

## FINDINGS

### **Introduction**

The Pacific Gales golf course is under construction on the site of the Knapp Ranch. The developer now intends to use reclaimed wastewater from the City of Port Orford to irrigate the golf course. That requires approval of a pipeline route from the City, through the County, and to the golf course. The City and the County must review the alternative routes. The state DEQ must approve the technical aspects of the proposal.

The City has approved the pipeline routing; the present request is for county approval of the routing; the DEQ advises that its review of the technical aspects is underway and will be completed after the City and County approvals.

The Planning Commission initially heard this application. It denied the application in an order and an amended order. The applicant appealed the denials to this Board, which conducted a full hearing. This Order approves the proposed use, based on the standards that apply, and addresses the issues raised by the opponents.

### **Summary**

Development of the Pacific Gales Golf Course was initially approved by the County in 2015; it was appealed to LUBA twice by the Oregon Coast Alliance (ORCA). LUBA affirmed the approval in January 2016. As required by the conditions of approval, construction of the golf course began during the first year following the initial approval. During that time the owner spent substantial sums of money and resources on required site clearing, removal of noxious vegetation, and well construction.

After LUBA affirmed the county approval, the developer determined that reclaimed wastewater from the Port Orford treatment facility could be used to irrigate the golf course. Using reclaimed water would support the golf course, benefit the City, and reduce the impact on groundwater resources. Using reclaimed wastewater in this way is explicitly allowed by state law, subject to review of pipeline routing by the City and the County, and review of technical issues by the DEQ.

The owner received approval from the City for its preferred pipeline routing on June 16, 2017. It then applied to the County for review and approval of its preferred pipeline routing. ORCA and its members opposed using reclaimed wastewater in this way. The Planning Commission held a public hearing, considered a staff report recommending approval, and also considered supporting and opposing testimony. The Commission then denied the request on November 7. It then issued an amended order denying the request on December 14. The applicant appealed both Planning Commission denials to the Board of Commissioners. This decision resolves that appeal.

The Board held a public hearing on January 17, 2018, closed the public hearing at that time, but left the record open for written evidence, rebuttal evidence, and final argument by the applicant.

This Board approves the proposed use as in compliance with the state law standards that apply, subject to two conditions recommended by county staff.

**Condition of Approval 1:** Receive approval from the Oregon State Department of Environmental Quality.

**Condition of Approval 2:** Receive any and all local permits from the County with respect to installing facilities in the County right-of-way.

As explained in the Staff Report, only state law applies to this application, and the state law sets a very low threshold for the applicant to get over. The applicant merely needs to “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.” ORS 215.246.

The applicant has met its burden to address alternative routings for the facilities. Its application showed a preferred and alternative route for the facilities. The applicant also has addressed other alternative routings that were suggested by opponents of the proposal. Nothing more is required of the applicant to be entitled to an approval of its application.

As explained in more detail in the findings below, none of the objections raised by opponents provides a basis to deny the application. The principal objections can be summarized and resolved as follows:

1. The applicant has addressed alternatives identified with sufficient specificity in the public process.
2. Approval of this application does not require first having an existing, valid land use approval for a golf course at the site of the proposed use of reclaimed water.
3. Furthermore, there is a valid golf course approval at the site of the proposed use of reclaimed wastewater. Condition 1 on the 2015 county approval of the golf course did not require an extension of the approval in the first year because the golf course development was initiated during the first year.
4. The use proposed here is not an “urban” level of use that requires the County to justify an exception to Statewide Planning Goal 11 -- Public Facilities.
5. The state law that applies does not require the DEQ to approve this use before the County may approve this use.
6. ORCA’s allegations of wetland destruction on the golf course site are not relevant to a decision on this application and are also unfounded.

## **Detailed Findings Supporting Approval**

These findings provide a more detailed explanation of the applicant is entitled to an approval of the proposed use. Key documents relied upon here include

Applicant's Written Statement (July 6, 2017);  
Applicant's Statement on Initiation of Development Activity (Jan. 2, 2017)  
Staff Report for the September 21 Planning Commission hearing;  
Staff Report for the Board January 17 hearing;  
County Counsel Memo to Planning Commission (July 2017)  
County Counsel Memo to Planning Commission (Oct. 11, 2017)  
County Counsel Memo to Board (Oct. 24, 2017)  
County Counsel Memo to Board (Nov. 27, 2017)

## **Nature of the Application**

The applicant's Written Statement summarizes the proposal generally:

"Elk River Property Development, LLC (referred to hereafter as "ERPD") is proposing to use reclaimed wastewater for irrigating a golf course on the property commonly known as the Knapp Ranch, which is zoned Exclusive Farm Use. The use of reclaimed wastewater includes the development of a pipeline that originates at the City of Port Orford municipal wastewater treatment plant, the creation of a reservoir adjacent to the ultimate place of use, and development of ancillary facilities, such as pumps. This application requests the county to conduct a public process required by statute when uses of this nature are proposed."

The applicant's Written Statement then describes in more detailed what is proposed:

"The current proposal includes the placement of a pipe under public rights-of-way (with alternative routes to be considered), the development of a pond at the golf course that would contain the treated water at the golf course, the use of this water for irrigation during the appropriate seasons, and the development of ancillary components of the system, such as a pump station and valves. A detailed description of the proposed irrigation system and the alternative pipeline routes have been prepared, and are attached as components of Exhibit A [to the Written Statement]."

## **Discussion of Standards that apply to the decision.**

The Applicant's Written Statement identifies the state law standards that apply and explains why the proposal complies with state law. The Staff Report for the September 21 Planning Commission hearing identifies the same standards and also explains why the proposal complies with state law.

The statutes that regulate uses on EFU land explain that the proposed use is allowed outright.

***ORS 215.283(1)*** *The following uses may be established in any area zoned for exclusive farm use:*

[...]

(v) *Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality under ORS 454.695 (License required to perform sewage disposal services), 459.205 (Permit required), 468B.050 (Water quality permit), 468B.053 (Alternatives to obtaining water quality permit) or 468B.055 (Plans and specifications for disposal, treatment and sewerage systems), or in compliance with rules adopted under ORS 468B.095 (Use of sludge on agricultural, horticultural or silvicultural land), and as provided in ORS 215.246 (Approval of land application of certain substances) to 215.251 (Relationship to other farm uses), the land application of reclaimed water, agricultural or industrial process water or biosolids for agricultural, horticultural or silvicultural production, or for irrigation in connection with a use allowed in an exclusive farm use zone under this chapter.*

The types of uses listed in ORS 215.283(1) are those uses allowed outright. Sub-section (v) includes “the land application of reclaimed water [...]”. The use proposed in this instance is the land application of reclaimed water “as provided in ORS 215.246.” The statute requires the land application of reclaimed water to have a license, permit, or other approval from DEQ. The record shows that the applicant is in the process of obtaining the necessary “reclaimed wastewater use permit,” or “RWUP” from DEQ. This statute also makes reference to ORS 215.246, which imposes a requirement to conduct an alternatives analysis. DEQ cannot issue its RWUP until the alternatives analysis has been completed. The findings below address the provisions of ORS 215.246, including the alternatives analysis done by the applicant.

***ORS 215.246 Approval of land application of certain substances; subsequent use of tract of land; consideration of alternatives.*** (1) *The uses allowed under ORS 215.213 (1)(y) and 215.283 (1)(v):*

(a) *Require a determination by the Department of Environmental Quality, in conjunction with the department’s review of a license, permit or approval, that the application rates and site management practices for the land application of reclaimed water, agricultural or industrial process water or biosolids ensure continued agricultural, horticultural or silvicultural production and do not reduce the productivity of the tract.*

The record shows that the DEQ is currently reviewing the application for a Wastewater Pollution Control Facility Permit (WPCF) and a Reclaimed Water Use Permit (RWUP). The state agency review looks at the proposed application rate, site practices, water quality, and other criteria, and it will ensure the continued productivity of the land will not be harmed by this proposal. As explained by the Applicant, the DEQ’s review is being conducted concurrently with this county

review. Communication between county staff and the DEQ confirms that the DEQ expects the County to complete its review before the DEQ will complete its technical review. County approval can be conditioned upon the applicant securing DEQ approval before the applicant begins to develop or use its proposal for a reclaimed wastewater irrigation system. The Board has imposed a condition of approval to that effect.

*(b) Are not subject to other provisions of ORS 215.213 or 215.283 or to the provisions of ORS 215.274, 215.275 or 215.296.*

This provision requires the applicant to demonstrate that there are not additional statutes that apply to the proposal, or, if there are, that the proposal complies with them. As explained below, the proposed use of reclaimed wastewater is not “subject to other provisions” of any of the listed statutes.

ORS 215.213 does not apply in the current context, because it applies only in marginal lands counties, which Curry County is not.

ORS 215.283 applies to non-marginal lands counties, such as Curry County, and that statute includes a list of uses allowed outright in EFU-zoned lands, including “the land application of reclaimed water”. The only “other provision” imposed on this type of use by ORS 215.283 is the review required under ORS 215.246. In this situation, ORS 215.283(1)(v) and ORS 215.246(1)(b) make circular references to each other. This land use application initiates the review required by ORS 215.246.

ORS 215.274 does not apply to the current application, as it deals solely with electrical transmission lines.

ORS 215.275 applies only to “utility facilities necessary for public service.” Those types of utility facilities are specifically defined and regulated by ORS 215.283(1)(c)(A). These “utility facilities necessary for public service” do not include the private wastewater utility facility that is proposed in this instance, which is separately regulated by ORS 215.283(1)(v).

ORS 215.296 applies only to the uses that can be conditionally approved within the scope of ORS 215.283(2). The proposal is one of the uses allowed outright under ORS 215.283(1), and is not subject to ORS 215.283(2).

In summary, the statutes listed in section (1)(b) of the statute do not impose “other provisions” on the proposed use, aside from the provisions of ORS 215.246, which this application was submitted to address.

*(2) The use of a tract of land on which the land application of reclaimed water, agricultural or industrial process water or biosolids has occurred under this section may not be changed to allow a different use unless:*

*[subsections (a) through (d) omitted for brevity.]*

ORS 215.246(2) applies only to lands where application of “reclaimed water, agricultural or industrial process water or biosolids” has already occurred, and where a change of use has subsequently been proposed for those lands. This standard does not apply to the current situation. Instead, the applicant is proposing to begin irrigating the lands with reclaimed water.

*(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.*

This provision of the statute is the core substantive standard that must be addressed in this decision. ORS 215.246(3) requires an applicant for this type of development to consider “alternatives identified in public comments.”

Exhibit A to the applicant’s written statement includes a more detailed explanation of what is proposed and also relevant graphics. That description is incorporated here. The main proposal, described generally, involves the movement of reclaimed wastewater to the golf course, where it can be used for irrigation. The initial application proposed a “preferred route” and an “alternative route.”

The attorney for ORCA suggested two alternate routings for the pipeline in his January 31 letter. The applicant then explained in its rebuttal comments why the suggested alternative routings were not used. See discussion of specific issues below.

*(4) The uses allowed under this section include:*

*(a) The treatment of reclaimed water, agricultural or industrial process water or biosolids that occurs as a result of the land application;*

Consistent with subsection (a), and in addition to the water quality treatments conducted at the Port Orford sewage treatment plant, natural processes will lead to continued improvements in water quality, such as exposure to UV light while the water is impounded in the pond at the golf course, and exposure to natural soil microbes that will digest nutrients and other substances

found in trace amounts in the treated water. This will amount to passive “treatment” of the reclaimed water that occurs as a result of the land application.

*(b) The establishment and use of facilities, including buildings, equipment, aerated and nonaerated water impoundments, pumps and other irrigation equipment, that are accessory to and reasonably necessary for the land application to occur on the subject tract;*

Pursuant to subsection (b), the applicant has described the improvements that will be necessary for the use of reclaimed wastewater on the tract where the irrigation will occur. These improvements will include a portion of the pipe that delivers the treated water, a pond that will store water, pumps and irrigation equipment, and a small pumphouse that will shelter the irrigation equipment.

*(c) The establishment and use of facilities, including buildings and equipment, that are not on the tract on which the land application occurs for the transport of reclaimed water, agricultural or industrial process water or biosolids to the tract on which the land application occurs if the facilities are located within:*

*(A) A public right of way; or*

*(B) Other land if the landowner provides written consent and the owner of the facility complies with ORS 215.275 (4); and*

*(d) The transport by vehicle of reclaimed water or agricultural or industrial process water to a tract on which the water will be applied to land.*

The application materials demonstrate that the applicant controls or has permission to use lands needed for the preferred and alternative routes for the facilities.

*(5) Uses not allowed under this section include:*

*(a) The establishment and use of facilities, including buildings or equipment, for the treatment of reclaimed water, agricultural or industrial process water or biosolids other than those treatment facilities related to the treatment that occurs as a result of the land application; or*

*(b) The establishment and use of utility facility service lines allowed under ORS 215.213 (1)(x) or 215.283 (1)(u).*

All water quality treatments will occur at the existing site of the Port Orford sewage treatment plant. Some degree of water quality improvement that is expected to occur incidentally to storing the reclaimed water in the pond and then applying it to the golf course, where it will be exposed to soil microbes and other natural processes. The water that is currently being discharged from the City of Port Orford’s treatment plant is already treated to such a high level that it is permitted to be discharged directly into the ocean.

This application does not propose any utility facility service lines. The current proposal involves the delivery, storage and use of reclaimed wastewater, as specifically allowed by ORS

215.283(1)(v) and ORS 283.246(3). The pipeline delivering the reclaimed wastewater is not a “utility service line” within the meaning of this statute because it is one of the necessary “facilities [...] for the transport of reclaimed water,” specifically allowed under ORS 283.246(4)(c).

## **Issues raised by the Planning Commission and the parties**

### **1. The applicant has addressed alternatives identified with sufficient specificity in the public process.**

As quoted above, ORS 215.246(3) the applicant must explain in writing the reasons for not using alternatives sufficiently specified alternatives suggested in the public process. The applicant has done that here.

The January 31, 2018, letter from Sean Malone on behalf of ORCA suggested that the pipeline routing could fully utilize Highway 101. In his rebuttal evidence submitted on February 7, 2018, the Managing Partner of the applicant explained that the Highway 101 corridor was not used in order to avoid the disruption on the main transportation corridor through the City. See email letter from Jim Haley to Board (Feb. 7. 2018).

The January 31, 2018, letter from Sean Malone on behalf of ORCA also suggested that the pipeline routing could have used Arizona Street. In his rebuttal evidence submitted on February 7, 2018, the Managing Partner of the applicant explained that the Arizona Street routing: (a) would have used a bridge over Garrison Creek that is failing; and (b) that routing also would have required permitting from the Division of State Lands. See email letter from Jim Haley to Board (Feb. 7. 2018).

### **2. Approval of this application does not require first having an existing, valid land use approval for a golf course at the site of the proposed use of reclaimed water.**

The state statute that applies here allows “the land application of reclaimed water” for “irrigation in connection with a use allowed in an exclusive farm use zone.” See ORS 215.283(1)(v) quoted above.

The Planning Commission, and opponents of this proposal, assume that the use of reclaimed water can only be approved if the golf course has an existing, valid land use approval from the County. Whether the applicant must also prove up on the status of the golf course approval in the context of this application is a question of state law. However, the Board views this assumption as not based on the language of the statute and not correct.

The statute does not say that the land use where the reclaimed water will be applied must be in existence before the land application can be approved. As the County Attorney advised in his October 11, 2017, memorandum to the Planning Commission, “a valid existing CUP for a golf



course is not required for the Commission to approve the current permit request.” An applicant for a golf course, or for another use allowed by the statute in the EFU zone, could first apply for a receive approval to use the reclaimed water for the proposed land use and later secure approval to develop the golf course or other use allowed in the EFU zone. Looked at differently, the EFU statute lists both uses at issue here as uses allowed in the EFU zone -- a golf course, and use of reclaimed water in connection with a use allowed in the EFU zone.

In summary, arguments about the current status of the golf course approved by the County in 2015 are not relevant to whether this proposed use of reclaimed water can be approved by the County now.

Related to this issue, ORCA argued that the reclaimed water use cannot be approved without amending the scope of the land use approval for the golf course. See Ltr from Sean Malone to Commission (Oct. 19, 2017). The ORCA theory is that golf course approval was premised upon using ground water, and switching to reclaimed water requires amending the golf course approval. This objection is not a basis for denial of this application. Because the golf course approval need not be in hand in order to approve this use, which is also allowed in the EFU zone, the scope of the actual golf course approval also is not relevant to this approval.

**3. Furthermore, there is a valid golf course approval at the site of the proposed use of reclaimed wastewater. Condition 1 on the 2015 county approval of the golf course did not require an extension of the approval in the first year because the golf course development was initiated during the first year.**

The findings made here are premised on the assumption, rejected above, that the applicant for this proposed use of reclaimed water must also prove that it has a valid land use approval for the golf course. The Board finds that the applicant has a valid land use approval for the golf course.

The Planning Commission focused on Condition 1 of the Board’s 2015 approval of a CUP for this golf course. Condition 1 says:

1. This conditional use permit is valid for one (1) year unless Applicant applies for and receives an extension of this approval.

Condition 1 was imposed on the CUP approval by the Board to implement the time limits provision stated in Section 7.050 of the then current code, which said, in relevant part:

“1. Authorization of a conditional use, in general, shall become null and void after one year unless substantial construction has taken place or an extension has been granted under Section 7.050 (4). Substantial construction in this case means obtaining all necessary permits required by governmental agencies to commence construction of any structures or to commence the principal activity permitted by the conditional use permit.”

“\* \* \* \*

“4. The Director or Commission may at its discretion issue conditional use permits which must be periodically reviewed to ascertain that the conditions of the permit are being complied with on a continuing basis. A discretionary decision approving development on agricultural or forest outside an Urban Growth Boundary (UGB) is void two years from the date of the final decision if the development is not initiated in that period.”

Condition 1 is ambiguous because it is not explicit about when an extension request is no longer needed. Condition 1 is to be read and understood in conjunction with the code language it was intended to implement. That code language is quoted above.

Subsection 1 quoted above applies to conditional use permits “in general.” Subsection 4 applies more particularly to conditional use permits issued for agricultural land and outside of urban growth boundaries. Subsection 4 is more relevant here because the golf course use was approved on agricultural land outside of an urban growth boundary. Although subsection 4 establishes a two-year period for the validity of a permit, Condition 1 reduced that to a one-year period of validity.

Reading the code sections above together with the language of Condition 1 on the golf course approval, the Board determines that Condition 1 on the approval required the permit holder to apply for an extension of the approval within one year if development was not initiated in the first year.

The Board finds, based on the evidence in the record, that the approved development was initiated during the first year of the approval. Therefore, the conditional use permit remains valid under Condition 1 of the 2015 approval.

The zoning code is helpful in defining what kinds of activity constitute “development.” CCZO 1.030(34) defines “Development Activity.”

“(34) Development Activity. Any use or proposed use of land that requires disturbance of the vegetation or soils or which requires action of the Planning Division or Building Division to allow the construction or modification of structures or other improvements or to allow the division of the land.”

The applicant has provided documentary evidence and supporting argument showing development activity that occurred during the first year of the conditional use permit approval. See evidence provided with January 2, 2018, transmittal to the Board. The evidence can be summarized as follows:

Photos from March 3, 2015, showing heavy equipment (bulldozers, excavators, fuel trucks) performing the removal of invasive gorse on the golf course development site. Removal of invasive plants was an essential and required element of the original CUP

approval. These photos (along with the date-stamped emails) are included as exhibits A – F.

Equipment costs for the two bulldozers and two excavators that were used in performing this ground-clearing. The heavy equipment is owned by the permit holder, but the equivalent rental costs can be used as a way to approximate the permitholder's expense in the depreciation and wear-and-tear that this type of work places on the equipment. These calculations are included as Exhibit G.

Checkbook register from Highland Golf Services Inc. (a company owned by members of Elk River Property Development, LLC) showing it paid \$16,459.06 from the period of February, 2015 to June, 2015 for fuel and heavy equipment operator services provided by Jeff Knapp. This evidence is included as Exhibit H.

An invoice from Bandon Well & Pump Co., showing the drilling of two wells on the property at a cost of \$12,303.80. These wells will likely be used for supplying the potable water to the golf course club house, pursuant to the original land use proposal, and pursuant to ORS 537.545(1)(f). This invoice is included as Exhibit I.

The evidence summarized above shows that the permit holder has spent substantial sums of money and has initiated the development activity authorized by the CUP within the one-year period following the January 15, 2015 date that the CUP was first issued. Because the permit holder initiated this development activity within the required time period, the permit did not lapse at the end of the first year, as Condition 1 imposed on the permit anticipated could happen.

The challenge to the continued validity of the county's golf course approval was raised by ORCA throughout this proceeding. ORCA's contention has been that the conditional use permit expired due to the failure of the applicant to request an extension of the approval as required by Condition 1 on the approval. ORCA's post-hearing submittal dated January 31 restated its expired land use approval theory, although that letter did not reference a standard or condition to support that theory. The Board assumes, therefore, that the "expired approval" issue raised on January 31 is a reference to ORCA's earlier discussion of Condition 1 on the approval.

**4. The use proposed here is not an "urban" level of use that requires the County to justify an exception to Statewide Planning Goal 11 -- Public Facilities.**

ORCA contended, in its October 19 letter to the Commission, that the applicant and the county have not justified this proposed use of water as a "rural" use, rather than an "urban" use which would require an exception to Goal 11 -- Public Facilities. This argument is not well taken. The proposed use can be fairly characterized as an irrigation use on a golf course, which is a rural use allowed on EFU land. Irrigating a rural use does not logically transform the rural use into an urban use.

**5. The state law that applies does not require the DEQ to approve this use before the County may approve this use.**

Opponents have alleged several times, most recently in the January 31 letter from Sean Malone on behalf of ORCA, that the DEQ approval of the proposed use must be in hand before the County may approve this application. See also Malone letter to the Commission dated October 19, 2017. Although this is a question of state law, the County believes that ORCA's view of the law is not well taken.

The statute that authorizes this use does not explicitly require that the DEQ approve the use before the County approves the use. The better view is as explained in the County Counsel's memorandum to the Commission dated October 24, 2017. The application to the DEQ is required to explain to the DEQ what alternatives were considered. This suggests that the County review and approval should come first.

In addition to the above, the DEQ has informed the County that in its view, based on its contribution to the enactment of the statute authorizing its approval for the use of reclaimed water, the County is to complete its review before the DEQ completes its review and final approval. See email from Ranei Nomura, DEQ Water Quality Permitting Manager, to Jacob Callister, LCOG (Nov. 27, 2017).

**6. ORCA's allegations of wetland destruction on the golf course site are not relevant to a decision on this application and are also unfounded.**

The January 17, 2018, letter from Sean Malone to the Board alleges wetland destruction in conjunction with earthwork for the golf course. The basis for this allegation are the photographs submitted by the applicant to show golf course construction, as discussed above. The ORCA letter also alleges violation of conditions of approval relating to wetlands.

Initially, the issue of impacts on wetlands in conjunction with golf course construction is unrelated to any standard for a decision on this application.

Furthermore, the allegations of permit violation misstate the conditions of approval on the golf course and also make bald conclusions that are not supported by the record.

ORCA summarizes the conditions of approval on the golf course as requiring a wetland delineation to be secured before any activity on the property. This misstates Conditions of approval 10 and 11 on the golf course approval. These conditions require:

10. An onsite inspection by a qualified wetland consultant shall be conducted prior to ground disturbing activities and site development to determine if the proposed project may impact wetlands. Where wetlands are present, wetland delineation is needed to determine precise wetland boundaries and setbacks.

11. The wetland delineation report shall be submitted to Department of State Lands (DSL) for review and approval.

Condition 10 requires an onsite inspection prior to ground disturbing activity, not a full wetland delineation as ORCA asserts. ORCA has misstated the condition of approval. ORCA has not submitted evidence that the required inspection was not done prior to ground disturbing activity, as required by the condition. More significantly, other than pointing to the applicant's photographs of earth work on the site, ORCA has not pointed to any evidence of wetlands being disturbed. ORCA has not explained why the applicant's photos show impacts on wetlands.