BEFORE THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of Upholding the Planning Director's Decision to Approve Planning Docket NFD-01-20; Denying the Appeal of the Decision; and Approving a Dwelling Not in Conjunction With Farm Use (Nonfarm Dwelling) on Tax Lot 2427-0200; Applicant: Steven D. Belt	))))))	Board Order 20-364

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on October 15, 2020, Commissioners Casey Kulla, Mary Starrett and Richard L. "Rick" Olson being present.

IT APPEARING TO THE BOARD as follows:

A. The applicant, Steven D. Belt, applied for permission to establish a dwelling not in conjunction with farm use (nonfarm dwelling) on Tax Lot 2427-0200, a 5.46-acre legal lot zoned for exclusive farm use. The Planning Director approved the application on May 19, 2020.

B. The Planning Director's decision was appealed, and considered by the Board at a hearing held on August 20, 2020. The record remained open at that time for submittal of additional written testimony and evidence by the parties and, on October 1, 2020, the Board, following deliberation, voted unanimously to uphold the Planning Director's decision, deny the appeal, and approve the application. NOW, THEREFORE,

IT IS HEREBY ORDERED BY THE BOARD AS FOLLOWS:

Section 1. Planning Docket NDF-01-20 is hereby approved.

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Section 2. The findings and conditions attached as Exhibit A, and incorporated herein by reference, are hereby adopted in support of this Order.

DONE this 15th day of October, 2020 at McMinnville, Oregon.

ATTEST:

YAMHILL COUNTY BOARD OF COMMISSIONERS

BRIAN VAN BERGEN
County Clerk

By: Carolina Rook
Deputy Carolina Rook

Chair CASEY KULLA

Commissioner MARY STARRETT

Commissioner RICHARD L. "RICK" OLSON

FORM APPROVED BY:

T. Sadlo

Timothy S. Sadlo
Office of County Counsel

Exhibit A
Board Order 20-364
Findings in Support of Approval
of Planning Docket NFD-01-20
and Conditions of Approval

DOCKET NO.: NFD-01-20

REQUEST: For approval of a dwelling not in conjunction with farm use (non-farm dwelling).

APPLICANT: Steven D. Belt

OWNER: Steven D. Belt

APPELLANT: Elliott Rector

TAX LOT: 2427-200

LOCATION: Parcel just east of 22064 NW Russell Creek Road, Yamhill, and approximately 0.3-miles northeast of the junction of NW Russell Creek Road and NW Goodrich Road.

ZONE: EF-20, Exclusive Farm Use District

CRITERIA: Sections 402.03(I) and 402.08 of the *Yamhill County Zoning Ordinance*.

FINDINGS:

A. Background Facts

1. *Parcel Size:* 5.46-acres.

2. *Access:* The proposed access will either be from East Cherry Street or NW Woodside Drive, both platted county roads. East Cherry Street runs along the property's northern property line. The parcel also has frontage to NW Woodside Drive, a platted but unimproved road, along the eastern property line.

3. *On-site Land Use and Zoning:* The parcel is located in the Exclusive Farm Use (EF-20), zone. The property is rectangular-shaped and is slightly smaller than most of the properties in the surrounding area. The property has a moderate slope to the south. The property is forested and there are no improvements on-site.

4. *Surrounding Land Use and Zoning:* The surrounding parcels are all located in the Exclusive Farm Use District. Surrounding properties to the south, east, west, and northwest are located in the EF-20 zone, and properties to the northeast are located in the EF-40 zone. Properties further to the southeast are in the Agriculture/Forestry Small Holding, AF-10, zone and further to the east are properties in the Very Low Density Residential, VLDR-2.5, zone. Further to the southwest are properties located in the EF-80 zone, and further to the northeast are parcels in the Agriculture/Forestry Large Holding, AF-20, zone. Land use in the surrounding area is a mix of forest and farm uses including grass seed and hay production, the cultivation of wheat and grain, livestock pasturage, vineyards, filbert production, and passive forest use.

5. *Water:* The applicant has indicated that water would be provided from a proposed onsite well. The applicant engaged an expert, senior hydrologist and geologist Chris Hyatt, to evaluate the adequacy of available water supply.

6. *Sewage Disposal*: Currently there is no septic system installed on the property. Installation of a septic system is required for residential use. The property is not within the Cove Orchard Sewer Service District.

7. *Fire Protection:* Yamhill Fire Protection District.

8. *Previous Actions:* In 1989, the Planning Commission denied a conditional use request for the establishment of a non-farm dwelling on the subject property, Docket C-42-89. In 1995, a conditional use request for the establishment of a dwelling not in conjunction with farm use was denied, Docket C-20-95.

9. *Overlay Districts*: The property is not located in an area identified as sensitive wildlife habitat or the Floodplain Overlay District, nor is it located within the Willamette River Greenway, and the property does not lie within an airport overlay district. This property is not located within an identified Groundwater Limited Area.

10. *Tax Deferral*: The property is not presently receiving farm or forest deferral.

B. Procedural Posture and Summary of Proceedings

Planning Director Ken Friday approved this application for a non-farm dwelling in a written decision dated May 19, 2020. The Planning Department received a Request for Hearing before the Planning Commission, from Elliott Rector. Mr. Rector owns the adjacent property to the east of the subject parcel. Mr. Rector identified a number of concerns and deficiencies in the application that he believed were justification for denial of the applicant's request for a non-farm dwelling. On April 13, 2020, Mr. Rector withdrew the request for hearing due to the Covid-19 pandemic and the social distancing requirements in place. On April 16, 2020, the applicant's agent, Ron Pomeroy, submitted a statement rebutting the concerns outlined in Mr. Rector's Request for Hearing paperwork. The Yamhill County Board of Commissioners (the "Board")

held a duly noticed public hearing on August 20, 2020. The Board left the record open to allow time for additional evidence and argument by the parties.

- First open-record period: 7 days for rebuttal evidence and argument,
- Second open-record period: 7 days for surrebuttal evidence responsive to evidence submitted during the first open-record period, and
- 21 days for the applicant's final argument (to accommodate vacation schedule)

Subsequently the Board re-convened at a duly noticed hearing on October 1, 2020, and, having considered all the evidence, voted 3-0 to approve this application, and deny the appeal.

C. Ordinance Provisions and Analysis

This parcel is in a resource zone. The purpose of the Yamhill County Exclusive Farm Use District (EF-80, EF-40 and EF-20) is to identify and protect land that is suitable and desirable for commercial agricultural operations and other uses which are compatible with such operations. Properties in the EF districts are primarily large, contiguous relatively flat terrace, valley-floor or low foothill holdings. Non-farm uses which might likely be affected by normal farm management practices are limited or prohibited. This proposal, however, would have no such significant impacts. It meets the relevant County and state approval criteria.

The requirements for a dwelling not in conjunction with farm use in the EF district are found in Section 402.03(I) of the YCZO, as follows (code sections in italics):

1. *The dwelling or activities associated with the dwelling will not force a significant change in or significantly increase the cost of accepted farming or forest practices on nearby lands devoted to farm or forest use.*

When addressing ORS 215.296(1) or local standards implementing this law, LUBA has held that in addressing the similar significant change/significant cost standard at ORS 215.296(1), the county must (1) identify farming and forest practices that exist in the "surrounding area," and (2) explain why the proposed use will not significantly change or significantly increase the cost of farm and forest practices within that area. *Berg v. Linn County*, 22 Or LUBA 507, 511 (1992); *Schellenberg v. Polk County*, 21 Or LUBA 425, 440 (1991).

The Applicant chose "surrounding lands" to mean parcels within 750 feet of his site. This distance was selected because it is the same as the notice list, and it is a reasonable maximum distance for properties that could be affected by the externalities of the Applicant's proposed use, (i.e., a single-family residence). Activities associated with a single-family residence include eating, sleeping, gardening, outdoor recreation, pets (i.e., dogs barking), and occasional entertainment of guests. These activities can cause effects such as noise, dust, outdoor lighting, and cooking odors.

ORS 215.203(2)(a) defines "farm use" as:

As used in this section, "farm use" means the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. "Farm use" includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. "Farm use" also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows. "Farm use" also includes the propagation, cultivation, maintenance and harvesting of aquatic, bird and animal species that are under the jurisdiction of the State Fish and Wildlife Commission, to the extent allowed by the rules adopted by the commission. "Farm use" includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection.

There are eleven parcels wholly or partially within 750 feet of the subject property, Tax Lot 2427-0200. The current farming and/or forestry practices on each are as follows:

Inventory of Farm and Forest Lands and Uses

Tax Lot	Farm and/or Forest Use
2427-0700	Passive forestry
2422-0900	Hay
2422-1100	Passive forestry, animal pasturing, some backyard fruit/vegetable gardening
2422-1200	Hay
2422-1300	Hay
2422-1300	Livestock pasturage
2427-0100	Passive forestry, organic farming, small scale pasturing of a livestock
2427-0201	Passive forestry, livestock pasturage
2427-0202	Passive forestry, livestock pasturage

2427-0800 Hay, passive forestry, livestock pasturing, horse stabling

Even if the distance was extended to 1500 feet (to an area bordered by NW McLoughlin Drive, NW Russell Creek Road, NW Lincoln Avenue and NW Ripplewood Drive), there are no identified farm or forestry uses other than those listed above.

The farm uses occurring on the properties listed in the "Inventory of Lands and Uses" table were determined by visual inspection from public rights-of-way and the subject site, aerial photographs, and local knowledge from the Applicant, friends and his family members. As previously mentioned, the Applicant has owned his parcel for over thirty years and his family lived in the immediate area a century ago.

The subject parcel is bordered on the south by a tract owned by the Xthona Family. Their tract is composed of three parcels, measuring a total of approximately 14.25 acres. There is a home located on the tract and the land use appears to be a mix of passive forest uses and farm use in the form of livestock pasturage.

The adjacent property to the west is 27 acres and is owned by the Petraitis family. A non-farm dwelling is located on the property, and land use appears to be predominantly dedicated to rural residential use.

The adjacent property to the north is owned by WWC Ranch and measures approximately 16.78 acres and is part of tract with an adjacent parcel that measures approximately 55.4 acres. This 72.2-acre +/- tract has a home on site and is predominantly dedicated to farm use in the form of hay production.

The adjacent property to the east is the Wooden Mallet farm owned by the Rector family. It is approximately 20.6 acres and has a residence. The property is used for a mix of farm uses, including pasture for two cows and small numbers of pigs, laying hens, meat chickens, row crops in greenhouses, and fruit and berries grown using organic methods.

The farm use inventory identified relatively few pasture sites with associated livestock on surrounding lands. Large scale ranching operations can involve some complicated and technical farm practices. However, the nature and scale of the observed livestock and associated pasture on lands surrounding the Belt property were such that more simplified practices would be expected. Farm practices would involve field fencing construction and maintenance, livestock medical treatments, animal feeding during times of low food sources, pasture rotations, livestock watering, and related activities.

Farm practices for the production of field crops and vegetables varies to some extent according to the type of vegetables and field crops being grown. Some of these crop types require irrigation and associated infrastructure and maintenance. These crops are typically annuals and must be planted anew each season. This involves preparing the field for planting by tilling the soil, applying appropriate chemicals such as pesticides, herbicides and nutrients.

Planting typically occurs in the spring. Crops are tended through the summer months with additional fertilizers, pesticides and herbicides for weed control for the particular crops under cultivation. Harvest occurs in late summer and into fall depending on the crop type. Harvest methods vary by crop. Most field crops and vegetables must be brought to market quickly after harvest. Generally, field crops and vegetables are somewhat limited in their level of mechanization except as part of very large commercial operations for singular crop types which were not observed in the inventory data collection for surrounding lands. Smaller operations require more manual labor and overall higher labor inputs when compared to other farm uses that can achieve greater levels of mechanization.

The County found that seven of the 11 parcels within 750-feet of the applicant's property have single-family dwellings. As mentioned above, the Applicant is proposing East Cherry Street or NW Woodside Drive, both of which are platted rights-of-way, to access the property for reasons which are discussed below. East Cherry Street lies along the subject property's northern property line, running east-to-west, connecting with NW Russell Creek Road. NW Woodside Drive runs south. The Applicant's request to develop a single-family homesite on this property will not force a significant change in, or significantly increase the cost of accepted farming practices on nearby lands.

Specific concerns raised by the Opponents regarding impacts on nearby farm practices are discussed below.

Application of Herbicides.

Mr. and Mrs. Rector owns the 20.6-acre property to the east of the Applicant's land. Mr. Rector states that he opposes approval of a non-farm dwelling on the property. He stated that approval of the non-farm dwelling could force a significant change in the farm practices on nearby lands.

Specifically, the Appellant stated that the approval of a non-farm dwelling is likely to result in an increase in the use of herbicides to eliminate abundant amounts of poison oak which exist on the Applicant's property and on the driveway providing access to the Applicant's land. The Appellant stated that use of the weed killer would negatively impact the no-spray farming that occurs on at least two of the neighboring properties. The Appellant stated that small farms are more financially viable and profitable when able to market their produce and meat as being free of exposure to herbicides. In her letter dated August 27, 2020, Ms. Rector expressed similar concerns.

The Board finds it is conjecture to assume the Applicant would begin spraying herbicides on the property if a home site is approved. Theoretically, since this property is in a farm zone, herbicides and pesticides could be used on the subject parcel regardless of whether a homesite is approved or denied. The use of herbicides and pesticides are accepted farming practices when used as directed, for the purpose indicated by the manufacturer, and in accordance with local, state, and federal regulations. Farmers are not allowed to spray on a neighboring property without consent, nor may they allow chemicals to drift onto neighboring properties. Allowing

drift of chemicals is a nuisance and a trespass. State and federal law prohibit the spraying of herbicides on property belonging to others and provide protections against spray drift. *See* ORS 634.372(2) and (4).

Ms. Rector also said that she feared that "application of herbicides as is typical of county road crews" could endanger her ability to market her crops as "certified organic," if Woodside Drive is improved. She argued that if Woodside Drive is improved, County road crews would apply herbicides that could endanger their ability to market their crops as "certified organic." However, even if the NW Woodside Drive ROW is improved with a driveway, the County would not maintain that driveway. County engineer Bill Gille confirmed that County road crews only spray herbicide alongside roads formally accepted by the Commissioners into the County roads maintenance list, to prevent encroachments and preserve safe sightlines. Because the Belt driveway would not be on this list, the county road crew would not spray herbicide at that location. *See* County Engineer Bill Gille's emails dated March 31, 2020 and September 3, 2020.

In addition, if NW Woodside Drive *is* improved, it would only be built as a 12'-wide driveway (in the 40' public right-of-way) to serve a single home.[1] The 12-foot-wide road will be developed in the center of the ROW, and would, therefore, result in 14-foot-wide buffers being sited on both sides of the driveway. Such a buffer could be planted with bushes or even left in blackberries, as it currently sits. Either way, the bushes would provide an adequate buffer which would obviate the need for the Rectors to use their own land as an additional buffer.

It is true that according to the USDA, a buffer would likely be required in situations where an organic field borders a roadway to which prohibited substances such as herbicides are applied. *See* Conservation Buffers in Organic Systems, Nov 2013, at p. 3. These buffers could

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[1]YCZO 403.11(E) provides:

E. Access. The following standards apply to all roads and driveways, except for private roads accessing only commercial farm or forest uses, which access uses permitted under Section 403.02 or approved under Sections 403.03 or 403.04 of this section. Variations from these standards may be granted by the fire service having responsibility for the area when topographic conditions make these standards impractical and where the local fire protection district states the access is acceptable for their fire-fighting equipment: [Amended 12/05/02; Ord. 720]

1. Width. Access roads serving three (3) or fewer dwellings shall have a 12-foot improved width and a 20-foot horizontal clearance. Access roads serving more than three (3) dwellings shall have a 16-foot improved width and a 20-foot horizontal clearance.

2. Construction. Access roads must be improved with an all-weather surface. Roads, bridges and culverts shall be designed and maintained to support a minimum gross vehicle weight (GVW) of 50,000 lbs. If bridges or culverts are involved in the construction of a road or driveway, written verification of compliance with the 50,000 lb. GVW standard shall be provided by a Professional Engineer, registered in Oregon.

be planted with bushes or even left in blackberries, as it currently sits. Either way, the vegetation would provide an adequate buffer, which would obviate the need for the neighbors to use their own land as an additional buffer. The USDA states that hedgerow planting (*i.e.* establishment of dense vegetation in a linear design) is an effective method of intercepting airborne particulate matter. *See* Conservation Buffers in Organic Systems, Nov 2013, at p. 4.

Furthermore, improving and maintaining NW Woodside Drive as a driveway would be the Applicant's sole financial responsibility. Most people do not spray herbicide on or near their gravel driveways, and the Applicant stated that he has no plans to do so.

Ms. Rector stated that in order to maintain her certification as an organic farm, she has to employ buffers along the edge of her farm. The Board agrees that the maintenance of buffers along an organic farm is an accepted farming practice and is part of the cost of running an organic farming operation. However, using undeveloped ROW as a substitute for such a buffer is not an accepted farming practice. Ms. Rector's argument wrongfully presumes that she is entitled to maintain the *status quo* with regard to the status of undeveloped ROW. Her rights to use a ROW are subservient to the traveling public.

But even if she were correct in her assumption, Ms. Rector made no attempt to quantify the impact on her farm caused by their need to add a new buffer. Nor did she explain why the remainder of the ROW could not serve as an adequate hedge or buffer. The Applicant submitted photographs showing that the blackberries in the ROW are up to ten feet in height. These blackberry thickets would form an effective barrier to any dust and similar particulates that might originate from the use of the ROW.

Furthermore, given the lack of intensive farming occurring on the portion of the Rector parcel adjacent to the ROW, the Board finds that developing Woodside Road with a 12-foot-wide driveway would have very little, if any, impact on the Rectors' current farming operations. The Rectors only use that adjacent land to graze two cows and a few sheep, and even then, the vast majority of their land is overgrown and unused.

In the Applicant's letter dated September 3, 2020, he provided many aerial photographs that show the current usage of the Woodside ROW and adjacent land. The vast majority of the ROW used by the Rector family is overgrown in blackberries. While there are few spots where those cows can currently graze in or near the ROW, the amount of productive land on the Rector farm which is adjacent to the ROW is very small. Therefore, the Board finds any impact on the Rector farm caused by the development of a gravel driveway is *de minimis.* The Board considered the evidence presented by the Applicant on this topic to be more credible than evidence presented by the opponents.

Adequacy of Water

Since the use of small-scale irrigation is an accepted farm practice for livestock watering and row crops, it is important to evaluate whether the Applicant's use of well water would have a significant impact on neighboring farms. The Applicant hired a water scientific expert, Chris R.

Hyatt RPG, LHG, to conduct a hydrogeologic review of the site. *See* Hydrogeologic Review, Hyatt GeoSciences LLC, August 15, 2020, and supplementary latter dated August 25, 2020.

A considerable amount of additional information was gathered as a result of testimony provided during the August 20, 2020 public hearing. This additional information included testimony provided by area residents concerning the actual number and locations of operating and abandoned water wells in the area, the current source of water used by area residents, and anecdotal information regarding water usage and well yields. The Applicant's water expert used this additional information to update and revise information previously presented in his *Hydrogeologic Review Report* dated August 15, 2020. Based on information provided during the public testimony he revised the Water Well Inventory (Table 3) with the Supplemental Water Use and Well Inventory Data table, presented as Table 4. This information was used, in turn, to revise the previous Aquifer Supply and Demand Calculations (Table 2) to reflect a more realistic and accurate interpretation of groundwater usage in the area.

This information indicates that there are currently as many as five domestic, exempt-use water supply wells operating within the ¼-mile study area. Reducing the number of wells (demand) from the 16 wells assumed in the previous report increases the recharge/demand ratio more than two-fold. That is, aquifer recharge exceeds demand by approximately 197 acre-feet per year (64,192,650 gallons per year). The revised Aquifer Supply and Demand Calculations were included as Table 5.

After conducting an extensive investigation and scientific analysis of the site and surrounding area, Mr. Hyatt stated (in his August 25 letter):

> "My analysis concluded that adding an exempt-use domestic well to the subject property will not have a significant impact on underlying water resources, or on farm and forest practices in the area. I believe that even if a future landowner were to theoretically engage in stock watering or domestic use of a 15,000 gallons per day well, it is highly unlikely that a domestic well on the subject property pulling only 400-700 gallons per day would have any significant impact on such a high-yielding 15,000 gallon/day well."

The Board notes that Mr. Hyatt's analysis used a very conservative approach with regard to all of the assumptions used in the model. As one example, there are additional sources of groundwater recharge that the model did not account for, including the following:

- Additional recharge from transient/upgradient groundwater flow
- The fact that residents in the area rely on septic systems to treat domestic wastewater. That water, in addition to water used for irrigation, could be considered as an additional source of aquifer recharge in the area, and;
- Despite the model's assumption, not all properties rely on wells for water supply. For example, water "imported" from the Cove Orchard Water Association could be

considered as an additional source of recharge to the study area via septic drain fields and irrigation.

Finally, by the very nature of the consolidated bedrock geology of the area, not all wells of similar depth can be expected to perform equally. Groundwater does not flow uniformly as in an unconsolidated, alluvial water table aquifer. Rather, water follows discontinuous cracks and fissures, resulting in considerable variability of individual well yields in the area.

Mr. Hyatt's expert analysis concluded that adding an exempt-use domestic well to the subject property will not have a significant impact on underlying water resources, or on farm and forest practices in the area. Mr. Hyatt said he believed that even if a future landowner were to theoretically engage in stock watering or domestic use of a 15,000 gallons per day well, it is highly unlikely that a domestic well on the subject property pulling only 400-700 gallons per day would have any significant impact on such a high-yielding 15,000 gallon/day well. The County found the Applicant's water evidence to be more credible than the evidence presented by opponents.

At the hearing a question was raised of whether Mr. Hyatt's hydrologic analysis factored in the potential for multiple users to draw the maximum of 15,000 gallons a day from an exempt well allowed by ORS 537.545. Stock watering using groundwater is exempt from permitting, which is true so long as the water is put to beneficial use and not wasted.

LUBA and the courts have clarified that the scope of "accepted farming or forest practices" that must be evaluated under the "no significant change/increase" standard is a fact-specific inquiry. The inquiry of whether the proposed nonfarm dwelling does not "seriously interfere" with accepted farming practices must evaluate presently-occurring farm practices, or, to the extent that no such activity currently occurs, to *potential* farm practices, *Resseger v. Clackamas County*, 7 Or LUBA 152, 157 (1983). Nonetheless, when agricultural activity is occurring, the standard only requires an analysis of what is *actually occurring* in the area, rather than some hypothetical examination of what might occur in future, at some maximum level of farm/forest activity.

It goes without saying that any inquiry into what is a "customarily accepted" agricultural activity necessarily requires examining whether other similar farms have engaged in the proposed activity. *Ehler v. Washington County*, 52 Or LUBA 663 (2006). It does not require consideration of activities that are not "customary" in the area. For example, in *Dierking v. Clackamas County,* 38 Or LUBA 106, 121 (2000):

> "We agree with the county that it is not required under ORS 215.296(1) to anticipate and consider the accepted farming practices that might be associated with every possible farm use to which surrounding lands may be put in the future."

LUBA reached a similar conclusion in *Central Oregon Landwatch v. Deschutes County*, 53 Or LUBA 290 (2007), LUBA held that a county hearings officer did not err in evaluating the

scope and intensity of "accepted forest practices" on adjacent lands based on the current forest uses or uses recently occurring in the area. LUBA stated that the hearings officer need not assume that future forest practices will occur at the most intensive levels possible. For this reason, worst-case scenario analysis is beyond the scope of what is required under Oregon law.

Nonetheless, the Applicant also demonstrated via undisputed expert testimony from Chris R. Hyatt, Hyatt GeoSciences, LLC, that the proposal will not decrease the supply of groundwater available to serve nearby farms. Mr. Hyatt listened carefully to the testimony provided by opponents and updated his model during the first open-record period. Mr. Hyatt concluded that the aquifer recharge exceeds demand by approximately 197 acre-feet per year (roughly 64 million gallons). He noted that, however, that due to the nature of the bedrock in the area, not all wells of similar depth can be expected to perform equally. Here, groundwater does not flow in a uniform manner, as it would in an unconsolidated alluvial water aquifer. In this portion of Yamhill County, water follows cracks and fissures in the bedrock, which results in considerable variability in the yield of any given well. For this reason, testimony from neighbors that "my well dries up in the summer" is not substantial evidence that there is insufficient water to support another dwelling unit. Nor is it proof that another residential well will cause other wells to dry up. It does suggest, however, that it may take several attempts to hit a seam that produces sufficient water to support residential needs.

From a factual perspective, the Applicant's evidence demonstrated that there was no extensive stock watering operation in the general area. Cattle generally require 10-20 gallons of water per day, and therefore a fairly large herd can be managed without significant appropriation of groundwater. Cattle and sheep operations are easy to identify from aerial photography due to the telltale trail systems created by cattle, and the county has not identified any such operations. Similarly, a significant pig farm would also be easy to identify from both aerial photography and odors, and the applicant's research revealed no such operation that would require significant quantities of groundwater. For this reason, the Board concluded that stockwatering at an intensive scale is not taking place in this part of Yamhill County. Any stock-watering that does occur in the area is at a *de minimis* level which would not be affected by the Applicant's domestic exempt-use well.

Perhaps the reason large-scale stock watering does not occur in the area is because most of the wells in the vicinity do not support large-scale appropriation of water. As many people testified at the hearing, most of the "exempt-use" wells are relatively shallow and only produce an average of 3 gallons per minute, or 180 gallons per hour. These wells typically are only pumped for a few hours a day and cannot be pumped continuously. Household use for a family of four is about 300-400 gallons per day, and much of that returns to shallow aquifers through drainage from septic systems. Therefore, a 3 gallon per minute well is generally sufficient for household use. However, most of the shallow wells could not be used for stock-watering at any sort of intensive scale, which makes consideration of high-intensity stock watering unnecessary.

Regarding the domestic use of exempt wells, the Environmental Protection Agency estimates that an average family of four uses 400 gallons of water every day, and, on average, approximately 70 percent of that water is used indoors. The rather broad exemption of 15,000

gallons per day provided for in the Oregon water laws is intended to cover potential "group domestic" water supply. Using the EPA's estimate of average water use of 400 gallons per day, approximately 38 homes could be supported on 15,000 gallons per day. Thus, one exempt-use well could provide water for approximately 38 dwellings. The County is not aware of any "group domestic" residential uses in the area, or evidence of exempt-use wells being used in that intensive manner in the vicinity of Cove Orchard.

The same is true of exempt use of wells for irrigation. Under Oregon law, irrigation of ½-acre of lawn or garden would not exceed 1,339 gallons per day averaged over a year. This is well within the parameters of the Applicant's modeling.

To reiterate, the Board finds the that the relevant approval standard is whether installing an exempt well on the Belt property will seriously interfere with farm practices (including irrigation) on neighboring lands devoted to such use, or will substantially increase the cost of conducting such farm practices. Given the lack of irrigation occurring on neighboring lands, and the substantial evidence provided by Mr. Hyatt, the Board finds the answer is "no."

Loss of Farmland in Right-of-Way

The Rectors raised the issue of loss of farmland if NW Woodside Drive is improved. The Board finds that the subject property is adequately buffered from nearby farm uses in the area, via distance, topography and vegetation. There is already 30 feet of ROW to the north and 40 feet to the east that serves as an additional buffer to adjacent farm uses.

The Board finds the proposal will not drive up land values because no division of land is contemplated or approved. The proposal will not result in extension of additional public services to the area other than the driveway, which is discussed below.

Mr. Albert Xthona, the neighbor residing directly south of the subject property, testified at the hearing that he will lose nearly one acre of right of way ("ROW") that he is currently using as farmland if Woodside Drive is developed. *See* Xthona letter dated Aug. 19, 2020. He further stated that he will have to move his fence out of the right-of-way. This concern provides no basis for denying this application.

The applicable legal standard only requires the Board to consider the effect upon accepted farming practices occurring on "nearby lands *devoted to farm or forest use*." County ROW is not "devoted to farm or forest use." Rather, all publicly platted ROW is devoted to public use as ingress and egress. Woodside Drive ROW has a width of 40 feet. The public is the easement holder. If Mr. Xthona has been using the public ROW for crops or grazing, he has done so at his own risk. Although Mr. Xthona may use the public ROW for any purpose that is consistent with the public's right of access, his legal right to use that land is subservient to the public's use of the ROW for access to private property. *Lowell v. Pendleton Auto Co.*, 123 Or 383, 261 P 415 (1927) (private use of ROW for auto repair business constitutes a public nuisance and can be enjoined).

Furthermore, while it is true that Mr. Xthona and the Rector family may have to move fence encroachments currently existing in the county ROW, the use of undeveloped ROW for farming is not an "accepted farm practice" that must be considered in this case. ORS 215.203(2)(c) defines the term "accepted farm practice" as "a mode of operation that is common to farms of a similar nature, necessary for the operation of such farms to obtain a profit in money, and customarily utilized in conjunction with farm use." It is not "common" or "necessary" to use county ROW as farmland in order to obtain a profit in money from farming. The opponents did not argue to the contrary, nor did they explain why such undeveloped ROW is "necessary" to operate their farms profitably.

Mr. Rector stated that the cost of replacing the fence would be $11 to $17 dollars per linear foot and estimates the total cost to replace the fence at an astounding $21,340.00 to $39,219.00. However, no professionally installed fence currently exists on any of the respective properties owned by the Rectors, Xthona, or within the ROW. Photographs provided by the applicant reveal that the existing fence is homemade and consists of 4-inch welded wire mesh panels. Further up the ROW, the only fence material is the historic woven wire plus two-strand barbed wire fence. It stands about two feet off the ground and serves no useful enclosure purpose at this time. At the top if the hill, there is no fencing at all in the ROW.

For these reasons, the county rejects the argument that permitting the use of the Woodside ROW for its intended public purpose (access) would significantly increase the cost of accepted farming practices on nearby lands devoted to farm use. Mr. Belt is entitled by law to build a driveway to serve his lot regardless of whether a nonfarm-dwelling is approved. For this reason, there is no impact to either the Rector or Xthona properties. Encroaching uses on public ROW do not create rights on behalf of the user, and any use of ROW for purposes other than access are subservient of the right of the public to use the ROW.

2. *The dwelling will be sited on a lot or parcel that is predominantly composed of Class IV through VIII soils that would not, when irrigated, be classified as prime, unique, Class I or II soils.*

In order to meet the soils criterion, the Applicant hired a certified professional soil classifier and soil scientist (Andy Gallagher, CPSSc/SC 03114) to evaluate the soils present on the subject property. The Applicant submitted a soils report prepared by the soil scientist (Applicant's Exhibit 2), which indicates the property is predominantly (approximately 59% of the property) composed of Class VI non-high value soils and approximately 41% Class IV non-high value soils. The Applicant's report indicates that the Class VI soils on the property are shallow Rickreall soils, eroded, with 20 to 30 percent slopes. The Class IV soils are Goodin, eroded phase of 7 to 20 percent slopes. The application states that the Soil Assessment was submitted to the Department of Land Conservation and Development (DLCD) on October 25th, 2019. The Applicant submitted a subsequent request for DLCD to release the soils analysis to Yamhill County on October 29th, 2019. The Applicant included with the application DLCD's Soil Assessment Completeness Review, dated November 8, 2019, please see Applicant's Exhibit 4.5. The Applicant satisfactorily conducted a soils analysis, reviewed and acknowledged by

DLCD, that demonstrates the property is predominantly, approximately 59%, composed of Class VI, non-high value soils.

The Appellants contended (without offering any evidence) that the Applicant's soils scientist slanted his analysis of the subject property's soils in order to financially benefit the Applicant. The county has carefully weighed the soils evidence presented by the Applicant's certified expert scientist, and considers this evidence more credible than the evidence presented by the Appellants.

Opponents argue that Andy Gallagher's soils report is contradicted by the USDA "Natural Resources Conservation Service ("NRCS") Custom Soil Resource Report for Yamhill County, Oregon." *See* Rector letter at p. 3. However, OAR 660-033-0030(5) permits use of "[m]ore detailed data on soil capability than is contained in the National Resource Conservation Service" soil maps and surveys to determine whether particular soils qualify as agricultural soils. The NRCS Soils Report is a highly generalized "Order III" level of study, and is no substitute for the precision of an actual on-the-ground "Order I" site evaluation performed by a qualified soils scientist such as Mr. Gallagher. *See* USDA NRCS Soil Mapping Concepts (Section entitled "Order of Soil Surveys" explains the difference between an "Order I" study and an "Order III" Study). Mr. Gallagher testified at the Aug 20, 2020 public hearing that his study was an "Order I" soil survey, which is the most detailed type of study. He even stated that he exceeded the typical number of test holes required of an Order I study, in order to ensure the accuracy and precision of his data. LUBA has recognized in multiple cases that an individual parcel soil survey conducted by a soil scientist is much more accurate than anything available from the NRCS.

The NRCS mapping is a big-picture overview of soils and is not intended to be used as a precise, parcel-by-parcel assessment of soils. In many cases, the personnel who created the maps did not physically access and inspect the soils on every lot. NRCS geologists do not dig test pits on every parcel they map. Rather, they extrapolate data based on topography, vegetation, and other variables that can be seen from high resolution aerial photography and maps. While the NRCS mapping is surprisingly accurate given the limitations of its data collection methods, it is not a parcel-specific analysis.

Indeed, the NRCS itself cautions that its data should <u>not</u> be used for individual land-use decisions, due to the imprecision of the mapping. The following is the standard NRCS disclaimer, shown below with italic emphasis added:

> "Soil survey data seldom contain detailed, site-specific information. *They are not intended for use as primary regulatory tools in site-specific permitting decisions.* They are, however, useful for broad regulatory planning and application.
>
> *Soil survey information cannot replace site-specific details, which require onsite investigation.* It is a valuable tool where acquiring onsite data is not feasible or is cost prohibitive. It is most useful as a tool for planning onsite investigation.

Understanding the capability and limitations of the different types of soil data is essential for making the best conservation-planning decisions."

In *Williams v. Jackson County*, 55 Or. LUBA 223, 228 (2007), LUBA agreed that an individual parcel soil survey conducted by a soil scientist is much more accurate than anything available from the NRCS:

> "While we might agree with petitioner if the NRCS survey was the only survey that was available for the county to rely on, intervenors submitted a soil survey from an expert that is much more detailed and accurate than the NRCS survey (footnote 6). Intervenors' soil survey explained that the soils on proposed Parcels 1 and 2 have a much higher percentage of Brader than Debenger loams, and that that higher percentage of Brader soils means that the property is generally unsuitable for the production of farm crops and livestock or merchantable tree species. It was reasonable for the county to rely in intervenors' more accurate survey rather than the NRCS survey."

In footnote 6, LUBA noted that "[t]he soil survey performed by intervenors' expert is an 'Order I' soil survey, which is accurate to .25-.50 of an acre. The NRCS survey is an 'Order III' survey, which is accurate to 5-10 acres." *See also Central Oregon Landwatch v. Deschutes County,* 74 Or LUBA 156 (2016) (A more detailed soils study of a 21.59-acre parcel that uses 43 soil data points, five transects and 276 site observations is substantial evidence that the parcel contains predominantly Class VII and VIII soils rather than predominantly Class VI soils as shown by the NRCS soil survey.).

The next concern of note submitted by Mr. Rector is the allegation that the Applicant has conducted two soil analyses over the years, and that the purpose of these soil classifications was to re-classify the on-site soils to predominantly non-high value soils to facilitate approval of a non-farm dwelling. Mr. Rector also quotes the criterion identified under subsection 402.03(I)(2), which requires that a non-farm dwelling can only be approved on a lot that is predominantly composed of Class IV through VIII soils.

The Applicant's Certified Professional Soil Scientist and Soil Classifier conducted a "high intensity (Order-1)" survey of the soils present on the subject parcel. The Applicant notes that the analysis conducted by, and conclusions prepared by, the soil scientist demonstrate that the reclassification of the soils on the subject parcel is accurate. The Applicant notes that to date the on-site soils have not been officially reclassified. The Applicant's soil analysis and classification was submitted to DLCD and was found to be completed in accordance with the requirements provided by OAR 660-033-0045(6)(a).

The Board reviews an application based upon the evidence submitted with the application and does not rely on evidence or findings from prior applications that were submitted during the 1989 or 1995 land use application processes. There is no evidence in the record from a licensed

professional Soil Scientist that refutes the evidence submitted by the Applicant. Thus, the Board finds the Applicant's soils evidence to be more credible than the unsupported testimony presented by opponents.

In her letter dated August 20, 2020, Ms. Rector asks why Mr. Gallagher stated in an earlier report (his 2018 work on the Casey parcel in Newberg) that Goodin soils were "good soils." Ms. Rector asks why Goodin soils were "good soils in that case, but not in this?"

As with most soils, Goodin soils are "good" for certain crops and "bad" for others. In the case of the Casey study, Mr. Gallagher was being asked to opine on whether the soils were suitable for wine grape production, and he concluded that those soils are indeed suitable for such agriculture.

However, that fact is simply not relevant under the applicable criteria for a NFD in the Willamette Valley. Under Oregon's land use laws applicable to the Willamette Valley, a nonfarm dwelling application can gain approval if the majority of the subject property contains such soils. Thus, the correct inquiry in the context of a NFD is simply whether the soils on the subject property are predominately Class IV through VIII.

Goodin soils are rated by the NRCS as being "Class IV" soils. Soils on hilltop parcels (like Mr. Belt's) are often of poor quality due to thin soil horizons caused by erosion. The soils tend to be carried down hillsides by wind and water, and those soils are then deposited on the sides of the hills and in the valleys. This is the reason that valley floors typically have deeper soil horizons.

Finally, Ms. Rector noted that soils listed as being part of a "Goodin-Dupee-Chehulpum complex" are considered by the NRCS to be "farmland of statewide importance." This is true because the complex generally, but not always, includes Class III Dupee soils. The Dupee series consists of deep and very deep, somewhat poorly-drained and moderately well drained soils that formed in clayey colluvium and residuum derived from sedimentary bedrock. These soils are in depressions and drainageways on hills. However, the fact that the complex is considered "farmland of statewide importance" is not relevant to the analysis required by ORS 215.284 and YCZO 402.03(I). The standard requires consideration of soil class, not farmland classification. Moreover, Mr. Gallaher's analysis reveals that the soils on the property did not fit within the more generic "Goodin-Dupee-Chehulpum complex," but rather are composed of Goodin and Rickreall soils. Importantly, no Dupee soils were found on the subject property, which is not surprising because the property is at the top of the hill.

3. The dwelling will be sited on a lot or parcel created before January 1, 1993.

The parcel was created as Lot 130 of the "Cove Orchard" subdivision plat, recorded on March 18, 1909. The Applicant purchased three lots in 1988, Tax Lots R2427 00200 (the subject parcel), R2427 00201 (approximately 4.84-acres), and R2427 00202 (approximately 9.4-acres). These three parcels consist of Lots 130, 131, 139, and 140 of the Cove Orchard Subdivision. There have been no lot line adjustments or land partitions that have altered the

configuration of these lots, and Planning Department records indicate that there is no recorded history of a lot line adjustment or partition. Aerial imagery from 1993 indicates that the subject parcel has remained densely forested since that time to the present day. The request complies with the requirements of criterion (3).

On the first page of her letter dated August 20, 2020, Ms. Rector wrote: "Mr. Belt bought the property around 1988 as a 20-acre Tax Lot 2427-200 that included tax lots 130, 131, 139, and 140 of FC Graham's Cove Orchard. *See* Exhibit A."

Mr. Belt owned four legally created lots. This area of Cove Orchard has been platted as 5-acre (+/-) lots since 1909. Mr. Belt's 20-acre tract consisted of four separate legal lots, as demonstrated by the deed submitted by Ms. Rector and the Tax lot map submitted by the Applicant. Note, in this regard, that the deed specifically references "130, 131, 139, and 140," which are lot numbers created in the FC Graham's Cove Orchard Plat of 1909. They are not "tax lots." In *Ressenger v. Clackamas County*, 7 Or LUBA 152, 157 (1983), LUBA stated:

> "Tax lots mean nothing as far as land use planning is concerned. They are but lines of convenience for owners and assessor's office use. *See Thede v Polk County*, 3 Or LUBA 335, 340 (1981)."

4. *The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern of the area, the cumulative impact of possible new nonfarm dwellings on other lots or parcels in the area similarly situated shall be considered. To address this standard, the county shall:*

   a. *Identify a study area for the cumulative impacts analysis. The study area shall include at least 2000 acres or a smaller area not less than 1000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch operations or practices that distinguish it from other, adjacent agricultural areas. Findings shall describe the study area, its boundaries, the location of the subject parcel within this area, why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or nonresource uses shall not be included in the study area;*

   b. *Identify within the study area the broad types of farm uses (irrigated or nonirrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, nonfarm, hardship, etc.) And the dwelling development trends since 1993. Determine the potential number of nonfarm/lot of record dwellings that could be approved, including identification of predominant soil classifications, the parcels created prior to January 1, 1993 and the parcels larger than the minimum lot size that*

may be divided to create new parcels for nonfarm dwellings under ORS 215.263(4). The findings shall describe the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible nonfarm dwellings under this subparagraph;

c. *Determine whether approval of the proposed nonfarm/lot-of-record dwellings together with existing nonfarm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of the existing and potential nonfarm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.*

The Board finds that this request has been shown not to alter the stability of the overall land use pattern in the area. The following pages take sections of those instructions and make findings related to those standards.

YCZO 402.03(I)(4)(a) language is identified in *italics* below. It states in part the Applicant must:

> *Identify a study area for the cumulative impacts analysis. The study area shall include at least 2000 acres or a smaller area not less than 1000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch operations or practices that distinguish it from other, adjacent agricultural areas. As mentioned above, findings shall describe the study area, its boundaries. . .*

The application contains information for a 2,675.25-acre study area that includes all or portions of Sections 15, 21, 22, 23, 26, 27, 28, and 34 of Township 2 South, Range 4 West and includes all relevant Quarters and Sub Quarters. There are a total of 215-parcels that lie within this study area.

> *. . .the location of the subject parcel within this area,. . .*

The subject parcel is approximately within the center of the study area

> *. . .why the selected area is representative of the land use pattern surrounding the subject parcel. . .*

As mentioned above, the selected study area surrounds the subject parcel. The Board finds that the land surrounding the subject parcel represents the most accurate means of assessing what the representative land use pattern is surrounding the subject parcel.

> *. . .and is adequate to conduct the analysis required by this standard.*

The Applicant has detailed a 2,675.25-acre study area which is representative of the land use pattern surrounding the subject parcel. The Board finds this study area is adequate to conduct the analysis since 2,000-acres is the requirement set by the administrative rule. This standard is, at a minimum, very comprehensive.

> *Lands zoned for rural residential or other urban or nonresource uses shall not be included in the study area;*

The study area contains properties zone for rural residential use, with a total of 46-parcels located in either the Very Low Density Residential (VLDR-2.5) zone or the Agriculture/Forestry Small Holding (AF-10) zone. The rural residential zones are located between 0.2-miles and 0.3-miles to the east and southeast of the subject parcel. The Appellant's property separates the subject parcel from the nearest rural residential zone, the AF-10 zone. There are 46-parcels that lie fully or partially within a rural residential, non-resource zone, and the area of the non-resource zoned land is approximately 152-acres and none of these properties were evaluated in the study.

YCZO 402.03(I)(4)(b) is identified in italics below. It states in part the applicant must:

> *Identify within the study area the broad types of farm uses (irrigated or non-irrigated crops, pasture or grazing lands). . .*

The identified broad types of farm uses in the study area include grass seed and hay production, cultivation of wheat and grain, livestock pasturage and grazing, wine grape vineyards, mushroom cultivation, fruit and nut orchards, and there is one wine production facility approved in the study area.

Taking a closer look, the Board notes the following land uses: the center of the study area consists of mostly rural residential lands with hobby farms, and a few commercial agriculture operations. The most common form of agriculture is hay production, but even that is not a very lucrative enterprise in this area. For example, Sandi Wodarczak owns WWC Ranch, Inc., which consists of over 50 acres of rolling hills directly to the north of the subject property. In her letter dated August 26, 2020, she admitted that she does not farm the land, but rather leases her land to other farmers. She stated that she only obtains ½ the normal expected rent for her land because of the steep slopes and the "wetness of the lower lands." She further stated that the farmer that is currently using the land does not pay any rent, because her lands were poorly-managed in the past and it is difficult to make a profit farming them.

There is one cattle grazing operation north of the subject property (2 4 22, TL 1403).

Further north, a 15-acre commercial vineyard is found (2 4 22, TL 1401, 1402 and 1404). It is one of the few active commercial-scale agriculture operations in the study area.

North of the commercial vineyards, the land use pattern changes dramatically due to the presence of a steeply sloped hilltop. All of the lands in the northern part of the study area are in forest use. Most of these lands are zoned F-80, which is a zone that does not allow non-farm dwellings.

Turning to the western portion of the study area, most of the lands immediately to the west of NW Russell Creek Rd are rural residential in nature, and either feature fields for horse pasture or small-scale hay production. One exception is 2 4 22, TL 900, which is a large 67-acre parcel that is in hay production. Further to the west, the land is mostly forested, and these forests serve as a visual buffer to lands further to the west, which front on Bishop Scott Road. Beyond the forest, a large mushroom cultivation operation exists on Tax Lot 2421-0600, which lies roughly one mile west of the subject property. Although classified as a farm use, the mushroom cultivation actually occurs indoors in large factory-like buildings, and the facility is more industrial in appearance and impact than a typical farming operation.

As one travels further to the south along NW Russell Creek Rd, the land starts to flatten out and the dominant land use pattern becomes agriculture. Most of the farmland is in hay production. However, Tax Lot 2434-0900 and -1200 feature wine grape production. A winery is located on Tax Lot 1200. Still further to the south, a large commercial orchard exists on a 99-acre parcel (Tax Lot 2434-0500).

Directly south of the subject property, the Xthona family farms 10-acres and owns another 5-acre woodlot. Mr. Xthona testified that they "run goats and pigs," and at times a "a few cattle." Currently, the property only has 4-5 goats. To the west of the Xthona property, there is a small ranch and accessory hay production.

South of McLoughlin, the land is mostly used for rural residential lifestyle uses, which includes a fairly diverse mix of accessory forestry use, and accessory pastureland and hay production.

Between McLoughlin/Ripplewood and Hwy 47, there is an area of land that is predominately rural residences on 5-acre and smaller lots on woodlots with small fields which mostly serve as residential yards. Further to the east, a cluster of urban density residential housing exists, mostly along Hwy 47, Lincoln Ave., Cove Orchard Road, and Graham Ave. This area was removed from the study area due to the rural residential zoning designations on these properties.

Lands to the southeast of the subject property are generally rural residential with small fields using for pasturing horses, cows, and other livestock.

. . .the number, location and type of existing dwellings (farm, non-farm, hardship, etc.).

The applicant submitted a table and documents showing the development pattern in the study area. There are a total of 173-lots located within a resource zone (e.g., the Exclusive Farm use, Forestry, or Agriculture/Forestry Large Holding), including the subject property. The application states that 101 of these parcels contain dwellings.

And the dwelling development trends since 1993. . .

The Board finds the majority of the dwellings (56) in the study area were placed after January of 1993, while 45-homes were placed before January of 1993. Of the 56-dwellings approved after January of 1993, twelve were approved as non-farm dwellings, seven were approved as lot of record dwellings, six received forest template dwelling approvals, six received farm dwelling approvals, and one of the homes in the study area was approved through a Measure 37/49 determination. The remaining 24 of the 56 dwellings were established through replacement dwelling approvals, and many of these dwellings were replacing homes that predated the establishment of land use regulations. The average number of new homes developed per decade, beginning in 1993 (i.e., the 1990's, the 2000's, and the 2010's) was two homes per year, however there was a significant increase in the number of homes developed in the study area between 2007 and 2019, with approximately 30 dwellings established during that timeframe. The applicant's research indicated that there are 66 parcels that do not have a homesite, and the average size of these parcels is approximately 14 acres which is well below the minimum lot size requirement for a partition. Lot of record dwellings, nonfarm dwellings, and dwellings developed under Measures 37 or 49 are all considered nonfarm dwellings so 20 of these 56 dwellings are considered to have been developed as nonfarm dwellings.

The Board finds the dwelling development trend in the area shows a moderate increase in rural residential development over the past 28 years. The area defined by the study area's data set is comprised of 167 parcels ranging between 0.13 acres and 110.5 acres in size. Generally, the subject site is located in an area where smaller parcel sizes are common, with the smallest being located in Cove Orchard to the east. Larger parcels are commonly found north, west and south of the site and grow generally larger as distance from the site increases. Within the study area, 131 of the study area's 167 parcels (78%) are twenty-acres or less in size; twenty acres is the minimum threshold for creation of a resource-zoned parcel by today's standards. Rural residences are prevalent in this area as evidenced by 101 of the 167 parcels that are improved with rural residences. Of those 101 residentially improved parcels, 45 residences were originally placed prior to January 1, 1993, while 56 of the residences were placed on or after January 1, 1993. Of these 56 post-1993 residentially improved parcels, 24 received land use approvals for replacement dwellings on or after January 1, 1993. Twelve (21%) received nonfarm dwelling land use approvals, seven (12%) received lot of record land use approvals, six (11%) received forest template land use approvals, six (11%) received farm dwelling land use approvals, and one (2%) received a Measure 37 land use approval. These land use approvals account for 32 (57%) of these 56 parcels. Thus, 69 of the 101 dwelling were originally built prior to 1993, indicating

an approximate 70% stability rate. The opportunities for new dwellings will decrease with time, as discussed below.

While land use records and information from the Yamhill County Assessor's Office commonly reference the approval and/or installation year for these replacement dwellings, the original residential dwelling approval date (and subsequently the land use approval process utilized allowing for establishment of the original dwelling) is not often found in available records. This is often due to rural homes originally being sited in years prior to the existence of residentially applicable land use review processes. Since lot of record dwellings and dwellings under Measure 37 are considered nonfarm dwellings, when these respective dwellings are combined with the twelve previously mentioned nonfarm dwellings identified above, the nonfarm dwelling category accounts for 20 (38%) of the 56 residences within the study area that were approved on or after January 1, 1993. The 45 pre-1993 dwellings and the 24 replacement dwellings account of 68.3% of all of the residentially improved parcels. However, the future development of new dwellings will taper off, as the opportunities for lot of record dwellings, template dwellings, and nonfarm dwelling decrease over time. This is due to the fact that, by their very nature, there are only a finite number of development opportunities for these types of dwellings. The number of farm dwellings will also likely decline, as the opportunities to meet the income standard on vacant parcels will likely decline in the future. The only possible exception to this trend is the conversion of forest lands to wine grape vineyards, which is a land use that seems to have some ability for growth in this region.

The basic purpose of evaluating the land use pattern and the development trends in the area is to determine how stable the current land use pattern is and hence what steps are necessary to protect that stability. It is the stability of the EFU land use pattern that the standard protects from material alteration, not some indeterminate threshold or balance between resource and non-resource uses.

> *Determine the potential number of nonfarm/lot of record dwellings that could be approved, including identification of predominant soil classifications, the parcels created prior to January 1, 1993 and the parcels larger than the minimum lot size that may be divided to create new parcels for nonfarm dwellings under ORS 215.263(4) * * **

Based on the analysis of the 2,675.25-acre study area submitted with the application and staff review of this information, it appears that one other non-farm dwelling could potentially be approved in the study area on Tax Lot 2423-0802 (3.8-acres). One lot of record dwelling was recently approved within the study area on Tax Lot 2427-00600, Docket LOR-01-20. Additionally, four lots (Tax Lots 2421-0800, 2434-0100, 2423-0600, and 2423-1900) have been identified as larger than the minimum lot size, which could be divided. However, the lots that would be created from a division would be farm or forest parcels, not nonfarm parcels. There are two reasons for this finding. The first is that a nonfarm parcel must satisfy OAR 660-033-0100(7) and these parcels would not satisfy OAR 660-033-0100(7)(b)(B) because they are not composed of at least 95 percent Class VI through VIII soils and the soils are capable of

producing more than 50 cubic feet per acre per year of wood fiber. This option was not included in the county's EF and AF zones because the administrative rule standards are nearly impossible to satisfy within Yamhill County. Therefore, no lots can be divided to create new nonfarm parcels.

> ** * * The findings shall describe the existing land use pattern of the study area including the distribution and arrangement of existing uses. . .* The existing land use pattern has been described above. ** * * and the land use pattern that could result from approval of the possible nonfarm dwellings under this subparagraph;*

Currently, 101 of the 173, or approximately 58%, of the farm/forest zoned lots within the 2,675.25-acre study area have dwellings. Including the subject parcel's non-farm dwelling, only one other parcel could potentially qualify for a nonfarm dwelling. The study area is highly parcelized due to a significant portion of the study area encompassing land that was platted as the unincorporated township of Cove Orchard. While Cove Orchard never incorporated as a city, the highly parcelized nature of the area in addition to significant areas of the study area having topographical and geographical challenges that make commercial farm or forest uses difficult. One could argue that the study area is composed of smaller lots like the applicant's, many with homesites that are not at all, or only marginally, affiliated with farm or forest uses. The Board finds that the potential additional nonfarm dwellings will not result in a change in the land use pattern of the area.

> c. *Determine whether approval of the proposed nonfarm/lot-of-record dwellings together with existing nonfarm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land use pattern will be materially altered if the cumulative effect of the existing and potential nonfarm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area.*

As noted above, in the 2,675.25-acre study area there are presently 101 dwellings located on parcels within the farm/forest zones. Of those 101 dwellings, 20 were dwellings permitted as non-farm/lot-of-record/Measure 37/49 dwellings. The 2,675.25-acre study area produced 173 total parcels in the resource zone. This number is quite high, due in part to a significant portion of the study area capturing lots that were originally platted for inclusion in the never incorporated Cove Orchard community. While some of these lots are zoned for rural residential use, and therefore not included study area or reviewable in this analysis, there were many of these smaller lots that were zoned for Exclusive Farm Use, Forestry use, or a mix of Agriculture/Forestry Large Holding uses. Many of these pre-existing subdivision, more urban-scale lots were platted as less, and in some cases much less than, five-acre lots. Even accounting for the two lots that exceed 300-acres and the two lots that are at or slightly above 100-acres, the median parcel size in the study area is approximately 9.5-acres and the subject parcel is roughly

half the size of the median in the study area, at approximately 5.46-acres. Properties that range in size from 5- to 10-acres are typically not favorable for large-scale commercial farming operations. The subject parcel is neighbored by properties ranging in size from 4.84-acres to 27-acres and many of the surrounding tracts have dwellings present. Several of these parcels exhibit either some small-scale farming or forest activities that do not appear to be impinged by the presence of a dwelling on the property. The Board finds that the presence of a single-family dwelling on a small lot with a mix of farm/forest and rural residential uses appears to be completely in keeping with the character and land use pattern found in the study area.

As mentioned above, the surrounding area is a mix of farm, forest, and rural residential use. The parcels south of East Cherry Street and west of NW Woodside Drive, an area that includes the subject parcel, are predominantly dedicated to passive forest uses. The predominant farming activities in the area surrounding the subject parcel include predominantly grass seed and hay production, livestock and small-scale poultry pasturage, and (much less commonly) row crop farming. The Board finds the location of the subject parcel would not diminish any other farm operation's ability to expand due to the subject parcel's location, size, topography, and the marginal value of the on-site soils and cumulatively these factors suggest the subject parcel is not desirable or practical for fostering or furthering large-scale commercial farmland development in the study area.

The so-called "stability standard" is intended to ensure that the approval of a series of non-farm dwellings will not change the overall land use pattern in an agricultural area. The standard requires a county to project a full-development, worst-case scenario and determine whether under that scenario the agricultural land use pattern would be destabilized at some point in the future. If the answer is affirmative, the county must either (1) deny the application or (2) identify some reason or mechanism why that scenario is not likely to occur and nonfarm development will not reach levels that destabilize the agricultural land use pattern. *Young v. Crook County,* 56 Or LUBA 704 (2008).

The stability standard requires an analysis of the development trends in the area and a determination of whether the proposed use will encourage similar uses on similarly situated properties in the area. The basic purpose of evaluating the land use pattern and the development trends in the area is to determine how stable the current land use pattern is and hence what steps are necessary to protect its stability. If the cumulative effect of historical, current and projected nonfarm development is to materially alter the stability of the land use pattern, then the stability standard is not met.

To meet the test, an Applicant must select an area for consideration, examine the types of uses existing in the selected area and then, based on the area selected and examination of uses in that area, determine that the proposed use will not materially alter the stability of the existing uses in the selected area.

The county's findings must justify the scope and contours of any study area used in applying the stability test. In this case, a 2,000+ acre study area that encompasses a diverse range of topography and land uses could take on many different configurations that are equally

"representative of the land use pattern surrounding the subject parcel," for purposes of OAR 660-033-0140(4)(a). The applicant chose a 2,675.25-acre study area. The shape of the study area was chosen to because the general area exhibits a wide variety of land use patterns, from small farm holdings to forest parcels, as well as a very high density rural residential center (Cove orchard) and adjoining rural residential lands. Because of this diversity of land uses, a circular study area centered on the subject property is the most accurate means of accessing the representative land use pattern in the area. In this regard, a county must not focus exclusively on a single rural residential area near the subject property and ignore the potential impacts on nearby forestlands. For this reason, it is appropriate to include all of the farm and forest landholdings in the study area, and not try to exclude large areas from the analysis. It is also not necessary to look beyond the one-mile radius, because it is unlikely that one dwelling cannot destabilize an area beyond one mile.

Next, the County is required to examine the types of uses existing in the selected area. An adequate description draws a clear picture of both the existing land use pattern in the area and the stability of that pattern. Aerial photographs in the record assist in the endeavor of describing the land use pattern.

This study area consists of a diverse set of land uses. Generally speaking, the north, west, and northeastern portions of the study area are dominated by forestry uses on hilly lands, whereas the center, south, and southeastern areas are mostly small rolling hills dominated by rural residential uses, hobby farms, and a few commercial-scale agricultural operations. The inner-east portion of the study area is dominated by high density rural residential and urban density residential uses. Growth in this area is limited by a lack of municipal water and sewer connections.

A careful review of the evidence of the record reveals that land use pattern is going to remain stable, because there are very few parcels within the 2000+ acre study area that would likely qualify for a non-farm dwelling. Stated another way, those few parcels that would qualify would not materially alter the stability of the overall land use pattern of the area.

As an initial matter, there are numerous parcels in the northern portion of the study area that are zoned F-80. Non-farm dwellings are not allowed in the F-80 zone, and therefore these lands can be omitted from consideration.

Second, the vast majority of parcels that would qualify for a non-farm dwelling have already been approved and built upon over the past 40 years. The land use pattern is increasingly becoming stable, as the Oregon land use program has been in place for roughly 45 years. The trend is that most of lands that can be built upon have been built upon, and fewer and fewer of the remaining vacant parcels will qualify for a NFD or a lot of record dwelling.

Third, there are numerous "tax lots" that are not "legal" lots of record. In her letter dated August 20, 2020, at p. 5, Ms. Rector states approving this application "sets the precedent of developing other tax lots of record, including our additional four lots of record and the Xthona's

(*sic*) additional two lots of record." However, Ms. Rector assumes facts which are not in the record.

As an example, the tract of land owned by the appellants provides a good example where the original platted lots may have been consolidated. In this regard, the Rector state that their land-holdings include five of the original lots from the Cove Orchard subdivision. However, a review of the current county tax lot map for the Rector property reveals that four of those five lots are shown as dashed lines. *See* email from Yamhill County Cartographer Brian Hansberry dated September 1, 2020 (noting that dashed lines on a tax lot map represent historic lines which no longer exist, and that such lines generally indicate that lots have been consolidated or adjusted via a property line adjustment). It is not clear from the record why those lines show up as a dashed line, but these lots may not exist anymore. For this reason, the Rector farm may only consist of two legal lots of record, and one of these already is developed with a single-family residence. Because the land is currently in a tract, the Rector family cannot build another dwelling on their property. YCZO 402.03(I)(6).

Moreover, Ms. Rector fails to demonstrate that the soils on her property are predominately Class IV. The only evidence in the record comes from NRCS data, and on the basis of that information, her parcels do not qualify. Even if the one vacant lot of record (*i.e.* Lot 129 of Cove Orchard Subdivision Plat) was sold off, that property would still not independently qualify for a nonfarm dwelling unless the majority of the soils on that land were Class IV-VIII. There is no evidence in the record that supports the conclusion that this is in fact the case.

To the contrary, the NRCS maps set forth in the record show the majority of lot 129 as being an unspecified mix of Goodin-Dupee-Chehulpum complex, 12 to 20 percent slopes (Class III, IV, and VI, 2765D), Cove Silty clay Loam (Class III, 2015A), and Pengra Silt Loam (Class II, 2750C). A "complex" consists of two or more distinct soil types in such an intricate pattern or in such small areas that they cannot be shown as one unit on the soil survey. *See* USDA NRCS "Soils 101" document. As Mr. Gallagher pointed out at the hearing and in his written materials, this particular "complex" contains high value Class III Dupee soils. Thus, in the absence of a site-specific survey, one cannot rely on the generic NRCS soil survey to determine if soils in the Goodin-Dupee-Chehulpum complex are predominately Class IV-VI. It is possible that the Dupee soils predominate, and this is particularly likely to be true in cases where the parcel sits on the side of a hill or in a valley.

Given the Rector property's location on the side and base of the hill, it is highly unlikely that the Goodin-Dupee-Chehulpum complex soils on the property are eroded enough to be a majority Class IV-VI. This is particularly true due to the presence of Pengra soils on the same site. Pengra soils which are very deep (more than 60 inches to rock) class 2 soils when non-irrigated.

In her post-hearing submittal, Ms. Sandi Wodarczak also asserts that "there are at least 17 lots of record…that can submit applications for NFD's." *See* letter dated August 26, 2020, p. 3. Any landowner can submit a NFD application, but obtaining approval seems extremely unlikely, given the facts pertaining to these lots. As an initial matter, Ms. Wodarczak may only own five

legal lots from the original 1893 Plat of Cove Orchard, not nine as she states. Her remaining lots may have been consolidated because they show up as dashed lines on tax assessor's map 2422.

Of the five remaining legal lots, only four of these lots are vacant (Cove Orchard Plat lots No. 7, 8, and 9. YCZO 402.03(I)(6) prohibits Ms. Wodarczak from developing the three vacant parcels because they are in a tract with a developed lot. Even if Ms. Wodarczak were to sell her home and retain the three vacant lots, it is unlikely that more than one of the three lots could get approved for a nonfarm dwelling because of the "tract" prohibition of YCZO 402.03(I)(6). Furthermore, one of the three vacant lots, lot 9, is mostly made up of the Class II Pengra soils. Lot #8 is composed predominantly of Class III Hazelair Silty Clay Loam soil—at 2 to 7 percent slopes—while the remaining western portion of Lot #8 is composed of Class IV Hazelair Silty Clay Loam—at 7 to 20 percent slopes. Given the relationship between the topography and the lot locations, it is virtually certain that lot 8 has a predominance of Class III soils. Lot 8 is simply too far down from the hilltop to have a sufficiently eroded soil profile.

Thus, at best, it appears that only one of those three lots (Tax Lot 2422-1000), may be eligible for a NFD. TL 1000 is a 16.78-acre unit of land that is split-zoned, with the portion of the property west of the platted roadway located in the EF-20 zone and the portion to the east of the platted roadway located in the EF-40 zone. The tax assessor's map suggests that the western portion of the lot is Lot #6 while the eastern portion of the property is Lot #7 of the 1893 Cove Orchard plat. These lots contain Goodin-Dupee-Chehulpum complex soils, which could be predominantly composed of Class IV soils. A soils scientist would need to determine that the soils complex on that lot was predominately Class IV through VI soils. Without such a site-specific study, it is speculative to assume that the soils are Class IV-IV.

Based on research and evidence submitted into the record, the County finds that there are only four other properties in the study area that either have qualified for a NFD would likely qualify for a NFD. The four parcels are as follows:

(1) Tax lot 200, T2N, R4W, Section 22DD is a 6.75-acre parcel which staff identified as having been recently approved for a non-farm dwelling. This property is heavily wooded and therefore the building site would be well-shielded from view. It is located in a heavily forested area where no agriculture is currently being undertaken or likely to occur in the future.

(2 & 3) Two parcels in Section 23 of T2N, R4W that would likely qualify for a NFDs. Tax lot 800 is a 3.81-acre parcel which is zoned EF-20. It is owned by David Peper and April Simmons. The soils are mostly Class IV to Class VI. It is currently being farmed for hay and contains a barn structure. Tax lot 802 is a 22.19- acre parcel of property that is zoned EF-20. Staff identified this parcel as one that would likely be approved for a NFD. TL 802 is owned by David Peper. The land is mostly steeply sloped and forested; and the soils are mostly Class IV to Class VI. Both of these lots are located to the northwest of Hwy 47, in a rural residential area that is mostly wooded and where there is no significant agricultural activity currently being conducted. Adding a NFD to each of these two lots would not perceptively alter the stability of

land use pattern in the study area because the land use pattern would remain rural residential. Furthermore, because of the hilly terrain and heavy forest canopy, it is unlikely that the two new residences that could be developed in this area would be visible from the major thoroughfares such as Highway 47.

(4) Tax lot 100, T2N, R4W, Section 21 is a forty-acre parcel that, according to staff, should quality for a non-farm dwelling. The soils on this property are primarily Class IV. The property is currently undeveloped and is not owned in a tract. Nonetheless, given the remote location of the property and the fact that it is located roughly a ½ mile away from any other dwelling, adding a simple non-farm dwelling on this lot would not perceptively alter the stability of land use pattern in the study area, even when considered cumulatively with other potential non-farm dwellings.

In addition to the aforementioned four parcels, there are two other properties in the study area that *might* qualify for a non-farm dwelling *if* the soils are determined to be predominately Class IV-VI. These findings have already discussed these two properties, which are currently assessed as "Tax lot 1000" of T2N, R4W, Section 22, above. To recap, this tax lot is a 16.7-acre property owned by WWC Ranch, Inc. (Ms. Sandi Wodarczak). The property consists of two of the original lots from the Cove Orchard Plat of 1893, one of which was reconfigured prior to 1993. These two lots seem to be legal lots of record stemming from the original plat. Both of these lots are currently vacant. As a worst-case scenario, one can assume that lots 6 and 7 will meet the soils requirement because they are at the top of the hill, and would quite possibly qualify for a NFD if sold off separately from the remaining WWC Ranch landholdings. As discussed above, the other lots owned by WWC Ranch, Inc. would not likely meet the soils test because they are on the side slopes of the hill where the soil horizon tends to be thicker due to the deposition of eroded soils from the top of the hill.

The Board also considered the possibility of an approval of a non-farm dwelling on Tax lot 201, T2N, R4W, Section 27. It is located directly south of the Belt lot. This is a 4.84- acre parcel owned by Albert and Dianne Xthona. This parcel is part of a tract that currently has a dwelling, so it would only qualify for a nonfarm dwelling if it is sold separately from the remaining tract. This lot might be a possible candidate for a NFD, but it is unlikely that it meets the soils test. The soils on this parcel are listed by the NRCS as being mostly an unspecified mix of Goodin-Dupee-Chehulpum complex, 2 to 12 percent slopes (Class III, IV, and VI, 2765C). Given the remapping on the Belt property, it stands to reason that some of the soils on the Xthona property that were mapped by NRCS as being in a "complex" could in fact consist of Rickreall and Goodin soils. However, the slope is generally less than the Belt property, and therefore it stands to reason that the soil horizon is therefore deeper. For this reason, it is highly likely that the soils on the Xthona parcel would be classified as the Dupee Class III soil type. However, no-one knows for sure until a soil study is completed, and until then it is speculative to conclude that this lot qualifies for a NFD.

In the original application, Planner Ron Pomeroy identified "29 parcels" which he stated "*could potentially qualify*" for approval for a NFD. The opponents incorrectly read Mr. Pomeroy's statement to mean that those 29 parcels *would for certain* qualify for a non-farm

dwelling. However, this is an improper reading of Mr. Pomeroy's analysis. In fact, the vast majority of the 29 parcels *would not* qualify for a NFD. As detailed below, one of the 29 parcels already contain a dwelling. Another three parcels are located well outside of the study area. Of those three parcels, two are configured as a driveway or right of way and are therefore not buildable in any event. Another lot within the study area is also configured as a driveway / right of way. Similarly, two other lots are located in stream corridors which make them unsuitable for development (these same parcels also contain Cove Silty Clay Loam soils, which are Class III flooded soils unsuitable for housing). Another lot is located on land that is actively being forested and contains topography that is far too steep and too unstable to be used as the site of a residential dwelling. Another steeply-sloped lot is located next to a junkyard, and would be an extremely unattractive site for a single-family residence.

In addition, the vast majority of the 29 parcels are in tracts that contain a dwelling. These parcels would not qualify for a NFD unless they are first sold separately from the remainder of the tract. While this fact does not prevent these lots from being developed for NFDs in the future, it does make it less likely that they will be developed. This is due to the fact that the value of the remainder property is going to be disproportionately reduced by virtue of the proximity of a new potential neighbor. In addition, there are two other properties adjacent to, and north of, the subject property, that *might* qualify for a non-farm dwelling *if* the soils are determined to be predominately Class IV-VI. Given the close proximity to the subject property, it is possible, but not certain, that these two parcels will qualify for a NFD if they are sold off from the tract (Note that these properties are in a tract that currently has a dwelling so the current owner could not apply for a non-farm dwelling. It is unclear how many people would want to buy a parcel without first knowing that it is buildable. In any event, once sold, a detailed soil study would have to be conducted to determine if the soils are predominately Class IV-VIII. Based on the best available NRCS data, it appears that 15 of the 29 lots discussed above are predominately Class I – III soils which do not qualify for a non-farm dwelling. These lots are individually discussed below:

- Tax lot 100, T2N, R4W, Section 22DD. This is a 6.54-acre parcel which is zoned EF-20. The front half of the property is flat and is currently being used as a junkyard. The property is in a tract that contains a residence. The soils are a combination of Chehalem Silty Clay Loam (Class II) and Goodin-Dupee-Chehulpum complex, 2 to 12 percent slopes (Class III, IV, and VI, 2765C). The steep slopes on the back portion of the property combined with the current commercial use make it highly unlikely that it would be re-developed as a single-family residence.

- Tax lot 1400, T2N, R4W, Section 23, Tax lot 1400 is a 3.15-acre parcel of property that is zoned EF-20 and consists of soils that are mostly Class IV soils. It is outside of the circular one-mile radius.

- Tax lot 1600, T2N, R4W, Section 23. This property is a long, thin parcel of land that is configured to serve as a driveway. It is too narrow to be used for a dwelling. It is outside of the circular one-mile radius comprising a 2000-acre study area.

- Tax lot 101, T2N, R4W, Section 23CD. This 0.6-acre parcel is a long, narrow triangular shaped lot that is not developable due to its location and shape. The property consists mostly of an unspecified mix of Goodin-Dupee-Chehulpum complex, 12 to 20 percent slopes (Class III, IV, and VI, 2765D), with a lesser amount of Cove Silty Clay Loam. Given the location of this property in a valley, it is highly unlikely that the soil horizon will be narrow enough to qualify the soils as Class IV-VI. For these reasons, it seems highly unlikely that this property would be a successful candidate for a NFD.

- Tax lot 100, T2N, R4W, Section 26. This .91-acre parcel is a long, thin parcel of land that is configured to serve as a driveway. It is too narrow to be used for a dwelling.

- Tax lot 901, T2N, R4W, Section 26. This 3.5-acre parcel is zoned AF-20. The property is owned by Mitchell and Sonia Anderman. This parcel is part of a tract that currently has a dwelling, so it would only qualify for a non-farm dwelling if it is sold separately from the remaining tract. The property is currently in forestry production and is way too steep to be developed as a single-family residence.

- Tax lots 200 and 201, T2N, R4W, Section 26BB. These two properties are owned by Mr. Adrian Castro. The soils on this property are primarily Cove Silty Clay Loam soils (Class III, 2015A), so they would not qualify for a NFD. Also, these properties have no septic availability, and are therefore not developable. Mr. Castro has tried in the past to development these properties but has had no success due to the limitations of the site.

- Tax lot 1702, T2N, R4W, Section 26BB. This is a .51-acre property owned by Jeremy Parker. This parcel is part of a tract that currently has a dwelling, so it would only qualify for a non-farm dwelling if it is sold separately from the remaining tract. The majority of the soils on this property are Chehalem silty clay loam, sedimentary, 3 to 12 percent slopes. In addition, this property is situated in an area that does not have water and septic availability, so it is not buildable. Nonetheless, even if this property qualified for a non-farm dwelling, it would not alter the stability of the land use pattern due to its central location in the heart of Cove Orchard. This area is sufficiently developed that it has a decidedly different character – higher density rural residential land – as compared to the lands closer to Mr. Belt's property.

- Tax lot 1703, T2N, R4W, Section 26BB. This is a 4.42-acre parcel zoned AF-20. The land is currently occupied by a dwelling and is therefore not able to support another NFD.

- Tax lot 1202 & 1302, T2N, R4W, Section 27. These two parcels are 2.16-acres and 1.0 acres in size respectively and are zoned EF-20. These two properties are bisected by the Yamhill river. Neither of these properties qualifies for a NFD because the soils are Cove Silty Clay Loam, Flooded (Class III). The narrow shape of the lots combined with the close proximity to the Yamhill River make these parcels unsuitable for development.

- Tax lot 1900, T2N, R4W, Section 27. This is a .49 acre of property zoned EF-40. It is owned by James and Dianne Jansen, who currently reside on another parcel in a tract

contiguous with TL 1900. TL 1900 is not buildable due to its lot shape as a right of way lot.

- Tax lot 201, T2N, R4W, Section 27AD. This parcel is 3.25-acres in size and owned by Roger and Cynthia Wilhelm. This parcel is part of a tract that currently has a dwelling, so it would only qualify for a non-farm dwelling if it is sold separately from the remaining tract. The property consists mostly of Cove Silty Clay Loam soils (Class III, 2015A), and the remainder are an unspecified mix of Goodin-Dupee-Chehulpum complex, 12 to 20 percent slopes (Class III, IV, and VI, 2765D). Therefore, it is highly unlikely that this property meets the soils test.

- Tax lot 300, T2N, R4W, Section 28. This 4.8-acre parcel is zoned EF-40. It is owned by The Stone Family Trust. It is part of a tract that has a single-family residence. This parcel would only qualify for a non-farm dwelling if it is sold separately from the remaining tract. This the NRCS maps show the majority of tax lot 300 as being an unspecified mix of Goodin-Dupee-Chehulpum complex, 12 to 20 percent slopes (Class III, IV, and VI, 2765D). Given the property's location on the side and base of the hill, it is highly unlikely that the Goodin-Dupee-Chehulpum complex soils on the property are eroded enough to be a majority Class IV-VI. The property is currently in farm production, and aerial photos show the property being actively farmed for hay.

- Tax lots 1100, T2N, R4W, Section 28. This lots is 1.23 acres. The parcel is not buildable due to lot shape and proximity to a creek. The soils are Waldo Silty Clay Loam (Class III) and would therefore not meet the soils test in any event.

- Tax lot 1200, T2N, R4W, Section 28. This is a 9.93-acre parcel. This lot does not qualify for a NFD because it has already been approved for a Measure 37 dwelling.

- Tax lot 1300, T2N, R4W, Section 28. This is a 9.93-acre parcel. It would not qualify for a NFD because it is in a tract with a Measure 37 dwelling. It is also composed primarily of soils such as the Carlton Clay Loam (Class II) and the Waldo Silty Clay Loam (Class III) and would therefore not meet the soils test.

- Tax lots 1400 and 1700, T2N, R4W, Section 28. These two lots are .71 acres and .98 acres, respectively. These are long and narrow lots that are not buildable due to lot shape and proximity to a creek. The soils are Waldo Silty Clay Loam (Class III) and would therefore not meet the soils test in any event.

- Tax lot 2300, T2N, R4W, Section 28. This 19.9-acre parcel is zoned EF-20. It is mostly located outside of the study area. Nonetheless, this parcel is traversed by a creek, and therefore, the majority of this parcel consists of Waldo Silty Clay Loam (Class III). The property would therefore not meet the soils test for a Non-farm dwelling. The property is currently in active farm use.

- Tax lot 3100, T2N, R4W, Section 28. This is a 1.6-acre lot which is zoned EFU-40. It is owned by Kimberly Sheridan and is part of a tract that has a single-family residence. This parcel would only qualify for a non-farm dwelling if it is sold separately from the remaining tract. Even then, it would still have to pass the soils test, and given that NRCS has mapped the majority of the soils on this lots as Cove Silty Clay Loam, Flooded (Class III), it seems highly unlikely that the parcel would qualify for a NFD.

- Tax lot 200, T2N, R4W, Section 34. This is a 16.83-acre parcel that is zoned EF-80. The soils are mostly Cove Silty Clay Loam (Class III) and high value Woodburn Silt Loam (Class I).

- Tax lot 300, T2N, R4W, Section 34. This is a 38.95-acre parcel that is zoned EF-80. The soils are mostly Cove Silty Clay Loam (Class III) and high value Woodburn Silt Loam (Class I).

Thus, to summarize on this topic, the Board finds that there are four properties that either have qualified for a NFD or most certainly would qualify - and two more properties that would likely qualify - *if* they meet the soils test. These six properties would not, when viewed cumulatively, materially alter the stability of the land use pattern because they represent a small amount of growth and they occur in two distinctly different subregions of the study area. Mr. Belt's parcel and the two properties directly north of it form one of the two clusters. Ms. Sandi Wodarczak testified that her property is not valuable as farmland in any event, so there is no concern about taking productive land out of farm production if her two lots are developed. Ms. Shavaghn Petraitis also testified that her property was taken out of farm production and allowed to return to forest usage. A cluster of three rural residential homes on 5 to 10- acre parcels would not destabilize the overall land use pattern.

The other cluster of potential NFD dwellings would occur far away in the northeastern portion of the study area, on the other side of Cove Orchard. Such growth would be barely perceptible to the community given its location, hilly terrain, and extensive tree cover.

Mr. Rector alleged that two large parcels, Tax Lots 2421-0800 (approximately 338-acres) and 2434-0100 (approximately 332-acres), should have been included in the Applicant's analysis because the development of these two large properties could significantly alter the character of the surrounding area.

The Board finds that these two properties were not included because the Applicant did not believe these two parcels were representative of the land use pattern surrounding the subject parcel, as defined by subsection 402.03(I)(4). The Board agrees with this determination.

Mr. Rector states that the county should have established the study area for the Applicant, and that the Applicant's proposed study area favors a finding that a nonfarm dwelling should be approved. In his letter dated August 27, 2020, Mr. Rector stated a procedural discrepancy exists because, in his reading of the code, the county is required to conduct the "stability study"

required by YCZO 402.03(I)(4). He argues that the county erred by delegating that duty to the Applicant.

ORS 215.284(1) states that "[i]n the Willamette Valley, a single-family residential dwelling not provided in conjunction with farm use may be established, subject to approval of the governing body or its designee, in any area zoned for exclusive farm use upon a finding that: * * * (d) The dwelling will not materially alter the stability of the overall land use pattern of the area; and * * *. The LCDC administrative rule is written as a directive to the County:

> *(D) The dwelling will not materially alter the stability of the overall land use pattern of the area. In determining whether a proposed nonfarm dwelling will alter the stability of the land use pattern in the area, a county shall consider the cumulative impact of possible new nonfarm dwellings and parcels on other lots or parcels in the area similarly situated. To address this standard, the county shall:*
>
> > *(i) Identify a study area for the cumulative impacts analysis. The study area shall include at least 2000 acres or a smaller area not less than 1000 acres, if the smaller area is a distinct agricultural area based on topography, soil types, land use pattern, or the type of farm or ranch operations or practices that distinguish it from other, adjacent agricultural areas. Findings shall describe the study area, its boundaries, the location of the subject parcel within this area, why the selected area is representative of the land use pattern surrounding the subject parcel and is adequate to conduct the analysis required by this standard. Lands zoned for rural residential or other urban or nonresource uses shall not be included in the study area;*
> >
> > *(ii) Identify within the study area the broad types of farm uses (irrigated or nonirrigated crops, pasture or grazing lands), the number, location and type of existing dwellings (farm, nonfarm, hardship, etc.), and the dwelling development trends since 1993. Determine the potential number of nonfarm/lot-of-record dwellings that could be approved under subsection (3)(a) and section (4) of this rule, including identification of predominant soil classifications, the parcels created prior to January 1, 1993 and the parcels larger than the minimum lot size that may be divided to create new parcels for nonfarm dwellings under ORS 215.263(4), ORS 215.263(5), and ORS 215.284(4). The findings shall describe the existing land use pattern of the study area including the distribution and arrangement of existing uses and the land use pattern that could result from approval of the possible nonfarm dwellings under this subparagraph; and*
> >
> > *(iii) Determine whether approval of the proposed nonfarm/lot-of-record dwellings together with existing nonfarm dwellings will materially alter the stability of the land use pattern in the area. The stability of the land*

use pattern will be materially altered if the cumulative effect of existing and potential nonfarm dwellings will make it more difficult for the existing types of farms in the area to continue operation due to diminished opportunities to expand, purchase or lease farmland, acquire water rights or diminish the number of tracts or acreage in farm use in a manner that will destabilize the overall character of the study area; and

However, neither the statute nor the administrative rule prohibits the County from delegating the evidence-gathering aspect of that analysis to the applicant and the opponents. In fact, that is the universal practice in Yamhill County and throughout Oregon.

The administrative rule is best understood as requiring the County to adopt findings which show that the study has been completed. Even that task can be delegated to the Applicant so long as the draft findings are reviewed by the County and the County agrees with the substance of what is presented therein. After all, it is the decision and findings that is subject to judicial review, not the application. The County is ultimately responsible for making sure the decision meets applicable legal standards, but it is not required to shoulder the task of developing evidence to support the decision or drafting the findings.

It would be highly unusual for any local government to shoulder the task of conducting the studies intended to meet the initial burden of proof in a quasi-judicial land use case. Rather, it is universally understood that the applicant bears the burden to establish compliance with approval criteria.

Yamhill County's policy has been for an Applicant to define and analyze a study area of at least 2,000-acres. The Applicant's study area used the subject parcel as the approximate centroid of the study area and established a circular study area, with a radius of approximately 1.1-miles, which established a study area in excess of the 2,000-acre requirement. This study area satisfied both state and local requirements for a non-farm dwelling study area. The County finds the evidence submitted by the Applicant to be more credible than evidence submitted by the Appellants.

The Board finds that this 2,000+ acre study area accurately represents the geographical and land use context surrounding the subject parcel.

5. *The dwelling complies with other conditions the county considers necessary, including but not limited to provision for sewage disposal, emergency vehicle access, and public road approach.*

Regarding criterion 402.03(I)(5), the County Engineer has identified some potential challenges regarding the development of East Cherry Street, the platted roadway the applicant has proposed as a possible access to the property. The Rectors identified access to the property as a concern and indicated that access to the subject parcel by East Cherry Street, which is only partially developed, or by NW Woodside Drive, which is completely undeveloped, is fraught with challenges.

The Applicant responded to these concerns by indicating that East Cherry Street, while not fully developed, currently provides access to three of the lots to the west of the subject parcel. The Applicant stated that he is amenable to providing a survey of the as-built location of East Cherry Street, prepared by a registered licensed professional surveyor for review and approval by Yamhill County prior to extending the right-of-way improvements of East Cherry Street to the subject parcel.

A condition of approval requires that the applicant shall ensure there is safe access to the property prior the issuance of building permits. This would require confirming that any development of the East Cherry Street and/or Woodside Drive must occur within the platted right-of-way for those roadways. Any development to East Cherry Street or Woodside Drive shall be constructed to county specifications and inspected by a licensed professional engineer.

The County Engineer believes that a neighboring property owner has built a barn within the East Cherry Street right-of-way. The subject parcel is bordered, along the eastern property line, by a second undeveloped platted roadway, NW Woodside Drive, which is an extension of NW McLoughlin Drive. A permit for a new road approach to the County road will be required from Public Works. A condition of approval requires that the design and construction of the road providing access to the subject property is reviewed and approved by the County Engineer, prior to the issuance of any permits.

The Commissioners inquired whether a Public Comment Notice was mailed to the correct fire department, Yamhill Fire Protection District. The standardized letter asks an agency to respond if they have any concerns with a land use application, and (if no comment is received) the County will assume the agency sees no problems. Planner Lance Woods subsequently confirmed the comment letter was sent to the correct fire agency, the Yamhill Fire Protection District. He sent out a second copy, just to make sure that no procedural error occurred. The Yamhill Fire Protection District did not respond to either letter. *See* Lance Woods Memorandum to Board of Commissioners dated August 27, 2020. Fire Chief Brian Jensen subsequently wrote a letter on September 2, 2020 confirming this parcel is covered by his fire protection district and that the fire district would respond to service calls in the same manner as any other neighboring dwelling. This letter is in the Record. A condition of approval requires the YFPD to approve the emergency access to the dwelling before any building permit will be issued.

A full septic evaluation has not been conducted on the property, but the Applicant stated that the property was previously 'perced' for a septic system and found to be suitable. A condition of approval requires that the property owner must receive septic approval prior to the issuance of a building permit for a dwelling. Additionally, a condition of approval requires that prior to the issuance of any building permits the landowner will be required to sign and record an affidavit stating the following:

> *"The subject property is located in an area designated by Yamhill County for agricultural uses. It is the county policy to protect agricultural operations from conflicting land uses in such designated areas. Accepted agricultural practices in*

this area may create inconveniences for the owners or occupants of this property. However, Yamhill County does not consider it the agricultural operator's responsibility to modify accepted practices to accommodate the owner or occupants of this property, with the exception of such operator's violation of State law."

The Board finds that, with these conditions of approval, the proposed non-farm dwelling complies (or can be made to comply) with other conditions the county considers necessary, by substantial evidence in the whole record. The Board further finds the evidence on these matters presented by the Applicant to be more credible than the evidence presented by opponents.

6. *The tract on which the dwelling is to be sited does not include a dwelling.*

Regarding criterion 402.03(I)(6), the subject parcel is not part of a tract.

7. *Prior to issuance of a residential building permit, the applicant shall provide evidence that the county assessor has disqualified the lot or parcel for valuation at true cash value for farm or forest use; and that additional tax or penalty has been imposed, if any is applicable, as provided by ORS 308.370 or 308.765 or ORS 321.352, 321.730, and 321.815. A parcel that has been disqualified under this subsection shall not re-qualify for special assessment unless, when combined with another contiguous parcel, it constitutes a qualifying parcel.*

Regarding standard (7) above, while the property is not presently on deferral, prior to the issuance of a building permit, a condition of approval requires the applicant must provide evidence to the Planning Director that the county assessor has disqualified the lot or parcel for valuation at true cash value for farm or forest use; and that additional tax or penalty has been imposed, if any is applicable.

Miscellaneous Opponent Concerns Not Directly Related to Approval Criteria

The Rectors raised matters that are not related to the review criteria for a nonfarm dwelling. Those included a concern about disturbing or further fragmenting wildlife habitat, and that an additional dwelling in the area could lead to additional air, noise, and light pollution. The preservation of wildlife habitat and the potential for an increase in pollution are not review criteria for a nonfarm dwelling in the Exclusive Farm use zone.

Topic: Previous Applications

As noted in the background fact A.8, this property has had two previous nonfarm dwelling applications denied. One in 1989 and the second in 1995. The question now is, why would the present application be approved for this property? The short answer is that different criteria took effect on June 1, 1998 which adjusted the standards related to soils and the test for

whether the approval would "materially alter the stability of the land use pattern."[2] These different criteria, and the justifications and substantial evidence submitted by the Applicant, resulted in a different outcome.

The previous requests date back approximately 31-years and 25-years ago. As mentioned above, the Applicant has submitted a soil assessment (Exhibit 2), prepared by a Certified Professional Soil Scientist and Soil Classifier, Andy Gallagher, that indicates that subject parcel is predominantly composed of non-high value farmland.

The Board reviewed this application based upon the merits of this application, the evidence submitted with the application, the law in effect at the time of the application, and finds the Applicant's evidence to be more credible than the evidence presented by the Appellants. There is no evidence in the record to refute or cast doubt on the Soil Assessment submitted by the Applicant.

Lastly, Subsection 1301.03 of the YCZO states that, "*If an application is denied, no new application for the same or substantially similar action shall be filed for at least one year from the effective date of decision.*" As noted above, it has been at least one year since the Applicant last submitted a substantially similar request.

Topic: Cost of Improving Woodside Drive

In her letter dated August 20, 2020, Ms. Rector stated that improving Woodside Drive "would require the demolition and rebuilding of two separate fence-lines along Woodside.... Who would pay for that?"

This concern does not relate to any relevant approval standard. Nonetheless, the answer is that the owners who built fences that encroach into a public ROW do so at their own risk and may have to pay to move their fences. There is no legal right to build obstructions in a publicly platted roadway. Mr. Belt would pay to build the driveway in the public ROW, and that driveway will need to be built to county standards.

Ms. Rector states that part of Woodside Drive temporarily floods in the winter months and asked who would pay for the improvements needed to prevent this. While the Applicant would be responsible for making any necessary improvements to Woodside Drive needed to meet county standards for a "fire apparatus road," the flooding issue is a pre-existing condition for which Mr. Belt is not responsible.

The Board finds the Applicant's development in this case does not exacerbate the pre-existing seasonal flooding issue, and is therefore not responsible for constructive corrective measures aimed at lessening such flooding.

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[2] It should be noted that the present Yamhill County Planning Director gave testimony in 1998 to the Land Conservation and Development Commission against the changes which adopted the extensive study area for nonfarm dwellings.

Topic: ORS 215.263(4)

Ms. Rector also faulted the applicant for not considering the effect of ORS 215.263(4). YCZO 402.03(I)(4)(b) references ORS 215.263(4) as follows:

> Determine the potential number of nonfarm/lot of record dwellings that could be approved, including identification of predominant soil classifications, the parcels created prior to January 1, 1993 and the parcels larger than the minimum lot size that may be divided to create new parcels for nonfarm dwellings under ORS 215.263(4).

Regardless of the fact that this statute is mentioned in YCZO 402.03(I)(4)(b), ORS 215.263(4) does **not** apply to the "Willamette Valley," which is defined by statute to include all of Yamhill County. Even if that were not the case, there are no parcels in the study area that meet the standards for land divisions for NFDs, because it is well understood that the soils in Yamhill County are simply too productive for forestry to meet the test established under state law for such land divisions.

Topic: ORS 92.205 and "Undeveloped Subdivisions"

In her letter dated August 20, 2020, Ms. Rector stated that "this undeveloped subdivision should be reviewed [pursuant to ORS 92.205] to ensure it's in accordance with the Comprehensive Plan, which states in numerous sections that preservation of viable farmland is a primary goal." *See Id.* at p. 6. The short answer to this assertion is that ORS 92.205 *et seq* is not an approval standard for a non-farm dwelling.

In *Bear Creek Corp. v. Jackson County,* 44 Or LUBA 685, 691-693 (2003), LUBA discussed ORS 92.205 *et seq,* and determined that is not a statute that gets applied in the course of a land use proceeding to determine the "legality" of lots:

> "ORS 92.205 through 92.245 permit local governments to review an undeveloped subdivision to determine whether the undeveloped subdivision should be modified or vacated so that a new subdivision may be platted that conforms to land division and development requirements.
>
> * * *
>
> As we understand the statute, it authorizes local governments to institute a review of undeveloped subdivisions. ORS 92.215 (a body authorized to approve subdivision plats under ORS 92.040 "may" review specified subdivisions). The purpose of that review is to determine whether such subdivisions conform to current plan and zoning standards and, if not, whether the subdivisions should

> be replatted or vacated. Review under ORS 92.205 through 92.245 is permissive and, moreover, the statute appears to contemplate that any such review is conducted as a separate proceeding from land use reviews. *See* ORS 92.234(3) (a person aggrieved by vacation of an undeveloped subdivision may appeal such action in the manner provided by ORS 34.010 to 34.100). Petitioner has not demonstrated that ORS 92.205 through 92.245 authorizes or requires the hearings officer to institute a review under the statute in the context of the present legal lot determination, and we do not see that it does."

Thus, Yamhill County does have the authority, under ORS 92.205, to initiate a separate proceeding to review the Cove Orchard Plat. Nonetheless, that process would require separate notice and hearings, and would result a separate land use decision. It would not, and could not, affect the outcome of this case.

Topic: Applicability of ORS 195.300(10)(e)

In her letter dated August 20, 2020, Ms. Rector states that ORS 195.300(10)(e) defines "high value farmland" in such a way that it includes Mr. Belt's parcel. However, ORS 195.300(10)(e) concerns the valuation of land for Measure 49 compensation claims and has nothing to do with non-farm dwelling applications. That statute is wholly irrelevant to this case.

Topic: Conflicts of Interest

On page 1 of her letter of August 26, 2020, Ms. Rector raises the issue of "potential conflicts of interest" between planning consultant Ron Pomeroy, county Planning Director Ken Friday, the Applicant, and all three County commissioners. Ms. Rector did not specify what these "potential conflicts of interest" might be. This argument is insufficiently detailed or developed to require refutation.

Oregon's ethics law makes a distinction between actual and potential conflicts of interest. A decision-maker with an actual conflict of interest may not participate in the proceeding. ORS 244.120(2)(b). A decision-maker with a potential conflict of interest must disclose the nature of the conflict and must give the hearing participants the opportunity to challenge his or her participation in the proceedings. ORS 244.120(2)(b). Once the potential conflict is disclosed and the opportunity for challenge has been provided, the decision-maker may participate in the proceedings.

An "actual conflict of interest" arises when a quasi-judicial decision-maker has a personal interest in the outcome of a matter on which he or she is deciding. ORS 244.020(1). *Personal interest* means the official's participation in the matter will result in a direct "pecuniary benefit or detriment" to the person or someone in the person's family. ORS 244.020(1). *Rosenzweig v. City of McMinnville*, 64 Or LUBA 402 (2011) (Any economic benefit a decision maker might indirectly realize for her accounting and financial planning business by voting in favor of a non-

profit organization's permit application to curry favor among the organization's members is too indirect to constitute a "pecuniary benefit," as that term is used in ORS 244.020(1)); *Frewing v. City of Tigard*, 52 Or LUBA 518 (2006) (elected decision-maker's desire to please the voters by approving development that may lead to a donation of open space land to the city, combined with receipt of a stipend for service as an elected official, does not constitute a potential or actual financial conflict of interest).

Regarding any alleged "conflicts" by the Planning Director, Mr. Ken Friday, the Board notes that he is not the final decisionmaker in this case. Therefore, any actual or potential conflict of interest that he might have had is no longer relevant to this proceeding once an appeal to the Board of Commissioners is filed. This is due to the fact that, once an appeal is filed, the Board makes the final decision. This cures any problem that otherwise might taint the county's decision, if the Planning Director were biased in any way. Having said that, the Board finds there is no evidence in the record suggesting that Mr. Friday has any such conflict of interest or bias of any kind.

CONCLUSION:

The request is for a dwelling not in conjunction with farm use (nonfarm dwelling). With conditions, the request complies with the approval criteria in Sections 402.03(I) and 402.08 of the Yamhill County Zoning Ordinance, by substantial evidence in the whole record, as outlined in the above findings.

DECISION:

Based on the above findings, analysis, and conclusions, the request by Steven Belt for a dwelling not in conjunction with farm use is hereby **approved**, with the following conditions:

1. All necessary permits for building, electrical, and septic installation shall be obtained and the required inspections performed for the residential development.

2. The road providing access to the subject parcel shall be constructed to county specifications and inspected by a private engineer.

3. This approval will expire four years from the date of final approval unless substantial construction has occurred prior to that date. An extension of the expiration date may be applied for as long as the application is made prior to the expiration of the approval.

4. Prior to issuance of a residential development permit, the landowner shall sign an affidavit acknowledging the following declaratory statement and record it in the deed and mortgage records for Yamhill County containing these words:

   "The subject property is located in an area designated by Yamhill County for agricultural uses. It is the county policy to protect agricultural operations from conflicting land uses in such designated areas. Accepted agricultural practices in

this area may create inconveniences for the owners or occupants of this property. However, Yamhill County does not consider it the agricultural operator's responsibility to modify accepted practices to accommodate the owner or occupants of this property, with the exception of such operator's violation of State law."

5. As required by YCZO Section 402.03(I)(7), prior to issuance of a residential building permit, the applicant shall provide evidence that the county assessor has disqualified the lot or parcel for valuation at true cash value for farm or forest use; and that additional tax or penalty has been imposed, if any is applicable, as provided by ORS 308.370 or 308.765 or ORS 321.352, 321.730, and 321.815. A parcel that has been disqualified under this subsection shall not re-qualify for special assessment unless, when combined with another contiguous parcel, it constitutes a qualifying parcel.

6. The property owner shall comply with all regulations by the Oregon Water Resources Department governing the construction and use of any groundwater.

7. The Yamhill County Building Official, pursuant to Section 6 of Ordinance 514, shall not issue a building permit for construction of a residence until the applicant has submitted a statement from the chief of the Yamhill Rural Fire Department that the proposed residence has suitable access for fire protection equipment, or otherwise meets fire protection standards.

END