



STAFF REPORT

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

I. **AGENDA ITEM IV. ITEM A – FILE # AM-22-004/RZ-22-003**

REPORT DATE: July 03, 2024
FILE NUMBER: AM-22-004/RZ-22-003
APPLICANT: Richard and Kathleen Randol
STAFF CONTACT(S): Jill Rolfe, Coos County Community Development Director

SUMMARY PROPOSAL: The proposal is for a plan amendment to change the Comprehensive Plan Designation from Rural Residential-5 (RR-5) to Rural Residential-2 (RR-2). The zone map will be amended if approved from Rural Residential-5 to Rural Residential-2. The Subject Property is identified as Map Number Township 27S, Range 14W, Section 28B, Tax Lots 100, Tax Account Number 767200 and is located north of the City of Bandon off of Seven Devils Road. The property contains 13.60 acres.

REVIEW CRITERIA: The applicant will need to comply with:

- Coos County Zoning and Land Development Ordinance (CCZLDO)
 - Article 5.1 Plan Amendments and Rezones
- Coos County Comprehensive Plan
 - Volume I, Part I, Section 5.17 Housing,
 - Volume I, Part II, Section 4.5 Housing
 - Volume I, Part III Exceptions for Rural Housing
- Coos County Comprehensive Plan Maps #14 Zone Maps
- Oregon's Statewide Planning Goals & Guidelines Goals
 - 3 Agricultural Lands
 - 4 Forest Lands
 - 5 Natural Resources, Scenic and Historic Areas, and Open Spaces
 - 6 Air, Water and Land Resource Quality
 - 7 Areas Subject to Natural Hazards
 - 8 Recreational Needs
 - 9 Economic Development
 - 10 Housing
 - 11 Public Facilities and Services
 - 12 Transportation
 - 13 Energy Conservation
 - 14 Urbanization

PROPERTY DETAILS:

Account Number: 767200
Map Number: 27S1428B0-00100

Property Owner: RANDOL, RICHARD A & KATHLEEN B

Situs Address: 58643 SEVEN DEVILS RD BANDON, OR 97411

Acreage: 13.60 Acres

Zoning: RURAL RESIDENTIAL - 5 (RR-5)

I.I STAFF REPORT – WITH RECOMMENDATIONS AND PROPOSED FINDINGS

A. NOTICE REQUIREMENT: This application is a Plan Amendment governed by CCZLDO Section 5.0.900. The Post-Acknowledgment 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. This application has been continued multiple times based on the applicants' requests to address additional information raised in the staff report and by the DLCD. The applicant submitted a supplemental report and requested to move forward with this hearing at the end of April 2024. An amended notice was provided to the DLCD, and amended hearing notices have been published, mailed, and posted as required.

B. DETAILS AND BACKGROUND:

PROPOSAL: The applicants have requested an amendment to the official zoning designation from Rural Residential-5 to Rural Residential-2. This requires a plan amendment and consistency with both the Coos County Comprehensive Plan and the Statewide Planning Goals.

COOS COUNTY COMPREHENSIVE PLAN BACKGROUND: The Comprehensive Land Use Plan Map, or Comprehensive Plan Map, is a 2" = 1 mile map of Coos County that sets forth, as a matter of official policy, general designations of land use categories for various geographic areas within the County. These designations are the basis for zoning designations set forth in the Zoning and Land Development Ordinance.

The Comprehensive Plan Map was developed through an extensive process that involved evaluating development potential and making selections. This process defined various land use categories on the Plan Map and eventually led to the adoption of the final map. The development of a rational land use plan was a crucial step in this process, which included considering various alternative courses of action and choosing a preferred alternative based on well-reasoned policy decisions.

This section provided the reasoning behind each of the proposed land use alternatives and included some analysis of the land use categories' acreage within each alternative. These decisions were closely related to the "ultimate policy choices" outlined in the Plan Policies section. These policy choices dictated which alternative or combination of land use alternatives would be selected as the Comprehensive Plan map.

During the County's planning process, four different land use maps were developed and considered. Each of these alternatives represented a distinct approach to conservation and development philosophy. They underwent thorough discussion and scrutiny within Coos County's citizen involvement process. Public hearings were conducted early in the process to gather input from County citizens before proposing zoning maps.

This is a general description of the four alternatives:

- Alternative 1 – Status Quo: This option limited development to areas already developed.
- Alternative 2 – Citizens Proposal: This alternative maximized development.
- Alternative 3 – Goal Balancing: It aimed to balance the needs for growth in all zones while maintaining resource protection.
- Alternative 4 – Maximum Resource Protection: This option reduced development potential.

For more details, please refer to CCCP Volume 1 Part I.

The decision to select one of the alternatives was supported by findings of fact and conclusions of law.

These findings were based on identifying issues and problems, evaluating alternative courses of action, and making ultimate policy choices while considering social, economic, energy, and environmental needs, as defined by Statewide Planning Goal #2, Land Use Planning.

Once the alternatives were completed the selection of the appropriate alternative against the following criteria:

- i. Best addresses citizen involvement and expressed citizen desires by attempting to legally satisfy citizens' requests through appropriate land use designations.
- ii. Best addresses the Statewide Land Use Goals and attempts to satisfy local needs and recognize local conditions, while remaining within the intent and spirit of State law.
- iii. Does not emphasize one Goal or set of familiar Goals to the detriment of another Goal or set of similar Goals.

The chosen alternative had to be the one that, in balance, best satisfied all three of the above criteria. The Board of Commissioners opted for Alternative #3, the "goal-balancing" alternative, as the most suitable option based on the criteria previously discussed. Since its adoption in January 1983, adjustments were made to the land use allocations by plan designations in response to both LCDC's initial review critique and input from citizens and agencies during the County's public hearings and comments process.

The following land use designations are those approved by the County Planning Commission for use in developing alternative plan maps for all unincorporated areas except the Coos Bay and Coquille Estuary study areas. ***

RURAL RESIDENTIAL - These are justified sites plus "committed" areas. The County's plan prescribes and allocates a finite number of rural dwelling/units/acreage. The zoning ordinance will specify permitted uses and minimum lot sizes. Two- and five-acre zones are the minimum lot sizes and are identified on the zoning map, adopted by the Comprehensive Plan.

Coos County went through an exception process to justify Rural Residential Zoning. This conclusion is supported by reasons, findings and conclusions made for each of 103 study areas as shown in Appendix B of the Comprehensive Plan's Housing Inventory, as modified by the findings in Appendix C of the Housing Inventory. The individual findings and conclusions for each study area result from a careful analysis of factors (a) through (g) of OAR 660-04-028(2)(d). The justification provided for 21,742 acres of Rural Residential Zoned property. OAR 660-04-028(2)(d) references OAR 660-004-0028(6) which where factor (a) through (g) are found. *See below*

660-004-0028

Exception Requirements for Land Irrevocably Committed to Other Uses

6) Findings of fact for a committed exception shall address the following factors:

- (a) Existing adjacent uses;*
- (b) Existing public facilities and services (water and sewer lines, etc.);*
- (c) Parcel size and ownership patterns of the exception area and adjacent lands:*

(A) Consideration of parcel size and ownership patterns under subsection (6)(c) of this rule shall include an analysis of how the existing development pattern came about and whether findings against the goals were made at the time of partitioning or subdivision. Past land divisions made without application of the goals do not in themselves demonstrate irrevocable

commitment of the exception area. Only if development (e.g., physical improvements such as roads and underground facilities) on the resulting parcels or other factors makes unsuitable their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed. Resource and nonresource parcels created and uses approved pursuant to the applicable goals shall not be used to justify a committed exception. For example, the presence of several parcels created for nonfarm dwellings or an intensive commercial agricultural operation under the provisions of an exclusive farm use zone cannot be used to justify a committed exception for the subject parcels or land adjoining those parcels.

(B) Existing parcel sizes and contiguous ownerships shall be considered together in relation to the land's actual use. For example, several contiguous undeveloped parcels (including parcels separated only by a road or highway) under one ownership shall be considered as one farm or forest operation. The mere fact that small parcels exist does not in itself constitute irrevocable commitment. Small parcels in separate ownerships are more likely to be irrevocably committed if the parcels are developed, clustered in a large group or clustered around a road designed to serve these parcels. Small parcels in separate ownerships are not likely to be irrevocably committed if they stand alone amidst larger farm or forest operations, or are buffered from such operations;

(d) Neighborhood and regional characteristics;

(e) Natural or man-made features or other impediments separating the exception area from adjacent resource land. Such features or impediments include but are not limited to roads, watercourses, utility lines, easements, or rights-of-way that effectively impede practicable resource use of all or part of the exception area;

(f) Physical development according to OAR 660-004-0025; and

(g) Other relevant factors.

The study is further explained in Volume 1 Part I of the Coos County Comprehensive Plan Section 5.5. There are three types of categories that were considered in the Rural Residential inventory. The three types of land categories in Coos County theoretically capable of providing physical space for the areas of rural residential housing without the taking of a new exception. The following lists each area and describes why the particular area cannot accommodate rural residential uses.

- (i) Nonresource lands. These lands generally occur in a narrow strip of land paralleling the coastline, and are composed largely of active foredunes and conditionally stabilized dunes. These lands cannot physically accommodate rural residential housing primarily for three reasons: (1) such areas will often be either unsuitable or of limited suitability for development as regulated by Goal #18, and thus would require the taking of a different kind of exception; (2) the size of suitable areas is therefore expected to be extremely small; and (3) the areas are often either inaccessible or

would require extensive and costly road construction across agricultural and forest lands to provide access. All other lands in Coos County are believed by the Department of Revenue to be capable of forest production (approximately 81% of Coos County, or 847,000 acres, is designated commercial forest land).

- (ii.) Irrevocably committed lands. Suitable vacant land within committed areas totals only 5300 acres, and has been considered as available to help reduce the amount of the total rural residential exception acreage. However, forcing remaining rural residential needs to occur within committed areas could require a very costly extension of public sewer and water to such areas because of the resulting "urban" density that would be forced on to the committed areas. This seems especially wasteful because individual septic systems are sufficient to handle the demand and, through regulation by the Department of Environmental Quality, are expected to continue to be sufficient during the planning period. Worse, the extension of such services would contravene the intent of the Plan to provide urban level services to urban areas. Instead, rural lands would be forced to become urban.
- (iii.) Cities and urban growth areas (UGAs). Cities are now proposed to have an increasing (rather than constant) share of total population growth. Also, UGAs have been earmarked for a greater percentage of unincorporated growth than in the previous acknowledgment effort. LCDC has acknowledged the County's cities and their UGAs based on the same coordinated population projections that show added (declining share) rural growth. Cities and UGA's by definition do not provide the rural living experience nor meet the reasons expressed in a previous section that justify not applying

This property was included in the original land inventory for Rural Residential and designated as Rural Residential-5 on the Zoning Plan Map. The request is to amend the Zoning Map from Rural Residential-5 to Rural Residential-2.

According to the Department of Land Conservation and Development: Oregon's statewide planning program conserves rural land for farming and forestry, protects natural resources and wildlife habitat, and allows development in appropriate places. The program discourages "sprawling" development that takes place outside an urban growth boundary. However, rural development is permitted under certain circumstances. A county decides where rural development should be allowed by following what is called the "exceptions process." Rural residential, recreational, commercial, and industrial zones (in "exception areas") allow development in certain rural areas. All rural development is overseen by the counties.

The term "rural" means different things to different people. However, in the Oregon's statewide planning program, "rural land" is, generally, land outside of an urban growth boundary. (Land inside of an urban growth boundary is never considered "rural".) "Rural use" is harder to define; but the Land Conservation and Development Commission has listed allowed rural uses in its administrative rules.

Statewide Planning Goal 14, Urbanization, limits new urban uses outside of urban growth boundaries. Urban growth boundaries have been a key component of the planning program as they prevent sprawl of urban uses across the rural landscape. Statewide Planning Goal 11, Public Facilities and Services limits extension of urban services such as sewerage to areas outside of urban growth boundaries in order to lessen demand for urban development in rural areas.

Exception areas zoned for rural residential use are subject to their own rule. As introduced above, Goal 14 limits urban development outside urban growth boundaries, and the rule implementing Goal 14 for rural residential areas specifies the level of development a county may allow without the area becoming urbanized. The level of development is regulated by the minimum parcel size for creation of new parcels and limiting parcels to one dwelling.

For exception areas that existed before the rule went into effect on October 4, 2000, the smallest minimum parcel size allowed by rule was designated by local comprehensive plans, provided it was two acres or larger. Currently, counties are prohibited from allowing the creation of new parcels smaller than two acres, outside of an urban designation but this does not apply to existing parcels. For a new rural exception area, the minimum parcel size must be at least 10 acres, with allowance for clustering. This rule only applies to the creation of new parcels; existing parcels are allowed one dwelling regardless of size.

The rule for rural residential zoning, OAR 660-004-0040, establishes that, for residential zoning, "rural use" means one dwelling per 10 acres.

The applicant will need to provide evidence and legal argument that will support the less than the current parcel size of five (5) acres in order for the Planning Commission to make a recommendation to the Board of Commissioners.

On December 6, 2023 a letter was received from Department of Land Conservation and Development regarding the proposal.

Dear Director Rolfe,

Thank you for providing an opportunity to comment on the zone change proposal, assigned FILE # AM-22-004/RZ-22-003. Based on the provided materials, it is our understanding that the subject property consists of a single parcel of approximately 13.60 acres in size.

It is our understanding that the subject property is part of a rural residential exception area designated "Rural Residential" in the Coos County Comprehensive Plan. The effective zoning for the subject property is Rural Residential-5 (RR-5), which requires a minimum of five acres for new land divisions. The applicants are proposing to re-zone the subject property from RR-5 to RR-2, which requires a minimum of two acres for new land divisions. Thus, the zone change could result in future subdivision of the land into up to 6 two-acre lots.

The materials provided for our review address standards and criteria in the Coos County Comprehensive Plan and Zoning and Land Development Ordinance. These materials also address Statewide Planning Goal 14 (Urbanization) by describing local policies for designating minimum parcel sizes and offering why the applicants believe the property would remain rural under the proposed RR-2 zoning. The materials also assert that a Goal 14 exception is not necessary.

The department respectfully disagrees regarding the proper application of Goal 14. It is our position that a Goal 14 exception is necessary in this case. While the effective zoning of RR-5 is consistent with the provisions of OAR 660-004-0040(6) and is deemed compliant with Goal 14, changing the effective zoning to RR-2, which would amend the applicable requirements regarding minimum parcel size to allow a greater amount of development, triggers OAR 660-004-0040(7). Please see the referenced sections of OAR 660-004-0040 below:

- (6)(a) A rural residential zone in effect on October 4, 2000 shall be deemed to comply with Goal 14 if that zone requires any new lot or parcel to have an area of at least two acres, except as required by section (8) of this rule.*
- (b) A rural residential zone does not comply with Goal 14 if that zone allows the creation of any new lots or parcels smaller than two acres. For such a zone, a*

local government must either amend the zone's minimum lot and parcel size provisions to require a minimum of at least two acres or take an exception to Goal 14. Until a local government amends its land use regulations to comply with this subsection, any new lot or parcel created in such a zone must have an area of at least two acres.

(7) After October 4, 2000, a local government's requirements for minimum lot or parcel sizes in rural residential areas shall not be amended to allow a smaller minimum for any individual lot or parcel without taking an exception to Goal 14 pursuant to OAR chapter 660, division 14, and applicable requirements of this division.

Again, thank you for this opportunity to comment. It is our recommendation that the subject property retain the existing and effective RR-5 zoning at this time unless the applicant submits and the county approves an exception to Goal 14 as authorized by OAR 660-014.

This letter was provided to the applicant and on December 7, 2023 the applicant requested additional time to address DLCD concerns. The supplemental response provide includes additional justification regarding Goal 14.

LOCATION AND SURROUNDING USES: The subject property is located approximately six (6) miles northeast of the City of Bandon. The property is accessed directly off from Seven Devils Road, which is a county designated major collector. Seven Devils Road directly connects to Highway 101. The subject property is located approximately ¼ mile south of the intersection of Whiskey Run and Seven Devils Road, on the east side of the road.

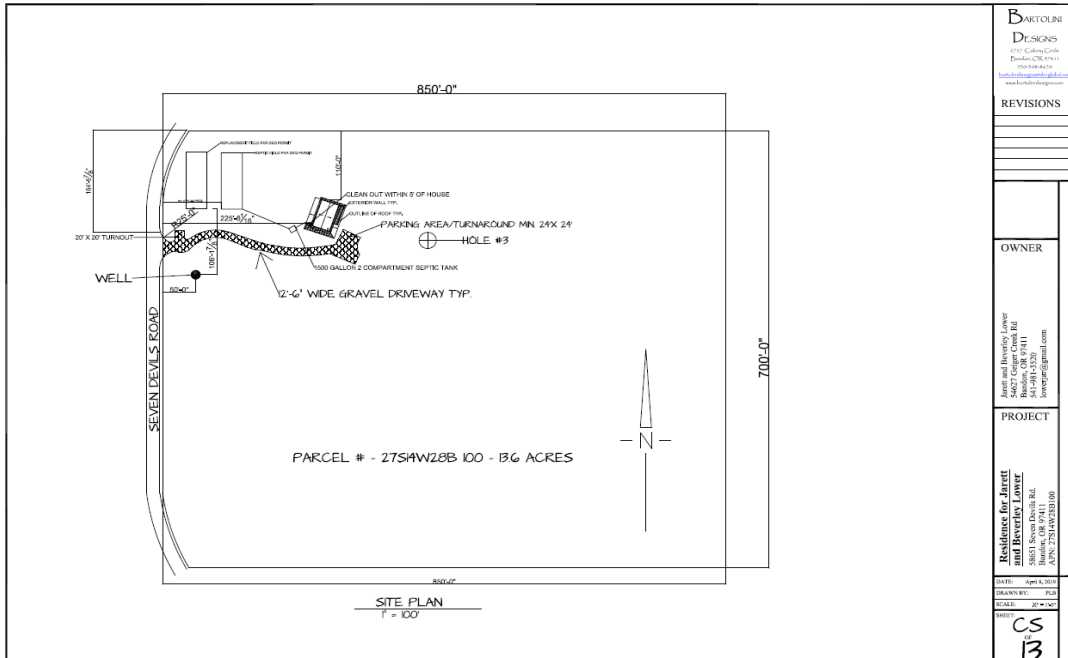
Major geographic reference features in this part of the County are Bandon Dunes Golf Resort, located ½ mile west of the subject property, and approximately ½ mile east is the Coos County Forest. The Coos County Forest is a 15,000-acre tract of County owned forestland that is primarily used for commercial timber harvesting.

PROPERTY HISTORY: The subject property was approved for one dwelling.

On March 14, 2019, there was a Zoning Compliance Letter (ZCL-19-084) issued for septic site evaluation only. On October 22, 2019, there was a Zoning Compliance Letter (ZCL-19-343) issued for a Single Family Dwelling and to request a DEQ permit for septic installation. A building permit was issued but this has expired without completion. The DEQ records are attached to this report (Attachment B).

On March 11, 2021 a pre-application meeting was held. The request was to change the zoning from Rural Residential-5 (RR-5) to Rural Residential (RR-2). During the meeting it was explained that in order to change the current zoning a new exception would be required to the Statewide Planning Goals similar to the original process the property went through to be zoned RR-5.

More details on the property zoning and exception process will be explained under the criteria for a rezone. The proposed development site plan (screenshot) was provided during the pre-application process:



ZONING: The subject property is currently zoned Rural Residential-5.

SECTION 4.2.100 RESIDENTIAL Rural Residential (RR)

There are two RR zonings: Rural Residential-5 (RR-5) and Rural Residential-2 (RR-2). The intent of the Rural Residential Districts includes justified sites plus "committed" areas. The County's plan prescribes and allocates a finite number of rural dwelling/units/acreage. The zoning ordinance will specify permitted uses and minimum lot sizes.

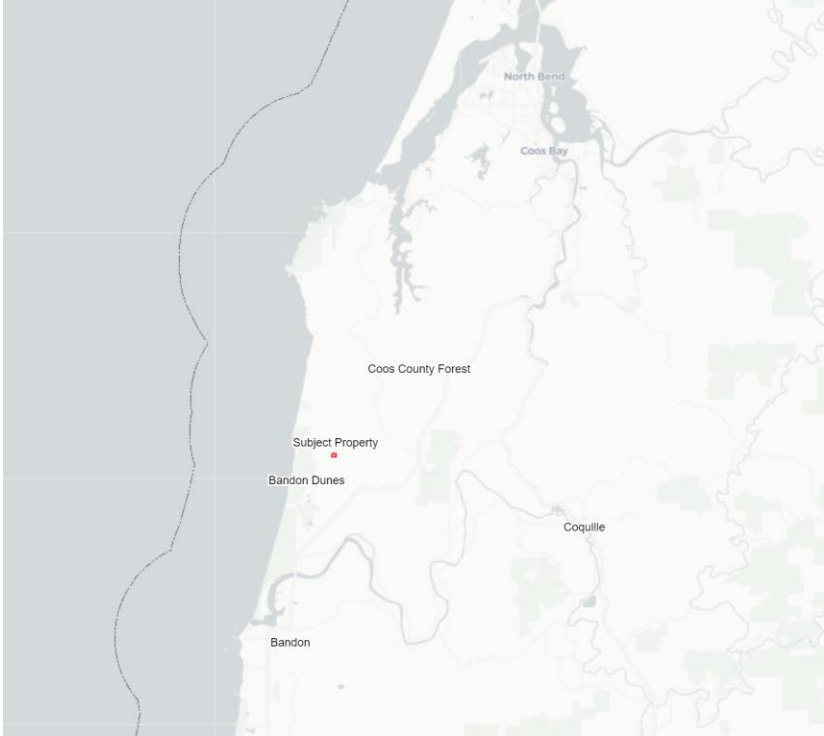
The purpose of the "RR-2" and "RR-5" districts are to provide for small to medium acreage dwelling sites outside of Urban Growth Boundaries, where a moderate intensity of land development is appropriate, but where urban services and facilities may not be available or necessary.

The "RR-2" district provides for continued existence of rural family life and to provide a transition of densities between urban development and exclusive agricultural and forestry uses.

The "RR-5" district provides for the orderly development of rural land so as to encourage the continued existence of rural family life and to provide a transition of densities between urban development and exclusive agricultural or forestry uses.

SITE DESCRIPTION: The subject property is a 13.60-acre parcel. The parcel is currently covered in forest vegetation with cleared areas in preparation for development. There is Forest zoned parcels located on the eastern side of the subject property. South and West of the subject property are Rural Residential-5 zoned parcels. There are Rural Residential-2 zoned parcels directly North of the subject property.

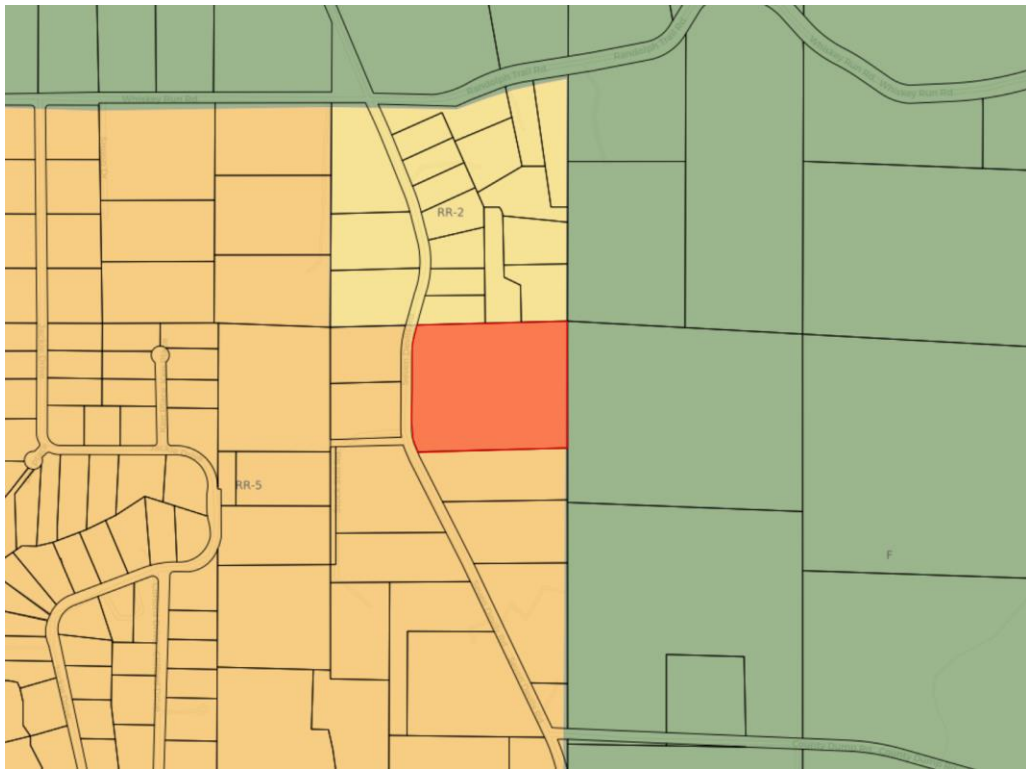
**MAPS NOT TO SCALE
OVERVIEW MAP**



SUBJECT PROPERTY MAPS



ZONE MAP





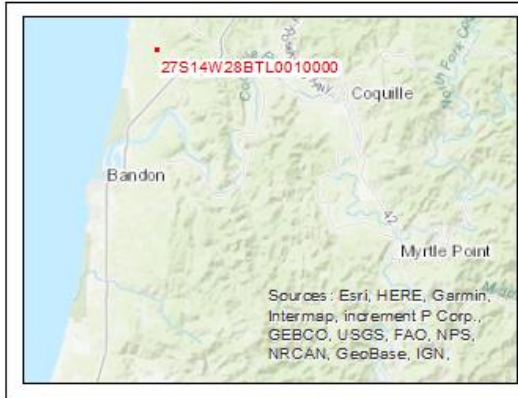
COOS COUNTY PLANNING DEPARTMENT

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

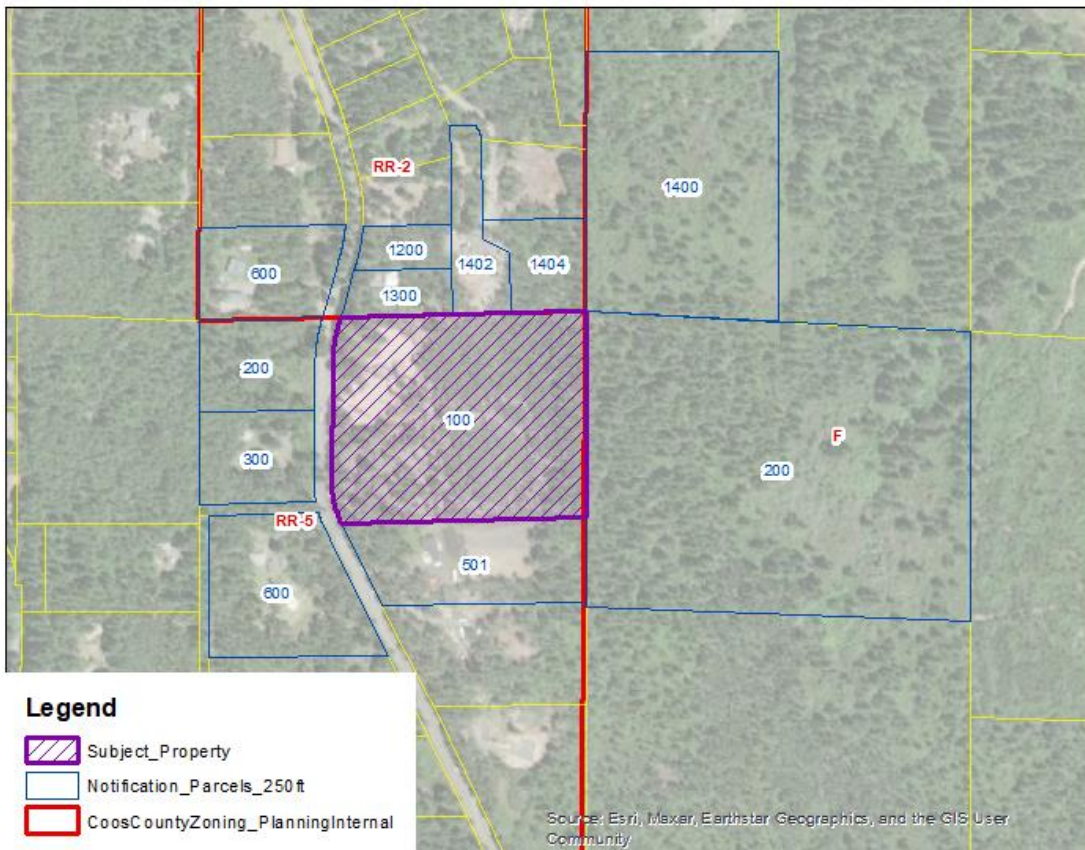
Physical Address: 60 E. Second, Coquille Oregon

Phone: (541) 396-7770

TDD (800) 735-2900



File: AM-22-004/RZ-22-003
 Owner: Richard and Kathleen Randol
 Date: February 8, 2023
 Location: Township 27S Range 14W
 Section 28B TL 100
 Proposal: Amendment/Rezone



C. COMMENTS RECEIVED: A pre-application was held and the following comments were received during that process:

- i. **County Road Department:** Road standards will only be applied at the time of the land division to create lots.
- ii. **County Health Department:** The EH office has no prohibition regarding the proposed property zoning, but will advise:

There is importance for personal health in testing a private water source supplying a residence for at least the contaminants Total Coliforms (any present), Nitrates (10 mg/L) and Arsenic (0.010 mg/L). The values in parenthesis would represent levels of concern and immediate action for a public water system.

D. GENERAL PROPERTY AND APPLICATION COMPLIANCE:

1. **COMPLIANCE PURSUANT TO SECTION 1.1.300:** It shall be unlawful for any person, firm, or corporation to cause, develop, permit, erect, construct, alter or use any building, structure or parcel of land contrary to the provisions of the district in which it is located. No permit for construction or alteration of any structure shall be issued unless the plans, specifications, and intended use of any structure or land conform in all respects with the provisions of this Ordinance, unless approval has been granted by the Hearings Body.

FINDING: At this time the property has not completed the building process as applied for the building permit has expired. Compliance is unable to be determined at this time but that is a separate issue and can be addressed through a separate process.

2. SECTION 6.1.125 LAWFULLY CREATED LOTS OR PARCELS:

“Lawfully established unit of land” means:

1. The unit of land was created:

- a. *Through an approved or pre-ordinance plat;*
- b. *Through a prior land use decision including a final decision from a higher court. A higher court includes the Land Use Board of Appeals;*
- c. *In compliance with all applicable planning, zoning and subdivision or partition ordinances and regulations at the time it was created.*
- d. *By a public dedicated road that was held in fee simple creating an interviewing ownership prior to January 1, 1986;*
- e. *By deed or land sales contract, if there were no applicable planning, zoning or subdivision or partition ordinances or regulations that prohibited the creation.*
- f. *By the claim of intervening state or federal ownership of navigable streams, meandered lakes or tidewaters. “Navigable-for-title” or “title-navigable” means that ownership of the waterway, including its bed, was passed from the federal government to the state at statehood. If a waterway is navigable-for-title, then it also is generally open to public use for navigation, commerce, recreation, and fisheries.*

STAFF FINDING: The unit of land was created pursuant to Section 6.1.125.1.e by deed or land sales contract, provided there were no applicable planning, zoning, subdivision, or partition ordinances or regulations that prohibited the creation. Therefore, staff concludes that the property is a lawfully created lot. The subject property was originally deeded out and created by County Clerk #77-12-20470.

SECTION 7.1.250 MATERIALS REQUIRED FOR AN APPLICATION:

A traffic plan (item 1) will be required for all rezones, recreational vehicle parks, campgrounds, mobile home parks, land divisions, industrial developments, commercial developments and high intensity development plans. The Roadmaster in consultation with the Planning Director will have discretion to waive items 2 through 4 based on the findings that the increase in development is diminimus to the existing development.

1. *Traffic Plan - A parking/traffic plan shall be submitted to address all of the following:*
 - a. *Property boundaries;*
 - b. *Location of all structures on the subject property;*
 - c. *Required parking spaces;*
 - d. *Current utilities and proposed utilities;*
 - e. *Roadmaster may require drawings and specs from the Oregon Standards Specification Manual (OSSC) (current edition);*
 - f. *The location and design of bicycle and pedestrian facilities shall be indicated on the site plan if applicable;*
 - g. *Pedestrian access and circulation will be required if applicable. Internal pedestrian circulation shall be provided in new commercial, office, and multi-family residential developments through the clustering of buildings, construction of walkways, landscaping, accessways, or similar techniques;*
 - h. *All plans (industrial and commercial) shall clearly show how the internal pedestrian and bicycle facilities of the site connect with external existing or planned facilities or systems;*
 - i. *Location of existing and proposed access point(s) on both sides of the road where applicable;*
 - j. *Distances to neighboring constructed access points, median openings (where applicable), traffic signals (where applicable), intersections, and other transportation features on both sides of the property;*
 - k. *Number and direction of lanes to be constructed on the road plus striping plans;*
 - l. *All planned transportation features (such as sidewalks, bikeways, auxiliary lanes, signals, etc.); and*
 - m. *Parking and internal circulation plans including walkways and bikeways, in UGB's and UUC's.*

STAFF FINDING: Staff notified the applicant that Section 7.1.250 was missing from the initial application. The applicant provided an email response on January 18, 2023. The Roadmaster has not directly responded but during the pre-application meeting the Roadmaster stated that given the size of the property and the potential increase it not enough of a change to require items 2 through 4. Therefore, the increase in development is de minimums to the existing development and will not change enough to cause an increase in traffic that would change the category of Seven Devils Road. Traffic impacts will be covered later in the report. Therefore, this has been addressed.

E. ARTICLE 5.1 REZONES

- **SECTION 5.1.100 LEGISLATIVE AMENDMENT OF TEXT ONLY:**

An amendment to the text of this ordinance or the comprehensive plan is a legislative act within the authority of the Board of Commissioners. [OR 04 12 013PL 2/09/05]

STAFF FINDING: The application is not for a text amendment. Therefore, this criterion is not applicable.

- **SECTION 5.1.110 WHO MAY SEEK CHANGE:**

Coos County shall consider the appropriateness of legislative plan text and map amendment proposals upon:

1. A motion by the Board of Commissioners; or
2. A motion of the Planning Commission; or
3. The submission of formal request made by either:
 - a. The Citizen Advisory Committee; or
 - b. An application filed by a citizen or organization, accompanied by a prescribed filing fee. If a Measure 56 notice is required the applicant shall be responsible for the payment of all cost associated with that service.

STAFF FINDING: The application was submitted by the landowners. Therefore, this application is being reviewed by 3b. This application does not trigger a Measure 56 notice. Therefore, this has been addressed.

• **SECTION 5.1.115 ALTERATION OF A RECOMMENDED AMENDMENT BY THE PLANNING DIRECTOR:**

The Planning Director may recommend an alteration of a proposed amendment if, in the director's judgment, such an alteration would result in better conformity with any applicable criteria. The Planning Director shall submit such recommendations for an alteration to the Hearings Body prior to the scheduled public hearing for a determination whether the proposed amendment should be so altered.

STAFF FINDING: The Planning Director does not request to amend the proposal.

• **SECTION 5.1.120 PROCEDURE FOR LEGISLATIVE AMENDMENT:**

The Board of Commissioners shall conduct one or more public hearings with 10 days advance published notice of each of the hearings. The public notice shall state the time and place of the hearing and contain a statement describing the general subject matter of the ordinance under consideration. (ORS 215.060 & ORS 215.223). Notice to DLCD shall be provided 35 days prior to the initial hearing per ORS 197.610. Notice of adoption is subject to ORS 197.615. [OR 04 12 013PL 2/09/05]

STAFF FINDING: Staff has published and mailed notices as required. The notices in ORS 197.610 requires the county to present the proposal for amendment with text to reasonable describe the proposed change. The proposed change is a map amendment. The findings provided from the applicants have changed but that does not require a new notice to DLCD under ORS 197.610. see *Jody McCaffree v. Coos Cuntly LUBA No. 2018-132*. Therefore, this section has been complied with.

• **SECTION 5.1.125 MINOR TEXT CORRECTIONS:**

The Director may correct this ordinance or the Comprehensive Plan without prior notice or hearing, so long as the correction does not alter the sense, meaning, effect, or substance of any adopted ordinance. [OR 04 12 013PL 2/09/05]

STAFF FINDING: This is not applicable to this request.

• **SECTION 5.1.130 NEED FOR STUDIES:**

The Board of Commissioners, Hearings Body, or Citizen Advisory Committee may direct the Planning Director to make such studies as are necessary to determine the need for amending the text of the Plan

and/or this Ordinance. When the amendment is initiated by application, such studies, justification and documentation are a burden of the initiator.

STAFF FINDING: This application was initiated by the applicants and it their responsibility to provide the studies, justification and documentation to meet the burden of proof. This section has been addressed.

- **SECTION 5.1.135 STATUS OF HEARINGS BODY RECOMMENDATIONS TO THE BOARD OF COMMISSIONERS:**

A Hearings Body recommendation for approval or approval with conditions shall not in itself amend this Ordinance or constitute a final decision.

STAFF FINDING: The Hearings Body will make a recommendation to the Board of Commissioners.

- b. 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.

STAFF FINDING: This will allow for changes to the uses that apply to the property. The change is in the density requirements of the development standards. Therefore, this is consider a rezone and the section has been addressed.

- i. 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.

STAFF FINDING: The Planning Director does not recommend an expansion of the geographic limits set forth in the application. Therefore, this section has been addressed.

- ii. 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.

STAFF FINDING: This is not within the interior of the of the Exclusive Farm Zone. Therefore, this section is not applicable.

- iii. 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.*

STAFF FINDING: The application was filed on December 8, 2022, and the 35-day notice was provided to DLCD on January 11, 2023. After several continuances, the applicant requested the proposal be placed on hold until additional information could be provided. The applicant submitted the additional information at the end of April 2024.

The Planning Director reviewed the application and supplemental information and has provided a staff report with findings. This request is not subject to a 150-day timeline and was able to be accommodated. The application, staff report, and any comments are provided to the Planning Commission seven days prior to the hearing. At the hearing, the Planning Commission will make a recommendation in accordance with Section 5.1.225. The Board of Commissioners will review the recommendation in a subsequent hearing. Therefore, the process is being followed as required by Section 5.1.220.

iv. 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.*

STAFF FINDING: The application is required to conform to the Comprehensive Plan. To determine this, it is necessary to review how the property was originally zoned and the steps to zone a property as Rural Residential-2. The Planning Commission can recommend to the Board of Commissioners that the proposal either conforms to the Coos County Comprehensive Plan, conforms with conditions (qualifiers), or does not conform and should be denied.

For historical perspective, Rural Residential Exceptions were part of a broader housing discussion in the Comprehensive Plan. They were designed to provide for transitional lands, acting as a bridge from Farm and Forest to Urban, or to identify lands that were not viable for commercial farm or forest use and were already committed to other uses (in this case, residential). Rural Residential exception land is not viable for farm or forest use due to several factors, including adjacent uses, size, location, soils, commercial enterprise, and resource management. These properties are not included in a housing needs analysis, which focuses on urban and urbanizable lands. Therefore, a housing need does not justify rural residential zoning; rather, a non-resource rezone or commitment to other uses is the path for justification.

Definition from the 1975 original goals¹:

```
RURAL LAND: Rural lands are those which are outside the
urban growth boundary and are:
(a) Non-urban agricultural, forest or open space lands or,
(b) Other lands suitable for sparse settlement, small
farms or acreage homesites with no or hardly any
public services, and which are not suitable,
necessary or intended for urban use.
```

Even though there have been some modifications over the years to goals and Land Use Board of Appeals (LUBA) cases (case law) that have changed the implementation of these goals, the process remains very similar. A justification is required through the exception process to change the density or zoning of a property.

The Coos County Comprehensive Plan Volume 1 Balance of County is the appropriate portion of the comprehensive plan that pertains to this property, as the property is not in one of the estuary plans. To determine compliance, the county will need to go through the same process that was used to determine the original zoning and like zoning.

The subject property was originally designated as Rural Residential and zoned Rural Residential-5 (RR-5). While in a pre-existing rural housing exception area, the property was analyzed at a density of

¹ History of Land Use <https://www.oregon.gov/lcd/OP/Pages/History.aspx>

one dwelling per five acres. The applicant is requesting a zone change from RR-5 to Rural Residential-2 (RR-2), which represents an increase in density by an average factor of 2.5. The property was already determined to be non-resource land and was included in the committed rural housing exception area.

The original criteria used to go through the exception process were based on OAR 660-004-025 and 660-004-028. Below is the language from the relevant OAR, followed by the factors used to determine compliance.

Exception Requirements for Land Physically Developed to Other Uses

(1) A local government may adopt an exception to a goal when the land subject to the exception is physically developed to the extent that it is no longer available for uses allowed by the applicable goal. Other rules may also apply, as described in OAR 660-004-0000(1).

(2) Whether land has been physically developed with uses not allowed by an applicable goal will depend on the situation at the site of the exception. The exact nature and extent of the areas found to be physically developed shall be clearly set forth in the justification for the exception. The specific area(s) must be shown on a map or otherwise described and keyed to the appropriate findings of fact. The findings of fact shall identify the extent and location of the existing physical development on the land and can include information on structures, roads, sewer and water facilities, and utility facilities. Uses allowed by the applicable goal(s) to which an exception is being taken shall not be used to justify a physically developed exception.

660-004-0028

Exception Requirements for Land Irrevocably Committed to Other Uses

(1) A local government may adopt an exception to a goal when the land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable:

(a) A "committed exception" is an exception taken in accordance with ORS 197.732(2)(b), Goal 2, Part II(b), and with the provisions of this rule, except where other rules apply as described in OAR 660-004-0000(1).

(b) For the purposes of this rule, an "exception area" is that area of land for which a "committed exception" is taken.

(c) An "applicable goal," as used in this rule, is a statewide planning goal or goal requirement that would apply to the exception area if an exception were not taken.

(2) Whether land is irrevocably committed depends on the relationship between the exception area and the lands adjacent to it. The findings for a committed exception therefore must address the following:

(a) The characteristics of the exception area;

(b) The characteristics of the adjacent lands;

(c) The relationship between the exception area and the lands adjacent to it; and

(d) The other relevant factors set forth in OAR 660-004-0028(6).

(3) Whether uses or activities allowed by an applicable goal are impracticable as that term is used in ORS 197.732(2)(b), in Goal 2, Part II(b), and in this rule shall be determined through consideration of factors set forth in this rule, except where other rules apply as described in OAR 660-004-0000(1).

Compliance with this rule shall constitute compliance with the requirements of Goal 2, Part II. It is the purpose of this rule to permit irrevocably committed exceptions where justified so as to provide flexibility in the application of broad resource protection goals. It shall not be required that local

governments demonstrate that every use allowed by the applicable goal is "impossible." For exceptions to Goals 3 or 4, local governments are required to demonstrate that only the following uses or activities are impracticable:

- (a) Farm use as defined in ORS 215.203;*
 - (b) Propagation or harvesting of a forest product as specified in OAR 660-033-0120; and*
 - (c) Forest operations or forest practices as specified in OAR 660-006-0025(2)(a).*
- (4) A conclusion that an exception area is irrevocably committed shall be supported by findings of fact that address all applicable factors of section (6) of this rule and by a statement of reasons explaining why the facts support the conclusion that uses allowed by the applicable goal are impracticable in the exception area.*
- (5) Findings of fact and a statement of reasons that land subject to an exception is irrevocably committed need not be prepared for each individual parcel in the exception area. Lands that are found to be irrevocably committed under this rule may include physically developed lands.*
- (6) Findings of fact for a committed exception shall address the following factors:*
- (a) Existing adjacent uses;*
 - (b) Existing public facilities and services (water and sewer lines, etc.);*
 - (c) Parcel size and ownership patterns of the exception area and adjacent lands:*
 - (A) Consideration of parcel size and ownership patterns under subsection (6)(c) of this rule shall include an analysis of how the existing development pattern came about and whether findings against the goals were made at the time of partitioning or subdivision. Past land divisions made without application of the goals do not in themselves demonstrate irrevocable commitment of the exception area. Only if development (e.g., physical improvements such as roads and underground facilities) on the resulting parcels or other factors makes unsuitable their resource use or the resource use of nearby lands can the parcels be considered to be irrevocably committed. Resource and nonresource parcels created and uses approved pursuant to the applicable goals shall not be used to justify a committed exception. For example, the presence of several parcels created for nonfarm dwellings or an intensive commercial agricultural operation under the provisions of an exclusive farm use zone cannot be used to justify a committed exception for the subject parcels or land adjoining those parcels.*
 - (B) Existing parcel sizes and contiguous ownerships shall be considered together in relation to the land's actual use. For example, several contiguous undeveloped parcels (including parcels separated only by a road or highway) under one ownership shall be considered as one farm or forest operation. The mere fact that small parcels exist does not in itself constitute irrevocable commitment. Small parcels in separate ownerships are more likely to be irrevocably committed if the parcels are developed, clustered in a large group or clustered around a road designed to serve these parcels. Small parcels in separate ownerships are not likely to be irrevocably committed if they stand alone amidst larger farm or forest operations, or are buffered from such operations;*
 - (d) Neighborhood and regional characteristics;*
 - (e) Natural or man-made features or other impediments separating the exception area from adjacent resource land. Such features or impediments include but are not limited to roads, watercourses, utility lines, easements, or rights-of-way that effectively impede practicable resource use of all or part of the exception area;*
 - (f) Physical development according to OAR 660-004-0025; and*
 - (g) Other relevant factors.*

(7) The evidence submitted to support any committed exception shall, at a minimum, include a current map or aerial photograph that shows the exception area and adjoining lands, and any other means needed to convey information about the factors set forth in this rule. For example, a local government may use tables, charts, summaries, or narratives to supplement the maps or photos. The applicable factors set forth in section (6) of this rule shall be shown on the map or aerial photograph.

➤ **Existing Exception Area and Background:**

It is important to remember that while the effective zoning of RR-5 is consistent with the provisions of OAR 660-004-0040(6) and is deemed compliant with Goal 14, changing the effective zoning to RR-2, which would amend the applicable requirements regarding minimum parcel size to allow a greater amount of development, triggers OAR 660-004-0040(7).

The subject property is part of a committed rural housing exception area. This exception is included in Volume 1, Part 3 of the Coos County Comprehensive Plan. Below is the text and map area of the exception.

*Coos County Comprehensive Plan Volume 1 Part 3
Section 5 Rural Housing Exception Statement*

5.1 INTRODUCTION

5.1.1 Purpose:

To justify the continued provision of rural housing opportunities in areas containing agricultural or forest soils but which are no longer suitable or otherwise available for agricultural and forest uses.

5.1.2 Exception Criteria:

When a local government determines that there are reasons to use resource lands for uses not allowed by a specified goal or goals, the local government must provide justification for its determination by adopting an exception to the applicable goal(s) as part of its comprehensive plan.

LCDC Goal #2, Part II(b) sets the following general standard for determining "irrevocable commitment":

The land subject to the exception is irrevocably committed to uses not allowed by the applicable goal because existing adjacent uses and other relevant factors make uses allowed by the applicable goal impracticable.

OAR 660-04-028(2) interprets the referenced goal language to mean that the following factors from OAR 660-04-028(6) shall be addressed in the findings of fact for the goal exception:

- o existing adjacent uses:*
- o public facilities and services:*
- o parcel size and ownership patterns of the exception area and adjacent lands:*
- o neighborhood and regional characteristics:*
- o natural boundaries or other buffers separating the exception area from adjacent resource land:*
- o physical development according to OAR 660-04-025: and*
- o other relevant factors.*

To summarize the exception section, this particular area was designated as an exception because the existing dwellings and parcelization in the region made forest use impracticable. The presence of dwellings and the subdivision of land necessitate alterations to forest management practices, which increases operational costs due to:

- Restrictions on logging that could potentially harm or damage domestic water supplies.
- The need for larger setbacks.
- Limitations on the use of herbicides.
- Obstruction of access to appropriate landing sites for highlead logging.
- The requirement to coordinate management activities across different parcels with timber at varying growth stages.
- Economic losses due to equipment vandalism and theft.

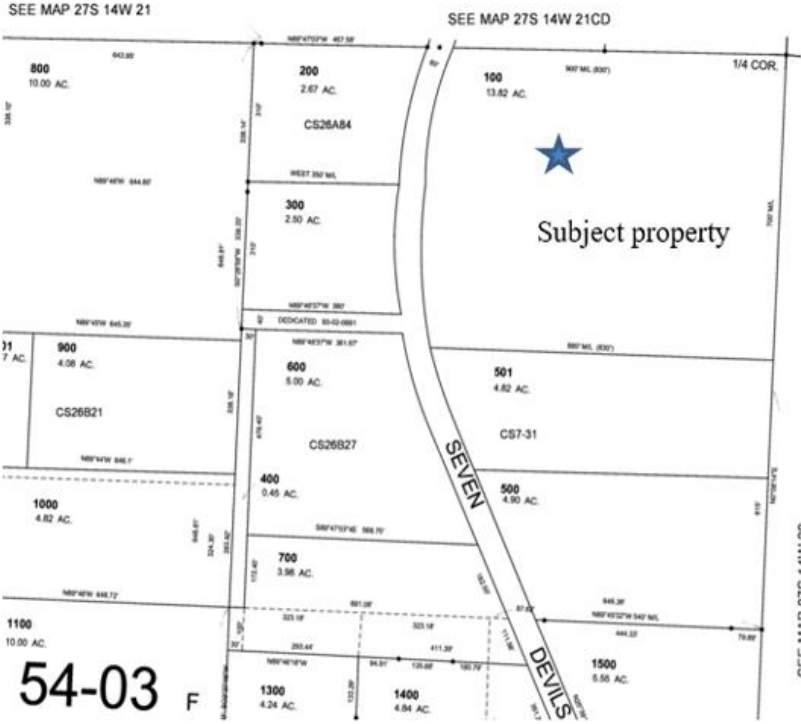
Additionally, managing small tracts involves infrequent activity, generates minimal income, and prohibits the implementation of practices that benefit from economies of scale.

For the reasons stated above, this area is irrevocably committed to non-resource use under OAR 660-04-028.

The first map provides a current assessment to give a clearer picture of the property and surrounding properties. The second set of maps illustrates the exception areas, showing the pattern of zoning.

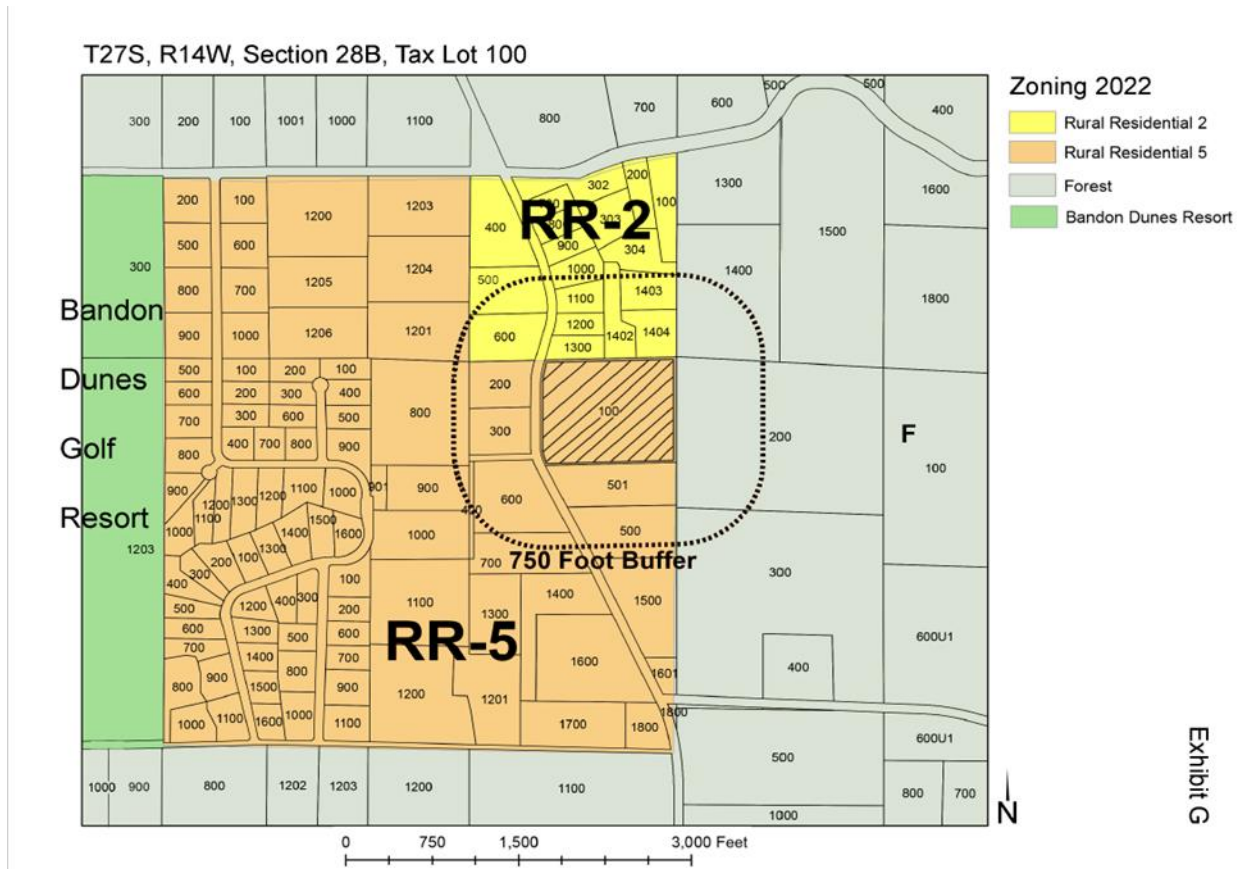
The current assessment map displays the subject property and the surrounding properties, providing an updated view of the area for better context. The exception area maps show the zoning pattern within the exception areas, highlighting the specific zoning designations and how they align with the exception criteria.

MAP WAS PREPARED FOR
SOME PURPOSE ONLY.





- Existing adjacent uses:
- Parcel size and ownership patterns of the exception area and adjacent lands:
- Neighborhood and regional characteristics:



The above map shows that the property to the east is in Forest Zoning, with tracts ranging in size from 13 acres to 70 acres. The properties to the south and west are zoned Rural Residential-5 and appear to be mostly developed with single-family dwellings, although there are some vacant parcels. The properties to the north are zoned Rural Residential-2 and are sparsely developed with residential dwellings. All properties are in private ownership. None of the properties to the north, south, or west are greater than 20 acres. This area, along with the rural residential area to the south, has developed over a period of years. The original exception statement remains valid, with some new development.

- Public facilities and services

The application included a list of public services available to the subject property, as detailed in their response to Goal 11. Rural properties are limited in services and require onsite water and septic systems to support development. The Comprehensive Plan prohibits the county from allowing the creation of undevelopable land. While this is usually addressed at the time of land division, it is important to understand the capacity of services in a rezone, as it indicates the potential for

developability.

Public Facilities (Existing)	
Facilities & Services	Provider
Water	Private Well
Sewer	Individual Septic System
Electric	Coos-Curry Electric CO-OP
Telephone	No public provider per Public Utility Commission
Solid Waste	Private
Police	Coos County Sheriff
Fire	Coos Rural Fire Protection District
Schools	Bandon School District
Road Access	Seven Devils Road (Minor Collector Road)

The subject property and the adjacent surrounding area are within the Bandon School District and the Bandon Rural Fire Protection District, with law enforcement provided by the Coos County Sheriff's Department. The applicant indicated that the subject property is served by the Coos Curry Electric Co-op for electricity and Ziplly Fiber for telephone service. Staff requested additional information from the applicant regarding adjacent wells and septic systems on neighboring properties. Water, sewer, and access are typically the major land use concerns for increases in rural density. Staff has addressed traffic, water, and onsite septic in the next section.

- Traffic

The property is accessed by Seven Devils County Road. This portion of Seven Devils is a two-lane paved road, currently classified as a Major Collector Road per the Coos County Transportation System Plan. The application included information in their Goal 12 response regarding daily traffic count increases. However, the applicant appears to have based their analysis on an incorrect assumption that Seven Devils is a minor collector. It is the gravel portion of Seven Devils Road that is classified as a minor collector.

Transportation System Plan Tables for Major and Minor Collectors:

Table 3-2. Major Collectors in Coos County

Alphabetical Listing (New 911 Names)	Length (miles)		Constructed Width (feet)		Right-of-Way Width (feet)	
	Paved	Gravel	Paved	Gravel	Paved	Gravel
Seven Devils Road	11.9	-	20-24	-	60	-

Table 3-3. Minor Collectors in Coos County

Alphabetical Listing (New 911 Names)	Length (miles)		Constructed Width (feet)		Right-of-Way Width (feet)	
	Paved	Gravel	Paved	Gravel	Paved	Gravel
Seven Devils Road	-	3.5	20-24	30	60	60

Google image to show paved road in front of the property.



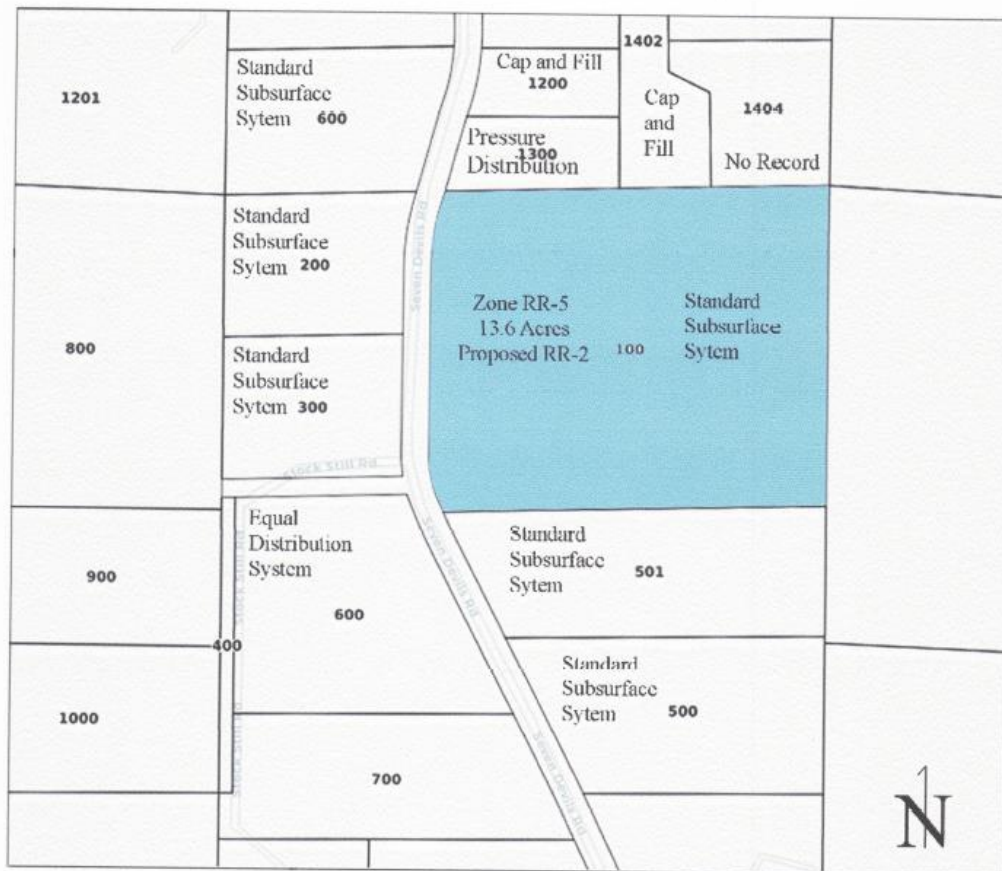
The transportation plan defines major collector roads as *“Major collectors generally serve higher traffic demands. They tie federal roads, minor collectors, and local roads to the arterial system. These roads also provide access to agricultural, forest, and recreational areas. As shown in Table 3-2, Coos County has 38 major collectors totaling approximately 217 miles of roadway. All of the major collectors are at least partially paved and 31 are paved their entire length. Most of the paved major collectors are between 17 and 25 feet wide which does not allow for much paved shoulder, thus any bicycles or pedestrians must share the travel lane with motorized vehicles”*.

There is currently the potential for a two-parcel partition on the subject property. Rezoning the area to an RR-2 zoning district may allow for a potential six-lot subdivision, depending on road and land improvements. Staff calculates that allowing an additional four residential parcels, with an average of 10 vehicle trips per day each, would only increase the traffic count by 40. This road is already classified to handle the additional 40 trips. Therefore, staff does not anticipate traffic to be a barrier to the change in zoning. At the time of development, the applicant will be required to create an internal road system, which will remove some developable area from the property.

- Onsite Septic Systems

The applicant provided a map of the onsite septic systems in the area along with some soil information to support the assertion that, if the density were modified and new lots or parcels were created, it would be consistent with the development potential. Additionally, information from DEQ regarding the type of system already approved for the property is attached. Typically, at least one acre is required to support onsite services, but this is dependent on many factors, including soil quality and the size of the development. The applicant provided the following soil information to address the onsite septic system potential.

Septic Systems on Adjacent and Subject Property



Soils 8B, 1B, and 1C, are the dominant soils on the subject parcel indicating suitable conditions for building development. These soils carry a limited 80-75 rating for septic tank absorption fields. The Department of Environmental Quality has approved the installation of a Standard subsurface system on site.

Soil 5B is less represented on site and can be limited by percolation and depth of soil to a cemented sandstone layer. These soils can have a limited suitability for subsurface systems due to lack of depth of the sandstone layer.

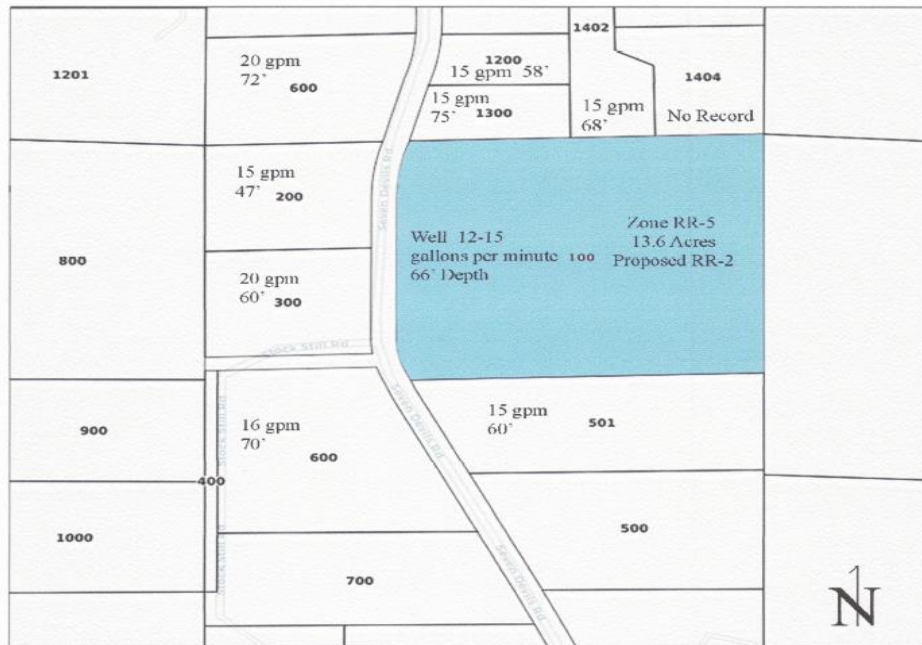
Standard system approval by DEQ on the subject parcel and adjacent parcels to the south and west indicate these soils will likely be suitable for Advanced Treatment Technology septic systems in the case of subsurface system is not approved. Parcels to the north show alternatives like sand filters and pressure distribution systems that can be used in areas where soil percolation is limited.

Environmentally ATT systems are advantageous as they often treat waste in a contaminant system, require little or no subsurface drain fields and treated wastewater contains minimal bacterium to be introduced into the soil or used as irrigation. Standard subsurface system approval by DEQ on site, use of standard systems in the area and site conditions such as suitable soils, good drainage and gentle topographic support the proposed Zone change on the subject parcel from RR-5 to RR-2, providing for increased rural residential living opportunities in the area.

Based on the fact that the subject property has an existing standard septic system, that the adjacent property (27-14-21CD-1300) has a pressure distribution system under DEQ permit #696-271, and that another adjacent property (27-14-21CD-1402) has a capping fill system under DEQ permit #246-20-00046, staff recommends finding that the subject property has a probable chance of additional septic drain field capacity.

- Water

The applicant provided the following information regarding the potential for onsite water potential.



Well Logs on Subject Property and Adjacent

Well data in the vicinity of the subject parcel is 12 - 20 gallons per minute. The subject parcel has a pH of 6.6 with 7 being neutral, a hardness of 1 with between 1-3 as optimal. Iron and Sediment levels are low and will require minimal filtration or alteration. It is typical in this area to use a UV process for bacteria treatment, fabric or micron filters for sediment and natural filtration and mineral treatment systems to alter iron levels.

The wells are commonly less than 100' deep and the compacted sandstone layer in the soil structure prevents surface contamination from seeping into the natural aquifer. Brown sandy clay 2' - 20' in depth is found to the Tax lot 300 to the West of the subject parcel. The sandy clay prevents most surface water from percolating into drinking water. Tax lot 600 has clay mixed with sand 30' -36' to the northwest. To the north tax lot 1300 has brown sand and clay 1'-30' and tax lot 501 to the south has compressed sandy clay from 2'-20' down.

These conditions indicate abundant water that will require minimal alteration and filtration to provide for the proposed increase in rural residential living.

The applicants had the water on Subject Property tested at Perry Electric/Plumbing in Coos Bay using the standard test for residential water use with no concerns raised. Information can be made available. (Well logs to support the maps at Attachment A)

The applicant has made a case that properties can be supported by onsite wells for primary residential uses.

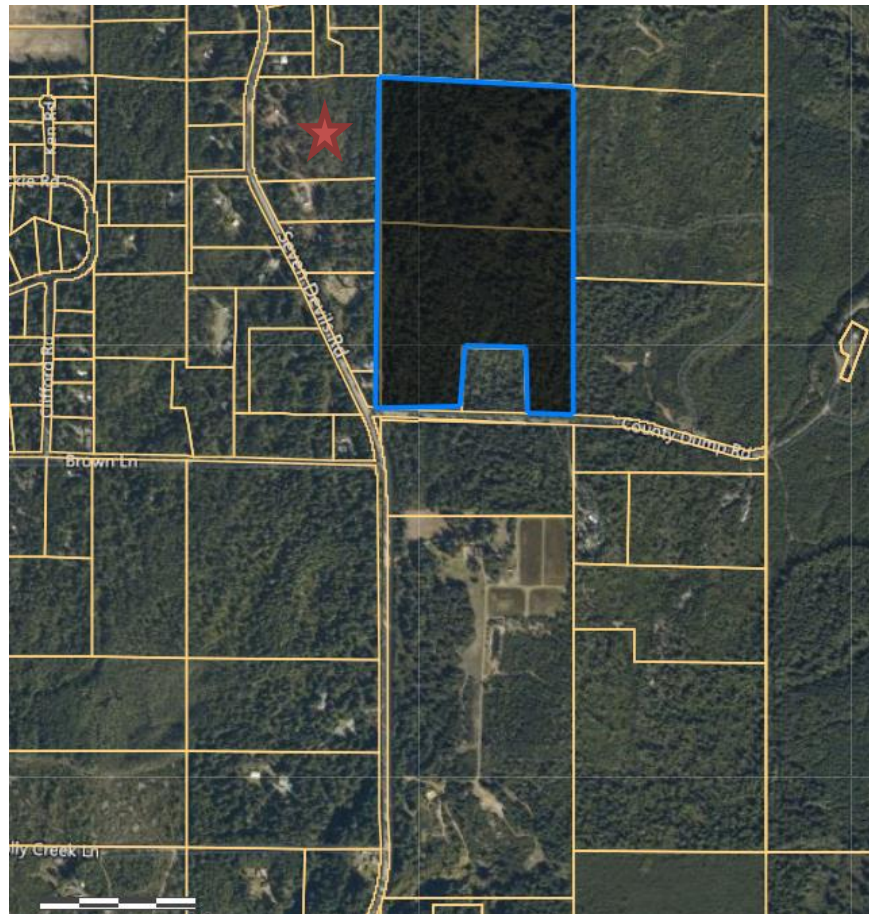
➤ **Adjacent property uses**

There is Rural Residential-2 (RR-2) zoned property to the north of the subject property. These parcels were originally zoned RR-2 during the initial comprehensive plan adoption under the rural housing exception. The RR-2 parcels along Seven Devils Road are approximately 1.1 to 1.4 acres in size and are already residentially developed. There are a few developed two-acre parcels located east of these properties with access to Whiskey Run Lane. The subject property is at the northeast corner of the Rural Residential-5 (RR-5) zoning district. There are pre-existing RR-5 zoned parcels located alongside Seven Devils Road. Other than the subject property, most of these parcels are under five acres in size and are considered non-conforming parcels.

The map on page 21 illustrates the overall exception area with the parcel sizes. Staff identified parcels under 5.0 acres in size as red, while parcels currently over 5 acres in size are identified in green. Approximately half of the Rural Residential-5 zoned area consists of pre-existing non-conforming lot sizes of less than 5 acres. About 50 lots were under the size of 2.0 acres at the time of zoning. There are a couple of pre-existing non-conforming lots across Seven Devils Road that are approximately two and a half acres in size. Directly southwest of the subject property is a 5-acre lot, and directly south of the subject property are non-conforming lots that are slightly under 5 acres in size.

The parcel size and ownership patterns of the exception area have already been discussed above. The areas adjacent to the Rural Housing Exception Area comprise forest-zoned parcels on the south, west, and north sides. On the western side, there is a Bandon Dunes Resort zoning district, established as an exception amendment/rezone during the 1990s, a decade after the analysis of the rural housing exception.

On the eastern side of the exception area, there are a couple of small timberland owners, generally classified as non-industrial timberland owners. It is crucial to highlight that the forest tract immediately east of the subject property, covering approximately 70 acres identified as tax lots 200 and 300, falls under a tract ownership outlined in blue below. Presently, if a residential property abuts forest zoning, a 30-foot setback is mandated for fire safety purposes. However, staff recommends considering a larger setback along the eastern border to minimize or eliminate any impact on forest practices.



When assessing the impact of increasing dwelling density on nearby forest practices, the pivotal question to address is whether the heightened density will necessitate a substantial escalation in accepted forest practices on the surrounding lands designated for forest use, or whether the proposal will not markedly increase the cost of accepted forest practices on the surrounding lands devoted to forest use.

The primary forest practices integral to common timberland management include harvesting, disposal of slash, site preparation, reforestation, pre-commercial thinning, stand maintenance, and road construction/maintenance.

The subject property shares a property line with tax lot 27-14-28-200. Tax lots 27-14-28-200, 27-14-28-300, and 27-14-28-400 are part of a forest-zoned tract spanning over 70 acres. Given the zoning and size of the property, it is likely that some type of forest practices will occur.

Staff recommends that the Planning Commission discuss whether an additional development setback buffer is necessary along the subject property's eastern boundary. This measure aims to mitigate the effects of adjacent forest practices and ensure compatibility.

The nearest agricultural operation appears to be a small cranberry farm located on tax lot 27-14-28-1000. This parcel is approximately 76 acres in size, but the cranberry operation is limited to about 6 acres of cranberry bogs on the northeastern portion of the property. The parcel is located about 400 feet southeast of the exception area and approximately ½ mile southeast of the subject property under review. The Comprehensive Plan does not formally establish a specific buffer distance between the proposed use or increase in lot density and the agricultural use. If the Planning Commission finds a conflict in uses, conditions may be applied.

The property is currently zoned Rural Residential (RR-5) with a five-acre minimum parcel size. Given that the property is 13.60 acres, it currently qualifies for only one additional dwelling and one additional parcel of land. If the property were to be rezoned to a two-acre minimum parcel size (RR-2), theoretically, the property could be divided into six lots, with each lot qualifying for one dwelling.

Contrary to the applicant's statement², the current zoning on the property is RR-5, allowing for a total of two parcels and considering the five-acre minimum lot size and the density requirement of one dwelling per legal unit of land outlined in Chapter 4. The proposed RR-2 zoning equates to six lots and with one dwelling per legal unit of land. There may be future accessory dwelling units allowed but that change in density has not been approved.

The Statewide Planning Goals have been addressed further down in the report. There are really three main considerations in the review process:

Just as a reminder, the relevant criteria in this matter really is *if the rezoning, is justified based on evidence submitted that all the following criteria are found to exist:*

- a. The rezoning will conform with the Comprehensive Plan or Section 5.1.215; and*

Staff does believe the rezone can conform with the Comprehensive Plan if the exception to Goal 14 has not been justified.

- b. The rezoning will not seriously interfere with permitted uses on other nearby parcels; and*

Staff has recommended that the Planning Commission consider the impacts on Forest Use to the east, with Farm Uses appearing to be at a greater distance from the property and, therefore; less concerning. Additional considerations may include the potential increase in water usage and the impact of additional septic systems. To address these concerns, the Planning Commission could explore options such as recommending a higher density or imposing restrictions, such as allowing only one dwelling per legal unit of land, if it is determined that a higher density could strain local resources.

And if the criteria above can be justified does the application warrant 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.*

² "The current zoning on the property is 5R which will allow nine dwelling units in total on the property." The proposed RR-2 zoning will create the potential for the site to be subdivided to create four additional homesites. Page 14 of the applicant's supplemental report

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.*

The Board of Commissioners are not considering any changes to the plan or ordinance that would prohibit this application.

Staff would only recommend approval of this application if the applicant provides adequate findings to address Goal 14 and the Planning Commission finds that the density change will not adversely impact adjoining properties.

v. 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.

STAFF FINDING: Any recommendation will not amend the zoning map.

vi. SECTION 5.1.235 BOARD OF COMMISSIONERS ACTION ON HEARINGS BODY RECOMMENDATION:

Not earlier than 15 days following the mailing of written notice of the Hearings Body recommendation pursuant to Section 5.1. 225, the Board of Commissioners shall either:

- 1. adopt the Hearings Body recommendation for approval or approval with conditions;*
- 2. reject the Hearings Body recommendation for approval or approval with conditions and dismiss the application;*
- 3. accept the Hearings Body recommendation with such modifications as deemed appropriate by the Board of Commissioners; or*
- 4. if an appeal has been filed pursuant to Article 5.8, the Hearings Body recommendation shall become a part of the appeal hearing record, and no further action is required to dispense with the Hearings Body recommendation.*

STAFF FINDING: This will be addressed by the Board of Commissioners.

vii. SECTION 5.1.240 REQUIREMENTS FOR “Q” QUALIFIED CLASSIFICATION:

Where limitations are deemed necessary, Board of Commissioners may place the property in a “Q” Qualified rezoning classification. Said “Q” Qualified Classification shall be indicated by the symbol “Q” preceding the proposed zoning designation (for example: Q C-1).

STAFF FINDING: The Planning Commission can consider a Qualified Rezone if they find it necessary to address the compatibility issues.

Given the application indicates a need for additional housing, the Planning Commission may include a Qualifier that any future residential development in the requested rezone area shall not be used as a vacation rental.

Staff has made other suggestions for consideration that may become qualifiers.

viii. SECTION 5.1.250 PERMITS AND APPLICATIONS MORATORIUM:

1. *After a proposed rezoning has been set for public hearing, no building or sewage disposal system permits shall be issued until final action has been taken. Final action constitutes either:
 - a. *Withdrawal of the application by the applicant;*
 - b. *Expiration of the County's appeal period without an appeal having been filed; or*
 - c. *Final order of Board of Commissioners upon hearing the appeal.**
2. *Following final action on the proposed rezoning, the issuance of a verification letter shall be in conformance with the application approval.*

STAFF FINDING: There have been no request for additional permits on the property.

ix. SECTION 5.1.275 STANDARDS FOR COMPREHENSIVE PLAN AND REZONE FOR NONRESOURCE LAND:

1. *The subject property does not meet the definition of Agricultural Land under Statewide Planning Goal 3 and /or Forest Land under Statewide Planning Goal 4.*

NOTE: If the subject property is predominantly Class 1-IV soils or if it predominantly consists of soils capable of producing 5000 cubic feet of commercial tree species it is not considered to be nonresource land.

2. *The subject property does not contain any natural resources defined in Statewide Planning Goal 5 which are identified in the Coos County Comprehensive Plan;*
3. *The subject property has been proven to be generally unsuitable for production of farm crops and livestock or merchantable tree species, considering terrain adverse soil conditions, drainage and flooding, vegetation, location and size of the tract.*
4. *The subject property is not considered to be nonresource land simply because it is too small to be farmed or forest managed profitably by itself. If the subject property can be sold, leased, rented or otherwise managed as part of a commercial farm, ranch or other forestland it is not considered to be nonresource land.*
5. *The subject property is not considered to be nonresource land if it has been given a special tax assessment for farm use or as designated forestland at any time in the past five years.*
6. *If the subject property is found to meet all of the standards above to be considered nonresource land the county shall also determine that rezoning the property to a nonresource zone will not materially alter the stability of the overall land use pattern in the area and lead to the rezoning of other lands to nonresource use to the detriment of the resource uses in the area.*
7. *The subject property shall be at least 10 acre in area unless it is contiguous to an area that is zoned for nonresource use.*

Any proposal of at least 2 acres but less than 10 acres requires approval of a Goal 14 exception pursuant to OAR 660-00-0040.

8. *Rezoning of land that is found to be nonresource land shall be to a "rural" zone that is appropriate for the type of land and its intended use.*

Rural commercial or industrial development must comply with standards for small-scale, low impact commercial and industrial use.

Development of property rezoned from Forest or Forest Mixed use to a nonresource zone shall comply with the resource development and siting standards. (ORD NO. 04-01-001PL February 10, 2004)

STAFF FINDING: The applicant has addressed Section 5.1.275, which is based on OAR 660-004-005. This rule defines "Non-resource Land" as land not subject to any of the statewide goals listed in OAR 660-004-0010(1)(a) through (g), except subsections (c) and (d). However, this definition does not apply to this request as the property is actually exception land and was already justified as non-resource in 1986.

The language for non-resource rezoning under current law (after October 4, 2000) mandates a minimum parcel size of ten (10) acres. The current zoning of RR-5 was established prior to the change in the law in 2000 and is essentially treated as nonconforming for the purposes of OAR 660-004-0010. Staff also notes that this language was not adopted into the ordinance until 2004, which is long after the adoption of the plan designating this as residential zoned property.

A. 660-014-0040 ESTABLISHMENT OF NEW URBAN DEVELOPMENT ON UNDEVELOPED RURAL LANDS

STAFF FINDING: Staff finds that the applicant miscopied the criteria regarding OAR 660-014-0040. The criteria set out on Page 23 of the supplemental application, listed as OAR 660-014-0040, appear to have been copied from OAR 660-004-0040. This provision specifies how Goal 14, "Urbanization," applies to rural lands in an acknowledged exception areas planned for residential uses. See the copied portion of the application, OAR 660-004, and OAR 660-014 for comparison.

IV. GOAL 2/GOAL 14 EXCEPTION

Findings: The level of development is regulated by the creation of new parcels and by limiting the number of dwellings per acre for rural residential zoning, OAR 660-014-0040, establishes that, for residential zoning, "rural use" means one dwelling per 10 acres.

<https://secure.sos.state.or.us/oard/view.action?rulenum=660-004-0040>
Ctrl+Click to follow link

OAR 660-014-0040, Application of Goal 14 to Rural Residential Areas (2):

(d) "Minimum lot size" means the minimum area for any new lot or parcel that is to be created in

OAR 660-004-0040

Application of Goal 14 to Rural Residential Areas

- (1) The purpose of this rule is to specify how Goal 14 "Urbanization" applies to rural lands in acknowledged exception areas planned for residential uses.
- (2) For purposes of this rule, the definitions in [ORS 197.015](#) ([Definitions for ORS chapters 195, 196, 197 and ORS 197A.300 to 197A.325](#)), the Statewide Planning Goals and [OAR 660-004-0005](#) ([Definitions](#)) shall apply. In addition, the following definitions shall apply:

660-014-0040

Establishment of New Urban Development on Undeveloped Rural Lands

- (1) As used in this rule, "undeveloped rural land" includes all land outside of acknowledged urban growth boundaries except for rural areas committed to urban development. This definition includes all resource and nonresource lands outside of urban growth boundaries. It also includes those lands subject to built and committed exceptions to Goals 3 or 4 but not developed at urban density or committed to urban level development.
- (2) A county can justify an exception to Goal 14 to allow establishment of new urban development on undeveloped rural land. Reasons that can justify why the policies in Goals 3, 4, 11 and 14 should not apply can include but are not limited to findings that an urban population and urban levels of facilities and services are necessary to support an economic activity that is dependent upon an adjacent or nearby natural resource.
- (3) To approve an exception under section (2) of this rule, a county must also show:
 - (a) That Goal 2, Part II (c)(1) and (c)(2) are met by showing that the proposed urban development cannot be reasonably accommodated in or through expansion of existing urban growth boundaries or by intensification of development in existing rural communities;
 - (b) That Goal 2, Part II (c)(3) is met by showing that the long-term environmental, economic, social and energy consequences resulting from urban development at the proposed site with measures designed to reduce adverse impacts are not significantly more adverse than would typically result from the same proposal being located on other undeveloped rural lands, considering:
 - (A) Whether the amount of land included within the boundaries of the proposed urban development is appropriate, and
 - (B) Whether urban development is limited by the air, water, energy and land resources at or available to the proposed site, and whether urban development at the proposed site will adversely affect the air, water, energy and land resources of the surrounding area.
 - (c) That Goal 2, Part II (c)(4) is met by showing that the proposed urban uses are compatible with adjacent uses or will be so rendered through measures designed to reduce adverse impacts considering:

As a reminder from the DLCD comments, Goal 14 exception is necessary in this case. While the effective zoning of RR-5 is consistent with the provisions of OAR 660-004-0040(6) and is deemed compliant with Goal 14, changing the effective zoning to RR-2, which would amend the applicable requirements regarding minimum parcel size to allow a greater amount of development, triggers OAR 660-004-0040(7). Please see the referenced sections of OAR 660-004-0040 below:

- (6) (a) A rural residential zone in effect on October 4, 2000 shall be deemed to comply with Goal 14 if that zone requires any new lot or parcel to have an area of at least two acres, except as required by section (8) of this rule.
- (b) A rural residential zone does not comply with Goal 14 if that zone allows the creation of any new lots or parcels smaller than two acres. For such a zone, a local government must either amend the zone's minimum lot and parcel size provisions to require a minimum of at least two acres or take an exception to Goal 14. Until a local government amends its land use regulations to comply with this subsection, any new lot or parcel created in such a zone must have an area of at least two acres.
- (7) After October 4, 2000, a local government's requirements for minimum lot or parcel sizes in rural residential areas shall not be amended to allow a smaller minimum for any individual lot or parcel without taking an exception to Goal 14 pursuant to OAR chapter 660, division 14, and applicable requirements of this division.

The subject property should retain the existing and effective RR-5 zoning at this time unless the applicant submits and the county approves an exception to Goal 14 as authorized by OAR 660-014 and not OAR 660-004.

Staff is unclear that the applicant has address the relevant criteria. However, Staff does believe there is still a pathway to move this forward.

OAR 660-14-0040 applies to “Undeveloped Rural Lands” where such lands include lands subject to built and committed exceptions to Goals 3 or 4 but not developed at urban density or committed to urban level development. Subject property is in a rural lands exception, but not developed at urban density or committed to urban level development.

The criteria included in [660-014-0040](#) can be used to justify an exception to Goal 14 to allow establishment of new urban development on undeveloped rural land, but this is not what the applicants are proposing. There is no proposal for urban levels of facilities and services. The applicants understand that rural services such as septic systems and wells will be necessary when the subject property is partitioned or subdivided. Urban levels of facilities and services are not needed as there is no proposal for economic activity that is dependent upon an adjacent or nearby natural resource.

The applicant continues with findings, but staff is unclear if the appropriate criteria have been addressed. The findings refer back to OAR 660-004-0040 (see page 23), which is confusing because OAR 660-004-0040 was copied but is not relevant to the justification.

OAR 660-014-0040
Application of Goal 14 to Rural Residential Areas

(1) The purpose of this rule is to specify how Goal 14 “Urbanization” applies to rural lands in acknowledged exception areas planned for residential uses.

Findings: Subject property and properties lying to the south, north and west are made up of rural lands that exist as an acknowledged exception area planned for residential use.

Staff has tried to bring forth the relevant facts and added some findings to assist in complying with the Goal 14 exception process. The County's plan allocates a finite number of rural dwelling units and acreage, with the zoning ordinance specifying permitted uses and minimum lot sizes. Residential districts are designed for small to medium-acreage dwelling sites outside Urban Growth Boundaries, suitable for moderate land development where urban services are not available or necessary. The subject property aligns with the proposed residential use, adjacent uses, and is consistent with long-term land use planning. Zoning in an "exception" area must limit allowed uses to those demonstrating justification for the exception. In this case, the justification was already established to zone the property as rural residential.

The subject property is pre-existing and already zoned Rural Residential. The exception process is necessary when aiming to exceed the density of one house every 10 acres when changing the existing density. While the property is considered an exception area, there is an argument that additional justification is required to reduce the density, addressing Goals 3, 4, 11, and 14. This is due to the nature of undeveloped residential land, including lands subject to built and committed exceptions to Goals 3 or 4 but not developed at urban density or committed to urban-level development.

This argument can be approached in two ways. Firstly, the applicant could assert that the property is already committed to an urban level of development based on the zoning district (one house per five acres). Alternatively, the safer option would be to argue that, even though it may be reserved for urban development, it is not committed because it is undeveloped land. Therefore, justification of Goals 3, 4, 11, and 14 would be required.

It appears that the applicant did attempt to argue that the property is compliant, but the incorrect referenced criteria made it difficult for staff to navigate. Staff has tried to add some additional facts to ensure the maximum legally defensible case and provides a pathway for the Commissioners to move forward. The burden of proof is always on the applicant, but CCZLDO Section 5.1.115 allows for the Planning Director to recommend an alteration of a proposed amendment if, in the director's judgment, such an alteration would result in better conformity with any applicable criteria.

The criteria under OAR 660-014-0040 necessitates that the applicant elucidate how the development cannot be reasonably accommodated within or through the expansion of existing urban growth boundaries or by intensifying development in existing rural communities. Given that the property is not situated within an Urban Growth Boundary, it is not imperative to justify why the additional development cannot be located within the Urban Growth Boundary. This is because the property is already in an exception area, aligning with the apparent intent of the language. It appears that the applicable law is stating that if a property is within an exception area for rural residential use, it is preferable to intensify the use in that area rather than impact Farm or Forest Zoned property reserved for Farm and Forest practices.

The criteria states that a county can justify an exception to Goal 14 to allow establishment of new urban development on undeveloped rural land. Reasons that can justify why the policies in Goals 3, 4, 11 and 14 should not apply can include but are not limited to findings that an urban population and urban levels of facilities and services are necessary to support an economic activity that is dependent upon an adjacent or nearby natural resource. The property may play a crucial role in supporting an economic activity dependent on an adjacent or nearby natural resource. This necessity arises from the vital link between housing and resource-related jobs in coastal communities. These communities, characterized by their reliance on various natural resources, serve as economic hubs, generating employment across diverse fields.

In coastal areas, where industries such as fishing, aquaculture, forestry, and tourism thrive, the need for suitable housing becomes paramount. The availability of housing in close proximity to these

resource-related jobs is essential for fostering a sustainable and vibrant local economy. Residents employed in resource-based industries contribute significantly to the economic fabric of these communities, creating a symbiotic relationship between housing development and economic activities.

In conclusion, acknowledging the intrinsic connection between housing and resource-related jobs is paramount for ensuring the sustained growth and prosperity of coastal communities. Coastal properties frequently grapple with challenges such as natural hazards, adverse soil conditions, and challenging slopes, factors that can impede development. Remarkably, the subject property stands out by not being encumbered by these hindrances, presenting a unique opportunity for development unhampered by the typical constraints faced by coastal real estate. This advantageous position positions the property as a valuable asset in contributing to both the housing needs and economic resilience of the coastal community.

While the Coos County Housing Analysis does not cover rural dwellings units and their impact on housing the City of Bandon's Housing Analysis³ covers the entire 97411 zip code, which this property is located in. There is justification based on that document for needed additional dwelling units to support urban levels of facilities in the way of rural housing to support an economic activity that is dependent upon an adjacent or nearby natural resources including land and waterways in this area.

Therefore, staff would support a finding that there is justification to support the urban level of facilities and services necessary to support an economic activity that is dependent upon an adjacent or nearby natural resource by way of increasing land available for rural housing in the 97411-zip code based on the needs described in the City of Bandon's Housing Needs Analysis.

Staff also supports a finding that this area was reserved for Rural Residential and that it is appropriate to increase the density on this property rather than expanding the City of Bandon Urban Growth Boundary. The City of Bandon Urban Growth Boundary faces development challenges due to Goal 18 Beaches and Dunes, limited water and sewer availability, and/or necessary infrastructure improvements. Staff addressed the compatibility, water, and sewer availability starting on page 25 of this report. Therefore, based on staff suggestions, the Planning Commission may recommend approval with certain conditions.

Goal 14 defines urban lands in more than one way. Urban lands can be found in Urban Growth Boundaries but may also be located outside of the Urban Growth Boundary when the density is less than one dwelling per ten (10) acres as explained in OAR 660-014-0040.

Staff has had a difficult time following the arguments made in this application but given the need for housing and the supplemental findings made by staff for Goal 14 the Planning Commission could consider rezoning the property with certain qualifiers to ensure compliance.

B. CONCLUSION:

The applicant is requesting to change the density requirements to allow for more residential development. Staff believes there are enough facts provided to move the proposal forward. However, the Planning Commission may choose to add conditions to the property for compatibility reasons. Some issues to consider are that the Board recently adopted Accessory Dwelling Units, which means the density of the dwelling units could potentially double on the property. This could cause issues with water, onsite septic systems, and fire hazards. Therefore, the Planning Commission may consider

3

https://www.cityofbandon.org/sites/default/files/fileattachments/general/page/4691/bandon_housing_needs_assessment_final.pdf

larger minimum lot sizes, such as two and a half or three acres, or impose limits on the types of uses that can be conducted within the dwellings or increased setback areas.

Staff is not sure if the applicant fully understood the requirements of Goal 14 or if the organization of the report has been complied in such a way to make it difficult to follow. Staff does believe there is enough information giving the additional findings provide by staff for the Planning Commission to move forward. This area is already an exception area, but any proposal to change an exception area, especially regarding density, requires justification of the Statewide Planning Goals.

The main focus of the Planning Commission should be the impacts on surrounding properties as part of the compatibility criteria.