



Cheese, Trees and Ocean Breeze

1510 - B Third Street
Tillamook, Oregon 97141
www.tillamook.or.us

Building (503) 842-3407
Planning (503) 842-3408
On-Site Sanitation (503) 842-3409
FAX (503) 842-1819
Toll Free 1 (800) 488-8280

CONDITIONAL USE REQUEST #851-21-000418-PLNG: KIRSCHNER

*NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR OR SELLER:
ORS 215 REQUIRES THAT IF YOU RECEIVE THIS NOTICE,
IT MUST BE PROMPTLY FORWARDED TO THE PURCHASER*

January 18, 2022

Dear Property Owner:

This is to confirm that the Tillamook County Department of Community Development **APPROVED WITH CONDITIONS** the above-cited Conditional Use Request on January 18, 2022.

A copy of the application, along with a map of the request area and the applicable criteria for review are available for inspection on the Tillamook County Department of Community Development website: <https://www.co.tillamook.or.us/commdev/landuseapps> and is also available for inspection at the Department of Community Development office located at 1510-B Third Street, Tillamook, Oregon 97141.

Appeal of this decision. This decision may be appealed to the Tillamook County Planning Commission, who will hold a public hearing. Forms and fees must be filed in the office of this Department before **4:00 PM on January 31, 2022.**

Unless appealed, the Effective Date of Decision shall be no sooner than February 1, 2022.

Request: An exception request to reduce the required 100-foot resource zone setback from the Forest (F) zone boundary along the south (rear yard) of the subject property to allow for the placement of a residential dwelling. The resource zone setback reductions shall result in a 20-foot rear and front yard setback and side-yard setbacks of not less than 5-feet each as indicated on the proposed site plan.

Location: The subject property is accessed via Hilltop Lane, a local access road, located in the Unincorporated Neskowin Community, and designated as Tax Lot(s) 3400 & 3500 in Section 36AB of Township 5 South, Range 10 West of the Willamette Meridian, Tillamook County, Oregon.

Zone: Neskowin Low Density Residential Zone (NeskR-1)

Applicant: Nichole Hendricks

Property Owner: Paul Kirschner 3923 NE 74th Ave. Portland, OR 97213

CONDITIONS OF APPROVAL

Section 8.060: COMPLIANCE WITH CONDITIONS, and 8.070: TIME LIMIT requires compliance with approved plans and Conditions of this decision, and all other ordinance provisions, and allows 24 months for compliance with Conditions and start of construction. Failure to comply with the Conditions of Approval and ordinance provisions could result in nullification of this approval.

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1. The applicant/property owner shall obtain all Federal, State, and Local permits, as applicable.
2. The applicant/property owner shall obtain an approved consolidated Building/Zoning Permit from the Tillamook County Department of Community Development prior to siting the proposed dwelling.
3. Development shall be as shown on the approved site plan and shall maintain the approved reduced resource zone setback of a 20-foot front and rear yard setback and side-yard setbacks of not less than 5-feet each as indicated on the proposed site plan.
4. The applicant/property owner shall submit a site plan, drawn to scale and indicating all required yard setbacks and reduced resource zone setbacks, at the time of consolidated Building/Zoning Permit application submittal.
5. Development shall otherwise comply with the applicable standards and requirements of TCLUO Section 3.322 Neskowin Low Density Residential Zone (NeskR-1).
6. In accepting this approval, the property owner understands intensive farm or forest practices may be conducted upon adjacent or nearby land zoned for farm or forest use. The property owner hereby acknowledges that practices may involve but are not limited to the application of herbicides or fertilizers (including aerial spraying), road construction, changes in view, noise, dust, odor, traffic, and other impacts related to a farm zone. The property owner acknowledges the residential use of this property may be impacted by such activities and is accepting of that fact. In the event of conflict, the property owner understands preference will be given to farm and forest practices.

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

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

Sincerely,
Tillamook County Department of Community Development

Christopher S. Laws, Planner II



Sarah Absher, CFM, Director



Enc.: Vicinity, Assessor & Zoning maps



Land of Cheese, Trees and Ocean Breeze

**Resource Zone Exception #851-21-000418-PLNG: KIRSCHNER
Administrative Decision & Staff Report**

Decision: Approved with Conditions
Decision Date: January 18, 2022
Report Prepared By: Christopher S. Laws, Land Use Planner II

I. GENERAL INFORMATION:

Request: An exception request to reduce the required 100-foot resource zone setback from the Forest (F) zone boundary along the south (rear yard) of the subject property to allow for the placement of a residential dwelling. The resource zone setback reductions shall result in a 20-foot rear and front yard setback and side-yard setbacks of not less than 5-feet each as indicated on the proposed site plan.

Location: The subject property is accessed via Hilltop Lane, a local access road, located in the Unincorporated Neskowin Community, and designated as Tax Lot(s) 3400 & 3500 in Section 36AB of Township 5 South, Range 10 West of the Willamette Meridian, Tillamook County, Oregon.

Zone: Neskowin Low Density Residential Zone (NeskR-1)

Applicant & Property Owner: Paul Kirschner 3923 NE 74th Ave. Portland, OR 97213

Description of Site and Vicinity: Assessor records indicate the subject properties encompass approximately 0.24 & 0.21 acres respectively, is densely wooded, and vacant of improvements (Exhibit A). There are no wetlands and riparian features on the subject property and is not within an area of landslide topography or FEMA Flood zones (Exhibit A).

Properties to the north, west and east are also zoned Neskowin Low Density Residential Zone (NeskR-1) and are a mix of un-developed and developed with single family dwellings and accessory structures (Exhibit

A). The property to the south is zoned Forest (F) (Exhibit A). FEMA Flood Insurance Rate Map 41057C1005F dated September 28, 2018 confirms the subject property is not located within an Area of Special Flood Hazard (Exhibit A).

II. APPLICABLE ORDINANCE AND COMPREHENSIVE PLAN PROVISIONS:

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

A. TCLUO Section 3.322 Neskowin Low Density Residential Zone (NeskR-1)

III. ANALYSIS:

Notice of the request was mailed to property owners within 250 feet of the subject property and other agencies on December 10, 2021. No comments were received.

A. Section 3.322: Neskowin Low Density Residential Zone (NeskR-1)

Section 3.322(4) Standards: *Land divisions and development in the NeskR-1 zone shall conform to the following standards, unless more restrictive supplemental regulations apply:*

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

Findings: The subject property lies within 100-feet of the Forest (F) Zone boundary along the south (rear-yard) of the subject property (Exhibit A).

Staff finds that a residential structure could not otherwise be placed on the subject property without an approved variance to the 100-ft setback due to the location of the Forest (F) zone boundary abutting the subject property (Exhibit B). The resource zone setback reductions shall result in a 20-foot front and rear yard setback and side-yard setbacks of not less than 5-feet each as indicated on the proposed site plan (Exhibit B). Staff finds this standard is met.

IV. DECISION: APPROVED WITH CONDITIONS

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

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

Appeal of this decision. This decision may be appealed to the Tillamook County Planning Commission, who will hold a public hearing. In such cases, forms and fees must be filed in the office of this Department before **4:00 PM on January 31, 2021.**

V. CONDITIONS OF APPROVAL:

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

1. The applicant/property owner shall obtain all Federal, State, and Local permits, as applicable.
2. The applicant/property owner shall obtain an approved consolidated Building/Zoning Permit from the Tillamook County Department of Community Development prior to siting the proposed dwelling.
3. Development shall be as shown on the approved site plan and shall maintain the approved reduced resource zone setback of a 20-foot front and rear yard setback and side-yard setbacks of not less than 5-feet each as indicated on the proposed site plan.
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A covenant to the deed shall be required, informing that intensive farm or forest practices may be conducted upon adjacent or nearby land zoned for farm or forest use and limiting pursuance of a claim for relief or cause of action of alleging injury from farming or forest practices. A copy of the recorded covenant included as 'Exhibit D' shall be provided at the time of applying for Building and Zoning Permits.

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

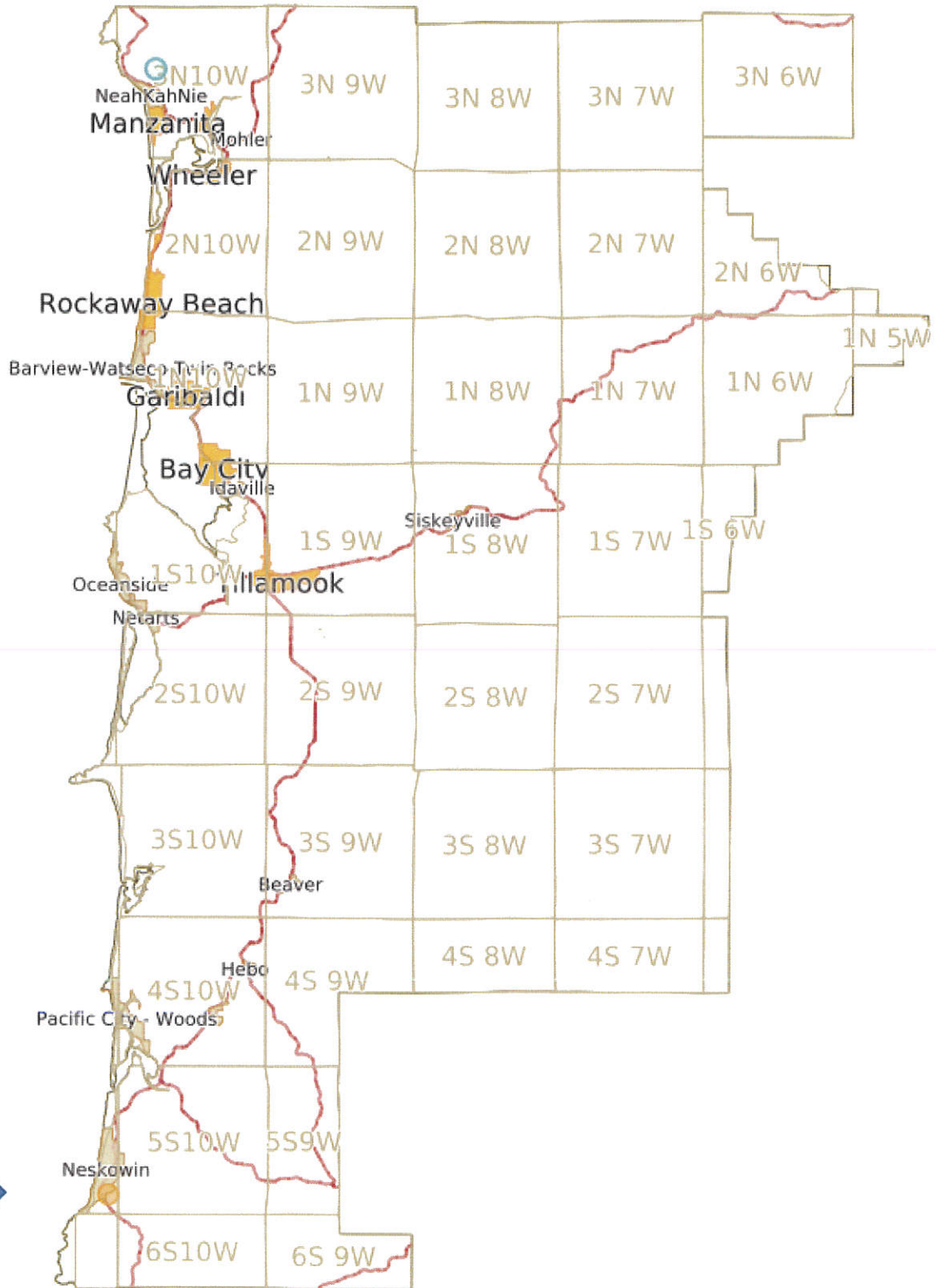
VI. EXHIBITS

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

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

EXHIBIT A

VICINITY MAP



Subject
Property



ZONE MAP



851-21-000418-PLNG

TAX MAP

THIS MAP WAS PREPARED FOR
ASSESSMENT PURPOSE ONLY

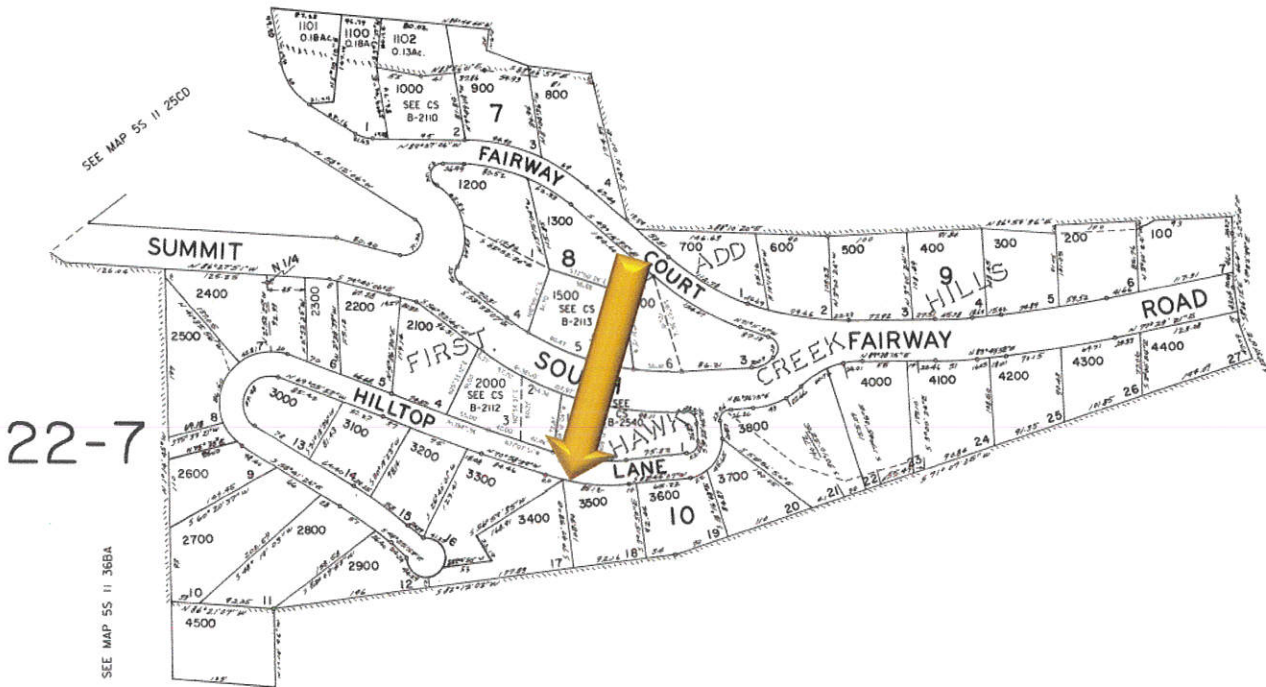
NW1/4 NE1/4 SEC. 36 T.5S. R.11W. W.M.
TILLAMOOK COUNTY

1" = 100'

SEE MAP 55 11 25

5S 11 36AB
HAWK CREEK
HILLS

CANCELLED NO.
1400
1600
1900
3900



22-7

SEE MAP 55 11 36BA

SEE MAP 55 11 36

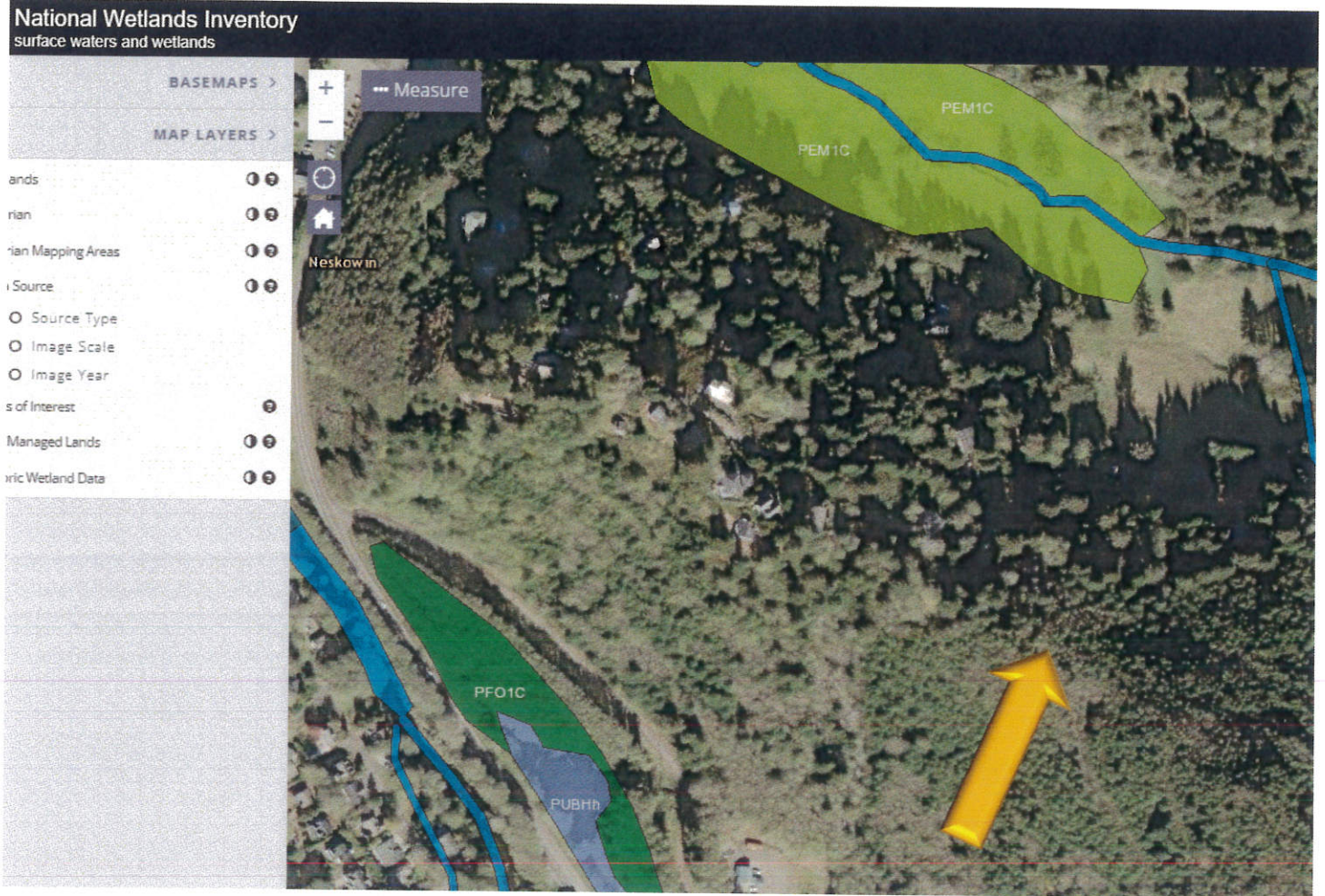
851-21-000418-PLNG

FEMA MAP



851-21-000418-PLNG

NATIONAL WETLAND INVENTORY MAP



851-21-000418-PLNG

EXHIBIT B



PLANNING APPLICATION

OFFICE USE ONLY	
Date Stamp	
<input type="checkbox"/> Approved <input type="checkbox"/> Denied	
Received by: <u>CSL</u>	
Receipt #: <u>123051</u>	
Fees: <u>615.00</u>	
Permit No: 851- <u>21-000418</u> PLNG	

Applicant (Check Box if Same as Property Owner)

Name: Paul Kirschner Phone: 303.902.0301
 Address: 3923 NE 74th Ave
 City: Portland State: OR Zip: 97213
 Email: PLKirschner@gmail.com

Property Owner

Name: Phone:
 Address:
 City: State: Zip:
 Email:

Request: Granting an exception to the resource setback for a single-family home

- | 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 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 checked="" 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: Hilltop Lane, Neskowin

Map Number:	5S	11W	36AB	3400 & 3500
	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.

[Signature]
 Property Owner Signature (Required)

11/17/21
 Date

11
 Applicant Signature

11
 Date

11/16/21

Tillamook County Department of Community Development,

I am submitting this planning application to seek exception to a resource setback impacting my property in Neskowin's Hawk Creek Hills neighborhood. This application regards both tax lot 3400 and 3500. A restrictive covenant has been completed on the lots. Confirmation has been given by the County that only one application is required for this exception request. **I propose a variance from the standard 100 ft setback to 20 ft based on the following points:**

- **The standard resource boundary setback renders my property unbuildable; a 20 ft setback will allow for a single-family home to be built on the property.**
- **The Hawk Creek Hills neighborhood was plotted prior to the current requirements and exception process.**
- **A similar request for exception was granted for tax lot 3400 in September of this year.**

I fully understand the implications of building within the standard setback of a resource boundary, and I can ensure you that due diligence has been completed. The location of the proposed structure is clearly the only viable site on the property for a single-family home.

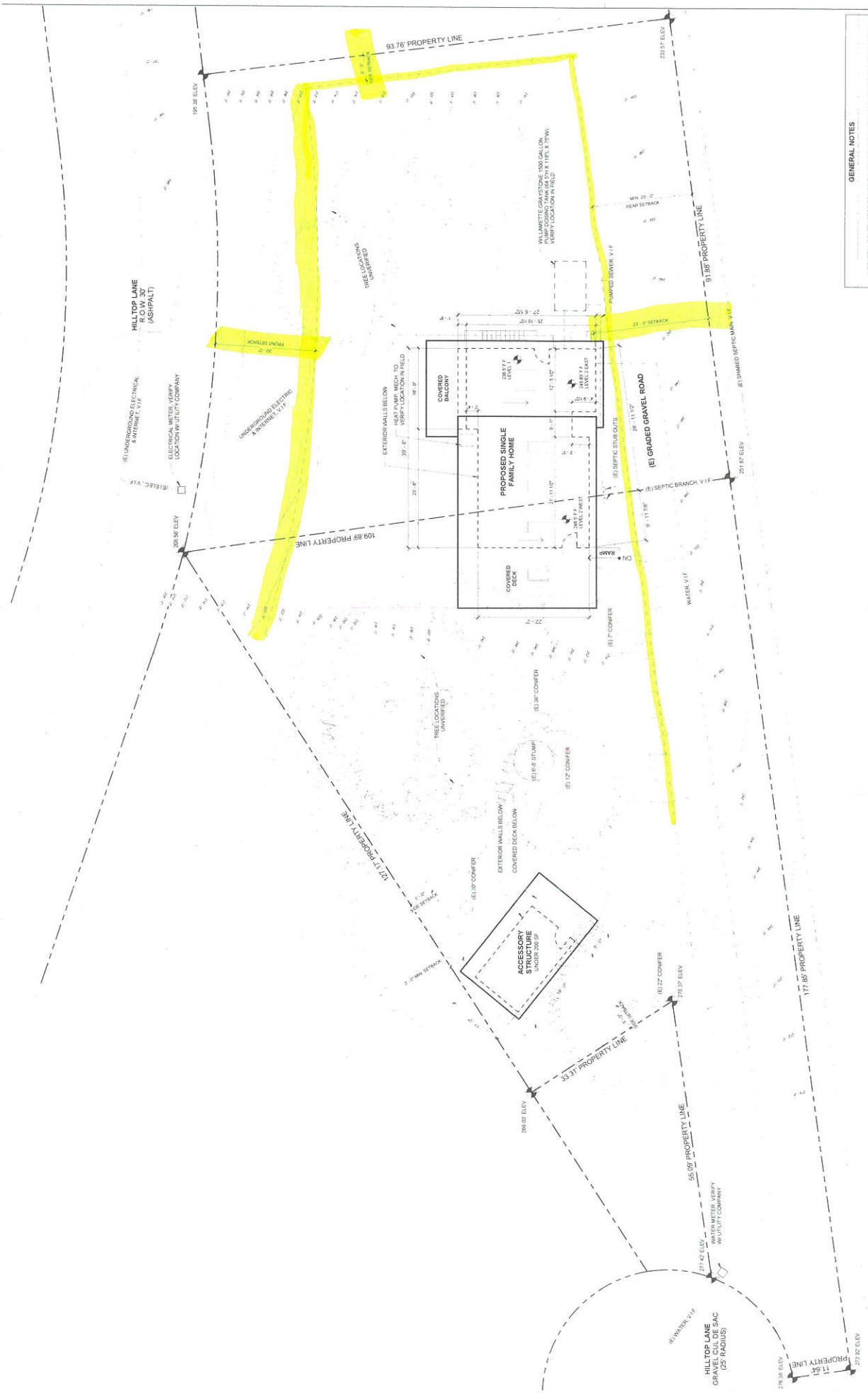
Thanks in advance for your time and consideration,



Paul L Kirschner

GENERAL NOTES

- 1) GENERAL CONTRACTOR TO VERIFY LOCATION OF ALL EXISTING AND PROPOSED UTILITIES WITH UTILITY COMPANIES AND FOR FEASIBILITY ON SITE BEFORE CONSTRUCTION BEGINS.
- 2) VERIFY LOCATION OF ALL EXISTING AND PROPOSED UTILITIES WITH UTILITY COMPANIES AND FOR FEASIBILITY ON SITE BEFORE CONSTRUCTION BEGINS.
- 3) VERIFY LOCATION OF ALL EXISTING AND PROPOSED UTILITIES WITH UTILITY COMPANIES AND FOR FEASIBILITY ON SITE BEFORE CONSTRUCTION BEGINS.
- 4) VERIFY LOCATION OF ALL EXISTING AND PROPOSED UTILITIES WITH UTILITY COMPANIES AND FOR FEASIBILITY ON SITE BEFORE CONSTRUCTION BEGINS.
- 5) VERIFY LOCATION OF ALL EXISTING AND PROPOSED UTILITIES WITH UTILITY COMPANIES AND FOR FEASIBILITY ON SITE BEFORE CONSTRUCTION BEGINS.
- 6) VERIFY LOCATION OF ALL EXISTING AND PROPOSED UTILITIES WITH UTILITY COMPANIES AND FOR FEASIBILITY ON SITE BEFORE CONSTRUCTION BEGINS.
- 7) VERIFY LOCATION OF ALL EXISTING AND PROPOSED UTILITIES WITH UTILITY COMPANIES AND FOR FEASIBILITY ON SITE BEFORE CONSTRUCTION BEGINS.
- 8) VERIFY LOCATION OF ALL EXISTING AND PROPOSED UTILITIES WITH UTILITY COMPANIES AND FOR FEASIBILITY ON SITE BEFORE CONSTRUCTION BEGINS.
- 9) VERIFY LOCATION OF ALL EXISTING AND PROPOSED UTILITIES WITH UTILITY COMPANIES AND FOR FEASIBILITY ON SITE BEFORE CONSTRUCTION BEGINS.
- 10) VERIFY LOCATION OF ALL EXISTING AND PROPOSED UTILITIES WITH UTILITY COMPANIES AND FOR FEASIBILITY ON SITE BEFORE CONSTRUCTION BEGINS.



STATE OF OREGON
COUNTY OF TILLAMOOK

RESTRICTIVE COVENANT

Paul Kirschner
(GRANTORS) are the owners of real property described as follows:

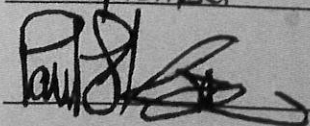
Property Legal Description attached as Exhibit A hereto and incorporated by reference

The Tillamook County Land Use Ordinance provides for minimum setbacks from property lines for any structural development on a unit of land and further provides for placement of structures within the setback area when adjustment of property lines is impracticable. The Grantor(s) wish to build a structure over and upon a property line between the units of land described in "Exhibit A" or within the setback area defined for the subject property in the Tillamook County Land Use Ordinance, and in consideration of the approval of said structural development, the Grantor(s) do hereby covenant and agree as follows:

1. The Grantor(s), their heirs, successors and assigns acknowledge that they desire to place a structure over and upon the line between the two units of land referenced above or within the setback area defined for the subject property in the Tillamook County Land Use Ordinance, and that they do not wish to vacate the lots at this time.
2. The Grantor(s) do further acknowledge that upon completion and recording of this document that the above referenced units of land must be conveyed as a single ownership and may no longer be considered two separately saleable units of land even though a formal vacation of the lots has not been completed.
3. Nothing in this agreement shall prevent the Grantor(s) or subsequent owners of the subject properties from adjustment of property lines or other lawful land use actions in the future, provided such actions comply fully with the applicable state and local laws and ordinances then current.
4. By signing this document I authorize the Tillamook County Assessor's office to combine these parcels for property tax purposes.

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

IN WITNESS WHEREOF, the said Party has executed this instrument this 21 day of September, 2021.



PAUL KIRSCHNER

Signature

Print Names

Acknowledgment in an Individual Capacity

State of OREGON

County of Oregon

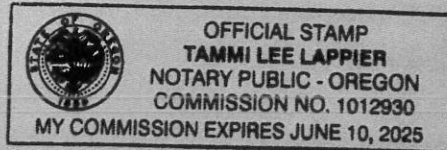
This record was acknowledged before me on (date) September 20 21 by

(name(s)) of individual(s) Paul Kirschner

Tammi Lappier

Notary Public - State of Oregon

Official Stamp



Document Description

This certificate is attached to page 3 of a Restrictive Covenant (title or type of document),
dated Sept. 21, 20 21, consisting of 3 pages.

