



APPEAL OF A LAND USE DECISION

SUBMIT TO COOS COUNTY PLANNING DEPT. AT 60 SECOND STREET OR
MAIL TO: COOS COUNTY PLANNING 250 N. BAXTER, COQUILLE OR 97423.
EMAIL PLANNING@CO.COOS.OR.US PHONE: 541-396-7770

Planning Director Appeal Fee \$250.00 / Hearings Body or Officer Appeal Fee \$2560.00
Date Received: 1/10/2024 Fee Received: \$250 FILE # AP- 24-001
If the correct fee is not with the appeal it will not be processed. Application shall be filed electronically.

List the names and signatures of each petitioner and a statement of the interest of each petitioner to determine party status. Multiple parties shall join in filing a single petition for review, but each petitioner shall designate a single Contact Representative for all contact with the Planning Department. All communications regarding the petition, including correspondence, shall be with the Contact Representative. This can be attached to this form marked as Attachment "A".

Appellant: Kathleen Collier
Mailing address: PO Box 1199, Bandon, Oregon 97411
Phone: 503-819-9987 Email: dkcollier@frontier.com
Signature: *Kathleen Collier*
Appellant's Representative: _____
Mailing address: _____
Phone: _____ Email: _____
Signature: _____

The name of the applicant: Shane Chrismon & Rh
County application file number being appealed: VR-23-001

Planning Director's Decision (Fee \$250) Hearings Body or Hearings Officer Decision (Fee \$2560)

The appellant must explain how they have achieved party status pursuant to the applicable sections of 5.8.150 or 5.8.160:
I received a Notice of Land Use Decision dated 12/27/23 regarding this case because we are an adjacent property owner.

The appeal deadline, as stated in the Director's Decision: January 11, 2024

The nature of the decision and the specific grounds for appeal, citing specific criteria from the Coos County Zoning and Land Development Ordinance, Comprehensive Plan, Statute or Rule. (This can be attached to this form marked as Attachment "B".)

Approved with Condition. ...Vested Right pursuant to Coos County ZLDO 5.4 and 4.6.210. There are several concerns with this proposal as detailed in Attachment C.

The appellant must explain in detail, on the appeal form or attached to the appeal form, how the application did not meet the criteria in the case of an approval or why the criteria should or should not apply; or, in the case of a denial the appellant shall explain why the application did meet the criteria or why certain criteria did not apply to the application. (This can be attached to this form marked as Attachment "C".)

See Attachment C.

ARTICLE 5.8 APPEAL REQUIREMENTS

SECTION 5.8.100 APPEALS GENERAL

Coos County has established an appeal period of fifteen (15) days from the date written notice of administrative or Planning Commission decision is mailed with the exception of Property Line Adjustments and lawfully created parcel determinations, which are subject to a twelve (12) day appeal period. The Board of Commissioners or Hearings Body shall dismiss an appeal for failure to follow the requirements of this article.

SECTION 5.8.150 STANDING TO APPEAL A PLANNING DIRECTOR'S DECISION: A decision by the Planning Director to approve or deny an application shall be appealed as identified in the Sections below. The appeal must be filed within the appeal period and meet one of the following criteria:

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

SECTION 5.8.160 STANDING TO APPEAL A HEARINGS BODY, APPOINTED HEARINGS OFFICER(S) OR BOARD OF COMMISSIONER DECISION: A decision by the Hearings Body, Appointed Hearings Officer(s) or Board of Commissioners to approve or deny an application shall be appealed as identified in the Sections below. The appeal must be filed within the appeal period. In the case of an appeal of a Hearings Body decision to the Board of Commissioners, the appellant must have appeared before the Hearings Body or appointed Hearings Officer(s) orally or in writing. [OR 04 12 013PL 2/09/05]

SECTION 5.8.170 APPEAL PROCEDURES: An appellant shall file the appeal for review on the appropriate county form and the form shall be completely filled out as required by this section. If an appellant fails to correctly fill out the form, and there has already been a public hearing on the matter, the Board of Commissioners may deny the appeal based on failure to comply with this section. In the event the appeal is denied based on a failure to comply with this section, a refund of unexpended fees shall be returned to the appellant.

The appeal form shall contain the following:

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

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

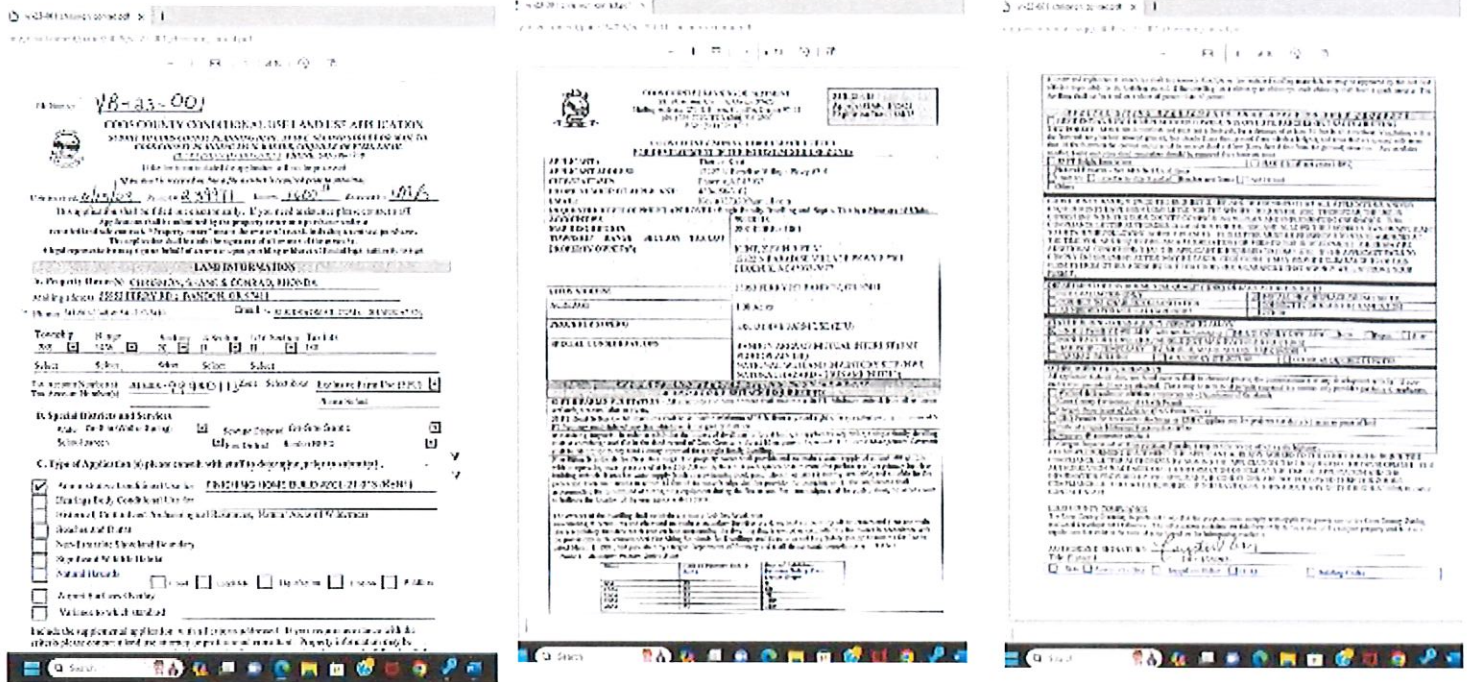
SECTION 5.8.400 Multiple Appeals

Multiple appeals of the same land use decision shall be consolidated into one hearing, at the discretion of the Planning Director, Planning Commission or Board of Commissioners, provided the appeals involve the same or substantially similar issues and/or a common question of law or fact. The consolidation process must not work to deprive any appellant of his or her right to a full and fair hearing on the merits of their case. Such consolidation of the appeals into one hearing will avoid unnecessary costs or delay and will assist in the proper resolution of the matter in question. If consolidation is granted by then a reduction of fee may be due to the parties when the final decision is rendered.

Attachment C:

RE: Comments related to File No. VR-23-001, Request for Vested Right Determination, Chrismon and Conrad

1. **Natural hazards:** The Permit requests are incomplete and fail to show high risk landslide and liquefaction areas on most of the property. This error repeats throughout the zoning compliance and conditional use application.



Without those natural hazard boxes checked it may be possible that these risk and potential mitigation and safeguards could be overlooked. It also appears that these risks require additional analysis.

REFERENCE: Earthquakes: Coos County shall promote protection of life and property in areas potentially subject to earthquake hazards. New development or substantial improvements in mapped areas identified as potentially subject to earthquake induced liquefaction shall be subject to a geologic assessment review as set out in this section. Such areas shall include lands subject to "very high" and "high" liquefaction identified in DOGAMI Open File Report O-13-06, "Ground motion, ground deformation, tsunami inundation, co-seismic Ireland Large Tract Dwelling 26-14-32 TL 101 13 /21 subsidence, and damage potential maps for the 2012 Oregon Resilience Plan for Cascadia Subduction Zone Earthquakes." Coos County shall continue to support Oregon State Building Codes to enforce any structural requirements related to landslide and earthquakes. Staff will notify Oregon State Building Codes by providing a copy of the geologic assessment report with the Zoning



Compliance Letter.

- (a) **Risks.** Not only does this parcel have two risks (Landslides at high or likely occurrence, and liquefaction at a high level) identified but the general topography includes steep and difficult to traverse ravines (typically created through erosion). The slope behind the dwelling site is steep enough to retard basic maintenance and or reduction of fuels loading without safety gear.
 - (b) **Potential risk.** The leach field (as shown on the following map) is close to a very significant ravine. The soil in the leach field could be destabilized with natural causes and also from the additional water exiting from the septic system. Should the leach field fail (for any reason) there is a high possibility of human waste flowing down the ravine and into a wetland area.
 - (c) **Past Practices.** Heavy rains, normal to our area, will further destabilize the soil, and create opportunities for erosion and slippage. The ground around the dwelling site was significantly disturbed right before the Chrismon/Conrad purchase. I witnessed approximately eight to ten full log-truck loads traveling out of that property.
2. **Zoning.** The parcel does not appear to meet the EFU zone standards.
 - (a) Most EFU zones are significantly larger than one acre. There is an allowance for a size variance for intensive farming (as defined on [www.co.coos.or.us/sites/default/files/fileattachments/planning/page121496/chapter_2 .pdf](http://www.co.coos.or.us/sites/default/files/fileattachments/planning/page121496/chapter_2.pdf)). This level of farming was not mentioned in the zoning compliance and Land Use decisions. The few chickens and ducks on the property appear to be more like pets rather than farm animals. The approximately 10 or less animals reside in a small chicken house (about 6x6' with a small enclosed yard).
 - (b) Intensive farming typically requires support structures, such as a barn (for processing and storage) and parking (perhaps for delivery). No such structure has been identified on the site map and there is no off-street parking. This makes it appear that intensive farming was not planned. Intensive farming would be very hard on the county and private roadway and potentially create extensive damage and maintenance costs.
 - (c) I believe that when the parcel was part of a larger tract (prior to Chrismon/Conrad purchase), the EFU zone was correct. Now that the parcel is under separate ownership it may no longer meet the EFU requirements.
3. **Vested Rights?** Based on the Coos County website, "Vested Rights" do not exempt a builder from other laws and regulations related to their project. A great deal of information about "Vested Rights" can be found at: <https://www.oregon.gov/LUBA/docs/headnotes/37.pdf> and [acu-23-064 application.pdf \(coos.or.us\)](http://acu-23-064.application.pdf(coos.or.us)). The "Vested Rights" discussion includes two different conditions: Omission or act by the government that kept the holder from completing the build and proof of appropriate Investment².
 - (a) I do not find a statement describing an omission or act by the government that may have delayed the build. I did note blaming delays on COVID, however no details were offered as to illustrate any specific delays. The problem might be more that the competition for local craftworkers is very keen in our area. Is not unusual to have to wait months or years to get a builder, cement mason, plumber, etc. This was true prior to COVID and is still true today.
 - (b) Did they just miss their expiration date? Having the paperwork expire might perhaps be considered a government act. Their compliance letter was approved 1/25/21 and clearly identified the expiration date of 1/24/23. Was the permit abandoned, interrupted, or discontinued due to the government actions or by simple oversight by Chrismon/Conrad? OR has the holder failed to diligently exercise the permit?
4. **Actual Investments.** There are some discrepancies in the items selected as proof of investments used to calculate the Holmes factor ratio.
 - (a) There is a bill in the investment records from me (page 39 of their investment documentation at [vr-23-001 application updated.pdf \(coos.or.us\)](http://vr-23-001.application.updated.pdf(coos.or.us)) related to a reimburse Chrisom /Conrad made to

me for easement road repair costs. This routine repair was made nearly two blocks away at the south end of my property. It was a routine maintenance, not directly-related to their project, on roads that were passable. Note: The copy of the paperwork used for the justification illustrates that they did not pay their fair share. A copy of that billing and their check has been attached at the end of this document in the Additional Figures.

- (b) There is also a \$7,000 bill for Internet service which seems to be an unreasonable cost. At the time, many neighbors were interested in getting better service but were unwilling or unable to pay that. In the end, Chrismon/Conrad reported to us that a relative got the \$7,000 price tag slashed significantly; it appears that the discounted actual cost was omitted from the vested rights paperwork. Further, was the Internet connection needed for the RV, the two cottage businesses they run from the RV, their business, access for son's homework, or for the new dwelling that does not exist? Are all investments qualified, reasonable, and lawful? Or was that work routine maintenance elsewhere? Were these investments needed quickly for the temporary residence?
- (c) There are two other considerations here related to what expenditures were "directly related" to the proposed use for the property and is there evidence of "substantial construction" showing what the expenses were used for. There has been work related in infrastructure (underground), but no actual start of construction related to permanent framing or foundation. There is no foundation or framing work being done on the project as yet. Shouldn't we, after a couple of years and nearly \$100,000 be able to see some substantial construction? Were monies, claimed as investments, used for non-construction expenses such as accessory buildings, trailers to store materials for their three businesses, or fuel and gravel to put on other neighbor's driveways?

REFERENCE NOTES from www.co.coos.or.us website: "Distinguishing those expenditures properly considered in a determination of the "ratio of expenditures" under Holmes factor (7) requires (1) identification of the time at which the expenditures were made, (2) an analysis of whether the expenditures were made in good faith and lawful when made, and (3) a determination regarding whether the expenditures are **directly related** to the proposed use of the property. DLCD v. Curry County, 19 Or LUBA 249 (1990). [my added bold]

SECTION 4.11.132 NATURAL HAZARDS (BALANCE OF COUNTY POLICY 5.11) Purpose Statements: Coos County **shall regulate development** in known areas potentially subject to natural disasters and hazards, so as to minimize possible risks to life and property. Coos County considers natural disasters and hazards to include river and coastal flooding, **landslides, liquefaction** potential due to earthquakes, fault lines, tsunamis, river bank erosion, coastal erosion along shorelines and headlands, coastal erosion due to wind, and wildfires, including those areas affected by gorse. This strategy shall be implemented by enacting **special protective measures through zoning and other implementing devices**, designed to minimize risks to life and property associated with new development and substantial improvements... [my added bold]

Thank you for this opportunity. We have had other friends lose their home to a landslide and my hope is that applicant and Coos County can use these observations to create a safer and healthier home.

Sincerely yours,



Kathleen Collier, neighbor and community supporter
55904 Ferry Road

Figures 1-4 showing Landslide and Liquefaction risks in more detail, and copy of road maintenance bill and check that was part of the "investments" claimed for the project.

Additional Figures

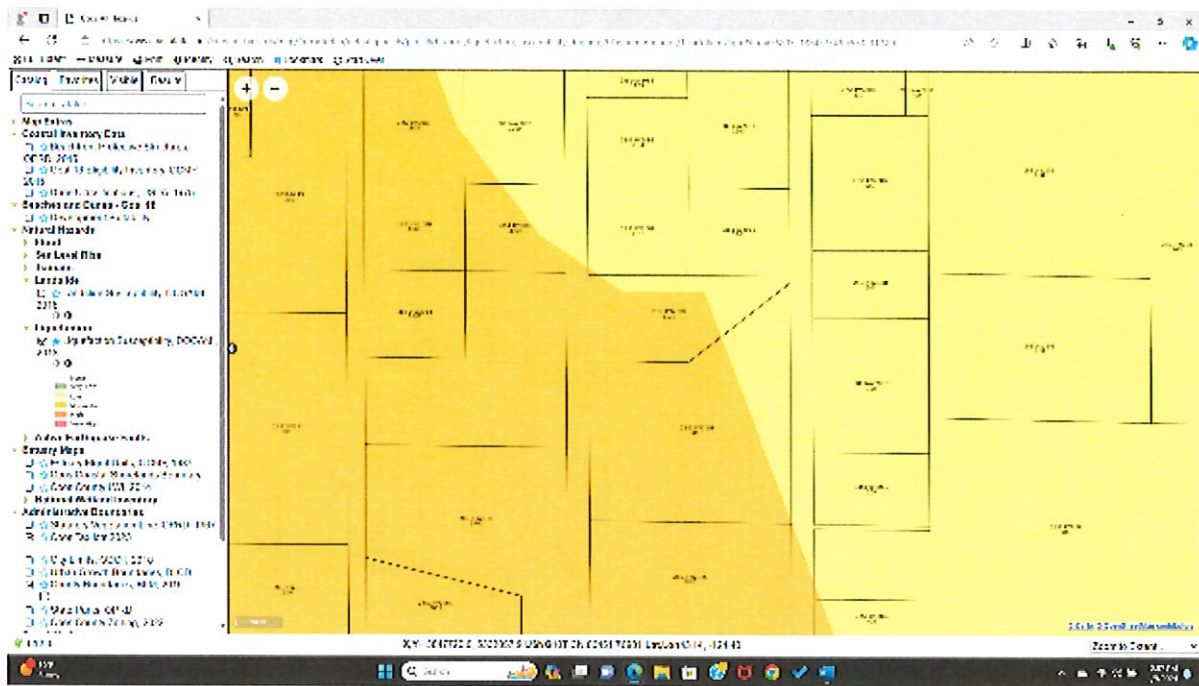


Figure 1. High landslide zones for lot 1801 and 1802.

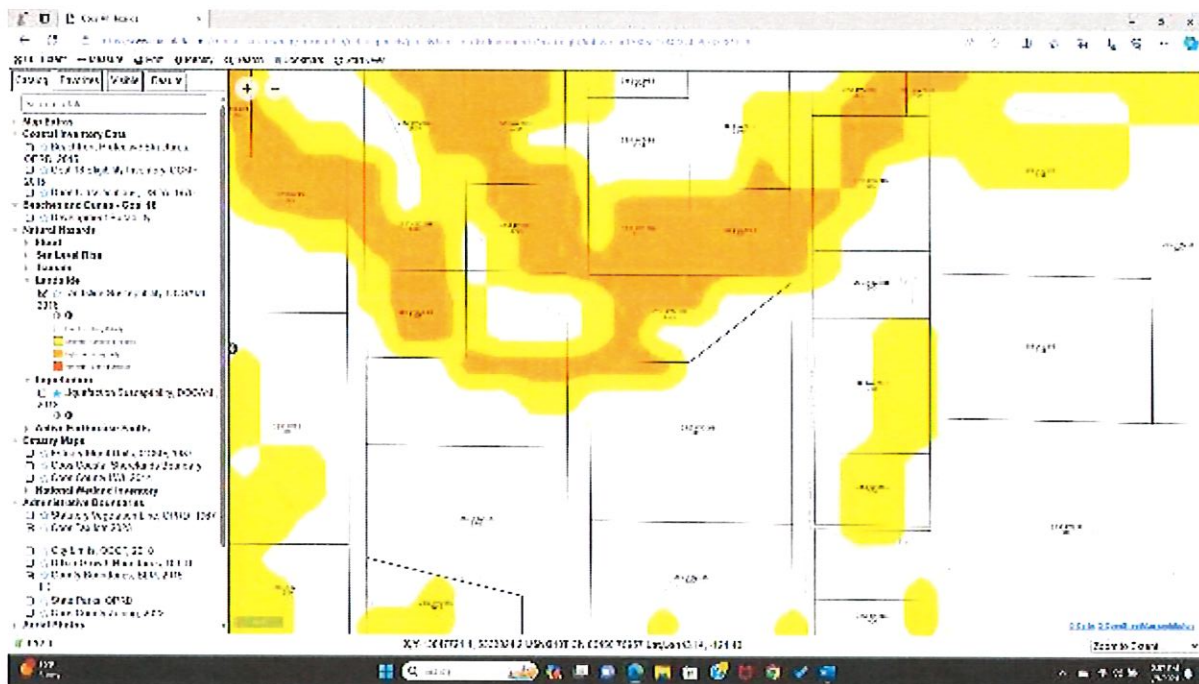


Figure 2. Larger image of the landslide risks and how it travels through the area, and specifically 1801.

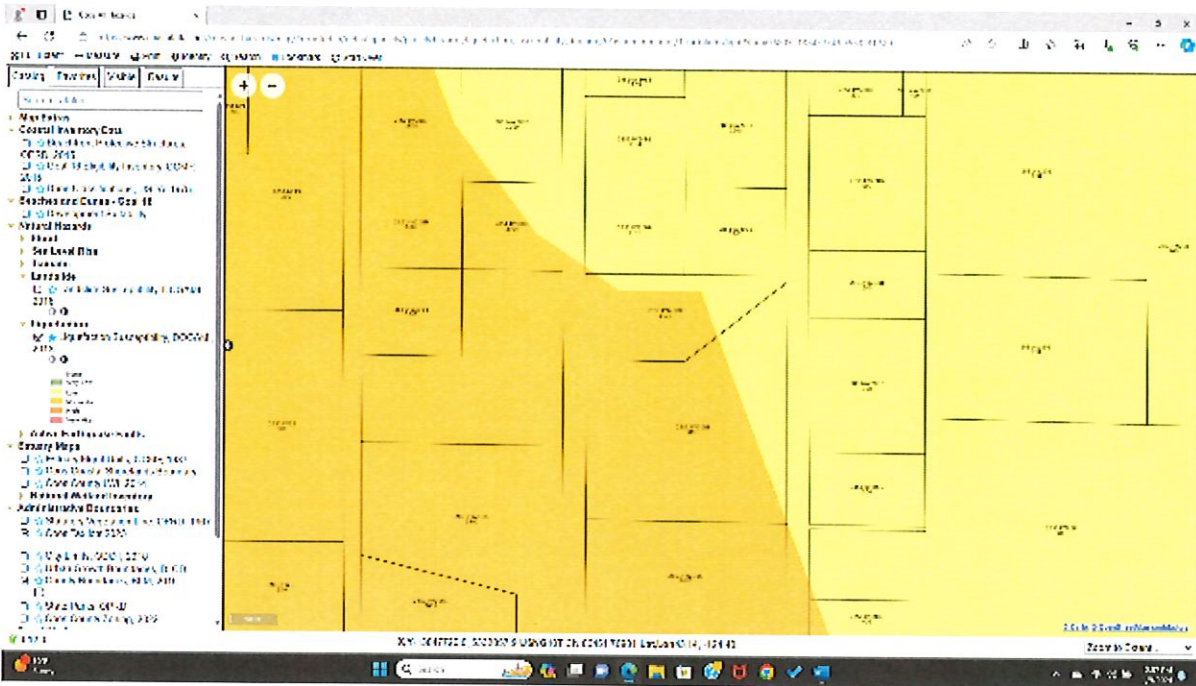


Figure 3. Liquefaction risk areas showing 1801 in a high risk area. [Coos All Hazards \(coastalatlus.net\)](https://coosallhazards.coastalatlus.net)

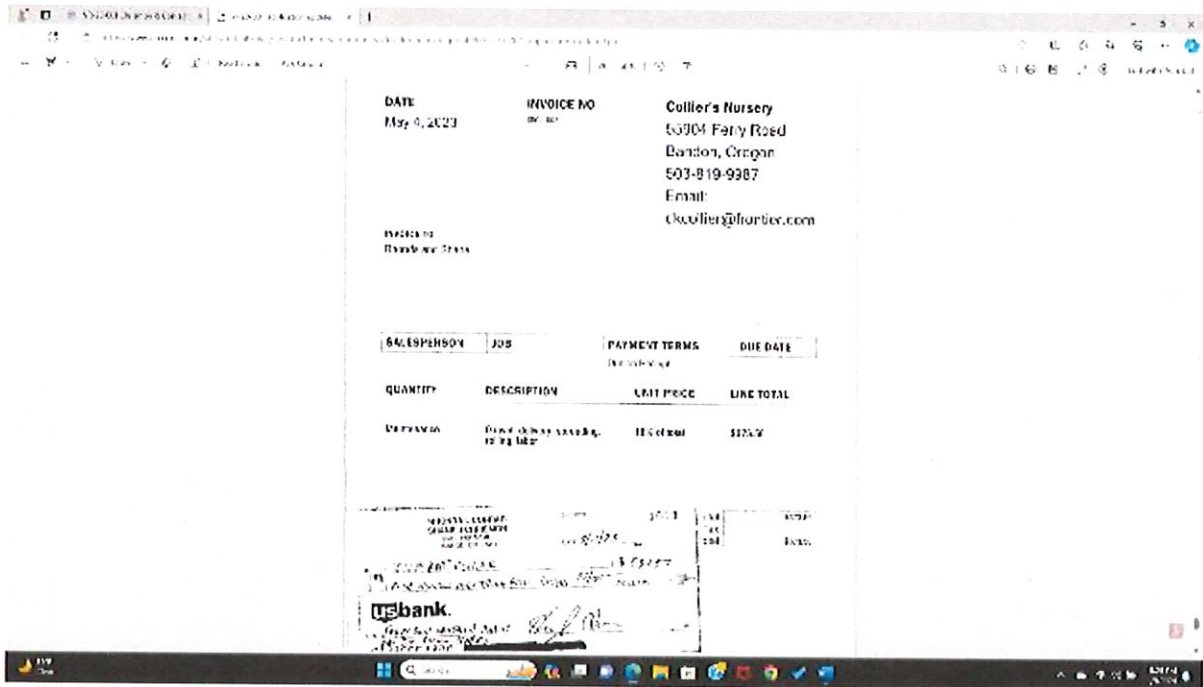


Figure 4. Bill to Chrismon/Conrad from me for easement road repair with their check. Even with verbal agreement to pay their fair share based on their use, they decided not to.