



STAFF REPORT

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

I. MATTER DETAILS – AGENDA ITEM IV. A

FILE NUMBERS: AM-21-002/RZ-21-002

APPLICANT: Bandon Biota, LLC
57744 Round Lake Road
Bandon, Oregon 97411

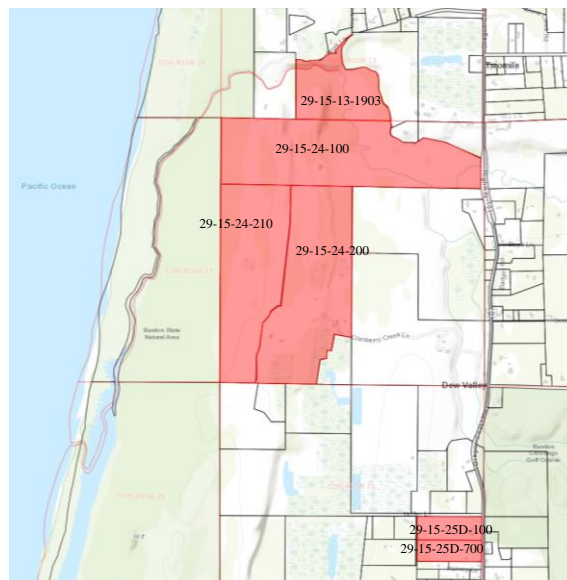
CONSULTANT: Chris Hood, Stuntzner Engineering & Forestry, L.L.C
PO Box 118/705 S. 4th Street
Coos Bay, Oregon 97420

STAFF CONTACT(S): Amy Dibble, Planner II adibble@co.coos.or.us Jill Rolfe, Planning Director jrolfe@co.coos.or.us

SUMMARY PROPOSAL: The request for a plan amendment to change the Comprehensive Plan Designation from Forest to Agriculture and rezone the properties from Forest to Exclusive Farm Use Zoning. This request only applies to the portions of the properties that are identified as Forest. The request will also remove the Mixed Use classification in the Forest Zone.

PUBLIC HEARING: The time and place for the Coos County Board of Commissioners to review this matter in a public hearing is December 2, 2021, at 10:00 A.M. in the Owen Building, 201 N. Adams Street, Coquille Oregon

LOCATION OF PROPOSAL: The Subject Properties are identified as Township 29S, Range 15W, Sections 13/24/25D, Tax Lots 1903/100, 200, 201/100, 700. These properties are located south of the City of Bandon.



APPLICABLE IDENTIFIED REVIEW CRITERIA:

- a. Coos County Zoning and Land Development Ordinance (CCZLDO), Article 5.1 Plan Amendments and Rezones
- b. Coos County Comprehensive Plan
 - i. Volume I Part II Inventories Sections 3.1 Agricultural Lands and 3.2 Forest Lands
 - ii. Comprehensive Plan Maps Balance of County (14) Zone Maps and (16) Mixed Use Maps
- c. Oregon's Statewide Planning Goals & Guidelines Goals 3 and 4.

HEARING PROCESS AND PROCEDURES:

There are four ways to participate in this matter by phone; virtually; in person or in writing.

- i. **Virtual or by phone:** This option is only available during the time and date the hearing is scheduled. To participate there GoToMeeting or by phone please provide an email to planning@co.coos.or.us with your name, address, email and phone number for the record and in case there is any technical difficulty.

Board of Commissioner Meeting

Thu, Dec 2, 2021 10:00 AM - 12:00 PM (PST)

Please join my meeting from your computer, tablet or smartphone.

<https://global.gotomeeting.com/join/314696397>

You can also dial in using your phone.

United States: [+1 \(872\) 240-3412](tel:+18722403412)

Access Code: 314-696-397

- ii. **In Person:** The meeting can be attended in person at the time and date scheduled. All participants are required to follow COVID restrictions that are applicable at the time of the hearing. The meeting will be held in the Owen Building Large Conference Room 201 N. Adams Street, Coquille OR 97423. If you require assistance to participate in the meeting, please provide 48 hours' notice to the Planning Staff to accommodate the request. planning@co.coos.or.us or 541-396-7770.

- iii. **In Writing: Testimony shall be submitted by the deadline provided at the hearing or the close of the record in the forms described below.**

- a. **Submission of Written Testimony:** Written testimony and evidenced provided by participants that will not be attending shall be received no later than 5 pm on the day of the hearing. Although it is encouraged to submit the information well in advance to provide the Hearings Body a chance for an in depth review. Written testimony and evidence shall be mailed to 225 N. Adams, Coquille, OR 97423, dropped off at the planning office at 60 E. Second Street, Coquille or emailed to planning@co.coos.or.us. If the testimony is not received by the 5 pm deadline it will need to be submitted in person at the hearing or it will not be considered. **Please review the additional information regarding submission of written evidence.**

- b. **Submission of Written Evidence**

- **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.
- **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.

- 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.
- All written testimony must contain the name of the person(s) submitting it and current mailing address for mailing of notice.
- The applicant bears the burden of proof that all 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]

iv. General Meeting Procedure: The Board of Commissioners will start the meeting at 10:00 am unless otherwise noticed. There will be introductions of the Commissioners and Staff, Approval of Minutes if available and Request for any comments from the public on matters not related to the formal hearings scheduled or pending land use matters prior to opening the hearing. Upon opening the public hearing portion of the meeting, the Planning Staff or County Counsel will provide the procedural rules.

The Board of Commissioners will:

- Disclose the substance of any prehearing *ex parte* contacts regarding the matter at the commencement of the public hearing on the matter. The member shall state whether the contact has impaired the impartiality or ability of the member to vote on the matter and shall participate or abstain accordingly;
- Any actual or potential conflicts of interest (financial gain); and
- Any biases or reason a member will not be participating in the decision making process.

The Board of Commissioners will ask the audience if there are challenges to any Commissioners reviewing the matter. If there are challenges, they shall be brought forward with evidence to substantiate such challenge. There will be a chance for the Commissioner to rebut the challenge or step down as the decision maker. If the member(s) does not step down the Commissioner shall make a motion as to remove the member based on the evidence or make the statement that the evidence submitted is not sufficient to create a actual bias or conflict of interest. Once this is complete staff will present the matter and criteria and provide the Board of Commissioners an opportunity to ask any questions about staff's presentation or material that have been provided.

The Oral testimony will begin:

- Applicant's presentation (20 minutes)
- Proponents of the application (3 to 5 minutes)
- Opponents of the application (3 to 5 minutes)
- Rebuttal or closing by the applicant. (3 to 5 minutes)

Tips for providing effective testimony¹

- State your name and address for the record.
- Begin by saying you support or oppose a particular agenda item, and briefly explain why.
- Use facts to verify your statements.
- Describe how this issue affects you personally, what you suggest as a solution and then summarize your testimony.

¹https://www.co.coos.or.us/sites/default/files/fileattachments/planning/page/13051/tesify_at_land_hearing_brochure.pdf

- e. Be sure to tell the reviewing body exactly what you wish them to do. If you are opposing, your testimony should discuss why the proposal is inconsistent with the controlling law, rules or ordinances.
- f. Do not repeat yourself or get off-topic; keep your argument concise

- v. **Notice Requirement:** This application is a Plan Map Amendment/Rezone governed by CCZLDO Section 5.0.900.3. The notice of Post Acknowledge Plan Amendment notice was provided 35 days prior to the Planning Commission meeting to meet the requirements of ORS 197.610. The hearing notice was published in accordance with ORS 197.732. Notice was mailed to property owners in compliance with CCZLDO Section 5.0.900.1 Notice of Public Hearings.
- vi. **REVIEW PERIOD:** This application was submitted on July 20, 2021. Pursuant to ORS 215.427 this application is not subject timelines as it is application for a zone change filed concurrently and considered jointly with a plan amendment.

II. STAFF REPORT – WITH RECOMENDATOINS AND PROPOSED FINDINGS

A. SUBJECT PROPERTY DETAILS AND BACKGROUND:

The Applicant’s consultant described the proposal as the following:

The Applicant, Bandon Biota, is the owner of an approximately 603 acre tract by assessment records. The Northerly end of the property is located approximately 2 miles south of the City of Bandon’s Urban Growth Boundary, and the tract extends south for approximately 2 miles through Sections 13, 24, and 25 (described above). Of the 603 acres, 339 acres are currently zoned Exclusive Farm Use (EFU) and 264 acres are zoned Forest (F) or Forest with a Mixed Use overlay. The Applicant is proposing to rezone 224 of the 264 Forest zoned acres to EFU. There is a 40-acre Forest-zoned segment within the tract that is adjacent to other Forest-zoned lands, which will therefore retain its Forest designation.

While the Applicant’s ownership consists of a single contiguous tract, there are two distinct Forest zoned segments that are separated by EFU zoned lands. The Westerly Segment is adjacent to Bandon State Park (state land) to the West and EFU zoned agricultural land to the North, South and East. The Easterly Segment is directly adjacent to US Highway 101 and contains a 40-foot panhandle that is owned by the Applicant, and provides access to the Applicant’s ownership. The Easterly Segment is adjacent to Forest zoning to the North, Rural Center and Rural Residential zoning to the South, and EFU zoning to the West.

The Applicant, with the consent of an adjacent property owner, will also be rezoning a small portion (15 to 20 acres) of their land from Forest to EFU to eliminate the creation of a Forest-zoned Island that would exist as a result of this rezone. The rezone segment is also addressed separately in this application as the Kranick Segment.

i. *SUBJECT PROPERTY INFORMATION:*

Account Number(s): 1239606, 1240300, 1240601, 1242101, 1242103
 Map Number(s): 29S151300-01903, 29S152400-00100, 29S152400-00201,
 29S1525D0-00100, 29S1525D0-00700

Property Owner: BANDON BIOTA, LLC
 2450 LAKEVIEW AV
 CHICAGO, IL 60614-2878

Situs Address: SECTION 24, TAX LOT 100 - 87230 BOAK LN
SECTION 25D TAX LOT 100 - 47698 HIGHWAY 101
SECTION 25D TAX LOT 700 - 47652 & 47654 HIGHWAY 101

Acreage: 45.23 ACRES, 138.24 ACRES, 107.04 ACRES,
15.00 ACRES; 12.74 ACRES

Zoning
(See zoning map): EXCLUSIVE FARM USE (EFU)
FOREST (F)
MINOR ESTUARY & SHORELANDS (MES)

Special Development
Considerations and
overlays: BANDON AIRPORT CONICAL ZONE (ABC)
BEACH EROSION & DEPOSITION (HZB)
BEACHES/DUNES - LIMITED (BDL)
BIRD SITE MEETS GOAL 5C REQRMT (B5C)
COASTAL SHORELAND BOUNDARY (CSB)
FLOODPLAIN (FP)
FOREST MIXED USE (MU)
NATIONAL WETLAND INVENTORY SITE (NWI)
NAT. HAZARDS WIND EROSION (HZW)
NATURAL HAZARD – EARTHQUAKE/LIQUEFACTION (NHEQL)
NATURAL HAZARD - TSUNAMI (NHTHO)
NATURAL HAZARD - WILDFIRE (NHWF)
WETLANDS (WET)

Account Number(s): 1240600
Map Number(s): 29S152400-00200

Property Owner: KRANICK, DAVID ET AL
BROWN, VIVIAN M L/E
87228 CRANBERRY CREEK LN
BANDON, OR 97411-7411

Situs Address: 87228 CRANBERRY CREEK LN BANDON, OR 97411

Acreage: 121.48 Acres

Zoning
(See zoning map): EXCLUSIVE FARM USE (EFU)
FOREST (F)

Special Development
Considerations and
overlays: BEACHES/DUNES - LIMITED (BDL)
FOREST MIXED USE (MU)
NAT. HAZARDS WIND EROSION (HZW)
NATIONAL WETLAND INVENTORY SITE (NWI)
NATURAL HAZARD - EARTHQUAKE - LIQUEFACTION
(NHEQL)
NATURAL HAZARD - TSUNAMI (NHTHO)
NATURAL HAZARD - WILDFIRE (NHWF)
WETLAND IN CRANBERRY BOGS (WC)
WETLANDS (WET)

ii. **KEY DEFINITIONS:**

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.

HIGH-VALUE FARMLAND: "High-value farmland" means land in a tract composed predominantly of soils that are:

A. Irrigated and classified prime, unique, Class I or Class II; or

B. Not irrigated and classified prime, unique, Class I or Class II.

A and B, above, include the following soils: 2C, 5A, 5B, 33, 17B, 25 and 36C.

In addition, high-value farmland includes tracts growing specified perennials as demonstrated by the most recent aerial photography of the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture taken prior to November 4, 1993. "Specified perennials" means perennials grown for market or research purposes including, but not limited to, nursery stock, berries, fruits, nuts, Christmas trees or vineyards, but not including seed crops, hay, pasture or alfalfa.

Also, high-value farmland, used in conjunction with a dairy operation on January 1, 1993, includes tracts composed predominantly of the following soils in Class III or IV or composed predominantly of a combination of the soils described in A or B above and the following soils: Meda (37C), Nehalem (40) and Coquille (12).

FOREST LAND: Those lands designated in the Coos County Comprehensive Plan (Volume I- "Balance of County") for inclusion in a Forest Lands zone. These areas include: (1) lands composed of existing and potential forest lands which are suitable for commercial forest uses, (2) other forested lands needed for watershed protection, wildlife and fisheries habitat and recreation, (3) lands where extreme conditions of climate, soil and topography require the maintenance of vegetative cover irrespective of use, and (4) other forested lands which provide urban buffers, wind breaks, wildlife and fisheries habitat, livestock habitat, scenic corridors and recreational use.

MINOR ESTUARY SHORELANDS: The purpose of the "MES" district is to regulate uses within the inventoried minor estuaries and adjacent shorelands within unincorporated Coos County. The estuaries within the district are treated as "natural management units" per LCDC Goal 16. There are no hearings body applications or development standards with the exception of road standards found in Chapter VII.

iii. **ZONING:**

ARTICLE 4.2 – ZONING PURPOSE AND INTENT

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.

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.

If a use is only allowed in the mixed use zone it will be explained in the text. Otherwise the uses listed are allowed in both the Forest and Forest Mixed Use zones.

EXCLUSIVE FARM USE (EFU)

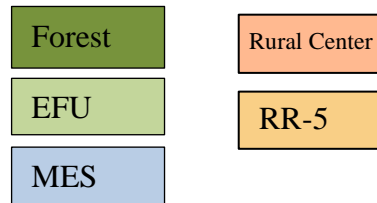
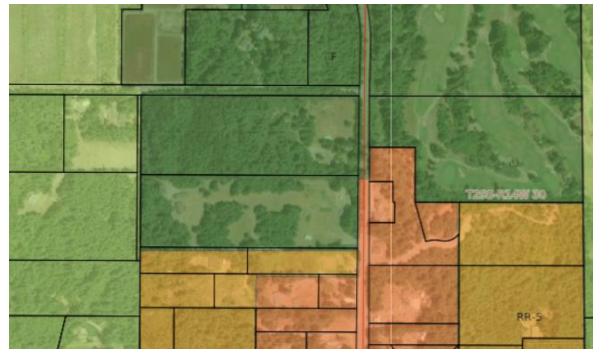
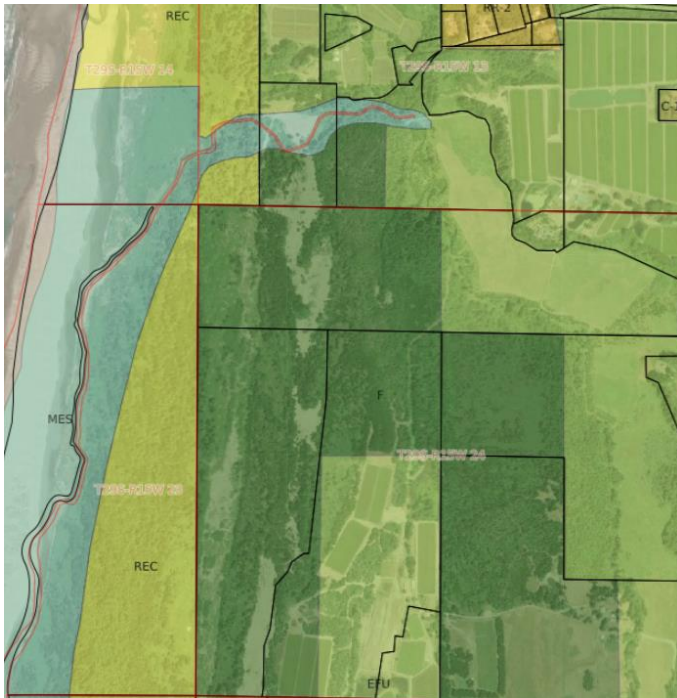
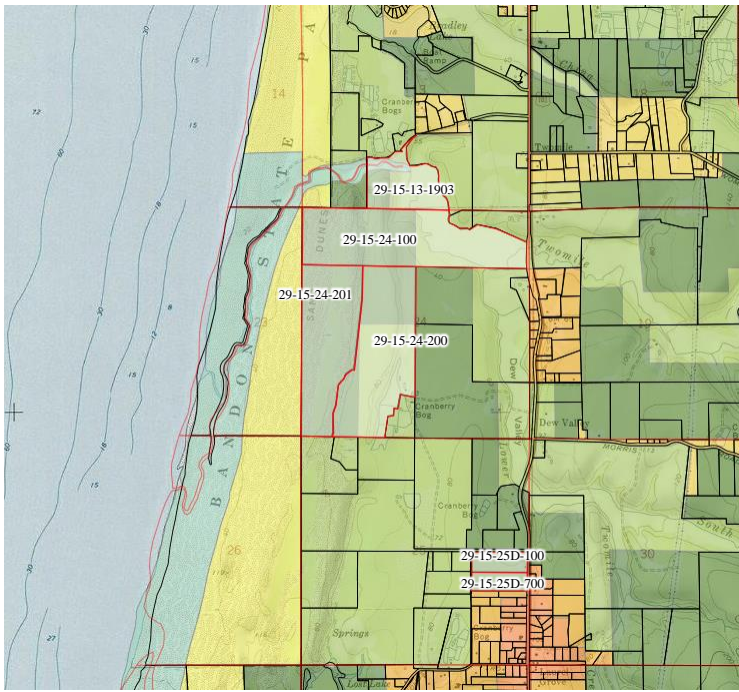
These include all inventoried "agricultural lands" not otherwise found to be needed (excepted) for other uses.

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

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

- 1. Committed rural residential areas and urban growth areas.*
- 2. Proposed rural residential areas as per the Exception to Goals #3 and #4.*
- 3. Proposed industrial/commercial sites.*
- 4. Existing recreation areas (e.g., golf courses) [Recreation designation]*
- 5. Isolated parcels of Class I-IV soils in upland areas, which are under, forest cover. (Forestlands designation).*
- 6. Narrow valley bottomlands where no agricultural activity is occurring anywhere in the vicinity [Forestlands designation].*

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



According to the applicant the segments as the Westerly Segment consists of property land located in Sections 13 and 24 of Township 29 South, Range 15 West of the Willamette Meridian, as follows:

- A portion of the Southeast Quarter of the Southwest Quarter of Section 13
- The North One-Half of the Northwest Quarter of Section 24
- The Southwest Quarter of the Northwest Quarter of Section 24

- A portion of the Southeast Quarter of the Northwest Quarter of Section 24
- A portion of the Northwest Quarter of the Southwest Quarter of Section 24
- A portion of the Southeast Quarter of the Southwest Quarter of Section 24
- A portion of Southwest Quarter of the Southwest Quarter of Section 24

The Easterly Segment consists of the following land located in Section 25 of Township 29 South, Range 15 West of the Willamette Meridian:

- A portion of the Northeast Quarter of the Southeast Quarter of Section 25
- A portion of the Southeast Quarter of the Northeast Quarter of Section 25, a fee title ownership consisting of a panhandle containing Hoffer Lane.
- The Kranick Segment consists of the following land located in Section 25 of Township 29 South, Range 15 West of the Willamette Meridian:
- A relatively small (15 acre +/-) portion of the West One-Half of the Southwest Quarter of Section 24 (see the Westerly Segment “Rezone Area” and “Zoning” maps).

Applicants Maps:





THE LANDS PROPOSED FOR REZONE HAVE BEEN COLORED FOR IDENTIFICATION PURPOSES. THE INTENT OF THIS ZONING MAP IS TO SHOW THE ZONING DISTRICTS ADJACENT TO AND SURROUNDING THE PROPOSED REZONE AREAS.

EASTERLY SEGMENT

iv. SPECIAL DEVELOPMENT CONSIDERATIONS AND OVERLAYS:

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

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

The properties located east of the Bandon State Park Area have serval overlays and hazards:

A portion of the property is mapped in the within:

- Bandon Airport Conical Zone which requires a notice Oregon Department of Aviation and restriction on possible building height.
- Beaches and Dunes with limited suitability included erosion and deposition due to the dune formation and wind erosion.
- Near or have a protected Goal 5C protected bird habitat and a notice for comments was provided to Oregon Department of Fish and Wildlife.
- There is an area mapped in the Coastal Shores Land designations that are located off the Minor Estuary Shorelands.

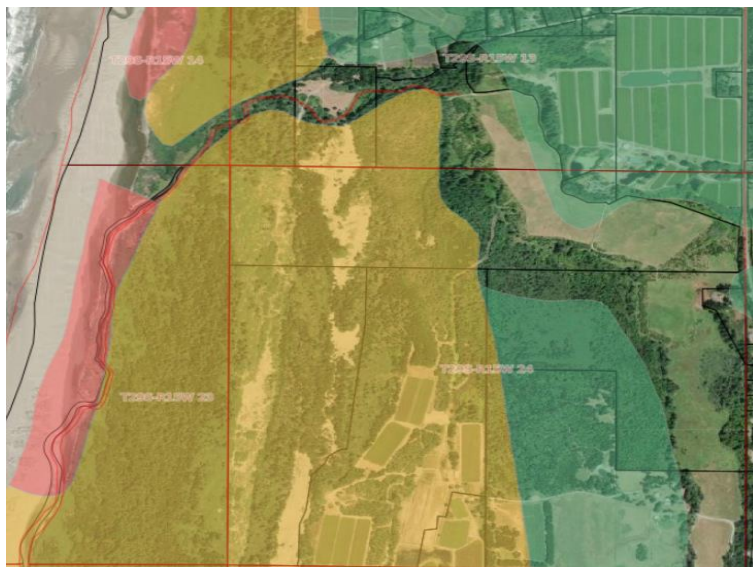
- Floodplain shown on the property that follows Twomile Creek.
- The portions that are located in the Forest Zone do have a Mixed Use Overlay.
- Mapped National Wetlands and notice was provided to Department of State Lands.
- Natural Hazards – Earthquake Liquefaction, Wildfire and Tsunami.
- County mapped wetlands (Agricultural Importance)

The other two smaller parcels located off Hwy 101 only have a Mixed Use Overlay and no other mapped hazards or development considerations.

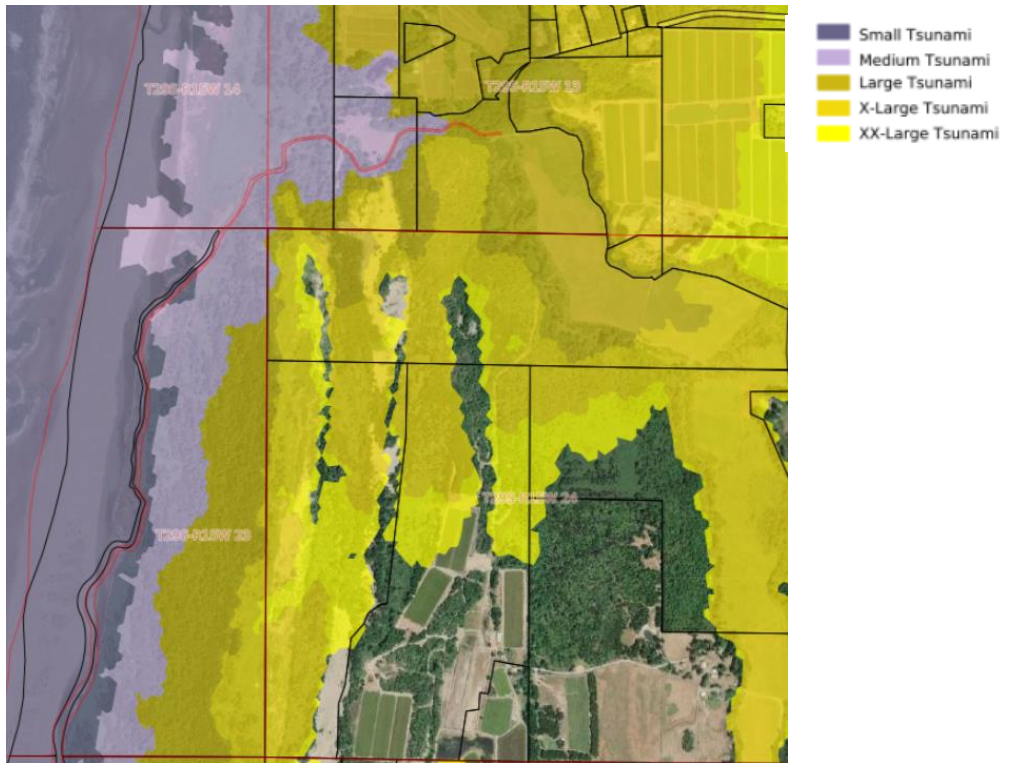
- Floodplain:



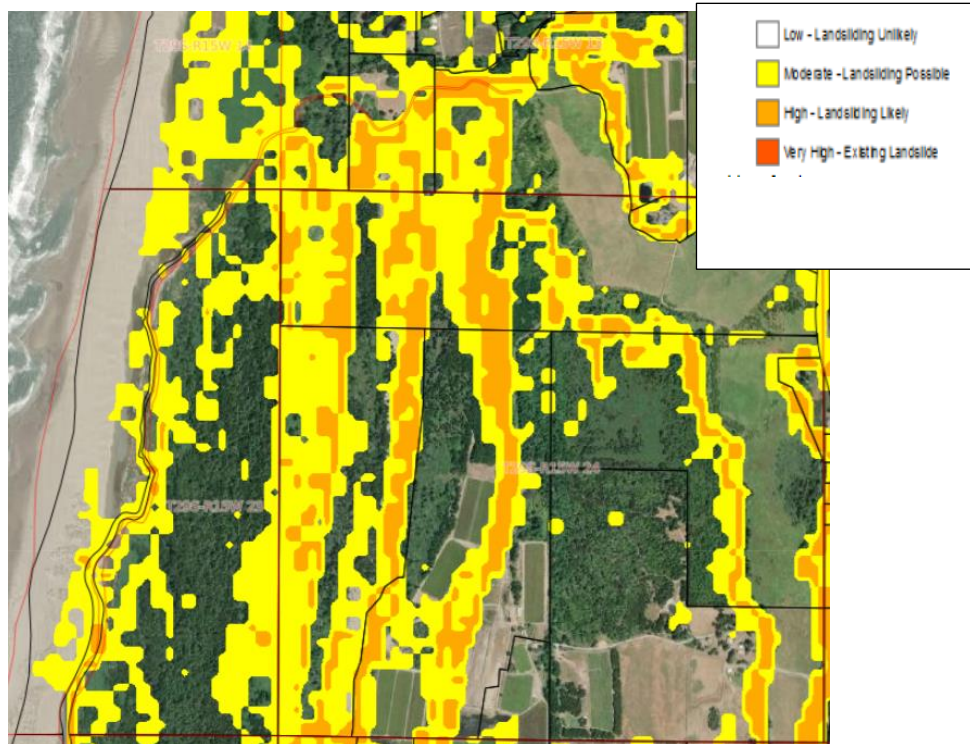
- Beaches and Dunes with Limited Development Suitability



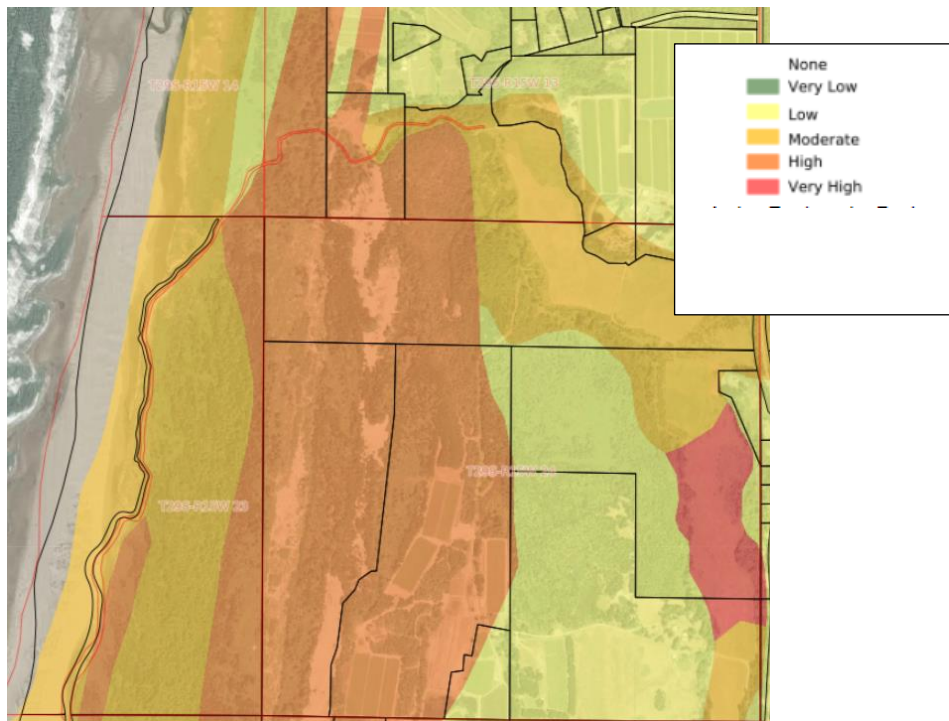
- Tsunami Inundation



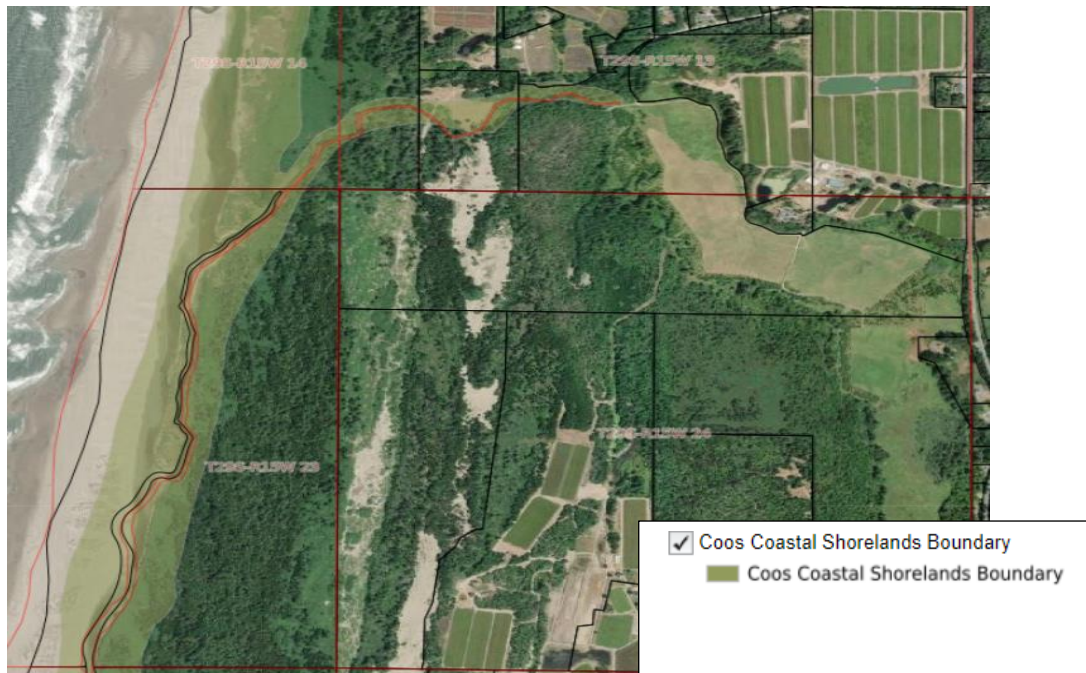
- **Landslide Susceptibility**



- **Liquefaction Susceptibility**



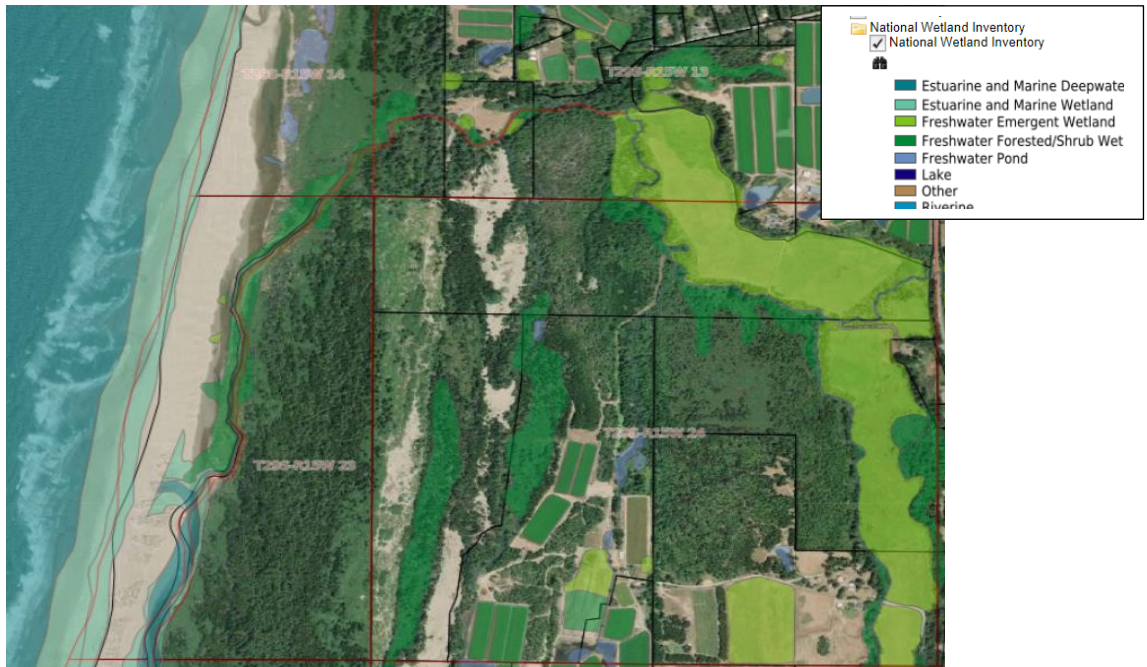
- Coastal Shoreland Boundary



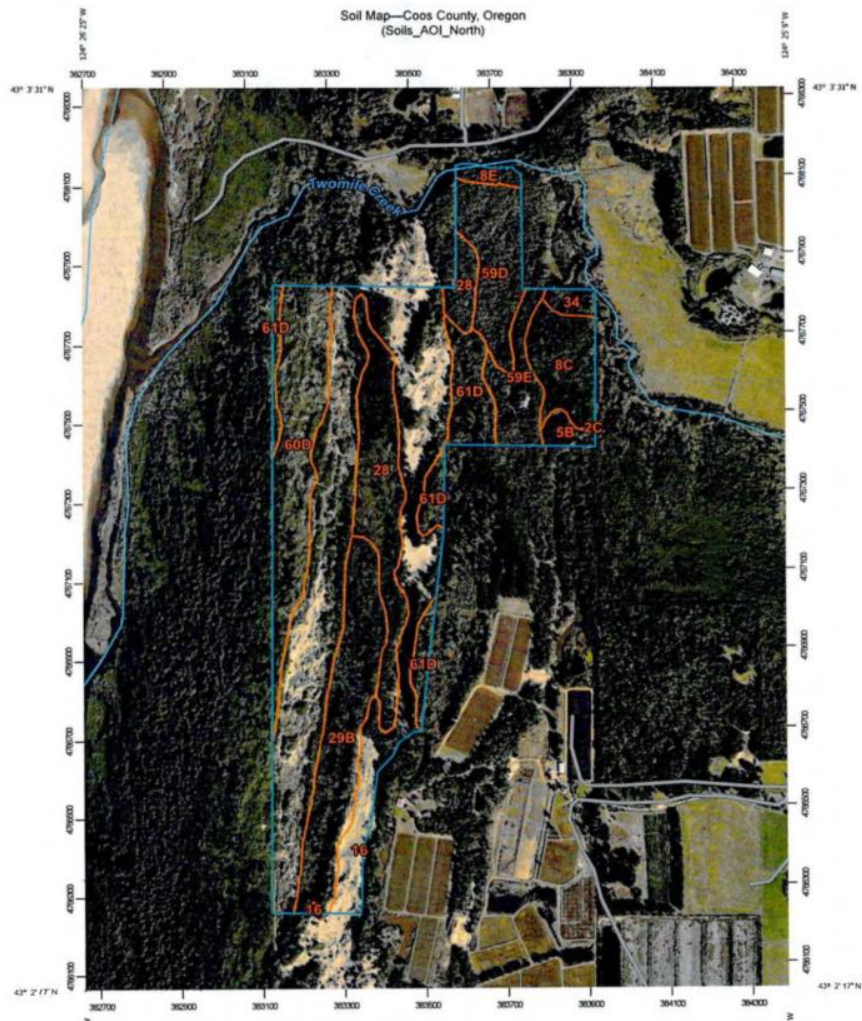
- Coos County inventoried wetlands



- National Wetland Inventory

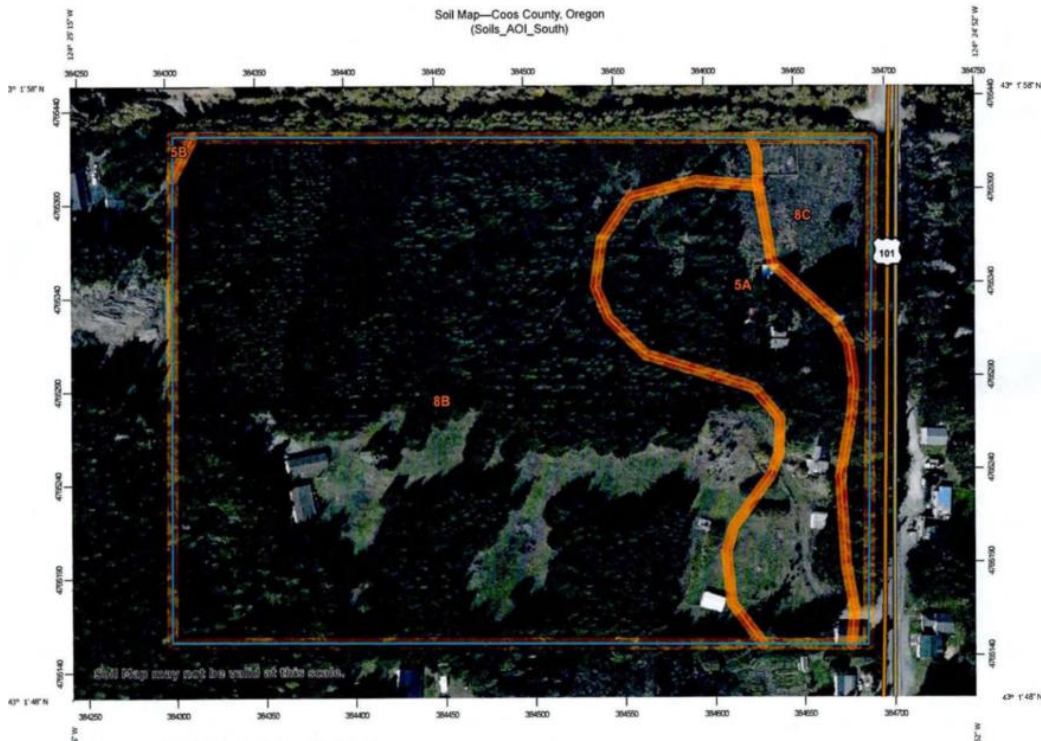


- v. **SOILS:** - The applicant has provided a soil map and full report at page 18.



Map Unit Legend

Map Unit Symbol	Map Unit Name	Acre In AOI	Percent of AOI
2C	Bandon-Blacklock complex, 0 to 12 percent slopes	0.0	0.0%
5B	Blacklock fine sandy loam, 3 to 7 percent slopes	2.1	1.1%
8C	Bullards sandy loam, 7 to 12 percent slopes	10.3	5.4%
8E	Bullards sandy loam, 30 to 50 percent slopes	1.7	0.9%
16	Dune land	72.2	37.8%
28	Heceta fine sand	22.1	11.5%
29B	Heceta-Waldport fine sands, 0 to 7 percent slopes	23.0	12.0%
34	Langlois silty clay loam	1.9	1.0%
59D	Waldport fine sand, 0 to 30 percent slopes	13.4	7.0%
59E	Waldport fine sand, 30 to 70 percent slopes	8.0	4.2%
60D	Waldport-Dune land complex, 12 to 30 percent slopes	22.9	12.0%
61D	Waldport-Heceta fine sands, 0 to 30 percent slopes	13.5	7.0%
Totals for Area of Interest		191.2	100.0%



Map Unit Legend

Map Unit Symbol	Map Unit Name	Acres In AOI	Percent of AOI
5A	Blacklock fine sandy loam, 0 to 3 percent slopes	4.5	17.1%
5B	Blacklock fine sandy loam, 3 to 7 percent slopes	0.0	0.1%
8B	Bullards sandy loam, 0 to 7 percent slopes	19.8	75.8%
8C	Bullards sandy loam, 7 to 12 percent slopes	1.8	6.9%
Totals for Area of Interest		26.1	100.0%

vi. **GENERAL COMPLIANCE:**
 Given the information available staff has determined that these properties are in compliance; however, a more in depth review will be performed at the time these properties are developed.

- vii. **PROPERTY BACKGROUND/HISTORY:**
- 29S152400-00100 – This property is located off of Boak Lane (87230) and is developed with a single family dwelling
 - 29S151300-01903 – This property has no development
 - 29S152400-00201 – This property has no development
 - 29S1525D0-00100 – This property is located off of Hwy 101 (47698) and is developed with a single family dwelling.

- 29S1525D0-00700 – This property is located off of Hwy 101 (47652 and 47654) and is developed with three (3) single family dwellings and two (2) accessory structures.

PROPERTY CHARACTERISTICS – Provided by the applicant and confirmed by staff.

Westerly Segment

The Westerly Segment consists of approximately 200 acres of a partially vegetated dune formation stretching north and south. There are 11 soil types contained within the tract that primarily consists of either sand or sandy complex soil types. The soil types are described in further detail below. The vegetation on the upland dunes primarily consists of the invasive species “gorse,” with a mixture of dime grasses and other dune-type vegetation. The primary tree type is Shore Pine intermingled with various types of conifers (primarily spruce) that are more predominant near identified wetlands described below. The open sand areas are generally located along dune ridges and north/south facing slopes.

There are approximately 20 acres of identified wetlands within the segment. The primary wetland (containing approximately 18 acres) runs north/south at the base of the adjacent dune formations. There is a portion of a wetland located along the northeasterly boundary of the segment.

Easterly Segment

The Easterly Segment contains a 24 acre (approx.) tract that consists of Tax Lots 100, 700, and a portion of Tax Lot 1000 (Hofer Lane). The tract is relatively flat and is directly adjacent to US Highway 101. Approximately 70% of the tract is covered in conifer tree species with approximately 30% in pasture. The northerly portion appears to have been planted as a Christmas tree farm that was never maintained or harvested.

There are three dwellings on the tract. One dwelling is sited on Tax Lot 100 to the north, and two dwellings are sited on the southerly Tax Lot 700. The dwelling on Tax Lot 100 was sited in 1940 and is therefore a legal Non-Conforming Use. One of the dwellings on Tax Lot 700 was sited in 1942 and is therefore a legal Non-Conforming Use. The second dwelling on Tax Lot 700 was permitted outright based upon “interim” Forest/Agricultural zoning that existed in 1979. Because the interim zoning district was established for either Forest or Agricultural use, the dwelling is a Conforming Use in either the existing Forest district or the proposed EFU district. In other words, two of the dwellings are legal Non-Conforming Uses by virtue of the fact that they were established prior to land use regulations, and one is a Conforming Use in either a Forest or EFU district.

Kranick Segment

The Kranick Segment is a Forest zoned sliver of the adjacent cranberry farm to the east. There are several existing cranberry bogs and an irrigation sump located within the segment that is a portion of a larger commercial farm operation. The property is clearly farm land by use and definition and EFU is an appropriate designation for the land.

viii.

COMMENTS:

- ix. **PUBLIC AGENCY:** Comments were sent to the Oregon Department of State Lands, a response was received stating the following: *“An amendment and rezoning does not require a permit because it does not directly impact wetlands or cause ground disturbance. However, tax lots 100 and 201 in section 24 likely contain wetlands as well as Essential Salmonoid Habitat including Twomile Creek and any surrounding*

wetlands. There are also several tributaries that could be state jurisdictional. If future development is planned, a wetland delineation and possibly a permit would be needed. Potential wetlands on 201 appear to be interdunal, which is an Aquatic Resource of Special concern and may be more difficult/expensive to alter if development is proposed in the future. It is unlikely that there are jurisdictional wetlands/waters on tax lots 100 and 700 in section 25D.”

Prior to development notification will be required to be sent to the Oregon Department of State Lands and the Oregon Department of Fish and Wild Life.

- x. **PUBLIC COMMENTS:** This proposal required that notification be sent to the abutting property owners within 500 feet of the subject properties and to be published in the newspaper 10 days prior to each hearing. Staff any request for comments prior to the release of the decision from the public and none were received.
- xi. **LOCAL TRIBE COMMENTS:** This proposal did not require any request for comments from the local tribes and none have been received.

B. FINDINGS, CONCLUSIONS AND RECOMMENDATIONS:

i. APPLICABLE IDENTIFIED REVIEW CRITERIA:

- a. Coos County Zoning and Land Development Ordinance (CCZLDO), Article 5.1 Plan Amendments and Rezones;
 - i. Coos County Comprehensive Plan
 - 1. Volume I Part II Inventories Sections 3.1 Agricultural Lands and 3.2 Forest Lands;
 - 2. Coos County Comprehensive Plan Maps Balance of County (14) Zone Maps and (16) Mixed Use Maps; and
- b. Oregon’s Statewide Planning Goals & Guidelines Goals 3 and 4.

a. Coos County Zoning and Land Development Ordinance (Ordinance)

- **ARTICLE 5.1 REZONES**

- **SECTION 5.1.200 REZONES:**

Rezoning constitutes a change in the permissible use of a specific piece of property after it has been previously zoned. Rezoning is therefore distinguished from original zoning and amendments to the text of the Ordinance in that it entails the application of a pre-existing zone classification to a specific piece of property, whereas both original zoning and amendments to the text of the Ordinance are general in scope and apply more broadly.

- **SECTION 5.1.210 RECOMMENDATION OF REZONE EXPANSION BY THE PLANNING DIRECTOR:**

The Planning Director may recommend an expansion of the geographic limits set forth in the application if, in the Planning Director’s judgment, such an expansion would result in better conformity with the criteria set forth in this Ordinance for the rezoning of property. The Planning Director shall submit a recommendation for expansion to the Hearings Body prior to the scheduled public hearing for a determination whether the application should be so extended.

- **SECTION 5.1.215 ZONING FOR APPROPRIATE NON-FARM USE:**

Consistent with ORS 215.215(2) and 215.243, Coos County may zone for the appropriate non-farm use one or more lots or parcels in the interior of an exclusive farm use zone if the lots or parcels were physically developed for the non-farm use prior to the establishment of the exclusive farm use zone.

• **SECTION 5.1.220 PROCESS FOR REZONES:**

1. Valid application must be filed with the Planning Department at least 35 days prior to a public hearing on the matter.
2. The Planning Director shall cause an investigation and report to be made to determine compatibility with this Ordinance and any other findings required.
3. The Hearings Body shall hold a public hearing pursuant to hearing procedures at Section 5.7.300.
4. The Hearings Body shall make a decision on the application pursuant to Section 5.1.225.
5. The Board of Commissioners shall review and take appropriate action on any rezone recommendation by the Hearings Body pursuant to Section 5.1.235.
6. A decision by the Hearings Body that a proposed rezone is not justified may be appealed pursuant to Article 5.8.

• **SECTION 5.1.225 DECISIONS OF THE HEARINGS BODY FOR A REZONE:**

The Hearings Body shall, after a public hearing on any rezone application, either:

1. Recommend the Board of Commissioners approve the rezoning, only if on the basis of the initiation or application, investigation and evidence submitted, all the following criteria are found to exist:
 - a. The rezoning will conform with the Comprehensive Plan or Section 5.1.215; and
 - b. The rezoning will not seriously interfere with permitted uses on other nearby parcels; and
 - c. The rezoning will comply with other policies and ordinances as may be adopted by the Board of Commissioners.
2. Recommend the Board of Commissioners approve, but qualify or condition a rezoning such that:
 - a. The property may not be utilized for all the uses ordinarily permitted in a particular zone;
 - b. The development of the site must conform to certain specified standards; or
 - c. Any combination of the above.

A qualified rezone shall be dependent on findings of fact including but not limited to the following:

- i. Such limitations as are deemed necessary to protect the best interests of the surrounding property or neighborhood;
 - ii. Such limitations as are deemed necessary to assure compatibility with the surrounding property or neighborhood;
 - iii. Such limitations as are deemed necessary to secure an appropriate development in harmony with the objectives of the Comprehensive Plan; or
 - iv. Such limitations as are deemed necessary to prevent or mitigate potential adverse environmental effects of the zone change.
3. Deny the rezone if the findings of 1 or 2 above cannot be made. Denial of a rezone by the Hearings Body is a final decision not requiring review by the Board of Commissioners unless appealed.

• **SECTION 5.1.230 STATUS OF HEARINGS BODY RECOMMENDATION OF APPROVAL:**

The recommendation of the Hearings Body made pursuant to 5.1.225(1) or (2) shall not in itself amend the zoning maps.

PLANNING COMMISSIONERS RECOMMENDED FINDING: The applicant filed an application and procedures were followed pursuant to Section 5.1.220. The main criteria of the rezone

- a. The rezoning will conform with the Comprehensive Plan or Section 5.1.215; and
- b. The rezoning will not seriously interfere with permitted uses on other nearby parcels; and
- c. The rezoning will comply with other policies and ordinances as may be adopted by the Board of Commissioners

In order to conform with the Comprehensive Plan, the soils and uses need to meet the intent of the Exclusive Farm Use (Agriculture). The portions of the Comprehensive Plan that is relevant is Volume I, Part II Section 3.1. The main drives for zoning in the Farm and Forest are based on soils and uses.

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

1. Committed rural residential areas and urban growth areas.
2. Proposed rural residential areas as per the Exception to Goals #3 and #4.
3. Proposed industrial/commercial sites.
4. Existing recreation areas (e.g., golf courses) [Recreation designation]
5. Isolated parcels of Class I-IV soils in upland areas, which are under, forest cover. (Forestlands designation).
6. Narrow valley bottomlands where no agricultural activity is occurring anywhere in the vicinity [Forestlands designation].

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

On the larger area to be rezoned the property contained twelve different soil types.

Map Unit Symbol	Map Unit Name	Acres In AOI	Percent of AOI
2C	Bandon-Blacklock complex, 0 to 12 percent slopes	0.0	0.0%
5B	Blacklock fine sandy loam, 3 to 7 percent slopes	2.1	1.1%
8C	Bullards sandy loam, 7 to 12 percent slopes	10.3	5.4%
8E	Bullards sandy loam, 30 to 50 percent slopes	1.7	0.9%
16	Dune land	72.2	37.8%
28	Heceta fine sand	22.1	11.5%
29B	Heceta-Waldport fine sands, 0 to 7 percent slopes	23.0	12.0%
34	Langlois silty clay loam	1.9	1.0%
59D	Waldport fine sand, 0 to 30 percent slopes	13.4	7.0%
59E	Waldport fine sand, 30 to 70 percent slopes	8.0	4.2%
60D	Waldport-Dune land complex, 12 to 30 percent slopes	22.9	12.0%
61D	Waldport-Heceta fine sands, 0 to 30 percent slopes	13.5	7.0%
Totals for Area of Interest		191.2	100.0%

- **2C-Bandon-Blacklock complex, 0 to 12 percent slopes. This unit is used mainly for timber production and wildlife habitat. Areas of the Bandon soil are also used for pasture, recreation, and homesite development. On the basis of a 100-year site curve, the mean site index for Douglas fir is 137 on the Bandon soil. Wind hazards and high water table limit the viable timber production within this soil classification. If this unit is used for pasture, the main limitations are the droughtiness of the Bandon soil in summer and the wetness of the Blacklock soil. Supplemental irrigation is needed for maximum production on the Bandon soil. If this unit is used for recreational development, the main limitations are the very slow permeability of the Bandon soil and the wetness and very slow permeability of the Blacklock soil. If this unit is used for homesite development, the main limitations are the very slow permeability of the soils and the hazard of erosion.**
- **5B-Blacklock fine sandy loam, 3 to 7 percent slopes. This unit is used mainly for timber production and wildlife habitat. It is also used for cranberry production and recreation. On the basis of a 100-year site curve, the mean site index for shore pine is 90. The main limitations for the management of timber on this unit are seasonal wetness and the hazard of windthrow. The seasonal high water table limits the use of equipment to dry periods. Irrigation and drainage are needed if the soil in this unit is intensively managed for cranberry production. If this unit is used for recreational development, the main limitations are wetness and the very slow permeability.**
- **8C-Bullards sandy loam, 7 to 12 percent slopes. This unit is used mainly for timber production, wildlife habitat, and homesite development. It is also used for pasture and recreation. On the basis of a 100-year site, curve, the mean site index for Douglas fir is 132. The main limitations for the management of timber on this unit are the hazard of windthrow and plant competition. If this unit is used for homesite development, the main limitations are slope and droughtiness in summer. Absorption lines should be installed on the contour. If this unit is used for pasture, the main limitation is droughtiness in summer. Supplemental irrigation is needed for maximum production. Sprinkler irrigation is a suitable method of applying water. If this unit is used for recreational development, the main limitation is steepness of slope. Slope may restrict some kinds of activities and increase the cost of constructing facilities.**
- **8E-Bullards sandy loam, 30 to 50 percent slopes. This unit is used mainly for timber production and wildlife habitat. It is also used for recreation. On the basis of a 100-year site, curve, the mean site index for Douglas fir is 132. High winds from the Pacific Ocean may seriously limit the growth of trees unless they are in a protected area. The main limitations for the management of timber on this unit are steepness of slope, the hazard of erosion, the hazard of windthrow, and plant competition. If this unit is used for recreational development, the main limitations are slope and the hazard of erosion. Slope limits the use of areas of this unit mainly to a few paths and trails, which should extend across the slope.**
- **16-Dune land. This unit is used for recreation. The hazard of soil blowing and the instability of the areas limit the unit for most kinds of recreational development. It is suitable for low-intensity uses such as hiking and horseback riding and for off-road vehicle traffic.**
- **28-Heceta fine sand. This unit is used for recreation and wildlife habitat. If this unit is used for recreational development, the main limitation is wetness. Use of paths and trails may be limited to 2 or 3 months in summer.**

- **29B-Heceta-Waldport fine sands, 0 to 7 percent slopes.** This unit is used for recreation and wildlife habitat. If this unit is used for recreational development, the main limitations are wetness of the Heceta soil and the hazard of soil blowing on the Waldport soil. Use of this unit is restricted mainly to low-intensity types of recreation, such as hiking and horseback riding. The unit can also be used for other kinds of recreational activities that require a minimum of construction and soil disturbance.
- **34-Langlois silty clay loam.** This unit is used mainly for hay and pasture and for wildlife habitat. The vegetation in areas not cultivated is mainly Pacific willow, red alder, black cottonwood, and Sitka spruce. The understory vegetation is mainly slough sedge, soft rush, brown-headed rush, and skunkcabbage.
- **59D-Waldport fine sand, 0 to 30 percent slopes.** This unit is used mainly for timber production, wildlife habitat, and recreation. It is also used for homesite development. On the basis of a 100-year site curve, the mean site index for shore pine is 90. The main limitations for the management of timber on this unit are seedling mortality and plant competition. If this unit is used for recreational development, the main limitations are the hazard of soil blowing, the instability of the soil, and slope. Use of the unit is restricted to low-intensity types of recreation, such as hiking and horseback riding. If this unit is used for homesite development, the main limitations are the hazard of ground water pollution, slope, the hazard of soil blowing, and droughtiness in summer.
- **59E-Waldport fine sand, 30 to 70 percent slopes.** This unit for timber production and wildlife habitat. On the basis of a 100*year site curve, the mean site index for shore pine is 90. The main limitations for the management of timber on this unit are the hazard of erosion, seedling mortality, and plant competition.
- **60D-Waldport-Dune land complex, 12 to 30 percent slopes.** This unit is used for recreation and wildlife habitat. If this unit is used for recreational development, the main limitations are soil blowing and the instability of the soil.
- **61D-Waldport-Heceta fine sands, 0 to 30 percent slopes.** The Waldport soil in this unit is used mainly for timber production, and the Heceta soil is used mainly for wildlife habitat. The unit is also used for recreation. On the basis of a 100-year site curve, the mean site index for shore pine is 90 on the Waldport soil. If this unit is used for recreational development, the main limitations are the hazard of soil blowing, the instability of the Waldport soil, and the wetness of the Heceta soil.

On the smaller tract off of Hwy 101 there are four soil units.

Map Unit Legend

Map Unit Symbol	Map Unit Name	Acres In AOI	Percent of AOI
5A	Blacklock fine sandy loam, 0 to 3 percent slopes	4.5	17.1%
5B	Blacklock fine sandy loam, 3 to 7 percent slopes	0.0	0.1%
8B	Bullards sandy loam, 0 to 7 percent slopes	19.8	75.8%
8C	Bullards sandy loam, 7 to 12 percent slopes	1.8	6.9%
Totals for Area of Interest		26.1	100.0%

- **5A-Blacklock fine sandy loam, 0 to 3 percent slopes.** This unit is used mainly for timber production and wildlife habitat. It is also used for cranberry production and recreation. On the basis of a 100-year site curve, the mean site index for shore pine is 90. The main limitations for the management of timber on this unit are seasonal wetness and the hazard of windthrow. Irrigation and drainage are needed if the soil in this unit is intensively managed for cranberry production. If this unit is used for recreational development, the main limitations are wetness and the very slow permeability.
- **5B-Blacklock fine sandy loam, 3 to 7 percent slopes.** This unit is used mainly for timber production and wildlife habitat. It is also used for cranberry production and recreation. On the basis of a 100-year site curve, the mean site index for shore pine is 90. The main limitations for the management of timber on this unit are seasonal wetness and the hazard of windthrow. Irrigation and drainage are needed if the soil in this unit is intensively managed for cranberry production. If this unit is used for recreational development, the main limitations are wetness and the very slow permeability.
- **8B-Bullards sandy loam, 0 to 7 percent slopes.** This unit is used mainly for timber production, wildlife habitat, and homesite development. It is also used for pasture and recreation. On the basis of a 100-year site, curve, the mean site index for Douglas fir is 132. The main limitations for the management of timber on this unit are the hazard of windthrow and plant competition. If this unit is used for homesite development, the main limitations are slope and droughtiness in summer. Absorption lines should be installed on the contour. If this unit is used for pasture, the main limitation is droughtiness in summer. If this unit is used for recreational development, the main limitation is steepness of slope. Slope may restrict some kinds of activities and increase the cost of constructing facilities.
- **8C-Bullards sandy loam, 7 to 12 percent slopes.** This unit is used mainly for timber production, wildlife habitat, and homesite development. It is also used for pasture and recreation. On the basis of a 100-year site, curve, the mean site index for Douglas fir is 132. The main limitations for the management of timber on this unit are the hazard of windthrow and plant competition. If this unit is used for homesite development, the main limitations are slope and droughtiness in summer. Absorption lines should be installed on the contour. If this unit is used for pasture, the main limitation is droughtiness in summer. Supplemental irrigation is needed for maximum production. Sprinkler irrigation is a suitable method of applying water. If this unit is used for recreational development, the

main limitation is steepness of slope. Slope may restrict some kinds of activities and increase the cost of constructing facilities.

The soils seem to support mainly Forest, Farm (pasture and cranberries), Recreational and Wildlife Management. The applicant's stated:

CCCP Volume I, Part I Policy 5.4(8.) which allows changes in zoning districts from Forest to Agriculture and vice versa, provided that adequate findings are made supporting the request. The policy recognizes that "agriculture and forestry are closely related in Coos County because the land resource base is capable of and suitable for supporting both agricultural and forest uses and activities.

While the statement is factual Policy 5.4 is specific to Forest Land. Policy 5.3 covers Agricultural. The more important issue to address specific to the Comprehensive Plan is inventoried Agricultural Lands as covered in Volume 1, Part II, Section 3.1 Agricultural Lands – Inventory and Assessment. This section provides a detailed explanation regarding Agricultural and how the inventory was developed. The applicant did not provide this; however, the Planning Commission did not see evidence that the properties were suitable for forest practices.

In defining "Agricultural Land", Oregon Administrative Rules, Chapter 660, Division 5-Land Conservation and Development Commission has provided the following interpretation:

"AGRICULTURAL LAND" as defined in Goal #3 includes:

(a) Lands classified by the U.S. Soil Conservation Service (SCS) as predominantly Class I-IV Soils in Western Oregon and I-IV soils in Eastern Oregon;

(b) Other lands in different soil classes which are suitable for farm use as defined in ORS 215.203 (2)(a)², taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming practices; and

² As used in this section, "farm use" means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. "Farm use" includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. "Farm use" also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows. "Farm use" also includes the propagation, cultivation, maintenance and harvesting of aquatic, bird and animal species that are under the jurisdiction of the State Fish and Wildlife Commission, to the extent allowed by the rules adopted by the commission. "Farm use" includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection. "Farm use" does not include the use of land subject to the provisions of ORS chapter 321, except land used exclusively for growing cultured Christmas trees or land described in [ORS 321.267 \(Lands not eligible for special assessment\)](#) (3) or [321.824 \(Lands not eligible for special assessment\)](#)

(c) land which is necessary to permit farm practices to be undertaken on adjacent or nearby agricultural lands. In addition, counties may designate agricultural land as marginal land and allow those uses and land divisions on the designated marginal land as allowed by ORS 197.247.

Based on mixed results with the soils the applicant should further address how the other soils classes are suitable for farm use as defined in ORS 215.203 (2)(a)³, taking into consideration soil fertility; suitability for grazing; climatic conditions; existing and future availability of water for farm irrigation purposes; existing land use patterns; technological and energy inputs required; and accepted farming practices. Staff finds that the land use pattern can support the change. The Board of Commissioners may choose to accept these areas in the inventory if they find that this proposed areas for rezone could support farm uses as defined in ORS 215.203(2)(a). Staff suggests careful consideration of the smaller properties that are developed with dwellings or as it is not apparent to staff that they will meet the definition of farm use given it appears the primary use of these properties seem to be dwellings.

The applicant addresses the surrounding uses and explains how the property will remain compatible. The applicant has provided a detailed package to address the criteria. Staff recommends that the Commissioners find a change for Forest with a Mixed Overlay to Agricultural /Exclusive Farm Use won't change the compatibility.

The Planning Commission has recommended that the Board of Commissioners approve and adopt the proposed amendment rezone. If the Board of Commissioners is satisfied that the criteria have been satisfied they shall approve, approve with conditions referred to as qualifiers, or deny the proposed amendment rezone. Qualifiers may be necessary to limit uses, density or other conditions that the Board of Commissioners finds would make the rezone compatible with surrounding uses.

b. Oregon's Statewide Planning Goals & Guidelines Goals 3 and 4

- AGRICULTURAL LANDS Goal 3 defines "agricultural lands." It then requires counties to inventory such lands and to "preserve and maintain" them through farm zoning. Details on the uses allowed in farm zones are found in ORS Chapter 215 and in Oregon Administrative Rules, Chapter 660, Division 33.
- FOREST LANDS This goal defines forest lands and requires counties to inventory them and adopt policies and ordinances that will "conserve forest lands for forest uses."

PLANNING COMMISSIONERS RECOMMENDED FINDING: Just based on the summary of the statewide planning goals the properties do not seem to be conserving forest lands for forest uses. The properties do seem to be utilized for cranberry, open space and residential. Therefore, the Planning Commission found the applicant submitted testimony and evidence to support the rezone.