



# 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: Monday, July 25, 2022  
File No: ACU-22-030  
Proposal: Request for confirmation of a Non-Conforming Use (dwelling).  
Applicant(s): Madeleine Vander Heyden  
54275 Bear Creek Road  
Bandon OR 97411  
Staff Planner: Jill Rolfe, Planning Director

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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 **Tuesday, August 09, 2022**. Appeals are based on the applicable land use criteria. The proposal is subject to the following criteria: Alteration of a Non-conforming use in the Forest Zone pursuant to Coos County Zoning and Land Development (CCZLDO) § Article 5.6 Nonconforming. This proposal is not 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.**

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## **Subject Property Information**

Account Number: 1033302  
Map Number: 28S143500-01202  
Property Owner: WHAN, DAVID & VANDER HEYDEN, MADELEINE  
54275 BEAR CREEK RD  
BANDON, OR 97411-9389  
Situs Address: 54275 BEAR CRK RD BANDON, OR 97411  
Acreage: 19.25 Acres  
Zoning: EXCLUSIVE FARM USE (EFU) and FOREST (F)  
Special Development Considerations and overlays: ARCHAEOLOGICAL AREAS OF INTEREST (ARC)  
FLOODPLAIN (FP)  
FOREST MIXED USE (MU)  
NAT HAZARDS EARTHFLOW & SLUMP (HZE)

This notice shall be posted from July 25, 2022 to August 9, 2022

NATIONAL WETLAND INVENTORY SITE (NWI)  
NATURAL HAZARD - LANDSLIDE (NHLND)

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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/planning/page/applications-2022>

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 is Jill Rolfe, Planning Director 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: *Jill Rolfe* Date: Monday, July 25, 2022  
Crystal Orr, Planner I

**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& Template Map

**The Exhibits below are mailed/mailed 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/planning/page/2022-administrative-conditional-use> 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. An after the fact Zoning Compliance letter will need to be obtained for the accessory structures that are not shown to have been permitted through the history.

**EXHIBIT "B"**  
**Vicinity Map**



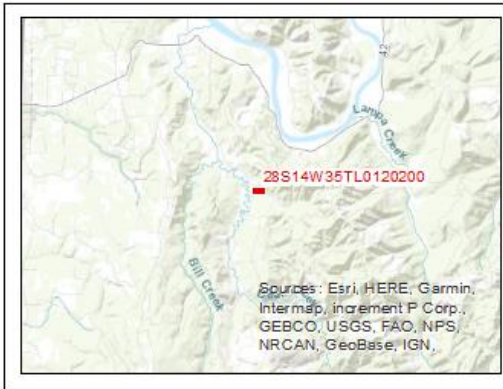
**COOS COUNTY PLANNING DEPARTMENT**

Mailing Address: 225 N. Adams, Coquille, Oregon 97423

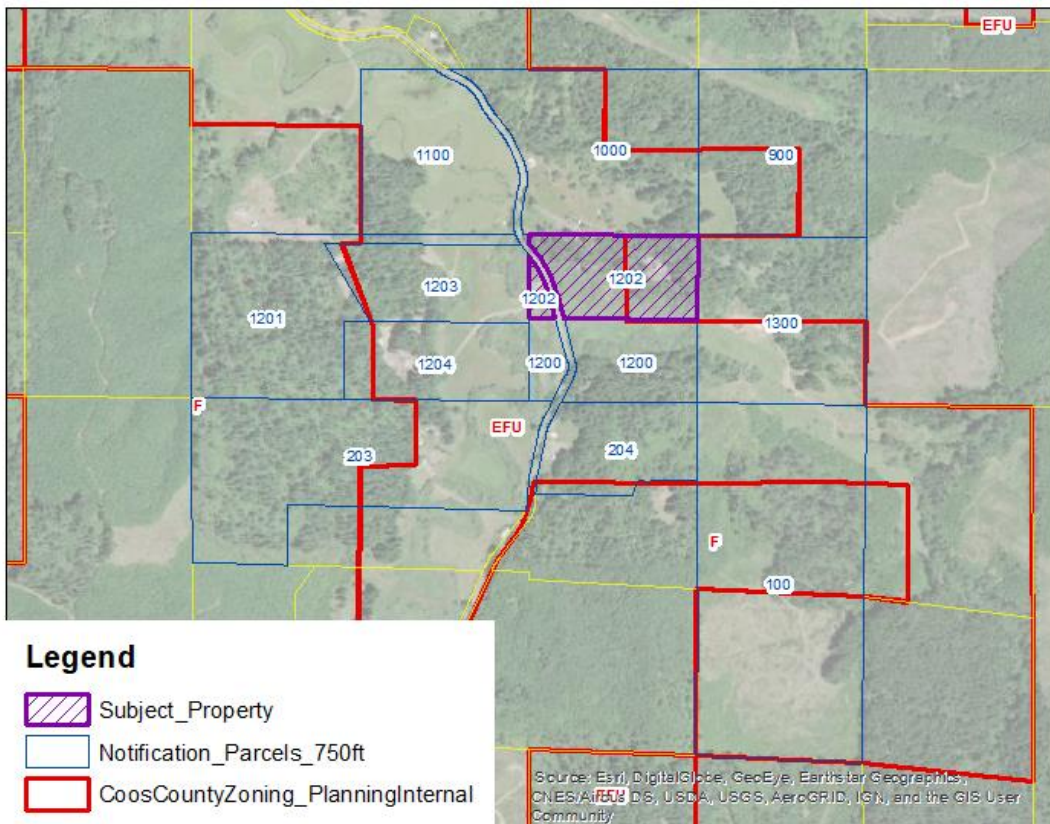
Physical Address: 60 E. Second, Coquille Oregon

Phone: (541) 396-7770

TDD (800) 735-2900



File: ACU-22-030  
Applicant/ Owner: Madeleine Vander Heyden/  
Madeleine Vander Heyden & Davud Whan  
Date: July 25, 2022  
Location: Township 28S Range 14W  
Section 35 TL 1202  
Proposal: Administrative Conditional Use



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

**I. PROPOSAL AND BACKGROUND/PROPERTY HISTORY INFORMATION:**

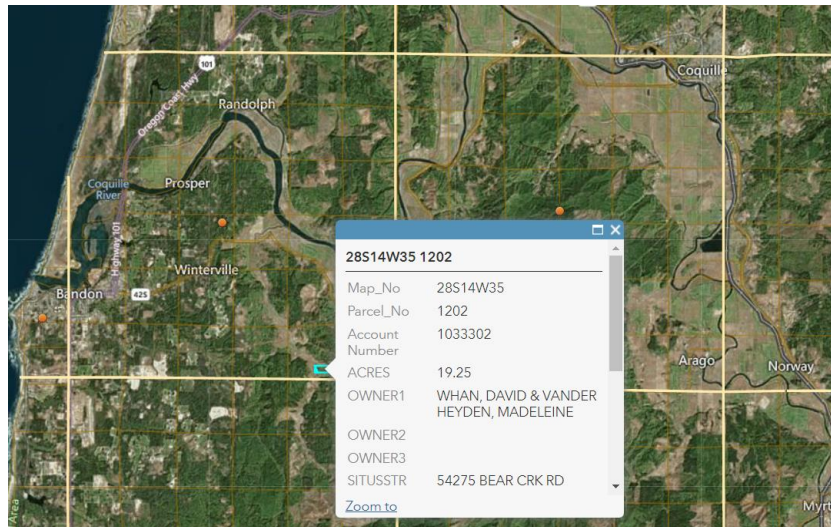
**A. PROPOSAL:** The applicant is requesting to confirmation of a Nonconforming Use. The nonconforming use in this case is a second dwelling unit.

**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.*

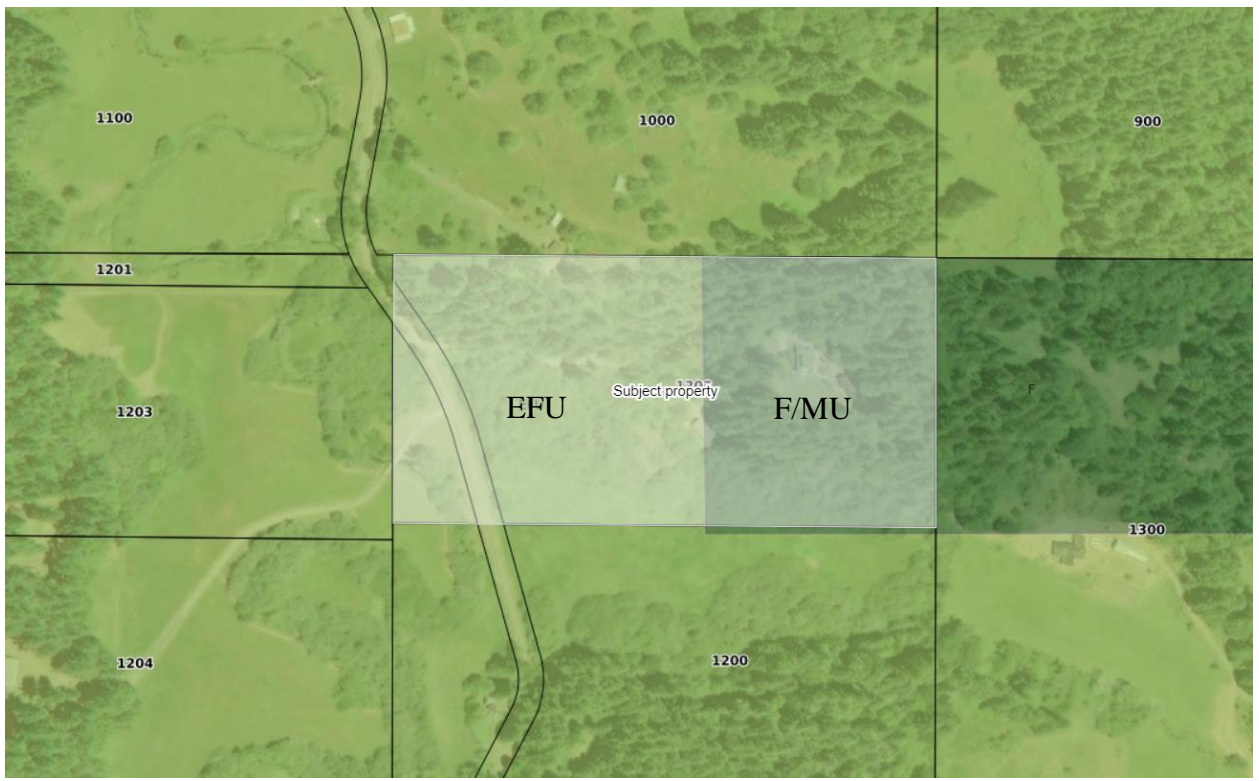
**Staff has reviewed the property history and county files to determine that at this time the property has a shed and shop that do not appear to have clearance but these accessory structures will be brought it into compliance with an after the fact Zoning Compliance Letter.**

**II. BASIC FINDINGS:**

**A. LOCATION:** The subject property is located southeast of the City of Bandon at 54275 Bear Creek Road, Bandon. The map below (not to scale) is a visual of the property location.



**B. ZONING:** - This property is zoned Exclusive Farm Use and Forest Mixed Use.



**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.*

**Exclusive Farm Use (EFU)**

*These include all inventoried "agricultural lands" not otherwise found to be needed (excepted) for other uses.*

*The purpose of the EFU district is to preserve the integrity and encourage the conservation of agricultural lands within Coos County and thereby comply with the provisions of ORS 215 and OAR 660. Division 33 to minimize conflicts between agricultural practices and non-farm uses by limiting any development to uses distinguished as dependent upon or accessory to supporting agricultural or forestry production and which qualify such farm lands for special tax relief pursuant to the provisions of Oregon Revised Statutes. This zone is also for the cultivation and marketing of specialty crops, horticultural crops and other intensive farm uses.*

*According to the Coos County Comprehensive Plan Exclusive Farm Use lands are inventoried as Agricultural Lands. The Main criterion for establishing the "Agricultural Lands Inventory" was land identified on the agricultural lands based on soils, Class I-IV soils or "other lands" suitable for agricultural use, with the following exceptions:*

- 1. Committed rural residential areas and urban growth areas.*
- 2. Proposed rural residential areas as per the Exception to Goals #3 and #4.*
- 3. Proposed industrial/commercial sites.*
- 4. Existing recreation areas (e.g., golf courses) [Recreation designation]*
- 5. Isolated parcels of Class I-IV soils in upland areas, which are under, forest cover. (Forestlands designation).*
- 6. Narrow valley bottomlands where no agricultural activity is occurring anywhere in the vicinity [Forestlands designation].*

*The secondary criterion for establishing the "Agricultural Lands Inventory" was the use of aerial photos used to identify additional areas without Class I-IV soils in current agricultural use which were not initially identified in the agricultural lands inventory from Assessor's Data. This situation typically occurs on benches, immediately above agricultural valleys, where grazing often takes place on non-class I-IV soils. However, if lands were zoned predominately forest it may have resulted in a Mixed Use Overlay.*

### **C. SPECIAL DEVELOPMENT CONSIDERATIONS AND OVERALYS:**

*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.*

**This property does have special development considerations and overlays, but no structural development is being proposed. Therefore, additional review was not required.**

**D. SITE DESCRIPTION AND SURROUNDING USES:**

The property is developed with trees surrounding most of the developed area. The property contains two dwellings, two accessory structures (shops), bathhouse and shed. The property is 19.25 acres and Randleman Creek runs through the lower portion of the property. The majority of the development is located in the Forest Mixed Use zone. There is one shop and garden area located in the Exclusive Farm Use Zone. The property is accessed via Bear Creek Road.



- E. COMMENTS:** There is no structural development so there were no comments required prior to the release of the decision.
- F. LAWFULLY CREATED UNIT OF LAND:** The unit of land was created by deed document 81-03-1182 from tax lot 1200. 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 to verify and alter a nonconforming use pursuant to Coos County Zoning and Land Development Ordinance (CCZLDO)§ Article 5.6 Nonconforming.

**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.*

*DWELLING: Any building that contains one or more dwelling units used, intended, or designed to be built, used, rented, leased, let or hired out to be occupied, or that are occupied for living purposes.*

**c. CRITERIA AND STANDARDS**

- **ARTICLE 5.6 NONCONFORMING**
  - **SECTION 5.6.100 NONCONFORMING USES:**

*The lawful use of any building, structure or land at the time of the enactment or amendment of this zoning ordinance may be continued. Alteration of any such use may be permitted subject to Sections 5.6.120 and 5.6.125. Alteration of any such use shall be permitted when necessary to comply with any lawful requirement for alteration in the use. Except as provided in ORS215.215 (Reestablishment of nonfarm use), a county shall not place conditions upon the continuation or alteration of a use described under this Section when necessary to comply with state or local health or safety requirements, or to maintain in good repair the existing structures associated with the use. A change of ownership or occupancy shall be permitted.*

*As used in this Section, alteration of a nonconforming use includes:*

1. *A change in the use of no greater adverse impact to the neighborhood; and*
2. *A change in the structure or physical improvements of no greater adverse impact to the neighborhood.*

**FINDING:** The structure was sited in 1980 and at that time the property was zoned Interim Exclusive Agricultural Zone (IAG-20) which provided for Dwellings and other building customarily provided in conjunction with farm use. At the time property was part of a large farm use. A permit was issued in June of 1980 and September of 1981 to build a dwelling and addition to the dwelling. It is possible that the two dwellings could have been sited as the permitting history isn't very clear and language in the ordinance at the 1980 did allow for "Dwellings". The assessment records support that the dwelling has been in place since 1980. Therefore, it is reasonable to conclude that this a Non-conforming Use that has continued since the adoption and acknowledgement of the current ordinance (January 1, 1986).

○ **SECTION 5.6.110 INTERRUPTION OR ABANDONMENT OF NONCONFORMING USES:**

*A non-conforming use or activity may not be resumed if it was subject to interruption or abandonment for more than one (1) year unless the resumed use conforms to the requirements of zoning ordinances or regulations applicable at the time of the proposed resumption.*

**FINDING:** The use has not been abandoned. It has been used as a second dwelling or guest house since the time it was constructed. Therefore, this criterion has been addressed.

○ **SECTION 5.6.120 ALTERATIONS, REPAIRS OR VERIFICATION:**

*Alterations, repairs or verification of a nonconforming use requires filing an application for a conditional use (See CCZLDO Article 5.2). All such applications shall be subject to the provisions of Section 5.6.125 of this ordinance and consistent with the intent of ORS 215.130(5)- (8). Alteration of any nonconforming use shall be permitted when necessary to comply with any lawful requirement for alteration in the use. The County shall not condition an approval of a land use application when the alteration is necessary to comply with State or local health or safety requirements, or to maintain in good repair the existing structures associated with the use.*

**FINDING:** This review is a conditional use request and is consistent with ORS 215.130. This is for a verification of use and for an alteration. The conditional was submitted to request a determination. Therefore, the criteria has been addressed.

○ **SECTION 5.6.125 CRITERIA FOR DECISION:**

*When evaluating a conditional use application for alteration or repair of a nonconforming use, the following criteria shall apply:*

- 1. The change in the use will be of no greater adverse impact to the neighborhood;*
- 2. The change in a structure or physical improvements will cause no greater adverse impact to the neighborhood; and*
- 3. Other provisions of this ordinance, such as property development standards, are met.*

*For the purpose of verifying a nonconforming use, an applicant shall provide evidence establishing the existence, continuity, nature and extent of the nonconforming use for the 10-year period immediately preceding the date of the application, and that the nonconforming use was lawful at the time the zoning ordinance or regulation went into effect. Such evidence shall create a rebuttable presumption that the nonconforming use lawfully existed at the time the applicable zoning ordinance or regulation was adopted and has continued uninterrupted until the date of the application.*

**FINDING: The applicant has provided the copies of the ordinance that was in place at the time both Dwellings were constructed to show it could be lawfully sited. The nonconforming use has not been altered and has been in existence well beyond ten (10) years. After staff has reviewed the land use authorization, permits, assessment records and prior permits, the facts support the Dwellings are legal Nonconforming. There have been some other structures built that appear to be newer than 1980/1981 that are accessory structures. Staff is requesting that the applicant obtain an after-the-fact zoning compliance letter for them to resolve any compliance issues. They have been identified as an Accessory Structures (Bath house and Shop).**

**VI. DECISION:**

There is evidence to adequately address the criteria for an alteration of the nonconforming use, 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 properties and the following agencies, special district or parties:

DLCD  
Bandon Rural Fire Protection District

Planning Commission  
Board of Commissioner