

Application for a Permit to Store Water in a Reservoir

(Standard Review)



Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, Oregon 97301-1266
503-986-0900
www.oregon.gov/OWRD

You must use this form for any reservoir storing more than 9.2 acre-feet and with a dam more than 10 feet high.

SECTION 1: APPLICANT INFORMATION AND SIGNATURE

Applicant

NAME Robert Van Loo			PHONE (HM)
PHONE (WK)	CELL		FAX
ADDRESS PO Box 234			
CITY Sixes	STATE OR	ZIP 97476	E-MAIL *

Applicant

NAME Don & Alice Baum			PHONE	FAX
ADDRESS 56501 Tom Smith Rd			CELL	
CITY Bandon	STATE OR	ZIP 97411	E-MAIL *	

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Agent – The agent is authorized to represent the applicant in all matters relating to this application.

AGENT / BUSINESS NAME Tom Gruszczenski/Knife River Materials			PHONE 541.770.2960	FAX
ADDRESS PO Box 1145			CELL	
CITY Medford	STATE OR	ZIP 97501	E-MAIL * Tom.Gruszczenski@KnifeRiver.com	

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Note: Attach multiple copies as needed

* By providing an e-mail address, consent is given to receive all correspondence from the Department electronically. (Paper copies of the final order documents will also be mailed.)

By my signature below I confirm that I understand:

- I am asking to use water specifically as described in this application.
- Evaluation of this application will be based on information provided in the application packet.
- I cannot legally store water until the Water Resources Department issues a permit to me.
- The Department encourages all applicants to wait for a permit to be issued before beginning construction of any proposed diversion. Acceptance of this application does not guarantee a permit will be issued.
- If I begin construction prior to the issuance of a permit, I assume all risks associated with my actions.
- If I get a permit, I must not waste water.
- If development of the water use is not according to the terms of the permit, the permit can be cancelled.
- The water use must be compatible with local comprehensive land use plans.
- Even if the Department issues a permit, I may have to stop using water to allow senior water right holders to get water to which they are entitled.

I (we) affirm that the information contained in this application is true and accurate.

Applicant Signature

Print Name and Title if applicable

Date

Applicant Signature

Print Name and Title if applicable

Date

For Department Use: App. Number: _____

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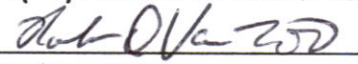
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- The water use must be compatible with local comprehensive land use plans.
- Even if the Department issues a permit, I may have to stop using water to allow senior water right holders to get water to which they are entitled.

 I (we) affirm that the information contained in this application is true and accurate.

	Robert D. Van Loo	11/27/22
Applicant Signature	Print Name and Title if applicable	Date

Applicant Signature	Print Name and Title if applicable	Date
---------------------	------------------------------------	------

SECTION 2: PROPERTY OWNERSHIP

Indicate if you own all the lands associated with the project from which the water is to be diverted, conveyed, and used.

- ☒ YES, there are no encumbrances.
☐ YES, the land is encumbered by easements, rights of way, roads or other encumbrances.
☐ NO, I have a recorded easement or written authorization permitting access.
☐ NO, I do not currently have written authorization or easement permitting access.
☐ NO, written authorization or an easement is not necessary, because the only affected lands I do not own are state-owned submersible lands, and this application is for irrigation and/or domestic use only (ORS 274.040).
☐ NO, because water is to be diverted, conveyed, and/or used only on federal lands.

Affected Landowners: List the names and mailing addresses of all the owners of any lands that are not owned by the applicant and that are crossed by the proposed ditch, canal or other work, even if the applicant has obtained written authorization or an easement from the owner. *(Attach additional sheets if necessary).*

N/A

Legal Description: You must provide the legal description of: (1) the property from which the water is to be diverted, (2) any property crossed by the proposed ditch, canal or other work, and (3) any property on which the water is to be used as depicted on the map.

The source of water is on Tax Lot 1800 which is part of a group of tax lots known as Tract 3 and is owned by Don & Alice Baum. The water will be stored on Tax Lot 1502 which is part of a group of tax lots known as Tract 1 owned by Robert Van Loo. Those tax lots are adjacent to each other. Both a Conditional Use Permit(CUP) from Curry County and an Operating Permit from the Oregon Department of Geology and Mineral Industries (DOGAMI) has been issued that allows mining and processing of aggregates on a portion of both tax lots. The Affected Landowners consist of the Applicants (i.e. Robert Van Loo and Don & Alice Baum) and the affects are located within the CUP/DOGAMI Permit Boundary.

The property is located in Section 7, Township 32 South , Range 15 West:

Tax Lot 1502 is 287.3 Acres and is a portion of Tract 1 (see attached Legal Description)

Tax Lot 1800 is 342.58 Acres and is portion of Tract 3 (see attached Legal Description)

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SECTION 3: SOURCE OF WATER

A. Reservoir Name: Van Loo Farm Reservoir

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B. Source: Provide the name of the water body or other source from which water will be diverted, and the name of the stream or lake it flows into. Indicate if source is run-off, seepage, or an unnamed stream or spring.

Source 1: Surface run-off collecting in existing pond	Tributary to: Unnamed Drainage into the Pacific Ocean
TRSQQ of POD: Township 32S, Range 15w, Section 7, NE ¼ SE 1/4	
Source 2:	Tributary to:
TRSQQ of POD:	

- Is the proposed reservoir in a wetland (as determined by DSL)? **No**
- Is the proposed reservoir an enlargement of an existing dam/reservoir? **No**
- Is the proposed reservoir in-channel of a stream or off-channel: **Off-Channel**
- If the reservoir is proposed to be in-channel, is the stream: **N/A**
- If the reservoir is proposed to be in-channel, has ODFW determined that native migratory fish are present?
N/A
- Is the reservoir in the 100-year floodplain? **No**
- If the reservoir is not in the channel of a stream, state how it is to be filled:
Surface water run-off that collects in an existing pond will be pumped into the reservoir.

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SECTION 4: SENSITIVE, THREATENED OR ENDANGERED FISH SPECIES PUBLIC INTEREST INFORMATION

This information must be provided for your application to be accepted as complete. The Water Resources Department will determine whether the proposed use will impair or be detrimental to the public interest with regard to sensitive, threatened or endangered fish species.

To answer the following questions, refer to the map shown on [Attachment 3](#) or the link below to determine whether the proposed point of diversion (POD) is located in an area where the Upper Columbia, the Lower Columbia, and/or the Statewide public interest rules apply.

For more detailed information, click on the following link and enter the TRSQQ or the Lat/Long of a POD and click on "Submit" to retrieve a report that will show which section, if any, of the rules apply:

https://apps.wrd.state.or.us/apps/misc/lkp_trsqq_features/

If you need help to determine in which area the proposed POD is located, please call the customer service desk at (503) 986-0900.

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Upper Columbia - OAR 690-033-0115 thru -0130

Is the POD located in an area where the Upper Columbia Rules apply?

No

If yes, you are notified that the Water Resources Department will consult with numerous federal, state, local and tribal governmental entities so it may determine whether the proposed use is consistent with the "Columbia River Basin Fish and Wildlife Program" adopted by the Northwest Power Planning Council in 1994 for the protection and recovery of listed fish species. The application may be denied, heavily conditioned, or if appropriate, mitigation for impacts may be needed to obtain approval for the proposed use.

If yes,

- I understand that the proposed use does not involve appropriation of direct streamflow during the time period April 15 to September 30, except as provided in OAR 690-033-0140.
- I understand that I will install, operate and maintain a fish screen and fish passage as listed in ORS 498.301 through 498.346, and 509.580 through 509.910, to the specifications and extent required by Oregon Department of Fish and Wildlife, prior to diversion of water under any permit issued pursuant to this application.
- I understand that the Oregon Department of Environmental Quality will review my application to determine if the proposed use complies with existing state and federal water quality standards.
- I understand that I will install and maintain water use measurement and recording devices as required by the Water Resources Department, and comply with recording and reporting permit condition requirements prior to diversion or use of water under any permit issued pursuant to this application.

Lower Columbia - OAR 690-033-0220 thru -0230

Is the POD located in an area where the Lower Columbia rules apply?

No

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If **yes, you are notified** that that the Water Resources Department will determine, by reviewing recovery plans, the Columbia River Basin Fish and Wildlife Program, and regional restoration programs applicable to threatened or endangered fish species, in coordination with state and federal agencies, as appropriate, whether the proposed use is detrimental to the protection or recovery of a threatened or endangered fish species and whether the use can be conditioned or mitigated to avoid the detriment.

If a permit is issued, it will likely contain conditions to ensure the water use complies with existing state and federal water quality standards; and water use measurement, recording and reporting required by the Water Resources Department. The application may be denied, or if appropriate, mitigation for impacts may be needed to obtain approval of the proposed use.

If **yes, provide the following information** (the information must be provided with the application to be considered complete).

☐ Yes ☐ No The proposed use is for more than **one** cubic foot per second (448.8 gpm) and is not subject to the requirements of OAR 690, Division 86 (Water Management and Conservation Plans).

If **yes**, provide a description of the measures to be taken to assure reasonably efficient water use:

Statewide - OAR 690-033-0330 thru -0340

Is the POD located in an area where the Statewide rules apply?

Yes

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If **yes**, the Water Resources Department will determine whether the proposed use will occur in an area where endangered, threatened or sensitive fish species are located. If so, the Water Resources Department, Department of Fish and Wildlife, Department of Environmental Quality, and the Department of Agriculture will recommend conditions required to achieve "no loss of essential habitat of threatened and endangered (T&E) fish species," or "no net loss of essential habitat of sensitive (S) fish species." If conditions cannot be identified that meet the standards of no loss of essential T&E fish habitat or no net loss of essential S fish habitat, the agencies will recommend denial of the application unless they conclude that the proposed use would not harm the species.

SECTION 5: WATER USE

- a) The use of the impounded water will be: **Industrial**
- b) The amount of water to be stored is: **30** acre-feet.
- c) The area submerged by the reservoir, when filled, will be **3** acres.

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SECTION 6: DAM HEIGHT AND COMPOSITION

The maximum height of the structure will be 0 feet above streambed or ground surface at the centerline of the crest of the dam.

Attach preliminary plans, specifications and supporting information for the dam and impoundment area including 1) dam height, 2) width, 3) crest width, 4) surface area and 5) preliminary fish passage design.

*Note: If your dam height is greater than or equal to 10.0' above land surface **AND** your reservoir will store equal to or greater than 9.2 acre-feet, engineered plans and specifications must be approved by the Department' Dam Safety Section prior to storage of water.*

The dam will be (check one):

Earthfill

Concrete

Flash board

Other ☒ X

If "other," provide the description:

The reservoir will be excavated and as such there will be no structure above ground surface.

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SECTION 7: PRIMARY OUTLET WORKS

- a) Describe the location and the dimensions of the outlet conduit through the dam:

NOTE: Most dams across a natural stream channel will need an outlet conduit having a minimum diameter of 8 inches or greater.

The reservoir will be off-channel and excavated. There will be no structure (i.e. dam) above ground. There will be no outlet from the reservoir. Water used will be pumped from the reservoir.

- b) How and when will the outlet be operated?

Water will be pumped from the reservoir into the washplant while aggregate materials are crushed, screened and washed

- c) If ODFW has determined fish are present in the stream, how do you propose to protect fish through the outlet conduit (the conduit does not constitute fish passage)?

Not Applicable as the reservoir is off channel.

SECTION 8: EMERGENCY SPILLWAY

- a) Describe the location and the dimensions of the spillway channel.

No spillway will be constructed. The reservoir will be filled using a pump and the pump system will be turned off once the reservoir is filled.

- b) How will the emergency spillway be designed to prevent erosion?

Not applicable

- c) What is the maximum design flow for the spillway? (Should be able to handle high flow events. 10-year flood events? 50-year flood events?)

Not applicable

SECTION 9: WATER QUALITY

- a) Describe how the reservoir will be managed to maintain water quality in the reservoir and downstream.
Water from the reservoir will be pumped into the aggregate plant and any excess water will be reused. Fines recovered from the washwater will be used for reclamation fill. There will be no discharge of water and as such no downstream effects.
- b) Describe how the perimeter of the reservoir will be buffered to limit nutrient and bacteria contamination.
There are no nutrient or bacteria sources adjacent to the reservoir and there will be nothing to buffer.
- c) Describe how annual maintenance of the reservoir will be accomplished without discharging contaminated water instream.
All water is managed on site. Any excess water will be infiltrated in the mining area and no water will be discharged from the site. Required maintenance will consist of removal of any settled fine material for reuse as reclamation fill.

SECTION 10: PROJECT SCHEDULE (List Month and Year)

- a) Proposed date construction work will begin: **September 1, 2023**
(Fish passage approval is necessary prior to construction.)
- b) Proposed date construction work will be completed: **November 1, 2023**
- c) Proposed date water use will be completed: **June 1, 2024**

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SECTION 11: WITHIN A DISTRICT

- ☐ Check here if the point of diversion or place of use are located within or are served by an irrigation or other water district.

Irrigation District Name	Address	
City	State	Zip

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SECTION 12: REMARKS

Use this space to clarify any information you have provided in the application.

The aggregate reservoir will have a total capacity of 15 acre feet of water. The reservoir will consist of a series of connected ponds designed to allow settling of fines and reuse of water. Water will be pumped from the reservoir into the wash plant and the wash water will be returned to the reservoir from the wash plant for settling and reuse.

Loss of water as a result of absorption into the aggregate, seepage into the ground and evaporation is estimated at 3 acre feet per month.

A total of 30 acre feet of water will be stored from December through March that will be used from December through May of each year.

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Lawrence F. Finneran
PO Box 359
Coos Bay, Oregon 97420

ALICE I RECEIVED
JAN 19 2023
OWRD

00094038202100043150030036

I, Renee' Kolen, County Clerk, certify that the
within document was received and duly recorded
in the official records of Curry County.

Renee' Kolen - Curry County Clerk



BARGAIN AND SALE DEED

SHIRLEY VAN LOO as Trustee of the Aubrey Van Loo Trust and SHIRLEY VAN LOO as Trustee of the Shirley Van Loo Trust, "Grantors", convey to DON BAUM and ALICE BAUM, husband wife, as tenants by the entirety, "Grantees," the following described real property:

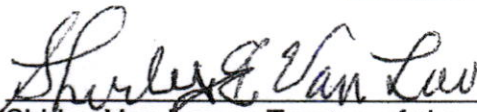
See Exhibit "A" attached hereto and by this reference
made a part hereof.

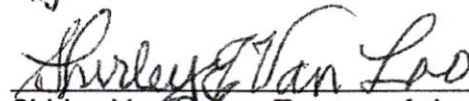
BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

The true and actual consideration for this conveyance is other property or value which is the whole consideration therefor.

Until a change is requested send tax statements for the property herein conveyed to: Don and Alice Baum, 56501 Tom Smith Road, Bandon, Oregon 97411.

DATED this 31st day of August, 2021.


Shirley Van Loo as Trustee of the
Aubrey Van Loo Trust


Shirley Van Loo as Trustee of the
Shirley Van Loo Trust

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EXHIBIT A

Alice

A parcel of land lying within Section 7, Township 32 South, Range 15, West of the Willamette Meridian and in Section 12, Township 32 South, Range 16, West of the Willamette Meridian, Curry County, Oregon, described as follows:

Beginning at a point North 1,378.45 feet from the Southeast corner of said Section 7; thence along the East boundary of Section 7 and Section 18, South 2,596.75 feet; thence West 3,475.70 feet; thence South 761.70 feet; thence West 1,726.90 feet, more-or-less, to the shore of the Pacific Ocean; thence Northerly following the shore of the Pacific Ocean to a point that bears West from the Point of Beginning; thence East, 5,621.83 feet; thence North 63°35'00" East, 816.89 feet; thence North 976.23 feet to Point "A" lying on the Southerly boundary of Cape Blanco State Highway; thence along said boundary South 54°33'30" East, 294.59 feet; thence South 1,071.55 feet, more-or-less, to the Point of Beginning.

EXHIBIT "A"

ROBERT 1 or 2

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After recording, return to:

Lawrence F. Finneran
PO Box 359
Coos Bay, Oregon 97420

CURRY COUNTY, OREGON 2021-0431
LAND 09/07/2021 03:17 PM
Cnt=1 Pgs=3 RECC \$108.0



I, Renee Kolen, County Clerk, certify that the
within document was received and duly recorded
in the official records of Curry County.

Renee Kolen - Curry County Clerk



BARGAIN AND SALE DEED

SHIRLEY VAN LOO as Trustee of the Aubrey Van Loo Trust and SHIRLEY VAN LOO as Trustee of the Shirley Van Loo Trust, "Grantors", convey to ROBERT DARRELL VAN LOO, "Grantee," the following described real property:

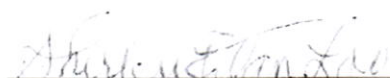
See Exhibit "A" attached hereto and by this reference made a part hereof.

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The true and actual consideration for this conveyance is other property or value which is the whole consideration therefor.

Until a change is requested send tax statements for the property herein conveyed to: Robert Darrell Van Loo, PO Box 234, Sixes, Oregon 97476.

DATED this 31st day of August, 2021.


Shirley Van Loo as Trustee of the
Aubrey Van Loo Trust


Shirley Van Loo as Trustee of the
Shirley Van Loo Trust

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EXHIBIT "A"

A parcel of land lying within Section 7 and the Southwest Quarter (SW1/4) of Section 6, Township 32 South, Range 15, West of the Willamette Meridian and in Section 12, Township 32 South, Range 16, West of the Willamette Meridian, Curry County, Oregon, described as follows:

Commencing at the Southeast corner of said Section 7; thence along the East boundary of Section 7, North 2,450 feet, more-or-less, to the Southerly boundary of Cape Blanco State Highway; thence along said boundary North 54°33'30" West, 294.59 feet to the True Point of Beginning; thence Northwesterly along said highway boundary to a point that bears 78.17 feet North and 1,629.24 feet East of the Northwest corner of Section 7; thence leaving said highway boundary North 79°28' West, 157.40 feet; thence South 21°33' West, 123.96 feet; thence South 52°30' West, 154.45 feet; thence South 69°17' West, 164.85 feet; thence South 88°15' West, 378.12 feet; thence South 71°51' West, 272.92 feet; thence North 81°39' West, 250.50 feet; thence South 08°12' West, 555.75 feet; thence South 31°36' West, 124.19 feet; thence South 46°31' West, 195.90 feet; thence South 77°35' West, 238.87 feet; thence South 08°08' West, 169.38 feet; thence South 66°48' West, 321.18 feet; thence South 49°20' West, 1,803.91 feet; thence South 37°57' West, 166.26 feet; thence South 32°04' East, 132.50 feet; thence South 29°45' East, 70.77 feet; thence East, 797.50 feet; thence South 79°26'02" East, 787.96 feet; thence North 22°41'58" East, 60.50 feet; thence North 03°28'53" East, 75.24 feet; thence North 03°02'37" West, 67.21 feet; thence North 11°12'53" West, 89.14 feet; thence North 40°35'57" East, 194.46 feet; thence North 41°20'24" East, 71.66 feet; thence North 23°01'48" East, 60.27 feet; thence North 10°20'21" East, 596.11 feet; thence North 17°48'17" East, 80.78 feet; thence North 37°05'44" East, 51.92 feet; thence East 770.00 feet; thence South 2,201.41 feet; thence East 3,664.08 feet; Thence North 63°35' East, 816.89 feet; thence North 976.28 feet to the True Point of Beginning.

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Attachment 2: Land Use Information Form

Land Use Information Form

OWRD



Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, Oregon 97301-1266
503-986-0900
www.oregon.gov/OWRD

22-000337

Applicant

NAME Robert Van Loo			PHONE (HM)		
PHONE (WK)		CELL		FAX	
ADDRESS PO Box 234					
CITY Sixes	STATE OR	ZIP 97476	E-MAIL*		

A. Land and Location

Please include the following information for all tax lots where water will be diverted (taken from its source), conveyed (transported), and/or used or developed. Applicants for municipal use, or irrigation uses within irrigation districts may substitute existing and proposed service-area boundaries for the tax-lot information requested below.

Township	Range	Section	¼ ¼	Tax Lot #	Plan Designation (e.g., Rural Residential/RR-5)	Water to be:			Proposed Land Use:
32s	15w	7	N1/2 SE 1/4	1502	FG/RI	☐ Diverted	☒ Conveyed	☒ Used	Storage
32s	15w	7	S1/2 SE 1/4	1800	FG	☒ Diverted	☒ Conveyed	☒ Used	Storage
						☐ Diverted	☐ Conveyed	☐ Used	
						☐ Diverted	☐ Conveyed	☐ Used	

List all counties and cities where water is proposed to be diverted, conveyed, and/or used or developed:

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B. Description of Proposed Use

Type of application to be filed with the Water Resources Department:

- ☒ Permit to Use or Store Water ☐ Water Right Transfer ☐ Permit Amendment or Groundwater Registration Modification
☐ Limited Water Use License ☐ Allocation of Conserved Water ☐ Exchange of Water

Source of water: ☒ Reservoir/Pond ☐ Groundwater ☐ Surface Water (name) surface run-off

Estimated quantity of water needed: 30 ☐ cubic feet per second ☐ gallons per minute ☒ acre-feet

Intended use of water: ☐ Irrigation ☐ Commercial ☒ Industrial ☐ Domestic for ____ household(s)
☐ Municipal ☐ Quasi-Municipal ☐ Instream ☐ Other ____

Briefly describe:

Water storage and use for aggregate processing.

Note to applicant: If the Land Use Information Form cannot be completed while you wait, please have a local government representative sign the receipt at the bottom of the next page and include it with the application filed with the Water Resources Department.

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Land Use Information Form

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Attachment 2: Land Use Information Form

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For Local Government Use Only

The following section must be completed by a planning official from each county and city listed unless the project will be located entirely within the city limits. In that case, only the city planning agency must complete this form. This deals only with the local land use plan. Do not include approval for activities such as building or grading permits.

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Please check the appropriate box below and provide the requested information

☐ Land uses to be served by the proposed water uses (including proposed construction) are allowed outright or are not regulated by your comprehensive plan. Cite applicable ordinance section(s): _____.

☒ Land uses to be served by the proposed water uses (including proposed construction) involve discretionary land use approvals as listed in the table below. (Please attach documentation of applicable land use approvals which have already been obtained. Record of Action/land use decision and accompanying findings are sufficient.) **If approvals have been obtained but all appeal periods have not ended, check "Being pursued."**

Type of Land Use Approval Needed (e.g., plan amendments, rezones, conditional-use permits, etc.)	Cite Most Significant, Applicable Plan Policies & Ordinance Section References	Land Use Approval:	
AD-2104: Modification of a Conditional Use Approval	approved expansion of mining and processing of aggregate	☒ Obtained ☐ Denied	☐ Being Pursued ☐ Not Being Pursued
AD-1604: Conditional Use Approval	authorized use of mining and processing of aggregate	☒ Obtained ☐ Denied	☐ Being Pursued ☐ Not Being Pursued
AD-1115: Conditional Use Approval - Expired	authorized use of mining and processing of aggregate	☒ Obtained ☐ Denied	☐ Being Pursued ☐ Not Being Pursued
		☐ Obtained ☐ Denied	☐ Being Pursued ☐ Not Being Pursued
		☐ Obtained ☐ Denied	☐ Being Pursued ☐ Not Being Pursued

Local governments are invited to express special land use concerns or make recommendations to the Water Resources Department regarding this proposed use of water below, or on a separate sheet.

Mining and processing of aggregate is a conditional use allowed in the Forestry-Grazing (FG) zone (Section 3.052 #24 of the Curry Co. Zoning Ordinance)

NAME Nancy O'Dwyer		TITLE: Senior Planner
SIGNATURE 	PHONE: 541-247-3284	DATE: 11/29/2022
GOVERNMENT ENTITY Curry County		

Note to local government representative: Please complete this form or sign the receipt below and return it to the applicant. If you sign the receipt, you will have 30 days from the Water Resources Department's notice date to return the completed Land Use Information Form or WRD may presume the land use associated with the proposed use of water is compatible with local comprehensive plans.

Receipt for Request for Land Use Information

Applicant name: _____

City or County: _____ Staff contact: _____

Signature: _____ Phone: _____ Date: _____

Land Use Information Form

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Curry County Community Development – Planning Department
NOTICE OF ADMINISTRATIVE DECISION



FILE #: AD-2104

May 18, 2022

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Property Owners: Robert Darrel Van Loo and Don & Alice Baum
PO Box 234 56501 Tom Smith Rd
Sixes, OR 97476 Bandon, OR 97411

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Applicant: Knife River Materials
PO Box 1145
Medford, OR 97501

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Assessor's Map: Township 32 South, Range 15 West W.M., Index,
Tax Lots: 1502 and 1800

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Land Use Action: Request to modify an existing conditional use approval (AD-1604) authorizing mining and processing of aggregate on a 57-acre portion of Van Loo Ranch with a zoning designation of Forestry Grazing (FG) and Rural Industrial (RI) to include an additional 12.5-acre area of retired cranberry bogs as process water storage and aggregate stockpiling.

Decision: Request to modify an existing conditional use approval (AD-1604) authorizing mining and processing of aggregate on a 57-acre portion of Van Loo Ranch to include an additional 12.5-acre area of retired cranberry bogs as process water storage and aggregate stockpiling is hereby **APPROVED** subject to conditions.

REQUIRED STATUTORY NOTICE:

Any person who is adversely affected or aggrieved by this decision or who is entitled to written notice under ORS 215.416 (11) (a) (C) of it, may appeal it to the Curry County Planning Commission. The appeal can only be initiated by filing a written appeal application together with a **\$250.00 fee** with the Curry County Planning Department within twelve (12) business days of the mailing (postmarked date) of this notice. **Appeals cannot be filed by fax or email correspondence.** A person who is mailed written notice of this decision cannot appeal the decision directly to the Land Use Board of Appeals (LUBA) under ORS 197.830. The decision described above will not become final until the period for filing a local appeal has expired, which is **5:00pm, Monday, June 6, 2022.**

Any appeal hearing before the Planning Commission will be a de novo or entirely new hearing and not on the record of the Planning Director's Decision. Additional information can be obtained as outlined below:

Curry County Community Development Department
Planning Division
94235 Moore Street, Suite 113
Gold Beach, OR 97444

Nancy O'Dwyer, Planner ODwyerN@co.curry.or.us (541) 247-3284
Becky Crockett, Planning Director CrockettB@co.curry.or.us (541) 247-3228

A copy of the application, documents and evidence submitted by the applicant, applicable decision criteria, and the decision order are available for inspection at the Curry County Planning Department office. Copies of these documents are available for a fee (\$0.25 per page).



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Application: AD-2104

May 17, 2022

Applicant	Property Owners		Application Date
Knife River Materials PO Box 1145 Medford, OR 97501	Robert Darrell Van Loo PO Box 234 Sixes, OR 97476	Don and Alice Baum 56501 Tom Smith Rd Bandon, OR 97411	February 19, 2021

Land Use Request: Applicant requests modification of an existing Conditional Use Approval (AD-1604) authorizing mining and processing of aggregate on a 57-acre portion of Van Loo Ranch with a zoning designation of Forestry-Grazing (FG) and Rural Industrial (RI) to include an additional 12.5-acre area of retired cranberry bogs as process water storage and stockpiling of aggregate materials. Exhibit A identifies the original 57-acre approved area and the 12.5-acre proposed expansion area.

Property Description: Township 32 South, Range 15 West W.M., Index, Tax Lots 1502 and 1800

Location: Approximately 1.5 miles west of Hwy 101 on Cape Blanco Rd.

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BACKGROUND

Bandon Concrete LLC submitted a conditional use application in 2011 (AD-1115), requesting authorization to mine and process aggregate on a 57-acre leased portion of the Van Loo Ranch. The Applicant proposed a phased project to extract the aggregate resource (about 3-5 ft below the surface with an average aggregate depth of about 20 ft), intending to mine about 5.8 acres at a time, suggesting that the supply of aggregate could extend over several decades. The proposed operation would consist of stripping the overburden, extracting the aggregate, screening and crushing the aggregate, and then hauling the screened material to another location.

Reportedly the subject property was in farm use for many years, but much of the property has become overgrown with gorse, an invasive shrub. As proposed, with the start of each new mining phase, the prior phase would be reclaimed, so the project area would eventually revert to pastureland. Extensive support (a noise study, phased operation plan, gorse removal plan, etc) for the proposal was included in this first application and has been retained as part of the permanent file record. The application was approved for a three-year period, but that approval (AD-1115) expired in 2015 without a request to reauthorize the approved development.



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The 2011 application listed Aubrey D. and Shirley E. Van Loo listed as the property owners of the 797-acre Van Loo Ranch. However, A & S Van Loo obtained approval from the Planning Department to adjust the lot lines of the ranch in preparation to divide the property to their four heirs and, following that approval, begun incremental transfers to their heirs. At that time of the 2011 application (as well as the later 2016 application), ownership was under A & S Van Loo as well as the heirs.

In 2016, an application for the same project was resubmitted. This application included an update of the AD-1115 conditions of approval, namely gorse removal, permit applications (ODOT, DEQ, DOGAMI), and property surveys (property lines and wetland delineation). Upon review, this application (AD-1604) was approved with nine conditions and was valid through 6/27/2019. Before October 2017, Knife River Materials assumed the lease from Bandon Concrete LLC. The prior Planning Director extended the conditional use approval in 2017 with the acceptance of a minor modification of the operation plan, approving resequencing of the planned extraction areas. On 1/7/2021, the conditional use approval was extended through 1/7/2024.

With the February 2021 application to amend AD-1604, the property owner was again listed as S. Van Loo, Trustee of the Shirley Van Loo Trust and the Aubrey Van Loo Trust, but the application included signatures from all the property owners at that time (S. Van Loo and heirs). Final ownership transfers to the heirs were recorded in September 2021. As recorded, Robert Darrell Van Loo now owns TL 1502 (Inst #2021-4316) and Don & Alice Baum now own TL 1800 (Inst #2021-4315).

As part of the 2021 application, the Applicant provided confirmation that requirements for ODOT, DEQ and DOGAMI are being addressed and ODOT confirmed that an access permit on Cape Blanco Rd (Hwy 250) was issued for the proposed operation. Any outstanding conditions would remain in effect for this amended application, if approved. The Applicant has given extensions for this application to provide additional information and allow the county time to research of the successor transfers. At one point an application denial letter was posted on the Curry County Planning Department's webpage, but ownership research found this letter was a mistake and it was removed. Public notice of the denial letter was not sent.

With this application (AD-2104) the Applicant seeks approval to amend the existing Conditional Use Approval (AD-1604) authorizing mining and processing of aggregate on a 57-acre portion of a parcel split zoned Forestry-Grazing (FG) and Rural Industrial (RI) to include an additional 12.5-acre area. The additional area has been retired from cranberry bog use and would instead be used for processing water storage and stockpiling of aggregate. Most of the TL 1502 and TL 1800 are in the FG (Forestry-Grazing) zoning district, but a 5-acre portion at the northeast corner of TL 1502 is identified under the Curry County Rural Site Exception Maps (#10) as having RI (Rural Industrial) zoning. Applicant has also provided a Geotechnical Site Evaluation (Cascadia Geoservices, dated 9/9/2021) as well as a DEQ WPCF Permit (dated 1/30/2020).

The Community Development Department has duly accepted the application filed in accordance with Curry County Zoning Ordinance (CCZO) Section 7.020 for an application requesting conditional use approval and has given notice of this matter to affected property owners as set forth in CCZO Section

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2.070(2). Approval of this amendment application is contingent on the Planning Director's review for compliance with the following sections of the Curry County Zoning Ordinance (CCZO). It is not the intent of this review to readdress the support and conclusions of AD-1604, but to consider the impact of modifying the existing approval to incorporate the proposed changes.

ANALYSIS

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Applicable Criteria:

JAN 19 2023

Curry County Comprehensive Plan (CCCP)

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Curry County Zoning Ordinance (CCZO)

Section 3.050

Forestry-Grazing Zone (FG)

Section 3.052 (24)

Conditional Uses Subject to Administrative Approval by the Director

Section 3.170

Rural Industrial Zone (RI)

Section 3.171 (2)

Uses Permitted Outright

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Section 7.040

Standards Governing Conditional Uses

1. Conditional Uses Generally
10. Mining, quarrying, or other extractive activity
17. Uses on resource land

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Section 7.050 (4)

Time Limit on a Permit for Conditional Use

Criteria and Findings

Curry County Comprehensive Plan (CCCP):

The prior applications in 2011 and 2016 included Findings for Goal 3 (Agricultural Lands), Goal 5 (Natural Resources), Goal 9 (Economy) and Goal 13 (Energy Conservation) of the Curry County Comprehensive Plan (CCCP). With both AD-1115 and AD-1604, the applicable goals and policies of the CCCP were considered to have been adequately addressed and both proposed applications were found to be in conformance. No changes or additions with respect to the CCCP were offered or required with this amendment request. The goals and policies of the CCCP remain adequately addressed.

CCZO Section 3.050 Forestry-Grazing Zone (FG)

Purpose of Classification: The Forestry Grazing Zone is applied to resource areas of the county where the primary land use is commercial forestry with some intermixed agricultural uses for livestock uses. The purpose of the Forestry Grazing Zone is:



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- (a) to implement the forest land policies of the Curry County Comprehensive Plan; and
- (b) to implement Statewide Planning Goal 4 with respect to forest lands in the county.
- (c) to implement the agricultural land policies of the Curry County Comprehensive Plan with respect to livestock grazing and related farm uses which are intermixed with forest land in some parts of the county; and
- (d) to implement Statewide Planning Goal 3 with respect to intermixed farm and forest land in the county.

CCZO Section 3.052 Conditional Uses Subject to Administrative Approval by the Director

- 24. Land-based mining and processing of oil, gas, or other subsurface resources, as defined in ORS Chapter 520 and not otherwise permitted in 3.041 (10), and the mining and processing of aggregate and mineral resources as defined under ORS Chapter 517 but not including support or processing facilities for offshore oil, gas or marine mineral activities. (1,9,16)

CCZO Section 3.170 Rural Industrial Zone (RI)

Purpose of Classification. The RI zoning classification is applied to all rural lands with existing industrial uses in built and committed exceptions to the Statewide Planning Goals as of the date of adoption of this ordinance. All future rezoning to this zoning designation shall require an exception to Goals 3 and/or 4, 14 and other Goals which are applicable to the specific site and shall be limited to those expressly authorized by statute and the comprehensive plan.

CCZO Section 3.171 (2) Uses Permitted Outright

- 2- A facility for the primary processing of aggregate or other mineral resources such as rock crushing, screening but not including processing facilities used for processing offshore oil, gas, or marine mineral resources.

Applicant's Response: The subject property is split zoned Forestry-Grazing and Rural Industrial. The zone purposes are listed above. Mining and processing of aggregate and mineral resources is permitted conditionally within the FG zone. Permanent facilities for secondary processing of aggregate and mineral resources are permitted conditionally within the Rural Industrial zone. Conditional use permit (AD-1116) [should be AD-1115] has been issued to mine and process aggregate in a 57-acre portion of the site. No mining is proposed in the expansion area. The proposed modification is for processing only and processing will have no effect on the operations of the site other than to store water in an area previously used to store water and provide additional area to stockpile aggregate.

Findings/Conclusion: Conditional use permit AD-1604 approved a 57-acre portion of Van Loo Ranch for aggregate mining and primary (not secondary) processing of aggregate. Most of the original 57-acres



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approved is in the FG zoning district, but the northeast corner of Tax Lot 1502, adjacent to Cape Blanco Road, is identified as Rural Industrial (RI) zoning under Curry County Rural Exception Site 10. Conditional use approval was granted under AD-1604 since the appropriate standards of the CCCP and CCZO were satisfied or could be satisfied with conditions. AD-1604 limited aggregate mining to the FG zoned portion of the proposed 57-acre operation, whereas primary aggregate processing was allowed on both the FG and RI zoned portions.

The Applicant requests approval to amend the conditional use permit (AD-1604) to include the 12.5-acres of retired cranberry bogs, spanning both the FG and RI zoning districts on this property. The Applicant states that there will be no aggregate mining in the expansion area and that the expansion area will be used for process water storage and aggregate stockpiling only. This request to amend the existing conditional use approval can thereby be approved if the appropriate standards of the CCZO are satisfied.

For the area within the FG zone, subsections 1, 10 and 17 of Section 7.040 (Standards Governing Conditional Uses) must be addressed. For the area in the RI zone, a facility for the primary processing of aggregate or other mineral resources such as rock crushing and screening is permitted outright and is not required to meet the standards of Section 7.040.

Section 7.040 Standards Governing Conditional Uses

In addition to the standards of the zone in which the conditional and permitted use is located and the other standards in this ordinance, conditional permitted uses must meet the following standards:

1. Conditional Uses Generally

(Subsections a, b, c, and d are applicable to this proposal, but subsections e, f, and g, specific to expansion of public water systems, are not applicable.)

- a- *Setbacks and building height. The County may require property line setbacks or building height restrictions other than those specified in this Ordinance in order to render the proposed conditional use compatible with surrounding land uses.*
- b- *Off-street parking, additional lot area and buffering. The County may require access to the property, off-street parking, additional lot area, or buffering requirements other than those specified in in this Ordinance to render the proposed conditional or permitted use compatible with surrounding land uses.*
- c- *More restrictive construction standards. The County may require that the development be constructed to standards more restrictive than the Uniform Building Code or the general codes to comply with the Comprehensive Plan and specific standards established and conditions imposed in granting the Conditional Use Permit for the proposed use.*

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Applicant's Response: Additional setback, height restrictions, parking, buffering, building code requirements, etc. may be conditions of approval to render the proposed use compatible with the surrounding properties.

Findings/Conclusion: No permanent structures were proposed with the application of AD-1604, so property line setbacks, building height limitations and more restrictive construction standards were unnecessary. Approval of AD-1604 was conditioned on a 500 ft buffer around the mining areas (Exhibit C) and a 50 ft buffer around NWI Wetland Areas (Exhibit D). The 500 ft buffer around the mining area was originally proposed by the Applicant to limit noise and dust around any extraction activity. The CCZO Riparian Buffer (Section 4.011) prevents disturbance within 50 ft of streams, but the buffer was expanded to further protect wetland areas. These buffers were to be maintained during any mining activity, so will remain as conditions of approval. As proposed, the 12.5-acre expansion is for process water and aggregate stockpiling and will not be used for aggregate mining area. No change in these required buffers is necessary for the proposed expansion. As conditioned, this requirement is met.

- d- *Utility statement requirements. If the proposed conditional or permitted use involves development that will use utility services, the applicant shall provide statements from the affected utilities that they have reviewed the applicants' proposed plans. These statements shall explicitly set forth the utilities' requirements, terms, and conditions for providing or expanding service to the proposed development and shall be adopted by the Commission or Director as part of the Conditional or Permitted Use Permit.*

Applicant's Response: Service Provider Confirmation forms from Coos-Curry Electric and Sixes Rural Fire Protection District have been previously provided and included in the existing CUP. The proposed amendment does not change those approvals, nor does the proposed amendment require the use of utility services.

Findings/Conclusion: Approval of AD-1604 was conditioned on compliance with Coos Curry Electric Co-op (CCEC) requirements, as specified under the Service Provider Confirmation Form dated 12/6/2011, prior to the initiation of mining. With this application, the Applicant provided an updated letter from CCEC confirming that their requirements are still outstanding, and no new requirements were added for the proposed expansion. The CCEC requirements will therefore remain as a condition of approval.

Cape Blanco Rd is State Highway 250, designated as a major collector providing access to US Hwy 101 in the Curry County Transportation Systems Plan. An ODOT access permit was included with the application for AD-2016 since the Applicant intended to expand the access for the gravel extraction use and an approved access permit was required as a condition of approval for AD-1604. Per Micah Horowitz, Senior Transportation Planner for ODOT Region 3, "the property has an existing access on Hwy 250 which should continue to serve as primary access to the site." This requirement of AD-1604 has been met.

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A service provider confirmation letter from Sixes Rural Fire Protection District (RFPD), originally provided with AD-1115, was included with the application for AD-1604. In Curry County, RFPDs were established to provide structural fire protection. No structures were proposed with AD-1604, and none are proposed with this amendment application. As noted in the Sixes RFPD letter, "project will not place added load and/or burden on the department."

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10. Mining, quarrying, or other extractive activity

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Plans and specifications submitted to the Commission for approval must contain sufficient information to allow the Commission to review and set siting standards related to the following standards:

- (1) Impact of the proposed use on surrounding land uses in terms of Department of Environmental Quality standards for noise, dust, or other environmental factors;*

Applicant's Response: The existing CUP allows excavation and processing (crushing). A noise study and analysis, submitted for the original CUP application, concluded there would be no impact to others. The proposed expansion results in no changes to the excavation or processing area which are the basis for the noise generation. Residential use and the boundaries of Cape Blanco State Park remains the same distance from the proposed aggregate site as it was in 2012 and the noise study completed continues to be applicable as neither the stockpile nor ponds will result in a new area of noise generation.

Findings/Conclusion: The noise study (Daly, Standlee and Associates, March 2011) for the proposed mining and aggregate processing facility was originally provided with the application for AD-1115. The study determined that no mitigation measures would be required for excavation and processing noise generated at the proposed site to comply with state and county noise regulations. A letter of update was submitted with the application for AD-1604, determining that noise emanating from the proposed mining operations would still be expected to comply with the DEQ noise level regulations.

With the applications for AD-1115 and AD-1604, the Applicant proposed that the operation will involve no more than six acres of excavation at any one time, and would include screening of existing rock and sand, with some crushing of the oversize materials on site. The crusher would be setback from the northern property line and any crushing or screening activities would conform to the necessary air discharge permits from DEQ. A water truck on site would also provide dust abatement and fire protection. The proposed 12.5-acre expansion, for process water and aggregate stockpiling, is not anticipated to result in more noise or dust generation than was already addressed under AD-1604. This requirement is met.

- (2) The impact of the proposed use on water quality, water flow, or fish habitat on affected rivers or streams;*

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Applicant's Response: Consistent with the CUP application and approval, there will be no impacts on water quality, water flow or fish habitat and streams as this is an upland site and does not include any wetlands. A Stormwater Permit has been applied for and has been approved. The site has been inspected by DOGAMI. No water will be discharged from the site, water will be infiltrated into the ground through seepage ponds and/or trenches, and there will be no impact to flow or quantity. There is no fish habitat or affected rivers or streams.

Findings/Conclusion: The Applicant states that no water will be discharged from the site, water will be infiltrated into the ground through seepage ponds and/or trenches, and there will be no impact to flow or quantity. The Applicant further states that there is no fish habitat or affected rivers or streams on the property. The Applicant has provided a DEQ Water Pollution Control Facility (WPCF-1000) General Permit from 2018 (which includes DOGAMI permit requirements and storm water pollution control plan) and a Water Quality Source Inspection, 1/30/2020, showing no violations. A DOGAMI Operating Permit (ID# 08-0104) was first issued in 2018, has been extended yearly, and is valid through February 2023. Approval of AD-1604 was also conditioned on a 50 ft buffer between mining and wetland areas, further limiting any potential impacts to water quality or water flow. Expansion of the aggregate processing and stockpiling areas is not anticipated to pose any greater impact to water quality, water flow, or fish habitat. This requirement is met.

(3) The impact of the proposed use on overall land stability, vegetation, wildlife habitat and land or soil erosion;

Applicant's Response: Consistent with the CUP application and approval, the site will be operated to prevent erosion and control sediment consistent with the Curry County Zoning Ordinance 3.300 – 3.324 and DOGAMI requirements, including the DOGAMI-approved Operating and Reclamation Plan. A Geotechnical Site Evaluation was completed in September 2021 by Cascadia Geoservices Inc. which concluded the site is stable and is well drained, consistent with the Curry County Zoning Ordinance 3.300 – 3.324 requirements. There are no identified conflicts with wildlife habitat, and gorse (a noxious shrub) is being removed from the property as part of the mining operation.

Findings/Conclusion: Review of both AD-1115 and AD-1604 determined that there were no conflicts with wildlife habitat; noxious vegetation would be removed; the land would be reclaimed for long-term use; and the reclamation plan provided to DOGAMI would address soil erosion, land stability and vegetation. Approval of AD-1604 was conditioned on the Applicant's compliance with the County's Erosion Prevention and Sediment Control requirements (CCZO Section 3.300 – 3.300) and any stormwater requirements of DOGAMI and DEQ related to the mining and processing operations. The Applicant states that they will comply. The Geotechnical Site Evaluation (Cascadia Geoservices Inc, September 2021) provided determined that the property is stable, and that "the proposed mining expansion can be accomplished without measures to mitigate or control the risk of geological hazards." No additional negative impacts on vegetation or wildlife habitat are anticipated with the proposed 12.5-acre expansion. This standard has been adequately addressed.



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- (4) *The adequacy of protection for people residing or working in the area from the proposed mining activity through fencing of the site;*

Applicant's Response: Consistent with the CUP application and approval, fencing is not necessary because the use is in a rural area with natural barriers due to distances from the site to residential and other nonagricultural uses. Regardless, a field fence is maintained along Cape Blanco Rd as well as an entrance gate to control livestock which also controls access of people.

Findings/Conclusion: Applicant states that fencing is unnecessary since the proposed use is in a less densely developed rural area distanced from residential and other nonagricultural uses, but that a field fence and gate are maintained along Cape Blanco Rd. Except for a limited view down the drive, trees along Cape Blanco Rd and an earth berm for the cranberry bogs block view and reduce potential noise from the project area. According to the Curry County GIS map, there are no residences within a 500-foot buffer around the gravel mining area. This standard is satisfied.

- (5) *The rehabilitation of the land upon termination of the mining activity. The proposed rehabilitation must at least meet the requirements of state surface mining or gravel removal permits.*

Applicant's Response: Consistent with the CUP application and approval, the site will be reclaimed in accordance with the allowable zoning uses and the DOGAMI approved reclamation plan. This will result in the pond area remaining as ponds upon reclamation for future farming or wildlife or in backfilling the pond area to establish grazing pasture for agricultural purposes.

The planned secondary beneficial use for this site is Agriculture/Grazing as the site will ultimately be backfilled and shaped to blend in with the surrounding topography through reclamation. Although the Reclamation Plan states that reclamation is scheduled to begin within 180 days after the completion of mining, per AD-1604, reclamation will be conducted concurrently with mining operations and will include ongoing backfilling operations, spreading of growth medium and revegetation. Taking into consideration that all excavation ponds will likely be backfilled with overburden and clean construction materials, it is unlikely that any excavation slopes will remain onsite; however, the final excavated sloping configurations at 1 ½ H:1V or flatter and all final fill slopes at 2H:1V or flatter.

All compacted areas including stockpiling and processing areas will be scarified and/or ripped with earth moving equipment to uncompact the upper surface to a depth of 12 inches prior to spreading growth medium. A minimum of 12 inches of growth medium will be placed on all areas to be reclaimed to Agriculture. Additional materials including overburden and imported fill materials may be utilized. All areas receiving soil materials will be seeded and planted.

The Applicant will revegetate all areas receiving growth medium utilizing an all-purpose, native, weed-free pasture grass seed mix at a minimum rate of 30 lbs per acre. Seeding will be conducted in either

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the spring or fall via mechanical or hydro-seeding. Fertilizers and lime will only be used if necessary to establish vegetation.

All structures, equipment, and refuse will be removed from the site upon completion of reclamation operations and all stormwater runoffs will continue to be contained onsite via internal infiltration.

Findings/Conclusion: DOGAMI requires rehabilitation of the land upon termination of the mining activity via an approved reclamation plan as well as a bond to ensure compliance. Approval of AD-1604 was conditioned on obtaining all required permits and licenses from Federal, State, and County agencies (including, but not limited to, DEQ, DOGAMI, ODFW and ODOT) necessary for aggregate mining activities and equipment use in these operations prior to initiating any activity approved herein and shall be kept current as necessary. All operations approved herein shall be conducted as required by these permits. The proposed 12.5-acre expansion area may require revisions to these permits and licenses but would not negate the need for this requirement. As conditioned, this requirement is met.

- (6) If the proposed extractive activity involves the removal of rock, gravel, or sediment from a river or stream, the proposal shall be reviewed by the Oregon Department of Fish and Wildlife, and it may provide a written statement to the county regarding the possible impact on fish habitat associated with the affected river or stream.*

Applicant's Response: Consistent with the CUP application and approval, the existing CUP mining and processing activities are upland mining which does not involve any river or stream activity. Similarly, the proposed expansion does not include any river or stream activity, nor does it include any mining (i.e., the removal of rock, gravel, or sediment from the proposed expansion area).

Findings/Conclusion: According to the Applicant, the proposed extraction activity will not include the removal of rock, gravel, or sediment from a river or a stream, nor will the proposed activity be adjacent to a river or stream. This standard is not applicable.

- (7) The County will define an area around the specific removal site which includes all lands within 250 feet of the site, based on the site map for a state mining or gravel permit. The applicant shall provide findings which identify the existing uses on those lands included within this area. The Commission shall evaluate the applicant's findings with regard to the potentially conflicting uses identified in the area based on the factors below:*
- i) If the mining activity can be sited on an alternate site; and*
 - ii) where conflicting uses are identified the economic, social environmental and energy consequences of the conflicting uses shall be determined and methods developed to resolve the conflict.*

Applicant's Response: The subject property is identified as a mineral resource site on the CC Comprehensive Plan Mineral Resources Map (Ordinance 98-5) and therefore ideally suited for mineral extraction activities as evidenced by being approved via the existing CUP and DOGAMI operating permit.

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The proposed modification to expand the area does not include mining in that area: it only includes the immediately adjacent unused cranberry bogs for process water sedimentation and storage and stockpiling of processed aggregate. It is contiguous to the approved CUP area. The buffer shown in Attachment C (Exhibit C herein) of the original permit application is still applicable as no changes to the removal area are being proposed. No conflicting uses have been identified and mining and processing at the site have been approved and commenced. Similarly, the use of the cranberry bog pond area for water and stockpiling does not result in any conflicts.

Findings/Conclusion: The Applicant demonstrated in 2016 that there are no residential or public uses within 250 feet of the proposed mining. The 250 ft buffer consists of agricultural land, vacant land, and land with mixed vegetation. No residential or public uses were impacted, and no conflicting uses were identified. Since the proposed 12.5-acre expansion area will not be used for mining, the 250 ft buffer would not change. Therefore, this standard has been adequately addressed.

The subject property is an identified significant mineral resource (Goal 5) site and is on the *Mineral Resources Inventory Map* of the *Curry County Comprehensive Plan*, as amended under Curry County Ordinance 98-5. The proposed extraction location is an upland site and aggregate extraction from an upland site is a less intrusive alternative to river gravel extraction (disturbance of fish habitat, estuary, etc). The Applicant states this aggregate, which includes marine basalt and other alluvial deposits, is a rare resource on the Oregon Coast and notes that a similar operation has existed on the adjacent property since 1982 (McKenzie, active DOGAMI Operating Permit valid through 5/31/2022).

- (8) *A rock crusher, washer or sorter shall not be located closer than 500 feet to any residential or commercial use. Surface mining equipment and necessary access roads shall be constructed, maintained, and operated in such a manner as to eliminate, as far as is practicable, noise, vibration, or dust which are injurious or substantially annoying to persons living in the vicinity.*

Applicant's Response: A rock crusher, washer or sorter are/will not be located closer than 500 ft to any residential or commercial use. Surface mining equipment and necessary access roads are/will be constructed, maintained, and operated in such a manner as to eliminate, as far as practicable, noise, vibration, or dust which are injurious or substantially annoying to persons living in the vicinity. All equipment will be located at least 500 ft from any residential or commercial uses on all adjacent properties. Approval of this amendment does not change the drive location or any mining (extraction) locations of the site.

Findings/Conclusions: Approval of AD-1604 was conditioned on a 500 ft buffer between all mining equipment and any residential or commercial use on adjacent lands. The proposed 12.5-acre expansion area is for process water and aggregate stockpiling only and does not change mining areas or access roads. The proposed 12.5-acre expansion does not negate or change the conditions of AD-1604. As conditioned, this requirement will be met.



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- (9) No uses are permitted relating to offshore oil, gas or marine mineral exploration or development.

Applicant's Response: No uses relating to offshore oil, gas or marine mineral exploration or development are proposed or otherwise included.

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Findings/Conclusions: Offshore oil, gas, or marine mineral exploration or development was not included in AD-1604 nor was it with the proposed amendment. This requirement is not applicable.

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17. **Uses on resource land.**

- a) *The proposed use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agricultural or forest land.*

Applicant's Response: The proposed use is consistent with the Comprehensive Plans for subject property, and the only affect on farming or forest practices will be positive because the long-term benefits to agriculture via the removal of noxious gorse.

Findings/Conclusions: As proposed, AD-1604 was consistent with the *Curry County Comprehensive Plan* and a long-term benefit of the reclamation plan was recognized since the plan would assist in returning the project area back to agricultural use, specifically pastureland. The proposed 12.5-acre expansion area for process water and aggregate stockpiling would similarly be subject to reclamation. This requirement is met.

- b) *The proposed use will not significantly increase fire suppression costs or significantly increase the risks to fire suppression personnel.*

Applicant's Response: The proposed use of the amendment area for water storage and aggregate stockpiles and will not significantly increase fire suppression costs or significantly increase the risks to fire suppression personnel as they are not flammable. Removal of gorse will reduce the fire danger.

Findings/Conclusions: Per the application for AD-1604, the Applicants proposed that the reclamation process would reduce the risk of fire to the surrounding properties and Cape Blanco State Park by removing gorse which is flammable. Furthermore, water would be maintained at the site available for fire suppression, which in turn reduces risks to fire suppression personnel. Approval of AD-1604 was also conditioned on maintaining a 130 ft firebreak (30-foot primary fire safety area plus a 100-foot secondary fire safety area) around all mining equipment and machinery pursuant to CCZO Section 3.055 (2)(a) and (b). Per the Advanced Oregon Wildfire Risk Explorer, this property is in the Lower Elk River Sub-Watershed and has Low Overall Wildfire Risk and Low Burn Probability. The proposed 12.5-acre expansion area would not be used for mining so it would not be subject to the 130 ft firebreak. The



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expansion area would not significantly increase fire suppression costs or significantly increase risks to fire suppression personnel. As conditioned, this requirement is met.

- c) *Uses listed authorized in Section 3.041 or Section 3.051 are also subject to this section, A written statement be recorded with the deed or written contract with the County, or its equivalent shall be obtained from the landowner which recognizes the rights of adjacent and nearby land owners to conduct forest operations consistent with the Oregon Forest Practices Act and related Oregon Administrative Rules.*

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Applicant's Response: The statement that is required seems more pertinent to residential use than to an aggregate extraction site. The landowners have provided a document to the county entitled "Waiver of Right to Remonstrance against Customarily (Commonly) Accepted Farm and Forestry Practices", which remains in effect and include the amendment area.

Findings/Conclusion: As approved, AD-1604 was conditioned on recording of a deed restriction recognizing the rights of adjacent and nearby landowners to conduct forest operations consistent with the Oregon Forest Practices Act. A copy of the possible waiver was provided to the Planning Division with the 2016 application and a statement by the property owners of TL 1502 and TL 1800 was provided with this 2021 application, but a deed restriction has not been provided.

The intent of this CCZO requirement is to have the Applicant requesting conditional use approval recognize the rights of adjacent and nearby landowners to conduct forest operations consistent with the Oregon Forest Practices Act by providing a recorded "Waiver of Right" to protest commonly accepted farm and forestry practices. When the Applicant is the property owner, provision of this waiver as a recorded deed is applicable. However, in this case, the Applicant is not the property owner, so provision of a waiver by the landowner is not in keeping with the requirement's intent since the landowner has no position in the conditional use request. Therefore, this criterion is not applicable in this case.

Section 7.050 Time Limit on a Permit for Conditional Uses

The Director or Commission may issue Conditional or Permitted Use Permits that must be periodically reviewed to ascertain that the conditions of the permit are being complied with on a continuing basis.

Findings/Conclusion: The CCZO allows conditional use permits to be issued which must be reviewed to ascertain that the conditions of approval are being met on a continuous basis. The approvals of AD-1115 and AD-1604 were conditioned on a validity period of THREE (3) years from the date of the order, subject to compliance with the approval conditions, unless the Applicant requested an extension of the permit as authorized in CCZO Section 7.050, provided the applicable criteria for this decision remain unchanged. As established with the prior approvals, this approval is conditioned on a THREE (3) year validity period, from the date of decision, subject to compliance with the approval conditions, unless the Applicant requested an extension of the permit as authorized in CCZO Section 7.050, provided the applicable criteria for this decision remain unchanged.



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COMMENTS RECEIVED

A Notice of Application was issued to nearby property owners and interested parties regarding this request to amend the existing conditional use approval (AD-1604) on March 8, 2022. Two responses were received.

Micah Horowitz, AICP, Senior Transportation Planner, ODOT Region 3, responded via a 4/8/2021 email that the property has an existing access to Hwy 250 (Cape Blanco Rd), which should continue to serve as primary access to the site, and that no new access to US Hwy 101 would be permitted.

Staff Response: AD-1604 was conditioned on a new ODOT access application, which has since been completed.

Phillip Johnson, Executive Director, Ocean Shores Conservation Coalition responded via a mailed letter (mistakenly dated 4/5/2020). OSCC's concerns were thoroughly stated and included supporting attachments, but can be summarized as:

- Lack of storm water plan and pollution control could impact Elk River estuary and landslide hazards
- Compliance with prior decisions/conditions
- Impact of noise, dust, and other environmental factors on surrounding properties
- Impact of water quality and water flow on fish habitat
- Lack of geotechnical data
- Whether conversion of retired cranberry bogs will impact or increase cost of nearby accepted farming practices.

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Staff Response:

Applicant provided DEQ Water Quality Source Inspection Form (dated 1/30/2020) and recent Geotechnical Site Evaluation (Cascadia Geoservices Inc) to support Applicant's storm water management and pollution control. No Rapidly Moving Landslides or DOGAMI Landslides indicated in area with existing approval (57 acres), nor in proposed expansion area (12.5 acres). Furthermore, existing approval (AD-1604) requires Applicant to maintain 50 ft buffer around wetland areas.

Upon review of approval conditions specified in AD-1604, an ODOT access permit, a DEQ Water Quality Inspection Form, and DOGAMI Operating Permit were confirmed. Most of the AD-1604 approval conditions were to be completed upon initiation of the operations and any outstanding conditions will remain in effect.

A Noise Study was provided with the application for AD-1115 and a letter of update was provided with the application for AD-1604. This study provided support for their determination that no mitigation measures were necessary since the potential noise emanating from the aggregate mining and processing facility would comply with DEQ noise level regulation. Approval of AD-1604 was conditioned on 500 ft buffer around mining area to limit potential issues from noise and dust.



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Applicant provided a recent Water Quality Source Inspection which confirmed no violations with DEQ requirements. The Geotechnical Site Evaluation supported that upon compliance with DEQ Best Management Practices, erosion and surface water runoff can be abated. Approval of AD-1604 was conditioned on a 50 ft buffer around wetland areas and streams to limit potential issues of water quality and flow.

Applicant provided Geotechnical Site Evaluation to address OSCC concerns. The evaluation determined that the proposed mining expansion can be accomplished without measures to mitigate or control the risk of geological hazards.

The cranberry bogs proposed for the expansion have been retired. There is ample area in the subject's immediate area with the same topographical, soil and climate attributes, with similar land use zoning, so potential to replace bogs is not restricted. No significant impacts or increased costs to farming practices are anticipated with the conversion of the retired cranberry bogs to process water and aggregate stockpiling.

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ADMINISTRATIVE DECISION OF THE DIRECTOR

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The Planning Director finds that the Applicant has met the burden of proof to show that the proposed amended use fully complies with the relevant criteria of the Curry County Comprehensive Plan and the Curry County Zoning Ordinance. The request to amend an existing Conditional Use Approval (AD-1604) authorizing mining and processing of aggregate on a 57-acre portion of a property split zoned Forestry-Grazing (FG) and Rural Industrial (RI) to include an additional 12.5-acre area for water processing and aggregate stockpiling, located on Assessor Map 3215-00 tax lots 01502 and 01800, is hereby **APPROVED** subject to the following conditions:

1. This permit shall be valid for a period of **THREE (3)** years from the date of this decision subject to compliance with the conditions listed in this order. Prior to expiration of the approval period (**May 17, 2025**) the Applicant may request extension of the permit as authorized in CCZO Section 7.050, provided the applicable criteria for this decision remains unchanged.
2. The original 57-acre mining and processing operation shall be extended to include the proposed 12.5-acre expansion of the retired cranberry bogs, totaling approximately 70-acres of the Van Loo Ranch property as depicted in Exhibit A.
3. All permits and licenses from other state and federal agencies that are necessary for the operations, and equipment used in support of the operations, approved in this permit shall be obtained prior to initiating the mining operations, and accessory uses, and shall always be kept current during the valid term of this permit. Those other agencies may include, but are not necessarily limited to: DOGAMI, DEQ, ODFW, or ODOT. It is the applicant's responsibility to



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ensure compliance with those other regulatory agencies. Valid agency permits shall be provided to the Planning Division prior to commencement of operations. All operations shall comply with the requirements of those additional agency permits.

4. The Applicants shall comply with the Coos Curry Electric Cooperative (CCEC) requirements:
 - a. The single-phase power line to the pump will be moved out of the mining area or retired.
 - b. Property owner must approve the reroute of the power line and sign off on a new CCEC easement.
 - c. The cost to move the power line will be paid by Bandon Concrete Development in full prior to the reroute of the power line and prior to any mining.
 - d. No new structures shall be built on or under existing CCEC power lines. A minimum of 15-foot setback must be maintained from existing power lines.
5. All mining equipment and machinery shall comply with the primary and secondary fire safety area requirements pursuant to CCZO Section 3.055(2).
6. All access roads to and from the mining/processing site shall be maintained to reduce dust and noise caused by the accessory equipment and vehicles. The Applicant shall post warning or caution signs on Cape Blanco Rd to alert motorists and other users of the road of potential heavy truck traffic when materials are being transported. The signs shall comply with ODOT sign regulations, if any.
7. All equipment shall be located at least 500 ft from any residential or commercial uses on adjacent lands, as shown on Exhibit B
8. A 50 ft riparian corridor buffer shall be maintained along the wetlands identified on the National Wetlands Inventory (NWI) maps, as shown in Exhibit C.
9. Operations are restricted to daylight hours. Operations are not authorized on the weekends or holidays unless substantial need necessitates emergency operations (such as emergency road repairs where extended hours or weekend or holiday work is necessary to assist city, county, state, or federal agencies with road maintenance authority). If such work is required, the Applicant shall notify the Planning Division of the emergency work on the following business day.
10. The Applicant shall use best management practices to implement and maintain gorse eradication on the subject parcel, specifically in the proposed mining area, areas immediately adjacent to the mining areas, and reclaimed areas.
11. The Applicant shall comply with County Erosion Prevention and Sediment Control regulations (CCZO Section 3.300) and any stormwater requirements of DOGAMI and DEQ related to the mining and processing operations.

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Failure to comply with all the conditions of approval listed above, or violations concerning the use approved in this permit, may result in the revocation by the Planning Director of this authorization--after due process. Depending on the nature of the violation, or non-compliance action, additional enforcement action may be pursued by the County and other regulatory agencies.

This decision is limited to the Planning Director's review of applicable zoning rules and land use law, as outlined in the Curry County Comprehensive Plan, the Curry County Zoning Ordinance, and the Curry County Flood Damage Prevention Ordinance. Other county, state and federal agencies may have regulatory review authority for development projects. The decision rendered herein neither implies nor guarantees compliance with the requirements of any other regulatory agency. It is the property owner's responsibility to ensure that the development complies with the requirements of any other regulatory agency or provisions of law prior to initiating the development.

Appeal Rights

The Planning Director's decision on this matter will be final unless appealed to the Curry County Planning Commission within 15 days following the date of the mailing of the notice of appeal (postmarked date). Any appeal must meet the provisions of CCZO Sections 2.120, 2.170, and 2.180.

Becky Crockett, Planning Director
Curry County Community Development

May 17, 2022

Date



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EXHIBIT A: Map of Request to Amend AD-1604

Adding 12.5 acres (identified in red) to original 57 acres (outlined in blue)

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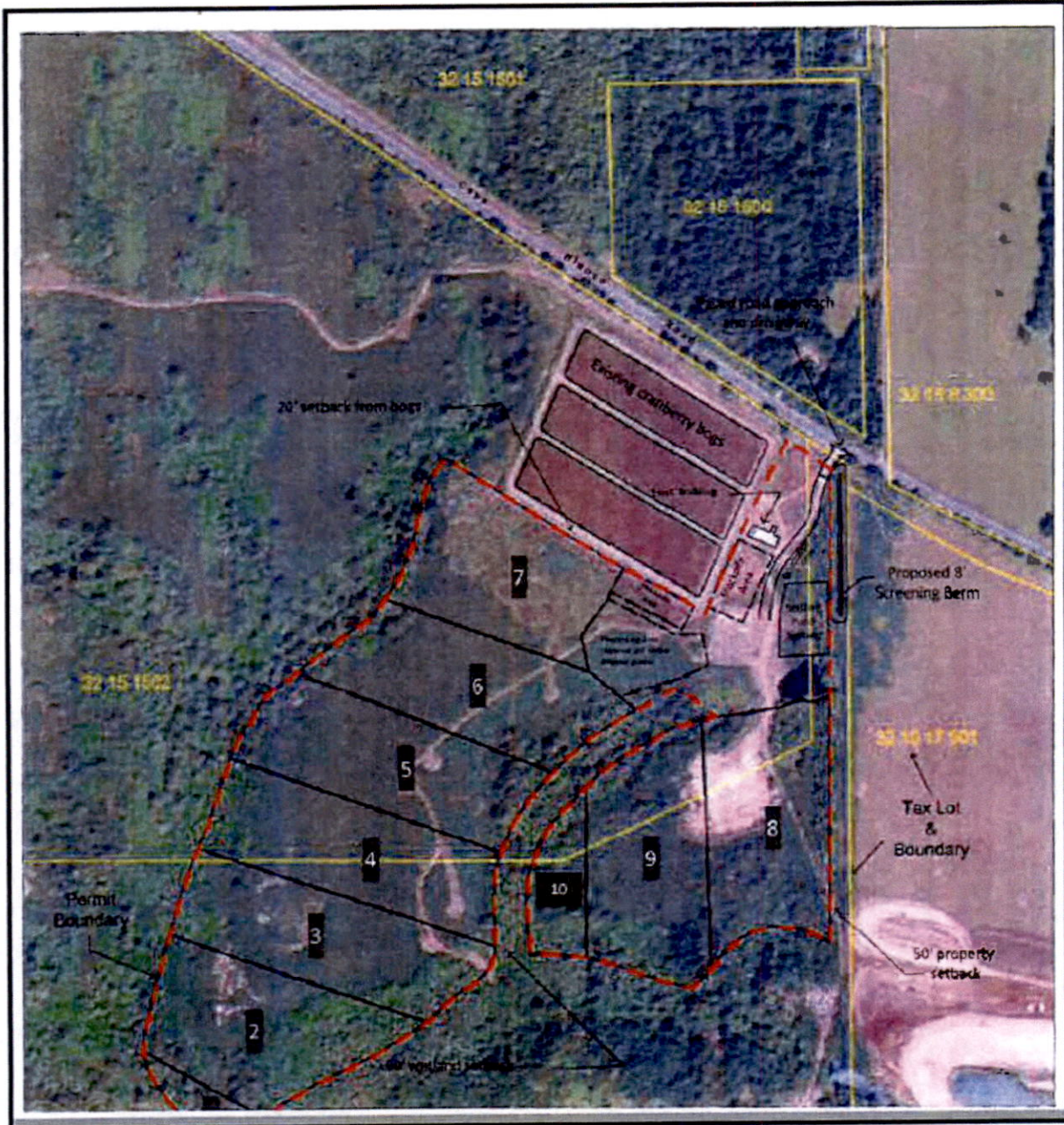
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EXHIBIT B: Proposed Sections of Mining Area
Not to include retired cranberry bog expansion area

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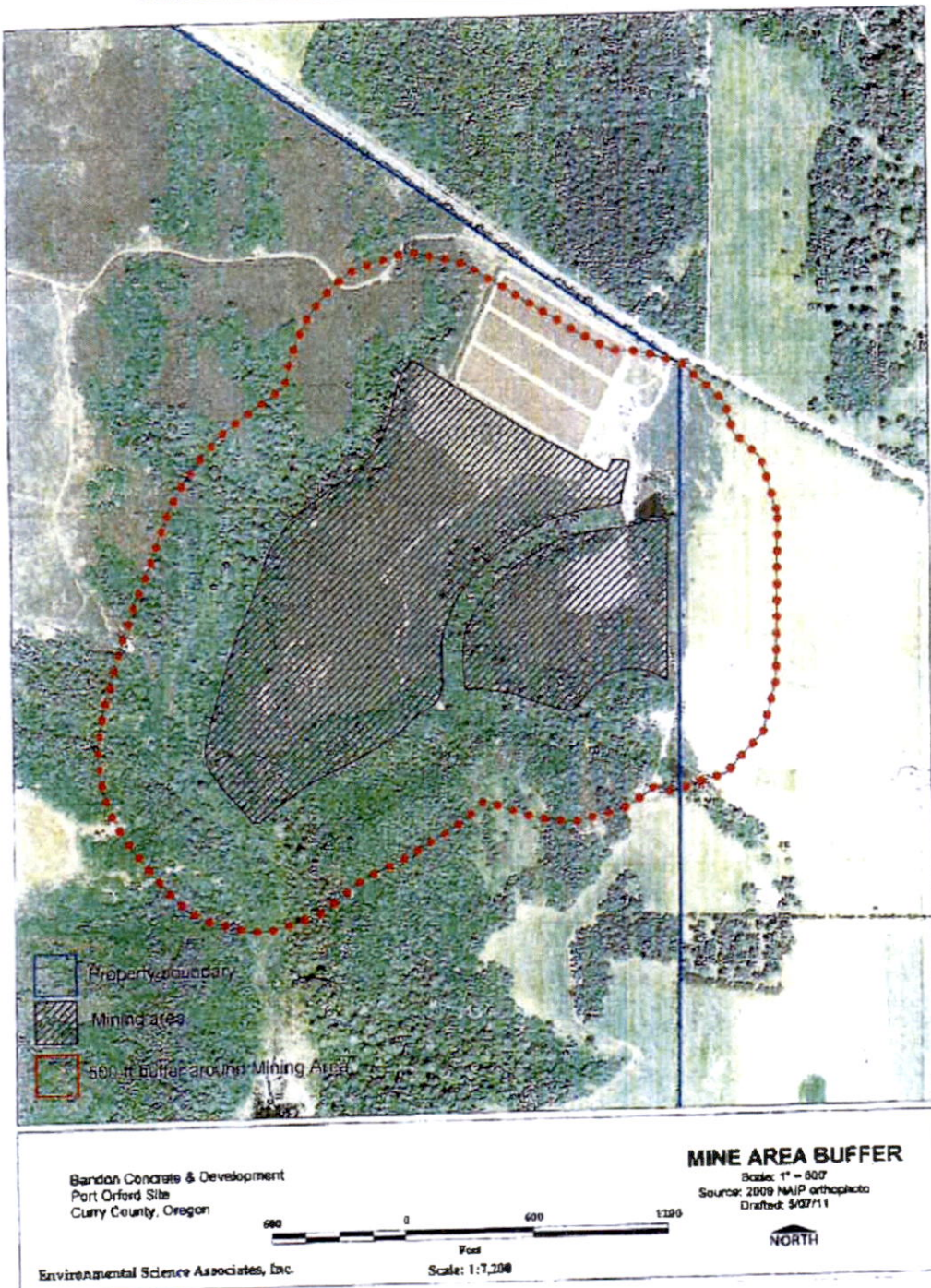
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EXHIBIT C : Proposed 500 ft Buffer Around Mining Areas





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EXHIBIT D : Proposed 50 ft Buffer Around Wetland Areas

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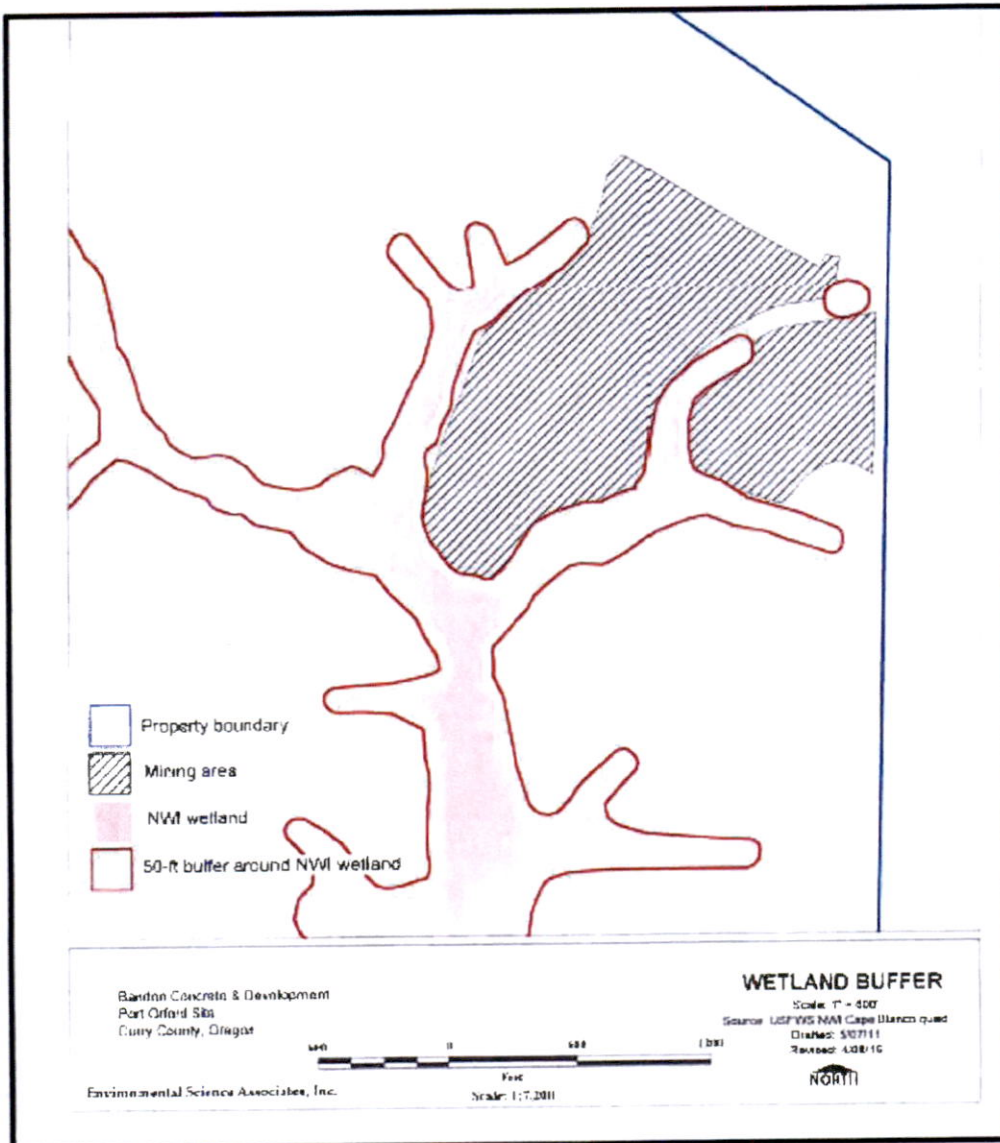
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Minimum Requirements Checklist

Minimum Requirements (OAR 690-310-0040, OAR 690-310-0050 & ORS 537.140)

Include this checklist with the application

Check that each of the following sections are completed. The application will be returned if all required items are not included. If you have questions, please call the Water Rights Customer Service Group at (503) 986-0900.

Please submit the original application and signatures to the Water Resources Department. Applicants are encouraged to keep a copy of the completed application.

- | | | | |
|-------------------------------------|-------------|--|--|
| ☒ | SECTION 1: | Applicant Information and Signature | |
| ☒ | SECTION 2: | Property Ownership | |
| ☒ | SECTION 3: | Source of Water | |
| ☒ | SECTION 4: | Sensitive, Threatened or Endangered Fish Species Public Interest Information | |
| ☒ | SECTION 5: | Water Use | |
| ☒ | SECTION 6: | Dam Height and Composition | |
| ☒ | SECTION 7: | Primary Outlet Works | |
| ☒ | SECTION 8: | Emergency Spillway | |
| ☒ | SECTION 9: | Water Quality | |
| ☒ | SECTION 10: | Project Schedule | |
| ☒ | SECTION 11: | Within a District | |
| ☒ | SECTION 12: | Remarks | |

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Include the following additional items:

- ☐ Land Use Information Form with approval and signature of local planning department (*must be an original*) or signed receipt.
- ☐ Provide the legal description of: (1) the property from which the water is to be diverted, (2) any property crossed by the proposed ditch, canal or other work, and (3) any property on which the water is to be used as depicted on the map.
- ☐ Fees - Amount enclosed: \$ _____
See the Department's Fee Schedule at www.oregon.gov/owrd or call (503) 986-0900.
- ☐ Map that includes the following items:
 - ☒ Map must be prepared by a Certified Water Rights Examiner
 - ☒ Permanent quality and drawn in ink
 - ☒ Even map scale not less than 4" = 1 mile (example: 1" = 400 ft, 1" = 1320 ft, etc.)
 - ☒ North directional symbol
 - ☒ Township, Range, Section, Quarter/Quarter, Tax Lots
 - ☒ Reference public-land survey corner on map
 - ☒ Location of each dam by reference to a recognized public land survey corner (distances north/south and east/west)
 - ☒ Indicate the area of use by Quarter/Quarter and tax lot identified clearly
 - ☒ Number of acres per Quarter/Quarter and hatching to indicate area of use if for primary irrigation, supplemental irrigation, or nursery
 - ☒ Location of main canals, ditches, pipelines or flumes (if well is outside of the area of use)

Please note that a secondary application is required if there are out-of-reservoir uses associated with this application.

Water-Use Permit Application Processing

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1. Completeness Determination

The Department evaluates whether the application and accompanying map contain all of the information required under OAR 690-310-0040 and OAR 690-310-0050. The Department also determines whether the proposed use is prohibited by statute. If the Department determines that the application is incomplete, all fees have not been paid, or the use is prohibited by statute, the application and all fees submitted are returned to the applicant.

2. Initial Review

The Department reviews the application to determine whether water is available during the period requested, whether the proposed use is restricted or limited by rule or statute, and whether other issues may preclude approval of or restrict the proposed use. An Initial Review (IR) containing preliminary determinations is mailed to the applicant. The applicant has 14 days from the mailing date to withdraw the application from further processing and receive a refund of all fees paid minus \$310. The applicant may put the application on hold for up to 180 days and may request additional time if necessary.

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3. Public Notice

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Within 7 days of the mailing of the initial review, the Department gives [public notice](#) of the application in the weekly notice published by the Department at www.oregon.gov/owrd. The public comment period is 30 days from publication in the weekly notice.

4. Proposed Final Order Issued

The Department reviews any comments received, including comments from other state agencies related to the protection of sensitive, threatened or endangered fish species. Within 60 days of completion of the IR, the Department issues a Proposed Final Order (PFO) explaining the proposed decision to deny or approve the application. A PFO proposing approval of an application will include a draft permit, and may request additional information or outstanding fees required prior to permit issuance.

5. Public Notice

Within 7 days of issuing the PFO, the Department gives public notice in the weekly notice. Notice includes information about the application and the PFO. Protest must be received by the Department within 45 days after publication of the PFO in the weekly notice. Anyone may file a protest. The protest filing fee is \$480.00 for the applicant and \$950.00 for non-applicants. Protests are filed on approximately 10 percent of Proposed Final Orders. If a protest is filed the Department will attempt to settle the protest but will schedule a contested case hearing if necessary.

6. Final Order Issued

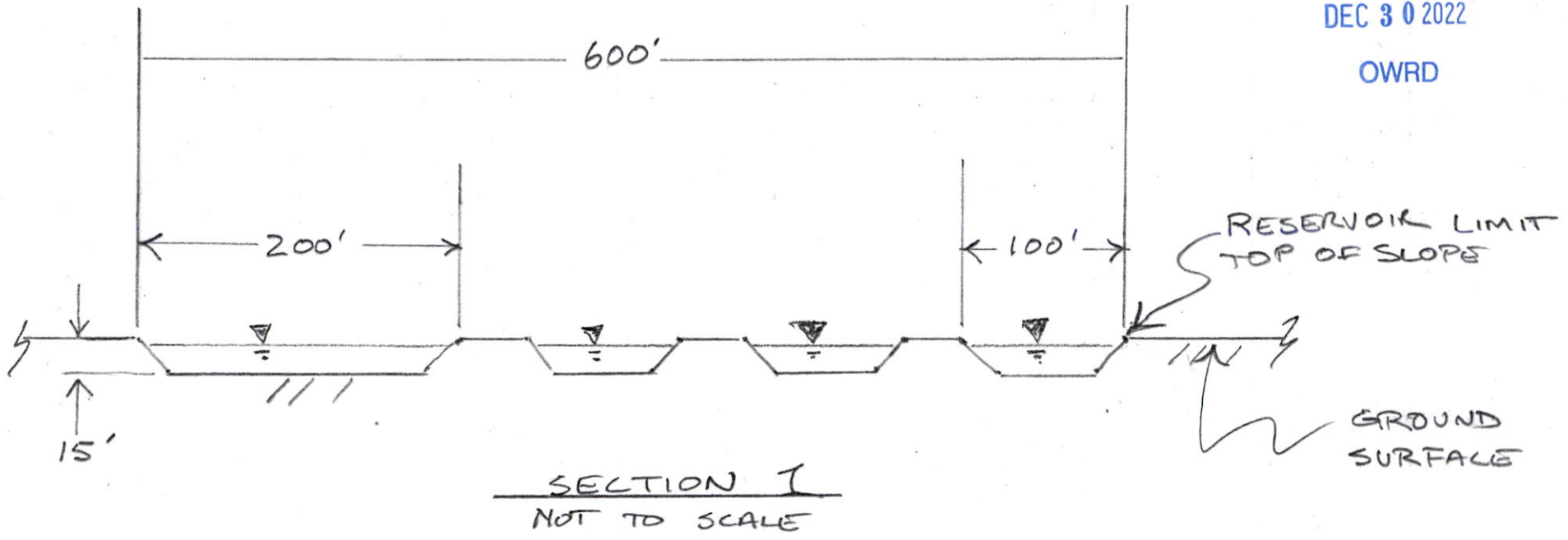
If no protests are filed, the Department can issue a Final Order within 60 days of the close of the period for receiving protest. If the application is approved, a permit is issued. The permit specifies the details of the authorized use and any terms, limitations or conditions that the Department deems appropriate.

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VAN LOO RESERVOIR TOM GRUSZCZENSKI

11/23/2022

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VAN LOO RESERVOIR

TOM GRUSZCZENSKI

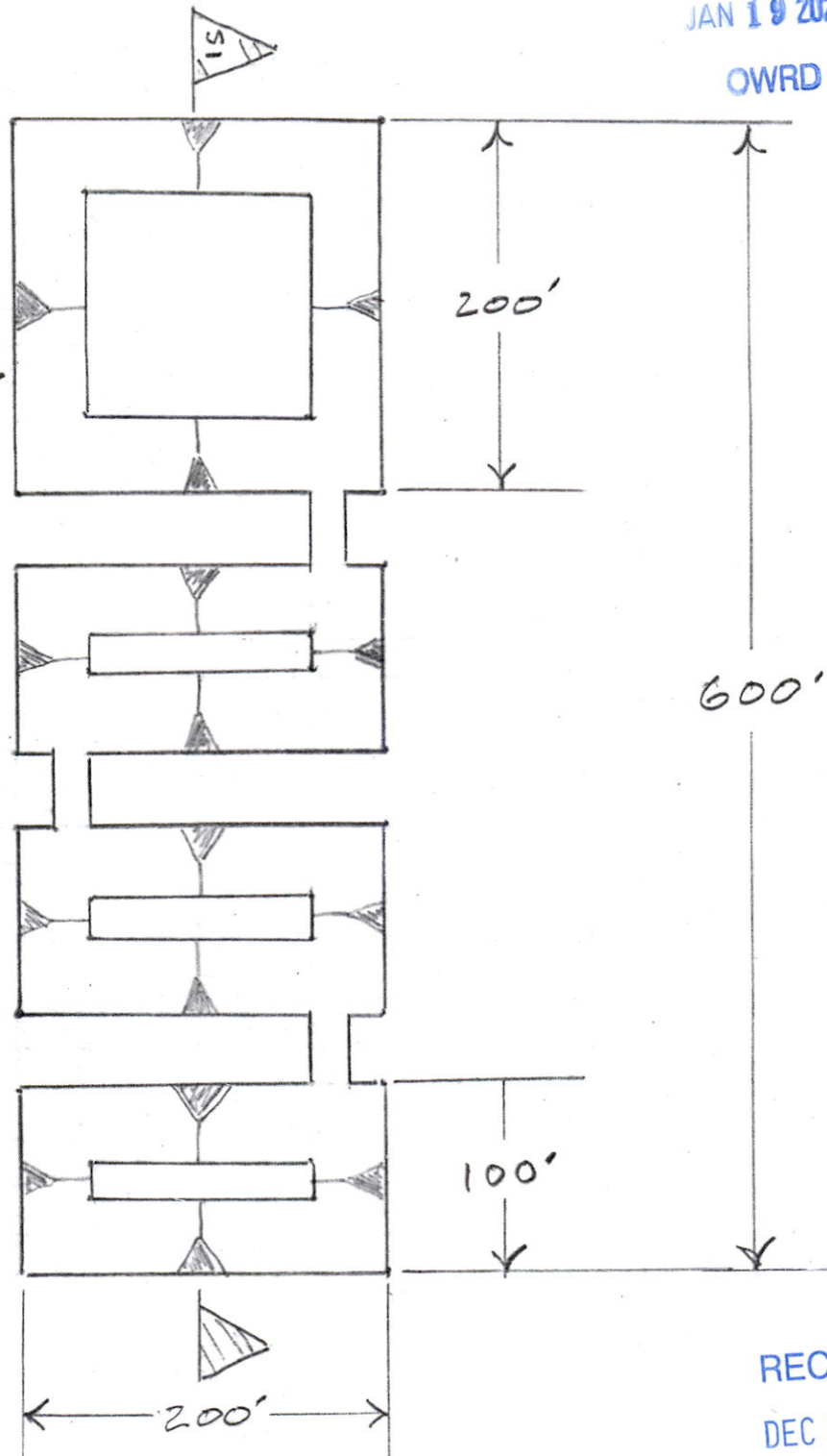
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RESERVOIR
LIMIT
TOP OF SLOPE



PLAN VIEW

1" = 100'

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Van Loo Reservoir





Oregon
Kate Brown, Governor

Water Resources Department
725 Summer St NE, Suite A
Salem, OR 97301
(503) 986-0900
Fax (503) 986-0904

January 3, 2023

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Tom Gruszczenski
PO Box 1145
Medford, OR 97501

Dear Applicant:

The Water Resources Department has received your application for a permit to store water in a reservoir. At this time, however, we are unable to accept your application because the minimum filing requirements have not been met according to the Oregon Administrative Rules 690-310-0040 and 0050.

We are therefore returning the incomplete application and fees. You may resubmit the application with the additional required information and fees noted on the reverse side of this letter.

Should you have any questions, please contact Water Right Customer Service at 503-986-0801 or 503-986-0810.

Sincerely,

Corie Lovrien
Water Rights Customer Service

Cc: OWRD Fiscal (Check # 16063649)
Scott Cecillani, WM District #14

Enclosures: Application and Check.

This review is based only on the completeness of your application(s). Any determination of water availability, compliance with basin plan rules, or any other water related issues has not been made. Fees may change.

Application Completeness | Summary of Needed Items:

Additional Application Materials or Forms:

☒ Provide the **Legal Description** of: (1) the property from which the water is to be diverted, (2) any property crossed by the proposed ditch, canal or other work, and (3) any property on which the water is to be used as depicted on the map. This requirement can be met by providing a copy of the deed, land sales contract, title insurance policy, or a lot book report prepared by a title company. Copies of tax bills are not acceptable.

☒ A **Map** that includes the following items:

- Must be prepared by a Certified Water Rights Examiner
- **Township, Range, Section, Quarter/Quarter, Tax Lots**
- Indicate the area of use by Quarter/Quarter and **tax lot** identified clearly

****You submitted a standard reservoir application, however, the information in the application suggest that you can also go the alternate reservoir route as the dam height is below 10 ft. If you decide to resubmit for an alternate reservoir, the map doesn't need to be prepared by a CWRE, but the last two requirements must be met on the new map.**

Additionally, since there's no signature from Alice Baum, she's not included as an applicant on this application. If you'd like to have her included as an applicant, please have her sign the application.