



**Board of Commissioners Special De Novo public Hearing for A-1701
An Appeal of Planning Commission Action on Application AD-1705
Pursuant to ORS 197.763(2)(a) and Curry County Zoning Ordinance 2.070(1).**

Board of Commissioners Hearing: The Board of Commissioners will hold a special de novo public hearing to hear an appeal of Curry County Planning Commission's decision(s) on the Elk River Property Development LLC land use proposal described further in this notice. The special de novo public hearing will be held at 2:30 PM on Wednesday, January 17, 2018 in the Board of Commissioners chambers on the upper level of the County Courthouse Annex in Gold Beach located at 94235 Moore Street. The special de novo public hearing is being provided to solicit public commentary on land use alternatives described further in this Notice.

Applicant/Agent : Elk River Property Development, LLC/ Law Office of Bill Kloos, P.C.

Property/Owner and the Proposal: An application was submitted for the analysis of alternatives and approval of proposal to use recycled wastewater for irrigation of golf course, including the development of pipeline and ancillary facilities. Two alternate pipeline routes have been proposed to be developed , these two routes can be found on Assessor map 32-15-29C, lot numbers: 103, 104, 105, 106, 107, 108, 118, 120 and 121. The pipeline will primarily be located within public rights of way, owned by either Curry County or the Oregon Department of Transportation. Generally, both routes under consideration leave the Port Orford urban growth boundary on the north side of Port Orford, and travel northward to the golf course development site located on the property commonly known as the Knapp Ranch where the ultimate place of use of the recycled wastewater will occur. (Sections 19, 29 & 30 of Township 32 S., Range 15 W., W.M. Tax lot 4400, and Section 29c of Township 32 S., Range 15 W., W.M. Tax lot 500)

Background: On November 7, 2017 Planning Commission denied the proposal; the applicant appealed the Planning Commission decision. On November 10, 2017 the applicant appealed the Planning Commission decision and requested a Board of Commissioners consideration of the proposal at a de novo public hearing. The Board of Commissioners de novo hearing then was put on hold at the request of the applicant pending a December 14, 2017 Planning Commission review. On December 14, 2017, the Planning Commission again denied the subject proposal. The applicant on December 18, 2017 appealed the Planning Commission's December 14, 2017 decision and again requested a Board of Commissioners de novo hearing to appeal the Curry County Planning Commission decision(s). The appeals will be consolidated for the purpose of the Board of Commissioners January 17, 2018 special de novo public hearing.

Applicable Criteria:

Oregon Revised Statutes (ORS) section 215.246(3) which requires an applicant to consider proposal alternatives as follows: *(3) When a state agency or a local government makes a land use decision relating to the land application of reclaimed water, agricultural or industrial process water or biosolids under a license, permit or approval by the Department of Environmental Quality, the applicant shall explain in writing how alternatives identified in public comments on the land use decision were considered and, if the alternatives are not used, explain in writing the reasons for not using the alternatives. The applicant must consider only those alternatives that are identified with sufficient specificity to afford the applicant an adequate opportunity to consider the alternatives. A land use decision relating to the land application of reclaimed water, agricultural or industrial process water or biosolids may not be reversed or remanded under this subsection unless the applicant failed to consider identified alternatives or to explain in writing the reasons for not using the alternatives.*

Curry County Zoning Ordinance section 2.170(7c and 7d): *Every Notice of Appeal shall be on a form supplied by the Director and contain the following information:*

(c) *A statement explaining the specific issues being raised on the appeal(s).* The applicant has identified the specific issues identified as findings for the proposal denial by the Planning Commission as follows:

Related to the appeal of the November 7, 2017 Planning Commission action and the specific issues identified:

a) No permitted use has been established under ORS 215.283(1)(v) because the statute requires the irrigation to be for a different approved use under section ORS 215.283(1)(v) which has not been identified. b) An approved use under (*sic*) 215.283(1)(v), is "subject to" ORS 215.246, which means the use is not permitted until the Oregon Department of Environmental Quality (DEQ) has completed its determination pursuant to ORS 215.246(1)(a); DEQ has not completed the subject determination.

Related to the appeal of the December 14, 2017 Planning Commission action and the specific issues identified:

a) Conditional Use Permit AD-1411 expired on January 16, 2016 because Condition of Approval 1 for AD-1411, imposed by the Board on January 1, 2015, required the Applicant to apply for and receive an extension for Conditional Use Permit AD-1411 within one year, and allowed no other method by which the Applicant can extend the one year time limit on the permit. Applicant did not request and receive an extension for Conditional Use Permit AD-1411 and b) the applicant failed to establish that ORS 215.283 (1)(v) served as a basis to justify the permit requested in AD-1705 to use effluent to irrigate the golf course because: a. Applicant did not provide proof of a "*use[s] permitted in exclusive farm use zones*"; b. The Department of Environmental Quality has not yet provided an approval; c. ORS 215.283(1)(v) is subject to ORS 215.246(1)(a); d. ORS 215.246.(1)(a) requires that a permitted use be established before an approval for the land application of effluent can be considered; e. Applicant has no established or permitted use because Conditional Use Permit AD-1411 expired on January 16, 2016, and thus Applicant cannot establish a permitted use required by ORS 215.246(1)(a).

(d) *A statement demonstrating that the appeal issues were raised during the public comment period.* **Related to the public comment periods for the November 7, and December 14, 2017 Planning Commission meetings:** The appeal issues were raised during the public comment period; the record of the Planning Commission meeting reflects that the applicant presented the Planning Commission with arguments and evidence that the subject property is the site of an approved golf course that, pursuant to ORS 215.283(1)(v), is entitled to receive reclaimed water and also that DEQ's analysis of the agricultural productivity does not need to be completed in order for the County to consider the alternatives analysis.

Required Statutory Notice: ORS 197.763 (3)(e) states that failure to raise an issue either in person or by letter or failure to provide statements or evidence sufficient to allow the decision maker an opportunity to respond to the issue precludes appeal to a higher judicial review based on that issue. Failure to provide sufficient specificity to afford the decision maker an opportunity to respond to an issue that is raised precludes appeal to LUBA based on that issue.

Documents and Staff report:

See the project application, the Applicant appeals and related documents at: www.co.curry.or.us/departments/Community-Development/Planning-Commission. See the January 17, 2018 staff report prepared for the Board of Commissioners special de novo public hearing at www.co.curry.org.us/Board-of-Commissioners on Friday, January 5, 2018 no later than 5 PM.

Your comments: Testimony, arguments, and evidence must be directed toward the criteria described in the Applicable Criteria section of this notice. You may submit written testimony prior to or at the hearing. Please include Appeal number A-1701 on your written testimony. Testimony may be submitted via email, fax, or by USPS mail. You may contact Jacob Callister at 541-682-4114 or jcallister@lcog.org to submit your comments; please put A-1701 in the subject line. Comments may be also be mailed to the Curry County Community Development Department, Curry County Annex, 94235 Moore St, Suite 113 Gold Beach, OR 97444, Attention: Carolyn Johnson. For your written comments to be included in the record prior to the hearing, they must be received by 3 PM on Wednesday, January 3, 2018. After that time your comments can be submitted but will be presented for the record at the January 17, 2018 Board of Commissioners special de novo public hearing. Should the action of the Board of Commissioners be appealed, the appeal shall be limited to the application materials, evidence and other documentation, and specific issues raised in the comments by interested parties leading up to the Board's action.



