STAFF REPORT FOR HEARINGS BODY REVIEW

APPLICANT: Jamie Moffitt, Vice President for Finance and Administration, University of Oregon (UO)  
Emily Eng, Planning Associate (UO), Representative  
1276 University of Oregon  
Eugene OR 97403-1276

OWNER: University of Oregon  
1276 University of Oregon  
Eugene OR 97403-1276

REQUEST: This request is to amend the plan map designation of a portion of the property from Forest  
Mixed Use (FMU) 17.6 acres and Urban Residential (UR-2) 2.8 acres and rezone those  
portions to Commercial (C-1).

STAFF CONTACT: Jill Rolfe, Planning Director

REVIEWING BODY: Coos County Planning Commission

MAP NUMBER(S) / LEGAL DESCRIPTION

ASSESSOR’S MAPS: Township 26S Range 14W Section 02 Tax Lot 100  
Township 26S Range 14W Section 02BD Tax Lot 500  
Township 26S Range 14W Section 02CA Tax Lot 100 & 200

PROPERTY LOCATION

The subject property is located southwest of the City of Coos Bay. The UR-2 zoned property is located  
within the Urban Unincorporated Community (UUC) of Charleston and FMU portion of the property  
abuts the UUC of Charleston. The subject property is accessed off of Boat Basin Road. The subject  
property contains of the OIMB campus.

APPLICABLE CRITERIA

Coos County Zoning and Land Development Ordinance (LDO), Coos County Comprehensive Plan  
(CCCP), Oregon Administrative Rule (OAR)

| LDO | §5.1.400 | Decisions of the Hearings Body for a Rezone |
| LDO | Appendix I, CCCP Volume I Policies | Policy 5.1 through 5.23 |
| OAR | 660-004-0025 | Physically Developed Exceptions to Statewide Goals 3 and 4 |

I. BASIC FINDINGS

A. Lawfully Created Parcel: The properties are lawfully created in accordance with LDO § 3.3.800.  
Township 26S Range 14W Section 02CA Tax Lots 100 & 200 were created through a subdivision plat  
(Seaport Plat A) in 1906. Township 26S Range 14W Section 02 Tax Lot 100 was created and recorded in  
deed document 140/273 and Township 26S Range 14W Section 02BD, Tax Lot 500 was created and  
recorded in deed document 209/126.
B. **Zoning:** Township 26S Range 14W Section 02 Tax Lot 100 is split zoned Coos Bay Estuary Management Plan (CBEMP) Segments 67-Development Shorelands (67-D), 68A-Conservation Shorelands (68A-CS) and Forest Mixed Use (FMU) only a portion of the FMU zoning has been included in the rezone request.

Township 26S Range 14W Section 02BD Tax Lot 500 is zoned Forest Mixed Use (FMU). Township 26S Range 14W Section 02CA Tax Lots 100 & 200 is zoned Urban Residential-2 (UR-2).

**Current Applicable Zoning**
The purpose of the "F" district is to designate forest lands and protect them for forest uses, except where findings establish that certain limited non-forest uses may be allowed. Some of the areas covered by the "F" zone are exclusive forest lands, while other areas include a combination of mixed farm and forest uses.

The purpose of the “UR-2” district is to provide for urban residential areas that are designed to accommodate single family dwellings, mobile homes and two family dwellings. Clustered planned unit developments, including multi-family dwellings, are consistent with the objectives of the “UR-2” district. The “UR-2” district shall only be used within Urban Growth Boundaries and Urban Unincorporated Community boundaries.

**Proposed Zoning**
The purpose of the “C-1” district is:
- a. to provide for needed commercial retail and service opportunities within Urban growth Boundaries;
- b. to recognize existing commercial uses outside Urban Growth Boundaries.

C. **Site History and Description:** The Oregon Institute of Marine Biology (OIMB) campus was originally owned by the federal government. The University of Oregon (UO) has been teaching and conducting research on this land since 1924 and was deeded the property in 1932 for scientific and educational purposes. Several of the buildings have been occupied since the 1920’s. UO has repaired and remodeled the existing structures and have expanded their campus over the years. UO purchased the “Hatzel” (Section 02CA Tax Lots 100 & 200) property which is developed with two homes and three accessory structures on the southern edge of the property. The plan is to rezone portions of the properties to allow for outright and future growth on the campus to be permitted.

D. **SPECIAL CONSIDERATIONS:** The property has special regulatory considerations prescribed by the CCCP. The property contains historical structures, archeological sites, significant botanical areas and floodplain. Special regulatory considerations apply to the property in case of development. This application is not proposing any new development but all of the regulatory agencies have received notice as required.

### II. FINDINGS TO THE APPLICABLE REVIEW CRITERIA

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<tr>
<th>LDO</th>
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<td>SECTION 5.1.400. Decisions of the Hearings Body for a Rezone. The Hearings Body shall, after a public hearing on any rezone application, either:</td>
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<td>1. Recommend the Board of Commissioners approve the rezoning, only if on the basis of the initiation or application, investigation and evidence submitted all the following criteria are found to exist:</td>
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<td>a. The rezoning will conform with the Comprehensive Plan or Section 5.1.250; and</td>
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<td>b. The rezoning will not seriously interfere with permitted uses on other nearby parcels; and</td>
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<td>c. The rezoning will comply with other policies and ordinances as may be adopted by the</td>
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2. Recommend the Board of Commissioners approve, but qualify or condition a rezoning such that:
   a. The property may not be utilized for all the uses ordinarily permitted in a particular zone; or
   b. The development of the site must conform to certain specified standards; or
   c. Any combination of the above.
      A qualified rezone shall be dependent on findings of fact including but not limited to the following:
      i. Such limitations as are deemed necessary to protect the best interests of the surrounding property or neighborhood; or
      ii. Such limitations as are deemed necessary to assure compatibility with the surrounding property or neighborhood; or
      iii. Such limitations as are deemed necessary to secure an appropriate development in harmony with the objectives of the Comprehensive Plan; or
      iv. Such limitations as are deemed necessary to prevent or mitigate potential adverse environmental effects of the zone change.
2. Deny the rezone if the findings of 1 or 2 above cannot be made. Denial of a rezone by the Hearings Body is a final decision not requiring review by the Board of Commissioners unless appealed.

SECTION 5.1.450. Status of Hearings Body Recommendation of Approval. The recommendation of the Hearings Body made pursuant to 5.1.400(1) or (2) shall not in itself amend the zoning maps.

FINDING: The OIMB facility has been in existence since the 1920’s but when zoning was applied to the property it was designated as Forest lands because the majority of the upper property was forested. There was no account for the future expansion of the OIMB facility. Currently, because the facility existed prior to zoning, it is considered to be a grandfathered use; however, every time the facility would like to expand they are required to go through a conditional use process. Therefore, OIMB (UO) would like to find a zoning that will allow for the continuing and potentially expanding their campus without going through multiple review steps. After reviewing all zoning classifications commercial seems to be the most viable zoning district for the current and anticipated future expansion. The applicants are only requesting the minimum area to allow for future expansion which will result in split zoning.

Currently the use is not allowed in the FMU zoning so it is considered a legal non-conforming use; therefore, it would be consistent with the CCCP to rezone the property to a designation that allows this type of use outright by changing the status of the development to a conforming use.

The rezone will not seriously interfere with permitted uses on other nearby parcels as there are many commercial uses to the south of this property in the Charleston Marina area. The majority of the FMU property will remain in the FMU zoning which will provide a buffer on the west and southwest portions of the property. The use is already established and has co-existed with other uses since the 1920’s.

The current proposal will comply with the LDO and the CCCP and there are no pending policies to be adopted by the Board of Commissioners at this time.

The Planning Commission will be making a recommendation to the Board of Commissioners. Staff has reviewed the proposal in detail and has found no reasons to place qualifiers on this rezone as it will comply with the CCCP and LDO as presented. However, the Planning Commission does have the option to place
qualifiers on the rezone if they find it is necessary to make it comply with the LDO, CCCP, ORS or OAR.

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5.3 Plan Implementation Strategies

1. Coos County shall conserve those resources designated as "agricultural lands" on the Comprehensive Plan map by regulating uses and activities in such areas through requirements stipulated in the following Exclusive Farm Use (EFU) zone: The delineation of this zone shall be generally consistent with the locational criteria developed on the Agricultural Lands Inventory and Assessment. Land divisions shall comply with criteria set forth in the Coos County Zoning and Land Development Ordinance. Implementation of this strategy shall be based on application of the statutory provisions governing uses in EFU zones.

2. Coos County shall maintain programs to control stray dogs, predatory animals and noxious weeds as funds are available. This strategy shall be implemented through existing County programs and cooperation with other agencies. This strategy recognizes that such programs provide valuable services to the county's farming community.

3. Coos County shall cooperate with the National Resources Conservation Service (NRCS) and Coos Soil and Water Conservation District (Coos SWCD) and other agencies in their efforts to promote bank stabilization, preferring non-structural stabilization methods except where bank protection structures are necessary. This strategy is based on the recognition that streambank protection and stabilization are necessary to prevent the erosion of agricultural soils.

4. Coos County shall cooperate with NRCS and Coos SWCD and drainage districts in their efforts to obtain permits and to maintain funding for drainage projects on floodplain land in agricultural use (include "wet meadows" classified by the U.S. Fish & Wildlife Service as wetlands). Such drainage projects may include improvement or maintenance of existing facilities or construction of new dikes and drainage channels. This strategy recognizes that: (1) improved or well-maintained drainage facilities are essential to the most efficient use of Coos County's most productive agricultural lands, and (2) recently adopted Federal policies to protect wetlands for their wildlife habitat values are unduly restrictive in the case of seasonally flooded, diked wet meadows, because agricultural and wildlife habitat uses are thoroughly compatible in these wet meadow areas.

5. Coos County shall generally support the efforts of the NRCS, Coos SWCD, Coos Watershed Association, Coquille Watershed Association and other entities to develop water storage projects to supply additional irrigation water to improve the county's agricultural economy except where strong public opposition is presented and accompanied by documentation.

This strategy recognizes the need for additional water storage projects and that the NRCS and Coos SWCD should play a lead role in the development of such projects.

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10. Coos County shall allow the establishment of single family dwellings on non-conforming lots of
record in EFU zones, subject to state law.

11. RESERVED

12. Coos County shall define development to mean: To bring about growth or availability; to construct or alter a structure, to conduct a mining operation, to make a physical change in the use or appearance of land, to divide land into parcels, or to create or terminate rights of access excepting normal agricultural or forest management activities. This strategy recognizes the important distinction between resource management and the conversion of land to more intensive uses.

13. Coos County shall permit a zone change to Rural Residential (RR-5) on lots within areas designated Exclusive Farm Use (EFU) that were physically developed for non-farm use prior to the establishment of the EFU zone. The applicant for such a zone change shall bear the burden of proof that such lot meets the preceding criterion.

This strategy recognizes:
   a. the provisions of ORS 215.215, which permit this strategy, and
   b. the benefits of enabling uses on property rezoned in this manner to be considered conforming uses rather than on-conforming uses.

5.4 FOREST LANDS

   Plan Implementation Strategies

1. Coos County shall conserve those resources designated as "Forest Lands" on the Comprehensive Plan map by regulating uses and activities in such areas through requirements stipulated in the forest zone ("F").

   The delineation of this zone shall be generally consistent with the locational criteria developed in the Forest Lands Inventory and Assessment. Land divisions shall comply with criteria set forth in the Coos County Zoning and Land Development Ordinance.

   This strategy recognizes that Coos County's forestlands are an extremely valuable resource, and that the above-referenced zones are: (1) necessary and reasonable to respond to the varying situational characteristics addressed in the inventory, and (2) adequate to conserve the County's forest lands for forest uses.

2. Coos County shall ensure that new rural residential dwellings are compatible with adjacent forest and agricultural management practices and production.

   This strategy shall be implemented by requiring applicants for building and septic permits to sign a statement (to be added to the zoning clearance letter) acknowledging that the normal intensive management practices occurring on adjacent resource land will not conflict with the rural residential landowner's enjoyment of his or her property.

   This strategy recognizes:

   a. that intensive forest and agricultural management practices could include herbicidal spraying, slash burning, or fertilization; and
b. that the potential for conflicts between resource uses and rural residential uses will be reduced by alerting prospective rural residential landowners to the fact that intensive resource management uses are expected in rural areas.

3. Coos County shall require all new residential development that is on lots, parcels or tracts within or abutting the "F" zone to agree to construct and maintain a fire-break of at least 30 feet in radius around the dwelling prior to completion of the dwelling. A fire-break is defined as an area free of readily inflammable material and may include lawns, ornamental shrubs, and scattered single specimen trees.

This strategy recognizes that these protection measures are the minimum necessary to prevent house fires from spreading to forested areas, and vice-versa.

4. Coos County shall foster sound forest management practices by supporting enforcement of the Oregon Forest Practices Act (ORS 527.610-527.730), recognizing that the Forest Practices Act (1) is designed to encourage sound forest management and to improve the forest resource, and (2) generally prohibits counties from regulating forest practices.

FINDING: The applicants have addressed all polices in Volume I of the CCCP as to their applicability. However, staff is only addressing the applicable polices and finds that the other polices do not apply to this rezone request. The applicants have made a compelling argument in this case and staff agrees. This rezone will not significantly change the amount of land in the County available for farm or forest use as the portions of the property that are part of the rezone are not currently being utilized for such uses. This area should not have been zoned for resource use as it was already committed to a commercial type use and granting the rezone will correct this zoning error.

5.16 INDUSTRIAL & COMMERCIAL LANDS Plan Implementation Strategies

1. Coos County shall continuously plan for and maintain an adequate supply of commercial and industrial land, recognizing that a readily available supply of such land is the basis for a sound economic development program.

2. Coos County "an active participating member of the Coos-Curry Douglas-Economic Improvement Association (CCD-EIA), shall sanction and support the economic development efforts of that regional organization, recognizing that regional programs are best resolved by a cooperative regional economic development program" (Coos Bay Comprehensive Plan).

3. Coos County "shall support the regional economic goals and objectives periodically adopted by the Coos County Overall Economic Development Program Committee, recognizing that these regional strategies constitute a coordinated program targeted at resolving impediments to the area's economic development potential as identified by the CCD-EIA.

4. Coos County shall ensure that adequate urban commercial land is designated within cities and urban growth areas as necessary to meet future needs for urban commercial uses.

This strategy shall be implemented in two ways:
   a. through coordinated urban growth boundary negotiations with cities; and
   b. through use of the "Controlled Development" designation as a complementary device to the "Commercial" designation.
This strategy is based on the recognition:

a. that Coos County has coordination responsibilities; and

b. that the Controlled Development designation is necessary and appropriate to guide land use decisions in certain urban growth areas that are experiencing a conversion of land in residential areas to commercial use.

5. Coos County shall: (1) permit limited expansion of commercial uses in Rural Centers; (2) designate existing dispersed rural commercial businesses as uses permitted outright; (3) allow neighborhood convenience stores as a conditional use in areas designated Rural Residential; and (4) permit rezoning of an appropriately sized parcel of land to "Rural Center" if it is within the recognized boundaries of an unincorporated community, and findings made that there is no suitable vacant site within the unincorporated community boundary for the proposed use. Furthermore, upon an action to approve the rezone, the county shall amend the comprehensive plan map designation to correspond to the new zone. This strategy shall be realized through implementing zoning measures. The limited area extent of some of the existing dispersed rural commercial uses shall enjoy the benefits of a plan designation as commercial. Implementation of (3) above shall include a public hearing for the purpose of considering proposed changes to the comprehensive plan map and zoning ordinance.

This strategy recognizes that: (1) commercial expansion within Rural Centers may be necessary to provide neighborhood shopping to the residents of rural centers and surrounding areas, as well as providing limited traveler services for tourists; (2) a commercial designation rather than a "Non-conforming use" designation (grandfathering) is necessary to ensure that the integrity of these existing dispersed rural commercial uses is given maximum protection; and (3) rural centers may not contain suitable vacant land for proposed uses, and that expansion of rural center is appropriate in such cases.

6. RESERVED
7. RESERVED

8. Coos County shall designate as commercial or Industrial all parcels legally established and currently in use as commercial or industrial, recognizing that a commercial or industrial designation rather than a non-conforming use designation ("grandfathering") is necessary and appropriate to give maximum protection to the integrity of existing uses.

FINDING: This property is not within an Urban Growth Boundary (UGB); however, it is with the Urban Unincorporated Community of Charleston. There are no coordinated UGB negotiations required within any city. A controlled development designation is not a requirement but a suggestion to have some control over the conversion of residential lands to commercial uses. This is a very small amount of property proposed for rezoning in the UUC and the use is not a typical commercial development. OIMB has proposed to use some of their area for student and faculty housing as part of their facility; therefore, the applicants have satisfied these criteria. Furthermore, Plan Implementation Strategy 8 specifically allows for this type of rezone. This use is commercial in nature and the CCCP instructs the county to designate the property as commercial rather than allowing a grandfathered non-conforming use.
5.17 HOUSING Plan Implementation Strategies

1. Coos County shall provide zoning for adequate buildable lands and shall encourage the availability of adequate numbers of housing units for future housing needs at price ranges and rent levels, which are commensurate with the financial capability of Coos County households.

This strategy shall be implemented through: (1) appropriate Comprehensive Plan map and zoning designations, as appropriately determined to meet housing and estimates established in this plan's inventory and assessment; and (2) cooperation by Coos County with the Coos-Curry Housing Authority (CHA) in this effort to develop housing assistance programs for people with low and moderate incomes.

This strategy recognizes: (1) the lead role of CCHA in housing assistance planning; (2) each city's responsibility for assessing housing needs within its urban growth boundary (UGB); and (3) the County's responsibility for assessing housing needs within all other unincorporated areas and for coordinating the UGB housing assessments of each city.

2. Coos County shall encourage the availability of a wide variety of housing locations in urban and rural areas. For urban and urbanizable areas, this strategy shall be implemented through urban growth management agreements and appropriate coordinated land use designations. For rural areas, this strategy shall be implemented through appropriate land use designations for acreage homesites as selected and justified in the County's rural housing exception. This strategy recognizes that the selected urban and rural locations are necessary to provide flexibility in housing location.

3. Coos County shall structure its implementing zoning ordinance such that it permits: (1) mobile homes; (2) mobile homes and clustering of dwellings under a Planned Unit Development concept in most residential zones; (3) multiple family dwellings in selected locations within urban growth boundaries (UGB's); and (4) multiple family dwellings outside UGB's when part of a Recreation Planned Unit Development. This strategy recognizes that such flexibility of housing type provides greater choice and enhanced ability to meet the housing needs of the citizens of Coos County.

4. Coos County shall structure its implementing ordinance so that it allows increasing density for (from lowest to highest) acreage homesites, rural centers, and UGA's.

FINDING: The re-designation of 2.8 acres from UR-2 to C-1 will not impact the overall need for residential development. C-1 zoning does allow for certain types of residential development but is not meant to be the primary use of the property. The commercial use will be the primary use of the property and residential will be incidental by way of student and faculty housing. Therefore, the rezone is consistent with the CCCP.

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OAR 660-004-0025
Exception Requirements for Land Physically Developed to Other Uses
(1) A local government may adopt an exception to a goal when the land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal. Other rules may also apply, as described in OAR 660-004-0000(1).
(2) Whether land has been physically developed with uses not allowed by an applicable goal will depend on the situation at the site of the exception. The exact nature and extent of the areas found to be physically developed shall be clearly set forth in the justification for the exception. The specific area(s) must be shown on a map or otherwise described and keyed to the appropriate findings of fact. The findings of fact shall identify the extent and location of the existing physical development on the land and can include information on structures, roads, sewer and water facilities, and utility facilities. Uses allowed by the applicable goal(s) to which an exception is being taken shall not be used to justify a physically developed exception.

FINDING: The applicants have chosen to take an exception to Statewide Planning Goal 4 Forest Lands because the property is physically developed to the point that it cannot be utilized for resource purposes of any type. Staff agrees with the applicants’ justification for this rezone.

III. NOTIFICATION/COMMENTS

Notification was provided as consistent with LDO Section 5.7.300. Notification was also provided on April 12, 2013, to subject property owners, property owners within 750’ feet from the subject property. The notice was also provided to the following: Board of Commissioners; Dave Perry, DLCD; Thomas Guevara, ODOT; Charleston RFPD; Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians; Charleston Sanitary District; Coos Bay School District; Coos Bay-North Bend Water Board; Chris Clair, ODFW; and Oregon International Port of Coos Bay. There have been no comments received as of the date of this report. This notice of hearing was published in The World News Paper on April 18, 2013 to comply with the notice requirements. The mailed notice of hearing noted the wrong date of publishing but that has no bearing on this matter. The World News Paper provided an affidavit of publishing showing the correct date to ensure the notice requirements have been met.

IV. SUMMARY/CONCLUSIONS

This rezone is consistent with the CCCP and the Planning Commission should recommend approval to correct the zoning on the proposed areas. The applicants are protecting the resource areas but asking that the areas of development be rezoned to an appropriate zoning designation. Staff is in support of this application because it meets the criteria. If the Planning Commission disagrees with staff they will need to make findings to support their conclusion. The Planning Commission can recommend approval of this application as it stands, recommend the application with qualifiers to ensure it meets the criteria or deny the application outright. If the Planning Commission recommends the application for approval as is or with qualifiers then the Board of Commissioners will review this matter on May 21, 2013 at 1:30 p.m.

If you have any questions please contact staff.

COOS COUNTY PLANNING DEPARTMENT

Jill Rolfe, Planning Director

Attachments: Applicants Submittal
C: Howard Crombie, Confederated Tribes
    Chris Clair, ODFW

C: w/o attachments:
    Special Districts

EC: County Counsel
    Dave Perry, DLCD
    Thomas Guevara Jr., ODOT