

**CITY OF BEND  
WATERWAY OVERLAY ZONE APPLICATION**

**BURDEN OF PROOF STATEMENT**

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**Request:** The Applicants request approval for a fish passage device (fish ladder) at the North Canal Diversion Dam, located within the Waterway Overlay Zone (“WOZ”). Applicants seek to install the fish ladder on Tax Lot Nos. 171229A000602 owned by Central Oregon Irrigation District and 171229AD04300 owned by Steidl Dam Co., Inc. (See tax maps attached as **Exhibit A**, an aerial overview of the site attached as **Exhibit B**, and a site plan attached as **Exhibit C**.)

The fish ladder will be constructed of brushed stainless steel and will be configured as detailed in **Exhibit D** (civil and structural design plans). The ladder will run from grade level to a height of approximately thirty (30) feet at the highest point, and will use an existing box on the existing dam structure as the point of attachment in order to avoid upstream impacts. The ladder structure will be supported by steel beams that will transfer the load to round column piers. The ladder will be approximately 5.3 feet wide, with ladder side walls approximately 5 feet in height, and with columns ranging from approximately 3 feet to 15 feet in height (with columns painted a dark natural color to match surrounding basalt). Use of a prefabricated brushed stainless steel design will eliminate the need for heavy machinery that would otherwise be necessary for concrete construction. Visual renderings of the fish ladder are attached as **Exhibit E**.

Structural components can be constructed off site and installed in a manner that minimizes impacts to the project site. The fish ladder will be located in a rocky outcrop area within a canyon with restricted access, so visual impacts will be very limited and primarily involve the property directly across the river from the ladder project. Wayne Purcell, one of the co-applicants and owner of the land directly across the river from the fish ladder project, through his company River's Edge Investments, LLC, has been included in the project design and development to ensure aesthetic compatibility. This project is necessary to provide fish passage past the existing dam, and is compatible with the WOZ goal of conserving and restoring habitat for fish.

Vegetation removal necessary to facilitate the project includes removal of two (2) trees—one 8-inch cottonwood and one 10-inch cottonwood, as detailed on the site plan attached as **Exhibit C** and page 1 of the design plans attached as **Exhibit D**. This planned vegetation removal was approved by Wayne Purcell in his capacity as representative of the parcel that will be visually impacted by removal of the two trees. Mr. Purcell's input was considered and a vegetation removal plan was developed that minimizes vegetation removal to the extent possible, and in a manner that is acceptable to Mr. Purcell. Significantly, Applicants have configured the project so that an 18-inch cottonwood, 8-inch double pine and 4-inch

double pine previously considered for removal will be protected in-place. Mr. Purcell is a co-applicant on this WOZ application.

The Applicants will perform minimal grading or excavating as needed to prepare the site for placement of column supports and the lower end of the fish ladder structure as detailed on page 1 of the design plans attached as **Exhibit D**. This will include approximately 13.6 cubic yards of excavation and backfill on the bed/banks up to the Ordinary High Water Mark (“OHWM”), and 285 cubic yards of excavation and backfill within the total project area.

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## EXHIBITS

All submitted exhibits are described below and incorporated by this reference and by their reference(s) in this Burden of Proof Statement.

**Exhibit A** – Tax Map of Subject Properties

**Exhibit B** – Aerial View of Subject Properties

**Exhibit C** – Site Plan

**Exhibit D** – Civil and Structural Design Plans

**Exhibit E** – Visual Renderings

**Exhibit F** – U.S. Army Corps of Engineers/Oregon Department of State Lands Joint Permit Application

**Exhibit G** – Ownership Deeds

**Exhibit H** – Agency Correspondence

## I. INTRODUCTION

This is an application for construction of a fish passage device (fish ladder) within the Waterway Overlay Zone. There are four joint Applicants (the “Applicants”) to this application. Steidl Dam Co., Inc. (“Steidl”) is the owner of the North Canal Dam (the “Dam”). The other applicants are Central Oregon Irrigation District (“COID”), which owns the remainder of the project site, Swalley Irrigation District (“Swalley”), and North Unit Irrigation District (“NUID”). The three irrigation districts rely on the Dam for the diversion of water into their irrigation facilities.

The fish ladder will be constructed of brushed stainless steel and will be configured as detailed in **Exhibit D** (civil and structural design plans). The ladder will run from grade level to a height of approximately thirty (30) feet at the highest point, and will use an existing box on the existing dam structure as the point of attachment in order to avoid upstream impacts. The ladder structure will be supported by steel beams that will transfer the load to round column piers. The ladder will be approximately 5.3 feet wide, with ladder side walls approximately 5 feet in height, and with columns ranging from approximately 3 feet to 15 feet in height (with columns painted a dark natural color to match surrounding basalt). Use of a prefabricated brushed stainless steel design will eliminate the need for heavy machinery that would otherwise be necessary for concrete construction. Visual renderings of the fish ladder are attached as **Exhibit E**.

Structural components can be constructed off site and installed in a manner that minimizes impacts to the project site. The fish ladder will be located in a rocky outcrop area within a canyon with restricted access, so visual impacts will be very limited and primarily involve the property directly across the river from the ladder project. Wayne Purcell, one of the co-applicants and owner of the land directly across the river from the fish ladder project, through his company River’s Edge Investments, LLC, has been included in the project design and development to ensure aesthetic compatibility. This project is necessary to provide fish passage past the existing dam, and is compatible with the WOZ goal of conserving and restoring habitat for fish.

Vegetation removal necessary to facilitate the project includes removal of two (2) trees—one 8-inch cottonwood and one 10-inch cottonwood, as detailed on the site plan attached as **Exhibit C** and page 1 of the design plans attached as **Exhibit D**. This planned vegetation removal was approved by Wayne Purcell in his capacity as representative of the parcel that will be visually impacted by removal of the two trees. Mr. Purcell’s input was considered and a vegetation removal plan was developed that minimizes vegetation removal to the extent possible, and in a manner that is acceptable to Mr. Purcell. Significantly, the Applicants have configured the project so that an 18-inch cottonwood, 8-inch double pine and 4-inch double pine previously considered for removal will be protected in-place. Mr. Purcell is a co-applicant on this WOZ application.

The applicants will perform minimal grading or excavating as needed to prepare the site for placement of column supports and the lower end of the fish ladder structure as detailed on page 1 of the design plans attached as **Exhibit D**. This will include approximately 13.6 cubic

yards of excavation and backfill on the bed/banks up to the OHWM, and 285 cubic yards of excavation and backfill within the total project area.

**Property Description:** Two lots (the “Subject Properties”) within the WOZ comprise the proposed project site. The property owned by Steidl is Tax Lot No. 171229AD04300. The property owned by COID is Tax Lot No. 171229A000602. The relevant tax maps are attached as **Exhibit A**. An aerial image of the Subject Properties depicting lot lines is attached as **Exhibit B**. A detailed site plan is attached as **Exhibit C**. The Subject Properties are zoned Commercial Light, CL on the Bend Urban Area General Plan map. The Subject Properties are adjacent to the Deschutes River and are within the Waterway Overlay Zone.

**Surrounding Land Uses:** The easterly side of the Deschutes River is zoned Commercial Light ("CL") and Commercial General ("CG"), and surrounding land uses include a hotel, a convention center, small businesses and Riverview Park. The westerly side of the Deschutes River is zoned CL and Residential Urban Standard Density ("RS"), and surrounding land uses include vacant land, a golf course, and single family residences.

**Proposal:** The North Canal Dam was constructed in the early 20th century to serve three irrigation districts that divert water from the headworks at the Dam—COID, NUID, and Swalley. Two canals and one pipeline divert water from the River at the Dam, the North Canal which is operated by COID, the North Unit Main Canal, operated by NUID, and the Swalley Main Pipeline operated by Swalley.

The Applicants propose the following:

- To install a fish passage device (fish ladder) to address fish passage issues.
- To remove two (2) trees and protect in place three (3) trees as detailed on the site plan attached as **Exhibit C** and page 1 of the design plans attached as **Exhibit D**, and complete re-vegetation as required by applicable City or State regulations.
- To grade and/or excavate 13.6 cubic yards of excavation and backfill on the bed/banks up to the OHWM, and to excavate/backfill 285 cubic yards on the remainder of the site, as detailed on page 1 of the design plans attached as **Exhibit D** and on pages 5 and 6 of the U.S. Army Corps of Engineers/Oregon Department of State Lands Joint Permit Application (the “Joint Permit Application”) attached as **Exhibit F**.

**Request:** The Applicants request approval to complete the fish ladder and associated improvements within or adjacent to the Deschutes River and within the WOZ.

## **II. PROCEDURE**

### **A. City of Bend Development Code Chapter 4.1 – Development Review and Procedures**

#### **1. Section 4.1.400 Type III Application**

Response:

This application will be processed as a Type III Application, subject to BDC 4.1.400, 4.1.423, 4.1.424, 4.1.425, 4.1.426, and 4.1.430. Type III decisions are made by the Planning Commission or Hearings Officer after a public hearing following the quasi-judicial hearings procedures of BDC 4.1.800.

Although the criteria include a mix of requirements, some imposed on the Applicants and some imposed on the City, they are all included in the interest of providing a complete list of procedural requirements for Type III Decisions. The Applicants understand and agree to the procedures detailed below, and agree to complete those requirements imposed by the Code upon the Applicants.

Pursuant to BDC 4.1.423, the City of Bend Planning Division is to complete mailing as required in this section.

Pursuant to BDC 4.1.425, the Applicants are to complete any posting requirements.

Pursuant to BDC 4.1.430, the City shall take final action within 120 days after the application is deemed complete.

Pursuant to BDC 4.1.910, the City shall base approval of the application upon a statement explaining the criteria and standards considered relevant to the decision. The decision shall state the facts relied upon in rendering the decision and explaining the justification for the decision based upon the criteria, standards and facts set forth. The decision shall be in writing and shall address all portions of the application that are approved.

Pursuant to BDC 4.1.915, the decision shall include findings regarding the date on which the application was deemed complete and formally accepted by the Development Services Director.

Pursuant to BDC 4.1.920, the decision shall include a finding that the property subject to the proposed land use action is a legal lot of record as that term is defined in the Bend Development Code.

Because the project will be located in an area designated as a state identified wetland and because the project will result in building permit issuance for a new structure, the final approval must include a notice statement required by ORS 227.350(3). This statement shall specify that the State has approved the project based on payment in lieu of delineation and mitigation.

**2. Section 4.1.412 Completeness Check/ 4.1.225(A) Meeting**

A completeness check meeting pursuant to BDC 4.1.225(A) is not required per project planner Amy Barry. This application will be routed internally for a completeness check review and any additional action items will be noted and provided by checklist to the Applicants.

**3. Section 4.1.920 Legal Lot Determination**

The Subject Properties are legal lots of record.

**4. Section 4.1.945 Compliance with ORS 227.350 Wetland Notice**

The City will complete notice requirements per Code and will advise Applicants of any associated action items.

**5. Section 4.1.210 Pre-Application Meeting**

A Pre-application conference (PLZ15-1014) was held with the City of Bend on December 10, 2015, pursuant to Bend Code section 4.1.210.

**6. Section 4.1.220(B)(5) Proof of Ownership**

Deeds establishing ownership are attached hereto as **Exhibit G**.

**7. Section 4.1.245(B) Mitigation Recommendation From ODFW**

The City will complete notice requirements per Code and will advise Applicants of any associated action items.

**8. Section 4.1.245(C) Oregon Parks and Recreation Department Approval**

The City will complete notice requirements per Code and will advise Applicants of any associated action items.

**9. Section 4.1.245 Notice to Public Agencies**

The City will complete notice requirements per Code and will advise Applicants of any associated action items. The Applicants have submitted the Joint Permit Application (**Exhibit F**), which triggered a notice and comment process by state and federal agencies coordinated by the Oregon Department of State Lands. The state agency comments received in response to the Joint Permit Application are attached as **Exhibit H**.

### III. CRITERIA AND STANDARDS

#### A. City of Bend Development Code Chapter 2.7 – Special Planned Districts

##### 1. Section 2.7.600 Waterway Overlay Zone (WOZ)

Response:

The WOZ consists of four Sub-Zones: (1) the Riparian Corridor Sub-Zone (2.7.620), (2) the River Corridor Areas of Special Interest Sub-Zone (2.7.630), (3) the Flood Plain Combining Sub-Zone (2.7.640), and (4) the Deschutes River Corridor Design Review Combining Sub-Zone (2.7.650).

The Sub-Zones applicable to the proposed restoration plan are: the Riparian Corridor Sub-Zone (2.7.620); the Flood Plain Combining Zone (2.7.640); and the Deschutes River Corridor Design Review Combining Sub-Zone (2.7.650). The River Corridor Areas of Special Interest Sub-Zone (2.7.630) is not applicable because the Subject Properties are not in a designated Area of Special Interest. The applicable standards and criteria are addressed in this application.

##### 2. Section 2.7.610 Purpose

**A. Purpose. The Deschutes River and Tumalo Creek stream corridors within the urban growth boundary of the City of Bend are valuable economic, recreational, scenic and natural resources for the community. The Waterway Overlay Zone (WOZ) is inclusive of all special purpose provisions that pertain to these stream corridors. The WOZ is intended to conserve and enhance the natural resource values of areas along the Deschutes River and Tumalo Creek within the City by:**

- **Recognizing and respecting the unusual natural beauty and character of the City's major waterways;**
- **Protecting and enhancing water quality for human use and aquatic life;**
- **Conserving wetlands;**
- **Controlling erosion and reducing the effects of flooding;**
- **Improving coordination between the City and agencies regarding development activities near waterways;**
- **Promoting development that is compatible with the purposes of the WOZ;**
- **Promoting the preservation and restoration of native riparian vegetation;**
- **Maintaining the scenic quality of the canyon and rimrock areas along these waterways;**

- **Conserving and protecting property values; and**
- **Encouraging development, preservation and enhancement of reasonable public access to major waterways for recreational use and visual enjoyment.**

Response:

The Applicants' proposal is consistent with the purpose statement of the WOZ because the purpose of the fish ladder is to restore habitat for fish and provide a means of passage for migrating fish. The fish ladder constitutes development that is compatible with the purposes of the WOZ, and has been designed to minimize aesthetic impacts in a manner compliant with WOZ goals and objectives. The Dam itself was constructed in the early 20<sup>th</sup> century, before the adoption of the WOZ, in order to allow irrigation districts to make diversions from the Deschutes River into irrigation canals for delivery to patrons for various agriculture uses. The Dam structure creates a lake-like visual setting, enjoyed and used by the public at Riverview Park, and from various other views along the Deschutes River and Awbrey Butte. The proposed fish ladder will enable the goal of fish passage to be met concurrently with the interests served by the Dam operations.

**B. Applicability. Provisions of this section apply to all property within the boundaries of the WOZ as shown on the Bend Urban Area Zoning Map and consistent with WOZ boundary determination procedures of subsection (C) of this section. Many parcels within the WOZ are affected by more than one sub-zone. Where this is the case, applicable development standards for each sub-zone shall apply within that sub-zone's boundaries. Standards of this section shall apply in addition to applicable standards of the underlying zone. Where there are conflicts between sub-zones standards, the more restrictive standards shall control. The WOZ includes the following sub-zones which are included in this chapter as BDC 2.7.620 through 2.7.650:**

- 1. Riparian Corridor**
- 2. Deschutes River Corridor Design Review**
- 3. River Corridor Areas of Special Interest**
- 4. Floodplain**

Response:

As stated above, the applicable Sub-Zones to the Subject Properties are the Riparian Corridor Sub-Zone, the Floodplain Combining Sub-Zone, and the Deschutes River Corridor Design Sub-Zone. The applicable standards and criteria are addressed in this application. The Area of Special Interest Sub-Zone is not applicable because the Subject Properties is not in an Area of Special Interest.

**C. WOZ Boundary Determination.** The WOZ boundary is inclusive of all WOZ sub-zones, as specified in this section. Except for the River Corridor Areas of Special Interest and the Floodplain Sub-Zone, the boundary of all sub-zones shall be determined by distance measurement from the designated waterway. The boundary for the River Corridor Areas of Special Interest Sub-Zone is designated on the Bend Urban Area General Plan Map, and shall be considered to be the outer (upland) edge of the mapped boundary line. Unless otherwise provided for specific WOZ sub-zones, boundary measurements shall be made from the ordinary high water mark. Distance measurements shall be made horizontally and at right angles to the edge of the waterway.

Response:

The Subject Properties are within the WOZ. More specifically, they are within the Riparian Corridor Sub-Zone and the Floodplain Sub-Zone and Deschutes River Corridor Design Review Sub-Zone.

**D. Tree Removal.**

- 1. Removal.** Consistent with the purposes of this section, and because trees contribute to the overall health of the riparian corridor, removal of existing trees greater than four inches in diameter within the WOZ is prohibited, except as follows:
  - a. Where necessary to accommodate an approved development activity; or Where the tree is determined by a qualified professional to be diseased or hazardous; or**
  - b. Where necessary to mitigate potential fire hazard in accordance with the Fire Protection Act of 1997.**

Response:

The Applicants must remove two (2) trees—one 8-inch cottonwood and one 10-inch cottonwood, as detailed on the site plan attached as **Exhibit C** and page 1 of the design plans attached as **Exhibit D**. Significantly, the Applicants have configured the project so that an 18-inch cottonwood, 8-inch double pine and 4-inch double pine previously considered for removal will be protected in-place. The planned vegetation removal was approved by Wayne Purcell in his capacity as representative of the parcel that will be visually impacted by removal of the two trees. Mr. Purcell’s input was considered and a vegetation removal plan was developed that minimizes vegetation removal to the extent

possible, and in a manner that is acceptable to Mr. Purcell. Mr. Purcell is a co-applicant on this WOZ application.

Pursuant to BDC 2.7.610(D)(2), tree removal under this subsection may be authorized by the Review Authority, based on findings demonstrating conformance with criteria in subsection (D)(1)(a) – where removal is necessary to accommodate an approved development activity. The tree removal detailed in the application is the minimum necessary to enable the project to be completed.

The Applicants will keep all disturbances within the WOZ to a minimum, and provide for mitigation should additional intrusion or tree removal be unavoidable.

#### **E. Review Process.**

- 1. State Agency Coordination. Within the WOZ, the State of Oregon has jurisdiction over certain development activities. In order to ensure coordination between the City of Bend and affected State agencies, notice of proposed activities within the WOZ will be provided to the Division of State Lands, the Oregon Department of Fish and Wildlife, the Oregon Parks and Recreation Department, and the Department of Environmental Quality, in accordance with provisions of BDC 4.1.245, Notice to Public Agencies.**
- 2. Application Information. In addition to application information required under BDC 4.1.220, Application requirements, an application for a development or land use action within the WOZ shall include the following:**
  - a. A detailed written explanation of the proposal, including the location, amount, and type (species) of any vegetation to be removed or planted, and any material to be graded, excavated, or filled;**
  - b. An explanation of why any proposed grading, excavation or fill of material and/or vegetation is necessary;**
  - c. A site plan drawn to scale, accompanied by such drawings, sketches, photos, and descriptions as are necessary to describe and illustrate the proposed activity. The site plan shall, at a minimum, include: any proposed structures or impervious surfaces on the site; location of property lines, easements, existing and proposed structures; identification of**

**existing vegetation on the site, indicating areas of native and nonnative plant species; any proposed modifications to existing vegetation; a grading and drainage plan, showing existing and proposed site contours at two-foot intervals, or less; all applicable WOZ sub-zone boundaries; location of the ordinary high water mark; location of designated wetlands on or abutting the site with boundaries of designated wetlands delineated using the methods accepted by the Oregon Division of State Lands.**

Response:

- 1) The Applicants have been proactive in their coordination with state and federal agencies through the submission of the Joint Permit Application attached as **Exhibit F**, which triggered a notice and comment process by state and federal agencies coordinated by the Oregon Department of State Lands. The state agency comments received in response to the Joint Permit Application are attached as **Exhibit H**.

In preceding sections of this Burden of Proof Statement, the Applicants have provided a written explanation of the project, including the location, amount and type (species) of any vegetation to be removed or planted and any material to be graded, excavated or filled. The applicants will perform minimal grading or excavating as needed to prepare the site for placement of column supports and the lower end of the fish ladder structure as detailed on page 1 of the design plans attached as **Exhibit D**. This will include approximately 13.6 cubic yards of excavation and backfill on the bed/banks up to the OHWM, and 285 cubic yards of excavation and backfill within the total project area.

- 2) The vegetation removal is the minimum necessary to facilitate placement of the proposed fish ladder structure, and has been reduced to require the removal of only two (2) trees—one 10-inch cottonwood and one 8-inch cottonwood as detailed on the site plan attached as **Exhibit C** and page 1 of the design plans attached as **Exhibit D**.
- 3) The Applicants have provided a scaled site plan and drawings, sketches, photos and descriptions as necessary to describe and illustrate the proposed activity:

**Exhibit A** – Tax Map of Subject Properties  
**Exhibit B** – Aerial View of Subject Properties  
**Exhibit C** – Site Plan  
**Exhibit D** – Civil and Structural Design Plans  
**Exhibit E** – Visual Renderings

### **3. Section 2.7.620 Riparian Corridor Sub-Zone**

**A. Riparian Corridor Boundary. The width of the Riparian Corridor Sub-Zone adjacent to various waterway segments is specified in Tables 2.7.620.A, 2.7.620.B and 2.7.620.C. Boundary**

distances shall be measured from the ordinary high water mark, or from the upland edge of any designated wetlands, whichever is more landward. For purposes of riparian corridor boundary determination, steep slopes are considered to exist in an area having:

- Sixty percent or greater slope; and
- A vertical rise of 20 feet or more; and
- A continuous horizontal length of 50 feet or more.

**Table 2.7.620.A — West Side Riparian Corridor Boundary: Deschutes River**

Deschutes River — East Side	Distance
From the north boundary of the Bend Riverside Motel Condominiums to the Mt. Washington Drive bridge	30/40 feet*

\* Where steep slopes are present within 50 feet horizontally of OHW, the riparian corridor boundary is 30 feet from OHW. Where steep slopes are not present within 50 feet horizontally of OHW, the riparian corridor boundary is 50 feet from OHW.

Response:

Applicants have attached a site plan showing the project area and the ordinary high water mark as **Exhibit C**. The width of the riparian corridor at the Subject Properties is 30 feet. The riparian corridor extends onto the property 30 feet from the ordinary high water mark, therefore the proposed project and inherent activities are within the riparian corridor.

**B. Activities Subject to Review and Approval. Within the Riparian Corridor Sub-Zone, permanent alteration by grading, removal of native vegetation, excavation or fill of soils or rocks, or by placement of structures or impervious surfaces is prohibited, except as provided in subsections (C), (E), (F) and (G) of this section.**

Response:

BDC 2.7.620(C)(4) and (6) provide that water-related and water-dependent uses and restoration of the riparian corridor constitute land use actions that may be approved within the riparian corridor by the Review Authority as a land use action. Upon a finding that the criteria for such uses are satisfied, as set forth in BDC 2.7.620(D), the Review authority may approve such a land use. Additionally, the Applicants have coordinated with ODFW and the proposal provides equal or better protection of riparian resources than would be achieved by excluding the proposed improvements from the sub-zone. BDC 2.7.620(G)(1)(c).

The Applicants in this case have complied with all applicable criteria under BDC 2.7.620(D).

The Applicants have obtained or will obtain all necessary state and federal permits:

**Exhibit F** – Joint Permit Application (note that the Corps is deferring to DSL).

The proposed fish ladder is designed and constructed to minimize intrusion into the riparian corridor; removal of riparian vegetation has been minimized to the extent possible and provision is made for replacement of vegetation with riparian species native to the Bend area and similar to existing plant species in the vicinity (excluding noxious weeds as identified by the Deschutes County Soil and Water Conservation District). The proposed construction is designed in a manner that minimizes adverse impacts upon designated wetlands, native riparian vegetation, fish and wildlife habitat and water quality. The erosion control plan described on page 6 of the Joint Permit Application (**Exhibit F**) establishes that erosion within the riparian corridor will be prevented during and after construction, and surface runoff from impervious areas will not flow unfiltered or untreated into adjacent waterways.

#### **4. Section 2.7.640 Floodplain Combining Zone**

##### **A. Application of FP Zone.**

- 1. The Flood Plain Combining Zone shall apply to the areas identified on the Flood Insurance Rate Map (FIRM), as special flood hazard areas inundated by the 100-year flood and floodway areas. The FIA Flood Insurance Study for "Deschutes County, Oregon and Incorporated Areas" and the FIRM map dated September 28, 2007 are hereby adopted and by this reference included herein. The Flood Insurance Study is on file at the Planning Division. The A and AE zones shown on the FIRM map are hereby zoned FP.**
- 2. The Planning Director is hereby appointed to administer and implement the Floodplain Combining Zone by granting or denying development permit applications in accordance with its provisions. Duties and responsibilities of the Planning Director are defined under 2.7.640(B)(2).**
- 3. 2.7.640(E) provides that no development shall occur in an FP Zone unless a permit has been received for the work, and no permit shall be issued unless the work will be reasonably safe from flooding, otherwise complies with this code, and all necessary State, Federal and local permits will be obtained as a condition of permit approval.**

Response:

The Floodplain Combining Sub-Zone applies to this application for placement of a fish ladder structure within the designated floodplain.

The structure will be reasonably safe from flooding and presents no human health, safety or welfare concerns as the structure does not alter watercourses, does not constitute residential construction and does not function for human occupancy or habitation. The ladder structure consists of no habitable floors and no floodproofing will be necessary. As such, code sections pertaining to structures designed for human habitation or occupancy are not applicable.

To the extent applicable, the Applicants have complied with 2.7.640(H), (I), (J), and (M).

The ladder structure will be constructed with materials resistant to flood damage, using methods and practices that minimize flood damage. The ladder improvements will be anchored to prevent flotation, collapse or lateral movement of the structure.

**5. Section 2.7.650 Deschutes River Corridor Design Review Combining Zone**

**A. Application of Deschutes River Corridor Design Review Combining Zone.**

- 1. The purposes of the Deschutes River Corridor Design Review Zone include recognition of and respect for the unusual natural beauty and character of the Deschutes River; conservation and enhancement of the existing riparian zone along the Deschutes River; maintenance of the scenic quality of the canyon and rimrock areas of the Deschutes River; conservation and enhancement of property values; preservation, protection and enhancement of water quality; encouragement of development, preservation and enhancement of reasonable public access to the river for recreational use and visual enjoyment.**
- 2. All new structural development and additions to existing structures are subject to a design review process.**
- 3. Prior to filing a design review application, the Applicant shall confer with the Planning Department concerning the application requirements.**
- 4. The Bend Urban Area Planning Commission shall approve, approve with conditions, or disapprove the design plan. To approve a design plan, the Bend Urban**

**Area Planning Commission (“Commission”) must find compliance with the provisions of the code.**

- 5. Standard 100 foot, 40 foot and 30 foot setbacks apply for all new buildings within various locations in the Deschutes River Corridor Design Review Combining Zone, but pursuant to BDC 2.7.650(E) the Commission may approve a lesser setback after the applicant has demonstrated through design review that that project provides at least the following: (i) protection of water quality, and fish and wildlife habitat; (ii) the improvement or restoration of riverfront riparian areas by the creation of new riparian vegetation areas or by improvements to the existing riverfront riparian areas through appropriate plantings; and (iii) the provision of open space along the riverfront.**
- 6. Structure height shall be limited to 30 feet at the minimum setback line.**
- 7. The following design criteria shall guide Commission review: (1) Conservation of Natural Features; (2) Compatibility with Existing Area; (3) Colors and Materials; (4) Bright/Reflective Colors limitation; (5) more restrictive criteria may be imposed as necessary; (6) public access considerations; and (7) enhanced landscaping and other conditions may be imposed.**

Response:

The proposed fish ladder is located within the Deschutes River Corridor Design Review Combining Sub-Zone, and the structure cannot meet the standard setbacks due to its unique quality as a river-dependent fish passage structure. It is appropriate for the Commission to approve a lesser setback based on the fact that the fish ladder project will have no adverse impact on water quality, will substantially improve fish habitat and fish passage, and is dependent upon the proposed location immediately adjacent to the existing dam structure. The Applicants have produced a vegetative planting plan that will ensure appropriate plantings replace any vegetation removed to facilitate ladder construction. (See pp. 3-4 of the Joint Permit Application attached as **Exhibit F**). The structure meets the 30 foot building height limitation.

The Applicants evaluated construction methods and materials and determined that construction of a brushed stainless steel ladder will have the least impact on the site in terms of vegetation removal, grading and excavation, and impact to the river canyon. Visual renditions and photographs of comparable brushed steel ladders demonstrate that the brushed steel materials will result in an aesthetically appropriate structure. Due to the steep topography of the canyon, limited adjacent development and limited public access in the area immediately adjacent to the existing dam structure, visual and aesthetic impacts will be very limited. The primary impact will

be to the waterfront property owned by one of the co-applicants immediately across the river from the subject site. The lead Applicant has cooperated closely with Mr. Purcell and has included Mr. Purcell in project design and development to ensure that he is satisfied regarding the design and construction materials proposed.

The proposed fish ladder will be immediately adjacent to the existing artificial dam structure constructed in the early 20th century to serve three irrigation districts. The proposed ladder is well-proportioned in terms of the existing surroundings and existing dam structure. The following exhibits demonstrate compliance with this portion of the Development Code.

**Exhibit C** – Site Plan

**Exhibit D** – Civil and Structural Design Plans

**Exhibit E** – Visual Renderings

**Exhibit F** – Joint Permit Application

#### **IV. CONCLUSION**

By this application, together with the referenced exhibits, the Applicants have satisfied all applicable criteria. The Applicants respectfully request approval of the proposed structural improvements and associated site work. If you have any questions please contact attorney Steve Shropshire at Jordan Ramis, P.C. (503) 598-5583.

**EXHIBIT H**  
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<http://statelandsonline.com/index.cfm?fuseaction=Comments.AppDetail&id=58311>

You can read and submit comments or download a copy of the application via the web site. You can also submit comments or request a copy of the application by fax (503-378-4844), by phone (call 503-986-5200 and ask for the resource coordinator assigned to this project), or via US Mail.

All comments will be evaluated and carefully considered before making the authorization decision. Copies of the applicable laws and rules are available on the Department's web site.

We would be pleased to answer your questions or provide additional information. Please do not hesitate to call the Department of State Lands.

Thank you.