

# Sean T. Malone

## Attorney at Law

259 E. Fifth Ave.,  
Suite 200-G  
Eugene, OR 97401

Tel. (303) 859-0403  
Fax (650) 471-7366  
seanmalone8@hotmail.com

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June 30, 2014

### Via Email

Patricia Burke  
Coos Bay District Manager  
Bureau of Land Management  
Coos Bay District Office  
1300 Airport Lane  
North Bend OR 97459  
(541) 756-0100  
[BLM OR CB Mail@blm.gov](mailto:BLM_OR_CB_Mail@blm.gov)

Re: BLM's reversionary interest in 280 acres of Bandon State Natural Area has now been triggered

Dear Ms. Burke,

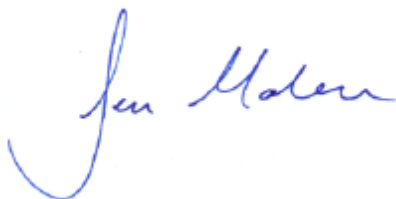
Oregon Coast Alliance (ORCA) thanks the Bureau of Land Management (BLM) for safeguarding the public's land at Bandon State Natural Area (BSNA) through adherence to the public processes, required under the Recreation and Public Purposes Act (RPPA), 43 U.S.C. § 869 *et seq.*, and other Federal laws, before considering the transfer of use and title of 280 acres to Bandon Biota LLC (Bandon Biota) or a nonprofit created by Bandon Biota, for development as a golf course. BLM has already warned the Parks Department in a May 13, 2014, letter that the Parks Department "may be at risk" of triggering the reversionary clause on the land with actions taken thus far in implementing an agreement with Bandon Biota.

Under 43 C.F.R. § 2741.9(a)(1), the BLM's reversionary interest in a property patented pursuant to the RPPA, is triggered once "[t]he patentee or its approved successor attempts to transfer title to or control over the lands to another." (emphasis added). Here, as explained below, there has been a concerted "attempt" to convey the subject property to Bandon Biota through continuing implementation of the November 2013 agreement (Exhibit A), and the recent Final Order (Exhibit B) only confirms this fact. As such, ORCA requests that the BLM make a finding that the Parks Commission and Department have made an "attempt" to transfer title or control over the patented land, and, therefore, the present interest in the subject property is held by the BLM.

Pursuant to the November 2013 land exchange agreement (Exhibit A), which set forth the legal relationship of the parties for the exchange, ORCA notes that this agreement is now being substantively implemented. Subsection 2.1.3 describes and incorporates the “Gorse Control Contribution Agreement,” under which Bandon Biota pledges to contribute \$300,000 for gorse control, “to be paid in 5 equal annual installments of \$60,000 each on January 15 of every year beginning in 2014.” Exhibit A at 5. The Parks Department received the initial non-refundable \$60,000 2014 contribution in January, and is in the process of deciding where to apply the funds for gorse control. Thus, the “attempt” by the Commission and the Department to change the use of the land pursuant to the November 2013 agreement is currently underway, and it is clear that this is more than a mere “attempt.”

More recently, the Parks Commission issued a Final Order signed April 11, 2014, that purports to satisfy all relevant criteria and approves the exchange. The Final Order goes further than the November 2013 land exchange agreement, which requires the BLM process to be successfully completed before closing and transfer of title to properties. The Order, however, does not. Instead, the Commission states its approval, acknowledging in the Order that “[i]n approving this exchange, the Commission recognizes that there is now less of Bandon State Natural Area, but there is more to the state park system.” Exhibit B at 29-30 (emphasis added). The clear import of this statement is that the Commission and the Department no longer hold title to the portion of the BSNA at issue because it has been conveyed to Bandon Biota. Even if the Commission’s position is an overstatement, the BLM’s reversionary interest has been triggered because the Commission need only “attempt” to transfer the subject property. This approval was certainly more than an “attempt,” and, therefore, ORCA respectfully requests that the BLM make a finding that the Commission has made an “attempt” to transfer title or control over the patented land, thus triggering the BLM’s reversionary clause.

Sincerely,



Sean T. Malone  
Attorney for ORCA

cc: Brad Grenham, USDOJ Solicitor’s Office  
Lisa Van Laanen, State Director, Oregon Parks and Recreation Department