



NOTICE OF LAND USE DECISION

Coos County Planning
60 E. Second
Coquille, OR 97423
<http://www.co.coos.or.us/>
Phone: 541-396-7770

This decision notice is required to be sent to the property owner(s), applicant(s), adjacent property owners (distance of notice is determined by zone area – Urban 100 feet, Rural 250 feet, and Resource 750 feet), special taxing districts, agencies with interest, or person that has requested notice. The development is contained within the identified property owners land. Notice is required to be provided pursuant to ORS 215.416. Please read all information carefully as this decision. (See attached vicinity map for the location of the subject property).

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.

Date of Notice: Friday, May 19, 2023

File No: ACU-23-006

Proposal: Request for placement of five (5) reservoirs/water impoundments.

Applicant(s): Nick Thomas
86895 N Bank Lane
Coquille, OR 97423

Staff Planner: Chris MacWhorter, Principal Planner

Decision: **Approved with Conditions.** All decisions are based on the record. This decision is final and effective at close of the appeal period unless a complete application with the fee is submitted by the Planning Department at 5 p.m. on **Saturday, June 03, 2023**. Appeals are based on the applicable land use criteria. The proposal is subject to the following criteria: Reservoirs and water impoundment subject to Section 4.6.120(4)(m). Review criteria for conditional uses subject to Section 4.6.120(5). This proposal is subject to review under Natural Hazards. **Civil matters including property or road disputes are outside of the criteria listed in this notice will not be considered. For more information please contact the staff planner listed in this notice.**

Subject Property Information

Account Number: 977202

Map Number: 28S142500-00800

Property Owner: NICK THOMAS TRUST, THOMAS, NICK TTEE
9210 JELLICO AVE
NORTHRIDGE, CA 91325-2316

Situs Address: 86895 NORTH BANK LN COQUILLE, OR 97423

29.70 Acres

Acreage:

Zoning: COQUILLE RIVER ESTUARY MGT PLN (CREMP)
CREMP AQUATIC D21 CONSERVATION (CRA21C)
CREMP EXCLUSIVE FARM USE (CR-EFU)
CREMP SHORELAND SEGMENT 33 (CRS33)
FOREST (F)

This notice shall be posted from May 19, 2023 to June 3, 2023

Special Development
Considerations and overlays:

FLOODPLAIN (FP)
FOREST MIXED USE (MU)
NATIONAL WETLAND INVENTORY SITE (NWI)
NATURAL HAZARD - TSUNAMI (NHTHO)
WET MEADOW WETLAND (WM)

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.

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 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.

The application, staff report and any conditions can be found at the following link:

<https://www.co.coos.or.us/community-dev/page/applications-2023> 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 60 E. Second St, 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 is Chris MacWhorter, Principal Planner and the telephone number where more information can be obtained is (541) 396-7770.

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.

Reviewed by: _____

Date: **Friday, May 19, 2023**

Chris MacWhorter, Principal Planner

This decision is authorized by the Coos County Planning Director, Jill Rolfe based on the staff's analysis of the Findings of Fact, Conclusions, Conditions of approval, application and all evidenced associated as listed in the exhibits.

EXHIBITS

Exhibit A: Conditions of Approval

Exhibit B: Vicinity Map

The Exhibits below are mailed/emailed to the Applicant, Board of Commissioners and Planning Commission only. Copies are available upon request or at the following website:

<https://www.co.coos.or.us/community-dev/page/applications-2023> or by contacting the Planning Department at (541) 396-7770.

Exhibit C: Staff Report -**Findings of Fact and Conclusions**

All comments and the application can be found on file with the Planning Department.

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.

CONDITIONS OF APPROVAL

1. All applicable federal, state, and local permits shall be obtained prior to the commencement of any development activity. If there were comments from any other agency were provided as part of this review, it is the responsibility of the property owner to comply.

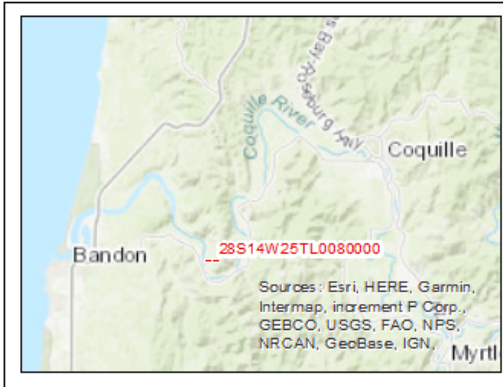
2. Pursuant to CCZLDO § 5.9.100, a Zoning Compliance Letter shall be required prior to the commencement of construction of the reservoirs. This authorization is based on conditions of approval and the conditions that are required to be completed prior obtaining the ZCL are defined in this section. To show compliance with this section the applicant shall submit a letter with the following items to request that staff find the following conditions have been satisfied:
 - a. The property owner is responsible for ensuring compliance, and land use authorization shall remain recorded in the chain of title. The statement needs to include language that the purchaser of the property has been provided a copy of the land use approval containing all conditions or restrictions understands the obligation and agrees to fulfill the conditions unless a modification is approved as provided in this ordinance. The property owner is responsible for ensuring compliance, and land use authorization. The recorded deed convent shall be recorded with the County Clerk and copy provided to the Planning Department.
 - b. Section 4.6.120(5)(C) Agricultural and Forest Covenant: In order to minimize the impact of conflicts with adjacent to agricultural and forest lands, all applicants requesting a non-forestry use shall acknowledge and file in the deed record of Coos County, a Forest Management Covenant. The Forest Management Covenant shall be filed prior to any final County approval for construction of the reservoirs.
 - c. Section 5.2.700 Development Transferability - Unless otherwise provided in the approval, a land use approval that was obtained through a conditional use process shall be transferable provided the transferor files a statement with the Planning Director signed by the transferee. This document shall be recorded in the chain of title of the property, indicating that the transferee has been provided a copy of the land use approval containing all conditions or restrictions understands the obligation and agrees to fulfill the conditions, unless a modification is approved as provided in this ordinance. The property owner is responsible for ensuring compliance, and land use authorization shall remain recorded in the chain of title to alert a purchaser that development was approved subject to conditions and possible restrictions.

EXHIBIT "B"
Vicinity Map

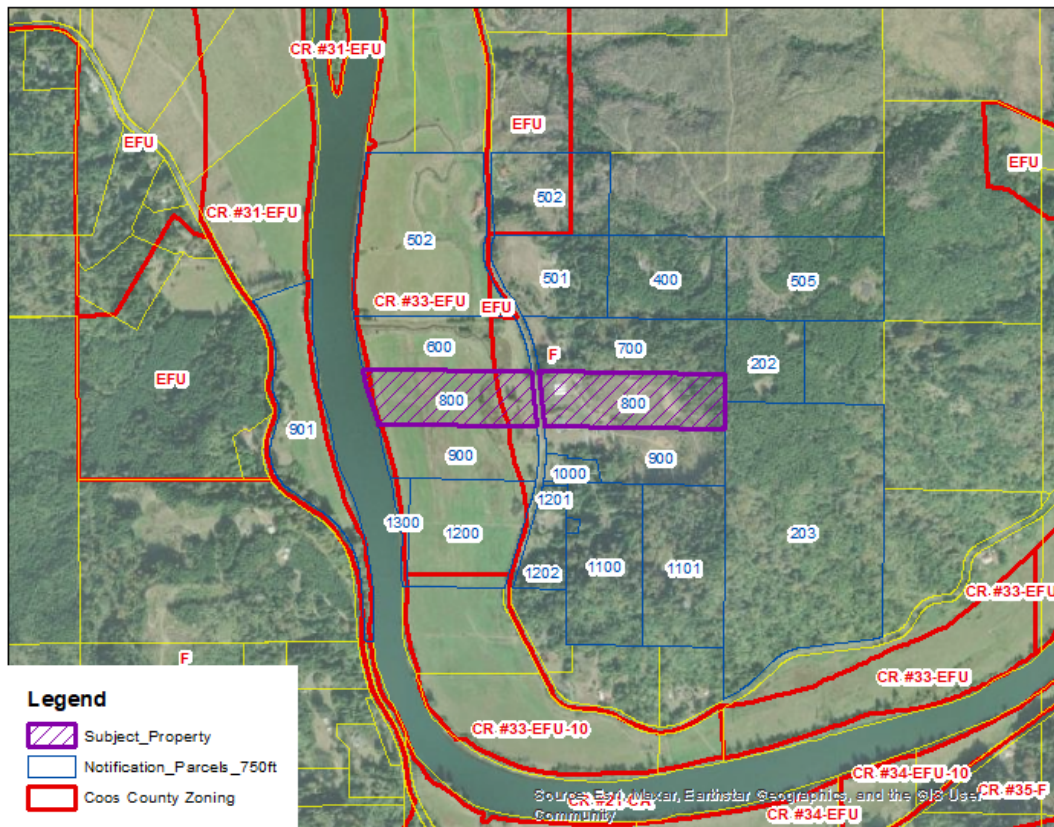


COOS COUNTY PLANNING DEPARTMENT

Mailing Address: 225 N. Adams, Coquille, Oregon 97423
Physical Address: 60 E. Second, Coquille Oregon
Phone: (541) 396-7770
TDD (800) 735-2900



File: ACU-23-006
Owner 1: Nick Thomas
Date: May 9, 2023
Location: Township 28S Range 14W
Section 25 TL 800
Proposal: Administrative Conditional Use



**EXHIBIT “C”
STAFF REPORT
FINDINGS OF FACT AND CONCLUSIONS**

I. PROPOSAL AND BACKGROUND/PROPERTY HISTORY INFORMATION:

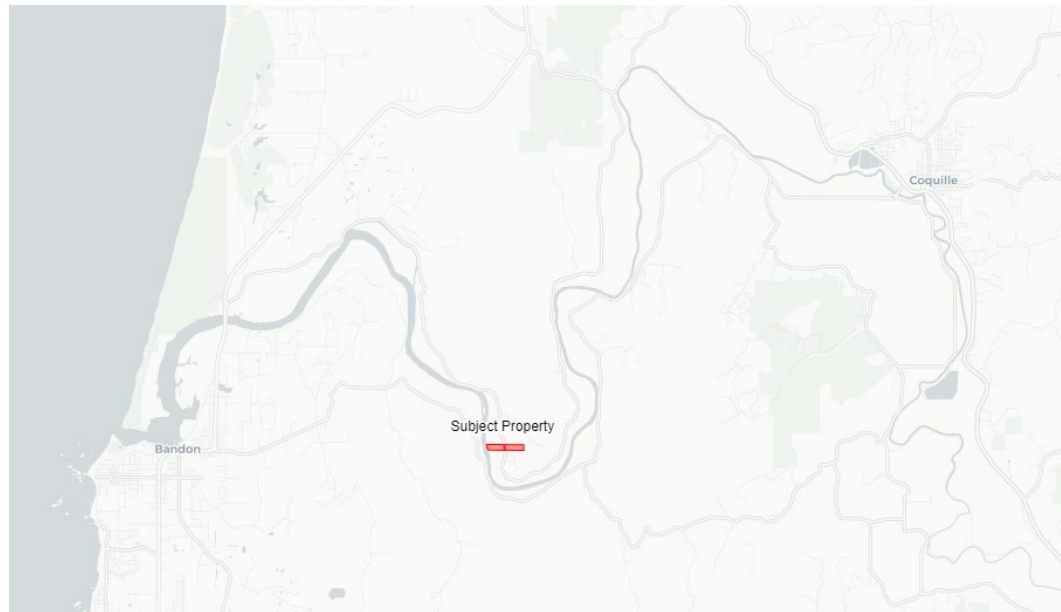
A. PROPOSAL: The applicant is requesting authorization to construct five (5) reservoirs or water impoundments in the Forest zoning district under Section 4.6.120(4)(m).

B. COMPLIANCE PURSUANT TO SECTION 1.1.300: *It shall be unlawful for any person, firm, or corporation to cause, develop, permit, erect, construct, alter or use any building, structure or parcel of land contrary to the provisions of the district in which it is located. No permit for construction or alteration of any structure shall be issued unless the plans, specifications, and intended use of any structure or land conform in all respects with the provisions of this Ordinance, unless approval has been granted by the Hearings Body.*

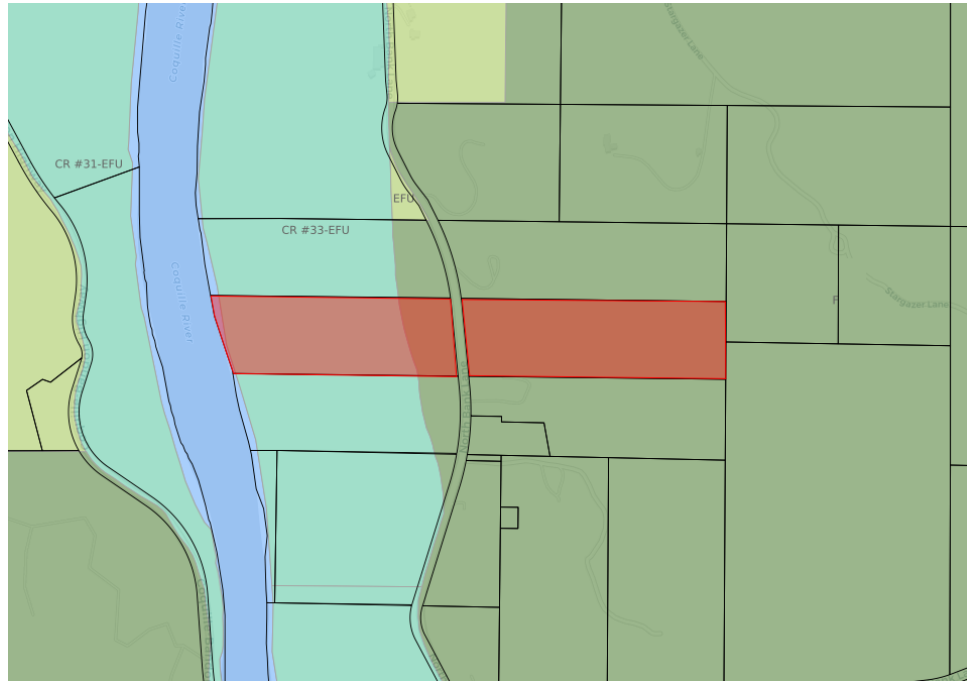
Staff has reviewed the property history and the County files to determine at the time of this report this property is compliant. This does not mean that there is not additional information that was unavailable during this review that would make the properties non-complaint

II. BASIC FINDINGS:

A. LOCATION: The subject property is located approximately 4.5 miles due east of the City of Bandon on an unaddressed parcel. The applicant/landowner also owns the parcel immediately to the south of the subject property, which is addressed at 86895 North Bank Lane. The map below (not to scale) is a visual of the property location.



- B. ZONING:** - This property is zoned Forest w/ Mixed Use, Coquille River Estuary Management Plan shoreland segment #33-EFU and aquatic segment #21-CA.



COQUILLE RIVER ESTUARY MANAGEMENT PLAN - EXCLUSIVE FARM USE (CREMP-EFU) SHORELAND SEGMENTS

- *Exclusive Farm Use Shoreland Segments: 27 (27-EFUS), 28 (28-EFUS), 31(31-EFUS), 32(32-EFUS), 33 (33-EFUS), 34 (34-EFUS), 36 (36-EFUS), 37 (37-EFUS), 41 (41-EFUS), 42 (42-EFUS), 43 (43-EFUS), 44 (44-EFUS), 47(47-EFUS), 53(53-EFUS), 55 (55-EFUS), 56 (56-EFUS), 60 (60-EFUS), 62 (62-EFUS), 73 (73-EFUS), 75 (75-EFUS) shall be managed for the continuation of farm use as defined in ORS 215.203 (2)(a) and such other farm uses as are conditionally permitted in ORS 215.213.*

COQUILLE RIVER ESTUARY MANAGEMENT PLAN - CONSERVATION AQUATIC UNITS (CREMP-CA)

- *Conservation Aquatic Unit 21 (21-CA) shall be managed to conserve and enhance to aquatic resources of the main river channel and fringing intertidal areas, while allowing such minor alterations as are necessary for the continuation of recreational boating and other shallow draft navigation. Removal of snags, old pilings and other obstructions from the river, and bank stabilization shall also be encouraged.*

SECTION 4.2.500 RESOURCE ZONES

Forest (F)

The intent of the Forest District is to include all inventoried "forestlands" not otherwise found to be needed (excepted) for other uses.

The purpose of the Forest zone is to conserve and protect forest land for forest uses. 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.

Forest Mixed Use (FMU)

The purpose of the Forest Mixed Farm-Forest Areas (“MU” areas) is to 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.

If land is in a zone that allows both farm and forest uses, a dwelling may be sited based on the predominate use of the tract on January 1, 1993.

If a use is only allowed in the mixed use zone it will be explained in the text. Otherwise the uses listed are allowed in both the Forest and Forest Mixed Use zones.

C. SPECIAL DEVELOPMENT CONSIDERATIONS AND OVERLAYS:

SECTION 4.11.125 Special Development Considerations: The considerations are map overlays that show areas of concern such as hazards or protected sites. Each development consideration may further restrict a use. Development considerations play a very important role in determining where development should be allowed in the Balance of County zoning. The adopted plan maps and overlay maps have to be examined in order to determine how the inventory applies to the specific site

SECTION 4.11.200 Purpose: Overlay zones may be super-imposed over the primary zoning district and will either add further requirements or replace certain requirements of the underlying zoning district. The requirements of an overlay zone are fully described in the text of the overlay zone designations. An overlay zone is applicable to all Balance of County Zoning Districts and any zoning districts located within the Coos Bay Estuary Management Plans when the Estuary Policies directly reference this section.

FINDING: This property does have special development considerations and overlays. Those will be addressed below.

D. SITE DESCRIPTION AND SURROUNDING USES:

The subject property is developed with four agricultural structures in the center of the property. Based on the aerial imagery, these structures appear to be temporary ‘hoop’ style greenhouses. There are two (2) accessory structures that are built over the shared property line with tax lot 900. There was a property line adjustment (PLA-21-047) application, approved with conditions on November 8, 2022, to move the shared property line with tax lot 900. The approved property line adjustment configuration would result in the accessory structures being sited entirely on tax lot 900. However, Staff could not find any final PLA deeds that were recorded as of the writing of this decision.

The subject property is surrounded by Forest zoned parcels on the upper (east) side of North Bank Lane. These consist of parcels that range from 5 to 60 acres in size. Most of the smaller parcels have been developed in single family dwellings. The larger parcels appear undeveloped and are being utilized for forestry purposes. The western portion of the subject property and the neighboring parcels below (west) North Bank Lane are being utilized for either hay production or cattle grazing.



E. COMMENTS:

a. PUBLIC AGENCY: This property did not require any request for comments from the Oregon Department of State Lands prior to the release of the decision. DSL responded with the following comments: *"It is difficult to tell if this project exceeds 50 cy of impacts in a jurisdictional waterway. DSL cautions the applicant that work over 50 cubic yards in jurisdictional wetlands or waters requires a permit. Removal/fill activities proposed in any future land use notices or permits may consider the volume of fill and removal from this project as part of an overall calculation. A removal-fill permit is not required at this time.*

b. PUBLIC COMMENTS: This property did not require any request for comments prior to the release of the decision and none were received.

c. LOCAL TRIBE COMMENTS: This property did not require any request for comments prior to the release of the decision and none were received.

F. LAWFULLY CREATED UNIT OF LAND: Tax lot 800 was created pursuant to 6.1.125.1.e by deed prior to any applicable partition ordinances that would have prohibited the creation (book 308, page 31). Therefore, it was lawfully created prior to 1986 as provided for by Article 6.

III. STAFF FINDINGS AND CONCLUSIONS:

a. SUMMARY OF PROPOSAL AND APPLICABLE REVIEW CRITERIA:

The applicant is requesting authorization to construct five (5) reservoirs or water impoundments in the Forest zoning district under Section 4.6.120(4)(m).

b. KEY DEFINITIONS:

ACTIVITY: Any action taken either in conjunction with a use or to make a use possible. Activities do not in and of themselves result in a specific use. Several activities such as dredging, piling and fill may be undertaken for a single use such as a port facility. Most activities may take place in conjunction with a variety of uses.

DEVELOP: To bring about growth or availability; to construct or alter a structure, to conduct a mining operation, to make a physical change in the use or appearance of land, to divide land into parcels, or to create or terminate rights to access.

DEVELOPMENT: The act, process or result of developing.

USE: The end to which a land or water area is ultimately employed. A use often involves the placement of structures or facilities for industry, commerce, habitation, or recreation.

ZONING DISTRICT: A zoning designation in this Ordinance text and delineated on the zoning maps, in which requirements for the use of land or buildings and development standards are prescribed.

RESERVOIRS AND WATER IMPOUNDMENTS: A place where water is collected and stored for use, and may include dam structures, the lakes and ponds behind them, off-stream ponds where water is collected and stored, similar storage areas and including, but not limited to, water diversion and transmission facilities, road construction, soil and rock extraction/processing, and related land alterations and activities which are accessory to the construction and maintenance of reservoir and water impoundments and ancillary improvements.

c. CRITERIA AND STANDARDS

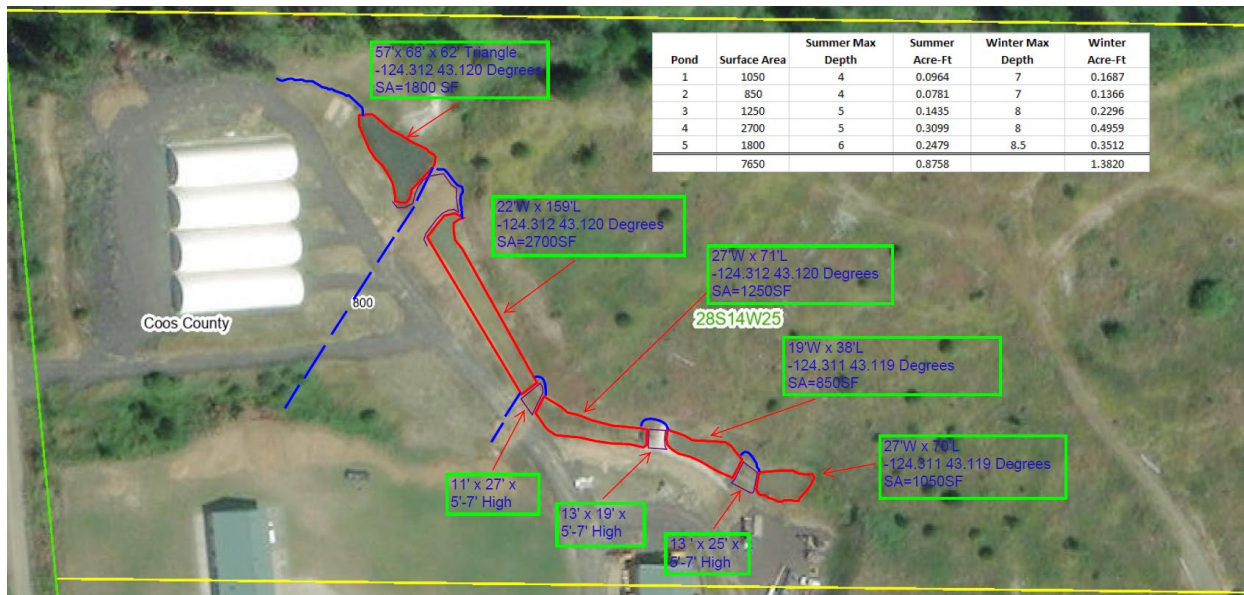
- **ARTICLE 4.6 – RESOURCE ZONING DISTRICTS**
 - **SECTION 4.6.120 REVIEW STANDARDS**

(4) CONDITIONAL USES - The following uses may be allowed on forest lands as a conditional use (see table for type of conditional use) subject to the review standards in section (5) of this rule:

(m) RESERVOIRS AND WATER IMPOUNDMENTS;

FINDING: The applicant is requesting to construct five (5) small reservoirs on the subject property. Based on the supplied information from the application, the applicant is planning on constructing these as off-stream ponds that are being placed at the toe of the adjacent upslope timber stand. The winter-time storage of the ponds ranges from 0.1366 to 0.3512 acre-feet storage in size, with an average depth ranging from 7 to 8.5 feet in depth.

Staff finds the proposed ponds meets the definition of the reservoir and water impoundments under the Chapter 2.



(5) REVIEW CRITERIA FOR CONDITIONAL USES: A use authorized by section (4) of this rule may be allowed provided the following requirements or their equivalent are met. These requirements are designed to make the use compatible with forest operations and agriculture and to conserve values found on forest lands:

(A) The proposed use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands;

FINDING: The proposed use is for water storage for aesthetic fountain use. The applicant stated the following: “Currently there are no farming or forest activity in the surrounding parcels either. Future farming, Forest or agricultural activities will not be negatively affected under any conditions”.

The criteria requires an analysis of the effects of the proposal on adjacent farm and forestry uses on the nearby parcels. Tax lot 203, which is an approximately 60 acre parcel and zoned Forest, appears to be utilized for forestry purposes. While a dwelling may have a negative effect on adjacent forestry parcels, and while the applicant does not really address this major review criteria in any substantial detail. Staff does not find any compelling reasons, in either the Comprehensive Plan or Ordinance, why a five relatively smaller (less than 1 acre feet each) will have an effect on adjacent forestry production. Staff does not the applicant is not requesting to directly developed these ponds for agricultural or forestry purposes. The ponds are being developed for “aesthetic foundation use”.

Most of the agricultural uses, either on or adjacent to the subject property, appear to be hay production or cattle grazing. The applicant did not appear to address agricultural uses in much detail. Staff research the Oregon Water Resources Department’s online water right records. Staff did not find any water rights for substantial agricultural uses in the nearby area. While these low lying lands are being utilized for either hay production or cattle grazing. These agricultural lands are adjacent to the Coquille River. Staff believes these lands are being naturally irrigated. Staff finds the development of the ponds should not have a negative effect on adjacent agricultural, given the lack of existing agricultural use water rights for the surrounding area and the given the relatively small reservoirs (less than 1 acre foot each) that are being proposed.

(B) The proposed use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel; and

FINDING: The applicant stated the following information in regards to this criterion: *“Having the ponds in the location indicated will have water available during fire season to combat local and neighboring forest fires. There are no water reservoirs currently available for forest fires during dry seasons on the East side of the North Bank Lane, which is the road going through parcel #800 and is adjacent to most of the homes and properties on the east and North side of the road.”*

The proposed use is five water reservoirs. Based on the application, the proposed reservoirs will be for a fountain. However, the overall scope of the use is creating five small bodies of water. Staff cannot find any logical reason how creating a body of water will significantly increase the fire hazard on the subject property or surrounding area.

(C) A written statement recorded with the deed or written contract with the county or its equivalent is obtained from the land owner that recognizes the rights of adjacent and nearby land owners to conduct forest operations consistent with the Forest Practices Act and Rules for uses authorized in subsections (4)(e), (m), (s), (t) and (w) of this rule.

FINDING: The applicant stated the following: *“I agree to file the seed covenant after approval”*. As a condition of approval, the applicant shall file this covenant prior to requesting the final zoning compliance letter. Therefore, this criterion has been addressed.

(D) All uses must comply with applicable development standards and fires siting and safety standards.

FINDING: The applicant stated the following: *“The use complies with applicable development standards and fire safety standards”*. Staff has addressed this criterion with more substantial details. The proposed use must meet the requires for Section 4.6.140 Development and Siting Criteria.

Staff finds the following criteria under will be met under Section 4.6.140

- 1) This is not a proposal for land division.
- 2) Based on plot plan, the required 35 feet setback from road centerline will be met.
- 3) The proposal did not indicate any fences, hedges, or walls.
- 4) No off-street parking is required for reservoirs.
- 5) A forest management covenant was already address above in (C).
- 6) Based on plot plan, the required 50 feet setback for riparian zones will be met.
- 7) No new dwellings or structures were proposed.
- 8) No new structures were proposed.
- 9) No new or replacement structures are proposed.
- 10) No dwellings are proposed, thereby driveway standards are not applicable.

- **ARTICLE 4.11 SPECIAL DEVELOPMENT CONSIDERATIONS AND OVERLAYS**

- **SECTION 4.11.100 Purpose:**

The purpose of this Article is to prescribe special regulations for the use and development of lands situated within resource or hazard areas identified on the Plan Maps for Volume I (Balance of County¹).

- **SECTION 4.11.125 Special Development Considerations:**

¹ Zoning is broke up by three comprehensive plan references which included 2 estuary plans (Coos Bay and Coquille) and then the rest of the zoning referred to as the Balance of County Zoning.

The considerations are map overlays that show areas of concern such as hazards or protected sites. Each development consideration may further restrict a use. Development considerations play a very important role in determining where development should be allowed in the Balance of County zoning. The adopted plan maps and overlay maps have to be examined in order to determine how the inventory applies to the specific site.

- **SECTION 4.11.132 Natural Hazards (Balance of County Policy 5.11)**

c. *Tsunamis: Coos County shall promote increased resilience to a potentially catastrophic Cascadia Subduction Zone (CSZ) tsunami through the establishment of a Tsunami Hazard Overlay Zone (THO) in the Balance of County Zoning. See Sections 4.11.260-4.11.270 for the requirements of this overlay zone.*

FINDING: Based on the map below, the proposed reservoirs are outside the Tsunami inundation scenario. Therefore, this criterion is not applicable.



- **OVERLAY ZONE: FLOODPLAIN**
- **DESIGNATION: /FP**
- **SECTION 4.11.211 AUTHORIZATION**

The State of Oregon has been delegated the responsibility through local government units to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry. Therefore, Coos County does ordain as follows:

FINDING: Based on the map below, the proposed reservoirs are outside proposed replacement dwelling is outside the mapped Floodplain. Therefore, this criterion is not applicable.



VI. DECISION:

There is evidence to adequately address the criteria for creation of five new reservoirs/water impoundments, therefore, this request has been approved. There are conditions that apply to this use that can be found at Exhibit "A".

VII. NOTICE REQUIREMENTS:

A notice of decision will be provided to property owners within 750 feet of the subject property and the following agencies, special district or parties:

DLCD
Bandon Rural Fire Protection District