November 17, 2014

Coos County Commissioners
Coos County Courthouse
Coquille, OR 97423

Re: Coos County Zoning and Land Development Ordinance Changes under File No. AM-14-10 and AM-14-11

Dear Commissioners:

In addition to comments and concerns that have previously been submitted on March 6, 2014, May 1, 2014, October 2, 2014 and October 16, 2014, I submit the following additional comments and concerns regarding Ordinance changes to the Coos County Zoning and Land Development Ordinance and the Coos Bay Estuary Management Plan. On October 16, 2014, I requested 120 days to review the current Ordinance changes under Coos County File No.s AM-14-10 and AM-14-11 as the short review time given was not sufficient time to review all the proposed changes. Citizens attempted to obtain a copy of the Coos County Comprehensive Plan from the Oregon Department of Land Conservation and Development within the 30 days that was given by the Coos County Commissioners in order to be able to review the Plan to make sure Ordinance changes were in compliance. Citizens were unable to do this before the date these comments were due. The 30 days given was insufficient time to review all proposed Ordinance changes. Please accept these additional comments of concern in addition to what has previously been submitted:

CCZLDO ARTICLE 1.1 INTRODUCTION

SECTION 1.1.100. Title and Authority. This Ordinance shall be known as the Coos County Zoning and Land Development Ordinance of 1985 and is enacted pursuant to the provisions of ORS 92.044, 92.046, 203.035, 203.065, 215.050 and 215.110 and the Coos County Comprehensive Plan. All provisions of this Ordinance shall remain in compliance with the Comprehensive Plan and State law. (Emphasis added)

2. CHAPTER II – NEW DEFINITIONS

The following definitions are found currently in SECTION 2.1.200. These are not up for proposed changes but I feel there needs to be changes made. See examples further below.

DREDGING: The removal of sediment or other material from a stream, river, estuary or other aquatic area: (1) Maintenance Dredging refers to dredging necessary to maintain
functional depths in maintained channels, or adjacent to existing docks and related facilities; (2) New Dredging refers to deepening either an existing authorized navigation channel or deepening a natural channel, or to create a marina or other dock facilities, or to obtain fill for the North Bend Airport runway extension project; (3) Dredging to Maintain Dikes and Tidegates refers to dredging necessary to provide material for existing dikes and tidegates; (4) Minor dredging refers to small amounts of removal as necessary, for instance, for a boat ramp. Minor dredging may exceed 50 cubic yards, and therefore require a permit.

CRITICAL FACILITY: means a facility for which even a slight change of flooding might be too great. Critical facilities include, but are not limited to schools, nursing homes, hospitals, police, fire and emergency response installations, installations which produce, use or store hazardous materials or hazardous waste.

Comment: The definition for Dredging above does not include all dredging as that term is used throughout the Ordinance. For example Policy 2 of the CBEMP allows incidental dredging necessary for the installation of pipelines, cables and utility crossing. The definition should be amended to read:

“DREDGING: The removal of sediment or other material from a stream, river, estuary or other aquatic area. Examples of dredging are: (1) Maintenance Dredging . . . .”

The definition for Critical Facility above does not include tsunami inundation or sea level rise. The definition should be amended to read:

“CRITICAL FACILITY: means a facility for which even a slight change of flooding, tsunami inundation or sea level rise might be too great. Critical facilities include, . . . .”

3. Estuary Zones

Comment: The Coos Bay Estuary Management Plan and the Coquille River Estuary Management Plan need to be found under separate zoning sections and not be all grouped together. The Policies found under these two plans are similar but not the same exact language. For example the CBEMP has a Policy 5 “Estuarine Fill and Removal” (page 385-387) and the CREMP also has a Policy 5 “Estuarine Fill and Removal” (page 490-491) all found within this same current Chapter 3 but these Policies do not have the same wording. This applies to other Policies also as well. This is too confusing and is likely to cause lots of errors since these two exactly titled the same Estuary Policies are only a 100 pages apart in the same document. These two separate Estuaries need to be separate and CLEARLY labeled as to what estuary you are actually looking at.

1 http://www.co.coos.or.us/Portals/0/Planning/AM-14-10/Article%203.1%20CB%20C%20Zoning%20Districts%20Uses%20and%20Activities%20Land%20Development%20Standards.pdf
Estuary Zones Pages 487-480

VOLUME III (COQUILLE RIVER ESTUARY) POLICIES APPENDIX 2
APPENDIX 2 - CREMP PLAN -

Comment: The above has the wrong page numbers listed in the CREMP Appendix.

Estuary Zones Page 1

ARTICLE 3.1 GENERAL INFORMATION
SECTION 3.1.100 ZONING DISTRICT MAPS:

Comment: All changes in zoning maps should require a public process. All maps should be available on-line in digital format and be easily legible and understandable. I could not find the Coos County “Special Considerations Map” or the “Shoreland Values Requiring Mandatory Protection Map” or the “Coastal Shorelands Inventory Map” or the “Natural Hazards Map” (except for the FEMA flood plain mapping) in the electronic mapping system. The zoning districts are NOT EASILY DISTINGUISHABLE. There are too many shades of blue and/or similar colors that are being used. The Assessor’s office had a distinct bold red line between zoning districts so I am not sure why that is not showing up on the electronic maps being adopted by the county for Planning. The date of issue should be part of all maps to avail confusion about which is the current version. Access to all previously dated maps to see all changes to Zoning districts should also be available and required.

Coos Bay Estuary Management Plan (CBEMP) Electronic Mapping
http://www.coastalatlas.net/estuarmaps/
**Comment:** IND Zone / Water Dependant development / 7-D Zone / Wetland areas are mislabeled and incorrect under Shoreland zoning for the Coos County Portion of the new electronic maps for both 1987 and 2014. Zoning boundaries are not well defined and hard to decipher. **There needs to be a bolder, more defined lines between zoning districts.** This is even true for the Coos Bay Estuary Management Plan waterbody and shoreline zoning districts as well. (See map below).
**Comment:** In the map below you will find that wetland areas on the North Spit are not showing up properly under the 2014 zoning when you click on Wetland Maps for Coos County. Zoning boundaries also need to be more defined. There are too many similar colors separating some of the districts. The National Inventory maps do show wetland areas (See map further below) but Coos County has done some detailed wetland mapping for the North Spit and that mapping is not showing up on any of these Coos County Inventory Maps:

The National Wetland Inventory Maps below do show general wetland areas but these are not detailed and are not lining up with the Coos County wetland mapping shown above.
4. CHAPTER IV - BALANCE OF COUNTY ZONES, OVERLAYS & SPECIAL CONSIDERATION

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SECTION 4.1.110 AMENDMENT OF ZONING DISTRICT MAP:
Whenever it is necessary to amend the zoning map to conform with an approved rezoning or with an amendment to the text of this Ordinance or as final land use actions of incorporated cities as may be required, the Planning Staff shall make the change and note it in the meta data. When changes are made to the digitized maps they shall be exported into a shape file with the date and title and stored in an archived file. If changes are needed to align with the Assessor’s tax lot data that may be done without notice.

Comment: Any changes made to the county zoning maps should be noticed to the public. I am not sure what all exactly would be needed in EVERY situation to align with the Assessor’s tax lot data but I would hate to see this very open ruling potentially be abused in some way, particularly if it involved wetlands or other critical areas. Any impacts to the Coos Bay Estuary or wetlands should require a public process and be excluded from “changes needed to align with the Assessor’s tax lot data may be done without notice.”

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SECTION 4.11.345 CONFORMANCE REQUIREMENT:
All structures and uses within the Airport Operations District shall conform to the requirements of Federal Aviation Agency Regulation FAR-77 or its successor, and to other Federal and State laws as supplemented by Coos County Ordinances regulating structure height, steam or dust, and other hazards to flight, air navigation or public health, safety and welfare.

Chapter IV currently before proposed change states:

Current Page IV-505

SECTION 4.6.345. Conformance Requirement. All structures and uses within the Airport Operations District shall conform to the requirements of Federal Aviation Agency Regulation FAR-77 or its successor, and to other Federal and State laws as supplemented by Coos County Ordinances regulating structure height, steam or dust, and other hazards to flight, air navigation or public health, safety and welfare.

Comment: The section number has changed above from SECTION 4.6.345 to SECTION 4.11.345 but there is no indication in the current proposed Ordinance Change document that this has occurred. When I first went looking for SECTION 4.6.345 in the new proposed Ordinance updates under File No. AM-14-10, I thought that this entire section had been removed. The way changes are being made does not reflect or let reviewers see ALL the changes that are being proposed and/or why they are being proposed.
SECTION 4.1.160 SPECIAL DEVELOPMENT CONSIDERATIONS AND OVERLAYS:

Special development considerations and overlays are listed in Article 4.11. The special development considerations are map overlays that show areas of concern such as hazards or protected sites. These maps have been digitized to allow for layers to be applied to the property. The original historical Mylar map shall be used to determine if an error in exists. Each development consideration may further restrict a use. Staff will look at maps to determine if there are mapped special developed considerations that apply. If applicable the applicant must address the development consideration prior to receiving a zoning compliance letter.

Comment: As stated above I could not find the Coos County “Special Consideration Map” or the “Shoreland Values Requiring Mandatory Protection Map” or the “Coastal Shorelands Inventory Map” or the “Natural Hazards Map” (except for FEMA flood plain mapping) in in the electronic mapping system. While I support making the maps electronic, these new maps are not user friendly and they are hard to read and/or understand what you are looking at. They do not have the details they should and use too many similar colors. They are poor quality for electronic mapping. In this day and age we have google earth and other resources available. These maps should be compatible to these other mapping systems and to the taxing district maps that the Coos County Assessor is currently using. There needs to be hard copy maps that are available also and any and all changes to maps should be kept in a hard copy map format somewhere.

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SECTION 4.2.130 DEVELOPMENT AND USE STANDARDS

(10) i. The 50’ measurement shall be taken from the closest point of the ordinary high water mark to the structure using a right angle from the ordinary high water mark.

Comment: As was explained earlier in testimony. The “ordinary high water mark” needs to be defined under Chapter 2 – Definitions. This reference is also listed in other sections and I have not listed them all here.

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SECTION 4.6.220 HEARINGS BODY CONDITIONAL DEVELOPMENT AND USE:

(1) (f)(iii)(5)(b) Defined as: a new transmission line constructed to connect an energy facility to the first point of junction of such transmission line or lines with either a power distribution system or an interconnected primary transmission system or both or to the Northwest Power Grid.

Comment: The words “for service to the public” needs to be added after the word “both” above so the following reads:
(1) (f)(iii)(5)(b) Defined as: a new transmission line constructed to connect an energy facility to the first point of junction of such transmission line or lines with either a power distribution system or an interconnected primary transmission system or both FOR SERVICE TO THE PUBLIC or to the Northwest Power Grid.

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7. Natural Hazards (Balance of County Policy 5.11)
The Natural Hazards map has inventoried the following:
• Wind Erosion/Deposition
• Earth flow & Slump Topography
• Critical Stream Bank Erosion
• Flash Flooding
• Rock fall & Debris and Flow Terrain

Purpose Statements:
Coos County shall regulate development in known areas potentially subject to natural disasters and hazards, so as to minimize possible risks to life and property. Coos County considers natural disasters and hazards to include stream and ocean flooding, wind hazards, wind erosion and deposition, *critical stream bank erosion, mass movement (earthflow and slump topography), earthquakes and weak foundation soils.

Comment: Tsunamis and wildfires need to be added to this section as they are listed as natural hazards and have been since 2001 in Statewide Planning Goal #7.

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SECTION 4.11.460 NONCONFORMING USES THAT APPLY TO THE SOUTHWEST OREGON REGIONAL AIRPORT OVERALY:
1. These regulations shall not be construed to require the removal, lowering or alteration of any structure existing at the time the ordinance codified in this chapter is adopted and not conforming to these regulations. These regulations shall not require any change in the construction, alteration or intended use of any structure, the construction or alteration of which was begun prior to the effective date of the ordinance codified in this section.

Comment: The last sentence of the above should be reworded to add the words “approved and” as follows:

...These regulations shall not require any change in the construction, alteration or intended use of any structure, the construction or alteration of which was APPROVED AND begun prior to the effective date of the ordinance codified in this section.
5. CHAPTER V

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SECTION 5.0.175

On October 16, 2014 sections 5.0.175 (4), (5) and (6) read as follows:

4. This section applies to applications submitted prior to the effective date of this section and to all unfulfilled conditions of approval of previously approved applications which requires the signatures or consent of the property owners at the time of the application submittal, provided that property owners were provided with notice of any hearing on the application pursuant to ORS 197.763.

5. Notwithstanding any other requirement of this ordinance, approvals granted to a such transportation agency for a transportation improvement, utility or entity shall not become effective for construction on a property under the approval until the transportation agency, utility or entity obtains either the written consent of the property owner or the property rights necessary for construction on that property the subject property is acquired for the project.

6. Any permit subject to this section will be effective valid for two (2) years unless a request for renewal for another two (2) years is received from the transportation, utility or entity agency within 2 years after the date of approval, is received from the transportation agency within 2 year period, in which case renewal will be automatic to a maximum of 5 renewals. The date of approval is the date the appeal period has expired and no appeals have been filed, or all appeals have been exhausted and final judgments are effective.[OR-92-07-012PL]

If you go on-line currently (November 16, 2014) this same section reads as:

4. Notwithstanding any other requirement of this ordinance, approvals granted to a such transportation agency for a transportation improvement, utility or entity shall not become effective for construction on a property under the approval until the transportation agency, utility or entity obtains either the written consent of the property owner or the property rights necessary for construction on that property the subject property is acquired for the project.

5. Any permit subject to this section will be effective valid for two (2) years unless a request for renewal for another two (2) years is received from the transportation, utility or entity agency within 2 years after the date of approval, is received from the transportation agency within 2 year period, in which case renewal will be automatic to a maximum of 5 renewals. The date of approval is the date the appeal period has expired and no appeals have been filed, or all appeals have been exhausted and final judgments are effective.[OR-92-07-012PL]

Comment: It appears that changes have been made in the course of the last few weeks to this document that is posted on-line but those changes are not readily visible and/or trackable on the on-line document. How are citizens supposed to follow along and comment on a document that
is continually being changed in this manner? I support this change to eliminate the previous number 4 but wonder about other changes that may also be occurring that I might not be aware of.

The Planning Commission unanimously recommend that this entire SECTION 5.0.175 have the words “public” added before the words transportation, utility or entity but I noticed in the two sections 4-6 above that these words were not added in blue text in with the Planning Commission’s recommendation as was intended the night of their ruling. I support their ruling to add the word “public” each time in SECTION 5.0.175 before the words transportation, utility or entity. This would make this local ruling more in line with State law and the Federal Natural Gas Act as explained in prior testimony on Oct 2 and 16, 2014.

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SECTION 5.0.250 TIMETABLE FOR FINAL DECISIONS (ORS 215.427):

6. Land use permits that have been approved by the county shall be held in abeyance until the decision is final and all fees are paid. That is, until the appeal period has expired and no appeals have been filed, or all appeals have been exhausted and final judgments are effective.

Comment: The following language should NOT BE REMOVED. Permits should be held in abeyance and not considered final until all appeal periods have been exhausted and final judgments are effective.

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SECTION 5.2.600 EXPIRATION AND EXTENSION OF CONDITIONAL USES

(1) c. Approval of an extension granted under this section is an administrative decision, is not a land use decision as described in ORS 197.015 and is not subject to appeal as a land use decision. (possible delete)

Comment: Recommend deletion. This wording makes it sound like you cannot appeal an administrative decision of an extension and that is not the case.

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Section 5.3.350 CRITERIA FOR APPROVAL OF VARIANCES

5. Variance regulations in CCZLDO Article 5.3 shall not apply to Sections 4.11.400 through 4.11.460, Chapter VII and Chapter VIII.

Comment: It is difficult to understand what exactly this would do. Since SECTION 5.3.200 requires that the Planning Director shall consider all formal requests for variances for zoning and land development variances. If Variances are requested for Sections 4.11.400 through 4.11.460, Chapter VII and Chapter VIII and are actually considered, then VARIANCE REGULATIONS IN CCZLDO ARTICLE 5.3 should APPLY in addition to requirements listed in Sections
4.11.400 through 4.11.460, Chapter VII and Chapter VIII. Citizens should have a right to have the requirements as they are spelled out in this Variance ruling apply to all Variances that are considered in order that the granting of the variance will not be detrimental to the public health, safety, or welfare or materially injurious to properties or improvements in the near vicinity.

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SECTION 5.3.360 EXPIRATION AND EXTENSION OF VARIANCES:

(5) c. Approval of an extension granted under this section is an administrative decision, is not a land use decision as described in ORS 197.015 and is not subject to appeal as a land use decision. (Possible deletion)

Comment: Recommend deletion. This wording makes it sound like you cannot appeal an administrative decision of an extension and that is not the case.

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ARTICLE 5.7 PUBLIC HEARINGS
SECTION 5.7.300 Quasi-Judicial Land Use Hearings Procedures

4(b)(i). Be written on the group, company, or organization's official letterhead;

Comment: This singles out smaller groups who do not have letterhead. A copy of the groups filing with the State should be more than sufficient to show that the person submitting testimony is qualified to speak for the group.

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SECTION 5.7.300 Quasi-Judicial Land Use Hearings Procedures

4(c)

...the determination is made that testimony was disqualified under this subsection then standing has not been achieved. That party may not appeal the matter unless other forms of testimony accepted forms of testimony was received and granted them standing under CCZLDO Section 5.8.160.

Comment: Citizens and groups should have the right to appeal a Planning decision and prove their case. To not allow citizens who have tried to follow the county appeal guidelines a proper process violates the spirit and intent of Statewide Planning Goal 1. This is supposed to be a citizen led process not a process for lawyers and corporate consultants only.

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SECTION 5.8.100 Appeals General

Coos County has established an appeal period of 1512 days from the date written notice of administrative or Planning Commission decision is mailed.
Comment: Please keep the appeal period at 15 days. Citizens should have a right to have at minimum that amount of time as explained in earlier testimony.

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SECTION 5.8.170

5. The nature of the decision and the specific grounds for appeal citing specific criteria from the Coos County Zoning and Land Development Ordinance, Comprehensive Plan, Statute or Rule.

6. The appellant must explain in detail, on the appeal form or attached to the appeal form, how the application did not meet the criteria in the case of an approval or why the criteria or should not apply; or, in the case of a denial the appellant shall explain why the application did meet the criteria or why certain criteria did not apply to the application. Failure to explain why the application did not meet criteria identified in the decision notice or why criteria should have been applied shall result in dismissal of appeal.

Comment: The entire section of 5.8.170 should revert back to the original language in “SECTION 5.8.200. Appeals of Administrative Decisions.” The language above requires more specificity than appeals to appellate courts in Oregon.

Page V-26 – V27:

SECTION 5.8.170

(8) g. All items to be submitted to the County must actually be received by the County Planning Department no later than 5:00 p.m. on the on the last day of the appeal period. If the last day of the appeal period falls on a weekend or County holiday, then the item must actually be received by the County Planning Department no later than 12:00 p.m. on the next County business day following the deadline date. All items to be mailed to another party must be postmarked no later than the end of the appeal period.

Comment: To be fair this appeal deadline day should really be changed to occur at 5 p.m. on the next county business day. All other State and Federal agencies do it this way so it seems very unorthodox to have this odd 12:00 p.m. time.

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ARTICLE 5.10 COMPLIANCE DETERMINATIONS AND REVIEWS

There is a lot of new information being placed in the above section, some of which I don’t know lines up with applicable state land use law requirements. There needs to be a review of this section to determine if these new regulations are allowing citizens in the county their proper due diligence and process in land use decisions. Making land use decisions administratively or by just checking off a form without due process does not seem proper. Applications that will negatively impact citizens in the county need to be done in a fair and open process that involves
a public hearing and gives citizens plenty of opportunities to have say as to how our county is planned and developed. If an industrial facility is being proposed they should not be allowed to obtain a permit just by checking off a form with no public process. If noise and pollution will go beyond the property lines of the permit being sought, then those issues should be given full consideration and citizens should be allowed a chance to comment on those impacts. The county should notify ALL impacted citizens and residents, not just those who may live 100 feet from the property lines. These narrow notification requirements do our area a great disservice. If a request is made to be notified concerning a permit application, citizens should be entitled to receive notice. I fail to see where these proposed changes have referenced any State Law or provided findings that justify the proposed change.

CONCLUSION

Points of Law:

1.5.3 Administrative Law – Requirement for Findings – Statewide Goals

In order to adopt a quasi-judicial plan amendment, a local government must make findings establishing the proposed amendment is in compliance with the Statewide Planning Goals. ODOT v. Clackamas County, 23 Or LUBA 370 (1992). That is not what has been going on here.

A decision amending a comprehensive plan must specifically identify the applicable statewide planning goals and include findings that substantively address how the proposed comprehensive plan amendment assures compliance with those goals. It is insufficient to make passing reference to the general subject matter of the goals in addressing other approval criteria. Larvik v. City of La Grande, 34 Or LUBA 467 (1998).

In reviewing a county's legislative comprehensive plan amendment, LUBA does not require detailed findings, but Goal 2 requires a local government to explain why the amendment complies with applicable Statewide Planning Goals. The required explanation can appear in findings, in the record or in the brief the local government files with LUBA. Valerio v. Union County, 33 Or LUBA 604 (1997).

All comprehensive plan amendments must comply with the Statewide Planning Goals. When adopting a comprehensive plan amendment, it is the local government's obligation to explain in its findings why the plan amendment complies with the goals or why arguably applicable goal standards need not be addressed and satisfied. O'Rourke v. Union County, 29 Or LUBA 303 (1995).

Please consider these issues of concern and recommended changes to the current Ordinance updates before you. More time is needed for this volume of changes in order for this review to be complete and thorough.

Sincerely,

Jody McCaffree

Jody McCaffree