



VARIANCE REQUEST #851-22-000159-PLNG: BRITT

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

NOTICE OF ADMINISTRATIVE REVIEW

Date of Notice: May 23, 2022

Notice is hereby given that the Tillamook County Department of Community Development is considering the following:

#851-22-000139-PLNG: A Variance request for relief to the location standards outlined in Chapter 157.275(A) to allow the alteration of an existing accessory structure (garage) to include an Accessory Dwelling Unit (ADU). The existing accessory structure (garage) does not meet siting standards for a free-standing ADU as outlined in Chapter 157.275(A). The subject property is located in the City of Nehalem Urban Growth Boundary (UGB) at 35020 Tohl Avenue, a County road, zoned Nehalem Medium Density Residential (NM-R2) and is designated as Tax Lot 3500 of Section 28DD, Township 3 North, Range 10 West, W.M., Tillamook County, Oregon. The applicant and property owner is Elizabeth Britt.

Written comments received by the Department of Community Development prior to 4:00 p.m. on June 6, 2022, will be considered in rendering a decision. Comments should address the criteria upon which the Department must base its decision. A decision will be rendered no sooner than the next business day, June 7, 2022. Notice of the application, a map of the subject area, and the applicable criteria are being mailed to all property owners within 250 feet of the exterior boundaries of the subject parcel for which an application has been made and other appropriate agencies at least 14 days prior to this Department rendering a decision on the request.

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

If you have any questions about this application, please contact the Department of Community Development at (503) 842-3408 ext. 3412 or by contacting Lynn Tone, DCD Office Specialist, at ltone@co.tillamook.or.us.

Sincerely,

A handwritten signature in blue ink that reads "Sarah Absher".

Sarah Absher, CFM, Director

Enc. Maps and applicable ordinance criteria

REVIEW CRITERIA

CITY OF NEHALEM CODE OF ORDINANCES: [Variances](#) | [Nehalem City Code \(municipal.codes\)](#)

Chapter 157.400-157.403: Variance

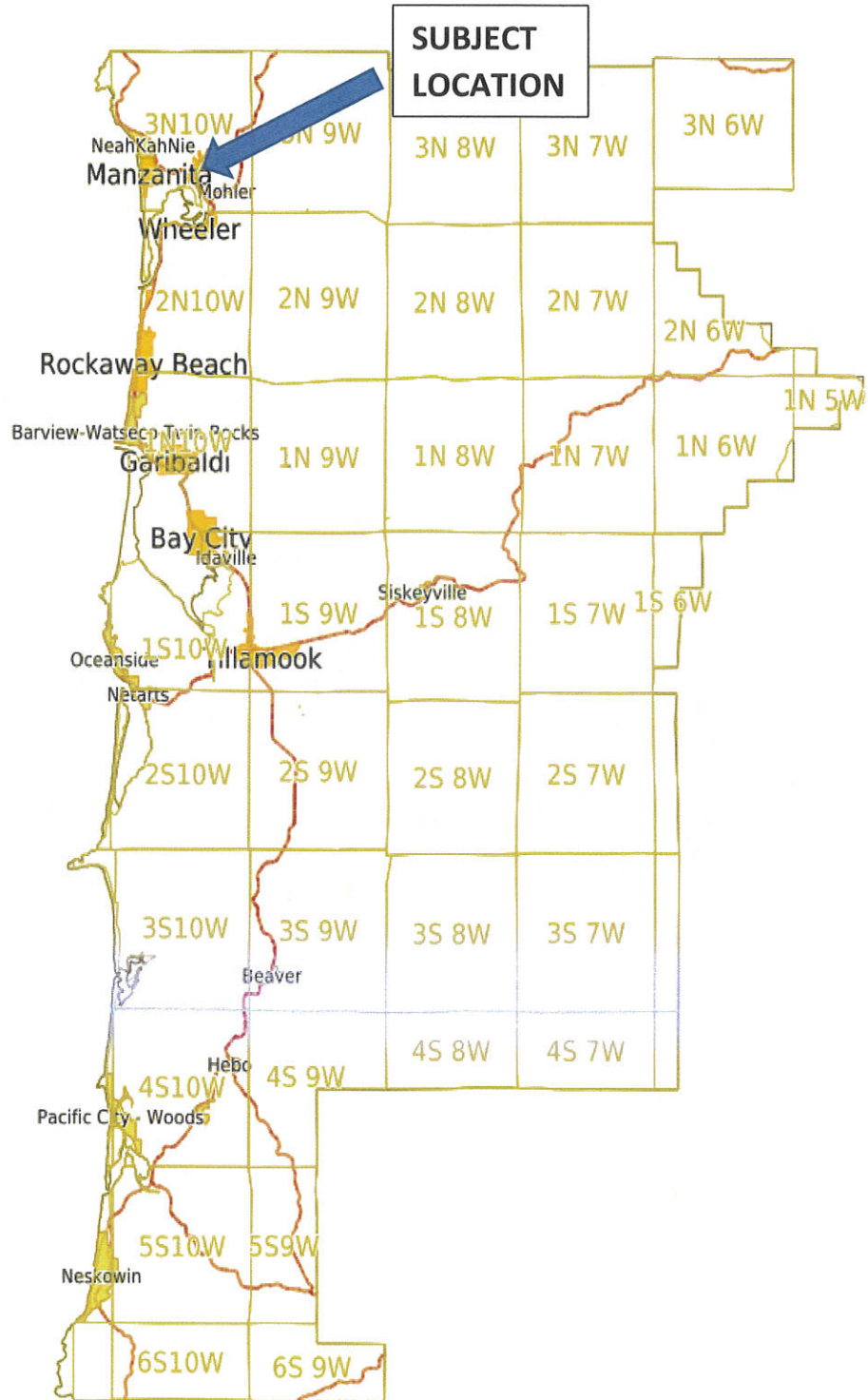
- (A) Exceptional or extraordinary circumstances apply to the property and result from lot size and shape, topography or other circumstances over which the owners of the property have no control;
- (B) The variance is necessary for the preservation of a property right of applicant substantially the same as owners of other property in the same zone or vicinity possess;
- (C) The variance would not be materially detrimental to the purposes of this chapter, the Comprehensive Plan, or to property in the same zone or vicinity in which the property is located or otherwise conflict with the objectives of any city policy; and
- (D) The variance request is the minimum variance which would alleviate the hardship. (Ord. 80-2, passed 06/14/2010)

Chapter 157.275: Accessory Dwelling Unit

Where permitted, an accessory dwelling unit may be sited on a lot with an existing or under-construction single-family home, shall conform to all building code requirements, and shall meet the following use and development standards:

- (A) *Location.* The accessory dwelling unit, if freestanding, shall be located within the side or rear yard and physically separated from the primary residence by a minimum distance of six feet. A covered walkway which contains no habitable space may connect the two buildings without violation of the setback requirements.

VICINITY MAP



#851-22-00159-PLNG: BRITT



PLANNING APPLICATION

OFFICE USE ONLY	
Date Stamp	APR 20 2022
BY:	lmailed ->
<input type="checkbox"/> Approved	<input type="checkbox"/> Denied
Received by:	JS
Receipt #:	125543
Fees:	1089
Permit No:	851-22-000159-PLNG

Applicant (Check Box if Same as Property Owner)

Name: ELIZABETH BRITT Phone: 503 801 2244
 Address: 35020 TOHL AVE
 City: NEHALEM State: OR Zip: 97131
 Email: TAYLORAVRITT@GMAIL

Property Owner

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

Request: REQUEST FOR VARIANCE TO BUILD ACCESSORY DWELLING UNIT UNDER LAND CODE NH RZ 157.275

Type II

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

Type III

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

Type IV

- Ordinance Amendment
- Large-Scale Zoning Map Amendment
- Plan and/or Code Text Amendment

Location:

Site Address: 35020 TOHL AVE NEHALEM, OR 97131
 Map Number: NEHALEM NHR2 3N10W 2800 5623 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.

Elizabeth Britt _____ 4-19-22
Property Owner Signature (Required) Date
Elizabeth Britt _____ 4-19-22
Applicant Signature Date

VARIANCES 157.400 Intent.

(A) The purpose of this subchapter is to allow for the granting of a variance permit from specified site-development requirements of this chapter where it can be shown that owing to special and unusual circumstances related to a specific lot, strict interpretation of the site-development requirements would cause undue or unnecessary hardship.

(B) In granting a variance, the Planning Commission may attach conditions which it finds necessary to protect the best interests of the surrounding property, or vicinity and otherwise achieve the purpose of this chapter. (Ord. 80-2, passed 06/14/2010)

157.401 Conditions for granting a variance.

Application for Variance

Name: Elizabeth Britt Phone Number: 503.801.2244 Address: 1406 SE 27th Ave., Apt 6, Portland, OR 97214

PROPOSED SITE LOCATION

Address: 35020 Tohl Ave., Nehalem, OR 97131 Assessor's Map Page Location: 03N10W28DD Tax Lot (s): 5623
Zone: NHR2 Section: 3N10W Plot: 3500 Legal Description: Parcel 2, Partition Plat 1994-57, Tillamook County, OR

(A) Exceptional or extraordinary circumstances apply to the property and result from lot size and shape, topography or other circumstances over which the owners of the property have no control;

Freshwater Forested/Shrub Wetland – Freshwater Forested/Shrub Wetland exists on the western perimeter of the property, in the rear of the residence; this is depicted in ***Exhibit A & B below***. This is an uncontrolled circumstance due to the topography in which the property owners have no control. The wetland is encroaching on the property line due to rising sea level.

According to the *Environmental Protection Agency*, sea levels have begun rising twice as fast since 1993 until present (0.14 inches per year) as compared to the long-term trend. There is no indication that this trend will change.¹ See ***Exhibit C below***. As sea levels rise, it puts low-lying communities at risk, while also impacting wetlands.² Wetlands are particularly vulnerable to storm surges, further endangering western property line (rear of the residence), and any future developments near that line.

¹ <https://www.epa.gov/climate-indicators/climate-change-indicators-sea-level>

² <https://sealevelrise.org/states/oregon/>

As sea levels continue to rise, the *National Oceanic and Atmospheric Administration (NOAA)* predicts both rising flood zones and expanding wetlands.³ See *Exhibit D & E below*. Flood levels are predicted to rise at a hazardous rate, and the land most susceptible to flood levels are Freshwater Forested/Shrub Wetland; this is depicted in *Exhibit F below*. This would directly jeopardize the safety and condition of an Accessory Dwelling Unit constructed in the rear of the residence.

These are exceptional and extraordinary circumstances that directly apply to the property, in particular the western line boarding the existing Freshwater Forest/Shrub Wetland. An uncontrolled natural weather event could greatly damage an ADU constructed in the rear of the residence, and worst, harm the occupants residing within the ADU.

Furthermore, there is not adequate spacing beside the existing residence to construct an ADU beside the primary residence. There is only 13.9" between the existing residence and north side of the property line, and 9.5" to the south.

(B) The variance is necessary for the preservation of a property right of applicant substantially the same as owners of other property in the same zone or vicinity possess;

Substantially the Same as Neighboring Properties – Plot 3601, 3603 and 3604, depicted in *Exhibit B*. The existing structure (garage) in front of the residence is longitudinally aligned with the residences in Plot 3604, 3601 and 3606, as depicted in *Exhibit C*. Therefore, the Accessory Dwelling Unit would be substantially the same with regards to placement within the property and relativity to Tohl Avenue as that of owners of other property in the same vicinity, including 25.3" distance from the nearest edge of the garage to the roadway, similarly to other property lines.

(C) The variance would not be materially detrimental to the purposes of this chapter, the Comprehensive Plan, or to property in the same zone or vicinity in which the property is located or otherwise conflict with the objectives of any city policy; and

Existing Structure – Requesting renovation of existing garage that has been built concurrent with the residence at the time of development; no new structures are to be developed on property conflicting with existing property, nor that of the neighboring zones.

(D) The variance request is the minimum variance which would alleviate the hardship. (Ord. 80-2, passed 06/14/2010)

Minimum Variance – Due to renovation of existing structure, variance is minimally obstructive to the property, including that of the neighboring zones. Hardship exists with standard requirement enforcing ADU to be placed beside or behind the residential structure, as it requires entirely new structural development. In addition, the existing residence and property line does not allow adequate space for an ADU, while behind the residence puts an ADU in jeopardy of convergence with Freshwater Forested/Shrub Wetland.

³ <https://coast.noaa.gov/slr/#>

Personal Note from the Property Owners: As we understand certain ordinances must be enforced for uniformity, we believe the request for variance is materially legitimate.

Ordinance 80-2 – 2010 was established over a decade ago, and the landscape of the housing market in northern Tillamook County has changed dramatically. People in the northern part of the county have a sincere need for long-term housing options that are both affordable and relative to their household size. We are fortunate to provide housing for a substantial family size in the primary residence (a mother and her three daughters and dog), but through years of experience interviewing rental candidates, it's become clear there is a need for small family footprints to have long-term housing.

In an area oversaturated with high-cost short-term summer rentals for out of towners, this is our opportunity to provide security for the same community that afforded it to us for over 25 years. Beyond the legitimate hazards listed above in the variance application, renovating the garage into an ADU allows for an efficient and cost-effective method to complete this project by summer's end. This means we can provide a small family with housing security by this winter month, and potentially for years to come.

From a larger perspective, the outdated Ordinance 80-2 – 2010 no longer serves the needs of the community. We also recommend the ordinance be reconsidered for the city, just as it has happened in the city of Portland. Although they're two entirely different places, the housing climate is the same – there's a dire need for local residents to have an affordable place to live, and a cost-effective method to providing that housing, even if it is an ADU in the front of the main residence.

Sincerely,
Elizabeth, Taylor, Tracy and Marley

157.402 Application.

- (A) A request for a variance may be initiated by a property owner, or his or her authorized agent, by filing an application with the City Manager/Recorder.
- (B) The application shall be accompanied by a site plan, drawn to scale, showing the dimensions and arrangement of the proposed development.
- (C) For waterfront property, the location of mean higher high water shall also be shown.
- (D) The City Manager/Recorder or Planning Commission may request other drawings or materials essential to an understanding of the proposed use and its relationship to surrounding properties. (Ord. 80-2, passed 06/14/2010)

157.403 Time limit.

- (A) Authorization of a variance shall be void after one year unless substantial construction has taken place.
- (B) Upon request, the Planning Commission may grant one six-month extension.
- (C) A change in plan requires a new application. (Ord. 80-2, passed 06/14/2010)

Exhibit A

Tillamook County Maps western property line in green, encroached by Freshwater Forested/Shrub Wetland.
Note the entire property is in the Local Tsunami Evacuation Zone.

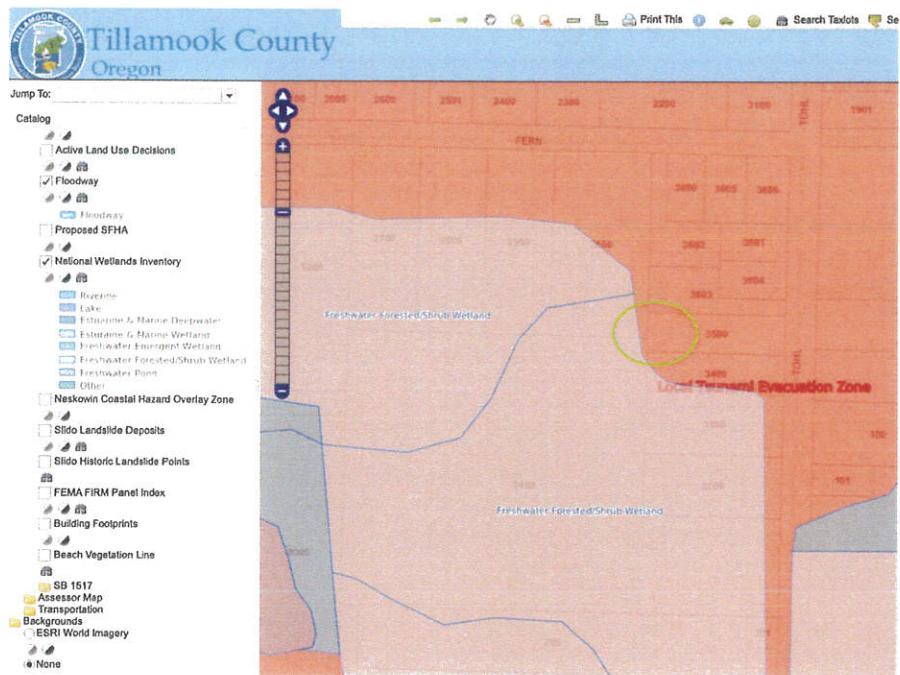


Exhibit B

Tillamook County Maps accredited site plan overlay, showing encroaching wetland on western property line relative to the rear yard.

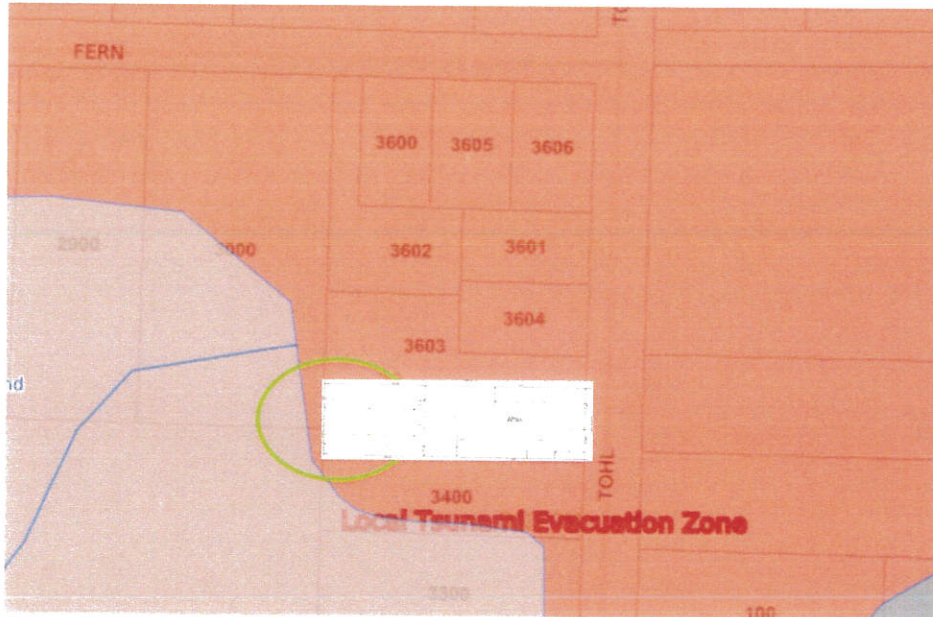
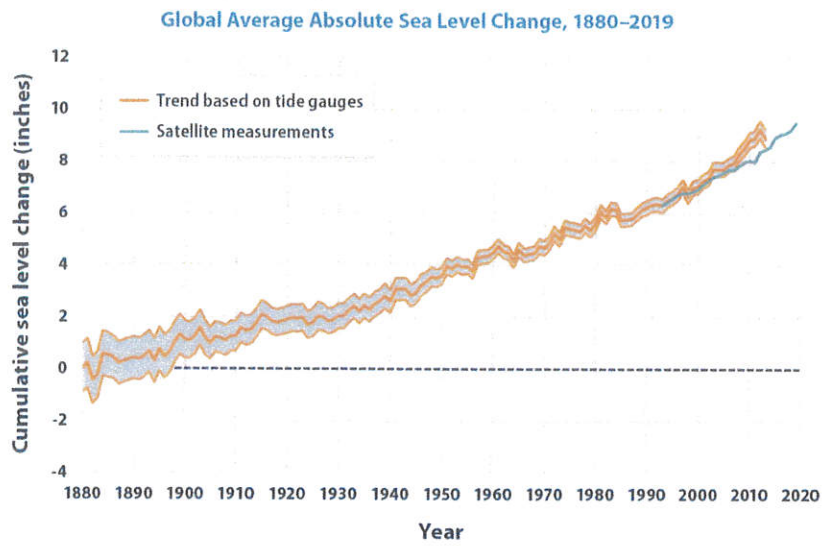


Exhibit C

EPA sea level change indicating approximately double the growth rate since 1993



Data sources:

- CSIRO (Commonwealth Scientific and Industrial Research Organisation). 2017 update to data originally published in: Church, J.A., and N.J. White. 2011. Sea-level rise from the late 19th to the early 21st century. *Surv. Geophys.* 32:585–602. Accessed September 2017. www.cmar.csiro.au/sealevel/sl_data_cmar.html.
- NOAA (National Oceanic and Atmospheric Administration). 2021. Laboratory for Satellite Altimetry: Sea level rise. Accessed March 2021. www.star.nesdis.noaa.gov/sod/lsa/SeaLevelRise/LSA_SLR_timeseries_global.php.

For more information, visit U.S. EPA's "Climate Change Indicators in the United States" at www.epa.gov/climate-indicators.

Exhibit D

NOAA predicted flood zone rise due to rising sea level; shown in the image is Bayside Gardens, Tohl Avenue, and the property.



Exhibit E

NOAA confidence of flood zone reach due to rising sea level

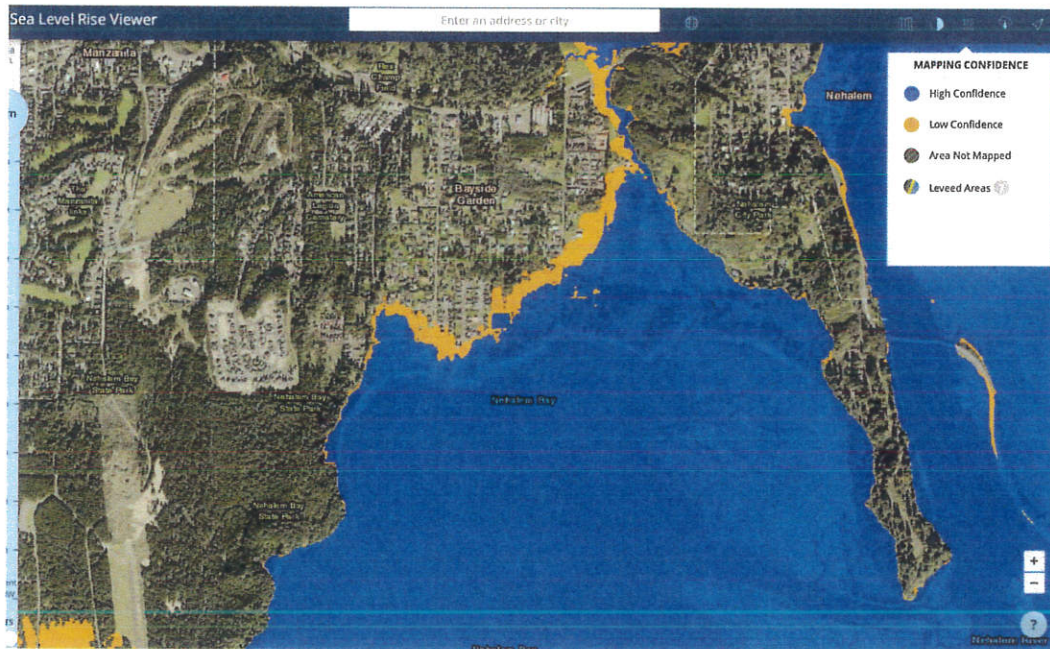


Exhibit F

NOAA predicted growth of Freshwater Forested and Shrub Wetland

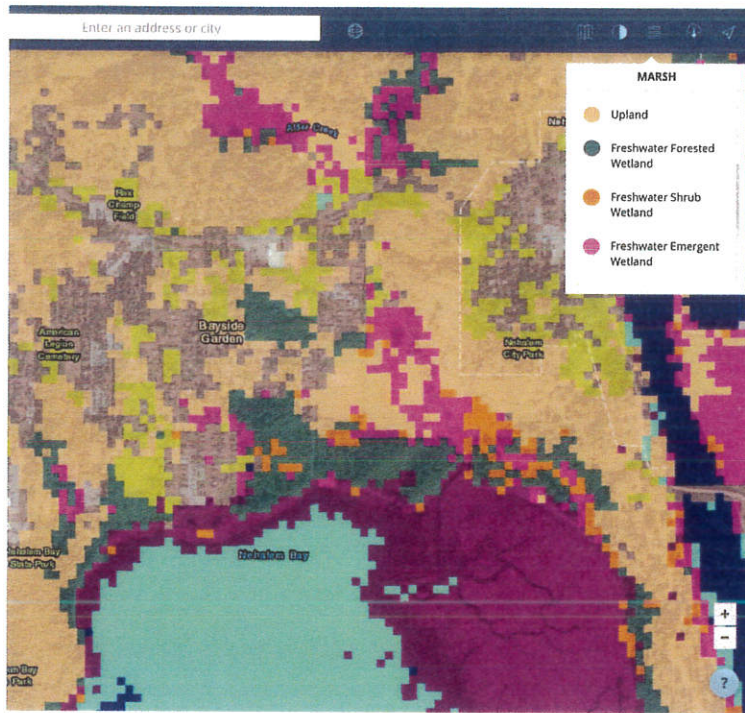


Exhibit C

The garage on Plot 3500 applying for variance renovate garage into ADU is aligned with neighboring residential structures

