

RECEIVED  
SEP 09 2010

BY: -----

Perkins  
Coie

1120 N.W. Couch Street, Tenth Floor  
Portland, OR 97209-4128  
PHONE: 503.727.2000  
FAX: 503.727.2222  
www.perkinscoie.com

Steven L. Pfeiffer  
PHONE: (503) 727-2261  
FAX: (503) 346-2261  
EMAIL: SPfeiffer@perkinscoie.com

September 9, 2010

**VIA EMAIL**

Curry County Planning Commission  
c/o David J. Pratt, Planning Director  
Curry County Department of Public Services  
94235 Moore Street  
Gold Beach, OR 97444

**Re: Tentative Destination Resort Master Plan, DR-1001;  
Applicant's Final Argument**

Dear Vice Chair Holman and fellow Commissioners:

As you know, this office represents Crook Family, LLC, the applicant for approval of a Tentative Destination Resort Master Plan to develop a phased destination resort located in the Pistol River area between Byrdies Lane and Burnt Hill Creek. On July 8, 2010 and August 12, 2010, hearings were held before the Planning Commission in this matter. Pursuant to the open record period granted by the Planning Commission at the last hearing, this letter is timely submitted and will serve as the applicant's final written argument.

First and foremost, in responding to public testimony, and discussion offered by the Commission itself during the course of this proceeding, we offer the attached proposed conditions of approval. The proposed conditions, which we believe address concerns raised by staff and interested stakeholders, are attached as **Exhibit A**. It is important to note that these conditions encompass in their entirety conditions of approval recommended by the Kalmiopsis Audubon Society and the Oregon Islands National Wildlife Refuge. The adoption of these conditions of approval and the subsequent demonstration of compliance prior to final Master Plan approval will serve to ensure compliance with all applicable approval criteria at this stage of review.

Secondly, because County review of a new destination resort is undertaken in stages, development may not occur, except as permitted through conditions of approval, until Final Destination Resort Master Plan approval. Many of the issues raised by staff and interested stakeholders in this initial Tentative Master Plan review stage are more appropriately addressed

74143-0001/LEGAL19106556.2

ANCHORAGE · BEIJING · BELLEVUE · BOISE · CHICAGO · DENVER · LOS ANGELES · MADISON  
MENLO PARK · PHOENIX · PORTLAND · SAN FRANCISCO · SEATTLE · SHANGHAI · WASHINGTON, D.C.

Perkins Coie LLP and Affiliates

at the Final Destination Resort Master Plan review stage. Specifically, this second stage of review will afford the Planning Commission and interested stakeholders another opportunity to assess compliance with both adopted conditions of the Tentative Master Plan approval as well as with the various criteria applicable to this later review.

Lastly, additional issues have been raised by the Oregon Shores Conservation Coalition (“Oregon Shores”) and the Oregon Coastal Alliance (“ORCA”), to which we respond as follows:

**1. Coastal Shoreland Boundary Identification.**

As addressed in the Staff Report dated August 10, 2010, sufficient information is available in the record to accurately identify the Shoreland Boundary. Specifically, the staff recommends a specific location of this boundary based upon the identified geological analysis provided by Terra Firma Geological Services and following both a site visit and consultation with Mr. David Perry of DLCD. Further, the record contains no credible evidence in rebuttal to this recommendation.

**2. Environmental Issues.**

The record contains sufficient information to show that natural features, wildlife habitat, and threatened or endangered species will be protected and maintained. Specifically, the record confirms (1) that no inventoried Goal 5 resources exist on the site; (2) that ODFW has conducted fish presence surveys and concluded that the site does not support critical habitat for these listed fish species; (3) that the applicant will retain a 100 foot buffer of riparian vegetation along streams; and (4) that the Oregon Islands National Wildlife Refuge has agreed to specific proposed conditions of approval included in **Exhibit A** to ensure avoidance and minimization of adverse effects to Refuge resources. Additionally, as previously noted, the applicant fully supports inclusion of all conditions of approval recommended by the Kalmiopsis Audubon Society and the Oregon Island National Wildlife Refuge as a binding component of Planning Commission approval.

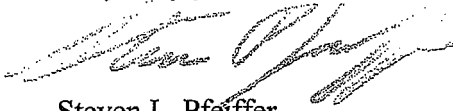
**3. Archeological Objects.**

An archeological survey is not a criterion for Tentative Plan approval. However, the applicant has proposed a condition of approval requiring that if an archeological resource is encountered during development, construction in the area will cease, the Planning Department will be notified, and an archeologist will be hired to evaluate the find.

Curry County Planning Commission  
September 9, 2010  
Page 3

For the reasons above, and based upon our previous testimony and substantial evidence in the record, we respectfully request that the Planning Commission approve Tentative Master Plan approval for the proposed destination resort. Please include this letter in the official Planning Department file for this matter and before the Planning Commission. Thank you for your time and attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Steven L. Pfeiffer", written over a light-colored background.

Steven L. Pfeiffer

SLP:cr1

Enclosures

cc: Client (w/enc.)

September 1, 2010

To ensure compliance with the applicable Tentative Master Plan approval criteria, address concerns raised by the Kalmiopsis Audubon Society (KAS), the U.S. Fish & Wildlife and other interested participants in the Planning Commission review process, the applicant proposes that the Tentative Master Plan approval of the Crook Point Destination Resort be subject to the following conditions of approval to be met as a requirement of Final Master Plan approval:

1. A geological hazard assessment of the approved water retention/golf link lakes prepared by an Oregon Certified Engineering Geologist shall be prepared to assure such facilities will not cause landslides on surrounding properties;
2. For the purpose of minimizing trespass-related impacts to the Oregon Islands National Wildlife Refuge, the resort shall implement a strategy to prevent beach access north of the lodge area. This strategy shall include gating, fencing and signage of the refuge road and preventing access to the beach north of Mack Point by resort guests and the general public. In the event that any Crook lot is sold outside of direct lineal family ownership, the lot shall be deed restricted to prevent beach access;
3. For the purpose of avoiding light-related impacts to the Oregon Islands National Wildlife Refuge and surrounding properties, the applicant shall submit and implement a lighting plan. Such plan shall:
  - a. ensure that all fixtures be fully shielded so as not to allow light above a 90 degree angle,
  - b. use the minimum amount of lumens required for safety,
  - c. permit no lights to be directed toward the ocean,
  - d. include a policy encouraging windows in the upper stories of the lodge be screened or curtained at night, and
  - e. require that design of parking stalls and resort roads include provisions that prevent to the extent practicable headlights shining to the ocean.
4. For the purpose of avoiding predator-related impacts to the Oregon Islands National Wildlife Refuge, the resort shall provide high-quality bear and rodent-proof trash containment facilities and follow best practices in management and maintenance of those facilities. Best practices shall include but are not limited to:
  - a. daily collection of garbage from all outdoor receptacles,
  - b. keeping dumpsters and recycle containers covered and fastened closed at all times except when garbage and recyclable waste are actually being placed in or removed from containers,
  - c. storing trash in closed sheds or garages,

- d. periodic washing of containers to reduce odors, and
  - e. no stacking of garbage or recyclable waste outside of receptacles at any time.
5. For the purpose of preventing undue fragmentation of wildlife habitat that would impact the Oregon Islands National Wildlife Refuge and the adjacent Oregon State Parks, the project shall provide for wildlife corridors that minimize adverse barrier effects of the resort development by retaining north-south oriented and continuous forest corridors as wide as practicable and minimize improved crossings and roads with such corridors. In developed areas of the resort, a 100-foot wide corridor without structural improvements (not including roads, cart paths and golf related improvements that cross the corridor) shall be maintained between Hwy 101 and the top of sea cliff;
6. For the purpose of minimizing impacts to the Oregon Islands National Wildlife Refuge, the applicant shall design and construct the resort to include buffers as follows:
- a. the buffer zone along the 4<sup>th</sup> hole of the golf course will average no less than 100 feet with a minimum distance of 75 feet,
  - b. at the 3<sup>rd</sup> green, a 50 feet buffer zone will be provided, and
  - c. the buffer zones shall include native vegetation that is allowed to undergo natural succession except for the removal of trees deemed hazardous to people using the golf course.
7. For the purpose of minimizing impacts to the Oregon Islands National Wildlife Refuge, prior to initiation of construction of Hole #3, as submitted, the applicant shall provide a geological hazard assessment prepared by an Oregon Certified Engineering Geologist to ensure that construction of the golf hole will not increase the potential for landslides;
8. The resort shall include enhanced stream buffers for coastal cutthroat trout. Such enhanced buffers shall include trees and steep slopes adjacent to the streams wherever possible. Riparian vegetation to be retained under section 4.085 3(a) shall include all low growing native plants and as many trees as possible; and
9. The applicant shall develop and implement a program for monitoring of water quality in streams within the boundaries of the project. This program shall be planned and coordinated with DEQ and the South Coast Watershed Council. The program shall include baseline data collected prior to construction on the site and shall continue on a regular basis to provide water quality information for management of facilities.
- 
10. If archaeological objects are encountered during any construction activities; such construction activities in that specific area shall be halted, the Planning Department notified, and a qualified archaeologist shall be consulted at the owner's expense to evaluate the find.

11. Prior to Final Master Plan approval for one or more phases authorized under the Tentative Master Plan approval, on-site construction and development activities shall be limited to site preparation and grading for the approved golf course, building pads and construction of private and public infrastructure facilities including but not limited to water, sanitary sewer, irrigation, stormwater facilities and on- and off-site roadway improvements.
12. Prior to the issuance of any development permits the applicants shall comply with all applicable State Fire Marshal requirements in consultation with the Pistol River Volunteer Fire Department.
13. Prior to development of any habitable structures, a site-specific geologic hazard assessment shall be provided pursuant to the requirements of Section 3.250.
14. For fire safety purposes, more than one road for ingress and egress shall be provided unless the resort includes fire safety areas that are large enough so that all visitors and residents of the resort can congregate in vehicles and survive a passing wildfire. If a safety area is provided, it shall be kept free of combustible material and vegetation. Information indicating the location of the safety area shall be provided to all resort visitors and residents, and signs shall be posted around the safety area and throughout the resort providing directions to the safety areas.
15. Prior to Final Master Plan approval the applicant shall provide a survey of the "red line" described as the "Inland extent of lands affected by direct hydraulic action of coastal water" on the map prepared by Terra Firma titled "Crook Point Resort Proposed Shoreland Boundary". This surveyed line shall be the approved Shoreland Boundary.
16. The applicant must provide a draft of a Cooperative Improvement Agreement (CIA) approved by ODOT for US 101 access and transportation improvements prior to County approval of the Final Destination Report Master Plan.

The CIA must identify each access and transportation improvement, the funding source, construction timeline, and be consistent with the applicant's TIS as follows:

- a. Construct intersection improvements at US 101/Byrdies Lane including, but not limited to, a US 101 northbound left-turn lane improvement and connecting Carpenterville Road to US 101. This improvement will require closure of the US 101/Arch Rock Road intersection.
  - b. Provide proof of valid ODOT Road Approach Permits for Byrdies Lane and Burnt Hill Road.
  - c. Submit complete construction plans and provide proof of permit to construct prior to any work within the highway right-of-way.
17. An application for a permit or documentation that a permit is not needed shall be submitted to the Oregon Water Resources Department indicating that the Applicants have the right to divert a sufficient quantity of water from the proposed source to meet the projected need for domestic use

by the proposed destination for the next twenty year planning period prior to the issuance of any building permits for permanent residential structures.

18. A raw water supply flow monitoring device (flow meter) must be installed on the domestic water system to record the quantity of water used in the system on a monthly basis. The monthly record of water usage shall be reported to the Curry County Department of Public Services (Planning Division and Environmental Divisions) and Health Department on an annual basis.
19. The applicants shall provide the following documents prior to the issuance of occupancy permits for development within individual phases pursuant to the approved Final Master Plan:
  - a. A statement from the County Roadmaster that the new road(s), as designed, are consistent with the requirements for road construction as found in Article III of the Curry County Code.
  - b. Proof that the disclosure statement for the land division includes a statement that the County is not responsible for the construction or maintenance of any roads not accepted into the County Road system.
  - c. A road maintenance agreement approved by Curry County and recorded in conjunction with the final plat for any roads not accepted into the County Road system.
  - d. "As-built" engineering/construction grade documents in a format specified by the County for all development, including but not limited to, grading, transportation facilities and utilities.
  - e. A statement from a Registered Professional Engineer that the roads have been constructed as preliminarily approved by the County.

---

A land division application and preliminary plat is required for the proposed lots to be created within the destination resort. The applicants have submitted a preliminary plat prepared by a licensed surveyor. The plat meets the Land Division Ordinance requirements. If the Planning Commission grants tentative approval to the destination resort master plan, an additional approval will be required for the land division component. The following conditions of approval are recommended:

1. Preliminary plat approval is for 11 total lots: 10 residential lots and 1 large remainder for the resort.
2. Water, electric, sewage disposal, and telephone utilities shall be installed and extended to each lot. Field verification by planning staff will be required prior to final plat approval.
3. The final plat shall comply with Curry County Surveyor requirements.

4. The final plat and plan shall meet all requirements of the Curry County Land Division Ordinance for submission of final plats (Article V & VI) prior to scheduling a public hearing for final plat approval.
5. The roads serving the 10 residential lots shall be constructed to County Road Standards. Written confirmation from a licensed civil engineer of the as-built status of the roads shall be required prior to final plat submission.
6. Except for site preparation, infrastructure improvements and relocation and/or remodel of existing dwellings, no more than three (3) new residential dwellings may be constructed prior to the approved 18-hole golf course being constructed and open for play.