

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)
Commission’s Decision to Approve Planning)
Docket C-23-20/RN-03-20; Construction of a New) Board Order 21-284
Public Road; Tax Lots 4501-1290 and 4501-1291;)
Applicants: Paul and Martha Jahnke, Trustees of)
the Jahnke Trust, Charles and Scotty Dolence)
and Cyclops Properties, LLC)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on July 8, 2021, Commissioners Mary Starrett, Lindsay Berschauer and Casey Kulla being present.

IT APPEARING TO THE BOARD as follows:

A. The applicants, Paul and Martha Jahnke (Trustees of the Jahnke Trust), Charles and Scotty Dolence and Cyclops Properties, LLC, applied for a conditional use permit to construct a new public road in an Exclusive Farm use zone on Tax Lots 4501-1290 and 4501-1291. Following notice and hearing, the Planning Commission approved the application 8-0 on March 4, 2021.

B. The Planning Commission’s decision was appealed, and considered by the Board at a hearing held on April 15, 2021, and continued to June 17, 2021. Following deliberation, the Board voted unanimously to uphold the Planning Commission’s decision, deny the appeal, and approve the application. NOW, THEREFORE,

IT IS HEREBY ORDERED BY THE BOARD AS FOLLOWS:

Section 1. Planning Docket C-23-20/RN-03-20 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 8th day of July, 2021, at McMinnville, Oregon.

ATTEST:



YAMHILL COUNTY BOARD OF COMMISSIONERS

BRIAN VAN BERGEN
County Clerk

Chair

MARY STARRETT

By: Carolina Rook
Deputy Carolina Rook

LINDSAY BERSCHAUER

Commissioner

FORM APPROVED BY:

Commissioner

CASEY KULLA

for Timothy S. Sadlo
Office of County Counsel

Exhibit "A" – Findings for Approval – Board Order 20-284

DATE OF TENTATIVE DECISION	June 18, 2021
REQUEST	Conditional Use approval to allow a public road on EFU zoned land.
APPLICANTS/ OWNERS	Paul and Martha Jahnke, Trustees of the Jahnke Trust Cyclops Properties LLC 310 White Pine Road Delafield, WI 53018 Charles J. and Scotty L. Dolence 13799 NW Willis Road McMinnville, OR 97128
APPLICANT'S REPRESENTATIVE	Andrew H. Stamp, P.C. Kruse Mercantile Professional Offices 4248 Galewood Street, Suite 16 Lake Oswego, Oregon 97035 Phone: 503.675.4318 Facsimile: 503.675.4319 Email: andrew@stamplaw.com
SITE ADDRESS/ MAILING ADDRESS	(Jahnke parcel) No assigned address; off Willis Road, McMinnville, Oregon 97128 (Dolence parcel) 13799 NW Willis Road McMinnville, OR 97128
LOCATION:	South and east of (and abutting) NW Willis Road, north and east of NW Berry Creek Road
LEGAL DESCRIPTION	Unsurveyed Parcel 3 of Partition P2006-47 T4S, R5W, S01, Tax Lot 1293 (Jahnke) Parcel 1 of Partition No. 94-40 recorded August 2, 1994 T4S, R5W, S01, Tax Lot 1290 (Dolence)
SITE AREA	Approximately 30.9 acres (Jahnke) Approximately 3 acres (Dolence)
ZONING	EF-40
FIRE PROTECTION	McMinnville RFPD
CRITERIA:	Sections 402.04(N) & 1202.02 of the Yamhill

I. Summary of Request.

The Applicants requested Conditional Use Permit (“CUP”) approval to build a dead-end public road on a privately-owned, undeveloped 30.9-acre parcel located in an EF-40 zone. The Applicants propose to build the road to County standards and have it professionally surfaced. The proposed road will be approximately 2300 feet long, and may be extended further to the south in the future.

Currently, a private driveway exists on TL 1293 which provides access to dwellings located on TL 1290 and TL 1291. However, a portion of this driveway is located on Tax Lot 1300, and is owned by Scott Sterling. Tax Lot 1292 does not have an easement to traverse Tax Lot 1300. Mr. Sterling testified as an opponent of this proposal, and testified that he would not grant an easement to TL 1292.

The private driveway currently serves six properties, including:

- ❖ T4S, R5W, S02, Tax Lot 800 (dwelling)
- ❖ T4S, R5W, S02, Tax Lot 802 (two dwellings)
- ❖ T4S, R5W, S01, Tax Lot 1290 (dwelling)
- ❖ T4S, R5W, S01, Tax Lot 1291 (dwelling)
- ❖ T4S, R5W, S01, Tax Lot 1292 (vacant)
- ❖ T4S, R5W, S01, Tax Lot 1293 (vacant)

The Applicants state the primary purpose for the public road is to provide access to TL 1292, which is owned by the Applicants. The road could also provide access for TL 1293 if it is developed in the future. The road could, in the future, also be extended further to the South to serve T4S R5E, Sec. 12, TL 1600, which is a 27-acre lot zoned for rural residential uses.

Currently, Tax Lot 1292 cannot be built upon, due to the Yamhill County rule that a maximum of three residences may use a private driveway. Yamhill County Land Division Ordinance #205 (as amended) §8(C). This provision states:

8. Private Easements/Driveways

A. A private easement may be established in accordance with this ordinance if it is the only reasonable method to provide a lot with access. If the existing lot contains sufficient acreage so that four or more parcels meeting the lot size minimums established by the county zoning ordinance could be created, or if the applicant owns contiguous parcels that contain sufficient acreage to divide the property into four or more parcels, and it is possible to provide access to each lot by creating a public road, a private easement may not be used.

B. The minimum right-of-way for a private easement shall not be less than 30 feet.

C. No more than three parcels may be served by a private easement.

D. Minimum standards for Private Easement and Driveway Construction are as follows:

- (1) Minimum Travel Surface Width 12 feet**
- (2) Minimum Vertical Clearance 14 feet**
- (3) Minimum Horizontal Clearance 16 feet**
- (4) Maximum Intermittent Grade 15% for 200 Feet**
- (5) Maximum Sustained Grade 10%**
- (6) (Road curve standard)**
- (7) Culverts, bridges and other drainage structures shall be placed so as to encourage drainage in established drainage ways.**

Tax Lots 1292 and 1293 are both located in a resource zone. The purpose of the Yamhill County Exclusive Farm Use Districts (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. As discussed below, the Board finds it meets the relevant County and state approval criteria.

II. Applicable Regulations - Yamhill County Zoning Ordinance.

The conditional use approval criteria contained in YCZO §1202 are set forth below with findings for each, as follows:

1202.02 Review Criteria

A conditional use may be authorized, subject to the Type B application procedure set forth in Section 1301, upon adequate demonstration by the applicant that the proposed use will be compatible with vicinity uses, and satisfies all relevant requirements of this ordinance and the following general criteria;

A. The use is listed as a conditional use in the underlying zoning district;

Findings: YCZO §402.04(N) lists roads as a Conditional Use in the EF-40 District, consistent with OAR 660-012-0065. YCZO §402.04(N) states:

Roads, highways and other transportation facilities and improvements not allowed under Subsections 402.02(K) or 402.04(J), subject to compliance with OAR 660-12.

The Board finds this criterion is satisfied.

B. The use is consistent with those goals and policies of the

Comprehensive Plan which apply to the proposed use;

Findings: Consistency with the goals and policies of the Comprehensive Plan is demonstrated *infra* at pp. 38-41.

C. The parcel is suitable for the proposed use considering its size, shape, location, topography, existence of improvements and natural features;

Findings: Under YCZO §1202.02(C), the Board is required to find that the parcel is “suitable” for the proposed public road use, considering six factors or prongs, including size, shape, location, topography, existence of improvements and natural features. *See generally Van Dyke v. Yamhill County*, __ Or LUBA __ (LUBA No 2019-047, Oct. 11, 2019). At the outset, the Board notes that this criterion is not concerned with the external impacts of the proposed use on other uses on surrounding lands, because other criteria focus on that particular issue. Rather, YCZO §1202.02(C) is focused on the relationship between the parcel and the requested use. *See York v. Clackamas County*, 79 Or LUBA 278, 286 (2019).

To interpret the meaning of terms set forth in approval criteria, the Board first looks to its definition section of the Code to see if the terms are defined. In the event they are not defined, the Board looks to the zoning code for interpretational rules. One of these rules is set forth at YCZO 201.01(F), and states:

F. Any word or term not defined herein shall be used with a meaning of common standard use. Any words, terms or phrases not defined herein, shall be construed according to their common, ordinary and accepted meaning.

For this reason, the Board looks to the dictionary to determine the plain meaning of undefined terms. The dictionary defines “suitable” as meaning: “...2.a. adapted to a use or purpose; fit... b. appropriate from the viewpoint of propriety, convenience, or fitness...” Webster's Third New Int'l Dictionary Unabridged (2002), at p. 2286. The Board interprets the word “suitable” consistent with its plain meaning. The Board considers each of the six prongs separately:

First, the Board considers the *size* of the parcel. At 30.9 acres, TL 1293 is large enough for the proposed use, and well-adapted to accommodate a 25' wide road within 50-foot ROW. The road would take up 1.26 acres of the property, the vast majority of which is already being used as a private driveway easement.

Second, the Board determines that the *shape* of the parcel is unremarkable, and appropriate to allow a road to head west from NW Willis Road, then south across TL 1293 to access the Applicants' other undeveloped, 3.1-acre lot (Tax Lot T4S R5W S1 TL 1292). The shape of TL 1293 is appropriate because it will allow this access to be sited in an efficient manner, given the topography of the site and the location of Tax Lot 1292.

Third, the Board determines that the *location* of the parcel - between NW Willis Road and the Applicant's other undeveloped, 3.1-acre lot (Tax Lot T4S R5W S1 TL 01292) – is appropriate for a road to connect the lot to NW Willis Road. The Board finds that there are no other viable

alternatives in any event. FOYC argues that the “location” of the parcel is not suitable for a road serving “up to 16 lots” because it is located in a “farmed and forested area” and it is in “peripheral big game winter range.” See FOYC Letter dated February 4, 2021, at p. 4. The Board finds that the evidence of actual farm and forest use on neighboring properties is scant, and the area is much more correctly viewed as rural residential in nature. Furthermore, FOYC does not explain why being in a “farmed and forested area” or a “peripheral big game winter range” makes the parcel “unsuitable” for a road. There many “roads” in the portions of Yamhill County that are peripheral big game winter range, and the Board is not aware on any particular impacts that low-volume, low-speed local access roads have on big game. The same thing is true of roads in “farm and forest areas.” There are very few commercial farms located in the immediate vicinity, and the Board is not aware of any lot (other than TL 1600 to the south) that has been actively logged in the past 20 years, or that is being actively managed for commercial forestry. The Board finds FOYC’s concern to be factually overstated.

Fourth, the Board finds the topography of the parcel is somewhat steep near NW Willis Road, but the terrain evens out as the proposed road travels west and south. The topography does not present an impediment to the siting of a public road. Preliminary drawings and studies submitted by the Applicants indicate this road alignment is both viable and safe. Most of the road can be built at a 10% grade or less, but a short 200-foot-long section will need to be set at 15% grade. The Public Works Department stated that the Applicants’ solution acceptable, as did the McMinnville Fire District. The Board notes that the Deputy Fire Marshal specifically commented on a previous design, and the Applicant’s redesigned the road to make it less steep in certain areas to address the concerns of the Deputy Fire Marshal.

FOYC argues that the “topography” of the parcel is not suitable for a road serving “up to 16 lots.” FOYC argues that the approach road onto Willis Road would need to be sited “on a sharp curve where sightlines are obscured by trees and other vegetation on property not controlled by the applicant.” See FOYC Letter dated February 4, 2021, at p. 4. FOYC ignores the fact that the topography has been historically sufficient to be used as a private road serving three lots, and has in fact been used in that capacity for years. FOYC also does not explain what specifically about the topography make the site suitable for a *private* road but not suitable for a *public* road. There are no different safety-related standards for private and public roads: the approach road location is either too steep or it isn’t. In fact, the proposed public road will be less steep than the existing private road. Also, the only expert evidence is the record concludes that the proposed intersection site distance is more than adequate.

FOYC also asserts that the site distance is inadequate because the Applicant used the wrong vehicle speed:

“The applicant’s conclusion that there is (barely) adequate sight distance at this intersection is based on an assumption that traffic does not exceed 30 m.p.h. on the portion of Willis Road.”

FOYC Letter dated February 4, 2021, at p. 3. This is an incorrect statement of the testimony of the Applicants’ traffic expert, Christopher M. Clemow, PE, PTOE. Mr. Clemow refuted these allegations, stating:

- ❖ Future development of the residential property served by Janke Road and Willis Road will not exceed the capacity of Willis Road.
- ❖ The proposed Janke Road can and will be designed and constructed to County standards.
- ❖ There has been recent vegetation removal on the north side of Willis Road that improves sight distance.
- ❖ Sight distance requirements are met for all turning movements for both the roadway design speed and the 85th percentile travel speed.
- ❖ There are no existing safety deficiencies along this section of Willis Road, and the proposed access is anticipated to operate in a safe and efficient manner.
- ❖ To address expressed safety concerns, it is recommended the County consider the installation of curve warning signs in advance of the curves on Willis Road.

See letter from Christopher M. Clemow dated March 4, 2021. The Board finds that the credibility of the FOYC testimony is diminished by her mischaracterization of the expert testimony presented by the Applicants' traffic engineer, which the Board considers substantial evidence.

FOYC states that "existing users * * * struggle with the grade," and that "users report that gravel is a better road surface than pavement in those conditions." See FOYC Letter dated February 4, 2021, at p. 4. The Board finds that the opponents' testimony that they "struggle" with the grade is overstated, because the opponents have used that access for over 40 years and made no effort to improve it. The Board finds that the opponents who currently use the graveled portion of the private driveway will continue to be able to use that easement for access to NW Willis Road if they so desire. The proposed new road will not replace that aspect of the existing private easement access. So whatever "struggles" that may exist will not be altered or made worse.

Fifth, the Board finds there are no "improvements" on the parcels that might get in the way of the proposed road. FOYC argues that "there is evidence that the proposed road could impact the replacement septic areas for TL 1290." FOYC provided no evidence to back up their assertion. The Applicant submitted expert testimony from Terry Vandegrift that effectively refuted the assertions made by FOYC. This evidence showed that there is sufficient room on Tax Lot 1291 for a replacement septic field, and that the proposed road will have no effect on the drainfields.

Sixth, the Board finds there are no "natural features" on the parcels that might get in the way of the proposed road. FOYC argues that the new road "presents concerns for ground and surface water movement." See FOYC Letter dated February 4, 2021, at p. 4. FOYC states that there is a "unnamed stream on the map and a pond further down slope," and that "users of the current easement are facing the cost of culvert installation due to water problems." *Id.* The Board finds this concern to be unsubstantiated. The proposed road will not alter the drainage pattern in

any way, other than to improve the situation with proper culverts built to County standards.

Lastly, County staff determined that “[T]he subject parcel does not host any identified sensitive wildlife habitat, historical features, nor is it located within a mapped 100-year floodplain.” Staff Report p.7. There is no evidence to the contrary. The Board concurs with this assessment, and finds that “peripheral big game winter range” is not the same as “sensitive wildlife habitat, which refers to a different mapping unit.

Some opponents voiced vague and unsubstantiated concerns about the effect of the proposed road on wetlands and/or wildlife. For example, opponent Jacob Sembler wrote “there is a stream very near the proposed road location. I am worried that construction and resulting traffic will negatively impact this low lying wetland habitat.” Sembler email dated January 27, 2021. Mr. Sembler made no effort to relate this concern to an approval criterion. Mr. Sembler made no effort to demonstrate that a wetland actually exists on or near the property, and no evidence of a wetland or its location can be found in the record. Neither County Planning Staff nor the County Public Works Department identified any wetlands, wildlife or habitat concerns involved with this land use application: “[T]he subject parcel does not host any identified sensitive wildlife habitat, historical features, nor is it located within a mapped 100-year floodplain.” Staff Report p.7. The Board finds there are no significant wetlands and/or wildlife issues that would legally justify denying this land use application.

The Board finds this criterion is satisfied.

D. The proposed use will not alter the character of the surrounding area in a manner which substantially limits, impairs or prevents the use of surrounding properties for the permitted uses listed in the underlying zoning district;

Findings: YCZO §1202.02(D) allows approval of a conditional use so long as it does not substantially limit, impair, or preclude the use of surrounding properties. The Board notes that this criterion is extremely subjective in nature, which is typical for CUP criteria. *See Morton v. Clackamas County*, 70 Or LUBA 7 (2014). *Compare Corbett/Terwilliger Neigh. Assoc. v. City of Portland*, 25 Or LUBA 601, 617 (1993) (Compatibility criteria extremely subjective); *Knudsen v. Washington County*, 39 Or LUBA 492 (2001) (same).

At the outset, the Board finds that this criterion requires findings which describe the character of the area. *Compare Broetje-McLaughlin v. Clackamas County*, 22 Or LUBA 198, 213 (1991). Nonetheless, YCZO §1202.02(D) *does not* require the County to independently address whether the proposed use “alter[s] the character” of the surrounding area. YCZO §1202.02(D) does not prohibit alteration of the character of the surrounding area, only alterations “in a manner that substantially limits, impairs, or prevents the use of surrounding properties for the primary use[.]” As YCZO §1202.02(D) is structured, *if* the Board concludes that the proposed use does not substantially limit, impair or preclude the primary uses of the surrounding area, *then* there is no need to address whether it has “alter[ed] the character” of the surrounding area in some other manner. *See York v. Clackamas County*, 79 Or LUBA 278, 286 (2019).

The focus of YCZO §1202.02(D) is on the impacts that the proposed “use” will have on

other “uses” which are “permitted” in the zoning district applicable to those uses. According to the definition section, the term “use” means “[t]he purpose for which land or a building or structure is used, designed, arranged or intended, or for which it is occupied or maintained.” The Board also interprets the term “permitted uses” consistent with the meaning set forth in the definition section of the Code: it means uses allowed by right, as opposed to conditional uses.

The scope of the proposed “use” is a primary issue in this case. In this case, the proposed use is a road that will be approximately 2000 feet long. The opponents seek to define the use more broadly as on its potential for future extension further to the South to reach TL 1600. In this regard, the opponents seek to have the county define the impacts of the proposed “use” as being a potential future configuration of the road with the attendant development of TL 1600. While it is true that the Applicants have indicated their likely future intent to extend the road to TL 1600 in the future, that plan is speculative at this stage. The County is not required to evaluate the ultimate future configuration of the road. Rather, it need only consider the configuration for which land use approval is currently being sought. In *Van Dyke Yamhill County*, ___ Or LUBA ___ (LUBA No. 2019-047, Oct. 11, 2019), the Board was faced with a similar argument, and LUBA resolved the “scope of use” in the County’s favor:

Petitioners argue that the 2.82-mile segment is part of a longer regional recreational trail that the county intends to construct, within the 12.48-mile right-of-way the county owns. Petitioners contend that the longer regional trail will attract large numbers of urban visitors from outside the local rural area, and the resulting influx of urban trail users will change the rural and agricultural character of the surrounding area.

Friends respond, and we agree, that the county did not err in evaluating under YCZO 1202.02(D) only the use actually proposed for conditional use approval--a 2.82-mile recreational trail--and not the longer regional trail that the county might someday seek to develop. Even if we accept petitioners' premise that the longer regional trail is likely to draw many non-local visitors, that regional trail is not the proposed conditional use, and need not be evaluated under YCZO 1202.02(D) in this proceeding.

Slip op. at pp. 75-6.

As mentioned above, YCZO §1202.02(D) requires the adoption of findings describing the character of the surrounding area, as well as findings concerning the impacts of the proposed conditional use on that character. Thus, to address this criterion, the Board must first define what constitutes the “surrounding area” for purposes of analysis. The terms “surrounding area” and “surrounding properties” are not defined by the Code, but these terms are typically interpreted as focusing the analysis on the “status of those living nearby.” *Marineau v. City of Bandon*, 15 Or LUBA 375 (1987). In this case, the Board defines the “surrounding area” as all adjacent properties as well as other nearby properties that could potentially be “limited” or “impaired” by the proposal.

The surrounding area is bounded by the two main existing transportation improvements, NW Willis Road to the east and north, and NW Berry Creek Road to the west and south. Apparent use was determined by site visits, roadside observation, aerial photographs, historical knowledge, as well as input from opponents gathered during the public hearings and written submissions in the record. The opponents did not suggest or argue that the selected geographic analysis area was too narrowly drawn. The properties in the surrounding area are mostly being used for rural residential uses. There are residences, underutilized pastureland, and small-scale hobby farms. There is one vineyard which was recently developed around 1000 feet +/- to the east of the proposed road. The uses include the following (clockwise, from west to north to east):

<u>Tax Lot Use</u>	<u>Zone</u>
4.5.02.0802 Rural residential, hay and/or grass seed crop, livestock pasture	EF-40
4.5.02.0700 Rural residential, hay production, livestock pasture	EF-40
4.5.02.1400 Rural residential, livestock pasture	EF-40
4.5.02.0400 Tree groves	AF-40
4.5.01.1101 Rural residential	EF-40
4.5.01.0900 Vineyard	EF-40
4.5.01.1290 Tree groves	EF-40
4.5.01.1291 Rural residential, Tree groves	EF-40
4.5.01.1292 Tree groves	EF-40
4.5.12.1600 Forestry	VLDR-2.5

Permitted uses in the EF-40 Zone include:

YCZO 402.02 Permitted Uses. In the Exclusive Farm Use District, the following uses shall be permitted subject to the standards and limitations set forth in subsection 402.09 and any other applicable provisions of this ordinance:

- A. Farm uses as defined in Subsection 402.10.***
- B. Farm stands...***
- C. Propagation and harvesting of a forest product.***
- D. Creation of, restoration of, or enhancement of wetlands.***
- E. A facility for the processing of farm crops located on a farm operation...***
- F. Utility facilities necessary for public service...***
- G. Accessory uses, including buildings other than dwellings customarily provided in conjunction with farm use.***
- H. Winery...***

- I. Operations for the exploration of minerals ...**
- J. Operations for the exploration for and the production of geothermal resources...**
- K. Signs, pursuant to the sign provisions set forth in Section 1006.**
- L. The following transportation facilities:**
 - 1. Climbing and passing lanes within the right of way...**
 - 2. Reconstruction or modification of public roads and highways...**
 - 3. Temporary public road and highway detours...**
 - 4. Minor betterment of existing public roads...**
- M. Alteration, restoration or replacement of a lawfully established dwelling...**
- N. Public or private school, including all buildings essential to the operation of a school...**
- O. Churches and cemeteries in conjunction with churches...**
- P. A site for the takeoff and landing of model aircraft...**
- Q. On-site filming and activities accessory to on-site filming...**
- R. Fire service facilities providing rural fire protection services...**
- S. Irrigation canals...**
- T. Utility facility service lines....**
- U. Subject to the issuance of a license, permit or other approval by the Department of Environmental Quality and with the requirements of ORS 215.246, 215.247, 215.249 and 215.251, the land application of reclaimed water, agricultural, or industrial process water or biosolids for agricultural, horticultural or silvicultural production...**
- V. The maintenance, expansion or enhancement of an existing site on the same tract for the disposal of solid waste...**
- W. A residential home...**
- X. Agri-tourism and other commercial events or activities....**

Permitted uses in the AF-40 Zone include:

YCZO 403.02 Permitted Uses. In the Agriculture/Forestry District, the

following uses shall be permitted subject to the standards and limitations set forth in Subsection 403.11, and any other applicable provisions of this Ordinance:

- A. Farm uses as defined in Subsection 403.12(E).**
- B. Farm stands....**
- C. Winery...**
- D. Accessory uses, including buildings other than dwellings customarily provided in conjunction with farm use.**
- E. A facility for the processing of farm crops or the production of biofuel...**
- F. The following forest uses....**
- G. Towers and fire stations for forest fire protection.**
- H. Water intake facilities, canals and distribution lines for farm irrigation and ponds.**
- I. Utility facilities necessary for public service...**
- J. Local distribution lines within existing rights-of-way (e.g., electric, telephone, natural gas) and accessory equipment...**
- K. The following transportation facilities:**
 - 1. Climbing and passing lanes within the right of way...**
 - 2. Reconstruction or modification of public roads and highways...**
 - 3. Temporary public road and highway detours...**
 - 4. Minor betterment of existing public roads...**
- L. Operations for the exploration of minerals...**
- M. Operations for the exploration for and the production of geothermal resources...**
- N. Alteration, restoration or replacement of a lawfully established dwelling...**
- O. Creation of, restoration of, or enhancement of wetlands.**
- P. Uses to conserve soil, air and water quality and to provide for wildlife and fisheries resources.**
- Q. Uninhabitable structures accessory to fish and wildlife enhancement.**
- R. Caretaker residences for public parks and fish hatcheries.**
- S. Destination resorts...**
- T. Private hunting and fishing operations without any accommodations.**

- U. Public or private school...**
- V. Churches and cemeteries in conjunction with churches...**
- W. A site for the takeoff and landing of model aircraft...**
- X. On-site filming and activities accessory to on-site filming...**
- Y. Fire service facilities providing rural fire protection services....**
- Z. Irrigation canals...**
- AA. Utility facility service lines....**
- BB. Subject to the issuance of a license...the land application of reclaimed water, agricultural, or industrial process water or biosolids for agricultural, horticultural or silvicultural production...**
- CC. A residential home as defined in ORS 197.660...**
- DD. Agri-tourism and other commercial events or activities.....**

Permitted uses in the VLDR-2.5 Zone include:

YCZO 502.02 Permitted Uses. In the VLDR Districts, the following uses shall be permitted subject to the standards and limitations set forth in subsection 502.06:

- A. Farm uses...**
- B. Propagation and harvesting of Christmas trees;**
- C. Principal Dwelling;**
- D. Subdivisions, subject to the land division requirements...**
- E. Residential planned unit developments...**
- F. Accessory uses;**
- G. Temporary structures as may be required during construction of an authorized permanent structure...**
- H. Manufactured home storage and temporary sales offices...**
- I. Signs, pursuant to the sign provisions set forth in Section 1006;**
- J. Residential home or a registered or certified family child care home...**
- K. Propagation and harvesting of forest products;**
- L. Accessory dwelling unit within an urban growth boundary....**

As mentioned *supra*, the character of the area is rural residential land uses, with small amounts of hobby farming occurring in the area.

The Board is also called upon to interpret the meaning of the phrase “substantially limits, impairs or prevents...”. As relevant here, Webster's Third New International Dictionary (unabridged ed. 2002) defines those terms as follows:

"limit * * * 2 a : something that bounds, restrains, or confines[.]” *Id.* at 1312.

"impair * * * to make worse : diminish in quantity, value, excellence, or strength : do harm to : DAMAGE, LESSEN[.]” *Id.* at 1131.

"Prevent: * * * to keep from happening or existing” *Id.* at 1798.

LUBA has noted that when an approval standard such as the one at issue here uses three different words with different meanings, all three prongs must be separately analyzed. *See York v. Clackamas County*, 79 Or LUBA 278, 288-9 (2019). In *York*, LUBA said that is error for a hearings officer to distill those terms into a single inquiry. Nonetheless, the Board is entitled to significantly more deference than the hearing officer in *York*. In light of that deference, the Board finds that although the dictionary definitions of these three terms suggests slightly different meaning, such differences are highly nuanced, and there is considerable overlap between these three standards that may not become relevant in all cases. Also, the Board finds that the analysis surrounding the “prevent” prong will be superfluous in the vast majority of cases, because the terms “limit” and “impair” create more easily triggered standards. Stated another way, a proposed conditional use may have impacts that “limit” or “impair” other uses long before the proposed conditional would “prevent” the other uses. In this regard, it is difficult to conceive of a situation where a use is “prevented” but not also “limited” or “impaired.”

The Board also considers the meaning of the term “substantially.” The term “substantially” is a qualifier: it means “significantly, markedly, and appreciably.” The word “substantially” modifies the words “limits, impairs, or prevents,” and suggests that the degree of impairment or limitation must be significant or appreciable. Some level of impact is allowed without triggering the prohibition or conditioning the proposed use. When a code requires that a proposed land use will not have a “substantial” impact, the applicant is not required to demonstrate that there will be *no* impacts. *See generally Rural Thurston, Inc. v. Lane County*, 55 Or LUBA 382, 390 (2007) (using similar analysis when interpreting ORS 215.296(1)). The Board interprets this provision to be focused on impacts that could cause fairly major disruptions, limitations, or impairments to a neighboring use or a potential allowed use. Minor inconveniences or annoyances are not of a nature that would “substantially limit, impair, or prevent” such uses. Thus, this criterion does not require the proposed use to be devoid of any impacts, but instead requires that whatever impacts do occur must not substantially limit, impair or preclude the use of adjacent properties for the allowed primary uses. The Board intends this to be a relatively low / permissive standard, and one that is limited in scope. For example, an applicant is not required to consider any decrease in property values of neighboring properties. *Reynolds v. Clackamas County*, 21 Or. LUBA 412 (1991); *Tylka v. Clackamas County*, 34 Or LUBA 14 (1998).

The Applicant evaluated the allowed uses set forth above and determined that the use of

the subject property for the proposed roadway use does not prevent neighboring properties from being used for the existing rural residential and farm and forest purposes, or otherwise restrain, confine, limit, impair or damage existing uses or other potential allowed uses. The Board finds it difficult to imagine any scenario where a simple 25' wide, dead-end, local access road within a 50-60-foot-wide right-of-way would substantially limit, impair or prevent the use of surrounding properties for any of these permitted uses, such as farm uses, residences, schools, churches, wineries, forestry operations, etc. To the contrary, low-usage rural access roads are complimentary to these allowed uses, and in fact are necessary to provide access nearly all of them. In addition, the proposed road will be located entirely on (and mostly surrounded by) land owned by the Applicants. This is discussed in more detail below, in the section analyzing and applying a related standard, ORS 215.296(1).

FOYC does not argue that the road, as currently proposed, damages, limits, or confines any existing use or potential future use. Rather, FOYC focuses of a future extension of the road to serve TL 1600. FOYC states that “[a] new road providing access to 11 new dwellings with designated [peripheral] big game winter range will undeniably alter its character.” See FOYC Ltr. dated February 2021, at p. 5. This argument is presented without evidentiary support, and the Board finds it is not sufficiently developed to enable a response. Nonetheless, FOYC is incorrect to suggest that “11 new dwellings” will take access from this road as least as it is currently proposed. As proposed, the new road will only serve two existing dwellings, on Tax Lots 1290, and 1291. It will also serve TL 1292 and 1293, both of which are currently vacant / undeveloped. TL 1292 is a lot created by Measure 37. It is possible that Tax Lot 1293 could qualify for a farm dwelling in the future, if it is ever converted to farm use.

In the future, if the proposed road is extended further to the south to access TL 1600, then it will be theoretically possible that it will serve upwards of eight to ten (8-10 +/-) lots, depending on factors not resolved at this time. As an example, the Applicant noted that water availability may be a limitation on development of TL 1600. However, this land use approval will not connect to TL 1600 without further land use approvals, and this CUP approval will not directly enable TL 1600 to develop. Future land use applications will address the issue of the development of TL 1600, if and when the landowner proposes that use.

The Board finds this criterion is met.

E. The proposed use is appropriate, considering the adequacy of public facilities and services existing or planned for the area affected by the use; and

Findings: This criterion requires the Board to evaluate the sufficiency of public facilities and services need to support the proposed use.

The Board gives the normal dictionary definition to the term “appropriate” and “adequacy.” Webster 's Third New International Dictionary Unabridged, 2002, defines “appropriate” as “specially suitable” (p. 106) and “adequacy” as “sufficiency for a purpose” (p.25).

The Board defines the term “public facilities” in a manner that is consistent with the way that term is used in the Comprehensive Plan, which includes “public lands and buildings, parks

and recreation areas and facilities, schools, police and fire protection, domestic water supply, sanitary and storm sewerage and other drainage facilities, and power, gas and telephone services.” Yamhill County Comprehensive Plan §IV.A.1. As an example, fire protection is a relevant “public facilit[y] and servic[e]” under YCZO 1202.02(E), which must be determined to be adequate to serve the proposed use. *Wissusik v. Yamhill County*, 20 Or. LUBA 246 (1990).

The Board finds that a road can, as a practical matter, only create impacts on two types of public facilities: (1) other transportation facilities such as adjacent roads and intersections, and (2) public storm drainage facilities. No party raised the issue of whether the Board must also consider impacts from development that might be allowed as of right, without further land use approvals, once the new public road is built. For example, since the new road will allow the construction of a new house on TL 1292 without further land use review, is it appropriate to consider if necessary public facilities are in place? In light of the fact that no party raises the issue, the Board passes on the question. Nonetheless, in this case the service providers do not express any concern about the road leading to any inadequacy of facilities or services.

In addition, no party raises concern about any existing or planned public facility other than the transportation network, so the Board may limit its discussion to those issues. A local access road is an appropriate use, given the current inadequacy of the existing public facility (roadway network) which provides no legal access needed to improve the 3.1-acre parcel (T4S R5W S01, Tax Lot 1292). As discussed *supra*, Yamhill County prohibits more than three parcels being served by a single private driveway. Yamhill County Land Division Ordinance #205 (as amended) §8(C).

FOYC relies on the same “10 new dwellings” fallacy to argue that “[t]he new road would dump about 110 more vehicle trips on NW Willis Road, or half again the existing volume.” Aside from the fact that the road, as currently proposed, would only serve one or two new dwellings, there is no evidence that the capacity of NW Willis Road is inadequate or otherwise unsafe. By the own admission, FOYC concedes that NW Willis Road currently has roughly 250 ADT per day. Local roads are designed to handle at least 400 ADT and in some cases 1500-2000 ADT, so the Board finds an additional 110 ADT over current volumes would not create capacity or safety problems. *See* Clemow Associates LLC traffic engineer’s report dated February 24, 2021.

FOYC asserted “the proposed intersection has limited sight distance that is further obscured by trees on property across Willis Road that the applicant does not own or control.” FOYC letter dated February 4, 2021, p. 3. FOYC argues that trimming these trees back from the NW Willis Road will interfere with farm or forest operations (presumably, forest operations on Tax Lot 4.5.01.400 to the north). *Id.* This is incorrect, for several reasons. First, the public right-of-way for NW Willis Road is sixty (60) feet wide, but the built road surface is only about 22 feet wide. Thus, there is ample space within the public right-of-way to add a retaining wall, if needed, and/or clear trees or other growth on either side of the public road without having any effect on any accepted forestry practice. In this regard, the Board finds that growing trees in a public roadway is not an “accepted forestry practice.” While landowners have the right to use portions of public ROW that has not be opened to the public, *Barton v. City of Portland*, 74 Or 75, 144 P 1146 (1914); *Killam v. Multnomah County*, 137 Or 562, 4 P2d 323, 325 (1931); *Prosch v. City of La Grande*, 14 Or App 546, 549-50, 514 P2d 351 (1973), a county has plenary power to open,

widen, and keep open and free from obstructions, all streets, and usually to extend and improve streets and public ways, subject ordinarily to the ultimate control by the state of its public highways. *Prosch v. City of La Grande, supra*. Trees and vegetation that block site distance are a public nuisance which can be removed from ROW without just compensation. *See generally City of Molalla v. Coover*, 192 Or 233, 252, 235 P2d 142 (1951)." In any event, the Yamhill County Public Works Department has already cleared back the vegetation FOYC was referring to.

Third, FOYC alleged that the "record contains abundant testimony about the (lack of) safety of the entry point onto Willis Road." FOYC letter of February 4, 2021, p.3. It is a true some opponents (*e.g.* Jacob Semmler, Dan Gilbreth, Joyce Morrow) gave their opinion that the section of NW Willis Road where the (proposed) NW Jahnke Drive would intersect is currently unsafe. This testimony is undermined by the fact that these opponents continue to use NW Willis Road on a daily basis, and the record contains no documented history of safety complaints to the Public Works Department or the Road Improvement Advisory Committee. The fact that the opponents only complain about the safety of NW Willis Road when a land use application has been filed suggests the road safety issue is pretextual and lacks credibility. Furthermore, the opponents' testimony came from lay persons with no training, specialized knowledge or expertise in traffic safety. A person truly qualified to give an expert opinion on traffic safety, professional engineer Christopher M. Clemow PE, PTOE, reached the following conclusions even before the vegetation was cut back:

"SAFETY ANALYSIS

NW Willis Road crash data was obtained from the Oregon Department of Transportation (ODOT) from January 2008 through December 2017 (10 years) and is attached for reference.

For the 5-mile length of Willis Road, there were only 4 recorded crashes and there were no recorded crashes in the vicinity of the property access. The attached Figure identifies crash locations.

Based on crash data, there are no existing safety deficiencies along this section of Willis Road, and the proposed access is anticipated to operate in a safe and efficient manner. It is further noted the existing access at this location also operates safely and efficiently.

SUMMARY

The following conclusions are made based on the materials contained in this analysis.

1. This transportation analysis includes a sight distance and safety analysis of the proposed property access (which is the same as the existing) serving the property addressed 13801 NW Willis Road, McMinnville, Oregon.
2. Intersection sight distance (ISD) and stopping sight distance (SSD) are met for all turning movements.

3. While not necessary, vegetation management on the north side of the NW Willis Road will improve sight distance.
4. Based on crash data, there are no existing safety deficiencies along this section of NW Willis Road, and the proposed access is anticipated to operate in a safe and efficient manner. It is further noted the existing access at this location also operates safely and efficiently.”

Clemow Associates LLC traffic engineer’s report dated October 26, 2020, page 7. As identified in that analysis, there is significant horizontal curvature on NW Willis Road at the proposed NW Jahnke Drive intersection that limits sight distance in both directions. The limitation results from vegetation and topography, noting the roadway curves around the base of a hill. Following the submittal of the October 26 Analysis, the Yamhill County Public Works Department removed vegetation on the north side of NW Willis Road, significantly improving sight distance. The Applicants’ February and March 2021 analysis materials presented sight distance measurements obtained after the vegetation removal and found that intersection and stopping sight distance requirements were met for all turning movements. *See* letter from Christopher M. Clemow dated March 4, 2021.

The Yamhill County Transportation System Plan (TSP) classifies Willis Road as a *Local Road* and based on the Yamhill County Roadway Standards for New Construction/Reconstruction Projects for Local Roads, the design speed on level terrain is 30 MPH. This is only the design speed.

There is no posted speed limit on NW Willis Road; therefore, the statutory speed limit is 55 MPH. Additionally, while not required for sight distance analysis on low-volume roads, field data collected found the 85th percentile vehicle speed on NW Willis Road in the vicinity of Janke Road is 41 MPH. Further, the Applicant's sight distance analysis found, and the Board agrees, that intersection and stopping sight distance requirements were met for all turning movements for both the roadway design speed and the 85th percentile travel speed.

The Board often gives greater weight to the opinion of a trained, certified traffic expert, and thus finds the proposal in this case meets all relevant traffic safety standards. It should also be noted the Yamhill County Department of Public Works reviewed this proposal and raised no traffic safety concerns.

The Board finds this criterion is met.

F. The use is or can be made compatible with existing uses and other allowable uses in the area.

Findings: YCZO 1202(F) requires the Board to adopt findings demonstrating that “the use is or can be made compatible with existing uses and other allowable uses in the area.”

The Board must first determine the correct meaning of the phrase “compatible with existing uses and other allowable uses in the area.” The term “compatible” is not defined in the

Code. Turning to Webster's Third New International Dictionary, the term "compatible" is defined as follows:

"Capable of existing together in harmony." Capable of existing together without discord or disharmony.

Webster's Third New International Dictionary Unabridged, 2002, p. 463. *See generally Vincent v. Benton County*, 5 Or LUBA 266 (1982), *aff'd*, 60 Or App 324, 653 P2d 279 (1982) (noting this definition). The same dictionary offers the following definitions of the terms used in the definition above.

Harmony: "Correspondence, accord" <lives in *harmony* with her neighbors>

Correspondence: "the agreement of things with one another, a particular similarity."

Accord: "to bring into agreement : reconcile."

Thus, compatibility does not mean "no impacts whatsoever." Rather, it means living together harmoniously. *La Pine Pumice Co. v. Deschutes County Board of Commissioners*, 13 Or LUBA 242 (1985). LUBA has stated that even though compatibility is defined as there being an "agreement," it does not require that the surrounding landowners necessarily agree that the proposed use is compatible. *Clark v. Coos County*, 53 Or LUBA 325 (2007). Rather, it is up to the decision-maker to make a determination, based on the evidence in the record, whether the proposed use is compatible with its surroundings. In other words, neighbors do not necessarily have "veto" power over an application. Nonetheless, neighbor testimony is important when evaluating whether two land uses are going to be able to live in harmony with one another.

Compatibility findings require a number of analytical steps, which we discuss below.

Step 1: Define the proposed use.

The first step in analyzing this criterion is to determine the nature and scope of the proposed use. *See generally Columbia Riverkeeper v. Columbia County*, 70 Or LUBA 171 (2014), Slip op at 58 ("We generally agree with petitioners that because the compatibility standard focuses on "adverse impacts," it cannot be meaningfully addressed unless the "proposed use" is described sufficiently to identify and evaluate its likely adverse impacts.").

In this case, the proposed use is a short, dead-end public road that will serve four residences. The proposed NW Jahnke Drive roadway will be 2,316.63 feet in length and have a 24-foot paved width. NW Janke Drive will intersect the south side of NW Willis Road on the outside of a horizontal curve near the Applicant's northeast property corner. The road will be professionally finished with an all-weather surface. Traffic will likely be rural residential with the roadway serving adjacent residences. The County expects these types of vehicles will include ordinary passenger cars, light trucks and sport-utility vehicles, with the occasional ambulance, fire

truck, commercial delivery van such as those commonly used by UPS, FedEx and Amazon. The road could also be used by logging trucks and construction vehicles on a temporary basis. Daily traffic is anticipated to be 40 or fewer average daily trips (ADT), based on the rule-of-thumb of 10 ADT per residence on weekdays. Based on Yamhill County *Local Road* design standards, the road capacity is 400 ADT, so the anticipated traffic level is far below the carrying capacity.

Step 2: Define the Geographic Study Area: What is Meant by the Term “Area.”

When approval standards require an examination of impacts on a geographic area, the decision maker must delineate the area that is being examined. *DLCD v. Curry County*, 21 Or LUBA 130, 135 (1991); *Benjamin v. City of Ashland*, 20 Or LUBA 265, 271 (1990); *Multnomah County v. City of Fairview*, 18 Or LUBA 8 (1989).

The term "area" is capable of more than one possible meaning and, therefore, requires interpretation. Unfortunately, the zoning code does not define the term “area.” The Comprehensive Plan also does not define the term either. *See generally O'Mara v. Douglas County*, 25 Or LUBA 25, 37, *rev'd and rem'd on other grounds*, 121 Or App 113, 854 P2d 470, *rev'd*, 318 Or 72, 862 P2d 499 (1993) (county must apply the "adjacent" language in zoning code consistently with the county's comprehensive plan, which defined the term.).

The dictionary defines “area” to mean “5.b. an expanse or tract of the earth’s surface...b: a section, district, or zone of a town or city”. Webster’s Third New International Dictionary Unabridged, 2002, p. 115. This definition is not particularly enlightening.

One possibility is that the phrase is intended to identify properties that directly abut the subject property. The phrase “surrounding area” can be interpreted as being more limited in scope. *Leathers Oil Co. v. City of Newberg*, 63 Or LUBA 176 2011 (surrounding “area” only refers to those land uses that are across the street and adjacent). On the other hand, the term “area” can also mean “nearby.” In similar contexts, LUBA has held that could interpret terms such as “surrounding area” and “adjacent” to mean “nearby.” *Stefan v. Yamhill County*, 18 Or LUBA 820, 844-45 (1990); *Marineau v. City of Bandon*, 15 Or LUBA 375 (1987). The Board, in this context, the interprets the word “area” to be consistent with, and synonymous to, the term “surrounding area” as used in YCZO §1202.02(D). The “area” includes adjacent parcels to the subject lot which shall be crossed or served by the proposed road, as well as other nearby parcels that could be impacted by the proposed road. The Board again finds that the surrounding area is bounded by the two main existing transportation improvements, NW Willis Road to the east and north, and NW Berry Creek Road to the west and south.

Step 3: Discuss What is Meant by “Other Allowable Uses” which are “Anticipated” in the “Area.”

This criterion requires the Board to not only consider impacts on uses that are “existing” in the area but also those potential futures use that are “allowable” in the area. *See generally Horizon Construction, Inc. v. City of Newberg*, 28 Or LUBA 632 (1995) (conditional use standard requiring reasonable compatibility with, and no more than minimal impact on, "appropriate development" of surrounding properties authorizes the local government to consider a proposed

conditional use's compatibility with, and impact on, future development of vacant properties). Similarly, in *Vizina v. Douglas County*, 16 Or LUBA 936 (1988), Douglas County approved a CUP for a gravel aggregate mine. One of the approval criteria was quite similar to YCZO 1202(F) inasmuch that it required the applicant to demonstrate that “[t]he proposed use is or may be made compatible with existing adjacent permitted uses and other uses permitted in the underlying zone.” On appeal to LUBA, Petitioners argued that County failed to adopt findings that the proposed use is or may be made compatible not only with the existing adjacent uses, but also with every other use permitted within the FF and FG zones. LUBA agreed, and remanded the County’s decision for additional findings regarding the proposed uses’ compatibility with potential future uses which are permitted in the zones applicable to those properties.

The Board makes two interpretations with regard to this aspect of the criterion.

First, the Board notes that YCZO §1202.02(D) uses the term “permitted” use whereas YCZO §1202.02(F) uses the term “allowable” use. The Board is mindful of the rule of construction that the use of different terms can suggest an intent to give different meaning to these terms. In this regard, the term “allowable” could be read to include both permitted uses and conditional uses. However, Board finds that the term “allowable” should be interpreted to only include consideration of permitted uses.

First, the Board looks at context, including the code definitions of “permitted use” and “conditional use,” as follows:

PERMITTED USE: A use permitted outright in a zoning district which complies with all of the regulations applicable in that district.

CONDITIONAL USE: A use not permitted outright in a zoning district but which may be allowed by permit, subject to review for compatibility with existing and anticipated future uses, and compliance with Section 1202 and any other applicable provisions of this ordinance. Amended 8/23/89; Ord. 492]

YCZO 202. In consideration of these two definitions, the Board finds that “allowable” refers to those uses that are listed in the base zone as being allowed or permitted *by right* in the zone, but does not include uses which are *conditionally permitted* in the base zone. The Code separates permitted (allowed by right) uses from conditional uses and creates different criteria for those two types of uses. By the express definition set forth above, conditional uses are not allowed by right in the zone. Rather, they are uses that “may” be allowed by permit, and the term “may” is permissive, as opposed to being mandatory. This means that the County is not required to “allow” a conditional use on any given property within the zone. Therefore, conditional uses cannot be “anticipated,” because they require approval based on a public process applying highly discretionary criteria. Furthermore, because the approval of a conditional use requires the use to be compatible with existing uses in the area, including those uses that have been allowed via a CUP, it makes no sense to require that a “first in time” CUP be required to show that it is compatible with a future potential use that will require a CUP. Such a requirement would be analytically circular, and the Code should not be read to create such a form of paralysis through

analysis. It follows, therefore, that the County is not required to consider the impacts that the proposed conditional use will have on potential future conditional uses. In fact, the opposite is true: future conditional uses will be evaluated for the impact that those uses will have on “existing uses,” including then-existing conditional uses in operation at that time.

Second, the Board interprets YCZO 1202.02(F) such that only compatibility with those future allowable uses that are “anticipated” in the area need to be considered and evaluated. This interpretation is based on the express wording on the definition of “conditional use,” which uses that terminology. According to Webster’s Third New International Dictionary (2002), the term “anticipated” means: “to consider in advance; give advance thought, discussion, or treatment, to {the author had *anticipated* the question in a preceding chapter}; to deal with in advance.” (p.94).

Therefore, the Board must make findings about the current and likely uses “by right” in the following zones: EF-40, AF-40, and VLDR 2.5, which brings us to Step 4.

Step 4: Identify the existing uses and anticipated future uses in the area.

In *Thomas v. Wasco County*, 35 Or LUBA 173 (1998), LUBA stated that a local provision requiring compatibility between a proposed use and development of abutting properties by outright permitted uses does not require an exhaustive listing and discussion of every subcategory of use permitted in the area. Rather, a county’s general description of permitted uses and explanation why the proposed use is compatible with types of permitted uses is adequate.

The surrounding properties include the following existing uses:

<u>Tax Lot</u>	<u>Existing Use</u>	<u>Zone</u>
4.5.02.0802	Rural residential, hay and/or grass seed crop, livestock pasture	EF-40
4.5.02.0700	Rural residential, hay production, livestock pasture	EF-40
4.5.02.1400	Rural residential, livestock pasture	EF-40
4.5.02.0400	Tree groves	AF-40
4.5.01.1101	Rural residential	EF-40
4.5.01.0900	Vineyard	EF-40
4.5.01.1290	Tree groves	EF-40
4.5.01.1291	Rural residential, Tree groves	EF-40
4.5.01.1292	Tree groves	EF-40
4.5.12.1600	Forestry	VLDR-2.5

The Board explained the permitted uses in the EF-40, AF-40 and VLDR 2.5 zones previously on pp.7-11, and need not repeat them here. The character of the area is rural residential land uses, with small amounts of hobby farming occurring in the area along with one commercial vineyard. Given the mostly rural-residential nature of the existing land use pattern, the Board does not anticipate much deviation from these types of uses in the future.

Based on the testimony provided by neighbors, the only future “use” that is “anticipated” for the “area” is a vineyard. Although the opponents do not suggest it, the Board finds that the

presence of vineyards implicitly suggests that an ORS 215.452 winery could also be “anticipated.” As noted by opponent Joyce Morrow, her property (Map No. 4502 Tax Lots 800 and 802) contains Jory soils and other soils that are well-suited for vineyards. Nonetheless, a dead-end public local access road is compatible with both a vineyard and a winery. In fact, any winery on the Morrow property would likely need to use the proposed new public road for access to Willis Road, because the existing gravel private driveway access is likely too steep and too sharp to accommodate the types of intensive two-way commercial traffic associated with a winery.

Ms. Morrow stated she “raises sheep and cattle” but provided no evidence of this use, nor did she substantiate any other farm or forest operation on her land. Aerial photography in the record does not confirm the presence of any extensive livestock operation on her property. Moreover, the Applicant’s agricultural expert, Tom Thomson, determined that Ms. Morrow’s parcels “have not been farmed commercially in many years and most likely will have no commercial cropping in the foreseeable future. Indeed, the presence of smaller broadleaf flowering plants indicates that the field most likely had not been sprayed with herbicides and in its current state would not make hay of commercial quality.” Northwest Agricultural Consulting report dated June 15, 2021. The Board finds that any livestock operation occurring on the Morrow property is of such small hobby scale that no compatibility issues are raised.

Ms. Morrow expressed concern she might somehow be “forced” to use the proposed NW Jahnke Drive, but this is untrue. Ms. Morrow has access to her parcel from a private easement that is wholly separate from the proposed NW Jahnke Drive, and maps in the record show that the two roadways will not intersect or even come near to contacting one another.

There was little other substantial testimony from opponents that suggested that the land in the area would be used in the future for any other land use, nor it is obvious what other land uses could possibly exist in the future.

Step 5: Explain how the proposed use is “compatible” with existing uses and anticipated future uses.

In this case, the following facts are deemed relevant to making the determination of compatibility between the proposed road and neighboring uses:

- ❖ There is an existing private road that gives access to at least five dwellings in the area.
- ❖ The existing road is partially paved and partially graveled.
- ❖ There is no evidence in the record suggesting that there is a history of the existing road causing conflicts with neighboring uses. In fact, no opponent stated that the existing private road conflicts with their use in any way.
- ❖ The dominant land use in the area is rural residential use. What little farming that occurs in the area is primarily done for the purpose of maintaining tax deferral status, and with the exception of the vineyard, appears to be hobby farms.
- ❖ The one commercial farm in the area is a proposed vineyard, and it is located roughly 1000 feet away from the proposed road.

The proposed use (a dead-end, low-traffic-volume road serving a few residences) will be compatible with anticipated allowable uses due to the very minor externalities of such a roadway. These include:

- ❖ Noise
- ❖ Exhaust Odor
- ❖ Traffic
- ❖ Dust
- ❖ Glare from headlights

We discuss each externality in turn.

Noise. The opponents did not raise any concerns over noise. The Board finds the noise of passing cars will have no discernible effects on existing uses, anticipated future uses in the area, and accepted farm practices. The applicant correctly notes that vehicle noise is directly related to the speed of travel. The provided unrefuted testimony that a passenger car or medium truck travelling at 30 m.p.h. generates very little noise, perhaps 62 to 73 decibels. The Applicants' expert further testified that the same vehicles travelling 45 m.p.h. on existing NW Willis Road or NW Berry Creek Road are much noisier, 68 to 79 decibels. This evidence was unrefuted, and the Board finds that it is reasonable and substantial.

Although unexpected loud or novel noises such as banging gates or load exhaust from air cylinders can startle cattle and horses, these animals will quickly acclimatize to noises such as cars traveling on rural roads at slow speeds. There is no evidence of any livestock that are especially sensitive to noise.

The Applicant proposes to have the road built and sealed with an all-weather surface which will virtually eliminate audible traffic noise beyond a range of 75 feet or so. As the road will be entirely on the Jahnke property, neighbors will be able to detect little if any traffic noise from ordinary passenger vehicles common on rural residential roads. Thus the Board finds the little traffic noise generated will be compatible with existing uses and anticipated future uses in the area.

Exhaust Odor / Fumes. The opponents did not raise any concerns over exhaust odor or fumes. Automobiles emit exhaust, but today's automobiles burn much cleaner than those in decades past. Car exhaust fumes may contain certain chemicals, including carbon monoxide, nitrogen oxides, formaldehyde, benzene, sulfur dioxide and soot; it is the latter two which cause the detectable odors. Modern cars must pass Oregon Department of Environmental Quality emissions checks in order to be licensed to drive on public roadways. Any such vehicle will not produce odor detectable to humans much beyond 10-20 feet in an outdoors setting with minor wind blowing. As the road will be entirely on the Jahnke/Dolence property, neighbors will be able to detect little if any traffic exhaust odor from ordinary passenger vehicles. The Board finds the negligible exhaust odor generated will be compatible with existing uses and anticipated future uses in the area.

Traffic. The opponents did raise concerns over traffic, but their issue related to the traffic created by the development of TL 1600. The Applicants propose to build a dead-end public road that will only serve a few residences. The resulting traffic will likely generate fewer than 10 additional trips per day per residence. It will safely connect to NW Willis Road, which currently operates well below capacity. *See* Clemow Associates LLC traffic engineer's reports dated October 26, 2020 and February 24, 2021. The Board finds this tiny increase in additional traffic generated will create no significant safety problems and the new traffic will be compatible with existing uses and anticipated future uses in the area.

Dust. The opponents did not raise any concerns over dust. The Applicant proposes to have the road built and sealed with an all-weather surface. It will be a dead-end road that only serves a few residences. Given the low traffic volume and road surface, dust generation will be minimal, and occur only on property owned by the Applicant and family members. The Board finds the negligible amount of dust generated will be compatible with existing uses and anticipated future uses in the area.

Vineyards and other crops can be susceptible to dust, especially at the critical time before harvest. However, dust from dirt roads usually only effects the vines that are with 50-100 feet of the road. In this case, the Applicant is proposing to create an all-weather surfaced road that only creates minimal dust, and it will be located at least 800-1000 feet away from any existing vineyards. Even if Ms. Morrow plants a vineyard, there will be a vegetative buffer between the two properties that will mitigate dust. The Board finds the negligible amount of dust generated will be compatible with existing vineyards or other crops and anticipated future vineyards or crops in the area.

Glare from Headlights. The opponents did not raise any concerns over glare from headlights. Glare from headlights might be an issue if certain animals which are sensitive to light were being raised. However, most domestic farm animals are not especially sensitive to headlights, and quickly get used to routine short-term glare caused by headlights. In any event, the road is designed so that it does not light onto adjacent fields which may be used for livestock now, or in the future. The Board finds the small amount of headlight glare created will be compatible with existing uses and anticipated future uses in the area. If headlight glare becomes an issue in the future. It can be remedied with vegetative screening within the ROW.

County planning staff found - and the Board agrees - that "there is nothing in the record to indicate that a road cannot be made compatible with existing and allowable uses in the Exclusive Farm use, Agriculture/Forestry Large Holding, or Very Low-Density Residential zones so long as appropriate conditions are applied to any approval." Staff Report at pp. 8-9. The Board has applied such conditions, which may be found at the end of these findings.

The Board finds the proposed new public road is compatible with all of the above listed permitted uses in the EF-40, AF-40, and VLDR-2.5 zones. Indeed, all (or nearly all) of these uses depend on the existence of roads to exist and continue.

The Board finds this criterion is met.

III. Applicable Regulations - ORS 215.296(1)

Conditional Uses in the EFU district must also comply with ORS 215.296:

ORS 215.296'

Standards for approval of certain uses in exclusive farm use zones

(1) A use allowed under ORS 215.213 (Uses permitted in exclusive farm use zones in counties that adopted marginal lands system prior to 1993) (2) or (11) or 215.283 (Uses permitted in exclusive farm use zones in nonmarginal lands counties) (2) or (4) may be approved only where the local governing body or its designee finds that the use will not:

(a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; or

(b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

Findings: Yamhill County implements ORS 215.296(1) via YCZO 402.07(A), which contains language that is the functional equivalent of the statute:

YCZO 402.07 Additional Standards for Approval of Conditional Uses

A. In the Exclusive Farm Use District, prior to establishment of a conditional use, the applicant shall demonstrate compliance with the following criteria in addition to other requirements of this ordinance:

1. The use will not force significant change in accepted farming or forest practices on surrounding lands devoted to farm or forest use.

2. The use will not significantly increase the cost of accepted farming or forest practices on surrounding lands devoted to farm or forest use.

Pertinent findings for purposes of ORS 215.296(1)(a) and (b) must at least:

- (1) describe the farm *practices* on surrounding lands devoted to farm use;
- (2) explain why the proposed use will not force a significant change in those practices; and
- (3) also explain why the proposed use will not significantly increase the cost of those practices.

Brown v. Union County, 32 Or LUBA 168 (1996). The Board finds the Applicants have adequately demonstrated that the proposed use will force no significant change in accepted farming or forestry practices or their cost.

In this case, analysis of the three steps leads to the following conclusions:

(1) describe the farm and forest practices on surrounding lands devoted to farm and forest use;

As mentioned above, LUBA has explained that the first step in completing the necessary findings is to describe the farm practices on surrounding lands devoted to farm use. This task can be further broken down into three parts.

Step 1, Part 1: Define the Analysis Area. Because the focus of ORS 215.296(1) is on the impacts of the proposed conditional use on agricultural practices in the proximate surrounding area, it is important to define an analysis area based on the reach of expected impacts of the proposed use. In this regard, it is inconsistent with ORS 215.296(1) to arbitrarily limit the scope of analysis to properties to a certain distance without regard to impacts. *Wilbur Residents v. Douglas County*, 37 Or LUBA 156 (1999). Nonetheless, LUBA generally takes a practical approach to the analysis, and therefore the County's failure to separately analyze more distant properties in the study area or identify its outer boundaries is not reversible error, where the County found no significant impacts on parcels adjacent to the subject property and, given the homogeneity of the surrounding area, significant impacts on non-adjoining parcels are unlikely. *Sisters Forest Planning Comm. v. Deschutes County*, 48 Or LUBA 78 (2004).

In this case, the Applicant defined what will be considered the "surrounding lands" based on anticipated impacts. The Applicant determined these uses by visual inspection from public right-of-way, knowledge of the local area, examination of current and historic aerial photographs, and consultation with expert Tom Thomson of Northwest Agricultural Consulting, who researched and personally visited the area.

The proposed use is a dead-end road that will serve only a few parcels. Since the proposed conditional use is a road, the boundaries chosen were the existing roads. The analysis area is generally bounded by the two main existing transportation improvements, NW Willis Road to the east and north, and NW Berry Creek Road to the west and south. The Applicant provided a map showing the entire analysis area. The proposed road's possible externalities are noise, dust, and possible traffic accidents from the passing vehicles. As these effects can only impact someone or something on (or right next to) the road, generally speaking only contiguous properties to Tax Lot 1293 were specifically analyzed in the analysis area. This analysis area is considerably larger than the 750' notice area. The County generally assumed, in the absence of facts to the contrary, that if these were no impacts on contiguous parcels, then there would also be no impacts on parcels further away, unless a specific sensitivity is present. *Sisters Forest Planning Comm. v. Deschutes County*, 48 Or LUBA 78 (2004). The opponents identified no property that had especially sensitive farm or forest uses or accepted practices.

Step 1, Part 2: Inventory Properties Within the Analysis Area that are in "Farm or Forest Use".

Once "surrounding lands" is defined, the applicant must provide an inventory of surrounding lands and uses.

ORS 215.203(3)(c) defines the term “farm use” as follows:

(2)(a) 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. “Farm use” does not include the use of land subject to the provisions of ORS chapter 321, except land used exclusively for growing cultured Christmas trees as defined in subsection (3) of this section or land described in ORS 321.267 (3) or 321.824 (3).

Goal 4 defines “forest lands” as follows:

“Forest lands are those lands acknowledged as forest lands as of the date of adoption of this goal amendment. Where a plan is not acknowledged or a plan amendment involving forest lands is proposed, forest land shall include lands which are suitable for commercial forest uses including adjacent or nearby lands which are necessary to permit forest operations or practices and other forested lands that maintain soil, air, water and fish and wildlife resources.”

Thus, the Board recognizes that the “farm impacts” approval criterion only requires a demonstration of whether the proposed road will force a significant change in or significantly increase the cost of accepted farming practices, not rural residential uses generally. *Wetherell v. Douglas County*, 51 Or LUBA 699 (2006), *aff’d*, 209 Or App 1, 146 P3d 343 (2006)(allegations to impacts to wells that serve domestic purposes do not provide a basis to reverse or remand the approval of a nonfarm dwelling under the farm impacts test); *Dierking v. Clackamas County*, 38 Or LUBA 106 (2000) *aff’d* 170 Or App 683, 13 P3d 1018 (2000) (Impacts on “farm families, residents and workers” are not impacts on “accepted farm practices,” that must be considered under ORS 215.296(1).).

The scope of “accepted farming or forest practices” that must be evaluated under the no significant change/increase standard is a fact-specific inquiry. A County does not err in evaluating the scope and intensity of “accepted forest practices” on adjacent lands based on the farm uses currently or recently occurring in the area. In *Dierking v. Clackamas County*, 38 Or LUBA 106, 121 (2000) *aff’d*, 170 Or App 683 (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.”

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. Stated another way, 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. *Contrast Resseger v. Clackamas County*, 7 Or LUBA 152, 157 (1983) (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.).

Also, 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.

ORS 215.296(1) also does not require the local government to address the indirect and speculative possibility that the owner of the land on which the proposed dwelling will be located may decide in the future not to lease any portions of the subject property that may have been available for leasing for grazing in the past. *Womelsdorf v. Jackson County*, 62 Or LUBA 34 (2010).

Inventory of Properties Within the Analysis Area in “Farm” or “Forest” Use.

<u>Tax Lot</u>	<u>Use</u>	<u>Zone</u>
4.5.02.0802	Rural residential, hay and/or grass crop, livestock pasture	EF-40
4.5.02.0700	Rural residential, hay production, livestock pasture	EF-40
4.5.02.1400	Rural residential, livestock pasture	EF-40
4.5.02.0400	Non-managed tree groves	AF-40
4.5.01.1101	Rural residential	EF-40
4.5.01.0900	Vineyard	EF-40
4.5.01.1290	Non-managed tree groves	EF-40
4.5.01.1291	Rural residential, non-managed tree groves	EF-40
4.5.01.1292	Non-managed tree groves	EF-40
4.5.12.1600	Forestry	VLDR-2.5

The substantial evidence supporting this conclusion includes a recent aerial photo showing surrounding uses, tax maps showing tax lot sizes, tax records from the Department of Assessment & Taxation showing improvements and tax assessments for surrounding tax lots, description of accepted farm practices and a USGS topography map for the surrounding area.

Step 1, Part 3: Identify the Farm Practices Employed by the Inventoried Farms.

The next aspect of the first step identified by LUBA is to identify the accepted farming practices occurring on the farms that have been identified and inventoried in Step 1, Part 2. Note that the two phrases “farm practices” and “farm 'uses” connote discrete elements for purposes of ORS 215.296(1); the former occurs on lands devoted to the latter.

This task is most often accomplished by means of a visual survey, which is then supplemented by information gained via the public hearing process:

Based on [the survey of farms uses], it is also appropriate to identify the accepted farming practices that are associated with the observed farm and forest uses. Unless some question is raised about the accuracy or completeness of the survey, the analysis required by ORS 215.296(1) may be limited to the farm uses and accepted farming practices identified through such a visual survey. However, once petitioner advised the county and applicant that he was in the process of changing the existing farm use of the property to an organic herb farm and botanical garden, the applicant and the county were no longer entitled to rely on the visual survey as the sole basis for determining the farm use to which petitioner's property is devoted.

Dierking v. Clackamas County, 38 Or LUBA 106, 120-121 (2000), *aff'd*, 170 Or App 683 (2000).

LUBA has confirmed that a county may properly base its identification of "accepted farm or forest practices," as those terms are used in ORS 215.296(1), on the definition of "accepted farming practice" in ORS 215.203(2)(c). *Schellenberg v. Polk County*, 22 Or LUBA 673 (1992). ORS 215.203(3)(c) defines the phrase “accepted farm practice” as follows:

As used in this subsection, “accepted farming practice” means 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.

In contrast, LUBA has held that impacts on “farm families, residents and workers” are not impacts on “accepted farm practices,” that must be considered under ORS 215.296(1). *Dierking v. Clackamas County*, 38 Or LUBA 106 (2000), *aff'd*, 170 Or App 683 (2000).

In this case, the Applicant broadly identified the following farm practices as possibly occurring on parcels in the Analysis Area, even though there was little actual evidence of actual farm or forest uses:

- ❖ ground-based application of fertilizer/herbicides,
- ❖ plowing fields, and allowing hay and grains to dry (in the open air or drying sheds),
- ❖ manual and machine-assisted harvesting of crops, and
- ❖ transport of harvested crops from the site on roadways.

The Board finds that the opponents submitted little evidence of any actual farm practices occurring on nearby property. As an example, Ms. Morrow stated that she raised sheep and cows but provided no evidence of this practice. Aerial photography in the record does not confirm the presence of any extensive livestock operation. The applicant's expert did not see evidence of a livestock operation, such as animal trails or evidence that animals have been grazing. The Board finds that whatever livestock operation is occurring on the Morrow property must be very small in scale because otherwise the impacts from that operation would be visible. Ms. Morrow did not describe any particular farm practices that might be impacted by the proposed road.

Ms. Morrow also stated that her property contained soils that were recognized as being very good for wine grapes. She suggested that her property might be used as a winery in the future. It is true that where a party during local proceedings advises the county that an existing or prior farm use on surrounding lands is in the process of being abandoned, and plans for the new farm use are sufficiently developed to allow the new farm use to be described in sufficient detail to allow the farm practices that will be associated with the new farm use to be identified, an applicant for a nonfarm use that is subject to ORS 215.296(1) must address the accepted farming practices that will be associated with that new farm use. *Dierking v. Clackamas County, supra*. However, the rule set forth in *Dierking* does not apply because Ms. Morrow does not state her plans with sufficient detail to identify the farm practices that will be required for such a vineyard. Ms. Morrow also did not identify any farm practices associated with her envisioned future vineyard. In light of the lack of testimony from opponents, the Board can only make generalized statements about the types of farm practices that are typical of vineyards, as set forth by the Applicant.

The only intensive farm operation in the near vicinity is the vineyard that was recently created on TL 900 T4S, R.5W section 1. The vineyard owner did not testify that their vineyard or any farm practices associated therewith would be impacted in any way. Generally speaking, a vineyard can be expected to employ some or all of the following farm practices:

- ❖ Trimming grape plant stalks in January – February, while the plant is dormant,
- ❖ Soil conditioning (tilling, adding tiles for drainage, and similar soil modification),
- ❖ ground-based application of fertilizer/herbicides/fungicides/insecticides,
- ❖ Fencing to keep deer out of vineyard,
- ❖ Control of nuisance animals (turkey and other birds/rodents/etc.),
- ❖ Irrigation (esp. in early years before the roots are well-established),
- ❖ Mowing and weed control,
- ❖ Dropping fruit clusters to improve fruit intensity,
- ❖ Leaf removal to help fruit get exposure to sun, and
- ❖ Harvesting in September or October.

Based on the Applicants' personal knowledge of the immediate local area, visual inspection, examination of current and historic aerial photographs, and consultation with expert Tom Thomson of Northwest Agricultural Consulting, there does not appear to any active "forestry" activity occurring in the Analysis Area other than on land owned by the Applicant. The Board finds that the opponents submitted no evidence of any actual forest practices. Although tree groves of naturally-occurring tree species are found in the area, they do not appear to be activity managed or cultivated, nor are there sufficient concentrations of commercially viable tree species. Because there appears to be no active forestry activity, management, or commercial forestry practices on lands other than those owned by the applicant, the Board finds that no forest practices occur in the area.

Step 2: Explain Why the Proposed Use Will Not Force a Significant Change in the Identified farm practices.

Having inventoried the surrounding farms uses and identified the accepted farm practices occurring on those farms, the next "step" identified by LUBA is to explain why the proposed use will not force a significant change in those *practices*. This step can also be further broken down into two subparts:

Step 2, Part 1: Describe the Impacts Created by the Proposed Use. The proposed use (a dead-end road serving residences) could in theory create a number of impacts, the most common and significant of which might generally include noise, exhaust odor / fumes, traffic, dust, and glare from headlights. The opponents did not testify as to any other types of impacts. However, the Board raised the issue of pesticide application and "Application Exclusion Zones" (AEZs), and the Applicant requests 60 days to address that issue.

Step 2, Part 2: Determine Whether any of the Identified Impacts Associated with the Proposed Use Will Force a Significant Change in Farm Practices.

Once the findings identify the impacts created by the proposed use, the next step is to evaluate each impact and the effect it will have on nearby farming and forestry practices. According to the Oregon Supreme Court, "the legislature intended the 'significant change' in a farm practice or 'significantly increased cost' of a farm practice standard to apply practice by practice and farm by farm." *Stop the Dump Coalition v. Yamhill County*, 364 Or 432, 435 P.3d 698 (2019). 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.

ORS 215.296(1) uses the term "significantly" in the context of defining what is an unacceptable impact. The use of this qualifier suggests that some impacts – *i.e.* those that are deemed to be insignificant – are allowable. Because the term "significant" is undefined, and of common usage, it is permissible to consult dictionary definitions. The most pertinent definition of "significant" in *Webster's Third New International Dictionary* (2002), p. 2116, appears to be "3 a : having or likely to have influence or effect : deserving to be considered[.]" In *Von Lubken v. Hood River County*, 118 Or App 246, 250, 846 P2d 1178 (1993), *rev. den.*, 316 Or 529, 854 P2d 940 (1993), the Court of Appeals observed that the word "significant" "connotes a question of

degree that is more a matter of fact than of law." The court rejected a proposed definition of "significant" that would have prohibited changes or increased costs that are "anything more than trivial or frivolous." *Id.* The court stated that "[t]he words "significant" and "significantly" limit, rather than supplement, the protections that the statute affords. *Id.*

Caselaw provides some examples of how the term significantly affects the analysis in practice. As an example, in *Johnson v. Marion County*, 58 Or LUBA 459 (2009), LUBA held that a county does not err in concluding that, as conditioned, a personal use airport will not "significantly" impact a neighboring equine facility, where the only adverse impact identified by the facility owner is that guests are advised to delay mounting or dismounting horses until after planes land or take-off, and conditions of approval limit operations to 20 flights per month.

In *Von Lubken v. Hood River County*, 28 Or LUBA 362 (1994), LUBA stated:

Where a golf course adjoining an orchard will force alterations in accepted farming practices and increase the costs associated with such practices, the relevant question under ORS 215.296(1) is whether such alterations and increased costs will be *significant*. Where there is evidence in the whole record that would allow a local government decision maker to answer that question either way, LUBA is required by ORS 197.835(7)(a)(C) to defer to the local government's judgment. *Von Lubken v. Hood River County*, 24 Or LUBA 271 (1992).

With regard to noise, exhaust odor / fumes, traffic, dust, and glare from headlights, the Board adopts the same findings that address YCZO 1202(F), *supra*. Although here the focus is on the impact on farm practices and not impairment or limitation on "uses" in general, the result is the same in the case. In part because of the lack of actual farm practices, but it also due to the fact that roads are very limited with regard to the types and levels of impact that they create. Using a future vineyard on Mrs. Morrow's property as an example, there is simply no indication in the record that a public road on TL 1293 would prevent Ms. Morrow from conducting the types of accepted farm practices typical of a vineyard in Yamhill County. She could still prune, fertilize, irrigate, and harvest wine grapes without any limitation or impairment. There is no evidence that the road would result in more trespassing or litter, as an example. Given that the road is a dead-end road, it is highly unlikely that the road will be used by the general public. The County will post the road as being a "dead-end," which will help keep people from accidentally venturing down the road.

Based on evidence provided by the Applicants, the Board is also convinced that the proposed road will not impact future farm uses due to the need to comply rules regarding agricultural pesticide-spraying "Application Exclusion Zones" (AEZs).

First, the road is not a "sensitive use" under Federal law.

Second, farmers spraying pesticides on crops abutting the proposed road are not required to follow federal and State AEZ rules, which are discussed in more detail below.

More importantly, there is no commercial spraying occurring currently or in the recent past. *Central Oregon Landwatch v. Deschutes Co.*, 53 Or LUBA 290 (2007) (County must evaluate the scope and intensity of “accepted forest practices” on adjacent lands based on the forest uses *currently or recently occurring in the area*, and need not assume that forest practices on adjacent parcels will occur in the future at a more intensive level). Note 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. Here, substantial evidence shows that the area is mostly a rural residential neighborhood devoid of commercial farms except for a recent vineyard located over 1000 feet away. *See, e.g.* Northwest Agricultural Consulting report dated June 15, 2021.

The Board also finds that the opponents did not raise any issue about the application of pesticides on any future vineyard on the Morrow property. Many vineyard managers grow their grapes organically in Yamhill County, so it is not always the case that vineyards use pesticides. Even if air blast spraying occurs on a future vineyard, the Board finds that the road (and the traffic generated thereby) would not create a significant impact on the ability of the vineyard owner to conduct such spraying. It would be easy to conduct the spraying of the vineyard at a time of day when pass-by traffic is at a minimum.

The Board also considered the possibility that the Morrow property might be used for row crops in the future. But even if there was spraying accruing near the proposed road resulting from row crops, such ground spraying of hay crops would only need a 25-foot AEZ. The hard-surfaced portion of the road would be located more than 25 feet away from the property line.

The Applicants engaged Tom Thomson of Northwest Agricultural Consulting to give an expert opinion on the farm activities occurring on parcels owned by opponents Joyce Morrow (Map 4502 Tax Lot 802) and Scott Sterling (Map 4501, Tax Lot 1300) as well as the AEZ issue. Mr. Thomson based his expert opinion on his many years of training, education, experience, and knowledge of the site obtained through research and personal observation. He made the following factual observations:

“On May 20, 2021, I visited the site and walked along the current driveway that provides access to TL 1292 and TL1291. This allowed good visual access to the surrounding tax lots and what is occurring on them.

TL802 was a large field of mixed vegetation which did not appear to be cropped in any fashion. The field had numerous patches of Scotch Broom, Blackberry, Oregon Oak, and Hawthorn plants as well as many scattered ferns and forbs such as daisies, plantain, etc. scattered throughout with some larger trees to the east. The area did not appear to be managed for hay or any other crop. TL1300 appeared similar to TL802 but with fewer brushy plants. Neither tax lot appeared to have been farmed in quite a while.

Examination of all available aerial photographs of the subject properties on Google Earth confirmed my determinations from the site visit. Early aerials from 1985 and 1994 were of insufficient resolution to make any determination from. Improved resolution of the later aerials – 2000 and later – allowed better assumptions to be made of how the properties were managed.

In the years 2000 through 2011, the western two-thirds of TL 802 showed scattered shrub “spots” which grew in size as the years progressed, while the eastern third appeared fairly free of brushy vegetation. The 2012 aerial shows the beginning of more brushy “spots” in the eastern third which grew in diameter until 2017 which is the last year available for aerial photos.

Since 2000, the aerial showed shrub patches in various scattered locations across both TL802 and TL1300 which, as the years progressed, grew larger in diameter. the photos.

TL1300 was free of brushy spots until 2004 when they began to show in the aerials and remained until 2017.

The area to the east and south of the subject property is heavily forested and uncropped.

Pesticide Application and Application Exclusion Zones (AEZ)

Due to the lack of any apparent commercial agricultural enterprise on the neighboring properties – TL 802 and TL 1300, one may assume that there would be no pesticide (mainly herbicide and/or insecticide) applications that would warrant application of the AEZ rule. Any sprays that may occur to reduce weeds pressure on the fields or to spray out the shrubby vegetation would be applied with ground equipment with ground directed nozzles which greatly reduces chances of overspray and or drift. No aerial applications would be made due to the small fields size, tall tree borders on the fields, and high cost of application. As such, the AWZ for those sprays would be 25 feet depending on the label requirements of the chemical being used and its specific label requirements.

One mentioned concern was whether any pesticide sprays that the new vineyard to the east (TL900) may perform would incur the AEZ rule. Many vineyards use both spray nozzle directed sprays as well as air blast sprayers. Air blast sprayer applications would incur the 100-foot AEZ to be applied. However, in this case, one may be safe to assume that due to the vineyards greater than 1000-foot distance from the subject properties coupled with the tall, forested area in the

intervening space, that there would be no need to enforce the AWZ rule.

CONCLUSIONS

Based on the foregoing, it is my opinion that the subject properties – TL802 and TL1300 – have not been farmed commercially in many years and most likely will have no commercial cropping in the foreseeable future. Indeed, the presence of smaller broadleaf flowering plants indicates that the field most likely had not been sprayed with herbicides and in its current state would not make hay of commercial quality.

Also, due to the lack of commercial farming, there would be no pesticide applications that would necessitate the AEZ rule to be enforced other than the basic 25 foot buffer during application.”

Northwest Agricultural Consulting report dated June 15, 2021. The Board finds that this expert testimony, which was unrebutted by the opponents, constitutes substantial evidence.

For the reasons set forth above, the approval (and subsequent construction) of the proposed NW Jahnke Drive will not prevent any neighboring farmer from applying pesticides to their land due to the Federal AEZ rules. The proposed road is not a “sensitive area.” The Board concludes the AEZ rules are no impediment to approval of this conditional use permit application.

In this case, the Applicant is proposing to build a dead-end road, on their own property, at their own expense, that for now will serve one or two additional parcels. The Board understands that it is likely that the Applicant will at some point apply to extend the road to the South to serve TL 1600, but that effort may require additional land use approvals to extend the road to the south.

The Board finds the traffic, noise, vibration, and dust from such a low-traffic-volume road will be negligible. The proposed road will be professionally engineered. It will be an all-weather surface, which will reduce dust and tire noise. Certainly, none of these impacts will be “significant,” and none will significantly increase the cost of nearby farm or forest practices.

IV. Applicable Comprehensive Plan Policies.

Under YCZO 1202.02(B), the County is required to find that the proposed road is consistent with the applicable comprehensive plan goals and policies. *Van Dyke v. Yamhill County*, __ Or LUBA __ (LUBA No 2019-047, Oct 11, 2019).

The Board identified a number of Comprehensive Plan Provisions that could potentially be approval standards for a road CUP. These provisions are discussed below.

SECTION I. Urban Growth and Change and Economic Development B. Rural Area Development Policy C. All proposed rural area development and facilities:

1. Shall be appropriately, if not uniquely, suited to the area or site proposed for development;

Findings: The Board finds the proposed road is uniquely suited to the site proposed for development, because the site proposed for development, TL 1292, does not have any other means of access. Furthermore, the Board find that the given the Jahnke family was previously denied access to TL 1600 from the south, that it makes conceptual sense that access to TL 1600 will occur from the north, across TL 1293 to Willis Road. As Planning Director Ken Friday noted at the June 17, 2021 public hearing, TL 1600 is zoned for rural residential uses, and the development pattern envisioned by the code cannot be accomplished unless TL 1600 has access to an existing public road.

2. Shall not be located in any natural hazard area, such as a floodplain or area of geologic hazard, steep slope, severe drainage problems or soil limitations for building or sub-surface sewage disposal, if relevant;

Findings: The proposed road is not located in a natural hazard area, such as a floodplain or area of geologic hazard, steep slope, or an area with “severe” drainage problems. Although some opponents complained of the steep slope of the existing private access, the existing easement has been in use for years without any apparent complaints or effort to take corrective action, which strongly suggests that the stated concern is exaggerated.

3. Shall be furnished with adequate access and an adequate individual or community water supply, if required; and shall not be justified solely or even primarily on the argument that the land is less costly than alternative better sites or that federal or state aid is available in the form of subsidized water supply or sewerage extensions from nearby urban centers.

Findings: The criterion does not apply to a road.

SECTION II. The Land and Water A. Agricultural Lands POLICIES A. Yamhill County will provide for the preservation of farm lands through appropriate zoning, recognizing comparative economic returns to agriculture and alternative uses, changing ownership patterns and management practices, changing market conditions for agricultural produce, and various public financial incentives.

Findings: Plan Policy A is a directive to the Board of Commissioners and staff, and is intended to guide the decision on how to zone rural land. This Plan Policy was fully implemented at the time zoning was first adopted. Therefore, Policy A is not an approval standard for this case.

SECTION II. The Land and Water D. Fish and Wildlife Policy C. All identified sensitive wildlife areas will be classified as exclusive agriculture, forest land or open space. No major land use change, including but not limited to road construction and recreational developments will be permitted without approval of measures to limit undesirable impacts on sensitive wildlife areas.

Findings: This standard applies to major land use changes, including “road construction” that occur on identified “sensitive” wildlife areas. In areas where it applies, this standard requires the Applicant to propose “measures” to limit “undesirable impacts” on “sensitive wildlife areas.”

FOYC correctly notes that this land has been designated as “big game peripheral winter range.” However, there is no indication that “big game peripheral winter range” is considered to be a “sensitive wildlife area. To the contrary, the County’s Goal 5 inventory classifies “sensitive” areas in a manner that excludes “peripheral” ranges.

The Board finds this criterion does not apply to this case.

SECTION II. The Land and Water D. Fish and Wildlife Policy F. In the Sensitive and Peripheral Big Game Winter Range, all proposed zone changes and applications for partitions will be referred to the Oregon Department of Fish and Wildlife for determination of conflicts with big game habitat requirements. In the event the Department identifies and informs the county that site-specific habitat conflicts exist, the county will not approve said zone changes without seeking resolution of such conflicts. (Ord. 233) (Ord 491)

Findings: The Applicant is not proposing a zone change or partition. The Board finds this criterion does not apply.

SECTION III. Transportation, Communications and Public Utilities A. Transportation GOAL STATEMENT 1. To provide and encourage an efficient, safe, convenient and economic transportation and communication system, including road, rail, waterways, public transit and air, to serve the needs of existing and projected urban and rural development within the county, as well as to accommodate the regional movement of people and goods and the transfer of energy, recognizing the economic, social and energy impacts of the various modes of transportation.

Findings: Friends of Yamhill County cites to this provision and implicitly argues that this is Goal applies to this case and requires that the road be designed so that it is “safe.” However, the Board finds this Goal statement is merely a statement of policy. It is not a mandatory approval standard for a road.

SECTION III. Transportation, Communications and Public Utilities A. Transportation Policy B. All transportation-related decisions will be made in consideration of land use impacts including but not limited to adjacent land use patterns, both existing and planned, and their designated uses and densities.

Findings: YCCP III.A.1(b) refers to a broad category of county decisions (“all transportation-related decisions”), and appears to require that such decisions include consideration of specified and unspecified land use impacts. *Mekkers v. Yamhill County*, 39 Or LUBA 367 (2001) (A comprehensive plan provision requiring that all transportation-related decisions consider specified land use impacts is a mandatory approval criterion potentially applicable to a decision vacating a county road.).

This Plan Policy supports the approval of the Applicant’s proposal. The Plan Policy requires the county to consider the “land use impacts” that the proposed new road will create to “adjacent land use patterns, both existing and planned.” TL 1600 of T4S, R5W, Sec. 12 is a 27-acre parcel zoned VLDR-2. TL 1292 and TL 1600 is not able to be developed to its highest and

best use unless and until suitable public road access is provided to that site. While this land use application will not provide direct access to TL 1600, it will bring the access to within a few hundred feet of that land. In order to provide access from TL 1600 to an existing public street, it is necessary to build a public street through adjacent land. The Jahnke family previously submitting a land use application seeking to access TL 1600 from an easement located South of TL 1600, but the County rejected that proposal. Therefore, the only feasible way to provide access to TL 1600 is to traverse the subject property, TL 1293, to NW Willis Road. For this reason, the Board finds Plan Policy III(A)(B) provides supports for this application, and in fact requires that a road be extended to TL 1292, and potentially, to the south to access TL 1600 with additional CUP review.

GOAL STATEMENT

2. To conserve Yamhill County's soil resources in a manner reflecting their suitability for forestry, agriculture and urban development and their sustained use for the purposes designated on the county plan map.

POLICIES

A. Yamhill County will continue to preserve those areas for farm use which exhibit Class I through IV soils as identified in the Capability Classification System of the U.S. Soil Conservation Service.

Findings: Yamhill County has interpreted the above language as aspirational. See, e.g. Staff Report C-13-99/RN-4-99, West CU Application Staff Report, April 6, 2000, p. 6, *affirmed* by the LUBA, *Friends of Yamhill County v. Yamhill County*, 41 Or LUBA 476 (2002). The goals are to be weighed against other goals and policies. Specifically, the goal and policy need to be weighed against the efficient use of the property and surrounding areas for farm and/or forest use.

Applicable Regulations – Transportation Planning Rule – OAR 660-012-0065(3)

OAR 660-012-0065(3) lists transportation improvements that are consistent with Goals 3, 4, 11, and 14, subject to this rule's requirements. Subsection (o) of this rule section allows the following transportation improvements on rural EFU lands:

(o) Transportation facilities, services and improvements other than those listed in this rule that serve local travel needs. The travel capacity and performance standards of facilities and improvements serving local travel needs shall be limited to that necessary to support rural land uses identified in the acknowledged comprehensive plan or to provide adequate emergency access.

The Applicant plans residential parcels to be served by this dead-end road. The County only allows three homesites on a private road, so the Applicant is requesting to build a public road in anticipation of potential future development.

OAR 660-012-0065(5) requires that a county must address, when evaluating new transportation uses or improvements listed in OAR 660-012-0065(3)(o), both compliance with ORS 215.296 and the following:

(a) Identify reasonable build design alternatives, such as alternative alignments, that are safe and can be constructed at a reasonable cost, not considering raw land costs, with available technology. The jurisdiction need not consider alternatives that are inconsistent with applicable standards or not approved by a registered professional engineer;

(b) Assess the effects of the identified alternatives on farm and forest practices, considering impacts to farm and forest lands, structures and facilities, considering the effects of traffic on the movement of farm and forest vehicles and equipment and considering the effects of access to parcels created on farm and forest lands; and

(c) Select from the identified alternatives, the one, or combination of identified alternatives that has the least impact on lands in the immediate vicinity devoted to farm or forest use.

Findings: This proposed road is intended to reach the Applicant's 3.1- acre parcel (Tax Lot T4S R5W S1 TL 01292) travelling from NW Willis Road to the south. The parties have referred to the access from NW Willis Road as the "northern approach." The proposed new road would cross the Applicants' 30.9- acre parcel (Tax Lot 1293) to reach the smaller Tax Lot 1292. No part of the road would lie on any other owner's land. Tax Lot 1292 currently has no buildable / practical access for vehicles. There is an existing paper easement that serves TL 1292, but it is not located in a location where it can be built consistent with the fire code and private road grade standards.

The alternative alignments from the east (across Tax Lots 1101 and 0900) and west (across tax Lot 0802) are precluded because those landowners have declined to grant or sell the Applicant an access easement for Tax Lot 1292. In addition, NW Willis Road has a sharp curve where Tax Lot 1101 and the Applicant's subject parcel (TL 1293) meet. *See* Map appended as Exhibit "B."

That leaves the fourth alternative, access from the south, from NW Berry Creek Road. The Applicant attempted to access TL 1600 from the south, via an existing private easement, in land use application Docket No. S-01-08 / V-03-08. Yamhill County denied that application. The Applicant has not been able to secure any other access rights across other properties in that area. Thus, the northern approach is the only viable route, and the Board finds it will have the least impact on lands in the immediate vicinity.

Constructing a new road will have no effect on the movement of farm and forest vehicles on existing roads such as NW Willis Road and NW Berry Creek Road. Both of those roads have more than enough capacity to handle the small number of additional vehicles. This land use application does not include any proposal for dwellings or other uses that might cause traffic, so a lack of road capacity does not form a basis for denial.

On page 1 of their letter dated 4 February 2021, Friends of Yamhill County (FOYC) argues that “OAR 660-012-0065(5) requires a meaningful analysis of alternatives.” However, FOYC omits some key language in the rule: the rule expressly limits the alternatives to those that are “reasonable build design alternatives.”

FOYC suggests two alternatives that it claims the Applicants did not consider:

1. Apply for a variance to Yamhill County Land Division Ordinance § 6.010(8)(C), which states that “no more than three parcels may be served by a private easement.”
2. The Applicant should grant themselves a new easement across TL 1293.

With regard to FOYC’s first alternative, the request for a variance is not a “build design” alternative, so it need not be considered. Moreover, the County’s Variance Code only allows variances to “dimensional requirements,” and the three-dwelling limit does not fall within that limitation. YCZO 1203.01.¹ Finally, even if a variance was available in theory, it is not clear that the Applicant could meet the criteria for a variance, because the creation of a public road is the only option that solves the *long-term* transportation deficiency in the neighborhood.

Turning to FOYC’s second alternative: the topography of the Applicant’s land does not allow for a second access onto Willis Road. In other words, a second easement would just end up at the same approach road location onto Willis Road. The rule states that the County “need not consider alternatives that are inconsistent with applicable standards or not approved by a registered professional engineer,” and FOYC has not submitted any drawings approved by an engineer. Moreover, a second easement would not have “the least impact on lands in the immediate vicinity devoted to farm or forest use,” so it need not be considered.

Finally, FOYC states that Partition 2006-47 (Docket P-36-05) “included road access to the parcel.” While that may be true inasmuch as the Partition 2006-47 created a “paper” access, the McMinnville Rural Fire Department stated in Docket P-36-05 that the “driveway approval was required prior to permit issuance.” The decision was also conditioned on the road meeting County specifications, which, in turn, require fire access standards to be met. The Fire Department visited the site recently and determined that the proposal private road was too steep and proposed turns that were too tight to meet fire access standards. Thus, when combined with the needs to comply with the conditions of approval and fire access standards, the County’s acceptance of Partition 2006-47 did *not* create a lawfully-usuable or practical vehicular access for Tax Lot 1292.

One of the main arguments raised by the opponents is that TL 1292 has what they refer to as “legal access,” and therefore, the argument goes, the road is not “needed.” *See, e.g.* the “Friends of Yamhill County” letters dated February 4, 2021 (p.1.) and June 15, 2021 (p.2.); Scott Sterling email dated December 17, 2020; Art and Anne Engen letter received June 16, 2021.

¹ YCZO 1203.01 states, in relevant part:

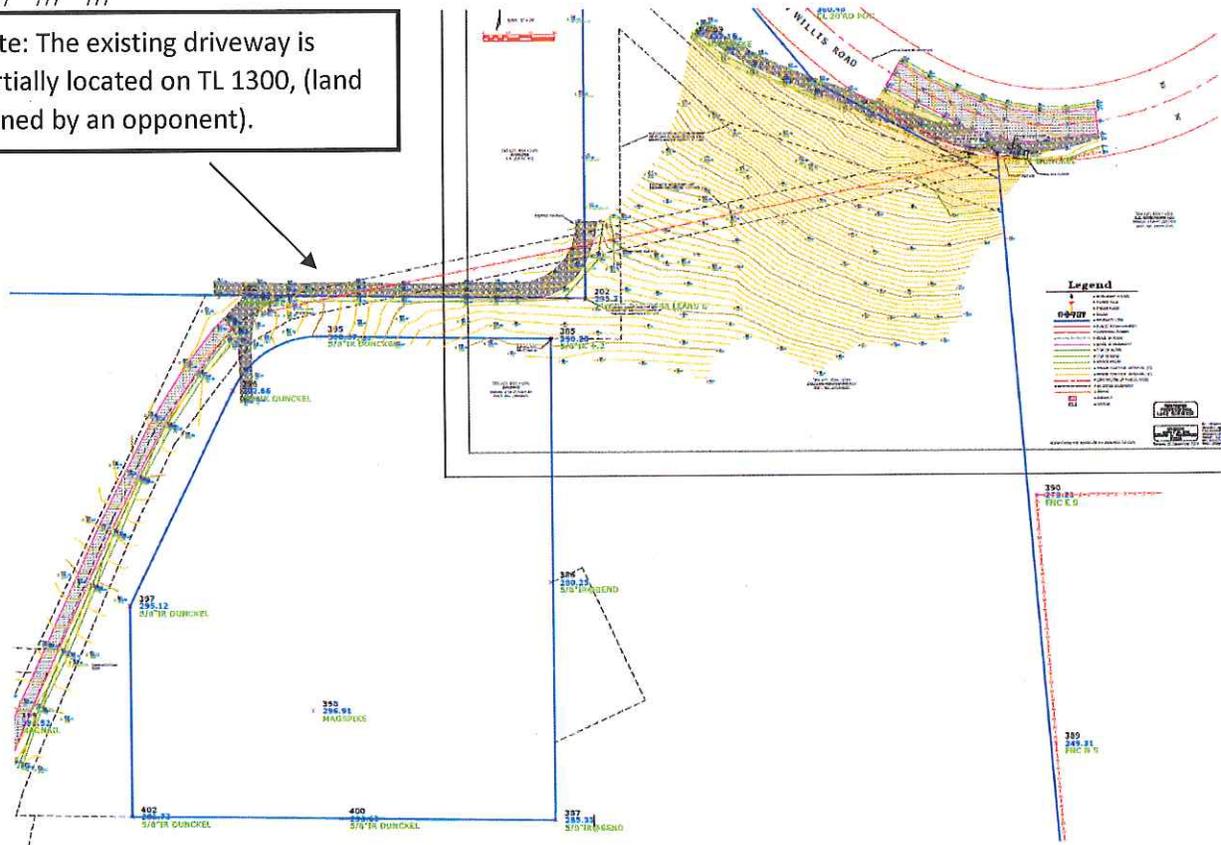
“The purpose of a variance is to provide administrative relief when a strict application of the zoning requirements of lot width, lot depth, building height, setback, access, or other dimensional requirements, excluding lot area, would impose practical difficulties.”

As an initial matter, there is no approval criterion that requires an applicant to prove that the road is “needed,” and the opponents point to no such law.

Nonetheless, there is a difference between having “legal access” and having access that is sufficient to ensure development rights for the lots. In this case, TL 1292 has “legal access” via a 2006 plat, *See* Partition Plat 06-47 (2006). That easement is a paper access only: the road cannot be built within the boundaries of the existing 30-foot easement because the underlying land is too steep to meet County Private Road grade standards, and because it overlaps with an existing driveway. More importantly, as mentioned earlier, the County only allows three (3) residences to take access from a private driveway. *See* Yamhill County Land Division Ordinance No. 205 (as amended) §6.010.8.C (“No more than three parcels may be served by a private easement”). The opponents admitted that the existing private driveway currently serves five (5) residences, and is therefore over the limit imposed by Yamhill County. The opponents offered no substantive rebuttal to the argument that a sixth dwelling is not allowed to use the private driveway, nor is the Board aware of any such argument.

/// /// ///

Note: The existing driveway is partially located on TL 1300, (land owned by an opponent).



To resolve this issue, the Jahnke family recently applied to the County Public Works Department for a conditional approval of a driveway access for a residential dwelling for TL 1292. Public Works approved the application subject to the condition of approval requiring the McMinnville Fire Department (“MFD”) sign off on the permit. The Applicants’ agent met with

Mr. Steve Candela, Deputy Fire Marshal, MFD, on site on June 11, 2021. In a follow-up email later that evening, Mr. Candela stated:

Before I approve a CONDITIONAL, please provide written documentation stating you have homeowner access EASEMENT to your proposed project site. That nice asphalt driveway we stopped on to look at your site, did we have permission to be there?

The Applicants' counsel responded to Mr. Candela on Sunday, June 13, 2021, and explained that TL 1292 was granted an easement over TL 1293 (which is property owned by Cyclops Properties, an LLC controlled by the Jahnke family). However, that "paper access" has not yet been built, nor can it be built lawfully. The existing asphalt driveway traverses TL 1300 – land owned by an opponent, Scott Sterling, who has stated in writing he will not permit the Applicants to use the private easement to access Tax Lot 1292. *See* Scott Sterling email dated December 17, 2020. There is no way to build a private road in the boundaries of the paper easement, as it is too steep and the turns are too sharp. Thus, the Board finds that while TL 1292 does have an undeveloped (and currently unusable) easement to access NW Willis Road, *it does not have a documented legal easement / right to use the existing road* where it crosses onto the neighbor's property (TL 1300 – see map *supra*).

In an email to the Applicant's counsel dated June 14, 2021, Steve Candela denied the conditional application for a driveway permit, as follows:

Sir,

Thank you for providing the background for this project.

However, the short answer is Edwin [Sharer] did NOT have permission/authority to stand on his neighbor's driveway and present his neighbor's property as access to his site. He [as a consultant for the Jahnke Family] will not be granted a condition approval.

Respectfully,
STEVE CANDELA
Deputy Fire Marshal
McMinnville Fire Dept
971-241-6177

The denial of the conditional approval of a driveway access for TL 1292 is conclusive proof that the opponents' "legal access" argument is flawed: the Applicant Jahnke family needs the public road to be approved before they can be issued a building permit for TL 1292.

V. Yamhill County Road Naming Provisions and Analysis.

Yamhill County Ordinance 381 establishes a rural address and road naming system. §401

grants the Planning Commission the authority to name roads, as follows:

4.01 Commission to Name Roads – The Planning Commission of Yamhill County is hereby given the authority to name all County roads and local access roads. In establishing the name for a road the Commission shall consider the following standards:

- a) Except as established on the Road Name Map, or may be established pursuant to this Ordinance, any local access or County road outside of an adopted urban growth boundary shall be designated as a “road,” except as provided in this Ordinance.***
- b) An extension of a road shall bear the same name as the road itself.***
- c) Designation as other than “road” may be established upon a finding that the designation “road” would be inconsistent with one or more of the criteria contained in this Ordinance.***
- d) A road inside of an adopted urban growth boundary need not be designated “road” unless this is necessary to be consistent with an extension of the same road outside of said urban growth boundary.***
- e) The name of the road shall be selected in accordance with the criteria found in Section 4.02 below.***

4.02 Road Naming Criteria – The following criteria shall be considered when selecting a road name:

- a) Factors of historical significance related to person, place, circumstance or events.***
- b) Factors of geographical significance.***
- c) Factors of road location, function, or direction.***
- d) Common usage of the name for the road.***
- e) Prior use of the name for the road.***
- f) Name consistency for continuous route including roads in other adjoining jurisdictions,***
- g) Avoidance of duplication of the same or similar road name.***
- h) Compliance with provisions of Section 4.01 above.***

Findings: The Applicant proposes to name the new road “NW Jahnke Drive,” after the Jahnke family who have lived in this area for generations. No road has been located in this position before. The proposed new road will connect to NW Willis Road, head west, then south. Following an inquiry with the U.S. Post Office in McMinnville, the Board is unaware of a

similar-sounding road anywhere in Yamhill County or neighboring counties. The Board finds these criteria are met.

VI. Conclusion.

For these reasons, the Yamhill County Board of Commissioners approves this Conditional Use Permit for a new dead-end public road based on substantial evidence in the whole record, with the following Conditions of Approval:

1. Prior to development of NW Jahnke Drive, the Applicant shall submit a road plan and profile drawings for NW Jahnke Drive and all proposed driveways for review and approval by the County Engineer.
2. Prior to development of NW Jahnke Drive, a registered engineer shall conduct a geotechnical analysis for review and approval by the Public Works Director to ensure that the sightlines for NW Willis Road and NW Jahnke Drive allow for safe development and usage of both roads.
3. The Applicant shall designate the right-of-way, identified as "NW Jahnke Drive," as shown on the face of the preliminary site plan. Said right-of-way shall be built to current County Road Public Standards.
4. Prior to development of NW Jahnke Drive, the Applicant shall submit a drainage plan showing that no natural drainage is disturbed by any development taking place on any of the proposed lots. The plan shall be prepared by a registered engineer. The drainage plan shall be submitted to and approved by the County Public Works Director prior to final approval.
5. The Applicant shall obtain all necessary permits and inspections from the Public Works Department and the Oregon Department of Environmental Quality (DEQ) prior to development of NW Jahnke Drive.
6. Prior to development of NW Jahnke Drive, the Applicant shall demonstrate that the right-of-way does not encroach on the designated repair area for the septic system serving Tax Lot 4501-01290. If the proposed right-of-way does encroach on the designated septic repair area, NW Jahnke Drive shall not be built until the septic system serving Tax Lot 4501-01290 has been altered or relocated to meet septic system setback requirements. Any septic evaluation or improvements shall be permitted by the County Sanitarian.
7. The Applicant shall prepare documents to dedicate the NW Jahnke Drive right-of-way. The final road alignment shall substantially conform to that of the preliminary road alignment. Said documents shall be reviewed and signed by the appropriate county departments and recorded in the County Clerk's Office prior to development of the road.

End