STAFF REPORT FOR APPEAL OF A HEARINGS BODY DECISION
FILE NO. V-13-03 & HBCU-13-05

APPLICANT/OWNER: Mike Smith
74799 Crannog Road
North Bend OR 97459

REQUEST: To site a dwelling within the Beaches and Dunes Limited Suitability for Development Area and a Variance to the 50 foot riparian vegetation setback.

STAFF CONTACT: Jill Rolfe, Planning Director

MAP NUMBER(S) / LEGAL DESCRIPTION
ASSESSOR’S MAPS: Township 23S Range 13W Section 35BB Tax Lot 200

PROPERTY LOCATION
The subject property is located in the Hauser area, between the cities of North Bend and Lakeside. It lies within the Deal Park Subdivision. Subject property is accessed by Crannog Road.

APPLICABLE CRITERIA
Coos County Zoning and Land Development Ordinance (LDO) and Coos County Comprehensive Plan (CCCP)

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1. BASIC FINDINGS

A. Lawfully Created Parcel: The subject property was lawfully created as required by Section 3.3.800, Lawfully Created Lots and Parcels. The subject property consists of a portion of Lot 9 of the Deal Park Subdivision, which was established in 1965. In 2013 a portion of Crannog Road was vacated and added to the subject property and a subsequent property line adjustment was authorized between the subject property and a neighboring property, creating the current configuration. Therefore, the subject property meets the criteria in 3.3.800 and is a lawfully created lot.

B. Zoning: The zoning is Rural Residential-2 (RR-2) and Forest Mixed Use; however, the development will remain in the RR-2 portion of the property with the exception of the septic and/or drain field.

The purpose of the “RR-2” district is to provide for small acreage homesites outside of Urban Growth Boundaries, where a moderate intensity of land development is appropriate, but where urban services and facilities may not be available or necessary. The “RR-2” district provides for continued existence of rural family life and to provide a transition of densities between urban development and exclusive agricultural and forestry uses.

A portion of the property is zoned Forest. The purpose of the “F” zone 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.

Mixed Farm-Forest Areas “MU” areas include land which is currently or potentially in farm-forest use. Typically such lands are those with soil, aspect, topographic features and present ground cover that are best suited to a combination of forest and grazing uses. The areas generally occupy land on the periphery of large corporate and agency holdings and tend to form a buffer between more remote uplands and populated valleys. In addition, these “mixed use” areas contain ownership of smaller size than in prime forest areas. Some are generally marginal in terms of forest productivity, such as areas close to the ocean.

In certain areas of the County, these “mixed use” areas consist of extensive uplands where the lands are held predominantly by ranchers who manage their properties interchangeably between grazing and forestry depending on the economic base of each commodity at any given time. An essential management approach practiced by these ranchers is to maintain enough upland grazing acreage to sustain livestock during the winter months due to the flooding of lowland areas. Some intensive forest management is practiced on these lands, but not to the same extent as in “prime forest areas”, and grazing is in many places a co-dominant use. There are typically mixtures of farm and forest uses in these areas. Certain non-forest uses will be allowed in areas that meet the criteria of this classification as established in the zoning ordinance.

C. Site Description: The subject property contains approximately 0.66 of an acre. There are approximately 0.35 of an acre within the RR-2 zoning district and approximately 0.31 of an acre within the FMU zone. The eastern portion of the property is bordered by Saunders Lake, the northern portion of the property is bordered by the Oregon Dunes National Recreation Area, the western and southern portions of the property are bordered by private property. The zone map shows there is no current development, although the applicant has submitted photos showing that a portion of the property has been cleared and leveled in anticipation of development. The photographs show that most of the trees and vegetation was removed by the owner while leveling the property.
D. **Background:**

- April 1, 2013, a road vacation (VAC-12-03) was approved by the Board of Commissioners, vacating the last 200 feet of Crannog Road, which was absorbed into the subject property.
- July 11, 2013, a property line adjustment (PLA-13-16) was authorized between the subject property and tax lot 100 in Township 23S Range 13W Section 35BB, which created the current configuration.
- July 18, 2013, the applicant submitted a multi part application request for the following: a dwelling on less than one acre in a rural residential platted subdivision; a dwelling within the Coastal Shoreland Boundary; a dwelling in the Beach and Dune with Limited Development Suitability; and a Variance to the riparian area. The applications were deemed complete on July 30, 2013.
- September 4, 2013, a request was sent to Pam Blake, Department of Environmental Quality (DEQ) office and to Christopher Claire of the local Department of Fish & Wildlife office requesting comments on the Variance to the riparian setbacks on Saunders Lake. Mr. Claire offered to contact the property owner and make a site visit. This was arranged for the end of September.
  - Ms. Blake commented that there were concerns with the water quality of the lake and did not support a variance but did offer some suggested mitigation to minimize the impacts (see page 79 of the record).
  - Mr. Claire provided comments about the existing site and some solutions for the already removed riparian to mitigate any of the damage (see page 77 of the record).
- After reviewing the comments and talking with the Planner reviewing the matter the Planning Director made the decision to send the Beaches and Dunes Limited Suitability for Development area application and the Variance request to the Planning Commission for review. The Planner had requested additional information and when received she did not find that the applicant had adequately addressed that information. Instead of denying the application outright the Planning Director decided to give the applicant a chance to go before the Planning Commission to review the matter.
- October 30, 2013, the two administrative applications (less than an acre in rural residential and dwelling within a Coastal Shoreland Boundary) received conditional approval. The applications were conditioned on approval of the Beach and Dunes application.
- November 15, 2014 a notice of a Planning Commission hearing was mailed out.
- December 5, 2013, the Planning Commission found that there was not enough evidence to support Mr. Smith’s variance request and they chose to continue their hearing until January 2, 2014 to allow Mr. Smith to amend his request and consider a variance to the Forest setback instead of the riparian. Mr. Smith submitted additional information that was forwarded to the Planning Commissioners after the meeting. However, Mr. Smith has stated that he was not aware of the date to which the Planning Commission hearing was continued.
- January 2, 2014, the Planning Commission approved HBCU-13-05, the application to site a dwelling within the Beaches and Dunes Limited Suitability for Development area; however, Mr. Smith was not present (see above) and, as a result, they denied V-13-03, the request for a Variance to the 50 foot riparian vegetation protection setbacks finding that there was not enough evidence to justify the approval.
- January 23, 2014, Mr. Smith filed an appeal in a timely manner. A record was compiled and sent to the Board of Commissioners.
• February 4, 2014, the Board of Commissioners in a regularly scheduled session, determined that they would hear the appeal in a de novo hearing.
• April 7, 2014, Mr. Smith signed a waiver to the time limits extending the decision deadline to June 30, 2014.
• May 14, 2014, Hearing notice was sent out as required by law.

II. FINDINGS TO THE APPLICABLE REVIEW CRITERIA

| LDO | Article 5.8, §5.8.100, 5.8.150 & 5.8.223 | Appeals of Discretionary Decisions; Standing to Appeal, Appeals of Hearings Body Decisions. |

Section 5.8.100 Coos County has established an appeal period of 15 days from the date written notice of administrative or Planning Commission decision is mailed.

The Board of Commissioners or Hearings Body shall dismiss an appeal for failure to follow the requirements of this article.

FINDING: The Planning Commission made their decision on January 2, 2014. The appeal was filed in a timely manner, on the proper form. Therefore, these criteria have been met.

Section 5.8.150 Standing to Appeal

A decision by the Planning Director, Hearings Body, or Board of Commissioners to approve or deny an application may be appealed as identified in the Sections below. The appeal must be filed within the appeal period and meet one of the following criteria:

1. In the case of a decision by the Planning Director, the petitioner was entitled to notice of the decision; or
2. In the case of a decision by the Hearings Body, the petitioner was entitled to notice of the decision of the hearing; or
3. The person is aggrieved or has interests adversely affected by the decision.

In the case of an appeal of a Hearings Body decision to the Board of Commissioners, the petitioner must have appeared before the Hearings Body orally or in writing. [OR 04 12 013PL  2/09/05]

FINDING: Mr. Smith was the applicant and appeared before the Planning Commission. He has standing to appeal and the Board of Commissioners should find that he has met the criteria for standing.

Section 5.8.223 Appeal of Hearings Body Decision to the Board of Commissioners

1. The review of the decision of the Hearings Body by the Board of Commissioners shall include:
   a. All materials, pleading, memoranda, stipulations, and motions submitted by any party to the proceeding and received or considered by the Hearings Body as evidence;
   b. All materials submitted by the Planning Department with respect to the application;
   c. Minutes of the public hearing of the Hearings Body;
d. The findings and action of the Hearings Body and the notice of decision;

2. A Notice of Appeal (NOA) shall be filed with the Department on the NOA form provided by the County along with any required filing fee.

3. The Planning Staff shall notify the Board of Commissioners of the Notice of Appeal and within ten days of receipt. Then planning staff shall provide the record to the Board of Commissioners for review. Provided there has been an initial evidentiary hearing, the Board of Commissioners may:
   a. Decline to hear the matter and enter an order affirming the lower decision; or
   b. Accept the appeal and:
      (1) Make a decision on the record without argument;
      (2) Make a decision on the record with argument
      (3) Conduct a hearing de novo; or
      (4) Conduct a hearing limited to specific issues.

   In the decision, the Board may affirm, modify, or reverse the lower decision, and accept any or all of the findings and conditions in the Hearings Body decision, or modify or adopt new findings and conditions on a permit.

4. If the Board allows argument only on the record, no new evidence may be submitted.
5. Any legal issues not specifically raised are considered waived for purposes of further appeal.
6. Where a hearing is limited to specific issues, any evidence or argument submitted must be related to the specific issue. Any evidence or argument submitted must be related to those specific issues.
7. 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 deadline date. If the deadline date 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 deadline date.
8. The decision of the board shall not be final until reduced to writing and signed by the Board.

FINDING: The record has been compiled pursuant to #1 above and presented to the Board of Commissioners in a timely manner. The notice of appeal was filed on the proper form. Planning Staff notified the Board of Commissioners in a timely manner and in their regularly scheduled meeting on February 4, 2014, the Board decided to hear the appeal and conduct the hearing de novo. The final Board decision will be reduced to writing and signed by the Board as is proper.

<table>
<thead>
<tr>
<th>LDO</th>
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<tr>
<td>RR-5</td>
<td>RR-2</td>
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<tr>
<td>Residential:</td>
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<tr>
<td>Single family dwelling</td>
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FINDING: The property is made up of portion of a lot 9 of the Deal Park Subdivision, which was platted and recorded in 1965. This subdivision was platted prior to the development of the Coos County Zoning and
Land Development Ordinance (LDO). The portion of the property which lies within the subdivision is approximately 0.35 of an acre and is zoned RR-2. LDO §4.2.400, Table 4.2c outright permits a dwelling in the RR-2 zoning district. However, due to the size of the property and the fact that it is in a pre-existing rural subdivision, a conditional use permit is required and the applicant must provide evidence that the property is compatible with surrounding uses. The applicant has provided justification for this use by showing that the subdivision was created with the purpose of siting dwellings. There are other small similar sized properties in this subdivision that are already developed for residential use. Other properties in the subdivision are sized from 0.18 to 2.68 acres. There are homes on properties that are as small as .23 acre.

The subject property is split zoned with the remainder of the property zoned Forest Mixed Use (FMU). All of the development must be located in the residential zoned portion or Mr. Smith will have to apply for a Forest Dwelling. If the property had been equal to or greater than one acre and had no special development considerations, a dwelling would have been allowed as an outright use. However, the property lies within the Beaches and Dunes Limited Suitability for Development area, the Coastal Shoreland Boundary of Saunders Lake, and is less than one acre in a rural platted subdivision. The applicant not only had to justify all the applications but has requested a variance to the 50 foot riparian protection setback. The applicant will have to meet the criteria listed for the aforementioned. The applicant has been approved for a dwelling but the placement of the dwelling is the source of the appeal.

<table>
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<tr>
<th>LDO</th>
<th>§4.4.400</th>
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<td>SECTION 4.4.400. General Standards for Rural Residential Zoning Districts.</td>
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<td>The general standards set forth in this section shall apply to the zoning districts and uses addressed in Table 4.2-c.</td>
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1. RR-5, RR-2, RC, CREMP RURAL RESIDENTIAL, AND CREMP RC ZONING DISTRICTS.

A. Minimum Lot Size: - 2 acres in the RR-2 district

Except:

i. Pre-existing legal lots of record shall be entitled to a use, subject to the findings and special standards on Table 4.2-c.

ii. Smaller parcels may be permitted in an approved residential planned unit development, provided the allowable density of the parent parcel is not exceeded; or

iii. As provided by Section 3.3.100(E); or

iv. As provided by Section 3.3.100 (B).

B. Dwelling Unit Density: Dwellings shall be permitted on lots or parcels complying with the minimum lot size requirements of (1) A above, when the findings and special standards of Table 4.2-c have been satisfied; however, the exceptions to minimum lot size requirements of Section 3.3.100 shall apply.

C. Lot Coverage: No requirement.

D. Setbacks:

a. All buildings or structures with the exception of fences shall be set back a minimum of thirty-five (35) feet from any road right-of-way centerline, or five (5) feet from the right-of-way line, whichever is greater.

b. Firebreak: New or replacement dwellings on lots, parcels or tracts abutting the “Forest”
zone shall establish and maintain a firebreak, for a distance of at least 30 feet in all
directions. Vegetation within this firebreak may include mowed grasses, low shrubs (less
than ground floor window height), and trees that are spaced with more than 15 feet
between the crowns and pruned to remove dead and low (less than 8 feet from the
ground) branches. Accumulated needles, limbs and other dead vegetation should be
removed from beneath trees. [ORD 95-05-006PL 11/29/95]

E. Structure Height: No requirement.
F. Fences, Hedges, and Walls: No requirement, but vision clearance provisions of SECTION
   3.3.400 apply.
G. Offstreet Parking and Loading: See Chapter X.
H. Minimum Road Frontage/Lot Width: within UGB’s – 50 feet and outside UGB’s – 20 feet
I. Compatibility with Forest and Agricultural Management Practices and Production: Any
   applicant for a rural residential dwelling building or septic permit adjacent to a forest or
   agriculture zone, shall sign a statement on 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”.
J. Riparian Vegetation Protection:

i Riparian vegetation within 50 feet of a estuarine wetland, stream, lake, or river, as identified
   on the Coastal Shoreland and Fish and Wildlife habitat inventory maps shall be maintained
   except that:
   a. Trees certified by the Coos Soil and Water Conservation District, a port district, or U.S.
      Soil Conservation Service posing an erosion or safety hazard may be removed to minimize
      said hazard; or
   b. Riparian vegetation may be removed to provide direct access for a water-dependent use;
      or
   c. Riparian vegetation may be removed in order to allow establishment of authorized
      structural shoreline stabilization measures; or
   d. Riparian vegetation may be removed to facilitate stream or streambank clearance
      projects under a port district, ODFW, BLM, Soil & Water Conservation District, or
      USFS stream enhancement plan; or
   e. Riparian vegetation may be removed in order to site or properly maintain public utilities
      and road right-of-ways, provided that the vegetation to be removed is the minimum
      necessary to accomplish the purpose; or
   f. Riparian vegetation may be removed in conjunction with existing agricultural operations
      (e.g., to site or maintain irrigation pumps, to limit encroaching brush, to allow harvesting
      farm crops customarily grown within riparian corridors, etc.) provided that such
      vegetation removal does not encroach further into the vegetation buffer except as needed
      to provide an access to the water to site or maintain irrigation pumps.

ii. The 50’ riparian vegetation setback shall not apply in any instance where an existing
   structure was lawfully established and an addition or alteration to said structure is to be
   sited not closer to the wetland, stream, lake, or river than the existing structure and said
   addition or alteration represents not more than 100% of the size of the existing
   structure’s “footprint”. (ORD 92-05-009PL)

K. Access to new dwellings shall meet road and driveway standards in Chapter VII.

FINDING: The subject property is zoned Rural Residential and; therefore, would qualify for a dwelling but
there are special considerations that apply. The property is located in a Beaches and Dunes Limited Suitability for Development Area, the Coastal Shorelands and less than an acre in a rural platted subdivision. The applicant submitted a multi-part application to address all of the criteria including the variance request. Staff reviewed two parts of the application administratively and the Planning Director sent the other two portions to the Planning Commission. After the Planner that was working on the matter reviewed all of the evidence she did not believe she could approve all of the applications. At that point the Planning Director separated the request and sent the beaches and dunes with limited development potential and the variance request to the Planning Commission to review.

**HBCU-13-05, Residential Dwelling in Beaches and Dunes Limited Suitability for Development Area**

This property is in an area that receives moderate movement, thus categorized as a limited suitability area for development. The property was almost completely forested prior to the application which helped to stabilize the property. The applicant has removed trees and vegetation to create a dwelling site.

Christopher Claire, Habitat Protection Biologist, Oregon Department of Fish and Wildlife, made a site visit to provide feedback on the riparian variance. While he was on site he made the observation that the property had mechanically cleared areas.

This area seems not to have drainage or safeguards in place currently to stabilize the property and keep it from adversely affecting the site or adjacent areas. The applicant also submitted pictures of the site to show where he had created the dwelling site. Below is a picture of the site prior to the development.

![Site prior to development](image)

The soil on this property is (43D) Netarts loamy fine sand with 2 to 30 percent slopes. Staff has included a topographical map (see page 76 of the record) for the Board of Commissioners to view the slopes on the
property. Netarts soil is a dune soil that drains well with a water table of more than 80 inches. This soil is associated with older stabilized sand dunes. The native vegetation is mainly conifers, shrubs, grasses and forbs. This soil unit is used mainly for timber production and wildlife habitat. It is also used for recreation and homesite development. The main limitation for management for timber is hazard of erosion, the hazard of wind, seedling mortality, and plant competition.

According the soil information, if this unit is used for homesite development, the main limitation is the hazard of ground water pollution and slope. The moderately rapid permeability of the substratum may permit untreated effluent to enter the ground water. Special designs may be needed to prevent contamination of water supplies. Some of the area is too steep for installation of absorption fields.

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<td>SPECIAL REGULATORY CONSIDERATIONS</td>
<td>Appendix I</td>
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<td>4, Beaches &amp; Dunes</td>
<td>a. Permit development within “limited development suitability” only upon establishment of findings. Requires Administrative Conditional Use.</td>
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<td>Appendix 1, Policy 5.10 (2)</td>
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**TABLE 4.7a**  
SPECIAL REGULATORY CONSIDERATIONS PRESCRIBED BY THE COOS COUNTY COMPREHENSIVE PLAN

Coos County shall permit development within areas designated as "Beach and Dune Areas with Limited Development Suitability" on the Special Considerations Map only upon the establishment of findings that consider at least:

- a. the type of use proposed and the adverse effects it might have on the site and adjacent areas;
- b. the need for temporary and permanent stabilization programs and the planned maintenance of new and existing vegetation;
- c. the need for methods for protecting the surrounding area from any adverse effects of the development; and
- d. hazards to life, public and private property, and the natural environment.
which may be caused by the proposed use. Further Coos County shall cooperate with affected local, state and federal agencies to protect the groundwater from drawdown, which would lead to loss of stabilizing vegetation, loss of water quality, or intrusion of saltwater into water supplies.

#4 Beaches and Dunes; Appendix 1, Policy 5.10 (2)

Coos County shall permit development within areas designated as "Beach and Dune Areas with Limited Development Suitability" on the Special Considerations Map only upon the establishment of findings that consider at least:

a. the type of use proposed and the adverse effects it might have on the site and adjacent areas;

FINDING: The applicant has stated there will be no adverse effects with the exception of erosion. The applicant stated in his written evidence that the cleared area is well compacted and slightly sloped to the North and west to avoid direct drainage toward the lake to the east. However, all drainage needs to be avoided from the development into Saunders Lake.

The applicant will need to use measures during construction to keep the soil stabilized. Afterwards, plantings of native grass and shrubs should be done. Rainwater drainage should be planned for as well. Mr. Claire suggested that special consideration should be given to any yard that is constructed surrounding structures at this site so as to prevent rainwater transport of yard wastes and fertilizer that might be used into the lake. These are adverse effects that need to be taken into consideration because the lake is an adjacent area.

Staff had concerns about the soils and that the moderately rapid permeability of the substratum may permit untreated effluent to enter the ground water. The applicant has not completed a site evaluation through Department of Environmental Quality to find out about the type of system that would be required or to discuss appropriate storm water treatment.

Staff has made some suggested conditions to help minimize the impacts to the site and adjacent areas later on in this report.

b. the need for temporary and permanent stabilization programs and the planned maintenance of new and existing vegetation;

FINDING: The applicant stated that the western dune is partially vegetated and this existing vegetation is well established. The applicant would need to take care if removing any more of the vegetation while developing the site. Any areas that are disturbed during the building process shall be replanted with native grasses and shrubs. Mr. Claire has listed some of the plantings that should be used.
The applicant has stated the main drainage area will be sloped to the north, away from the lake, and native and ornamental vegetation will be planted to help control any erosion. There has been some clearing as shown in the photos below. The applicant has supplied some photos to show the site at ground level. Staff has provided some suggested conditions to address these issues if the Board of Commissioners chooses to approve the application.

c. the need for methods for protecting the surrounding area from any adverse effects of the development; and

FINDING: The site is partially vegetated, as shown in the photos above, except for the flat cleared area of the proposed building site. The properties to the north are owned by the US Forest Service and consist of the Dunes National Recreation Area. There are partially vegetated dunes to the west. The south has a few neighbors, but there are trees between the two properties. Any disturbing of the western dune could be detrimental to the neighborhood, as it helps protect the area from wind and blowing sand damage. The applicant has expressed concern about disturbing this dune for those reasons. Any removal of sand from the western dunes should be mitigated by replanting and possible additional structural stabilization such as a retaining wall.
Staff appreciates that the applicant has been monitoring the site and it has yet to show any erosion issues. Staff has also reviewed the pictures but it is hard to determine if the correct stabilization has been performed to keep this cleared area from impacting the lake. The applicant seems confident that he will be able to control runoff or wind erosion on the site and surrounding areas. Staff has provided some suggested conditions to address these issues.

d. hazards to life, public and private property, and the natural environment which may be caused by the proposed use.

FINDING: The applicant has created a site for a dwelling taking into consideration the slope. He has already impacted the subject property by doing so but the question is, will this development create a hazard to life, public and private property, and the natural environment? Staff does not find that there would be hazard to life as the soils indicate that this is older stabilized dune, but it is still subject to hazards that need to be considered, in particular with regard to the natural environment of Saunders Lake.

Staff has made suggested conditions below to help ensure there will be no hazards.

Further Coos County shall cooperate with affected local, state and federal agencies to protect the groundwater from drawdown, which would lead to loss of stabilizing vegetation, loss of water quality, or intrusion of saltwater into water supplies.

FINDING: The applicant should stabilize the dunes if any sand removal occurs. Ms. Blake, of the DEQ, has stated that no permits or requests for septic evaluations have come through their office at this time. The applicant has referred to a pressurized seepage bed; however Ms. Blake recommends an evaluation to determine what type of system will work best for this area. The applicant plans to site a well to the north of the property and the septic system to the south. Again staff has made some suggested conditions to help with the draw down issues. There is no indication from the soils that saltwater will be an issue.

In their January 2, 2014 hearing, the Planning Commission decided to approve the dwelling within the Beaches and Dunes Limited Suitability for Development area with suggested conditions of approval from staff. Staff suggests that the Board of Commissioners uphold this decision. The variance is discussed below.

V-13-03, Variance to the Riparian Vegetation

The development standards require that all riparian vegetation within 50 feet of an estuarine wetland, stream, lake, or river, as identified on the Coastal Shoreland and Fish and Wildlife Habitat Inventory maps shall be maintained. Saunders Lake is a lake identified on the Coastal Shoreland and Fish and Wildlife Habitat Inventory maps.

Mr. Claire and Ms. Blake both provided comments on this issue. While they have no direct control over the denial or approval of this standard their opinions are valuable in considering the criteria. Protections of the lake is crucial. If the applicant is able to meet the criteria, staff suggest the Board take into consideration some of the suggested mitigation and planting suggestions made by Ms. Blake and Mr. Claire. The applicant must meet
the criteria in order for the Board of Commissioners to overturn the Planning Commission decision and approve the application.

The Planning Commission held the first evidentiary hearing on December 5, 2014. The minutes are attached to this report. The Planning Commission discussed in the meeting drainage and septic issues. The concern was the impact to the lake. The Planning Commission offered another solution by allowing the applicant to come back to them with a variance to the firebreak setback rather than a variance to the riparian setback. They tabled the decision to the January 2, 2014 regular scheduled Planning Commission meeting.

After the December Planning Commission hearing staff sent Mr. Smith a follow-up letter. The letter explained that the Planning Commission was not willing to support the variance request to the riparian setback but would consider a variance to the 30 foot firebreak setback. Upon further review of the plot plan that was provided with the application, it was unclear to staff how the applicant determined the zone boundaries. The letter also questioned the dimensions of the lot. Staff noted that the driveway must be constructed with a 12-foot all weather surface as required by LDO Table 7.2.

Mr. Smith came into the office to review his options including zoning and the question about the dimensions. The dimensions seem to be correct but the Forest Zone setbacks was shown incorrectly. Mr. Smith had showed a 30 foot setback on his plan starting on the east side of the driveway. The zone boundary between Rural Residential and Forest is actually to the west side of the road which opens up more space for development. (see page 33 minutes testimony from Mr. Smith and page 21 of the record for plot plan). Staff suggested that the applicant revise the map. In that same meeting staff talked about the desired setback from the lake and how it was calculated. Mr. Claire provided a measure that seem to differ from Mr. Smith. Staff explained there was no set way defined by the ordinance to measure riparian setback but he should use Mr. Claire’s because it was to Mr. Smith’s advantage. Mr. Smith did provide a follow-up letter to address concerns found in the record at page 23. Mr. Smith did revise his plot plan (see record page 25). After the Planning Commission reviewed the additional material they still had questions about the plan, as the Planning Commission understood Mr. Smith’s written justification to state that the deck would be the only thing in the riparian area but the plot plan shows something different. Staff was unable to explain the difference to the Planning Commission and Mr. Smith was not available at the meeting for questions. However, subsequently, closer review of Mr. Smith’s written statement shows that he instead only stated that most of the variance to the riparian setback would be due to the deck. One other question that the Planning Commission asked was why Mr. Smith did not consider the alternative variance to the forest setback. This appeal will give Mr. Smith another chance to answer any questions and show how he can meet the criteria. He has submitted more written testimony and evidence to prove his case as addressed below.

<table>
<thead>
<tr>
<th>LDO</th>
<th>Article 5.3 §5.3.100, 5.3.150; 5.3.350</th>
<th>Variances; General; Self-inflicted Hardships; Criteria for Approval of Variances</th>
</tr>
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Section 5.3.100 – General: Practical difficulty and unnecessary physical hardship may result from the size, shape, or dimensions of a site or the location of existing structures thereon, geographic, topographic or other physical conditions on the site or in the immediate vicinity, or, from population density, street location, or traffic conditions in the immediate vicinity. Variances may be granted to overcome unnecessary physical hardships or practical difficulties. The authority to grant variances does not extend to use regulations.
FINDING: The applicant states that the shape, size and topography of the subject property create a practical difficulty in siting a dwelling in any other portion of the property. He is requesting a variance to the 50 foot riparian vegetation setback, moving it approximately 15/25 feet (ODFW measurement/ 2 dimensional plane applicant’s measurement) from the ordinary mean high watermark.

The northern border of the property is owned by the Federal Government and managed as the Dunes National Recreation Area. The western portion of the property also consists of fairly large dunes, which have some trees and shrubs. The applicant states to remove this dune would be detrimental to the neighborhood, as it would no longer act as a wind and erosion buffer, allowing greater movement of sand towards Saunders Lake. The eastern boundary of the property is Saunders Lake. The southern portion of the property abuts another residential property.

Riparian areas and setbacks were implemented to protect the water resources and wildlife habitat and these standards were adopted into the CCZLDO to implement Statewide Planning Goal 17. This goal tasks the counties with adopting the riparian areas in order to protect vegetation necessary to stabilize the shoreline, maintain water quality, and maintain fish habitat and spawning areas. However, variances provisions were adopted into the ordinance for cases in which these areas and setbacks left properties undevelopable. That is the reason the standards are set high. For clarification, variances are local regulations and not based on state law.

The subject property, in this case, is small and the applicant recognized the limitation and has tried to increase the area by receiving approval for a road vacation and property line adjustment. However, this does not increase the residential zoned area. The applicant stated there is enough room to site a septic system to the southwest, where the dune is not as steep. DEQ has reported that there has not been a septic evaluation and; therefore, there is no dispositive evidence that there is actually room for a septic system. However, Mr. Smith provided a letter from Del Cline. Del Cline worked for DEQ for many years as a septic inspector but his comments were made as an independent consultant. The size and shape of the property and the fact that the western portion of the property is dunal does limit where a dwelling can be built. The applicant will have to demonstrate to the Board of Commissioners that a smaller house is not an option including a two story dwelling and the applicant has provided justification for consideration. The applicant’s justification states that the site would only allow for a singlewide mobile home or an RV. As a side note, an RV would not be permitted beyond camping.

Mr. Claire visited the site and measured the areas with Mr. Smith to find out where the ordinary high water mark was located. He does note that the data may vary. He explained that the riparian area has already been modified by removal of vegetation to make way for the dwelling. When Planning Staff explained its position that the vegetation removal was in violation the ordinance, Mr. Smith apologized for any misunderstanding of the regulations (page 35 of the record minutes). He spoke to the State Department of Forestry and that staff person provided him with their rules for removal of riparian vegetation. This conversation is found in the December 2, 2013 minutes. The site plan shows distances but does not show how close the dwelling would be from the bottom of the slope. It has appeared from the site plan that the dwelling could be manipulated or reduced in size to comply with the riparian setback; however, Mr. Smith has provided some additional information for the Board of Commissioners to review. The pictures show limitations on the cleared area of the site. The information includes a letter from the Fire Chief for the Hauser Rural Fire Protection District explaining why it was necessary to have a fire buffer around the house. Mr. Smith should present some evidence of how much “defensive space” is necessary for the fire buffer. This information will confirm the limitations on the site. This will help the Board make a determination.
Section 5.3.150 – Self-inflicted hardships. A variance shall not be granted when the special circumstances upon which the applicant relies are a result of the actions of the applicant or owner or previous owners, including but not limited to

♦ Self-created hardship
♦ Willful or accidental violations
♦ Manufactured hardships.

This does not mean a variance cannot be granted for other reasons.

FINDING: The residential portion of the property is located in the Deal Subdivision. The applicant states he purchased the property with the intention of siting a dwelling. He has supplied evidence of other residences within the subdivision, some of which are well within the 50 foot riparian vegetation protection area; however, with one exception, most of these appear to be “grandfathered” dwellings that were sited before there were restrictions to help protect the riparian vegetation or requirements for siting away from the Lake itself. Under today’s Ordinance requirements, these homes would not be allowed to be built within the riparian vegetation protection area without an approved variance.

The Board of Commissioners will need to look at the lot and decide if there is a self-created hardship, willful or accidental violations, or a manufactured hardship. The applicant has removed some riparian vegetation and he has explained he did not understand that to be a violation of any ordinance provisions. However, the removal can be rectified by replanting the vegetation. The structure has not been sited yet and so the request is not a violation of the setback. Staff believes that Mr. Smith is now aware of the circumstances regarding when he can remove riparian vegetation.

The other two questions are more difficult to answer. Mr. Smith did purchase the small lot and went through the process to increase the size for development purposes. There are several pre-existing legally non-conforming parcels that are zoned for residential purposes that are less than the minimum lot size suggested for development. The last question is, is this a manufactured hardship? This property is small and it does limit the size of development. The property contains special development considerations such as the beach and dunes limited development suitability and the stabilization of the ground has to be considered. There was a suggestion that the bank could be cut back further and a retaining wall established to control the stability and erosion issues. Mr. Smith has provided written testimony to refute that proposal stating that in his opinion that removing the vegetation on the bank would cause bank to become unstable. Staff has no geological information to show if the bank could be cut back further. There is no geo-technical report for staff to rely on in this case (see page 89 of the record). However, this is in a mapped area that shows limited development for suitability and there could be a concern with removal of the dune. The Planning Commission found that there was not enough evidence provided to justify the hardship. Mr. Smith has provided additional information at the request of staff. This information shows that it was not a willful or manufactured hardship. Again, the parcel was a legal non-conforming lot and the size has to be a consideration.

Section 5.3.350 Criteria for Approval of Variances. No variance may be granted by the Planning Director unless, on the basis of the application, investigation, and evidence submitted that both findings “A” and “B” below are made:

A. i. that a strict or literal interpretation and enforcement of the specified requirement would result in unnecessary physical hardship and would be inconsistent with the objectives of this
Ordinance; or

ii. that there are exceptional or extraordinary circumstances or conditions applicable to the property involved which do not apply to other properties in the same zoning district; or

iii. that strict or literal interpretation and enforcement of the specified regulation would deprive the applicant of privileges legally enjoyed by the owners of other properties or classified in the same zoning district;

FINDING: The Planning Commission did not find that the strict or literal interpretation and enforcement of the riparian vegetation setbacks would deprive the applicant of privileges legally enjoyed by owners of other properties or classified in the same zoning district. However, this is a de novo hearing and the Board will take testimony on this matter to make a decision.

There are two areas of concern, the stabilization of the dune and the health of Saunders Lake.

The Board of Commissioner is left with the decision of, should the variance to the riparian be granted and what effects would that have on the property owner? These are the questions that need to be answered:

- Would denial cause unnecessary physical hardship or be inconsistent with the objectives of this ordinance?
- Are there exceptional or extraordinary circumstances or conditions applicable to the property involved which do not apply to other properties in the same zoning district? or
- Would the strict or literal interpretation and enforcement of the specified regulation deprive the applicant of privileges legally enjoyed by the owners of other properties or classified in the same zoning district?

These are difficult questions to consider. The Planning Commission considered these criteria in their decision. However, Mr. Smith has provided additional written testimony and pictures and may be able to provide additional oral testimony to help the Board make different findings on this matter. All the properties located within the Deal Subdivision on the northwest side of the lake are zoned residential, many of them are less than an acre and have the same special development limitations (Beach and Dunes and CSB) as Mr. Smith’s property. These are the properties that should be used as a comparison when answering the questions above. The applicant states in his written testimony that other properties around the Lake are situated within the 50 foot riparian area. There are no special or extraordinary circumstances that apply to this property that do not apply to other properties on the lake. The criteria require that one of these criteria has to meet in order to comply with this section. The applicant has argued basically that the literal interpretation and enforcement of the specified regulation deprive the applicant of privileges legally enjoyed by the owners of other properties or classified in the same zoning district.

B. 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.

FINDING: Mr. Smith states that allowing this variance will not be detrimental to the public health, safety or welfare or materially injurious to properties or improvements in the near vicinity. He further states, that by removing more of the dune it would cause the sand dune to impact the lake.
Ms. Blake of the DEQ stated that lakeshore vegetation can be carefully managed but removal should be avoided. She noted that the submitted photos appeared to show fill material in close proximity to the lake without any visible erosion control methods. Mr. Smith has stated that the site was sloped in a way that allows for better drainage and stabilization. Ms. Blake seems to be concerned about the water quality. She states that she has no data available on the lake but they have been receiving concerns. Mr. Smith has stated that he does not believe that the riparian area that he has asked to vary will add to any of the water quality issues. He offers another reason for the possible water quality issues. Staff has no biological assessment information to allow agreement with either interpretation in this matter. However, a small variance in itself does not seem to be detrimental to the public health, safety, or welfare or materially injurious to properties or improvements in the near vicinity.

Mr. Claire visited the site at the end of September, 2013. He noted the mechanically cleared area and measured from the ordinary high water mark (OHW) of Saunders Lake to the edges of that cleared area. He found the distance from the southeast corner cleared to the OHW of Saunders Lake to be 35 feet. The distance from the center edge of the site to the OHW measured 40 feet and the distance from the northwest corner to the OHW measured 35 feet. He observed there was already an impact to Saunders Lake from the removal of Douglas fir trees, pacific madrone, the clearing of shrubs and the leveling of the slope adjacent to the lake to the distances. Mr. Claire offered some solutions to mitigate the impacts.

If the Board finds that the criteria can be met by the applicant then staff suggests that conditions be applied to mitigate any impacts. The Board should consider the letters provided by Ms. Blake and Mr. Claire.

### III. NOTIFICATION/COMMENTS

Notification was provided as consistent with LDO Section 5.7.300. Notification was also provided on May 14, 2014, to the appellant, all parties who participated in the Planning Commission hearing either by being present or by submission, the Planning Commission and David Perry of the DLCD.

### IV. SUMMARY

The subject property is zoned rural residential and therefore would qualify for a dwelling. However, there are special circumstances on this property that required the property owners to submit several conditional use permit applications: those being that the property is less than an acre in a rural residential platted subdivision, the dwelling would be within the Beaches and Dunes Area of Limited Suitability for Development, and the dwelling would be within the Coastal Shoreland Boundary.

Staff has already approved with conditions the applications for a dwelling on less than one acre and lying within the Coastal Shoreland Boundary. Conditions of these approvals included obtaining approval from the Hearings Body to site the dwelling within the Beaches and Dunes Limited Suitability for Development Area.

The Planning Commission approved siting the dwelling within the Beaches and Dunes Limited Suitability for Development Area, but decided to deny the application for the variance due to insufficient evidence in the record.

Staff recommends upholding the Planning Commission’s decision to approve siting the dwelling within the Beaches and Dunes Limited Suitability for Development Area.
Staff does not usually support a request for a variance to the riparian vegetation when it is submitted to a hearings body; however, the applicant has stated that the majority of the encroachment will be the deck in which vegetation will be allowed to grow under the structure. In light of the additional evidence submitted by the applicant, staff is not opposed to this variance request, with certain conditions. However, the Board of Commissioners is the decision maker in this matter. If the Board of Commissioners decides to overturn the Planning Commission’s decision to deny the variance application, it is suggested the conditions of approval noted below should be included in the approval.

Once the Board of Commissioners has made a decision a final decision and order will be drafted for the Board of Commissioners to adopt in a regular meeting. Once the final decision and order have been signed a decision notice will be mailed out with a 21-day appeal period.

VI. PROPOSED CONDITIONS OF APPROVAL

The Board of Commissioner will make the decision on the appropriate conditions of approval.

1. The riparian vegetation area should be replanted with native trees, including Douglas fir or Sitka spruce (Picea sitchensis) and red alder (Alnus rubra) should be planted on 10ft. spacing to a reasonable distance from any new structure(s) built on the site. No other riparian vegetation may be removed.

2. Special consideration should be given to sloping of any yard that is constructed so as to prevent rainwater transport of yard wastes and fertilizers that might be used from contaminating Saunders Lake.

3. If the western dune area is disturbed, it must be stabilized with plantings and/or a retaining wall.

4. The disturbed area (yard) should be replanted as soon as possible with native grasses and/or shrubs to help stabilize the ground.

5. Obtain a zoning compliance letter (ZCL) from the Planning Department in order to obtain State DEQ and Building Code permits.

6. The Board of Commissioners may add any additional conditions of approval that directly relate to this application.

If you have any questions please contact staff.

COOS COUNTY PLANNING DEPARTMENT

Jill Rolfe, Planning Director

EC: Chris Claire, ODFW
    Pam Blake, DEQ
    Dave Perry, DLCD

Attachments: (All attachments can be found on-line under pending applications)
    Pam Blake, DEQ Comments and responses
    Mr. Smith’s clarification on the requested setback
    Adopted minutes
    Record of the matter (this was sent to the Board on January 30, 2014)
Additional appeal information V-13-03

It seems that the Planning staff and commission are of the opinion that a home site on this property should be placed adjacent to or into the western sand dune side of this property which is heavily forested and must be maintained that way to guard against blowing sand intrusion. Placing the home site here does not allow for a defensible space between the home and heavily forested dune. In my experience as a 29 year resident of this neighborhood on the edge of the dunes, this is not a sound building practice. The sand dune interface is the more critical area of concern on this property. The home site should be set to the east toward the lake to allow for this defensible space. This siting would intrude on the riparian set back, which is an arbitrary ideal boundary. Not one person throughout this whole planning process has been able to name any actual detrimental effects to siting the home here other than intruding on this setback. This siting is consistent with normal building practices in this area and provides the best balance considering restraints on this small lot. If I am forced to build without this variance and leave a defensible space to the west I will only have enough room for a small single wide or travel trailer that will be covered by overhanging riparian vegetation. That would be a substandard development and a poor planning decision for this location.
Mr. Smith,

You can obtain a zoning compliance letter for site evaluation only. Pam Blake and have not had any conversations about your property other than to request updated comments. I only sent you DEQ's comments so you could respond. The Board will have the record and all the information that has been received and I thought you should have the information.

Thank you,

Jill Rolfe
Planning Director,
Coos County Planning Department
225 N. Adams St.
Coquille OR 97423
250 N. Baxter (Mailing)
541-396-7770
planning@co.coos.or.us

Jill,

You are missing some big parts of this situation. First of all when you develop a property in Coos County the process is to obtain your zoning compliance before the DEQ process. They don't even want to waste time on a site evaluation without a compliance letter from your department. Secondly Debbie from your staff and me determined that it would be best to add that forest property to the original RR2 lot for the sole purpose of creating a lot with a good septic site. Your and Pam's idea that if we site the septic system differently or use a different system that we will save some space for locating the home site makes no sense. The home has to be on the RR2 portion of the lot and the septic on the Forest portion. No matter how small I make the drain field it will not effect the home siting. The zoning is the limiting factor. I had the best consultant on the coast verify the septic siting. It is fine, and if it is not to Pam's liking she can redo it when they do their evaluation.

It appears that you and Pam really want there to be an erosion problem on the site as many times as it has been referenced, but as I have responded numerous times there is not. Chris Clair from ODFW and Del Cline retired DEQ have both been to the site and had none of the concerns that that your department seems to have.
Please enter this email you sent me and my response as evidence for my upcoming hearing.

Thanks again,

Mike Smith

-------- Original Message --------
Subject: FW: Smith Appeal
From: Jill Rolfe <jrolfe@co.coos.or.us>
Date: Fri, May 23, 2014 2:45 pm
To: "mail@dunehaven.biz" <mail@dunehaven.biz>

Mr. Smith,

This is the response from DEQ that was just sent to me. Have you tried to talk with DEQ about septic systems or are you confident that there is no other system?

Thank you,

Jill Rolfe
Planning Director,
Coos County Planning Department
225 N. Adams St.
Coquille OR 97423
250 N. Baxter (Mailing)
541-396-7770
planning@co.coos.or.us

From: BLAKE Pam [mailto:BLAKE.Pam@deq.state.or.us]
Sent: Friday, May 23, 2014 2:41 PM
To: Jill Rolfe; CLAIRE Christopher W
Subject: RE: Smith Appeal

Hello Jill. I will not be able to make it to the appeal hearing):

DEQ still has not received a request for a site evaluation for this property. Without a site evaluation Mr. Smith does not know what type of waste water treatment system can be placed on his property. He should have had this done before disturbing the ground. The site may allow a system type that will take less room thereby allowing Mr. Smith to place the proposed structure in a location outside of the riparian buffer area. A riparian variance would only seem appropriate for consideration after all other options are explored.

This information is provided as an update to my initial comments sent to you on 9/16/13 (attached) which continue to apply to this site.
Please let me know if you have any questions or if you need additional information.
FYI. Mr. Smith is asking that this e-mail be included in the record.

Josh Soper  
County Counsel  
Coos County Office of Legal Counsel  
250 N. Baxter St., Coquille, OR 97423  
Voice: (541) 396-7690  
Fax: (541) 396-1012

The 25' measurement is the correct measurement. Measured the proper way horizontally in a 2 dimensional plane. ODFW measured along the slope with a tape measure. The only reason the 15' measurement came up is because Jill preferred ODFW's to mine. I capitulated because ODFW's measurement's were in my favor and I was trying satisfy Jill's wishes. At that point I just wanted it done, and if that was going to help, so be it.

In order for the development to hold up to future scrutiny it is best to use the proper measurements. The original application with out any of planning's additional mumbo jumbo they piled on is the best basis for a good result in this development. If everyone else on the County’s side of this wants to use the 15' figure just make sure it is completely documented and that the land owner is absolved of any wrong doing in placing the structure using those measurements.

Please enter this e-mail into the appeal evidence.

Thanks,

Mike Smith

-------- Original Message --------
Subject: Question
From: Josh Soper <jsoper@co.coos.or.us>
Date: Tue, May 27, 2014 3:21 pm
To: "mail@dunehaven.biz" <mail@dunehaven.biz>

Mike,

I've been working with Jill on the staff report and think we may have some language changes that will address most if not all of your major concerns. However, one remaining issue is the 15 foot vs. 25 foot measurement, since the additional information you submitted in December used the 25 foot figure. If Planning makes clear in the report that you're using the 25 foot figure based on ODFW’s measurements at Planning’s suggestion, do you have any problem with
that? If not, I’ll see what I can do but the solution may be a bit more complicated in light of the December 26th document.

Thanks!

Josh Soper
County Counsel
Coos County Office of Legal Counsel
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Voice: (541) 396-7690
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Josh Soper
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COOS COUNTY PLANNING COMMISSION
MINUTES OF MEETING
DECEMBER 5, 2013
COOS COUNTY ANNEX CONFERENCE ROOM
COQUILLE, OREGON 97423

MEMBERS PRESENT
Joseph Cortez, Chairman
Hilary Baker, Commissioner
Charlie Waterman, Commissioner
Larry Scarborough, Commissioner
Jerry Phillips, Commissioner
Steve Scheer, Commissioner

MEMBERS ABSENT
Kevin Westfall
Joann Hansen

STAFF PRESENT
Jill Rolfe, Planning Director
Lynn Jones, Administrative Aide I

ITEM I CALL MEETING TO ORDER
Chair Cortez called the meeting to order at 7:00 p.m. and introductions were conducted.

ITEM II CITIZEN PARTICIPATION
Chair Cortez stated that this is the time for brief public comments that do not pertain to tonight’s public hearings(s) and if you have any please come to the podium and present the board with your name, address and comments.

There were none.

ITEM III APPROVAL OF MINUTES
Chair Cortez stated that there were no minutes to approve.

ITEM IV PUBLIC HEARINGS
Chair Cortez recited this is the time and place for a series of public hearings in the matters concerning land-use planning and zoning procedures. If you are not the applicant or appellant, and wish to speak on any of the public hearings listed in tonight’s agenda please fill out a request to speak form and give it to the staff.

Oral presentation should begin by stating your name, address, and identifying the criteria you will be addressing. The criteria for each application are listed on the meeting agenda which is available at the sign-in desk. All testimony shall be directed toward the decision makers.

Those wishing to testify shall focus the substance of the testimony toward the criteria; endorse rather than repeat testimony of others; and clearly and accurately state your issues when testifying. Please turn off all cell phones...
and be aware that these hearing are being recorded and all other discussion should take place outside the hearing room to allow for clear recording.

The applicant or appellant in the case of an appeal will receive 15 minutes for their presentation and all other parties will have 5 minutes to testify.

ITEM A – FILE # AP-13-05 DEATHERAGE
Chair Cortez opened the public hearing portion on Item A, File No. AP-13-05 and asked the Commissioners the following questions pertaining to the matters.

1. Has each Commissioner received their staff reports?
   The Commissioners replied they had received their staff reports.

2. Do any of the Commissioners need to disclose conflicts or bias?
   None of the Commissioners had any conflicts or biases to disclose.

3. Does any member need to abstain from participating in the hearings?
   None of the Commissioners need to abstain from the hearing.

Does anyone present wish to challenge any member of the Commission from participation in the public hearings? Hearing none he moved onto ask staff to please read the procedural rights, indicate if proper legal notice of the hearings has been provided, present the matter and review the criteria.

Director Rolfe read the procedural rights pursuant to §5.7.300 of the Coos County Zoning and Land Development Ordinance (LDO) and ORS 197.763.

She explained that the appellant had requested the Planning Commission reverse the Planning Director’s decision to deny the application for a first (template) dwelling in a Forest zone. The property is located at Township 28, Range 14, Section 25, Tax Lot 505; the subject property is located northeast of the city of Bandon and is accessed via a private unnamed driveway off of North Bank Lane. The property was lawfully created through many property line adjustments into its current configuration. The application is subject to Coos County Zoning and Land Development Ordinance (LDO) Article 5.8, Appeals of Discretionary Decisions and Article 4.8, § 4.8.525(B), Dwellings in the Forest Zone: Template Dwelling criteria. The first action the Commission must take is to determine if the applicant has standing and the application was properly filed. Staff explained the appeal was filed timely and appropriately within the correct time frame.

Commissioner Phillips moved to accept the appellant’s standing and that the appeal was properly filed and Commissioner Waterman seconded the motion. The motion passed unopposed.

Director Rolfe explained that the criteria in this matter required staff to look at how the properties were configured in 1993. She and the applicant worked together to gather information that Staff used to evaluate the property with a template. If the Commission finds the road through the property meets the intent, then there are enough properties to meet the criteria and the application can be approved.

Planning Director Rolfe had asked the Roadmaster for his opinion of the road and he said technically it was a road because it serves multiple properties. At this time she was not able to fine a clear decisive definition of road when used by in this criteria. She anticipates that the applicant will provide that information, but he needs to show the road existed prior to 1993. She then asked if the Commission had any questions. There were none.

Chair Cortez called Mr. Deatherage, the appellant, to testify.

Mr. Deatherage presented his information in the record and pointed out the road on the third page of that submittal. He indicated where it starts on North Bank Road to the south then ends at the Cochran’s property to the north. He presented an easement from 1951 that shows the road existed at that time. Then he called attention
to a tax map to demonstrate that the lots around his property have dwellings on them or have dwelling approvals. In his exhibit packet he pointed out page five that defines a road according to Oregon law. He explained that the prior County Road Department Staff advised his client that in order to make the road acceptable to service the parcels in the area, the road had to be paved. The client did the work to the standards provided at the time. He provided a picture of the road and stated that it was clear to him that this was a qualifying road. The property has a pending sale that hinges on the dwelling approval. The evidence shows there has been a road for over fifty years. He then asked if anyone had any questions.

Commissioner Baker questioned if she could drive through the property on the road.

Mr. Deatherage replied that she could but the road has only been paved up to the subject property. From the Cochran property to his property is gravel and rough, a person would not drive it in a car.

Commissioner Baker asked if a member of the general public could they drive the length of the road. She asked if it was available for public access.

Mr. Deatherage answered yes. He also stated that there was an easement for people to drive through it.

Commissioner Waterman asked if it had been previously used as a logging road.

Mr. Deatherage replied that he was sure in the 1950’s that was all it was used for but he believes now people use it all the time for access to their property.

Commissioner Scheer questioned the easement included in Mr. Deatherage’s exhibit packet. He was concerned because the easement was only for five years and did not think that helped Mr. Deatherage prove his point that the road had been a road for a long time. The deed was only for logging purposes.

Mr. Deatherage explained he put it in the record to show how long ago it had been used as a road.

Commissioner Scheer said he didn’t think the intent of the road was to serve residential development.

Mr. Deatherage replied that the evidence was presented to show the road meets the definition which does not take into consideration the purpose of the road.

Commissioner Scheer insisted the purpose was relevant to the criteria.

Commissioner Waterman discussed the history of the road and what it had been used for years by various people.

Mr. Deatherage agreed and said everyone uses it.

Commissioner Scheer questioned if the repeated use over more than seven years trumped the deeded prescriptive use.

Mr. Deatherage replied yes, his justification was that since the 1950s different logging companies had used this road and maintained it as a matter of business.

Chair Cortez asked if the proposal was for one dwelling or if there are plans to develop more.

Mr. Deatherage stated this proposal was for one dwelling.

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Director Rolfe clarified that the template would only allow them to build one house.

Commissioner Scheer asked if the road was a county road or a private road.

Director Rolfe replied that the road was not a county road, it is a private road. The question is how long it has been considered a road.

Commissioner Phillips asked if the Commission could obtain a legal opinion on this matter.

Chair Cortez also requested the Commission obtain a report from the County Roadmaster.

Director Rolfe replied she could have legal counsel look at the matter. The Roadmaster commented that this was currently a road; however, because it is private he would not have any information on when or why it was created.

Commissioner Scheer stated that they need that date to be legal. He asked if the hearing could be continued so the applicant and Counsel could provide more information on this issue.

Mr. Deatherage offered that he had included the deed from 1951.

Commissioner Scheer stated that the deed was an easement and does not prove that status of the road.

Commissioner Waterman stated that he would like to see a letter from the Roadmaster on the status of the road. He explained there were numerous roads that are driven all the time, they are open to the public, they are privately owned and they are un-named. He would not vote to deny an application because no one knows the when and how the road was used, especially because it is un-named without any proof was inconceivable.

Director Rolfe explained that the road would not qualify for a road name until there were three dwelling located on the road. Addressing is not a land use action. She could request a letter from the Roadmaster concerning the status of the road.

Mr. Deatherage interjected there was one dwelling built and two other lots approved so this would be the fourth.

Director Rolfe explained that the homes have to be developed or the addresses in place. When the third person obtains an address the county will require that the road be named.

Commissioner Phillips commented that he would like to have a legal opinion on the road.

Commissioner Scheer agreed and expressed the he would like to continue the issue to gather more information.

Commissioner Phillips recounted the history of the planning commission and how past decisions had been appealed or used to set precedence for future decisions and he urged the Commission to wait for a counsel opinion.
Chair Cortez asked the commissioners if they had any other questions and if they wanted to consider a continuance in order to hear back from county counsel and the Roadmaster.

Planning Director Rolfe stated that the continuance needed a date and time certain

Mr. Deatherage asked if the application could be approved with conditions.

Director Rolfe explained that a conditional use could have conditions but not a deferral of review criteria.

Director Rolfe asked the Commission if they would like to continue to the regular date of January 2 or due to the holidays if the Commission would like to move it to the following week. The Commission with the exception of Commissioner Scarborough, who was unsure if he would be able to make the January 2 meeting, that they would have the meeting on January 2, 2014.

**MOTION**

Commissioner Scheer moved to continue the meeting to January 2, 2014 and Commissioner Phillips second the motion. Chair Cortez called for the vote. The motion passed unanimously.

Director Rolfe explained that no further notice would be given. New information will be forwarded as received.

**ITEM B – FILE # HBCU-13-05/V-13-03 SMITH**

Chair Cortez opened the public hearing portion Item B, File No. HBCU-13-05/V-13-03. He asked the Commissioners the following questions pertaining to the matters.

1. Has each Commissioner received their staff reports?
   The Commissioners replied they had received their staff reports.

2. Do any of the Commissioners need to disclose conflicts or bias?
   None of the Commissioners had any conflicts or biases to disclose.

3. Does any member need to abstain from participating in the hearings?
   None of the Commissioners need to abstain from the hearing.

Does anyone present wish to challenge any member of the Commission from participation in the public hearings? Hearing none he moved onto ask staff to please read the procedural rights, indicate if proper legal notice of the hearings has been provided, present the matter and review the criteria.

Director Rolfe read the procedural rights pursuant to §5.7.300 of the Coos County Zoning and Land Development Ordinance (LDO) and ORS 197.763.

She then stated that this applicant, Mike Smith, has submitted an application to site a dwelling within the Beaches and Dunes Limited Suitability for Development area and a variance to the 50 foot riparian vegetation setback. The property is identified as Township 23S, Range 13W, Section 35BB, Tax Lot 200. The subject property is located in the Hauser area, between the cities of North Bend and Lakeside. It lies within the Deal Park Subdivision. Subject property is accessed by Crannog Road. The applicable criteria is found in Coos County Zoning and Land Development Ordinance (LDO) §4.2.400, Table 4.2c, Rural Residential Zoning Districts including Rural Unincorporated Communities, §4.4.400, General Standards for Rural Residential Zoning Districts, Article 4.7, Table 4.7a (4a), Appendix 1 Policy 5.10 (2), Special Regulatory Considerations Prescribed by the Coos County Comprehensive Plan (CCCP). Beaches & Dunes: Permit development within “limited development suitability” only upon establishment of findings. Requires an Administrative Conditional Use Permit;
Article 5.3, §5.3.150; §5.3.350, Variances: Self-inflicted Hardships; Criteria for Approval of Variances. Proper legal notice was provided including to neighbors within 250 feet of the applicant’s property. She stated that she provided the commission members with letters from both the DEQ and ODFW regarding the variance. The dune that is mentioned is older and stabilized and it has already been impacted by the applicant preparing for development. Planning Director Rolfe explained that she believes the applicant can meet the criteria for the dunes but she does not support the variance for the lake. Planning Director Rolfe then asked if there were any questions.

Chair Cortez asked if there were any questions. There were none so he asked the applicant to present his case.

Mr. Smith introduced himself and began his presentation by explaining that he said he had been a resident at Saunders Lake for 29 years and recently bought a lot down the street that he wanted to develop. He stated that if the dune question was acceptable to the director, then he would focus on the variance question. He displayed a plot map showing the riparian setback and the forest setback and the triangle shape space that he would be left with to build a house. He stated that this is a perfect case for a variance and he meets the criteria for it.

Director Rolfe explained that the applicant needed to make his justification to the decision maker.

Commissioner Phillips stated that the commission had recently had before them another case where the applicant brought up the issue of the riparian setback and the commissioners had a tough time with the exact same question.

Mr. Smith stated he had looked over previous variances granted to his neighbors and he acknowledged the standards are different now.

Chair Cortez commented that the laws had changed.

Mr. Smith replied he didn’t know if the laws had changed but it is a lot tougher now.

Commissioner Baker asked the Director Rolfe if the setback from the dune, the forest setback, if that could be varied.

Director Rolfe stated it could.

Commissioner Baker surmised that the triangle could then be enlarged.

Commissioner Scheer asked Planning Director Rolfe if that was a separate issue or if it could be covered at this time.

Director Rolfe stated that the meeting could be continued and the applicant could amend his application.

Mr. Smith stated that he could explain why it would be better to vary the riparian setback than the forest setback.

Commissioner Baker requested an explanation.
Mr. Smith indicated on his map where the driveway and the dune were located and stated he had to worry about driveway setbacks. He explained that if he built the house where the driveway was there was no way to turn around because it would be too close to the dune. He stated it important to keep the vegetation on the dune to keep the wind from blowing the sand closer to the lake.

Commissioner Scheer inquired if the applicant had talked to the Department of Environmental Quality (DEQ) about a septic site evaluation.

Mr. Smith replied he had purchased an adjoining lot specifically for the placement of the septic system.

Commissioner Scheer expressed concerns about the soil, underground aquifers, and the impact of a septic system on the lake. He stated that Mr. Smith may be required to put in a very expensive septic system, something like 20 or 30 thousand dollars.

Mr. Smith explained he was anticipating a raised bed system that way you can put anything you need underneath it. He repeated that he has lived at the lake for 29 years and drinking the water out of Saunders Lake that whole time.

Chair Cortez asked if there were any other questions.

Commissioner Scarborough asked if Mr. Smith wanted to build triangle house.

Mr. Smith said no.

Commissioner Scheer reiterated his septic concerns.

Mr. Smith stated he was aware of what he is up against.

Commissioner Phillips asked if Mr. Smith had talked with Staff much before getting to this point.

Mr. Smith said he had.

Director Rolfe asked Mr. Smith to go over his plans to mitigate any damage done to the property or adjacent properties for the work he has already done to the site.

Mr. Smith explained he had sloped his building site back toward the dune so water would drain back to the dune instead of going into the lake. He described the terrain of the property and how the bank between his site and the lake still has vegetation and how he has encouraged that area to remain covered in wild vegetation.

Chair Cortez commented that the response from the DEQ was not very positive.

Commissioner Phillips stated that trying to build within the Beaches and Dunes Limited Suitability for Development area presents a challenge.

Mr. Smith responded by saying that the area he is working in is an established, stabilized dune and the conditions of the Beaches and Dunes Limited Suitability for Development Zone should not apply to his
situation. He does not believe the area around Saunders Lake should be considered a limited development area.

Chair Waterman asked Mr. Smith to address the possible drainage problems from the dwelling and road.

Mr. Smith stated that the water would go back toward the dune and sink into the sand.

Commissioner Scheer explained that tree needles and other debris would collect and create a mat and soon the water would not dissipate as it does currently. He asked Mr. Smith to address his plan when there is standing water on the property. The water has to drain somewhere.

Mr. Smith said he planned to have all runoff from downspouts and anywhere else go toward the dune. He stated that most homes in the area did not have the option to drain their water away from the lake and that most runoff on the other properties goes right into the lake.

Commissioner Waterman questioned if the water on this property ran into the lake before Mr. Smith reshaped the property.

Mr. Smith answered that he had spoken with the State Forestry Department and they advised him that he could clear vegetation for water dependent uses and one water dependent use is recreation. Mr. Smith felt he was included in that category and acted accordingly.

Commissioner Scheer asked Director Rolfe if what Mr. Smith stated was true.

Director Rolfe stated that she gave the Planning Commission members packets that included the Development Standards that address Mr. Smith’s statement. There are very specific criteria for removal of riparian vegetation and there is no exception for recreational use removal.

Mr. Smith apologized if he misinterpreted the rules but he said he tried to do the right thing. He stated that once he found out he was in the wrong he called the planning department to get approval.

Commissioner Scheer agreed that it is difficult to know where to go because there are so many different agencies.

Chair Cortez asked if there were questions but there were none.

Director Rolfe stated that there were two issues to vote on. One is to find that the application meets the criteria for the limited suitability area and the other is the variance to the setback.

Chair Cortez stated that since he heard no other questions he would close the hearing and go into deliberations.

Commissioner Waterman stated he would approve with conditions. He would also approve the variance with conditions listed in the staff report.
Commissioner Scheer stated he agrees with the siting, but not with the variance for riparian setback. He stated that the commission had recently rejected a similar request from another applicant and he did not see a reason to approve this variance after rejecting the previous one.

Commissioner Scarborough stated he agreed with Mr. Waterman.

Commissioner Baker stated that she approves the siting, but not the variance for the riparian setback. She would approve a variance to the forest setback. She did not want to approve a variance after denying the previous applicant.

Commissioner Phillips stated that he agrees with Commissioner Baker. He would approve the siting but also was unwilling to approve this applicant after denying a previous applicant for a similar request. He would prefer it sited closer to the dune.

Chair Cortez stated he found the lot to be a challenge as far as the available land and the setbacks. He stated he agreed with Commissioner Baker that he would rather give a variance for the forest setback than to the riparian setback. Chair Cortez stated that he didn’t feel he got a clear picture from ODFW and he thinks the applicant may have problems from the DEQ, especially because of the recent problems with water quality in that area. Chair Cortez stated that if the applicant could fit a house in the allowable space then fine, he would approve it. Chair Cortez asked for questions or statements.

Commissioner Scheer asked if the vote was to approve building on the property, could the applicant come back with a solution in regard to the setbacks.

Director Rolfe explained that the applicant could withdraw the application before the appeal deadline is over, then amend it and resubmit it, or the Planning Commission could table the matter and give the applicant a few weeks to amend his application.

Chair Cortez asked Mr. Smith if that option appealed to him.

Mr. Smith stated that it would be the best answer.

**MOTION**

Commissioner Scheer made motion to reopen the hearing for HBCU-13-05/V-13-03 and Commissioner Scarborough seconded the motion.

Chair Cortez called for a vote and it was unanimous to reopen the hearing.

Commissioner Waterman made a motion to table the application to January 2, 2014, 7:00 p.m., in the Owen Building and Commissioner Scarborough seconded the motion.

Chair Cortez called for a vote and it was unanimous in favor to table the application.

Director Rolfe stated that there would be no further notice given but that any new information would be forwarded to the Planning Commission.
ITEM C – REVIEW OF TEXT AMENDMENTS
Director Rolfe presented new floodplain maps to adopt and some typographical and formatting changes to the ordinance on pages 494, 495, and 500. Director Rolfe stated that some areas are being added and some areas are being removed from the maps and the floodplain insurance will be impacted.

Commissioner Scheer asked what impact the changes will have on the floodplain insurance.

Director Rolfe explained that there were a lot of new areas being added and some were removed. The rate will increase. The last information she received from FEMA was that there may not be a huge rate increase they are still in discussion. Before the discussion was FEMA was in the red and they had to raise the rates to recoup the cost.

The Commission had no requested changes to the proposal.

Director Rolfe explained the next step was to present the language to the Board and have them initiate the formal process.

ITEM V OTHER BUSINESS
Director Rolfe stated she had received the recommendation from the hearings officer on the amendment to the pipeline and it was favorable for the applicant but she has not seen a recommendation on the change in the route. The hearing for deliberation before the Board of Commissioners is scheduled for January 9, 2014 at 10:00 a.m.

Director Rolfe stated she has met with Oregon Department of Energy regarding the criteria for the power plant project and the office has received another route change for the LNG project.

Director Rolfe reported that three more people had resigned from the Citizen Advisory Committee and they had not elected officers yet.

Commissioner Waterman stated he did not see the need for the Citizen Advisory Commission.

Planning Director Rolfe stated that the Board of Commissioners would have to repeal the Citizen Advisory Committee language and shift the responsibility to the Planning Commission.

There were no further comments.

ITEM VI ADJOURN
Chair Cortez adjourned the meeting at 8:20 pm.

[Signatures]
Recording Secretary
Planning Commission Chair

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COOS COUNTY PLANNING COMMISSION
MINUTES OF MEETING
JANUARY 2, 2014
COOS COUNTY ANNEX CONFERENCE ROOM
COQUILLE, OREGON 97423

MEMBERS PRESENT
Joseph Cortez, Chairman
Kevin Westfall, Vice Chairman
Charlie Waterman, Commissioner
Jerry Phillips, Commissioner
Joann Hansen, Commissioner
Steve Scheer, Commissioner

MEMBERS ABSENT
Larry Scarborough, Commissioner
Hilary Baker, Commissioner

STAFF PRESENT
Jill Rolle, Administrative Planner
Josh Soper, Assistant County Counsel
Amy Dibble, Planning Aide

ITEM I CALL MEETING TO ORDER
Chairman Cortez called the meeting to order at 7:00 p.m. and introductions were conducted.

ITEM II CITIZEN PARTICIPATION
There were none.

ITEM III APPROVAL OF MINUTES
There were none.

ITEM IV PUBLIC HEARINGS
Chair Cortez stated that this meeting is a continuance of file number AP-13-05 Deatherage.

ITEM A – FILE NO. AP-13-5 Deatherage
Planning Director Rolle stated that this is the continuation of the December 5th, 2013, Planning Commission Meeting. This matter is an appeal of the Planning Director’s decision to deny a template dwelling. The denial was based on Staff’s findings that the property did not have enough lawfully created parcels and dwellings to qualify under LDO Section 4.8.525 (B) with a template dwelling criteria. The template that was applied was a square because Staff did not have enough information to determine if the road existed prior to 1993. The Planning Commission chose to continue this matter to have County Counsel and the Roadmaster comment. The Roadmaster was unable to attend but he had a letter in the record to state that he had visited the site. The existing roadway is paved with an average width of 10 ½ feet and a total length of 4,685 feet. This is consistent with the driveway permit in your packet dated December 16, 2005, which is from the property that actually has a dwelling on it. There are photos dating back to the 1950s that show the resource road in place. There is no dispute that there was a road in place historically. The question that came up was the status of the road and if it was in fact a qualifying road. Staff attempted to research case law regarding the matter without success. Staff requested County Counsel to provide a legal opinion and he did. There is a memo in your packet regarding the definition and opinion on the matter. The definitions include the ORS 92.010 (14) Road or street means a public or private way that is created to provide ingress or egress for persons to one or more lots, parcels, areas or tracts of land, excluding a private way that is created to provide ingress or
egress to such land in conjunction with the use of such land for forestry, mining or agricultural purposes. Staff concurs with Counsel’s memo. The Planning Commission must find that the road meets the definition of road and in existence prior to 1993 in order to qualify for a dwelling. The Planning Commission needs to remember that the definition excludes a private way that is created to provide ingress and egress for forestry, mining or agricultural purposes. Staff researched the properties abutting the private road and found that there was a dwelling approval from 2004. The approval was granted which could change the status of the road but that is not prior to 1993. The applicant provided the commission with some deeds but they were after 1993 as well. Planning Director Rolfe then asked if there were any questions.

Commissioner Scheer stated that he remembered from last time that the issue was that the deed showed the road was for forestry operations only and the memo from the County Counsel lays out what the options are and the deed specifies what the commission’s action is to be.

Chair Cortez stated his concern was that if it was a road then a different formula applied to the consideration.

Counsel Soper clarified by stating the classification of the road will determine if the rectangle instead of the square would apply.

Commissioner Waterman asked Counsel Soper if all the applicant had to do was prove there was a road there, not that it was necessarily put there for the use. Referring to the packet provided, Commissioner Waterman stated that the information did not specify use of the road.

Counsel Soper agreed that his initial reading of the ordinance was the same. He explained that the State has statutes specifying that in this context the word “road” means a specific subset of roads and excludes roads that are used exclusively for forestry, mining or agricultural purposes.

Commissioner Hansen asked if that statute applies to Coos County Zoning Ordinance.

County Counsel Soper answered that it does and that the county ordinance was implementing the State statute so the same definitions would apply.

Commissioner Hansen asked what the significance of January 1, 1993 was. She wanted more clarification as to what difference that date makes.

County Counsel Soper stated that date is also from the statutes. It was probably when a statutory change went into effect and things were grandfathered in from before the statute came about.

Director Rolfe confirmed that prior to January 1, 1993 there was a different set of rules that applied to farm and forest. She gave some legislative history on the matter.

County Counsel Soper stated that the rules changed in 1993 so if your road was in existence before then, the old rules apply, if it was after then the new rules apply.

Chair Cortez asked if there were any other questions. There were none. He then asked Mr. Deatherage if he had anything to add.
Mr. Deatherage stated that he did not understand what County Counsel was saying about the road. He asked if the road would qualify or not.

County Counsel Soper responded that it is not his decision to make; it is the Planning Commission’s decision. The rule is that if the road existed prior to January 1, 1993, and it was not a private road for forestry, mining or agricultural purposes then it would work. In this case, based on the evidence in the record here, there is a deed showing a forestry road in 1951 and the only other evidence that the road was used for residential purposes beginning in 2004. Based on that record it appears that it would not qualify.

Mr. Deatherage stated that he did not see how County Counsel got that meaning. He said the statute says if it abuts a road. He argued that if the LCDC wanted to say if abuts a road, but that road can’t be used for forestry, then they would have said that. He argued that the road had been in place for at least 60 years, going through farmland and residential land. He disagreed with Counsel’s interpretation. Mr. Deatherage stated he talked with Jennifer at LCDC and she told him the definition of a road was never written into the law. The law is clear it does not say it can’t be used for forestry or that it has to have been used previously as a residential road. The only thing it says is that it has to be there since 1993 so he thinks it’s safe to assume that when they put these rules together that’s what they wanted. He said the fair and lawful thing would be to grant the property owner the rectangle and if the County objects to doing it this way they need to change the rules and change the law. He continued by suggesting that the LCDC says the county can say a road can’t be counted if it is used for forestry purposes, but at this point it is clear that this property should be allowed to use the rectangle.

Director Rolfe clarified Katherine from DLCD was the Farm/Forest Specialist that Mr. Deatherage spoke with. DLCD did not provide a legal position in the matter. This is a local decision.

Chair Cortez asked if there were any other questions.

Commissioner Hansen recited a portion of the letter provided by Mr. Robert Smajkal, Attorney, “if a tract abuts a road that existed on January 1, 1993”. She asked when the statute changed the definition of a road, not to include forest or agriculture.

Director Rolfe stated that she was unsure if the definition of a road had changed. The statute that changed was in regards to forest dwellings. She stated LDO § 7.1.600 in the Staff Report, describes forest, agriculture, and mining access and it has been there since adoption in 1986.

Commissioner Phillips stated that it was an interesting question in a larger sense, because the commission is talking about an old logging road and there are thousands of miles of those in the county and if the commission chooses to accept all roads in the greater sense, then it impacts the development potential. He requested clarification on staff’s position on the road.

Planning Director Rolfe stated that staff has to use the definition in place at the time the applicant applied. The Planning Commission has to be careful in decision making as it could alter future approvals.

Mr. Deatherage interjected saying he guessed that was right in a sense but at this point, it would be fair, because it just says road, to rewrite the rules if you want to exclude logging roads. His argument was that the road was used for more than a logging road, it is a substantial road and it goes from one
point on North Bank Road and it goes to another and it goes through ten different properties so it’s more than just a little simple logging road and it’s been used for logging but there is nothing in here that says because it was used as a logging road that it can’t be used. Most of the template plans work just with a square so it’s not really going to open up a lot of parcels but if the County doesn’t like that they can change the law.

Commissioner Phillips stated where he could see it was a significant issue in the greater sense.

Commissioner Scheer questioned if Mr. Deatherage had anything in writing to reflect the conversations he had with Katherine at DLCD.

Counsel Soper reported that he had found the statute that has the definition but it has been amended seventeen times so it will take a little research to find the amendment dates.

Commissioner Waterman stated he has insight into the road issue but it only goes back to 1999. He knows they were rocking the road at that time but he did not know for what the purpose the road was supposed to be.

County Counsel Soper responded that would be the key, to know what the purpose of the road was, if it was for forestry, mining or agricultural purposes.

Commissioner Hansen asked how many residences were located on the road.

Mr. Deatherage answered that there was only one that is built, but there were about eleven properties, adjacent to the road.

Director Rolfe clarified it currently serves one residence.

Mr. Deatherage responded that there is one already there and there are a couple permits for homes that have not been built yet.

Mel Garrett from the audience began speaking. She stated she was a realtor with Gold Coast Properties in Bandon. She represents the buyers, a couple that wants to retire here, who want build a dwelling on the property. She explained that the applicant should not be denied because no one can say what did or did not go on with this road over the last sixty years. She conceded that the applicant could not prove what the road was used for but the County could also not prove what it wasn’t used for.

Director Rolfe explained that the burden of proof rest with the applicant.

Ms. Garrett stated that the property was not financially viable as a logging property but the fact that surrounding neighbors have conditional use permits to build was the reason the buyers wanted to look at the property.

Director Rolfe stated there are two neighbors with permits. One expired and the other is active. They qualified using the square and the road was not considered in their applications because it was not considered a qualifying road. This property is unique because it sits back further so it doesn’t pick up enough dwellings within the square template.
Ms. Garrett questioned if it would qualify using the rectangle.

Mr. Deatherage replied yes and explained that a neighbor used a rectangle for his property.

Director Rolfe clarified that the neighbor was abutting North Bank Road and that was the road that was used in the template.

Mr. Deatherage insisted that the law is fair and clear because it says road and does not question the use of the road.

Commissioner Phillips responded that this is why the commission asked for legal advice, because it is a legal issue.

Mr. Deatherage stated that the commission could amend the law tomorrow.

Counsel Soper stated that the commission can amend a planning ordinance but it takes the state legislature to amend state law and you can’t be less restrictive than state law. The definition Counsel presented was from state law, so it would take action on behalf of the legislature to change.

Chair Cortez asked if there were any other questions. Hearing none, he closed the hearing to begin deliberation.

Chair Cortez began by stating there was no question it was a paved road the question is if the road qualifies for the rectangle determination. The commission needs to make a decision on this issue.

Commissioner Scheer agreed with Counsel, the commission cannot write new laws. The commission can only interpret and give variances to rules but cannot change the rules, and after reviewing Counsel’s opinion and the evidence in the record that shows the road was deeded for forestry purposes there is no legal justification to qualify this road. Therefore, he agreed with Counsel and would vote to uphold the Planning Director’s decision to deny the application.

Commissioner Waterman had a different opinion as this road is not gated, and there was no restriction from people using it. He understood the exclusion for forestry, agricultural or mining but this is an open road and there are people who will drive that road for sightseeing or whatever. This changes the status of the road which could easily meet the definition for a qualifying road. I have owned land, when the road is open, come deer season or whatever, there are people crawling all over the property. Ask any forester about their property, they will tell you the same thing. He thought the road met the definition. He would vote to overturn the Planning Director’s denial.

Commissioner Westfall stated that after hearing and reading the testimony he agrees with Commissioner Waterman. It serves one residence; the potential for additional residences is there since there are permits, to say it’s a road only for forestry, it’s not obviously since there are people living there and building there.

Planning Director Rolfe interjected that any findings need to be made that the road was a qualifying road prior to 1993. Counsel has provided you with some information about the status of the road. He is not telling you that it is impossible that the road could have been created for forestry, agricultural, mining purposes and then changed to serve other purposes, but that had to be prior to 1993. The
current evidence does not support that decision and the Planning Commission needs to make legal defendable findings one way or the other based on the record.

Commissioner Westfall continued that he thinks it should be approved.

Commissioner Hansen stated that “road” means the entire right or way of any public or private way that provides ingress to or egress from property by means of vehicles or other means; she gave examples, and then said it gets you from one place to the next. If the road was built in 1950 for whatever reason it was built, it was built for ingress and egress and that’s what roads are for, so she wants to approve the application.

Commissioner Phillips thanked Counsel for attending the meeting then read the last paragraph of County Counsel’s memo. He stated that his heart would like to approve it, but looking at the legal issue, it does not qualify. In trying to be consistent, he does not want to see just any old logging road becoming a qualifying road; therefore, he could not support approval of the application.

Chair Cortez stated he visited the site and the road is being used for egress and ingress and it could be used for logging in the future. He is leaning in the direction of approval.

Commissioner Scheer stated he agreed with Commissioner Phillips. He wants to know how to put a handle on this in the future. If Counsel gives guidance and the commission chooses to ignore then every other ruling we make in the future could be legally challenged and overturned. He questioned what the commission was doing for the citizens of Coos County.

Commissioner Hansen asked what the commission is doing for this citizen.

Commissioner Scheer stated he has a neighbor in the same situation with twenty eight acres. He can’t get a permit either. It is a fact of life, not everyone is created equal.

Commissioner Hansen made the point that there are residents on it already and it is being used.

Director Rolfe stated she wanted the commission to think about two things in this situation. One was a causation concerning making a decision that is not supported by the record and legal opinion; and the second, the template dwellings that have come before staff and the commission that have been denied in the past because the road did not qualify.

Commissioner Scheer asked if previous applicants would come back.

Commissioner Hansen asked if it would be for this one area.

Director Rolfe stated that if it is opened up, other people may qualify because they also had to have a road to qualify and the road did not previously qualify.

Counsel Soper clarified that findings would have to be that this road had uses other than forestry, mining or agricultural purposes prior to January 1, 1993.

Director Rolfe concurred.
Chair Cortez asked when the house was built in that area.

Director Rolfe replied that the house was built in 2005 but the approval was 2004.

Commissioner Phillips asked if they needed to find that the road was created for another purpose.

County Counsel Soper answered that is another open question can the road be changed to a different purpose.

Chair Cortez asked that if there is a house up there, what exclusions did they make to get there.

Director Rolfe answered that they used the square template; they didn’t use the road to qualify. The applicant meets the development pattern when the square template was applied. The only dwelling that was qualified using a road was the one that abutted North Bank Road which meets the definition. The template dwelling was created to look at the pattern of development so you are not taking forestland out of forest production to site a dwelling.

Commissioner Hansen asked if this was prime forestland.

Planning Director Rolfe stated that it could be.

Mr. Deatherage added that it is on top of a hill.

Commissioner Phillips stated that it has the potential to be as far as the soils, but it is not being utilized that way.

Chair Cortez stated that there is no timber at this time.

Commissioner Scheer expressed concern over having a number of people coming back into the office about their previous denials and wanting them to be overturned.

Commissioner Waterman stated that he went to the commissioner training and, in his opinion, he is to take the evidence and weigh it to the best of each person’s ability, not collectively. Each person comes from different backgrounds and experiences which gives a good cross section of good answers. Additionally each hearing has its own merits. He then referenced maps in their materials and commented on the condition of the road over the years. He has personal knowledge of people who visited that area for hunting. The road is open and he has a problem stating that the road was not for other uses.

Director Rolfe clarified that the commission needed to be clear about the findings so that the next applicant can understand what a qualifying road would be. There needs to be evidence that the road was not primarily used for forest, agricultural or mining uses.

Counsel Soper repeated that Commissioner Waterman was making the finding that it was used for other purposes prior to 1993 and on that basis, you believe it qualifies. That would give Director Rolfe guidance.
Director Rolfe explained that the findings need to be clear so she can help the people who come to the office to make their applications and provide them with consistent.

Commissioner Waterman stated that the fact that it was an open road to the public that’s a main criterion to him. If it is closed then he doesn’t think it qualifies.

Director Rolfe questioned if just the fact of a gate made the difference to him and he agreed.

Commissioner Waterman stated he felt this road was open to the public prior to 1993.

Chair Cortez asked if there were any other comments.

Commissioner Scheer remembered when he interviewed to be a commissioner and when he was asked if he could put his own personal feelings aside to make a determination, based on the law and he said he could do that. He had the same issue in a previous employment position and he stated he had to follow the law. He felt the applicant had failed to produce evidence to support his case and it was necessary to follow the lead of County Counsel.

Counsel interjected to the Chair that the hearing could be reopened and the applicant could provide evidence of use prior to 1993.

Mr. Deatherage asked if that meant another continuance and did not understand what the commission was asking for.

Counsel Soper asked for evidence that the road was used prior to 1993 for other than mining, forestry or agricultural uses.

Mr. Deatherage argued that the commissioners were not saying it is not a road and the question of what uses the road has had are irrelevant and quoted the letter from Attorney Smajkal that says it is not readily apparent.

Counsel Soper explained that it is not readily apparent if the initial creation of the road is the operative fact or if it can change over time.

Mr. Deatherage argued that the use question has been brought in and it is irrelevant and nothing to do with the laws.

Counsel Soper explained that it is in the ordinance which is the law.

Ms. Garrett asked about the type of evidence that would be required.

Mr. Deatherage offered to bring in hunters.

Counsel Soper clarified that any evidence sufficient enough to create the record that would be convincing to the Planning Commission to show that that was the case.
Ms. Garrett stated that there was one person in the room that has personal knowledge that hunters had been in that area in the area and she didn’t think it was reasonable for Mr. Deatherage to provide evidence and she didn’t know what type of evidence would be needed.

Director Rolfe stated it could be any type of evidence and the more evidence that is provided; the more it builds the record. The evidence needs to support the conclusion that this is a qualifying road.

Mr. Deatherage asked how many members of the planning commission have to vote to approve his appeal.

Director Rolfe explained it would take a majority vote and the commissioners could either reopen the hearing and continue it, or close the record and take a vote.

Mr. Deatherage stated he would like to have the attorney back up what he had already submitted.

Counsel Soper explained that the criteria for the road are found in ORS 92 and he did not see the attorney reference that ORS at all in his previous letter. He could have his attorney contact him and they could discuss the issue.

Commissioner Phillips explained the background of the planning commission and their decisions.

Mr. Deatherage chose to request a continuance.

Chair Cortez reopened the hearing for a continuance until the next meeting on February 6, 2014.

Director Rolfe explained there will be no further notice given. The hearing will be on February 6, 2013 at 7:00 p.m.

**ITEM B – FILE NO. HBCU-13-05 / V-13-03 Smith**

Chair Cortez brought up the matter of HBCU-13-05 / V-13-03 Smith.

Planning Director Rolfe reviewed the background of the application up to present. She also stated that the applicant had met with Staff and expressed his position that removing more of the dune would make it unstable. Staff also discussed with Mr. Smith the method he was using to measure the distances on his plot plan and explained he needed to measure from the high water mark, not his property line. Mr. Smith reworked his plot plan with the new information and discovered he would need less of a variance than he originally thought. Mr. Smith submitted a new plot plan but stated he was unable to move the dwelling closer to the forest area. He also submitted a couple of letters to the Planning Commission, one from Del Cline regarding septic service and the other from Jerry Wharton, Fires Chief regarding placement of the dwelling in relationship to the forest setback.

Staff disagreed with two of the statements made in the materials submitted by Mr. Smith. One statement is that he is attempting to do everything correctly from scratch but he admittedly began excavation of the site without consulting with the Planning Department first and the second statement is that denial of his application would be setting a new precedent, inconsistent with the past Planning Department decisions. Other variances have been denied in this area so that statement is false. Mr. Smith is not present today to answer any questions but I can answer questions if possible based on the information he has previously submitted.
Commissioner Scheer asked if the application had been denied for the riparian setback already.

Director Rolfe explained at the last meeting it seemed the consensus of the commission was to provide Mr. Smith with an opportunity to explore a variance to the forest setback rather than the riparian setback. However, Mr. Smith chose to provide more information to show why the Planning Commission should approve the variance to the riparian area.

Chair Cortez commented that the applicant will still be siting the dwelling in the riparian area according to his plot plan.

Director Rolfe stated that the narrative provided explains that the deck would be the only portion encroaching into the riparian area.

Commissioner Waterman asked if he left the deck off would the house fit within the setback.

Chair Cortez replied no, according to the site plan the setback line runs through the house and the problem is that the lot is too small for Mr. Smith’s ambitions.

Commissioner Scheer discussed Mr. Smith’s apparent plans for the septic system and the options.

Chair Cortez asked if anyone had any other questions and expressed disappointment that Mr. Smith had not addressed the issues that the Planning Commission had asked him about at the previous meeting.

**MOTION**
Commissioner Scheer moved to deny the variance based on the evidence in the record and the staff report. Commissioner Phillips seconded the motion. The vote was unanimous.

Commissioner Scheer moved that they approve the dwelling to be located within the beach and dunes area with limited development suitability. Commissioner Phillips seconded the motion. The decision was based on evidence in the record and the staff report. The vote was unanimous.

**ITEM V OTHER BUSINESS**
Director Rolfe announced that the Board of Commissioners will have a meeting to deliberate on the alternate pipeline route as well as the amendment to the condition of approval on January 9, 2014. She requested that the Commission complete their mileage vouchers. She provided updates on amendments.

**ITEM VI ADJOURN**
Chair Cortez adjourned the meeting at 8:20 pm.

Lynn Jones, Recording Secretary

Joe Cortez, Planning Commission Chair