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Land of Cheese, Trees and Ocean Breeze

**CONDITIONAL USE REQUEST #851-22-000245-PLNG: DENNING
ADMINISTRATIVE DECISION & STAFF REPORT**

Decision Date: November 21, 2022

**Decision: APPROVED WITH CONDITIONS
(This is not Building or Placement Permit Approval)**

Report Prepared by: Sarah Absher, CFM, Director

I. GENERAL INFORMATION:

- Request:** Conditional Use request for the construction of an accessory structure without a primary use (dwelling) (Exhibit B).
- Location:** Located northeast of the City of Nehalem and accessed via Highway 53, a State Highway, the subject property is designated as Tax Lot 923 in Section 13 of Township 3 North, Range 10 West of the Willamette Meridian, Tillamook County, Oregon (Exhibit A).
- Zone:** Rural Residential 2 Acre (RR-2) Zone
- Applicant:** Jesse Denning, P.O. Box 507, Manzanita, OR 97130
- Property Owner:** Jesse Denning, P.O. Box 507, Manzanita, OR 97130

Property Description: The subject property contains 4.03 acres and is irregular in shape. Property is accessed via Highway 53 and a private easement, varies in topography and is vegetated with grasses, trees and shrubs. County records indicate the subject property is improved with an accessory structure and a well.

Subject property does not contain wetlands or other mapped natural features. Property is within an area of geologic hazard. Property is not located within area of special flood hazard per FEMA Firm #41057C0230F dated September 28, 2018 (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. Section 3.010: Rural Residential 2 Acre and 10 Acre Zone
- B. Article VI: Conditional Use Procedures and Criteria

III. ANALYSIS:

A. A. Section 3.010: Rural Residential 2 Acre and 10 Acre Zone

PURPOSE: The purpose of the RR zone is to provide for the creation and use of small acreage residential homesites. Land that is suitable for Rural Residential use has limited value for farm or forest use; it is physically capable of having homesites on parcels of five acres or less; and it can be utilized for residential purposes without constraining the use of surrounding resource-zoned properties for resource-production purposes.

- 1. **Section 3.010 (3)(g)** lists accessory structures or accessory uses without an on-site primary structure as a use permitted conditionally in the Rural Residential 2 Acre Zone subject to the provisions of Article 6 and the requirements of all other applicable supplementary regulations contained in this Ordinance.

Findings: Staff finds that conditional use approval is required for the construction of an accessory structure without a primary structure in the RR-2 zone.

B. Article VI Conditional Use Procedures and Criteria

Article VI of the Tillamook County Land Use Ordinance contains the procedures and review criteria for processing a Conditional Use request. These criteria, along with Staff's findings and conclusions, are indicated below.

- 1. **Section 6.020 Procedure** requires public notice in accordance with TCLUO Section 10.070 which requires notification of the request to be mailed to landowners within 250 feet of the subject property, to allow at least 14 days for written comment, and requires staff to consider comments received in making the decision.

Findings: Notice of the request was mailed to property owners within 250 feet of the subject property and other agencies on October 19, 2022. Written comments were received by the Oregon Department of State Lands and are included as "Exhibit C" of this report. Comments conclude that the project appears to avoid wetlands (Exhibit C).

2. Section 6.040 Review Criteria

- 1. *The use is listed as a conditional use in the underlying zone, or in an applicable overlying zone.*

Findings: The applicant is proposing the construction of an accessory structure without a primary use (dwelling). As stated above, the use is permitted conditionally in the RR-2 Zone.

2. *The use is consistent with the applicable goals and policies of the comprehensive plan.*

Findings: Staff finds that the proposed use is permitted conditionally in the RR-2 zone of the Tillamook County Land Use Ordinance. The TCLUO is an implementing document of the Comprehensive Plan. In the absence of evidence to the contrary, uses allowed conditionally in the Land Use Ordinance are presumed to be consistent with the Comprehensive Plan. Staff concludes this criterion has been met.

3. *The parcel is suitable for the proposed use considering its size, shape, location, topography, existence of improvements and natural features.*

Findings: The subject property contains approximately 4.03 acres and is accessed via Highway 53, a State Highway (Exhibit A). There are no wetland present on the property and is not in the flood hazard overlay zone (Exhibit A). Applicant is proposing to construct the accessory structure in an area of the property that is relative flat. Property has access to a well for water to provide water for fire suppression (Exhibit B).

Given the size of property, absence of natural features, and established access, Staff finds that the subject property can be suitable for the proposed construction of an accessory structure.

4. *The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs or prevents the use of surrounding properties for the permitted uses listed in the underlying zone.*

Findings: Adjacent properties are zoned RR-2, Farm (F-1) and Forest (F) as depicted on the zoning map included in "Exhibit A" of this report. Existing uses in the vicinity consist primarily of residential, agricultural and forestry. Several properties are improved with similar accessory structures. Applicant adds that the structure will be sited in a manner on the property with limited visibility to the neighboring properties and state highway (Exhibit B). Applicant's site plan demonstrates all uses will continue to take place on the subject property and that the property is of adequate size to accommodate the proposed accessory structure in a manner that ensures permitted uses on adjacent properties are not impacted in the manner described in the criterion above.

Given the diversity of existing uses in the area and size of the subject property in relation to the proposed use, Staff finds that the construction of an accessory structure on the subject property will not alter the character of the surrounding area in a manner which substantially limits, impairs or prevents surrounding landowners from developing their properties consistent with permitted uses in the underlying zones within this vicinity.

5. *The proposed use will not have a detrimental effect on existing solar energy systems, wind energy conversion systems or wind mills.*

Findings: None such systems are known to exist in the area. Staff concludes this criterion has been met.

6. *The proposed use is timely, considering the adequacy of public facilities and services existing or planned for the area affected by the use.*

Findings: Long-established existing public facilities and services in this area include Nehalem Bay Fire and Rescue District, Tillamook County Sheriff and Tillamook County Public Works, and Tillamook People's Utility District (PUD). Water is provided by a well as mentioned in the Applicant's submittal.

Given the existence of public services and facilities in the area in relation to the proposed construction of an accessory structure without a primary structure (dwelling), Staff finds the proposed use is timely and any requirements for service provider letters can be required through Conditions of Approval. Need for water service has been addressed. Any sanitary needs can be accomplished through permitting for an onsite wastewater treatment system as reflected in the Conditions of Approval listed below.

Staff finds that this criterion can be met through compliance with the Conditions of Approval.

IV. DECISION: APPROVED WITH CONDITIONS

Based on the findings shown above, Staff concludes that the applicant has satisfied the review criteria and can meet all applicable ordinance requirements at the time of application. Therefore, the Department approves this request subject to the Conditions of Approval in section V of this report.

Appeal of this decision. This decision may be appealed to the Tillamook County Planning Commission, who will hold a public hearing. The forms and fees must be filed in the office of this Department before **4:00 PM on December 5, 2022.**

V. CONDITIONS OF APPROVAL:

Sections 6.070: COMPLIANCE WITH CONDITIONS, and 6.080: TIME LIMIT requires compliance with approved plans and conditions of this decision, and all other ordinance provisions. 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 adhere to applicable development standards in TCLUO Section 3.010: Rural Residential 2-Acre (RR-2) zone.
3. Development of the property shall adhere to the applicable development standards outlined in TCLUO Section 4.130: Development Requirements for Geologic Hazard Areas. Development on slopes greater than 29% is subject to a Geologic Hazard Assessment as per TCLUO Section 4.130.
4. The applicant shall submit a fire letter from the Nehalem Bay Fire and Rescue District to the Department at the time of consolidated zoning/building permit submittal.
5. This approval shall be void on November 21, 2024, unless implementation of approved plans has begun, or an extension is requested from, and approved by this Department.

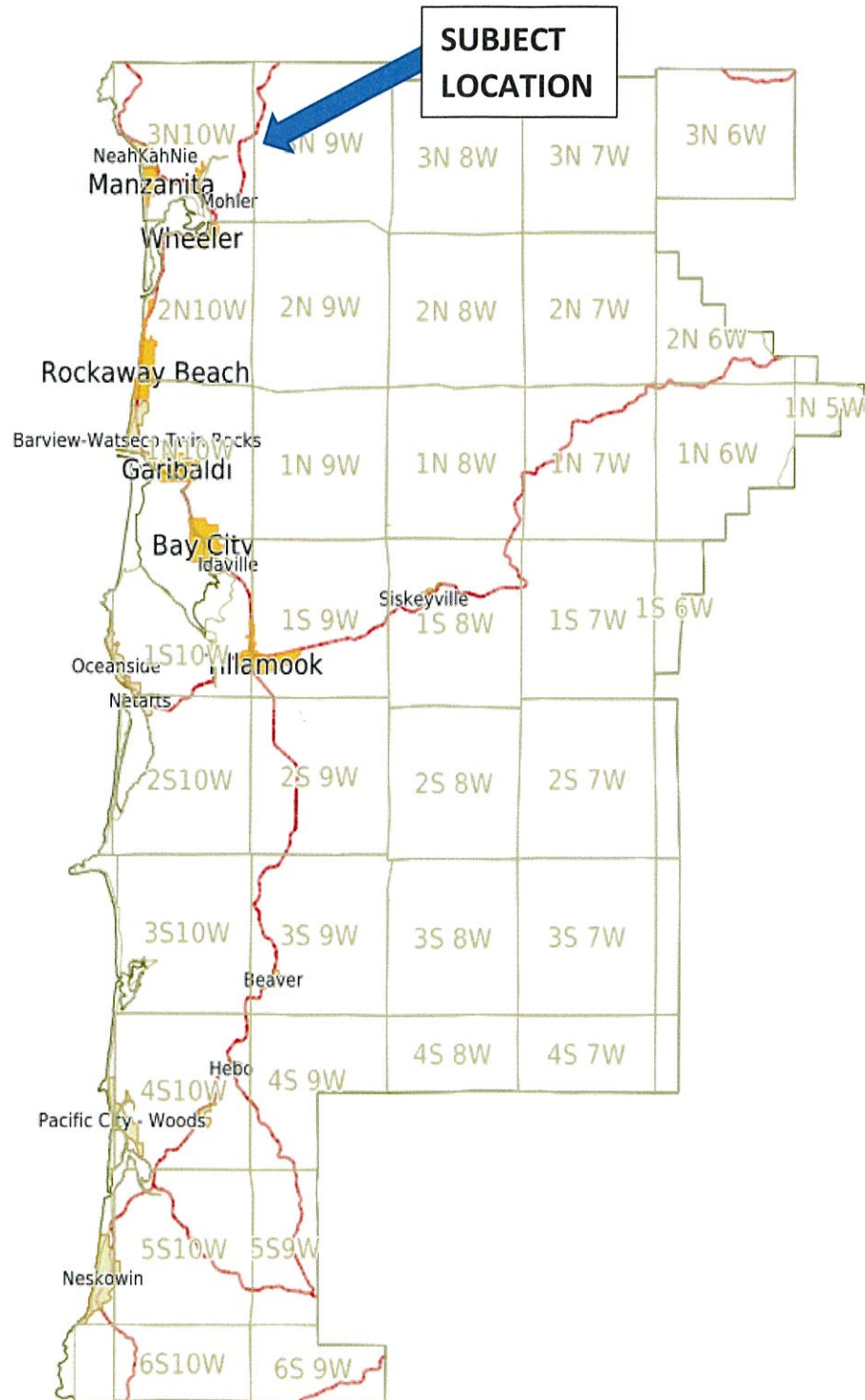
VI. EXHIBITS

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

- A. Location map, Assessor map, Zoning map, FEMA Firm, NWI Map
- B. Applicant's submittal
- C. Comments

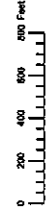
EXHIBIT A

VICINITY MAP



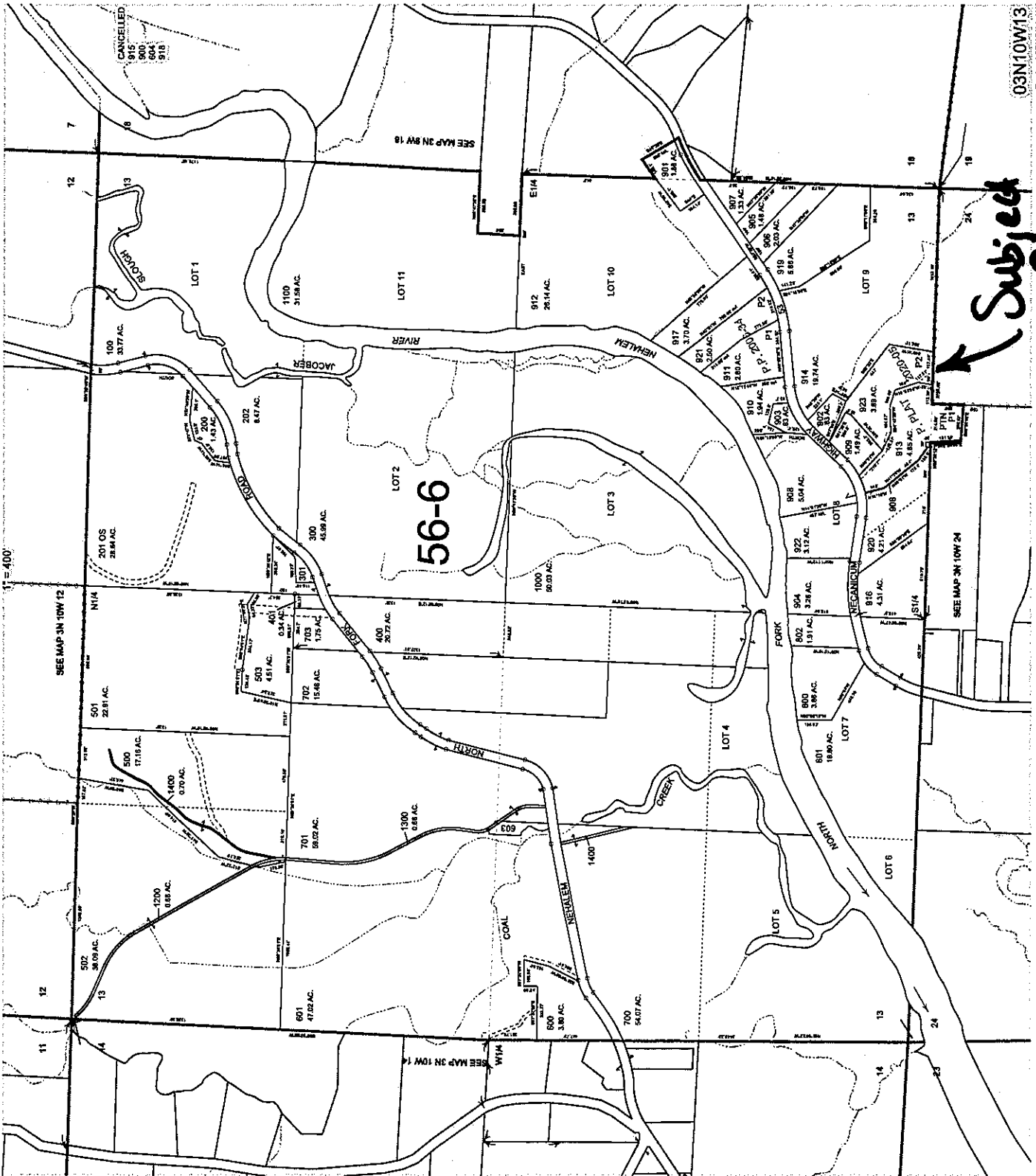
#851-22-00245-PLNG: DENNING
ACCESSORY STRUCTURE

THIS MAP WAS PREPARED FOR
ASSESSMENT PURPOSE ONLY



SECTION 13 T.3N. R.10W. W.M.
TILLAMOOK COUNTY

03N10W13



Subject Property

03N10W13
Revised 07/15/21, WS

Map



National Flood Hazard Layer FIRMette

123°51'14"W 45°44'37"N



123°50'36"W 45°44'12"N

Legend

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

SPECIAL FLOOD HAZARD AREAS

- Without Base Flood Elevation (BFE)
Zone A, V, A99
- With BFE or Depth Zone AE, AO, AH, VE, AR
- Regulatory Floodway

0.2% Annual Chance Flood Hazard, Area of 1% annual chance flood with average depth less than one foot or with drainage areas of less than one square mile Zone X

Future Conditions 1% Annual Chance Flood Hazard Zone X
Area with Reduced Flood Risk due to Levee. See Notes, Zone X
Area with Flood Risk due to Levee Zone D

OTHER AREAS OF FLOOD HAZARD

- NO SCREEN
- Area of Minimal Flood Hazard Zone X
- Effective LOMR
- Area of Undetermined Flood Hazard Zone

OTHER AREAS

GENERAL STRUCTURES

- Channel, Culvert, or Storm Sewer
- Levee, Dike, or Floodwall

- 20.2 Cross Sections with 1% Annual Chance Water Surface Elevation
- 8 Coastal Transect
- Base Flood Elevation Line (BFE)
- Limit of Study
- Jurisdiction Boundary
- Coastal Transect Baseline
- Profile Baseline
- Hydrographic Feature

OTHER FEATURES

- Digital Data Available
- No Digital Data Available
- Unmapped

MAP PANELS



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 11/20/2022 at 12:38 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.



U.S. Fish and Wildlife Service

National Wetlands Inventory

#851-22-000245-PLNG: DENNING NWI M.



November 21, 2022

Wetlands

- Estuarine and Marine Deepwater
- Estuarine and Marine Wetland
- Freshwater Emergent Wetland
- Freshwater Forested/Shrub Wetland
- Freshwater Pond

- Lake
- Other
- Riverine

This map is for general reference only. The US Fish and Wildlife Service is not responsible for the accuracy or currentness of the base data shown on this map. All wetlands related data should be used in accordance with the layer metadata found on the Wetlands Mapper web site.

EXHIBIT B



PLANNING APPLICATION

OFFICE USE ONLY	
Date Stamp JUN 17 2022	
BY:	
<input type="checkbox"/> Approved	<input type="checkbox"/> Denied
Received by: <i>SS</i>	
Receipt #: <i>126810</i>	
Fees: <i>\$1,089.- (Fees Change July 1, 2022)</i>	
Permit No: <i>851-22-600245-PLNG</i>	

Applicant (Check Box if Same as Property Owner)

Name: *Jesse Denning* Phone: *(503) 812-3470*

Address: *P.O. Box 5070*

City: *Manzanita* State: *Or.* Zip: *97130*

Email: *oregonjd79@gmail.com*

Property Owner

Name: _____ Phone: _____

Address: _____

City: _____ State: _____ Zip: _____

Email: _____

Request: *ACCESSORY STRUCTURE WITHOUT PRIMARY STRUCTURE*

- | Type II | Type III | Type IV |
|--|--|---|
| <input type="checkbox"/> Farm/Forest Review | <input type="checkbox"/> Appeal of Director's Decision | <input type="checkbox"/> Appeal of Planning Commission Decision |
| <input checked="" type="checkbox"/> Conditional Use Review | <input type="checkbox"/> Extension of Time | <input type="checkbox"/> Ordinance Amendment |
| <input type="checkbox"/> Variance | <input type="checkbox"/> Detailed Hazard Report | <input type="checkbox"/> Large-Scale Zoning Map Amendment |
| <input type="checkbox"/> Exception to Resource or Riparian Setback | <input type="checkbox"/> Conditional Use (As deemed by Director) | <input type="checkbox"/> Plan and/or Code Text Amendment |
| <input type="checkbox"/> Nonconforming Review (Major or Minor) | <input type="checkbox"/> Ordinance Amendment | |
| <input type="checkbox"/> Development Permit Review for Estuary Development | <input type="checkbox"/> Map Amendment | |
| <input type="checkbox"/> Non-farm dwelling in Farm Zone | <input type="checkbox"/> Goal Exception | |
| <input type="checkbox"/> Fore-dune Grading Permit Review | | |
| <input type="checkbox"/> Neskowin Coastal Hazards Area | | |

Location:

Site Address: _____

Map Number: *3N* *10* *13* *923*
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) *[Signature]*

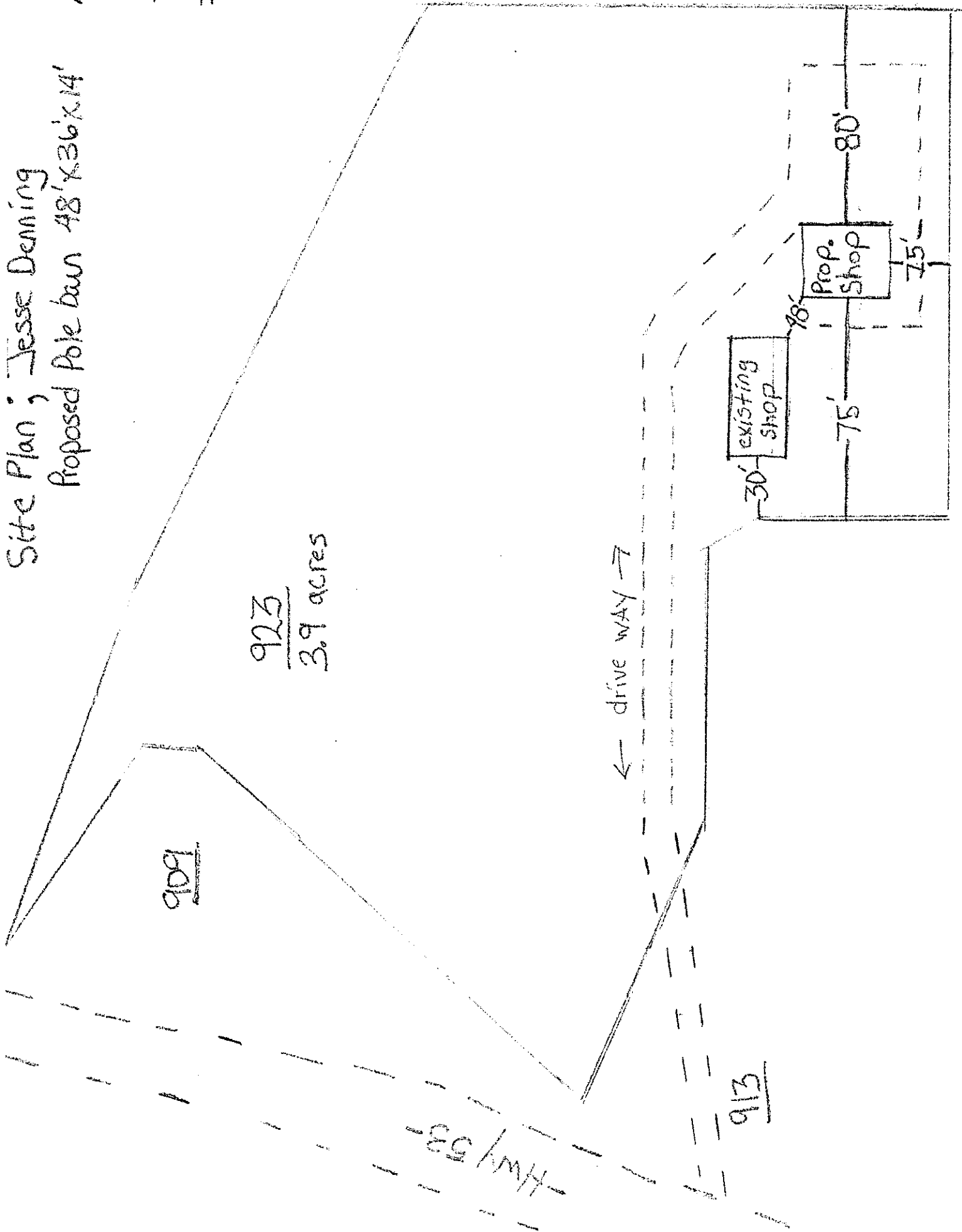
Date *5/30/22*

Applicant Signature _____ Date _____

- 1.) The use is listed as a CONDITIONAL USE in the underlying zone, or in an applicable overlying zone.
Yes. (RR-2)
- 2.) The use is consistent with the applicable goals and policies of the comprehensive plan.
Yes. Because it is listed as a conditional use in the (RR-2) zone.
- 3.) The parcel is suitable for the proposed use considering its size, shape, location, topography, existence of improvement and natural features.
Yes. The parcel is nearly four acres in size, it can easily hold a 48' x 36' pole framed shop. The parcels shape, location and topography are all suitable for holding a standalone structure. The vast majority of surrounding properties have such structure/shops. The addition of a permitted well nearby the proposed build site (well I.D. label # 135462) is an improvement to the parcel as it provides a water source for fire suppression. The proposed build site is not near any waterways or streams.
- 4.) The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs or prevents the use of surrounding properties for the permitted uses listed in the underlying zone.
The proposed use will not alter the character of the surrounding area. The character of the surrounding area is farms, logging and other commercial type activity. The proposed build site is situated in a way that is not visible at all to the closest highway (highway 53) west, barely visible to the parcel to the north, not visible to the parcel to the south and is bordered by Stimpson lumber to the east. The proposed build site has access to sheriff, fire and emergency personal and does not impede these agencies from accessing the adjacent properties.
- 5.) The proposed use will not have detrimental effect on existing solar energy systems, wind energy conversion systems or wind mills.
No. There are no solar or wind energy systems in the area.
- 6.) The proposed use is timely, considering the adequacy of public facilities and services existing or planned for the area affected by the use.
Yes. The proposed use is timely and has adequate access to tax lot 923 via highway 53. The Tillamook sheriff's department Nehalem bay fire and Tillamook PUD all have good access to the area's in and around proposed accessory structure build site.

Site Plan; Jesse Denning
Proposed Pole barn 48'x36'x14'

North ↑



$\frac{923}{3.9}$ acres

Bob

Hwy 37

913

← drive way →

existing shop

Prop. Shop

EXHIBIT C



Wetland Land Use Notice Response

Response Page

Department of State Lands (DSL) WN#*
WN2022-1027

Responsible Jurisdiction

Staff Contact	Jurisdiction Type	Municipality
Lynn Tone	County	Tillamook
Local case file #	County	
851-22-000245-PLNG	Tillamook	

Activity Location

Township	Range	Section	QQ section	Tax Lot(s)
03N	10W	13		923

Street Address

Highway 53 N of the intersection with North Fork Rd

Address Line 2

City

State / Province / Region

Postal / Zip Code

Country

Tillamook

Latitude

45.771031

Longitude

-123.831797

Wetland/Waterway/Other Water Features

There are/may be wetlands, waterways or other water features on the property that are subject to the State Removal-Fill Law based upon a review of wetland maps, the county soil survey and other available information.

The National Wetlands Inventory shows wetland, waterway or other water features on the property

Applicable Oregon Removal-Fill Permit Requirement(s)

A state permit is required for 50 cubic yards or more of fill removal or other ground alteration in wetlands, below ordinary high water of waterways, within other waters of the state, or below highest measured tide.

Closing Information

Additional Comments

Based on a review of the available information, the proposed shop, as shown on the submitted map, appears to avoid impacts to the adjacent drainage and possible wetlands.

This is a preliminary jurisdictional determination and is advisory only.

This report is for the State Removal-Fill law only. City or County permits may be required for the proposed activity.

Contact Information

- For information on permitting, use of a state-owned water, wetland determination or delineation report requirements please contact the respective DSL Aquatic Resource, Proprietary or Jurisdiction Coordinator for the site county. The current list is found at: <http://www.oregon.gov/dsl/ww/pages/wwstaff.aspx>
- The current Removal-Fill permit and/or Wetland Delineation report fee schedule is found at: <https://www.oregon.gov/dsl/WW/Documents/Removal-FillFees.pdf>

Response Date

11/1/2022

Response by:

Chris Stevenson

Response Phone:

503-986-5246