



Community Development

Mailing Date: Thursday, March 14, 2024

Coos County Community Development

PLANNING COMMISSION NOTICE OF DECISION

FILE NUMBER: AP-24-001 of VR-23-001

APPLICANT(S): Shane Crimson & Rhonda Conrad

APPELANT(S): Kathleen Collier

STAFF CONTACT: Jill Rolfe, Planning Director
Phone: 541-396-7770
Email: planning@co.coos.or.us

HEARINGS BODY: Planning Commission
 Diana Schab, Chair
 Joe Aguirre, Vice Chair
 Charlie Waterman, Commissioner
 Joann Hansen, Commissioner
 Todd Buchholz, Commissioner
 Todd Goergen, Commissioner
 Matthew Vonderstrasse, Commissioner

RECORD: Record items can be viewed online at:
[AP-24-001](#)
[VR-23-001](#)

SUMMARY/REQUEST: The request was an appeal of a request for a conditional use to allow a Vested Right determination for a Single Family Dwelling.

HEARINGS BODY DECISION: The Planning Commission convened for a public hearing on March 7, 2024, to review this matter. Following deliberation, they voted unanimously to uphold the Planning Director’s decision and deny the appeal. During the hearing, testimony and evidence were presented in opposition of the staff’s approval. However, upon evaluation, they were not deemed relevant to determining whether the applicable criteria had been met. The findings and conditions are found in Attachment A.

APPEAL RIGHTS: 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 15 fifteen days from the date of the notice was mailed as indicated in the top corner of this document, Friday, March 29, 2024 Appeals are subject 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. Failure of an appeal to be received in the office by 5:00 pm of the appeal date with the proper fee will result in a determination that an appeal was not properly filed.

Mailing of this notice to you precludes an appeal directly to the Land Use Board of Appeals.

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 St., Coquille, Oregon. Copies may be purchased at a cost of 50 cents per page. If you would like to view the record in this matter, please make an appointment. The decision is based on the application submittal and information on record.

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.

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Attachment A –
Findings and Conditions

SUBJECT PROPERTY DETAILS:

ACCOUNT NUMBER: 99920113
MAP NUMBER: 28S1420BB-01801

PROPERTY OWNER(S) CHRISMON, SHANE J & CONRAD, RHONDA L
55953 FERRY RD
BANDON, OR 97411-8863

SITUS ADDRESS 55953 FERRY RD BANDON, OR 97411


ACREAGE: 1.00 Acres

ZONING(S): EXCLUSIVE FARM USE (EFU)

SPECIAL DEVELOPMENT
CONSIDERATIONS AND
OVERLAYS: BANDON AREA OF MUTUAL INTEREST (BMI)
NATIONAL WETLAND INVENTORY (NWI)
NH TSUNAMI (NHTHO)

Plot Plan and Subject Property Map
(Not to scale)

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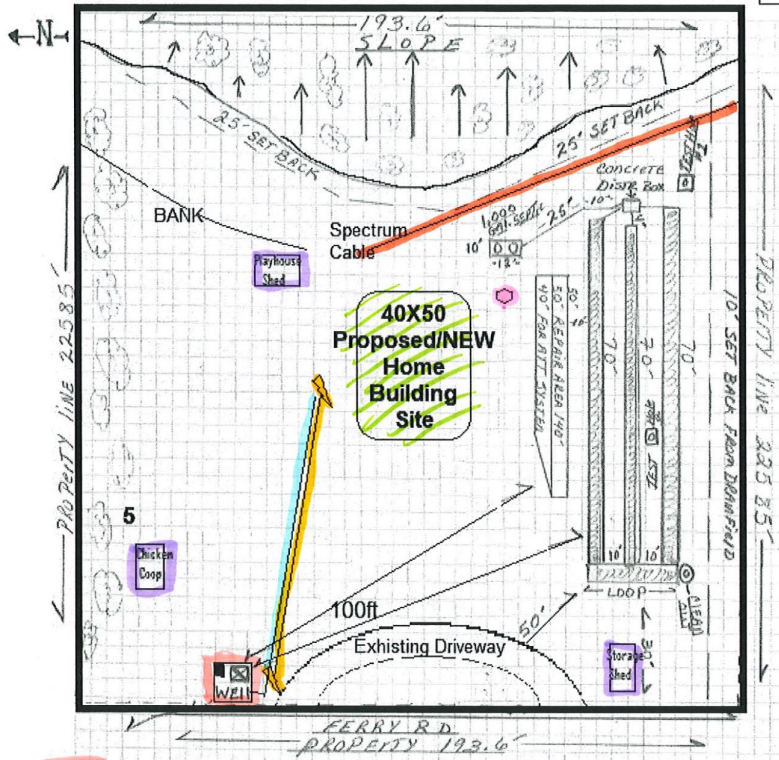


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55953 Ferry Road
Bandon, OR 97411

Rhonda Conrad (541) 961-3348
Shane Chrismon (541) 297-7410
28, 14, 20 BB-1800
LOT 88

1" = 25 ft
not to scale



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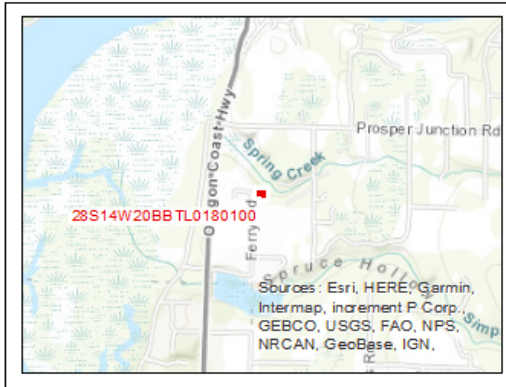


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COOS COUNTY PLANNING DEPARTMENT

Mailing Address: 250 N. Baxter, Coquille, Oregon 97423
 Physical Address: 60 E. Second, Coquille Oregon
 Phone: (541) 396-7770
 TDD (800) 735-2900



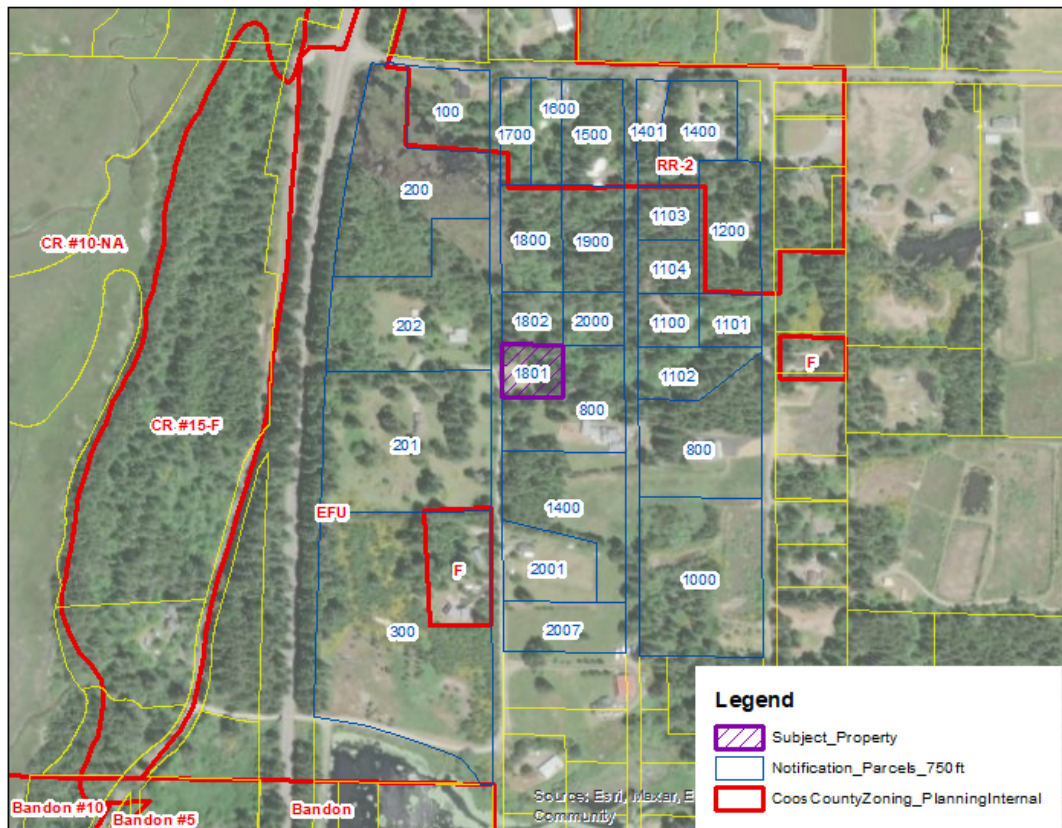
File: VR-23-001

Applicant/
 Owner: Shane Chrismon & Rhonda Conrad

Date: December 21, 2023

Location: Township 28S Range 14W
 Section 20BB TL 1801

Proposal: Vested Right



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I. APPLICABLE CRITERIA

COOS COUNTY ZONING AND LAND DEVELOPMENT ORDINANCE (CCZLDO)

CHAPTER IV - BALANCE OF COUNTY ZONES, OVERLAYS & SPECIAL CONSIDERATION

SECTIONS

- 4.6.210 – Development and Use Standards for the Exclusive Farm Use Zone

CHAPTER V – Administration

ARTICLE 5.4 VESTED RIGHT

ARTICLE 5.8 APPEAL REQUIREMENTS

SECTIONS

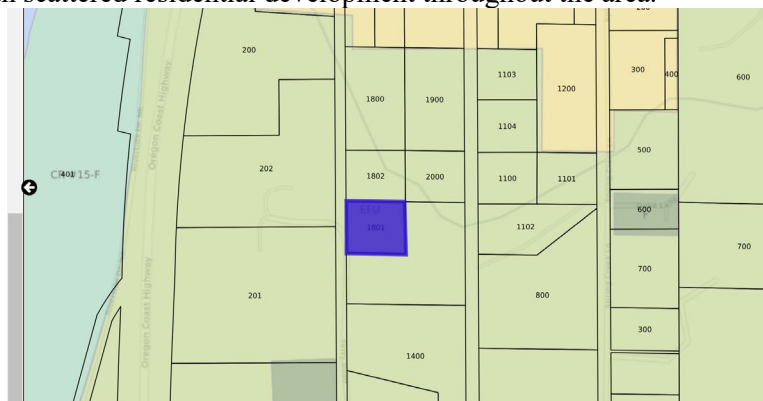
- 5.8.100 Appeals General
- 5.8.150 Standing to Appeal a Planning Director’s Decision
- 5.8.170 Appeal Procedures
- 5.8.300 Record Presented to Hearings Body or Board of Commissioners

II. BASIC FINDINGS

LEGALLY CREATED UNITS OF LAND STATUS: The Coos County Zoning and Land Development Ordinances requires that properties are legally created pursuant to Article 6.1 Lawfully Created Lots and Parcels ORS 92. Staff found that this unit of land was lawfully created through (a), through a pre ordinance plat. The parcel is identified as lot 87 within the Wheeler Subdivision, which was established in 1907.

SITE DESCRIPTION AND LAND USE HISTORY: The subject property is approximately one acre and zoned Exclusive Farm Use (EFU). It is situated off Ferry Road, north of the City of Bandon. Ferry Road is a publicly platted privately maintained road connected to Prosper Junction Road, which is a publicly maintained road by Coos County. Ferry Road is not accessed via Prosper Junction Road, as the topography does not allow it. Access to Ferry Road is through an easement off of Oregon State Highway 101.

The subject property is part of the Wheeler Subdivision, a pre-ordinance subdivision consisting of lots of approximately one (1) acre in size. The subject property is densely wooded (other than the southwest portion), as are most of the surrounding lots, with scattered residential development throughout the area.



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APPEAL: The decision to allow the subject property approval through the Vested Right process was appealed by a neighboring property owner, Ms. Kathleen Collier, whose property is within the notification area, and received a Notice of Decision. Ms. Collier has the following concerns:

- **Natural Hazards:** She commented that the permit results are incomplete and fail to show high risk landslide and liquefaction areas on most off the property. She is also concerned that the leach field is close to a very significant ravine, and should the leach field fail there is a high possibility of human waste flowing down the ravine into a wetland area.
- **Zoning:** Ms. Collier claims that the parcel does not meet the EFU zone standards as most EFU zones are significantly larger than one acre, the few chickens and ducks on the property appear to be more like pets rather than farm animals.
- **Vested Rights:** Ms. Collier questions whether there was an omission or act by the government that delayed the build. She further questioned whether the permit was abandoned, interrupted or discontinued due to the government actions or by simple oversight of the property owners.
- **Actual Investments:** Ms. Collier claims that there are discrepancies in the items selected as proof of investments to calculate the Holmes Factor Ratio.

PUBLIC AGENCY COMMENTS: The subject property is subject to the following Overlays and Special Development Considerations: National Wetland Inventory and Natural Hazard Tsunami Special Development Considerations. County Staff forwarded a request for comments to the Oregon Department of State Lands (DSL), and they responded:

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.

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The proposed home is shown on the site plan as being at the top of the slope down to the creek to the northwest. Please assure that the homesite and all ground disturbance is fully at the top of slope. There is a wetland mapped by the National Wetlands Inventory that is very close to the proposed home but below the top of slope. Best management practices should be used during construction to avoid sedimentation into the creek or potential wetlands below.

The applicant is obligated to adhere to any recommendations or comments provided by DSL.

It's important to note that residential development does not trigger any additional requirements under the Natural Hazard Tsunami regulations. As a result, no further review is needed.

PUBLIC COMMENTS: The Planning Department mailed notice of the conditional use approval to all property owners within 750 feet of the subject property on December 27, 2023. The applicant also complied with the posted notice requirements of Section 5.0.900. Public comments were received and can be found in Attachment B.

III. FINDINGS & CONCLUSIONS

Vested Right pursuant to Coos County Zoning and Land Development (CCZLDO) Article 5.4 Vested Right and §4.6.210 Development and Siting Criteria within the Exclusive Farm Use Zone


ARTICLE 5.4 VESTED RIGHT

A parcel shall be considered vested for completion of the construction of a nonconforming use when an administrative conditional use is granted, based on findings establishing:

- 1. The good faith of the property owner in making expenditures to lawfully develop his property in a given manner;*
- 2. The amount of reliance on any prior zoning classification in purchasing the property and making expenditures to develop the property;*
- 3. The extent to which the expenditures relate principally to the use of an applicant claims is vested, rather than to ancillary improvements, such as but not limited to roads, driveways, which could support other uses allowed as of right;*
- 4. The extent of the purported vested use as compared to the uses allowed in the subsequent zoning ordinances;*
- 5. Whether the expenditures made prior to existing zoning regulations show that the property owner has gone beyond mere contemplated use and has committed the property to the purported vested use which would in fact have been made on the subject property but for the passage of the existing zoning regulation; and*
- 6. The ratio of the prior expenditures to the total cost of the proposed use.*

FINDING: The current property owners, Shane Chrismon and Rhonda Conrad, acquired the property in November 2021. At the time of purchase, they were aware that the property had received approval for a Single-Family Dwelling through a Measure 49 claim. However, they did not understand that the claim was close to expiring, and the approval for the dwelling could not be extended. The purchase took place during the COVID-19 pandemic, and the applicants mentioned that timelines for some permitting agencies were longer than normal. Additionally, finding an accountable contractor proved to be challenging.

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Since Mr. Chrismon and Ms. Conrad purchased the property, they have invested approximately \$97,000 in it. They installed a septic system, and a certificate of satisfactory completion was issued by the Oregon Department of Environmental Quality on July 22, 2022. Additionally, a well was constructed and completed by A1 Pump. To upgrade the electrical system, they installed 2,000 feet of new electrical conduit, securing permits from the Coos County Road Department, as the existing electrical infrastructure could not support another dwelling.


The property owners chose this parcel for development with the aim of creating a “small rural farm,” featuring chickens, ducks, and other farm animals. Although residential uses are allowed within the current zoning of the property, it's important to note that the primary objective of the Exclusive Farm Use Zone is not residential development. Instead, residential uses are contingent upon the property's capacity to be farmed for profit. Given the property's size and other constraints, meeting the income requirements for a commercial farming operation to be profitable poses a significant to impossible challenge.

The applicants assert that the investment and effort they have dedicated to the property underscore their significant commitment to its development and improvement. The staff concurs with this statement. They acquired the property for \$149,000, introduced improvements totaling over \$97,000, and anticipate investing an additional \$150,000 to \$200,000 to complete the enhancements.

In analyze how the property owner, who has acquired the property for \$149,000, introduced improvements totaling over \$97,000, and anticipates investing an additional \$150,000 to \$200,000 to complete the enhancements, meets the specified criteria:

- 1. Good Faith Expenditures:** The property owner's significant financial investments, including the acquisition cost and substantial improvements, demonstrate a clear commitment and good faith effort toward lawful development. The improvements include a full septic system, well, electrical system to support the residential and farm use, driveway to support the residential use and parking.
- 2. Reliance on Prior Zoning:** The amount spent on the property, especially the substantial investment in improvements, indicates a reliance on the existing zoning classification at the time of purchase. This demonstrates a significant commitment based on the prior zoning. The Measure 49 claim waived certain zoning requirements for a certain amount of time. During this time the improvements were listed in subsection one were made to facilitate a single-family dwelling.
- 3. Expenditures Principally for Vested Use:** The expenditures primarily focus on improvements related to the claimed vested use (e.g., the development of a small rural farm). While ancillary improvements like roads and driveways are essential, the majority of the investments directly contribute to the intended use. The intended use is residential and the improvements for an onsite septic, well, electrical, driveway, address and parking all support the residential use.
- 4. Comparison with Subsequent Zoning:** An analysis of the purported vested use against subsequent zoning ordinances is crucial. If the property owner's intended use aligns with the subsequent zoning, it strengthens the argument for vested rights. The property owners chose this parcel for development with the aim of creating a 'small rural farm,' featuring chickens, ducks, and other farm animals. Although residential uses are allowed within the current zoning of the property, it's important to note that the primary objective of the Exclusive Farm Use Zone is not residential development. Instead, residential uses are contingent upon the property's capacity to be farmed for profit. Given the property's size and other constraints, meeting the income requirements for farming profitability poses a significant to impossible challenge.

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5. **Expenditures Preceding Zoning Regulations:** The substantial expenditures made prior to the implementation of existing zoning regulations highlight a commitment beyond mere contemplation. This suggests a genuine intention to develop the property as it would have been done in the absence of the current zoning regulations. The Measure 49 claim waived certain zoning requirements for a certain amount of time. During this time the improvements were listed in subsection one were made to facilitate a single-family dwelling.
6. **Evaluating the ratio of prior expenditures (the \$149,000 purchase price plus \$97,000 of investment, totaling \$246,900) to the total projected cost of the proposed use (anticipated additional \$150,000 to \$200,000) provides insight into the proportion of commitment. With the current total investment exceeding 50% of the total anticipated cost, this high ratio significantly strengthens the argument for vested rights. The substantial financial commitment demonstrates a substantial dedication to the proposed use, further supporting the claim for vested rights.**

In summary, the property owner's actions align with the criteria, demonstrating a substantial and committed effort toward the development of the property in accordance with their claimed vested use.

Section 4.6.210 development and siting criteria:

Development Standards All dwellings and structures approved shall be sited in accordance with this section.

1. *Minimum Lot Size: The minimum parcel size shall be at least 80 acres. Land divisions involving a house that existed prior to June 1, 1995 see § 4.6.210(5)(a). For land divisions where all resulting parcels are at least 80 acres, a conditional use is not required. However, the applicable standards in Chapter VI must be met. [OR96-06-007PL 9/4/96]*

New lots or parcels for dwellings not in conjunction with farm use may be allowed when the requirements of §4.6.210(3), §4.6.210(4)(a or b) and § 4.6.210(5) are met. In addition, the creation of new parcels for nonfarm uses may be allowed only when such new parcel is the minimum size needed to accommodate the use in a manner consistent with other provisions of the Ordinance.

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.


FINDING: There is no new lots or lots created through this request; therefore, this criterion is not applicable.

1. Setbacks

- a. *Road: All buildings or structures with the exception of fences shall be setback 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.*
- b. *Firebreak: New or replacement dwellings on lots, parcels, or tracts abutting the “Forest” zone shall establish and maintain a firebreak for a distance of at least 30 in all directions. Vegetation within this firebreak 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.*

FINDING: The submitted plot plan does not contain all necessary information to determine that setbacks have been met. As a condition of approval, a new plot plan meeting requirements must be submitted.

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Therefore, this criterion has been addressed.

3. *Structure Height: Farm-related structures are exempt from height limits unless subject to Airport Overlay zone or Urban Growth Boundary requirements.*
4. *Lot Coverage: No requirements.*

FINDING: There are no structure or lot coverage requirements that pertain to this request.

5. *Fences, Hedges and Walls: No requirement except for vision clearance provisions of §7.1.525 apply.*

FINDING: There is no indication that the applicant is proposing any fences, hedges or walls. As a condition of approval if any of the above is proposed at a later date they shall meet the requirements for the vision clearance in Section 7.1.525.

Therefore, this criterion has been addressed.

6. *Off-street parking and Loading: See Chapter VII.*

FINDING: A Road/ Driveway Access application was not submitted. As a condition of approval, a Road/Driveway Access application must be submitted and signed off prior to receiving a Zoning Compliance Letter.

Therefore, this criterion has been addressed.

7. *Minimum Road Frontage/Lot Width unless waived by the Planning Director in consultation with the County Surveyor due to creating an unsafe or irregular configuration:*

- a. *Within UGB's – 50 feet*
- b. *Outside UGB's – 20 feet*

8. *Access: Access to new dwellings shall meet road design standards in Chapter VII.*

FINDING: A Road/ Driveway Access application was not submitted. As a condition of approval, a Road/Driveway Access application must be submitted and signed off prior to receiving a Zoning Compliance Letter.


Therefore, this criterion has been addressed.

9. *Minimizing Impacts: in order to minimize the impacts of dwellings in agricultural lands, all applicants requesting a nonfarm dwelling shall acknowledge and file in the deed records of Coos County, a Farm Practices Management Easement. The Farm Practices Easement shall be recorded in the deed records of the county prior to any final county approval for a single family dwelling. [OR96-06-007PL 9/4/96]*

FINDING: This requirement has been made a condition of approval.

10. *Riparian Vegetation Protection 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:*

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- 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 in order to site or properly maintain public utilities and road right-of-ways;*
- 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.*

FINDING: **The dwelling will need be located at least 50 feet from any identified wetland, stream, lake or river.**

Therefore, this criterion has been met.

ARTICLE 5.8 APPEAL REQUIREMENTS


SECTION 5.8.100 APPEALS GENERAL

Coos County has established an appeal period of fifteen (15) days from the date written notice of administrative or Planning Commission decision is mailed with the exception of Property Line Adjustments and lawfully created parcel determinations, which are subject to a twelve (12) day appeal period.

The Board of Commissioners or Hearings Body shall dismiss an appeal for failure to follow the requirements of this article. [OR 04 12 013PL 2/09/05]

SECTION 5.8.150 STANDING TO APPEAL A PLANNING DIRECTOR’S DECISION:

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A decision by the Planning Director to approve or deny an application shall be appealed as identified in the Sections below. The appeal must be filed within the appeal period and meet one of the following criteria:

1. In the case of a decision by the Planning Director, the appellant was entitled to notice of the decision; or
2. The person is aggrieved or has interests adversely affected by the decision.

FINDING: The appellant submitted the appeal within the allowed timeframe. The appellant was entitled to, and received a notice of decision.


SECTION 5.8.170 APPEAL PROCEDURES:

An appellant shall file the appeal for review on the appropriate county form and the form shall be completely filled out as required by this section. If an appellant fails to correctly fill out the form, and there has already been a public hearing on the matter, the Board of Commissioners may deny the appeal based on failure to comply with this section. In the event the appeal is denied based on a failure to comply with this section, a refund of unexpended fees shall be returned to the appellant.

The appeal form shall contain the following:

1. The name of the applicant and the County application file number;
2. The name and signature of each petitioner and a statement of the interest of each petitioner to determine party status. Multiple parties shall join in filing a single petition for review, but each petitioner shall designate a single Contact Representative for all contact with the Planning Department. All communications regarding the petition, including correspondence, shall be with the Contact Representative;
3. The appellant must explain how they have achieved party status pursuant to the applicable sections of 5.8.150 or 5.8.160;
4. The date that the notice of the decision was mailed as written in the notice of decision;
5. The nature of the decision and the specific grounds for appeal citing specific criteria from the Coos County Zoning and Land Development Ordinance, Comprehensive Plan, Statute or Rule.
6. The appellant must explain in detail, on the appeal form or attached to the appeal form, how the application did not meet the criteria in the case of an approval or why the criteria should or should not apply; or, in the case of a denial the appellant shall explain why the application did meet the criteria or why certain criteria did not apply to the application.
7. Appeals of Planning Director's decision will be de novo;
8. Appeals of Planning Commission's or appointed Hearings Officer(s) decision shall be reviewed by the Board of Commissioners or Hearings Officer if the Board of Commissioners so chooses. The Board of Commissioners shall, provided there has been an initial evidentiary hearing:
 - a. Decline to hear the matter and enter an order affirming the lower decision; or
 - b. Accept the appeal and:

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- i. *Make a decision on the record without argument;*
 - ii. *Make a decision on the record with argument;*
 - iii. *Conduct a hearing de novo; or*
 - iv. *Conduct a hearing limited to specific issues.*
- c. *In the decision, the Board shall affirm, modify, or reverse the lower decision, and accept any or all of the findings and conditions in the Hearings Body decision, or modify or adopt new findings and conditions on a permit.*
 - d. *If the Board allows argument only on the record, no new evidence shall be submitted.*
 - e. *Any legal issues not specifically raised are considered waived for purposes of appeal to the Land Use Board of Appeals (LUBA).*
 - f. *Where a hearing is limited to specific issues, any evidence or argument submitted must be relevant to the specific issue.*
 - g. *All items to be submitted to the County must actually be received by the County Planning Department no later than 5:00 p.m. on the on the last day of the appeal period. If the last day of the appeal period falls on a weekend or County holiday, then the item must actually be received by the County Planning Department no later than 12:00 p.m. on the next County business day following the deadline date. All items to be mailed to another party must be postmarked no later than the end of the appeal period.*
 - h. *The decision of the Board of Commissioners shall not be final for the purpose of appeal until reduced to writing and signed by the Board.*

FINDING: The appeal application contained the necessary information listed within Section 5.8.170. This is an appeal of a Planning Director’s decision and will be processed as a de novo hearing.


SECTION 5.8.300 RECORD PRESENTED TO HEARINGS BODY OR BOARD OF COMMISSIONERS

After notice of intent to appeal has been filed pursuant to Section 5.8.200, then: [OR 96-06-007PL 9/4/96]

1. *For appeals of administrative decisions, the Planning Director shall forward to the Hearings Body a copy of:*
 - a. *the application for the subject administrative permit; and*
 - b. *the written findings establishing the basis for his decision; and*
 - c. *the notice of intent to appeal.*
2. *For appeals of Hearings Body decisions, the Planning Director shall forward to the Board of Commissioners a copy of:*
 - a. *the application for the requested action; and*
 - b. *the staff report on the request; and*
 - c. *the public hearing record of the Hearings Body’s decision; and,*
 - d. *the notice of intent to appeal.*

FINDING: The Hearings Body in this case is the Planning Commission. The Planning Commission was provided a copy of the application (VR-23-001), the Staff Report, as well as the Appeal Application (AP-24-001).

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The appellant party, Kathleen Collier submitted an appeal based on four (4) factors:

- **Natural Hazards:** The approval failed to show the high risk of landslide and liquefaction on the subject property, the leach field is very close to a significant ravine.

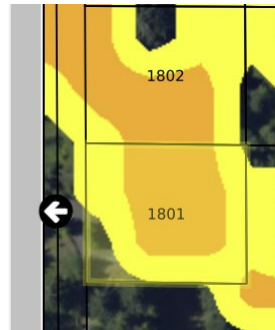
Staff Response: The relevant criteria within Section 4.11.132 Natural Hazards b. Landslides and Earthquakes states that “potential landslide areas subject to geological assessment review shall include all lands partially or completely within “very high” landslide susceptibility areas, this property does not have any very high landslide, and contains moderate and high. Earthquakes within the section require “new development or substantial improvements in mapped areas identified as potentially subject to a geologic assessment shall include lands subject to very high and high liquefaction, this property does not have high nor very high liquefaction potential. The property does have moderate & high landslide, as well as moderate liquefaction, neither of which require review pursuant to the Coos County Zoning and Land Development Ordinance. Therefore, the applicant is not subject to this review and the issued raised is not valid.

See below maps:

▼ **Landslide**

☆ Landslide Susceptibility, DOGAMI, 2016

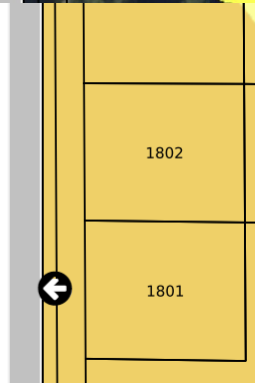
- ●
- Low - Landsliding Unlikely
- Moderate - Landsliding Possible
- High - Landsliding Likely
- Very High - Existing Landslide



▼ **Liquefaction**

☆ Liquefaction Susceptibility, DOGAMI, 2013

- ●
- None
- Very Low
- Low
- Moderate
- High
- Very High



▶ **Active Earthquake Faults**

- **Zoning:** The parcel does not appear to meet EFU zone standards. Most EFU parcels are significantly larger than one (1) acre. There is an allowance for a size variance for intensive farming, this level of farming is not mentioned in the zoning compliance and land use decisions. The few chickens and ducks on the property appear to be more like pets rather than farm animals.

Staff Response: This is not applicable as there is nothing within the criteria that requires any level of farming. The applicant misconstrues the laws regarding zoning and minimum lot standards. Section 4.6.210(1) states specifically that the size of the parcel will not prohibit development as long as it was lawfully created or otherwise required to

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be a certain size in order to qualify for a use. A vested right does not require a specific size for development and the lot was lawfully created. Therefore, this is not a valid objection.

- **Vested Rights:** Vested Rights do not exempt a builder from other laws and regulations related to their project. The vested rights discussion includes two different conditions: omission or act by the government that kept the holder from completing the build and proof of appropriate investment. Appellant does not find a statement within the Staff Report that described an omission or act by the government that may have delayed the build. I did note blaming delays on COVID; however, no details were offered as to illustrate any specific delays. Did the property owners just miss the expiration date, having paperwork expire might perhaps be considered a government act? The compliance letter was approved 1/25/2021 and clearly identified the expiration date of 1/24/2023.

Response: The appellant's stated that "[i]n Oregon, the concept of 'vested rights' for development refers to the legal protection granted to property owners or developers when they have obtained a valid land use approval or permit for a development project. Vested rights ensure that once a property owner has obtained approval for a project, they have the legal right to proceed with the development in accordance with the terms and conditions of that approval, even if zoning or land use regulations **change after** the approval is granted.


To qualify for vested rights in Oregon, property owners typically need to demonstrate that they have met all the requirements and conditions necessary to obtain land use approval or permits. This often includes obtaining necessary permits, completing required studies or assessments, and meeting any other criteria specified by the local jurisdiction's land use regulations.

Once vested rights are established, they protect property owners from subsequent changes in zoning or land use regulations that would otherwise prevent or restrict approved development from proceeding. Vested rights do not exempt builders from other laws and regulations related to their projects. While this is true, it's important to note that the threshold for vested rights is whether they have met the "land use" regulations, not the building regulations, which are a separate phase. In this case, the appellant failed to understand this distinction. The applicant obtained a planning permit and proceeded to install the driveway, parking area, septic system, well and utilities. However, when they attempted to submit for building plans, they were unable to obtain them without a valid Zoning Compliance Letter. The law that allowed them to obtain the Zoning Compliance Letter was no longer valid. However, due to the proportion of development completed, they have the option to request that their development be considered vested or that the county ruled that they have met the planning requirements and do not need to reapply.

- **Actual Investments:** There are discrepancies in the items selected as proof of investments to calculate the Holmes Factor Ratio. There is a bill in the investment records from me (\$673.56) for easement and road repair costs. It was a routine road maintenance. Not directly related to their project, on roads that were passable. There is a \$7,000 bill for internet service which seems to be an unreasonable cost, the appellant does not believe this should be included within the expenditure ratio.

Staff Response: For a use, structure, or other physical improvements to be considered a lawfully established vested right, the applicant must submit evidence to prove there was a good faith commitment to complete the use, structure, or other physical improvements before the relevant change in law went into effect. Factors to be considered when determining a vested right have been established over time through court cases and include factors in the information, records, and documentation requested in this application form. A determination will only be made after a complete application is received and reviewed. The County approves an application only if it finds that the proposal meets the standards.

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In Oregon, when determining vested rights for a property, certain expenditures related to the development process can be calculated into the vesting determination. These expenditures typically include costs incurred by the property owner that are directly related to the development project and are considered reasonable and necessary for the project to proceed. Some examples of expenditures that may be calculated into vesting include:


- **Permit and Application Fees:** Costs associated with obtaining land use approvals, building permits, environmental permits, or other necessary permits for the development project.
- **Design and Engineering Costs:** Expenses related to architectural design, engineering studies, site planning, and other design work necessary for the project.
- **Land Acquisition Costs:** The purchase price of the property or any costs associated with acquiring land for the development project.
- **Infrastructure Costs:** Expenses related to installing or improving infrastructure such as roads, utilities, drainage systems, or other necessary infrastructure for the project.
- **Planning and Consulting Fees:** Costs associated with hiring consultants, attorneys, or other professionals to assist with the development process, including planning, legal, environmental, or other consulting services.
- **Construction Costs:** Expenses related to actual construction work, including labor, materials, equipment rental, and other construction-related costs.

When staff calculated the expenditures, all expenditures were used. The appellant is asking to not calculate all of the expenditures provides under the assumption they were not directly related to a single-family dwelling. Even if we deducted the two expenditures as requested staff believes the investment is substantial. The acquired the property for \$149,000, introduced improvements totaling over \$89,000 (\$238,300.00) and anticipate investing an additional \$150,000 to \$200,000 to complete the enhancements which would be bring the total price between \$388,300 to \$438,300. The amount that they have spent on purchase, permitting, installation of road improvements, installation of septic, installation of utilities, and installation of well.

SECTION 5.7.300 QUASI-JUDICIAL LAND USE HEARINGS PROCEDURES

1. *The presiding officer shall provide an opportunity for members to announce conflicts or abstain from participating and allow challenge to any member participating as a decision maker in a quasi-judicial hearing.*
2. *At the beginning of a hearing under the Comprehensive Plan or land use regulations of Coos County, a statement shall be made to those in attendance that:*
 - a. *Lists the applicable substantive criteria;*
 - b. *States that testimony and evidence must be directed toward the criteria listed or other criteria in the Plan or implementing ordinances which the person believes to apply to the decision; and*
 - c. *States that failure to raise an issue with statements and evidence sufficient to afford the decision maker an opportunity to respond to the issue precludes appeal to the Land Use Board of Appeals.*
3. *Presentation of Testimony (for hearings other than appeals on the record):*
 - a. *For First Evidentiary Hearing including an appeal of a Planning Director's decision:*
 - i. *Staff Report;*
 - ii. *Applicant;*

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- iii. *Additional testimony by other parties in support of the application;*
- iv. *Testimony by opponents;*
- v. *Neutral parties;*
- vi. *Applicant's rebuttal arguments;*
- vii. *Upon completion of evidence and testimony, if there has been no request to continue the hearing or leave the record open, the Chair will close the public hearing. A request for continuance or an opportunity to submit additional evidence is subject to provisions of Section 5.7.400;*
- viii. *After closing the record, the Hearings Body will deliberate and reach a decision. The final decision will be reduced to writing and will include the findings upon which the decision is based. Notice of the decision will be mailed to all parties; and*
- ix. *Appeals of Planning Director's decision will be de novo and processed in accordance with § 5.7.300.*

b. *For Appeals of a Hearings Body decision (testimony may be limited to parties only):*


- i. *Staff Report;*
- ii. *Applicant or, in the case of an appeal of a prior decision, appellant;*
- iii. *Additional testimony by other parties in support of the application or appeal;*
- iv. *Testimony by opponents or, in the case of an appeal, the applicant and others in support of the application;*
- v. *Neutral parties;*
- vi. *Applicant's rebuttal arguments, or in the case of an appeal of a prior decision, appellant's rebuttal arguments;*
- vii. *Upon completion of evidence and testimony, if there has been no request to continue the hearing or leave the record open, the Chair will close the public hearing. A request for continuance or an opportunity to submit additional evidence is subject to provisions of Section 5.7.400; and*
- viii. *After closing the record, the Hearings Body will deliberate and reach a decision. The final decision will be reduced to writing and will include the findings upon which the decision is based. Notice of the decision will be mailed to all parties.*

4. *Representatives*

- a. *A party may represent themselves or be represented by an attorney. Consultants and other non-attorney professionals may appear as fact witnesses for any party, but may not appear as a legal representative.*
 - i. *Any person presenting written testimony on behalf of a group, company or any other organization, except an attorney, consultant, owner, officer, or employee of that group, company, or organization must enter written evidence into the record establishing that the person is authorized to appear on behalf of the organization. Such written authorization must:*
 - ii. *Be written on the group, company, or organization's official letterhead;*
 - iii. *Name the person authorized to appear on behalf of the group, company, or organization;*
 - iv. *Specify the scope of the authorization; and*
 - v. *Contain the signature of a person with authority to grant the authorization.*

Failure of a person to submit such written authorization shall cause the group, company, or organization to not achieve party status for the purposes of the proceeding and shall preclude the group, company, or organization from having standing to file an appeal.

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- b. *Any person presenting oral testimony on behalf of a group, company or any other organization, with the exception of an attorney, shall present a letter of authorization at that time to show that the person testifying does in fact represent that group, company or organization. If the letter is not presented at the time the hearings body or designee shall in its discretion, allow the person to submit that authorization prior to the close of the record.*

Failure to provide written proof of authorization to represent a group, company or organization shall result in the group, company or organization not having standing in the event of an appeal. The person who provided the testimony shall be the only one to achieve party status in the event of an appeal. The hearings body or designee has discretion to not consider the testimony as part of the record if a person presenting testimony on behalf of a group, company, or organization fails to comply with the rules of Section 4. If this is the decision of the hearings body or designee then it will be made part of the final order and decision. If the determination is made that testimony was disqualified under this subsection then standing has not been achieved. That party may not appeal the matter unless other forms of testimony accepted forms of testimony was received and granted them standing under CCZLDO Section 5.8.160.

5. *Submission of Written Evidence*

- a. *Petitions: Any party may submit a petition into the record as evidence. The petition shall be considered as written testimony of the party who submitted the petition. A petition shall not be considered to be written testimony of any individual signer. To have standing, a person must participate orally at the hearing or submit other individual written comments. Anonymous petitions or petitions that do not otherwise identify the party submitting the petition shall not be accepted as evidence.*
- b. *Required Number of Copies: Submission of written materials for consideration shall be provided in the form one original hard copy and one exact copy or one original hard copy and one electronic copy.*


The County may, at its sole discretion, reject any materials that do not contain the requisite number of copies. It may be requested that the County make the requisite number of copies subject to the submitter paying the applicable copy charges.

- c. *E-mail testimony may be submitted; however, it is the responsibility of the person submitting the testimony to verify it has been received by Planning Staff by the applicable Deadline.*
- d. *All written testimony must contain the name of the person(s) submitting it and current mailing address for mailing of notice.*
- e. *The applicant bears the burden of proof that all of the applicable criteria have been met; however, in the case of an appeal, the appellant bears the burden of proving the basis for the appeal, such as procedural error or that applicable criteria have not in fact been met. [Amended OR 08-09-009PL 5/13/09]*

6. *Definitions: As used in this Article the following definitions shall apply:*

- a. *“Party” means any person, organization or agency who has established standing under the provisions of this Article 5.8.*
- b. *“Witness” means any person who appears and is heard at a hearing and is not a “party”. A witness shall not be considered a “party” unless the Board of Commissioners determines that the person is a party in accordance with Article 5.8.*

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IV. STAFF RECOMMENDATIONS – Staff recommends the Planning Commission uphold the approval of the Vested Right with the conditions of approval listed within Decision and Staff Report of VR-23-001 and deny the appeal. The decision should be based on the relevant criteria only.

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 applicants and that the applicants 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 will be issued after all the following conditions have been satisfied.
 - a. Shall acknowledge and file in the deed records of Coos County, a Farm Practices Management Easement.
 - b. 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.
 - c. A new plot plan meeting requirements within “plot plan instructions” shall be submitted.
 - d. A Road/Driveway Access application must be submitted and signed off.

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