

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 #P-10-22; Partition Application for)	Board Order 23-65
Tax Lot 4512-01600; Applicant: Jonathan Jahnke)	

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on February 23, 2023, Commissioners Lindsay Berschauer, Kit Johnston, and Mary Starrett being present.

IT APPEARING TO THE BOARD as follows:

A. WHEREAS, The applicant, Jonathan Jahnke, requested a lot partition of an approximately 27-acre roperty into three (3) parcels, two of which will measure approximately 2.4-acres and the third will be approximately 22.44-acres; and

B. WHEREAS, On December 2, 2022, the Planning Director issued a letter notifying interested parties that the application was approved by the Planning Commission; and

C. WHEREAS, The Planning Commission's decision was appealed and considered by the Board at a hearing held on February 2, 2023; and

D. WHEREAS, Following deliberation, the Board voted unanimously to uphold the Planning Commission's decision, deny the appeal, and approve the application; and now, therefore,

IT IS HEREBY ORDERED BY THE BOARD AS FOLLOWS:

Section 1. Planning Docket #P-10-22 is hereby approved, subject to the following conditions:

1. A final partition plat pursuant to the requirements of the *Yamhill County Land Division Ordinance* shall be prepared and submitted to the Planning Director. The final partition plat shall substantially conform to the preliminary map. The Yamhill County Planning Docket Number "P-10-22" shall appear on the face of the plat.
2. Prior to final partition approval, a survey of Parcel #1 (2.4-acres) and Parcel #2 (2.4-acres), shall be completed by a registered land surveyor pursuant to Section 6.120 of the *Yamhill County Land Division Ordinance*.

3. The existing 60-foot-wide nonexclusive easement for ingress and egress providing access to all of the newly created parcels shall be surveyed and shown on the face of the final plat. This easement shall be granted at the time of conveyance of any of the newly created lots.
4. The easement drive providing access to all parcels shall be constructed to county specifications and inspected by a private engineer, or a road construction agreement shall be completed and recorded, prior to final plat approval.
5. Road plan and profile drawings shall be submitted to and approved by the Public Works Department prior to final plat approval.
6. The installation of septic systems on the newly created parcels shall be located on each individual lot and maintain the minimum setback requirements of 10 feet from all new property lines. If the 10-foot minimum setbacks from the property lines cannot be maintained, a properly recorded easement will be required, pursuant to Section 6.100 of the *Land Division Ordinance*.
7. Prior to final plat approval, the Applicant shall demonstrate conformance with standard 1, 2, 3 or 4 of Subsection 6.090 of the *Land Division Ordinance*. Either domestic water shall be provided to each lot by a community water system or an on-site well or wells, with the location of the well(s) indicated on the face of the plat, or the following disclosure shall be placed on the plat:

No municipal, public utility, community water supply or private system will be provided to the purchaser of those lots noted hereon.

Each lot not provided with a well or community water service shall be so identified.

8. The Applicant shall submit a drainage plan showing that no natural drainage is diverted 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 plat approval and the issuance of building or septic permits.
9. Prior to final plat approval, the Applicant shall enter into an easement maintenance agreement with the owners of Tax Lot R4512-01701, currently Alfredo and Deborah Arguedas, in compliance with ORS 105.175. Once complete, the easement maintenance agreement shall be provided to the Yamhill County Planning Department.

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

DATED this 23 day of February, 2023, at McMinnville, Oregon.

ATTEST:

YAMHILL COUNTY BOARD OF COMMISSIONERS



Lindsay Berschauer

KERI HINTON
County Clerk

Chair

LINDSAY BERSCHAUER

Kit Johnston

By: *Carolina Rook*
Deputy Carolina Rook

Commissioner

Kit Johnston

Mary Starrett

FORM APPROVED BY:

Commissioner

MARY STARRETT

Jodi M. Gollehon

Jodi M. Gollehon
Assistant County Counsel

Accepted by Yamhill County
Board of Commissioners on
2.23.23 by Board Order
B.O. 23.65

Exhibit “A” – Findings for Approval – P-10-22

HEARING DATE: January 25, 2023

DOCKET NO.: P-10-22

REQUEST: To partition an approximately 27-acre property into three (3) parcels, two of which will measure approximately 2.4-acres and the third will be approximately 22.44-acres. The Applicant is applying for this partition using parcel size averaging.

APPLICANT: Jonathan Jahnke

APPELLANT: Kathryn Jernstedt, representing Friends of Yamhill County

OWNER: Cyclops Rising, LLC

TAX LOT: 4512-01600

LOCATION: The subject parcel does not have a situs address assigned but is located just north of the parcel with an address of 14100 NW Berry Creek Road, and just south of the parcel with an address of 13801 NW Willis Road.

ZONE: VLDR-2.5, Very Low Density Residential District

CRITERIA: Section 502 of the *Yamhill County Zoning Ordinance* and the *Yamhill County Land Division Ordinance*.

A. Background Facts

1. *Lot Size:* Approximately 27-acres.
2. *Access:* The proposed parcels have access to NW Berry Creek Road to the south by way of an existing 60-foot-wide access easement. The easement driveway passes through Tax Lot 4512-01701, the adjacent parcel to the south of the subject parcel.
3. *On-site Land Use and Zoning:* The subject parcel is zoned for rural residential use and is located in the Very Low Density Residential, VLDR-2.5 zone. The subject parcel is currently unimproved with no structures located on the property. The property is currently forested with a small stream that meanders through the eastern third of the property, with a roughly north-south course.
4. *Surrounding Land Use and Zoning:* The surrounding parcels to the south, east, and west are all located in the Very Low Density Residential, VLDR-2.5 zone. Properties to the north, northwest, and northeast are located in the Exclusive Farm use, EF-40 zone. Land use in the

surrounding area is variable, with hay production on parcels to the west, northwest, and southeast of the tract, two vineyards located further east and northeast of the tract, livestock pasturage on an adjacent parcel to the northwest of the tract. Passive forest management is also common in the surrounding area, particularly on adjacent parcels to the south and north, and on several lots further to the northwest of the tract. Rural residential uses are common in the surrounding area, with homes located on adjacent parcels to the east, west, south, and north.

5. *Water:* The application states that water will be provided by a proposed well.
6. *Sewage Disposal:* The proposed lots will need a separate and individual on-site septic system.
7. *Fire Protection:* McMinnville Rural Fire Department.
8. *Previous Actions:* A request to create a 12-lot subdivision on Tax Lot 4501-01293 was approved in 2007, Docket S-17-07, but an associated request for a variance to the private road standards was denied.
9. *Deferral:* The County Assessor's records show that the entire parcel is receiving forest deferral.
10. *Overlay Districts:* The subject parcel is not located within an identified 100-year floodplain area. The property is not within an identified sensitive wildlife habitat area, the Willamette River Greenway, or an airport overlay district. The subject parcel and the surrounding area are not located within an identified limited groundwater area.

B. Land Division Ordinance Provisions and Analysis

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:

**** * * * ****

D. Subdivisions, subject to the land division requirements set forth in Ordinance 205;

Finding: This application conforms to the requirements of the Land Division Ordinance (LDO), as detailed below. The Yamhill County Zoning Ordinance (YCZO) does not define the term "subdivision." Yamhill County interprets the word "subdivisions" (four or more lots) as used in YCZO §502.02.D to include the lesser-included terms "partitions" (two or three lots).

502.06 Standards and Limitations. In the VLDR Districts, the following standards and limitations shall apply:

A. Dwelling Density. 1. Permitted Uses.

(a) The maximum overall dwelling density for any new development shall not exceed:

**** * * * ****

*ii. one (1) dwelling per two and one-half (2 1/2) acres in the VLDR-2 1/2 District;
and*

Finding: This application will result in three parcels being created from one 27-acre parcel zoned VLDR 2.5. Two new 2.4-acre parcels will be created, resulting in the remainder parcel being reduced in size to 22 acres. *See Site Plan at Exhibit A-1 (showing the desired new configuration).* This conforms to the maximum density allowed in the VLDR 2.5 zone.

This criterion is satisfied.

(b) Not more than one (1) principal dwelling shall be permitted on any parcel, except in the case of a planned unit development and except as follows: i. one (1) duplex may be allowed on any ten (10) acre parcel in the VLDR-5 District. ii. one (1) duplex may be allowed on any five (5) acre parcel in the VLDR-2 2 District; and iii. one (1) duplex may be allowed on any two (2) acre parcel in the VLDR-1 District.

Finding: Each parcel shall be limited to one single family dwelling.

This criterion is satisfied.

(c) For the division of any contiguous lands under the same ownership, parcel sizes may be averaged provided that the maximum overall density of the applicable VLDR District is not exceeded, and provided that no parcel shall be below the applicable minimum parcel size established by subsection 502.06(B). In the case of parcel-size averaging, the landowner shall record an affidavit with the county clerk specifying the imposed conditions which are applicable to the newly-created parcels, including overall residential density, etc.

Finding: This application will result in three parcels being created from one 27-acre parcel zoned VLDR 2.5. Two new 2.4-acre new parcels will be created, making the remainder parcel 22.44 acres. *See Site Plan at Exhibit A-1 (showing the desired new configuration).* This conforms to the maximum density allowed in the VLDR 2.5 zone.

One of the surrounding property owners submitted a concern regarding the request for two (2) lots that, if approved, will be smaller than the 2.5-acre minimum lot size for newly created parcels within the VLDR-2.5 zone. The County finds that the code allows for lot-size averaging. The Applicant's request for a partition is in conformity with the parcel size averaging option, with two (2) parcels proposed at 2.4-acres and a single parcel at 22.44-acres, with an average parcel size of 12.28-acres between the three newly created parcels.

502.06(B). Parcel Size and Dimension.

* * * * *

2. VLDR-2 2. (a) Newly-Created Parcels. The minimum size of any newly-created parcel shall be two and one-half (2 2) acres, except as follows:

- i. *in the case of parcel-size averaging, the minimum parcel size shall be one (1) acre; and*
- ii. *in the case of a duplex, the minimum parcel shall be five (5) acres; and*
- iii. *in the case of a residential planned unit development, the minimum parcel size shall be ten (10) acres.*

Finding: This application will result in three parcels being created from one 27-acre parcel zoned VLDR 2.5. Two new 2.4-acre new parcels would be created, making the remainder parcel 22 acres. See Site Plan at Exhibit A-1 showing the desired new configuration. This conforms to the minimum parcel size and dimensions allowed in the VLDR 2.5 zone.

In the VLDR zone, an applicant may propose to use “parcel size averaging” when partitioning new lots. In the VLDR-2.5 zone, Section 502.06(B)(2) of the YCZO allows for a minimum lot size of one (1) acre. However, a memorandum issued in 2000 by the Oregon Department of Land Conservation and Development (DLCD) stated that lots below 2-acres in size represent an urban-scale of development. See also *1000 Friends of Oregon v. LCDC, (Curry Co.)*, 301 Or. 447, 724 P.2d 268 (1986).

The Applicant’s request for a partition utilizes the parcel size averaging option permitted by the county zoning ordinance with two (2) parcels proposed at 2.4-acres and a single parcel at 22.44-acres, for an average parcel size of 12.28-acres. Section I.B., Policy B. of the Yamhill County Comprehensive Plan directs the county to “... recognize the lands designated on the plan map as Agriculture/Forestry Small Holding (AFSH), Very Low Density Residential (VLDR) and Low Density Residential (LDR) as the appropriate and desired location for rural residential development, while at the same time encouraging opportunities for small scale or intensive agricultural and forestry activities within these plan-designated areas.” The proposed partition is occurring in an area planned for rural residential use, namely the VLDR District, and the development of these parcels will provide additional opportunities for future residents to develop agricultural or forestry activities on these proposed lots. The Applicant’s request is in conformance with the *Yamhill County Comprehensive Plan* and the *Yamhill County Zoning Ordinance*.

(b) Pre-existing Lots of Record. Any permitted or conditional use provided for in this District may be established on a substandard pre-existing lot of record, subject to the applicable requirements of this section. In addition, prior to issuance of a building permit for a principal dwelling, the provisions of Section 1204 shall be satisfied.

Finding: TL 1600 is not substandard, so this criterion does not apply.

(c) Depth-to-Width Ratio. The maximum depth-to-width ratio for any newly-created parcel shall be 3:1.

Finding: The depth to width ration for the two newly created parcels will be 340’ deep by 282’ wide, or a ratio of 1.2/1. See Site Plan at Exhibit A-1.

502.06(C). Setbacks. *The following setback requirements apply to all VLDR Districts unless varied or waived by a planned unit development, subject to Section 903:*

1. Front Yard. *The minimum front yard setback shall be thirty (30) feet except as follows:*

(a) No dwelling shall be located within one hundred (100) feet of the property line of an existing extraction or mining operation nor less than two hundred (200) feet from an existing extraction operation.

(b) The minimum setback for all yards for signs shall be five (5) feet; and (c) No structure housing livestock shall be located within fifty (50) feet of any front parcel line, twenty-five (25) feet of any other parcel line, and forty (40) feet of any dwelling.

2. Side and Rear Yard. *The minimum side and rear yard setbacks shall be fifteen (15) feet, except as provided in this subsection.*

3. An accessory structure not more than fifteen (15) feet in height, at least sixty (60) feet from a road, and at least ten (10) feet from any dwelling may be located a minimum distance of three (3) feet from the property line in a side yard or rear yard.

Finding: These standards shall apply to subsequent development constructed on approved parcels, and can be made conditions of approval to the land use decision which approves this request for a Minor Partition.

4. A swimming pool may be located in a required rear yard, provided it lies a minimum of five (5) feet from the rear property line.

Finding: This standard shall apply to subsequent development constructed on approved parcels.

5. Fences, walls and hedges may be permitted in any required yard or along the edge of any yard, subject to the clear-vision area requirements of subsection 502.06(F). [Subsection C amended 7/9/98, Ord. 648]

Finding: This standard shall apply to subsequent development constructed on approved parcels.

502.06(D). Parcel Coverage. *For any parcel of one (1) acre or more, but less than ten (10) acres, the maximum parcel coverage shall be ten (10) percent. For any parcel of less than one (1) acre, the maximum parcel coverage shall be fifteen (15) percent.*

Finding: This standard shall apply to subsequent development constructed on approved parcels.

502.06(E). Access. *Before a dwelling may be established on any parcel as provided in this section, the parcel shall have a legal, safe and passable means of access by abutting at least twenty (20) feet either directly upon a public road, or by a private easement which is at least thirty (30) feet in width for its entire length and which also abuts upon a public road for at least*

thirty (30) feet. Nothing in this section shall be construed to vary or waive the requirements for creation of new access contained in any Land Division Ordinance legally adopted by Yamhill County.

Finding: There is an existing 60' wide easement along the western property line across TL 1701 to NW Berry Creek Road. *See Exhibit A-1 (Site Plan).*

502.06(F). Clear-Vision Areas. *A clear-vision area shall be maintained on the corner of any parcel at the intersection of any two of the following: County roads, public roads, private roads serving four or more parcels; and railroads. A clear-vision area shall contain no sight-obscuring structures or planting exceeding thirty (30) inches in within a triangle formed by the lot corner nearest the intersection, and the two points twenty (20) feet from this corner as measured along the parcel lines adjacent to the intersecting rights-of-way. Trees exceeding this may be located such that their branches extend into this triangle, provided they are maintained to allow at least twelve (12) feet of visual clearance within the triangle below the lowest hanging branches.*

Finding: TL 1600 and the two newly-created parcels are not located at any such intersection, so this criterion does not apply. *See Exhibit A-1 (Site Plan).*

I. Applicable Regulations - Yamhill County Land Division Ordinance.

6.000 GENERAL REQUIREMENTS

6.000(1). Conformity to the Comprehensive Plan, Official Map, Zoning Ordinance and Other Ordinances or Factors - *The subdivision or partition shall conform to and be in harmony with the county comprehensive plan, the development pattern, the zoning ordinance and any other ordinance legally adopted or amended.*

Finding: Subsection 6.000 of the LDO requires subdivisions and partitions to conform with the requirements of the Comprehensive Plan and other ordinances. The subject parcel has a Comprehensive Plan and zoning designation of Very Low Density Residential (VLDR), the VLDR-2.5 zone. In the VLDR zone parcel size averaging is an option for an Applicant to propose using when partitioning new lots. In the VLDR-2.5 zone, Section 502.06(B)(2) of the YCZO allows for a minimum lot size of one (1) acre, however a memorandum issued in 2000 by the Oregon Department of Land Conservation and Development (DLCD) stated that lots below 2-acres in size represent an urban-scale of development. *See also 1000 Friends of Oregon v. LCDC, (Curry Co.), 301 Or. 447, 724 P.2d 268 (1986).* The Applicant's request for a partition utilizes the parcel size averaging option permitted by the county zoning ordinance with two (2) parcels proposed at 2.4-acres and a single parcel at 22.44-acres, for an average parcel size of 12.28-acres. Section I.B., Policy B. of the Yamhill County Comprehensive Plan directs the county to "... recognize the lands designated on the plan map as Agriculture/Forestry Small Holding (AFSH), Very Low Density Residential (VLDR) and Low Density Residential (LDR) as the appropriate and desired location for rural residential development, while at the same time encouraging opportunities for small scale or intensive agricultural and forestry activities within these plan-designated areas." The proposed partition is occurring in an area planned for rural residential use,

namely the VLDR District, and the development of these parcels will provide additional opportunities for future residents to develop agricultural or forestry activities on these proposed lots. The Applicant's request is in conformance with the *Yamhill County Comprehensive Plan* and the *Yamhill County Zoning Ordinance*.

One of the applicable Comprehensive Plan policies is found at Section II (D), Policy F:

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)

Staff sent the required notice to ODFW. Staff did not receive any response from the agency. Section II (D), Policy F creates no affirmative obligation on the Applicant in the absence of information provided by ODWF which indicates that site-specific habitat conflicts exist resulting from the proposed development.

6.000(2). Conformity to State Requirements - The subdivision or partition shall conform to the requirements of the Oregon Revised Statutes (ORS) Chapters 92, 197, and 215.

Finding: This Application conforms to the requirements of ORS Chapters 92, 197, and 215. Those statutory requirements have been incorporated into the Yamhill County Zoning Ordinance and Yamhill County Land Division Ordinance, so showing conformance with the County ordinances establishes conformity with state statutes regarding partitions.

6.000(3). The subdivision or partition of land within a designated Urban Growth Boundary or Urban Reserve Area shall be reviewed by the affected city to ensure that interim rural development does not restrict options for long-term urbanization. At the request of the affected city, additional planning requirements such as shadow platting, redevelopment planning, or lot clustering shall be imposed as conditions of interim rural development to meet this objective.

Finding: TL 1600 is not within a designated UGB, so this criterion does not apply.

6.000(4). If a subdivision or partition of land within a designated Urban Growth Boundary or Urban Reserve Area will result in parcels less than ten acres, the County shall require that the applicant submit a plan that illustrates how the parcels can be further redivided to urban densities without interfering with the orderly development of streets. The plan shall be referred to the City for review and concurrence on a final decision. If requested by the city, the County Planning Director shall restrict the placement or location of structures, easements, facilities or other uses to protect future roadway corridors and future urban development options.

Finding: TL 1600 is not within a designated UGB, so this criterion does not apply.

6.010 STREET DESIGN

6.010(1). No major partition or subdivision plat shall be granted final approval until street improvements are completed in accordance with this ordinance, or proper security is posted as specified in Section 13.000 of this ordinance.

Finding: Subsection 6.010(1) of the LDO requires that road improvements be completed, or proper security posted as specified in Section 13.000 of the LDO. The proposed lots are provided access to NW Berry Creek Road by way of an existing 60-foot wide easement drive. NW Berry Creek Road is a county maintained public road. The easement drive passes through Tax Lot 4512-01701. A portion of NW Berry Creek Road is paved, but the portion of the road that fronts TL 1701 is an all-weather gravel surfaced road.

It is appropriate to impose a condition of approval that the Applicant sign and record a road maintenance agreement with any willing participants, and that the McMinnville Fire Department inspect and approve the development of the access drive to the proposed parcels and that these conditions be satisfied prior to the issuance of septic or building permits. With conditions, the Applicant's request is consistent with this subsection of the Yamhill County *Land Division Ordinance*.

6.010(2). Relation to the Adjoining Street System - A subdivision or partition shall provide for the continuation of the principal street(s) existing in the adjoining area, or of their proper projection when adjoining property is not developed. Such street(s) shall be of a width and standard of not less than the minimum requirements for streets as set forth in this ordinance and the Standards and Specifications For Road Construction in Yamhill County, Oregon.

Finding: Subsection 6.010(2) of the LDO requires that the partition provide for continuation of the principal streets existing in the area. The proposed lot configuration will be the creation of an easement drive that extends from NW Berry Creek Road and will not lead to the continuation of NW Berry Creek Road, so the request conforms to this requirement. This application does not include any streets.

6.010(3). If the preliminary plat submitted covers only a part of the subdivider's or partitioner's tract, or if there are indications that contiguous lots, parcels or units of land will eventually be subdivided or partitioned, the owner may be required to demonstrate that the subdivision or partition can substantially conform to and be in harmony with the eventual orderly development of the entire tract or contiguous lands. The Director may require the owner to submit a drawing (at the time of initial application) of a general or prospective future street system and lot layout of the entire tract or contiguous units of land.

Finding: The preliminary partition plat covers all of Cyclops Rising LLC's parcel (TL 1600), so this criterion does not apply.

6.010(4). If a tract is divided into lots of 20,000 square feet or more, the Director may require an arrangement of lots and streets to permit a later re-division in conformity to the requirements contained in this ordinance. The location of lot lines and other details of the

layout shall be such that further division of the parcels may readily take place without interfering with the orderly development of streets. The Director may restrict the placement or location of structures, easements, facilities or other uses that may cause an infringement upon the use or development and improvement of an existing or anticipated street or roadway.

Finding: Subsection 6.010(4) of the LDO indicates that the Planning Director may require an arrangement of lots and streets that will permit a later re-division of the properties. The property is currently well outside of the McMinnville urban growth boundary or an urban reserve area. Therefore, a shadow plat will not be required.

6.010(5). Except as provided in subsection 8 (Private easements/ driveways) of this section, no partition or subdivision or dedication of any area shall be approved by the Director unless the streets shown therein are connected to an existing street that the county engineer finds to be adequate to accommodate the additional use generated by the development.

Finding: Subsection 6.010(8) of the LDO lists the option of property being served by a private easement or driveway. As noted above, the proposed parcel will be served by an existing 60-foot easement drive providing access to NW Berry Creek Road. The County finds that NW Berry Creek Road is adequate to handle the additional traffic that could be generated by two new single-family residences.

6.010(6). If a subdivision or partition contains or abuts an existing or proposed arterial street, railroad right-of-way or limited access thoroughfare, the Director may require additional design standards deemed necessary for adequate protection and buffering of residential, commercial or industrial property, which may include, but is not limited to:

A. Frontage streets;

B. Limited access locations;

C. Reverse frontage lots;

D. Increase lot depth requirement on those lots abutting the arterial, railroad right-of-way or limited access thoroughfare;

E. Planting easements; and

F. Sight obscuring screen planting or fencing.

Finding: This standard does not apply because the proposed partition does not “contain” or “abut” a proposed arterial, railroad ROW, or an ODOT facility.

6.010(7). Street and cul-de-sac widths and improvements.

Finding: This application does not include any new streets or cul-de-sacs, so this criterion does not apply.

6.010(7)(A). *The creation of any road and the standard street section requirements shall conform to the county road standards and this ordinance. However, any public road proposed to be located within the Urban Growth Boundary of a city having more restrictive road requirements shall be subject to city road requirements.*

Finding: This application does not include any new roads, so this criterion does not apply.

6.010(7)(B). *Except as provided in paragraph C below, all streets designed for public dedication shall have a right-of-way width of not less than 60 feet. Additional right-of-way may be required in order to properly accommodate all road cut and fill slopes and the placement and installation of utilities.*

Finding: This application does not include any new street dedications, so this criterion does not apply.

6.010(7)(C). *Cul-de-sac streets that serve as access to parcels averaging 20,000 square feet in area or less shall not exceed 500 feet in length, and shall otherwise not exceed 1500 feet in length. Each cul-de-sac must be terminated by a turnaround right-of-way not less than 100 feet in diameter. The minimum right-of-way for cul-de-sac streets shall be 50 feet.*

Finding: This application does not include any cul-de-sac streets. The private easement has an emergency turn-around. See Exhibit A-1.

6.010(7)(D). *Temporary Dead-end Streets. If a street is designed to remain only temporarily as a dead-end street, an adequate (all weather) temporary turning area and drainage system shall be provided at the dead-end to remain and be available for public use so long as the dead-end condition exists. Construction of the temporary turnaround and drainage system shall meet with the approval of the county engineer.*

Finding: The Site Plan includes an emergency vehicle turnaround conforming to the Fire Code. See Exhibit A-1.

6.010(7)(E). *Half-streets proposed along a subdivision boundary or within any part of a subdivision or partition shall not be approved.*

Finding: No half-streets are proposed. This subsection does not apply.

6.010(7)(F). *Street grades may be permitted up to 15 percent provided they do not exceed 200 feet in length, whereby they must be reduced to 10 percent or less for a minimum length of 200 feet. The overall maximum sustained grade shall not exceed 10 percent.*

Finding: The applicant does not propose any sustained grade which exceeds 10 percent.

6.010(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.

(8) All private roadways and easements shall be constructed in accordance with the Standards and Specifications for Road Construction in Yamhill County, 1975, or to a standard determined by the Yamhill County Public Works Director or the Director's designee.

Finding: The proposed private easement shall serve a maximum of three parcels (TL 1600 and the two new 2.4-acre parcels). The easement shall conform to these dimensional requirements. See Exhibit A-1.

A surrounding property owner submitted a comment suggesting that the proposed three (3) new lots will exceed the number of lots served by the existing easement. The Yamhill County LDO defines an easement as “an estate in land owned by another that entitles its holder to a use.” Section 6.010(8)(C) of the LDO states that no more than three parcels may be served by a private easement. The surrounding property owners contend that the lot through which the easement crosses should count towards the maximum of the three lots that can be served by an access easement. In this case, the existing 60-foot easement passes through Tax Lot 4512-01701, which is under the ownership of Alfredo and Deborah Arguedas. The Arguedas parcel has direct access to NW Berry Creek Road. The driveway providing access to Tax Lot 4512-01701 is an estate of land under the ownership of the Arguedas family and does not pass through an estate of land

owned by another party. Therefore, the County finds that the use of the existing access easement will be serving the three lots proposed by the Applicant, and that the Applicant's request is in conformity with Section 6.010(8)(C) of the LDO.

6.010(8)(D)(9). Roads longer than 400 feet in length must have turnouts at least every 800 feet or less as required by the county public works department. Turnouts must contain 10 feet of additional road width for a minimum distance of 30 feet. In addition roads that exceed 400 feet in length, having only one entrance onto the county road system, shall provide one or more turnarounds. Turnarounds should be circular with a minimum 30 foot radius wherever possible, but may be modified by the county engineer if the engineer finds that:

- a. The size and design of the turnaround is sufficient to allow at least a 1000 gallon pumper fire truck to turn around without backing up more than once.**
- b. The perimeter of the turnaround is properly marked to allow visual guidance when a vehicle is turning around or backing up.**

Finding: No such road is proposed. This criterion does not apply.

6.010(8)(D)(10). Construction of turnouts and turnarounds shall be made to the same standard as required for private easement construction.

Finding: The emergency turnaround shown on Exhibit A-1 shall be built to the standards required for private easement construction.

6.010(8)(D)(11). Additional road construction improvements may be required in areas exhibiting poor soil stability, drainage or other abnormal conditions including but not limited to abnormal traffic volumes or heavy truck traffic.

Finding: The area under consideration does not exhibit poor soil stability, poor drainage or other abnormal conditions. This area does not exhibit abnormal traffic volumes or heavy truck traffic. For these reasons, no additional road construction improvements are required.

6.010(8)(E). It shall be the responsibility of the benefitted property owners to maintain the private easement or driveway established in accordance with this ordinance. The Director may require the establishment of a road maintenance association, covenant or other similar requirement for the perpetual maintenance of such road. Any maintenance agreement required by the Director shall be in accordance with Chapter 660 Oregon Laws, 1989. In the absence of an agreement, responsibility for maintenance of an access easement shall be as specified in Chapter 660 Oregon Laws, 1989.

Finding: This is not an approval criterion, but rather is informational in nature.

6.020 ACCESS TO PARCELS AND HOMESITES

6.020(1). There shall be direct legal access to and abutting on every lot or parcel. In addition, each anticipated homesite shall be capable of being provided access that meets minimum requirements for access by fire protection equipment.

Finding: The Applicant has shown via the site plan that it is feasible to provide legal access to each of the two developable parcels and the remainder parcel. *See* Exhibit A-1 and the recorded easement attached as Exhibit 4, which establishes a 60' wide easement across T.L. 1701.

6.020(2). *The land provided for public roadways and easement or easements of a public or private utility system shall be clearly defined on the preliminary plat.*

Finding: The preliminary partition plat identifies the easements. *See* Exhibit A-1.

6.030 LOTS

6.030(1). *Lot Shape. Lots should form or approximate conventional shapes, and shall otherwise be consistent with the zoning ordinance.*

Finding: Subsection 6.030 of the LDO requires that all lots should form or approximate conventional shapes, with lot side lines running at right angles to the street as far as practical, except for lots on cul-de-sac streets, where side lot lines shall be radial to the curve. The proposed parcels are shown as rectangular in shape on the preliminary plat, therefore the request is in conformity with the requirements of subsection 6.030.

6.030(2). *Lot Access. Every lot shall abut and have adequate access to a public street and shall have a road frontage of not less than 50 feet, except as provided below:*

- A. A lot on the radius of a curved street or facing the circular end of a cul-de-sac shall have frontage of not less than 30 feet upon a street, measured on the arc of the right-of-way.*
- B. Minimum access widths for flag lots shall be 30 feet, except that a greater width may be required if it is possible that more than two parcels could be served from such access as their only means of legal access.*
- C. No more than three parcels may be served by a private easement which has a minimum width of 30 feet. Roads which are to serve as access to four or more parcels shall be constructed to the specifications required by the county road standards.*

Finding: No more than three parcels shall be served by the existing TL 1701 private easement (*see* Exhibit 4), or the two new easements shown on Exhibit A-1. All three parcels will have adequate access to NW Berry Creek Road.

6.030(3). *Flag Lots and Double Frontage Lots. Flag lots shall not be permitted unless, in the judgment of the Director, the parcel shape, topography, or other factors make such lots unavoidable. Lots that have street frontage along two opposite boundaries (double frontage lots) may be permitted if the boundary along one of the streets is established as the rear lot line.*

Finding: No flag lots or double frontage lots are proposed. *See* Exhibit A-1. This criterion does not apply.

6.030(4). Lot Bordering a Water Body or Stream Course. In creating parcels of two acres or less in a partition or subdivision, the minimum lot area shall not include those lands, tracts, areas, or portions of a lot located below the mean high water elevation of a lake, river, stream or other water body.

Finding: None of the three proposed parcels border a water body or stream course. This criterion does not apply.

6.030(5). Lot Sidelines. As far as practical, lot side lines shall run at right angles to the street upon which the lots face, except that on curved or cul-de-sac streets, they shall be radial to the curve. The Director may vary this requirement when it is found that existing topography, providing for solar orientation or other factors, make such a requirement impractical.

Finding: The lot side lines run at right angles to the easements that provide access. See Exhibit A-1.

6.030(6). Lot Drainage. Lots shall be laid out to provide positive drainage away from all buildings. Individual lot drainage shall be coordinated with the general stream drainage pattern for the area. Drainage shall be designed to avoid unnecessary concentration of storm drainage water from each lot to other lots or parcels. Drainage systems shall be designed and constructed to the specifications that may be hereafter adopted by Board order and recorded in the Commissioners Journal.

Finding: This code section contains four component sentences, each of which encompasses a separate requirement. Each requirement is discussed below:

6. Lots shall be laid out to provide positive drainage away from all buildings.

The first sentence is intended to ensure that the lot design takes the topography into account, so that no building site is located in a depression or flat swampy area where no “positive drainage” is possible. In this regard, this is a “common sense” provision that any reasonable developer would do regardless of the existence of a code provision to that effect.

Individual lot drainage shall be coordinated with the general stream drainage pattern for the area.

This second sentence is consistent with state law inasmuch as it is intended to prevent water from being “diverted” from one natural drainage basin to another. It seeks to ensure that lots are designed to use existing natural “stream drainage patterns” in the area, as opposed to out of basin diversions. The applicant’s proposed development is consistent with this sentence because the two 2.5 acre lots will continue to drain to the intermittent creek shown in the USGS Topo map for this area.

Drainage shall be designed to avoid unnecessary concentration of storm drainage water from each lot to other lots or parcels.

The third sentence is written broadly enough to encompass multiple drainage law concepts. First, it seeks to mandate a grading plan that does result in an “unnecessary concentration” of water from one lot to another. Most often, such a concentration occurs when surface water is collected from impervious surfaces into a pipe and then is discharged at one location. The outfall of the pipe will often form a channel, which causes unnecessary damage on a lower lot or parcel. The creation of a channel where none previously existed is unlawful both under state common law and this code provision. Site design can mitigate such problems via the use of level spreaders, groundwater percolation systems and other technologies.

Note, however, that this code provision does not completely prohibit the acceleration of water as that term is understood in *Garbarino v. Van Cleave*, 214 Or 54, 330 P2d 28 (1958) and its progeny. As stated above, Oregon’s system of drainage is based on the civil rule of drainage, which establishes that upper landowners are granted, by operation of law, a drainage easement for natural water flows, including *accelerated* water flows. *Rehfuss v. Weeks*, 93 Or 25, 33, 182 P 137 (1919). The limiting language in the Code (*i.e.* “unnecessary concentration”) is interpreted in a manner consistent with Oregon’s common law, which is to say that it must take into account the reasonable consideration for the rights of the lower proprietor” by not causing an “unusual” or “unreasonable amount of water” to be emptied upon the lower owner. To interpret Code in a more strict manner would deny the upper landowner of its natural drainage easements, which are a property right.

The applicant submitted expert evidence from Mr. Chis Bahner, P.E., D., WRE of WEST Consultants that demonstrates that it is feasible for on-site drainage solutions to be designed for the two new 2.4-acre rural residential sites. According to Mr. Bahner, such facilities can be designed to avoid any “unnecessary concentrations” of storm drainage on downstream properties. On-site engineering solutions, such as on-site retention or infiltration facilities, will address any increase in stormwater runoff. Such engineering solutions are both possible and highly likely to succeed in ensuring no discernible detrimental impacts to downstream property. In addition, Mr. Bahner assured the County that careful design will ensure that no out-of-basin diversions occur from the development of the two parcels.

Paul and Anna Marie Roberts submitted a letter on October 27, 2022 in which they argue that “developing these new tax lots will cause harm to the people and environment in this area from erosion and flooding.” However, Mr. & Mrs. Roberts do not substantiate their opinion in any manner, or offer any reason to think that water originating on the subject property will reach their property. Unsupported statements are mere conclusions, and do not constitute substantial evidence. *Palmer v. Lane County*, 29 Or LUBA 436 (1995); *DLCD v. Curry County*, 31 Or LUBA (1996). In addition, substantial evidence also does not exist to support a conclusion if the only supporting evidence “consists of an opinion whose foundation is unclear or which is inconsistent with the information on which it is based.” *1000 Friends of Oregon v. LCDC*, 83 Or App 278, 286, 731 P2d 457 (1987), *aff’d in part, rev’d in part on other grounds*, 305 Or 384, 752 P2d 271 (1988).

In this case, the two 2.4-acre lots are composed almost entirely of Gellatly-Dixonville soils, which are well-drained volcanic soils. This good drainage is evidenced by the good growth of conifers, such as Douglas Fir, on all but the lowest parts of the property.

As noted by Mr. Chis Bahner, P.E., D., WRE of WEST Consultants, the two 2.4-acre lots will drain to the southwest into a natural drainage swale located near the west edge of the subject property. That natural drainage swale carries surface water from the subject property to the south, where it goes under Berry Creek Road via a culvert and eventually reaches Berry Creek.

Mr. & Mrs. Roberts state that their “concern is that by developing these new tax lots this will cause further erosion and flooding of our home and property.” This is simply implausible due to the topography of the site. Due to an intervening area of high ground, there is no opportunity for water originating on the two 2.4 acre lots to reach the Roberts’ property. Their concern is therefore unfounded. Having said that, topographic maps reveal that the Roberts’ home was built directly over a small drainage swale. It is, therefore, understandable why they have experienced drainage problems in the past that required remediation via a curtain drain. Furthermore, their home sits uncomfortably close to a culvert in Berry Creek Road, which until recently, was undersized. The County recently replaced that culvert with a new 36-inch pipe.

Moreover, assuming that the two proposed 2.4-acre parcels will be used to build single family residences within normal setbacks, it seems highly unlikely that such development would create an “unnecessary concentration of storm drainage water from each lot to other lots or parcels.” The homes would most certainly be placed as far up the slope of the hill as the setbacks allow, to maximize the beautiful territorial views to the southwest. Any surface water created by roof drains would percolate into the well-drained Gellatly-Dixonville soils.

Mr. & Mrs. Roberts also state that they are concerned about “the erosion and flooding of Berry Creek Road.” They point out that the road is gravel and “currently faces flooding and erosion issues in multiple areas.” Mr. & Mrs. Roberts do not relate this concern to any approval criterion, and the concern is certainly outside the scope of LDO §6.030(6).

The Applicant submitted expert testimony responding to comments submitted by Jesse and Chris Hanke. In their letter, the Hanke’s provide Natural Resources Conservation Service (NRCS) Web Soil Survey (WSS) data that indicates that the soils on the subject property have very slow infiltration and have “one or more features that are unfavorable for infiltration systems to manage stormwater.” As the Hanke’s correctly point out, the NRCS advises that in such soils, “[t]he limitations generally cannot be overcome without major soil reclamation, special design, or expensive installation procedures. Poor performance and high maintenance can be expected.” As shown in the NRCS map on the next page, soils rated as “very limited” are very common all throughout the volcanic hilly areas in Yamhill County. However, the applicant’s expert stated that the drainage limitations inherent in these soils is not an impediment to residential development.

The applicant’s expert provided another map (a close-up of the area with the red shaded area representing Hydrologic Soil Group (HSG) “D”) which represents the soils the Hanke’s pointed out, and blue shaded area representing HSG “C” that has higher infiltration rates than HSG “D”. The soils at the proposed parcels are classified as either 2795D or 2795E that have a drainage

classification of “well drained” and infiltration rates between 0.6 to 0.2 inches per hour. The Applicant’s expert stated that the presence of these soils does not require that development be denied; it simply means that more attention, expertise, and forethought need to be applied when building in these areas, and engineering solutions are available. The solutions just require, as NRCS notes, a “special design” and in some cases, the installation may be somewhat more expensive than areas that do not require special attention. However, the Applicant’s expert noted that these are far from the worst areas in Oregon when it comes to stormwater management. For example, he stated that the McMinnville foothills are relatively easy to manage from a stormwater, drainage, and flooding perspective, as compared to the Tillamook Valley area.

The County finds the expert testimony of Mr. Bahner to be more credible than the testimony of the neighbors. The County believes it is appropriate to impose a condition of approval requiring the submission of a drainage plan which shall be prepared by a registered engineer demonstrating that no natural drainage will be disturbed by the proposed partition and future residential development of the lots. The drainage plan shall be submitted to and approved by the Public Works Department prior to approval of the final plat or issuance of building or septic permits. With the imposition of conditions, the request complies with subsection 6.030(6) of the LDO.

Drainage systems shall be designed and constructed to the specifications that may be hereafter adopted by Board order and recorded in the Commissioners Journal.

The last sentence of 6.030(6) states that the developer will abide by whatever stormwater construction standards the County has adopted. Such construction standards typically apply at the time of construction of roads, buildings, and similar structures.

6.040 BLOCKS

1. In a subdivision or partition with lots averaging one acre or less, the blocks shall not exceed 1,000 feet in length, except blocks adjacent to arterial or collector streets, a railroad right-of-way or limited access thoroughfare.

Finding: This criterion does not apply.

2. Pedestrian walkways. The subdivider may be required to dedicate and improve a ten foot pedestrian walkway across blocks over 600 feet in length and/or to provide access to schools, parks or other public areas. Pedestrian walkways shall be surfaced in a manner appropriate to the level of development.

Finding: This criterion does not apply.

6.050 UTILITY EASEMENTS Easements for sewers, drainage, water mains, public utility installation, including overhead or underground systems, and for other public purposes shall be placed in road right-of-ways, walkways and planting strips subject to the approval by the county engineer, or shall otherwise be dedicated, reserved or granted by the subdivider in widths not less than 15 feet centering along or abutting side or rear lot lines when necessary.

Finding: This criterion can be made a condition of approval.

6.060 WATERCOURSES - The Director may require a stream water easement or drainage right-of-way conforming substantially to the line of a watercourse, drainage way, wasteway, channel, or stream bordering or traversing a partition or subdivision. The easement or right-of-way shall be wide enough to allow for construction, maintenance, and control and otherwise be adequate for purposes specified by the appropriate agency.

Finding: The County does not find it necessary to impose a stream water easement or drainage right-of-way at this time, because no stream or drainage channel exists on the two 2.4 acre parcels. According to the Applicant, the remainder parcel shall be the subject of future development applications.

6.070 LANDS SUBJECT TO HAZARDOUS CONDITIONS - Lands which the Director finds to be unsuitable for development due to flooding, inadequate drainage, steep slopes, rock formations, earthquake activity, landmass instability, pollutants or other factors or conditions likely to be harmful to the safety, and general health of future residents or the general public, shall not be developed for building purposes and may be used for open space unless adequate methods for overcoming these conditions are submitted and approved by all appropriate agencies.

Finding: Subsection 6.070 of the LDO deals with lands subject to hazardous conditions related to flooding, inadequate drainage, steep slopes, rock formations, earthquake activity, landmass instability, pollutants, or other general factors or conditions that are likely to be harmful to the health and safety of future residents or the general public. The property is not in the Flood Hazard Overlay zone and is not located in any identified hazard area. There are no steep slopes or significant rock formations that could impede the safe and orderly development of the proposed parcels. There is no documented history of the dumping of toxic or hazardous pollutants on the subject parcel. Earthquakes are an ever-present risk in Oregon but there is no indication that this particular property is at greater risk of earthquake than any other geographic feature in the county. The subject parcel is not located within an identified limited groundwater area. No hazardous conditions have been identified on proposed Parcels 1, 2, or 3.

6.080 LAND FOR PUBLIC PURPOSES - If the county has an interest in acquiring a portion of a proposed subdivision for a public purpose, or if the county has been advised of such interest by a school district or other public agency, and there is reasonable assurance that steps will be taken to acquire the land, the Director may require that those portions of the subdivision or partition be reserved for public acquisition, for a period not to exceed one year, at a cost not to exceed the value of the land prior to subdivision.

Finding: This criterion does not apply.

6.090 WATER SUPPLY - All lots within a partition or subdivision shall have an adequate quantity and quality of water to support the proposed use of the land. No final plat of a subdivision or partition shall be approved unless the Director and engineer have received and

accepted:

1. *A certification by a municipal, public utility or community water supply system, subject to the regulation by the Public Utility Commission of Oregon, that water will be provided to the parcel line of each and every parcel depicted in the final plat; or*
2. *A bond, contract or other assurance by the subdivider or partitioner to the county that a domestic water supply system will be installed on behalf of the subdivider or partitioner to the parcel line of each and every parcel depicted on the final plat. The amount of any such bond, contract or other assurance by the subdivider or partitioner shall be determined by a registered professional engineer, subject to any change in the amount as determined necessary by the county; or*
3. *A water well report filed with the State of Oregon Water Resources Department for each well provided within a subdivision or partition. The location of such wells and an appropriate disclosure shall be placed on the face of the final plat. If the subdivider or partitioner intends that domestic water will be provided to the proposed lot or lots by well(s) and no test wells have been drilled, the Director may require that test wells be drilled prior to final approval. The number and location of such wells shall be determined by the director and watermaster having jurisdiction; or*
4. *In lieu of Subsections (1), (2), and (3) of this Section, when a municipal, public utility, community water supply or private well system is not available, then a statement must be placed on the final plat or map which states: "No municipal, public utility, community water supply or private well system will be provided to the purchaser of those lots noted hereon."*

Finding: The Applicant indicated that a proposed new well will be used to provide water to the new parcels which would satisfy subsection 6.090 of the LDO. At the hearing before the Board of Commissioners, the Applicant testified that they had successfully drilled a 17gallon / min well on the remainder parcel, and that this well would be used to serve the two 2.4-acre parcels being proposed by this application. A condition of approval will be imposed that requires the Applicant demonstrate conformance with one of the four standards provided by Section 6.090 of the LDO prior to final plat approval. With the imposition of conditions, the request complies with Subsection 6.090 of the LDO.

Although opponents noted concerns about water wells, Staff correctly stated at the hearing before the Planning Commission that no approval criterion relates to this issue. Nonetheless, the Applicant has stated that it understands that it needs to proceed slowly and carefully with regard to well-drilling, to ensure that the aquifer is not utilized in a non-sustainable manner.

6.100 SEWAGE DISPOSAL REQUIREMENTS - All lots within a partition or subdivision to be used for residential purposes shall have either an approved subsurface septic site evaluation or be connected to a sewer treatment facility approved by the State Department of Environment Quality. No final plat of a subdivision or partition shall be approved unless the Director and engineer have received and accepted:

- 1. A certification by a city-owned sewage-disposal system or by the owner of a privately owned sewage-disposal system that is subject to regulation by the State Department of Environmental Quality, that a sewage disposal system will be provided to the parcel line of each and every parcel depicted in the final plat; or*
- 2. Certification by the county sanitarian that an approved subsurface sewage disposal site has been located on the proposed parcel to the specifications prescribed by the State Department of Environmental Quality. Each proposed lot 2 ½ acres in size or less which is to be served by subsurface sewage disposal systems shall reflect the approved area by survey on the final plat along with a statement that reads: "Septic tank drainfields have been approved for those areas noted hereon. The placement of a drainfield shall require approval and permit by the county sanitarian"; or*
- 3. A bond, contract or other assurance by the subdivider or partitioner to the county that a sewage-disposal system, septic tank drainfield or surveyed drainfield area will be installed or provided by or on behalf of the subdivider or partitioner for each and every parcel depicted on the final plat. The amount of such bond, contract or other assurance shall be determined by a registered professional engineer, subject to any change in the amount as the county considers necessary; or*
- 4. In lieu of, or in combination with Subsections 1, 2, and 3 of this Section, a statement shall be placed on the face of the final plat or map which states: "A subsurface site evaluation or an alternative sewer treatment facility has been approved and authorized by the State of Oregon Department of Environmental Quality for those lots noted hereon." when:*
 - A. A city owned or privately owned sewage disposal system is not available, or*
 - B. Lots are over 2 ½ acres in size, or*
 - C. An alternate sewage treatment facility has been approved and authorized by the State of Oregon Department of Environmental Quality.*

Finding: Subsection 6.100 of the LDO contains options and requirements for sewage disposal. The provision of adequate sewage disposal will be required on any approval. No public or city sewer services are available in the surrounding area, so Parcels 1, 2, and 3 will be required to be served by an individual on-site subsurface sewage disposal system prior to issuance of building permits.

On September 30th, 2022, a representative of the Applicant submitted into the record approved septic site evaluations for the two proposed 2.4-acre parcels. The County Sanitarian conducts septic site evaluations to ensure there is adequate area to locate an adequately sized and engineered septic system so that wastewater generated by a future dwelling will not adversely impact groundwater in the area. In addition to the drainfield location, the site evaluation also identifies a replacement area for the septic system. The request complies with Subsection 6.100 of the LDO.

6.100(5). If an alternative sewage treatment facility has been authorized, or an expiration date has been specified relating to Subsection 1, 2 and 4 of this section, an appropriate disclosure shall be placed on the face of the final plat indicating the location and type of system authorized and/or the date of expiration. 6. In lieu of, or in combination with Subsections 1, 2, 3 and 4 of this section, when a lot is created for nonresidential purposes only, and no city-owned or privately owned sewage disposal system, alternate treatment facility or approved septic site will be provided, then a statement shall be placed on the face of the final plat or map which states: "No city-owned or privately owned sewage disposal system, alternate treatment facility or approved septic site will be provided to the purchaser of any parcel depicted hereon as NONRESIDENTIAL."

Finding: This criterion does not apply.

6.120 SURVEYING REQUIREMENTS AND STANDARDS

Finding: Subsection 6.120 of the LDO contains requirements and standards for surveying partitions. Since Parcels 1 and 2 will be less than 10 acres in size, the County shall require a condition of approval that mandates a survey of these two lots be created. This survey shall comply with the survey standards outlined in the Yamhill County LDO. With the imposition of conditions, the request complies with Subsection 6.120 of the LDO.

C. Surrounding Property Owner Comments

1. Groundwater

The Planning Department received comments expressing concern regarding the potential impacts to groundwater and sustainability of existing wells in the area if/when a home is built on the proposed parcels should the partition request be approved.

The extraction and management of groundwater is outside of the jurisdiction of Yamhill County but rather is under the jurisdiction of the Department of Water Resources, a state-level agency. The potential impacts to surrounding wells is not an applicable review criterion for a land division, and therefore, cannot form a basis to approve or deny this request. Subsection 6.090 of the *Yamhill County Land Division Ordinance* (LDO) requires an Applicant to determine if and how water will be provided to a newly created parcel, and this subsection of the LDO provides four different options to an Applicant which must be addressed prior to final plat approval. The first option is certification by a municipal, public utility, or community water supply system subject to the regulation by the Public Utility Commission of Oregon that water will be provided to the parcel line of each and every parcel depicted in the final plat. The second option is a bond, contract, or other assurance by the partitioner to the county that a domestic water supply system will be installed on behalf of the partitioner to the parcel line of each and every parcel depicted on the final plat. The amount of any such bond, contract, or other assurance shall be determined by a registered professional engineer, subject to any change in the amount as determined necessary by the county. The third option allows for a water well report filed with the State of Oregon Water Resources Department for each well provided within a subdivision or partition. The location of

such wells and an appropriate disclosure shall be placed on the face of the final plat. If the subdivider or partitioner intends that domestic water will be provided to the proposed lot or lots by well(s) and no test wells have been drilled, the Director may require that test well be drilled prior to final approval. The number and location of such wells shall be determined by the director and watermaster having jurisdiction. The fourth, and final, option is that the Applicant may in lieu of the previous three options and when a municipal, public utility, community water supply, or private well system is not available then a statement shall be placed on the final plat or map which states that, "no municipal, public utility, community water supply or private well system will be provided to the purchaser of those lots noted hereon." The County has imposed a condition of approval requiring the Applicant to abide by one of the four options provided by the LDO.

2. Establishment of Fencing and Crash Barrier

The County received multiple requests from surrounding property owners regarding the establishment of fencing along the easement drive along with a crash barrier.

Neither the County Zoning Ordinance nor the *Land Division Ordinance* has a provision that allows the county to require the establishment of a fence or a crash barrier in conjunction with a proposed land division or construction of a single-family dwelling, which is a permitted use in the VLDR-2.5 zone. The County agrees that the easement drive should be developed in a manner that is safe for those using and living alongside the easement drive. A condition of approval shall be imposed requiring the easement drive to meet the access and driveway standards of the Yamhill County Road Department and the McMinnville Fire Department.

3. Potential Land Suitability for Wine Grapes.

Mr. Jacob Sembler submitted an email in which he argues that the partition should not be allowed because the subject property is located on lands that are suitable for growing wine grapes. Mr. Sembler fails to relate his argument to any applicable approval criterion. There are no criteria that would make the soil types on the subject property or adjacent properties relevant to the decision. For this reason, Mr. Sembler's argument provides no valid basis for denial. *See Dorgan v. City of Albany*, 27 Or LUBA 64 (1994); *Stewart v. City of Brookings*, 31 Or LUBA 325 (1996). *See also Ashley Manor Care Centers v. City of Grants Pass*, 38 Or LUBA 308 (2000) (A city's decision violates ORS 227.173(1) where the city relies on "factors" or "considerations" that are unconnected to approval standards established in its land use regulations to deny a permit application.). Furthermore, a farm use is a use permitted outright in the VLDR-2.5 zone. *See YCZO §502.02(A)*. So there is nothing that would prevent current or future landowners from using the subject property for growing wine grapes or conducting any type of farm use.

4. Applicability of Planning Goals 6 and 14.

FOYC submitted a request for a hearing on this matter. However, the reasons provided as establishing the basis for the hearing are not clear. FOYC states that the proposal "raises issues with Oregon Land Use goals 6 (air water and land resource quality) [Goal] 14 (urbanization) and others." The statewide planning goals normally do not apply directly as approval criteria for

permit applications governed by acknowledged comprehensive plans and land use regulations. *Gottman v. Clackamas County*, 64 Or LUBA 358 (2011). See also *McCrary v. City of Talent*, 29 Or LUBA 110 (1995) (If a local government's comprehensive plan and land use regulations are acknowledged as being in compliance with the statewide planning goals, and the challenged decision approving a residential subdivision does not amend the local government's plan or land use regulations, the statewide planning goals do not apply to the challenged decision.).

Even if Goal 6 did somehow apply, it does not require the local government to demonstrate its decision will not cause any adverse environmental impact on individual properties. *Salem Golf Club v. City of Salem*, 28 Or LUBA 561 (1995).

Generally speaking, Goal 14 is applicable at the time land is brought into a UGB. Because the applicant is not proposing to add this property into a UGB, that aspect of Goal 14 certainly does not apply. Another aspect of Goal 14 is that it prohibits urban land uses on rural lands. That would have been applicable at the time the zoning was selected for this subject property. In fact, the reason the County selected the 2-acre minimum lot size was to comply with Goal 14, as interpreted by the Oregon Supreme Court in *1000 Friends of Oregon v. LCDC, (Curry Co.)*, 301 Or. 447, 724 P.2d 268 (1986). However, LUBA has held that seven lot of record dwellings on lots that range in size from as small as two acres to as large as eight acres are properly viewed as rural land uses. *Friends of Yamhill County v. Yamhill County*, 39 Or LUBA 478 (2001). For this reason, we see no Goal 14 issues presented by the facts of this case.

5. Request that the County Require a Contract with Neighbors.

Mr. & Mrs. Pfahler seek to have the county force the Jahnke family to enter into a "contract" with the downstream property owners, whereby the upper landowners are responsible for any future flood damage occurring on lower lands. Mr. & Mrs. Pfahler state:

So in one way or another, we (neighbors) want to put this type of contract in place. This will place the risk exposure on the developer and/or new property owners, which is where it should be placed, because they are the entities that are modifying the water flow characteristics of the existing undeveloped land.

Thus, the neighbor's desire is to shift any costs associated with stormwater problems to the upstream owners, rather than on the lower elevation property owners. However, the County has no authority to require an applicant for land use entitlements to enter into a contract with neighbors. Moreover, the desired scheme is generally inconsistent with Oregon law, which requires the lower landowner to accommodate the stormwater runoff from upstream land, at least with certain unspecified limits (*i.e.* a "reasonableness" standard). See *Garbarino v. Van Cleave*, 214 Or 54, 330 P2d 28 (1958).

6. Wetlands.

Some opponents stated that they wanted the county to require the entire 27-acre site to be delineated for wetlands. However, County staff exercised discretion to not require a wetland

delineation. Given that the applicant only seeks two buildable lots at this time (and a remainder lot which will be the subject of future land use actions), it does not make sense to delineate the entire 27-acre site at this time.

There is no evidence of any wetlands on the two buildable sites. The Applicant's wetland expert, Mr. Randy Cunningham of Devser, Inc., concluded that there are no wetlands on the land where the two 2.4-acre parcels are being proposed. *See* Letter from Mr. Randy Cunningham, Devser, Inc., dated 16 November 2022. There is no credible evidence to the contrary in the record.

Conditions of Approval.

The Board of Commissioners imposes the following conditions of approval:

1. A final partition plat pursuant to the requirements of the *Yamhill County Land Division Ordinance* shall be prepared and submitted to the Planning Director. The final partition plat shall substantially conform to the preliminary map. The Yamhill County Planning Docket Number "P-10-22" shall appear on the face of the plat.
2. Prior to final partition approval, a survey of Parcel #1 (2.4-acres) and Parcel #2 (2.4-acres), shall be completed by a registered land surveyor pursuant to Section 6.120 of the *Yamhill County Land Division Ordinance*.
3. The existing 60-foot-wide nonexclusive easement for ingress and egress providing access to all of the newly created parcels shall be surveyed and shown on the face of the final plat. This easement shall be granted at the time of conveyance of any of the newly created lots.
4. The easement drive providing access to all parcels shall be constructed to county specifications and inspected by a private engineer, or a road construction agreement shall be completed and recorded, prior to final plat approval.
5. Road plan and profile drawings shall be submitted to and approved by the Public Works Department prior to final plat approval.
6. The installation of septic systems on the newly created parcels shall be located on each individual lot and maintain the minimum setback requirements of 10 feet from all new property lines. If the 10-foot minimum setbacks from the property lines cannot be maintained, a properly recorded easement will be required, pursuant to Section 6.100 of the *Land Division Ordinance*.
7. Prior to final plat approval, the Applicant shall demonstrate conformance with standard 1, 2, 3 or 4 of Subsection 6.090 of the *Land Division Ordinance*. Either domestic water shall be provided to each lot by a community water system or an on-site well or wells, with the location of the well(s) indicated on the face of the plat, or the following disclosure shall be placed on the plat:

No municipal, public utility, community water supply or private system will be provided to

the purchaser of those lots noted hereon.

Each lot not provided with a well or community water service shall be so identified.

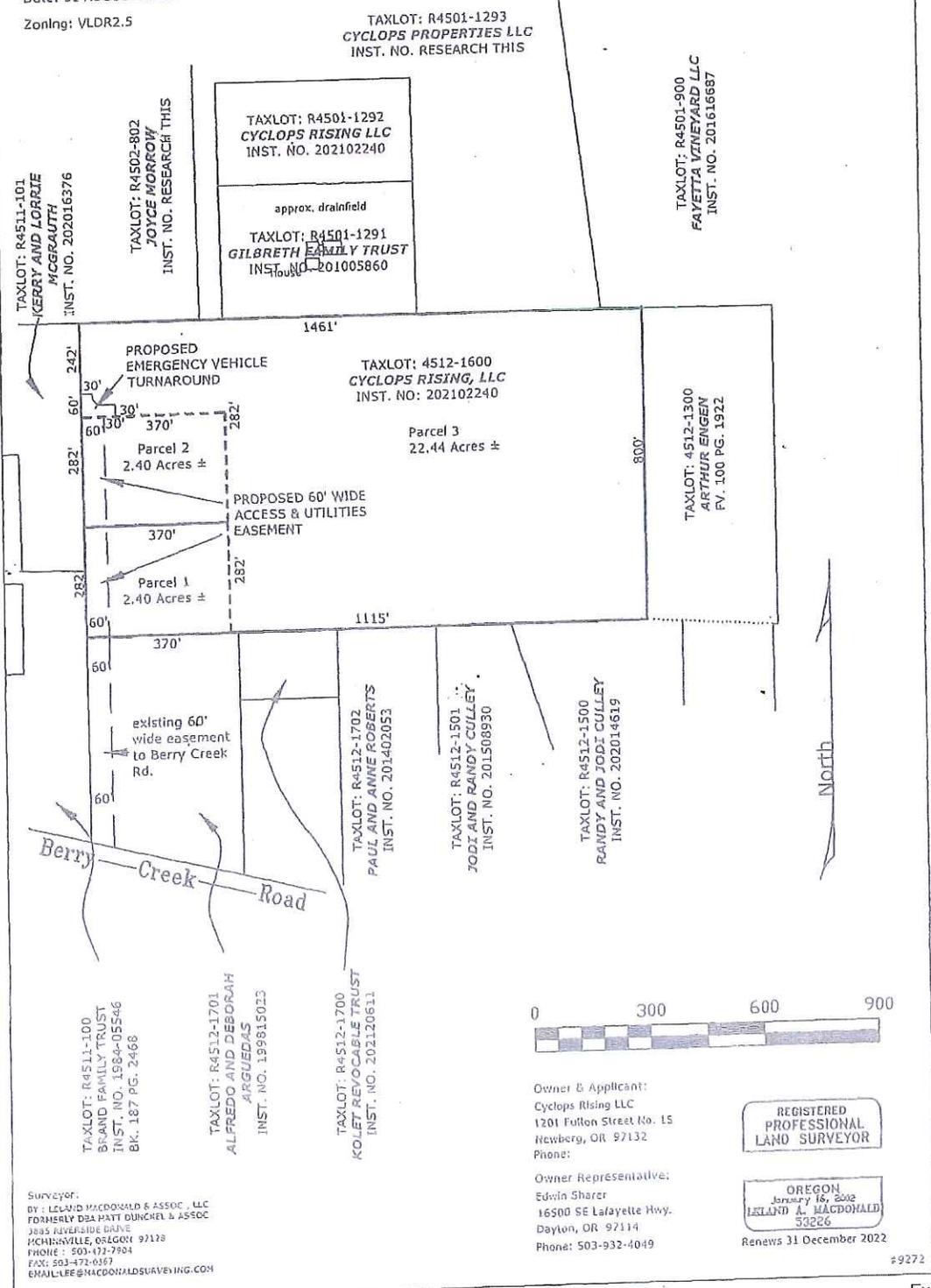
8. The Applicant shall submit a drainage plan showing that no natural drainage is diverted by any development taking place on any of the proposed lots. The plan shall be prepared by a registered engineer. The drainage plan shall be submitted to and approved by the County Public Works Director prior to final plat approval and the issuance of building or septic permits.
9. Prior to final plat approval, the Applicant shall enter into an easement maintenance agreement with the owners of Tax Lot R4512-01701, currently Alfredo and Deborah Arguedas, in compliance with ORS 105.175. Once complete, the easement maintenance agreement shall be provided to the Yamhill County Planning Department.

Tentative Partition Plan Cyclops Rising, LLC

Legend
 - - - - - = proposed lot line
 ————— = existing lot line
 - - - - - = easement

Location: NE 1/4 Section 11, NW 1/4 Section 12,
T. 4 S., R. 5 W., Yamhill County, OR

Tax Lot: 4512 - 1600
 Deed: Inst. No. 202102240
 Date: 31 AUGUST 2022
 Zoning: VLDR2.5



Owner & Applicant:
Cyclops Rising LLC
1201 Fulton Street No. 15
Newberg, OR 97132
Phone:

Owner Representative:
Edwin Sharer
16500 SE Lafayette Hwy.
Dayton, OR 97114
Phone: 503-932-4049

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
January 16, 2012
ISLAND A. MACDONALD
53226
Renews 31 December 2022

Surveyor:
BY: ISLAND MACDONALD & ASSOC., LLC
FORMERLY DEB HATT DUNCAN & ASSOC
3835 RIVERSIDE DRIVE
MCHEWVILLE, OREGON 97128
PHONE: 503-472-7804
FAX: 503-472-0157
EMAIL: LEE@MACDONALDSURVEYING.COM

#9272

EXHIBIT 2
PAGE 1 OF 2

Tentative Partition Plan

Cyclops Rising, LLC

Location: NE 1/4 Section 11, NW 1/4 Section 12,
T. 4 S., R. 5 W., Yamhill County, OR

Tax Lot: 4512 - 1600

Deed: Inst. No. 202102240

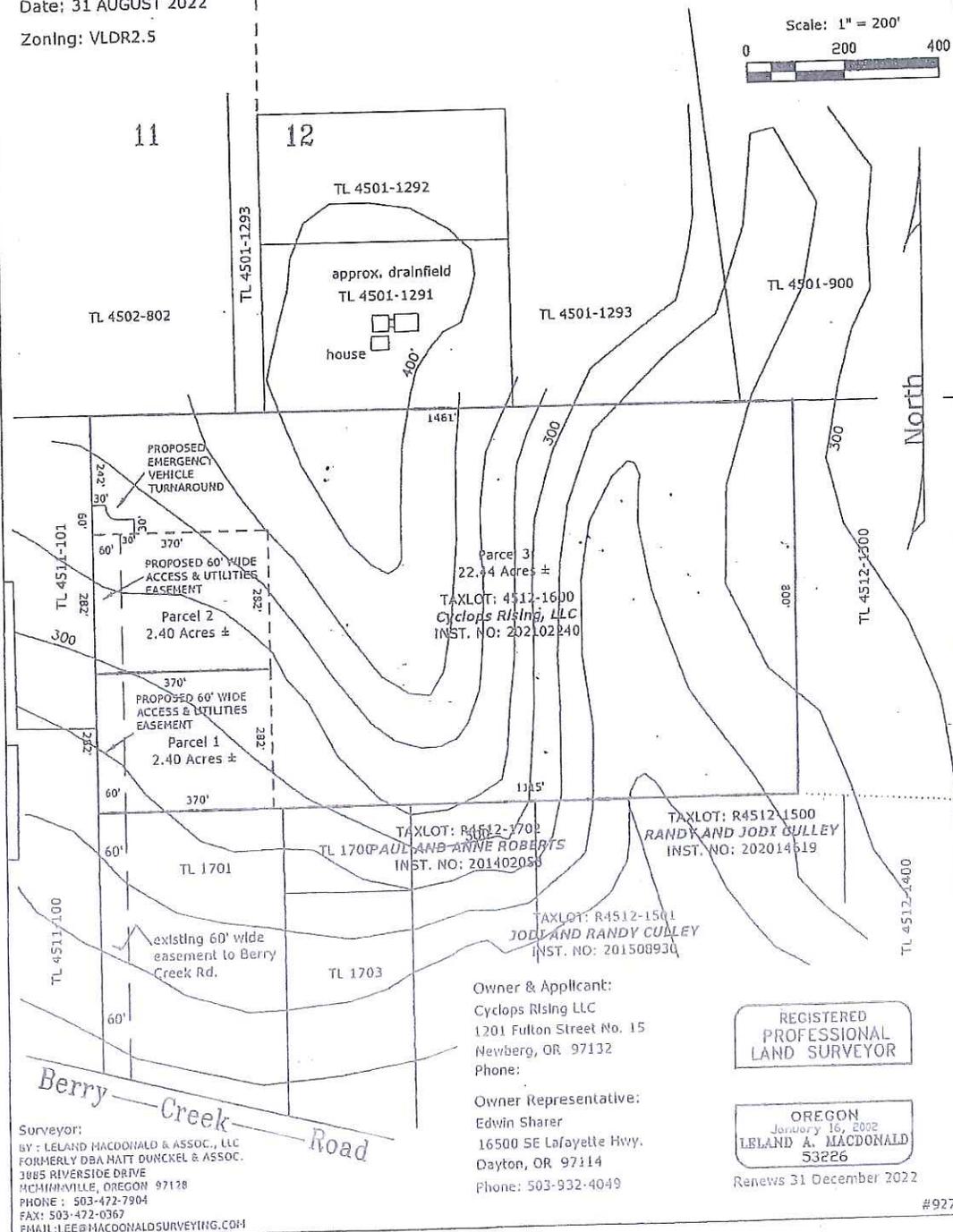
Date: 31 AUGUST 2022

Zoning: VLDR2.5

Legend

- = proposed lot line
- = existing lot line
- = easement

Scale: 1" = 200'



Owner & Applicant:
Cyclops Rising LLC
1201 Fulton Street No. 15
Newberg, OR 97112
Phone:

Owner Representative:
Edwin Sharer
16500 SE Lafayette Hwy.
Dayton, OR 97114
Phone: 503-932-4049

REGISTERED
PROFESSIONAL
LAND SURVEYOR

OREGON
January 16, 2022
LELAND A. MACDONALD
53226

Renews 31 December 2022

Surveyor:
BY: LELAND MACDONALD & ASSOC., LLC
FORMERLY DBA MATT DUNCKEL & ASSOC.
3885 RIVERSIDE DRIVE
MCHIMMILLE, OREGON 97118
PHONE: 503-472-7904
FAX: 503-472-0367
EMAIL: LEE@MACDONALDSURVEYING.COM

#9272

EXHIBIT 2
PAGE 2 OF 2