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: Request approval for a two (2) year extension of the development approval period for County File No. HBCU-09-01 allowing the Oregon International Port of Coos Bay (“Port”) to use the property formerly known as the Kentuck Golf Course for active and passive mitigation.

DECISION: Approved on October 3, 2013

FILE: ACU-13-24

STAFF CONTACT: Jill Rolfe, Planning Director

MAP NUMBER(S) / LEGAL DESCRIPTION

ASSESSOR’S MAPS: Township 25S Range 12W Section(s) 06C Tax Lot(s) 100  
Township 25S Range 12W Section(s) 07 Tax Lot(s) 799  
Township 25S Range 13W Section(s) 01D Tax Lot(s) 400  
Township 25S Range 13W Section(s) 12A Tax Lot(s) 100

PROPERTY LOCATION

The property is located northeast of the City of North Bend off of Golf Course Lane via Kentuck Way Lane (HWY 101 to East Bay Road to Kentuck Way)

APPLICABLE CRITERIA

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

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<td>EXPICATION AND EXTENSION of Conditional Uses</td>
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I. BACKGROUND

On September 23, 2009, the Coos County Board of Commissioners “Board” adopted Ordinance No. 09-09-005PL In the Matter of a Plan Amendment and rezone, zoning boundary interpretation and administrative conditional use for active and passive restoration in Coos Bay Estuary Management Plan (CBEMP) 15-RS. The only portion of the decision that is subject to renewal would be the conditional use decision in HBCU-09-01 which is subject to LDO § 5.0.700 and Oregon Revised Statute (ORS) 215.417.
The applicant requested the extension on July 31, 2013. The application was deemed complete on August 9, 2013.

II. FINDINGS TO THE APPLICABLE REVIEW CRITERIA

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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 September 30, 2013 deadline (Received on July 31, 2013 and deemed complete on August 9, 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 Ordinance No. 09-09-005PL and the applicant’s request for an extension. This property is to be used for mitigation in conjunction with impact ts arising from the Port’s other project that was approved in HBCU-07-03 (Slip and Access Waterway). In the applicant’s justification for an extension, the applicant states that they were unable to begin or continue development of the Slip and Access Waterway 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
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. Until the applicant is able to move forward with the project that was approved under HBCU-07-03 this site is unable to be used to mitigate the impacts of that development.

The above circumstances are outside the Applicant’s control, and the Applicant has no ability to prevent or limit their occurrence.

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 3, 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 18, 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.

V. CONDITIONS OF APPROVAL

All conditions of approval that were listed in Board of Commissioner’s Final Decision and Ordinance 09-09-005PL remains in effect.