



NOTICE OF LAND USE DECISION

Coos County Planning
60 E Second St.
Coquille, OR 97423
<http://www.co.coos.or.us/>
Phone: 541-396-7770
Fax: 541-396-1022

This decision notice is required to be sent to the property owner(s), applicant(s), adjacent property owners (distance of notice is determined by zone area – Urban 100 feet, Rural 250 feet, and Resource 750 feet), special taxing districts, agencies with interest, or person that has requested notice. The development is contained within the identified property owners land. Notice is required to be provided pursuant to ORS 215.416. Please read all information carefully as this decision. (See attached vicinity map for the location of the subject property).

NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR OR SELLER: ORS CHAPTER 215 (ORS 215.513) REQUIRES THAT IF YOU RECEIVE THIS NOTICE, IT MUST PROMPTLY BE FORWARDED TO THE PURCHASER.

Date of Notice: Friday, February 10, 2023
File No: ACU-22-048
Proposal: Request for Replacement of a Lawfully Established Dwelling
Applicant(s): Larry Paul & Bonnie Riley
Staff Planner: Crystal Orr, Associate Planner

Decision: **Denied**. This decision is final and effective at close of the appeal period unless a complete application with the fee is submitted by the Planning Department at 12 p.m. on **Monday, February 27, 2023**. Appeals are based on the applicable land use criteria. The proposal is subject to the following criteria: Replacement Dwelling criteria in the Exclusive Farm Use Zone pursuant to Coos County Zoning and Land Development (CCZLDO) § 4.6.200.21 Replacement of a Lawfully Established Dwelling subject to: § 4.6.200(21) (8) Replacement Dwellings, (30) Deed Declaration; and §4.6.210 Development and Siting Criteria. This proposal is not subject to review under Natural Hazards. **Civil matters including property disputes outside of the criteria listed in this notice will not be considered. For more information please contact the staff planner listed in this notice**

Subject Property Information

Account Number: 3089701
Map Number: 29S140700-02500
Property Owner: PAUL, LARRY; ET AL
13830 LITTLE RIVER RD
GLIDE, OR 97443-9770
Situs Address: 88018 NAPIER LN BANDON, OR 97411
Acreage: 5.01 Acres
Zoning: EXCLUSIVE FARM USE (EFU)
Special Development Considerations and overlays: BANDON AIRPORT CONICAL ZONE (ABC)
BANDON AREA OF MUTUAL INTEREST (BMI)

This notice shall be posted from February 10, 2023 to February 27, 2023

The purpose of this notice is to inform you about the proposal and decision, where you may receive more information, and the requirements if you wish to appeal the decision by the Director to the Coos County Hearings Body. Any person who is adversely affected or aggrieved or who is entitled to written notice may appeal the decision by filing a written appeal in the manner and within the time period as provided below pursuant to Coos County Zoning and Land Development Ordinance (CCZLDO) Article 5.8. If you are mailing any documents to the Coos County Planning Department the address is 250 N. Baxter, Coquille OR 97423. Mailing of this notice to you precludes an appeal directly to the Land Use Board of Appeals.

Mailed notices to owners of real property required by ORS 215 shall be deemed given to those owners named in an affidavit of mailing executed by the person designated by the governing body of a county to mail the notices. The failure of the governing body of a county to cause a notice to be mailed to an owner of a lot or parcel of property created or that has changed ownership since the last complete tax assessment roll was prepared shall not invalidate an ordinance.

The application, staff report and any conditions may be found at the following link: <https://www.co.coos.or.us/community-dev/page/applications-2022> The application and all documents and evidence contained in the record, including the staff report and the applicable criteria, are available for inspection, at no cost, in the Planning Department located at 60 E Second Street, Coquille, Oregon. Copies may be purchased at a cost of 50 cents per page; however, if you need to view the record, please contact the department to make arrangements. The decision is based on the application submittal and information on record. The name of the Coos County Planning Department representative to contact is Crystal Orr, Associate Planner and the telephone number where more information can be obtained is **(541) 396-7770**.

Failure of an issue to be raised in a hearing, in person or in writing, or failure to provide statements of evidence sufficient to afford the Approval Authority an opportunity to respond to the issue precludes raising the issue in an appeal to the Land Use Board of Appeals.

Reviewed by: _____ **Date:** Friday, February 10, 2023 .
Crystal Orr, Associate Planner

This decision is authorized by the Coos County Planning Director, Jill Rolfe based on the staff's analysis of the Findings of Fact, Conclusions, Conditions of approval, application and all evidence associated as listed in the exhibits.

EXHIBITS

Exhibit A: Conditions of Approval

Exhibit B: Vicinity Map

The Exhibits below are mailed/emailed to the Applicant, Board of Commissioners and Planning Commission only. Copies are available upon request or at the following website:

<https://www.co.coos.or.us/community-dev/page/applications-2022> or by contacting the Planning Department at (541) 396-7770.

Exhibit C: Staff Report -**Findings of Fact and Conclusions**

EXHIBIT "B"
Vicinity Map



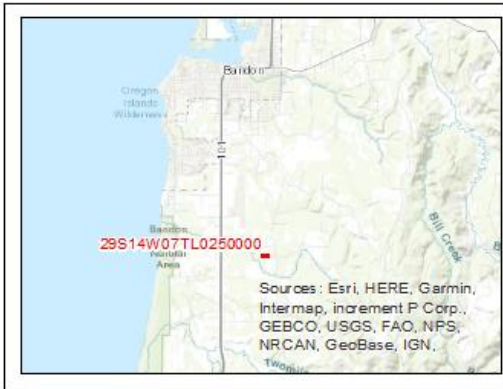
COOS COUNTY PLANNING DEPARTMENT

Mailing Address: 225 N. Adams, Coquille, Oregon 97423

Physical Address: 60 E. Second, Coquille Oregon

Phone: (541) 396-7770

TDD (800) 735-2900



File: ACU-22-048
Owner: Larry Paul and Bonnie Riley
Date: February 7, 2023
Location: Township 29S Range 14W
Section 7 TL 2500
Proposal: Administrative Conditional Use

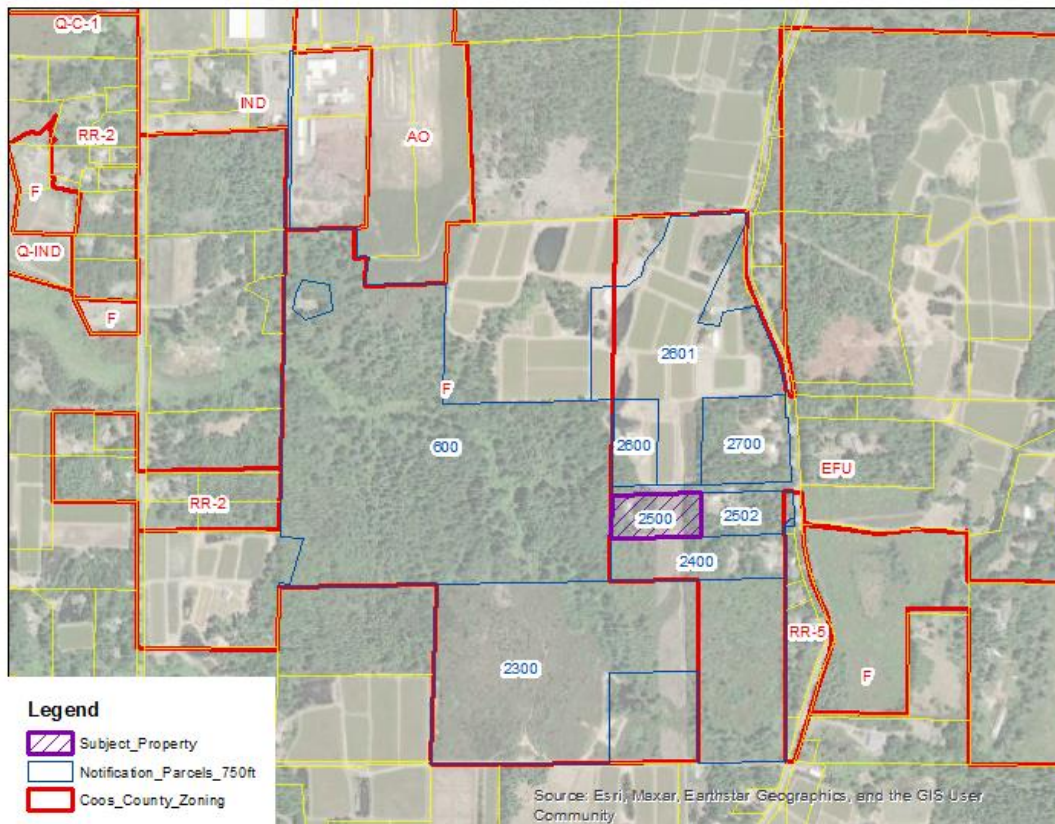


EXHIBIT "C"
STAFF REPORT
FINDINGS OF FACT AND CONCLUSIONS

I. PROPOSAL AND BACKGROUND/PROPERTY HISTORY INFORMATION:

A. PROPOSAL: The applicants propose to site a Single Family Dwelling through the Deferred Replacement process.

B. BACKGROUND/PROEPRTY HISTORY: On May 23, 1984 a Zoning Clearance Letter (ZCL-84-233) was issued to allow the construction of a **Conventional Dwelling**¹ and septic system. The Department of Environmental Quality (DEQ) records state the septic system application was applied for on May 25, 1984 and expired on June 20, 1985. DEQ did accept a new application for septic as a renewal on June 19, 1985 but the application did state there was no Zoning Compliance Letter. This was signed by the property owner.

STATE OF OREGON
Department of Environmental Quality

FOR OFFICE USE ONLY
Date Rec'd: 6-19-85
Date Completed: _____
Required Fee: \$15.00
Receipt No: 31371
Control No: 615-132

FOR OFFICE USE ONLY
Date Test Holes Ready: _____

APPLICATION FOR:

Site Evaluation Report
 Permit to Construct On-Site Sewage Disposal System
 Permit to Repair On-Site Sewage Disposal System
 Permit for Alteration of On-Site Sewage Disposal System
 Permit Renewal SYD
 Authorization Notice
 Other (Specify) _____

(Required fee and land use compatibility statement must accompany application)

FOR OFFICE USE ONLY:
PLOT PLAN REQUIRED YES NO ATTACHED ... YES NO
VICINITY OR TAX LOT MAP REQUIRED YES NO ATTACHED ... YES NO
TEST HOLES REQUIRED YES NO
ZONING COMPLIANCE LETTER YES NO ATTACHED ... YES NO
ADDITIONAL ITEM(S) REQUIRED _____

PLEASE COMPLETE BELOW THIS LINE

For Applicant's Use - (Please Print)
Harris, Robert & Faye
(Property Owner's Name)

29 14 07 2500/30897.01 Coos
(Township) (Range) (Section) (Tax Lot/sect. No.) (County)

_____ 5.01
(Subdivision Name) (Lot No.) (Block No.) (Lot Size)

_____ WELL
(Public Water Supply) (Private Water Supply, Specify Type)

(Single Family Residence - Number of Bedrooms) _____ (Other - Specify) _____

Directions to Property: Second right hand driveway, past 3-mile marker off Road Rd., so. of Saddle. On driveway take second

By my signature, I certify that the information I have furnished is correct, and hereby grant the Department of Environmental Quality and its authorized agent permission to enter into the above described property for the purpose of this application.

s. Faye Harris _____ 6/19/85 Owner
(Signature) (Date) Authorized Representative
 S.D.S. License No. _____

¹ Ordinance 82-12-021L is the controlling ordinance in effect at the time the authorization for the dwelling was approved. CCZLDO Section 2.1.200 CONVENTIONAL SINGLE-FAMILY DWELLING: A single household unit including on-site construction or modular units (but not including a mobile home). Said dwelling unit shall not share a common wall, floor or ceiling with another single household unit. RESIDENTIAL- MOBILE HOME: A vehicle or structure constructed for movement on public highways upon its own frame and that has sleeping, cooking and plumbing facilities, is intended for human occupancy and is being used for residential purposes. Any such vehicle or structure shall be deemed to be a mobile home whether or not the wheels have been removed therefrom and whether or not resting upon a temporary or permanent foundation.

While staff agrees that DEQ should not have processed the application without a valid Zoning Compliance Letter it is up to the applicant/property owner to ensure that all permits are obtained. There was never approval obtained for the Mobile Home. DEQ did provide a satisfactory completion on March 19, 1986 for the Septic System. The regulations and zoning did change from the time the Zoning Compliance Letter was issued. There were several amendments during 1984 through the end of 1986 (date of acknowledgments). When the County was acknowledged effective date of July 1, 1986 this property was zoned Exclusive Farm Use -10 and a dwelling would have required a conditional use process at the time for a farm dwelling and public hearing if it was to be considered a non-farm dwelling. The applicant at any time from the date of the Zoning Compliance Letter to July 1, 1986 could have requested a new Zoning Compliance Letter and reconsideration of allowance for a Mobile Home but that was not requested. The reason this is important to explain is that a dwelling had to be lawful before it can be requested to be replaced. This will be explained mor in the criteria section.

The property owners, at the time, did take other unlawful actions during their ownership. On November 12, 1986 Coos County Planning Staff was notified by DEQ of an Alleged Violation (AV-86-22) of two (2) travel trailers and a shed being used as dwellings on the property. DEQ staff did visit the property to confirm that there was at least one travel trailer used as a dwelling. On December 24, 1986 DEQ staff conducted a follow up inspection of the property and confirmed that the violation had been resolved. Based on this information Planning Staff closed the illegal RV as a dwelling violation but it does not appear that any site visits were made by County Staff.

On April 9, 2021: an email was received from the property owner inquiring for information to site a metal building for a resident. Within the email they explained that the property had a mobile home, but that it was removed. Staff emailed back asking for the property's situs address, as permitting process is site specific. The property owner emailed the address, and stated that the mobile home had been gone for a while. Staff replied and stated that the property is zoned Exclusive Farm Use, there are only two ways to replace a lawfully established dwelling. The first option would be replacement within a year of removal, but this property would not qualify because based on aerial photos the dwelling had been removed for over a year. The other option would be to apply for a deferred replacement, but that staff could not conclude that the property would meet the criteria. Staff provided the criteria.

On August 18, 2021: Coos County Planning Staff was notified of a potential violation (AV-21-017) by a neighboring property owner, the neighbor alleged that there was a structure built over the property line. Staff sent a letter on August 18, 2021 to Larry Paul regarding the structure. Larry Paul responded on November 20, 2021 stating that he would move the building onto his property within 90 days. On March 4, 2022 Larry Paul sent Coos County Planning an email stating the construction company is behind schedule, and the new date he was given for moving the structure was March 10, 2022. On March 11, 2022 Coos County Staff sent a Notice of Decision for Alleged Violation. Within this decision staff explained that any proposed structure to be built requires land use authorization, the property had no land use approvals and may not qualify for any type of dwelling due to zoning. On March 12, 2022 an email was received by the property owner with pictures to show that the structure was removed.

On May 3, 2022: An email was received by the property owner with an incomplete application. Staff responded and let him know that the application was not completely filled out and there was no plot plan nor any addressed criteria. Larry Paul responded

with a plot plan that did not meet county standards along with property intensions, but this did not address the required criteria that was emailed to him previously.

On May 4, 2022: Staff responded stating that if the intent was to site a dwelling he would need to turn in a conditional use and address the applicable criteria. Staff attached the criteria and application to the email, and gave him the fee amount.

On May 12, 2022: Staff sent an email to Mr. Paul and let him know that after further research on the property that the dwelling that was removed would need to be proved to be lawfully sited. The 1986 violation, AV-86-22 was closed in December 1986 with no notes of other development. The dwelling approval listed a conventional dwelling. The dwelling that was sited was a mobile home. Mr. Paul responded that he had no idea what to do now, and assumed that the single wide was permitted when he bought the property in 2011. He asked Staff to give him direction in building a dwelling on the property. Staff responded that a permit process to build a dwelling on the property could not be found through researching the Coos County Zoning and Land Development Ordinance (CCZLDO), but provided a link for the ordinance so that he would review the uses.

On October 12, 2022: a Conditional Use (ACU-22-048) was received to apply for the replacement of the mobile home.

II. **BASIC FINDINGS:**

A. LOCATION: The subject property is located south of the City of Bandon off of Napier Lane, which is a privately maintained road. The property has a situs address of 88018 Napier Lane, Bandon, OR 97411.

B. ZONING: - This property is zoned Exclusive Farm Use.

ARTICLE 4.2 – ZONING PURPOSE AND INTENT

SECTION 4.2.500 RESOURCE ZONES

Exclusive Farm Use (EFU)

These include all inventoried "agricultural lands" not otherwise found to be needed (excepted) for other uses.

The purpose of the EFU district is to preserve the integrity and encourage the conservation of agricultural lands within Coos County and thereby comply with the provisions of ORS 215 and OAR 660. Division 33 to minimize conflicts between agricultural practices and non-farm uses by limiting any development to uses distinguished as dependent upon or accessory to supporting agricultural or forestry production and which qualify such farm lands for special tax relief pursuant to the provisions of Oregon Revised Statutes. This zone is also for the cultivation and marketing of specialty crops, horticultural crops and other intensive farm uses.

According to the Coos County Comprehensive Plan Exclusive Farm Use lands are inventoried as Agricultural Lands. The Main criterion for establishing the "Agricultural Lands Inventory" was land identified on the agricultural lands based on soils, Class I-IV soils or "other lands" suitable for agricultural use, with the following exceptions:

Committed rural residential areas and urban growth areas.

Proposed rural residential areas as per the Exception to Goals #3 and #4.

Proposed industrial/commercial sites.

Existing recreation areas (e.g., golf courses) [Recreation designation]

*Isolated parcels of Class I-IV soils in upland areas, which are under, forest cover. (Forestlands designation).
Narrow valley bottomlands where no agricultural activity is occurring anywhere in the vicinity [Forestlands designation].*

The secondary criterion for establishing the “Agricultural Lands Inventory” was the use of aerial photos used to identify additional areas without Class I-IV soils in current agricultural use which were not initially identified in the agricultural lands inventory from Assessor's Data. This situation typically occurs on benches, immediately above agricultural valleys, where grazing often takes place on non-class I-IV soils. However, if lands were zoned predominately forest it may have resulted in a Mixed Use Overlay.

Forest (F): The intent of the Forest District is to include all inventoried "forestlands" not otherwise found to be needed (excepted) for other uses.

The purpose of the Forest zone is to conserve and protect forest land for forest uses. Some of the areas covered by the “F” zone are exclusive forest lands, while other areas include a combination of mixed farm and forest uses.

C. SPECIAL DEVELOPMENT CONSIDERATIONS AND OVERLAYS:

SECTION 4.11.125 Special Development Considerations: The considerations are map overlays that show areas of concern such as hazards or protected sites. Each development consideration may further restrict a use. Development considerations play a very important role in determining where development should be allowed In the Balance of County zoning. The adopted plan maps and overlay maps have to be examined in order to determine how the inventory applies to the specific site

SECTION 4.11.200 Purpose: Overlay zones may be super-imposed over the primary zoning district and will either add further requirements or replace certain requirements of the underlying zoning district. The requirements of an overlay zone are fully described in the text of the overlay zone designations. An overlay zone is applicable to all Balance of County Zoning Districts and any zoning districts located within the Coos Bay Estuary Management Plans when the Estuary Policies directly reference this section.

This property is within the Bandon Airport Conical Zone and Bandon Area of Mutual Interest. A request for comments was sent to the Oregon Department of Aviation on October 12, 2022, a response has not been received. Bandon Area of Mutual Interest requires staff to send a notice of decision to the City of Bandon, a copy of this decision will be provided to them.

D. SITE DESCRIPTION AND SURROUNDING USES: The subject property is zoned Exclusive Farm Use (EFU) and contains approximately 5.01 acres. This property is located west of Rosa Road off of Napier Lane, south of the City of Bandon. The parcel appears to have vegetation, other than the power line easement and the old homesite. The surrounding properties are zoned Exclusive Farm Use (EFU) and Forest (F) and appear to be used for farm, forest and residential uses.

E. COMMENTS:

- a. PUBLIC AGENCY:** This property required a request for comments to Oregon Department of Aviation. A request for comments was sent October 12, 2022, at this time comments have not been received. Any comments received in the future will need to be adhered to by applicant.

- b. **PUBLIC COMMENTS:** This property did not require any request for comments prior to the release of the decision.
- c. **LOCAL TRIBE COMMENTS:** This property did not require any request for comments prior to the release of the decision.

E. LAWFULLY CREATED UNIT OF LAND: The unit of land was created pursuant to 6.1.125.1.e by deed or land sales contract, if there were no applicable planning, zoning, or subdivision or partition ordinances or regulations that prohibited the creation. Prior to 1986 properties were allowed to be created by deed or sale agreement and this property was created prior to 1986, *see* Deed Document 81-30590.

III. STAFF FINDINGS AND CONCLUSIONS:

a. SUMMARY OF PROPOSAL AND APPLICABLE REVIEW CRITERIA:

Deferred Replacement dwelling criteria in the Exclusive Farm Use Zone pursuant to Coos County Zoning and Land Development (CCZLDO) § 4.6.200.21 replacement of a lawfully established dwelling subject to: § 4.6.200(21) (8) Replacement Dwellings, (30) Deed Declaration; and §4.6.210 Development and Siting Criteria.

b. KEY DEFINITIONS:

ACTIVITY: Any action taken either in conjunction with a use or to make a use possible. Activities do not in and of themselves result in a specific use. Several activities such as dredging, piling and fill may be undertaken for a single use such as a port facility. Most activities may take place in conjunction with a variety of uses.

DEVELOP: To bring about growth or availability; to construct or alter a structure, to conduct a mining operation, to make a physical change in the use or appearance of land, to divide land into parcels, or to create or terminate rights to access.

DEVELOPMENT: The act, process or result of developing.

USE: The end to which a land or water area is ultimately employed. A use often involves the placement of structures or facilities for industry, commerce, habitation, or recreation.

ZONING DISTRICT: A zoning designation in this Ordinance text and delineated on the zoning maps, in which requirements for the use of land or buildings and development standards are prescribed.

DWELLING: Any building that contains one or more dwelling units used, intended, or designed to be built, used, rented, leased, let or hired out to be occupied, or that are occupied for living purposes.

- **SECTION 4.6.200(21) PERMITTED OR USES SUBJECT TO CONDITIONAL USE: THE FOLLOWING USES MAY BE ALLOWED WITH CONDITIONS OF APPROVAL ON EXCLUSIVE FARM USE LANDS SUBJECT TO THE REVIEW IDENTIFIED IN THE USE TABLE FOR EXCLUSIVE FARM USE ARE LISTED AS PART OF THE USE:**

(8) REPLACEMENT DWELLING - Dwelling that no longer meets replacement criteria as described in subsection (8)(a)(A)(i) through (iv) of this section. This determination meets the requirements for a land use decision and shall reviewed as an Administrative Conditional Use (ACU).

- (a) *A lawfully established dwelling may be altered, restored or replaced under 215.283(1)(p) if, when an application for a permit is submitted, the permitting authority finds to its satisfaction, based on substantial evidence that:*
- (A) *The dwelling to be altered, restored or replaced has:*
- (i) *Intact exterior walls and roof structure;*
 - (ii) *Indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;*
 - (iii) *Interior wiring for interior lights; and*
 - (iv) *A heating system; and*
 - (v) *The dwelling's tax lot does not have a lien for delinquent ad valorem taxes; and*
 - (vi) *Any removal, destruction or demolition occurred on or after January 1, 1973;*
- (B) *If the dwelling is currently in such a state of disrepair that the dwelling is unsafe for occupancy or constitutes an attractive nuisance, the dwelling's tax lot does not have a lien for delinquent ad valorem taxes; or*
- (C) *A dwelling not described in subsection (A) or (B) of this section was assessed as a dwelling for purposes of ad valorem taxation:*
- (i) *For the previous five property tax years; or*
 - (ii) *From the time when the dwelling was erected upon or affixed to the land and became subject to assessment as described in ORS 307.010.*
- (b) *For replacement of a lawfully established dwelling under this section:*
- (A) *or replaced under ORS 215.283 if the county determines that:*
- (i) *The dwelling to be altered, restored or replaced has, or formerly had:*
 - (1) *Intact exterior walls and roof structure;*
 - (2) *Indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;*
 - (3) *Interior wiring for interior lights; and*
 - (4) *A heating system; and*
 - (ii)(1) *If the dwelling was removed, destroyed or demolished:*
 - (a) *The dwelling's tax lot does not have a lien for delinquent ad valorem taxes; and*
 - (b) *Any removal, destruction or demolition occurred on or after January 1, 1973;*
 - (2) *If the dwelling is currently in such a state of disrepair that the dwelling is unsafe for occupancy or constitutes an attractive nuisance, the dwelling's tax lot does not have a lien for delinquent ad valorem taxes; or*
 - (3) *A dwelling not described in subparagraph (A)(i)(1) or (A)(i)(2) of this subsection was assessed as a dwelling for purposes of ad valorem taxation:*
 - (i) *For the previous five property tax years; or*
 - (ii) *From the time when the dwelling was erected upon or affixed to the land and became subject to assessment as described in ORS 307.010.*

FINDING: **The first criteria within this provision to allow replacement states “A lawfully established dwelling may be altered, restored or replaced”. This means that in order to alter, restore or replace a dwelling it must have been lawfully sited. When reviewing the property permit history, it was found that the mobile home was not lawfully sited. The Zoning Clearance Letter issued on May 23, 1984 clearly stated that a “conventional dwelling” was allowed and that a “mobile home” was not permitted. See portion of Zoning Clearance Letter below:**

NO reconnect to existing system

11) BUILDING PERMITS:

- YES construction of conventional dwelling
- NO site mobile home
- NO repair of existing dwelling
- NO construction of an accessory to a residential dwelling
- NO other: _____

The applicant failed to address how this could have been lawfully sited. Staff spent a considerable amount of time reading the prior ordinances that were in effect at the time the Zoning Compliance Letter was granted. At that time it is clear that there were two different dwelling types list in the Zoning. The definitions of a Conventional Dwelling and Mobile Home were provided. This is why Staff did tell the current property owner that it cannot be confirmed that a dwelling was lawfully sited on this property. Staff still is unable to confirm that this property had a lawfully established dwelling and cannot approve this replacement permit request.

Staff urges that property owner to seek a dwelling permit under the current standards or consider a rezone. The property at one time was zoned Rural Residential but did not retain that designation at the time of Acknowledgment. If the applicant is able to provide reasonable proof that the dwelling was lawfully sited within the appeal period staff is willing to reconsider the manner following the processes and fee set out in Section 5.8.250.

VI. DECISION:

There is not adequate evidence to address the criteria for a Replacement Dwelling in EFU zoning; therefore, this request has been denied.

VIII. NOTICE REQUIREMENTS:

A notice of decision and staff report will be provided to property owners within 750 feet of the subject properties and the following agencies, special district or parties: Bandon RFPD, City of Bandon, Southern Coos General Health Department.

A notice of decision and staff report will be provided to: Department of Land Conservation and Development, Planning Commission, Board of Commissioner