



Background

- December 11, 1984 : A Conditional Zoning Compliance Letter (VL-84-575) was issued, granting authorization to construct a single family dwelling in the floodplain, subject to two conditions: the first stipulating that the certificate of occupancy was not to be issued until a Flood Hazard Compliance Letter was issued by the Planning Department and the second stating that no construction was permitted within the Coastal Shorelands Boundary.
- February 1, 1985 : An after-the-fact Application for Development in Special Flood Hazard Areas, under file number FP-84-04, is approved, with conditions, stating a Conditional Zoning Compliance Letter may be obtained to begin construction on a single family dwelling.
- June 13, 1985 : A Zoning Compliance Letter (VL-85-281) was issued, stating a post FIRM certificate of occupancy may be issued.
- September 30, 1993 : An Administrative Conditional Use Permit, under file number ACU-93-68/FP-93-19, is granted to place riprap along the shore next to the Bay in order to protect against future erosion. In the same application, approval for a dock was denied.
- October 2, 2003 : A Zoning Compliance Letter (ZCL-03-487) was issued, granting authorization for a detached accessory structure to be sited on the property outside of the floodplain. Notice of the proposal was forwarded to the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians, who responded stating they had no objections to the proposal development.
- December 15, 2004 : An alleged violation was discovered on the property in the form of an unpermitted duplex. A letter was sent to the landowner at the time, giving them the option to either remove the unpermitted dwelling or obtain an after-the-fact Zoning Compliance Letter permitting it to remain.
- January 27, 2005 : A Zoning Compliance Letter (ZCL-05-035) was issued, granting after-the-fact authorization to site a duplex on the property, thereby resolving the alleged violation.
- Present : According to aerial photographs taken in May of 2015, it appears to the dwelling originally permitted in 1984-85 was sited within the Coastal Shorelands Boundary, despite a restriction stating this was not permitted. No other authorization, after-the-fact or otherwise, has been granted to allow the dwelling(s) to be sited within the Coastal Shoreland Boundary.

As a result, the property is currently in violation of the CCZLDO and no permits will be issued until this issue is corrected.

Special Districts/Agencies:  
Coquille Indian Tribe

Confederated Tribes of Coos, Lower

**II. CONCLUSIONS AND CONDITIONS**

Based on the review completed below, the applicant has failed to satisfy the necessary requirements of the Coos County Zoning and Land Development Ordinance in order to obtain authorization for a vacation rental to operate on the property.

**III. FINDINGS TO THE APPLICABLE REVIEW CRITERIA**

**APPLICABLE CRITERIA**

**Coos County Zoning and Land Development Ordinance (CCZLDO) and Coos County Comprehensive Plan (CCCP)**

CCZLDO	§ 3.1.400	Prohibited Uses
CCZLDO	§ 3.2.305	Management Objective [for the 55B-Natural Aquatic zone]
CCZLDO	§ 3.2.306	Uses, Activities, and Special Conditions [for the 55B-NA zone]
CCZLDO	§ 4.2.120(15)(e)	Hearings Body Conditional Development and Use [in the Urban Residential zones] – Vacation Rentals
CCZLDO	§ 4.11.125(3)(b)	Historical, Cultural and Archaeological, Natural Areas and Wilderness (Balance of County Policy 5.7) – Areas of Archaeological Concern

Note: criteria are shown below with findings in **bold**.

CCZLDO	§ 3.1.400	Prohibited Uses
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**SECTION 3.1.400 PROHIBITED USES:**

Unless an exception is specifically listed in the Ordinance, any use not listed or specifically identified as not permitted are prohibited. However, it is recognized that in the development of a Comprehensive Zoning and Land Development Ordinance, not all uses of land and water can be listed, nor can all future uses be anticipated. A “use” may have been inadvertently omitted from the list of those specified as permitted or conditional in each of the various districts designated. Ambiguity may arise concerning the appropriate classification of a particular use within the meaning and intent of this Ordinance.

1. The classification of a new permitted or conditional use may be approved by the Planning Director, or may be referred to the Board of Commissioners for consideration;
2. To classify and add a new permitted or conditional use to the uses already listed within a zoning district without formal amendment to the text of this Ordinance, the Planning Director must find that the proposed use to be added is similar and not more obnoxious or detrimental to the public health, safety, and welfare as other uses listed in the respective zoning district.
3. Notice of any decision to classify a new use shall be published in a newspaper of general circulation at least ten (10) days prior to the effective date of the decision, and shall be subject to

appeal pursuant to Article 5.8. Decisions to classify a new use may be appealed following the procedures of Article 5.8.

- a. Any decision to classify a use pursuant to this section shall be entered in a registry available to the public setting forth:
  - i. The street address or other easily understood geographic reference to the subject property;
  - ii. The date of the decision; and
  - iii. A description of the decision made.

4. New classified uses shall be subject to all other requirements of this Ordinance.

Any new use classified for an Exclusive Farm Use or Forest zone must comply with ORS 215 and requirements of applicable case law and administrative rules. [OR-92-07-012PL]

**Finding:** As discussed below, in Sections 3.2.305 and 306, a Vacation Rental is not a listed use in the 55B-NA zone.

**Therefore, a vacation rental is not permitted.**

CCZLDO	§ 3.2.305	Management Objective [for the 55B-Natural Aquatic zone]
CCZLDO	§ 3.2.306	Uses, Activities, and Special Conditions [for the 55B-NA zone]

GENERAL LOCATION: LOWER BAY

ZONING DESIGNATION: 55B-NA

ZONING DISTRICT: 55B-NATURAL AQUATIC

SPECIFIC BOUNDARIES: This aquatic district begins at a line running westerly from a point on the shoreline at Noble Avenue and ends at a line extending west from Spaw Boulevard. The west boundary is the waterward edge of the intertidal flats.

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**SECTION 3.2.305. MANAGEMENT OBJECTIVE:**

This aquatic district shall be managed to protect its natural resources. However, a recreational pier is proposed in this district to provide public fishing access to the lower bay.

**SECTION 3.2.306. USES, ACTIVITIES AND SPECIAL CONDITIONS.**

Table 55B-NA sets forth the uses and activities which are permitted, which may be permitted as conditional uses, or which are prohibited in this zoning district. Table 55B-NA also sets forth special conditions which may restrict certain uses or activities, or modify the manner in which certain uses or activities may occur. Reference to “policy numbers” refers to Plan Policies set forth in the Coos Bay Estuary Management Plan.

A. Uses:

1.	Aquaculture	ACU-S, G
2.	Commercial	N
3.	Docks	N
4.	Industrial & port facilities	N
5.	Log dump/sort/storage (in-water)	N
6.	Marinas	N
7.	Mining/mineral extraction	N
8.	Recreation facilities	
	a. Low-intensity	ACU-S, G
	b. High-intensity	N
9.	Utilities	
	a. Low-intensity	P-G
	b. High-intensity	N
10.	Bridge crossing support structures and dredging necessary for installation	N
11.	Bridge crossings	N
B. Activities:		
1.	Dikes	
	a. New construction	N
	b. Maintenance/repair	N
	c. Installation of tidegates in existing functional dikes	N
2.	Dredging	
	a. New	N
	b. Maintenance dredging of existing facilities	N
	c. To repair dikes and tidegates	N
3.	Dredged material disposal	N
4.	Fill	N
5.	Navigational	
	a. Aides	P-G
	b. Structures	N
	c. Minor navigational improvements	N
	d. Water-dependent commercial enterprises and activities	N
6.	Piling/dolphin installation	N
7.	Shoreline stabilization	
	a. Vegetative	P-G
	b. Riprap	ACU-S, G
	c. Bulkheads	N
8.	Mitigation	P-G
9.	Restoration	
	a. Active	N
	b. Passive	P-G
10.	Temporary alterations	ACU-S, G
11.	Protection of habitat, nutrient, fish, wildlife and aesthetic	P
12.	Research and educational observations	P
13.	Waste water/storm water discharge	N
14.	Research and educational observation structure	ACU-S, G

**Finding:** The location of the current structure is in the 55B-NA zone, according to the records of the Coos County Planning Department.

This table contains all uses that may be permitted or conditionally permitted in this zone. As Vacation Rentals are not a listed use in this table, they are submit to Section 3.1.400 – Prohibited Uses.

Therefore, this criterion has not been met.

CCZLDO	§ 4.2.120(15)(e)	Hearings Body Conditional Development and Use [in the Urban Residential zones]
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**SECTION 4.2.120 HEARINGS BODY CONDITIONAL DEVELOPMENT AND USE:**

The following uses and their accessory uses are permitted under a hearings body conditional use permit procedure subject to applicable development standards in the Urban Residential-1, Urban Residential -2 and Urban Residential-Multi-Family. All hearings body development and uses may be permitted if the proposed use must be found compatible with surrounding uses or may be made compatible through the imposition of conditions. Applicable additional criteria will be listed out under the individual proposed uses.

15. Vacation rentals are subject to the following criteria:

- a. Must be found to be compatible with the surrounding area;
- b. Must be licensed by the Coos County Health Department in accordance with ORS 446.310-350;
- c. Approval shall vest exclusively with the owner of the land at the time of approval. The rental shall not be conveyed or otherwise transferred to a subsequent landowner without a new conditional use permit;
- d. Must meet parking access, driveway and parking standards as identified in Chapter VII; and
- e. If a vacation rental existed prior to April 1, 2015 and had been permitted by the Coos County Public Health Department<sup>1</sup>, the use may continue provided a compliance determination has been submitted.

**Finding:** The applicant submitted a Compliance Determination application for this property with the intention of obtaining authorization for an existing vacation rental to continue to operate using (e) in this subsection. However, the location of the existing structure is not within the UR-1 zone; instead, it is located in the 55B-NA zone and is subject to the requirements of that zone.

Therefore, this criterion does not apply.

CCZLDO	§ 4.11.125(3)(b)	Historical, Cultural and Archaeological, Natural Areas and Wilderness (Balance of County Policy 5.7) – Areas of Archaeological Concern
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**3. Historical, Cultural and Archaeological Resources, Natural Areas and Wilderness (Balance of County Policy 5.7)**

The Historical/Archeological maps have inventoried the following:

<sup>1</sup> Also known as Coos County Health and Wellness

- Historical;
- Area of Archaeological Concern;
- Botanical; and
- Geological Resources.

**Purpose Statement:**

Coos County shall manage its historical, cultural and archaeological areas, sites, structures and objects so as to preserve their original resource value. This strategy recognizes that preservation of significant historical, cultural and archaeological resources is necessary to sustain the County's cultural heritage.

- b. Areas of Archaeological Concern: Coos County shall continue to refrain from wide-spread dissemination of site-specific inventory information concerning identified archaeological sites. Rather, Coos County shall manage development in these areas so as to preserve their value as archaeological resources.
  - a. This strategy shall be implemented by requiring development proposals to be accompanied by documentation that the proposed project would not adversely impact the historical and archaeological values of the project's site. "Sufficient documentation" shall be a letter from a qualified archaeologist/historian and/or a duly authorized representative of a local Indian tribe(s).
  - b. Properties which have been determined to have an "archaeological site" location must comply with the following steps prior to issuance of a "Zoning Compliance Letter" for building and/or septic permits.
    - i. The County Planning Department shall make initial contact with the Tribe(s) for determination of an archaeological site(s). The following information shall be provided by the property owner/agent:
      1. Plot plan showing exact location of excavation, clearing, and development, and where the access to the property is located;
      2. Township, range, section and tax lot(s) numbers; and
      3. Specific directions to the property.
    - ii. The Planning Department will forward the above information including a request for response to the appropriate tribe(s).
    - iii. The Tribe(s) will review the proposal and respond in writing within 30 days to the Planning Department with a copy to the property owner/agent.
    - iv. It is the responsibility of the property owner/agent to contact the Planning Department in order to proceed in obtaining a "Zoning Compliance Letter" (ZCL) or to obtain further instruction on other issues pertaining to their request.
  - c. In cases where adverse impacts have been identified, then development shall only proceed if appropriate measures are taken to preserve the archaeological value of the site. "Appropriate measures" are deemed to be those, which do not compromise the integrity of remains, such as:

- i. Paving over the sites;
  - ii. Incorporating cluster-type housing design to avoid the sensitive areas; or
  - iii. Contracting with a qualified archaeologist to remove and re-inter the cultural remains or burial(s) at the developer's expense. If an archaeological site is encountered in the process of development, which previously had been unknown to exist, then, these three appropriate measures shall still apply. Land development activities found to violate the intent of this strategy shall be subject to penalties prescribed by ORS 97.745 (Source: Coos Bay Plan).
- d. This strategy is based on the recognition that preservation of such archaeologically sensitive areas is not only a community's social responsibility but is also a legal responsibility pursuant to Goal #5 and ORS 97.745. It also recognizes that historical and archaeological sites are non-renewable, cultural resources (Source: Coos Bay Plan).

**Finding: A copy of this Staff Report and associated Notice of Decision shall be forwarded to the local Native American tribes for review.**

#### IV. NOTIFICATION

Pursuant to CCZLDO Section 5.10.400, the Planning Department mailed individual written notice of the decision to the owners of record of all property located within 100 feet of the subject property. A copy of this Staff Report and a Notice of Decision was mailed to Applicant(s); Owner(s); Dave Perry, DLCD; Coos County Assessor's Office; Coos County Planning Commission; Coos County Board of Commissioners; and the special districts as noted above. In addition to the mailed copies, notice of the decision was posted at the Coos County Courthouse, Coquille Annex, and North Bend Annex. All notices were mailed and posted on September 30, 2015. Any inquires concerning this matter may be made to Alex Murphy, GIS Planner I.

#### V. NOTICE OF APPEAL RIGHTS

The fact that discretion was used to reach this decision makes this a land use decision that may be appealed to the Coos County Hearings Body pursuant to Article 5.8 of the Coos County Zoning and Land Development Ordinance within 15 days from the date of written notice. Appeals must be received in the Planning Department office by **5 p.m. on Thursday, October 15, 2015** in order to be considered. This decision will not be final until the period for filing an appeal has expired. Detailed information about the appeal process, filing fees and additional information will be provided by the Planning Department upon request. The decision is based upon the submitted application, supporting evidence, facts, and findings to the criteria.