STAFF REPORT FOR ADMINISTRATIVE DECISION

APPLICANT:    Dorothy Foster

OWNER:    Dorothy E. Foster Revocable Trust, et al
            Dorothy E. Foster, Trustee
            94912 Hwy 42 S.
            Coquille OR 97423

REQUEST:    A Grandfather Determination for an accessory structure (fishing cabin).

DECISION:    APPROVED

STAFF CONTACT:    Debby Darling, Planning Tech

MAP NUMBER(S) / LEGAL DESCRIPTION

ASSESSOR’S MAPS:    Township 27 Range 13 Sections 29/33  Tax Lots  600/702

PROPERTY LOCATION

The subject property is located northwest of the City of Coquille and is accessed off of George Claussen Road via Highway 42 S.

SPECIAL DISTRICTS

Coquille RFPD
Oregon Department of Fish & Wildlife (ODF&W)

APPLICABLE CRITERIA

Coos County Zoning and Land Development Ordinance (LDO) and Coos County Comprehensive Plan (CCCP)

<table>
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<tr>
<th>LDO Article 3.4</th>
<th>Grandfather Provisions</th>
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<tr>
<td>LDO Section 3.4.100</td>
<td>Use and Alteration of Buildings, Structures, or Land Existing Prior to Enactment of this Ordinance.</td>
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<tr>
<td>LDO Section 3.4.400</td>
<td>Process for Determining a Grandfather Use.</td>
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<td>LDO Section 4.9.700(J)(1)(g)</td>
<td>Riparian Vegetation Protection</td>
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I. BASIC FINDINGS

A. Lawfully Created Parcel:    The subject property was lawfully created in accordance with LDO Section 3.3.800. The 1982 Assessment records show that the property was owned by John F. Charles, Inc. under deed reference number 82-17556 of the Coos County Deed Records located in the Coos County Clerk’s...
office and therefore, meets the criterion of lawfully created parcels.

B. **Zoning:** Coquille River Estuary Management Plan Exclusive Farm Use (CREMP-EFU), CREMP Aquatic Conservation D-21

**CREMP Aquatic Conservation D-21** - The CREMP zoning districts shall have the same boundaries as the Coquille River Estuary Management Plan unit boundaries and shall be so designated to conserve and enhance the aquatic resources of the main river channel and fringing intertidal areas, while allowing such minor alterations as are necessary for the continuation of recreational boating and other shallow draft navigation. Removal of snags, old pilings and other obstructions from the river, and bank stabilization shall also be encouraged.

**CREMP-EFU** - The purpose of the "EFU" district is to preserve the integrity and encourage the conservation of agricultural lands within Coos County and thereby comply with the provisions of ORS 215; to minimize conflicts between agricultural practices and non-farm uses by limiting any development to uses distinguished as dependent upon or accessory to supporting agricultural or forestry production and which qualify such farm lands for special tax relief pursuant to the provisions of Oregon Revised Statutes. This zone is also for the cultivation and marketing of specialty crops, horticultural crops and other intensive farm uses.

C. **Site Description:** The tax lots are part of a larger agricultural holding owned by the Foster family. The development under review is located on tax lot 600 in Township 27 Range 13 Section 29. The only development on this tax lot is the fishing cabin, for which this application was submitted. This portion of the property is accessed by George Clausen Road.

D. **Surrounding Land Uses:** The Coquille River bends around the property in a west-northwest manner, looping back around to the south on the western portion of the property. The surrounding properties are zoned CREMP EFU and are a part of the larger farm operation.

E. **Background:** In 1989 a conditional use permit was submitted by the Oregon Fishing Club, Inc. to site a commercial fishing camp along the Coquille River. This was ultimately denied by the Planning Commission due to the applicant's failure to adequately address the review criteria and to respond to written objections regarding compatibility. There was an existing fishing cabin\(^1\) on the property currently owned by the Dorothy Foster Revocable Trust, et al. This building was not removed, per the denial of the 1989 conditional use permit.

The accessory\(^2\) building and accessory uses (picnic table, etc) were built within the 50 foot riparian vegetation setback area. The Foster family is well aware that this property has had numerous violations throughout the years and has been working in good faith to correct these. The Foster family has presented evidence to show the fishing shack has been in existence since the 1960's. At that time, there were no provisions for riparian setback protection.

Ms. Foster has submitted this application to grandfather the fishing shack and allow it to remain where sited within the 50 foot riparian vegetation setback.

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\(^1\) Also referred to as a fishing shack

\(^2\) An accessory use may be located on the same lot, parcel or tract or on a contiguous lot, parcel or tract under the same ownership as the lot, parcel or tract that contains the principal use.
II. FINDINGS TO THE APPLICABLE REVIEW CRITERIA

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The lawful use of any building, structure or land at the time of the enactment or amendment of this Ordinance may at the discretion of the owner be continued.

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A change of ownership or occupancy shall be permitted

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FINDING: Ms. Foster has submitted affidavits from the following

♦ Vernon T. Crockett, stating he had direct knowledge of the fishing shack being in this location, which he knows as “Clausen Corner”, since 1962.
♦ Allen D. Davis, stating he grew up in Riverton and for the past 50 years he can remember there being a fishing shack at Clausen Corner on the Coquille River.
♦ Ed Davis, stating he was raised in Riverton and fished the Coquille River in the 1960’s. He remembers the fishing shack on the Clausen property at the spot he knew as Clausen Corner Hole or the Ed Tool Hole. He says today it is referred to as the Beaver Hill Hole.3
♦ Joel R. Clausen, who remembers there being a fishing shack at this spot for the past 60 or so years.

This evidence is enough to show the fishing shack has been in existence for the past 50-60 years. Therefore, this building was in lawful use at the time of the enactment of the Ordinance, which was adopted in 1986. Ms. Foster has recently inherited the property from her father’s estate. But since a change of ownership shall be permitted, this does not affect the fact that the fishing shack has been in existence since before the Ordinance was adopted.

This criteria has been met

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<th>LDO Section 3.4.400</th>
<th>Process for Determining a Grandfathered Use</th>
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When a grandfathered use is not known to exist and must be established, an application may be submitted. The Planning Director shall determine the validity of a Grandfathered use, based on documentation submitted by the applicant. Said review shall be conducted in accordance with Article 5.7, and any appeals shall be conducted in accordance with Article 5.8. (OR-98-01-002PL 5/4/98)

For the purposes of verification, an applicant must prove the existence, continuity, nature and extent of the use for the 10-year period immediately preceding the date of application. Evidence proving the existence, continuity, nature and extent of the use for the 10-year period preceding application creates a rebuttable presumption that the use, as proven, lawfully existed at the time the applicable Ordinance was adopted and has continued uninterrupted until the date of application. (OR-98-01-002PL 5/4/98)

FINDING: Ms. Foster originally submitted a request for a variance to the riparian vegetation setbacks; however, during that review, it was determined that there was no record of the fishing shack ever having zoning clearance. Ms. Foster was asked to submit evidence to prove the fishing shack had been in existence prior to the enactment of the

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3 The fishing shack is located on the Coquille River directly opposite where Beaver Hill Road meets North Bank Lane.
LDO. As noted above, she was able to obtain affidavits from several different people who grew up or have lived in the area for the past 50-60 years and have direct knowledge of the fishing shack.

Since the evidence supports the continued use of the fishing shack for the past 50-60 years, it is not necessary to request a variance to the riparian vegetation setbacks, since there were no regulations protecting the riparian area prior to the adoption of the LDO.

The criteria for grandfathering have been met.

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<th>LDO Section 4.9.700(J)(1)(g)</th>
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<td>The 50’ riparian vegetation setback shall not apply in any instance where an existing structure was lawfully established and an addition or alteration to said structure is to be sited not closer to the wetland, stream, lake or river than the existing structure and said addition or alteration represents not more than 100% of the size of the existing structure’s “footprint”. (ORD 92-05-009PL)</td>
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**FINDING:** The fishing shack is now determined to be grandfathered and therefore, the 50 foot riparian vegetation setback shall not apply. In the future, should there be alterations requested for this building, the alterations shall not be sited closer to the river than the building currently located.

**III. ANALYSIS**

The application for a grandfather determination is approved. There were affidavits submitted showing the fishing shack has been in existence for the past 50-60 years, at least since the early to mid 1960’s. Because the fishing shack was sited prior to the adoption and acknowledgement of the LDO, the riparian vegetation setbacks do not need to apply.

Please note, all applications are subject to review of all applicable review criteria in the Coos County Comprehensive Plan (CCCP), the Coos County Zoning and Land Development Ordinance (LDO), and all land use regulations. Please be aware the burden of proof rests with the applicant.

**IV. NOTIFICATION**

The Planning Department mailed individual written notice of the decision to the owners of record of all property located as required in Section 5.0.900. Notice of Decision with a copy of the staff report was forwarded to Applicant(s), Owner(s) and Dave Perry, DLC. Notice of Decision was also provided to the following: Coos County Planning Commission, the special districts identified above. In addition, notice of the decision was posted at the Coos County Courthouse, Coquille Annex and North Bend Annex. All notices were mailed and posted on March 7, 2013.

**V. NOTICE OF APPEAL RIGHTS**

This decision may be appealed to the Coos County Hearings Body pursuant to Article 5.8 of the Coos County Zoning and Land Development Ordinance within 15 days from the date of written notice. This means that appeals must be received in the Planning Department by 5 p.m. on March 22, 2013, in order to be considered. This decision will not be final until the period for filing an appeal has expired. Detailed information about the appeal process, filing fees and additional information will be provided by the Planning Department upon request. The decision is based upon the submitted application, supporting evidence, facts, and findings to the criteria.

**VI. CONDITIONS**

1. Any alterations such as re-roofing, installing porches or decks, attaching rain gutters, or improving the existing components of the structure shall be permitted with a zoning compliance letter, provided there is no increase in floor square footage.
2. If the shack were to be removed, it can be replaced only if done within two years of removal.
3. Any changes to the building cannot be built closer to the river than it already is in order to protect the riparian vegetation area.
4. The riparian vegetation should be allowed to return to its natural growth and no more riparian vegetation should be removed, other than to keep a clear path to the water use on the Coquille River.
5. Once a building is altered it cannot become more noncompliant than it has been.
6. Pursuant to ORS 215.416(1), the fees charged by the Planning Department for permit applications represent the average cost of processing the application. If the actual cost of processing the application exceeds the average cost, then the applicant shall be responsible for paying the full amount. If such an amount is due, it must be paid before a zoning compliance letter can be issued.