

BEFORE THE PUBLIC UTILITIES COMMISSION
OF OREGON
Docket No. PCN-2

In the Matter of Tillamook People’s Utility District’s Petition for Certificate of Public Convenience and Necessity (PCN-2))))	Oregon Coast Alliance’s Response to Staff’s Motion to Modify the Procedural Schedule
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Oregon Coast Alliance (ORCA) submits this Response to Staff’s Motion to Modify the Procedural Schedule. ORCA has no objection to staff’s proposal and agrees with and adopts the three arguments of staff. ORCA also notes an additional argument not raised by staff.

Under OAR 860-025-0030(3)(a), a copy of the local land use permit must be provided by the applicant. It is important for the County Board of Commissioners, in the first instance, to make the final decision on the land use application because local governments are due varying degrees of deference in the interpretations of their land use regulations. *See Siporen v. City of Medford*, 349 Or 247, 266 (2010). Without going into the various layers of deference, the deference afforded a County Board of Commissioners’ interpretation of its land use regulation depends on whether the land use regulation is implementing state law (e.g., statute, statewide planning goal, administrative rule) or not. *Id.* The Administrative Law Judge, here, however, would not be given the same degree of deference that the County Board of Commissions is afforded. Thus, even

in the unlikely event that the County Board of Commissioners' final decision mirrors that of the ALJ's decision, the deference given to the interpretations would be different if the two applications were decided concurrently. As such, it is reasonable for the land use component of this application to be initially and solely addressed by the County Board of Commissioners. Once that occurs, the ALJ can rely on that decision and there will be no divergent interpretations of the land use regulations at issue.

To ORCA, staff's proposal is likely to be the most efficient in resolving the overlapping issues related to land use that arise both here and before the County Board of Commissioners.

Respectfully Submitted this 17th Day of April 2018,

/s/ Sean Malone

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