STAFF REPORT FOR ADMINISTRATIVE DECISION

APPLICANT: Oregon International Port of Coos Bay
c/o Mark Whitlow, Perkins Coie LLP
1120 NW Couch St. 10th FL.
Portland OR 974209

OWNER(S): Fort Chicago Holdings II US LLC
222-3rd Ave SW, Ste 900
Calgary AB T2P PB4 Canada

Request approval for a two (2) year extension of the development approval period for County File No. HBCU-07-03 Applied for by Oregon International Port of Coos Bay to allow an Industrial & Port Facility, New & Maintenance Dredging, Shoreline Stabilization, & Storm Water Discharge (Oregon Gateway Marine Terminal).

DECISION: Approved on October 2, 2013

FILE: ACU-13-23

STAFF CONTACT: Jill Rolfe, Planning Director

MAP NUMBER(S) / LEGAL DESCRIPTION

ASSESSOR’S MAPS: Township 25S Range 13W Section(s) 00/03/04/05 Tax Lot(s) 200/200/100/100, 200, 300

PROPERTY LOCATION

The property is located across the bay from the City of North Bend and is accessed via TransPacific Parkway.

APPLICABLE CRITERIA

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

| LDO | § 5.0.700 | EXPIRATION AND EXTENSION of Conditional Uses |

1. BACKGROUND

On January 2, 2008, the Coos County Board of Commissioners “Board” adopted Final Decision and Order 07-12-309PL In the Matter of a Conditional Use HBCU-07-03 Applied for by Oregon International Port of Coos Bay to allow an Industrial & Port Facility, New & Maintenance Dredging, Shoreline Stabilization, & Storm Water Discharge...
(Oregon Gateway Marine Terminal). On December 9, 2011, the Planning Department approved a request to extend the approval period for the Upland Terminal by two (2) years to January 2, 2014.

II. FINDINGS TO THE APPLICABLE REVIEW CRITERIA

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<th>LDO</th>
<th>§ 5.0.700</th>
<th>EXPIRATION AND EXTENSION of Conditional Uses</th>
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SECTION 5.0.700 EXPIRATION AND EXTENSION of Conditional Uses

All conditional uses, except for site plans, variances and land divisions, remain valid for the period set forth in ORS 215.417. Any conditional use not initiated within said time frame may be granted a two year extension as specified in ORS 215.417 provided that:

A. An application for said extension is filed with the Planning Department prior to the expiration of the deadline. The applicant must state the reasons that prevented him from beginning or continuing development within the approval period; and

FINDING: The applicant provided an application for an extension prior to the January 2, 2014 deadline (Received on July 30, 2013 and deemed complete on August 27, 2013). The applicant provided the reasons that prevented the authorized development from beginning within the approval period. Therefore, the applicant has met this criterion.

B. The Planning director finds:
   i. that there have been no substantial changes in the land use pattern of the area or other circumstances sufficient to cause a new conditional use application to be sought for the same use; and

FINDING: There have been no substantial changes in the land use pattern of the area. After looking at other permits in the area, staff is able to confirm that there have been no rezones, no major development and no changes to the ordinance language that would cause the applicant to address additional criteria. Therefore, this criterion has been satisfied.

   ii. that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.

FINDING: Staff has reviewed the Board of Commissioners Final Decision and Order No. 07-12-309PL In the Matter of a Conditional Use HBCU-07-03 Applied for by Oregon International Port of Coos Bay to allow an Industrial & Port Facility, New & Maintenance Dredging, Shoreline Stabilization, & Storm Water Discharge (Oregon Gateway Marine Terminal).

In its written request for an extension, the applicant states that they were unable to begin or continue development within the approval period for the following reasons:

Construction of the Slip and Access Waterway requires both the Department of State Lands (DSL) removal fill authorization which was issued on December 17, 2011, and also an independent 404 Permit issued by the Army Corps of Engineers (COE). The 404 Permit is now pending before the COE and because it includes the LNG berth facilities for the Jordan Cove Energy Project’s proposed LNG terminal, that permit is subject to both COE review and FERC review, both of which are underway, with the status of the FERC authorization.

As a matter of public record, JCEP’s December 17, 2009 FERC authorization to construct and operate an LNG import terminal and related Pacific Connector pipeline was vacated on April 16, 2012, due to changes in the natural gas market making the building of an import terminal impracticable.

The domestic market for liquefied natural gas shrank dramatically, while the international market for liquefied natural gas increased. This dramatic shift in market conditions forced the Applicant to seek new federal permits in order to
shift from an import facility to an export facility.

JCEP filed its application with the FERC on May 21, 2013 seeking authorization to build and operate a liquefaction terminal. JCEP intends to proceed to finance and construct the Port’s Slip and Access Waterway upon receipt of FERC’s authorization for liquefaction terminal, and upon satisfaction of all related FERC conditions of approval.

The applicant has requested an additional two-year extension to allow the FERC and related NEPA process to move forward to completion.

The above circumstances were outside the Applicant’s control, and the Applicant had no ability to prevent or limit their occurrence. The Port has been unable to proceed for the above reasons to construct the Port’s Slip and Access Waterway. Therefore, the Director can find that the Applicant was unable to begin or continue development during the approval period for reasons for which Applicant was not responsible.

The fact that the applicant has not been able to complete the review from other agencies within the conditional use time frame complies with the criteria. Therefore, staff finds that due to reasons for which the applicant was not responsible, the applicant was unable to begin development during the approval period. Therefore, staff finds that the applicant has met the requirements for an extension of this application.

Additional extensions granted are ministerial decisions and not a land use decisions as described in ORS 197.015 and are not subject to appeal as land use decisions per OAR 660-33-140(3). (OR-93-12-017PL 2-23-94) (OR-95-05-006 PL 11-29-95) (OR 05-01-002PL 3-21-05)

FINDING: The applicant has requested that the County provide notice of this decision in the same manner as an administrative conditional use to allow for the opportunity for appeal. Staff finds there is no legal reason not to grant this request. Therefore, this has been reviewed as an administrative decision subject to appeal.

III. ANALYSIS

The Planning Department mailed individual written notice of the decision to the owners of record of all property located within 250-feet of the subject property. Notice of Decision was sent out to all parties of the original decision. 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 October 2, 2013.

IV. NOTIFICATION / 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 October 17, 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.

The notice of decision will be mailed to the all special districts, parties to the original application, applicant, owner and Dave Perry, DLCD.

V. CONDITIONS OF APPROVAL

All conditions of approval that were listed in Board of Commissioner’s Final Decision and Orders 07-12-309PL remain in effect.