



OREGON SHORES CONSERVATION COALITION

April 5, 2020

Becky Crockett, Planning Director
County Planning Department
94235 Moore Street, Ste. 113
Gold Beach, OR, 97444

Via Email to: crockettb@co.curry.or.us

**Re: Application AD-2104, Bandon Concrete
Comments of Oregon Shores Conservation Coalition**

Dear Director Crockett:

Please accept these comments from the Oregon Shores Conservation Coalition and its members (collectively “Oregon Shores”) to be included in the file for Curry County Application AD-2104 (Bandon Concrete).¹ Oregon Shores is a non-profit organization dedicated to protecting the Oregon coast’s natural communities, ecosystems, and landscapes, while preserving the public’s access to these priceless treasures in an ecologically responsible manner. Our mission includes assisting local residents in land use matters and other regulatory processes affecting their coastal communities, as well as engaging Oregonians and visitors alike in a wide range of advocacy efforts and stewardship activities that serve to protect our state’s celebrated public shoreline and coastal heritage. For half a century, Oregon Shores has been a public interest participant in legal processes and policy decisions related to land use, estuarine, and shoreline management in Oregon. Please notify us of any further decisions, reports, or notices issued for this Application, or any public hearings held in relation to this matter. Please feel free to contact us with any questions regarding the below comment.

Oregon Shores recognizes the necessity of aggregate mining and gravel extraction and associated uses. However, this need must be balanced against the equally important need to

¹ Curry County Planning Dept., *AD-2104 Bandon Concrete/Knife River CUP - Public Notice*, 1-2 (Mar. 8, 2021); Planning Dept., *AD-2104 Bandon Concrete/Knife River CUP – Land Use Appl.*, (Feb. 19, 2021) [hereinafter *Appl.*].

protect our vital and vulnerable coastal and estuarine ecosystems. We provide these comments in order to underscore the apparent deficiencies in the Application materials and to emphasize the importance of a robust review prior to development in a highly dynamic coastal environment—particularly when a proposed expansion of an existing mining operation risks harmful impacts to downslope estuarine ecosystems and foothill areas mapped with landslide hazards.

I. Potential Stormwater Runoff Impacts to the Elk River Estuary Ecosystem

The Application involves a request to modify and expand an existing conditional use approval (AD-1604) for the mining and processing of aggregate by 12.5 acres on a 797-acre parcel zoned both Forestry Grazing (FG) and Rural Industrial (RI).² Specifically, approval of this Application would allow “an additional 12.5 acres of an existing 57-acre aggregate mining operation [to be used] for the purpose of process water storage and stockpiling of aggregate,”³ resulting in a new CUP boundary of approximately 70 acres.⁴ According to the Applicant, “the proposed expansion area was developed in the mid to late 1990s for use as a cranberry bog.”⁵ Per the Applicant, said cranberry bog is “no longer in use.”⁶

The proposed project site and expansion area sit almost directly upland of the Elk River estuary and surrounding environs. The Elk River estuary is designated as a Natural estuary under Oregon’s estuary classification system. Orford Reef and a portion of the Oregon Islands National Wildlife Refuge are located directly opposite of the mouth where the Elk River enters the Pacific Ocean. Absent robust storm water management and pollution control measures during construction and operation of the proposed expansion, Oregon Shores is concerned that the project as proposed may adversely impact this sensitive estuarine ecosystem in a manner inconsistent with the requirements of the Curry County Comprehensive Plan (“CCCP”) and the Curry County Zoning Ordinance (“CCZO”). Of particular importance where this Application is concerned are the mapped landslide hazards on the slope directly below the existing site and the proposed expansion area. We contend that the Application fails to provide sufficient information to support an assurance that such adverse impacts will not occur.

II. The Application materials lack sufficient information to analyze potential adverse impacts to the subject hillside and adjacent estuarine ecosystem.

A. CCZO Sec. 2.060. Administrative and Discretionary Permit application and completeness.

Pursuant to CCZO Sec. 2.060.1, applications for administrative actions subject to the Director’s authority under shall be complete and shall include, in relevant part:

² *Pub. Notice*, 1; *Appl.*,

³ *Id.*; *Appl.*, 1.

⁴ *Appl.*, 5.

⁵ *Id.*

⁶ *Id.*

d) Information demonstrating compliance with all prior decision(s) and conditions of approval for the subject site, as applicable.

Per Oregon Shores' correspondence with the Planning Director, it appears that the Department was unable to provide electronic access to the full application file for this proposal via the County's courtesy website. However, per Oregon Shores' review, despite frequent reference to and reliance upon an existing conditional use permit approval (AD-1604) and reference to another permit (AD-1116),⁷ the materials provide little meaningful guidance or information as to how previously approved applications address the applicable criteria for the proposed expansion uses. To the extent that the Application relies on these previous approvals to meet the requisite criteria, further information is required to both evaluate whether the proposed expansion request as submitted meets the applicable criteria and to determine whether the Applicant has demonstrated compliance with all prior decisions and conditions of approval for the subject site. Absent this information, Oregon Shores argues that the Director cannot evaluate consistency with CCZO Sec. 2.060.1.d for the proposed expansion at issue.

B. CCZO Sec. 2.100. Action on Administrative Permits of the Director.

CCZO Sec. 2.100(1)(a) states that the burden of proof in a land use matter rests upon the proponent. In relevant part, such burden shall be to prove:

- (1) The proposed action fully complies with the applicable goals, policies and elements of the CCCP; and
- (2) The proposed action is in accordance with the applicable criteria of this ordinance, applicable Oregon Statutes and Oregon Administrative Rules.
- (3) The proposed action shall not impose an undue burden on the public transportation system.

A proposal for the expansion of an existing operational rock quarry by 12.5 acres to allow for process water storage and stockpiling of aggregate on a hillside just above the mouth of the Elk River Estuary could have a significant impact on slope stability, water quality, shoreland and upland habitat, recreational access, traffic, and other existing uses in the surrounding area. Thus, the Applicant has a burden to demonstrate compliance with all applicable criteria. However, the current materials do not provide the required data and analysis to meet this burden of proof.

Based on a review of the limited information provided in the Application materials for this matter, Oregon Shores was unable to locate a specific description of the exact process water storage or aggregate stockpile locations, or the methods by which each of these new uses would

⁷ *Appl.*, 7.

be developed. Absent this information, the Application cannot demonstrate consistency with CCZO Sec. 2.100(1)(a)(1)-(3). Per CCZO Sec. 2.100(1)(b), in making an Administrative Action decision, the Director must also consider “the possibility of the proposed action causing substantial change in the neighborhood area or community area or other relevant geographic area.” The existing quarry and the expansion area are mapped as being just above an area of moderate to high landslide hazard (i.e., landsliding is possible or likely) by the Oregon Department of Minerals and Geologic Industries (DOGAMI). Expansion of existing operations could destabilize the hillside, and thus result in substantial adverse impacts to the forest uses, agricultural uses, and natural areas on the hillside below. Oregon Shores was unable to locate any meaningful discussion within the Application materials addressing potential adverse impacts to adjacent properties or addressing geological hazards. A screen capture of DOGAMI’s Hazards Viewer tools demonstrating the potential landslide risk on the subject foothill is attached to this comment. Absent the aforementioned information regarding landslide hazards, the Director cannot conduct the analysis required under Per CCZO Sec. 2.100(1)(b).

Oregon Shores was also unable to locate any discussion within the Application regarding current or proposed methods for managing storm water runoff or other potential harmful discharges of water associated with operation from the existing quarry, and how storm water runoff or other harmful discharges of any other water from the site will be managed during construction and operation of the proposed expansion. This is especially concerning, given that the proposed expansion will occur at a site almost directly above the mouth of the Elk River Estuary, and just uphill from small stream and wetland areas. An increase in runoff or an increase in sediment being flushed off the hillside could significantly impact the water quality of the estuarine environment and the surrounding habitat. The Application should provide a detailed mining plan to visualize the size and scope of mining operations and the proposed expansion activities, including mining stages; dimensions of the mine; and the location of processing areas, stockpiles, settling ponds, washing facilities, stormwater ponds, and roads. This plan should ideally be combined with the topographic map to present an overall view of the site and the mine operations. Absent the aforementioned information regarding storm water and discharge management, the Director cannot conduct the analysis required under Per CCZO Sec. 2.100(1)(b), as well as those required by CCZO Sec. 7.040 discussed below.

For the above reasons, the Application is inconsistent with CCZO Sec. 2.100.

III. Further information is required to demonstrate compliance with the standards set forth in CCZO Sec. 7.040 (Standards Governing Conditional Uses).

In addition to the standards of the zone in which a proposed conditional and permitted use is located and the other standards within the CCZO, conditional permitted uses must meet the standards contained in CCZO Sec. 7.040. These are discussed below.

A. CCZO Sec. 7.040.1. Conditional Uses Generally

Storm water runoff from mine and quarry stockpiles, as well as from equipment like rock crushers, washers, and sorters, could have serious water quality impacts absent effective management measures. Per the authority granted under CCZO Sec. 7.040.1 subsections (a) and

(c), Oregon Shores strongly urges the County to impose stricter setbacks and more restrictive construction requirements to ensure compatibility with surrounding forest, farm, and estuarine resources. The following additional information is vital to evaluating the current proposal and ensuring compatibility:

- **Topographic Map:** A topographic map showing elevations, roads, floodplains, property lines, and other natural and human-made features should be provided to address runoff, discharge, stockpiling, and equipment storage area questions.
- **Hydrologic Information:** Assessing the potential impacts of mining operations on ground-water flow, wells, and surface waters requires hydrologic information. The direction of ground-water flow in the deposit, the location and construction of wells, and any surface-water bodies (streams, lakes, wetlands, and springs) should be displayed on a map of the area at the appropriate scale. If the mine is to be dewatered, the pumping point, volume, and discharge location should also be included. This information will allow the County to assess the impact the proposed expansion will have on surface-water features.
- **Pollution Prevention Plan:** A pollution prevention plan must be implemented to address the likely risks of runoff and discharges associated with the proposal. Good management practices such as vegetative buffers, detention ponds, covered bulk containers and hazardous material storage areas, as well as the skillful placement of stockpiles and equipment, will greatly improve storm water management and erosion control at aggregate sites, and prevent further harms to the hillside or estuarine ecosystem.

Oregon Shores was unable to find any meaningful discussion of proposed conditions of approval within the Application materials. Prior to any final decision on the matter, we request that the County provide any proposed conditions of approval to the public with sufficient time to review the same. Should the County decline to impose any conditions pursuant to CCZO Sec. 7.040.1, Oregon Shores respectfully requests findings clarifying the basis for such a decision.

B. CCZO Sec. 7.040.10. Mining, quarrying, or other extraction activity

CCZO Sec. 7.040(10)(a) contains nine standards governing mining, quarrying, and extractive activities, and states that plans and specifications submitted must “contain sufficient information to allow the [County] to review and set siting standards” in accordance with the standards. The Application materials do not provide a detailed mining site plan sufficient to assess compliance with the applicable criteria. Specific data insufficiencies include, but are not limited to:

CCZO Sec. 7.040(10)(a)(1): Impact of the proposed use on surrounding land uses in terms of [DEQ] standards for noise, dust, or other environmental factors.

The Application states that “consistent with the CUP application and approval which includes a noise study and analysis, there are [*sic*] no impact to others.”⁸ No further discussion

⁸ *Appl.*, 9.

of how the Applicant proposes to meet environmental quality standards for noise is provided. Oregon Shores was unable to locate any meaningful discussion of dust or other environmental factors as required by this criterion. To the extent that the Applicant relies on previous studies to meet this criterion, more information is required to allow for robust evaluation of whether said studies sufficiently address concerns arising from the proposed expansion to assess compliance with CCZO Sec. 7.040(10)(a)(1). As such, the County cannot conclude this criterion is met.

CCZO Sec. 7.040(10)(a)(2): The impact of the proposed use on water quality, water flow, or fish habitat on affected rivers or streams.

The Application materials fail to meaningfully discuss the potential adverse impacts that the proposed expansion may impose on water quality, water flow, or fish habitat in a manner that would allow for meaningful evaluation against CCZO Sec. 7.040(10)(a)(2).⁹ This is of particular concern since the Elk River estuary is directly downhill from the proposed expansion is a designated habitat for salmon and trout rearing and migration pursuant to OAR 340-041-0300.¹⁰ Further, as noted above, the existing and proposed expansion site are both uphill from small coastal streams and wetlands.¹¹ As such, the County cannot conclude this criterion is met.

CCZO Sec. 7.040(10)(a)(3): The impact of the proposed use on overall land stability, vegetation, wildlife habitat and land or soil erosion.

In response to this criterion, the Application simply states “consistent with the CUP application and approval, the site will be operated to prevent erosion and control sediment consisten [*sic*] with Curry County Zoning Ordinance 3.300-3.324 and DOGAM [*sic*] requirements which includes the DOGAMI approved Operating and Reclamation Plan.”¹² No further discussion of how the Applicant proposes to meet this criterion is provided, nor is any further discussion on the relevance of the aforementioned Operating and Reclamation Plan to the proposed expansion given. The current Application materials do not meaningfully address CCZO Sec. 3.300, et. seq., which contain the County’s Erosion Prevention and Sediment Control standards. The Application materials also fail to address CCZO 3.400, et. seq., containing the County’s Storm and Surface Water Management Standards, or otherwise argue said standards are inapplicable to the proposed expansion.

The Applicant should provide a more explicit discussion of the impacts of the existing use and the proposed expansion on overall land stability, vegetation, wildlife habitat, and land or soil erosion to allow robust evaluation of its requested CUP modification. To the extent that the Applicant relies on previous materials to meet this criterion, further information is required to allow for robust evaluation of whether said materials sufficiently address concerns related to the proposed expansion consistent with CCZO Sec. 7.040(10)(a)(3). As noted, there are moderate to high landslide risks mapped just below the existing and proposed sites. Absent further

⁹ *Id.*

¹⁰ See Fig. 300A, available at <https://www.oregon.gov/deq/Rulemaking%20Docs/figure300a.pdf>. This document is also enclosed.

¹¹ A screenshot from the Curry County GIS tool showing the location of these wetlands and streams is enclosed.

¹² *Appl.*, 9.

information (including a detailed mining site plan, topographic map, hydrologic map, and pollution prevent plan), we argue that the County cannot conclude that this criterion is met.

CCZO Sec. 7.040(10)(a)(5): The rehabilitation of the land upon termination of the mining activity. The proposed rehabilitation must at least meet the requirements of state surface mining or gravel removal permits.

In response to this criterion, the Application states that “consistent with the CUP application and approval, the site will be reclaimed in accordance with the allowable zoning [*sic*] uses and the DOGAMI approved Reclamation Plan.”¹³ No further discussion of how future rehabilitation efforts for the existing site and the proposed expansion will be conducted to meet the applicable criteria is provided, which appear to include but are not limited to ORS 517.702 to 517.989 and associated implementing regulations. Similarly, the Application materials fail to provide any meaningful information to demonstrate that previous reclamation plans submitted with prior CUP approvals are relevant to the proposed expansion at issue. To the extent that the Applicant relies on previous materials to meet this criterion, further information is required to allow for robust evaluation of whether said materials sufficiently address concerns related to the proposed expansion consistent with CCZO Sec. 7.040(10)(a)(5).

The Application also appears to assert that reliance on previous plans “will result in the pond area remaining as ponds upon reclamation for future farming or wildlife or in backfilling the pond area to establish grazing pasture for agricultural purposes.”¹⁴ However, Oregon Shores was unable to locate any further information about the pond, or potential adverse impacts to said pond, within the Application materials. A crucial concern related to aggregate mining uses and activities in coastal areas is the use and character of a mining area once mining operations end. A robust reclamation plan, including data addressing the proposed expansion uses, must be prepared and submitted to allow for robust evaluation consistent with this criterion. Said reclamation plan should include, at the very minimum, what reclamation activities will be done during mining, reclamation methods, vegetation types, shape and slope of open water areas, and the future uses of the site. This information will allow the County to tailor the reclamation plan so that the design and use of the reclaimed area is compatible with the surrounding properties and downslope estuarine area. Absent more data concerning reclamation plans for the proposed expansion, the County cannot conclude that this criterion is met.

CCZO Sec. 7.040(10)(a)(7): The County will define an area around the specific removal site which includes all lands within 250 feet of the site, based on the site map for a state mining or gravel permit. The applicant shall provide findings which identify the existing uses on those lands included within this area. The Commission shall evaluate the applicant's findings with regard to the potentially conflicting uses identified in the area based on the factors below:

¹³ *Appl.*, 10.

¹⁴ *Id.*

ii) where conflicting uses are identified the economic, social environmental and energy consequences of the conflicting uses shall be determined and methods developed to resolve the conflict.

Regarding CCZO Sec. 7.050(10)(a)(7)(ii), the Applicant asserts, absent any meaningful supporting information, that its proposed use of the cranberry bog pond area for process water sedimentation and storage as well as stockpiling of processed aggregate will “not result in any conflicts.”¹⁵ On the basis of the present record, the County cannot evaluate whether the proposed expansion of uses demonstrate consistency with this criterion.

C. CCZO Sec. 7.040.17. Uses on Resource Lands

CCZO Sec. 7.040.17.a. The proposed use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agricultural or forest land.

The Application asserts that the “proposed use is consistent with the Comprehensive Plans [*sic*] for the subject property, and the only affect [*sic*] on farming or forest practices will be positive because of the long-term benefits to agriculture.”¹⁶ Oregon Shores was unable to locate any information sufficient to support these assertions within the Application materials. Specifically, it is unclear how the proposed expansion uses are consistent with applicable criteria within the CCCP, and it is unclear how the proposed expansion uses will result in “long-term benefits to agriculture.” Publicly available evidence regarding the conversion of agricultural land for aggregate mining uses suggests the contrary: namely, it is likely that the adjacent cranberry bog will not be useable for that purpose following termination of mining activities and the proposed expansion uses.

As noted in the CCCP, there are presently about 48 acres of cranberry bogs in Curry County all of which are located in 27 individual bogs adjacent to the Cape Blanco Airport north of Port Orford.¹⁷ The cranberries grown in Curry County can successfully compete with those grown in larger scale operations in the Midwest and on the East coast only because of the higher quality of the product grown in the County relative to those grown elsewhere.¹⁸ However, the capital outlay to establish cranberry bogs and the intensive nature of the farm operation have limited the expansion of this farm type in the county.¹⁹ As such, the County should not allow the conversion of existing cranberry bogs absent sufficient justification to do so, and without a robust reclamation plan to allow the resumption of use to the extent feasible.

In sum, Application materials appear to omit any meaningful discussion of this criterion, which requires the Applicant to address whether the proposed expansion use will force a significant change in or increase the cost of accepted farming or forest practices on agriculture or

¹⁵ *Appl. 11.*

¹⁶ *Appl., 12.*

¹⁷ CCCP, § 3.4.5, 58.

¹⁸ *Id.*

¹⁹ *Id.*

forest land. Based on the present record, the County cannot conclude that the proposed expansion is consistent with this criterion.

CCZO Sec. 7.040.17.b. The proposed use will not significantly increase fire suppression costs or significantly increase the risks to fire suppression personnel.

The Application materials assert that the “proposed use for water and stockpiles are not flammable [*sic*] and will not significantly increase fire suppression costs or significantly increase the risks to fire suppression personnel.”²⁰ There is no further discussion provided in relation to this criterion, including potential increases in fire suppression costs or risks to fire suppression personnel arising from construction of the proposed expansion (including details of the proposed methods of development, equipment required, etc.). Whether the proposed materials for storage themselves are flammable is merely one part of the analysis required by this criterion. On the basis of the present record, the County cannot conclude that this criterion is met.

IV. Conclusion

Oregon Shores understands that sand, gravel, and aggregate are necessary resources, and that mining for them must take place somewhere. However, expanding an existing mining operation on a hillside immediately above an area of high ecological importance should receive the highest level of scrutiny. Oregon Shores would state firmly that the present Application falls short of supplying the information that would be necessary for this level of analysis, and strongly urges the Director to require further information on potential impacts prior to any final decision in this matter. The necessary conclusion with regard to the current Application before the Director must be that it falls short and should be rejected for lack of sufficient information. For all the reasons stated above, Oregon Shores recommends denial of the permit application.

Sincerely,

A handwritten signature in black ink, appearing to read "Phillip Johnson", with a long horizontal line extending to the right.

Phillip Johnson
Executive Director
Oregon Shores Conservation Coalition
P.O. Box 33
Seal Rock, OR 97376
(503) 754-9303
phillip@oregonshores.org

Encl.

²⁰ *Appl.*, 12.



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Coastal Erosion Hazard

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Earthquake Hazard

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Landslide Hazard

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Low - Landsliding Unlikely

Moderate - Landsliding Possible

High - Landsliding Likely

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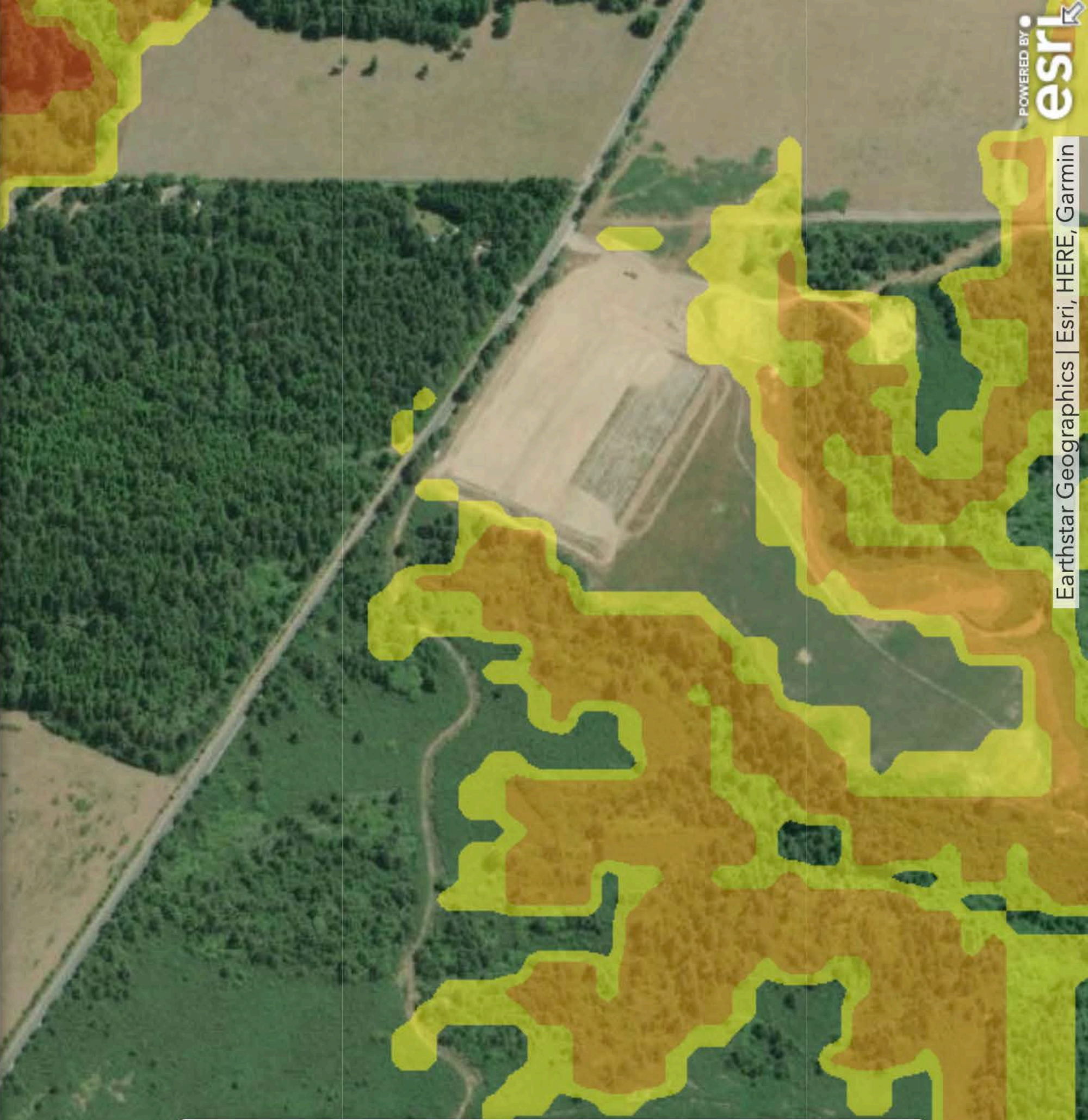
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High - Landsliding Likely

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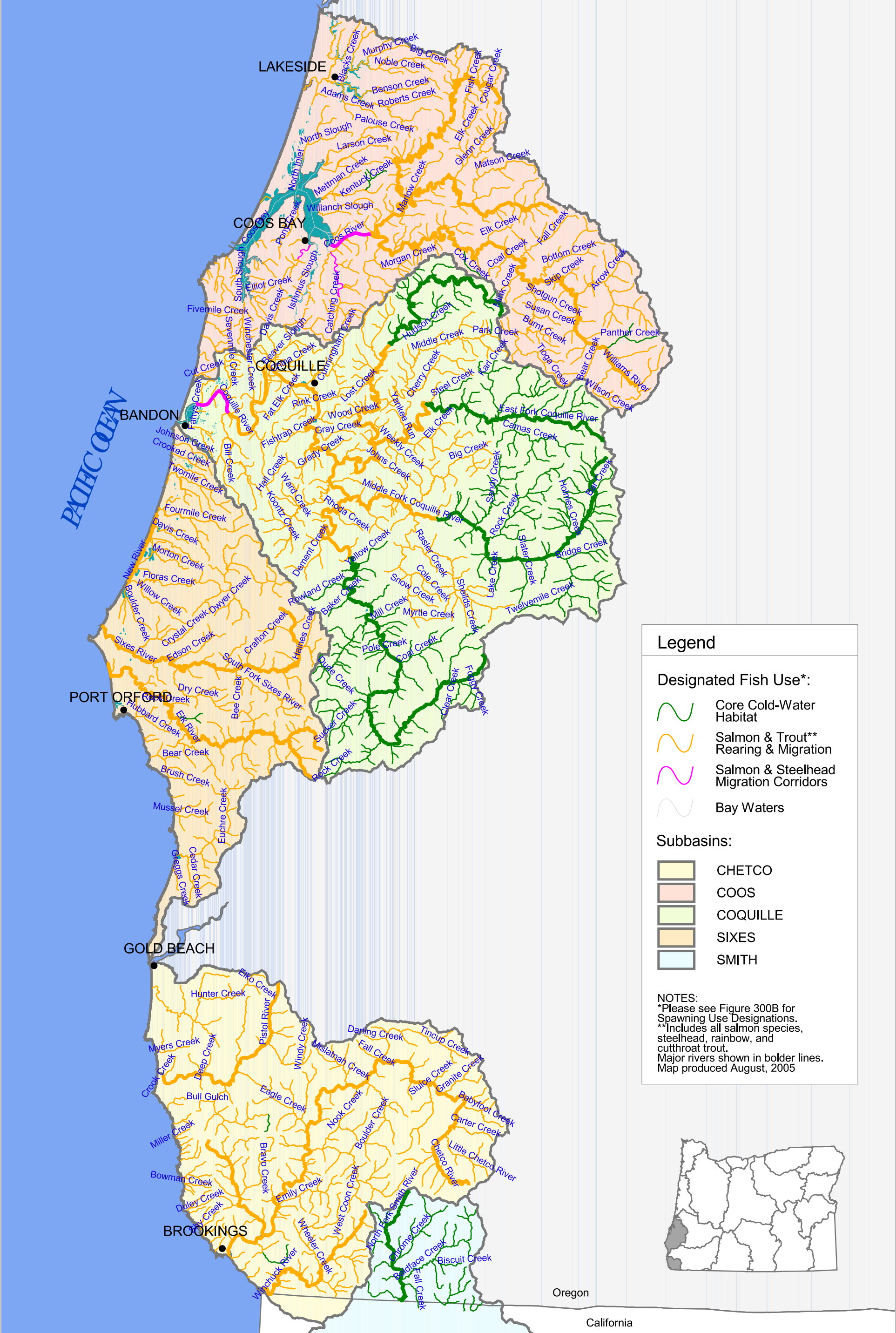


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Draft Revised Figure 300A: Fish Use Designations*
South Coast Basin, Oregon





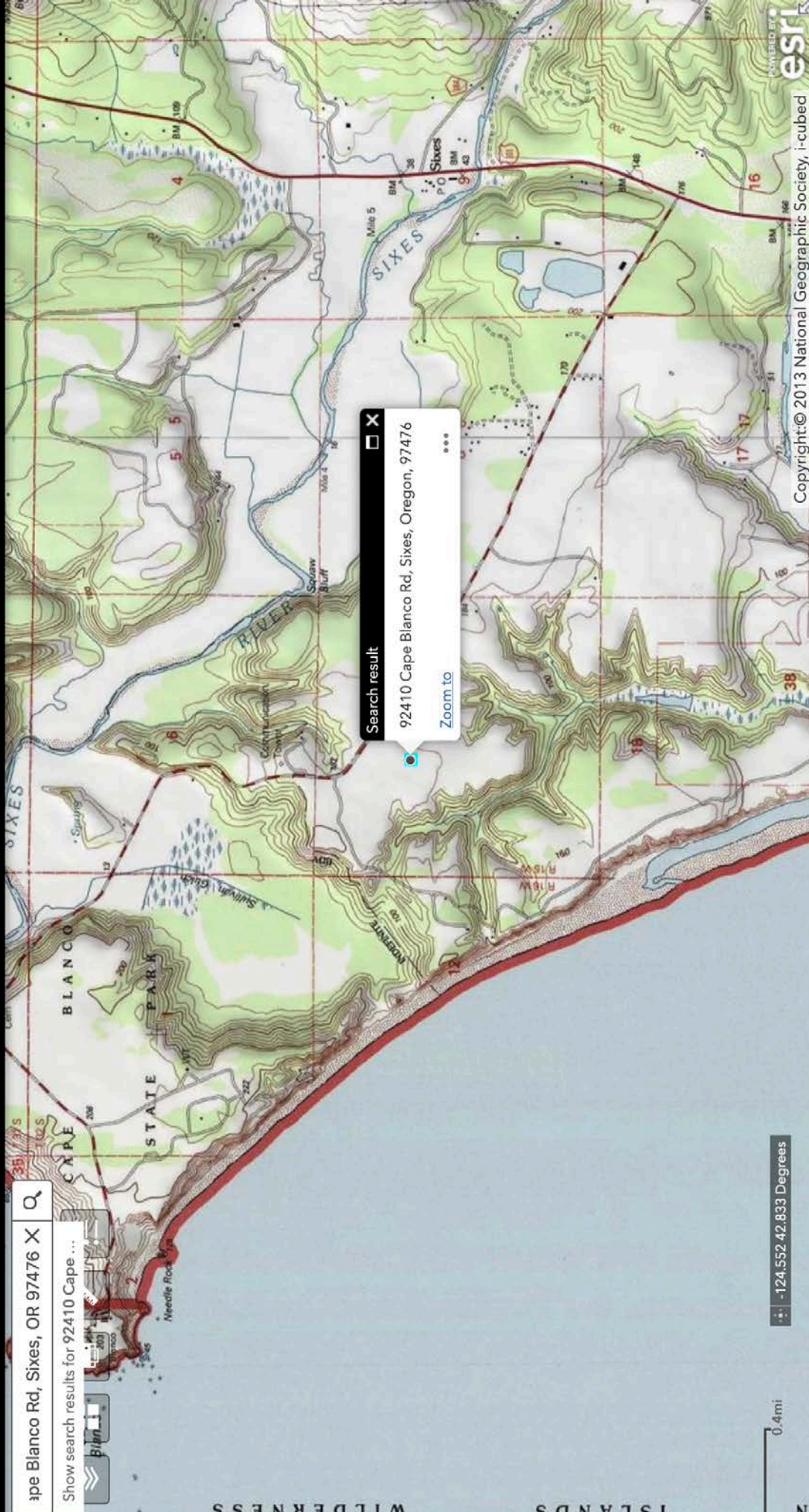
Oregon HazVu: Statewide Geohazards Viewer

Oregon Department of Geology and Mineral Industries Help | More Information



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