



NOTICE OF LAND USE DECISION

You may have received this because you are an adjacent property owner, and this notice is required to be provided pursuant to ORS 215.416. The proposal is identified in this decision and will be located on the subject property.

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

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. Please read all information carefully as this decision. (See attached vicinity map for the location of the subject property).

Date of Notice: **Monday, January 09, 2023**
File No: ACU-22-034

Proposal: Request for Single Family Dwelling in the Forest Zone.

Applicant(s): JCB Holdings Coos Curry Consulting
PO Box 346 PO Box 1548
Bandon, OR 97411 Bandon, OR 97411

Staff Planner: Crystal Orr, Associate Planner

Decision: **Approved with Conditions.** All decisions are based on the record. 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 5 p.m. on **Tuesday, January 24, 2023**. Appeals are based on the applicable land use criteria. *Coos County Zoning and Land Development Ordinance (CCZLDO) General Compliance with Sections 1.1.300 Compliance with Comprehensive Plan and Ordinance Provisions and Article 6.1 Lawfully Created Lots or Parcels. The Dwelling Review is subject to Article 4.6 Resource Zoning District, Section 4.6.100 Forest and Forest Mixed Use, Use Table 1 in Section 4.6.110.63 Template Dwelling (Alternative forestland dwellings ORS 215.750) to Section 4.6.120 Review Standards (9)(B)(II). Development shall also comply with Section 4.6.140 Development and Siting Standards. All dwellings and structures are subject to the siting standards found in Section 4.6.130. Properties that are in a Special Development Consideration and/or overlays shall comply with the applicable review process identified by that Special Development Consideration and/or overlay located in Article 4.11. **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: 1202101
Map Number: 29S140400-00101

Property Owner: JCB HOLDINGS LLC
PO BOX 346
BANDON, OR 97411-0346

Situs Address: NO SITUS ADDRESS

Acreage: 37.03 Acres

Zoning: FOREST (F)

Special Development Considerations and Overlays: BANDON AREA OF MUTUAL INTEREST (BMI)
FOREST MIXED USE (MU)
MUNICIPAL WATERSHED (WTR)
NATIONAL WETLAND INVENTORY SITE (NWI)

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 225 N. Adams, 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. **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.**

The application, staff report and any conditions can be found at the following link: <https://www.co.coos.or.us/community-dev>. 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, Coquille, Oregon. Copies may be purchased at a cost of 50 cents per page. The decision is based on the application submittal and information on record. The name of the Coos County Planning Department representative to contact is Jill Rolfe, Planning Director 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: **Monday, January 09, 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 evidenced associated as listed in the exhibits.

EXHIBITS

Exhibit A: Conditions of Approval

Exhibit B: Vicinity Map & Template Map

The following exhibits are on file at the Coos County Planning Department and may be accessed by contacting the department. All noticeable decisions are posted on the website for viewing when possible.

Exhibit C: Staff Report -Findings of Fact and Conclusions

Exhibit D: Comments Received

EXHIBIT "A"

The applicant shall comply with the following conditions of approval with the understanding that all costs associated with complying with the conditions are the responsibility of the applicant(s) and that the applicant(s) are not acting as an agent of the county. If the applicant fails to comply or maintain compliance with the conditions of approval the permit may be revoked as allowed by the Coos County Zoning and Land Development Ordinance. Please read the following conditions of approval and if you have any questions contact planning staff.

CONDITIONS OF APPROVAL

1. All applicable federal, state, and local permits shall be obtained prior to the commencement of any development activity. If there were comments from any other agency were provided as part of this review, it is the responsibility of the property owner to comply.
2. Pursuant to CCZLDO § 5.9.100, a Zoning Compliance Letter shall be required prior to the commencement of construction of the proposed dwelling. This authorization is based on conditions of approval and the conditions that are required to be completed prior obtaining the ZCL are defined in this section. Pursuant to CCZLDO § 4.6.110, § 4.6.130 and § 4.6.140. To show compliance with this section the applicant shall submit a letter with the following items to request that staff find the following conditions have been satisfied:
 - a. The property owner is responsible for ensuring compliance, and land use authorization shall remain recorded in the chain of title. The statement needs to include language that the purchaser of the property has been provided a copy of the land use approval containing all conditions or restrictions understands the obligation and agrees to fulfill the conditions unless a modification is approved as provided in this ordinance. The property owner is responsible for ensuring compliance, and land use authorization. The recorded deed convent shall be recorded with the County Clerk and copy provided to the Planning Department.
 - b. CCZLDO Section 4.6.130(3) The applicant shall provide evidence to the governing body that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices rules (OAR chapter 629). For purposes of this section, evidence of a domestic water supply means: (a) Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water; (b) A water use permit issued by the Water Resources Department for the use described in the application; or (c) Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report to the county upon completion of the well.
 - c. Section 4.6.140(2) Setbacks: All Development, with the exception of fences, shall be set back a minimum of thirty-five (35) feet from any road right-of-way centerline, or five (5) feet from any right-of-way line, whichever is greater. This should be shown on the plot plan.
 - d. Section 4.6.140(5) Minimizing Impacts: In order to minimize the impact of dwellings in forest lands, all applicants requesting a single-family dwelling shall acknowledge and file in the deed record of Coos County, a Forest Management Covenant. The Forest Management Covenant shall be filed prior to any final County approval for a single family dwelling.
 - e. Section 4.6.140(6) Riparian Vegetation Protection. Riparian vegetation within 50 feet of a wetland, stream, lake or river, as identified on the Coastal Shoreland and Fish and Wildlife habitat inventory maps shall be maintained. If there are no wetlands, streams, lakes or rivers then this is not applicable.
 - f. Section 4.6.140(7)(a) & Section 4.6.140(9) All new and replacement structures shall use non-combustible or fire resistant roofing materials, as may be approved by the certified official

responsible for the building permit. If they are not available yet then this will be a condition of approval on the ZCL.

- g. Section 4.6.140(14) If the dwelling has a chimney or chimneys, each chimney shall have a spark arrester. A copy of the building plans shall be submitted. If they are not available, then this will be a condition of approval on the ZCL.
- h. Section 4.6.140(7)(b) The dwelling shall not be sited on a slope of greater than 40 percent. This shall be shown on the plot plan.
- i. Section 4.6.140(7)(e) & Section 4.6.140(8)(a)(b)(c)(d) Firebreak: a. This firebreak will be a primary safety zone around all structures. Vegetation within this primary safety zone may include mowed grasses, low shrubs (less than ground floor window height), and trees that are spaced with more than 15 feet between the crowns and pruned to remove dead and low (less than 8 feet from the ground) branches. Accumulated needles, limbs and other dead vegetation should be removed from beneath trees. b. Sufficient Garden Hose to reach the perimeter of the primary safety zone (as identified in staff report) shall be available at all times. c. The owners of the dwelling shall maintain a primary fuel-free break (as identified in staff report) area surrounding all structures and clear and maintain a secondary fuel-free break on land surrounding all structures and clear and maintain a secondary fuel-free break on land surrounding the dwelling that is owned or controlled by the owner in accordance with the provisions in “Recommended Fire Siting Standards for Dwellings and Structures and Fire Safety Design Standards for Roads” dated March 1, 1991, and published by Oregon Department of Forestry and shall demonstrate compliance with Table 1. Table one is addressed in the staff report based on down slope. This can be shown on a plot plan.
- j. Section 4.6.140 (16) Except for private roads and bridges accessing only commercial forest uses, public roads, bridges, private roads and driveways shall be constructed so as to provide adequate access for firefighting equipment. If the property is within a fire protection district (Coos Forest Protective Agency or Rural Fire Department) a sign off from the fire department is required or proof that the road has been constructed to meet the requirements of the “Recommended Fire Siting Standards for Dwellings and Structures and Fire Safety Design Standards for Roads” dated March 1, 1991.
- k. Section 4.6.140(17) Access to new dwellings shall meet road and driveway standards in Chapter VII. Driveway/ Access Parking/Access permit application shall be signed off by the Coos County Road Department prior to issuance of a Zoning Compliance Letter
- l. Section 5.2.700 Development Transferability - Unless otherwise provided in the approval, a land use approval that was obtained through a conditional use process shall be transferable provided the transferor files a statement with the Planning Director signed by the transferee. This document shall be recorded in the chain of title of the property, indicating that the transferee has been provided a copy of the land use approval containing all conditions or restrictions understands the obligation and agrees to fulfill the conditions, unless a modification is approved as provided in this ordinance. The property owner is responsible for ensuring compliance, and land use authorization shall remain recorded in the chain of title to alert a purchaser that development was approved subject to conditions and possible restrictions.

EXHIBIT "B"
Vicinity Map



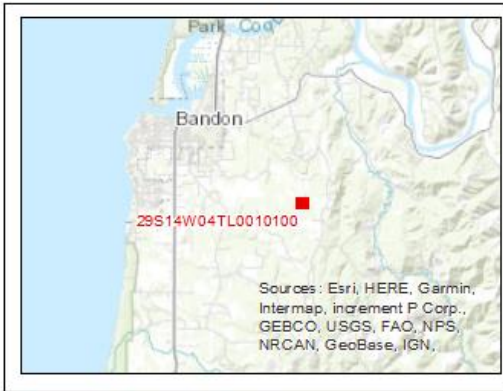
COOS COUNTY PLANNING DEPARTMENT

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

Physical Address: 60 E. Second, Coquille Oregon

Phone: (541) 396-7770

TDD (800) 735-2900



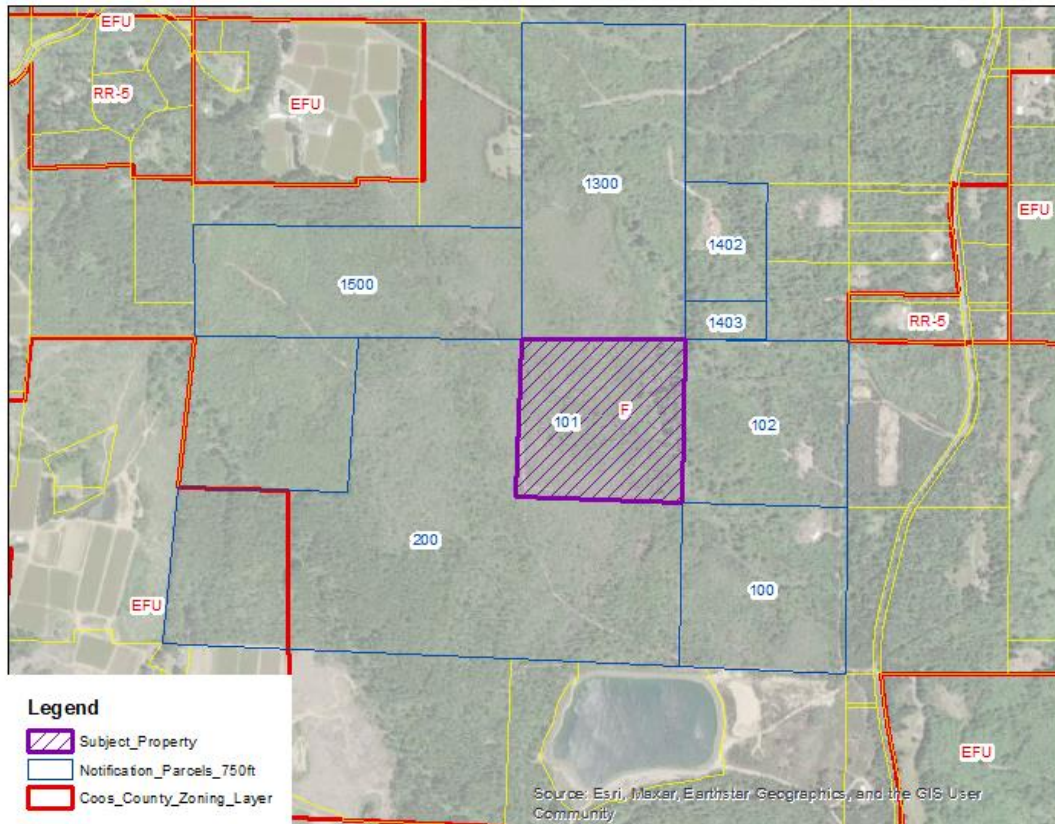
File: ACU-22-034

Applicant/
Owner: JCB Holdings LLC

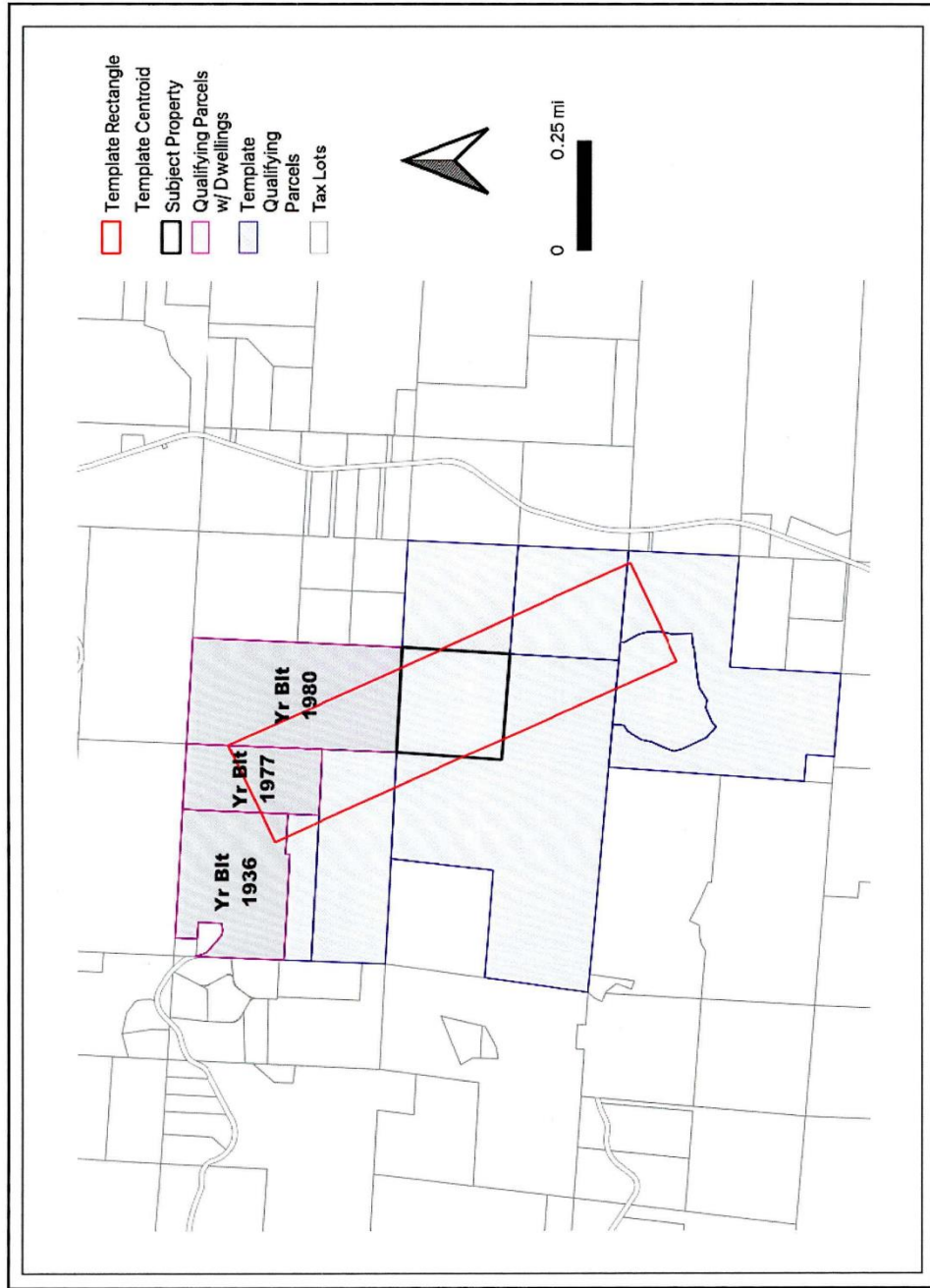
Date: December 29, 2022

Location: Township 29S Range 14W
Section 4 TL 101

Proposal: Administrative Conditional Use



Template Map



**EXHIBIT “C”
STAFF REPORT
FINDINGS OF FACT AND CONCLUSIONS**

I. PROPOSAL AND BACKGROUND/PROPERTY HISTORY INFORMATION AND PRIOR COMPLIANCE:

- A. PROPOSAL:** According to the application the property owner is seeking approval for a new Single-Family Dwelling, shop, greenhouse and pump house in the Forest Mixed Use Zone. There is no indication that any other development is proposed at this time.
- B. BACKGROUND/PROPERTY HISTORY:** On February 23, 2021 a Template Test Application was submitted. On April 6, 2021 Staff completed the template test and came to the conclusion that the parcel did not meet the template requirements. The template test was performed using a square template. The current application submitted (ACU-22-034) identified a public dedicated non-county-maintained road that crosses the subject property, identified as Bills Creek Public Road 1059. The road was created prior to January 1, 1993. This road allows the template requirement to be determined via a 160-acre rectangle that is one mile long and one-quarter mile wide centered on the subject tract that is to the maximum extent possible aligned with the road. When performing the template test with the rectangle configuration, this parcel meets the template requirement.
- C. LOCATION:** The subject property is located east of the City Limits of Bandon. The property is accessed via Bills Creek Lane.
- D. ZONING:** - This property is zoned Forest with a Mixed-Use Overlay.

ARTICLE 4.2 – ZONING PURPOSE AND INTENT
SECTION 4.2.500 RESOURCE ZONES

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.

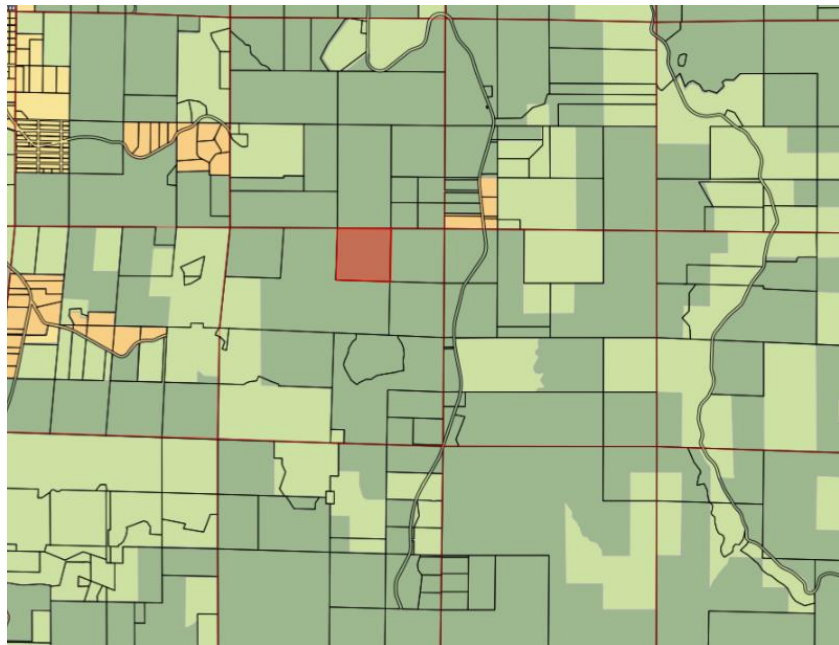
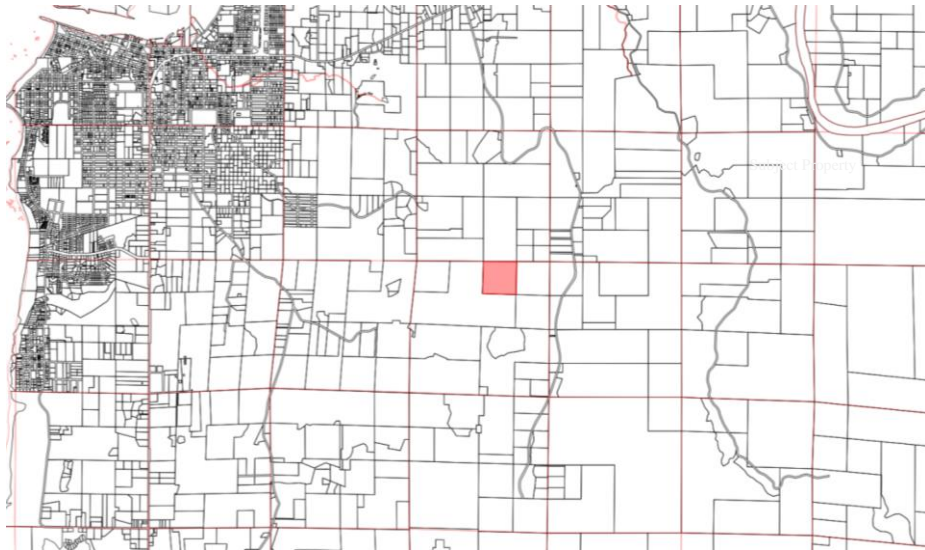
Forest Mixed Use (FMU): The purpose of the Forest Mixed Farm-Forest Areas (“MU” areas) is to include land which is currently or potentially in farm-forest use. Typically, such lands are those with soil, aspect, topographic features and present ground cover that are best suited to a combination of forest and grazing uses. The areas generally occupy land on the periphery of large corporate and agency holdings and tend to form a buffer between more remote uplands and populated valleys. In addition, these “mixed use” areas contain ownership of smaller size than in prime forest areas. Some are generally marginal in terms of forest productivity, such as areas close to the ocean.

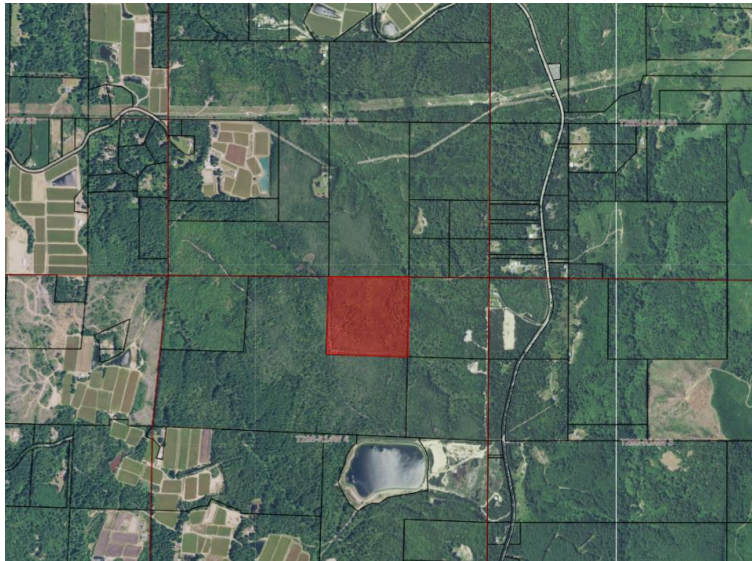
E. SITE DESCRIPTION AND SURROUNDING USES:

The lot is located east of the city limits of Bandon. The property is within the Forest Zoning district and is 37.03 acres in size. There is not a situs address for this property. No development has taken place on this property, and it is not being used for farm or forestry purposes.

The property is accessed from Bill's Creek Road, a gravel road originating at Morrison Road and improved eastward for approximately 1500'. Bills Creek Road becomes a dirt road and crosses over the subject property both in the east/west direction and in the north/south direction along the western side of the property. No other roads or driveways are developed on the site.

Vegetation along the southern lower elevations consists of smaller sized pine trees, rhododendron, huckleberries and a variety of wild weeds. Soils are poor in this area and not conducive to farming or forestry. Parts of the property have Douglas Fir and have potential for selective harvesting. The topography of the site varies, but is mostly slightly to moderately sloped.





F. COMMENTS:

- a. **PUBLIC AGENCY:** This property did not require any request for comments prior to the release of the decision and none were received.
- b. **PUBLIC COMMENTS:** This property did not require any request for comments prior to the release of the decision and none were received.
- c. **LOCAL TRIBE COMMENTS:** This property did not require any request for comments from the Tribes prior to the release of the decision and none were received.

II. GENERAL PROPERTY COMPLIANCE:

A. COMPLIANCE PURSUANT TO SECTION 1.1.300:

It shall be unlawful for any person, firm, or corporation to cause, develop, permit, erect, construct, alter or use any building, structure or parcel of land contrary to the provisions of the district in which it is located. No permit for construction or alteration of any structure shall be issued unless the plans, specifications, and intended use of any structure or land conform in all respects with the provisions of this Ordinance, unless approval has been granted by the Hearings Body.

FINDING: Staff has reviewed the property history and the county finds, at the time of this report, the property is compliant with the Coos County Zoning and Land Development Ordinance. This does not mean that there is not additional information that was unavailable during this review that would make the properties non-compliant.

B. SECTION 6.1.125 LAWFULLY CREATED LOTS OR PARCELS:

“Lawfully established unit of land” means:

- 1. *The unit of land was created:*
 - a. *Through an approved or pre-ordinance plat;*
 - b. *Through a prior land use decision including a final decision from a higher court. A higher court includes the Land Use Board of Appeals;*
 - c. *In compliance with all applicable planning, zoning and subdivision or partition ordinances and regulations at the time it was created.*

- d. By a public dedicated road that was held in fee simple creating an interviewing ownership prior to January 1, 1986;
- 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.
- f. By the claim of intervening state or federal ownership of navigable streams, meandered lakes or tidewaters. "Navigable-for-title" or "title-navigable" means that ownership of the waterway, including its bed, was passed from the federal government to the state at statehood. If a waterway is navigable-for-title, then it also is generally open to public use for navigation, commerce, recreation, and fisheries.

FINDING: The unit of land was created pursuant to Section 6.1.125.1.e, through deeds prior to applicable planning or partition ordinances or regulations that would prohibit the creation.

On April 17, 2001, the Coos County Planning Department received a letter from the Coos County Assessor's Office regarding a non-compliance issue pertaining to an unlawfully created parcel. After reviewing that information, on April 25, 2001, the Coos County Planning Department sent a letter to the property owner regarding the unlawfully created parcel. In response, on April 30, 2001, the Coos County Planning Department received a letter from Randall Manicke Et Al (property owner) stating: "The Bargain and Sale Deeds were recorded prior to the date Planning no longer recognized Government Lots as discrete. Our attorney tells us Government Lots are still discrete to this day. Please notice that two of the Tax Lots in question are Government Lots, and the third, (Tax Lot 100) remained vested as-is. Thus there were two deeds 'In Kind.' We trust there has been no violation." In response to the property owners letter, dated May 9, 2001, the Coos County Planning Department sent a letter to the property owners (Randall Manicke, Et Al/James Bussmann) stating that the department has determined the deeds in question do not create a potential violation resolving the legally created parcel issue. This resolved the lawfully created unit of land issue.

III. STAFF FINDINGS AND CONCLUSIONS:

A. SUMMARY OF PROPOSAL AND APPLICABLE REVIEW CRITERIA:

The proposal is for Planning Director Approval of a Template Dwelling, *Single Family Dwelling* in the Forest Mixed Use Zone. The application did not specify any additional development requests; therefore, no other development proposals were reviewed.

The applicable review criteria are found in Coos County Zoning and Land Development (CCZLDO) 4.6.100 Table 1 identifies the uses and activities in the Forest (F) and Forest/Mixed Use (FMU) zone. The tables describe the use, type of review, applicable review standards. Table 1 of CCZLDO Section 4.6.110.63 defines the relevant criteria for Template Dwellings (Alternative forestland dwellings ORS 215.750) subject to an ACU, Section 4.6.120 Review Standards (9)(B)(II). Development shall also comply with Section 4.6.140 Development and Siting Standards. All dwellings and structures are subject to the siting standards found in Section 4.6.130. Properties that are in a Special Development Consideration and/or overlays shall comply with the applicable review process identified by that Special Development Consideration and/or overlay located in Article 4.11. This proposal is subject to review under Natural Hazards Section 4.11.

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.*

C. TEMPLATE DWELLING CRITERIA AND FOREST SITING STANDARDS

*Forest Template Dwelling Supplemental Application:
Coos County Zoning and Land Development Ordinance (CCZLDO)*

SECTION 4.6.100 FOREST AND FOREST MIXED USE – USE TABLES Table 1 identifies the uses and activities in the Forest (F) and Forest/Mixed Use (FMU) zone. The tables describe the use, type of review, applicable review standards. Development shall also comply with Section 4.6.140 Development and Siting Standards. All dwellings and structures are subject to the siting standards found in Section 4.6.130. Exceptions to minimum lot and parcel sizes for the purpose of land division may apply as set out in Section 4.6.145 Land Division for Open Space and Special Assessment, and Section 4.6.145 Exceptions to Minimum Parcel Size. Properties that are located in a Special Development Consideration and/or overlays shall comply with the applicable review process identified by that Special Development Consideration and/or overlay located in Article 4.11.

If a use specifically states Forest Mixed Use only it is not permitted in the Forest Zone. If land is in a zone that allows both farm and forest uses, a dwelling may be sited based on the predominate use of the tract on January 1, 1993.

SECTION 4.6.110 (OAR 660-006-0025) Uses Authorized in Forest Zones (1) Goal 4 requires that forest land be conserved. Forest lands are conserved by adopting and applying comprehensive plan provisions and zoning regulations consistent with the goals and this rule. In addition to forest practices and operations and uses auxiliary to forest practices, as set forth in ORS 527.722, the Commission has determined that five general types of uses, as set forth in the goal, may be allowed in the forest environment, subject to the standards in the goal and in this rule. These general types of uses are: (a) Uses related to and in support of forest operations; (b) Uses to conserve soil, air and water quality and to provide for fish and wildlife resources, agriculture and recreational opportunities appropriate in a forest environment; (c) Locationally dependent uses, such as communication towers, mineral and aggregate resources, etc.; (d) Dwellings authorized by ORS 215.705 to 215.755; and (e) Other dwellings under prescribed conditions.

<i>Use</i>	<i>TR</i>	<i>Subject to</i>
<i>Dwellings authorized by ORS 215.705 to 215.755; and (e) Other dwellings under prescribed conditions.</i>		

63.	<i>Template Dwelling (Alternative forestland dwellings ORS 215.750)</i>	ACU	(9)(B)(II)
-----	---	-----	------------

- *SECTION 4.6.120 Review Standards (9)(B) DWELLING ON FOREST AND FOREST MIXED USE ZONES -(II) TEMPLATE DWELLING - 215.750 Alternative forestland dwellings; criteria.*
 - (1) *In western Oregon, a governing body of a county or its designate may allow the establishment of a single-family dwelling on a lot or parcel located within a forest zone if the lot or parcel is predominantly composed of soils that are:*
 - (a) *Capable of producing 0 to 49 cubic feet per acre per year of wood fiber if:*
 - (A) *All or part of at least three other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and*
 - (B) *At least three dwellings existed on January 1, 1993, on the other lots or parcels continue to exist on the other lots or parcels;*
 - (b) *Capable of producing 50 to 85 cubic feet per acre per year of wood fiber if:*
 - (A) *All or part of at least seven other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and*
 - (B) *At least three dwellings existed on January 1, 1993, on the other lots or parcels; or*
 - (c) *Capable of producing more than 85 cubic feet per acre per year of wood fiber if:*
 - (A) *All or part of at least 11 other lots or parcels that existed on January 1, 1993, are within a 160-acre square centered on the center of the subject tract; and*
 - (B) *At least three dwellings existed on January 1, 1993, on the other lots or parcels.*
 - (d) *As used in this section, “center of the subject tract” means the mathematical centroid of the tract.*

FINDING: The subject property consists of the Bandon-Blacklock Complex-2C, Bullards sandy loam-8C, and Bullards sandy loam-8E. Based on the ODF Letter below, dated August 18, 2001, the subject property is capable of producing 80 cubic feet per acre per year of wood fiber. This information was used instead of the NRCS Soils Survey because it is more specific to the subject property.

Based on this information, the subject property needs to comply with 1(b), which is a minimum of 7 discrete parcels, with 3 dwellings, created and sited prior to January 1, 1993 with the template test. The template test centroid was calculated using QGIS geographic information system software by the applicant and confirmed by Coos County GIS System.



Oregon

John A. Kitzhaber, M.D., Governor

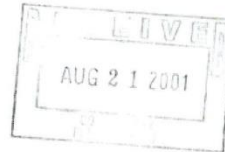
Department of Forestry

Coos District
300 Fifth Street, Bay Park
Coos Bay, OR 97420-3899
(541) 267-4136
FAX (541) 269-2027



"STEWARDSHIP IN FORESTRY"

pl
file



18 August, 2001

Mr. Bruce Manicke
97559 Seven Devils Road
Bandon OR., 97411

Dear Mr. Manicke;

This letter contains the Forest Site Information that you requested for a Conditional Use Permit with the Coos County Planning Department. A copy of this letter has also been sent to the Planning Director for inclusion in your Application file.

Site Class data for this letter has been gathered from various sources and each will be documented where appropriate.

The Oregon Department of Revenue has determined site conditions for much of Western Oregon's forestland. Field checking has proven their determinations to be generally accurate. For the 37.03 acre parcel, Tax Lot 101, located in Section 04 of Township 29 South, Range 14 West, W.M. in Coos County, the DOR has determined the Site Condition to be FF. This generally equates to a Forest Site Index of 100, which is the approximate height of a dominant tree at age 100 years on the parcel.

Using Site Class information from USDA Technical Bulletin No. 201, an estimation of the site productivity for forestland can be made. Each acre of forestland on the Applicant's property can be expected to yield approximately 7800 BF at the end of a sixty year rotation if proper stocking levels are maintained. Cubic foot growth estimates for the site are 80 cubic feet per acre per year.

Gary J. Schulz, Acting Service Forester

cc: Patty Evernden, County Planning Director

MacWhorter Findings of Fact for 29-14-04 TL 101

3/22

- SECTION 4.6.120 Review Standards (9)(B) DWELLING ON FOREST AND FOREST MIXED USE ZONES -(II) TEMPLATE DWELLING - 215.750 Alternative forestland dwellings; criteria. Subsections (3) though (7). Subsection (2) has been removed:

(2) The following review standards apply to "template" dwellings approved under this rule:

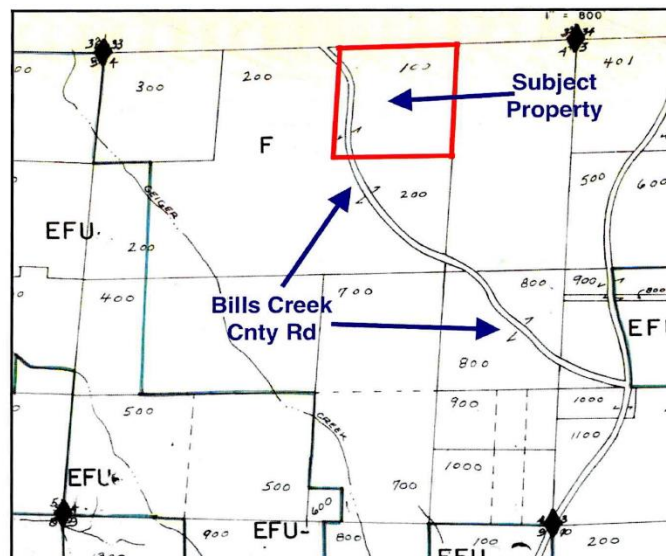
ACU-22-034

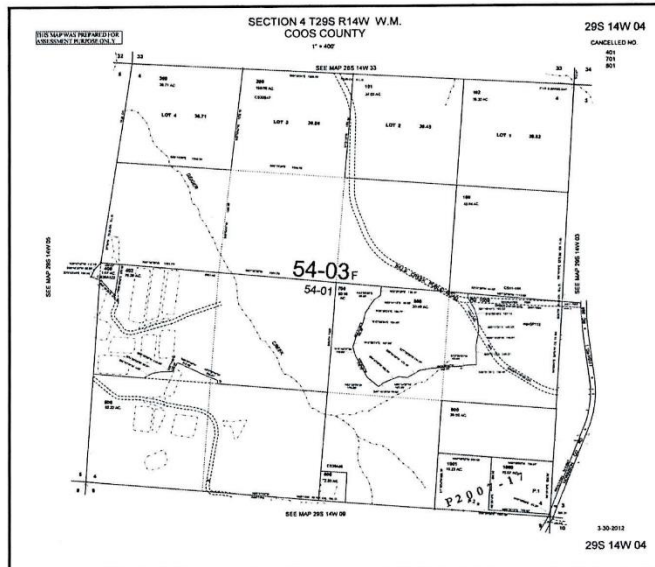
- a. *Lots or parcels within urban growth boundaries may not be used to satisfy the eligibility requirements under this rule.*
 - b. *Except as provided by subsection (c) of this section, if the tract under section (1) of this rule abuts a road¹ that existed on January 1, 1993, the measurement may be made by creating a 160-acre rectangle that is one mile long and one-quarter mile wide centered on the center of the subject tract and that is to the maximum extent possible, aligned with the road.*
 - c. *If the:*
 - i. *Tract 60 acres or larger described under section (1) of this rule abuts a road or perennial stream, the measurement shall be made in accordance with subsection (b) of this section. However, one of the three required dwellings must be on the same side of the road or stream as the tract, and:*
 - 1. *Be located within a 160-acre rectangle that is one mile long and one-quarter mile wide centered on the center of the subject tract and that is, to the maximum extent possible aligned with the road or stream; or*
 - 2. *Be within one-quarter mile from the edge of the subject tract but not outside the length of the 160-acre rectangle, and on the same side of the road or stream as the tract.*
 - ii. *Road crosses the tract on which the dwelling will be located, at least one of the three required dwellings shall be on the same side of the road as the proposed dwelling.*
 - d. *Notwithstanding subsection (6)(a) of this rule, if the acknowledged comprehensive plan and land use regulations of a county require that a dwelling be located in a 160-acre square or rectangle described in sections (3) and (4) of this rule or subsections (b) or (c) of this section, a dwelling is in the 160-acre square or rectangle if any part of the dwelling is in the 160-acre square or rectangle.*
- (3) *A proposed “template” dwelling under this rule is allowed only if:*
- a. *It will comply with the requirements of an acknowledged comprehensive plan, acknowledged land use regulations, and other provisions of law;*
 - b. *It complies with the requirements of OAR 660-006-0029 and 660-006-0035;*
 - c. *No dwellings are allowed on other lots or parcels that make up the tract and deed restrictions established under section (5) of this rule for the other lots or parcels that make up the tract are met;*
 - d. *The tract on which the dwelling will be sited does not include a dwelling.*
 - e. *The lot or parcel on which the dwelling will be sited was lawfully established.*
 - f. *Any property line adjustment to the lot or parcel complied with the applicable property line adjustment provisions in ORS 92.192.*
 - g. *Any property line adjustment to the lot or parcel after January 1, 2019, did not have the effect of qualifying the lot or parcel for a dwelling under this section; and*
 - h. *If the lot or parcel on which the dwelling will be sited was part of a tract on January 1, 2019, no dwelling existed on the tract on that date, and no dwelling exists or has been approved on another lot or parcel that was part of the tract.*
- (4) *Subsection (1)(d) and (3)(e) through (4) of Section (II) TEMPLATE DWELLING applies:*

¹ The statutory definition of “public road” at ORS 368.001(5) is not applicable to approval of a forest template dwelling required by ORS 215.750(5) to be located on a tract that abuts a “road.” Interpretation of a local code requirement that such dwellings be located on a “public road” is controlled by local legislative intent rather than by statute. *Petersen v. Yamhill County*, 33 Or LUBA 584 (1997). The road may be public or private as long as it has been existence and continued to be in existence since January 1, 1993 and meets the following local definition: A public or private way created or intended to provide ingress or egress for persons to one or more lots, parcels, areas, or tracts of land. A road does not include: (a) driveway located exclusively on the same lot, parcel or tract of land as the use it serves; (b) a private way that is created or intended to provide ingress or egress to such land in conjunction with the use of such land exclusively for forestry, mining, or agricultural purposes.

- a. *On and after November 1, 2021 in Columbia, Coos, Curry, Deschutes, Douglas, Josephine, Linn, Marion, Washington, and Yamhill Counties with following limited exception:*
 - i. *Prior to November 1, 2023, the county may allow the establishment of a single-family dwelling on a lot or parcel that was part of a tract on January 1, 2021, if;*
 - 1. *No more than one other dwelling exists or has been approved on another lot or parcel that was part of the tract; and*
 - 2. *The lot or parcel qualifies, notwithstanding subsection (3)(h), for a dwelling under section (1) of this rule.*
- (5) *When the lot or parcel on which the dwelling will be located is part of a tract, the remaining portions of the tract shall be consolidated into a single lot or parcel and a deed restriction using the form provided in OAR 660-06-027(6), "Exhibit A," shall be completed and recorded with Coos County Clerk. The covenants, conditions and restrictions in the deed restriction:*
- a. *The covenants, conditions and restrictions are irrevocable, unless a statement of release is signed by an authorized representative of the county or counties where the property subject to the covenants, conditions and restrictions is located.*
 - b. *Enforcement of the covenants, conditions and restrictions may be undertaken by the department or by the county or counties where the property subject to the covenants, conditions and restrictions is located.*
 - c. *The failure to follow the requirements of this section shall not affect the validity of the transfer of property or the legal remedies available to the buyers of property that is subject to the covenants, conditions and restrictions required by this section.*
 - d. *The county planning director shall maintain a copy of the covenants, conditions and restrictions filed in the county deed records pursuant to this section and a map or other record depicting tracts do not qualify for the siting of a dwelling under the covenants, conditions and restrictions filed in the county deed records pursuant to this section. The map or other record required by this subsection shall be readily available to the public in the county planning office.*

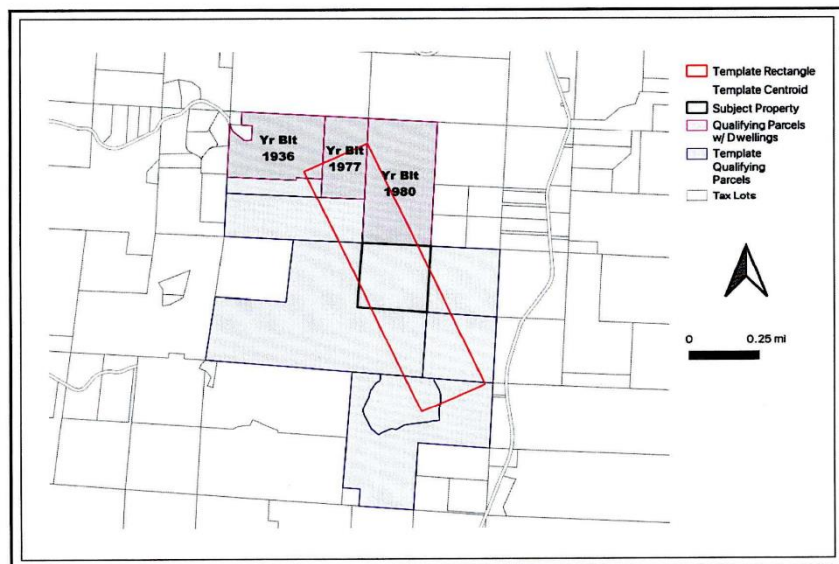
FINDING: There are no UGB parcels used to meet the 7 parcels requirement. There is a publicly dedicated non-County maintained road that crosses the 7 subject property, which is identified as Bills Creek Public Road RD 1059. This road was created prior to Jan 1,1993.





The subject property is less than 60 acres in size. The applicant has utilize the 1 mile by ¼ mile rectangle option which is allowed given the size and road status. The rectangle must be aligned with the maximum extent possible of the Bills Creek Road. The rectangle is aligned with the direction of the road as it proceeds through section 4. A portion of Bills Creek Road was vacated and realigned in 2007. The applicant aligned the rectangle with the 1993 configuration of Bills Creek County Road.

There are ten (10) discrete units of land with three (3) dwellings created prior to 1993. Please see the map below indicating these parcels with the age of the dwelling.



Units of land with Dwellings, creating before Jan 1,1993 are:
T28S-R14W-S33-TL1100 - 1936 SFD
T28S-R14W-S33-TL1200 -1977 SFD
T28S-R14W-S33-TL1300 -1980 MH
T28S-R14W-S33-TL1500

T28S-R14W-S33-TL1501
T29S-R14W-S4-TL100
T29S-R14W-S4-TL102
T29S-R14W-S4-TL200
T29S-R14W-S4-TL700
T29S-R14W-S4-TL800

The proposed *Single-Family Dwelling* will comply with the Coos County Comprehensive Plan, as template dwellings are permitted with an approved administrative conditional use application. There are no other adjacent parcels under the same ownership. There have not been any property line adjustments on the subject property, at least since January 1, 2019.

There have not been any property line adjustments on the subject property, thus there was no effect on the centroid of the template test for qualifying the subject property. Based on assessment records and confirmed with the planning records, the subject property was not part of a tract on January 1, 2019; therefore, there are no dwellings or approvals on adjacent parcels that disqualify the subject property. The criteria has been addressed.

SECTION 4.6.130 ADDITIONAL CRITERIA FOR ALL new and REPLACEMENT dwellings and structures in forest

The following siting criteria or their equivalent shall apply to all new dwellings and structures in forest and agriculture/forest zones. These criteria are designed to make such uses compatible with forest operations and agriculture, to minimize wildfire hazards and risks and to conserve values found on forest lands. A governing body shall consider the criteria in this rule together with the requirements OAR 660-0060-0035 to identify the building site:

1. *Dwellings and structures shall be sited on the parcel so that:*
 - a) *They have the least impact on nearby² or adjoining forest or agricultural lands;*
 - b) *The siting ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized;*
 - c) *The amount of forest lands used to site access roads, service corridors, the dwelling and structures is minimized; and*
 - d) *The risks associated with wildfire are minimized.*
2. *Siting criteria satisfying section (1) of this section may include setbacks from adjoining properties, clustering near or among existing structures, siting close to existing roads and siting on that portion of the parcel least suited for growing trees.*
3. *The applicant shall provide evidence to the governing body that the domestic water supply is from a source authorized in accordance with the Water Resources Department's administrative rules for the appropriation of ground water or surface water and not from a Class II stream as defined in the Forest Practices rules (OAR chapter 629). For purposes of this section, evidence of a domestic water supply means:*
 - a) *Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water;*
 - b) *A water use permit issued by the Water Resources Department for the use described in the application; or*
 - c) *Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt*

²*For the purpose of this section "Nearby" is defined as within the decision notification area as defined in Section 5.0.900(2) for farm zoned property.*

from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report to the county upon completion of the well.

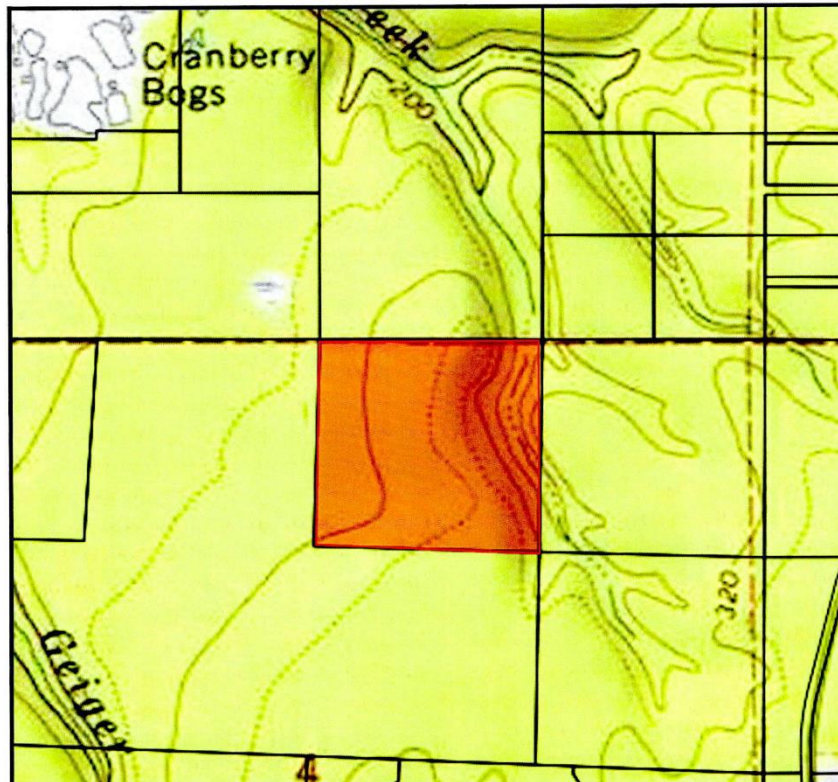
4. *As a condition of approval, if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the U.S. Bureau of Land Management, or the U.S. Forest Service, then the applicant shall provide proof of a long-term road access use permit or agreement. The road use permit may require the applicant to agree to accept responsibility for road maintenance.*
5. *Approval of a dwelling shall be subject to the following requirements:*
 - (a) *Approval of a dwelling requires the owner of the tract to plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in department of Forestry administrative rules;*
 - (b) *The planning department shall notify the county assessor of the above condition at the time the dwelling is approved;*
 - (c) *If the lot or parcel is more than 10 acres in western Oregon or more than 30 acres in eastern Oregon, the property owner shall submit a stocking survey report to the county assessor and the assessor will verify that the minimum stocking requirements have been met by the time required by Department of Forestry rules;*
 - (d) *Upon notification by the assessor the Department of Forestry will determine whether the tract meets minimum stocking requirements of the Forest Practices Act. If that department determines that the tract does not meet those requirements, that department will notify the owner and the assessor that the land is not being managed as forest land. The assessor will then remove the forest land designation pursuant to ORS 321.359 and impose the additional tax; and*
 - (e) *The county governing body or its designate shall require as a condition of approval of a single-family dwelling under ORS 215.213, 215.383 or 215.284 or otherwise in a farm or forest zone, that the landowner for the dwelling sign and record in the deed records for the county a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.*

FINDING: Section 4.6.130(l)(a) and Section 4.6.130(l)(b) require proof of adverse impacts to the subject property and nearby farm and forest operations. The proposed homesite, septic, and well are located approximately in the center of the subject property, as shown on the plot plan. The proposed development site is approximately 400 feet from the property lines and is therefore at least 400 feet away from the forestlands that may be harvested for commercial timber. Based on aerial imagery, this adjacent property appears to be mostly covered with 'reprod' stage timber.

Forest operations generally include the following types of forest practices:

1. **Harvesting (final harvests and commercial thinnings)**
 2. **Disposal or treatment of slash (including prescribed burning)**
 3. **Site preparation (including application of herbicides)**
 4. **Reforestation**
 5. **Pre-commercial thinning**
 6. **Stand maintenance (including herbicide and chemical applications for insect and disease control, competing vegetation control, and fertilization) (Senate Bill 1602)**
 7. **Road construction and maintenance**
 8. **High Landslide Hazard Locations**
1. **The adjacent parcels appear to have a slope below 35% according to the topographic map below. Groundside harvesting methods would be preferred based on Oregon Department of Forestry Land Use Note #2. Ground-side timber harvesting involves machines that cut, delimb, and buck the trees into logs. It is designed to transport these machines via public roads via standard commercial truck and lowboy trailers, even though they are pretty**

large. Unlike cable harvesting methods, ground-side harvesting methods are mostly self-contained within the harvest unit. Forest dwellings should have a setback distance of at least 300 feet from ground-side harvest and 500 feet from cable logging operations, according to ODF's Considerations for Dwellings on Forest Land. The location of the dwelling should not adversely affect commercial timber harvesting on adjacent parcels. The adjacent property owners could harvest their properties within 300 feet of a dwelling. They just need to use caution.



2. Disposal of forest slash typically involves both broadcast and piling burning of logging slash. The applicant will create fuel breaks around the proposed dwelling. The fuel breaks will reduce the chances of embers from neighboring slash burns igniting dead trees next to the proposed dwelling leading to a crown fire. Neighboring slash burns, and burning relating to cranberry bogs, will produce a significant amount of smoke.
3. When looking for the effects of new forest dwellings on nearby pesticide practices, the parcel size is more important than whether the land is classified as non-industrial or industrial timberlands. Senate Bill 1602 increased the helicopter spray distance buffer from 60 feet to 300 feet of an inhabitable dwelling starting January 1, 2021. The Anderson v. Coos County, 51 Or LUBA 454 (2006) case established an important factor. According to the LUBA case, a reasonable assumption could conclude that herbicides would be applied to land less than 40 acres using ground application methods. Spraying herbicides using ground spraying applications is permitted up to the property line. Herbicide application by aerial spraying is preferred for lands over 40 acres.

There are active forestlands on the adjacent lands. The applicant finds that it is reasonable to conclude ground-based herbicide treatments could be utilized on these timber stands that are within 300 feet from any constructed dwelling. This will only result in a couple of acres on the

parcel located to the south requiring ground-based herbicide treatments. The treatment area is located close to the Bills Creek Road allowing easy access for ground crews.

The rest of this parcel is capable of utilizing aerial herbicide treatments. The parcel to the east is also within 160 feet of the development site. However, that parcel is approximately 40 acres so it is likely that parcel would utilize ground-based herbicide treatments.

4. Reforestation, or planting trees, of recently logged, relatively flat timberlands typically have little effect on nearby dwellings. Other forest practices, like pesticide spraying or slash burning that complement reforestation, usually have a more significant impact on nearby dwellings. The nearby timber stands range from 40-acre reprod units to a 160-acre parcel with multiple harvest units. This practice is relatively short-term, lasting about a week or two, depending on crew size, over the life of the stand.
5. Pre-commercial thinning involves the selective cutting and leaving of mid-stage trees to increase the ability of the forest stand to grow in height and volume. These practices involve hand crews selecting cutting the forest stand to pre-determine stand prescription. Close to reforestation, this practice is relatively short-term (approximately a couple of weeks over) over the life of the stand. In comparison, this practice does create an increase in fire hazard. The risk to forest-dwelling is reduced when active measures like fuel breaks are designed to minimize risks by wildfire.
6. To successfully manage nearby timberlands, the adjacent owners will need to maintain their timber stands. Maintenance of these stands will include practices such as pre-commercial thinning and the use of pesticides. Please see the responses above in those applicable sections.
7. To minimize the effects of road and maintenance on nearby forest parcels. The applicant plans on using the existing Bill's Creek Road and will only need to construct a new aggregate driveway to the proposed dwelling.
8. Pursuant to OAR 629-623-0000, the Oregon Department of Forestry's HLHL regulations affects and restricts timber harvest restrictions when high landslide hazard locations within the operation area and if there may be structures or roads in the path of a potential shallow, rapidly moving landslide below the operation area. While a complicated set of rules and guidelines. The first factor to check is if slopes above 60% are upslope of 300 ft of the dwelling. Based on the topo map, there are no slopes meeting this criterion within 300 ft. The nearby forestlands are not affected by the proposed development.

In looking at nearby agricultural lands based on aerial imagery overlay with the tax lot data, there are no nearby lands (within 750 feet) being utilized for commercial agricultural uses. There are cranberry farming operations located XA mile away, outside the scope of nearby lands.

Section 4.6.130(l)(c) requires the amount of forest lands used to site access roads, service corridors, the dwelling and structures to be minimized. The proposed dwelling will be located in the southeast portion of the Forest zoned part of the parcel. The proposed dwelling's location minimizes the distance of the non-resource use roads while maintaining the farthest reasonable distance from adjacent non-industrial forestlands.

Section 4.6.130(l)(d) requires that the proposal minimize wildfire risks. Slope is the first factor to consider when assessing wildfire risk. The proposed dwelling will be located on a ridge at a slope of 10-20%. A tributary of Bills Creek can be found downslope east of the proposed dwelling location. There is a 50 feet wide strip of commercial timber before reaching the

riparian management area. Please see the attached plot plan and topo map. Most of the slopes on this parcel are less than 40 percent. There are steep slopes throughout the riparian management areas (RMAs) along the northeast and east edges of the parcel. The second consideration for wildfire is access to the parcel. The road will be constructed with an aggregate surface and have a relatively flat slope based on the contours of the land. During wildfire events, these roads are often used as anchor points for fire trails. The applicant will install an adequate turnaround at the end of the driveway for fire truck operations. In order to get the final driveway permit, the applicants will need to construct this driveway and emergency vehicle turnaround. A third consideration will be managing fuel near the proposed dwellings. Based on the attached NRCS web soil survey. The proposed development site will be located in Bullards sandy loam soil type, which has slopes between 7 to 12%.

Map Unit Legend			
Map Unit Symbol	Map Unit Name	Area In AOI	Percent of AOI
2C	Bandon-Blacklock complex, 0 to 12 percent slopes	15.0	39.1%
8C	Bullards sandy loam, 7 to 12 percent slopes	13.8	36.1%
8E	Bullards sandy loam, 30 to 50 percent slopes	9.5	24.9%
Totals for Area of Interest		38.4	100.0%

Therefore, there are 10-20 percent slopes in the proposed location of the dwelling for the primary and secondary fuel breaks. The requirement is for the dwellings to have at least an 80 ft primary fuel break, with a 100 ft secondary fuel break. The applicant will need to install a septic tank, a primary drain field, and a reserve drain field. These will be installed adjacent to the proposed dwelling. The physical size of this area will help create the primary fuel break required by the 80-foot primary fuel break requirement. Moreover, the drain fields will reduce the effects of any wildfire burning upslope toward the dwelling. A secondary fuel break will be maintained by the applicant. It will extend 100 feet beyond the primary fuel break. Trees in this area will be limb up to 8 ft, and no tree canopies will touch. A water storage tank capable of storing 5000 gallons or as determined by the county will be placed on site and contain a hose adapter for firefighting personnel.

A 50 feet riparian management area will be required along the Bills Creek tributary. Because of the perennial stream, the vegetation buffer will remain moist throughout the year, reducing the chance of fire spreading. The applicant believes that primary or secondary fuel breaks should not be required in the 50 ft riparian management area, since the riparian vegetation buffer provides a sufficient natural barrier against the spread of fire (applicable LUBA opinion *Lovinger v. Lane County 51 OR LUBA 29*).

In locating the dwelling in the middle of the parcel, the dwelling is set back from the Forest zoned lands on all sides of the parcel. The proposed dwelling location exceeds the required setback distance to all property lines. A vegetation easement is not required on any surrounding forested parcels, nor does the applicant have any easements to control vegetation. The applicant's proposed location is the closest nearest distance to the existing Bill's Creek Road

while maintaining a reasonable setback distance. In order to reduce conflict with neighboring resources, the applicant will only construct a distance of a new residential driveway in order to connect to Bills Creek Road. It is typically recommended to cluster dwelling units. The location of the proposed dwelling is the closest location to the dwellings located at S04-TL102 and S04-100 for being built in the Forest zoned portion of the property, utilizing the existing Bills Creek Road, and providing a setback from the property lines. There are three different soil types on the subject property, and they all have the same potential for growing Douglas-fir.

The applicant is proposing to construct a well. Domestic wells do not require a permit under Oregon Water Resources Department regulations. Before requesting a Zoning Compliance Letter, the Applicants will submit a Water Verification Letter from the Oregon Water Resources Department verifying the rights to the water. Domestic wells are exempt under ORS 537.545 for water use permits; the applicant will submit a well report to the County Planning Department upon completion of the well.

The applicant plans on using the existing Bills Creek Road, which is a publicly dedicated non-County maintained road.

The parcel is over 10 acres in size and has been reforested. The applicant will submit a stocking survey to the Coos County Assessor's Office. The applicant understands that deferred taxes may be collected by the Assessor's office.

The applicant will record a Farm Forest Management Covenant with the Coos County Clerk's office and then submit a copy of the recorded form to Coos County Planning Department before requesting a Zoning Compliance Letter.

○ **SECTION 4.6.140 DEVELOPMENT AND SITING CRITERIA:**

This section contain all of the development standards for uses (unless otherwise accepted out by a use review) and all of the siting standards for development.

1. *Except as provided in subsection 4.6.145 of this ordinance, the following minimum lot or parcel sizes apply for land designated forestland, is at least 80 acres.*

Minimum lot size will not affect approval for development unless specified in use. The size of the parcel will not prohibit development as long as it was lawfully created or otherwise required to be a certain size in order to qualify for a use.

2. *Setbacks: All Development with the exception of fences shall be set back a minimum of thirty-five (35) feet from any road right-of-way centerline, or five (5) feet from any right-of-way line, whichever is greater.*
3. *Fences, Hedges and Walls: No requirement, except for vision clearance provisions in Section 7.1.525.*
4. *Off-Street Parking and Loading: See Chapter VII.*
5. *Minimizing Impacts: In order to minimize the impact of dwellings in forest lands, all applicants requesting a single family dwelling shall acknowledge and file in the deed record of Coos County, a Forest Management Covenant. The Forest Management Covenant shall be filed prior to any final County approval for a single family dwelling.*

6. *Riparian Vegetation Protection. Riparian vegetation within 50 feet of a wetland, stream, lake or river, as identified on the Coastal Shoreland and Fish and Wildlife habitat inventory maps shall be maintained except that:*
 - a. *Trees certified as posing an erosion or safety hazard. Property owner is responsible for ensuring compliance with all local, state and federal agencies for the removal of the tree.*
 - b. *Riparian vegetation may be removed to provide direct access for a water-dependent use if it is a listed permitted within the zoning district;*
 - c. *Riparian vegetation may be removed in order to allow establishment of authorized structural shoreline stabilization measures;*
 - d. *Riparian vegetation may be removed to facilitate stream or stream bank clearance projects under a port district, ODFW, BLM, Soil & Water Conservation District, or USFS stream enhancement plan;*
 - e. *Riparian vegetation may be removed to site or properly maintain public utilities and road rights-of-way;*
 - f. *Riparian vegetation may be removed in conjunction with existing agricultural operations (e.g., to site or maintain irrigation pumps, to limit encroaching brush, to allow harvesting farm crops customarily grown within riparian corridors, etc.) provided that such vegetation removal does not encroach further into the vegetation buffer except as needed to provide an access to the water to site or maintain irrigation pumps; or*
 - g. *The 50 foot riparian vegetation setback shall not apply in any instance where an existing structure was lawfully established and an addition or alteration to said structure is to be sited not closer to the estuarine wetland, stream, lake, or river than the existing structure and said addition or alteration represents not more than 100% of the size of the existing structure's "footprint".*
 - h. *Riparian removal within the Coastal Shoreland Boundary will require a conditional use. See Special Development Considerations Coastal Shoreland Boundary.*
 - i. *The 50' measurement shall be taken from the closest point of the ordinary high water mark to the structure using a right angle from the ordinary high water mark.*
7. *All new and replacement dwellings and permanent structures shall, at a minimum, meet the following standards.*
 - a. *The dwelling has a fire retardant roof.*
 - b. *The dwelling will not be sited on a slope of greater than 40 percent. Slope³ will also determine additional firebreak in Section 8 Firebreak. Evidence is provided that the domestic water supply is from a source authorized by the Water Resources Department and not from a Class II stream as designated by the State Board of Forestry.*
 - c. *The dwelling is located upon a parcel within a fire protection district or is provided with residential fire protection by contract. If the dwelling is not within a fire protection district, the applicant provides evidence that the applicant has asked to be included in the nearest such district or contract with a private fire protection company.*
 - d. *For dwellings and structures outside of a fire protection district alternative forms of fire protections will apply to the develop including fire sprinkling system, on-site equipment and water storage.*

³ Slope calculations must include the primary and additional fuel-free breaks. Staff will use the slopes from the soil data found in the Soil Survey of Coos County Oregon³ published by United States Department of Agriculture, Soil Conservation Service, in cooperation with Oregon Agricultural Experiment Station. Staff will accept an on ground study for slope from an Registered Surveyor or other Registered Professional that is able to make calculations based on the profession licensing requirements.

- i. *Water storage shall be a swimming pool, pond, lake or similar body of water that at all times contains at least 4,000 gallons or a stream that has a minimum flow of at least one cubic foot per second. Road access shall be provided to within 15 feet of the water's edge for fire-fighting pumping units, and the road access shall accommodate a turnaround for fire-fighting equipment. The access to the water source shall be marked with signs for fire water sources.*
- e. *If the dwelling has a chimney or chimneys, each chimney has a spark arrester.*
- f. *The owner provides and maintains primary fuel-free break and secondary break areas on land surrounding the dwelling that is owned or controlled by the owner and complies with Section 8 Firebreak.*

8. *Firebreak:*

- a. *The property owner shall maintain a primary firebreak safety zone around all structures. Vegetation within this primary safety zone may include mowed grasses, low shrubs (less than ground floor window height), and trees that are spaced with more than 15 feet between the crowns and pruned to remove dead and low (less than 8 feet from the ground) branches. Accumulated needles, limbs and other dead vegetation should be removed from beneath trees.*
- b. *Sufficient garden hose to reach the perimeter of the primary safety zone shall be available at all times.*
- c. *The owners of the dwelling shall maintain a primary fuel-free break area surrounding all structures and clear and maintain a secondary fuel-free break on land surrounding all structures and clear and maintain a secondary fuel-free break area on land surrounding the dwelling that is owned or controlled by the owner in accordance with the provisions in "Recommended Fire Siting Standards for Dwellings and Structures and Fire Safety Design Standards for Roads" dated March 1, 1991, and published by Oregon Department of Forestry and shall demonstrate compliance with Table 1.*
- d. *Proof that all of these items will be met includes proof of the slope to determine additional firebreak setbacks is required.*

Table 1 – Minimum Primary Safety Zone

<i>Slope</i>	<i>Feet of Primary Safety Zone</i>	<i>Feet of Additional Primary Safety Zone Down Slope</i>
0%	30	0
10%	30	50
20%	30	75
25%	30	100
40%	30	150

- 9. *All new and replacement structures shall use non-combustible or fire resistant roofing materials, as may be approved by the certified official responsible for the building permit.*
- 10. *Access to new dwellings shall meet road and driveway standards in Chapter VII.*

FINDING: Section 4.6.140(1) is only applicable in the creation of new parcels and that is not part of this request; therefore, it is not applicable.

Section 4.6.140(2) requires a setback from any road right-of-way. The provided plot plan illustrated that all setbacks for the proposed dwelling will be more than satisfied.

Section 4.6.140(3) applies to fences, hedges and walls. The proposal does not include any new fences, hedges, or wall. Therefore, this criterion does not apply.

Sections 4.6.140(4) require parking, loading, access and road standards be addressed. Driveway/Access/Parking Verification Permit application must be signed off prior to issuance of a Zoning Compliance Letter. Therefore, this criterion has been satisfied.

Section 4.6.140(5) requires that the property owners sign and record in the deed of records for the county a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937. These forms shall be signed in front of a notary and recorded. This criterion was addressed above and will be made a condition of approval.

Section 4.6.140(6) requires a setback from any wetland. There are no mapped wetlands or water bodies requiring protection on, or adjacent to the subject property. Therefore, this criterion has been addressed.

Section 4.6.140(7)

(a) Requires the roofing material to be non-combustible or fire resistance. The applicant stated that "*Non-combustible or fire resistant roofing materials*". As a condition of approval, the property owner shall be required to submit evidence certifying the roofing materials meet this requirement. Therefore, this criterion has been addressed.

(b) Requires that a dwelling not be located on a slope of greater than 40%. Based on the NRCS soil type data the property slope around the dwelling site is less than 40%. Therefore, this criterion has been addressed.

(c) Requires the dwelling shall be located within a fire protection district or shall be provided with residential fire protection by contract. The dwelling will be located within the Bandon Fire Protection District; therefore, this criterion has been satisfied.

(d) The applicant shall meet the minimum fire protection standards. However, if these standards are impractical the applicants shall comply with alternative forms of fire protection. The subject property is within the Bandon Rural Fire Protection District. Therefore, this criterion is not applicable.

(e) States that if a dwelling has a chimney, it shall have a spark arrester. The applicant stated that "*a spark arrester will be installed on the proposed dwelling*". Therefore, this criterion has been addressed.

(f) Determines the primary and secondary fire safety setbacks. Based on the NRCS soil type data, Staff finds the primary and secondary fuel break slopes surrounding the proposed dwelling are less than 10%. The applicant's will be required to install a 30 ft primary fuel free break, with a 100 ft secondary fuel break, around all structures on the subject property. The applicant is only responsible for primary and secondary fuel free breaks on land either owned or controlled by the landowner. This criterion will be made a condition of approval.

Section 4.6.140(8)

(a) Determines the primary and secondary fire safety setbacks. Based on the NRCS soil type data, Staff finds the primary and secondary fuel break slopes surrounding the proposed dwelling are less than 10%. The applicant's will be required to install a 30 ft primary fuel free break, with a 100 ft secondary fuel break, around all structures on the subject property. The applicant is only responsible for primary and secondary fuel free breaks on land either owned or controlled by the landowner. This criterion will be made a condition of approval.

(b) Requires sufficient ¾ inch hose for the perimeter of the primary fire break. The applicant stated that “The property owner agrees to provide and maintain a water supply of at least 500 gallons with an operating water pressure of at least 50 PSI and sufficient ¾ inch garden hose to reach the perimeter of the primary fuel-free (30 feet) building setback”. The property owner shall provide evidence of this prior to issuance of a Zoning Compliance Letter, this will be made a condition of approval. Therefore, this requirement has been addressed.

(c & d) Determines the primary and secondary fire safety setbacks. Based on the NRCS soil type data, Staff finds the primary and secondary fuel break slopes surrounding the proposed dwelling are between 7 to 12 percent. Therefore, there are 10-20 percent slopes in the proposed location of the dwelling for the primary and secondary fuel breaks. The requirement is for the dwellings to have at least a 80 ft primary fuel break, with a 100 ft secondary fuel break.

The applicant will maintain a ¾-inch 50 PSI garden hose with sufficient length to reach the primary safety zone.

Section 4.6.140 (9) Requires the roofing material to be non-combustible or fire resistance. The applicant stated that “non-combustible or fire resistant roofing materials”. As a condition of approval, the property owner shall be required to submit evidence certifying the roofing materials meet this requirement. Therefore, this criterion has been addressed.

Section 4.6.140 (10) requires adequate access for firefighting equipment. Table 7.2A in Section 7.2.200 identifies the minimum standards for new rural roads and driveways constructed to access new dwellings. The applicant will use the existing Bills Creek Road to access the subject property. The subject property is zoned Forest with Mixed Use Overlay. The driveway standards for Forest zoning district requires that all new driveways be a minimum of 14 ft sub-grade, 12 ft surface, 4-inch aggregate all-weather surface, with a maximum grade of 18%. If the driveway is over 1,000 ft., a pullout is required every 600 ft.

Section 7.1.400 relates to the criteria for private bridge standards; the applicant proposed driveway will not cross any private bridges.

Therefore, all criteria in Section 4.6.140 Development and Siting Criteria have been addressed.

D. 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.*
- *4.11.132 Natural Hazards (Balance of County Policy 5.11)*

Coos County has inventoried the following hazards:

- *Flood Hazard*
 - *Riverine flooding*
 - *Coastal flooding*
- *Landslides and Earthquakes*
 - *Landslide Susceptibility*
 - *Liquefaction potential*

- *Tsunamis*
- *Erosion*
 - o *Riverine streambank erosion*
 - o *Coastal*
 - Shoreline and headlands*
 - Wind*
- *Wildfire*

Purpose Statements:

Coos County shall regulate development in known areas potentially subject to natural disasters and hazards, so as to minimize possible risks to life and property. Coos County considers natural disasters and hazards to include river and coastal flooding, landslides, liquefaction potential due to earthquakes, fault lines, tsunamis, river bank erosion, coastal erosion along shorelines and headlands, coastal erosion due to wind, and wildfires, including those areas affected by gorse.

This strategy shall be implemented by enacting special protective measures through zoning and other implementing devices, designed to minimize risks to life and property associated with new development and substantial improvements. The determination of whether a property is located in one of the above referenced potentially hazardous areas shall be made by the reviewing body (Planning Director, Planning Commission, Board of Commissioners, or any designee based upon adopted inventory mapping). A specific site may not include the characteristics for which it is mapped. In these circumstances staff shall apply § 4.11.132.ii.2m.

- f. Wildfires: Coos County shall promote protection of property from risks associated with wildfires. New development or substantial improvements shall, at a minimum, meet the following standards, on parcels designated or partially designated as “High” or “Moderate” risk on the Oregon Department of Forestry 2013 Fire Threat Index Map for Coos County or as designated as at-risk of fire hazard on the 2015 Coos County Comprehensive Plan Natural Hazards Map:*
- 1. The dwelling shall be located within a fire protection district or shall be provided with residential fire protection by contract. If the dwelling is not within a fire protection district, the applicant shall provide evidence that the applicant has asked to be included within the nearest such district or is provided fire protection by contract.*

FINDING: The subject property is located within the Bandon Rural Protection District. Therefore, this criterion has been addressed.

- 2. When it is determined that these standards are impractical the Planning Director may authorize alternative forms of fire protection that shall comply with the following:*
 - a. The means selected may include a fire sprinkling system, onsite equipment and water storage or other methods that are reasonable, given the site conditions, as established by credible documentation approved in writing by the Director;*
 - b. If a water supply is required for fire protection, it shall be a swimming pool, pond, lake, or similar body of water that at all times contains at least 4,000 gallons per dwelling or a stream that has a continuous year round flow of at least one cubic foot per second per dwelling;*
 - c. The applicant shall provide verification from the Water Resources Department that any permits or registrations required for water diversion or storage have been obtained or that permits or registrations are not required for the use; and*
 - d. Road access shall be provided to within 15 feet of the water’s edge for firefighting pumping units. The road access shall accommodate the turnaround of firefighting equipment during fire season. Permanent signs shall be posted along the access route*

to indicate the location of the emergency water source.

FINDING: The subject property is located within the Bandon Rural Protection District. Therefore, these criteria are not applicable.

3. *Fire Siting Standards for New Dwellings:*

- a. *The property owner shall provide and maintain a water supply of at least 500 gallons with an operating water pressure of at least 50 PSI and sufficient ¾ inch garden hose to reach the perimeter of the primary fuel-free building setback.*
- b. *If another water supply (such as a swimming pool, pond, stream, or lake) is nearby, available, and suitable for fire protection, then road access to within 15 feet of the water's edge shall be provided for pumping units. The road access shall accommodate the turnaround of firefighting equipment during the fire season. Permanent signs shall be posted along the access route to indicate the location of the emergency water source.*

FINDING: As a condition of approval, the applicant shall provide proof of a water supply of at least 500 gallons with an operating water pressure of at least 50 psi and a sufficient ¾ inch garden hose to reach the perimeter of the primary fuel break. Therefore, these criteria have been addressed.

4. *Firebreak:*

- a. *A firebreak shall be established and maintained around all structures, including decks, on land owned or controlled by the applicant for a distance of at least 30 feet in all directions.*
- b. *This firebreak will be a primary safety zone around all structures. Vegetation within this primary safety zone may include mowed grasses, low shrubs (less than ground floor window height), and trees that are spaced with more than 15 feet between the crowns and pruned to remove dead and low (less than 8 feet from the ground) branches. Accumulated needles, limbs and other dead vegetation should be removed from beneath trees.*
- c. *Sufficient garden hose to reach the perimeter of the primary safety zone shall be available at all times.*
- d. *The owners of the dwelling shall maintain a primary fuel-free break area surrounding all structures and clear and maintain a secondary fuel-free break on land surrounding all structures that is owned or controlled by the owner in accordance with the provisions in "Recommended Fire Siting Standards for Dwellings and Structures and Fire Safety Design Standards for Roads" dated March 1, 1991, and published by Oregon Department of Forestry and shall demonstrate compliance with Table 1.*

Table 2 – Minimum Primary Safety Zone

<i>Slope</i>	<i>Feet of Primary Safety Zone</i>	<i>Feet of Additional Primary Safety Zone Down Slope</i>
<i>0%</i>	<i>30</i>	<i>0</i>
<i>10%</i>	<i>30</i>	<i>50</i>
<i>20%</i>	<i>30</i>	<i>75</i>
<i>25%</i>	<i>30</i>	<i>100</i>
<i>40%</i>	<i>30</i>	<i>150</i>

- e. *All new and replacement structures shall use non-combustible or fire resistant roofing materials, as may be approved by the certified official responsible for the building permit.*
- f. *If a water supply exceeding 4,000 gallons is suitable and available (within 100 feet of the driveway or road) for fire suppression, then road access and turning space shall be provided for fire protection pumping units to the source during fire season. This includes water supplies such as a swimming pool, tank or natural water supply (e.g. pond).*
- g. *The structure shall not be sited on a slope of greater than 40 percent.*
- h. *If the structure has a chimney or chimneys, each chimney shall have a spark arrester.*
- i. *Except for private roads and bridges accessing only commercial forest uses, public roads, bridges, private roads, and driveways shall be constructed so as to provide adequate access for firefighting equipment. Confirmation shall be provided from the Coos County Road Department or local fire protection district that these standards have been met.*

FINDING: As a condition of approval, the applicant shall provide proof of a water supply of at least 500 gallons with an operating water pressure of at least 50 psi and a sufficient ¾ inch garden hose to reach the perimeter of the primary fuel break. As a condition of approval, the applicant shall supply proof the roof material is non-combustible and fire resistant. There is no water supply of 4000 gallons currently on the subject property. If a water supply greater than 4000 gallons is constructed on the subject property, then the applicant shall provide road access and turnaround for fire protection pumping units. The subject property does not have slopes greater than 40 percent. As a condition of approval, any chimney shall have a spark arrester installed. The required driveway inspection by Coos County Road Department will be sufficient to provide proof that the driveway is constructed to provide for adequate access for firefighting equipment. Therefore, these criteria have been addressed.

- 5. *Wildfires inside urban growth boundaries. Certain areas inside urban growth boundaries may present special risks and may be made subject to additional or different standards and requirements jointly adopted by a city and the county in the form of code requirements, master plans, annexation plans, or other means.*

FINDING: The subject property is located outside of any urban growth boundaries.

IV. DECISION

In conclusion Staff finds that the applicant has address most of the relevant criteria and the ones that have not been address or cannot be completed until after the approval is obtained have been made conditions of approval. Therefore, the proposed Template Dwelling meets the requirements of the Coos County Zoning and Land Development Ordinance, with conditions listed in Exhibit “A” of this report.

V. EXPIRATION:

Permits approved under ORS 215.416 for a proposed residential development on agricultural or forest land outside of an urban growth boundary under ORS 215.010 to 215.293 or 215.317 to 215.438 or under county legislation or regulation, the permit is valid for four years.

- A. *Extensions for Residential Development as provided for under ORS 215.213 (3) and (4), 215.284, 215.317, 215.705 (1) to (3), 215.720, 215.740, 215.750 and 215.755 (1) and (3) shall be granted as follows:*

- i. *First Extension - An extension of a permit for “residential development” as described in Subsection (1) above is valid for two (2) years.*
 1. *The applicant shall submit an application requesting an extension to the County Planning Department prior to expiration of the final decision. See Section 5.0.250 for time lines for final decisions. Untimely extension requests will not be processed.*
 2. *Upon the Planning Department receiving the applicable application and fee, staff shall verify that the application was received within the deadline and if so issue an extension.*
 3. *An extension of a permit as described in this section is not a land use decision as defined in ORS 197.015.*
- ii. *Additional Extensions - A county may approve no more than five additional one-year extensions of a permit if:*
 1. *The applicant submits an application requesting the additional extension prior to the expiration of a previous extension;*
 2. *The applicable residential development statute has not been amended following the approval of the permit; and*
 3. *An applicable rule or land use regulation has not been amended following the issuance of the permit, unless allowed by the county, which may require that the applicant comply with the amended rule or land use regulation.*

An extension of a permit as described in this section is not a land use decision as defined in ORS 197.015.

This conditional use is for a residential development within a resource zone and is valid for four years for the date of final approval Sunday, January 24, 2027.

VII. NOTICE REQUIREMENTS:

A notice of decision will be provided to property owners within 750 feet of the subject properties and the following agencies, special districts, or parties: Bandon Rural Fire Protection District.

A Notice of Decision and Staff Report will be provided to the following:

Applicants/Owners, Department of Land Conservation and Development, Coos County Assessor’s Office and the Planning Commission and Board of Commissioners.

Adjacent property owners will receive a Notice of Decision and maps, but all other attachments can be found by contacting the Planning Department or visiting the website. If not found on the website the public may contact the department to view the official record.

EXHIBIT "D"

Comments Received



Wetland Land Use Notice Response

Response Page

Department of State Lands (DSL) WN#*

WN2022-0786

Responsible Jurisdiction

Staff Contact	Jurisdiction Type	Municipality
Michelle Berglund	County	Coos County
Local case file #	County	
ACU-22-034	Coos	

Activity Location

Township	Range	Section	QQ section	Tax Lot(s)
29S	14W	04		101

Street Address

Bills Creek Public Rd

Address Line 2

City

State / Province / Region

Postal / Zip Code

Country

Coos

Latitude

43.095264

Longitude

-124.36342

Wetland/Waterway/Other Water Features

There are/may be wetlands, waterways or other water features on the property that are subject to the State Removal-Fill Law based upon a review of wetland maps, the county soil survey and other available information.

The National Wetlands Inventory shows wetland, waterway or other water features on the property

Your Activity

A state permit will not be required for the proposed project because, based on the submitted site plan, the project avoids impacts to jurisdictional wetlands, waterways, or other waters.

Applicable Oregon Removal-Fill Permit Requirement(s)

A state permit is required for 50 cubic yards or more of fill removal or other ground alteration in wetlands, below ordinary high water of waterways, within other waters of the state, or below highest measured tide.

Closing Information



Additional Comments

Based on a review of best available information, the proposed forest template dwelling does not appear to overlap any wetlands or waters on this taxlot.

This is a preliminary jurisdictional determination and is advisory only.

This report is for the State Removal-Fill law only. City or County permits may be required for the proposed activity.

Contact Information

- For information on permitting, use of a state-owned water, wetland determination or delineation report requirements please contact the respective DSL Aquatic Resource, Proprietary or Jurisdiction Coordinator for the site county. The current list is found at: <http://www.oregon.gov/dsl/ww/pages/wwstaff.aspx>
- The current Removal-Fill permit and/or Wetland Delineation report fee schedule is found at: <https://www.oregon.gov/dsl/WW/Documents/Removal-FillFees.pdf>

Response Date

8/31/2022

Response by:

Daniel Evans

Response Phone:

503-986-5271