



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 Notice: October 14, 2019

File No: FP-19-005

RE: Request for a land use authorization for development (placement of a gravel pad) within the floodplain.

Applicant(s): GMA Garnet Group

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, LIENHOLDER, 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 Deny 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: 395000/395700
Map Number: 25S133500-00300/ 25S1335DB-00300

Property Owner: GMA GARNET (USA) CORP
1800 HUGHES LANDING BLVD #SUITE 350
THE WOODLANDS, TX 77380-1684

Situs Address: 63776 MULLEN RD COOS BAY, OR 97420

Acreage: 28.44 Acres

Zoning: COOS BAY ESTUARY MNGMT PLAN (CBEMP)
DEVELOPMENT AQUATIC (28A-DA)
URBAN WATER DEPENDENT (36-UW)
URBAN DEVELOPMENT (38-UD)

Special Considerations: ARCHAEOLOGICAL SITES (ARC)

Notice shall be posted from October 14, 2019 until 12:00 pm on October 29, 2019

FLOODPLAIN (FP)
NATIONAL WETLAND INVENTORY SITE (NWI)

Proposal: Request for Planning Director approval for development within the floodplain within the Coos Bay Estuary Management Plan (CBEMP) segments 38-Urban Development (38-UD) meets the criteria set forth in the Coos County Zoning and Land Development Ordinance (CCZLDO) § SECTION 3.2.696. Uses, Activities and Special Conditions in Segment 38-UD; Policy #17 – Protection of “Major Marshes” and “Significant Wildlife Habitat” in Coastal Shorelands; Policy #18 – Protection of Historical, Cultural, and Archaeological Sites; Policy #23 – Riparian Vegetation and Streambank Protection; Policy #27 – Floodplain Protection within Coastal Shorelands; § 4.11.235 - Floodplain – Establishment of Development Permit; § 4.11.251 - Floodplain – General Standards; § 4.11.252(5)&(7) - Floodplain – Specific Standards;

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 regarding 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).

Notice to mortgagee, lien holder, vendor or seller: ORS Chapter 215 requires that if you receive this notice, it must be forwarded to the purchaser.

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 below pursuant to 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. Mailing of this notice to you precludes an appeal directly to the Land Use Board of Appeals.

The application, staff report and any conditions can be found at the following link: <http://www.co.coos.or.us/Departments/Planning/PlanningDepartment--Applications2019.aspx>. The application and all documents and evidence contained in the record, including the staff report and the applicable criteria, are available for inspection, at no cost, in the Planning Department located at 225 North Adams Street, Coquille, Oregon. Copies may be purchased at a cost of 50 cents per page. The decision is based on the application submittal and information on record. The name of the Coos County Planning Department representative to contact Amy Dibble, Planner II and the telephone number where more information can be obtained is (541) 396-7770.

This decision will become final at 5 P.M. on October 29, 2019 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.

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.

Prepared by: Amy Dibble

Amy Dibble, Planner II

Date: October 14, 2019

Authorized by: Jill Rolfe

Jill Rolfe, Planning Director

Date: October 14, 2019

EXHIBITS

Exhibit A: Conditions of Approval

Exhibit B: Vicinity Map

The Exhibits below are mailed to the Applicant only. Copies are available upon request or 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(s) 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 applicant(s) and that the applicant(s) are not acting as an agent of the county. If the applicant(s) 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.

CONDITIONS OF APPROVAL

1. The applicant shall comply with comments found at Exhibit D.
2. The applicant shall comply with comments from the Coquille Indian Tribe and the Oregon Department of State Lands when received.
3. The applicant shall obtain a Zoning Compliance Letter once the appeal deadline has expired.
4. The applicant shall provide a final elevation certificate after the placement of the gravel pad is complete.

EXHIBIT "B" Vicinity Map



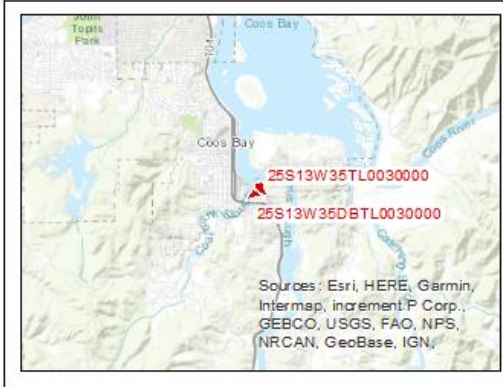
COOS COUNTY PLANNING DEPARTMENT

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: FP-19-005

Applicant/
Owner: GMA Garnet USA Corporation

Date: September 24, 2019

Location: Township 25S Range 13W
Section 35/35DB TL 300/300

Proposal: Floodplain

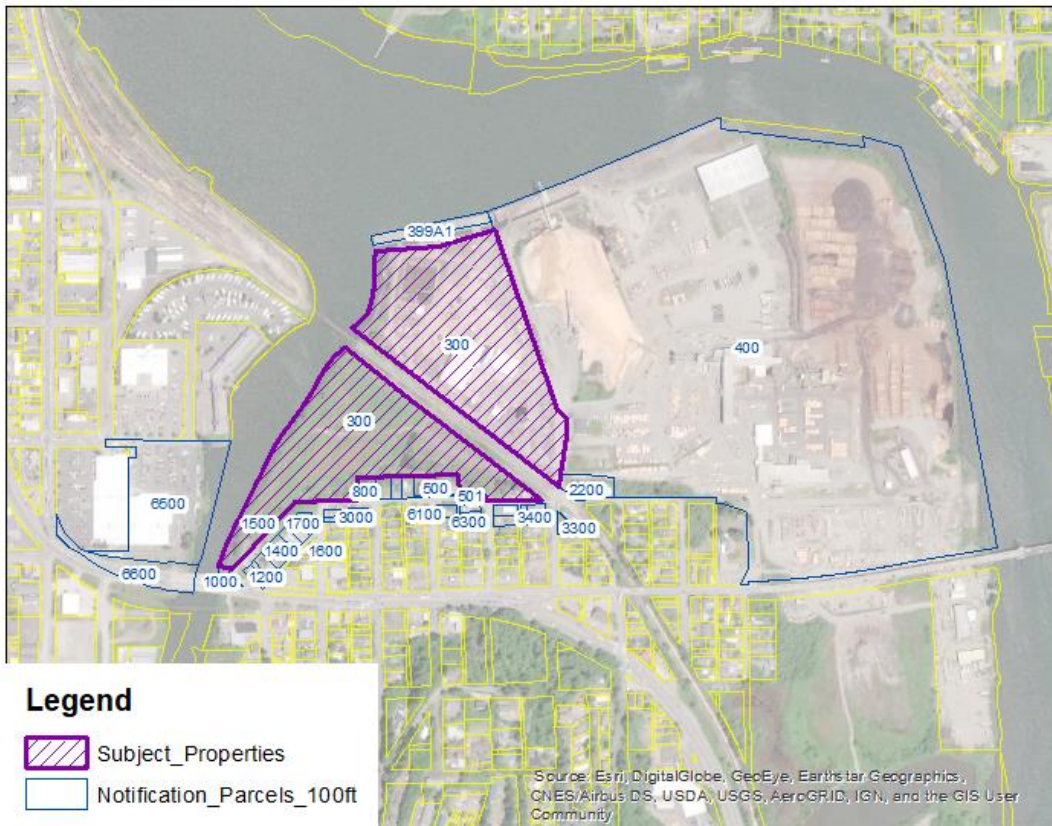


EXHIBIT "C"
Staff Report

File Number: FP-19-005

Account Number 395000/395700
Map Number 25S133500-00300/ 25S1335DB-00300

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1800 HUGHES LANDING BLVD #SUITE 350
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URBAN DEVELOPMENT (38-UD)

Special Considerations ARCHAEOLOGICAL SITES (ARC)
FLOODPLAIN (FP)
NATIONAL WETLAND INVENTORY SITE (NWI)

Reviewing Staff: Amy Dibble, Planner II
Date of Report: October 14, 2019

I. PROPOSAL

Request for Planning Director approval for development within the floodplain within the Coos Bay Estuary Management Plan (CBEMP) segments 38-Urban Development (38-UD) meets the criteria set forth in the Coos County Zoning and Land Development Ordinance (CCZLDO) § SECTION 3.2.696. Uses, Activities and Special Conditions in Segment 38-UD; Policy #17 – Protection of “Major Marshes” and “Significant Wildlife Habitat” in Coastal Shorelands; Policy #18 – Protection of Historical, Cultural, and Archaeological Sites; Policy #23 – Riparian Vegetation and Streambank Protection; Policy #27 – Floodplain Protection within Coastal Shorelands; § 4.11.235 - Floodplain – Establishment of Development Permit; § 4.11.251 - Floodplain – General Standards; § 4.11.252(5)&(7) - Floodplain – Specific Standards;

II. PROPERTY DESCRIPTION AND PROPOSAL

LAWFULLY CREATED: These properties are acknowledged as a lawfully created parcels (Deed Doc Book 262 page 208 for 25-13-35-300 and Deed Doc Book 255 page 185) pursuant to CCZLDO § 6.1.125.8 as it was described by legal description conveying real property prior to 1986.

LOCATION: The subject property is located north of the Urban Unincorporated Community of Bunker Hill at 63776 Mullen Rd.

PROPOSAL: Request for Planning Director approval for development within the floodplain. The proposed development is placement of a gravel pad 80 feet in width and 400 feet in length, consisting of approximately 593 cubic yards of drain rock/gravel. The purpose of the gravel pad is to park a portable conveyor during unloading of rail cars.

• **III. APPROVAL CRITERIA & FINDINGS OF FACT**

“DEVELOPMENT” means any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures; mining; dredging; filling; grading; paving; excavation or drilling operations; or storage of equipment or materials located within the area of special flood hazard. (Definition from § 4.11.220)

• **SECTION 3.2.696. Uses, Activities and Special Conditions.**

Table 38-UD sets forth the uses and activities which are permitted, which may be permitted as conditional uses, or which are prohibited in this zoning district. Table 38-UD also sets forth special conditions which may restrict certain uses or activities, or modify the manner in which certain uses or activities may occur. Reference to “policy numbers” refers to Plan Policies set forth in the Coos Bay Estuary Management Plan.

B. Activities

5. Fill

P-G

GENERAL CONDITIONS

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

Finding: The proposal is for a gravel pad to be placed adjacent to the Pacific Rail Road. This pad will consist of approximately 593 cubic yards of drain rock/gravel that will measure 80 feet in width and 400 feet in length. This is considered to be fill and is a permitted activity; however, policy #'s 17, 18, 23, and 27 shall be addressed. They will be addressed below.

• **#17 Protection of "Major Marshes" and "Significant Wildlife Habitat" in Coastal Shorelands**

Local governments shall protect from development, major marshes and significant wildlife habitat, coastal headlands, and exceptional aesthetic resources located within the Coos Bay Coastal Shorelands Boundary, except where exceptions allow otherwise.

- I. Local government shall protect:
 - a. "Major marshes" to include areas identified in the Goal #17, "Linkage Matrix", and the Shoreland Values Inventory map; and
 - b. "Significant wildlife habitats" to include those areas identified on the "Shoreland Values Inventory" map; and
 - c. "Coastal headlands"; and
 - d. "Exceptional aesthetic resources" where the quality is primarily derived from or related to the association with coastal water areas.
- II. This strategy shall be implemented through:
 - a. Plan designations, and use and activity matrices set forth elsewhere in this Plan that limit uses in these special areas to those that are consistent with protection of natural values; and
 - b. Through use of the Special Considerations Map, which identified such special areas and restricts uses and activities therein to uses that are consistent with the protection of natural values. Such uses may include propagation and selective

- harvesting of forest products consistent with the Oregon Forest Practices Act, grazing, harvesting wild crops, and low-intensity water-dependent recreation.*
- c. *Contacting Oregon Department of Fish and Wildlife for review and comment on the proposed development within the area of the 5b or 5c bird sites.*

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

Finding: The property does not have any identified major marshes, significant wildlife habitats, coastal headlands, or aesthetic resources; therefore, this policy does not apply.

• **#18 Protection of Historical, Cultural and Archaeological Sites**

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

- I. *This strategy shall be implemented by requiring review of all development proposals involving a cultural, archaeological or historical site, to determine whether the project as proposed would protect the cultural, archaeological and historical values of the site.*
- II. *The development proposal, when submitted shall include a Plot Plan 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 and Coos, Siuslaw, Lower Umpqua Tribe(s) in writing, together with a copy of the Plot Plan Application. The Tribe(s) shall have the right to submit a written statement to the local government within thirty (30) days of receipt of such notification, stating whether the project as proposed would protect the cultural, historical and archaeological values of the site, or if not, whether the project could be modified by appropriate measures to protect those values.*

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

- a. *Retaining the prehistoric and/or historic structure in site 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, reintering the human remains at the developer's expense; or*
- f. *Using civil means to ensure adequate protection of the resources, such as acquisition of easements, public dedications, or transfer of title.*

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

- III. *Upon receipt of the statement by the Tribe(s), or upon expiration of the Tribe(s) thirty day response period, the local government shall conduct an administrative review of the Plot Plan Application and shall:*
- a. *Approve the development proposal if no adverse impacts have been identified, as long as consistent with other portions of this plan, or*

- b. *Approve the development proposal subject to appropriate measures agreed upon by the landowner and the Tribe(s), as well as any additional measures deemed necessary by the local government to protect the cultural, historical and archaeological values of the site. If the property owner and the Tribe(s) cannot agree on the appropriate measures, then the governing body shall hold a quasi-judicial hearing to resolve the dispute. The hearing shall be a public hearing at which the governing body shall determine by preponderance of evidence whether the development project may be allowed to proceed, subject to any modifications deemed necessary by the governing body to protect the cultural, historical and archaeological values of the site.*
- IV. *Through the "overlay concept" of this policy and the Special Considerations Map, unless an exception has been taken, no uses other than propagation and selective harvesting of forest products consistent with the Oregon Forest Practices Act, grazing, harvesting wild crops, and low intensity water-dependent recreation shall be allowed unless such uses are consistent with the protection of the cultural, historical and archaeological values, or unless appropriate measures have been taken to protect the historic and archaeological values of the site.*

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

Finding: Notification has been submitted to the Coquille Indian Tribe (CIT) and the Confederated Tribes of the Coos Lower Umpqua, and Siuslaw Indians (CTCLUSI). CTCLUSI responded stating that they have no objections to the proposed work; however, they request to be given at least 72 hours notice prior to any ground disturbing activities, and that a response was received from the has not been received as of the date of this report. The applicants shall comply with the recommendations of both tribes once received.

- **#23 *Riparian Vegetation and Streambank Protection***

- I. *Local government shall strive to maintain riparian vegetation within the shorelands of the estuary, and when appropriate, restore or enhance it, as consistent with water-dependent uses. Local government shall also encourage use of tax incentives to encourage maintenance of riparian vegetation, pursuant to ORS 308.792 - 308.803.*

Appropriate provisions for riparian vegetation are set forth in the CCZLDO Section 3.2.180 (OR 92-05-009PL).

- II. *Local government shall encourage streambank stabilization for the purpose of controlling streambank erosion along the estuary, subject to other policies concerning structural and non-structural stabilization measures.*

This strategy shall be implemented by Oregon Department of Transportation (ODOT) and local government where erosion threatens roads. Otherwise, individual landowners in cooperation with the Oregon International Port of Coos Bay, and Coos Soil and Water Conservation District, Watershed Councils, Division of State Lands and Oregon Department of Fish & Wildlife shall be responsible for bank protection.

This strategy recognizes that the banks of the estuary, particularly the Coos and Millicoma Rivers are susceptible to erosion and have threatened valuable farm land, roads and other structures.

Finding: The applicants has identified the natural vegetated buffer and the proposed gravel pad

will not impact the vegetated area.

- #27 *Floodplain Protection within Coastal Shorelands*

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

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

OVERLAY ZONE: FLOODPLAIN

DESIGNATION: /FP

SECTION 4.11.235 ESTABLISHMENT OF DEVELOPMENT PERMIT

1. *Floodplain Application Required*

A floodplain application shall be submitted and approved before construction or regulated development begins within any area of special flood hazard established in Section 4.11.232. The permit shall be for all structures including manufactured homes, as set forth in the "DEFINITIONS," and for all development including fill and other activities, also as set forth in the "DEFINITIONS."

2. *Application*

An application shall be made on the forms furnished by the Planning Department and may include, but not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures, fill, storage of materials, drainage facilities, and the location of the foregoing. Specifically, the following information is required:

- Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures which may be submitted by a registered surveyor;*
- Elevation in relation to mean sea level of floodproofing in any structure;*
- Certification by a registered professional engineer or architect that the floodproofing methods for any nonresidential structure meet the floodproofing criteria in Section 4.11.252; and*
- Description of the extent to which a watercourse will be altered or relocated as a result of proposed development.*

Finding: The proposal is for placement of a gravel pad; this pad will be 80 feet wide and 400 feet in length and will be located adjacent to the existing Pacific Rail Road. The project takes place within the mapped floodplain in Flood Hazard Zone AE. The applicants submitted the proper Floodplain application along with an Elevation Certificate prepared by Douglas McMahan, Registered Professional Land Surveyor. The Base Flood Elevation (BFE) of the area that proposed development will occur is 13 feet. The project would need to be located above 13 feet in order to be above the BFE; however, according to Mr. McMahan, the highest point (grade) next to the proposed project is 11.7 feet and the lowest point (grade) is 9.1 feet; therefore, the development will occur below BFE and the standards for development (fill) in a floodplain shall be complied with.

SECTION 4.11.251 GENERAL STANDARDS

In all areas of special flood hazards, the following standards are required:

*

5. *Review of Applications*

Where elevation data is not available either through the Flood Insurance Study, FIRM, or from another authoritative source [Section 4.11.243(2)], applications for structural development shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is a local judgment and includes use of historical data, high water marks,

photographs of past flooding, etc., where available. Failure to elevate at least two feet above grade in these zones may result in higher insurance rates.

*

7. *Other Development. Includes mining, dredging, filling, grading, paving, excavation or drilling operations located within the area of a special flood hazard, but does not include such uses as normal agricultural operations, fill less than 12 cubic yards, fences, road and driveway maintenance, landscaping, gardening and similar uses which are excluded from definition because it is the County's determination that such uses are not of the type and magnitude to affect potential water surface elevations or increase the level of insurable damages.*

Review and authorization of a floodplain application must be obtained from the Coos County Planning Department before "other development" may occur. Such authorization by the Planning Department shall not be issued unless it is established, based on a licensed engineer's certification that the "other development" shall not:

- a. *Result in any increase in flood levels during the occurrence of the base flood discharge if the development will occur within a designated floodway; or,*
- b. *Result in a cumulative increase of more than one foot during the occurrence of the base flood discharge if the development will occur within a designated flood plain outside of a designated floodway.*

Finding: The proposal meets the definition of "other development" and includes placement of a gravel pad; this pad will be located adjacent to the existing Pacific Rail Road and will measure 80 feet in width and 400 feet in length. The pad will consist of approximately 593 cubic yards of drain rock/gravel. The purpose of this pad is to park a portable conveyor. This conveyor will only be parked on the pad temporarily during the offloading of rail cars. Once the rail cars have been offloaded the conveyor belt will be moved and stored within the GMA Garnet's industrial minerals plant. The applicants submitted a certification from Mark Hampton, Registered Professional Engineer for Stuntzner Engineering & Forestry, LLC, stating that the proposal would have very minimal impact, less than 1 foot rise, on the base flood elevation. Since the proposal is located within the flood plain and outside of the floodway this criterion has been satisfied.

SECTION 4.11.252 SPECIFIC STANDARDS

In all areas of special flood hazards where base flood elevation data has been provided (Zones A1-30, AH, and AE) as set forth in Section 4.11.232, BASIS FOR ESTABLISHING THE AREAS OF SPECIAL FLOOD HAZARD or Section 4.11.243(2), Use of Other Base Flood Data (In A and V Zones), the following provisions are required:

2. Nonresidential Construction

New construction and substantial improvement of any commercial, industrial or other nonresidential structure shall either have the lowest floor, including basement, elevated at or above the base flood elevation; or, together with attendant utility and sanitary facilities, shall:

- a. *Be floodproofed so that below the base flood level the structure is watertight with walls substantially impermeable to the passage of water;*
- b. *Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;*
- c. *Be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting provisions of this subsection based on their development and/or review of the structural design, specifications and plans. Such certifications shall be provided to the official as set forth in Section 4.11.243(3)(b);*
- d. *Nonresidential structures that are elevated, not floodproofed, must meet the same standards for space below the lowest floor as described in 4.11.252(1)(b);*

- e. Applicants floodproofing nonresidential buildings shall be notified that flood insurance premiums will be based on rates that are one foot below the floodproofed level (e.g. a building floodproofed to the base flood level will be rated as one foot below);
- f. Applicants shall supply a comprehensive Maintenance Plan for the entire structure to include but not limited to: exterior envelope of structure; all penetrations to the exterior of the structure; all shields, gates, barriers, or components designed to provide floodproofing protection to the structure; all seals or gaskets for shields, gates, barriers, or components; and, the location of all shields, gates, barriers, and components as well as all associated hardware, and any materials or specialized tools necessary to seal the structure; and
- g. Applicants shall supply an Emergency Action Plan (EAP) for the installation and sealing of the structure prior to a flooding event that clearly identifies what triggers the EAP and who is responsible for enacting the EAP.

Finding: The proposal does not include a residential or non-residential structure, the proposal consists of placement of a gravel pad measuring 80 feet in width, 400 feet in length that will consist of approximately 593 cubic yards of drain rock/gravel. The proposal also includes a portable conveyor that will be parked on the gravel pad temporarily during the off loading of rail cars. Therefore, these criteria are not applicable.

- **SECTION 5.2.600 EXPIRATION AND EXTENSION OF CONDITIONAL USES**

- 1. *Permit Expiration Dates for all Conditional Use Approvals and Extensions :*

- a. *On lands zoned Exclusive Farm, Forest and Forest Mixed Use:*

- (1) *Except as provided for in section (5) of this rule, a discretionary decision, except for a land division, made after the effective date of this division approving a proposed development on agricultural or forest land outside an urban growth boundary under ORS 215.010 to 215.293 and 215.317 to 215.438 or under county legislation or regulation adopted pursuant thereto is void two years from the date of the final decision if the development action is not initiated in that period.*

- (2) *A county may grant one extension period of up to 12 months if:*

- (a) *An applicant makes a written request for an extension of the development approval period;*

- (b) *The request is submitted to the county prior to the expiration of the approval period;*

- (c) *The applicant states reasons that prevented the applicant from beginning or continuing development within the approval period; and*

- (d) *The county determines that the applicant was unable to begin or continue development during the approval period¹ for reasons for which the applicant was not responsible.*

Coos County has and will continue to accept reasons for which the applicant was not responsible as, but limited too, financial hardship, death or owner, transfer of property, unable to complete conditions of approval and projects that require additional permits. The County's Ordinance does not control other permitting agency processes and the County shall only consider if the applicant has requested other permits as a valid reason and to show they are attempting to satisfy conditions of approval. This is a different standard than actually showing compliance with conditions of approval. This also, does not account for other permits that may be required outside of the land use process.

¹ The approval period is the time period the original application was valid or the extension is valid. If multiple extensions have been filed the decision maker may only consider the time period that the current extension is valid. Prior approval periods shall not be considered. For example, if this is the third extension request up for review the information provided during the period within last extension time frame shall be considered and not the overall time the application has been approved. This prevents a collateral attack on the original authorization.

- (3) *Approval of an extension granted under this rule is not a land use decision as described in ORS 197.015 and is not subject to appeal as a land use decision.*
- (4) *Additional one-year extensions may be authorized where applicable criteria for the decision have not changed.*
- (5) (a) *If a permit is approved for a proposed residential development on agricultural or forest land outside of an urban growth boundary, the permit shall be valid for four years.*
 (b) *An extension of a permit described in subsection (5)(a) of this rule shall be valid for two years.*
- (6) *For the purposes of section (5) of this rule, "residential development" only includes the dwellings provided for under ORS 215.213(3) and (4), 215.284, 215.705(1) to (3), 215.720, 215.740, 215.750 and 215.755(1) and (3).*
- (7) *There are no limit on the number of extensions that can be applied for unless this ordinance otherwise allows.*
- b. *On lands not zoned Exclusive Farm, Forest and Forest Mixed Use:*
 - (1) *All conditional uses for residential development including overlays shall not expire once they have received approval.*
 - (2) *All conditional uses for non residential development including overlays shall be valid for period of four (4) years from the date of final approval.*
 - (3) *Extension Requests:*
 - a. *For all conditional uses subject to an expiration date of four (4) years are eligible for extensions so long as the property has not been:*
 - i. *Reconfigured through a property line adjustment or land division; and*
 - ii. *Rezoned to another zoning district.*
 - (4) *An extension shall be applied for on an official Coos County Planning Department Extension Request Form with the fee.*
 - (5) *An extension shall be received prior the expiration date of the conditional use or the prior extension.*
- 2. *Changes or amendments to areas subject to natural hazards² do not void the original authorization for a use or uses, as they do not determine if a use can or cannot be sited, but how it can be sited with the least amount of risk possible. Overlays and Special Development Considerations may have to be addressed to ensure the use can be sited with an acceptable level risk as established by Coos County.*

² Natural hazards are: floods (coastal and riverine), landslides, earthquakes and related hazards, tsunamis, coastal erosion, and wildfires.

Exhibit D
Comments Received



**CONFEDERATED TRIBES OF
COOS, LOWER UMPQUA & SIUSLAW INDIANS**

1245 Fulton Ave. Coos Bay, OR 97420
Phone (541) 888-9577 or 1-888-280-0726
Fax (541) 888-2853

9 October 2019

Amy Dibble
Coos County Planning Department
250 N. Baxter
Coquille, Oregon 97423

Re: FP-19-005 Request for Comments

Dear Ms. Dibble,

The Confederated Tribes of the Coos, Lower Umpqua, and Siuslaw Indians have no objections to the proposed work. Please be aware that the proposed work area is in proximity to known cultural resource sites and so may contain as yet unlocated cultural resources. We request that we be contacted immediately if any known or suspected cultural resources are encountered during any phase of the work. **We further request to be given at least 72 hours' notice prior to any ground disturbing activities, and that a staff person or designated member of the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians be present during any ground disturbing activities.**

Please also be aware that federal and state laws prohibit intentional excavation of known or suspected cultural resources without an archaeological permit and require that we be notified immediately if resources are discovered, uncovered, or disturbed. 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 any 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**.

Please feel free to contact me if I may be of any further assistance.

Sincerely,

Courtney Krossman
Archaeological Assistant

CC: Applicant