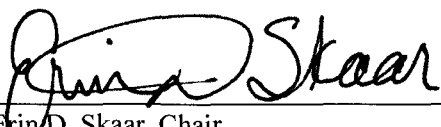
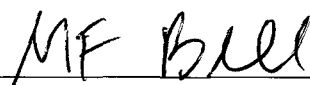
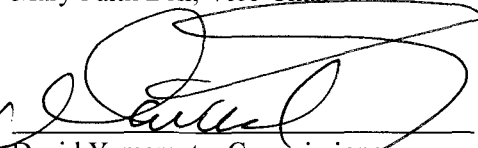


Section 3. The findings and conditions attached as "Exhibit A" and "Exhibit B" are hereby incorporated by reference and adopted in support of this order.

DATED this 19th day of April 2023.

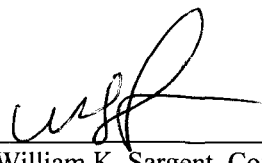
BOARD OF COUNTY COMMISSIONERS
FOR TILLAMOOK COUNTY, OREGON

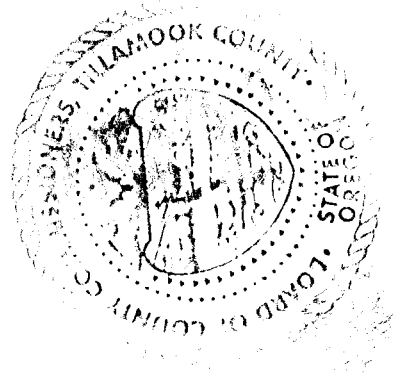
	Aye	Nay	Abstain/Absent
 Erin D. Skaar, Chair	X	_____	_____
 Mary Faith Bell, Vice-Chair	Y	_____	_____
 David Yamamoto, Commissioner	Y	_____	_____

ATTEST: Tassi O'Neil,
County Clerk

APPROVED AS TO FORM:


Special Deputy


William K. Sargent, County Counsel



“Exhibit A”

BEFORE THE TILLAMOOK COUNTY BOARD OF COMMISSIONERS

**ON REMAND FROM THE OREGON LAND USE BOARD OF APPEALS
FINAL OPINION AND ORDER: 2022-065**

I. GENERAL INFORMATION:

Request: Reconsideration of a request for Conditional Use approval for a 19-site recreational campground on an approximately 18-acre portion of a 58.51-acre parcel. The proposed campground is located within the Rural Residential 2-Acre (RR-2) zoned portion of the property.

Location: The subject property is accessed via Floyd Avenue, a County local access road, and is designated as Tax Lot 600 of Section 6, Township 4 South, Range 10 West of the Willamette Meridian, Tillamook County, Oregon

Zone: Rural Residential 2-Acre (RR-2) and Small Farm and Woodlot (SF W-20)

Applicant/ Property

Owner/ Intervenor- Oregon Treehouse Partners LLC, 1276 NW 107th Ave, Portland, OR 97229

Respondent:

Petitioner: Oregon Coast Alliance, PO Box 857, Astoria, OR 97103

SUMMARY OF PROCEEDINGS: Public hearings were held before the Tillamook County Planning Commission on January 27, 2022, and February 24, 2022, where two actions were taken by the Planning Commission at the February 24, 2022, hearing following discussion and consideration of Conditional Use request #851-21-00416-PLNG. After consideration of the findings of fact and conclusions contained in the Staff Report, staff memos, testimony received, evidence in the record and the January 20, 2022, staff report, the Planning Commission voted 7 in favor and 0 opposed to approve Conditional Use request #851-21-00416-PLNG, along with amend the Conditions of Approval. This Planning Commission decision was appealed to the Board of County Commissioners.

The Tillamook County Board of Commissioners opened a de novo public hearing on April 25, 2022, and continued the hearing to May 11, 2022, which was continued to June 1, 2022. At the June 1, 2022 hearing, The Board, by a vote of 3-to-0, upheld the Planning Commission’s decision and denied the appeal of the Conditional Use request #851-21-000416-PLNG.

The Board of Commissioner’s decision was appealed to the State of Oregon Land Use Board of Appeals (LUBA). The Petitioner in this appeal was Oregon Coast Alliance. The Respondent was Joel Stevens, Tillamook County Counsel, with James D. Howsley as the Intervenor-Respondent on behalf Oregon Treehouse Partners LLC.

The appeals filed by the petitioners were consolidated for the LUBA appeal hearing proceedings. LUBA issued the Final Opinion and Order (LUBA No. 2022-065) on November 3, 2022. The Final Opinion and Order reflects the voluntary remand by the Intervenor-Respondents for further consideration of this request by Tillamook County.

Intervenor-Respondents (James D. Howsley) submitted a request in writing to Tillamook County for initiation of LUBA remand proceedings in accordance with ORS 215.435 and TCLUO Article 10.130(2)(c)

on January 26, 2023. The voluntary remand requires additional consideration of this Conditional Use request in relation to the criteria contained within Article VI of the Tillamook County Land Use Ordinance (TCLUO). The remand hearing has been properly noticed in accordance with the provisions outlined in Article 10 of the TCLUO. Applicant's submittal documents that were provided as Remand Testimony were posted to the county's web on February 17, 2023, and again on February 27, 2023 when they supplied additional testimony. Then all testimony submitted by the Applicant, including both the February 17, 2023, and February 23, 2023 documents, plus all agency and public comments received up to March 9, 2023, and the Department's Staff Report were again posted in conjunction with the preparation of the Board Hearing packet on March 9, 2023, seven days before the hearing on March 16, 2023, in accordance with ORS 197.797(4)(b).

On March 16, 2023, the Board of Commissioners held a public hearing and voted 3-0 to approve the application, subject to conditions and the adoption of findings.

DESCRIPTION OF REQUEST: The LUBA Final Opinion and Order reflects the voluntary remand for further consideration of this Conditional Use request in relation to the criteria contained within Article VI of the Tillamook County Land Use Ordinance. This remand hearing is de novo. Intervenor-Respondent have supplied additional findings to the request.

The Board of Commissioners considered the comments of ORCA that the Applicant's proposed changes to the site plan are not minor as per TCLUO 10.020(6)(f)(iii), and assumes ORCA intended that the application must be reviewed as a Significant Modification as per TCLUO 10.020(6)(f)(ii). The Board finds the Applicant made several small changes to the original site plan in response to public comments, and in order to reduce the impacts of the project. The original concept is unchanged; that is, 19 camp sites are provided, with a central support building, located in the same area of the property. Thus, there are no additional off-site impacts, such as increased water consumption or vehicle trip generation. There are no material changes to the setbacks. Therefore, there is no increase in off-site impacts either to the adjacent neighbors or to the larger Tierra Del Mar community, as evidenced by the supportive letter from the adjacent neighbors Jeanette Lilly and Charity Ralls, and the supportive comment email of March 16 from Rich and Carol Friz of Tierra Del Mar. The changes can be summarized as reducing road widths, relocating improvements including parking away from the delineated wetland, and relocating improvements to more stable areas of geology, all of which will reduce the necessary grading.

The Board finds these changes do not require any alteration in the approval criteria and development standards because the use is the same; that is a campground with 19 sites, with the same public road access, and it is located in the same area within the larger property.

In review of the new information, the Board concludes that these alterations do not result in a significant modification or change of the Conditional Use request 851-22-000107-PLNG. The Board processed this remand as a continuation of review of Conditional Use request #851-22-000107-PLNG, with minor modification as per TCLUO 10.020(6)(f)(iii). The Board also disagrees with ORCA's demand that a new application is required, and that the scope of the remand must be expanded because other criteria are affected. For the same reasons the Board of County Commissioners make a finding that the proposed alterations are minor. The Board notes ORCA has failed to identify any applicable standard or criterion that was not included in the Staff Report, and confirms that these findings do not address any additional code standards beyond those reviewed in the Staff Report.

The Board of Commissioners reviewed ORCA's request for an open record period to review the Applicant's new evidence. It notes the new evidence in the Applicant's submittal documents that were provided as Remand Testimony were posted when they were received – collectively February 17, 2023, and again on February 27, 2023, when they supplied additional testimony. Then all testimony submitted by the Applicant, including both the February 17, 2023, and February 23, 2023, documents, plus all agency and public comments received up to March 9, 2023, and the Department's Staff Report were again posted in

conjunction with the preparation of the Board Hearing packet on March 9, 2023, seven days before the hearing on March 16, 2023, in accordance with ORS 197.797(4)(b).

The Board finds that the applicant's PowerPoint slides at the hearing did not include new evidence, but merely summarized the evidence previously submitted and made available to the public. These findings do not rely on that PowerPoint presentation or the Applicant's oral testimony of Messrs. Gindelsperger or Howsley at the hearing; rather the findings are based on the expert reports as noted. The Board finds that ORS 197.797(4)(b) gives the local government the discretion to leave the record open as ORCA requested, but does not require it. The Board notes that ORCA is a sophisticated land use advocate, which had almost one month to prepare a response to the Applicant's expert reports, which is ample opportunity to retain its own experts on geology, water, topography, traffic and wetlands in order to support its opposition to the project, but ORCA did not do so. It concludes that ORCA was not prejudiced by the decision to decline its request leave the record open.

The Board finds the Conditions of Approval reflected in the Board Order for request #851-22-000107-PLNG remain valid and applicable for this request, with one modification of the Conditions of Approval to clear up ordinance language as applicable to the request. This will be discussed below.

PROPERTY DESCRIPTION: The subject property encompasses approximately 58.51 acres situated north of the Unincorporated Community Boundary of Pacific City/Woods in an area commonly referred to as Tierra Del Mar. Floyd Avenue, a County local access road, serves off Sandlake Road, a County road, to the subject property. According to County Tax Assessors records, the property is currently unimproved.

The subject property is zoned Rural Residential 2-Acre (RR-2) and Small Farm and Woodlot (SFW-20). Development of the campground facilities is concentrated on an approximately 18-acre portion of the property zoned Rural Residential 2-Acre (RR-2). Development is not proposed within the Small Farm and Woodlot (SFW-20) zoned portion of the property.

The United States Forest Service (USFS) owns the Forest (F) zoned property abutting the subject property to the east and south. An unimproved SFW-20 zoned property under private ownership abuts the subject property to the north. Adjacent RR-2 zoned properties under private ownership abut the subject property to the north, south and west, either unimproved or improved with a residence.

Situated to the west is a pocket of zoned Rural Residential 2 Acre (RR-2) and Rural Commercial (RC) properties that are either unimproved or contain single family dwellings.

The subject property has highly variable slopes and terrain with it generally sloping upward to the east. Development is proposed to be primarily located on the slopes, east of an existing private roadway through the subject property. Mapped wetlands and riverine features are present on the subject property on the western boundary, including Freshwater Forested/Shrub wetlands.

The tract lies within an area of potential landslide susceptibility as identified by DOGAMI map layers. The subject property is not located in a Special Flood Hazard Area.

II. APPLICABLE ORDINANCE AND COMPREHENSIVE PLAN PROVISIONS:

The desired use is governed through the following Sections of the Tillamook County Land Use Ordinance (TCLUO). The suitability of the proposed use, in light of these requirements and criteria, is discussed in Sections III, IV and V of this report:

STANDARDS: Standards are rules governing the size, dimensions, shape, or orientation of a lot or parcel, or the placement of buildings or activities thereon. Contained in Section III of this report:

- A. TCLUO Section 3.010: Rural Residential 2-Acre (RR-2) Zone
- B. TCLUO Section 5.030: Recreational Campground Standards

- C. TCLUO Section 3.555: Freshwater Wetlands Overlay
- D. TCLUO Section 4.130: Development Requirements for Geologic Hazard Areas
- E. TCLUO Section 4.140: Requirements for Protection of Water Quality and Streambank Stabilization
- F. TCLUO Section 4.160: Protection of Archaeological Sites

APPROVAL CRITERIA: Any conditional use authorization shall be subject to the following criteria which may involve the exercise of judgement in implementing established policy.

Contained in Section IV of this report:

TCLUO Section 6.040: Review Criteria

Contained in Section V of this report:

TCLUO ARTICLE X: Administrative Provisions

III. ANALYSIS OF STANDARDS:

A. TCLUO Section 3.010: Rural Residential 2-Acre (RR-2) Zone

(3) USES PERMITTED CONDITIONALLY: In the RR zone, the following uses and their accessory uses are permitted subject to the provisions of Article 6 and the requirements of all other applicable supplementary regulations contained in this Ordinance.

...
(u) Parks, recreational campgrounds, primitive campgrounds hunting and fishing preserves, and other recreational uses and associated facilities, on a contiguous ownership of 10 or more acres.

Findings: The subject property is approximately 58.51-acres, with the RR-2 zoned portion of the subject property approximately 18-acres in size. The proposed campground is within the RR-2 zoned portion of the property. The Board finds this standard is met.

STANDARDS: Land divisions and development in the RR-2 and RR-10 zone shall conform to the following standards, unless more restrictive supplemental regulations apply

(a) The minimum lot size is two acres for parcels zoned before October 4, 2000. ...

(f) The minimum front yard shall be 20 feet.

(g) The minimum side yard shall be 5 feet; on the street side of a corner lot, it shall be no less than 15 feet.

(h) The minimum rear yard shall be 20 feet; on a corner lot, it shall be no less than 5 feet.

(i) The maximum building height shall be 35 feet, except on ocean or bay frontage lots, where it shall be 24 feet. Higher structures may be permitted only according to the provisions of Article 8.

Findings: Applicant's site plan indicates all development will be located within the RR-2 zoned portion of the subject property. Applicant's site plan indicates a 50-foot setback from all property lines for proposed structures, except for a 30-ft by 40-ft viewing platform located near the northerly property line at approximately 20-feet from the property line. The Board finds that these standards can be met through compliance with Conditions of Approval.

B. TCLUO Section 5.030: Recreational Campground Standards

(1) PURPOSE: The purpose of the RECREATIONAL CAMPGROUND STANDARDS is to insure that each new or enlarged RECREATIONAL CAMPGROUND provides necessary facilities, adequate lot area, set-back, and other needed requirements for the public safety, health, and general welfare.

A RECREATIONAL CAMPGROUND is a place where four or more recreational vehicles and/or tents are located on one or more continuous lots, tracts, or parcels of land under a single ownership for temporary recreational camping. A permanent house, mobile home, manufactured home, or recreational vehicle for the owner, operator, or manager of the campground is allowed, however other Sections of the Ordinance pertaining to such use shall apply, including Section 5.010, etc. Accessory uses that may be permitted include recreational cabins, showers, laundry, a grocery, a gas pump, and recreation facilities that are designated for the primary purpose of serving the occupants of the campground. A camper as defined in Article I, shall not be allowed to stay any longer than six (6) months in any twelve (12) month period.

The standards contained in this Section are minimum standards. Additional standards may be required where necessary to meet other requirements of this Ordinance, i.e. Floodplain, Geologic Hazard zone, Riparian Vegetation.

(2) A RECREATIONAL CAMPGROUND shall be built to State standards and shall comply with the following provisions:

a. A RECREATIONAL CAMPGROUND shall have:

i. A minimum size of 1 acre or the minimum lot size of the zone, whichever is greater;

ii. A minimum number of 4 sites;

Findings: Applicant states the area of RR-2 zoned property utilized for the campground is approximately 18-acres with (15) tent sites and (4) recreational vehicles sites which will be sited with units provided by the Applicant. Minimum size for the establishment of a campground in the RR-2 is 10 acres or more, as detailed above. The Board finds these standards are met.

iii. A minimum width of space 23 feet or state minimum which ever is greater, for each site;

iv. Lot depths may vary in size, however maximum unit lengths shall be designated for each proposed space, and each space shall include enough area for the required set-backs along with the maximum unit length;

Findings: Applicant's original site plan and narrative stated six (6) tent campsites maintaining 23-ft by 40-ft in size, nine (9) tent campsites maintaining 30-ft by 40-ft spaces, and the recreational vehicle spaces being 23-ft by 40-ft in size with a single parking space. Applicants altered site plan included in their remand submittal details six (6) tent campsites of approximately 23-ft by 30-ft in size, nine (9) tent campsites of approximately 30-ft by 26-ft in size, and the recreational vehicle spaces being 18-ft by 32-ft in size with additional area for a single parking space provided to each site for an overall width of 28-ft by 32-ft . The Board finds the altered unit space sizes continue to meet the minimum requirement. The Board finds these standards can be met through compliance with conditions of approval because there is ample area around the site to ensure adequate campsite spaces.

v. A minimum distance between actual unit location and interior road right-of-way of 10 feet. Each campsite will have direct access to interior road right-of-way;

vi. And all property lines not abutting an exterior roadway shall be 10 feet. A minimum distance between actual unit and an exterior roadway shall be 20 feet;

vii. A minimum distance between actual units of 15 feet;

viii. Minimum distance between actual unit and community or service buildings of 10 feet;

Findings: Applicant describes that all sites will maintain over 10-ft from all interior road rights-of-way, and over 20-ft from exterior roadways. The Applicants altered site plan details units will maintain a minimum 20-ft separation from exterior roadways, with the units and community buildings having a

separation greater than 10-ft. Applicant's site plan confirms such setbacks and separation requirements are detailed.

The Board notes the altered site plan prepared by the Applicant indicates the tent sites are well-separated but does not specify the distance between the tent sites. The Board finds that the site plan shows has ample space between and around the tent sites to satisfy this requirement, and requires Applicant to illustrate the minimum 15-foot separation on the site plan for the Zoning and Building Permit submittal to ensure the tent sites meet the minimum 15-ft separation.

The Board finds these standards are met, and requires conditions of approval to ensure the minimum separation. With the conditions of approval, the Board finds the standards are met.

ix. Campground roads shall have a surface width of at least 16 feet with 2 foot shoulders on each side. All interior park roads shall be surfaced to minimum County road standards and well drained. No on-street parking shall be allowed;

Findings: Applicant provides that proposed interior roadways will be a minimum 16-ft as demonstrated on the altered site plan. Applicant has proposed in the altered site plan a 10-ft wide multiuse path to serve the northerly campsites, with the narrative indicating access for emergency services. Applicant states it will improve the road surface to County standards. Applicant has proposed (18) parking spaces located near the proposed support cabin, along with four (4) parking spaces provided at the recreational vehicle sites, all located off the proposed interior roadways.

Tillamook County Public Works Director Chris Laity will require a Road Approach with their Department for site development. Mr. Laity provided testimony that they had no concerns with the proposed alterations and would defer to Chief Oeder for Nestucca Rural Fire Protection District for steeper grades. Chief Oeder provided comments that identified the altered site plan to address the concerns for road improvement requirements.

The Board finds this standard is met by the site plan and through compliance with conditions of approval.

x. Walkways not less than three (3) feet wide may be required to be provided from trailer spaces to community and service buildings. All access roads and walkways should be well lighted;

xi. All areas not used for spaces, motor vehicle parking, traffic circulation, or service or community buildings shall be completely and permanently landscaped or maintain existing natural vegetation. The landscaping shall be maintained in good condition;

xii. A sight-obscuring fence and/or buffer strip of vegetation may be required on every side of a RECREATIONAL CAMPGROUND;

xiii. Trash cans shall be provided in convenient locations for the use of guests of the park, and shall be located in such number, and shall be of such capacity, that there is no uncovered accumulation of trash at any time;

Findings: Applicant provides that walkways will maintain 3-ft minimum width in all areas, with lighting and drainage sufficient for the site. Applicant details on the altered site plan a 50-ft buffer around the subject property boundaries to the north, south and west, detailing that natural vegetation for landscaping will be used to maintain the existing coastal forest, with landscaping to be maintained around sites and service buildings. Applicant further states that trash enclosures with approved wildlife closures are provided to all spaces. The Board finds these standards are met by the site plan and through compliance with conditions of approval.

xiv. *All Recreational Vehicles staying in the park shall be assigned to a space. No space shall have more than one (1) Recreational Vehicle or tent assigned to it, except as provided in State law;*

Findings: Applicant confirms that all spaces will be numbered for one individual recreational vehicle or tent use. The Board finds this standard is met through compliance with conditions of approval.

xv. *Approval of a recreational campground shall not be construed to be an approval of the building plans for building permit review purposes. All proposed building construction must meet Uniform Building Code requirements as part of building permit review;*

Findings: Applicable building permit review in accordance with uniform building code requirements will be obtained, per the Applicant. The Board finds this standard can be met through compliance with conditions of approval.

xvi. *On-site storage areas, for park residents only, may be allowed. If allowed, the storage area shall be screened or combined landscape and screening with a 6 foot high sight obscuring fence or hedge along all exterior property lines of the storage area;*

Findings: Applicant has not proposed on-site storage areas for the park at this time.

xvii. *Preliminary plans which contain all the information specified in OAR 333-31-059 shall be submitted to the Planning Department when requesting Conditional Use approval.*

Findings: Applicants submission is being reviewed with materials for this Conditional Use request.

...
xix. *The accessory commercial uses such as gas pump, laundry, grocery store and recreational facilities shall not exceed the requirements of Rural Commercial, Section 3.020.*

Findings: Applicant provided that proposed commercial uses will not exceed Rural Commercial requirements . The Board finds accessory commercial uses described within the proposal include a support cabin for the campers that will maintain bathrooms, showers, a convenience store, gift shop area, and a preparation kitchen .

xx. *New full hook-up parks requiring a community septic/sewer system are permitted only within adopted unincorporated community boundaries.*

Findings: The Board finds that those two onsite sanitation systems are proposed for the subject property meeting compliance with County sanitation requirements and OAR 333-031-0006.

C. TCLUO Section 3.550: Freshwater Wetlands Overlay (FW)

(1) *PURPOSE AND AREAS INCLUDED: The purpose of this zone is to protect significant areas of freshwater wetlands, marshes and swamps from filling, drainage or other alteration which would destroy or reduce their biological value. Areas included in this zone are:*

...
(b) *Notification Wetlands: wetlands shown on the Statewide Wetland Inventory (discussed in the Goal 5 Element of the Comprehensive Plan).*

(2) *USES PERMITTED:*

(c) Exposed areas shall be planted in permanent cover as soon as possible after construction.

(d) Storm water shall be directed into drainages with adequate capacity so as not to flood adjacent or downstream properties. Finished grades should preferably be designed to direct water flows along natural drainage courses.

(e) Additional requirements contained in a Geologic report required by this Section shall be followed.

Findings: Applicant has provided a Geologic Conditions and Geologic Hazard Report prepared by Earth Engineers, Inc. dated February 15, 2023. Earth Engineers, Inc. included recommendations for vegetation removal and planting, erosion control measures, and drainage control for the proposed development. Earth Engineers, Inc. identified areas of concern for the site to include slope instability, undocumented fill and landslide deposits, and seismic risks. Earth Engineers, Inc. provided recommendations for site preparation, structural fill, and positive site drainage to mitigate those risks. The Board finds this report is complete and includes all information necessary for a geologic hazard study. The Board considered ORCA's comment that the study fails to quantify the precise amount of vegetation removal. The Board finds there is no code requirement for such specificity and that ORCA has failed to identify one.

Earth Engineers concluded that the site was geologically feasible for the proposed development, with review of the Applicant's altered site plan.

The Board finds at the time of applying for Zoning and Building Permit approval, Applicant will be required to submit evidence demonstrating continued compliance with TCLUO 4.130 based on the final construction plans, to include review of a Geologic Hazard Report in accordance with Article X. The Board requires that these standards be met through compliance with Conditions of Approval.

The Board of Commissioners reviewed ORCA's argument in its comments of March 16 and in the first assignment of error at LUBA that the county unlawfully deferred compliance with TCLUO 4.130 regarding geologic hazards because the geologic hazards report was deferred. The Board reviewed the Applicant's new geologic hazard study, and finds that it complies with all requirements of TCLUO 4.130. The Board notes this study was available to all parties prior to the March 16, 2023 hearing, and that neither ORCA nor another commenter alleged that the study is not adequate under TCLUO 4.130. The Board also finds that the geologic hazard study found the site is suitable for the proposed campground.

The Board considered ORCA's argument in the second assignment of error at LUBA that it has failed to respond to public comments "related to geologic hazards, topography, and wetland." The Board reviewed the applicant's geologic hazard study and finds that it analyzed the geological hazards and the topography, and concluded that the campground is feasible. It notes there is no contrary evidence from a licensed geologist in the record. The Board also finds the revised site plan, as designed by the engineering firm KPFF, reduces cuts and fills, and better aligns with the existing topography.

The Board also considered ORCA's recent comment that the amount of vegetation removal must be precisely specified in the geologic hazard study. The Board notes there is no code requirement for that information in the study. The Board also finds that the ORCA comment letter does not explain why the amount of vegetation removal must be demonstrated to satisfy any specific standard or criteria. The Board finds that the geologic hazard study and the site plan drawing from KPFF are expert evidence the vegetation removal does not create a geologic, landslide, or erosion control hazard, and that there is no contrary expert evidence in the record.

The Board finds the wetland comments are addressed through the Applicant's delineation and the DSL concurrence letter.

Findings:

The Board finds:

- The subject property would maintain 18-acres of area for the campground, while being a good distance off the main road system. Applicant describes existing forest and fauna providing a natural setting, with the establishment of existing roads that are to campground guidelines. The subject property is zoned Rural Residential 2-Acre (RR-2) and Small Farm and Woodlot (SFW-20). Development of the facilities are proposed to be concentrated in an approximately 18-acres of Rural Residential 2-Acre (RR-2) zoned portion of the property.
- The subject property is irregularly shaped and encompasses 58.51-acres and the proposed area of development encompasses approximately 18 acres. The size and shape of the property can accommodate the proposed development and still allow for a significant buffer of natural vegetation to be maintained around the proposed area of development, including the 50-ft buffer described by the Applicant and included in their altered site plan. The Board finds that the size and shape of the parcel is suitable to the provision of outdoor recreation opportunities on site and the proposed campground use.
- The subject property is zoned RR-2 which, as discussed above, allows campgrounds with consideration on contiguous property greater than 10-acres.
- The subject property is currently densely vegetated. The Board finds that the significant existing vegetative cover provides an environment suitable to the requirements of TCLUO 5.030 and appropriate to provide outdoor recreational opportunities.
- The subject property has highly variable slopes and terrain with it generally sloping upward to the east. Development is proposed to be primarily located on the slopes, east of an existing private roadway through the subject property. Mapped wetlands and riverine features are present on the subject property on the western boundary, including Freshwater Forested/Shrub wetlands.
- The tract lies within an area of potential landslide susceptibility as identified by DOGAMI map layers. The subject property is not located in a Special Flood Hazard Area.
- The Applicant's altered site plan and National Wetlands Inventory Map indicate that the proposed campsites and roadway may be adjacent to mapped wetland features. A wetland delineation concurrence provided by the Oregon Department of State Lands dated February 23, 2023 has been provided by the Applicant, identifying that the location of all proposed improvements are located outside the areas of mapped jurisdictional wetlands. The Board finds the DSL concurrence is substantial evidence that all state and local wetland requirements are satisfied.
- The subject property is currently served off Floyd Avenue, a County local access road, which comes off Sandlake Road, a County road, to the subject property. The Tillamook County Public Works Department provided comment that improvements from Sandlake Road to the proposed development will be required as part of development of the road approach. Tillamook County Public Works Director Chris Laity states in his testimony that he has no concerns with the prepared remand testimony provided by the Applicant. A Condition of Approval has been made to conform to any additional standards which might be required by the Tillamook County Public Works Department.
- The Board finds interior roadway systems have been designed and included in the altered site plan and remand testimony provided by the Applicant, prepared by Studio Campo and KPFF dated February 2023. The roadways include a 16-ft roadway, identified as the Main Access Road, to serve off Floyd Avenue, a County local access road, with available off-street parking areas of (18) parking spaces. In addition, a roadway identified as Clubhouse Road would serve to the proposed recreational vehicle sites and the support cabin. An additional roadway that is proposed to be limited access for no public vehicles, is proposed to service the campground to the proposed siting locations of the tent sites and a viewing platform. This remand testimony prepared by the Applicant reduces road widths previously proposed, thereby reducing vegetation removal, cuts and fills needed for road design. The Board finds this plan for the internal roads is substantial evidence of site suitability, and notes the project opponents have not included any expert testimony to the contrary.
- Applicant has provided a Geologic Conditions and Geologic Hazard Report prepared by Earth Engineers, Inc. dated February 15, 2023. Earth Engineers, Inc. included recommendations for vegetation

Oregon Department of Environmental Quality (DEQ) or the County Sanitarian and the County Environmental Health Department are the entities charged with the regulation of sewage, liquid waste and solid waste for recreational parks including overnight campgrounds. These agencies were noticed of the application. Applicant has prepared on their altered site plan new locations for the two (2) onsite sanitation systems for the campground, which are to be located away from mapped wetlands. The Board finds this will not alter the wetland, and that as a Condition of Approval, the Applicant be required to demonstrate that they have obtained permit approvals from the County Sanitarian or DEQ for sewage and liquid waste disposal systems appropriate to the proposed development at the time of applying for Zoning and Building permits. Solid waste disposal is also subject to DEQ regulation. Both solid and sewage and liquid waste are addressed in OAR 333-031, Oregon Health Authority, Public Health Division rules addressing the construction, operation and maintenance of recreation parks, including overnight campgrounds. The Board requires that as a Condition of Approval, Applicant obtain all required federal, state and local permits and licenses and adhere to all applicable rules and regulations.

Tillamook County Public Works Department Director Chris Laity detailed no concerns with the proposed altered site plan for the proposed campground development. TCPW recommended in the original application that a road approach permit be required at time of development of the site. The Board finds this is substantial evidence that the proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs or prevents the use of surrounding properties for the permitted uses listed in the underlying zones.

Nestucca Rural Fire Protection District Fire Chief Oeder provided comments detailing sprinkler, hydrant and fire pit recommendations for management of the site. The Board finds the chief's comments are substantial evidence that the proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs or prevents the use of surrounding properties for the permitted uses listed in the underlying zones, and requires that a Condition of Approval be made to ensure compliance with requirements of the Nestucca Rural Fire Protection District.

ODFW and USFWS were notified of this application. ODFW has provided comments recommending consultation for fish passage improvements, due to proximity to cutthroat trout habitat. Applicant has proposed to replace the and upgrade the pipe culverts to a larger box culvert located on the main access road to improve wildlife function. The Board finds this new culvert is substantial evidence that the proposed use will not alter the character of the surrounding creek resources in a manner which substantially limits, impairs or prevents the use of surrounding properties for the permitted uses listed in the underlying zones.

Applicant has provided a Geologic Conditions and Geologic Hazard Report prepared by Earth Engineers, Inc. dated February 15, 2023. Earth Engineers, Inc. provided recommendations for site preparation, structural fill, and positive site drainage to mitigate risks. Earth Engineers, Inc. concludes that the altered site was geologically feasible and there were no concerns regarding groundwater impacts for the proposed development. The Board notes that no party has identified evidence of impacts associated with the proposed campground development which would substantially impact the ability of a residential dwelling to be sited in the neighboring residential areas or would substantially impact the ability for residential uses to occur in dwellings sited in the neighboring residential areas. Adjacent Forest and SFW-20 zoned properties would maintain a proposed 50-ft buffer from proposed improvements. The Board concludes the proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs or prevents the use of surrounding properties for the permitted uses listed in the underlying zone.

(5) The proposed use will not have detrimental effect on existing solar energy systems, wind energy conversion systems or wind mills.

Findings: The Board finds the proposal will not have a detrimental effect on solar or wind systems. Applicant states they will utilize solar energy in their development . The Board finds no record of such facilities and improvements on the subject properties or within the vicinity. The Board finds that this criterion has been met.

(6) The proposed use is timely, considering the adequacy of public facilities and services existing or planned for the area affected by the use.

Findings: The Board finds there is a demand for year-around facilities with Pacific City experiencing a demand and shortage of facilities.

The subject property is currently served off Floyd Avenue, a County local access road, which comes off Sandlake Road, a County road, to the subject property. The Tillamook County Public Works Department provided comment that improvements from Sandlake Road to the proposed development will be required as part of development of the road approach. The Board finds the Public Works comments are substantial evidence public facilities are adequate for the campground, and requires a Condition of Approval, a letter from the Tillamook County Public Works Department be required at the time of applying for Zoning and Building permits.

The property is located within the service area of the Nestucca Rural Fire Protection District. Chief Oeder commented that the plans showing road width, grade and pullouts are acceptable for the Nestucca Rural Fire Protection District, with comments for recommendations of fire hydrants, sprinklers and management of fire pits. Chief Oeder detailed to Staff that the proposed road designs were adequate for emergency service personnel. The Board finds those comments are substantial evidence of adequate public facilities for fire safety, and the Board requires that as a Condition of Approval, a letter from the Nestucca Rural Fire Protection District confirming service to the campground development be required at the time of applying for Zoning and Building permits.

Tillamook County Environmental Health detailed requirements for licensing of a tourist facility, restaurant license and RV park license through their division. Environmental Health stated that a State Drinking Water service will be required as part of water provided to the campers. The Board requires a Condition of Approval that final approval of campground design be provided at time of application for Building Permits from Tillamook County Environmental Health.

Comments received from the Tierra Del Mar Water Company in the record state they have availability to service water needs to recreational vehicle sites, and that the addition of the proposed campground will not overwhelm its system. The Board finds that water company comment is expert evidence that can be relied on, and notes there is no contrary expert testimony in the record. The Board welcomed and considered comments from the various opponents that the water system will be adversely impacted, and notes the comments are not from any expert such as a hydrologist or water company manager. It finds that use of wells is feasible for an emergency water supply to serve the hydrants and the building sprinkler, because those uses of water are very rare. Again, the Board notes the application remains for just 19 campsites, which is the same as the prior application.

The Board also appreciates and considered Ms. Ruttledge's comment about this criterion, that the Applicant has not met the criterion because of a lack of information regarding on-site management, shuttle vehicles, delivery trucks, and lighting. The Board finds that on-site management of a small campground is not required and typically not provided at campgrounds in the county, including public campgrounds. The Board disagrees that shuttle vehicles, or the absence thereof, has a material impact on this timeliness criterion or the adequacy of public facilities, because the small scale of the campground means that shuttle traffic, if any, will be de minimus. On lighting, the Board finds the tree preservation ensures that interior lighting will not be intrusive for neighbors, and that the existence and potential removal of lighting on Sand Lake Road is unrelated to lighting for this project which lacks any frontage on Sand Lake Road. The Board also considered Ms. Ruttledge's other comments that are not directed to a specific code standard or criterion, and concludes they do not provide substantial evidence or persuasive argument that any code standard or criterion is not met.

The Board concludes the proposed use is timely, and that public facilities and services are adequate for the proposed campground, which will not impair public facilities and services for the surrounding area.

V. ADMINISTRATIVE PROVISIONS

A. TCLUO Section 6.020: Procedure

The following procedure shall be observed in submitting and acting on a CONDITIONAL USE request:

(1) A request may be initiated for a CONDITIONAL USE, or the modification of an approved CONDITIONAL USE, by filing an application with the Department. The Department may require any information necessary for a complete understanding of the proposed use and its relationship to surrounding properties.

(2) The Director shall act administratively according to the procedure set forth in Article 10, or shall refer the application to the Commission for a public hearing and decision. The application shall be referred to the Commission if the director determines that the proposed use would have significant impacts that extend beyond the abutting properties, and that those impacts are not likely to be adequately addressed by response to public notice required by Section 10.070. If the Director elects to refer the application to the Commission, it shall be heard at the next available Commission hearing, unless the applicant requests otherwise.

(3) No CONDITIONAL USE permit shall be invalidated because of failure to receive the notice provided for in Section 10.070.

B. TCLUO Section 6.030: General Requirements

(2) A CONDITIONAL USE may be enlarged or altered pursuant to the following:

...

(b) Minor alterations of a CONDITIONAL USE may be approved by the Director according to the procedures used for authorizing a building permit, if such alterations are requested prior to the issuance of a building permit for the CONDITIONAL USE. Minor alterations are those which may affect the siting and dimensions of structural and other improvements relating to the CONDITIONAL USE, and may include small changes in the use itself. Any change which would affect the basic type, character, arrangement, or intent of the approved CONDITIONAL USE shall be considered a major alteration.

Findings: Applicant has prepared an altered site plan and a narrative was included in their remand testimony. The Board finds the Applicant's original proposal of a 19-site recreational campground and its facilities in the RR-2 zone remains materially the same, and do not affect the basic type, character, arrangement, or intent of the approved campground use. Applicants' proposal includes reducing road widths, relocating improvements and parking to areas away from wetlands, and relocating improvements to areas the Applicant's geologist finds geologically feasible. In review of new information, the Board finds that these alterations do not result in a significant modification or change of the Conditional Use request 851-22-000107-PLNG. This is a continuation of review of CUP 851-22-000107-PLNG. The Board concludes that the proposed alterations are minor.

C. TCLUO Section 10.080: Type III Procedures

(1) Notice for Type III Decisions.

(a) Notice of Review. The County shall provide notice of a public hearing on a Quasi-Judicial application at least 28 days prior to the first hearing date. If two or more hearings are allowed, then notice shall be provided at least 10 days prior to first hearing. The County Planning Director shall prepare an affidavit of notice, which shall be made part of the file. This affidavit shall state the date that the notice was mailed. Notice of a public hearing shall be provided to the following parties:

...

iv. Property owners within 750 feet of subject property if the subject property is outside UGB and in a farm or forest zone.

v. Any affected government agency or public district, including affected city if subject site is inside a UGB.

vi. Any citizen's advisory committee or community organization whose boundaries include, or are adjacent to, the subject site.

...

(c) Newspaper notice. Notice of the public hearing shall be published in a newspaper of general circulation in the County at least ten (10) calendar days prior to the date of a quasi-judicial public hearing. An affidavit or other formal certification of publication shall be made part of the record.

Findings: Notice of Public Hearing was mailed out on February 16, 2023, to all landowners within 750 feet of the subject property, parties with standing, and affected agencies, districts and other parties. Newspaper Notice of Public Hearing was published on February 14, 2023, in the Tillamook County Headlight Herald. The Board finds the remand hearing was properly noticed in accordance with the provisions outlined in Article 10 of the TCLUO.

D. TCLUO Section 10.130: Remands

...

(2) Final action must be taken on the application within 90 days of the effective date of the remand order issued by the State Land Use Board of Appeals.

...

(c) The 90-day period shall not begin until the applicant requests in writing that the County proceed with the application on remand.

Findings: Intervenors-Respondents (applicant and property owner) submitted a request in writing to Tillamook County for initiation of LUBA remand proceedings in accordance with ORS 215.435 and TCLUO Article 10.130(2)(c) on January 26, 2023.

'EXHIBIT B'

CONDITIONS OF APPROVAL:

1. The applicant/property owner shall obtain all required Federal, State, and Local permits and/or licenses and will comply with applicable rules and regulations.
2. The property owner shall obtain all necessary electrical, mechanical, and plumbing permits.
3. At the time of applying for Zoning and Building Permit approval, Applicant will be required to submit the following:
 - Authorization Notice approval for on-site sewage disposal permits from the Department of Community Development or Oregon DEQ.
 - A letter verifying a legal water source to the proposed facility.
 - A letter from the Nestucca Rural Fire Protection District confirming fire protection service to the proposed facilities.
 - A letter from the Tillamook County Public Works Department approving the road approach and internal roadway design.
 - Demonstration of compliance of applicable standards contained within TCLUO Section 4.130.
4. If buildings within or near the area identified as inactive landslide topography are to be sited on slopes greater than 29%, a Geologic Hazard Report will be required as described in TCLUO 4.130. If such a report is required, a Geologic Hazard Report shall be submitted in conjunction with application for Zoning and Building Permit approval for review and acceptance.
5. Applicant will maintain the minimum proposed vegetative buffers between the proposed area of development and the property boundaries. The site plan submitted for approval with application for Zoning and Building permits will clearly show the vegetative buffers.
6. Development will comply with the requirements and standards of TCLUO 3.010 'Rural Residential 2-Acre (RR-2) Zone' and 5.030 'Recreational Campground Standards'.
7. Overnight temporary use of the campground by a camper or a camper's vehicle shall not be for longer than six (6) months in any twelve (12) month period as required by TCLUO Section 5.030.
8. The applicant/property owner shall provide a copy of an approved campground design from Tillamook County Environmental Health at time of Zoning Permit/Building Permit submittal.
9. Development shall comply with riparian buffer and vegetation retention requirements of TCLUO Section 4.140: Requirements for Protection of Water Quality and Streambank Stabilization.
10. Signage shall comply with the requirements of TCLUO Section 4.020: Signs.
11. Development shall occur in the area as generally depicted on the submitted site plan and as described and shall not exceed 19 campsites and the supporting facilities, including the support cabin and bathhouse.
12. Applicant/property owner shall submit a to-scale site plan indicating the proposed parking plan, subject to standards in TCLUO Section 4.030 'Off-Street Parking and Off-Street Loading Requirements', including demonstration of a minimum one (1) parking space per guest accommodation.