STAFF REPORT FOR HEARINGS BODY REVIEW

OWNER:       ORC Properties LLC
APPLICANT:   Aaron Powell, Baird Hanson LLP
             4219 E. Rowan Ave
             Spokane WA 99217

REQUEST: To amend the Coos County Comprehensive Plan designation and Coos Bay Estuary Management Plan (CBEMP) Segment 38-UD (38-Urban Development) to allow for log storage. To approve a condition use application request to allow for log storage on the subject property and approval of a floodplain certificate for the log storage as “other development”.

STAFF CONTACT: Jill Rolfe, Planning Director

REVIEWING BODY: Coos County Planning Commission

MAP NUMBER(S) / LEGAL DESCRIPTION

ASSESSOR’S MAPS: Township 25S Range 13 Section 35DB Tax Lot 300

PROPERTY LOCATION

The property is located just southeast of the City of Coos Bay and north of the unincorporated community of Bunker Hill. The property is accessed off of Mullen Road.

APPLICABLE CRITERIA

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

Amendment

<table>
<thead>
<tr>
<th>LDO</th>
<th>§ 1.2.100, §1.2.200, § 1.2.325</th>
<th>Amendment of Text Only, Who May Seek Change, Procedures for Legislative Amendment</th>
</tr>
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<tr>
<td>LDO</td>
<td>§ 4.5.696</td>
<td>Uses, Activities and Special Conditions</td>
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<td>CCCP</td>
<td>Volume II, Part I, § 5</td>
<td>Isthmus Slough-Coalbank Slough Shoreland Unit -38</td>
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Conditional use for log storage

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<th>LDO</th>
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<td>LDO</td>
<td>Appendix 3, Policies</td>
<td>17, 18, 23, 27 and 16(b)(I)</td>
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<tr>
<td>LDO</td>
<td>§ 4.6.217(4)</td>
<td>Other Development – This is covered under Policy 27.</td>
</tr>
</tbody>
</table>
I. BASIC FINDINGS

A. LAWFULLY CREATED PARCEL: The subject property was created prior to 1986 by deed as required under § 6.1.125.

B. ZONING: The property is zoned Coos Bay Estuary Management Plan, Shoreland district 38-Urban Development (38-UD).

SECTION 4.5.695 Management Objective: This district shall be managed to facilitate development of upland support uses for moorage that is expected to develop in Coalbank Slough.

C. SPECIAL CONSIDERATIONS: This property contains areas of Archaeological concerns, a wetland and floodplain. Notice has been provided to Department of Environmental Quality (DEQ) Department of State Lands, Army Corps of Engineers and both local Indian Tribes. The applicant will have to address the wetland with Army Corps of Engineers and Department State Lands. There have been no negative comments received.

D. SURROUNDING USES: This property is a triangle shape that is boarded by Coalbank Slough on the west and northwest portions of the property. To the east is the railroad and across the railroad is ORC’s mineral processing facility. To the south is the urban unincorporated community of Bunker Hill which is platted and mostly developed with dwellings.

II. FINDINGS TO THE APPLICABLE REVIEW CRITERIA

<table>
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SECTION 1.2.100. Amendment of Text Only An amendment to the text of this ordinance or the comprehensive plan is a legislative act within the authority of the Board of Commissioners. [OR 04 12 013PL 2/09/05]

SECTION 1.2.200. Who May Seek Change. A text amendment may be initiated by the Board of Commissioners, Planning Commission or by application of a property owner or their authorized agent. An application by a property owner shall be accompanied by the required fee. [OR 04 12 013PL 2/09/05]

SECTION 1.2.300. Alteration of a Recommended Amendment by the Planning Director. The Planning Director may recommend an alteration of a proposed amendment if, in the director's judgment, such an alteration would result in better conformity with any applicable criteria. The Planning Director shall submit such recommendations for an alteration to the Hearings Body prior to the scheduled public hearing for a determination whether the proposed amendment should be so altered.

SECTION 1.2.325. Procedure for Legislative Amendment. The Board of Commissioners shall conduct one or more public hearings with 10 days advance published notice of each of the hearings.
The public notice shall state the time and place of the hearing and contain a statement describing the
general subject matter of the ordinance under consideration. (ORS 215.060 & ORS 215.223)

Notice to DLCD shall be provided 35 days prior to the initial hearing per ORS 197.610. Notice of
adoption is subject to ORS 197.615. [OR 04 12 013PL 2/09/05]

FINDING: The property owner’s agent requested this text amendment. At the pre-application meeting
the Planning Director suggested some language to be used if the applicant moved forward with the change. Currently this segment’s management objective is to facilitate development of upland support uses for moorage that is expected to develop in Coalbank Slough. The Coos Bay Estuary Management Plan was adopted in 1986 and under this management unit Industrial uses are allowed but log storage/sorting yards are specifically prohibited. This was a policy decision made by the Board of Commissioners at the time the Comprehensive Plan and Implementing Ordinances were developed and adopted.

The proposal is for log storage in the 38-UD but this use will be in a location dependent on the water access in the adjacent zoning districts to allow for barging of the logs. In the Development Management Unit (Policy 2 of the CBEMP, Appendix 3) lists out water-dependent commercial industrial uses, water storage areas needed for products in industries, and water-borne transportation receipt/shipment including transfer facilities which all support log storage and sorting. Policy 2 was adopted into the plan to implement Statewide Planning Goal #16.

The applicant filed the application and staff provided 35-day notice of the change to Department of Land Conservation and Development (DLCD). Written notices were provided 20 days in advance of the Planning Commission meeting. This notice of hearing was published in *The World News Paper* on July 28, 2014 and August 4, 2014 to comply with the notice requirements.

Therefore, the procedures for this process have been followed.

<table>
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<th>LDO</th>
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<th>Uses, Activities and Special Conditions</th>
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</table>

The amended language is shown with a strikethrough to indicate removal and *bold/italics* is for the new proposed language.

A. Uses
1. Agriculture                  N/A
2. Airports                     N
3. Aquaculture                  ACU-S, G
4. Commercial                  ACU-S, G
5. Dryland moorage              P-G
6. Industrial & port facilities ACU-S, G
7. Land transportation facilities P-G
8. Log storage/sorting yard (land) **ACU-S, G**

**GENERAL CONDITIONS**
1. All permitted uses and activities shall be consistent with Policy #23, requiring protection of riparian vegetation.
2. All permitted uses shall be consistent with the respective flood regulations of local governments, as required in Policy #27.
3. All uses and activities: Inventoried resources requiring mandatory protection are subject to Policies #17 and #18.

SPECIAL CONDITIONS

Uses:

8. **Industrial uses within this segment are subject to Policy 16b(I).**

The new language is consistent with Goal 16. This was a policy choice by the Board of Commissioners.

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**ISTHMUS SLOUGH – COALBANK SLOUGH**

**MANAGEMENT**

**CLASSIFICATION – UD**

**SHORELAND UNIT – 38**

Boundaries:
Northeastern Boundary – the rail line south of the crossing of Coalbank Slough.
Southwestern Boundary – The east edge of the eastern-most major salt marsh on the south shore of Coalbank Slough.

Management Objective: This unit shall be managed to facilitate development of upland support uses for moorage that is expected to develop in Coalbank Slough.

A. Uses:
1. Agriculture N/A
2. Airports N
3. Aquaculture *
4. Commercial *
5. Dryland moorage A
6. Industrial & port facilities *
7. Land transportation facilities A
8. Log storage/sorting yard (land) N/A

SPECIAL CONDITIONS:

Uses:

8. **Industrial uses within this segment are subject to Policy 16b(I).**
Conditional Use Request for Log Storage

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GENERAL CONDITIONS

1. All permitted uses and activities shall be consistent with Policy #23, requiring protection of riparian vegetation.
2. All permitted uses shall be consistent with the respective flood regulations of local governments, as required in Policy #27.
3. All uses and activities: Inventoried resources requiring mandatory protection are subject to Policies #17 and #18.

SPECIAL CONDITIONS

Uses:
8. Industrial uses within this segment are subject to Policy 16(b)(I).

FINDING: The conditional use application is dependent on the approval of the text amendment. The Planning Commission will need to make the recommendation on the text amendment prior to making a recommendation on the conditional use.

The applicant has submitted an application request to address the criteria; therefore, complying with this criterion.

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<td>#16b Rural, Urban, and Unincorporated Communities Use Standards</td>
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<td>I. Commercial and Industrial uses in Unincorporated Communities and on Rural Lands shall be consistent with OAR 660-022-0030. Commercial and industrial uses shall comply with building square footage requirements set forth in OAR 660-022-0030(10) and (11). New commercial structures authorized outside of a UCB or UGB shall not exceed 3,500 square feet of floor area. New industrial structures located outside of a UCB or UGB shall not exceed 35,000 square feet of floor area, unless:</td>
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<td>a. The industrial use involves the primary processing of raw material(s) produced in the area or from ocean resources; or</td>
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<td>b. The industrial use is located on an abandoned or diminished mill site as defined by statute; or</td>
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<td>c. The industrial use is located in an area where an exception to Goal 14 has been taken; or</td>
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<td>d. As authorized by Goals 3 and/or 4.</td>
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<td>This policy shall be implemented through ordinance measures. Implementation shall occur as identified under specific zoning district standards.</td>
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FINDING: There is no building proposed with this use request. Therefore, this policy will not apply to
This request.

#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: Staff has reviewed the plan maps and this property does not contain any inventoried major marshes, significant wildlife habitats, coastal headlands or exceptional aesthetic resources. Therefore, this policy does not apply to this request.

#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) cannot 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: This property does not contain any historical structures or sites. The property is in an area of archeological interest. Both tribes have received a copy of the application and they still have time to comment. A copy of this staff report will also be sent to them as well as a decision notice. If an agreement with the tribe is unable to be reached then there is a requirement for a hearing to resolve the dispute. Staff does not anticipate any disagreement but the resolution is in place. At this time the applicant has satisfied this criterion.

#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’s proposal will be out of the riparian area with the closest point of the proposed area 500 feet away from Coalbank Slough. The proposal will be located at the southeast end of the property as shown by the applicant’s Exhibit 2. There is no proposed stabilization with this project because it is on the upland portion of the estuary.

#27 Floodplain Protection within Coastal Shorelands

The respective flood regulations of local government set forth requirements for uses and activities in identified flood areas; these shall be recognized as implementing ordinances of this Plan.

This strategy recognizes the potential for property damage that could result from flooding of the estuary.

FINDING: The applicant has provided a flood certification letter from Clyde Mulkins, Registered Professional Engineer that the flood level would not raise more than one foot. This proposal is considered to be “other development” under § 4.6.217(4) of the CCZLDO. The requirement for this type of development within the floodplain requires a certification that:
a. Result in any increase in flood levels during the occurrence of the base flood discharge if the development will occur within a designated floodway; or,
b. Result in a cumulative increase of more than one foot during the occurrence of the base flood discharge if the development will occur within a designated flood plain outside of a designated floodway.

This property is located within a floodplain and not a floodway; therefore, subsection b would apply to this request. The certification clearly states that cumulative increase will not be more than one foot. Therefore, this criterion has been satisfied.

III. NOTIFICATION/ COMMENTS

Notification was provided as consistent with LDO Section 5.7.300. Notification was also provided on July 11, 2014, to subject property owners, property owners within 100’ feet from the subject property. The notice was also provided to the following: Board of Commissioners; Dave Perry, DLCD; Thomas Guevara, ODOT; Bunker Hill RFPD; Bunker Hill Sanitary District; Department of State Lands; Coos Bay-North Bend Water Board; Coos Bay School District; Oregon National Port of Coos Bay; Army Corps of Engineers; Coquille Tribe; Coos, Lower Umpqua & Siuslaw Indians; County Roadmaster and the Planning Commission. There have been no negative comments received as of the date of this report. This notice of hearing was published in The World News Paper on July 28, 2014 and August 4, 2014 to comply with the notice requirements.

IV. SUMMARY / CONCLUSIONS

This rezone is consistent with the CCCP and the Planning Commission should recommend approval. The Planning Commission can recommend approval of this application as it stands, recommend the application with qualifiers to ensure that 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 August 14, 2014 at 10:30 a.m.

If you have any questions please contact staff.

COOS COUNTY PLANNING DEPARTMENT

Jill Rolfe, Planning Director

Attachments: Applicants Submittal
C: Property Owner

EC: Board of Commissioners
    County Counsel
    Dave Perry, DLCD
    John Rowe, County Roadmaster
    Confederated Tribes
    Coquille Indian Tribes