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June 18, 2018

VIA EMAIL

Hui Rodomsky
Lincoln County
Dept. of Planning and Development
210 SW 2nd Street
Newport, OR 97365

RE: Salishan PD Amendment Testimony

Dear Hui:

This letter constitutes AWI Salishan LLC's (the "Applicant") rebuttal testimony in connection with connection with Case File #01-PD-PC-18. Please add this letter and the attachments to the record. The Applicant will also be providing final written argument, as permitted under ORS 197.763(6)(e). To the extent that a participant submits additional evidence during the 7-day open record period, the Applicant specifically reserves its rights to request that the record be re-opened to respond to such evidence under ORS 197.763(6)(c).

At the outset, I apologize for the length of this letter. Given the breadth and volume of testimony submitted prior to and at the public hearing, the Applicant believes that it is critical to respond to all of the issues.

Historic Context of Planned Development

Before addressing the Applicant's rebuttal testimony, it is crucial for the Planning Commission to understand the context and regulatory background of the Salishan Planned Development. The Lincoln County Board of County Commissioners originally approved the Salishan Planned Development on January 10, 1968, via adoption of a zoning map identifying the subject property as R-1-PD. *See*, Exhibit A ("Original PD Map"). The 1968 approval did not include the approval of any specific use. Rather, Salishan was free to develop facilities within the broad context of the Planned Development. Over the years, at the request of the County, Salishan prepared, and the County adopted, general land use designations for the resort. For example, in 1976 Salishan sought to expand the resort and, as part of that application, the County adopted a general land use plan for Salishan. *See*, Exhibit B ("1976 PD Amendment Map"). As the 1976 PD Amendment Map demonstrates, the overall Planned Development is broken down into general use categories: Residential, Multi-family, General Commercial, Common Areas and Recreation. Under these broad categories, the developer was given wide latitude to develop corresponding facilities within these areas. Simply put, the County did not approve the specific location of the golf course. It did not approve the design or location of the lodge and supporting uses. It did not approve the Marketplace

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buildings. It did not approve the Tennis Center, nature trails, outdoor patio uses or any other specific element of Salishan.¹ Rather, provided that the underlying use was consistent with the general land use category, Salishan was free to develop such uses.

The Applicant has maintained from the beginning of this process that the recreation facilities, which are located wholly within areas designated as “Recreation” on the 1976 PD Amendment Map, do not require County approval. These elements were included in the present application at the request of planning staff to document their location and nature of the use. Simply put, mountain biking, tree climbing (Treeology), a challenge course (Adventure Park) and the zip line are not “uses” regulated by the LCC. To the extent that these activities fall into any category, they would fall into the definition of “Outdoor Recreation Activity” which is defined by the LCC as including “fishing, camping, swimming, clam digging, hunting, boating, hiking, bicycling, horseback riding and similar outdoor activities engaged in for leisure and recreation.” The LCC simply does not regulate these activities or specify where they may be located. People are free to fish, boat, bike or hike in any appropriate location without County approval. On the other hand, the LCC does regulate certain large scale outdoor recreation developments, such as picnic parks, campgrounds and organizational camps due to the extensive improvements required for such facilities. *See, e.g.*, LCC 1.1115(65). Unlike a organizational camp, the proposed recreational activities require no infrastructure and involve little or no improvements. For purposes of Salishan, the only restriction is that the “recreation” uses be located within an area designated as “recreation” on the existing PD map. By analogy, were the Applicant to construct a bocce ball court or plant a vegetable garden adjacent to Salishan Lodge, the County would have no regulatory authority over either improvement on private property. While the recreational elements were included for informational purposes so that planning staff could document this use in the Salishan PD, we do not believe that formal approval is necessary or consistent with the adoption and implementation of the Salishan PD over the last 50 years.

The Applicant’s position is supported by the fact that there is an existing challenge course at Salishan which was constructed approximately 30 years ago and which did not require County approval. *See*, Exhibit C. The existing challenge course includes several features, including a climbing wall, a High Y, a High V and a Grape Vine—all classic elements of a challenge course. Given that these features have been in operation for over three decades without objection in the same general location as the proposed features, there is little basis to now argue that the new elements will create conflicts when there is no record of any complaints regarding the existing course.

Applicable Criteria

At the public hearing, the planning director stated that the applicable criteria require the Applicant to demonstrate that the amendment to the existing Planned Development is “compatible” with the existing, Salishan Planned Development. We believe that the planning director’s statement is in error. The primary approval standard for Planned Developments is found in LCC 1.1380(3)(C), which provides:

The proposed development will provide the following amenities or protections at a higher level than would otherwise be provided under conventional land development procedures: Protection of significant natural and cultural features and resources, such as historical, scientific and cultural resources, fish and wildlife habitats, stream corridors,

¹ The County did, however, approve the preliminary and final plats of the residential elements of the resort pursuant to the County’s standard subdivision regulations.

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riparian areas, and wetlands; maintenance, enhancement or establishment of natural vegetation, especially indigenous plant communities; protection of scenic and aesthetic qualities; and creation of a high quality built environment which harmonizes with the natural and physical features of the site and includes design features such as suitably located open space, recreation facilities, and other public and common facilities, and also includes pedestrian oriented development which reduces reliance on automobile travel, provision of solar access or similar measures to promote energy conservation, or avoidance of risks and costs associated with environmental hazards.

Simply put, there is nothing in LCC 1.1380 which requires the Applicant to demonstrate “compatibility” with the approved Planned Development or “compatibility” with nearby uses. The question before the Planning Commission is whether the elements proposed through the current application, satisfy the above standard and the other approval criteria.

Protection of significant natural and cultural features and resources: There can be little doubt that the existing development meets this standard and provides a level of protection far above what would be found in a typical residential subdivision on the property. Vast areas of the property remain in open space. Significant tracts of trees have been retained. Wetlands have been preserved, maintained and expanded. Riparian corridors are protected. Moreover, the modest improvements proposed by the Applicant do no alter these protections. Mountain biking trails will be located on existing trails. The Glamping units will be located in an area currently used for golf maintenance and waste without the need for removal of any significant vegetation. Treeology, the zip line and challenge course are located within a forested area without the need for removal of any significant natural resources. As explained at the public hearing, these elements are specifically designed with the health and protection of the trees and existing natural resources as a top priority.

Creation of a high quality built environment which harmonizes with the natural and physical features of the site and includes design features such as suitably located open space, recreation facilities, and other public and common facilities: Again, the existing resort is renown throughout the region for the quality of the resort and how it harmonizes with nature. The proposed Glamping units will continue on this path. The units are specifically located in an area within a larger grove of trees to transform the existing golf maintenance and waste area into a quiet camping retreat with the express intention of providing guests an opportunity to connect with the natural environment. Moreover, this standard expressly requires the provision of recreation facilities which harmonize the natural features of the site. It is hard to imagine a recreation opportunity that accomplishes this goal more than the proposed features, especially given their location within the tree canopy.

While there was ample testimony regarding the proximity of the recreation features to homes within The Island development, the above standard provides no limitation or other restrictions on the location of these facilities. Indeed, this standard strongly encourages recreation facilities than engage the guest with the natural elements of the site. Although not applicable to this application, the Conditional Use standards in LCC 1.1630 demonstrate that the recreation facilities are adequately set back from adjacent uses. LCC 1.1630(3) (b) imposes a 30-foot setback for community swimming pools from adjacent residential uses in a residential zone. The recreation features proposed by the Applicant have a minimum setback of 150 feet from the nearest residence—which is five times the setback imposed for a swimming pool in a residential zone. If a community swimming pool filled with screaming children can be located 30 feet from a residence, there is simply no basis to conclude that a zip line located within a

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forest canopy at least 150 feet from the nearest residence is too close. Similarly, to the extent that the recreational features are considered as a “recreation establishment” the LCC imposes a 75-foot setback from residential zones. The Island development is within the Salishan “Residential” designation and is more than twice the distance of the 75-foot setback applied to “recreation establishments.” Again, while these setbacks do not directly apply, they are illustrative of the fact that the proposed setbacks from The Island development are far greater than those imposed under the County’s conditional use standards.

All or Nothing Approval

The Planning Director also indicated that the Planning Commission had to either approve the entire application or deny the entire application as proposed by the Applicant. While we generally agree with that statement, we believe that the Planning Commission has the express authority to impose conditions which could result in an approval which varies from the original proposal. For example, based on public comments, the Applicant has proposed to relocated portions of the zip line further from the nearest residence. The Applicant would accept and would not challenge the following condition of approval:

The Applicant shall modify the location of the zip line feature such that no zip line or supporting structure is within 150 feet of the nearest residence.

Similarly, due to significant concerns regarding the employee housing, the Applicant has agreed to drop that element of the proposal. To the extent that there is any concern regarding the removal of the employee housing element, the Applicant would accept and would not challenge the following condition of approval, which the Applicant believes could never be satisfied:

The Applicant shall not operate any portion of the Salishan Marketplace as employee housing until a majority of the Leaseholders have voted in favor of the employee housing proposal.

While we do not believe that either condition is necessary, we believe that the imposition of these conditions is permitted by the LCC and would alleviate any concern about the Applicant modifying its proposal and the ability of the Planning Commission to approve a “modified” proposal.

Sewer and Water

Several opponents have argued that the Applicant is required to demonstrate that the Salishan Sanitary Service District has sufficient sewer and water capacity to serve the Glamping units. Putting aside the fact that there are a total of only 11 new lodging units that will be used seasonally and which will have a de minimis impact on sewer and water services, no approval standard requires the Applicant to demonstrate the adequacy of water and sewer. Consequently, the Planning Commission may not consider this issue when evaluating the proposal for consistency with the applicable approval standards.

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Use of Salishan Leaseholder's ("SLI") Trails

To be clear, the Applicant does not propose to utilize any portion of the SLI trails or other property owned or controlled by SLI. The proposal before the Planning Commission involves improvements located solely on the Applicant's property on the east side of Highway 101. Concerns regarding trail use, beach use by the general public or resort guests have absolutely no bearing on the present application. The Applicant is well aware of the limitations placed on SLI-owned roads and trails pursuant to the underlying agreements between the resort and SLI. Because the present application does not relate in any way to the SLI-owned facilities, the Planning Commission cannot consider these concerns when evaluating the proposal against the approval criteria.

Responses to Specific Objections

- Kimberly Lynch:** On behalf of Ms. Lynch, the law firm of Ball Janik LLP filed a four-page objection letter. Ball Janik's letter entirely misconstrues the application and the applicable approval criteria. Ball Janik asserts that Ms. Lynch's home is "adjacent" to the proposed project. Ms. Lynch resides on Beach Grass Place, on the spit and over 4,000 feet as the crow flies from the nearest element of the proposal. Moreover, most of Ms. Lynch's comments center on concerns regarding use of SLI trails, beach access and impacts to wildlife on the spit—none of which relate in any way to the elements proposed in the PD Amendment. The Applicant does not propose to provide beach access as part of the PD Amendment. Given the deletion of the employee housing aspect of the PD Amendment, Ms. Lynch's comments regarding Goal 2 and Goal 9 have no bearing on the Planning Commission's consideration of this proposal. The balance of Ms. Lynch's testimony relates to purported violations of the SLI agreements with Salishan. Again, the underlying agreements between SLI and the resort cannot be considered by the Planning Commission. While the Applicant is aware of its rights and obligations under these agreements, nothing in the PD Amendment application implicates these agreements or otherwise would result in a violation of these agreements. The Planning Commission should disregard Ms. Lynch's testimony as irrelevant to the approval criteria.
- James T. Carkulis:** Mr. Carkulis generally argues that because the LCC does not include an express Planned Development amendment process, Salishan must "requalify" as a new Planned Development. There is no support for this contention in the LCC. There can be little doubt that Salishan is an approved Planned Development. Moreover, in connection with the 2004 approval of the Spa at Salishan, the County expressly recognized that the amendment process had been inadvertently deleted from the LCC in 1997. As a consequence, rather than going through an amendment process, the County required the applicant in 2004 to demonstrate that the proposal—that is, the spa project—was consistent with the Planned Development regulations in their entirety. The County did not, and may not at this point, require Salishan to "requalify." Moreover, if the Applicant is prevented from amending the Planned Development by processing the application pursuant to the standards of LCC 1.1380, the County would be imposing a de facto moratorium on development in violation of state law. The County is free to interpret the LCC consistent with the 2004 spa approval and to process the present application in the same manner. The County can simply recognize the existing Salishan development and make findings that demonstrate that the existing development, together with the modest improvements contemplated by the present application are consistent with LCC 1.1380. Nothing more is required.
- Golf & Tennis:** Many objections related to rumors regarding the continuance of golf and tennis at Salishan. While it remains completely at the Applicants discretion whether it continues to operate golf

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and tennis, as part of the application, the Applicant is not proposing any changes to golf or tennis facilities. Any such changes are well outside the County's regulatory authority. Consequently, the Planning Commission should disregard all comments regarding golf and tennis as irrelevant to the approval criteria. In addition, to the extent that the Applicant may be required to provide an emergency access road over a fairway on the Applicant's property similarly has no bearing on the approval criteria.

4. **Impacts to Beach and Dunes:** Many SLI owners have objected to possible impacts to the beach, dunes, wildlife and the Salishan Spit. Again, no part of the Applicant's proposal relates in any way to the use of SLI property or the Salishan Spit. The Planning Commission should disregard all comments regarding this issue as they do not relate to the proposal before the Planning Commission or the applicable approval criteria.

5. **Bike and Kayak Rentals:** Several opponents have objected to the use of the Marketplace as a location for bike and kayak rentals. The Marketplace is designated in the approved Salishan Planned Development as "Commercial." Whether the Applicant or a tenant of the Marketplace elects to open a facility that rents bikes, kayaks or other recreational equipment is entirely within Applicant's existing rights and is wholly outside the scope of the present application or the County's regulatory authority. The Planning Commission should disregard all comments regarding this issue as they do not relate to the proposal before the Planning Commission or the applicable approval criteria.

Conclusion

We urge the Planning Commission to focus on the actual approval criteria for this application and to disregard an overwhelming majority of the comments filed by opponents. While the Applicant has listened to the concerns, has eliminated the most contentious element of the proposal and modified the recreation elements to address neighbor concerns, we believe that most of the objections do not relate to the approval criteria. We also urge the Planning Commission to recognize that a very large segment of the community is in favor of the proposal put forward by the Applicant. We thank the Planning Commission for its time and efforts on this application.

Very truly yours,

/s/ Steven P. Hultberg

Enclosure(s)

cc: Ken Cruse