

CS 2023-154
Curry County Clerk, Shelley Denney
Filed Date 6 / 21 / 23
Time 3:10pm 29pgs
Deputy S. Lindsey Harris

**BEFORE THE BOARD OF COUNTY COMMISSIONERS
IN AND FOR THE COUNTY OF CURRY, OREGON**

In the Matter of an Order Affirming the)
Curry County Planning Commission's)
Decision to Approve Application AD-2228;)
Final Order Regarding a Request for)
Conditional Use Approval; and Denying)
Appeal A-2301)
)
(Arizona Ranch RV Park))

ORDER NO. 23265

WHEREAS, this matter originally came before the Curry County Planning Commission for a decision on February 16, 2023, by way of an application (AD-2228) seeking approval for the development of a 31 space, full service recreational vehicle ("RV") Park on property identified on Curry County Assessor's Map No. 34-14-20, tax lot 201 ("Arizona Ranch") within the Rural Commercial (RC) zoning district; and

WHEREAS, the subject real property is designated as a Rural Exception Area and has been committed to the use of an RV Park and motel for over fifty (50) years; and

WHEREAS, a public hearing was held before the Planning Commission as a matter duly set upon the agenda of a regular meeting on February 16, 2023, after providing public notice to affected property owners and publication pursuant to Section 2.070 of the Curry County Zoning Ordinance (CCZO); and

WHEREAS, at the conclusion of review and consideration of the evidence in the record and upon a motion duly made and seconded, the Planning Commission voted to approve Conditional Use Application AD-2228 based on findings of fact and conclusions of law; and

WHEREAS, the Planning Commission's Final Order approving the application was signed by the Chair of the Planning Commission and the Curry County Planning Director on March 8, 2023; and

WHEREAS, an appeal of the Planning Commission decision was received on March 29, 2023, consistent with the provisions of CCZO Section 2.170 (Appeal of a Land Use Decision); and

WHEREAS, the Curry County Board of Commissioners held a duly noticed de novo public hearing on May 17, 2023 for the appeal (A-2301) of application AD-2228 consistent with the provisions of CCZO Section 2.170; such hearing on the appeal was closed on May 17, 2023 and

the Record was left open for seven (7) days as requested by the appellant to allow for the submittal of additional written evidence; and

WHEREAS, additional written evidence was submitted by the appellant prior to closure of the record; the Applicant was then allowed seven (7) days to provide final written arguments in support of the application that did not include new evidence, and the applicant submitted final written arguments in support of the application.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

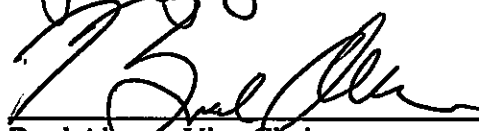
1. The Planning Commission's decision to approve a request for Conditional Use approval by Silver Butte Investments, LLC for the development of a 31 space, full-service RV Park at Arizona Ranch for File AD-2228 on property identified on Curry County Assessor's Map No. 34-14-20, tax lot 201 within the Rural Commercial (RC) zoning district is **AFFIRMED**.
2. The Appeal A-2301 filed by Jonathan Giska based on written evidence, arguments and testimony in the record of hearings and findings specified in the staff report dated February 6, 2023 (Exhibit 1), the Planning Commission March 8, 2023 Final Order (Exhibit 2), the May 8, 2023 BOC Staff Report (Exhibit 3) and the June 1, 2023 BOC Staff Report Addendum (Exhibit 4) is **DENIED**.

DATED this 21st day of June, 2023.

BOARD OF CURRY COUNTY COMMISSIONERS



John Herzog, Chair

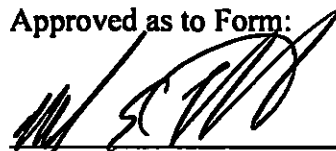


Brad Albem, Vice Chair



Jay Trost, Commissioner

Approved as to Form:



Michael E. Fitzgerald, OSB #950738
Curry County Legal Counsel



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

Exhibit 1

Becky Crockett
Planning Director

Phone (541) 247-3228
FAX (541) 247-4579

Curry County Community Development Department
Staff Report
February 6, 2023

Application AD-2228 is a request for Conditional Use approval for a 31 space, full-service RV Park at Arizona Ranch in the Rural Commercial (RC) zoning district.

Background Information

Owner: Silver Butte Investments, LLC
P.O. Box 395
Port Orford, OR 97465

Applicant: Bret O'Brien
P.O. Box 395
Port Orford, OR 97465

Agent: Stephanie Martell, Principal Landscape Architect
HGE Architects, Inc.
333 South 4th Street
Coos Bay, OR 97420

Property Description: Assessor's Map 34-14-20, Tax Lot 201

Location Subject property is located 0.2 miles east on Arizona Ranch Road at 337015 Arizona Ranch Road.

Existing Development: Unoccupied small motel with a well and septic system.

Proposed Development: Thirty-one (31) space, full-service RV Park.

Access: Access is east from Highway 101 at Arizona Beach on to Arizona Ranch Road for 0.2 miles and then on to the site on the south side of the road.

Adjacent Land Uses: Surrounding land use includes rural residential, State Parks and forestry.

Zone: Rural Commercial (RC)

Acreage: Parcel is 5.38 acres

Rural Exception Area – 15: Comprehensive Plan designation recognizing historical RV Park and Motel

Applicable Review Criteria

The proposed application for a thirty-one (31) space full-service RV Park located at Arizona Ranch must be found in compliance with the following sections of the Curry County Zoning Ordinance (CCZO).

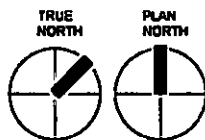
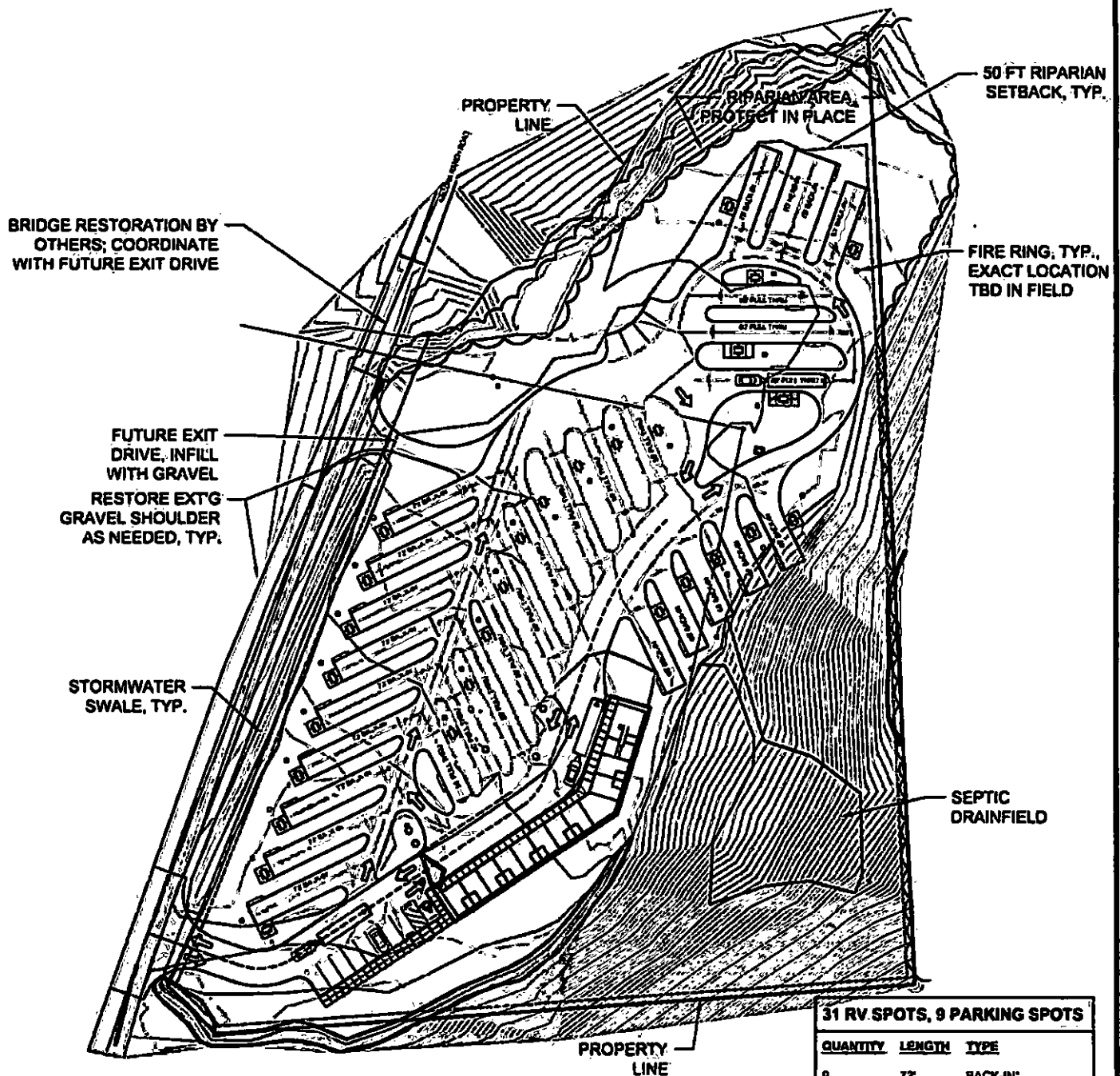
Curry County Zoning Ordinance (CCZO)

Section 2.090	Procedure for Conditional and Permitted Use Permits
Section 3.130	Rural Commercial Zone (RC)
Section 3.280	Riparian Corridor Buffer Overlay Zone
Section 3.300	Erosion Prevention and Sediment Control
Section 3.400	Storm and Surface Water Management Standards
Section 4.020	Off Street Parking
Section 4.050	Access Management
Section 7.040	Standards Governing Conditional Uses
Section 7.040 (6)	Recreational Vehicle Park or Campground

Project Information (Brief Summary)

Project Background: The property has historically included an eleven (11) unit motel with a few RV spots available for the traveling public. This historic business pre-dates the Curry County Comprehensive Plan and Zoning Ordinance and provided the justification for the Rural Commercial (RC) zoning district in the vicinity (Rural Site Exception Area Number 15). It appears that the original site was established as a “car camping” and motel facility which dates back to at least 1959.

More recently, it has been used as both a commercial motel with various site set ups for RVs and tent camping. Antidotal information of the use of the site in recent years indicate that it included nefarious activities with unpermitted RV and tent camping. The site and commercial use was shut down when it was purchased by the new owner and applicant, Silver Butte Investments, LLC in 2020.



1 OVERALL SITE LAYOUT PLAN
L100 SCALE: 1" = 100'

HGE
ARCHITECTS

333 S. 4TH STREET
COOS BAY, OR 97420
P: 541.269.1166
general@hge1.com
www.hge1.com

PRELIMINARY
NOT FOR
CONSTRUCTION

PROJECT NO.: 20.36

ARIZONA RANCH RV PARK

SILVER BUTTE INVESTMENTS

37015 ARIZONA RANCH ROAD, PORT ORFORD, OR 97465

SHEET TITLE:
OVERALL SITE PLAN

0 SCALE 1"
[Scale bar showing 0 to 1 inch]

DATE:
DECEMBER 2022

L100

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Findings

Section 2.090 - Procedure for Conditional and Permitted Use Permits - *After accepting a completed application for Administrative Action pursuant to Section 2.060, the Director shall act on or cause a hearing to be held on the application pursuant to Section 2.062.*

Finding: The final application for an Administrative Conditional Use permit was submitted on December 15, 2022 and determined to be complete on December 27, 2022. At that time, the Planning Director determined that it was probable that there would be interest in the project by surrounding property owners and interested persons who live in the area, and that these persons would desire to have a public hearing. Therefore, the Planning Director is referring the proposed project to the Planning Commission for a public hearing and subsequent consideration of a decision. This finding is met.

Section 3.130 – Rural Commercial (RC) Zone - *The RC zoning classification is applied to all rural lands with existing commercial uses in built and committed exception areas to the Statewide Planning Goals as of the date of adoption of this ordinance. Commercial uses in this zoning designation must be compatible with any adjacent agricultural or forestry uses and are limited to development which is suitable to individual water wells and septic systems or existing public utilities. Recreational vehicle park/rural campground is allowed as a conditional use subject to criteria set forth in Section 7.040(6).*

Finding: The proposed full-service RV Park is located on property within the adopted rural lands exception area #15. Therefore, the proposed use is consistent with the Statewide Planning Goals and the Curry County Zoning Ordinance (CCZO). The exception area designation was based on the rural commercial site historically being used as both a RV Park and a motel. The proposed development will use on-site well water and an on-site septic system. There are no agricultural uses on adjacent lands. The east property line abuts a forestry parcel. However, the proposed RV Park drain field/vegetated area provides a buffer between the RV Park and the forest land. This criterion has been met.

Section 3.280 – Riparian Corridor Buffer Overlay Zone (RB) - *The purpose of the RB zone is to insure that riparian corridors identified in the County's Goal 5 water resources inventory are protected as habitat for fish, other aquatic life and wildlife, to control erosion and limit sedimentation, and to reduce the effects of flooding. The provisions of this section attempt to accomplish these goals by excluding structures from buffer areas around lakes, streams and associated wetlands, and by prohibiting vegetation removal or other alteration to those buffers.*

The riparian area is the area adjacent to a river, lake or stream, consisting of the area of transition from aquatic ecosystems to a terrestrial ecosystem. The riparian corridor to be protected by the provisions of this section is defined as the area:

2. Along all lakes, and streams within a river drainage basin in which the principal river or creek has an average annual stream flow less than 1000 cubic feet per second (cfs), the riparian corridor shall be fifty (50) feet from the top of the bank.

Finding: Myrtle Creek runs along the northern property line. The applicant has developed project site plans that include a minimum setback of fifty (50) feet from the top of the bank of Myrtle Creek. All proposed improvements on the site are to be located outside of the setback area. This finding is met.

Section 3.300 – Erosion Prevention and Sediment Control - *The purpose of this provision, consistent with Goal 5 of the Curry County Comprehensive Plan, is 1) to preserve or enhance the health, safety, welfare and quality of life of the inhabitants of Curry County by providing clean water, and by minimizing risk to inhabitants and property through control of erosion and management of storm water and 2) to maintain or improve water quality within Curry County consistent with the requirements of the State of Oregon and the United States government.*

All development activity can result in altered or increased runoff, erosion and sediment both during and following vegetation removal, grading, construction of improvements, landscaping and other activities that disturb the surface of the soil. Measures must be taken to manage site hazards such as water runoff, soil erosion and sediment deposition. The requirements of this section must be met by all development activities that:

- a) Will result in the excavation of 800 square feet or more of soil surface or*
- b) Will result in the construction of either 2,000 square feet of impervious surface on a site or will result in the coverage of 25% or more of the area of a site in impervious surfaces, whichever is less.*

Applications for authorization to undertake development and other activities described above must be accompanied by an Erosion Prevention and Sediment Control Plan.

Finding: The proposed RV Park site improvements include development activities that encompass the majority of the 5.38-acre site. Therefore, a detailed Erosion Prevention and Sediment Control Plan (ESCP) is required. Site development activities include 31 full-service RV spots, renovation of the motel for a park manager, restroom, laundry facilities, recreation room, store, reception area and office; improved road access and parking areas; stormwater treatment; renovation and expansion of the septic system; renovation and expansion of on-site utilities (water, sewer, electrical) including a water storage tank hydrants and landscaping. The applicant has submitted an engineered detailed ESCP (attached) which complies with the ESCP requirements of CCZO Section 3.300. The applicant will also be required to submit and obtain approval from the Department of Environmental Quality (DEQ) for a NPDES 1200-C permit required for the construction disturbance of greater than 1-acre. The 1200-C permit

will require a Land Use Compatibility Statement (LUCS) from the Curry County Planning Department. This finding is met.

Section 3.400 – Storm and Surface Water Management Standards - *This ordinance includes standards for conveyance of surface water to streams, creek, and channels. It also addresses pollution reduction and flow control for stormwater generated from new and redevelopment. For the purpose of this ordinance, "new" and "redevelopment" refers to any man-made change to improved or unimproved real estate including, but not limited to the placement of buildings or other structures, dredging, filling, grading, or paving.*

This section of the CCZO requires the submittal of a Stormwater Management Plan with calculations to determine the amount of stormwater that needs to be managed and a plan for Infiltration, Treatment and Detention for the anticipated stormwater on the site.

Finding: The applicant has submitted a detailed Stormwater Management Plan prepared by Civil West Engineers. The stormwater collection system will include an underground stormwater collection and conveyance system (catch basins and 12" stormwater piping) that directs the stormwater to an existing County ditch located on the west side of the site, adjacent to Arizona Ranch Road. The ditch is proposed to be rehabilitated to treat the incoming stormwater prior to discharge into Myrtle Creek. The ditch will be excavated, the bottom filled with 6" of drain rock, the sides covered with amended soils and then hydroseeded with water quality plantings. The water quality treatment ditch will have a maintenance requirement every 3 months to remove silt and build-up, obstructions from the flow area and invasive species that have taken root. The ditch is within the County ROW and construction plans, rehabilitation and maintenance will be required to be approved by the County Road Department through a Facility Permit. The County Road Department has verbally authorized the reconfiguration of this ditch for stormwater treatment of the proposed RV Park and its amenities.

Section 4.020 – Off Street Parking - *At the time of construction of a new structure or at the time of enlargement or change in use of an existing structure which would require additional parking spaces, off-street parking spaces shall be provided in accordance with this section.*

2. a.) Motel

One space per guest room or suite, plus one additional space for the owner or manager.

6.a.) Retail Store

One space per 200 sq. ft. of floor are, plus one space per employee

Finding: The applicant has stated:

"The existing Motel renovations include changing from 11 units with a storage room, to 3 units (one in which includes the Park Host/Manager), a restroom/laundry facility for RV guests, a recreation room, and a retail space (general store) with a reception counter and office. Per item 6.a.) Commercial Retail Store requires one space per 200 sq. ft. of floor space, plus one space per employee. Thus, the Zoning Ordinance requires (1) space for Park Host, (1) space for Reception/Store Employee, three (3) spaces for the Retail floor space of Store, and (2) spaces for the motel guest rooms for a total of (7) spaces required. The proposed Site Layout Plan includes eight (8) standard parking spaces with one (1) van accessible handicap space for a total of nine (9) parking spaces.

Additionally, there are four (4) more spaces available on-site near the north corner of the site which will be reserved for tent camping and overflow."

Based on the applicants proposed parking plan, the requirements of this Code Section are met.

Section 4.050 Access Management – *The purpose of this section of the ordinance is to manage access to land development to preserve the county transportation in terms of safety, capacity, and function.*

Finding: The existing site and proposed RV Park includes one two-way ingress/egress access point (see site layout). The future access plan for the Park includes a separate ingress and egress plan with the Park exit constructed in close proximity to the Arizona Ranch Road Bridge Replacement project. The County and the Oregon Department of Transportation (ODOT) have requested that the applicant delay the Park exit construction until after the wooden bridge has been replaced which is expected in 2027. The applicant will adhere to this requirement and has noted this future exit on the RV Park Site Plans. A Facility Permit (No. 3297) has been issued by the County Road Department with conditions and installation requirements for construction of this future exit for the Park. This criterion is met.

Section 7.040 Standards Governing Conditional Uses (Section 3.052 (1)) – *In addition to the standards of the zone in which the conditional use is located and the other standards in this ordinance, conditional uses must meet the following standards:*

Conditional Uses Generally

- a. *The County may require property line set-backs or building height restrictions other than those specified in Article IV in order to render the proposed conditional use compatible with surrounding land use.*

Finding: No additional setbacks or building height restrictions are required; therefore, this criterion is met.

- b. *The County may require access to the property, off-street parking, additional lot area, or buffering requirements other than those specified in Article IV in order to render the proposed conditional use compatible with surrounding land uses.*

Finding: Two additional County requirements are necessary for this development. They include authorization and a Facility Permit for the stormwater treatment ditch in the County ROW and delay of the exit access for the Park to accommodate the replacement of the Arizona Ranch Road wood bridge in 2027. With these conditions, this finding is met.

- c. *The County may require that the development be constructed to standards more restrictive than the Uniform Building Code or the general codes in order to comply with the specific standards established and conditions imposed in granting the conditional use permit for the proposed use.*

Finding: This criterion can be met with conditions.

- d. If the proposed conditional use involves development that will use utility services; the applicant shall provide statements from the affected utilities that they have reviewed the applicant's proposed plans. These statements shall explicitly set forth the utilities' requirements, terms and conditions providing or expanding service to the proposed development and shall be adopted by the Commission or Director as part of the conditional use permit.*

Finding: The applicant has submitted the required Notification letters from the utility serve providers. Utility services include electrical from Coos Curry Electric and Fire from the Ophir Rural Fire Protection District. Adam Brotton, the Fire Chief at the Ophir Rural Fire Protection District will require a 10,000-gallon elevated storage tank, 2 hydrants, a water supply to the tank with pumping and connections from the well.

The applicant has stated that water for the development will be provided by an on-site well. Recent (May 23, 2022) well tests indicate that it averaged 9.22 gallons per minute (GPM) over a test period of one hour. While the applicant hasn't provided a projected water demand for the proposed RV Park, it would be reasonable to conclude that the well is suffice to service the Park with an adequate water supply.

The applicant has submitted a permit for a septic system repair of the existing system from 2019. Further, the RV Park plan drawings indicate a proposed expanded drain field, relocation and the addition of septic tanks, a septic pre-treatment (Orenco Advantex) and septic dosing tank and pump vault. Discussion with the applicant's representative about the intent with the septic system indicates that the 2019 septic repair information was included to verify that the site is capable of maintaining an expanded drain field. However, the proposal includes the development of an essentially new septic system using the Orenco Advantex technology. This will require review and approval from the Department of Environmental Quality (DEQ). This criterion can be met with conditions as noted herein.

- e. If the proposed conditional use involves the development or expansion of a community or non-community public water system, the applicant shall submit a water right permit(s) or documentation that a permit is not required from the Oregon Water Resources Department which indicates that the applicant has the right to divert a sufficient quantity of water from the proposed source to meet the projected need for the proposed use for the next twenty year planning period.*

Finding: The proposed development of the subject property does not involve the development or expansion of a community or non-community public water system. Therefore, this standard is not applicable.

- f. If the proposed conditional use involves the development or expansion of a community or non-community public water system, the applicant shall install a raw*

water supply flow monitoring device (flow meter) on the water system and shall record the quantity of water used in the system on a monthly basis. The monthly record of water usage shall be reported to the Curry County Department of Public Services-Planning Division and Health Department Sanitarian on an annual basis.

Finding: The proposed development of the subject property does not involve the development or expansion of a community or non-community public water system. Therefore, this standard is not applicable.

- g. If the proposed conditional use included the development or expansion of a community or non-community public water system and the use is located within the service area of a city or special district water system, the applicant shall utilize the city or special district water system rather than developing an independent public water system. An independent community or non-community public water system can be developed for the use if the applicant can prove that it would be physically or economically not feasible to connect to the city or special district water system. The city or special district must concur in the conclusion that connection of the proposed use is not feasible.*

Finding: The proposed development of the subject property does not involve the development or expansion of a community or non-community public water system. Therefore, this standard is not applicable.

Section 7.040 6. B) Recreational Vehicle Park (rural) and Related Parking Facilities –

- (1) Campgrounds and recreational vehicle parks generally. The size and design of the park or campground at a minimum shall conform to any limitations established by law on the proposed public road access or driveway used for access to the park or campground.*

Finding: The public road is Arizona Ranch Road which is a County Road. The County Road Master has reviewed the proposed project on site and has presented requirements for both the future exit from the Park (construct after the Arizona Road wooden bridge replacement project in 2027) and coordinate with the Road Department on the reconstruction of the stormwater ditch. Conditions related to both of these items are included below. This finding is met.

- (3) Recreational vehicle park/rural.*

- i) Utilities shall be limited to a size and scale appropriate for rural uses. Drinking water facilities and sewage disposal facilities shall be limited to those located wholly within the property on which the park is located. Water, electric, telephone, and other utilities may only be developed at a park by extending existing distribution lines located along roads or utility easements contiguous to the park.*

Finding: The proposed RV Park water and sewer utilities will be wholly included within the Park properties. Other utilities, primarily electrical has already been

extended into the park property therefore no new distribution lines are required to support the use. This finding is met.

- ii) *Accessory uses within the park shall be limited to a level appropriate for rural uses and shall be limited to a store, laundry facilities, outdoor recreation play area which are of a size and design to serve only the patrons of the park.*

Finding: The proposed RV Park has included a laundry facility, store and recreation room to be used for park patrons. The Park is located a significant distance from development which makes it unlikely that non-park public parties will endeavor to be on site for the purpose of using the amenities. This finding is met.

- iii) *One dwelling for a manager shall be allowed on the park site.*

Finding: The proposed RV Park provides one living space for the Park Manager within the retrofitted motel. This finding is met.

Section 7.050 Time Limit on a Permit for Conditional Uses – *Authorization of a conditional use shall become null and void after one year unless substantial construction has taken place or an extension has been granted.*

Finding: In order to comply with Section 7.050 of the CCZO, the conditional use for the RV Park and amenities will include a condition that the approval expires if development does not commence within one year and if an extension is not requested by the applicant and granted by the Planning Director.

Staff Recommendation

Application AD-2228 for Conditional Use approval to authorize a 31 space, full service Recreational Vehicle Park at Arizona Ranch on property zoned Rural Commercial (RC) located on Assessor's Map 34-14 Section 20, Tax Lot 201 is recommended for approval with the following conditions:

1. This Conditional Use Permit shall be valid for a period of one (1) year unless there is a failure of the applicant to comply with all the conditions of approval. Failure to comply with all conditions of approval, or violations concerning the use approved herein, may result in nullification of this approval by the County.
2. This approval will expire one (1) year from the date this decision becomes final. This period of time may be administratively renewed upon receipt of a written request for extension prior to the expiration of the permit and upon the Planning Director finding compliance with the conditions of approval.
3. Applicant shall comply with the conditions of the Ophir Fire Protection District:
 - a. A 10,000 gallon elevated storage tank high enough for gravity feed
 - b. Two fire hydrants – one at each end of the site
 - c. Water supply to the tank with pumps, fixtures, and piping
4. Control lighting in the RV Park to minimize impacts to the night sky and adjacent properties.
5. Comply with all DEQ septic requirements including the installation and final approval of the Orenco Advantex system. No RV sites shall be rented out until final inspection and approval of the septic system is issued by DEQ.
6. No tent camping is allowed unless the Conditional Use Permit is amended by written request of the applicant.
7. Quiet time shall be established for the RV Park patrons after 10:00 pm until 8:00 am.
8. Proposed RV sites shall not be advertised or rented out until all conditions of this approval have been fulfilled and verified on site by the County Planning Director.
9. Application completion, approval and compliance with the DEQ NPDES 1200-C Erosion Control permit and County approved Erosion Control Plan shall be maintained at all times throughout construction. Erosion control structures shall be maintained until vegetation becomes established.
10. Any work done within the County ROW will require a Facility Permit from the County Road Department.
11. The applicant shall provide a maintenance agreement for the stormwater management facilities within the Park and for facilities conveying stormwater in the County Road ROW.
12. All activities shall set back a minimum of fifty (50) feet from the stream that runs through the project.

February 6, 2023

13. The water system (well) for the RV Park shall conform to all State of Oregon (OWRD) standards and conditions.
14. The RV Park and amenities shall conform to all public health requirements as set forth by the Oregon Health Authority.

Exhibit 2

BEFORE THE PLANNING COMMISSION CURRY COUNTY, OREGON

In the matter of Planning Commission file AD-2228,)
a request for a Conditional Use approval for the Arizona)
Ranch Recreation Vehicle (RV) Park, filed by Silver Butte)
Investments, LLC. Identified on Curry County)
Assessor's Map 34-14-20, Tax Lot 201)

FINAL ORDER and Findings of Fact

ORDER in the **APPROVAL** of the Arizona Ranch Recreation Vehicle (RV) Park (AD-2228), filed by Silver Butte Investments, LLC to authorize up to a thirty-one (31) space, full-service RV Park. The subject property is located in the Rural Commercial (RC) Zone, Rural Exception Area 15, and is designated as Assessor Map Numbers: 34-14-20, tax lot 201 in Curry County, Oregon. A complete application was filed as provided for in the Curry County Zoning Ordinance (CCZO) on December 27, 2022.

WHEREAS:

The application (AD-2228) is to request allowance of a thirty-one (31) space, full-service RV Park on property identified as Curry County Assessor's Map No. 34-14-20, tax lot 201 within the Rural Commercial (RC) zone in the vicinity of Arizona Beach. The property is located at 37015 Arizona Ranch Road.

This matter came before the Curry County Planning Commission as a request (AD-2228) for approval on February 16th, 2023. A public hearing was held before the Planning Commission as a matter duly set upon the agenda of a regular meeting on February 16th, 2023, after giving public notice to affected property owners and publication in the local newspapers as set forth in Section 2.070 of the CCZO.

At the public hearing on said application, evidence and testimony was presented by the Planning Director in the form of Findings of Fact, Conclusions, and Exhibits. The hearing was conducted according to the rules of procedure and conduct of hearings on land use matters as set forth in Section 2.140 of the CCZO. The Planning Commission received oral and written evidence concerning this application. A decision was made by the Planning Commission to close the public hearing at that time as no request was made to leave the record open or extend the hearing.

At the conclusion of review and consideration of the evidence in the record and at the public hearing and upon a motion duly made and seconded, the Planning Commission voted to **APPROVE** Conditional Use Application AD-2228 based on findings of fact and conclusions of law as set forth in this order and in Exhibit 1 attached hereto and included herein by this reference.

Exhibit 2

FINDINGS OF FACT:

The Planning Commission hereby adopts the findings in Staff Report dated February 6, 2023 (Exhibit 1) and the written and oral testimony submitted into the public hearing record as the basis for this decision.

CONCLUSIONS OF LAW

1. The burden of proof is upon the Applicant to prove that the proposal does fully comply with applicable ordinance criteria, Oregon State Statutes and Oregon Administrative Rules as set forth in CCZO Section 2.100(1) (a).
2. The Planning Commission finds that Exhibit 1, Findings of Fact and Conclusions and evidence and testimony presented at the hearing and submitted into the Record indicates that the Applicant has provided sufficient information to make a determination to prove that the proposal does fully comply with applicable ordinance criteria, Oregon State Statutes and Oregon Administrative Rules.
3. The Planning Commission finds that the Applicant has met the burden of proof to support approval of the proposed application for the thirty-one (31) space, full-service Recreation Vehicle (RV) Park in the area of Arizona Beach.

NOW THEREFORE LET IT HEREBY BE ORDERED that AD-2228 a request for Conditional Use approval for a thirty-one (31) space, full-service Recreation Vehicle (RV) Park on property located in the Rural Commercial (RC) zone, and designated as Assessor Map Numbers as 34-14-20, tax lot 201, in Curry County, filed by Silver Butte Investments, LLC, be **APPROVED** subject to meeting the following conditions:

1. This Conditional Use Permit shall be valid for a period of one (1) year unless there is a failure of the applicant to comply with all the conditions of approval. Failure to comply with all conditions of approval, or violations concerning the use approved herein, may result in nullification of this approval by the County.
2. This approval will expire one (1) year from the date this decision becomes final. This period of time may be administratively renewed upon receipt of a written request for extension prior to the expiration of the permit and upon the Planning Director finding compliance with the conditions of approval.

3. Applicant shall comply with the conditions of the Ophir Fire Protection District:
 - a. A 10,000 gallon elevated storage tank high enough for gravity feed
 - b. Two fire hydrants – one at each end of the site
 - c. Water supply to the tank with pumps, fixtures, and piping
4. Control lighting in the RV Park to minimize impacts to the night sky and adjacent properties by making sure fixtures are fully shielded, that lights are no brighter than needed for their purpose, and that color temperature of lights does not exceed 2700k.
5. Comply with all DEQ septic requirements including the installation and final approval of the Orenco Advantex system. No RV sites shall be rented out until final inspection and approval of the septic system is issued by DEQ.
6. Tent camping is allowed within the RV Park except within any of the riparian areas. The riparian areas shall be identified and posted with signage.
7. Quiet time shall be established for the RV Park patrons after 10:00 pm until 8:00 am.
8. Proposed RV sites shall not be advertised or rented out until all conditions of this approval have been fulfilled and verified on site by the County Planning Director.
9. Application completion, approval and compliance with the DEQ NPDES 1200-C Erosion Control permit and County approved Erosion Control Plan shall be maintained at all times throughout construction. Erosion control structures shall be maintained until vegetation becomes established.
10. Any work done within the County ROW will require a Facility Permit from the County Road Department.
11. The applicant shall provide a maintenance agreement for the stormwater management facilities within the Park and for facilities conveying stormwater in the County Road ROW.
12. All activities shall set back a minimum of fifty (50) feet from the stream that runs through the project.

13. The water system (well) for the RV Park shall conform to all State of Oregon (OWRD) standards and conditions.
14. The RV Park and amenities shall conform to all public health requirements as set forth by the Oregon Health Authority.
15. The applicant shall coordinate with the Oregon Department of Fish and Wildlife (ODFW) to determine if there are specific actions that can be taken during construction to minimize impacts to wildlife, especially to the local elk herd.
16. Park rules shall include a reminder to patrons not to use the private residential trash bins located near the road by the Lister's well.
17. No development activity shall be allowed within the identified and sign posted riparian areas.
18. The applicant shall coordinate a well drawdown between the on-site RV Park well and the Lister's well in order to ascertain potential capacity impacts to the Lister's well as a result of utilizing the on-site RV Park's well at capacity.

County Requirements: The Public Hearing on AD-2228 resulted in the following conditions that are the responsibility of Curry County, not the applicant:

1. The "Dead End" sign on Arizona Ranch Road (County Road) shall remain in place.
2. The County will work with the Oregon Department of Transportation (ODOT) to ensure that the planned replacement of the Arizona Ranch Road Bridge will accommodate two-way traffic safely.
3. The County will work with ODOT to try to reduce the Highway 101 speed limit to 45 mph on the approach to Arizona Ranch Road.

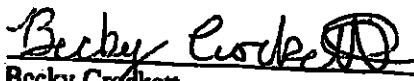
This order in the **APPROVAL** of AD-2228 was reviewed and approved by the Planning Commission on this 8th day of March, 2023.

CURRY COUNTY PLANNING COMMISSION



Michael Lange, Chairperson
Planning Commission

03-08-23
Date



Becky Crockett
Planning Director

03/08/2023
Date

Exhibit 3

May 8, 2023

Curry County Board of Commissioners

STAFF REPORT

Appeal A-2301

To: Curry County Board of Commissioners

FROM: Becky Crockett
Planning Director

DATE: May 8, 2023

SUBJECT: Appeal (A-2301) of the Curry County Planning Commission's February 16, 2023 decision (AD-2228) to approve the Arizona Ranch Recreation Vehicle (RV) Park project proposal by Silver Butte Investments, LLC (Bret and Dalia O'Brien). *Note: Background documents for this appeal are posted on the Curry County Planning Commission website including the Planning Commission Staff Report and Final Order and the Giska appeal application.

Application Information

Appellant: Jonathan Giska
PO Box 1912
Gold Beach, OR 97444

Property Description: Assessor's Map 34-14-20; Tax Lot 201.

Property Location: Located approximately 0.2 miles east on Arizona Ranch Road (just north of Prehistoric Gardens) at 37015 Arizona Ranch Road.

Zoning District: Rural Commercial (RC)
Rural Exception Area 15

Existing Development: Small motel (11 units) with well and septic.

Proposed Development: Thirty-one (31) space, full service RV Park; manager's unit, store, rec room, reception area and laundry.

Adjacent Land Use: Surrounding land uses include rural residential, State Parks and forestry.

Acreage: Parcel is 5.38 acres

Background Information

On March 9, 2023, the Curry County Planning Commission approved Conditional Use Application – AD-2228 to allow the proposed Arizona Ranch RV Park with twenty-one (21) conditions (February 6, 2023 Staff Report and March 8, 2023 Final Order). The decision was based on the evidence in the record and evidence presented at the February 16, 2023 Public Hearing. Significant factors for the Planning Commission decision included:

- 1) The application was complete and addressed all of the applicable criteria in the Curry County Zoning Ordinance.
- 2) The site is a Land Conservation and Development (LCDC) rural exception area approved for the specific purpose to allow Rural Commercial development; and
- 3) The applicant was very responsive to the questions and concerns identified during the public hearing process which resulted in additional agree upon conditions for the RV Park.

Summary of Board of Commissioners Appeal Request

Jonathan Giska is appealing the Planning Commission's approval of the Arizona Ranch RV Park project. The specific issues identified in the appeal "include but are not limited to" the following (Giska Appeal application, March 23, 2023):

1. Failure to comply with CCZO Section 3.252(10) re Natural Hazard;
2. Failure to comply with CCZO Section 7.040(2) re septic system;
3. Failure to address fire prevention access and fire restrictions on lands adjacent to Forestry lands, and comply with the Curry County Comprehensive Plan Section 4.6, policy #5, for forests;
4. Failure to require the applicant to take measures to protect groundwater from drawdown which would lead to loss of stabilizing vegetation, loss of water quality, or intrusion of salt water into water supplies as required in the Curry County Comprehensive Plan, section 15.10; and
5. Failure to contact Oregon Department of State Lands (DSL) regarding this application re the impact to adjacent wetlands, given the prior knowledge of high groundwater and septic system failures at this site, and failure to work with DSL and the applicant to require a Wetlands Determination and Delineation on this tax lot.

Staff Analysis

Section 2.170 of the Curry County Zoning Ordinance (CCZO) Appeal of a Land Use Decision sets forth the process and criteria for review of an appeal of a land use decision. Specifically, Section 2.170 (7) identifies the information required to be presented by the applicant as the basis of the appeal. Staff analysis of the required information presented by the applicant as the basis of the appeal is as follows:

Section 2.170 (7) Every Notice of Appeal shall be on a form supplied by the Planning Director and contain the following information:

- a) *Identification of the decision being appealed, including the date of the decision.*

Staff Response: The appellant included the Planning Commission decision date of March 8, 2023 on the appeal application and the identification of the decision being appealed as AD-2228. This is the decision (AD-2228) and the date that the Planning Commission voted unanimously to approve the proposed Arizona Ranch RV Park with twenty-one conditions.

- b) *A statement demonstrating the person filing the notice of appeal has standing to appeal.*

Staff Response: The appellant, Jonathan Giska has identified himself as having appeared before the Planning Commission on February 16, 2023. Staff has confirmed that Mr. Giska has standing to appeal in accordance with Section 2.120 – Establishment of Party Status of the CCZO.

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

Staff Response: The appellant has raised five (5) specific issues in this appeal (noted above). Each of the issues were addressed through evidence in the record and at the Planning Commission hearing prior to the Planning Commission approval of AD-2228. The appellant has also stated that his issues “are not limited” to those explicitly identified as specific issues in his appeal application. However, CCZO Section 2.170(7)(c) requires the appellant to provide “a statement explaining the specific issues being raised on appeal.” Therefore, short of determining this appeal to be “a jurisdictional defect and not heard or considered” in accordance with CCZO Section 2.170(10); only those five (5) specific issues explained in the appellant’s application shall be jurisdictionally appropriate to be considered for this appeal.

The five (5) specific issues raised by the appellant for this appeal are as follows:

1) **Failure to comply with CCZO 3.252 (10) Re: Natural Hazards**

CCZO Section 3.252 (10) states: “*If a possible new geologic hazard that has not been mapped is brought to the attention of county officials, the county shall then require that a geologist be hired by the county to investigate the subject site and report on the nature of the hazard and its possible impact to the proposed use and surrounding properties. The cost of this geologic hazard investigation is to be paid by the applicant.*”

The appellant states “because these RV sites could potentially serve as permanent residences, failure to require a geological investigation and assessment may leave the county open to legal challenges from community members seeking redress from damages or loss of life related to Natural Hazard events in the future.”

The appellant identifies Statewide Planning Goal 7 (Natural Hazards) and multiple Curry County Comprehensive Plan policies as a basis for the need of a geologic investigation.

Staff Response: The site proposed for the Arizona Ranch RV Park is predominantly flat with a slope at the southeast corner transitioning onto an adjacent ownership. Landslide, liquefaction and tsunami zones are well documented and mapped for this area by the

Department of Geology and Mineral Industries (DOGAMI). There are no “new” undocumented geologic hazards that require a geologic investigation for this site as suggested by the appellant under CCZO Section 3.252 (10). The appellant has provided the mapped geologic hazards in the vicinity as documented by DOGAMI. A “high-land sliding likely” has been identified by DOGAMI on the adjacent parcel to the southeast and south of the subject site. A “tsunami inundation” area is included for the northeastern portion of the subject site and a “liquefaction hazard” is identified for a small area on the western side of the subject site. The “high-land sliding likely” identification does not apply to the subject parcel as it is located on an adjacent property. In 2017, the Curry County Board of Commissioners (BOC) determined that no additional land use restrictions would be adopted for the geologic hazards of “liquefaction” or “tsunami inundation” areas. At that time, the BOC determined that applying land use restrictions based on those hazards would, in effect, limit most future development in Curry County.

The proposed RV Park development is not for the purpose of establishing permanent residences as stated and postulated by the appellant. The owner has been clear in the application and at the Planning Commission public hearing that the RV Park is for the purpose of temporary use for traveling vacationers. Expansion of that use to include permanent residences would require an amendment to the Conditional Use Permit. The appellant’s identification of Statewide Planning Goal 7 (Natural Hazards) and multiple Curry County Comprehensive Plan policies as a basis for the need for further geologic investigations of the site is misguided in accordance with Oregon’s Land Use foundation. The applicable review criteria for a specific land use application is set forth within the Curry County Zoning Ordinance (CCZO). The CCZO implements the Curry County Comprehensive Plan (CCCP) which is consistent with the Statewide Planning Goals. The CCZO and CCCP are reviewed and approved by the Department of Land Conservation and Development (DLCD) to insure local consistency with the Statewide Planning Goals. Neither the CCCP or the Statewide Planning Goals contain the applicable review criteria for this specific land use action.

2) Failure to comply with CCZO Section 7.040(2)(a) RE: Septic System

CCZO Section 7.040 (2) states: “A dwelling not served by community sewer may be authorized as a conditional use only after the individual sewage disposal system site has

been approved in writing by the Oregon Department of Environmental Quality or other agent authorized to regulate sewage disposal systems in the County. If the Board, Commission or Director has been informed as to a possible environmental hazard if the Conditional Use Permit were approved, or if records show past environmental violations on a part of the applicant; the Board, Commission or Director shall request that this conditional use be reviewed by the Department of Environmental Quality and that a sewage disposal system plan shall be approved for this conditional use before the permit is granted."

The appellant states "pursuant to CCZO Section 7.040(2)(a) the size, discharge, and design of this system must be reviewed and approved by the Department of Environmental Quality prior to approval of this conditional use permit."

Staff Response: The appellant's identification of CCZO Section 7.040(2)(a) is misguided for the purpose of a review criteria relevant to the feasibility of a septic system for the proposed RV Park. CCZO Section 7.040(2)(a) is only applicable to the development of a dwelling which is a residential use. The proposed Arizona Ranch RV Park is a rural commercial use that will require review and approval by DEQ as a commercial use.

The CCZO Section 7.010 allows the Director, the Planning Commission and the Board of Commissioners discretion to apply the appropriate level of conditions for uses within each zone to protect the best interests of the surrounding property, the neighborhood, or the county as a whole. The RV Park applicant has proposed an expanded drain field, relocation of septic tanks, a septic pre-treatment (Orenco Advantex) and septic dosing tank and pump vault. This is essentially a new septic system using the Orenco Advantex technology which will require review and approval by DEQ. The Planning Commission approved this septic system approach and applied a condition with their March 8, 2023 Final Order which requires the applicant to "Comply with all DEQ septic requirements including installation and final approval of the Orenco Advantex system. No RV sites shall be rented out until final inspection and approval of the septic system is issued by DEQ." (AD-2228 February 6, 2023 Staff Report and March 8, 2023 Final Order).

- 3) **Failure to address fire prevention access and fire restrictions on lands adjunct to Forestry lands and comply with the Curry County Comprehensive Plan Section 4.6 policy #5 for forests.**

Staff Response: As stated in the Staff Response to Appellant issued #1 above, the CCCP policies are not the applicable criteria to review the Arizona Ranch RV Park application. The Ophir Rural Fire Protection District Chief, Adam Brotton conducted a review of the proposed RV Park site to ascertain the appropriate level of fire protection needed. Based on Fire Chief Brotton's review, the applicant will be required to install a 10,000 gallon elevated storage tank high enough for gravity feed, two fire-hydrants – one at each end of the site and a water supply system in the tank with pumps, fixtures and piping. (AD-2228 February 6, 2023 Staff Report and March 8, 2023 Final Order).

- 4) **Failure to require the applicant to take measures to protect groundwater from drawdown which would lead to loss of stabilizing vegetation, loss of water quality, or intrusion of salt water into water supplies as required in the Curry County Comprehensive Plan, Section 15.10.**

The appellant states "the County must ensure that, through hydrogeologic investigation, the drawdown of this well, combined with the previously existing wells in the groundwater recharge area, does not significantly impact the wetland or coastal shoreline habitat, and/or lead to saltwater intrusion of the groundwater source."

Staff Response: Again, the appellant is misguided in attempting to apply CCCP policies from Section 15.10 to the proposed Arizona Ranch RV Park. Section 15.10 of the CCCP apply to areas in the county that have been identified as protected Beaches, Dunes and Coastal Shorelands. The subject property does not have a Beaches, Dunes, or Coastal Shoreland protection overlay; therefore the provisions therein do not apply.

- 5) **Failure to contact Oregon Department of State Lands (DSL) regarding this application re the impact to adjacent wetlands, given the prior knowledge of high groundwater and septic system failures at this site, and failure to work with DLS and the applicant to require a Wetlands Determination and Delineation on this tax lot.**

The appellant states "the most significant deficiency of this application is that there is no provided information that either the Applicant or the County has contacted the DSL regarding this project as is required for developments that might impact wetlands." Further, "the County should pursue revision to its current zoning designation of this tax lot based upon the outcome of a Wetlands Determination and Delineation."

Staff Response: The applicable CCZO criteria related to potential wetlands for a land use application is contained in Section 2.070(3). Section 2.070(3) states: "*Written notice shall be provided to the Oregon Division of State Lands of applications which involve lands that are wholly or partially within areas that are identified as wetlands on the State-wide Wetlands Inventory.*"

The proposed Arizona Ranch RV Park application and engineered drawings clearly indicate the avoidance and setback from any potential involvement of lands that include the riparian or wetland areas associated with Mussel Creek. The State-wide Wetlands Inventory indicate there is a small confined area in the northwest corner of the subject property associated with Mussel Creek that is potentially a Freshwater Forested / Shrub wetland (PFOA). The applicant's engineered drawings indicate a minimum setback of fifty (50) feet from Mussel Creek. Because there are no lands that are involved or to be developed with wetlands for the project, there is no requirement for the County to contact DSL.

d) A Statement demonstrating that the appeal issues were raised during the public comment period.

Staff Response: The appellant was present and provided both written and verbal testimony for the record of hearing for AD-2228.

Staff Recommendation

If the Board of Commissioners (BOC) finds that the appellant has standing and the appeal application has satisfied Sections 2.065, 2.120 and 2.270 of the CCZO, then a decision on the specific merits of the appeal can be considered. Staff has determined that the appellant has standing, and an application has been submitted that satisfies the provisions of Sections 2.065, 2.120 and 2.170 of the CCZO based on the analysis above. Therefore, staff recommends that the BOC consider the following decision options or develop a decision that more closely represents the conclusion of the testimony presented at the May 17, 2023 public hearing.

Option #1.) Affirm the Planning Commission's decision set forth in their Final Order (AD-2228) dated March 8, 2023 which approves the Conditional Use Permit for the thirty-one (31) space, full service RV Park at Arizona Beach. The applicable land use findings for this decision are contained in the February 6, 2023 Planning Commission Staff Report and the March 8, 2023 Final Order.

Option #2.) Reverse the Planning Commission's decision set forth in their Final Order (AD-2228) dated March 8, 2023 and deny the Conditional Use Permit to authorize the thirty-one (31) space, fully service RV Park at Arizona Beach. The applicable land use findings for this decision document the error(s) made by the Planning Commission in applying the applicable CCZO criteria and brought forward by the appellant to the proposed Arizona Ranch RV Park project decision.

Exhibit 4

STAFF REPORT ADDENDUM

DATE: June 1, 2023

TO: Curry County Board of Commissioners (BOC)

FROM: Becky Crockett, Curry County Planning Director

RE: A-2301 Giska Appeal

The BOC held a de novo public hearing on A-2301 on May 17, 2023. This is an appeal of a Planning Commission decision to approve the Request of a Conditional Use Permit (AD-2228) for the Arizona Ranch RV Park in the Rural Commercial (RC) Zoning District for Bret and Dalia O'Brien.

At the conclusion of the Public Hearing, the BOC decided to close the hearing but to leave the record open for seven (7) days as requested by the Appellant and by Oregon Coast Alliance (ORCA). During the seven (7) days additional information was submitted by ORCA (attached) and the Oregon Department of State Lands, DSL (attached). Both these submittals are from entities with standing to the appeal pursuant to CCZO Section 2.120. There were two additional comment letters submitted. However, neither of these additional parties have standing in the appeal process therefore the letters are not included in the record.

The Applicant is granted seven (7) days to submit rebuttal testimony into the record after it is closed. The Applicant has submitted rebuttal testimony (attached) on the two issues presented from entities with standing to the appeal. The two issues include wetlands and geologic hazards.

Staff Recommendation

Staff has reviewed the record of hearing and recommends that the BOC **AFFIRM** the Planning Commission's decision set forth in their Final Order (AD-2228) dated March 8, 2023 which **APPROVES** the Conditional Use Permit for the thirty-one (31) space, full service RV Park at Arizona Beach. The applicable land use finding for this decision are contained in the February 6, 2023 Staff Report, the March 8, 2023 Final Order and the BOC Final Order to be prepared for the BOC on June 21st, 2023.

Note: All documents noted above are available on the Planning Commission web site and listed under the May 17, 2023 BOC De Novo Public Hearing Appeal (A-2301)