BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

BOTTS MARSH, LLC,	)	
	)	
Petitioner,	)	
	)	
vs.	)	
	)	LUBA NO. 2022-002
CITY OF WHEELER,	)	
	)	
Respondent.	)	
	)	
and	)	
	)	
OREGON COAST ALLIANCE,	)	
	)	
Respondent-Intervenor	)	
	)	

OREGON COAST ALLIANCE'S RESPONSE BRIEF

Sean Malone, OSB No. 084060
Attorney at Law
259 E. 5th Ave., Suite 200-C
Eugene, OR 97401
(303) 859-0403
Attorney for Respondent-Intervneor

Jennie Bricker, OSB No. 975240
Land Shore Water Legal Services, LLC
818 SW Third Avenue, PMB 1517
Portland OR 97204
(503) 928-0976
Attorney for Petitioner

Bill Kabeiseman, OSB No. 944920
Carrie Richter, OSB No. 003703
Bateman Seidel
1000 SW Broadway, Suite 1910
Portland, OR 97205
(503) 972-9920
Counsel for Respondent

Sara Curtiss, OSB No. 076333
Stoel Rives, LLP
760 SW 9th Avenue, Suite 3000
Portland OR 97205
(503) 294-9829
Attorney for Petitioner

March 31, 2022

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I. RESPONSE TO PETITIONERS' STANDING TO APPEAL

Intervenor-Respondent Oregon Coast Alliance (ORCA) does not contest Petitioners' standing to appeal.

II. RESPONSE TO STATEMENT OF THE CASE

A. NATURE OF THE LAND USE DECISION AND RELIEF SOUGHT

ORCA disagrees with Petitioner's legal conclusions. ORCA requests that LUBA affirm the City's decision.

ORCA will provide a response to the Second and Third Assignments of Error.

B. SUMMARY OF RESPONSE TO ARGUMENTS

Second Assignment of Error: The City's findings correctly construe, are adequate, and are supported by substantial evidence with regard to WZO 11.050(4)(a)(6), (b)(1), (b)(2), (b)(3), and (b)(5).

Third Assignment of Error: The City did not act outside its range of jurisdiction, and the Petitioner's reliance on ORS 197.195(1).

C. RESPONSE TO PETITIONER'S SUMMARY OF MATERIAL FACTS

ORCA believes the applicant's summary of material facts is largely irrelevant. ORCA adopts the summary of material facts contained in Respondent City of Wheeler's Response Brief.

III. JURISDICTION

Intervenor does not dispute that LUBA has jurisdiction over this matter.

IV. RESPONSE TO SECOND ASSIGNMENT OF ERROR

The City's findings regarding WZO 11.050 determined that the applicant did not satisfy five separate criteria. If LUBA affirms any single criterion, then LUBA should affirm the City's decision as it relates to Petitioner's Second Assignment of Error. *See Johns v. City of Lincoln,* 34 Or LUBA 594 (1998) ("On review of a local government's denial of a development permit, the local government is required to establish nly one basis for denying petitioner's application."); *R/C Pilots Assoc. v. Marion County,* __ Or LUBA __ (LUBA No. 96-250, October 2, 1997) *citing Baughman v. Marion County,* 17 Or LUBA 632, 636 (1989).

A. Response to WZO 11.050(4)(a)(6)

WZO 11.050(4)(a)(6) requires that building entrances have certain characteristics:

> "Primary building entrances shall open directly to the outside and shall have walkways connecting them to the street sidewalk. Create storefronts and entries that are visible and easily accessible from the street. Either orient the primary entrance to the building along a street facing property line or create an ADA accessible courtyard / plaza incorporating pedestrian amenities including street trees, outdoor seating and decorative pavers. Ensure a direct pedestrian connection between the street and buildings on the site, and between buildings and other activities within the site. In addition, provide for connections between adjacent sites, where feasible."

The relevant findings in support of denial provide as follows:

> "the applicant must ensure a direct pedestrian connection between the buildings and other activities, including direct pedestrian access from the one side of the parking lot to the buildings. The site plan demonstrates that a direct pedestrian connection is frustrated by the loading area, placed in the middle of the building and on the eastside of the building facing the street, effectively dividing the parking lot and not allowing direct pedestrian access to the entrance for half of the parking spaces. This design would appear to create safety problems for patrons and workers accessing the building to have to navigate forklifts or trucks that are loading/unloading. Entryways on the west and north appear to be doors but no access to those doors via sidewalks. Effectively, those entryways do not connect to the street because the sidewalks do not even connect to the entryways. As such, the applicant has failed to carry its burden under this criterion, and this criterion is not satisfied.

First, Petitioner takes issue with WZO 11.050(4)(a)(6), which focuses on "primary building entrances." Below, the applicant alleged that there was only one "primary entrance to the building," which is at the south side of the building: "Primary entrance to the building will be located on the south portion of the building. The primary entrance will lead to a created ADA accessible courtyard. (See Exhibit II – Site Plan)." R 216-217. Despite this, the applicant, in its brief, uses the plural "Primary entrances." *See e.g.,* Petition at 23 ("there are sidewalks encircling the parking lot that connect the building's *primary entrances*") (emphasis added).

Second, the applicant's design has restricted half of the parking lot by frustrating (*i.e.*, blocking) the sidewalk from directly connecting to the primary entrance. The sidewalk does not "encircle[e]" the parking lot, as alleged by the applicant and as demonstrated on the site plans. Petition at 22 (Petitioner alleging that "there are sidewalks encircling the parking lot"). Half of the parking lot

sidewalk is disconnected from the primary entrance as a result of the loading dock, as well as the entry. There is simply no direct connection from one half of the parking lot to the other half of the parking lot, as evidenced by the site plans. *See* R 94, 96, 97, 100.

Third, Petitioner alleges that the "Decision does not explain *how* the loading area frustrates pedestrian connections between the building and other activities on the site." Petition at 23 (emphasis in original). Petitioner is feigning ignorance. The loading area clearly interrupts (*i.e.*, frustrates) the continuity of the sidewalk, which conflicts with the criterion. The applicant is capable of designing a site plan that includes a sidewalk that "[e]nsure[s] a direct pedestrian connection between the street and buildings on the site, and between buildings and other activities within the site." The entrance to the parking lot also frustrates the continuity of the sidewalk. *See* R 96-97 (site plans). If half of the parking lot is restricted, by way of the loading dock and the entrance to the site, then the applicant has not designed a "direct pedestrian connection" between the building and the other activities, including the other half of the parking lot. In other words, there is no direct access from half of the parking lot to the commercial part of the building. Moreover, the "safety issues" raised at the Petition at 23 are merely products of failing to provide the "direct pedestrian connection." "Safety" is not directly an approval criterion,

but "safety" does appear to be reason for the "direct pedestrian connection" requirement.

Petitioner points to the findings for WZO 11.050(4)(a)(10), but Petitioner's argument is misplaced. Petition at 23. That provision only requires a "hard-surfaced" access system. The City never found that patrons would be required to traverse grassy knolls, climb embankments, or wade through water to get to the entrance. Clearly, the parking lot and sidewalks would all be "hard-surfaced," but that is a different standard than what is required under WZO 11.050(4)(a)(6). The findings for WZO 11.050(4)(b)(6) are no different when referencing a "concrete walkway." Providing for a hard-surfaced sidewalk that is interrupted by a hard-surfaced loading area and a hard-surfaced parking lot is not a "direct pedestrian connection," in the City's view. The applicant must simply connect the parking area (*i.e.*, other activities) to the commercial and industrial parts of the building, including the primary entrance, via a direct pedestrian connection. It is not enough to satisfy this criterion to have patrons and workers access the commercial part of the building, including the primary building entrance, without having to dodge incoming vehicles – whether that is for purposes of loading in the middle of the parking lot or for those entering and exiting the parking lot via the entrance.

Petitioner also takes issue with the following findings:

> "In order to avoid having an entrance facing the street, the applicant alleges that '[t]he primary entrance will lead to a created ADA accessible

courtyard.' A courtyard is generally defined as an unroofed area that is completely or mostly enclosed by the walls of a large building. There does not appear to be any such place on the site plans. However, even assuming that the applicant could satisfy such a definition, there does not appear to be any courtyard identified on any site plan in the record. Moreover, there is no evidence identifying what the applicant proposes as a courtyard or what such a courtyard would look like. At a very minimum, the applicant would have to identify a courtyard on the site plan, but the applicant has failed to make such a showing. In the absence of a courtyard, the applicant is required to place the entrance facing the street. Again, the site plans plainly show that the entrance does not face the street. Without evidence in the record of a courtyard and its location or a street-facing entrance, the applicant failed to carry its burden. Therefore, this criterion is not satisfied."

It is undisputed that the primary entrance does not face the street, and, therefore, the applicant must "create an ADA accessible courtyard / plaza incorporating pedestrian amenities including street trees, outdoor seating and decorative pavers." WZO 11.050(4)(a)(6). Moreover, at no time below did the applicant allege that it was providing a "plaza," despite now alleging that a plaza is consistent with the site plans. Moreover, none of the site plans identify a "plaza."

The applicant only alleged, in a single statement, that "[t]he primary entrance will lead to a created ADA accessible courtyard (See Exhibit II – Site Plan)," R 68, but the application does not identify a courtyard on any of the stie plans (and does not include any of the listed amenities on the site plan), *see* R 83-87, 94, 96, 97. Other than a staff statement, there is nothing on a site plan that identifies a "courtyard." As such, Petitioner's allegations about a plaza are occurring for the first time here.

Petitioner concedes that "courtyard" is not defined in the WZO, Petition at 24, an alleges that the dictionary definition would "frustrate the intent of guideline 4.a.6, which is to provide a *direct pedestrian connection*," *id.* Petitioner alleges that "[i]f the proposed courtyard were [*sic*] 'completely or mostly enclosed by a large building,' the storefront would no longer be visible and easily accessible as the guideline requires." *Id.* There could be an inherent contradiction if the courtyard were completely enclosed but if not completely enclosed, then the requirements of the guidelines can still be satisfied. Moreover, because the street does not face a street, it remains to be seen how the primary entrance is visible from the street. Instead, what is most visible from the street is a parking lot and a loading dock.

B. Response to WZO 11.050(4)(b)(1)

WZO 11.050(4)(b)(1) requires that new development be compatible with the site and adjoining buildings; it provides as follows:

> "The height and scale of the buildings should be compatible with the site and adjoining buildings. Use of materials should promote harmony with the surrounding structures and site. The materials shall be chosen and constructed to be compatible with the natural elements and applicable city ordinances."

The relevant findings for WZO 11.050(4)(b)(1) provide as follows:

> "while the applicant's response to this criterion simply lists the materials proposed to be used, the applicant has not proposed how the height and scale of the proposed buildings will be compatible with the site or adjoining buildings. Similarly, the applicant has not indicated how the materials

> proposed will promote harmony with the structures and site. Instead, the applicant has simply listed the proposed materials. Finally, the applicant has not demonstrated how the materials are compatible with the natural elements. The City Council is unable to discern the applicant's rationale for the applicant's proposal. Without some argument and evidence in the record to demonstrate how the materials chosen are compatible and promote harmony, the Council cannot find that this provision has been satisfied. Moreover, the applicant has not included in the record any information on the "natural elements" that are identified in this criterion and for which there must be a finding of compatibility. As such, the applicant has not carried its burden of proof in demonstrating how this criterion is satisfied."

Despite including a mandatory approval criterion employing the word "shall," WZO 11.050(4)(b)(1) ("The materials shall be chosen and constructed to be compatible with the natural elements and applicable city ordinances."), the applicant refers to this requirement as "soft." Petition at 25. Even the applicant cites to the WZO and acknowledges that "[t]he word shall is mandatory[.]" *Id.* Inconsistent with the applicant's burden of proof, the applicant alleges that it was not incumbent upon the applicant "to provide specific evidence, argument, or draft findings demonstrating 'compatibility' and 'harmony.'"

The applicant, in response to this criterion, below simply listed "types of material," R 70, but did not address how those materials are "compatible with the natural elements." If the applicant failed to provide any rationale as to why the materials provided are "compatible with the natural elements," then it is not the City's job to do that work for the applicant. Despite not providing this information below, the applicant now attempts to shore up the failure by providing the missing

rationale. *See* Petition at 26 (alleging that "site plans show that the footprint and configuration of the building and parking lot fit into the site by following the curved Marine Drive alignment to the east and the sinuosities of the Nehalem Bay shoreline to the west."). The applicant's attempts at this late-stage is insufficient.

Petitioner next argues that it need only submit "a site plan, building elevations, and a plot plan" in order to satisfy all criteria. *See* Petition at 27. But that is not all that the applicant submitted below. Indeed, the applicant submitted a brief narrative. *See* R 66-74. Despite the applicant's failure to make the relevant arguments below in support of the criteria, pursuant to the applicant's burden of proof, the applicant purports to place "at least some of the 'burden of proof' for knowledge of the site and surrounding areas on the City." Petition at 27.

C. Response to WZO 11.050(4)(b)(2)

WZO 11.050(4)(b)(2) requires the City to evaluate the quality of design for new development; it provides as follows:

> "Architectural style should not be restricted[.] Evaluation of a project should be based on quality of design and the relationship to its surroundings. However, the use of styles characteristic of Wheeler and the coastal area are preferred. These include the use of natural wood siding such as cedar shingles. The City encourages the use of pitched roofs, large overhangs, wood fences and wood signs. Colors should be earth tones harmonious with the structure, with bright or brilliant colors used only for accent."

Petitioner sets forth the relevant findings at Petition at 28-29. *See also* R 31-32. As noted by the findings, the applicant alleged that "Project design was influenced

from historical pictures of previous buildings in Wheeler' and points to Exhibit III, which is an elevation of the building at issue. Notably, the applicant did not provide any "historical pictures of previous buildings in Wheeler." Accordingly, without any evidence to support the criterion, the City found that the applicant failed to carry its burden of proof. R 16.

While the standard states that "architectural style should not be restricted," the City requires some evidence to show that the remainder of the standard is somehow satisfied. The City is not requiring "strict adherence" but rather a modicum of evidence to demonstrate that the applicant is even addressing the standard. If the applicant alleges that the building is based on historic buildings, but fails to provide any evidence of such historic buildings, then the applicant has not submitted evidence to support its allegations.

D. Response to WZO 11.050(4)(b)(3)

WZO 11.050(4)(b)(3) requires new development to provide some level of visual interest through design; it provides: "Monotony of design in single or multiple building projects shall be avoided. Variety of detail, form, and site design shall be used to provide visual interest." The relevant findings are as follows:

> "The Council finds that the applicant has not carried its burden under WZO 11.050(4)(b)(3). The proposed structure is largely dominated by gray/black metal with only a small amount of wood proposed. The Council notes that other provisions of the zoning ordinance encourage natural wood siding. Here, there is only a relatively small amount of the structure devoted to natural wood. Monotony is defined as a lack of variety, tedious repetition,

and routine. The Council finds that the use of two materials, with the exception of the roofing and windows, to lack variety and to be monotonous. The Council finds that it does not provide visual interest. The north and west elevations show nothing but the similar patterns of windows amidst gray/black metal siding and a single door. The Council finds the north and west elevations are particularly monotonous and lack detail. Given the site's location on the waterfront, the Council believes the requirements in this criterion are particularly important. The Council finds that the applicant has submitted inconsistent information regarding the window trim. On one hand, the vinyl windows are referred to as white in the narrative, yet they appear black in elevations and plans. The Council finds that the applicant has not satisfied this criterion."

R 15.

Petitioner's primary argument under this criterion is that the staff report should be followed instead of the City Council's findings. The staff report identifies a "break in the roof line," a contrasting "wooden exterior" and a "metal structure," that there are windows, and that there is an entrance. *See* R 110 (staff report). Simply put, windows and an entrance are not a "variety of detail, form, and site design" that provides "visual interest." Instead, windows and an entrance are routine, normal components of a building.

Regardless, the City reviewed the site plans and the applicant's narrative, including the gray/black metal with a small amount of wood. *See* R 15; R 94 (representation showing eastside of building with only a small amount of wood). The City acknowledged that the applicant only used two materials, and that the overwhelming amount of material was black/gray metal. R 15, 94. The City reviewed the definition of "variety" and determined that the north and west sides of

the building lack variety and are routine in that they "show nothing but the similar patterns of windows amidst gray/black metal siding and a single door." R 15. The City's interpretation of "monotony" is entitled to deference. *See Siporen v. City of Medford*, 243 P.3d 776 (2010).

Petitioner alleges that "the Decision does not even reference breaks in the roof line, windows and entrances[.]" Petition at 31. Not so. The findings above explicitly refer to the roofing and the windows, as well as the doors on the north and west side of the building. The City found that the windows from the elevations showed similar patterns, which did not show a "variety." Petitioner alleges, for the first time, a variety of arguments in support that were never set forth below. For example, the applicant alleges that it demonstrated a "variety of *site design* in the configuration of the building and parking lot, which fit into the site by following the Marine Drive alignment to the east and the Nehalem Bay shoreline to the west, and also in exceeding the landscaping requirement for the building's east elevation." Petition at 32 (emphasis in original). If the applicant wanted the City to entertain such arguments, then the applicant should have done so below, pursuant its burden of proof. The City is not in a position to make the applicant's case. It is not enough to believe that the City should implicitly understand what the applicant believes if the applicant does not set forth such arguments in some manner. The findings determine that the use of two materials,

with the exceptions of roofing and windows, are monotonous and lack variety and visual interest. If the applicant were to use a greater variety of materials and did not use similar patterns of windows and doors, then it is likely that the applicant can satisfy this criterion.

Next, Petitioner argues that "the Decision contradicts the conclusion of noncompliance with guideline 4.b.(3)," Petition at 32, by pointing to the findings for WZO 11.050(4)(b)(9) and (b)(10). WZO 11.050(4)(b)(9) provides that "[m]ulti-story commercial, mixed-use or multifamily dwellings shall have ground floors defined and separated from upper stories by architectural features that visually identify the transition from ground floor to upper story." R 16. The findings state that [t]he commercial portion of the structure has a distinct roof separation and exterior finish (metal ground floor, wood second floors which visually separates the two floors. In addition, the second floor runs perpendicular to the ground floor." *Id.* WZO 11.050(4)(b)(3) and (b)(9) contain different requirements. Petitioner would prefer that satisfying (b)(9) would be sufficient (b)(3), but, again, they contain different requirements. Nothing about satisfying (b)(9) means that (b)(3) must also be satisfied. As for WZO 11.050(4)(b)(10), the findings address "shielded lighting on street-facing elevations," which is only one of four sides to the development. The finding for the east side of the building does not control the "[v]ariety of detail, form, and site design" for the entire building.

Under (b)(3), more than a single side of the building was addressed. In fact, the findings for (b)(10) explicitly note that the "north and west sides of the structure contain blank walls ...." R 35. Even assuming the eastside of the building breaks up the monotony, the north and west elevations are blank walls, and Petitioner does not dispute those findings. Because (b)(3) addresses the entire building, and (b)(10) addresses only a single side of the building, Petitioner's argument is misplaced.

Notably, the applicant does not address or allege fault in the findings related to the applicant "submitted inconsistent information regarding window trim. On one hand, the vinyl windows are referred to as white in the narrative, yet the appear black in elevations and plans." R 15; R 83, 84, 94 (showing black trim); R 70 (list of types of material: "Windows: Vinyl/white trimp"). If the applicant has not submitted consistent information about the detail of the structure, then the application cannot satisfy a criterion that requires the City to look to the design of the building. However, if the applicant submits consistent information about the design of the building with further variety, then the applicant can likely satisfy this criterion.

E. Response to WZO 11.050(4)(b)(5).

WZO 11.050(4)(b)(5) requires the City to take into account views from adjacent or other areas; it provides: "The impact that structures will have on views

from adjacent or other areas will be taken into account." The findings for this criterion provide as follows:

> "The City Council finds that there is evidence in the record that the proposal will block views from an adjacent or other area, including a residence across highway 101. The Council finds that the "adjacent" and "other areas" is broad enough to include the residence across from Highway 101. The applicant's justification that '[t]he building will be no taller than 24 feet, which is the allowable height.' The Council finds that this criterion is not reduced to the maximum height allowed but rather whether there will be an impact to structures that have views. If the criterion could be satisfied merely by complying with the height restriction, then the criterion would have no independent purpose from the height restriction, making it superfluous. This criterion is intended to protect views, including those from adjacent structures or structures in other areas. The Council finds that the residence at 175 Nehalem Boulevard is such a structure that would have its view of the Nehalem Bay adversely affected. The Council finds that this criterion has not been satisfied."

R 15-16. As noted in the findings, the only rationale provided by the applicant below was that "[t]he building will be no taller than 24 feet, which is the allowable height." R 71. Because the applicant did not even attempt to disclose that other structures could be affected, the applicant did not take that structure "into account." Instead, the applicant only focused on its own building without regard to other adjacent structures in the area. If the applicant "take[s] into account" views from other structures and other areas, then the applicant may very well be capable of satisfying this criterion, but, again, the applicant provided nothing in the way of evidence or argument to address this criterion. Petitioner alleges that 90 percent of the site is open space, citing to R 63, 71, 86, 87, 96, 110. Unfortunately, none of

those record citations indicate that the site is 90% open space, assuming that is a correct statement. Again, the applicant is attempting to carry its burden of proof too late. Had the applicant made such an argument, supported by evidence in the record, and "taken into account" views from adjacent dwellings and other areas, then the applicant could have satisfied this criterion. The applicant, however, did not take any other structures or areas into account when attempting to demonstrate whether views would be affected.

Petitioner refers to this criterion as "soft, discretionary guideline," Petition at 33, but the criterion uses the word "will," which is not consistent with what the Petitioner characterizes as "soft." The criterion is, however, discretionary. Regardless, the applicant did not present *any* evidence – aside from the height of the building – about the views from adjacent or other areas. The applicant's refusal – intentional or not – to consider any such views did not assist the application.

V. RESPONSE TO THIRD ASSIGNMENT OF ERROR – The City did not act outside its range of jurisdiction.

A. Response to Argument

Petitioner argues that "[s]tandards that have not been incorporated into the applicable land use regulations do not provide applicable criteria and may not be

relied upon as reasons for denial." Petition at 35 (citing ORS 197.195(1)). In full, ORS 197.195(1) provides that:

> "A limited land use decision shall be consistent with applicable provisiosn of city or county comprehensive plans and land use regulations. Such a decision may include conditions authorized by law. Within two years of September 29, 1991, cities and counties shall incorporate all comprehensive plan standards applicable to limited land use decision into their land use regulations. A decision to incorporate all, some, or none of the applicable comprehensive plan standards into land use regulations shall be undertaken as a post-acknowledgment amendment under ORS 197.610 to 197.625. If a city or county does not incorporate its comprehensive plan provisions into its land use regulations, the comprehensive plan provisions may not be used as a basis for a decision by the city or county or on appeal from that decision."

The statute is concerned with applying comprehensive plan provisions to limited land use decisions, *see Paterson v. City of Bend,* 49 Or LUBA 160, *aff'd, in part, rev'd and rem'd on other grounds,* 201 Or App 344, 118 P3d 842 (2005), and the City's decision does nothing of the sort.

Instead, Petitioner argues that "[t]he City based its findings of noncompliance with the design review guidelines primarily on Petitioner's alleged failure to provide argument or draft findings relating to compliance." Petition at 35. Petitioner further posits that:

> "there is simply nothing in the WZO to suggest that the site plan, building elevations, and plot plan – all of which are required by WZP Section 11.050.3 – do not provide the necessary evidence to show compliance with the design review guidelines or that a design review applicant must provide extensive written findings on each and every design guideline."

Id. First, Petitioner misses the mark because the applicant must carry its burden of proof. Simply submitting any "site plan" or "elevation" is not sufficient to approve an application, especially if they are not aided by any argument or if they contain conflicting information . The standards require more. They require "compatibility," "harmony," a design that avoids monotony, amongst other value-laden, discretionary criteria. The code provides that "no permit will be issued until site plans have been reviewed and approved under Comprehensive Plan Policies and Ordinance Provisions * * *," WZO 11.050.2, but that does not mean that all site plans, bereft of some argument or rationale, must automatically be approved. Indeed, Petitioner acknowledges that "the applicant is responsible for demonstrating compliance with the applicable design review guidelines[.]" Petition at 35. TheThe City is not able to supply a rationale for the applicant for why various discretionary and subjective design review criteria are satisfied, if the site plans, elevations, and so forth do not address all applicable criteria (or that they contain unexplained inconsistencies), then the applicant cannot be heard to complain under ORS 197.195(1). Indeed, while the WZO 11.050(2) and (3) identify elements that must be provided, WZO 11.050(4)(a) and (b) include a host of "guidelines [that] shall be used by the Planning Commission in the evaluation of proposals[.]" WZO 11.050(4). Those guidelines are within the WZO, not the

comprehensive plan. As such, the applicant's argument under ORS 197.195(1) is misplaced and must be rejected.

VI. CONCLUSION

ORCA respectfully requests that LUBA affirm the City's decision.

Respectfully submitted this 21st day of March, 2022.

By: _____

Sean T. Malone, # 084060
Counsel for Intervenor
Oregon Coast Alliance

CERTIFICATE OF COMPLIANCE, FILING, AND SERVICE

I certify that (1) this brief complies with the word-count limitation in OAR 661-010-0030(2) and (2) the word count of this brief as described in OAR 661-010-0030(2) is 4754 words.

I certify that on March 21, 2022, I filed the original of Intervenor's Response Brief along with four copies with the Land Use Board of Appeals, DSL Building, 775 Summer Street NE, Suite 330, Salem OR 97301-1283, by Certified First Class Mail, Return Receipt Requested.

I also certify that on March 21, 2022, I served a true and correct copy of this Response Brief by First Class Mail to the following person(s):

Bill Kabeiseman, OSB No. 944920
Carrie Richter, OSB No. 003703
Bateman Seidel
1000 SW Broadway, Suite 1910
Portland, OR 97205
(503) 972-9920
Counsel for Respondent

Jennie Bricker, OSB No. 975240
Land Shore Water Legal Services, LLC
818 SW Third Avenue, PMB 1517
Portland OR 97204
(503) 928-0976
Attorney for Petitioner

Sara Curtiss, OSB No. 076333
Stoel Rives, LLP
760 SW 9th Avenue, Suite 3000
Portland OR 97205
(503) 294-9829
Attorney for Petitioner

Dated: March 21, 2022

Sean Malone OSB No. 084060
Attorney at Law
259 E. 5th Ave., Suite 200-C
Eugene, OR 97401
(303) 859-0403
seanmalone8@hotmail.com

Sean Malone
Attorney at Law
259 E. 5th Ave, Ste 200-C
Eugene OR 97401

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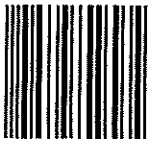

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FCM LG
SPOKAN
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MAR 21,
AMOUN
$1
R2304P1

Bill Kabeiseman, OSB No. 944920
Carrie Richter, OSB No. 003703
Bateman Seidel
1000 SW Broadway, Suite 1910
Portland, OR 97205