STAFF REPORT

Date of Report: Monday, September 22, 2014    Appeal Deadline Tuesday, October 07, 2014

Type of Application:  ADMINISTRATIVE CONDITIONAL USE APPLICATION

Decision: APPROVED WITH CONDITIONS

File Number: ACU-14-19    Reviewed by:  Jill Rolfe, Planning Director

II. Property Information

Applicant:    Janell Stradtner, Project Planner
Oregon Department of Transportation
3500 NW Stewart Parkway
Roseburg, OR 97470

Proposal:    The applicant is proposing bank stabilization by placing 2500 cubic yards of riprap.

Map Number/Location:    Township 24S Range 13W Section 34 (Public right-of-way). The property is located north of the City of North Bend at the David Dewett Veteran’s Memorial Wayside.

Zoning:    The project will take place in the Coos Bay Estuary Management Plan (CBEMP) Segments 10-Natural Aquatic and 11-Rural Shoreland.

Special Districts/Agencies:

| International Port of Coos Bay | Coos Bay-North Bend Water Board | Dave Perry, DLCD |
| Department of State Lands | Corps of Engineers |

III. FINDINGS TO THE APPLICABLE REVIEW CRITERIA

APPLICABLE CRITERIA

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

| CCZLDO | § 4.5.396(B)(7)(b) | Uses, Activities and Special Conditions (10-NA) – Shoreland Stabilization - Riprap |
| CCZLDO | § 4.5.401(B)(6)(b) | Uses, Activities and Special Conditions (11-RS) – Shoreland Stabilization - Riprap |
| CCZLDO | Appendix 3 | Policies #9, #17, #18 and #23 |

Note: criteria are shown below with findings in **bold**.
DEFINITION
The management objective of the 10-Natural Aquatic (10-NA) states this district, having both algal/eelgrass beds and salt marsh habitats, shall be managed to protect its resource productivity. Maintenance/repair of bridge crossing support structures shall be allowed. This district also contains five designated mitigations sites: M-9(b), "medium" priority and M-8(a), M-9(c), M-10 and M-11(b), "low" priority. Site M-9(b) shall be protected, as required by Policy #22.

The management objective of the 11-Rural Shoreland (11-RS) states this district shall be managed so as to continue its rural low-intensity character and uses that have limited (if any) association with the aquatic district. This district includes three designated mitigation sites (M-12, M-13 and M-22). However, only Site M-22 shall be protected from pre-emptive uses. Other sites are "low" priority, and need not be protected (See Policy #22).

RIPRAP: A layer, facing, or protective mound of stones randomly placed to prevent erosion, scour or sloughing of a structure or embankment; also, the stone so used. Similar use of other hard material, such as concrete rubble, is also riprap.

<table>
<thead>
<tr>
<th>LDO</th>
<th>§ 4.5.396(B)(7)(b)</th>
<th>Uses, Activities and Special Conditions (10-NA) – Shoreland Stabilization - Riprap</th>
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SECTION 4.5.396. Uses, Activities and Special Conditions. Table 10-NA sets forth the uses and activities which are permitted, which may be permitted as conditional uses, or which are prohibited in this zoning district. Table 10-NA also sets forth special conditions which may restrict certain uses or activities, or modify the manner in which certain uses or activities may occur. Reference to “policy numbers” refers to Plan Policies set forth in the Coos Bay Estuary Management Plan.

B. Activities:***
7. Shoreline stabilization
   a. Vegetative P-G
   b. Riprap ACU-S, G

GENERAL CONDITION (the following condition applies to all uses and activities):

1. Inventoried resources requiring mandatory protection in this district are subject to Policies #17 and #18. Activities:

7b. Riprap shall be allowed for the purpose of protecting and maintaining the Highway 101 berm, subject to the general findings required by Policy #9, "Solutions to Erosion and Flooding Problems", preferring nonstructural to structural solutions, and to the specific findings for riprap. Riprap may be allowed to a very limited extent where necessary for erosion control to protect: (A) uses existing as of 10-7-77; (B) unique natural resource and historical and archaeological values; or, (C) public facilities.
FINDING: The applicant, Oregon Department of Transportation (ODOT), has requested a conditional use to allow for riprap to be used for bank stabilization in the Coos Bay Estuary Management Plan (CBEMP) Segment 10-NA. The bank stabilization is necessary for the wayside that is considered part of the public facility. Therefore, the proposal is consistent with the intent of Subsection 7b. Policy #9 as addressed below.

SECTION 4.5.401. Uses, Activities and Special Conditions. Table 11-RS sets forth the uses and activities which are permitted, which may be permitted as conditional uses, or which are prohibited in this zoning district. Table 11-RS also sets forth special conditions which may restrict certain uses or activities, or modify the manner in which certain uses or activities may occur. Reference to “policy numbers” refers to Plan Policies set forth in the Coos Bay Estuary Management Plan.

B. Activities: ***
   6. Shoreline stabilization
      a. Vegetative P-G
      b. Riprap ACU-S, G

GENERAL CONDITIONS (the following condition applies to all uses and activities):

1. Inventoried resources requiring mandatory protection in this district are subject to Policies #17 and #18.

2. All permitted uses and activities shall be consistent with Policy #23, requiring protection of riparian vegetation.

FINDING: Again, the purpose of this property is to use riprap for shoreland stabilization which requires a conditional use application. (ODOT) has submitted a conditional use application to address all policies as explained below.

#9 Solutions to Erosion and Flooding Problems

Local government shall prefer nonstructural solutions to problems of erosion and flooding to structural solutions. Where shown to be necessary, water and erosion control structures such as jetties, bulkheads, seawalls and similar protective structures and fill whether located in the waterways or on shorelands above ordinary high water mark shall be designed to minimize adverse impacts on water currents, erosion and accretion patterns.

I. Further, where listed as an "allowable" activity within the respective management units, riprap may be allowed in Development Management Units upon findings that:

a. Land use management practices and nonstructural solutions are inadequate; and
b. Adverse impacts on water currents, erosion and accretion patterns are minimized; and

c. It is consistent with the Development management unit requirements of the Estuarine Resources Goal.
II. Further, where listed as an "allowable" activity within respective management units, riprap shall only be allowed in Conservation Aquatic (CA) units upon findings that:

a. Land use management practices and nonstructural solutions are inadequate; and
b. Adverse impacts on water currents, erosion and accretion patterns are minimized; and
c. Riprap is consistent with the resource capabilities of the area and the purposes of maintaining Conservation management units.

III. Further, where listed as an "allowable" activity within respective management units, riprap shall only be allowed in Natural Aquatic (NA) units upon findings that:

a. There is a need to protect from erosion: uses existing as of October 7, 1977, unique natural resources and historic archaeological values, or public facilities;
b. Land use management practices and nonstructural solutions are inadequate;
c. It is consistent with the natural management unit as set forth in this Plan and required by Goal #16; and
d. Adverse impacts on water currents, erosion and accretion patterns and estuarine organisms and their habitat are minimized.

Implementation of this strategy shall occur through local review of and comment on state and federal permit applications for such projects.

This strategy is based on the recognition that nonstructural solutions are often more cost-effective as corrective measures, but that carefully designed structural solutions are occasionally necessary. The strategy also recognizes LCDC Goal #16 and #17 requirements and the Oregon Administrative Rule classifying Oregon estuaries (OAR 660-17-000 as amended June, 1981).

FINDING: The applicant proposes to use riprap and to prevent further erosion of the bank around the memorial located at the wayside. The placement of riprap will eliminate the threat to the memorial and highway. Standard Best Management Practices (BMPs) will be used for erosion and sediment control. Erosion control measures will be inspected and maintained daily to ensure their continued effectiveness. Oregon’s current turbidity standard (OAR 340-41-036) requires that “No more than 10% increase in natural stream turbidity be allowed, as measured relative to control point immediately upstream of the turbidity causing agent.” All of these requirements ODOT proposes to follow are consistent with Policy #9.

Policy #9 was enacted to ensure that if riprap was used in the NA segment that it was a last resort and that it was done in a certain way to protect the estuary. This is also consistent with Goal #16 because this is a protection of a public facility (memorial wayside), all nonstructural solutions have been explored and found to be inadequate. The adverse impacts on water currents, erosion, accretion patterns and estuarine organisms along with their habitat are proposed to be minimal.

The applicant’s proposal meets Policy #9’s criterion.
#17  Protection of "Major Marshes" and "Significant Wildlife Habitat" in Coastal Shorelands

Local governments shall protect from development, major marshes and significant wildlife habitat, coastal headlands, and exceptional aesthetic resources located within the Coos Bay Coastal Shorelands Boundary, except where exceptions allow otherwise.

I. Local government shall protect:

   a. "Major marshes" to include areas identified in the Goal #17, "Linkage Matrix", and the Shoreland Values Inventory map; and
   b. "Significant wildlife habitats" to include those areas identified on the "Shoreland Values Inventory" map; and
   c. “Coastal headlands”; and
   d. “Exceptional aesthetic resources” where the quality is primarily derived from or related to the association with coastal water areas.

II. This strategy shall be implemented through:

   a. Plan designations, and use and activity matrices set forth elsewhere in this Plan that limit uses in these special areas to those that are consistent with protection of natural values; and
   b. Through use of the Special Considerations Map, which identified such special areas and restricts uses and activities therein to uses that are consistent with the protection of natural values. Such uses may include propagation and selective harvesting of forest products consistent with the Oregon Forest Practices Act, grazing, harvesting wild crops, and low-intensity water-dependent recreation.
   c. Contacting Oregon Department of Fish and Wildlife for review and comment on the proposed development within the area of the 5b or 5c bird sites.

This strategy recognizes that special protective consideration must be given to key resources in coastal shorelands over and above the protection afforded such resources elsewhere in this Plan.

FINDING: The proposal is not located within any areas identified as a major marshes, significant wildlife habitats, coastal headlines, exceptional aesthetic resources or listed 5b or 5c bird site. Therefore, this policy is not applicable to the proposal.

#18  Protection of Historical, Cultural and Archaeological Sites

Local government shall provide protection to historical, cultural and archaeological sites and shall continue to refrain from widespread dissemination of site-specific information about identified archaeological sites.

I. This strategy shall be implemented by requiring review of all development proposals involving a cultural, archaeological or historical site, to determine whether the project as proposed would
protect the cultural, archaeological and historical values of the site.

II. The development proposal, when submitted shall include a Plot Plan, showing, at a minimum, all areas proposed for excavation, clearing and construction. Within three (3) working days of receipt of the development proposal, the local government shall notify the Coquille Indian Tribe and Coos, Siuslaw, Lower Umpqua Tribe(s) in writing, together with a copy of the Plot Plan. The Tribe(s) shall have the right to submit a written statement to the local government within thirty (30) days of receipt of such notification, stating whether the project as proposed would protect the cultural, historical and archaeological values of the site, or if not, whether the project could be modified by appropriate measures to protect those values.

"Appropriate measures" may include, but shall not be limited to the following:

a. Retaining the prehistoric and/or historic structure in situ or moving it intact to another site; or

b. Paving over the site without disturbance of any human remains or cultural objects upon the written consent of the Tribe(s); or

c. Clustering development so as to avoid disturbing the site; or

d. Setting the site aside for non-impacting activities, such as storage; or

e. If permitted pursuant to the substantive and procedural requirements of ORS 97.750, contracting with a qualified archaeologist to excavate the site and remove any cultural objects and human remains, reinterring the human remains at the developer's expense; or

f. Using civil means to ensure adequate protection of the resources, such as acquisition of easements, public dedications, or transfer of title.

If a previously unknown or unrecorded archaeological site is encountered in the development process, the above measures shall still apply. Land development activities, which violate the intent of this strategy shall be subject to penalties prescribed in ORS 97.990.

III. Upon receipt of the statement by the Tribe(s), or upon expiration of the Tribe(s) thirty day response period, the local government shall review the Plot Plan and shall:

a. Approve the development proposal if no adverse impacts have been identified, as long as consistent with other portions of this plan, or

b. Approve the development proposal subject to appropriate measures agreed upon by the landowner and the Tribe(s), as well as any additional measures deemed necessary by the local government to protect the cultural, historical and archaeological values of the site. If the property owner and the Tribe(s) can not agree on the appropriate measures, then the governing body shall hold a quasi-judicial hearing to resolve the dispute. The hearing shall be a public hearing at which the governing body shall determine by preponderance of evidence whether the development project may be allowed to proceed, subject to any modifications deemed necessary by the governing body to protect the cultural, historical and archaeological values of the site.
IV. Through the "overlay concept" of this policy and the Special Considerations Map, unless an exception has been taken, no uses other than propagation and selective harvesting of forest products consistent with the Oregon Forest Practices Act, grazing, harvesting wild crops, and low intensity water-dependent recreation shall be allowed unless such uses are consistent with the protection of the cultural, historical and archaeological values, or unless appropriate measures have been taken to protect the historic and archaeological values of the site.

This strategy recognizes that protection of cultural, historical and archaeological sites is not only a community's social responsibility; it is also legally required by ORS 97.745. It also recognizes that cultural, historical and archaeological sites are non-renewable cultural resources.

FINDING: The applicant provided documentation to show that the project is not within a historical or cultural and archaeological area. Therefore, this policy does not apply.

#23 Riparian Vegetation and Streambank Protection

I. Local government shall strive to maintain riparian vegetation within the shorelands of the estuary, and when appropriate, restore or enhance it, as consistent with water-dependent uses. Local government shall also encourage use of tax incentives to encourage maintenance of riparian vegetation, pursuant to ORS 308.792 - 308.803.

Appropriate provisions for riparian vegetation are set forth in the CCZLDO Section 4.5.180 (OR 92-05-009PL).

II. Local government shall encourage streambank stabilization for the purpose of controlling streambank erosion along the estuary, subject to other policies concerning structural and non-structural stabilization measures.

This strategy shall be implemented by Oregon Department of Transportation (ODOT) and local government where erosion threatens roads. Otherwise, individual landowners in cooperation with the Oregon International Port of Coos Bay, and Coos Soil and Water Conservation District, Watershed Councils, Division of State Lands and Oregon Department of Fish & Wildlife shall be responsible for bank protection.

This strategy recognizes that the banks of the estuary, particularly the Coos and Millicoma Rivers are susceptible to erosion and have threatened valuable farm land, roads and other structures.

FINDING: The applicant is ODOT in this case and they are working toward stabilization (Streambank Protection) of the shoreland. Once the riprap is in place it will be top dressed and seeded with native grass species enhancing the riparian area. Therefore, the applicant meets the criterion.
III. AGENCY COMMENTS

There have been non agency comments received as of the date of this report.

IV. NOTIFICATION

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 with a copy of the staff report was forwarded to Applicant(s), Owner(s) and Dave Perry, DLCD. Notice of Decision was also provided to the following: Coos County Planning Commission, The Coos County Board of Commissioners, the special districts as noted 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 September 22, 2014.

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 Tuesday, October 07, 2014, 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. CONCLUSION AND CONDITIONS

The applicant has met the criteria and the project has been approved. The only condition of approval is to comply with state and federal regulations regarding working in the waterway.

Attachments: Applicant’s submittal
Attachment “A” form ACU-96-10
Attachment “B” from ACU-96-10