

NOTICE OF LAND USE DECISION BY THE COOS COUNTY PLANNING DIRECTOR

Coos County Planning 225 N. Adams St. Coquille, OR 97423 http://www.co.coos.or.us/

Phone: 541-396-7770 Fax: 541-396-1022

Date of this Decision: January 27, 2019 File No: ACU-19-028

RE: Request for approval of an after-the-fact dock.

Applicant(s): Steven & Maria Sadler

This decision notice serves as public notice to all participants, adjacent property owners, special districts, agency with interests, or person with interests. If you are an adjacent property owner, this notice is being mailed to you because the applicant has applied for a use or activity on their property that requires that you receive notice pursuant to ORS 197.763. Please read all information carefully as this decision may affect you. (See attached vicinity map for the location of the subject property).

Mailed notices to owners of real property required by ORS 215 shall be deemed given to those owners named in an affidavit of mailing executed by the person designated by the governing body of a county to mail the notices. The failure of a person named in the affidavit to receive the notice shall not invalidate an ordinance. The failure of the governing body of a county to cause a notice to be mailed to an owner of a lot or parcel of property created or that has changed ownership since the last complete tax assessment roll was prepared shall not invalidate an ordinance.

NOTICE TO MORTGAGEE, LIEN HOLDER, VENDOR OR SELLER: ORS CHAPTER 215 (ORS 215.513) REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST PROMPTLY BE FORWARDED TO THE PURCHASER."

The requested proposal has been Approved Denied subject to the findings to the criteria found in Exhibit A. The decision is based on findings and facts represented in the staff report.

SUBJECT PROPERTY INFORMATION

Account Number: 953102

Map Number: 28S1416BC-03201

Property Owner: SADLER, STEVEN C & MARIA T

57598 PARKERSBURG RD BANDON, OR 97411-7305

Situs Address: 57599 PARKERSBURG RD BANDON, OR 97411

Acreage: 0.20 Acres

Zoning: COQUILLE RIVER ESTUARY MGT PLN (CREMP)

CREMP AQUATIC D17 CONSERVATION (CRA17C)

CREMP INDUSTRIAL (CR-IND)

CREMP SHORELAND SEGMENT 20 (CRS20)

Special ARCHAEOLOGICAL SITES (ARC)

Considerations: BANDON AREA OF MUTUAL INTEREST (BMI)

FLOODPLAIN (FP)

NATIONAL WETLAND INVENTORY SITE (NWI)

Proposal: Request for Planning Director Approval for an after-the-fact dock in the

Coquille River Estuary Management Plan, Conservation Aquatic Unit 17 pursuant to Coos County Zoning and Land Development (CCZLDO) § 3.3.810(2) Administrative Conditional Development and Use -Docks and Moorage; Policy #10 Proliferation of Single-Purpose Docks and Piers; Policy #17 Protection of "Major Marshes" and significant "Wildlife Habitats" in Coastal Shorelands; Policy #18 Protection of "Historical, Cultural and

Archaeological Sites

Decision: This request meets the criteria subject to conditions of approval found at Exhibit

A. Approval is based on findings and facts represented in the staff report.

This notice is to serve as public notice and decision notice and if you have received this notice by mail it is because you are a participant, adjacent property owner, special district, agency with interest, or person with interest in regard to the following land use application. Please read all information carefully as this decision may affect you. (See attached vicinity map for the location of the subject property).

The purpose of this notice is to inform you about the proposal and decision, where you may receive more information, and the requirements if you wish to appeal the decision by the Director to the Coos County Hearings Body. Any person who is adversely affected or aggrieved or who is entitled to written notice may appeal the decision by filing a written appeal in the manner and within the time period as provided by the Coos County Zoning and Land Development Ordinance (CCZLDO) Article 5.8. If you are mailing any documents to the Coos County Planning Department the address is 250 N. Baxter, Coquille OR 97423, but if an appeal is not received in the office by the time and date noted in this decision it will not be accepted. An appeal shall not be directly filed with the Land Use Board of Appeals until all local appeals have been exhausted. If appealed, failure of an issue to be raised in a hearing, in person or in writing, or failure to provide statements of evidence sufficient to afford the Approval Authority an opportunity to respond to the issue precludes raising the issue in an appeal to the Land Use Board of Appeals.

This decision will become final at 5 P.M. on <u>February 11, 2020</u> unless before this time a completed **APPLICATION FOR AN APPEAL OF A DECISION BY THE PLANNING DIRECTOR** form is submitted to and received by the Coos County Planning Department.

Prepared by: Amy Dibble Date: January 27, 2020

Amy Dibble, Planner II

Authorized by: <u>Gill Rolle</u> Date: <u>January 27, 2020</u>

Jill Rolfe, Planning Director

EXHIBITS

Exhibit A: Conditions of Approval

Exhibit B: Vicinity Map

The Exhibits below are mailed to the Applicant and Planning Commission only. Copies are available upon request or may be found at the following website:

http://www.co.coos.or.us/Departments/Planning/PlanningDepartment--Applications2019.aspx or by visiting the Planning Department at 225 N. Baxter, Coquille OR 97423. If you have any questions please contact staff at (541) 396-7770.

Exhibit C: Staff Report

Exhibit D: Comments Received

EXHIBIT "A"

The applicant shall comply with the following conditions of approval with the understanding that all costs associated with complying with the conditions are the responsibility of the applicants and that the applicants are not acting as an agent of the county. If the applicant fails to comply or maintain compliance with the conditions of approval the permit may be revoked as allowed by the Coos County Zoning and Land Development Ordinance. Please read the following conditions of approval and if you have any questions contact planning staff.

- 1. All applicable federal, state, and local permits shall be obtained prior to the commencement of any development activity. If there were comments from Department of State Lands it is the responsibility of the property owner to comply.
- 2. Shall comply with the comments found at Exhibit "D".
- 3. All costs associated with complying with the conditions are the responsibility of the applicant and that the applicant is not acting as an agent of the county.

EXHIBIT "B" VICINITY MAP



COOS COUNTY PLANNING DEPARTMENT

Mailing Address: 250 N. Baxter, Coos County Courthouse, Coquille, Oregon 97423
Physical Address: 225 N. Adams, Coquille Oregon
Phone: (541) 396-7770
Fax: (541) 396-1022/TDD (800) 735-2900



File: ACU-19-028

Applicant/

Owner: Steven & Maria Sadler

Date: January 15, 2020

Location: Township 28S Range 14W

Section 16BC TL 3201

Proposal: Administrative Conditional Use



EXHIBIT "C" Staff Report

File Number: ACU-19-028 Account Number 953102

Map Number 28S1416BC-03201

Property Owner SADLER, STEVEN C & MARIA T

57598 PARKERSBURG RD BANDON, OR 97411-7305

Situs Address 57599 PARKERSBURG RD BANDON, OR 97411

Acreage 0.20 Acres

Zoning COQUILLE RIVER ESTUARY MGT PLN (CREMP)

CREMP AQUATIC D17 CONSERVATION (CRA17C)

CREMP INDUSTRIAL (CR-IND)

CREMP SHORELAND SEGMENT 20 (CRS20)

Special Considerations ARCHAEOLOGICAL SITES (ARC)

BANDON AREA OF MUTUAL INTEREST (BMI)

FLOODPLAIN (FP)

NATIONAL WETLAND INVENTORY SITE (NWI)

Reviewing Staff: Amy Dibble, Planning Aide

Date of Report: January 27, 2020

I. PROPOSAL

Request for Planning Director Approval for an after-the-fact dock in the Coquille River Estuary Management Plan, Conservation Aquatic Unit 17 pursuant to Coos County Zoning and Land Development (CCZLDO) § 3.3.810(2) Administrative Conditional Development and Use -Docks and Moorage; Policy #10 Proliferation of Single-Purpose Docks and Piers; Policy #17 Protection of "Major Marshes" and significant "Wildlife Habitats" in Coastal Shorelands; Policy #18 Protection of "Historical, Cultural and Archaeological Sites.

III. PROPERTY DESCRIPTION AND PROPOSAL

LAWFULLY CREATED: This property is acknowledged as a lawfully created parcel (Deed Doc # 78-46757) pursuant to CCZLDO § 6.1.125(1)(b) as it was created through a prior land use decision (P-00-09).

LOCATION: The subject property is located northeast of the City of Bandon at 57599 Parkersburg Road.

SITE DESCRIPTION AND SURROUNDING USES:

a. SITE DESCRIPTION AND SURROUNDING USES: This property is located northeast of the City of Bandon and consists of a dock. The Coquille River runs along the northern property

boundary and Parkersburg Road runs along the southern boundary. The adjacent property to the east is dissected by Parkersburg Road, with an accessory structure and dock located immediately adjacent and the single family dwelling located across Parkersburg Road. The adjacent property to the west is also split by Parkersburg Road with no development on the portion immediately adjacent and a single family dwelling located on the southern portion of the property across Parkersburg Road.

b. PROPOSAL: Request for Planning Director Approval for an after-the-fact dock in the Coquille River Estuary Management Plan, Conservation Aquatic Unit 17 pursuant to Coos County Zoning and Land Development (CCZLDO) § 3.3.810(2) Administrative Conditional Development and Use -Docks and Moorage; Policy #10 Proliferation of Single-Purpose Docks and Piers; Policy #17 Protection of "Major Marshes" and significant "Wildlife Habitats" in Coastal Shorelands; Policy #18 Protection of "Historical, Cultural and Archaeological Sites.

IV. APPROVAL CRITERIA & FINDINGS OF FACT

<u>COQUILLE RIVER ESTUARY MANAGEMENT PLAN - CONSERVATION AQUATIC UNITS</u> (CREMP-CA)

- Conservation Aquatic Unit 17 (17-CA) shall be managed to conserve and enhance the natural resources of this intertidal area while allowing for the continuation of recreational and commercial docking facilities and maintenance dredging as necessary.
- SECTION 3.3.810 ADMINISTRATIVE CONDITIONAL DEVELOPMENT AND USE: The following uses and activities are permitted under an administrative conditional use permit CREMP-CA.
 - 2. Docks and Moorage only allowed in Conservation Aquatic Units 8, 12,15, 17, 21 and 23 subject to CREMP policies #10, #17 and #18 and the following review criteria:
 - a. Only permitted where occupying water surface by means other than fill.
 - b. Only permitted where consistent with the resource capabilities of the area and the purposes of the management unit.

Finding: The proposal is for an existing dock that had been sited without proper land use approval. The dock is a floating dock and is not using fill to occupy the water, it is connected to land by way of pilings and is utilized by the property owners for recreation. The dock is located within the Conservation Aquatic Unit 17 of the Coquille River Estuary Mangment Plan (CREMP). There are several docks within this area. The area is identified as the Prosper Waterfront on the Coastal Shorelands Inventory Plan Map and within close proximity to an area identified as being a potential *Water-Dependent* recreational site. The CREMP policies will be addressed later in this staff report.

• Policy #10: Proliferation of Single-Purpose Docks and Piers

Local government shall act to restrict the proliferation of individual single-purpose docks and piers, when such are allowed within respective management units.

- *I.* This strategy shall be implemented by:
 - a. preparation of findings by local government in response to a "request for comment" DSL (which shall seek local government's determination regarding the appropriateness of a permit to allow the proposed dock or pier) which document that:

- 1. the size and shape of the proposed dock or pier shall be limited to that required for the intended use; and
- 2. alternatives to docks and piers (such as mooring buoys, dryland storage, and launching ramps) have been investigated and considered; and
- b. encouraging community facilities common to several uses and interest by:
 - 1. satisfying community needs for docks and moorage facilities in this Plan; and
 - 2. encouraging easements to facilitate multi-ownership.

This policy recognizes the requirements of Goal #16 and the environmental benefits of multi-purpose and multi-ownership docks and moorage facilities.

Finding: Staff submitted a request for comments to the Department of State Lands (DSL). DSL responded recognizing that the property owners have started the registration process for the existing dock and that this must be finished. They explained that the state's jurisdictional boundary for this location is the highest measured tide or the landward extent of wetlands; due to the fact that the placement of the dock causes minimal to no soil disturbance in the mudflat they will not be requiring a delineation. They caution that no additional placement, movement, or removal of any material should be done within 50 feet of the dock without a wetland delineation of the property to determine the wetland and water boundaries.

The existing dock is used for personal recreation and is small in size measuring 120 square feet. Since the dock was in existence prior to the current property owners purchase there is no alternative to the dock. They were unaware that the dock was sited without land use authorization and they want to bring the property into compliance. There are five (5) docks on properties located within the notification area (250 ft), not including the subject property. According to research using google earth, several of these docks, including the subject property's, have been in existence since at least 1994 and they appear to be personal docks.

Policy #17: Protection of "Major Marshes" and Significant "Wildlife Habitats" in Coastal Shorelands

Local government shall protect from development, major marshes and significant wildlife habitat, coastal headlands, and exceptional aesthetic resources located within the Coquille River Coastal Shorelands Boundary unless exceptions allow otherwise.

- I. Local government shall protect:
 - a. "Major marshes" to include areas identified in the Goal #17 "Linkage Matrix", and the Shoreland Values Inventory map; and
 - b. "Significant wildlife habitats" to include those areas identified on the map "Freshwater Wetlands" plus natural areas of significant importance identified on the map "Historical/Archaeological/Scientific sites"; and
 - c. "Coastal headlands"; and
 - d. "Exceptional aesthetic resources" where the quality is primarily derived from or related to the association with coastal water areas.
- *II.* This strategy shall be implemented through:
 - a. plan designations and use and activity matrices set forth elsewhere in this Plan that limit uses in these special areas to those that are consistent with protection of natural values, and
 - b. through use of the Special Considerations Map that identifies such special areas and

restricts uses and activities therein to uses that are consistent with the protection of natural values. Such uses may include propagation and selective harvesting of forest products consistent with the Oregon Forest Practices Act, grazing, harvesting wild crops, and low-intensity water-dependent recreation.

This strategy recognizes that special protective consideration must be given to key resources in coastal shorelands over and above the protection afforded such resources elsewhere in this Plan.

Finding: Subsection II.a. requires staff to review the matrices for uses and activities to ensure uses and activities are permitted. The unit states that the High-Intensity Water-Development Use of a dock is permitted but shall address review standards 1, 2 and 7.

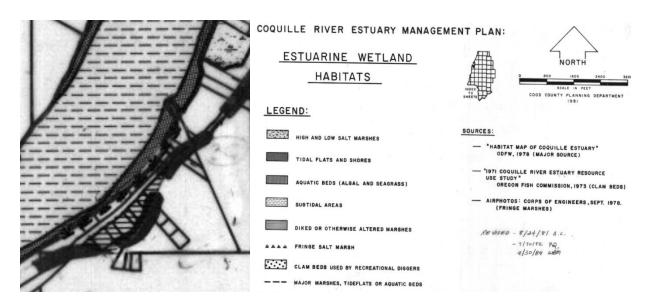
- ONLY PERMITTED WHERE OCCUPYING WATER SURFACE BY MEANS OTHER THAN FILL.

2. WHERE CONSISTENT WITH THE RESOURCE CAPABILITIES OF THE AREA AND THE PURPOSES OF THIS MANAGEMENT UNIT."

7 PROVIDED RECREATION IS WATER-DEPENDENT.

The dock is a floating dock and is not using fill to occupy the water, it is connected to land by way of pilings and is utilized by the property owners for recreation. Staff reviewed the resource maps and found that there are no resources that are being impacted by the existing dock. However, staff sent a request for comments to the Coquille Indian Tribe and the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians and submitted notification to the Oregon Department of State Lands (DSL). DSL responded that the property includes or is adjacent to designated Essential Salmonid Habitat and a state permit would be required for any amount of fill, removal, and/or ground alteration in Essential Salmon Habitat and within adjacent off-channel rearing or high-flow refugia habitat with a permanent or seasonal surface water connection to the stream. Due to the fact that this is an after-the-fact authorization and there is no proposal of construction or development there will be no impact made to the area.

This area is recognized as the prosper waterfront and a potential water dependent recreation site. According to the Estuarine Wetland Habitats map the existing dock is located within an area identified as a major marsh, tide flat, or aquatic bed. Also identified as fringe salt marsh.



There are no acknowledged significant wetland wildlife habitat located in the area of the existing dock, however, there is to the northeast. This site lacks any historical, archaeological, or scientific specific sites, nor is it a head of tide or an area of exceptional aesthetic resources.

The property owners submitted a waterway structure registration to the Planning Department and staff determined that due to the segment of the CREMP that the dock is located an administrative conditional use review would be required.

• Policy #18: Protection of "Historical, Cultural and Archaeological Sites"

Local government shall provide special protection to historic and archaeological sites and shall continue to refrain from widespread dissemination of site-specific information about identified archaeological sites.

- I. This strategy shall be implemented by requiring review of all development proposals involving an archaeological or historical site to determine whether the project as proposed would protect the historical and archaeological values of the site.
- II. The development proposal, when submitted shall include a Site Plan Application, showing, at a minimum, all areas proposed for excavation, clearing and construction. Within three (3) working days of receipt of the development proposal, the local government shall notify the Coquille Indian Tribe in writing, together with a copy of the Site Plan Application. The Tribe shall have the right to submit a written statement to the local government within thirty (30) days of receipt of such notification, stating whether the project as proposed would protect the cultural, historical and archaeological values of the site, or if not, whether the project could be modified by appropriate measures to protect those values.

"Appropriate measures" may include, but shall not be limited to, the following:

- a. Retaining the prehistoric and/or historic structure in situ or moving it intact to another site; or
- b. Paving over the site without disturbance of any human remains or cultural objects upon the written consent of the Tribe(s); or
- c. Clustering development so as to avoid disturbing the site; or

- d. Setting the site aside for non-impacting activities, such as storage; or
- e. If permitted pursuant to the substantive and procedural requirements of ORS 97.750, contracting with a qualified archaeologist to excavate the site and remove any cultural objects and human remains, reinterring the human remains at the developer's expense; or
- f. Using civil means to ensure adequate protection of the resources, such as acquisition of easements, public dedications, or transfer of title.

If a previously unknown or unrecorded archaeological site is encountered in the development process, the above measures shall still apply. Land development activities, which violate the intent of this strategy, shall be subject to penalties prescribed in ORS Chapter 97.990.

- III. Upon receipt of the statement by the Tribe, or upon expiration of the Tribe thirty day (30) response period, the local government shall conduct an administrative review of the development proposal and shall:
 - a. approve the development proposal if no adverse impacts have been identified, as long as consistent with other portions of this Plan, or
 - b. approve the development proposal subject to appropriate measures agreed upon by the landowner and the Tribe, as well as any additional measures deemed necessary by the local government to protect the historical and archaeological values of the site. If the property owner and the Tribe cannot agree on the appropriate measures, then the governing body shall hold a quasi-judicial hearing to resolve the dispute. The hearing shall be a public hearing at which the governing body shall determine by preponderance of evidence whether the development project may be allowed to proceed, subject to any modifications deemed necessary by the governing body to protect the historical and archaeological values of the site.
 - c. Through the "overlay concept" of this policy and the Special Considerations Map, unless an Exception has been taken, no uses other than propagation and selective harvesting of forest products consistent with the Oregon Forest Practices Act, grazing, harvesting wild crops, and low-intensity water-dependent recreation shall be allowed unless such uses are consistent with the protection of the historic and archaeological values, or unless appropriate measures have been taken to protect the historic and archaeological values of the site.

This strategy recognizes that protection of historical and archaeological sites is not only a community's social responsibility, is also legally required by ORS 97.745. It also recognizes that historical and archaeological sites are non-renewable cultural resources.

Finding: Notice was provided to the Coquille Indian Tribe and the Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians. Todd Martin, Tribal Historic Preservation Specialist for the Coquille Indian Tribe, responded stating that no historic properties or cultural resources will be adversely affected. Mr. Martin further stated that extreme caution is recommended and if any known or suspected cultural resources were encountered during the work the property owners and/or contractor should contact the tribe immediately. Mr. Martin instructed prior to any future projects located at this property that the landowner(s), applicant(s), and or contractor(s) contact their office to schedule a Cultural Resource Monitor to be on site during all ground-disturbance activities. No response was received by the Confederated Tribes of the Coos, Lower Umpqua, and

Siuslaw Indians.

VI. DECISION:

There is evidence to support the after-the-fact dock. There are conditions that apply to this use that can be found at Exhibit "A".

VII. EXPIRATION AND EXTENSION OF CONDITIONAL USES

On lands not zoned Exclusive Farm, Forest and Forest Mixed Use:

- All conditional uses for nonresidential development including overlays shall be valid for period of five (5) years from the date of final approval.
- Extension Requests:
 - All conditional uses subject to an expiration date of five (5) years are eligible for extensions so long as the subject property has not been:
 - Reconfigured through a property line adjustment that reduces the size of the property or land division; or
 - Rezoned to another zoning district in which the use is no longer allowed.

EXHIBIT "D" Comments Received



COQUILLE INDIAN TRIBE

3050 Tremont Ave. North Bend, OR 97459 Telephone: (541) 756-0904 ~ Fax: (541) 756-0847 www.coquilletribe.org

September 3, 2019

Coos County Planning Department 250 N Baxter Coquille, Oregon 97429

Re: ACU-19-028

Project location: 57599 Parkersburg Road, Bandon, Oregon 97411

Thank you for the opportunity to comment on the proposal for an after-the-fact dock at the above referenced location. The Coquille Indian Tribe THPO concurs with the anticipatory finding of no historic properties/cultural resources adversely effected. **Extreme caution is recommended**. If any known or suspected cultural resources were encountered during the work, the landowner or contractor should contact our office immediately.

For future projects located on this property, we request that the landowner and/or contractor contact our office to schedule a Cultural Resource Monitor to be on site during all ground-disturbing activities.

Please be aware that state statutes and federal law governs how archaeological sites are to be managed. 43 CFR 10 applies on tribal and federal lands, federal projects, federal agencies, as well as to federal actions and federally funded (directly or indirectly) projects. ORS 97.745 prohibits the willful removal, mutilation, defacing, injury, or destruction of any cairn, burial, human remains, funerary objects, or objects of cultural patrimony of a Native Indian. ORS 358.920 prohibits excavation, injury, destruction, or alteration of an archaeological site or object, or removal of an archaeological object from public or private lands. If archaeological materials are discovered, uncovered, or disturbed on the property, we will discuss the appropriate actions with all necessary parties.

Thank you again and feel free to contact me at (541) 217-5721 if you have any questions.

Best,

Todd Martin

God With

Tribal Historic Preservation Specialist

CRT19203

