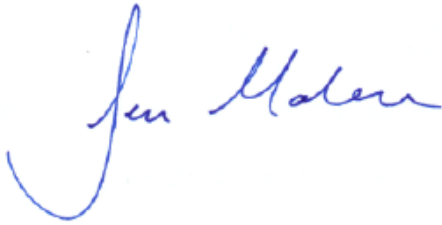
³ OAR 141-85-510(3) defines “**Aquatic Resources of Special Concern**” to mean the: “waters of this state that provide functions, values and habitats that are limited in quantity because they are naturally rare or have been disproportionately lost due to prior impacts. These include alkali wetlands and lakes, bogs, cold water habitat, fens, hot springs, interdunal wetlands, kelp beds, mature forested wetlands, native eelgrass beds, off-channel habitats (alcoves and side channels), ultramafic soil wetlands, vernal pools, wet prairies, wooded tidal wetlands, and others as determined by the Department.”

issue must be resolved before the conditional use criteria can be applied. The staff report noted that there are mapped wetlands and river features, including forested shrub wetlands, and DSL has already stated that the proposal will impact wetlands, thus requiring a state permit.

ORCA requests an open record period of 14 days to respond to new testimony and evidence submitted. The applicant has submitted new evidence on remand – and ORCA alleges that the new evidence is more than a minor modification – and therefore the County must grant opponents an opportunity to respond to the applicants’ new evidence, as well as new argument and evidence that is submitted at the hearing.

In conclusion, ORCA respectfully requests that the application on remand be denied.

Sincerely,

A handwritten signature in blue ink that reads "Sean T. Malone". The signature is written in a cursive style with a large, sweeping initial "S".

Sean T. Malone
Attorney for Oregon Coast Alliance

Cc:
Client