

BOARD OF COMMISSIONERS
COUNTY OF COOS
STATE OF OREGON

IN THE MATTER OF AMENDING)
THE COOS COUNTY ZONING) ORDINANCE 24-02-001PL
AND LAND DEVELOPMENT)
ORDINANCE CHAPTER III COQUILLE)
RIVER ESTUARY MANAGEMENT PLAN)
20-INDS (TEXT AMENDMENT AM-24-001))

The Board of Commissioners for the County of Coos ordains as follows:

SECTION 1. TITLE

This Ordinance shall be known as “Coos County Ordinance No. ORDINANCE 24-02-001PL.”

SECTION 2. AUTHORITY

This Ordinance is enacted pursuant to the provisions of ORS 203.035 and ORS Chapter 215.

SECTION 3. PURPOSE

The purpose of this Ordinance is to amend Coos County Ordinance 85-03-004L and amendments hereto, which is the Coos County Zoning and Land Development Ordinance that implements Volumes I, II, and III of the Coos County Comprehensive Plan; this Ordinance therefore amends Ordinance 85-03-004L.

SECTION 4. FINDINGS

The Board of Commissioners find this amendment complies with Oregon Statewide Planning Goals as demonstrated in Exhibit “A” Findings of Fact .

SECTION 5. ADOPTION OF AMENDMENTS TO THE COOS COUNTY COMPREHENSIVE PLAN AND TO THE COOS COUNTY ZONING AND LAND DEVELOPMENT ORDINANCE

Ordinance 82-08-015L and amendments thereto and Ordinance 85-03-004L and amendments thereto are repealed to the extent that they conflict with this Ordinance. Said Ordinance shall remain in full force and effect in all other respects.

SECTION 6. REPEAL OF INCONSISTENT ORDINANCES

Coos County Ordinance Ordinance 85-03-004L and amendments thereto are repealed to the extent that they conflict with this Ordinance. Said Ordinance shall remain in full force and effect in all other respects.

SECTION 7. SEVERANCE CLAUSE

If any section, subsection, provision, clause or paragraph of this Ordinance shall be adjudged or declared by any court of competent jurisdiction to be unconstitutional or invalid, such judgement shall not affect

the validity of the remaining portions of this Ordinance; and it is hereby expressly declared that every other section, subsection, provision, clause or paragraph the Ordinance enacted, irrespective of the enactment or validity of the portion thereof declared to be unconstitutional or invalid, is valid.

SECTION 8. SAVINGS CLAUSE

Unless otherwise specified herein, the adoption of this Ordinance shall have no effect on existing litigation and shall have no effect on any action or proceeding pending on the date of adoption of this Ordinance.

SECTION 9. EMERGENCY CLAUSE

The Board of Commissioners for the County of Coos deems this Ordinance necessary for the immediate preservation and protection of the public peace, safety, health and general welfare for Coos County and declares an emergency exists, and this Ordinance shall be in full force and effect upon its passage.

Adopted this Dated this 24th day of April, 2024

BOARD OF COMMISSIONERS

ATTEST

Michelle Berglund

Recording Secretary

Approved as to form:

Cotton Totland

Office of Legal Counsel

J. W. Smith
Chair Acting chair

Absent

Vice Chair

Robt Bob Marin
Commissioner

1st Reading: April 4, 2024
2nd Reading: April 24, 2024
Effective Date of Adoption: April 24, 2024

Exhibit "A" Findings of Fact

FILE NUMBER: AM-24-001
APPLICANT(s): Lee Tony Coombes
REPRESENTATIVE: Robert S. "Robin" Miller III
RECORD: Record items can be viewed online at:
AM-24-001

SUMMARY/REQUEST: The proposal is to amend the allowable uses within the Coquille River Estuary Management Plan (CREMP) Industrial Shoreland Segment 20 (20-INDS).

The applicant would like to site a dwelling in conjunction with a high intensity recreational use and has provided three options to allow this to use to happen:

The proposed text is found below:

SECTION 3.3.500 DEVELOPMENT AND USE PERMITTED: The following uses and activities are permitted outright in the in the CREMP-IND.

1. Residential
 - a. **Single Family Dwelling**/Watchman/Caretaker shall not be permitted in IND Shoreland Segments 14 and 16. All other IND Shoreland Segment must comply with the following:
 1. This use permitted only if in conjunction with a permitted or conditionally permitted use **including an established recreational dock**; and
 2. This use is subject to the provisions of CREMP Policy #18 **and** #27.

SECTION 3.3.510 ADMINISTRATIVE CONDITIONAL DEVELOPMENT AND USE: The following uses and activities are permitted under an administrative conditional use permit CREMP-IND.***

14. High-intensity recreation:
 - a. In IND Shoreland Segments 14, 20 and 40 this use may be permitted subject to the provisions of CREMP Policies #14, #18 and #27.
 - b. In IND Shoreland Segments 16 and 54 this use may be permitted subject to the provisions of CREMP Policies #14 and #27.
 - c. In IND Shoreland Segment 45 this use may be permitted subject to the provisions of CREMP Policies #23 and #27.
 - d. In IND Shoreland Segment 52 this use may be permitted subject to the provisions of CREMP Policy #27.
 - e. **In IND Shoreland Segment 20 this use may allow for a Single Family Dwelling in conjunction with an existing recreational use to be consistent with the management**

unit purpose. This is subject to addressing CREMP Policies #14, #18 and #27. The Dwelling may be used as seasonal or vacation rental.

16. Commercial:***

c. Non-water-dependent/related is prohibited in IND Shoreland Segments 14, 16 and 40 all other IND Shoreland Segments shall address the applicable standards as follows:

- i. In IND Shoreland Segment 20 this use may be permitted subject to the provisions of CREMP Policies #14, #18 and #27.
- ii. In IND Shoreland Segment 54 this use may be permitted subject to the provisions of CREMP Policies #14 and #27.
- iii. In IND Shoreland Segment 45 this use may be permitted subject to the provisions of CREMP Policies #23 and #27.
- iv. In IND Shoreland Segment 52 this use may be permitted subject to the provisions of CREMP Policy #27.
- v. The commercial use is located in building or buildings not to exceed the floor area standards set forth in OAR 660-022-0030(10). New commercial structures authorized outside a UCB or UGB shall not exceed 3,500 square feet of floor area.
- vi. ***In IND Shoreland Segment 20 a Single Family Dwelling may be permitted as a non-water use providing it does not pre-empt a permitted commercial and/or industrial uses. The use is subject to CREMP Policies #14, #18, and #27***

I. APPLICABLE CRITERIA

COOS COUNTY ZONING AND LAND DEVELOPMENT ORDINANCE (CCZLDO)

COOS COUNTY ZONING AND LAND DEVELOPMENT ORDINANCE (CCZLDO)

- o Article 5.1 Plan Amendments and Rezones

COOS COUNTY COMPREHENSIVE PLAN

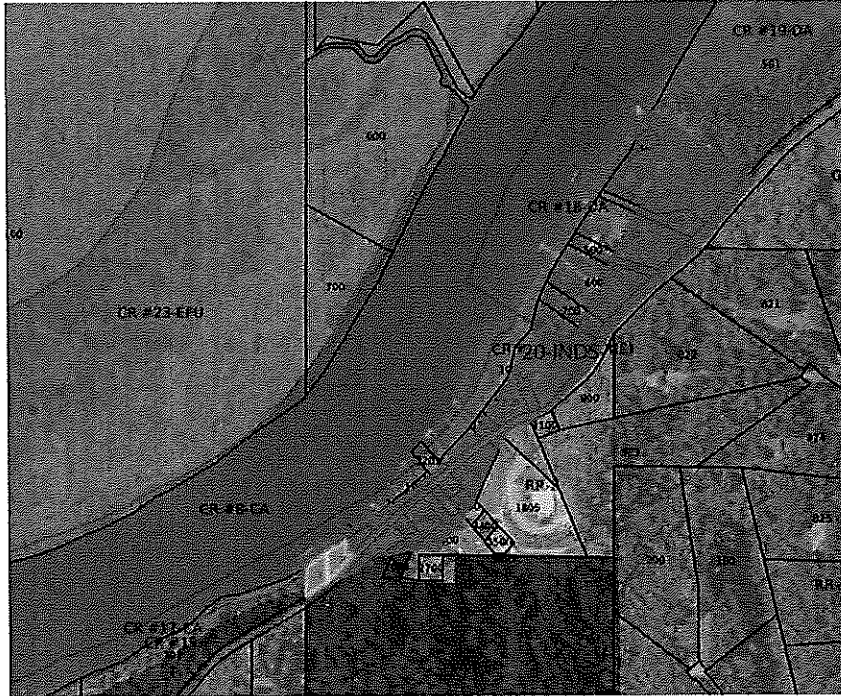
- o Volume III, Parts I, II, and III

OREGON'S STATEWIDE PLANNING GOALS & GUIDELINES GOALS

- o 16 Estuarine Resources
- o 17 Coastal Shorelands
- o 18 Beaches and Dunes

II. BASIC FINDINGS

SITE DESCRIPTION AND LAND USE HISTORY: This request is for a text amendment to accommodate a use (Single Family Dwelling) as a non-water use in the Industrial Shoreland Segment 20 (20-INDS). This request would potentially allow a dwelling on 28 properties but that is narrowed down to properties that have an established recreational dock. The orange color below represents the 20-INDS and the yellow within the red represents the applicant's ownership.



COOS COUNTY COMPREHENSIVE PLAN BACKGROUND:

The Coquille River Estuary Task Force took great care to ensure that the policies were understandable and internally consistent. However, the complexity of the Coastal Goals and related Statutes, Administrative Rules and Land Conservation and Development Commission (LCDC) Policies were such that the language needed to be both complex and lengthy in some instances. Wherever possible the relevant statutes, rules and LCDC Policies are cited, so that the user may go to the source if necessary. Much of the language is based directly on explicit requirements in the Coastal Goals, which should be referred to when questions arise as to the origin of the policy.

- **Function of the Plan Map and Use/Activity Matrices**

The Plan map for the Coquille River Estuary Management Plan is an official policy document, which has the same statutory force as the policy contained in the Plan Provisions Section. The aquatic and shoreland use designations indicate the broad purpose and types of uses planned for each “Management Unit” on the map. Indeed, within the unincorporated County, the use designations are identical with those used elsewhere throughout the rest of the County. The Use/Activity Matrices for the aquatic and shoreland areas are also, however, part of the Plan Provisions. They are, in turn, supplemented by an implementing Zoning Ordinance for the unincorporated part of the Coquille River Coastal Shorelands area. Inside city limits, they are supplemented by the respective city-zoning ordinance, where it may be necessary to distinguish more narrowly-defined use-types. The Coos County Land Development Ordinance provisions will apply to land inside the shoreland boundary, based on applicable policies in this Plan. For

instance, in the case where land divisions are permitted, partitions and subdivisions following the same procedures as in the rest of the County.

- **PROBLEMS AND OPPORTUNITIES - COQUILLE RIVER ESTUARY**

- **Water Quality:**

Water quality problems are not generally serious, but are aggravated by a slow rate of flushing; they include occasional high coliform bacteria counts, summer high water temperatures and seasonal high turbidity/sediment.

Seasonal saltwater intrusion is a problem at the Coquille municipal water intake and the Roseburg Lumber mill. It is also a problem for agricultural irrigation.

- **Sedimentation and Shoaling:**

There are several areas in the river where the deposition of sediment has caused serious shoaling, sometimes preventing the passage of even small recreational boats and limiting future use by barges or other commercial traffic.

- **Flooding:**

Widespread flooding of the valley floor occurs every winter; major floods in recent years have caused substantial loss of stock and property damage.

Flooding in the lower riverine section is exacerbated by salinity, which causes damage to economically valuable forage crops.

- **Erosion:**

Serious seasonal streambank erosion is occurring on parts of the Coquille River, especially between Coquille and Myrtle Point, which destroys valuable agricultural land, contributes to shoaling and turbidity, and may undermine roads and other structures.

- **Jetties and Channel Entrance:**

There are persistent problems with the building of sediment in the channel entrance from littoral transport during late summer months, creating rough water and a different bar crossing, which interfere with navigation.

Storm surges tend to be directed toward the Bandon Boat Basin because of the breakwater orientation, causing rough water and damage to boats.

The South Jetty area is experiencing serious erosion, which threatens a road and property, due to the disintegration of a former jetty extension.

- **Effects of Dredging:**

Though the biological effects of annual maintenance dredging are relatively slight, new dredging

can cause substantial direct and indirect biological and physical changes in the estuary; these can be minimized, however, with greater knowledge of the physical and biological systems affected and careful timing of operations.

- **Agricultural Drainage Problems:**

Ponding of floodwater and high-water tables cause serious drainage problems for farmers; the maintenance of dikes, tidegates, and drainage ditches is very important and will be hampered by a recent cut-off of federal funds where “wet meadow” wetlands are involved.

- **Disused Pilings and Snags:**

The Coquille River contains a large number of disused pilings and snags, which can cause obstruction to boat passage, accumulate debris, and worsen erosion and sedimentation problems.

Fishing: The lack of federal dollars to increase the boat basin space and repair the poor bar conditions have inhibited the development of the fishing industry, while the abundant ocean resources provide great potential for this sector of the local economy.

A shortage of processing facilities for most types of fish products in Bandon has caused fish landed there to be sold and processed in Charleston.

Salmon ranching and Salmon and Trout Enhancement Program (S.T.E.P.) can provide opportunities for growth of the Bandon fishing industry.

- **General Economy:**

The Coquille Valley suffers from the inherent problems of an undiversified economy based on the wood products industry: seasonally, a dwindling resource base, automation and cyclical demand, with resulting severe unemployment problems.

There is a scarcity of suitable back-up land in the Bandon area for water-dependent uses.

- **Bandon Boat Basin:**

Since the initial adoption of the Coquille River Estuary Management Plan, the existing Bandon Boat Basin has been updated and completed for commercial and recreational boaters use.

- **Tourism/Recreation:**

Tourism and water-based recreation can provide a needed boost to the Coquille Valley economy, particularly Bandon; revitalization of the Bandon waterfront and increased use of the river are two of the best opportunities for growth of the tourist economy.

- **Sites for Water-Dependent Industrial/Commercial/Recreational Uses:**

The Coquille River Estuary suffers from a shortage of suitable and readily available sites for water-dependent uses, which would comply with the Statewide Planning Goals.

- **Recreational Fishing Access:**

Certain sections of the Coquille River lack access for recreational fishing both for boats and bank fishing.

Existing boat ramps are in need of frequent maintenance dredging and further improvement of facilities.

- **Historical/Archaeological and Cultural Sites:**

Development needs may in the future conflict with the protection of historical, cultural, and archaeological sites; in addition, there are many unrecorded and even undiscovered archaeological sites, which may be unearthed in the process of development.

- **Areas of Scientific Importance:**

Since the acknowledgment of the CREMP the Bandon saltmarsh has been acquired by the U.S. Fish and Wildlife Service. The saltmarsh is now called the “Bandon Marsh National Wildlife Refuge” and totals 712 acres.

- **Waterfowl Habitat:**

Elimination of habitat areas suitable for migratory wildfowl causes a reduction in the resources available to support the population, while continuation of customary agricultural practices is generally compatible with the protection of migratory wildfowl habitat, removal of tidal marsh and mudflat areas from the estuarine system together with similar actions in other estuaries may have a long-term effect of reducing wildfowl numbers.

- **Research Needs:**

Generally, the state of knowledge about the biological resources of the Coquille River Estuary, particularly the riverine section, can be characterized as sketchy at best. This means that the effects of dredging and other improvements to the river channel and various fish and wildlife management actions are not known for certain.

- **Riparian Vegetation:**

Indiscriminate removal of riparian vegetation may contribute to bank instability, erosion, and elevated water temperature, all of which can have secondary physical and biological effects.

- **Mitigation/Restoration Sites:**

Mitigation and restoration are as yet relatively untried concepts on Oregon’s estuaries. Problems exist on the Coquille as elsewhere in finding suitable and readily available sites, in matching development projects with suitable sites, and in actually implementing a mitigation/restoration plan. Private owners, in particular, may resist the identification of potential mitigation/restoration sites on their property, particularly on which was formerly diked farm land.

General Statewide Planning Goal Statements:

Section 3.1 Estuarine Resources Goal #16

Local governments shall recognize and protect the unique environmental, economic, and social values of the Coquille River Estuary and its associated wetlands.

They shall also protect, maintain, where appropriate develop, and where appropriate restore the long-term environmental, economic, and social values, diversity, and benefits of the Coquille River Estuary.

The Coquille River Estuary Management Plan provides and shall continue to provide for appropriate uses (including preservation) with as much diversity as is consistent with the overall Oregon Estuary Classification (OAR 660-17-000), as well as with the biological economic, recreational, and aesthetic benefits of the Estuary.

The Plan shall protect the estuarine ecosystem, including its natural biological productivity, habitat, diversity, unique features, and water quality.

Section 3.2 Coastal Shorelands Goal #17

Local governments shall strive to conserve, protect, where appropriate restore the resources and benefits of all coastal shorelands of the Coquille River Estuary, recognizing their value for protection and maintenance of water quality, fish and wildlife habitat, water-dependent uses, economic resources, and recreation and aesthetics.

They shall also manage the coastal shoreland areas in a way that is compatible with the characteristics of the adjacent coastal waters.

They shall also strive to reduce the hazard to human life and property, and the adverse effects upon water quality and fish and wildlife habitat, resulting from the use and enjoyment of the Coastal Shorelands of the Coquille River Estuary.

The Coquille River Estuary Management Plan and related implementing actions and permit reviews shall include consideration of the critical relationships between coastal shorelands and resources of coastal waters, and of the geologic and hydrologic hazards associated with coastal shorelands. Local governments shall within the limit of their authority maintain the diverse environmental, economic, and social values of coastal shorelands and water quality in coastal waters. Within those limits, the local governments shall include minimizing man-induced sedimentation in estuaries, near shore ocean waters, and coastal lakes.

Section 3.3 Beaches and Dunes Goal #18

Local governments shall strive to conserve, protect, where appropriate develop, and where appropriate restore the resources and benefits of coastal beach and dune areas within the coastal shorelands of the Coquille River Estuary.

They shall also strive to reduce the hazard to human life and property from natural or man-induced actions associated with these areas.

The Coquille River Estuary Management Plan and implementing actions shall provide for diverse and appropriate use of beach and dune areas consistent with their ecological,

recreational, aesthetic, water resource, and economic values, and consistent with the natural limitations of beaches, dunes and dune vegetation for development.

PLAN POLICIES:

Local governments shall officially recognize the Coquille River Estuary as a “Shallow Draft Development Estuary”, consistent with the overall Oregon Estuary Classification).¹ Further, the estuary management plan’s allowed uses and activities are and must remain, consistent with the “shallow-draft development” designation and the estuarine management unit requirements of Goal #16. The upland uses are determined to be consistent with the adjacent aquatic uses and compliant with the Goals #17 and #18. Policies that apply to upland uses are

- #13 Overall Use Priorities within Coastal Shorelands
- #14 General Policy on Uses within Rural Coastal Shorelands
- #15 Land Divisions within Rural Shorelands
- #16 Protection of Sites Suited to Water-Dependent Uses; and Special Allowance for New Non-Water-Dependent Uses is “Urban Water-Dependent (UW)” Units, which are “Suitable for Water-Dependent Uses”; and Potential Sites Suited to Water-Dependent Uses; and Protection of Sites Suited to Water-Dependent Uses in Future Urbanizable Areas
- #16a Rural, Urban, and Unincorporated Communities Use Standards
- #16b Potential Sites Suitable for Water-Dependent Uses
- #16c Protection of Sites Suited to Water-Dependent Uses in Future Urbanizable Areas
- #17 Protection of “Major Marshes” and “Significant Wildlife Habitats” in Coastal Shorelands
- #18 Protection of Historical, Cultural and Archaeological Sites
- #19 Management of “Wet-Meadow” Wetlands within Coastal Shorelands
- #20 Dredged Material Disposal Sites
- #21 Mitigation and Restoration Sites
- #22 Mitigation Sites: Protection against Preemptory Uses
- #22a Acquisition and Protection of Mitigation/Restoration and Dredged Material Disposal Sites
- #23 Riparian Vegetation/Streambank Protection
- #24 Waste Water/Storm Water Discharge
- #27 Floodplain Protection within Coastal Shorelands
- #28 Recognition of LCDC Goal #3 (Agricultural Lands) Requirements for Rural Lands within the Coastal Shorelands Boundary
- #29 Restricting Actions in Beach and Dune Areas that are “Unsuitable for Development”
- #30 Restricting Actions in Beach and Dune Areas with “Limited Development Suitability”; and Special Consideration for Sensitive Beach and Dune Resources

¹ OAR 660-17-010(3), as amended.

- #31 (Reserved)
#34 Recognition of LCDC Goal #4 (Forest Lands) Requirements for Rural Lands within the Coastal Shorelands Boundary

Within these policies each management² unit or segment has been reviewed to determine appropriate uses. Some areas have exceptions to the statewide planning goals to permit more intensive uses, such as the proposed amendment. This management unit is classified as a Water-Dependent Development Shorelands³ unit, but within that unit, it has been zoned industrial. This implies that the uses are in line with Policies 13 and 14, but they are further limited by specific exceptions to the Statewide Planning Goals to facilitate a particular use (such as a marina) in this area.

Industrial Shoreland Segment 20 (20-INDS) shall be managed to develop this area of historic water-front development for industrial and commercial uses connected with boat building, repair, port operations, moorage and other water-dependent or related uses.

As consistent with Policy #13, most uses are water-dependent and accessory to the water-dependent uses. The Plan restricts residential developments listed in Policy #14 (which is based on Statewide Planning Goal 17) to accessory housing in the form of a watchman or caretaker who needs to reside on-premise to serve a water-dependent use.

The applicant is requesting to expand the housing to be in conjunction with an approved recreational use. Staff believes this can be accomplished within the current policies and exception.

Exception Background:

An exception was made to accommodate the tourism industry which would require dredging of the marina area in the adjacent aquatic area. The upland areas were designated as industrial based on the fact that certain uses were accessory to the recreational boating industry. The concept was to establish a marina complete with moorage, docks, lodging, and all necessary facilities to support recreational activities in that area. The justification for this zoning was completed through a committed exception.

² A discrete geographic area, defined by biophysical characteristics and features, within which particular uses and activities are promoted, encouraged, protected, or enhanced, and others are discouraged, restricted, or prohibited. Management units are delineated on the Plan map, and provide a framework for policy decisions embodied in Volume II, Part 1, Section 5.2 of this Plan.

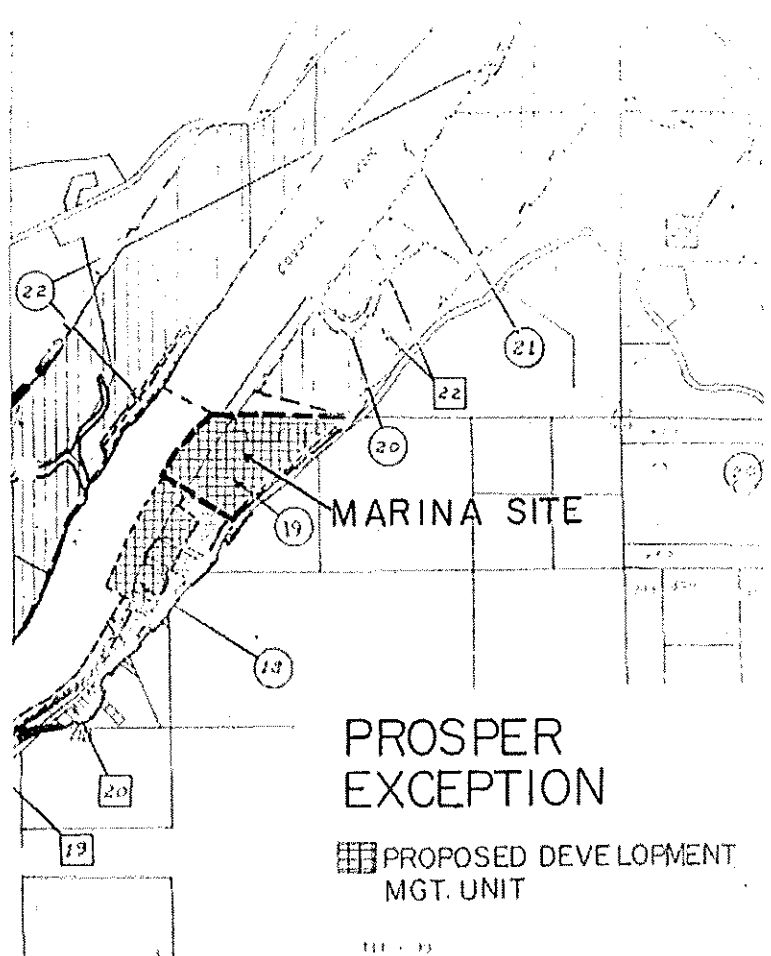
³ areas managed for water-dependent uses and some of these areas are suited for water-dependent development. Water-related and other uses are restricted to specific instances prescribed in unit management objectives. Water-Dependent Development Shoreland areas are always located outside of urban growth boundaries, and satisfy needs that cannot be met within urban growth boundaries.

The proposed marina is intended to provide live-aboard moorage for yachts and other recreational craft. This service, together with the boat repair, yacht club, and lodge, will draw boatowners from a wide area specifically to visit Prosper. As a related note, the Overall Economic Development Plan (OEDP) specifically pointed out that there is insufficient existing moorage, launch, and parking facilities to satisfy projected recreational boating. Thus, the proposed uses will be a destination center for the marina users. Beyond satisfying the needs of the marina users, the lodge is intended to be large enough to provide a facility to attract other visitors (including large groups) to stay longer than the current average 1.6 days.

The exception process in Oregon's Statewide Planning Goals framework allows for special permissions or deviations from established guidelines under specific circumstances. In the case of this particular project, the exception was granted to apply industrial zoning for a tourism-oriented development, specifically a marina with associated facilities. While the project itself did not come to fruition, the need for such development or funding constraints may have been factors.

Proposing a change in zoning may require new justifications and reasons for an exception, as the original exception was granted for a specific project and economic development purpose. Any deviation from the Statewide Planning Goals necessitates a thorough explanation and demonstration of consistency. However, the exception taken for this area was for the entire development. The new upland use will require consistency with the plan and zoning designation.

The amendment process involves public hearings, reviews by the Planning Commission and Board of Commissioners, with the aim of balancing specific needs or circumstances against broader planning objectives and values. While exceptions are not mandatory for all Statewide Planning Goals, they must be addressed for compliance. It's important to note that while the subject property was included in the exception, the main area proposed for the marina was not.



The property is located on the southwestern edge of Unit 20, adjacent to Units 18 and 19, where the main part of the marina was projected to be developed. Unit 20 supports the proposed development and is part of the "committed areas". Due to its riparian location, it was considered better suited for industrial designation than for residential use. Unit #20, also known as Prosper waterfront, as mentioned in CCCP Volume III 5.5, possesses flat back-up land, easy access to the channel, is an area of historic importance for boat building and repair, and is within a reasonable distance of the Bandon waterfront. It is needed for boat building and repair because adequate flat back-up land is scarce in Bandon, where any available land is better used for fish processing or other fishing-related uses. This proposal was envisioned in the plan in the late 1970's but has not come to fruition, and at this time, it would be suitable to consider alternatives for this area. It is important to ensure that the change would be consistent with the exception area as well as surrounding zoning.

The applicant requested a pre-application meeting for this property in 2023 to explore the possibility of establishing a dwelling and to gain a better understanding of the applicable regulations. Although the property had received approval for the dock and accessory structure, there had been no approval for a dwelling. The request made during the pre-application meeting

was to convert an accessory structure (referred to as a "dry cabin") into an approved residential dwelling.

To achieve this, three potential options were presented:

- Under the current zoning, the only option to site a dwelling is to establish a watchman/caretaker dwelling, but it must be in conjunction with a permitted or conditionally permitted use-based on a water-dependent industrial or commercial use. The property has a private recreational development and not a commercial or industrial development.
- Rezoning the property to another zoning category that would allow for a single-family dwelling. However, this option would necessitate selecting a zoning category similar to the current one, potentially resulting in spot zoning.
- Seeking a text amendment to allow for the proposed use, with limits to ensure consistency with the management objectives and the goal exception that can be allowed under the current zoning.

During the meeting, all options were discussed, and the applicant chose a text amendment as the appropriate avenue. Staff supports this decision.

Comments:

PUBLIC AGENCY COMMENTS: The Post Acknowledged Plan Amended was filed with Department of Land Conservation and Development within the 35-day requirements. There have been no comments received on this proposal.

PUBLIC COMMENTS: The Planning Department mailed notice of this application to all property owners within zoning district and all agencies required on March 15, 2024. The notices were posted as required by Section 5.0.900. There have been no public comments filed.

III. FINDINGS & CONCLUSIONS

A. ARTICLE 5.1 REZONES

(a) *SECTION 5.1.100 LEGISLATIVE AMENDMENT OF TEXT ONLY:*

An amendment to the text of this ordinance or the comprehensive plan is a legislative act within the authority of the Board of Commissioners. [OR 04 12 013PL 2/09/05]

FINDING: This is an amendment to the text of the ordinance that implements Volume III of the Coos County Comprehensive Plan, Coquille River Estuary Management Plan. The Board of Commissioners are the final decision makers in this matter. The Planning Commission reviewed the matter on April 4, 2024 and recommended approval to the Board of Commissioners. The Board heard the matter on April 24, 2024 and found that the proposal met the requirements. Therefore, this has been complied with.

(b) SECTION 5.1.110 WHO MAY SEEK CHANGE:

Coos County shall consider the appropriateness of legislative plan text and map amendment proposals upon:

1. *A motion by the Board of Commissioners; or*
2. *A motion of the Planning Commission; or*
3. *The submission of formal request made by either:*
 - a. *The Citizen Advisory Committee; or*
 - b. *An application filed by a citizen or organization, accompanied by a prescribed filing fee. If a Measure 56 notice is required the applicant shall be responsible for the payment of all cost associated with that service.*

FINDING: The application was submitted by the landowners, thus placing it under the purview of 3b for review. As part of the review process, notice was issued to all property owners within the management unit (Zoning District). The notice was small in scale and did not result in any additional filing fees beyond those covered under the application fee.

(c) SECTION 5.1.115 ALTERATION OF A RECOMMENDED AMENDMENT BY THE PLANNING DIRECTOR:

The Planning Director may recommend an alteration of a proposed amendment if, in the director's judgment, such an alteration would result in better conformity with any applicable criteria. The Planning Director shall submit such recommendations for an alteration to the Hearings Body prior to the scheduled public hearing for a determination whether the proposed amendment should be so altered.

FINDING: The Planning Director did not request to amend the proposal. The proposal was found to be consistent with the discussion that happened in the pre-application meeting.

(d) SECTION 5.1.120 PROCEDURE FOR LEGISLATIVE AMENDMENT:

The Board of Commissioners shall conduct one or more public hearings with 10 days advance published notice of each of the hearings. The public notice shall state the time and place of the hearing and contain a statement describing the general subject matter of the ordinance under consideration. (ORS 215.060 & ORS 215.223). Notice to DLCD shall be provided 35 days prior to the initial hearing per ORS 197.610. Notice of adoption is subject to ORS 197.615. [OR 04 12 013PL 2/09/05]

FINDING: Staff published and mailed notices as required. All documentation is on file with the Planning Department.

(e) SECTION 5.1.125 MINOR TEXT CORRECTIONS:

The Director may correct this ordinance or the Comprehensive Plan without prior notice or hearing, so long as the correction does not alter the sense, meaning, effect, or substance of any adopted ordinance. [OR 04 12 013PL 2/09/05]

STAFF FINDING: This is not applicable to this request.

(f) SECTION 5.1.130 NEED FOR STUDIES:

The Board of Commissioners, Hearings Body, or Citizen Advisory Committee may direct the Planning Director to make such studies as are necessary to determine the need for amending the text of the Plan and/or this Ordinance. When the amendment is initiated by application, such studies, justification and documentation are a burden of the initiator.

STAFF FINDING: The applicant has provided justification, studies and documents to support the application proposal.

(g) SECTION 5.1.135 STATUS OF HEARINGS BODY RECOMMENDATIONS TO THE BOARD OF COMMISSIONERS:

A Hearings Body recommendation for approval or approval with conditions shall not in itself amend this Ordinance or constitute a final decision.

FINDING: The Hearings Body recommend to the Board of Commissioners the second option with a clarification the new use can be sited in conjunction with a “high-intensity” recreational use as defined in Chapter II of the CCZLDO. This is consistent with the plan and the intent of the exception area. The change in the language is show in bold below.

*SECTION 3.3.510 ADMINISTRATIVE CONDITIONAL DEVELOPMENT AND USE: The following uses and activities are permitted under an administrative conditional use permit CREMP-IND. ****

14. High-intensity recreation:

- f. In IND Shoreland Segments 14, 20 and 40 this use may be permitted subject to the provisions of CREMP Policies #14, #18 and #27.*
- g. In IND Shoreland Segments 16 and 54 this use may be permitted subject to the provisions of CREMP Policies #14 and #27.*
- h. In IND Shoreland Segment 45 this use may be permitted subject to the provisions of CREMP Policies #23 and #27.*
- i. In IND Shoreland Segment 52 this use may be permitted subject to the provisions of CREMP Policy #27.*
- j. In IND Shoreland Segment 20 this use may allow for a Single Family Dwelling in conjunction with an existing high intensity recreational use to be consistent with the**

management unit purpose. This is subject to addressing CREMP Policies #14, #18 and #27. The Dwelling may be used as seasonal or vacation rental.

B. STATEWIDE PLANNING GOALS:

Statewide Planning Goal #17 OAR Chapter 660 Division 37 – Water-Dependent Shorelands

OAR 660-037-0030

- (1) This division applies to any post-acknowledgment plan amendment or periodic review work task that:
 - (a) Would directly affect a designated water-dependent shoreland site; and*
 - (b) Is initiated on or after the effective date of this division.**
- (2) For purposes of this division, a designated water-dependent shoreland site is directly affected when any post-acknowledgment plan amendment or periodic review work task would:
 - (a) Change the size or shape of the site;*
 - (b) Allow or authorize a nonwater-dependent use or activity at a site, unless the use or activity is a “permissible nonwater-dependent use” as allowed by Goal 17 Coastal Shoreland Uses Requirement 2 (OAR 660-015-0010(2)); or*
 - (c) Prohibit all water-dependent uses and activities at the site.**
- (3) For purposes of this division, a post-acknowledgment plan amendment is “initiated” when a local government files a proposed amendment to or adoption of a comprehensive plan or land use regulation with the director in accordance with OAR 660-018-0020.*
- (4) For purposes of this division, a periodic review work task is “initiated” when a local government’s periodic review work program is approved in accordance with OAR 660-025-0100 or modified in accordance with OAR 660-025-0100.*
- (5) This division does not mandate any changes to existing local comprehensive plans or land use regulations for water-dependent shorelands. Local cities and counties may retain their existing comprehensive plan designations and land use regulation designations for water-dependent shorelands.*

660-037-0040 - Definitions

- (6) “Water-Dependent Use.”
 - (a) The definition of “water-dependent” contained in the Statewide Planning Goals (OAR chapter 660, division 015) applies. In addition, the following definitions apply:
 - (A) “Access” means physical contact with or use of the water.*
 - (B) “Requires” means the use either by its intrinsic nature (e.g., fishing, navigation, boat moorage) or at the current level of technology cannot exist without water access.*
 - (C) “Water-borne transportation” means uses of water access:
 - (i) Which are themselves transportation (e.g. navigation);*
 - (ii) Which require the receipt of shipment of goods by water; or****

- (iii) *Which are necessary to support water-borne transportation (e.g. moorage fueling, servicing of watercraft, ships, boats, etc. terminal and transfer facilities).*
 - (D) *“Recreation” means water access for fishing, swimming, boating, etc. Recreational uses are water dependent only if use of the water is an integral part of the activity.*
 - (E) *“Energy production” means uses which need quantities of water to produce energy directly (e.g. hydroelectric facilities, ocean thermal energy conversion).*
 - (F) *“Source of water” means facilities for the appropriation of quantities of water for cooling processing or other integral functions.*
- (b) *Typical examples of water dependent uses include the following:*
- (A) *Industrial — e.g., manufacturing to include boat building and repair; water-borne transportation, terminals, and support; energy production which needs quantities of water to produce energy directly; water intake structures for facilities needing quantities of water for cooling, processing, or other integral functions.*
 - (B) *Commercial — e.g., commercial fishing marinas and support; fish processing and sales; boat sales, rentals, and supplies.*
 - (C) *Recreational — e.g., recreational marinas, boat ramps, and support.*
 - (D) *Aquaculture.*
 - (E) *Certain scientific and educational activities which, by their nature, require access to coastal waters — estuarine research activities and equipment mooring and support.*
- (c) *For purposes of this division, examples of uses that are not “water dependent uses” include restaurants, hotels, motels, bed and breakfasts, residences, parking lots not associated with water-dependent uses, and boardwalks.*

Finding: The proposal aims to introduce the use of a single-family dwelling as an accessory to an approved recreational use. This aligns with the criteria outlined in Statewide Planning Goal #17 and OAR Chapter 660 Division 37 - Water-Dependent Shorelands.

According to the definitions provided in OAR 660-037-0040, water-dependent uses are those that require physical contact with or use of the water and cannot exist without water access. Typical examples of water-dependent uses include industrial activities like boat building and repair, commercial activities such as commercial fishing marinas, recreational activities like recreational marinas, and aquaculture.

In this case, the proposed single-family dwelling would serve as an accessory to an approved high intensity recreational use, which falls within the scope of water-dependent uses. While residences are typically not considered water-dependent uses, the proposal specifies that the dwelling would be accessory to an approved recreational use, thus ensuring its compliance with the criteria outlined in Statewide Planning Goal #17 and OAR Chapter 660 Division 37.

C. COQUILLE RIVER ESTUARY MANAGEMENT PLAN:

5.5 Exception Statement for Dredged Marina at Prosper to Goals #3 (Agricultural Lands), #16 (Estuarine Resources) and #17 (Coastal Shorelands)

The proposed uses discussed in this Exception are of two types: marina uses located within the Coquille River Estuary Coastal Shorelands Boundary (CSB) and upland uses located adjacent to the marina across Prosper Road. The marina uses include a recreational marina intended primarily for live-aboard yacht moorage (temporary occupancy), public fishing pier, and floating marina-related shops (e.g. ship's chandlery, gift shops). The marina-related shops are proposed as non-water-dependent uses not requiring fill as defined by the Statewide Planning Goals (see Proposed Exception discussion below). The marina and public fishing pier are proposed as water-dependent recreational/ commercial uses.

The proposed upland uses include a yacht club, hotel/ convention center, tennis courts, nature trails, parking lot, and sewage treatment facilities. Only the marina uses fall within the CSB and jurisdiction of the U.S. Army Corps of Engineers (Section 404 of the 1977 Clean Water Act, and Section 10 of the 1899 Rivers and Harbors Act) and the Oregon Division of State Lands (ORS 541.605-541.665). Coos County recognizes that the combined marina and upland uses need to be evaluated in this Exception so that the Department of Land Conservation and Development (DLCD) and other reviewing agencies have adequate information with which to examine the marina permit applications currently filed with the Corps and Division of State Lands. For this reason, the term "proposed uses" in this Exception means both the marina and upland uses described above.

Proposed Exceptions: Three Exceptions to justify the proposed marina uses discussed above are presented below. The Exceptions are needed because development of the Coquille River Estuary Management Plan has shown that it is not possible to apply Goals #3, #16 and # 17 to the Prosper site for the proposed uses.

An Exception to Goal #3 is required because the site contains Soil Conservation Class III W "agricultural soils" which must be protected for farm uses under Goal #3 (Agricultural Lands). A recreational marina is not a farm use as defined by the Goal.

The estuarine portion of the site is a tidal marsh and intertidal flat, which are both "significant habitat" which are smaller and of less biological importance than "major tracts" of these habitat types elsewhere in the estuary. Therefore, according to Goal #16 (Estuarine Resources), they would normally be placed in a Conservation management unit.

This Exception will provide the four-fold findings to justify a Development Management Unit for the entire area of the proposed marina. In addition, findings are included to support a conclusion that the non-water-dependent, non-water-related uses (floating marina-related shops) are consistent with the resource capabilities and purposes of the proposed Development Management Unit.

An Exception to Goal #17 is required because the marina site has been identified as "significant wildlife habitat", which must be protected under Goal #17 (Coastal Shoreland Uses # 1) for uses

“consistent with protection of natural values”. The proposed marina would not protect the existing natural shoreland values.

The Exceptions addressed the four tests required by Goal #2 (Land Use Planning) for the proposed uses. In summary, the marina should be “provided for” because it will create needed basic jobs, help diversify the local economy, enhance the overall attractiveness of the area as a tourist destination and help to satisfy a growing need for moorage for large recreational boats. Alternative sites have been identified and evaluated. It is concluded that the Prosper site would best serve both the public interest and the applicant’s interest because of the site’s locational characteristics and potential to create the most favorable economic consequences, while minimizing adverse environmental consequences. Coos County and the project proponents recognize the authority of the Oregon Division of State Lands to require mitigation for fill and removal actions in intertidal areas. Finally, the Exception has addressed the compatibility of the proposed uses with existing adjacent uses and found no land use compatibility conflicts associated with the selected alternative.

Based upon the findings and conclusions-presented above, Coos County concludes that sufficient compelling reasons and facts exist to justify the proposed water-dependent uses at the Prosper site. These reasons and facts, therefore, support the designation of a Development management unit at the Prosper site for the purpose of allowing a dredged recreational marina and other marina-related uses, which are non-agricultural or “inconsistent” with the protection of existing natural shoreland values. Within the Development management unit, the proposed non-water-dependent uses (floating marina-related shops) are concluded to be consistent with the resource capabilities and purposes of the management unit. This conclusion is based upon the “non-interference” with fish use in the marina that would be posed by the floating shops and the fact that the shops would improve the marina's ability to attract visitors and business to the area.

The acknowledged plan adequately addressed all of the exceptions outlined, providing justification based on economic considerations specific to the site's location under marine industrial uses. This rationale was deemed appropriate and site-specific, effectively addressing the exceptions in a manner consistent with the acknowledged plan's overall objectives. The current proposal has to be consistent with all elements of the original exception.

The applicant has provided three options to the text to allow for single family dwelling. The decision makers need to decide which text changes is consistent with the Coquille River Estuary Management Plan. The decision makers need to keep in mind that the purpose of the exception area was to create needed basic jobs, help diversify the local economy, enhance the overall attractiveness of the area as a tourist destination.

The proposed text for the County to select from was provided below:

SECTION 3.3.500 DEVELOPMENT AND USE PERMITTED: The following uses and activities are permitted outright in the in the CREMP-IND.

2. Residential

- a. **Single Family Dwelling**/Watchman/Caretaker shall not be permitted in IND Shoreland Segments 14 and 16. All other IND Shoreland Segment must comply with the following:
 - 1. This use permitted only if in conjunction with a permitted or conditionally permitted use **including an established recreational dock**; and
 - 2. This use is subject to the provisions of CREMP Policy #18 **and** #27.

SECTION 3.3.510 ADMINISTRATIVE CONDITIONAL DEVELOPMENT AND USE: The following uses and activities are permitted under an administrative conditional use permit CREMP-IND.***

14. High-intensity recreation:

- f. In IND Shoreland Segments 14, 20 and 40 this use may be permitted subject to the provisions of CREMP Policies #14, #18 and #27.
- g. In IND Shoreland Segments 16 and 54 this use may be permitted subject to the provisions of CREMP Policies #14 and #27.
- h. In IND Shoreland Segment 45 this use may be permitted subject to the provisions of CREMP Policies #23 and #27.
- i. In IND Shoreland Segment 52 this use may be permitted subject to the provisions of CREMP Policy #27.
- j. ***In IND Shoreland Segment 20 this use may allow for a Single Family Dwelling in conjunction with an existing recreational use to be consistent with the management unit purpose. This is subject to addressing CREMP Policies #14, #18 and #27. The Dwelling may be used as seasonal or vacation rental.***

16. Commercial:***

c. Non-water-dependent/related is prohibited in IND Shoreland Segments 14, 16 and 40 all other IND Shoreland Segments shall address the applicable standards as follows:

- vii. In IND Shoreland Segment 20 this use may be permitted subject to the provisions of CREMP Policies #14, #18 and #27.
- viii. In IND Shoreland Segment 54 this use may be permitted subject to the provisions of CREMP Policies #14 and #27.
- ix. In IND Shoreland Segment 45 this use may be permitted subject to the provisions of CREMP Policies #23 and #27.
- x. In IND Shoreland Segment 52 this use may be permitted subject to the provisions of CREMP Policy #27.
- xi. The commercial use is located in building or buildings not to exceed the floor area standards set forth in OAR 660-022-0030(10). New commercial structures authorized outside a UCB or UGB shall not exceed 3,500 square feet of floor area.
- xii. ***In IND Shoreland Segment 20 a Single Family Dwelling may be permitted as a non-water use providing it does not pre-empt a permitted commercial and/or industrial uses. The use is subject to CREMP Policies #14, #18, and #27***

FINDING: Given that the specific zone was created to generate needed basic jobs, help diversify the local economy, enhance the overall attractiveness of the area as a tourist destination. Based on the provided options and the goals outlined for the specific zone (CREMP-IND), the option more consistent would be the administrative conditional use permit outlined in Section 3.3.510. This option allows for a broader range of uses, including high-intensity recreation and certain commercial activities, subject to specific CREMP policies relevant to each shoreland segment.

Specifically, option (j) under Section 3.3.510 allows for the permitting of a single-family dwelling in conjunction with an existing recreational use in IND Shoreland Segment 20. This aligns with the goal of enhancing the overall attractiveness of the area as a tourist destination while still maintaining compliance with relevant CREMP policies (#14, #18, and #27). Please note that the Planning Commission added the wording “high intensity” prior to recreation to make the language consistent and clear.

In contrast, option 2 under Section 3.3.500 only permits residential use outright if it is in conjunction with a permitted or conditionally permitted use. This option may be more restrictive and less conducive to diversifying the local economy or enhancing the area's appeal as a tourist destination, as it primarily focuses on residential use in conjunction with recreational docks only.

Therefore, the administrative conditional use permit option provides greater flexibility and potential for achieving the goals of creating needed basic jobs, diversifying the local economy, and enhancing the attractiveness of the area as a tourist destination, while still ensuring compliance with relevant CREMP policies. The proposed addition of the use of a single-family dwelling as high-intensity recreational use, which may be utilized for residential or recreational purposes such as short-term rental or seasonal use, aligns with the original exceptions outlined for the industrial marina at Prosper, especially concerning Statewide Planning Goals #3 (Agricultural Lands), #16 (Estuarine Resources), and #17 (Coastal Shorelands).

The exceptions originally granted for the industrial marina at Prosper were based on economic considerations specific to the site's location under marine industrial uses. These exceptions were justified to enable the development of the marina and associated upland uses, such as a yacht club, hotel/convention center, and recreational amenities.

Introducing the use of a single-family dwelling as part of the high-intensity recreational use complements the overall objectives of the exceptions granted. It contributes to enhancing the area's attractiveness as a tourist destination and supports economic diversification efforts. Additionally, allowing for residential or recreational purposes, such as short-term rental or seasonal use, aligns with the broader goals of promoting sustainable development and enhancing recreational opportunities while still ensuring compliance with relevant statewide planning goals.

Therefore, the proposed addition of the single-family dwelling as part of the high-intensity recreational use is consistent with the original exceptions granted for the industrial marina at Prosper and supports the overarching objectives of the development plan for the site.

The exceptions outlined for the marina site justify the proposed uses, including recreational marina facilities and upland amenities. In light of these exceptions and findings, the addition of a dwelling for residential or recreational purposes aligns with the broader context of the proposed marina development and its associated exceptions. The fact that the proposed use will be limited to accessory to an approved recreational use, continues to ensure compatibility with the overall goals and purposes outlined in the statewide planning goals while allowing for appropriate land use within the designated area.

IV. Language Change in Coos County Zoning and Land Development Ordinance

14. High-intensity recreation:

- k. In IND Shoreland Segments 14, 20 and 40 this use may be permitted subject to the provisions of CREMP Policies #14, #18 and #27.
- l. In IND Shoreland Segments 16 and 54 this use may be permitted subject to the provisions of CREMP Policies #14 and #27.
- m. In IND Shoreland Segment 45 this use may be permitted subject to the provisions of CREMP Policies #23 and #27.
- n. In IND Shoreland Segment 52 this use may be permitted subject to the provisions of CREMP Policy #27.
- o. In IND Shoreland Segment 20 this use may allow for a Single Family Dwelling in conjunction with an existing recreational use to be consistent with the management unit purpose. This is subject to addressing CREMP Policies #14, #18 and #27. The Dwelling may be used as seasonal or vacation rental.***

This language was selected based on the record, staff, and Planning Commission recommendations.