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November 2, 2021

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Curry County Community Development
94235 Moore Street, Suite 113
Gold Beach, Oregon 97444

RE: Notice of Appeal of AD-2113

Dear Curry County,

As you are aware, this law firm represents Daryl and Wendy Blymyer. Please find enclosed a Notice of Appeal and accompanying check for the above numbered land use proceedings. A copy of this communication should be placed in the official record.

Please direct any future notices regarding the application, decision, and appeal to this law firm. I previously filed written correspondence to the County on this application but never received any notice of a final decision.

My clients reserve the right to withdraw this appeal at any time.

Yours sincerely,

O'CONNOR LAW, LLC

/s/ Garrett West

Garrett K. West, OSB No. 174890
west@oconnorlawgroup.net

GKW:

Enclosure: Notice of Appeal Application; Notice of Appeal; Decision; Statutory Notice

RECEIVED
11/5/21



CURRY COUNTY COMMUNITY DEVELOPMENT

94235 MOORE STREET, SUITE 113
GOLD BEACH, OREGON 97444

Becky Crockett
Planning Director

Phone (541) 247-3228
FAX (541) 247-4579

21-000271

FOR OFFICE USE ONLY

Date Received: _____

A-2103

NOTICE OF APPEAL

This is a request to appeal the following decision by Curry County

_____ Land Use Decision by the Curry County Planning Commission

X _____ Land Use Decision by the Planning Director

DECISION INFORMATION

Decision Date: October 21, 2021 Application File # AD-2113

Applicants Name(s): Stepping Stones Brookings, LLC

APPELLANT INFORMATION

STANDING: I have standing because (check one)

_____ I am the applicant or agent of the applicant

X _____ I participated in the decision orally at the hearing or with written testimony

_____ I represent an agency that is affected by the decision and have standing through participation in the hearing process

Appellant Name(s): Daryl Blymyer and Wendy Blymyer

Mailing Address: 670 G St., Suite B, Jacksonville, Oregon 97530 Attn: Garrett West

Phone: 541-702-5350 E-mail: west@oconnorlawgroup.net

NOTE: An appeal of a decision will be heard by the appeals body specified in the relevant ordinance as a de novo (or entirely new) hearing. Appeals must be filed within the appeal period specified following the initial decision to be considered by the appeals body. The required fee, in currency or negotiable instrument must accompany this notice in order for it to be accepted as an appeal by the county.

BEFORE THE PLANNING COMMISSION
FOR THE COUNTY OF CURRY, STATE OF OREGON

Daryl Blymyer and Wendy Blymyer,	)	
	)	Application AD-2113
Appellants,	)	
	)	NOTICE OF APPEAL
_____	)	

1.

Daryl Blymyer and Wendy Blymyer (collectively the “Appellants”) by and through their attorneys Garrett K. West and O’Connor Law, LLC file this Notice of Appeal for that land use decision identified as “Application AD-2113”.

2.

Appellants request that this Notice of Appeal be included in the Official Record for this proceeding.

3.

The land use decision being appealed was issued on or about October 21, 2021, which is attached hereto as **Exhibit “A”** and the required statutory notice for that application is attached as **Exhibit “B”** (collectively referred to herein as the “Decision”). *See generally* Curry County Zoning Ordinance (1994) (“CCZO”) Section 2.170(7)(a).

4.

Appellants qualify as a party under CCZO Section 2.120 because they received notice of the land use proceeding and because they previously submitted comments on the application. Appellants therefore have legal standing to bring this appeal. CCZO Section 2.170(7)(b).

5.

This Notice of Appeal is timely as it was filed in conformance with CCZO Section 2.110(3), and the instructions outlined in **Exhibit “B”**.

6.

The issue raised on appeal (CCZO Section 2.170(7)(c)) is that the Decision violates CCZO Section 3.053. In particular, Tax Lots 700 and 1100 of Township 40 South, Range 13 West of the Willamette Meridian, Section 30A (the “subject properties”) were unlawfully created. It further violates CCZO Section 3.053 because the 160-acre square or rectangle was not centered on the center of the subject tract. Appellants raised the issue of non-compliance with CCZO Section 3.053 during the public comment period, which the Decision acknowledges. *See* Decision at page 15; CCZO 2.170(7)(d).

7.

This notice is accompanied by the required fee as indicated on **Exhibit “B”** (\$250.00). *See* CCZO Section 2.170(8).

8.

Appellants respectfully request that the Decision be reversed.

Dated this 2nd day of November 2021.

O'CONNOR LAW, LLC



Garrett K. West, OSB No. 174890

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Jacksonville, OR 97530

(541) 702-5350

Of Attorneys for Appellants



Curry County Community Development

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Phone (541) 247-3304

Administrative Staff Report and Decision

Application: AD-2113

October 19, 2021

I. LAND USE REVIEW:

Applicant requests Conditional Use approval to construct a single-family dwelling on a 18.2-acre property within the Forestry Grazing (FG) zone using the Template or Grid Density Test.

Property Owner:	Ronald and Susan Stone Stepping Stones Brookings, LLC
Agent:	John Bishoff Wildwood Planning Consultants 96333 Wildwood Rd, Brookings, OR 97415
Property Description:	Township 40 South, Range 13 West W.M., Section 30A, Tax Lots (TL) 700 and 1100
Location:	This property is off Henderson Rd, about ½ mile east of its intersection with Carpenterville Rd, and it is outside the Brookings Urban Growth Boundary.
Land Use Zone:	TL 700 (17.54 acres) is zoned Forestry Grazing (FG) TL 1100 (0.66 acres) is zoned Rural Residential (RR-5).
Property Size:	18.20 acres
Current Land Use:	This property has mixed conifer and hardwood timber, but no timber cutting was evident from a review of aerial maps during the last 25 years. Property owners recently obtained an Erosion Prevention and Sediment Control Permit (EP-2003, 7/20/2020) to manage SODS, clear brush and improve an access drive.
Surrounding Land Use:	Properties directly west, north, and east of the subject are in the Henderson Rural Land Exception Area (RLE 52) and many are developed with residences. Properties directly south and beyond the RLE area are FG zoned, mostly under timber production.

II. BACKGROUND

The Applicant researched the creation of this property since 1972 (enactment of ORS 92) and submitted application AD-2113 for tax lot (TL) 700 only. The Applicant's agent noted in the submittal findings that the adjoining TL 1100 was not included because the ownership of that tax lot was "in contention." Planning staff found that the Applicant purchased TL 700 and TL 1100 under the same warranty deed (Inst #2020-1092) and the County Assessor's records identify TL 1100 under the ownership of the Applicant. Therefore TL 1100 is included as "part-of-a-total," or one legal property for the processing of this application.

Staff was notified by the attorney for the other party who is making the case that TL 1100 is not legally owned by the Applicant. In the event it is decided, based on the conclusion of a legal determination, that TL 1100 is not in the ownership of the Applicant, that determination shall not result in the nullification of the Curry County decision on AD-2113. Review of the findings against the criteria of the Curry Co. Zoning Ordinance (CCZO) are applicable to a decision for TL 700 solely, or TL 700 and TL 1100 as a combined ownership.

The Applicant seeks approval to establish a single-family dwelling on an FG zoned property using the grid density test. A parcel in the FG zone may be approved for the siting of a dwelling under any one of the three tests allowed in the Curry County Zoning Ordinance (CCZO). However, any structure within the FG zone must meet certain general standards and requirements, as well as specific fire safety criteria found under CCZO Sections 3.055 and 3.056. This property includes narrow wetlands areas along streams (according to the National Wetlands Inventory) and some areas of geological hazard (according to the Provisional Maps of Rapidly Moving Landslides, as recognized by the CCZO under Section 3.252). Since the Applicant has specified a home site some distance from the identified wetlands and geological hazard areas, no wetland or geology report was required for this application.

The Community Development Department has duly accepted the application filed in accordance with CCZO Section 7.020 for an application for a conditional use and has given notice of this matter to affected property owners as set forth in CCZO Section 2.070(2).

III. APPLICABLE REVIEW CRITERIA

The proposed application for Conditional Use Approval of a single-family dwelling on an FG zoned parcel is an Administrative Decision under CCZO Section 2.060(1), subject to the following review requirements:

Section 3.050.	Forest Grazing Zone
Section 3.052.	Conditional Uses Subject to Administrative Approval by the Director
Section 3.053.	Standards for the Approval of Dwellings
Section 3.055.	Fire Fighting Standards for Dwellings and Structures
Section 3.056.	Fire Safety Standards for Roads
Section 3.252.	Development in Areas of Geologic Hazards
Section 4.011.	Riparian Vegetation Set-Back
Section 7.040.	Standards Governing Conditional Uses
Section 7.050.	Time Limit on a Permit for Conditional Uses

IV. FINDINGS

Section 3.050. Forestry Grazing Zone (FG).

Purpose of Classification: The Forestry Grazing Zone is applied to resource areas of the county where the primary land use is commercial forestry with some intermixed agricultural uses for livestock uses. The purpose of the Forestry Grazing Zone is:

- (a) to implement the forest land policies of the Curry County Comprehensive Plan;*
- (b) to implement Statewide Planning Goal 4 with respect to forest lands in the county;*
- (c) to implement the agricultural land policies of the Curry County Comprehensive Plan with respect to livestock grazing and related farm uses which are intermixed with forest land in some parts of the county; and*
- (d) to implement Statewide Planning Goal 3 with respect to intermixed farm and forestland in the county.*

Finding: The Applicant requests approval to site a single-family dwelling on an FG-zoned parcel. The FG zone allows this use through a conditional use review. The Applicant has submitted a complete conditional use application with findings to address the applicable CCZO criteria for siting a single-family dwelling on an 18.20-acre FG zoned parcel. The application is consistent with the purpose of the FG zone, so this requirement is met.

Section 3.052. Conditional Uses Subject to Administrative Approval by the Director.

The following uses may be allowed provided a land use application is submitted pursuant to Section 2.060 of the Curry County Zoning Ordinance and the Planning Director approves the proposed use based upon relevant standards for review in this ordinance. Numbers in parenthesis following the uses indicate the standards described in Section 7.040 that must be met to approve the use.

16. Dwellings subject to Section 3.053 (1,16)

– Note CCZO Error: The correct reference is Section 3.053(1, 2, 17).

Finding: The Applicant has submitted a complete conditional use application for review by the Planning Director under the provisions of CCZO Section 2.060. The CCZO Section 3.052 identifies the proposed residential use as being allowed through a conditional use review. This requirement is met.

Section 3.053. Standards for the Approval of Dwellings.

One single-family dwelling may be approved on a forest land parcel if the dwelling meets any of the tests set forth in (1), (2) or (3) below.

This application has been made under test (3) as follows:

- 3. A single-family dwelling may be sited on forest land if the lot or parcel is predominantly composed of soils that are;*
 - c) capable of producing more than 85 cubic feet per acre per year of wood fiber if:*

(1) all or part of at least 11 other lots or parcels that existed on January 1, 1993 are within a 160-acre square centered on the center of the subject tract; and

(2) at least three dwellings existed on January 1, 1993 on other lots or parcels.

d) If the tract abuts a road that existed on January 1, 1993, the measurement may be made by creating a 160 acre rectangle that is one mile long and one-fourth mile wide centered on the center of the subject tract and to the maximum extent possible, aligned with the road.

g) If a road crosses the tract on which the dwelling will be located, at least one of the three required dwellings shall be on the same side of the road as the proposed dwelling.

Finding: The GIS map identifies the soils of this parcel as Loeb-Macklyn Complex (15-30% slopes). Under the Soil Survey of Curry Co (issued 2005), the LMC complex (165E) can produce an annual growth of 145-178 cu ft/acre of Douglas fir (under the 50-year Site Index) or an annual growth of 144-167 cu ft/acre (under the 100-year Site Index). Since this soil type has potential to produce more than 85 cu ft/acre/year timber production, the standard of density test (3)(c) must be met to approve a dwelling.

The application identifies 27 parcels at least partially within the 160-acre rectangle (1/4 mile wide, but 1 mile long, centered on the subject property and aligned with Henderson Road) created before January 1, 1993, with 4 of those parcels having residences established at that time.

Upon review, only 10 of the provided parcels were lawfully created by deed prior to enactment of the Curry Co. Subdivision Ordinance (CCSO, dated Aug 8, 1974). An eleventh parcel was found which was created by deed transfer (not approved by the county) after enactment of the CCSO but was then recognized as a legal lot upon conditional use approval in 1989 for a home site.

Of these 11 lawful parcels, 2 parcels had residences constructed before 1993. A third lawful parcel was found which the County Assessor had record of a dwelling built prior to 1974 that was replaced in 2017. The residence on this last property is also on the same side of Henderson Rd as the proposed home site. Therefore, these requirements of this density test are met.

4. The approval of a dwelling under subsections 1, 2, or 3 above shall be subject to the following additional requirements.

a) Dwellings and structures shall be sited on the parcel so that:

i) they have the least impact on nearby or adjoining forest or agricultural lands;

Finding: The Applicant proposes a home site area in the southern section of the parcel, south of TL 800 and between TL 702 and TL 1100. Adjoining properties to the north, east and west are small rural tracts (1-10 acres), developed with residences or available for residential development. The property directly south is

under commercial timber production. Based on rough GIS measurements, the proposed homesite is about 250 ft distant of the south property line. There is good separation from adjacent parcels and sufficient distance to maintain the required Fire Safety Areas. No negative impacts are anticipated from the proposed home site for the mixed forestry/grazing uses on the adjoining lots. This requirement is met.

ii) the siting ensures that adverse impacts on forest operations and accepted farming practices on the tract will be minimized;

Finding: The proposed home site is in the southern portion of the parcel, near the access easement and a dwelling on the adjacent lot. Beyond the site, the property will remain available for timber production. The proposed residential site will not force a significant change on forest operations or accepted farming practices on this tract. This requirement is met.

iii) the amount of forest lands used to site access roads, service corridors, the dwelling and structures is minimized; and

Finding: The Applicants submitted an Erosion Prevention and Sediment Control (EPSC) plan for a permit (221-20-000177/EP-2003) to disturb more than 800 sf of soil. It was the Applicants intent to terrace an area above an existing road to facilitate the removal of brush and tan oak trees killed by disease (Sudden Oak Death). However, the permit approved clearing only during the dry months, excluded mechanical clearing in areas identified as having potential for extreme erosion and slope failure, and to replant with native species before the wet season.

The proposed home site is in the area cleared of brush and disease damaged trees under the EPSC, so no further significant tree removal is anticipated to develop a home site and there are existing roads in this area. Therefore, the amount of forest lands used for access, home site development and timber management will be minimized. This requirement is met.

iv) the risks associated with wildfire are minimized.

Finding: Per the Advanced Oregon Wildfire Risk Explorer (AOWRE), a mapping tool designed in collaboration with OR Dept of Forestry and US Forest Service, this property is within the Thomas Creek – Frontal Cape Ferrelo Watershed, extending along the coast from the Brookings City Limits north to Cape Ferrelo. The watershed covers over 23,000 acres and has a High Overall Wildfire Risk. Other ratings for the watershed include Moderate-High Burn Probability, Very High Potential Impact, High Hazard to Potential Structures.

The proposed home site (roughly Lat 42.08546 degrees N, Lon 124.28903 degrees W) has the following ratings in the AOWRE:

Overall Wildfire Risk (Exhibit A)	Low Benefit
Burn Probability (Exhibit B)	High
Overall Potential Impact (Exhibit C)	Low Benefit

Potential Impact to Timber Resources (Exhibit D)	High
Hazard to Potential Structures (Exhibit E)	High

Requirements to reduce the risks associated with wildfire are addressed later in this report (CCZO Sections 3.055 and 3.056) and must be minimized in accordance with those standards. If the applicable standards of CCZO Sections 3.055 and 3.056 are met, then the risks associated with wildfire are minimized, thereby meeting this requirement.

- b) the siting criteria to (a) above may include setbacks from adjoining properties, clustering near or among existing structures, siting close to existing roads and siting on that portion of the parcel least suited for growing trees.*

Finding: The proposed home site is about 250 ft from Henderson Rd and is near a developed home site on TL 702, to the west. The site will be at least 130 ft distant of the property lines to meet the Fire Safety Area requirements. Setbacks for Fire Safety Areas (under CCZO Section 3.055) and riparian vegetation buffers (Section 4.011) will be required and reviewed for compliance upon application of a development permit. There are no existing structures on the property. No other setbacks are needed. This requirement is met.

- c) The applicant shall provide evidence that the domestic water supply is from a source authorized by the Oregon Water Resources Department's administrative rules for the appropriation of ground water or surface water and is not from a Class II stream as defined in the Forest Practices Rules (OAR Chapter 629). For purposes of this subsection, evidence of a domestic water supply means:*

- iii) verification from the Oregon Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report to the county upon completion of the well.*

Finding: A water source for the proposed home site has not yet been developed. The Applicant intends to drill a well for the domestic water supply. Per OR Water Resources Department, new drilled wells for domestic use do not require a water right but the well must be registered by the driller. There are productive wells within a 1/3 mile of the parcel. Alternatively, the GIS map shows two streams crossing this property, as well as a small pond on TL 1100, but these surface water sources would require water right certification. The approval of this request is conditioned on installation of a drilled well with sufficient yield for domestic use prior to application for home site development permits (Condition #2). As conditioned, this requirement will be met.

- d) As a condition of approval, if road access to the dwelling is by a road owned and maintained by a private party or by the Oregon Department of Forestry, the United States Bureau of Land Management, or the United States Forest Service, then the applicant shall provide proof of a long-term road access permit or agreement. The road use permit may require the applicant to agree to accept*

responsibility for road maintenance.

Finding: Access to the home site does not cross ODF, US BLM, or US FS roads. Henderson Rd is a local access road off Carpenterville Rd (an Oregon public highway). Its gravel surface is privately maintained, and no road maintenance agreement was provided. Oregon law [ORS 105.175] provides for shared maintenance and costs in the absence of a formally recorded agreement. This requirement is met.

e) Approval of a dwelling shall be subject to the following requirements:

(1) the applicant shall plant a sufficient number of trees on the tract to demonstrate that the tract is reasonably expected to meet Department of Forestry stocking requirements at the time specified in Department of Forestry administrative rules;

f) The Director shall notify the county Assessor of the above condition at the time the dwelling is approved.

g) the property owner shall submit a stocking survey report to the Assessor and the Assessor shall verify that the minimum stocking requirements have been met by the time required by Department of Forestry rules;

h) the Assessor shall inform the Department of Forestry in cases where the property owner has not submitted a stocking survey report or where the survey report indicates that minimum stocking requirements have not been met;

i) upon notification by the Assessor the Department of Forestry shall determine whether the tract meets the minimum stocking requirements of the Forest Practices Act, if the Department of Forestry determines that the tract does not meet those requirements then the Department shall notify the owner and the Assessor that the land is not being managed as forest land, the Assessor shall then remove the forest land designation pursuant to ORS 321.359 and impose the additional tax pursuant to ORS 321.372.

Finding: Based on the reported soil types, this property has potential for timber production of Douglas fir; however, per the GIS maps, coastal hardwoods seem most prominent. Portions of the property have steep topography (over 30%) and the lot has an unusual shape, both of which make timber production less economically viable on this lot. The property is not specially assessed as timber land; and, based on a review of Google Earth's historical aerial maps, this property has not been cut during the last 25+ years.

Nevertheless, if commercial timber is taken or removed from this property, the Department of Forestry must be notified, and the property owner will be required to follow Department of Forestry restocking requirements. Timber restocking requirements (CCZO Section 3.053 (4) (e-i)) will be reviewed for compliance upon application to construct a dwelling if timber has been harvested from this property. (Condition #3)

Section 3.055. Fire Fighting Standards for Dwellings and Structures

The following fire siting standards shall apply to all new dwellings or permanent structures constructed or placed on lands within the Forestry Grazing (FG) Zoning designation.

1. *The dwelling shall be located on a parcel that is located within a structural fire protection district or the owner has contracted with a structural fire protection district for residential fire protection. If the dwelling is not within a fire protection district, the applicant shall provide evidence that the applicant has asked to be included within the nearest such district. If the Director determines that inclusion within a fire protection district or contracting for residential fire protection is impracticable, the Director may provide an alternative means for protecting the dwelling from fire hazards. The alternative means for providing fire protection may include a fire sprinkling system, onsite fire suppression equipment and water storage or other methods that are reasonable, given the site conditions. If a water supply is required for fire protection, it shall be a swimming pool, pond, lake, or similar body of water that at all times contains at least 4,000 gallons or a stream that has a continuous year-round flow of at least one cubic foot per second. The applicant shall provide verification from the Water Resources Department that any permits or registrations required for water diversion or storage have been obtained or that permits, or registrations are not required for the use. Road access shall be provided to within 15 feet of the water's edge for fire-fighting pumping units. The road access shall accommodate the turnaround of fire-fighting equipment during the fire season. Permanent signs shall be posted along the access route to indicate the location of the emergency water source.*

Finding: Coos Forest Protective Association would provide forest protection to this property. The Applicant has provided a signed service provider letter from Cape Ferrelo Rural Fire Protection District for protection of the dwelling. Per the AOWRE, the proposed home site (roughly Lat 42.08546 degrees N, Lon 124.28903 degrees W) has:

Overall Wildfire Risk (Exhibit A)	Low Benefit
Burn Probability (Exhibit B)	High
Hazard to Potential Structures (Exhibit E)	High

The Overall Wildfire Risk “takes into account both the likelihood of a wildfire and the exposure/susceptibility of mapped valued resources and assets combined.” The High Burn Probability indicates a 1 in 500 chance of a wildfire larger than 250 acres in a single year. The High Hazard to Potential Structures when a wildfire ignites near a hypothetical structure in the proposed home site area is between 80 and 95 percent.

Given the mixed AWORE ratings, the Applicant will be required to provide an alternative means (water storage, fire sprinkling system, onsite fire suppression equipment, etc) of protecting the dwelling from fire hazards upon application for a development permit (Condition #4). With this condition, this requirement will be met.

2. *Fire Safety Area: Owners of new dwellings and structures shall comply with the following requirements.*

- a) *A primary fire safety area of at least thirty (30) feet width shall be maintained around*

all structures; NOTE: For purposes of this ordinance a primary fire safety area shall be defined as follows:

An area in which the vegetation shall be limited to mowed grasses, low shrubs (less than two (2) feet high, and trees that are spaced with more than fifteen (15) feet between the crowns and pruned to remove dead and low (less than eight (8) feet from the ground) branches. Accumulated needles, limbs and other dead vegetation should be removed from beneath the trees.

- b) A secondary fire safety area of at least one hundred (100) feet width shall be cleared and maintained around the primary fire safety area. NOTE: For purposes of this ordinance a secondary fire safety area shall be defined as follows:*

An area in which the vegetation shall be limited to mowed grasses, low shrubs (less than two (2) feet high, and trees that are spaced with more than fifteen (15) feet between the crowns and pruned to remove dead and low (less than eight (8) feet from the ground) branches.

Finding: The proposed home site has sufficient separation from the property lines to meet the distance requirements for both the primary and secondary Fire Safety Areas. No impediments to the standard for Fire Safety Areas are anticipated for this property. Compliance with the Fire Safety Areas (CCZO Section 3.055 (2)) is anticipated and will be reviewed for upon application to construct a dwelling. (Condition #5)

- 3. The dwelling shall have a fire-retardant roof.*
- 4. If the dwelling has a chimney or chimneys, each chimney shall have a spark arrester.*
- 5. The dwelling shall not be sited on a slope greater than 40 percent.*

Finding: The applicant has not yet specified the roof cover or whether there will be chimneys. Compliance with these construction standards (CCZO Section 3.055 (3) and (4)) is anticipated and will be reviewed at the time an application is made to construct a dwelling. (Condition #6)

- 6. The County may impose standards and conditions in addition to those specified above, when it deems it necessary to protect the public health, safety and welfare.*

Finding: CCZO Section 3.055(6) authorizes the County to impose additional standards and conditions on a dwelling constructed in an FG zone if the County believes it is necessary to protect the public. The County has not imposed any conditions pursuant to this subsection other than those set forth in the review above. The County may impose additional conditions in later sections of this report to enable criteria and standards to be met, or to protect the public.

- 7. Replacement or substantial improvement of legally sited existing dwellings requires compliance with the Fire Safety Area requirements of subsection (2) above. Substantial improvement constitutes an improvement which is in excess of 50% of the assessed value of the existing dwelling.*

Finding: This application is a request to permit a new dwelling. This standard is not applicable.

8. Road Access to Dwellings

Road access to the dwelling shall meet the requirements set forth in Section 3.056.

Finding: Road access standards (Section 3.056) are addressed under the next section.

Section 3.056. Fire Safety Standards for Roads. *The following special road standards shall apply within the Forestry Grazing (FG) zoning designation. These special road standards shall not apply to private roads accessing only commercial forest uses that do not include permanent dwellings or structures. The purpose of the rule is to provide adequate access for fire-fighting equipment.*

- 1. Roads and driveways shall have a drivable surface width of sixteen (16) feet.*
- 2. Roads and driveways shall have an all-weather drivable surface of gravel or rock.*
- 3. Roads and driveways shall have an unobstructed horizontal clearance of not less than sixteen (16) feet and an unobstructed vertical clearance of not less than twelve (12) feet.*
- 4. Average grade for a road or driveway shall not exceed thirteen and one-half (13.5%) percent for any one mile of road length; or exceed twenty (20%) percent for any four hundred (400) consecutive feet of road length.*
- 5. Roads and driveways shall have a drivable surfaced turnaround which has either a thirty-five (35) foot radius cul-de-sac, or a sixty (60) foot "T-shaped" design for the turning of fire-fighting equipment.*
- 6. Roads, driveways, bridges, and culverts shall be designed and maintained to support a minimum gross weight (GVW) of 50,000 pounds for the passage of fire fighting vehicles or equipment.*
- 7. Bridges or culverts which are part of the construction of the road or driveway to the dwelling or structure shall have written verification from a Professional Engineer, licensed in the State of Oregon, that the structure can meet the 50,000-pound construction standard.*
- 8. All bridges shall be inspected and certified as to compliance with the 50,000-pound construction standard at an interval not greater than once every two years from the date of this ordinance. The inspection report shall be filed with the Curry County Road Department.*
- 9. Variations from these standards may be granted through the provisions of Article VIII of this ordinance. The applicant shall provide a written statement from the governing board of the fire protection district having responsibility for structural fire protection in the area where the new dwelling or structure is to be located which states that their fire-fighting vehicles and equipment can negotiate the proposed road and driveway.*

Finding: There is an existing road to the proposed home site area. Incorporation of the Fire Safety Road Standards into the development of a drive does not appear insurmountable for this

property. Compliance with the road access standards (Section 3.056) is anticipated and will be reviewed at the time an application is made to construct the dwelling. (Condition #7)

Section 3.252. Development in Areas of Geologic Hazards.

Those areas identified as geologic hazard areas shall be subject to the following requirements at such time as a development activity application is submitted to the Director.

1. *The applicant shall present a geologic hazard assessment prepared by a geologist at the applicant's expense that identifies site specific geologic hazards, associated levels of risk and the suitability of the site for the development activity in view of such hazards. The geologic hazard assessment shall include an analysis of the risk of geologic hazards on the subject property, on contiguous and adjacent property and on upslope and downslope properties that may be at risk from, or pose a risk to, the development activity. The geologic hazard assessment shall also assess erosion and any increase in storm water runoff and any diversion or alteration of natural storm water runoff patterns resulting from the development activity. The geologic hazard assessment shall include one of the following:*
 - a) *A certification that the development activity can be accomplished without measures to mitigate or control the risk of geologic hazard to the subject property or to adjacent properties resulting from the proposed development activity.*
 - b) *A statement that there is an elevated risk posed to the subject property or to adjacent properties by geologic hazards that requires mitigation measures in order for the development activity to be undertaken safely and within the purposes of Section 3.250.*
2. *If the assessment provides a certification pursuant to Section 3.252(1)(a), the development activity may proceed without further requirements of this Section*
3. *If the assessment provides a statement pursuant to Section 3.252(1)(b), the applicant must apply for and receive an Administrative Decision prior to any disturbance of the soils or construction.*

Finding: Per the Provision Maps of Rapidly Moving Landslides, portions of this property are identified as having geological hazard areas (Exhibit F). The proposed home site is some distance from any of the identified geological hazard areas, so no geology report was required. Nevertheless, compliance with natural hazard requirements will be reviewed upon application of a development permit. (Condition #8)

Section 4.011 Riparian Vegetation Setback

The following setbacks shall be required from waterbodies for the protection of riparian vegetation:

1. *Notwithstanding any yard or other setback requirement in any zone, all structural development located along a stream, river, or lake shall maintain the requirements of the Riparian Corridor Buffer Overlay (RB) zone, if applicable, or if not applicable then a minimum fifty (50) foot setback from the top of the bank of that water body.*

2. *The county shall provide notice to the Oregon Division of State Lands (DSL) for all development permits that are requested which affect wetlands identified on the Statewide Wetlands Inventory (OAR 660-023-0100(7)).*

Finding: Per the National Wetlands Inventory mapping (Exhibit G), portions of this property are identified as having stream and wetland areas. The proposed home site is some distance from any of the identified stream or wetland areas, so no wetland report was required. Nevertheless, compliance with riparian setbacks is anticipated and will be reviewed upon application of a development permit. (Condition #9)

Section 7.010 Authorization to Grant or Deny Conditional Uses:

Uses designated in this ordinance as conditional uses may be permitted, enlarged, or altered in accordance with the requirements of Sections 7.020 through 7.050. In permitting a conditional use the County may impose conditions in addition to the provisions set for uses within each zone in order to protect the best interests of the surrounding property, the neighborhood, or the County as a whole. A change in use, the size of the site area of use, or a structure that is classified as conditional and in existence prior to the effective date of this ordinance shall conform to all provisions of this ordinance pertaining to conditional uses.

Finding: The authority stated above gives the County the ability, if warranted by findings of fact, to impose some or all the conditions set forth in Section 7.040(1) below or other conditions that may be necessary to protect the best interests of the area or the County as a whole. There are conditions applicable to this application that will be required to be satisfied at the time a development permit is requested to construct a residence on this property. This finding is met.

Section 7.040 Standards Governing Conditional Uses:

1. Conditional Uses Generally.

- a) *The County may require property line setbacks or building height restrictions other than those specified in Article IV in order to render the proposed conditional use compatible with surrounding land use.*
- b) *The County may require access to the property, off-street parking, additional lot area, or buffering requirements other than those specified in Article IV in order to render the proposed conditional use compatible with surrounding land uses.*
- c) *The County may require that the development be constructed to standards more restrictive than the Uniform Building Code or the general codes in order to comply with the specific standards established and conditions imposed in granting the conditional use permit for the proposed use.*

Finding: Based on evaluation of this application, the County is not requiring additional conditions of approval related to items a) – c) to find the proposed use of establishing a dwelling on the property to be compatible with adjacent land uses. This requirement is met.

- d) *If the proposed conditional use involves development that will use utility services; the applicant shall provide statements from the affected utilities that they have reviewed*

the applicants' proposed plans. These statements shall explicitly set forth the utilities' requirements, terms and conditions for providing or expanding service to the proposed development and shall be adopted by the Commission or Director as part of the conditional use permit.

Finding: The proposed dwelling is located outside the utility service areas for public water and sewer service. Electrical power is to be supplied by the Coos Curry Electric Co-Op and structural fire protection is available from Cape Ferrelo RFPD. The Applicant has provided service provider letters from CCEC and Cape Ferrelo RFPD. This requirement is met.

2. *Dwelling not served by community water or sewer service.*

- a) *A dwelling not served by community sewer may be authorized as a conditional use only after the individual sewage disposal system site has been approved in writing by the County Sanitarian or other agent authorized to regulate sewage disposal systems in the county. If the Board, Commission or Director has been informed as to a possible environmental hazard if the conditional use permit were approved, or if records show past environmental violations on the part of the applicant; the Board, Commission or Director shall request that this conditional use be reviewed by the Department of Environmental Quality and that a sewage disposal system plan shall be approved for this conditional use before the permit is granted.*

Finding: A copy of a Residential Septic Site Evaluation (221-21-000077-EVAL, dated 7/8/2021) for use of an onsite sewage disposal system on the subject property was submitted by the Applicant. The required individual site evaluation was approved by Danielle Morvan (Onsite Septic Program, Josephine County), the appropriate authority for the task. This requirement is met.

- b) *A dwelling not served by community water may be authorized as a conditional use only after the description of the proposed method of supplying domestic water to the proposed dwelling have been approved by the decision maker. If the proposed method involves the creation of a community water system; the plans, approved by a licensed engineer, and other related documents including water rights, water quality test(s), water quantity test(s), and letters of approval from the appropriate agency shall be provided to the decision maker. If the proposed method involves the extension of an existing water supply system a statement from the agency that controls the system indicating that it can and will supply water to the proposed dwelling shall be provided to the decision maker. If the proposed water source is an individual on-site source a description of the water source and quantity of flow shall be provided to the decision maker. If the water source is to be a proposed well the applicant shall provide evidence that there is ground water available based on the well records from existing wells within 1/4 mile of the proposed well site.*

Finding: The Applicant did not provide a list of wells within ¼ mile from the OR Water Resources Department's well log. Although the county assessor reports 11 dwellings within ¼ mile of the proposed home site, no well log entries have been reported for those dwellings. (Shallow dug wells have not historically been reported on the ORWRD well log.) Between ¼ mile and ½ mile, the ORWRD reports 2 drilled wells:

CURR_52468	120ft deep	drilled 12/11/2013	5 gpm yield
CURR_52833	255ft deep	drilled 10/16/2018	5 gpm yield

These well log entries provide support that ground water is available nearby. Verification of a sufficient domestic water source will be required upon application of a home site development permit. As conditioned, this requirement is met (Condition #2.)

17. *Uses on resource land.*

- 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 forestland.*

Finding: This request is for a single-family dwelling plus the implementation of associated residential activities. The Applicant has submitted evidence and has proposed to comply with provisions intended to alleviate any conflicts associated with nearby forest or farming uses. The impact of a dwelling has been found to have minimal impact on adjacent forest or farming uses; therefore, the proposed use should not significantly deter those uses. This requirement is met.

- b) *The proposed use will not significantly increase fire suppression costs or significantly increase the risks to fire suppression personnel.*

Finding: Per the Advance Oregon Wildfire Risk Explorer (AOWRE), this property is in the Thomas Creek-Frontal Cape Ferrello Watershed (23,073 acres). Fire history for this watershed indicates there were 29 fires (~14% lightning caused and ~86% human caused) between 2008 and 2019, burning a total of 14 acres over those 11 years. This calculates to an average of 1.3 acres per year for an area of 23,073 acres. Nevertheless, this watershed has moderate-high burn probability with very high potential impact.

Fire safety requirements have been addressed in prior sections of this review (Sections 3.055 and 3.056). The conclusion was reached that if all conditions of approval were met for the stated requirements and standards, danger from wildfire would be minimized. If danger from wildfire is minimized, the use should not pose a significant risk to personal involved in fire suppression, nor significantly increase the associated costs. The requirements for Fire Fighting Standards for Dwellings and Structures (Section 3.055) and Fire Safety Standards for Roads (Section 3.056) will be reviewed for compliance at the time an application is made to construct a dwelling (Conditions #5 and #6).

- c) *A written statement be recorded with the deed or written contract with the County or its equivalent shall be obtained from the land owner which recognizes the rights of adjacent and nearby land owners to conduct forest operations consistent with the Oregon Forest Practices Act and related Oregon Administrative Rules.*

Finding: As a condition of approval, a written statement recognizing the rights of adjacent and nearby landowners to conduct forest operations consistent with the Oregon Forest Practices Act and related Oregon Administrative Rules shall be recorded (Condition #10). As conditioned, this requirement will be met.

Section 7.050 Time Limit on a Permit for Conditional Uses – *Authorization of a conditional Use permit to establish a single-family dwelling in the FG zone, outside the urban growth boundary, shall become null and void after four years unless substantial construction has taken place, or an extension has been granted. The county may grant an extension period of up to 12 months if the applicant makes a written request for an extension and the request is submitted to the County prior to the expiration of the approval period.*

Finding: To comply with Section 7.050 of the CCZO, the conditional use approval for the single-family dwelling will include a condition (Condition #11) that the approval expires if construction does not commence within four years and if an extension is not requested by the applicant and granted by the Planning Director.

V. PUBLIC COMMENTS/CONCERNS

A Notice of Application was issued to nearby property owners and interested parties regarding this request for Conditional Use Approval on July 15, 2021. ODOT responded on 7/16/2021 that they had no comments on this proposal. Only one other written comment was received.

Garrett West, Associate Attorney at O'Connor Law LLC, submitted written comments on 8/9/2021 at the request his clients, Daryl and Wendy Blymyer of 97292 Henderson Rd. The Blymyers are concerned whether tax lot 1100 is a lawful parcel, whether the Applicant's proposed septic system would constitute an environmental hazard for their well and others in the vicinity, and whether their access would be impacted if a single-family residence is approved on Applicant's property.

The Applicants traced the creation of their property from 1969 through their 2020 purchase of both TL 700 and TL 1100. Based on that research, TL 700 and TL 1100 were determined to be a part-of-a-total.

A septic site evaluation, approving the feasibility of developing a septic system in the proposed home site area, was provided by Onsite Septic from Josephine County (manages septic systems in Curry County). Developing a septic system will require a construction permit and the system will be required to meet all DEQ requirements. Completion of a building permit will require a DEQ certified septic system. If the system is designed and installed to DEQ requirements, then it should not be detrimental to nearby wells.

Easements are property rights issued by the property owner to others. The Curry Co. Planning Department manages land uses and does not have jurisdiction over property rights. If the Blymyer's have a legal easement to use Henderson Road across the Applicant's property, then placement of a new dwelling should not negate the easement, unless the structure is placed within the specified easement area. If the placement of the dwelling impacts an existing easement, then that issue must be resolved between the involved parties.

VI ADMINISTRATIVE DECISION AND CONDITIONS OF APPROVAL

Application AD-2113 for a Conditional Use Approval to establish a dwelling on an 18.20 acre property within the Forestry Grazing (FG) zoning district, located on Assessor's Map 4013-30A,

Tax Lot 700 and Tax Lot 1100, is **APPROVED** with the conditions on this date of October 19, 2021.

The Applicant has demonstrated that this request, with the imposition of the conditions listed below, will meet all applicable requirements and standards for a dwelling in the FG zone.

1. One single-family dwelling may be developed on this tract. This approval is based on siting the single-family dwelling as indicated in this application. Therefore, to comply with the applicable criteria and standards of the CCZO, and the recommended conditions of approval, the dwelling and any accessory structures must be sited in the approved area proposed in this application. No change in the location of the approved area is authorized without amendment of this conditional use approval.
2. The Applicant shall provide verification of a drilled well with sufficient yield for domestic use upon application for a home site development permit.
3. Timber restocking requirements (CCZO Section 3.053 (4) (e-i)) will be reviewed for compliance upon application to construct a dwelling if timber has been taken or removed from this property.
4. An alternative means (water storage, fire sprinkling system, onsite fire suppression equipment, etc) of protecting the dwelling from fire hazards will be required upon application for a development permit
5. Fire Safety Areas shall be cleared and maintained around all structures, consistent with CCZO Section 3.055 (2a) and (2b), and compliance will be reviewed upon application for a home site development permit. Fire Safety Areas are defined as:

The primary fire safety area (30ft from structure) is defined as follows: an area in which the vegetation shall be limited to mowed grasses, low shrubs (less than two (2) feet high, and trees that are spaced with more than fifteen (15) feet between the crowns and pruned to remove dead and low (less than eight (8) feet from the ground) branches. Accumulated needles, limbs and other dead vegetation should be removed from beneath the trees.

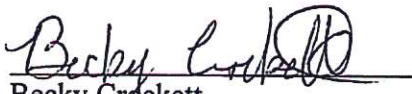
The secondary fire safety area (an additional 100ft beyond the primary area) is defined as follows: an area in which the vegetation shall be limited to mowed grasses, low shrubs (less than two (2) feet high, and trees that are spaced with more than fifteen (15) feet between the crowns and pruned to remove dead and low (less than eight (8) feet from the ground) branches.

6. Any proposed dwelling must be sited on a slope less than 40 percent, shall have a fire-retardant roof and all chimneys shall have approved spark arresters installed. Compliance with these standards will be reviewed upon application for development, plus inspected and certified by the building inspector at the time of construction.
7. Road access to the dwelling must meet Fire Safety Standards (CCZO Section 3.056). The Applicant must submit, prior to building permit issuance, a copy of a signed and notarized form, supplied by the County, stating that the private drive has been constructed and will be maintained to the standards in CCZO Section 3.056.

8. Development near geological hazard areas must meet the requirements of the Natural Hazard Overlay Zone (CCZO Section 3.250). Compliance with these standards will be reviewed upon application of a development permit.
9. Development near stream and wetland areas must meet Riparian Vegetation Setbacks (CCZO Section 4.011). Compliance with these standards will be reviewed upon application of a development permit.
10. The Applicant shall provide a recorded statement recognizing the rights of adjacent and nearby landowners to conduct forest operations consistent with the Oregon Forest Practices Act and related Oregon Administrative Rules.
11. This approval will **expire four (4) years** from the date this decision becomes final unless substantial construction toward home site development has taken place or an extension of time has been granted. Requests for extension of time shall be consistent with CCZO Section 7.050(5) and must be received by the Planning Department, in writing, with the appropriate fee, prior to the expiration date.

This decision is limited to the review of Curry County applicable zoning rules and land use law, as outlined in the Curry County Comprehensive Plan and the Curry County Zoning Ordinance. Other county, state and federal agencies may have regulatory review authority for development projects. The decision rendered herein neither implies nor guarantees compliance with the requirements of any other regulatory agency. It is the property owner's responsibility to ensure that the development complies with the requirements of any other regulatory agency or provisions of law prior to initiating the development. Notice of this decision is being sent to property owners in the vicinity of this property.

Notice of this Administrative Decision is being sent to property owners within the statutory vicinity of this property. The applicants, or the noticed adjacent property owners, have the right to request an appeal hearing within 15 days of this decision. This decision will be final once the 15-day period has ended, provided an appeal has not been filed. Any appeal must meet the provisions of CCZO Sections 2.060 (2) (b), 2.170; and 2.180.


Becky Crockett
Curry County Planning Direct

Oct. 20, 2021
Date

Exhibit A – Advanced Oregon Wildfire Risk Explorer: Overall Wildfire Risk

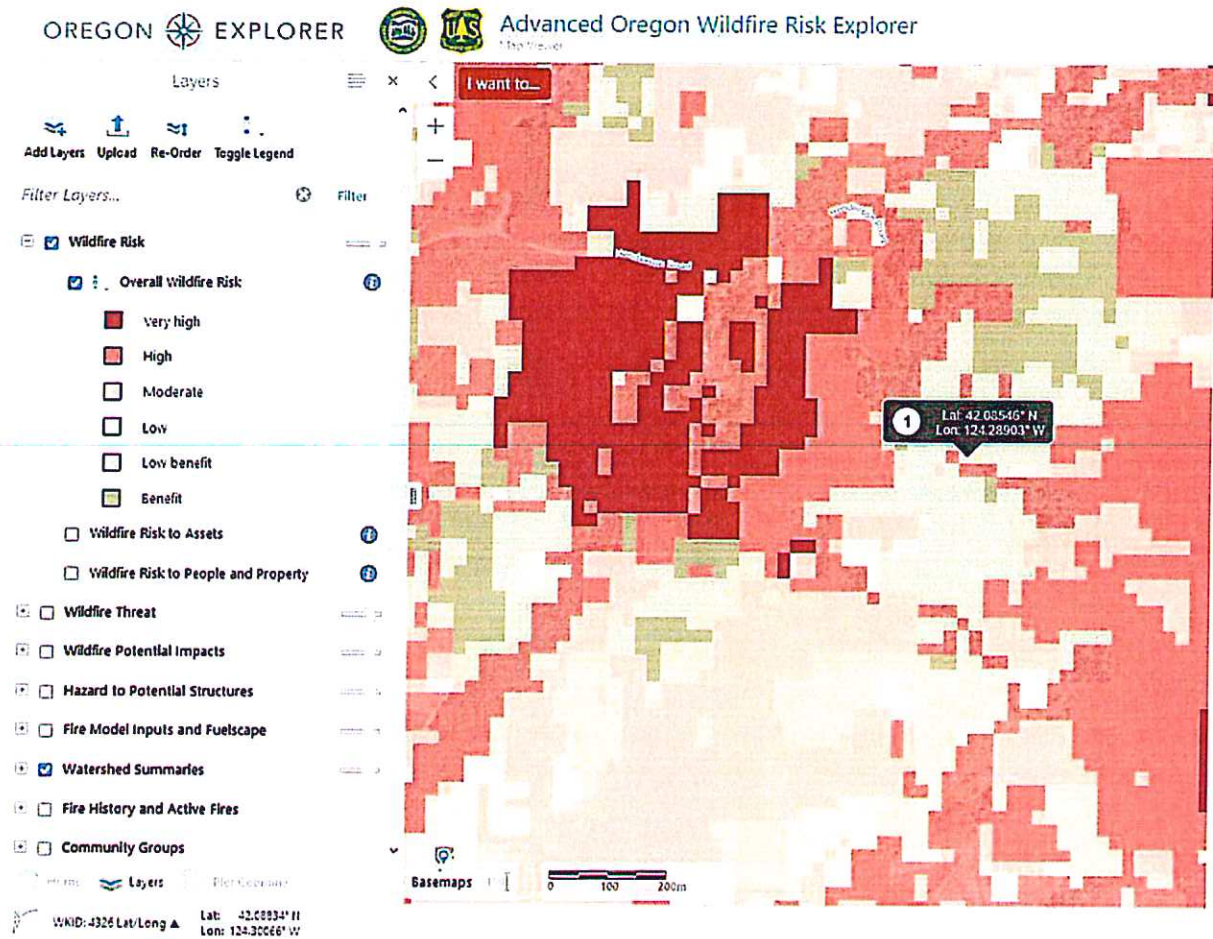


Exhibit B – Advanced Oregon Wildfire Risk Explorer: Burn Probability

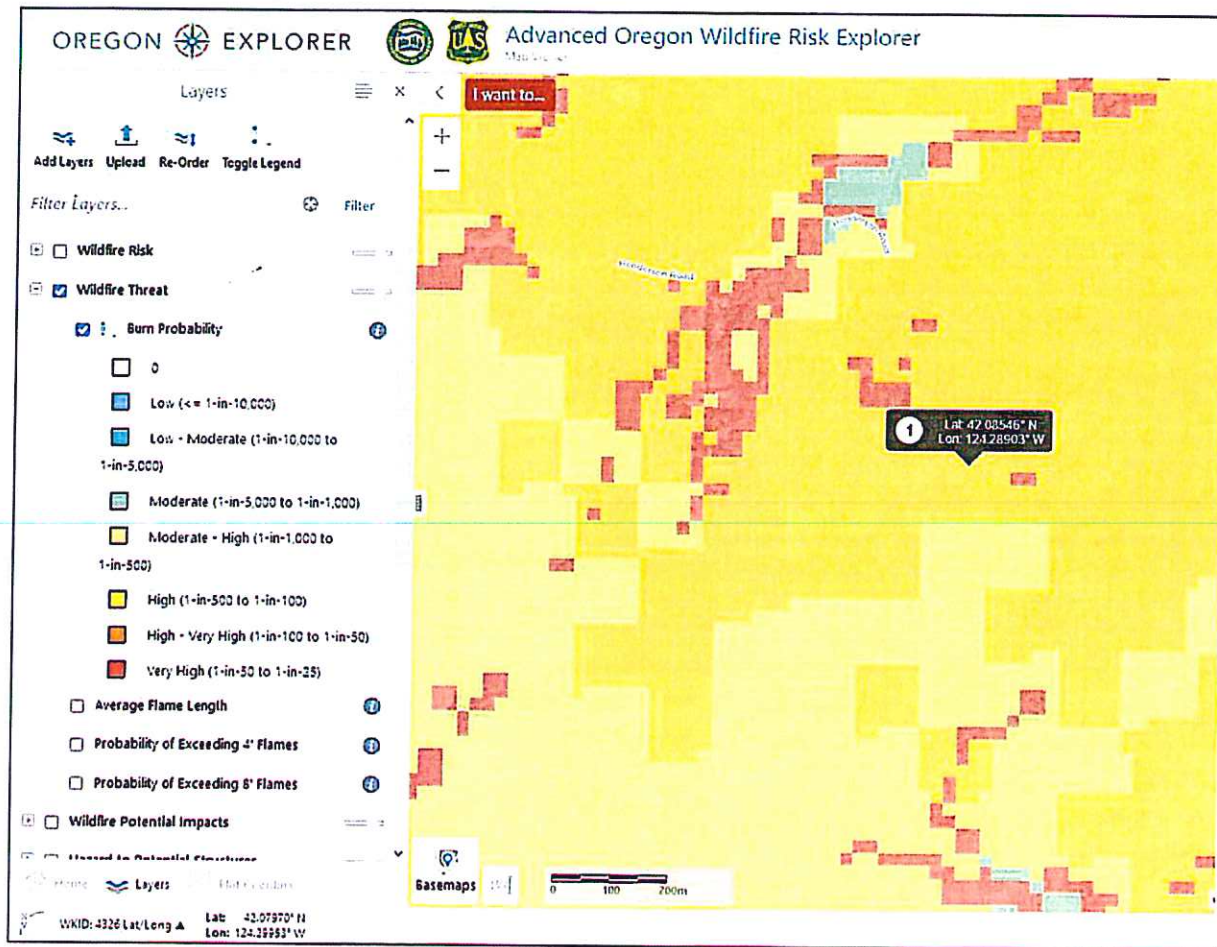


Exhibit C – AOWRE: Overall Potential Impact

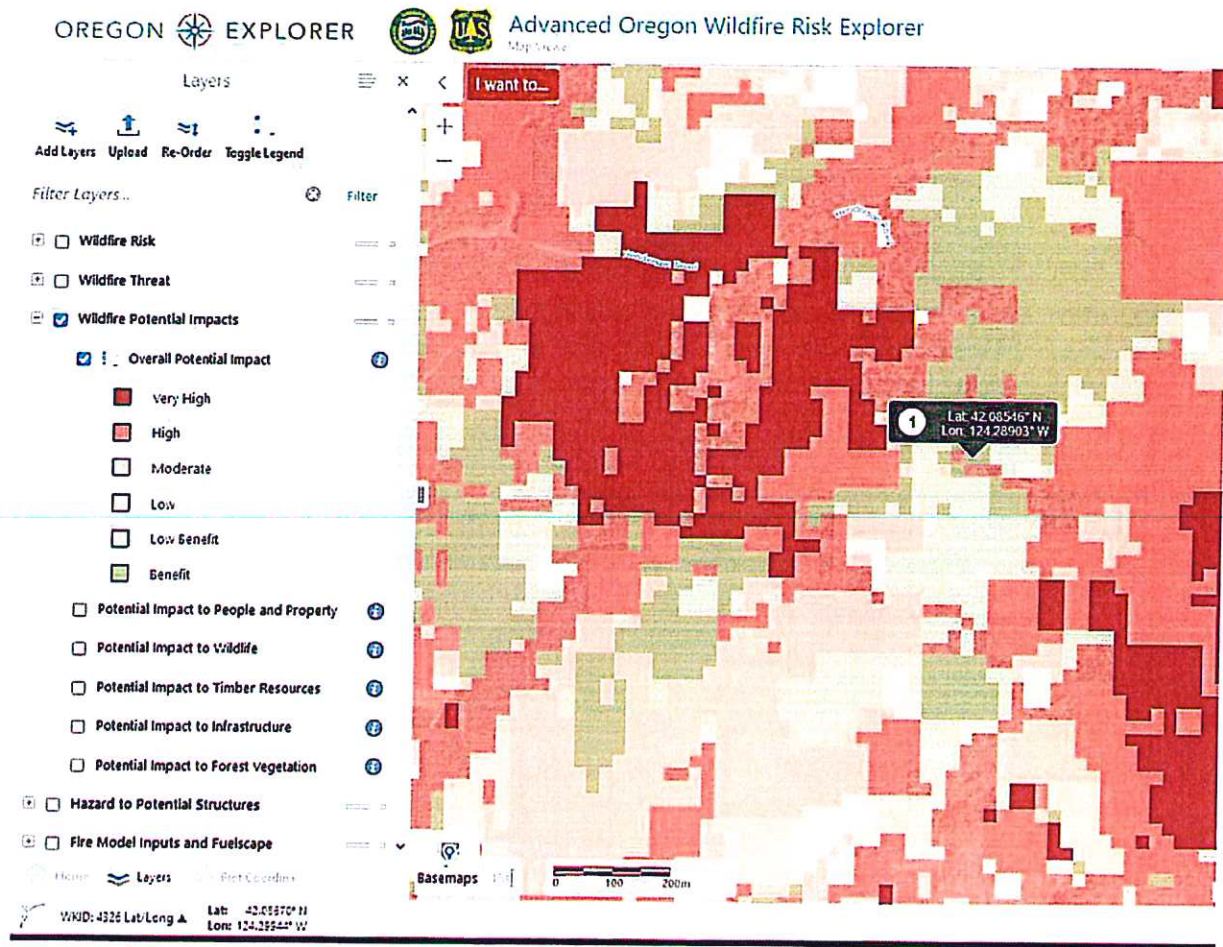


Exhibit D – AOWRE: Potential Impact to Timber Resources

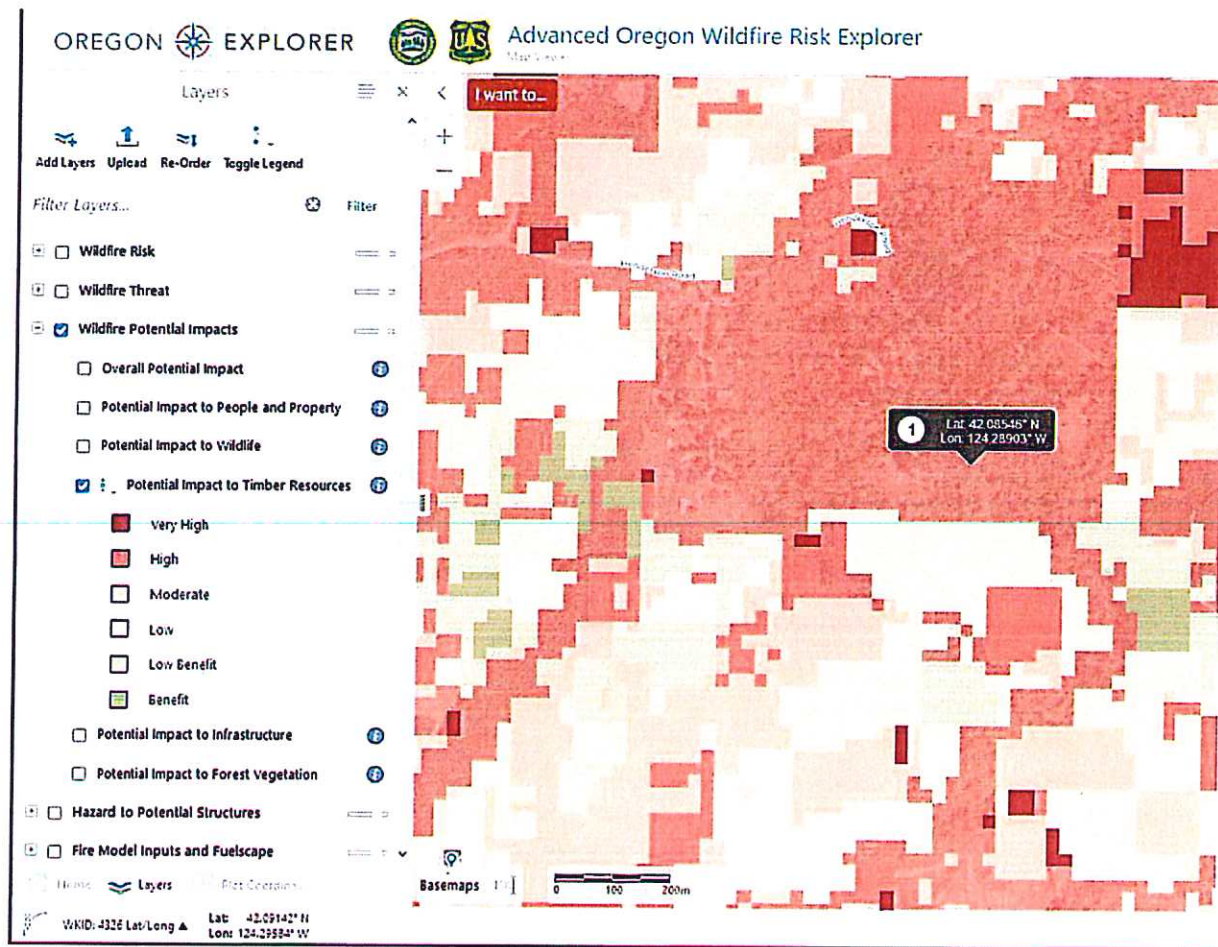
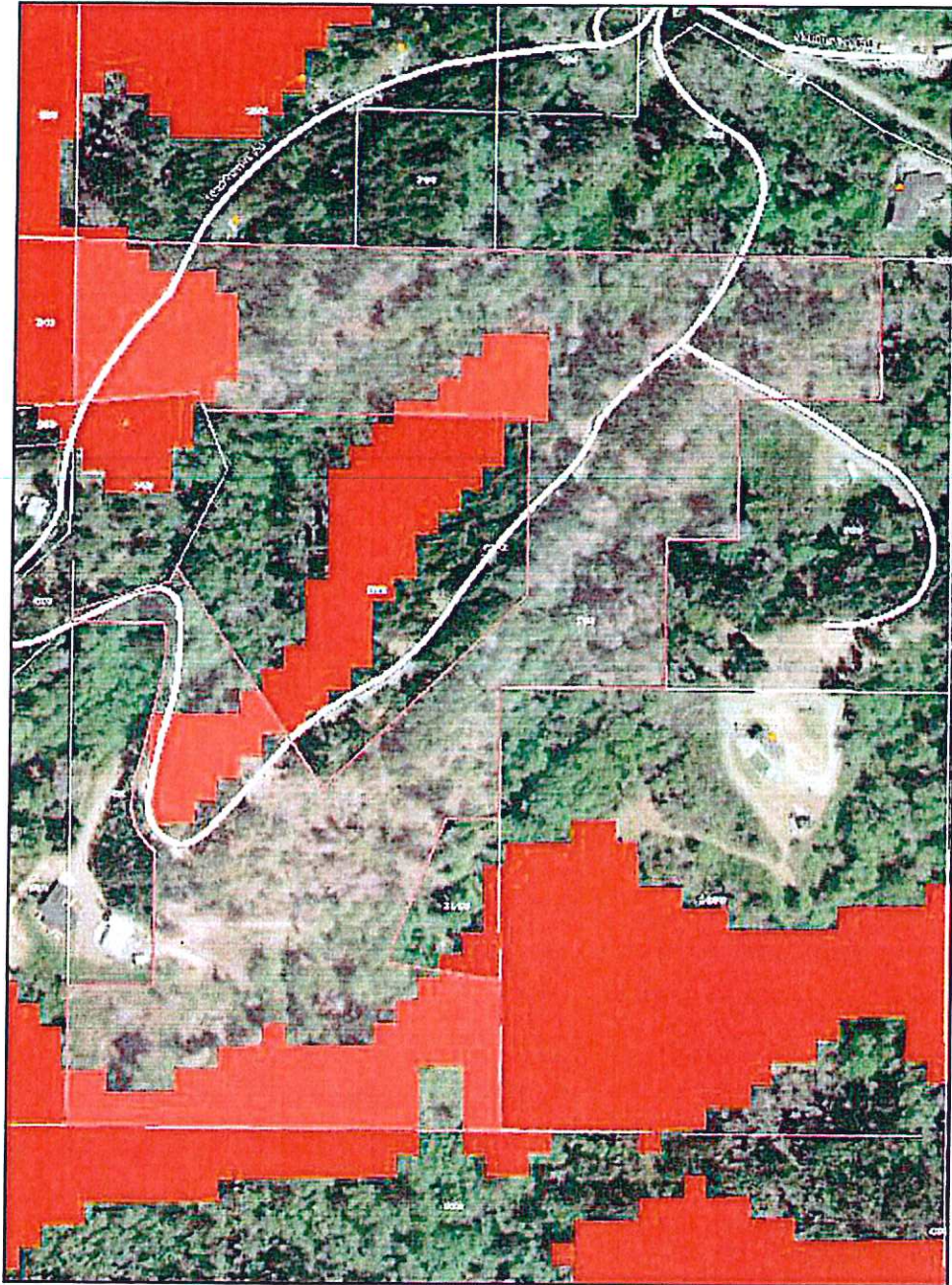


Exhibit E: AOWRE: Hazard to Potential Structures



Exhibit F: GIS - Rapidly Moving Landslides

Curry County Web Map



10/16/2021, 1:04:57 PM

- | | | |
|------------------------------|------------------------|----------------------------|
| World Imagery | Override 1 | Townships |
| Low Resolution 15m Imagery | Highways (1) | City Limits |
| High Resolution 50cm Imagery | All Roads | Urban Growth Boundary |
| High Resolution 30cm Imagery | Parcels | Courtesy |
| Contours | Parcel Labels | Rapidly Moving Slides Cont |
| 50cm Resolution Metadata | Site Address (Current) | |

12,257
0 0.01 0.02 0.03 mi
0 0.03 0.06 0.12 km
Map: Mosaic
Bureau of Land Management, State of Oregon, State of Oregon
DOI, State of Oregon GEO, East Canada, East, 1510, 1510, 1510,
USGS, 1510, USGS

Created by USGS for Curry County

Exhibit G: GIS - Wetlands

Curry County Web Map



10/19/2021, 1:07:52 PM

- | | | |
|-----------------------------|------------------------|-----------------------|
| World Imagery | Overlaid 1 | Townships |
| Low Resolution 15m Imagery | Highways (1) | City Limits |
| High Resolution 60m Imagery | All Roads | Urban Growth Boundary |
| High Resolution 30m Imagery | Parcels | Counties |
| Citations | Parcel Labels | Wetlands (NWI) |
| 60m Resolution Metadata | Site Address (Current) | Streams |

1:2,257
0 0.02 0.04 0.07 mi
0 0.03 0.06 0.12 km
Maple, Microsoft
Bureau of Land Management, State of Oregon, State of Oregon
DOI, State of Oregon GEO Data Service, Inc., 1990; Census,
USDA, EPA, USGS

Created by COGIS for Curry County



**Curry County Community Development – Planning Department
NOTICE OF ADMINISTRATIVE DECISION**

Application AD-2113

October 21, 2021

Applicant

Property Owner: Ronald and Susan Stone
Stepping Stones Brookings, LLC

Agent: John Bischoff
Wildwood Planning Consultants

Assessor's Map: Township 40 South, Range 13 West W.M., Section 30A
Tax Lots: 700 and 1100

Decision: Request for a Conditional Use Approval to place a single-family dwelling on an 18.2-acre property zoned Forestry Grazing (FG) is hereby **APPROVED**, subject to conditions.

REQUIRED STATUTORY NOTICE:

Any person who is adversely affected or aggrieved by this decision or who is entitled to written notice under ORS 215.416 (11) (a) (C) of it, may appeal it to the Curry County Planning Commission. The appeal can only be initiated by filing a written appeal application together with a fee of **\$250.00** with the Curry County Community Development Department – Planning Division within twelve (12) business days of the mailing (postmarked date) of this notice. **Appeals cannot be filed by fax or email correspondence.** A person who is mailed written notice of this decision cannot appeal the decision directly to the Land Use Board of Appeals (LUBA) under ORS 197.830. The decision described above will not become final until the period for filing a local appeal has expired, which is **5:00 pm, Friday, November 8, 2021.**

Any appeal hearing before the Planning Commission will be a de novo or entirely new hearing and not on the record of the Planning Director's Decision.

Additional information can be obtained as outlined below:

Curry County Community Development Department
Planning Division
94235 Moore Street, Suite 113
Gold Beach, OR 97444

Nancy O'Dwyer, Planner	ODwyerN@co.curry.or.us	(541) 247-3284
Becky Crockett, Planning Director	CrockettB@co.curry.or.us	(541) 247-3228

A copy of the application, documents and evidence submitted by the applicant, applicable decision criteria, and the decision order are available for inspection at the Curry County Community Development office. Copies of these documents are available upon payment (\$0.25 per page).