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Coos County Board of Commissioners
250 N. Baxter Street
Coquille, Oregon 97423 April 17, 2024

Re: ACU-23-074/FP-23-012 Hearing, April 17, 2024

The Beaver Slough Drainage District (District) appreciates the opportunity to provide additional comments regarding our ACU-23-074/FP-23-012 application.

BSDD and CCPD Concur – All Applicable Standards and Criteria are Met

The District and our landowner applicants believe application ACU-23-074/FP-23-012 meets all the criteria required by the COOS COUNTY ZONING AND LAND DEVELOPMENT ORDINANCE (CCZLDO) for approval. The CCPD has reached this same conclusion on two separate occasions now in two separate staff reports.¹ The Commissioners should also find BSDD has met all applicable criteria and standards.

The bulk of the project actions are in the EFU Zone and are outright permitted uses in the EFU Zone. Project actions in the CREMP/EFU Zone are a minor portion of the project and the only actions subject to ACU approval or additional conditions. Again, the Commissioners should take note of its staff's determinations that all applicable standards and criteria have been satisfied as it makes its own determination.

CCPD Recommended Conditions Are Not Appropriate

The applicable standard for approval of this application is there are no **significant** changes to accepted farm and forest practices on surrounding lands and no increased costs of accepted farm and forest practices on lands devoted to farm and forest use. The District has submitted extensive supplemental information to address issues identified in the ACU-23-074/FP-23-012 3.21.2024 and 4.10.2024 Staff Reports regarding the potential impacts of project actions. This information, along with prior application documents, demonstrate that there are no anticipated impacts that will force significant changes and significant cost to existing farm and forest practices. The Section 3.3.730 findings of CCPD provide no specific information or evidence regarding **significant** impact or costs to surrounding farm or forest properties. Rather, speculative terms such as "may," "could," "potential," "if" are used by CCPD, and these subjective terms are untethered to any factual basis in the record.

¹ "Overall, the wetland enhancement project is not likely to bring significant changes to accepted farm or forest practices and associated costs for adjacent landowners. The applicants have provided a comprehensive study to show that the project does not intend to have any significant changes to adjacent accepted farm or forest practices or significantly change the cost of Farm or Forest Practices. The applicant did provide additional information specific to the reductions of mosquito population because of this project." (CCPD 4.10.2024 Staff Report, p.26; CCPD 3.21.2024 Staff Report, p.22).

This is an Agricultural Lands Productivity Enhancement Project with Salmon Habitat Benefits

CCPD Staff Report 4.10.2024, page 26, paragraph one refers to “the wetland enhancement project”. This is an inaccurate statement. The project actions in the application are clearly to enable maintenance and improvement of agricultural infrastructure that has been in place for over one hundred years.

CCPD Misinterprets Evidence Provided in Support of the Application

CCPD Staff Report 4.10.2024, page 26, paragraph two the second sentence, “In the applicant’s testimony, it is suggested that there may have been unintentional creation of mosquito habitat during phases I and II of the project, as indicated in Exhibit 11 and 12.” is also inaccurate. Exhibits 11 and 12 are comments from mosquito experts familiar with the application and are both supportive of the project actions having a positive impact on reducing mosquito populations. Additionally, phases I and II were designed and reviewed to ensure all reasonable precautions were taken to not create mosquito habitat.

CCPD Staff Report 4.10.2024, page 26, paragraph three again references “potential unintended mosquito habitat created during prior phases of the project”. To clarify, phases I and II did not create unintended mosquito habitat. The purpose of the phase III application is to provide for maintenance and improvement of infrastructure that was not included in phases I and II due to permitting and timing constraints. BSDD objects to the CCPD characterization of the record on this point and, again for clarity, states that the project is specifically designed to prevent negative impacts from mosquitos and no negative impacts are anticipated.

The County Treatment of this Application is Not Consistent with Its Past Actions

We would also note ACU 23-008, which was for similar infrastructure improvements in much of the same CREMP area in this application, was approved administratively with no hearings just a year ago in 2023. No conditions were recommended or imposed.

To reiterate, this application is simply requesting approval for the maintenance and upgrading of our interior infrastructure to allow us to manage water in a manner that meets individual landowner’s objectives while maintaining productivity and value. Failure to approve this application will result in continued loss of productivity and value for the affected landowners in the District.

Mosquito and Invasive Weed Issues are Regional and Should be Addressed Regionally

Mosquito and invasive weed species management are regional issues – those are outside the scope of this one site-specific project and application. We have clearly addressed the positive impact of the project actions to reduce mosquito and invasive

weed habitat. Additionally, our impact analysis identifies no **significant** changes to accepted farm and forest practices or increased costs on adjacent farm and forest land.

Refusing to approve this application denies the District and our applicant landowners the ability to take the necessary actions, recommended by our engineers and consultants, to remove the conditions that enable mosquitos to be a problem.

Resolving mosquito and invasive weed issues encompasses much more than just the project area in our application. We do not believe a mosquito monitoring and control program for individual entities is a workable solution to resolve a regional mosquito problem. A structured entity with authority to define the scope and size of the mosquito problem and provide viable and timely control measures is necessary. With no clear authority to investigate or provide solutions beyond district or individual property line boundaries the “finger pointing” and controversy will only continue within the community. It is in everyone’s best interests to seek a comprehensive solution for the entire region.

Climate change is also a relevant factor in that warmer temperatures over a longer season combined with unpredictable seasonal rains will provide for more opportunities to produce mosquitos throughout the area.

ORS 452, Vector Control, provides the legal structure and organization to identify the sources of mosquitos within the community and provide the necessary resources to control the problem. Creating a Vector Control District is clearly the responsibility of Coos County and requires its leadership.

Additionally, there are resources and programs already in place within the county to address invasive weed problems. Parrot feather weed is widespread and has been documented in the county for over twenty years.

The district, our landowners, and stakeholders are supporters of and would be willing co-operators in advancing the discussion concerning mosquitos and invasive weeds to create viable solutions for the entire area.

The CCLZDO Does Not Allow Imposing Conditions Here

The CCPD states in its report at page 26: “[The] project is not likely to bring significant changes to accepted farm or forest practices and associated costs for adjacent landowners.” After making that determination, the CCPD admits in its report on page 29 that the record does not contain clear and convincing evidence there will actually be any mosquito or invasive weed issues caused by the project: “These issues have the potential to increase accepted costs and management practices for surrounding property owners. However, the record is not definitive in showing how substantial this increase may or may not be on actual farm and forest practices.

The Commissioner’s should consider those two statements from CCPD and find that the CCLZDO does not allow conditioning this permit if those statements are accurate.

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.

First, the Code allows conditioning of a permit when a condition is “necessary to ensure compliance.” Here, the CCPD recommended Finding is that BSDD has satisfied all ordinance provisions with the information it has presented. That is, there is nothing to be added that is “necessary” for compliance. Without a finding of necessity, the Code does not allow imposing burdensome and expensive conditions on the permit. The Code requires that any condition imposed to be proportional to the extent and amount of anticipated impacts. The CCPD directly says that the record is “not definitive” on whether or not there might be any impacts at all.² The Commissioners should understand that if the record lacks this definition, it is impossible to meet the Code’s requirement than any conditions it imposes must be proportional to the extent and amount of impact. The Code does not give the Commissioners or the CCPD authority to impose conditions on a permit that meets all applicable standards and criteria and when the record is unclear if there “may or may not” actually have an impact at all.

Again, we request approval of the ACU-23-074/FP-23-012 application so we can move forward with resolving our infrastructure issues for the benefit of the District, our landowners, stakeholders, and the community.

Regards,



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² BSDD disagrees with the CCPD statement in that it believes that the record is clear that the project is designed and will be implemented without any significant impacts to established farm/forest uses and that it will not force any significant cost increases on existing farm/forest activities.