

*Neskowin Community Planning Advisory Committee  
Serving the Neskowin, Oregon Community*

**VIA HAND DELIVERY**

September 10, 2009  
Tillamook County Planning Commission  
201 Laurel Avenue  
Tillamook, OR 97141

**Re: Hawk Creek Cluster Subdivision Proposal  
File No. SUB-09-01**

Dear Planning Commission:

The Neskowin Community Planning Advisory Committee (CPAC) hereby submits additional comments in opposition to the cluster subdivision proposal for The Cottages at Neskowin. These comments are being submitted without the assistance or expertise of professional consultants or counsel because the CPAC has been advised by Tillamook County that it cannot engage such assistance in reviewing any land use proposals. The CPAC respectfully disagrees with the County and believes the County's decision has compromised the CPAC's ability to respond fully and effectively to this proposal.

As explained in the following comments, the cluster subdivision proposal also fails to meet a number of Tillamook County development code criteria necessary for approving the cluster subdivision. In addition, the cluster subdivision proposal fails to comply with the policies and goals adopted by Tillamook County in the Neskowin Community Plan.

The Neskowin CPAC respectfully requests that the Tillamook County Planning Commission deny the cluster subdivision proposal for the reasons set forth in the CPAC's initial comments to Tillamook County dated September 6, 2009 and in this letter. The Neskowin CPAC also requests that the record remain open for no less than seven (7) additional days beyond the date of the hearing to allow and further additional testimony to be submitted concerning the proposal.

The following comments (1) address the supplemental documents submitted by the applicant to the Tillamook County Planning Staff by electronic mail dated September 1, 2009, and (2) amend the CPAC's initial comments dated September 6, 2009.

**Introduction**

The applicant's September 1, 2009 supplemental information includes a Technical Memorandum ("TM" or "Memorandum") dated August 26, 2009 prepared by PSI on behalf of the applicant, an undated "Wetland Summary" prepared by Schott & Associates (the "Schott Memorandum"), and an undated "Storm Water Analysis Memo" from SFA

Design Group, LLC. These documents purport to address the flood hazard and wetlands in the Cottages of Neskowin cluster subdivision proposal. The CPAC has reviewed these documents and responds below.

**PSI Technical Memorandum (August 26, 2009) and the undated Schott Memo**

This TM seeks to clarify information related to the proposed development's proximity to the FEMA Flood Plain and identified "High Ground Water Areas." The CPAC, in its previous correspondence, contends that the "purposes and criteria" of the County's Neskowin Low Density R-1 zone and the Flood Hazard Overlay are not met by this application. We find nothing in the TM (or any of the other documents in the applicant's submittals) that alleviates the CPAC's concerns or supports a change in the prior position.

The application simply ignores the potential for increased flooding on downstream and adjacent properties including, but not limited to, Highway 101, Neskowin Marsh Golf Course, and portions of the Village of Neskowin.

The applicant currently proposes 25 units of an eventual 100 (or more) unit development. Application materials state that the impervious surfaces from the proposed 25 units will increase from 0% to 46%. The impact of impervious surfaces at full build out is not addressed. There is no evaluation of the impact of increased storm water runoff on Hawk Creek, the ability of existing culverts to accommodate the increased run off, and impacts on downstream properties and/or infrastructure. Applicant simply states that proposed wetland mitigation in the flood plain will "help reduce flooding" (see Schott Memo, paragraph 4).

The purposes of the County's policies and criteria related to flooding are not limited to the proposed new development nor do they simply require an effort to "help reduce flooding." The policies and criteria are broadly written to include all potential impacts from flooding including impacts that may occur off-site/downstream of the proposed development. Lacking a thorough evaluation of increased storm water runoff and associated flooding risks (from both the current proposal and full build out), the applicable criteria cannot be found to be satisfied and the application must be denied.

The TM states:

High groundwater is an additional hazard identified in our 2008 report and referenced in Figures 4 and 7. All of the building lots planned for the development are located outside of the designated "High Ground Water" area. No homes will be constructed within the high groundwater areas.

The CPAC is concerned that the applicant intends to eliminate the drainage ditch, which runs from east to west along the toe of the North facing slope on the south edge of the property. Clearly, the purpose of this drainage ditch is to capture runoff from the slope and convey it to the wetlands/flood plain near Highway 101. As stated by the applicant, the elimination of the ditch will indeed restore some of the site's natural hydrology which

will, in turn, increase the elevation of ground water and likely result in the restoration of historical wetlands that probably dominated much of the entire site prior to its construction. The applicant has failed to adequately evaluate the impact of this “new” source of water from the drainage ditch on the elevation of ground water and its potential impacts in the areas proposed for residential, road and utility development.

There are several statements in the Schott Memo that require comment. The Memo states: “Because of the historic use of the wetlands as a golf course the wetlands currently are low quality for most wetland functions.”

The CPAC notes this statement is vague and unsubstantiated in the application materials. To our knowledge, there has been nothing more than a wetland delineation completed. We are unaware of any evaluation of the wetlands (or of Hawk Creek), or a survey of vegetation types, or a compilation of a fish/wildlife inventory, or an evaluation of the water quality, water storage or any other wetland (or stream) function. As previously noted, operation of the site as a golf course ceased approximately 4 years ago and until the applicant had the site mowed in August, 2009, it was rapidly regenerating with a variety of native trees, shrubs and wetland plants. Without baseline information, it is impossible to reasonably evaluate the applicant’s proposals related to protection of the wetland and riparian resources on the site as required by County policies and ordinances.

The Schott Memo states on page 1:

During the design of the proposed development the wetland biologist worked with both the design team and the applicant and attempted to avoid the wetlands as much as possible, and to minimize the remaining impacts as much as possible, while maintaining an economically feasible project.

The CPAC has previously concluded that with the exception of one road crossing, the proposed elimination of wetlands for residential lots, roads, walkways, water quality swales etc. are “avoidable” and, therefore, are in direct conflict with Department of State Lands (DSL) policies and rules. It is noteworthy that the applicant failed to follow the advice of DSL in their correspondence dated November 7, 2007 that states:

Please be advised that state law establishes a preference for avoidance of wetland impacts. Because measures to avoid and minimize wetland impacts may include reconfiguring parcel layout and size or development design, we recommend that you work with Department staff on appropriate site design before completing the city or county land use approval process.

The CPAC further notes that it is not the responsibility of either the County or DSL to assure that the applicants have an “economically feasible project” although it is the responsibility of both to assure protection of public trust resources such as fish, wildlife, water quality and assure public health, safety and welfare.

The Schott Memo states at page 1:

Access to the south side of the site was determined by existing roads, topography, and land ownership. The need to enter the site in a specific location resulted in much of the proposed wetland impacts. Again, this wetland impact is in a low quality wetland. The path that would connect with the northern portion of the site was selected because of the creek crossing. This location minimized riparian impacts. The wetland impacts due to lots 4,5,6 9, and 10 are for the most part on isolated wetlands, which would have been surrounded by development, and indirect impacts were anticipated. Development of the adjacent areas would have removed much of the hydrology, and there was a distinct possibility that the wetlands would have lost much of their hydrology source. In addition, they would have been surrounded by development, which would have significantly reduced their function.

The CPAC notes that none of the above statements are supported by materials provided by the applicant. As noted previously, there has been no evaluation of the wetlands that documents the quality of their functions. There has been no information provided to support the statement that “development of the surrounding areas would have removed much of the hydrology, and there was a distinct possibility that the wetlands would have lost much of their hydrology source.”

The CPAC further notes that the statement: “In addition, they would have been surrounded by development, which would have significantly reduced their functions” is unsubstantiated.

The CPAC disagrees with the statement that the wetlands proposed to be filled for residential lot development are “isolated”. The applicant’s wetland delineation maps dated 7/7/2007 clearly show all wetlands within the area proposed for the development of roads, residential lots, walkways and water quality swale (i.e. portions of wetlands “D” and all of wetland “F”) have direct connections to Hawk Creek.

The Schott Memo states at pages 1 and 2:

Currently, there is a drain-tile and ditch system that was constructed to help keep the golf course dry. This system significantly changed the hydrology of the wetland. The wetland is significantly drier than historically. In addition, the drainage system carried water to the road ditch significantly faster than the historical condition. The historical wetland retained and detained much of the water. The intent is to restore the original hydrology of the wetland by filling the ditch that runs along the southwest property line. Additionally it is being proposed to have the storm water from the development, after it has run through a water quality facility, discharged to the upper portion of the wetland. The result will be the wetland will become wetter, and the storm water will take longer to reach the culvert under the highway. This should help reduce flooding. DSL and the Army Corps of Engineers requires mitigation to replace the impacted

wetland's functions. The proposed mitigation will either meet or exceed these requirements. There will be significant increase in the storm water storage. Furthermore, the mitigation plantings will improve the wildlife habitat. Plantings along the creek will help the stream bank stability, and reduce erosion. Establishing trees and shrubs along the creek will also improve fish habitat by providing shading as well as stabilizing the stream banks. A complete functional analysis will be submitted to DSL and the COE when wetland fill permits are applied for.

The CPAC again notes that the statements above are unsubstantiated. The drain-tile system impacted portions of the site that were most likely historical wetlands. The water has merely been diverted to existing wetlands downstream. If these existing wetlands weren't already "wet" they would not have been delineated as "wetlands". Removal of the drainage will neither increase nor decrease the amount of water that ultimately drains to the wetlands at the western end of the site. However, the addition of significant areas of impervious surface will increase both the quantity and speed of water movement to the western portion of the site. The applicant acknowledges flooding as an issue, but only states their plan "should help reduce flooding."

Finally, the applicant states that mitigation plantings will improve fish/wildlife habitat, reduce bank erosion and increase bank stability. Again, these statements are undocumented and unsupported. There has been no evaluation of the existing conditions, no inventory of vegetation, fish, wildlife or stream conditions on the site. When the CPAC noted the site was showing signs of rapid natural regeneration, it was mowed. The applicant only states that a "complete functional analysis" will be presented to the DSL/COE with the application for fill and removal.

### **Amendments to CPAC September 6, 2009 Comments**

The CPAC requests that its response found on page 6 of its September 6, 2009 comments concerning sewer service requirements of Tillamook County Nesk R-1 Zone Section 3.322(2)(d) be replaced with the following:

A public sewer line is located near Highway 101, however, the subject site currently lacks sewer. A form letter submitted to Tillamook County from the Neskowin Regional Sanitary Authority (NRSA) dated April 23, 2008, states that "[S]ewer is available to the site conditional upon improvements that will need to be made." However, the NRSA form letter does not specify what improvements are necessary or whether such improvements could in fact be permitted or built. Sewer treatment capacity in Neskowin is limited. As the application does not propose on-site sanitation and without further detail from the applicant and NRSA, the criterion is not met. It should be noted that the property is currently encumbered by one or more deed restrictions that will not permit the proposed development. The CPAC has no indication that the modification/removal of the deed restrictions is imminent.

The CPAC requests that its response found on page 6 of its September 6, 2009 comments concerning water service availability requirements of Tillamook County Nesk R-1 Zone Section 3.322(2)(e) be withdrawn.

Based on its September 6, 2009 comments and the comments set out in this letter, the Neskowin CPAC continues to believe that the proposed Cottages of Neskowin cluster subdivision proposal fails to meet the policies, purposes and criteria of the County's zoning ordinances and the Neskowin Community Plan . Therefore, the proposal must be denied.

Thank you.

Charlie Ciecko, Vice Chair  
Neskowin CPAC