

**CITY OF FLORENCE
PLANNING COMMISSION**

RESOLUTION PC 16 27 EAP 02

A REQUEST FOR A ONE-YEAR EXTENSION OF APPROVAL PERIOD FOR RESOLUTION PC 15 16 CUP 09, A REQUEST FOR A CONDITIONAL USE PERMIT TO CONSTRUCT A PRIVATE BOAT LIFT AND GANGWAY WITH TWO MOORING BUOYS AND NINE PERMANENT PILES IN THE CONSERVATION ESTUARY DISTRICT LOCATED AT MILE 3.5 OF THE SIUSLAW RIVER, 100 RHODODENDRON DRIVE, MAP 18-12-27-33, TAX LOTS 304, 400, 500 AND THE BAY (FRONT) STREET RIGHT-OF-WAY.

WHEREAS, application was submitted by Larry Porter for an extension to the approved conditional use permit, Resolution PC 15 16 CUP 09, as required by FCC 10-1-1-5, and FCC 10-4-8; and

WHEREAS, the Planning Commission/Design Review Board met December 13, 2016, as outlined in Florence City Code 10-1-1-5 to consider the application, evidence in the record, and testimony received, and

WHEREAS, the Planning Commission/Design Review Board determined per FCC 10-4-8, after review of the application, testimony and evidence in the record, that the application meets the criteria; and

WHEREAS, the Planning Commission/Design Review Board of the City of Florence finds, based on the Findings of Fact, staff recommendation, and evidence and testimony presented to them, that the application meets the applicable criteria.

NOW THEREFORE BE IT RESOLVED that the Planning Commission/Design Review Board of the City of Florence finds, based on the Findings of Fact and the evidence in record, that the request for a one-year extension of approval period for Resolution PC 15 16 CUP 09 may be approved.

1. Approval shall be shown on:

“A” *Findings of Fact*

“B” Application for Extension

Findings of Fact attached as Exhibit “A” are incorporated by reference and adopted in support of this decision. Any modifications to the approved plans or changes of use, except those changes relating to Building Codes, will require approval by the Community Development Director or Planning Commission/Design Review Board.

2. Regardless of the content of material presented for this Planning Commission, including application text and exhibits, staff reports, testimony and/or discussions, the applicant agrees

to comply with all regulations and requirements of the Florence City Code which are current on this date, EXCEPT where variance or deviation from such regulations and requirements has been specifically approved by formal Planning Commission action as documented by the records of this decision and/or the associated Conditions of Approval. The applicant shall submit to the Community Development Department a signed "Agreement of Acceptance" of all conditions of approval prior to issuance of a building permit.

3. Upon encountering any cultural or historic resources during construction, the applicant shall immediately contact the State Historic Preservation Office and the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians. Construction shall cease immediately and shall not continue until permitted by either a SHPO or CTCLUSI representative.
4. The applicant shall be granted one 12-month extension of approval period for conditional use permit approval Resolution PC 15 16 CUP 09, ending on **December 13, 2017**.

ADOPTED BY THE FLORENCE PLANNING COMMISSION/DESIGN REVIEW BOARD the 13th day of December, 2016.

CURT MUILENBURG, Chairperson
Florence Planning Commission

DATE

**STAFF REPORT & FINDINGS OF FACT
FLORENCE COMMUNITY DEVELOPMENT DEPARTMENT
Planning Commission
Exhibit "A"**

Public Hearing Date: December 13, 2016 **Planner:** Glen Southerland
Date of Report: December 6, 2016
Application: PC 16 27 EAP 02

I. PROPOSAL DESCRIPTION

Proposal: A request for extension of approval period for Resolution PC 15 16 CUP 06, a request for a conditional use permit for a boat lift on the Siuslaw River.

Applicant: Larry Porter

Property Owners: Oregon Department of State Lands
Larry Porter, 100 Rhododendron Drive, Taxlot 304
City of Florence, Bay Street Right-of-Way
Port of Siuslaw, Taxlots 400 and 500

Location: Mile 3.5, Siuslaw River, at 43.973102°, -124.121498°
550 feet northeast of the Navigation Channel

Site: Map # 18-12-27-33, Taxlots 00304, 00400, 00500 and Bay (Front) St.
Right-of-Way

Comprehensive Plan Map Designation: None (Siuslaw River), Low Density Residential

Zone Map Classification: Conservation Estuary (Siuslaw River), Restricted Residential, Residential Development Overlay

Surrounding Land Use / Zoning:

Site: Mile 3.5, Siuslaw River / Conservation Estuary/Restricted Residential/Residential Development Overlay

North: Port of Siuslaw Submerged Properties / Conservation Estuary

South: Port of Siuslaw Submerged Properties / Conservation Estuary

East: Residences / Restricted Residential

West: Siuslaw River Navigation Channel/ Conservation Estuary

Streets / Classification:

Site – Bay (Front) Street – Submerged and Undeveloped; West – None; North – None;
East – Rhododendron Drive - Collector; South – None

II. NARRATIVE:

The applicant submitted their original application, represented by Greg Swenson of PBS Environmental, on July 10, 2015 for a conditional use permit to construct a boatlift facility with gangway adjacent to the applicant's property at 100 Rhododendron Drive. The applicant submitted a Joint Permit Application to the Department of State Lands and U.S. Army Corps of Engineers on August 3, 2015. The application was deemed complete on August 4, 2015.

The first evidentiary hearing was held on August 25, 2015 and a decision was delayed due to several unanswered questions regarding key issues with the site and proposal. The Planning Commission held a second hearing on October 27, 2015 and issued an approval for the proposed project.

Since obtaining City approval for the boatlift, the applicant had their application with the Department of State Lands denied. The applicant contested that decision and a hearing was held in October 2016. There is no set timeline for an order to be issued by the Administrative Law Judge, however, it could possibly take weeks or months. The applicant is requesting a one-year extension to his original approval in order to allow this decision time to be made and to complete in-water work if approval is granted.

The application for extension was submitted on October 13, 2016 and was deemed complete on November 8, 2016.

III. NOTICES & REFERRALS:

Notice: On November 22, 2016, notice was mailed to surrounding property owners within 300 feet of the property. On November 22, 2016, a sign was posted on the property. Notice was published in the Siuslaw News on December 7, 2016.

At the time of this report, the City has received no written comments.

Referrals: On September 20, 2016, referrals were sent to the Florence Building Department; the Florence Police Department; Florence Public Works; Siuslaw Valley Fire and Rescue; Lane County Environmental Health; the Department of State Lands; the Port of Siuslaw; the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians; the Confederated Tribes of Siletz; the State Historic Preservation Office; the Oregon Department of Fish and Wildlife; and the Department of Land Conservation and Development.

At the time of this report, the City has received comments from the State Historic Preservation Office and Siuslaw Valley Fire and Rescue.

Dennis Griffin, SHPO State Archaeologist, submitted comments that the State Historic Preservation Office had no concerns with the extension, but that the applicant had not yet submitted information regarding the piles he had proposed to remove. He stated that

the applicant would need to submit information to SHPO in order to receive approval for the removal of the piles.

Sean Barrett, SVFR Fire Marshal, submitted comments stating that fire had no concerns with the extension.

IV. APPLICABLE REVIEW CRITERIA

Florence City Code, Title 10:

Chapter 1: Zoning Administration, Section 1-5

Chapter 4: Conditional Uses, Section 8

V. PROPOSED FINDINGS

Code criteria are listed in **bold**, with staff response beneath. Only applicable criteria have been listed.

FLORENCE CITY CODE

TITLE 10: CHAPTER 1: ZONING ADMINISTRATION

10-1-1-5: LAND USE HEARINGS

- A. Hearings are required for quasi-judicial land use matters requiring Planning Commission review.**
- B. Notification of Hearing:**
 - 1. At least twenty (20) days prior to a quasi-judicial hearing, notice of hearing shall be posted on the subject property and shall be provided to the applicant and to all owners of record of property within 100 feet of the subject property, except in the case of hearings for Conditional Use Permits, Variance, Planned Unit Development and Zone Change, which notice shall be sent to all owners of record of property within 300 feet of the subject property.**
 - a. Notice shall also be provided to the airport as required by ORS 227.175 and FCC 10-21-2-4 and any governmental agency that is entitled to notice under an intergovernmental agreement with the City or that is potentially affected by the proposal. For proposals located adjacent to a state roadway or where proposals are expected to have an impact on a state transportation facility, notice of the hearing shall be sent to the Oregon Department of Transportation.**
 - 2. Prior to a quasi-judicial hearing, notice shall be published one (1) time in a newspaper of general circulation.**

Notification of the quasi-judicial land use hearing for this extension of approval period was mailed on November 22, 2016, 22 days prior to the hearing, to all property owners within 300 feet of the subject property. A notice was also published in the Siuslaw News one time on December 7, 2016. The notification procedures met the requirements of FCC 10-1-1-5.

C. Notice Mailed to Surrounding Property Owners - Information provided:

1. The notice shall:

- a. Explain the nature of the application and the proposed use or uses which could be authorized;**
- b. List the applicable criteria from the ordinance and the plan that apply to the application at issue;**
- c. Set forth the street address or other easily understood geographical reference to the subject property;**
- d. State the date, time and location of the hearing;**
- e. State that failure of an issue to be raised in a hearing, in person or by letter, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue precludes further appeal based on that issue;**
- f. State that application and applicable criteria are available for inspection at no cost and will be provided at reasonable cost;**
- g. State that a copy of the staff report will be available for inspection at no cost at least 7 days prior to the hearing and will be provided at reasonable cost;**
- h. Include a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings.**
- i. Include the name of a local government representative to contact and the telephone number where additional information may be obtained.**

The notice mailed to surrounding property owners as described above contained information regarding the nature of the application and uses proposed; applicable criteria applying to the issue; a geographical reference to the subject property; the date, time, and location of the meeting; the need to "raise it or waive it" appeal rights; stated that the application and criteria were available for inspection at no cost and would be provided at

reasonable cost; stated that a copy of the staff report would be available no less than seven days prior to the hearing regarding the item; included a statement of the requirements for submission of testimony; and included the name of the staff person to contact, telephone number for the Planning Department and an email address where questions or testimony could be sent. The application was properly noticed and these criteria are met.

D. Hearing procedure: All quasi-judicial hearings shall conform to the procedures of Florence City Code Title 2 Chapter 10.

The Planning Commission will meet and decide upon the application in accordance with FCC (Florence City Code) 2-10.

E. Action by the Planning Commission:

- 1. At the public hearing, the Planning Commission shall receive all evidence deemed relevant to the issue. It shall then set forth in the record what it found to be the facts supported by reliable, probative and substantive evidence.**
- 2. Conclusions drawn from the facts shall state whether the ordinance requirements were met, whether the Comprehensive Plan was complied with and whether the requirements of the State law were met.**
- 4. There is no duty upon the Planning Commission to elicit or require evidence. The burden to provide evidence to support the application is upon the applicant. If the Planning Commission determines there is not sufficient evidence supporting the major requirements, then the burden has not been met and approval shall be denied.**

The Planning Commission held a public hearing on December 13, 2016 regarding the application for PC 16 27 EAP 02. The Planning Commission was provided with all evidence deemed relevant to the issue and then set forth in the record what it found to be the facts supported by reliable, probative, and substantive evidence. The conclusions drawn by the Planning Commission were from the facts and stated that the Ordinance requirements were met, the Comprehensive Plan was complied with, and that the requirements of State law were met. The applicant provided all evidence required to support the application, which met the burden of proof for approval.

TITLE 10: CHAPTER 4: CONDITIONAL USES

10-4-8: EXPIRATION OF CONDITIONAL USE PERMIT:

- A. Authorization of a conditional use permit shall be void one (1) year after the date of approval of a conditional use application, unless a building permit has been issued and substantial construction pursuant thereto has taken**

place. Substantial construction shall be considered to be completion of a building foundation. The applicant may apply to the Planning Commission for a one-time extension of one (1) year maximum duration based on compliance with the following criteria:

- 1. The request for an extension is made in writing prior to expiration of the original approval.**
- 2. There are special or unusual circumstances that exist which warrant an extension.**
- 3. No material changes of surrounding land uses or zoning has occurred. The Planning Commission may deny the request for an extension of a conditional use if new land use regulations have been adopted that affect the applicant's proposal. (Ord. 26, 2008)**

Resolution PC 15 16 CUP 09 was approved on October 27, 2015, with expiration of that CUP approval occurring on October 27, 2016. The applicant applied for extension of their approval period on October 13, 2016. The boatlift has not been completed and substantial construction of the development has not yet occurred in accordance with the approved final development schedule. The applicant's Joint Permit Application was denied and the decision from his appeal hearing has not yet been issued by the State. The State's denial and delay in final decision is an unusual or special circumstance warranting an extension. This criterion is met. The applicant is eligible for an extension of their conditional use permit approval of 12 months and this request for extension meets the required timeline for submittal criterion.

While significant changes to the zoning code have taken place within the last year, no changes which affect this application have taken place since the original approval. An extension of the approval period will allow the applicant additional time to obtain state approval to finish the project, complete required studies, as well as complete construction within the current in-water work period or start construction within the next in-water work period. There have also been no material changes of land uses. These criteria are met.

The applicant shall be granted one 12-month extension of approval period for conditional use permit approval Resolution PC 15 16 CUP 09, ending on **December 13, 2017. (Condition 4)**

Code allows only a 12-month extension of the approval. The in-water work period for the Siuslaw River extends from November 1 to February 15. In-water work must be completed or substantial construction initiated by the deadline date (December 13, 2017) or a new conditional use permit must be submitted.

VI. ALTERNATIVES

- 1. Approve the application based on the findings of compliance with City regulations.**
- 2. Modify the findings, reasons or conditions, and approve the request as modified.**
- 3. Deny the application based on the Commission’s findings.**
- 4. Continue the Public Hearing to a date certain if more information is needed.**

VII. CONCLUSIONS AND RECOMMENDATIONS

Staff finds that the proposed application meets the requirements of City Code with conditions, and recommends approval of the conditional use permit subject to the following conditions.

VIII. CONDITIONS OF APPROVAL

The application, as presented, meets or can meet applicable City codes and requirements, provided that the following conditions of approval are met.

- 1. Approval for shall be shown on:**

“A” Findings of Fact
“B” Land Use Application

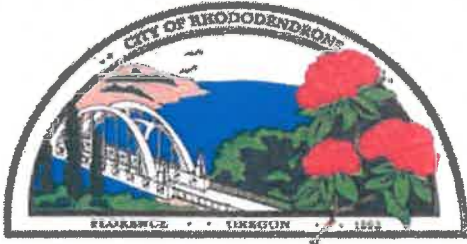
Findings of Fact attached as Exhibit “A” are incorporated by reference and adopted in support of this decision. Any modifications to the approved plans or changes of use, except those changes relating to Building Codes, will require approval by the Community Development Director or Planning Commission/Design Review Board.

- 2. Regardless of the content of material presented for this Planning Commission, including application text and exhibits, staff reports, testimony and/or discussions, the applicant agrees to comply with all regulations and requirements of the Florence City Code which are current on this date, EXCEPT where variance or deviation from such regulations and requirements has been specifically approved by formal Planning Commission action as documented by the records of this decision and/or the associated Conditions of Approval. The applicant shall submit to the Community Development Department a signed “Agreement of Acceptance” of all conditions of approval prior to issuance of a building permit.**

3. Upon encountering any cultural or historic resources during construction, the applicant shall immediately contact the State Historic Preservation Office and the Confederated Tribes of Coos, Lower Umpqua, and Siuslaw Indians. Construction shall cease immediately and shall not continue until permitted by either a SHPO or CTCLUSI representative.
4. The applicant shall be granted one 12-month extension of approval period for conditional use permit approval Resolution PC 15 16 CUP 09, ending on **December 13, 2017**.

VIII. EXHIBITS

"A" Findings of Fact
"B" Land Use Application
"C" SHPO Referral Comments
"D" SVFR Referral Comments
Included for Reference: Resolution PC 15 16 CUP 09



City of Florence
Community Development Department
250 Highway 101
Florence, OR 97439
Phone: (541) 997 - 8237
Fax: (541) 997 - 4109
www.ci.florence.or.us

request

Extension of Approval Period

Applicant information

Name: Larry Porter Phone 1:
E-mail Address: Phone 2: _____
Address:
Signature: Date: 10/13/16
Applicant's Representative (if any): _____

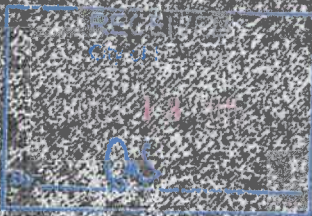
Property Owner information

Name: Same as above Phone 1: _____
E-mail Address: _____ Phone 2: _____
Address: A
Signature: Date: 10/13/16
Applicant's Representative (if any): _____

NOTE: If applicant and property owner are not the same individual, a signed letter of authorization from the property owner which allows the applicant to act as the agent for the property owner must be submitted to the City along with this application. The property owner agrees to allow the Planning Staff and the Planning Commission onto the property. Please inform Planning Staff if prior notification or special arrangements are necessary.

(Attach Additional Sheets as Necessary)

Office Use Only



Approved

Exhibit

Exhibit B

Resolution Number: PC1516CUP06 Approval Date: Oct 27, 2015

Property Address: 100 Rhododendron Dr. Florence, OR 97439

General Location (example: City Hall is at the SE corner of 2nd and Highway 101):
Boat Lift on Siuslaw @ property address

Assessor's Map and Tax Lot: 18-12-27-33 (00304, 00400, 00500)

Original Expiration Date: Oct 27, 2016 Revised Expiration Date: Oct 27, 2017
(or later)

List the reasons for the extension request (please be specific):

~~DSB~~ DSB permit has not been obtained.
Need more time to get that and
complete in-water construction.

Date Submitted: <u>10/27/15</u>	Fee: <u>300</u>
Received by: <u>[Signature]</u>	



Oregon

Kate Brown, Governor

Parks and Recreation Department

State Historic Preservation Office

725 Summer St NE Ste C

Salem, OR 97301-1266

Phone (503) 986-0690

Fax (503) 986-0793

www.oregonheritage.org



November 30, 2016

Ms. Vevie Popplewell-Walker
City of Florence
Planning
250 Hwy 101
Florence, OR 97439

RE: SHPO Case No. 15-1266

City of Florence, Resolution PC 15 16 CUP 09, Porter Boatlift
Construction

100 Rhododendron Drive; 18S 12W 27, Florence, Lane County

Dear Ms. Popplewell-Walker:

Our office received your letter regarding issuing an extension for the above proposed project. Our office has no problem with having the time period associated with this project being extended; however, as noted in an earlier letter to your office, our office is still waiting to receive information regarding the history and significance of the archaeological site that the applicant wishes to remove. In our earlier review we were notified that construction of a private boatlift, gangway and two mooring buoys were being proposed within the above project area. To construct the proposed boat ramp the project applicant proposes to remove 37 derelict piles from the vicinity of the project. These piles represent an archaeological site (i.e., abandoned more than 75 years ago) and the applicant was asked to submit an archaeological site form to our office that outlines the history and potential significance of these features so that we can assess the potential effect the project would have on any significant properties. To date, we have not received any information regarding the proposed piers. Before such an activity can be approved, our office will need to receive a copy of a site form and sufficient information on the site's significance. Once we are able to learn more about the age, extent, integrity and history of the piles we will be able to address any potential effect that could occur to historic properties within the project's APE.

It is important that the applicant contact a professional archaeologist to have the site assessed for significance and a site form completed. Once our office receives a copy of this form and the assessment we will be able to complete our review of the project. In order to help us track your project accurately, please be sure to reference the SHPO case number above in all correspondence.

Sincerely,

Dennis Griffin, Ph.D., RPA
State Archaeologist
(503) 986-0674
dennis.griffin@oregon.gov

cc: Chris Page, USACOE Policy & Compliance Section

Exhibit C

Veve McPherren

From: Sean Barrett <sean@svfr.org>
Sent: Wednesday, November 23, 2016 4:42 PM
To: Veve McPherren
Subject: RE: Referral - PC 16 27 EAP 02 - Extension of Approval Period

Fire has no concerns with this extension. Sean

From: Veve McPherren [mailto:veve.mcpherren@ci.florence.or.us]
Sent: Wednesday, November 23, 2016 2:46 PM
To: Mike Miller; Eric Rines; Tom Turner; Jim Langborg; Sean Barrett; Sarah Puls; charles.redon@dsl.state.or.us; port@portofsiuslaw.com; sscott@ctclusi.org; rkentta@ctsi.nsn.us; dennis.griffin@state.or.us; kuri.gill@state.or.us; derek.r.wilson@state.or.us; Dave Perry - DLCD
Cc: Wendy Farley-Campbell; Glen Southerland
Subject: Referral - PC 16 27 EAP 02 - Extension of Approval Period

Good afternoon!

The purpose of this notice is to acquaint you with the proposed development, to gather information you may have about the project, and provide an opportunity to comment and express concerns prior to the city's decision to approve or deny the proposal.

PC 16 27 EAP 02 – Extension of Approval Period: A request for a one-year extension of approval period, which ended October 27, 2016 for Resolution PC 15 16 CUP 09 - a request for a conditional use permit to construct a private boat lift and gangway located at 100 Rhododendron Drive, Map 18-12-27-33, Tax Lots 304, 400, 500 and the Bay (Front) Street Right-of-Way.

Please contact the Planning Department with any questions or concerns.

Thank you kindly,

Veve "Viva"
LiveHappy!
Veve M. McPherren
Planning Administrative Assistant
veve.mcpherren@ci.florence.or.us
541-997-8237

City of Florence
250 Hwy 101
Florence, OR 97439

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