



*Land of Cheese, Trees and Ocean Breeze*

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**RESOURCE ZONE EXCEPTION #851-22-000303-PLNG: BAERTLEIN  
Administrative Decision & Staff Report**

**Decision:** Approved with Conditions  
**Decision Date:** **October 10, 2022**  
**Report Prepared By:** **Sarah Absher, CFM, Director**

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**I. GENERAL INFORMATION:**

**Request:** An exception request to reduce the required 100-foot resource zone setback from the Farm (F-1) zone boundary and establish a 33-foot setback to allow for the placement of a residential structure (single-family dwelling) (Exhibit B).

**Location:** The subject property is accessed via Hurliman Hill Road, a private road, is located southeast of the City of Tillamook, is zoned Rural Residential 2-Acre and is designated as Tax Lot 901 in Section 22 of Township 2 South, Range 9 West of the Willamette Meridian, Tillamook County, Oregon.

**Zone:** Rural Residential 2-Acre (RR-2) Zone

**Applicant &**

**Property Owner:** Dave and Kim Baertlein, 9700 Sollie Smith Road, Tillamook, OR 97141

**Description of Site and Vicinity:** Assessor records indicate the subject property encompasses approximately 2.18 acres with varying topography primarily consisting of steep slopes and few benched areas, is vegetated and vacant of improvements (Exhibit A). Wetlands and riparian features are mapped within the vicinity, however none are present on the subject property (Exhibit A). The subject property is not located within an area of Special Flood Hazard and is located within an area of landslide topography (Exhibit A).

Properties to the south and west are also zoned Rural Residential 2 Acre (RR-2) and are generally developed with single family dwellings and accessory structures (Exhibit A). The properties to the north and east are zoned Farm (F-1) and properties to the northeast are zoned Forest (F) and appear to be in Forest use (Exhibit A).

## II. APPLICABLE ORDINANCE AND COMPREHENSIVE PLAN PROVISIONS:

The desired use is governed through the following sections of the Tillamook County Land Use Ordinance (TCLUO). The suitability of the proposed use, in light of these criteria, is discussed in Section III of this report:

- A. TCLUO Section 3.010: Rural Residential 2-Acre (RR-2) Zone
- B. TCLUO Section 4.130: Development Requirements for Geologic Hazard Areas

## III. ANALYSIS:

Notice of the request was mailed to property owners within 250 feet of the subject property and other agencies on September 15, 2022. No comments were received.

### A. **Section 3.010: Rural Residential 2-Acre (RR-2) Zone**

**Section 3.011(4) Standards:** *Land divisions and development in the RR-2 and RR-10 zone shall conform to the following standards, unless more restrictive supplemental regulations apply:*

*...(k) No residential structure shall be located within 100 feet of an F-1, F, or SFW-20 zone boundary, unless it can be demonstrated that natural or man-made features will act as an equally effective barrier to conflicts between resource and residential uses; or that a residential structure could not otherwise be placed on the property without requiring a variance to the 100-foot requirement. In either case, all yard requirements in this zone shall still apply.*

**Findings:** The subject property lies within 100-feet of the Farm (F-1) zoned properties to the north and east, and within 100-feet of the Forest zone abutting the northeasterly corner of the subject property (Exhibit A). Applicant sites steep slopes on southern half of the property and that there are adequate vegetative buffers to the north to properly mitigate any potential conflicts with adjacent resource uses (Exhibit B).

Staff finds that a residential structure could not otherwise be placed on the subject property without requiring a variance to the 100-foot setback due to the locations of the resource boundaries surrounding the subject property to the north and east, together with the steep slopes and limited area for location of a building footprint that does not require significant excavation and disturbance of existing sloped areas (Exhibit B).

### B. **TCLUO Section 4.130: Development Requirements for Geologic Hazard Areas**

TCLUO Section 4.130(2)(a) identifies all lands partially or completely within categories of “high” and “moderate” susceptibility to shallow landslides and all lands partially or completely within categories of “high” and “moderate” susceptibility to deep landslides as mapped in DOGAMI Open File Report O-20-13, Landslide hazard and risk study of Tillamook County, Oregon as potentially geologically hazardous and subject to the requirements of this section.

**Findings:** Development is subject to geologic hazard assessment review in accordance with the provisions outlined in TCLUO Section 4.130(3), where the average existing slope of the building footprint or area to be disturbed measured from the highest to lowest point within the footprint or area to be disturbed is 29 percent or greater for properties 20,000 square feet or larger.

Staff finds a Condition of Approval can be made to require development adheres to the applicable development standards of TCLUO Section 4.130 at the time of consolidated zoning and building permit submittal.

**IV. DECISION: APPROVED WITH CONDITIONS**

Staff concludes that the applicant has satisfied the review criteria and can meet all applicable ordinance requirements at the time of application. Therefore, Staff approves this request for an exception to the Farm (F-1) zone setback subject to the Conditions of Approval in Section V of this report. This approval does not address any additional development of the subject property.

By accepting this approval, the applicant and property owner agrees to indemnify, defend, save and hold harmless Tillamook County, and its officers, agents, and employees from any claim, suit, action or activity undertaken under this approval, including construction under a Building Permit approved subject to this approval. The applicant /property owner shall obtain all of the necessary local, state, and federal permits and comply with all applicable regulations for the proposed construction.

**Appeal of this decision.** This decision may be appealed to the Tillamook County Planning Commission, who will hold a public hearing. In such cases, forms and fees must be filed in the office of this Department before **4:00 PM on October 24, 2022.**

**V. CONDITIONS OF APPROVAL:**

Failure to comply with the Conditions of Approval and ordinance provisions could result in nullification of this approval.

1. The applicant/property owner shall obtain all Federal, State, and Local permits, as applicable.
2. The applicant/property owner shall obtain an approved consolidated Building/Zoning Permit from the Tillamook County Department of Community Development prior to siting the proposed dwelling.
3. Residential development shall maintain the approved reduced resource zone setback of a 33-foot setback along the northerly property line as depicted on the proposed site plan.
4. The applicant/property owner shall submit a site plan indicating all required yard setbacks and reduced resource zone setbacks, at the time of consolidated Building/Zoning Permit application submittal.
5. Development shall otherwise comply with the applicable standards and requirements of TCLUO Section 3.010: Rural Residential 2-Acre (RR-2) Zone.
6. Development shall comply with the applicable standards and requirements of TCLUO Section 4.130: Development Requirements for Geologic Hazard Areas.
7. In accepting this approval, the property owner understands intensive farm or forest practices may be conducted upon adjacent or nearby land zoned for farm or forest use. The property owner hereby acknowledges that practices may involve but are not limited to the application of herbicides or fertilizers (including aerial spraying), road construction, changes in view, noise, dust, odor, traffic, and other impacts related to a farm zone. The property owner acknowledges the residential use of this property may be impacted by such activities and is accepting of that fact. In the event of conflict, the property owner understands preference will be given to farm and forest practices.

A covenant to the deed shall be required, informing that intensive farm or forest practices may be conducted upon adjacent or nearby land zoned for farm or forest use and limiting pursuance of a claim for relief or cause of action of alleging injury from farming or forest practices. A copy of the recorded covenant included as 'Exhibit D' shall be provided at the time of applying for Building and Zoning Permits.

8. This approval expires if a Building Permit is not applied for within two (2) years of issuance of this approval.

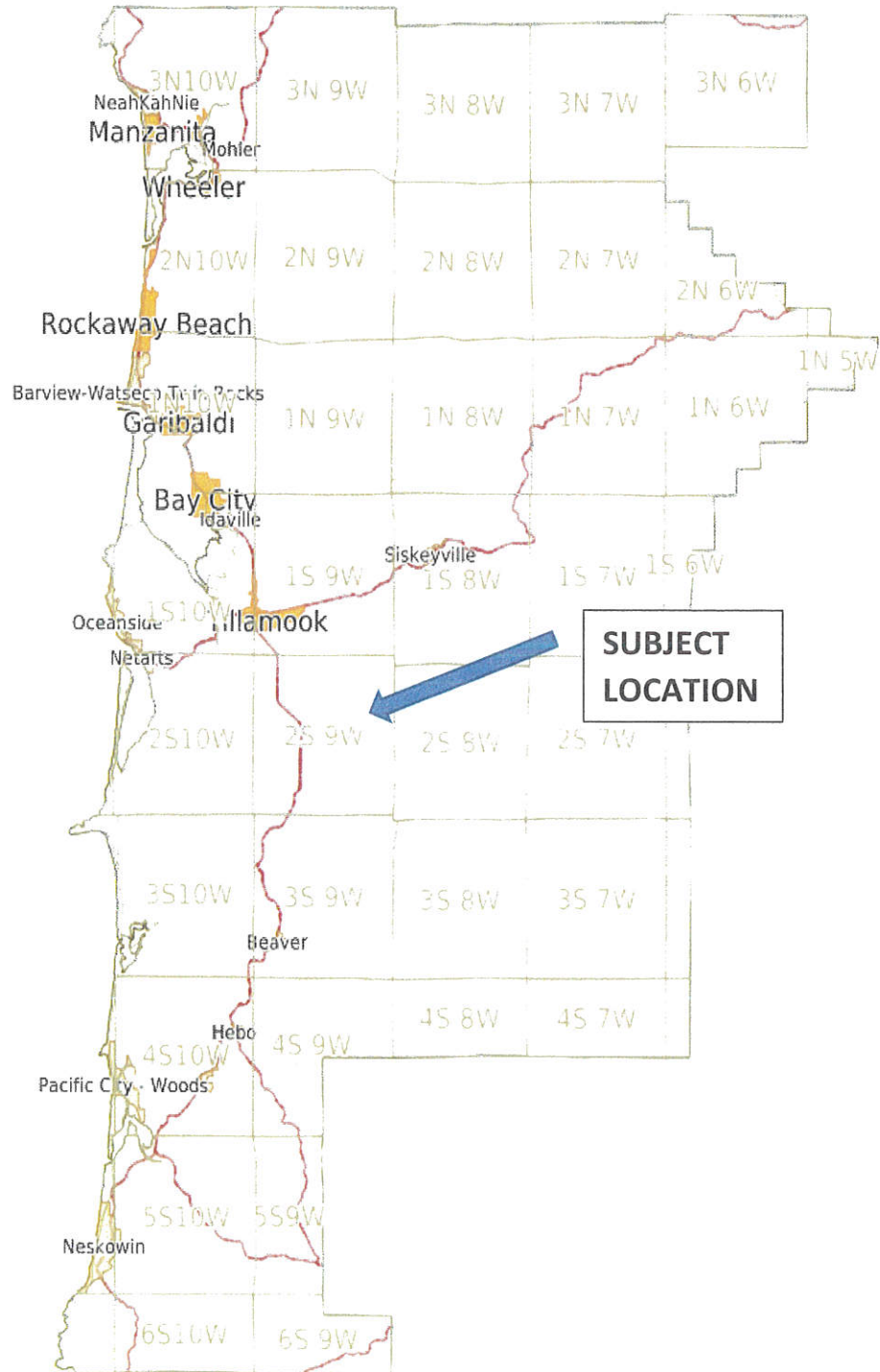
## **VI. EXHIBITS**

All Exhibits referenced herein are, by this reference, made a part hereof:

- A. Vicinity map, Assessor map, Zoning map, Assessor's Summary Report
- B. Applicant's submittal
- C. Required Restrictive Covenant: Farm Forest Practices

# EXHIBIT A

# VICINITY MAP



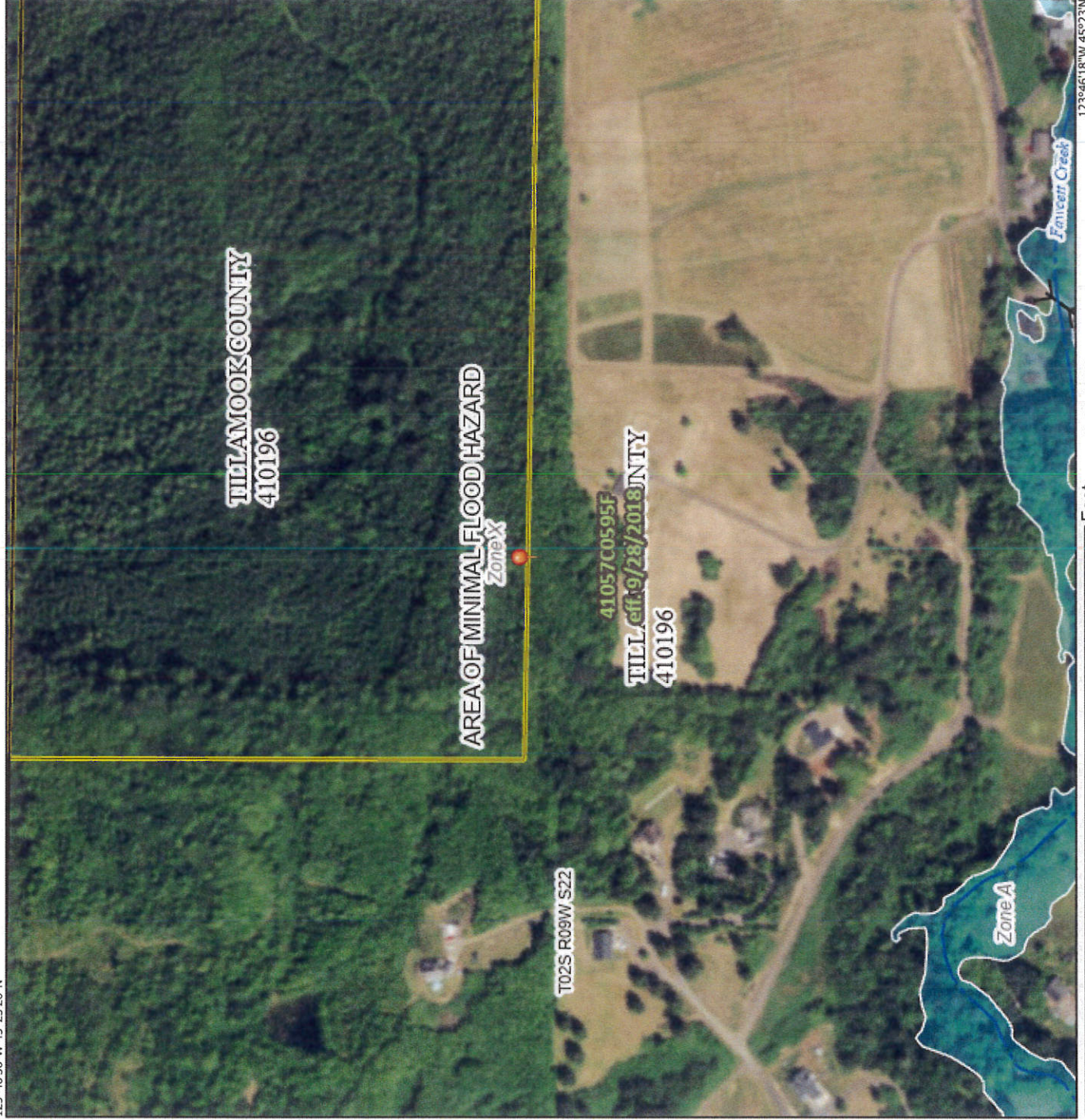
#851-22-000303-PLNG: BAERTLEIN



# National Flood Hazard Layer FIRMette



123°46'56"W 45°23'26"N



## Legend

SEE FIS REPORT FOR DETAILED LEGEND AND INDEX MAP FOR FIRM PANEL LAYOUT

	Without Base Flood Elevation (BFE) <i>Zone A, V, A99</i>
	With BFE or Depth <i>Zone AE, AO, AH, VE, AR</i>
	Regulatory Floodway
	0.2% Annual Chance Flood Hazard, Areas of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile <i>Zone X</i>
	Future Conditions 1% Annual Chance Flood Hazard <i>Zone X</i>
	Area with Reduced Flood Risk due to Levee. See Notes. <i>Zone X</i>
	Area with Flood Risk due to Levee <i>Zone D</i>
	NO SCREEN
	Area of Minimal Flood Hazard <i>Zone X</i>
	Effective LOMIRs
	Area of Undetermined Flood Hazard <i>Zone D</i>
	Channel, Culvert, or Storm Sewer
	Levee, Dike, or Floodwall
	Cross Sections with 1% Annual Chance Water Surface Elevation
	Coastal Transect
	Base Flood Elevation Line (BFE)
	Limit of Study
	Jurisdiction Boundary
	Coastal Transect Baseline
	Profile Baseline
	Hydrographic Feature
	Digital Data Available
	No Digital Data Available
	Unmapped



The pin displayed on the map is an approximate point selected by the user and does not represent an authoritative property location.

This map complies with FEMA's standards for the use of digital flood maps if it is not void as described below. The basemap shown complies with FEMA's basemap accuracy standards

The flood hazard information is derived directly from the authoritative NFHL web services provided by FEMA. This map was exported on 10/10/2022 at 1:25 PM and does not reflect changes or amendments subsequent to this date and time. The NFHL and effective information may change or become superseded by new data over time.

This map image is void if the one or more of the following map elements do not appear: basemap imagery, flood zone labels, legend, scale bar, map creation date, community identifiers, FIRM panel number, and FIRM effective date. Map images for unmapped and unmodernized areas cannot be used for regulatory purposes.

0 250 500 1,000 1,500 2,000 Feet

123°46'18"W 45°23'N

Basemap: USGS National Map: Orthoimagery: Data refreshed October, 2020







# TILLAMOOK County Assessor's Summary Report

## Real Property Assessment Report

FOR ASSESSMENT YEAR 2022

October 10, 2022 10:29:31 am

<b>Account #</b> 418478 <b>Map #</b> 2S09220000901 <b>Code - Tax #</b> 0912-418478  <b>Legal Descr</b> PARTITION PLAT 2021-10 Lot - PARCEL 1  <b>Mailing Name</b> BAERTLEIN, KIMBERLY & DAVID <b>Agent</b> <b>In Care Of</b> <b>Mailing Address</b> 9400 HURLIMAN HILL RD TILLAMOOK, OR 97141  <b>Prop Class</b> 640 <b>MA</b> <b>SA</b> <b>NH</b> <b>Unit</b> <b>RMV Class</b> 400      01   SV   104   23269-1	<b>Tax Status</b> ASSESSABLE <b>Acct Status</b> ACTIVE <b>Subtype</b> NORMAL  <b>Deed Reference #</b> 2022-2006 <b>Sales Date/Price</b> 03-22-2022 / \$140,000.00 <b>Appraiser</b> HANNAH THOMPSON
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<b>Situs Address(s)</b>	<b>Situs City</b>
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Code Area		RMV	MAV	Value Summary AV	RMV Exception	CPR %
0912	Land	104,410			Land	53.8
	Impr.	0			Impr.	0
<b>Code Area Total</b>		104,410	56,170	1,719	104,410	
<b>Grand Total</b>		104,410	56,170	1,719	104,410	

Land Breakdown										
Code Area	ID#	RFPD	Ex	Plan Zone	Value Source	TD%	LS	Size	Land Class	Trended RMV
0912	1	<input checked="" type="checkbox"/>		RR-2	Designated Forest Land	110	A	2.18	OA	104,410
<b>Grand Total</b>								2.18		104,410

Improvement Breakdown									
Code Area	ID#	Yr Built	Stat Class	Description	TD%	Total Sq. Ft.	Ex%	MS Acct #	Trended RMV
<b>Grand Total</b>						0			0

**Exemptions / Special Assessments / Potential Liability**

**NOTATIONS:**  
 ■ FOREST LAND - POTENTIAL ADDITIONAL TAX LIABILITY 321.362 ADDED 2022

**Code Area** 0912

**FIRE PATROL:**  
 ■ FIRE PATROL NORTHWEST

	<b>Amount</b>	18.75	<b>Acres</b>	2.18	<b>Year</b>	2022
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**Comments:** 02/24/2022 Due to partition plat 2021-10, a portion of tax lot 2S09220000900 will now be carried in the new tax lot 901. Adjusted RMV and applied exception. There was a size change due to acreage calculation. HT

# EXHIBIT B



## PLANNING APPLICATION

**RECEIVED**

**OFFICE USE ONLY**

Date Stamp **JUL 27 2022**

BY: \_\_\_\_\_

<input type="checkbox"/> Approved	<input type="checkbox"/> Denied
Received by: _____	
Receipt #: <b>12754</b>	
Fees: <b>\$1,300.00</b>	
Permit No: <b>851-22-00303-PLNG</b>	

**Applicant**  (Check Box if Same as Property Owner)

Name: **DAVE + Kim Baertlein** Phone: **503-338-8208**

Address: **9700 Solle Smith Rd**

City: **Tillamook** State: **OR** Zip: **97141**

Email: **kbaertlein@live.com**

**Property Owner**

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Email: \_\_\_\_\_

**Request:**

**Need North setback to be 33'**  
**We cant crowd South property line because of slope / virgin ground**  
**Vegetative buffer North region of property to mitigate conflicts with resource users.**

**Type II**

- Farm/Forest Review
- Conditional Use Review
- Variance
- Exception to Resource or Riparian Setback
- Nonconforming Review (Major or Minor)
- Development Permit Review for Estuary Development
- Non-farm dwelling in Farm Zone
- Foredune Grading Permit Review
- Neskowin Coastal Hazards Area

**Type III**

- Appeal of Director's Decision
- Extension of Time
- Detailed Hazard Report
- Conditional Use (As deemed by Director)
- Ordinance Amendment
- Map Amendment
- Goal Exception

**Type IV**

- Appeal of Planning Commission Decision
- Ordinance Amendment
- Large-Scale Zoning Map Amendment
- Plan and/or Code Text Amendment

**Location:**

Site Address: \_\_\_\_\_

Map Number: **25** **9** **22** **901**  
Township Range Section Tax Lot(s)

Clerk's Instrument #: \_\_\_\_\_

**Authorization**

This permit application does not assure permit approval. The applicant and/or property owner shall be responsible for obtaining any other necessary federal, state, and local permits. The applicant verifies that the information submitted is complete, accurate, and consistent with other information submitted with this application.

*Property Owner Signature (Required)*

**7/27/22**  
Date

Applicant Signature

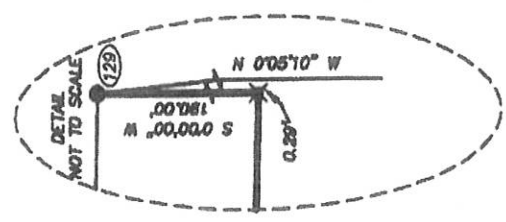
Date

50.00 N  
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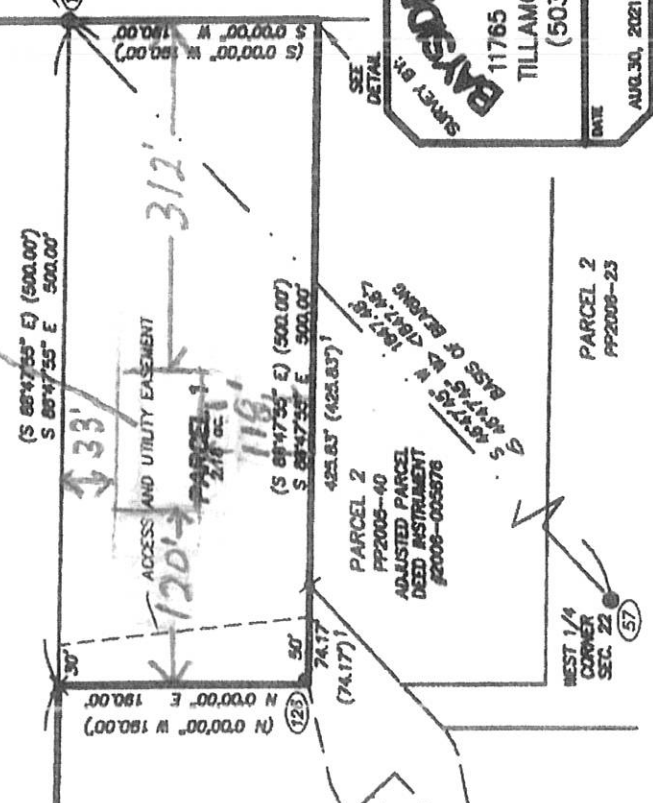
**LEGEND**

- INDICATES FOUND MONUMENT AS NOTED HEREON. HELD FOR CONTROL.
- ⊗ INDICATES FOUND 5/8" REBAR WITH YELLOW PLASTIC CAP STAMPED "TERRY JONES LS 2207". SEE MAPS P-798 AND P-822.
- ⊗ INDICATES FOUND 5/8" REBAR WITH YELLOW PLASTIC CAP STAMPED "A DUNCAN LS 793", HELD. SEE MAPS B-282R, AND P-152.
- INDICATES FOUND MONUMENT AS NOTED HEREON.
- ( ) INDICATES RECORDED VALUE FROM MAP P-152.
- ( ) INDICATES RECORDED VALUE FROM MAP P-798.
- < > INDICATES CALCULATED VALUE FROM MAP P-152.
- NO ( ) OR < > INDICATES MEASURED VALUE.

*Proposed Shop 60' x 40'*



INITIAL POINT NW 1/16 CORNER



SHEET 2 of 2

PARYKOMINOTHLOWIC  
GEO-HURLCSS\_019

**TAMMY & RICK KOMINOTH**

REPLAT OF PARCEL 2  
PARTITION PLAT 1993-42

NW1/4 OF SECTION 22, T2S, R9W, W.M.  
TILLAMOOK COUNTY, OREGON

**BASESDE SURVEYING**  
11765 HWY 101 SOUTH  
TILLAMOOK, OR. 97141  
(503) 842-5551

DATE: AUG.30, 2021  
TOPCON GPT-1002  
TDS-RECON

PARCEL 2  
PP2008-23

WEST 1/4 CORNER SEC. 22 (57)

# EXHIBIT C

**INSTRUCTIONS FOR FILING RESTRICTIVE COVENANT  
FOR THE CREATION OF A PARCEL OR PLACEMENT OF A DWELLING  
ADJACENT TO LAND ZONED FOR FARM OR FOREST USE**

1. This acknowledgment is required when the County permits the creation of parcels or the location/placement of dwellings adjacent to an area designated by the County as farm or forest lands (F, F-1, SFW-20).
2. Obtain the legal description of the subject property as it's recorded in the Tillamook County Deed Records. This is what is referred to as Exhibit A and must accompany the affidavit/covenant.
3. The attached affidavit/covenant must be filled out showing the names of ALL current property owners who appear on the property deed or contract, and signed before a Notary Public. Community Development has Notaries that can provide the service for free.
4. Once the affidavit/covenant is signed and notarized with the attached legal description, bring these to the Tillamook County Clerk's office to be recorded. **The Clerk's will charge a recording fee.** Please contact the Clerk's office at (503)842-3402 for current fees.
5. **A copy of the recorded and notarized affidavit/covenant will be given to DCD to put on file.**
6. If you have any questions about the affidavit/covenant, or the recording procedure, please contact the Department of Community Development Staff at (503)842-3408 x3410.



After Recording Return To:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**RESTRICTIVE COVENANT**

\_\_\_\_\_  
(GRANTORS) are the owners of real property described as follows:

**PROPERTY LEGAL DESCRIPTION attached as Exhibit A hereto and incorporated by reference**

Do hereby promise and covenant as follows:

The property herein described is situated adjacent to a Farm or Forest resource zone such as F, F-1, or SFW-20 zones in Tillamook County, Oregon where the intent is to encourage farm and forest use and minimize conflicts with those uses. The owners/residents of this parcel understand that on the adjacent land customary and accepted farm or forest management practices, conducted in accordance with federal and state laws, ordinarily and necessarily produce noise, dust, smoke, odors, the application of manure, fertilizers, or herbicides (including aerial spraying), road construction, changes in view, and other impacts related to a resource zone.

I/We do hereby accept the potential impacts from farm and forest practices as normal and necessary and part of the risk of establishing a structure in this area and shall not pursue a claim for relief or cause of action of alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or ORS 30.937.

This covenant shall run with the land and is intended to and hereby shall bind my/our heirs, assigns, lessees, and successors and it can not be deleted or altered without prior contact and approval by the Tillamook County Department of Community Development (GRANTEE) or its successor.

IN WITNESS WHEREOF, the said Party has executed this instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

\_\_\_\_\_

\_\_\_\_\_

Signature

Print Names

State of \_\_\_\_\_, County of \_\_\_\_\_

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_

SEAL

\_\_\_\_\_  
Notary Public of Oregon  
My Commission Expires:  
\_\_\_\_\_

STATE OF OREGON  
COUNTY OF TILLAMOOK