



NOTICE OF LAND USE DECISION BY THE COOS COUNTY PLANNING DIRECTOR

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

Date of this Decision: March 27, 2023

File No: ACU-23-009

RE: Request for approval of Nonconforming Development Replacement of a tide gate

Applicant(s): Haynes Drainage District (Fred Messerle) with Assistance from Coos Watershed

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).

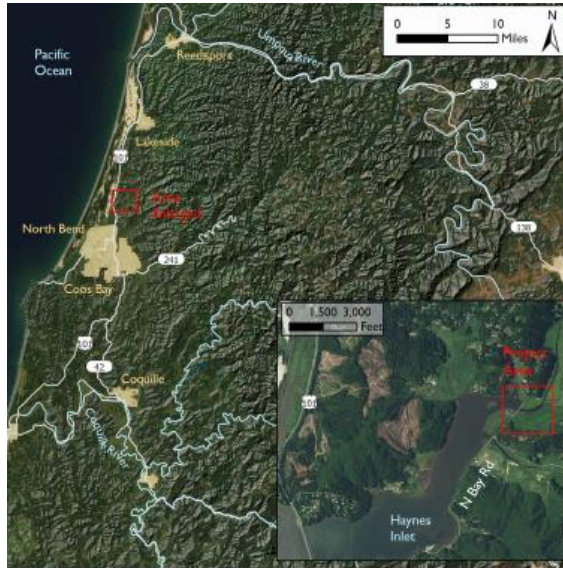
Mailed notices to owners of real property required by ORS 215 shall be deemed given to those owners named in an affidavit of mailing executed by the person designated by the governing body of a county to mail the notices. The failure of a person named in the affidavit to receive the notice shall not 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

Location: The work for this proposal is located within waters of the state (*Palouse Slough*) with some temporary staging areas located on Township 24S Range 13W Section 25 Tax Lot 400 (Roberts Property). See the map for more details on location.



Proposal: Request for Planning Director Approval for an approval of Nonconforming Development Replacement and staging areas in the 11-Rural Shoreland Segment of the Coos Bay Estuary Management Plan pursuant to Coos County Zoning and Land Development (CCZLDO).

The staging areas are temporary uses that can be permitted through CCZLDO Section 3.1.450 Supplemental provisions that apply to all zoning listed in Article 3 (4) Temporary Uses.

In the 11-RS tide gates are not a listed use or activity that can be permitted. The original tide gate has been in place prior to the ordinance and likely was considered as part of the bridge structure which would have been part of the Land Transportation Facility which is a permitted use. However the applicant has specifically stated the purpose of this proposal is to decouple the tide gate from the bridge and site it in a different location near the original site. Given this information this would be a nonconforming feature and which triggers a review of a Nonconforming use/activity reviewed under Section 5.6 of the CCZLDO.

The work in the floodplain also requires a Flood Hazard Application regulated by Section 4.11.200.

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.

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 East Second Street, Coquille, Oregon. Copies may be purchased at a cost of 50 cents per page or if available may be viewed at <https://www.co.coos.or.us/community-dev/page/land-use-applications-submitted> . Staff makes every effort to place all noticeable decisions on the webpage but it is not a legal requirement. The decision is based on the application submittal and information on record. The name of the Coos County Planning Department representative to contact is the person that prepared the report and the telephone number where more information can be obtained is (541) 396-7770.

This decision will become final at 4:30 p.m. on April 11, 2023 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.

Authorized by: Jill Rolfe **Date:** March 27, 2023

Jill Rolfe, Planning Director

EXHIBITS

Exhibit A: Conditions of Approval

Exhibit B: Vicinity Map

Exhibit C: Staff Report (only provided to the applicant, PC and BOC)

The Exhibits below are mailed to the Applicant and Planning Commission and Board of Commissioners only. Copies are available upon request (planning@co.coos.or.us) or may be found on the website or by visiting the Coos County Community Development page on www.co.coos.or.us , or by visiting the office at 60 East Second St, Coquille OR 97423. If you have any questions please contact staff at (541) 396-7770.

EXHIBIT "A"
CONDITIONS OF APPROVAL

1. Alteration of the non-conforming use may be permitted subject to Sections 5.6.120 and 5.6.125 of the CCZLDO. Alteration of this use shall be permitted when necessary to comply with any lawful requirement for alteration in the use.
2. Conditions are only allowed to be placed on non-conforming uses 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.
3. A signature from Michael and Cathryn Roberts to allow the temporary staging areas to be sited on their property is required for this application.
4. The temporary use (staging areas) shall not result in any permanent changes to the landscape itself and as a condition of approval the area shall be restored to the previous condition.
5. 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



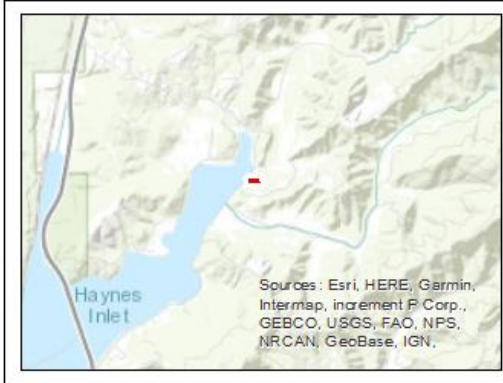
COOS COUNTY PLANNING DEPARTMENT

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

Physical Address: 60 E. Second, Coquille Oregon

Phone: (541) 396-7770

TDD (800) 735-2900



File: ACU-23-009

Applicant/Haynes Drainage District/Coos Watershed
Owner: Michael & Cathryn Roberts

Date: March 27, 2023

Location: Township 24S Range 13W
Section 25

Proposal: Administrative Conditional Use

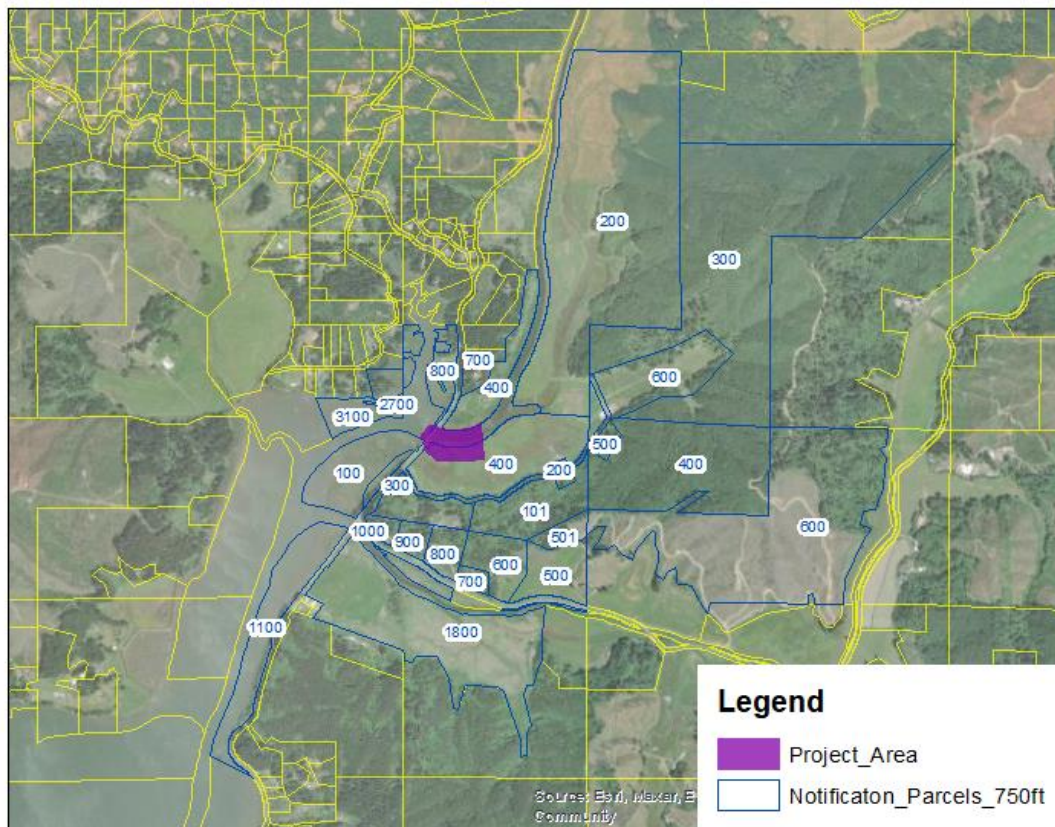


EXHIBIT "C" Staff Report

Reviewing Staff: Jill Rolfe, Coos County Community Development Director
Date of Report: March 26, 2023

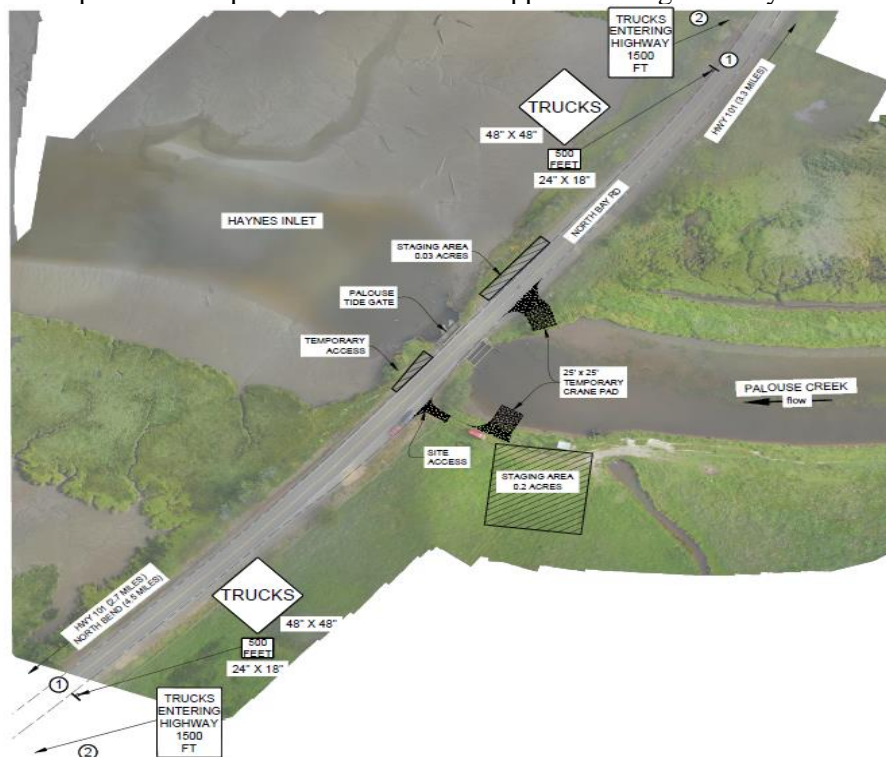
I. PROPOSAL

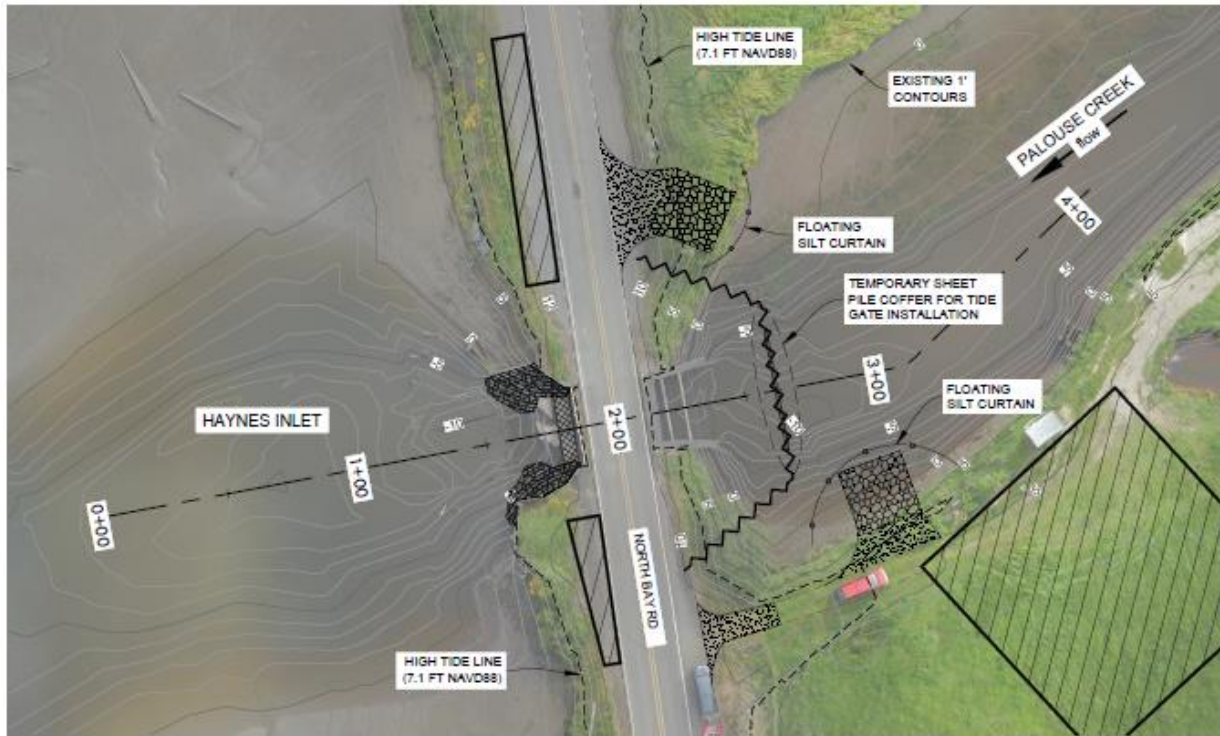
Request for Planning Director Approval for a Nonconforming Development Replacement and staging areas in the 11-Rural Shoreland Segment of the Coos Bay Estuary Management Plan pursuant to Coos County Zoning and Land Development (CCZLDO).

The staging areas are temporary uses that can be permitted through CCZLDO Section 3.1.450 Supplemental provisions that apply to all zoning listed in Article 3 (4) Temporary Uses.

In the 11-RS tide gates are not a listed use or activity that can be permitted. The original tide gate has been in place prior to the ordinance and likely was considered as part of the bridge structure which would have been part of the Land Transportation Facility which is a permitted use. However the applicant has specifically stated the purpose of this proposal is to decouple the tide gate from the bridge and site it in a different location near the original site. Given this information this would be a nonconforming feature which triggers a review of a Nonconforming use/activity reviewed under Section 5.6 of the CCZLDO.

The work in the floodplain also requires a Flood Hazard Application regulated by Section 4.11.200.





II. BACKGROUND INFORMATION

On November 3, 2022 the Coos County Community Development, Planning staff was invited to participate in a project planning session by the Coos Watershed for five different projects. This application deals with just one of the projects proposed.

Coos County Community Development is a non-general fund department and may not be able to participate in these types of requests unless pre-application fees and formal requests are made. Project time is paid for by applicants or grant funding and staff may not have additional resources or time to review multiple projects ahead of time it depends on capacity and review of other funded projects. This department is tasked with ensuring all needs are met for the community based on the funding available. Staff notified the watershed staff prior to the date of the site visit that staff did not have the capacity to visit the sites. Staff suggested sending a narrative of the proposals and as time permitted an assessment of permitting requirements would be provided.

On November 15, 2022 Coos Watershed did provide documents to the County to review. Staff was assigned based on available time to review the projects. On December 7, 2022 a review of permitting requirements were provided for each of the five different proposal and projects planned with the exception of one as additional locational information was required.

On December 7, 2022 the following information was provided specifically for this project:

Palouse Creek, Correct, this project will need a floodplain application. That application will require a letter of no-rise certification from a licensed Engineer, with the supporting documentation. That supporting documentation is a HEC-RAS model. The engineer will

need to provide proof they have training in floodplain modeling and management. This is assuming that no net fill will be brought into the floodplain.

However, the project is located in CBEMP #11-RS zoning district and relocating of a new dike is not permitted. There may be an avenue to replace the existing dike in a different location through a non-conforming application. The criteria for a non-conforming application may be found in Chapter 5:

https://www.co.coos.or.us/sites/default/files/fileattachments/planning/page/21496/chapter_5.pdf You may find the land use ordinance for 11-RS starting on page 138: https://www.co.coos.or.us/sites/default/files/fileattachments/planning/page/21496/chapter_3.pdf The staging area must be restored to original condition. No net fill shall occur at the staging area.

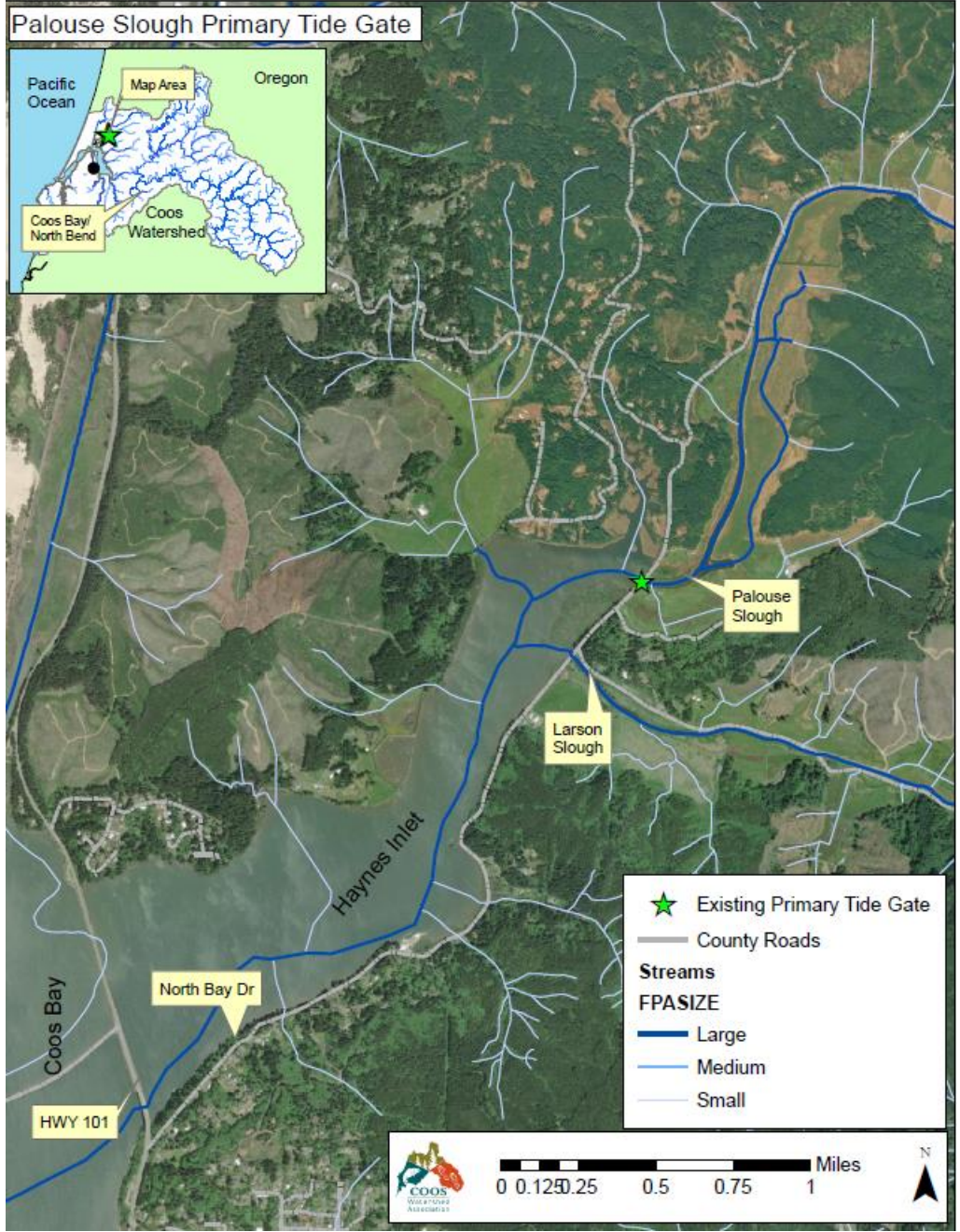
There was a debate between County Staff and the Watershed Staff regarding the permitting process. Staff did provide a clear process forward for the Watershed but felt after debating the steps it was important to bring Department of Land Conservation and Development Staff into the conversation. Therefore, on February 16, 2023 staff forwarded the conversation regarding the permitting process. On February 22, 2023 DLCD Staff did confirm the pathway provided by the county was appropriate and offered any additional assistance if needed. Staff forwarded this information on to the watershed.

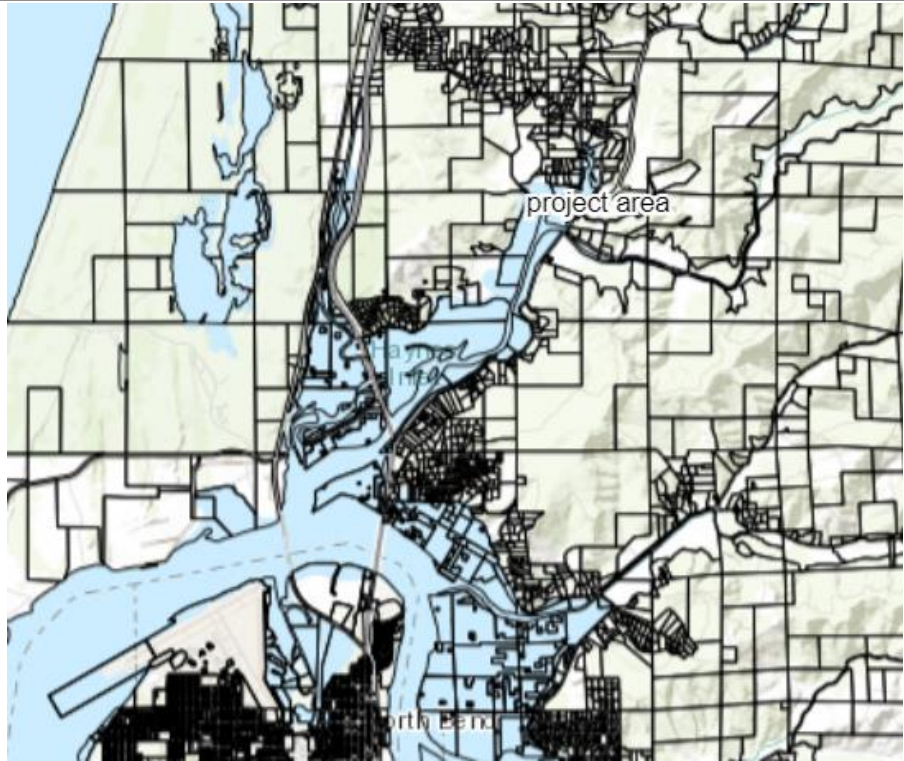
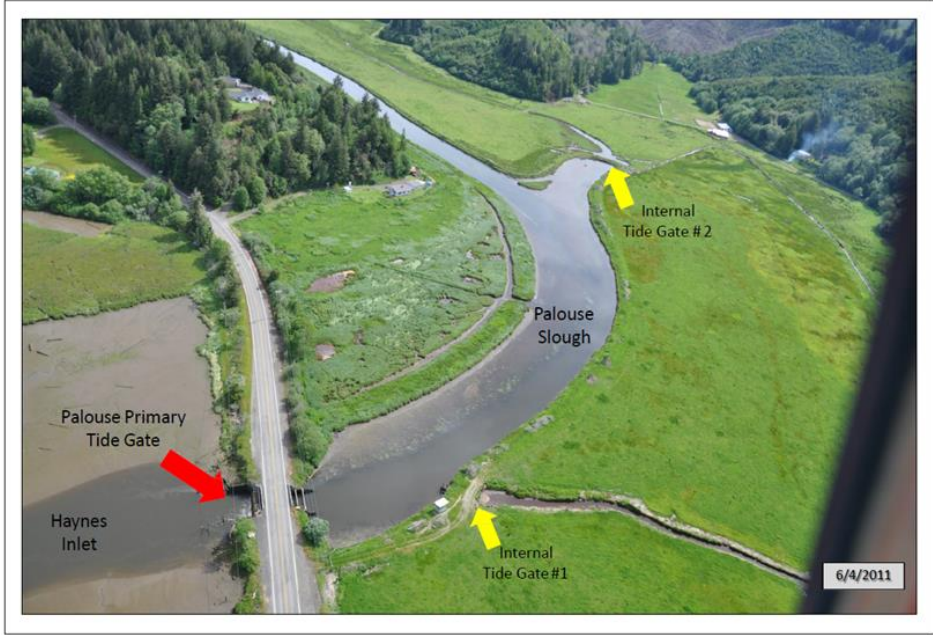
The formal application was received on February 23, 2023 and staff is very understanding in regards to the timeframe around the grant funding for the proposal. Staff reviews projects by the date they are submitted and then the date projects are found to be complete.

There are different levels of reviews under the Coos County Zoning and Land Development Ordinance and each one has a timeline associated. This is an Administrative Conditional Use and Floodplain governed by Article 5.0 and Section 5.2 Conditional Uses and Section 4.11.235 Establishment of Development Permit. All applicable criteria have been reviewed under the Section IV of this report and all conditions of this approval are found in Attachment A.

III. PROPERTY DESCRIPTION AND PROPOSAL

LOCATION: The subject property is located at North Bay Road but will take place in the waterway of Palouse Slough. Palouse Slough is a drainage to Haynes Inlet. There will be a staging area on the property adjacent to the slough. The work will be done during the in-water work period defined by the State of Oregon to ensure impacts to habitat or flooding is minimized. Below are maps to show the location in relationship to the city of North Bend. The proposed area is located northeast of the City of North Bend.







SITE DESCRIPTION AND SURROUNDING USES:

a. SITE DESCRIPTION AND SURROUNDING USES:

The project area is within the 11-Rural Shoreland Zoning District.

GENERAL LOCATION: NORTH SLOUGH/HAYNES INLET

ZONING DESIGNATION: 11-RS

ZONING DISTRICT: 11-RURAL SHORELANDS

SPECIFIC BOUNDARIES: Northwestern boundary: a line extending west from the pumphouse north of the Highway 101 Causeway; this shoreline borders on North Slough.

Southeastern boundary: a line extending west along the north property line of the Clausen Oyster processing facility on the South side of Haynes Inlet. This district includes land up to 1,000-feet above head of tide (major tide gates) on Palouse and Larson Sloughs.

SECTION 3.2.400. MANAGEMENT OBJECTIVE:

This district shall be managed so as to continue its rural low-intensity character and uses that have limited (if any) association with the aquatic district. This district includes three designated mitigation sites (M-12, M-13 and M-22). However, only Site M-22 shall be protected from pre-emptive uses. Other sites are "low" priority, and need not be protected (See Policy #22).



The area is mainly tidal marsh and grazing land. There is limited development surrounding the project area due to the location. The bridge is part of the county maintained land transportation facility.

b. PROPOSAL DETAILS:

Below are the site pictures of the existing tide gate structure along with the plan to remove the main tide gates, shown below in the dashed area and create a new sheet pile wall with opening gates to efficiently be able to control the water flow.



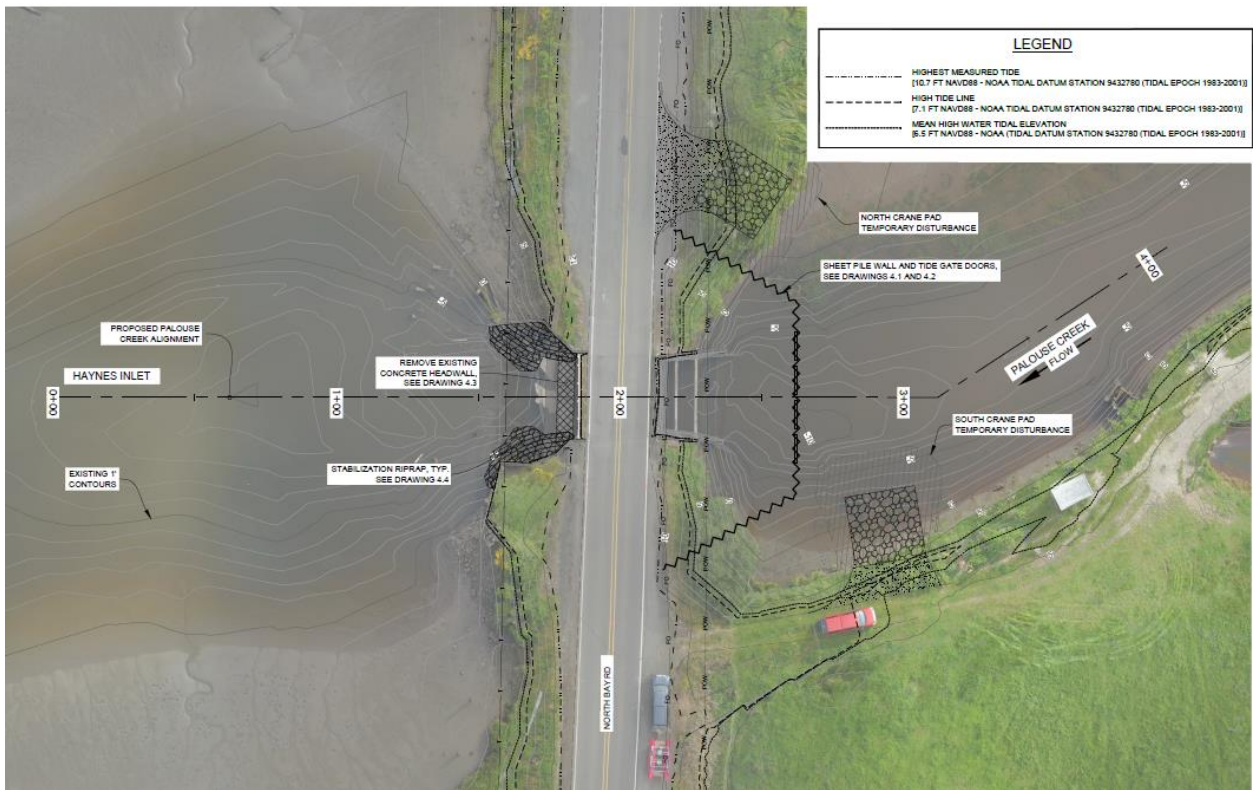
Tide gate from southern side at moderate tide



From northern side at low tide



Head wall failure (south side)



IV. APPROVAL CRITERIA & FINDINGS OF FACT

- **SECTION 3.1.450 SUPPLEMENTAL PROVISIONS THAT APPLY TO ALL ZONING LISTED IN ARTICLE 3. *****
- 4. *Special Temporary Uses. The special temporary uses and their accessory structures and uses may be temporarily permitted by the Planning Director as set forth in the Zoning Districts. The Planning Director's decision may be reviewed by the Hearing's Body.*

Finding: The placement of silt curtains and staging area are considered special temporary uses with in the Coos Bay Estuary Management Unit. These will only be in place while working on the project. The Special Temporary Uses require a notice of decision as they can be reviewed by the Hearings Body. Therefore, the Planning Director is permitting this uses as part of the construction of the overall project. This temporary use shall not result in any permanent changes to the landscape itself and as a condition of approval the area shall be restored to the previous condition.

- **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:
 - a. *Elevation in relation to mean sea level, of the lowest floor (including basement) of all structures which may be submitted by a registered surveyor;*
 - b. *Elevation in relation to mean sea level of floodproofing in any structure;*
 - c. *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*
 - d. *Description of the extent to which a watercourse will be altered or relocated as a result of proposed development.*
 - e. *Plot plan drawn to scale showing the nature, location and dimensions and elevation referenced to mean sea level, or NAVD 88, whichever is applicable, of the area in question including existing and proposed structures, fill, storage of materials, and drainage facilities. Applicants shall submit certification by an Oregon registered professional engineer or land surveyor of the site's ground elevation and whether or not the development is located in a flood hazard area. If so, the certification shall include which flood hazard area applies, the location of the floodway at the site, and the 100 year flood elevation at the site. A reference mark shall be set at the elevation of the 100 year flood at the site. The location, description, and elevation of the reference mark shall be included in the certification; and*
 - f. *Any other information required to show compliance.*

- g. *Applications for variance, water course changes or staff determinations will be noticed with an opportunity to appeal in the same manner as a conditional use (see Chapter V). Non-discretionary determination of compliance with the standards will be processed in the same manner as a Compliance Determination (see Article 5.10)*

- **SECTION 4.11.251 GENERAL STANDARDS**

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

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: While the applicant did not complete the application form with the information a report and elevation certificate was provided by Russell Bartlett, PE River Design Group, Inc. to address the criteria.

River Design Group, Inc. (RDG) was retained by the Coos Watershed Association (CoosWA) to provide professional services for the Palouse Slough primary tide gate replacement project (Project). The Project site is located within an unincorporated portion of Coos County near Coos Bay, Oregon. The Federal Emergency Management Agency (FEMA) Flood Insurance Study (FIS) for Palouse Slough at the project site is contained in Community Number 410042 (Coos County, Unincorporated Areas) and on the Flood Insurance Rate Map (FIRM) 41011C0180F which has an effective date December 7, 2018.

The Palouse Slough/Coos Bay floodplain is mapped FEMA Zone AE (Figure 1) within the vicinity of the Project site. This mapping designation identifies Special Flood Hazard Areas (SFHA) with a one-percent chance of being inundated by the 100-year base flood with mapping determined by detailed methods with base flood elevations (BFEs) defined. No Floodway is defined at the Project site. Project elements are proposed to be compliant with Coos County Zoning Code Section 4.11.251(7)(b) for "other development" within the floodplain by showing no cumulative increase greater than 1.0 ft during the occurrence of the base flood discharge. This is shown by zero-net rise in the base flood elevation resultant of Project actions.

The methodology provided by Mr. Bartlett was explained as follows: a two-dimensional (2D), steady-state HEC-RAS models was used to analyze existing and post project floodplain conditions. The Effective Approximate Hydraulic Analysis conducted by STARR in 2016 was obtained from

the FEMA Engineering Library and found not to be applicable for our analysis of the proposed restorative enhancements due to it not including the existing North Bay Road bridge or tide gate structure. Rather a 2D model used in the project design was modified to analyze anticipated floodplain impacts of the Project. The model was developed within HEC-RAS v6.2 utilizing the software's unsteady capabilities which utilizes an implicit finite-volume iterative solution to the diffusion wave equations. This technique results in an output of various hydraulic variables (i.e., velocity, hydraulic head, friction losses, etc.) at any point within the model domain.

The full report is part of the application, but in summary, based on the hydraulic analysis of existing and with-project conditions, this letter conveys assurance the proposed Project as analyzed by RDG will not produce a rise in base flood elevations. Hence, the Project meets the intent of Coos County Zoning Code Section 4.11.251(7)(b) for "other development" within the floodplain. All materials proposed for the Project that will become permanent features in the floodplain are designed to be resistant to flood damage.

The Planning Director finds that the report and information complies with the floodplain regulations. Therefore, the relevant criteria 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.

- **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: A verification and alteration of a nonconforming use requires a conditional use pursuant to CCZLDO § 5.6.120. The tide gate was in existence since the time the Coos County Zoning Ordinance was adopted as documented by the description of the zoning district. The application stated the primary tide gate on Palouse was placed in the 1920's and has been in use consistently to date. The existing gate was constructed under a county bridge and there is now a significant push to decouple the tide gate structure from the County bridge structure to clearly separate liabilities and responsibilities of each party with the individual structures. The proposed design modifies the tide gate location upstream of the existing bridge to further restore the natural function of Haynes Inlet through the existing bridge.

Tide gates are normally a listed use in development aquatic zoning districts but not in shoreland segments as the purpose of a tide gate is to control water flow. However, the zoning map and description has this area described as a shoreland unit and not an aquatic unit in the Coos Bay Estuary Management Plan. The only reason staff could find was that the area is mapped and planned in this manner was that it is controlled by a series of tide gates and the main tide gate was viewed as part of the land transportation system (county right-of-way) but that is not specifically explained in the plan or ordinance. Therefore, when the Watershed reached out about this project staff provided the nonconforming alteration path as the proposed tide gate is not a listed allowed use.

The proposal is specifically to decouple the tide gates from the county bridge and create a new wall with gates. This will allow for better water control for habitat purposes.

The applicant states that there will be no interruption in use or activity of the primary tide gate on Palouse Slough. The new primary tide gate will be built prior to the removal of the existing primary gate, therefore there will be no interruption in use of the primary tide gate. There is no change in use to the structure. The use of the proposed tide gate structure will have the same use as the existing structure.

The change of the primary tide gate will not adversely affect the neighborhood; however, it will positively impact the neighborhood. The upgrade of the primary tide gate structure will significantly improve the drainage of the basin upstream of the tide gate to reduce prolonged flooding due to the existing tide gate doors remaining closed through multiple tide cycles. This project will also improve water quality and fish passage in the Palouse Slough/Haynes Inlet area.

Staff finds that this a nonconforming use that has not been abandoned and is in need of alteration. The alteration will remove portions of the existing structure and create a new sheet pile wall with functioning tide gates. This will not adversely affect the neighborhood and, in fact, will enhance the use of the properties while increasing fish habitat.

SECTION 5.0.150 APPLICATION REQUIREMENTS:

Applications for development or land use action shall be filed on forms prescribed by the County and shall include sufficient information and evidence necessary to demonstrate compliance with the applicable criteria and standards of this Ordinance and be accompanied by the appropriate fee. An application shall not be considered to have been filed until all application fees have been paid. All applications shall include the following:

1. *Applications shall be submitted by the property owner or a purchaser under a recorded land sale contract. "Property owner" means the owner of record, including a contract purchaser. The application shall include the signature of all owners of the property. A legal representative may sign on behalf of an owner upon providing evidence of formal legal authority to sign.*
2. *An application for a variance to the requirements of the Airport Surfaces Overlay zone may not be considered unless a copy of the application has been furnished to the airport owner for advice as to the aeronautical effects of the variance. If the airport owner does not respond to the application within twenty (20) days after receipt, the Planning Director may act to grant or deny said application.*
3. *One original and one exact unbound copy of the application or an electronic copy shall be provided at the time of submittal for all applications.*

An application may be deemed incomplete for failure to comply with this section.

The burden of proof in showing that an application complies with all applicable criteria and standards lies with the applicant.

FINDING: The application was provided on the appropriate forms but it was submitted without the proper signature from Michael and Cathryn Roberts for the temporary staging areas. The tide gate itself is owned and operated by the Haynes Drainage District and the signature for the Drainage District was appropriately provided. The work will primarily be in County right-of-way and in waters under the jurisdiction of Oregon through Department of State Lands who is not required to sign a permit under Section 5.0.450. Therefore, as a condition of approval the applicant shall provide authorization from the Roberts.

SECTION 5.0.175 APPLICATION MADE BY TRANSPORTATION AGENCIES, UTILITIES OR ENTITIES:

1. *A transportation agency, utility company or entity with the private right of property acquisition pursuant to ORS Chapter 35 may submit an application to the Planning Department for a permit or zoning authorization required for a project without landowner consent otherwise required by this ordinance.*
2. *For any new applications submitted after the effective date of this section, such transportation agency, utility, or entity must mail certified notice to the Planning Department and any owner of land upon which the proposed project would be constructed at least ten (10) days before submitting an application to the Planning Department. Said notice shall state the transportation agency, utility, or entity's intent to file the application and must include a map, brief description of the proposed project, and a name and telephone number of an official or representative of the available to discuss the proposed project.*
3. *Such transportation agency, utility or entity (applicant) must comply with all other applicable requirements of this ordinance including property owners that were provided with notice of any hearing on any hearing on the application pursuant to ORS 197.76.*
4. *Notwithstanding any other requirement of this ordinance, approvals granted to such transportation agency, utility or entity shall not become effective for construction on a property*

under the approval until the transportation agency, utility or entity obtains either the written consent of the property owner or the property rights necessary for construction on that property.

5. *Any permit subject to this section will be valid for two (2) years unless a request for renewal for another two (2) years is received from the transportation, utility or entity agency within 2 years after the date of approval, in which case renewal will be automatic to a maximum of 5 renewals. The date of approval is the date the appeal period has expired and no appeals have been filed, or all appeals have been exhausted and final judgments are effective.[OR-92-07-012PL]*

SECTION 5.0.200 APPLICATION COMPLETENESS (ORS 215.427):

1. *An application will not be acted upon until it has been deemed complete by the Planning Department. In order to be deemed complete, the application must comply with the requirements of Section 5.0.150, and all applicable criteria or standards must be adequately addressed in the application. If the County Road Department recommends traffic impact analysis (TIA) the application will not be deemed complete until it is submitted.*
2. *For land within an urban growth boundary and applications for mineral aggregate extraction, the governing body of a county or its designee shall take final action on an application for a permit, limited land use decision, including resolution of all appeals under ORS 215.422 (Review of decision of hearings officer or other authority), within 120 days after the application is deemed complete unless an application has been deemed incomplete, voided or extended as discussed in this section . The governing body of a county or its designee shall take final action on all other applications for a permit, limited land use decision or zone change, including resolution of all appeals under ORS 215.422 (Review of decision of hearings officer or other authority), within 150 days after the application is deemed complete, unless an application has been deemed incomplete, voided or extended as provided for in this section.*
3. *If an application for a permit or limited land use decision is incomplete, the governing body or its designee shall notify the applicant in writing of exactly what information is missing within 30 days of receipt of the application and allow the applicant to submit the missing information. The application shall be deemed complete for the purpose of subsection 2 upon receipt by the governing body or its designee of:*
 - a. *All of the missing information;*
 - b. *Some of the missing information and written notice from the applicant that no other information will be provided; or*
 - c. *Written notice from the applicant that none of the missing information will be provided.*
4. *If the application was complete when first submitted or the applicant submits additional information, as described in Subsection 3, within 180 days of the date the application was first submitted and the county has a comprehensive plan and land use regulations acknowledged under ORS 197.251 (Compliance acknowledgment), approval or denial of the application shall be based upon the standards and criteria that were applicable at the time the application was first submitted.*
5. *If the application is for industrial or traded sector development of a site identified under Section 11 below, chapter 800, Oregon Laws 2003, and proposes an amendment to the*

comprehensive plan, approval or denial of the application must be based upon the standards and criteria that were applicable at the time the application was first submitted, provided the application complies with Section 4 above.

6. *On the 181st day after first being submitted, the application is void if the applicant has been notified of the missing information as required under subsection (3) of this section and has not submitted:*
 - a. *All of the missing information;*
 - b. *Some of the missing information and written notice that no other information will be provided; or*
 - c. *Written notice that none of the missing information will be provided.*
7. *The period set in Subsection 2 of this section may be extended for a specified period of time at the written request of the applicant. The total of all extensions, except as provided in Section 12 of this section for mediation, may not exceed 215 days.*
8. *The period set in Section 2 of this section applies:*
 - a. *Only to decisions wholly within the authority and control of the governing body of the county; and*
 - b. *Unless the parties have agreed to mediation as described in Section 11 of this section or ORS 197.319(2)(b) (Procedures prior to request of an enforcement order)*
9. *Timelines as described in this section do not apply to a decision of the county making a change to an acknowledged comprehensive plan or dependent on the approval of a comprehensive plan amendment.*
10. *Except when an applicant requests an extension of the timelines, if the governing body of the county or its designee does not take final action on an application for a permit, limited land use decision or zone change within 120 days or 150 days, as applicable, after the application is deemed complete, the county shall refund to the applicant either the unexpended portion of any application fees or deposits previously paid or 50 percent of the total amount of such fees or deposits, whichever is greater. The applicant is not liable for additional governmental fees incurred subsequent to the payment of such fees or deposits. However, the applicant is responsible for the costs of providing sufficient additional information to address relevant issues identified in the consideration of the application.*
11. *A county may not compel an applicant to waive the period set in ORS 215.429 (Mandamus proceeding when county fails to take final action on land use application within specified time) as a condition for taking any action on an application for a permit, limited land use decision or zone change except when such applications are filed concurrently and considered jointly with a plan amendment.*
12. *The periods set forth in this section may be extended by up to 90 additional days, if the applicant and the county agree that a dispute concerning the application will be mediated. [1997 c.414 §2; 1999 c.393 §§3,3a; enacted in lieu of 215.428 in 1999; 2003 c.800 §30; 2007 c.232 §1; 2009 c.873 §15; 2011 c.280 §10]*

FINDING: Even though the signature of the property owner is missing from the application staff has placed this a condition of approval to allow this review to be completed.

SECTION 5.0.250 TIMETABLE FOR FINAL DECISIONS (ORS 215.427):

(Legislative decisions are not subject to the time frames in this section)

1. *For lands located within an urban growth boundary, and all applications for mineral or aggregate extraction, the County will take final action within 120 days after the application is deemed complete. For land divisions within the urban growth boundary or lands designated as Regionally Significant Industrial Areas (RSIA) see Article 5.12 for processing and time tables.*
2. *For all other applications, the County will take final action within 150 days after the application is deemed complete.*
3. *These time frames may be extended upon written request by the applicant.*
4. *Time periods specified in this Section shall be computed by excluding the first day and including the last day. If the last day is a Saturday, Sunday, legal holiday or any day on which the County is not open for business, the time deadline is the next working day. [OAR 661-010-0075]*
5. *The period for expiration of a permit begins when the appeal period for the final decision approving the permit has expired and no appeals have been filed, or all appeals have been exhausted and final judgments are effective.*

FINDING: The formal application was not submitted until February 23, 2023 and this decision has been mailed out on March 27, 2023 which is 32 days which is 118 days less than the required time to process these types of applications.

SECTION 5.0.300 FINDINGS REQUIRED [ORS 215.416(9)-(10)]:

Approval or denial of an application shall be in writing, based upon compliance with the criteria and standards relevant to the decision, and include a statement of the findings of fact and conclusions related to the criteria relied upon in rendering the decision.

FINDING: The decision is to approve the application and the findings of staff have been reduced to a written investigative report (staff report) to analyze the criteria and response provided by the applicant. The staff report provides findings of the facts in the matter to support the decision.

SECTION 5.0.350 CONDITIONS OF APPROVAL:

1. *Conditions of approval may be imposed on any land use decision when deemed necessary to ensure compliance with the applicable provisions of this Ordinance, Comprehensive Plan, or other requirements of law. Any conditions attached to approvals shall be directly related to the impacts of the proposed use or development and shall be roughly proportional in both the extent and amount to the anticipated impacts of the proposed use or development.*

2. *An applicant who has received development approval is responsible for complying with all conditions of approval. Failure to comply with such conditions is a violation of this ordinance, and may result in revocation of the approval in accordance with the provisions of Section 1.3.300.*
3. *At an applicant's request, the County may modify or amend one or more conditions of approval for an application previously approved and final. Decisions to modify or amend final conditions of approval will be made by the review authority with the initial jurisdiction over the original application using the same type of review procedure in the original review.*

FINDING: Staff has listed some conditions of approval to ensure this proposal will comply with CCZLDO.

SECTION 5.0.400 CONSOLIDATED APPLICATIONS:

1. *Applications for more than one land use decision on the same property may be submitted together for concurrent review. If the applications involve different review processes, they will be heard or decided under the higher review procedure. For example, combined applications involving an administrative review and hearings body reviews, will be subject to a public hearing.*
2. *Applications that are paired with a Plan Amendment and/or Rezone application shall be contingent upon final approval of the amendment by the Board of Commissioners. If the Board denies the amendment, then any other application submitted concurrently and dependent upon it shall also be denied.*

FINDING: This is a consolidated application with Administrative Conditional Use and Floodplain.

VI. DECISION:

There is evidence to support the tide gate is a nonconforming use and it can be altered to change the placement with a new structure without impacts to the neighborhood. The temporary use for staging and silt curtains have been approved as well and the acceptance of the flood hazard analyses. There are conditions that apply to this use that can be found at Exhibit "A".