APPLICANT/OWNER: Jerry White
64904 East Bay Lane
North Bend OR 97459

REQUEST: Amend Volume II, Part 1, Plan Provisions of the Coos Bay Estuary Management Plan (CBEMP) text to change the management objective, uses, activities and special conditions of the existing management unit 16-Water Dependent-Development Shorelands (16-WD) to 16-Rural Shorelands (16-RS); Amend the CBEMP map to change the zoning and all support maps from 16-WD to 16-RS which rezones this property from industrial to residential; and Amend the Coos County Comprehensive Plan (CCCP), Volume II and the Coos County Zoning and Land Development Ordinance (LDO), Appendix 3, Plan Policy 16a to adjust the protected water-dependent acreage available and zoned for water dependent use.

STAFF CONTACT: Jill Rolfe, Planning Director

REVIEWING BODY: Coos County Planning Commission

MAP NUMBER(S) / LEGAL DESCRIPTION
ASSESSOR’S MAPS: Township 25S Range 13W Section 13B Tax Lot 600; Township 25S Range 13W Section 13CA Tax Lots 100, 400 & 900; and Township 25S Range 13W Section 13C Tax Lot 100

PROPERTY LOCATION
The property is located on the east side of the Coos Bay Estuary across the bay from the City of North Bend off of East Bay Road. The property is commonly known as Pierce Point. The specific boundary is described as the entire Pierce Point area west of East Bay Road, the northern boundary is East Bay Road at the bridge over Willanch Slough. The southern boundary is a line extending west from the L-turn of the East Bay Road south of the Pierce Point peninsula.

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

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<th>Rezones</th>
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<td>LDO Appendix 3, Volume II</td>
<td>CBEMP, Policy #36</td>
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<td>CCCP Volume II, Part 1</td>
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<td>OAR 660-004-0028</td>
<td>Exceptions Requirements for Lands Irrevocably Committed to Other Uses</td>
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<td>OAR 660-037-0090</td>
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I. BASIC FINDINGS

A. Lawfully Created Parcel: The properties are lawfully created in accordance with LDO § 3.3.800. The properties are located within the 1906 Plat of the City of Coos Bay and are discrete.

B. Zoning: The property is currently zoned Coos Bay Estuary Management Plan (CBEMP) and the portion to be rezoned is 16-Water Dependent-Development Shorelands (16-WD)

Current Applicable Zoning (16-WD)
This district, because of its location near the forest resource and the natural Cooston Navigation Channel, will be managed to protect its future utility as an industrial site particularly for log handling and storage and barging facilities.

Proposed Zoning (16-RS)
This district shall be managed to maintain the present character of and uses in the area, which include low-intensity rural development having minimal association with the adjacent aquatic area. This area shall be consistent with objectives to maintain the riparian vegetation.

C. SITE HISTORY AND DESCRIPTION: The intent of 16-WD was based on the location near the forest resource and the natural Cooston Navigation Channel and it would be managed to protect its future utility as an industrial site particularly for log handling and storage and barging facilities. This segment was proposed as a future water-dependent industrial site for log storage and transport. The site was selected because of its unique locational characteristics. At the time of adoption the property was close to the owner’s (Weyco) timber lands, reducing the distance necessary to haul the logs by road before transfer to the water. It was located close to a natural channel which was of sufficient depth to enable transport of the log rafts with minimal maintenance dredging or minor navigational improvements. The property was also located close to the Weyco Mill in North Bend via the Cooston Channel. An upland site was needed for this use because of the limited amount of subtidal area available for in-water log storage and restrictions on intertidal log storage. Future increased log storage was anticipated for the uplands. There was an alternative that was not practicable for this operation because it was a rural area. There were no sites in an urban/urbanizable area with the same favorable characteristics as this site contained. However, over time the timber market changed and due to downsizing Weyerhaeuser sold this property to Mr. White because it was no longer used as part of their operation.

D. SPECIAL CONSIDERATIONS: The property has special regulatory considerations prescribed by the CCCP. The property located within the Coastal Shorelands Boundary, area that may contain archeological sites 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

<table>
<thead>
<tr>
<th>LDO</th>
<th>§5.1.400</th>
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<td>SECTION 5.1.400.</td>
<td>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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c. The rezoning will comply with other policies and ordinances as may be adopted by the Board of Commissioners.

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.

1. 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: This proposal will conform with the CCCP as it will update this portion of the plan which is outdated. Currently the CCCP has a total of 1445.92 acres available for water dependent uses and is only required to maintain 592.85 acres, which is more than double the requirement. The removal of the proposed site will reduce the total by a little more than 34 acres (1406.46 total acres after reduction). Therefore, the reduction of water dependent uses acreage will still comply with the LDO and CCCP. After reviewing the area, it is surrounded by Rural Shorelands zoned property and it seems appropriate to apply that zoning on these properties as well. The zoning segment will remain 16 but the designation will change to Rural Shorelands which is consistent with the adjacent properties. This property is no longer viable for an industrial log storage area. There is no major highway, rail line or barging area. The property is currently restricted to water dependent uses. The applicant has established that it cannot be managed as an industrial site, particularly for log handling and storage and barging facilities; and therefore, it is in conflict with the management objective. Therefore, the County must look at alternatives for this site and design a management objective and zoning district that will be consistent with the current and future uses while protecting the adjacent zoning districts.

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.
Coos County shall: a) conduct a formal review of this the Plan, including inventory and factual base and implementing measures to determine if any revision is needed; b) shall base its review upon re-examination of data, problems and issues; c) shall issue a public statement as to whether any revision is needed; d) shall coordinate with other jurisdictions which are included within the Coos Bay Estuary and its shorelands; and e) shall incorporate public input into its decision.

Coos County may rely on the formal "Periodic Review " process of this Plan to satisfy the requirements of this policy.

This strategy is based on the recognition that a formal periodic review is necessary to keep this Plan current with local situations and events which may change from time-to-time and reduce the Plan's ability to effectively and appropriately guide growth of the Coos Bay Estuary and its shorelands.

Coos County shall approve minor revisions/amendments to its Comprehensive Plan when justified. Minor revisions/amendments are smaller in scope than major revisions/amendments, and generally include, but are not limited to changes in uses and activities allowed and changes in standards and conditions.

**FINDING:** This would be considered a minor amendment to the plan and not a formal periodic review because it is focused on one area that is inconsistent and has an impracticable management objective to comply with. The applicant has shown a need and justification for the rezone due to the fact there has been a change in the local economy that makes this particular area limited in development possibilities to the point it is hindering appropriate growth in this shorelands segment.

**FINDING:** The applicant has provided details from the CCCP, Volume II, Part 3, Linkage explaining the background on how this property was chosen for Water-Dependent Use. The language explains that the 16-WD complied with Statewide Planning Goals and this property was not found to be resource land.

**660-004-0028**

**Exception Requirements for Land Irrevocably Committed to Other Uses**

1 A local government may adopt an exception to a goal when the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable:

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1 See Applicant’s submittal Attachment A
(a) A "committed exception" is an exception taken in accordance with ORS 197.732(2)(b), Goal 2, Part II(b), and with the provisions of this rule, except where other rules apply as described in OAR 660-004-0000(1).
(b) For the purposes of this rule, an "exception area" is that area of land for which a "committed exception" is taken.
(c) An "applicable goal," as used in this rule, is a statewide planning goal or goal requirement that would apply to the exception area if an exception were not taken.

(2) Whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent to it. The findings for a committed exception therefore must address the following:
(a) The characteristics of the exception area;
(b) The characteristics of the adjacent lands;
(c) The relationship between the exception area and the lands adjacent to it; and
(d) The other relevant factors set forth in OAR 660-004-0028(6).

(3) Whether uses or activities allowed by an applicable goal are impracticable as that term is used in ORS 197.732(2)(b), in Goal 2, Part II(b), and in this rule shall be determined through consideration of factors set forth in this rule, except where other rules apply as described in OAR 660-004-0000(1). Compliance with this rule shall constitute compliance with the requirements of Goal 2, Part II. It is the purpose of this rule to permit irrevocably committed exceptions where justified so as to provide flexibility in the application of broad resource protection goals. It shall not be required that local governments demonstrate that every use allowed by the applicable goal is "impossible." For exceptions to Goals 3 or 4, local governments are required to demonstrate that only the following uses or activities are impracticable:
(a) Farm use as defined in ORS 215.203;
(b) Propagation or harvesting of a forest product as specified in OAR 660-033-0120; and
(c) Forest operations or forest practices as specified in OAR 660-006-0025(2)(a).

(4) A conclusion that an exception area is irrevocably committed shall be supported by findings of fact that address all applicable factors of section (6) of this rule and by a statement of reasons explaining why the facts support the conclusion that uses allowed by the applicable goal are impracticable in the exception area.

(5) Findings of fact and a statement of reasons that land subject to an exception is irrevocably committed need not be prepared for each individual parcel in the exception area. Lands that are found to be irrevocably committed under this rule may include physically developed lands.

(6) Findings of fact for a committed exception shall address the following factors:
(a) Existing adjacent uses;
(b) Existing public facilities and services (water and sewer lines, etc.);
(c) Parcel size and ownership patterns of the exception area and adjacent lands:
   (A) Consideration of parcel size and ownership patterns under subsection (6)(c) of this rule shall include an analysis of how the existing development pattern came about and whether findings against the goals were made at the time of partitioning or subdivision. Past land divisions made without application of the goals do not in themselves demonstrate irrevocable commitment of the exception area. Only if development (e.g., physical improvements such as roads and underground facilities) on the resulting parcels or other factors makes unsuitable their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed. Resource and nonresource parcels created and uses approved pursuant
to the applicable goals shall not be used to justify a committed exception. For example, the presence of several parcels created for nonfarm dwellings or an intensive commercial agricultural operation under the provisions of an exclusive farm use zone cannot be used to justify a committed exception for the subject parcels or land adjoining those parcels.

(B) Existing parcel sizes and contiguous ownerships shall be considered together in relation to the land's actual use. For example, several contiguous undeveloped parcels (including parcels separated only by a road or highway) under one ownership shall be considered as one farm or forest operation. The mere fact that small parcels exist does not in itself constitute irrevocable commitment. Small parcels in separate ownerships are more likely to be irrevocably committed if the parcels are developed, clustered in a large group or clustered around a road designed to serve these parcels. Small parcels in separate ownerships are not likely to be irrevocably committed if they stand alone amidst larger farm or forest operations, or are buffered from such operations;

(d) Neighborhood and regional characteristics;

(e) Natural or man-made features or other impediments separating the exception area from adjacent resource land. Such features or impediments include but are not limited to roads, watercourses, utility lines, easements, or rights-of-way that effectively impede practicable resource use of all or part of the exception area;

(f) Physical development according to OAR 660-004-0025; and

(g) Other relevant factors.

(7) The evidence submitted to support any committed exception shall, at a minimum, include a current map or aerial photograph that shows the exception area and adjoining lands, and any other means needed to convey information about the factors set forth in this rule. For example, a local government may use tables, charts, summaries, or narratives to supplement the maps or photos. The applicable factors set forth in section (6) of this rule shall be shown on the map or aerial photograph.

FINDING: This is a platted subdivision and each lot is discrete and may be sold separately. There is no minimum lot size currently for this property. The Rural Shorelands has varied size requirements of two, five or ten acres according to the minimum lots size CBEMP map. The applicant has provided a 1969 photo to show this property contained nine dwellings prior Weyerhaeuser purchasing. At that time Weyerhaeuser purchased the property for a specific use and worked with the County Planning staff to ensure that was taken into consideration at the time the plan was acknowledged. If you calculate the density of the dwelling units at that time, the density would have been less than four acres per dwelling; however, in 1969 there were no density requirements for Coos County.

The dwelling units were removed in anticipation that Weyerhaeuser would be able to utilize the industrial site particularly for log handling and storage and barging facilities. Due to the changes in the local economy, environmental requirements for in water storage of logs and the lack of transportation Weyerhaeuser found that is property was no longer viable for an industrial operation and chose to sell the property.

This property is completely located within the Coos Bay Estuary Management Plan; therefore, under the current plan we are limited to the following shorelands zoning districts: Natural Shorelands; Conservation Shorelands; Rural Shorelands; Development Shorelands; Water-Dependent Development Shorelands; Urban Development Shorelands; Urban Water-Dependent; Non-Water-Dependent Shorelands; and Urban Development. These zoning districts were designed to comply with Oregon Statewide Planning Goal 16 and they do fall within one of three management units which are natural, conservation and development.
This area was designated by the CCCP to be a development area. Staff had to look at adjacent development zoning and decide the appropriate zoning. The urban management units were not considered because this property is not located within an urban growth boundary or an urban unincorporated area; therefore, the rural development shorelands units are Rural Shorelands, Development Shorelands, Water-Dependent Development Shorelands, and Non-Water-Dependent Shorelands. The adjacent zoning is Rural Shorelands and the applicant has provided findings, including statements and evidence to show the property is currently not viable for water development uses. Comparing the current zoning with the proposed zoning, shows the new zoning is more restrictive on overall allowed uses. Although a specific exception was not taken to this property for current zoning it was incorporated into a broad exception area and justified as an industrial water dependent use and adopted as part of the CCCP. Volume I of the CBEMP, Part 2 Section 4.3.1 provides details on irrevocably committed exceptions explaining that lands that have already been divided into such a small parcel size that the consolidation or assemblage of the parcels in sizes large enough to permit efficient resource production is no longer possible. This platted area is made up not only multiple lots but public streets as well, which would limit the amount of acreage that could be combined to create any type of resource area; therefore, it is already considered to be irrevocably committed. Below shows a portion of the property and how the streets and alleys are platted creating a non-resource property.

The applicant states in their narrative that grazing has happened in the past but that is only because the platted streets and alleys were not taken into consideration. Again each lot is discrete and could be sold off and if so the platted roads would become developed and that would limit the grazing area. Basically in order for this tract to become viable for farm or forest resource the plat and all of its components would have to be vacated; however, it was not the intent of the exception to take this into consideration. The rezone proposal is consistent with the CCCP.

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<th>OAR</th>
<th>660-037-0090</th>
<th>Goal 17 Water-Dependent Shorelands</th>
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<tr>
<td>660-037-0090</td>
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<td>Rezoning of Qualifying Shorelands to Nonwater-Dependent Uses</td>
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</table>
(1) Any amendment to an acknowledged comprehensive plan or land use regulation under this rule must comply with all applicable Statewide Planning Goals. For purposes of this division, such applicable Goals include but are not limited to the following: Goal 5, Natural Resources, Scenic and Historic Areas, and Open Spaces (OAR 660-015-0000(5)); Goal 7, Natural Hazards (660-015-0000(7)); Goal 16, Estuarine Resources (660-015-0010(1)); and Goal 17, Coastal Shorelands (660-015-0010(2)). In Goal 16, the designation of estuarine management units is based in part on the uses of the adjacent shorelands. Consequently, any change to shoreland designations and allowed uses being proposed under this division must include consideration of affected estuarine management unit designations and allowed uses. This is particularly important in situations where the level of development designated in the adjacent estuarine management unit was acknowledged through a Goal 2 Exception; retaining that level of estuarine development would no longer be justified without taking a new Goal 2 Exception.

(2) Local governments that choose to rezone shoreland sites to nonwater-dependent uses as allowed under this division are encouraged to provide for water-related and water-oriented uses at such sites as much as possible.

FINDING: This property is already in compliance with the Statewide Planning Goals. It is inventoried as Coastal Shorelands Boundary, area that may contain archeological sites, wetlands and floodplain. The property will be required to comply with all of these special considerations and must comply with the applicable policies shown in the use table (found at attachment I of the applicant’s submittal). As explained above this area was part of a broad brush exception at the time of acknowledgement and all of the Goals were considered at that time.

Coos County has a total of 1445.92 acres of available acreage available for water dependent uses and is only required to maintain 592.85 acres, which is more than double the requirement. The removal of the proposed site will reduce the total by a little more than 34 acres (1406.46 total acres after reduction). Therefore, this change in zone and plan amendment will comply with this OAR.

III. NOTIFICATION/ COMMENTS

Notification was provided as consistent with LDO Section 5.7.300. Notification was also provided on June 13, 2013, to subject property owners, property owners within 250’ feet from the subject property. The notice was also provided to the following: Board of Commissioners; Dave Perry, DLCD; North Bay RFPD; Confederated Tribes of Coos, Lower Umpqua & Siuslaw Indians; Coquille Tribe; City of North Bend; City of Coos Bay; and Oregon International Port of Coos Bay. This notice of hearing was published in The World News Paper on June 20, 2013 to comply with the notice requirements.

IV. SUMMARY / CONCLUSIONS

If the Planning Commission recommends the application for approval as is or with qualifiers then the Board of Commissioners will review this matter on July 18, 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: Applicant
Confederated Tribes
Coquille Tribe

EC: County Counsel
Dave Perry, DLCD

C: w/o attachments:
Special Districts