

BEFORE THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of Upholding the Planning  
Director's Decision to Approve Planning  
Docket P-03-23, Partition Approval for Tax  
Lot No. 6304-00307; Applicants: Richard &  
Nicole Moore

Board Order 23-456

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the Board) sat for the transaction of county business on December 21, 2023, Commissioners Lindsay Berschauer, Kit Johnston, and Mary Starrett being present.

IT APPEARING TO THE BOARD as follows:

A. WHEREAS, The original applicant, Larry and Cindy Christenson, submitted an application to partition Tax Lot No. 6304-00307 into two (2) parcels; and

B. WHEREAS, The Yamhill County Planning Commission approved the application after a hearing held on October 5, 2023; and

C. WHEREAS, Larry and Cindy Christenson sold the subject property to, and thereby transferred the application to, Richard & Nicole Moore on October 24, 2023; and

C. WHEREAS, The Planning Commission's decision was appealed to the Board and a hearing was held on November 30, 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-03-23 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-03-23" shall appear on the face of the plat.
2. Prior to final partition approval, a survey of Parcel #1 (1.66-acres), shall be completed by a registered land surveyor pursuant to Section 6.120 of the Yamhill County Land Division Ordinance.

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3. A site evaluation for a subsurface sewage disposal system shall be approved by the County Sanitarian for Parcel #1. The septic system on Parcel #1 shall be located on the 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.
4. The establishment of a dwelling on Parcel #1, under Measure 49, is subject to the conditions described in Final Order and Home Site Authorization Number E131580.
5. 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.

6. 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 plat approval and the issuance of building or septic permits.

Section 2. The Board hereby adopts the findings set forth in Exhibit A, attached hereto and incorporated herein.

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DONE this 21<sup>st</sup> day of December, 2023, at McMinnville, Oregon.

ATTEST: AYE 3  
NAY 0



McMINNVILLE COUNTY BOARD OF COMMISSIONERS

*Lindsay Berschauer*

KERI HINTON

County Clerk

Chair

LINDSAY BERSCHAUER

By: *Carolina Rook*  
Deputy Carolina Rook

*Kit Johnston*  
Commissioner KIT JOHNSTON

FORM APPROVED BY:

*Jodi M. Gollehon*

*Mary Starrett*  
Commissioner MARY STARRETT

Jodi M. Gollehon  
Assistant County Counsel

**EXHIBIT A**  
**FINDINGS IN SUPPORT OF APPROVAL**  
**(Board Order 23-456)**

**HEARING DATES:** October 5, 2023 & November 30, 2023

**DOCKET NO.:** P-03-23

**REQUEST:** To partition an approximately 31.52-acre property into parcels of approximately 1.66 and 29.2-acres. This partition application is possible due to a “Measure 49” Final Order and Home Site Authorization, E131580, approved by the Oregon Department of Land Conservation and Development.

**ORIGINAL APPLICANT:** Larry & Cindy Christenson

**CURRENT OWNER/APPLICANT:** Richard & Nicole Moore (the “Applicant”)

**TAX LOT:** R6304 00307

**LOCATION:** 24725 SE Wallace Road, Dayton

**ZONE:** EF-80, Exclusive Farm Use District

**CRITERIA:** Oregon Laws 2007, Chapter 424, Section 11; Measure 49 Order No. E131580; Yamhill County Land Division Ordinance No. 205, including as amended by Ordinance No. 497

**FINDINGS OF FACT:**

**A. Background Facts**

1. *Lot Size:* Approximately 31.52-acres
2. *Access:* The property has direct access to SE Wallace Road.
3. *On-site Land Use and Zoning:* The subject parcel is zoned for Exclusive Farm Use, the EF-80 zone. The subject lot is bordered to the east by the Willamette River. The subject parcel is predominantly used agriculturally in the form of an approximately 22-acre hazelnut orchard.
4. *Surrounding Land Use and Zoning:* The surrounding parcels are all located in the Exclusive Farm Use zone, the EF-80 zone. There are a number of farm activities evident in the surrounding area, including grass seed and hay production (predominantly to the west, southwest, and northwest), nut tree orchards (predominantly to the east and northeast), and nursery stock to the northwest. There are also several small lots in the

surrounding area – ranging in size from 0.7 to 3 acres – with single-family dwellings that are predominantly dedicated to residential uses. Several of these lots are located along the subject parcel’s southern property line, and one of these lots was created through a previous Measure 49 approval in 2020, identified as Tax Lot No. R6304 00306. Another smaller lot is located adjacent to the northwest corner of the subject parcel, identified as Tax Lot No. R6304 00304. The Applicant’s proposed new parcel would be located directly east of, and would share a property line with, Tax Lot No. R6304 00304. Passive forest uses are also relatively common in the surrounding area, predominantly along the Willamette River and the land east of the river in Marion County.

5. *Fire Protection:* Dayton Rural Fire Department.

6. *Previous Actions:*

- a. The subject parcel was involved in a land partition in 1972, Docket P-196-72. In 2007, Marvel Pendergraft, then-owner of the subject parcel, filed a Measure 37 application, Docket M-37-175-06, to allow for up to three home sites. The claim was approved by Yamhill County as detailed in Board Order No. 07-749, attached hereto as Exhibit A-1 and incorporated herein.
- b. On December 11, 2009, a Measure 49 claim was processed and approved through State Election Claim No. E131580 (see Exhibit A-2, attached hereto and incorporated herein). The Final Order and Home Site Authorization from State Election Number E131580 (the “Final M49 Order”) states, in part,

*“Based on the analysis set forth above, this claim is approved, and the claimant qualifies for three home site approvals... [A]fter taking into account the number of existing lots, parcels or dwellings, the claimant is authorized for two additional lots or parcels and two additional dwellings on the property on which the claimant is eligible for Measure 49 relief.”*

- c. On September 29, 2020, Larry & Cindy Christenson received approval for a land partition to create a single (1) parcel measuring approximately 1.12-acres via Docket No. P-07-20, which reduced the number of lots or parcels that can be created under the Final M49 Order to a single (1) additional parcel (see Exhibit A-3, attached hereto and incorporated herein).
9. *Deferral:* The County Assessor’s records show that 10-acres of the subject parcel are receiving forest deferral and 21.52-acres of the parcel are receiving farm deferral.
10. *Overlay Districts:* The proposed new parcel is not located within an identified 100-year floodplain area, nor is it within an identified sensitive wildlife habitat area. Approximately 21.5-acres of the subject parcel are located in the Willamette River Greenway, and the proposed new 1.66-acre parcel will be located within the Willamette

River Greenway. The subject parcel is located within the Eola Hills groundwater limited area. The subject parcel is not located within an airport overlay district.

**B. Oregon Laws 2007, Chapter 424, Section 11 Provisions and Analysis**

Ballot Measure 49 (“M49”), as provided in Oregon Laws 2007, Chapter 424<sup>1</sup>, allows for the completion of certain developments that were begun legally under Ballot Measure 37, but that had not yet been completed as of the effective date of the act, December 6, 2007. Section 11 of M49 addresses the development standards of a partition request authorized under the act. An analysis of each provision under Section 11 follows.

1. *Subsection (1): A subdivision or partition of property, or the establishment of a dwelling on property, authorized under sections 5 to 11 of this 2007 Act must comply with all applicable standards governing the siting or development of the dwelling, lot or parcel including, but not limited to, the location, design, construction or size of the dwelling, lot or parcel. However, the standards must not be applied in a manner that has the effect of prohibiting the establishment of the dwelling, lot or parcel authorized under sections 5 to 11 of this 2007 Act unless the standards are reasonably necessary to avoid or abate a nuisance, to protect public health or safety or to carry out federal law.*

The Applicant is requesting a land partition approval pursuant to the Final M49 Order. The request has been evaluated as provided herein to assure compliance with appropriate health and safety standards.

2. *Subsection (2): Before beginning construction of any dwelling authorized under section 6 or 7 of this 2007 Act, the owner must comply with the requirements of ORS 215.293 if the property is in an exclusive farm use zone, a forest zone or a mixed farm and forest zone.*

The Applicant is requesting a land division approval, not a dwelling approval. However, to ensure compliance with the provisions of ORS 215.293, a condition of approval of the partition application will include the requirement that they record in the deed records for the newly established parcel the following statement:

“The county governing body or its designate shall require as a condition of approval of a single-family dwelling under ORS 215.213, 215.283 or 215.284, or otherwise in a farm or forest zone, that the landowner for the dwelling sign and record in the deed records for the county a document binding the landowner, and the landowner’s successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.”

With the imposition of this condition, the request complies with the requirements of subsection (2).

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<sup>1</sup> See [https://www.oregonlegislature.gov/bills\\_laws/lawsstatutes/2007orLaw0424.html](https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2007orLaw0424.html)

3. *Subsection (3)(a): A city or county may approve the creation of a lot or parcel to contain a dwelling authorized under sections 5 to 11 of this 2007 Act. However, a new lot or parcel located in an exclusive farm use zone, a forest zone or a mixed farm and forest zone may not exceed:*

- (A) Two acres if the lot or parcel is located on high-value farmland, on high-value forestland or on land within a ground water restricted area; or*
- (B) Five acres if the lot or parcel is not located on high-value farmland, on high-value forestland or on land within a ground water restricted area.*

The entirety of the subject parcel is composed of high value farmland and is also located within the Eola Hills groundwater limited area. Therefore, the newly created parcel can be no larger than two (2) acres. The Applicant's application, as amended (attached hereto as Exhibit A-4 and incorporated herein), confirms that the newly created parcel will be 1.66 acres. The request complies with the requirements of subsection (3)(a).

4. *Subsection (3)(b): If the property is in an exclusive farm use zone, a forest zone or a mixed farm and forest zone, the new lots or parcels created must be clustered so as to maximize suitability of the remnant lot or parcel for farm or forest use.*

The subject parcel is located in an Exclusive Farm Use zone, and any new lots must therefore be clustered to maximize the suitability of the remnant parcel for farm or forest use. The proposed new parcel, measuring approximately 1.66-acres, will be located in the southernmost area of the subject parcel, effectively clustering it with the parcel created in 2020 pursuant to the same Final M49 Order.

In 2020, the Applicant received land use approval under Docket No. P-07-20 for one of the two new lots permitted under the Final M49 Order. This 2020 parcel was created adjacent to the southwestern property line and measured approximately 1.12 acres. The Applicant's current application will create the second parcel authorized under the Final M49 Order, which will also be located in the southernmost section of the subject parcel, adjacent to the first parcel created in 2020 (see Exhibit A-4, pages 19-21). The new parcel was initially proposed to be located in the northwestern area of the parcel; however, an addendum to the application was submitted on June 14, 2023, to alter the location of the proposed parcel to the southern area of the parent parcel. The Applicant proposed this new location to meet the clustering standard provided in Section 11(3)(b) of the Final M49 Order.

The County finds that the Applicant's proposed new lot (identified as Parcel #1 in the attached Exhibit A-4), which is located adjacent to the lot partitioned from the subject parcel in 2020, satisfies the requirements of M49 because it will result in a clustering of the buildable lots and will also maximize the suitability of the remaining acreage for the continued farm use (hazelnut orchard) occurring on the parent parcel. The request complies with the requirements of subsection (3)(b).

### **C. Final Measure 49 Order No. E131580 Provisions and Analysis**

On December 11, 2009, the State of Oregon issued *Ballot Measure 49 Election Number E131580* ("Final M49 Order") granting the owner of the subject parcel two additional lots or parcels and two

additional dwellings, subject to certain terms and conditions. An analysis of those terms and conditions follows.

1. *Each dwelling must be on a separate lot or parcel, and must be contained within the property on which the claimant is eligible for Measure 49 relief. The establishment of a land division or dwelling based on this home site authorization must comply with all applicable standards governing the siting or development of the land division or dwelling. However, those standards must not be applied in a manner that prohibits the establishment of the land division or dwelling, unless the standards are reasonably necessary to avoid or abate a nuisance, to protect public health or safety, or to carry out federal law.*

The Applicant is requesting a land partition of property subject to the Final M49 Order. The request has been evaluated as provided herein to assure compliance with the Yamhill County Land Division Ordinance, and with the imposition of the conditions set forth herein, the County finds that the request satisfies Condition No. 1 of the Final M49 Order.

2. *This home site authorization will not authorize the establishment of a land division or dwelling in violation of land use regulation described in ORS 195.305(3) or in violation of any other law that is not a land use regulation as defined by ORS 195.300(14).*

ORS 195.305(3) exempts from claims under M49 certain types of land use regulations, including public nuisances and other activities that threaten public health or safety. Based on the information submitted by the Applicant, the County finds that the request satisfies Condition No. 2 of the Final M49 Order.

3. *A claimant is not eligible for more than 20 home site approvals under Sections 5 to 11 of Measure 49 regard less of how many properties a claimant owns or how many claims a claimant filed. If the claimant has developed the limit of twenty home sites under Measure 49 the claimant is no longer eligible for the home site approvals that are the subject of this order.*

Under the Final M49 Order, the subject parcel was granted approval for the development of two additional parcels, for a total of three homesites. The current request is for the second and final land partition authorized under the Final M49 Order. Based on the information submitted by the Applicant, the County finds that the request satisfies Condition No. 3 of the Final M49 Order.

4. *The number of lots, parcels or dwellings a claimant may establish under this home site authorization is reduced by the number of lots, parcels and dwellings currently in existence on the Measure 37 claim property and contiguous property in the same ownership, regardless of whether evidence of their existence has been provided to the department. If based on the information available to the department, the department has calculated the number of currently existing lots, parcels or dwellings to be either greater than or less than the number of lots, parcels or dwellings actually in existence on the Measure 37 claim property or contiguous property under the same ownership, then the number of additional lots, parcels or dwellings a claimant may establish pursuant to this home site authorization must be adjusted according to the methodology stated in Section 6(2)(b) and 6(3) of Measure*

*49. Statements in this final order regarding the number of lots, parcels or dwellings currently existing on the Measure 37 claim property and contiguous property are not a determination on the current legal status of those lots, parcels or dwellings.*

Based on the information submitted by the Applicant, the County finds that the request satisfies Condition No. 8 of the Final M49 Order.

- 5. Temporary dwellings are not considered in determining the number of existing dwellings currently on the property. The claimant may choose to convert any temporary dwelling currently located on the property on which the claimant is eligible for Measure 49 relief to an authorized home site pursuant to a home site approval. Otherwise, any temporary dwelling is subject to the terms of the local permit requirements under which it was approved and is subject to removal at the end of the term for which it is allowed.*

The request is for a land partition, not a dwelling permit. Based on the information submitted by the Applicant, the County finds that the request satisfies Condition No. 5 of the Final M49 Order.

- 6. A home site approval only authorizes the establishment of a new lot, parcel or dwelling on the property on which the claimant is eligible for Measure 49 relief. No additional development is authorized on contiguous property for which no Measure 37 claim was filed or on Measure 37 claim property on which the claimant is not eligible for Measure 49 relief. A lot or parcel established pursuant to a home site approval must either be the site of a dwelling that is currently in existence or be the site of a dwelling that may be established pursuant to the home site approval.*

The Applicant is requesting a land partition of the property subject to the Final M49 Order authorizing the development of three home sites. Based on the information submitted by the Applicant, the County finds that the request satisfies Condition No. 6 of the Final M49 Order.

- 7. The claimant may use a home site approval to convert a lot, parcel or dwelling currently located on the property on which the claimant is eligible for Measure 49 relief to an authorized home site. If the number of lots, parcels or dwellings existing on the property on which the claimant is eligible for Measure 49 relief exceeds the number of home site approvals the claimant qualifies for under a home site authorization, the claimant may select which existing lots, parcels or dwellings to convert to authorized home sites; or may reconfigure existing lots, parcels or dwellings so that the number is equivalent to the number of home site approvals.*

The subject parcel was granted approval for the development of two additional parcels, for a total of three homesites. The current request is for the second and final land partition authorized under the Final M49 Order. Based on the information submitted by the Applicant, the County finds that the request satisfies Condition No. 7 of the Final M49 Order.

- 8. The claimant may not implement the relief described in this Measure 49 Home Site Authorization if a claimant has been determined to have a common law vested right to a use described in a Measure 37 waiver for the property. Therefore, if a claimant has been*

*determined in a final judgment or final order that is not subject to further appeal to have a common law vested right as described in Section 5(3) of Measure 49 to any use on the Measure 37 claim property, then this Measure 49 Home Site Authorization is void. However, so long as no claimant has been determined in such a final judgment or final order to have a common law vested right to a use described in a Measure 37 waiver for the property, a use that has been completed on the property pursuant to a Measure 37 waiver may be converted to an authorized home site.*

Based on the information submitted by the Applicant, the County finds that the request satisfies Condition No. 8 of the Final M49 Order.

9. *A. home site approval does not authorize the establishment of a new dwelling on a lot or parcel that already contains one or more dwellings. The claimant may be required to alter the configuration or the lots or parcels currently in existence on the Measure 37 claim property and contiguous property so that each additional dwelling established on the property on which the claimant is eligible for Measure 49 relief: pursuant to this home site authorization, is sited on a separate lot or parcel.*

The request is for a land partition, not a dwelling permit. Based on the information submitted by the Applicant, the County finds that the request satisfies Condition No. 9 of the Final M49 Order.

10. *Because the property is located in an exclusive farm use zone, the home site authorization does not authorize new lots or parcels that exceed five acres. However, existing or remnant lots or parcels may exceed five acres. Before beginning construction, the owner must comply with the requirements of ORS 215.293. Further, the home site authorization will not authorize new lots or parcels that exceed two acres if the new lots or parcels are located on high-value farmland, on high-value forestland or on land within a ground water restricted area. However, existing or remnant lots or parcels may exceed two acres.*

The entirety of the subject parcel is composed of high value farmland. Therefore, the newly created parcel can be no larger than two (2) acres. The Applicant's application, as amended (attached as Exhibit A-4), confirms that the newly created parcel will be 1.66 acres. Based on the information submitted by the Applicant, the County finds that the request satisfies Condition No. 10 of the Final M49 Order.

11. *Because the property is located in an exclusive farm use zone, Measure 49 requires new home sites to be clustered so as to maximize suitability of the remnant lot or parcel for farm or forest use. Further, if an owner of the property is authorized by other home site authorizations to subdivide, partition, or establish dwellings on other Measure 37 claim properties, Measure 49 authorizes the owner to cluster some or all of the authorized lots, parcels or dwellings that would otherwise be located on land in an exclusive farm use zone, a forest zone or a mixed farm and forest zone on a single Measure 37 claim property that is zoned residential use or is located in an exclusive farm use zone, a forest zone or a mixed farm and forest zone but is less suitable for farm or forest use than the other Measure 37 claim properties.*

In 2020, the Applicant received land use approval under Docket No. P-07-20 for one of the two new lots permitted under the Final M49 Order. This 2020 parcel was created adjacent to the southwestern property line and measured approximately 1.12 acres. The Applicant's current application will create the second parcel authorized under the Final M49 Order, and it will also be located in the southernmost section of the parent parcel, adjacent to the first parcel created in 2020 (see Exhibit A-4, pages 19-21). The new parcel proposed under the current application was initially proposed to be located in the northwestern area of the parcel; however, an addendum to the application was submitted on June 14, 2023, to alter the location of the new parcel to the southern area of the parcel. The Applicant proposed this new location to meet the clustering standard provided in Section 11(3)(b) of the Final M49 Order.

Opposition to the Applicant's application has been focused on an interpretation of Condition No. 11 of the Final M49 Order that (they argue) necessitates the County impose a clustering condition on its partition approval that limits placement of any future dwellings on the new parcel. However, this interpretation is not consistent with the plain language and text of Measure 49, Section 11(3)(b), which states that, "If the property is in an exclusive farm use zone... the new lots or parcels created must be clustered so as to maximize suitability of the remnant lot or parcel for farm or forest use." As is clear, use of the term "home site" under Condition No. 11 was not intended to convey a requirement for clustering of new dwellings, but to convey the *parcel* clustering requirement of Measure 49, Section 11(3)(b). The County, therefore, finds that the clustering requirement is only relevant as it pertains to a partition (i.e., a home site) and not the home itself (i.e., a dwelling).

The County finds that the Applicant's proposed new lot (identified as Parcel #1 in the attached Exhibit A-4), which is located adjacent to the lot partitioned from the subject parcel in 2020, satisfies the clustering requirements of Condition No. 11 because it will result in a clustering of the two partitioned lots while still maximizing the suitability of the remaining parcel for the continued farm use (hazelnut orchard). The request satisfies Condition No. 11 of the Final M49 Order.

*12. If the claimant transferred ownership interest in the Measure 37 claim properly prior to the date of this order, this order is rendered invalid and authorizes no home site approvals, provided this order is valid when issued, a home site approval authorized under this order runs with the property and transfers with the property. A home site approval will not expire, except that if a claimant who received this home site authorization later conveys the property to a party other than the claimant's spouse or the trustee of a revocable trust in which the claimant is the settlor, the subsequent owner of the property must establish the authorized lots, parcels and dwellings within 10 years of the conveyance. A lot or parcel lawfully created based on this home site authorization will remain a discrete lot or parcel, unless the lot or parcel lines are vacated or the lot or parcel is further divided, as provided by law. A dwelling lawfully created based on a home site approval is a permitted use.*

Based on the information submitted by the Applicant, the County finds that the request satisfies Condition No. 12 of the Final M49 Order.

*13. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, this home site authorization will not*

*authorize the use of the property unless the claimant first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a permit as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies, and restrictions on the use of the subject property imposed by private parties.*

Based on the information submitted by the Applicant, the County finds that the request satisfies Condition No. 13 of the Final M49 Order.

**D. Yamhill County Land Division Ordinance Provisions and Analysis**

The Yamhill County Land Division Ordinance (LDO) Chapter 6 contains general design standards for partitions. An analysis of each respective standard follows.

1. *Section 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.*

Ballot Measure 37 (“M37”) was placed on the ballot by initiative and adopted by Oregon voters on November 2, 2004. M37 allowed for certain waivers of land use laws and regulations enacted by public entities after December 2, 2004. The former owner of the subject parcel, Marvel Pendergraft, applied for and was granted a M37 waiver by the County in 2007 (see Exhibit A-1). This waiver allowed the owner of the parcel the right to develop two additional home sites on the subject parcel, regardless of the land use laws and regulations in effect at the time of the application.

Ballot Measure 49 was passed by the voters of the State of Oregon on November 6, 2007. Measure 49 retroactively voided the M37 waivers authorized under Ballot Measure 37. Instead, individuals who wanted to continue their M37 claims had to file for supplemental review by the State of Oregon, Department of Land Conservation and Development, after which, instead of waiving land use regulations, individuals could be granted a specific number of home site authorizations.

On December 11, 2009, a M49 claim was processed and approved through State Election Claim No. E131580 for Mr. Pendergraft (see Exhibit A-2). Approval of a M49 land partition request is outside the scope of the Yamhill County Comprehensive Plan goals and standards and is also generally exempted from the minimum lot size standards of the underlying zoning district. However, the request must meet the standards established in the Final M49 Order. The County must therefore review a proposed M49 land partition request to ensure that: 1) the request meets all applicable Measure 49 standards outlined in the Final Order, 2) safe ingress/egress can be provided to the proposed lot(s), 3) a septic system can be permitted on the property, and 4) the preliminary and final partition plat will satisfy the County’s Land Division Ordinance. All four requirements have been examined as provided herein, and the County has determined that the partition application does comply with the Final M49 Order.

2. *Section 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.*

Ballot Measure 37 (“M37”) was placed on the ballot by initiative and adopted by Oregon voters on November 2, 2004. M37 allowed for certain waivers of land use laws and regulations enacted by public entities after December 2, 2004. The former owner of the subject parcel, Marvel Pendergraft, applied for and was granted a M37 waiver by the County in 2007. This waiver allowed the owner of the parcel the right to build up to three home sites on the subject parcel, regardless of the land use laws and regulations in effect at the time of the application.

Ballot Measure 49 was passed by the voters of the State of Oregon on November 6, 2007. Measure 49 retroactively voided the M37 waivers authorized under Ballot Measure 37. Instead, individuals who wanted to continue their M37 claims were required to file for supplemental review by the State of Oregon where, instead of waiving land use regulations, individuals could be granted a specific number of home site authorizations.

On December 11, 2009, a Measure 49 claim was processed and approved through State Election Claim No. E131580 for Mr. Pendergraft (see Exhibit A-2). Approval of a Measure 49 land partition request is generally exempted from the requirements of ORS Chapters 92, 197, and 215. However, the request must still meet the standards established in the Final M49 Order. The County must therefore review a proposed Measure 49 land partition request to ensure that the request meets all applicable Measure 49 standards outlined in the Final M49 Order. The County analyzed the conformity of the application to the Final M49 Order as provided in Section C above, and the County has determined that the partition application does comply with the Final M49 Order.

3. *6.010 Street Design*

*Subsection 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.*

The proposed parcel will have direct access from SE Wallace Road, and any access drive serving the proposed lot will need to receive all necessary permits and inspections from ODOT and the Dayton Fire Department prior to issuance of building permits. With conditions as further defined below, this request complies with subsection 6.010(1) of the LDO.

*Subsection 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.*

The proposed lot will be served by a private driveway and will not be a continuation of an existing principal street, thereby satisfying the requirements of subsection 6.010(2).

*Subsection 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.*

The property is currently outside the urban growth boundary and urban reserve area. The subject parcel is located in the Exclusive Farm Use zone with an 80-acre minimum, and while a land division as proposed is permitted through the Final M49 Order, there will be no later re-division of lots barring a seismic change to state law. Therefore, a condition of approval requiring a shadow plat will not be recommended, and subsection 6.010(4) is thereby satisfied.

*Subsection 6.010(8) Private Easements/Driveways.<sup>2</sup>*

Section 6.010(8) of the LDO provides the option of property being served by a private easement or driveway. As noted above, the proposed parcel will be served by the development of a private driveway, with direct access to SE Wallace Road. A permit from ODOT may be required as SE Wallace Road is a state highway. An inspection of any driveway by the local fire department (Dayton Fire Department) is a standard procedure prior to the issuance of a building permit for a dwelling or other structure in the county. The request complies with subsection 6.010(8) of the LDO.

4. *Section 6.015 Road Widening and Dedication of Right-of-Way.*

Section 6.015 of the LDO can require the dedication of additional right-of-way when requested by the Public Works Director. A notice of the proposed partition was sent to the Public Works Department and the Planning Department did not receive any comments, concerns, or requests from the Public Works Director therefore a requirement to dedicate additional right-of-way will not be recommended as a condition of approval, and the request complies with Section 6.015 of the LDO.

5. *Section 6.030 Lots:*

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

The proposed parcel on the preliminary plat is roughly rectangular in shape, thereby satisfying the requirements of subsection 6.030(1).

*(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.*

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<sup>2</sup> For brevity, the various requirements are not listed. The LDO code can be found in its entirety here: <https://www.co.yamhill.or.us/sites/default/files/LDO-643.pdf>

The proposed parcel will have approximately 137 feet of road frontage with SE Wallace Road, thereby satisfying the requirements of subsection 6.030(2).

*(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.*

The proposed parcel does not appear to include any portions of land below the mean high-water mark of the adjacent Willamette River (see attached Exhibit A-5), thereby satisfying the requirements of subsection 6.030(4).

*(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 proposed parcel contains lot lines that run at approximate right angles to SE Wallace Road, thereby satisfying the requirements of subsection 6.030(5).

*(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.*

A condition of approval of the application will require the submission of a drainage plan, prepared by a registered engineer, demonstrating that no natural drainage will be disturbed by the proposed development of the parcel. This drainage plan shall be submitted to, and approved by, the Public Works Department prior to the approval of the final plat and issuance of any building or septic permits. With the imposition of this condition, the request satisfies the requirements of subsection 6.030(6).

*6. Section 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.*

Section 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 identifiable hazardous area. The proposed parcel will be located entirely within the Willamette River Greenway and development within the Greenway must be shown to comply with Statewide Planning Goal 15, which was established to protect, enhance, and maintain the natural, scenic, historical, agricultural, economic and recreational qualities of lands along the Willamette River. A request for development of a dwelling or other structure in the Willamette River Greenway is subject to the criteria and standards provided in Section 902 of the YCZO, and a Willamette River Greenway permit will be required prior to issuance of any building permits for a structure or dwelling on land within the Willamette River Greenway.

Regarding other identifiable hazards on the proposed parcel, there are no steep slopes or significant rock formations that could impede the safe and orderly development of a home site on the proposed parcel. There is no history of 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. Though not a hazard, the subject parcel is located within the Eola Hills limited groundwater area, and this impacts the maximum allowable size for a newly created parcel for an approved M49 claim, so a newly created parcel can be no larger than two (2) acres. In summary, the County does not identify any hazardous conditions on the subject parcel or the proposed 1.66-acre parcel.

As mentioned previously, a condition of approval will require the Applicant to engage a registered professional engineer to prepare a report demonstrating that there will be no disturbance to the natural drainage from the development of the proposed parcel. With the imposition of this condition, the County finds that the request complies with Section 6.070 of the LDO.

6. *Section 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.”*

The Applicant has indicated that water may be provided to the proposed parcel by way of an existing shared well. A condition of approval will require that the Applicant file a well report with the Oregon Department of Water Resources, to be provided to the Planning Department prior to approval of the final plat and issuance of any building or septic permits. Two additional conditions of approval will include: 1) a requirement that the location of the shared well be shown on the face of the partition plat, and 2) a requirement that the Applicant demonstrate conformance with one of the three other standards provided by Section 6.090 of the LDO prior to final plat approval. With the imposition of these conditions, the County finds that the request complies with Section 6.090 of the LDO.

*7. Section 6.100 Sewage Disposal Requirements.*<sup>3</sup>

Section 6.100 of the LDO contains options and requirements for sewage disposal. The provision of adequate sewage disposal will be required for final plat approval. No public or city sewer services are available, so the proposed new parcel (identified as Parcel #1 in Exhibit A-4) will be required to be served by a single on-site subsurface sewage disposal system. A site evaluation for Parcel #1 conducted by the County Sanitarian will be required prior to final plat approval. The site evaluation will ensure that there is adequate area to establish a septic system on the parcel that will not adversely affect the groundwater in the area. Additionally, a site evaluation is necessary to ensure that there is an area set aside for a replacement area for the septic system. With the imposition of this as a condition of approval, the County finds that the request complies with Section 6.100 of the LDO.

*8. Section 6.120 Surveying Requirements and Standards: The surveying requirements and standards, or evidence of a survey, described in this section shall apply to... (A) All subdivisions and partitions except that any parcels that are greater than 10 acres need not be surveyed...*

Section 6.120 of the LDO contains requirements and standards for surveying partitions. Because the proposed new parcel will be less than 10 acres in size, a survey complying with the standards provided in this section will be required. With the imposition of this as a condition of approval, the County finds that the request complies with Section 6.120 of the LDO.

**E. OAR 660-041-0170**

The Department of Land Conservation and Development (DLCD) administrative rule section OAR 660-041-0170, requires notice to DLCD on any land use application involving a decision under

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<sup>3</sup> For brevity, the various requirements are not listed. The LDO code can be found in its entirety here: <https://www.co.yamhill.or.us/sites/default/files/LDO-643.pdf>

Measure 49. The Yamhill County Planning Department sent a referral to the DLCD regarding this application and did not receive a response.

**CONCLUSIONS FOR APPROVAL:**

1. The request is consistent with Oregon Laws 2007, Chapter 424, Section 11 (*Measure 49*).
2. The request is consistent with the State of Oregon Final Measure 49 Order No. E131580.
3. With the imposition of the following conditions, the request is consistent with the applicable standards and limitations of the Yamhill County Land Division Ordinance:
  - a. 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-03-23" shall appear on the face of the plat.
  - b. Prior to final partition approval, a survey of Parcel #1 (1.66-acres), shall be completed by a registered land surveyor pursuant to Section 6.120 of the Yamhill County Land Division Ordinance.
  - c. A site evaluation for a subsurface sewage disposal system shall be approved by the County Sanitarian for Parcel #1. The septic system on Parcel #1 shall be located on the 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.
  - d. The establishment of a dwelling on Parcel #1, under M49, is subject to the conditions set forth in the Final Order and Home Site Authorization Number E131580.
  - e. 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:
  - f. No municipal, public utility, community water supply or private system will be provided to the purchaser of those lots noted hereon.
  - g. Each lot not provided with a well or community water service shall be so identified.
  - h. 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 plat approval and the issuance of building or septic permits.

\*END\*

#### **LIST OF EXHIBITS**

- Exhibit A-1: Original Measure 37 Approval by the County
- Exhibit A-2: Measure 49 Approval by the State
- Exhibit A-3: 2020 Partition Approval for the Adjacent Lot
- Exhibit A-4: Partition Application, as Amended
- Exhibit A-5: Base Flood Elevation and 100-year Flood Zone Map

# **EXHIBIT A-1**

**Original Measure 37 Approval by the County**

BOARD ORDERS AND MINUTES

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY ("the Board") sat for the transaction of county business in formal session on March 14, 2007 at 9:00 a.m. in Room 32 of the Courthouse, Commissioners Kathy George, Mary P. Stern, and Leslie Lewis being present.

Also present was John Krawczyk, Administrative Services Director; John M. Gray, Jr., County Counsel; Rick Sanai, Assistant County Counsel; Martin Chroust-Masin, Associate Planner; Sheriff Jack Crabtree; Tonya Saunders, Transit Coordinator; Laura Tschabold, Projects Coordinator; Henry Reeves, 22250 Boulder Crest Lane SE, Amity; Merylyn Reeves, PO Box 1083, McMinnville; Carrie Richter, 121 SW Morrison Street #1100, Portland; Ron Fowler, 6940 SW Dale Avenue, Beaverton; Douglas Evans, 1500 NE Irving Street, Portland; Eleanor Huff, 9380 NE Powell Hill Road, Dundee; Rick and Barbara Lipinski, PO Box 221, Dundee; Jerry and Elizabeth Seeberger, 18145 NE Fairview Drive, Dundee; Danny Ross, 408 Mylar Circle, Irving, Texas; Linda Foley, 18600 NE Buena Vista, Dundee; Janet Rinard, 18265 NE Fairview Drive, Dundee; Bruce Dickson and Kathleen Horgan, 18035 NE Fairview Drive, Dundee; Marc Dochez, 17001 Fairview Drive, Dundee; Christl and Frank Stohr and Diane Letteer, 17995 NE Fairview Drive, Dundee; Mary Weil, PO Box 515, Dundee; Liss Robertson, 2955 NE Hembree Street #220, McMinnville; and Peter Shultz, 9771 Highway 47, Carlton.

Commissioner George called the meeting to order.

A. **PUBLIC COMMENT:** This thirty-minute time period is reserved for public comment on any topic other than a quasi-judicial land use matter or other topic scheduled for public hearing. Unless extended or restricted by the Chair or majority of the Board, public comment will be limited to three minutes per person.

Henry Reeves pointed out that the Measure 37 claims being considered today would affect over 2000 acres in Yamhill County, although Commissioners George and Lewis had assured the public after Measure 37 passed that it would primarily deal with requests for single dwellings. He stated that he is still waiting for an explanation of what went wrong and said that either the commissioners were deceived or they had deceived the public.

B. **AGENDA:**

Personnel

1. **B. O. 07-725** - Consideration of approval of the employment of Phillip Shadden, Carlton, as Deputy Sheriff in the Sheriff's Office Patrol, regular full-time, Range 12, Step 1, \$3089/month, retroactive to March 9, 2007.

2. **B. O. 07-726** - Consideration of approval of the employment of Elma Cantu, McMinnville,

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as Extra Help in the Jail, regular part-time, \$11.91/hour, retroactive to March 9, 2007.

3. **B. O. 07-727** - Consideration of approval of the change of status of Woody Little to Corrections Officer in the Jail, regular full-time, \$3089/month, retroactive to March 9, 2007.
4. **B. O. 07-728** - Consideration of approving a shift schedule change for the Road and Fleet Department to four ten-hour days per week, effective March 19, 2007.
5. **B. O. 07-729** - Consideration of approval of a contract employee agreement between the Assessor's Office and Ruthella Hughes for consulting services, \$30/hour, effective March 14, 2007.
6. **B. O. 07-730** - Consideration of approval of the reclassification of Ken Summers and Ron Huber from Lieutenants to Captains in the Sheriff's Office, maintaining current anniversary dates, Range 20, Step 7, effective March 14, 2007.

Ms. Stern stated that she supports the Sheriff's plan to restructure his department in a way that would work best. She pointed out that the City of McMinnville has also recently reclassified its lieutenants to captains. Ms. Lewis added that the long-term impact on the Sheriff's budget would not be very large.

Ms. Stern moved approval of items B(1) through B(6). The motion passed, Commissioners George, Stern, and Lewis voting aye.

#### Contracts

7. **B. O. 07-731** - Consideration of approval of Amendment #2 to Intergovernmental Agreement YAMH0507 between the Commission on Children & Families and Oregon Commission on Children & Families to increase the maximum medicaid earnings for the Healthy Start Program from \$158,500 to \$170,000, effective March 14, 2007.
8. **B. O. 07-732** - Consideration of approval of Contract #4600006521 between HHS Public Health and Multnomah County for federal Ryan White CARE Act funds to provide case management, mental health, and transportation services for persons living with HIV/AIDS, not to exceed \$34,200, retroactive to March 1, 2007 through February 20, 2008.
9. **B. O. 07-733** - Consideration of authorization of Service Element Prior Authorization (SEPA) Approval Unit #165082 for the 2005-07 Financing Agreement #113020 between Health & Human Services and Oregon Department of Human Services.
10. **B. O. 07-734** - Consideration of approval of Amendment #41 to the 2005-07 Financing Agreement #113020 between Health & Human Services and Oregon Department of Human Services to increase case management and local administration funding.
11. **B. O. 07-735** - Consideration of approval of Amendment #1 to Agreement #10084 between the Juvenile Department and Oregon Youth Authority to add Gang Intervention Funds, \$42,124.

Ms. Lewis moved approval of items B(7) through B(11). The motion passed, Commissioners

George, Stern, and Lewis voting aye.

Policy

12. **B. O. 07-736** - Consideration of adoption of a Policy on Execution and Approval of County Contracts.

Ms. Stern moved to adopt the policy. The motion passed, Commissioners George, Stern, and Lewis voting aye.

Discretionary Spending

13. Declaration of a \$175 discretionary expenditure by Commissioner Stern to Rice Furniture, McMinnville to pay 50% of the cost of a new TV set for the Reflections House in McMinnville, correcting a scrivener error in the amount declared on February 14, 2007.

Economic Development

14. **B. O. 07-737** - Consideration of authorizing the payment of \$3400 from the Economic Development Fund to Chehalem Valley Transit to assist with the implementation of expanded services.

Ms. Lewis moved to authorize the payment, noting that this is similar to what the county did for the YCAP expansion. The motion passed, Commissioners George, Stern, and Lewis voting aye.

Resolutions

15. **B. O. 07-738** - Consideration of adoption of Resolution 07-3-14-1 in support of the formation of a Regional Micro Enterprise Assistance Program and a grant application to Lane MicroBusiness, replacing Resolution 07-2-14-2.

Laura Tschabold explained that Resolution 07-2-14-2 had designated the City of Cottage Grove as lead applicant for the grant, but the City of Veneta has since been identified as a better choice. Ms. George moved to adopt the resolution. The motion passed, Commissioners George, Stern, and Lewis voting aye.

16. **B. O. 07-739** - Consideration of adoption of Resolution 07-3-14-2 in support of a March 20, 2007 legislative event to advocate for the funding of the Newberg-Dundee Bypass.

Ms. Lewis moved to adopt the resolution. The motion passed, Commissioners George, Stern, and Lewis voting aye.

Committees

17. Acknowledge the resignation of Clifford Rosenbohm from the Commission on Children & Families.

Housing

18. **Tabled** - Consideration of a letter of support to Pacific Retirement Services for a project to bring affordable housing for seniors to Newberg.

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Water Line

19. **Tabled** - Follow up discussion on a request from Pioneer Trust Bank for permission to attach a water line to a county bridge to serve another house after the land is partitioned.

Measure 37

20. **B. O. 07-740** - Consideration of M37-127-06, a Measure 37 claim authorizing J. Clifton Jensen to make application to divide 52.3 acres into seven lots and to establish a dwelling on each vacant lot.

Following the public hearings, the Board considered the Measure 37 claims on the agenda. John Gray read the operative part of the order for M37-127-06. Ms. Lewis moved approval of the claim. The motion passed, Commissioners George and Lewis voting aye and Commissioner Stern voting no. Ms. Stern explained that this would constitute a subdivision and she does not believe it was the legislative intent of the voters to approve rural subdivisions.

21. **B. O. 07-741** - Consideration of M37-136-06, a Measure 37 claim authorizing John and Richard Kirsch to make application to divide 41.43 acres into seven lots and to establish a dwelling on each vacant lot.

Mr. Gray read the operative part of the order. Ms. Lewis moved approval of M37-136-06. The motion passed, Commissioners George and Lewis voting aye and Commissioner Stern voting no.

22. **B. O. 07-742** - Consideration of M37-137-06, a Measure 37 claim authorizing the John Kirsch Revocable Living Trust to make application to divide 152.46 acres into thirteen lots and to establish a dwelling on each vacant lot.

Mr. Gray read the operative part of the order. Ms. Lewis moved approval of M37-137-06. The motion passed, Commissioners George and Lewis voting aye and Commissioner Stern voting no.

23. **B. O. 07-743** - Consideration of M37-155-06, a Measure 37 claim authorizing Paul Hoskins to make application to divide 14.32 acres into three lots and to establish a dwelling on each vacant lot.

Mr. Gray read the operative part of the order. Ms. Stern moved approval of M37-155-06, noting that the subject property was zoned agricultural at the time of purchase and the Board will be making a determination as to what would be allowed under that zoning. The motion passed, Commissioners George, Stern, and Lewis voting aye.

24. **B. O. 07-744** - Consideration of M37-162-06, a Measure 37 claim authorizing Bernards family members to make application to divide 117 acres into two or three lots and to establish a dwelling on each vacant lot.

Mr. Gray read the operative part of the order. Ms. George moved approval of M37-162-06. The motion passed, Commissioners George, Stern, and Lewis voting aye.

25. **B. O. 07-745** - Consideration of M37-163-06, a Measure 37 claim authorizing Edna Long to make application to divide 109.2 acres into six or seven lots and to establish a dwelling on each vacant lot.

Mr. Gray read the operative part of the order. Ms. Lewis moved approval of M37-163-06. The motion passed, Commissioners George and Lewis voting aye and Commissioner Stern voting no.

26. **B. O. 07-746** - Consideration of M37-170-06, a Measure 37 claim authorizing Roy Aebi to make application to divide 232.73 acres into 23 lots and to establish a dwelling on each vacant lot.

Mr. Gray read the operative part of the order. Ms. George moved approval of M37-170-06. The motion passed, Commissioners George and Lewis voting aye and Commissioner Stern voting no.

27. **B. O. 07-747** - Consideration of the denial of M37-173-06, a Measure 37 claim authorizing Frank Buck to make application to divide 16.95 acres into three lots and to establish a dwelling on each vacant lot.

Mr. Gray explained that no land use regulations have been enacted since the time of acquisition which would reduce the property value. Ms. Stern moved to deny M37-173-06. The motion passed, Commissioners George, Stern, and Lewis voting aye.

28. **B. O. 07-748** - Consideration of M37-174-06, a Measure 37 claim authorizing William Schmidt to make application to divide 83.83 acres into forty lots and to establish a dwelling and/or commercial development on each vacant lot.

Mr. Gray read the operative part of the order. Ms. Lewis moved approval of M37-174-06, stating for the record that the fact that Mr. Schmidt is her neighbor had no impact on her decision. The motion passed, Commissioners George and Lewis voting aye and Commissioner Stern voting no.

29. **B. O. 07-749** - Consideration of M37-175-06, a Measure 37 claim authorizing Marvel Pendergraft to make application to divide 32.65 acres into fifteen lots and to establish a dwelling on each vacant lot.

Mr. Gray read the operative part of the order. Ms. Lewis moved approval of M37-175-06. The motion passed, Commissioners George and Lewis voting aye and Commissioner Stern voting no.

30. **B. O. 07-750** - Consideration of M37-176-06, a Measure 37 claim authorizing the Faye Bell Smith Trust to make application to divide 20.2 acres into three lots and to establish a dwelling on

each vacant lot.

Mr. Gray read the operative part of the order. Ms. Stern moved approval of M37-176-06. The motion passed, Commissioners George, Stern, and Lewis voting aye.

31. **B. O. 07-751** - Consideration of M37-177-06, a Measure 37 claim authorizing the Nellie Jinings Family Trust to make application to divide 39.3 acres into four lots and to establish a dwelling on each vacant lot.

Mr. Gray read the operative part of the order. Ms. Lewis moved approval of M37-177-06. The motion passed, Commissioners George, Stern, and Lewis voting aye. Ms. Stern noted that although the property was not zoned at the time of purchase, the first zoning was rural residential.

32. **B. O. 07-752** - Consideration of M37-178-06, a Measure 37 claim authorizing the Doris Haverman Revocable Living Trust to make application to recognize 19+ platted lots, to establish a dwelling on fifteen of the vacant lots, and to establish commercial or light industrial development on the remaining vacant lots.

Mr. Gray read the operative part of the order. Ms. George moved approval of M37-178-06. The motion passed, Commissioners George and Lewis voting aye and Commissioner Stern voting no.

33. **B. O. 07-753** - Consideration of M37-179-06, a Measure 37 claim authorizing Richard and Judith Jinings to make application to divide 4.8 acres into two lots and to establish a dwelling on each vacant lot.

Mr. Gray read the operative part of the order. Ms. Stern moved approval of M37-179-06. The motion passed, Commissioners George, Stern, and Lewis voting aye.

34. **B. O. 07-754** - Consideration of M37-180-06, a Measure 37 claim authorizing Vivian Moe to make application to divide five acres into five lots and to establish a dwelling on each vacant lot.

Mr. Gray read the operative part of the order. Ms. Lewis moved approval of M37-180-06. The motion passed, Commissioners George and Lewis voting aye and Commissioner Stern voting no.

35. **B. O. 07-755** - Consideration of M37-181-06, a Measure 37 claim authorizing William and Martha Goodman to make application to establish a dwelling on each of five existing tax lots.

Mr. Gray read the operative part of the order. Ms. Stern moved approval of M37-181-06. The motion passed, Commissioners George, Stern, and Lewis voting aye.

36. **B. O. 07-756** - Consideration of M37-182-06, a Measure 37 claim authorizing Bryce and Barbara Mitchell to make application to establish a residential resort subdivision and a commercial shopping center on 160.34 acres.

Mr. Gray read the operative part of the order. Ms. Lewis moved approval of M37-182-06. The motion passed, Commissioners George and Lewis voting aye and Commissioner Stern voting no.

37. **B. O. 07-757** - Consideration of M37-183-06, a Measure 37 claim authorizing the Thompson Family Trust to make application to divide 22.6 acres into four lots and to establish a dwelling on each vacant lot.

Mr. Gray read the operative part of the order. Ms. Stern moved approval of M37-183-06, noting that the property was zoned agricultural at the time of purchase. The motion passed, Commissioners George, Stern, and Lewis voting aye.

38. **B. O. 07-758** - Consideration of M37-184-06, a Measure 37 claim authorizing Gordon and Carolyn Dromgoole to make application to divide 28.7 acres into three lots and to establish a dwelling on each vacant lot, one lot to be used as a commercial/residential lot.

Mr. Gray read the operative part of the order. Ms. Lewis moved approval of M37-184-06. The motion passed, Commissioners George, Stern, and Lewis voting aye.

39. **B. O. 07-759** - Consideration of M37-185-06, a Measure 37 claim authorizing Gordon and Carolyn Dromgoole to make application to divide 68.17 acres into two lots and to establish a dwelling on each vacant lot.

Mr. Gray read the operative part of the order. Ms. Stern moved approval of M37-185-06. The motion passed, Commissioners George, Stern, and Lewis voting aye.

40. **B. O. 07-760** - Consideration of M37-186-06, a Measure 37 claim authorizing Gordon and Carolyn Dromgoole to make application to divide 58.8 acres into sixteen lots, to use eight lots for commercial/light industrial development, and to establish a dwelling on each of the remaining vacant lots.

Mr. Gray read the operative part of the order. Ms. George moved approval of M37-186-06. The motion passed, Commissioners George and Lewis voting aye and Commissioner Stern voting no.

41. **B. O. 07-761** - Consideration of M37-188-06, a Measure 37 claim authorizing Alan and Marjorie Ehry to make application to divide 33.2 acres into three lots and to establish a dwelling and/or commercial uses on each vacant lot.

Mr. Gray read the operative part of the order. Ms. Stern moved approval of M37-188-06. The motion passed, Commissioners George, Stern, and Lewis voting aye.

42. **B. O. 07-762** - Consideration of M37-189-06, a Measure 37 claim authorizing the Joan

Silvers Revocable Trust to make application to divide 6.05 acres into twelve lots and to establish a dwelling on each vacant lot.

Mr. Gray read the operative part of the order. Ms. Lewis moved approval of M37-189-06, expressing frustration that the property has been in Newberg's Urban Reserve Area for a long time and should clearly be brought into the city. The motion passed, Commissioners George and Lewis voting aye and Commissioner Stern voting no.

43. **B. O. 07-763** - Consideration of M37-191-06, a Measure 37 claim authorizing Gary and Diana Muir to make application to divide 29.16 acres into two lots and to establish a dwelling on the vacant lot.

Mr. Gray read the operative part of the order. Ms. Stern moved approval of M37-191-06. The motion passed, Commissioners George, Stern, and Lewis voting aye.

44. **B. O. 07-764** - Consideration of M37-193-06, a Measure 37 claim authorizing Burden, Varuska, and Gubser to make application to divide 65.43 acres into thirteen lots and to establish a dwelling on each vacant lot.

Mr. Gray read the operative part of the order. Ms. Lewis moved approval of M37-193-06. The motion passed, Commissioners George and Lewis voting aye and Commissioner Stern voting no.

45. **B. O. 07-765** - Consideration of M37-194-06, a Measure 37 claim authorizing Margaret and Gilbert Arendt to make application to divide 9.78 acres into five lots and to establish a dwelling on each vacant lot.

Mr. Gray read the operative part of the order. Ms. George moved approval of M37-194-06. The motion passed, Commissioners George and Lewis voting aye and Commissioner Stern voting no.

46. **B. O. 07-766** - Consideration of the denial of M37-195-06, a Measure 37 claim authorizing Zim Lar Tree Farms, LLC to make application to divide 571 acres into 110 lots and to establish a dwelling on each vacant lot.

Mr. Gray explained that no land use regulations have been enacted since the time of acquisition which would reduce the property value. Ms. Stern moved to deny M37-195-06. The motion passed, Commissioners George, Stern, and Lewis voting aye.

47. **B. O. 07-767** - Consideration of M37-196-06, a Measure 37 claim authorizing the Carson Trust to make application to divide 33.29 acres into three lots and to establish a dwelling on each vacant lot.

Mr. Gray read the operative part of the order. Ms. George moved approval of M37-196-06. The motion passed, Commissioners George, Stern, and Lewis voting aye.

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48. **B. O. 07-768** - Consideration of the denial of M37-197-06, a Measure 37 claim authorizing Merritt and Grace Johnson to make application to divide 3.56 acres into three lots and to establish a dwelling on each vacant lot.

Mr. Gray explained that no land use regulations have been enacted since the time of acquisition which would reduce the property value. Ms. Stern moved to deny M37-197-06. The motion passed, Commissioners George, Stern, and Lewis voting aye.

49. **B. O. 07-769** - Consideration of M37-198-06, a Measure 37 claim authorizing the Vermulm Living Trust to make application to divide 7.2 acres into seven lots and to establish a dwelling on each vacant lot.

Mr. Gray read the operative part of the order. Ms. George moved approval of M37-198-06. The motion passed, Commissioners George and Lewis voting aye and Commissioner Stern voting no.

50. **B. O. 07-770** - Consideration of the denial of M37-199-06, a Measure 37 claim authorizing the Hutchens Living Trust to make application to divide 21.2 acres into 21 lots and to establish a dwelling on each vacant lot.

Mr. Gray explained that no land use regulations have been enacted since the time of acquisition which would reduce the property value. Ms. Stern moved to deny M37-199-06. The motion passed, Commissioners George, Stern, and Lewis voting aye.

**C. OLD BUSINESS:**

1. **B. O. 07-771** - Consideration of adoption of an order in support of M37-132-06, a Measure 37 claim authorizing George Steele to make application to divide 22.65 acres into 22 lots and to establish a dwelling on each lot, as tentatively approved March 7, 2007.

Mr. Gray read the operative part of the order. Ms. Lewis moved approval of M37-132-06. The motion passed, Commissioners George and Lewis voting aye and Commissioner Stern voting no.

**D. OTHER BUSINESS (Add-ons and non-consent items):** None.

**E. PUBLIC HEARINGS:**

1. Consideration of Planning Docket SDR-22-06, an appeal of the Planning Director's approval of a site design review for a 120-foot communications monopole antenna and associated equipment, applicant Douglas P. Evans for T-Mobile USA, appellants Jerry Seeberger et al, as continued from February 21, 2007. *[Continued to April 11, 2007 at the point of Staff Recommendation; record left open for submission of written information by either party until 5:00 p.m. March 28, 2007, for written rebuttal by either party until 5:00 p.m. April 4, 2007, and for written rebuttal by the applicant until 5:00 p.m. April 9, 2007.]*

Ms. George opened the public hearing. There were no abstentions or objections to

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jurisdiction. She noted that the commissioners had each taken a site visit. Rick Sanai read the statement required for land use hearings relating to the requirement that parties must raise all issues at the hearing or waive their right to raise the issues on appeal.

Staff Report - Martin Chroust-Masin described the subject property and the proposal to construct a 120-foot communications antenna.

Proponents - Douglas Evans, representing T-Mobile, stated that after studying the traffic patterns, cell phone coverage, and cell phone usage in the area, T-Mobile has determined that there is a need to provide additional service along Highway 240 and Worden Hill Road, which currently have no coverage. He reviewed the criteria for approval and explained that only one of the criteria needs to be met. He stated that he would address the technical and engineering feasibility criteria.

He stated that analysis by an independent telecommunications engineering company indicates that the proposed site is an optimum location to meet T-Mobile's coverage objectives. He explained that this tower would link to two other towers planned by T-Mobile in the general area. He said that 120 feet is the height necessary to provide coverage and will also offer co-location opportunities for other providers, reducing the need for multiple towers in the area. He added that the only non-resource zone in the area is not a feasible location because it slopes away from the target coverage area. He noted that locating towers on flat land in the valley to avoid tree issues would result in a substantial increase in the number of towers needed.

He stated that the proposed facility meets all applicable codes imposed by the state for noise levels and lighting would not be required on the tower. He pointed out that because 40% of emergency calls in the U.S. are made from cell phones, this tower would provide an extension of the county's public safety network at no additional cost. He concluded that the applicant has complied with all applicable county and state code and he urged the Board to uphold the Planning Director's decision to approve the application.

Questions of Proponents - Mr. Evans stated that he does not have specific information with him about the location of the other two proposed towers. In response to a question about the soil type, he stated that geotechnical studies would be conducted and the results would be presented to building officials. He stated that the proposed tower very adequately clears the existing tree canopy and if it were to become non-functional in the future, the structure would be removed. He said that he is not aware of any code provisions which would allow the applicant to require the removal of trees on someone else's property.

Ron Fowler explained that the existing pole on the subject property is a wooden utility pole approximately 35 feet tall which was put up by an unknown local person for some sort of wi-fi service, but it would not support the needs of the applicant. He discussed the land that was considered for location of the proposed cell tower and listed the property owners who were contacted. He stated that the subject property was the only candidate which met the applicant's objectives.

Carrie Richter stated that the applicant would be willing to leave the record open in order to

provide additional information regarding alternate locations and property owners contacted, but the applicant has no obligation to do so. She urged the Board to stick to the required criteria listed in the statute.

Opponents - Rick Lipinski stated that because the subject property is forty to sixty feet below the top of a ridge, the tower would have to be much taller than it would be if it were located on the north side of the ridge. He said that the decision made by the Land Use Board of Appeals in Case #2001-043 makes it clear that an alternative search analysis is required when attempting to site on Exclusive Farm Use (EFU) land and the applicants must provide a thorough accounting of sites searched and the reasons for rejection. He added that future technology is unknown at this point and neighbors have no protection against situations such as a 100-foot-wide dish being installed on the proposed tower several years from now.

Marc Dochez stated that neighbors were not previously aware of the plans for two additional towers in the area, whose locations would be locked in by this proposed tower. He read the county statute describing the purpose of EF-20 land and stated that the applicant has not fully explored other locations which would be more suitable for a non-conforming use. He pointed out that there are numerous potential sites located in exception land along Highway 240 and submitted a map for the record. He stated that T-Mobile needs to address all of the approval criteria.

Danny Ross stated that the goal of the neighbors is not to prevent T-Mobile from improving its service, but to help the applicant find a better solution more in harmony with the community. He reviewed the coverage objectives as stated by the applicant and pointed out the co-locating its equipment on existing Bonneville Power towers in the area would meet the majority of the coverage objectives. He suggested that the applicant compromise on some of the objectives in order to be a more welcome neighbor. He answered questions about his qualifications as a radio frequency engineer.

Elizabeth Seeberger stated that she had spoken with Tim Murray, Equipment Manager for Bonneville Power Administration, who had informed her that co-locating T-Mobile equipment on BPA towers is a common practice and would be welcome in this area as well. She stated that when she had entered her own address as a potential customer on the T-Mobile website, it stated that she would have cell phone coverage on Highway 240, which contradicts Mr. Evans' statement that there is no coverage in that area. She said that Buena Vista Drive and the other roads mentioned by the applicant are in an area comprised of parcels of five to twenty acres each and that area will not become any more populated than it already is. She added that the subject property is a prime area for a future vineyard, which would eliminate the existing trees as a disguise for the tower.

Bruce Dickson encouraged the Board to preserve the inherent pastoral beauty of Yamhill County farmland by ensuring that the applicant has thoroughly investigated other, less-intrusive locations. He submitted a simulated photo of the proposed tower and its visual impact on the area. He noted that the owner of the subject property would be willing to release T-Mobile from its contract if a better location were found.

Ms. Stern stated for the record that she has a working relationship with Mr. and Mrs. Dickson

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as well as with Mr. Dochez, but this will not impact her decision.

Janet Rinard stated that by using their own T-Mobile cell phones to test existing coverage in the target area, she and her husband have confirmed that adequate coverage already exists.

Linda Foley read a quote from the March 4, 2007 edition of the Oregonian regarding the worldwide acclaim for Yamhill County wine country and stated that the proposed tower would detract from the rural beauty of the area.

Barbara Lipinski expressed concern that the current owners of the subject property are trying to sell the property by marketing its great view and its vineyard potential. She stated that a six-foot vineyard would not mitigate a 120-foot tower and she urged the Board to use its discretion in where it allows a tower to be constructed.

Jerry Seeberger discussed the potential loss of property value in the area because of the visual impact of the proposed tower, which would have very little mitigation. He stated that there are alternative sites available which are not on EFU land.

Eleanor Huff stated that John Knight is strongly opposed to the application because he intends to build a house on top of the hill when the land between his two lots becomes available and the proposed tower would practically be in his back yard.

Public Agency Reports - Mr. Chroust-Masin stated that Yamhill County Public Works, the City of Dundee, and Oregon Department of Aviation have no conflicts with the application.

Rebuttal - Mr. Evans responded to a suggestion to locate the tower on Bald Peak Road or Mountain Top Road, pointing out that although T-Mobile intends to locate towers in both of those locations eventually, that does not eliminate the need for the current application. He stated that the need for additional coverage was determined by exhaustive engineering studies and professional testing using calibrated equipment, not by an anecdotal test using a single cell phone. He added that marketing materials are not always consistent with engineering data. He submitted simulated photographic exhibits showing considerable mitigation from the existing tree canopy and said that no economic diminution of property value has resulted from other T-Mobile towers located in wine country. He stated that the Board does not have unlimited discretion in this case, as suggested by the opponents, but has limited discretion within the regulations of the statute.

Mr. Fowler stated that the applicant had looked for co-location opportunities first, but the BPA towers weren't given serious consideration because their lower elevation would not provide coverage of the Worden Hill Road area. He added that because BPA does not own the land underneath its towers, leases and easements are required which make co-locating more expensive for T-Mobile than building its own tower. Ms. Lewis stated that she would like to see engineering information showing that BPA towers would not provide adequate coverage.

Ms. Richter stated that the applicant would do its best to provide the requested information during the open record period, but she re-emphasized that cell towers are an allowed use in EFU land

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if one of the criteria is met. She referred to Sprint PCS v. Washington County, which makes it clear that the applicant has the ability to present evidence showing where the coverage shortfall is and how to fill it. She stated that the applicant has considered various alternatives, including alternate sites and heights for the tower, and noted that potential loss of value is not one of the approval criteria.

A summary was made of the information requested of the applicant during the open record period, which includes: propagation maps showing BPA tower locations; studies to prove or disprove feasibility on exception lands; electronic copies of the simulated photos submitted by the applicant today; plans for visual buffer continuation; proof of the need for additional cell phone coverage; the projected growth of trees uphill from the tower site and its impact on coverage; propagation maps of Bald Peak and Mountain Top Road sites, including both existing and proposed towers; a map of existing T-Mobile towers in wine country; and simulated photos taken from four locations to be determined jointly with the opponents.

Ms. Lewis moved to continue the hearing to April 11, 2007 at the point of Staff Recommendation, with the record left open for submission of written information by either party until 5:00 p.m. March 28, 2007, for written rebuttal by either party until 5:00 p.m. April 4, 2007, and for written rebuttal by the applicant until 5:00 p.m. April 9, 2007. The motion passed, Commissioners George, Stern, and Lewis voting aye.

2. **B. O. 07-772** - Final hearing for formation of the Yamhill County Transit Area, a county service district; adoption of an order forming the district; and notice of the first YCTA Board of Directors meeting at 8:45 a.m. on March 21, 2007 in Room 32 of the Courthouse.

Ms. George opened the public hearing. Ms. Lewis and Ms. Saunders provided background information. There being no public comment, the hearing was closed.

Ms. Lewis moved to approve the formation of the YCTA, expressing her appreciation to all those who have worked for many years on this project. The motion passed, Commissioners George, Stern, and Lewis voting aye.

The meeting recessed at 12:28 p.m. and reconvened at 1:22 p.m. to consider the Measure 37 claims on the agenda, beginning with item B(20).

**F. ANNOUNCEMENTS:**

1. The following positions are open to the public. Contact the Commissioners' Office for applications.

- a. Commission on Children & Families, one lay alternate position and one youth position;
- b. Local Alcohol and Drug Planning Committee, three positions;
- c. Parks Board, one position;
- d. Road Improvement Advisory Committee, one position;
- e. Special Transportation Advisory Commission, one position.

2. Northwest Senior & Disability Services has openings for Yamhill County residents on the following regional councils:

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# Yamhill County

## DEPARTMENT OF PLANNING AND DEVELOPMENT

525 NE 4th STREET • McMinnville, Oregon 97128

Phone:(503) 434-7516 • Fax:(503)434-7544 • TTY: (800) 735-2900 • Internet Address: <http://www.co.yamhill.or.us/plan/>

COPY

April 3, 2007

Lane Shetterly, Director  
Department of Land Conservation and Development  
635 Capitol Street NE, Suite 150  
Salem, OR 97301-2540

RE: Yamhill County Measure 37 action, Docket Number M37-175-06

Dear Mr. Shetterly:

The Yamhill County Board of Commissioners adopted Ordinance 749 on December 2, 2004 to process Measure 37 claims. Section 6(1) of Ordinance 749 provides as follows:

(1) Upon conclusion of consideration of a claim application, and not later than 180 days after a claim application is filed with the Planning Director, the Board shall issue a written decision by Board Order that declares:

(a) The claim is not a valid claim; or

(b) The claim is a valid claim and the amount of compensation, if any, due to the owner(s) of the subject property; or

(c) The claim is a valid claim and the County will, as of the date of the final Board decision, modify, remove, or choose not to apply the challenged land use regulation(s) to avoid reducing the fair market value of the property and to allow the owner to use the property for a use permitted at the time the owner acquired the property. In those circumstances where the Board has decided to modify, remove or not to apply the challenged Yamhill County land use regulation but the use remains prohibited by a State of Oregon land use regulation, the Planning Director shall send notice of the Board's decision to the Director of the Department of Land Conservation and Development. The notice shall include a statement that the County will not accept an application for a building permit related to the newly allowed use of the property until the following event: notice by the Department of Land Conservation and Development that it concurs with the Board's decision

In accordance with Section 6(1)(c) of Ordinance 749, this letter constitutes notice that on March 14, 2007 the Board adopted Board Order 07-749 to approve the application of Marvel L. Pendergraft, Trustee, in Docket Number M37-175-06. The effect of the order was to allow the following use on property located at 24725 SE Wallace Rd: Claimant is authorized to make application to divide the subject property into not more than 15 lots and, upon the Planning Director's issuance of land division approval, to make applications to establish dwellings on undeveloped lots under land use regulations then in effect on July 11, 1962; provided, however, that under no circumstances will the Planning Director waive any exempt land use regulations as defined by ORS 197.352(3), including the following: regulations that restrict or prohibit activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations.

The County will not accept an application for subdivision or building permits related to the newly allowed use on the property until the following occurs: notice by the Department of Land Conservation and Development that it concurs with the Board's decision.

If you have any questions, please contact me.

Sincerely,  
  
Michael Brandt, Director  
Department of Planning and Development

cc: Board of Commissioners  
County Counsel  
Applicant

**PLANNING DIRECTOR'S RECOMMENDATION ON MEASURE 37 CLAIM  
YAMHILL COUNTY DEPARTMENT OF PLANNING AND DEVELOPMENT**

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**DATE:** January 31, 2007

**DOCKET:** M37-175-06

**REQUEST:** To divide the property into 15 lots and to establish a dwelling on each vacant lot.

**APPLICANT:** Marvel L. Pendergraft

**TAX LOT:** 6304-303

**LOCATION:** 24725 SE Wallace Road, Salem, Oregon

**ZONE DESIGNATION:** EF-80 Exclusive Farm. Much of the property is within the Willamette River Greenway.

**REVIEW CRITERIA:** Ordinance 749, Measure 37 Implementation Ordinance  
(**Note:** Ballot Measure 37 was adopted by the voters of the State of Oregon on November 2, 2004 to add provisions to ORS Chapter 197 to require, under certain circumstances, payment of just compensation to landowners if a government land use regulation reduces property value. In lieu of payment of just compensation, Measure 37 authorizes the governing body of a local government to modify, remove or not apply the land use regulation. Ordinance 749 was adopted December 2, 2004 to implement Measure 37.)

**FINDINGS:**

**A. Background Facts**

1. *Parcel Size:* 32.65 acres.
2. *Ownership:* The applicant has submitted a warranty deed and mortgage verifying ownership of Tax Lot 6304-303 by Marvel Pendergraft since July 11, 1962 (Film Volume 27, page 21).
3. *Surrounding Zoning:* The surrounding area is zoned EF-80.
4. *Property Valuation:* The applicant has submitted an estimated loss of value of \$1,584,619.
5. *County Land Use Regulations:* On April 1, 1959, the county adopted subdivision regulations by order of the County Court. On August 30, 1968, the county adopted Ordinance 29 which

zoned a small portion of the county. The applicant's property was not zoned in 1968. The County Comprehensive Plan was initially adopted in September, 1974. From February 11, 1976 until 1980 the applicant's property was zoned AF-20. In 1993, the Oregon State Legislature passed House Bill 3661, which became effective November 3, 1993, and mandated an 80-acre minimum lot size for farm and forest zones in western Oregon. Subsequently, Yamhill County adopted new zoning maps on December 29, 1993 which designated the applicant's property with the present EF-80 Exclusive Farm zone. Early the following year the Land Conservation and Development Commission adopted new administrative rules which required farm dwellings on high-value farm land to show gross sales of \$80,000. This rule became effective on March 1, 1994 and was adopted by the County as an amendment to Ordinance 310.

6. *Enforcement Date:* On November 8, 2006, the applicant's representative submitted a letter to the Planning Director requesting permission to divide and develop the property. On November 22, 2006, the Planning Director wrote a response letter saying that because the property is zoned EF-80, parcel sizes must meet the 80 acre minimum size requirement and any new principal dwellings must meet the \$80,000 gross farm income requirement (see attached).

**B. Ordinance Provisions and Analysis**

Section 4(1) of Ordinance No. 749 provides that the applicant must demonstrate the request satisfies all of the following criteria:

- (a) Yamhill County has either adopted or enforced a land use regulation that restricts the use of private real property or any interest therein;*
- (b) The restriction on use has the effect of reducing the fair market value of the property or any interest therein, upon which the restriction is imposed;*
- (c) The challenged Yamhill County land use regulation was adopted, enforced or applied after the current owner of the property (the applicant) became the owner; and*
- (d) The challenged Yamhill County land use regulation is not an exempt land use regulation as defined in Section 1 of this ordinance.*

1. Regarding section 4(1)(a). The Planning Director finds that this criterion has been satisfied. Yamhill County has adopted the following land use regulations that restrict the use of the applicant's private real property:

- a. Ordinance 62, Yamhill County Comprehensive Plan, adopted 1974.

- b. Ordinance 83, adopted February 11, 1976.
  - c. Ordinance 205, as amended, adopted June, 1979.
  - d. Ordinance 310, as amended, adopted December 1, 1982.
2. Regarding Section 4(1)(b). The Planning Director finds that this criterion has been satisfied. Based upon discussion with the Yamhill County Assessor, the restrictions on use imposed by the regulations cited above had the effect of reducing the fair market value of the subject property or any interest therein. The specific reduction in fair market value is discussed below under **Recommendation**.
3. Regarding section 4(1)(c). The Planning Director finds that this criterion has been satisfied. As provided in Section 1(2)(b) of Ordinance 749, the challenged Yamhill County land use regulations were enforced by letter from the Planning Director on November 22, 2006. This date is after the current owner of the property (the applicant) became the owner. A mortgage indicates the ownership date of 1962 for the tax lot owned by the applicant.
4. Regarding Section 4(1)(d). The Planning Director finds that this criterion has been satisfied. Section 1(3) of Ordinance 749 defines exempt land use regulation as a regulation that:
- (a) Restricts or prohibits activities commonly and historically recognized as public nuisances under common law;*
  - (b) Restricts or prohibits activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations;*
  - (c) Is required to comply with federal law;*
  - (d) Restricts or prohibits the use of property for the purpose of selling pornography or performing nude dancing; or*
  - (e) Was enacted prior to the date of acquisition of the property by the owner or a family member.*

The challenged land use regulations do not constitute an “exempt land use regulation” as defined in Section 1(3) of Ordinance 749.

### C. Recommendation

Section 4(3) of Ordinance 749 provides as follows:

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*If the claim application meets all of the criteria in subsection (1) of this section, the Planning Director shall issue a written recommendation to the Board recommending acceptance of the claim application as a valid claim and explaining the basis for the Director's recommendation. The recommendation shall include the following components:*

*(a) The Planning Director's determination of the amount of compensation to which the applicant may be entitled as a result of a reduction in property value due to the imposition of a land use regulation; and*

*(b) The Planning Director's determination whether it is necessary to modify, remove or not to apply a Yamhill County land use regulation to avoid owner entitlement to compensation under the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004). The determination shall include a recommendation on the extent of the adjustment of the land use regulation needed to avoid the entitlement to such compensation; and*

*(c) The Planning Director's determination that the public interest is served by modifying, removing or not applying the subject land use regulation in lieu of paying compensation; taking into consideration the financial resources of the County for the payment of such claims.*

Based upon satisfaction of the criteria established by Section 4(1) of Ordinance 749, the Planning Director concludes as follows:

1. The applicant is claiming a reduction in value of \$1,584,619 based upon the property being divided and developed with dwellings. Due to the imposition of land use regulations cited above the applicant would be entitled to compensation of \$1,584,619.
2. The applicant desires to divide the property into 15 lots for residential development. Such proposed uses are not allowed by several land use regulations adopted after acquisition of the property by the current owner. These include Section 402 of the Yamhill County Zoning Ordinance and the Goals and Policies of the Yamhill County Comprehensive Plan that have the effect of reducing the fair market value of the subject property or any interest therein by imposing the 80 acre minimum lot size, the \$80,000 income test for dwellings, and the specific use provisions of the EF-80 District which do not allow the development proposed. Further, ordinances in effect prior to the current zoning ordinance such as Ordinance 62 and Ordinance 83 further restrict the use of the property in the manner desired by the applicant. These ordinances were enacted after the owner acquired the property. In order to allow such development, density, dwelling siting standards sought by the owner on the subject property pursuant to rights established by Measure 37 and Ordinance 749, it is necessary to modify, remove or not to apply use restrictions within the EF-80 District that were established by the regulations cited in this report.

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3. There is evidence in the record that compensation due the applicant for reduction of the fair market value of the subject property would be approximately \$1,584,619 based upon the uses requested by the owner. Taking into consideration the financial resources of the County for the payment of the applicant's claim, the Planning Director finds that the public interest is served by modifying, removing or not applying the regulations identified in the preceding paragraph that would prohibit the proposed development.

Based upon the findings and conclusions stated above, the Planning Director recommends that the Board of Commissioners approve the request by Marvel L. Pendergraft to divide the property into 15 lots and to establish a dwelling on each vacant lot on Tax Lot 6304-303 in lieu of paying compensation for the reduction in property value caused by the application of land use regulations enacted after the current owner acquired the property. In order to allow the proposed development, the Planning Director recommends that the Board of Commissioners modify, remove or not apply land use regulations listed in Section B(1) against the subject property when the current owner seeks development permits on the subject property. Note: Since the property was acquired by the current owner in 1962, it would be subject to the land division ordinance in place prior to the purchase date.

**IMPORTANT NOTE:** This recommendation regarding Yamhill County land use regulations will be considered by the Board of Commissioners. After considering the recommendation, the Board has three options. First, it can determine the claim is not valid. Second, it can determine the claim is valid and order compensation to be paid. Third, it can determine the claim is valid and decide whether to modify, remove or not apply the challenged land use regulation(s) in lieu of paying compensation.

However, a decision by the Board of Commissioners to adopt the Planning Director's recommendation does not entitle the applicant to a building permit in every case. The Board has no authority to modify, remove or not apply a state land use regulation. Section 6(1)(c) of Ordinance 749 applies when a use prohibited by a Yamhill County land use regulation is also prohibited by a state land use regulation. Part of Section 6(1)(c) provides as follows:

"... In those circumstances where the Board has decided to modify, remove or not to apply the challenged Yamhill County land use regulation but the use remains prohibited by a State of Oregon land use regulation, the Planning Director shall send notice of the Board's decision to the Director of the Department of Land Conservation and Development. The notice shall include a statement that the County will not accept an application for a building permit related to the newly allowed use of the property until the earlier of the following events: (i) notice by the Department of Land Conservation and Development that it concurs with the Board's decision, or (ii) a date 180 days from issuance of the Board's decision where no response is made to the notice by the Department of Land Conservation and Development."

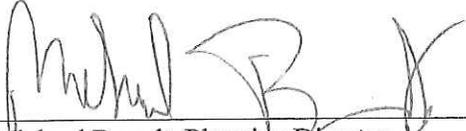
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DATED AND SIGNED this 2<sup>nd</sup> day of February, 2007, at  
McMinnville, Oregon.



Michael Brandt, Planning Director  
Yamhill County Planning and Development

MB:mb

CERTIFICATION OF TRUST

In accordance with ORS 128.005, the undersigned MARVEL L. PENDERGRAFT Trustee hereby makes the following certification:

1. Name and Date of Trust: WAYNE F. PENDERGRAFT Credit Shelter Trust dated May 13, 2002
2. The Trust was created by: WAYNE F. PENDERGRAFT
3. The Trustees shall have all of the trust powers contained in the Uniform Trust Code set forth in ORS 130.001 to 130.910.
4. Name(s) and Address(es) of currently acting Trustee or Trustees:  
MARVEL L. PENDERGRAFT  
24725 Wallace Rd. NW  
Salem, OR 97304
5. The trust is an irrevocable trust and may not be amended or revoked by anyone.
6. If there is more than one Trustee serving at a time, each Trustee shall have the power to act individually on behalf of the trust.
7. The name of the successor Trustee is: ROGER MILLS
8. Trust Identification No.: 27-600-3302
9. The manner in which title to trust assets should be taken:  
"MARVEL L. PENDERGRAFT, Trustee under the WAYNE F. PENDERGRAFT, Credit Shelter Trust dated May 13, 2002."
10. The trust has not been revoked, modified or amended in any manner that would cause the representations contained in this certifica-

KNOW ALL MEN BY THESE PRESENTS, That  
 FREDERICK H. ELEY and BESSIE ELEY, husband and wife,  
 Grantor  
 TEN AND NO. 100 Dollars,  
 by the Grantors being do hereby grant, bargain, sell and convey unto  
 WAYNE F. PENDERGRAFT and MARVEL J. PENDERGRAFT, husband  
 and wife, Grantee, as tenants by the entirety, the following described real property, situate in the County of  
 Yamhill and State of Oregon, to-wit:

All of that part of the following described property which is situated within the  
 bounds of the Adam Matheny Donation Land Claim No. 60 in Township 5 South,  
 Range 3 West and the William Miller Donation Land Claim in Townships 5 and  
 6 South, Range 3 West of the Willamette Meridian in Yamhill County, Oregon:  
 Beginning in the center of the old County Road before the same was relocated  
 and established as a State Secondary Highway, said beginning point being the  
 southwest corner of the Daniel Matheny Donation Land Claim in said County  
 and State; thence running in a Southerly direction in the center of said Market  
 Road to the South line of the said William Miller Donation Land Claim; thence  
 East to the low water mark of the Willamette River; thence Northeasterly following  
 the low water mark of said Willamette River to the North line of the said William  
 Miller Donation Land Claim; thence North along the East line of the Adam Matheny  
 Donation Land Claim to the South line of the Daniel Matheny Donation Land Claim;  
 thence West on the South line of the Daniel Matheny Donation Land Claim to the  
 place of beginning.

Subject to: Rights of the public in and to that portion of the premises lying in  
 roads and roadways.

To Have and to Hold the granted premises unto the said Grantee, as tenants by the entirety, their Heirs  
 and Assigns forever.  
 The Grantor do covenant that they are lawfully seized in fee simple of the above granted  
 premises free from all incumbrances;

and that they will and their heirs, executors and administrators, shall warrant and forever  
 defend the granted premises, against the lawful claims and demands of all persons, except as above stated.  
 Witness our hand and seal this 11 day of July 1982

*Frederick H. Eley* (SEAL)  
*Bessie Eley* (SEAL)  
 (SEAL)  
 (SEAL)

STATE OF OREGON  
 County of Marion  
 On this 11 day of July 1982  
 FREDERICK H. ELEY and BESSIE ELEY,  
 husband and wife

69709  
 STATE OF OREGON  
 County of Yamhill  
 I certify that the within instrument was recorded for record on  
 December 24 1982  
 at 3:58 o'clock P.M. and was indexed  
 in Book Page of  
 Deeds of said county.

*Jack B. ...*  
 Clerk of County  
 STATE OF OREGON  
 By *Alice ...*  
 Deputy

*Book*  
 Public for Oregon  
 11/16

Returns to:  
 Salem, Ore  
 P.O. Box 128  
 Salem, Ore

WARRANTY DEED

FILM 109 PAGE 106

KNOW ALL MEN BY THESE PRESENTS, That Wayne Pendergraft and Marvel Pendergraft

hereinafter called the grantor, for the consideration hereinafter stated, to grantor paid by Don D. Pendergraft, hereinafter called the grantee, does hereby grant, bargain, sell and convey unto the said grantee and grantee's heirs, successors and assigns, that certain real property, with the tenements, hereditaments and appurtenances thereunto belonging or appertaining, situated in the County of Yamhill and State of Oregon, described as follows, to-wit:

Beginning at a point on the centerline of the old County Road which bears West 251.46 feet and North 30°22' East 54.5 feet and North 71°08' East 264 feet and North 20°56' East 200.00 feet and North 13°10' East 162.58 feet from the Southeast corner of the William Miller Donation Land Claim Township 6 South, Range 3 West of the Willamette Meridian, Yamhill County, Oregon, and running thence: North 60°28'18" West 58 feet, more or less, to the Southeastly right-of-way line of State Secondary Highway 221; thence Northeastly along said right-of-way line 40 feet, more or less, to the Southerly line of Lot 5 in County Survey 2815, Yamhill County Survey Records; thence East 45 feet, more or less, to a 1 inch iron pipe marking the Southeast corner of said Lot 5; thence North 13°10' East 80 feet, more or less, to a point on a line parallel to and a perpendicular distance of 144 feet, measured Northeastly from the Southerly boundary line of the herein described parcel of land; thence South 60°28'18" East along said line to the low-water line of the Willamette River; thence Southwestly along said low-water line to a point which bears South 60°28'18" East from the point of beginning; thence North 60°28'18" West to the point of beginning and containing 1 acre of more or less, as shown by the description on reverse side.

To Have and to Hold the same unto the said grantee and grantee's heirs, successors and assigns forever. And said grantor hereby covenants to and with said grantee and grantee's heirs, successors and assigns, that grantor is lawfully seized in fee simple of the above granted premises, free from all encumbrances

and that grantor will warrant and defend the said premises and every part and parcel thereof against the lawful claims and demands of all persons whomsoever, except those claiming under the above described encumbrances.

The true and actual consideration paid for this transfer, stated in terms of dollars, is \$ none. However, the actual consideration consists of or includes other property or value given or promised which is the whole consideration (in which case the sentence between the symbols @, if not applicable, should be deleted. See ORS 93.030.)

In construing this deed and where the context so requires, the singular includes the plural and all grammatical changes shall be implied to make the provisions hereof apply equally to corporations and to individuals.

In Witness Whereof, the grantor has executed this instrument this 7th day of November, 1975; if a corporate grantor, it has caused its name to be signed and seal affixed by its officers, duly authorized thereto by order of its board of directors.

Wayne Pendergraft
Marvel Pendergraft

If executed by a corporation, affix corporate seal

STATE OF OREGON, County of Yamhill, November 7, 1975

STATE OF OREGON, County of Yamhill, November 7, 1975

Personally appeared the above named Wayne Pendergraft and Marvel Pendergraft

Personally appeared [blank] who, being duly sworn, each for himself and not one for the other, did say that the former is the president and that the latter is the secretary of [blank] a corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation and that said instrument was signed and sealed in behalf of said corporation by authority of its board of directors; and each of them acknowledged said instrument to be its voluntary act and deed.

And acknowledged the foregoing instrument to be their voluntary act and deed.

Before me, Barbara J. Johnson, Notary Public for Oregon, My commission expires Sept. 19, 1979

Before me: Notary Public for Oregon, My commission expires:

GRANTOR'S NAME AND ADDRESS
GRANTEE'S NAME AND ADDRESS
After recording return to: Don D. Pendergraft, 1420 N. Johnson
NAME, ADDRESS, ZIP
Mail a change in request all tax statements shall be sent to the following address.

39222 STATE OF OREGON, County of Yamhill
I certify that the within instrument was received for record on the 13 day of Nov, 1975, at 3:50 o'clock P.M., and recorded in book 109 on page 106 or as file/reel number.
Record of Deeds of said county.
Witness my hand and seal of County afixied.
WANDA CATT, COUNTY CLERK
Recording Officer

TRANSAMERICA TITLE INS. CO.
C/L-

ARC 9-21-76

7

# Yamhill County

## DEPARTMENT OF PLANNING AND DEVELOPMENT

525 NE FOURTH STREET • McMinnville, OREGON 97128

Phone:(503) 434-7516 • Fax:(503) 434-7544 • TTY 800-735-2900 • Internet Address: <http://www.co.yamhill.or.us/plan/>

mailed  
1-17-07  
@

### NOTICE OF PENDING "MEASURE 37" CLAIM UNDER ORDINANCE 749

Notice is hereby given that the owner of the property identified below has submitted to the Yamhill County Planning Director an application for compensation or relief from land use regulations for a Measure 37 claim under Yamhill County Ordinance 749. This notice is being provided for informational purposes only. Please note that the Board of Commissioners has not yet determined whether this is a valid claim. **Interested parties wishing to submit information should direct relevant information toward the review criteria identified below.** All materials submitted by the applicant are available for inspection, and copies may be purchased at a reasonable cost. For further information, contact the Yamhill County Department of Planning and Development, 525 NE Fourth Street, McMinnville, Oregon 97128, or at (503) 434-7516.

**DOCKET NO.:** M37-175-06

**APPLICANT:** Marvel L. Pendergraft

**REQUEST:** To divide the 36.8 acre parcel into 15 lots of approximately 2 acres each and place dwellings thereon. The applicant estimates the existing land use regulations cause a reduction in value of \$1,584,619.

**TAX LOT:** 6304-303

**LOCATION:** 24725 SE Wallace Road, Salem, Oregon

#### REVIEW CRITERIA:

Section 4(1) of Ordinance No.749 provides that the applicant must demonstrate the request satisfies all of the following criteria:

*(a) Yamhill County has either adopted or enforced a land use regulation that restricts the use of private real property or any interest therein;*

*(b) The restriction on use has the effect of reducing the fair market value of the property or any interest therein, upon which the restriction is imposed;*

*(c) The challenged Yamhill County land use regulation was adopted, enforced or applied after the current owner of the property (the applicant) became the owner; and*

*(d) The challenged Yamhill County land use regulation is not an exempt land use regulation as defined in Section 1 of this ordinance (Ordinance No. 749).*

F:\Share\Measure\_37\M37-175-06.spo.wpd

# M37 DOCKET PROCESSING FORM

Applicant: **PENDERGRAFT, MARVEL**  
 Address: 24725 Wallace Rd, Salem, OR. 97304

Tel: 503-868-7504

Owner: SAME  
 Address:

Tel:

Docket #: M37-175-06  
 Date Rec'd: 11-30-06  
 Fee Paid: \$250.00  
 Rec'd By: LOWE  
 Receipt: 65538  
 Zone: EF-80  
 Tax Lot(s): 6304-303

Planner Assigned: <u>MB-Duffy SR. (1-31-07)</u>	Board Formal Session (if needed) _____
Date Regulation First Enforced: _____	Decision Made: _____
Application Deemed Complete: _____	_____
Board Informal Session: _____	Date Sent to State: _____

Notes

EF-80, WRG

After recording, return to:  
Board of Commissioners  
Yamhill County Courthouse  
535 NE Fifth Street  
McMinnville, OR 97128

RECORDING INFORMATION

OFFICIAL YAMHILL COUNTY RECORDS  
JAN COLEMAN, COUNTY CLERK

200706189



NO FEE

00264605200700061890070070

03/20/2007 04:15:32 PM

DMR-DRDMR Cnt=1 Stn=2 ANITA

This is a no fee document

IN 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 an Order Allowing the Measure 37/ )  
Ordinance 749, as amended, Claim of Marvel L. )  
Pendergraft, Trustee to Authorize Uses on the ) BOARD ORDER 07-749  
Subject Property Allowed When the Current )  
Owner Acquired the Property, Docket M37-175-06. )

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON ("the Board") sat for the transaction of county business in formal session on March 14, 2007, commissioners Kathy George, Mary P. Stern and Leslie Lewis participating.

A. On November 2, 2004, the voters of the State of Oregon approved Ballot Measure 37 which added provisions to Oregon Revised Statutes (ORS) Chapter 197 to require, under certain circumstances, payment of just compensation to landowners if a government land use regulation reduces property value. In lieu of payment of just compensation, Ballot Measure 37 authorizes the governing body of a local government to modify, remove or not apply the land use regulation. Measure 37 is now codified as ORS 197.352 (2005 replacement part).

B. On December 2, 2004 the Board adopted Ordinance 749 to implement Measure 37. (As used in this order, "Ordinance 749" includes Ordinance 749 and amendments to Ordinance 749.) Ordinance 749 requires Measure 37 claimants to submit an application for compensation or waiver of land use regulations to the Planning Director who is to make an initial determination as to whether the claim meets the requirements of Measure 37 and Ordinance 749. If determined to be a valid Measure 37 claim, the Planning Director is required to issue a written recommendation to the Board explaining the basis for the recommendation within 45 days of the date the claim is deemed complete.

C. On November 30, 2006 Marvel L. Pendergraft, Trustee ("claimant") filed a Measure 37/Ordinance 749 claim with the Planning Director. County records concerning the claim are included in Docket Number M37-175-06. The Planning Director has issued a written

recommendation to the Board to accept the claim as valid. A copy of the recommendation is attached and incorporated into this Board Order as Exhibit "A." The property affected by the claim is identified in Exhibit "A" and is referred to as the "subject property" in this Board Order.

D. In Exhibit "A," the Planning Director has recommended that certain land use regulations be modified, removed or not applied against the subject property in lieu of payment of just compensation to claimant. However, without an appraisal, it is not possible to substantiate the specific dollar amount to which the claimant is entitled should the Board authorize compensation to resolve the claim. Nevertheless, based on the information submitted with the application, the Board finds it is more likely than not that there has been some reduction in the fair market value of the subject property as a result of land use regulations enforced by Yamhill County. Thus, the Board is authorized to modify, remove or not apply the challenged Yamhill County land use regulations.

E. A majority of the Board did not support a public hearing to consider the subject claim. Claimant's application was considered at a formal Board session.

F. The Board has considered whether the public interest would be better served by compensating claimant, or by modifying, removing, or choosing not to apply the challenged land use regulation(s) to the subject property. Due to scarcity of available county resources, the Board finds that a decision to modify, remove or not apply the challenged land use regulation(s) to the subject property would better serve the public interest than paying just compensation to claimant.

G. The Board's decision on claimant's application is justified by the facts and conclusions set forth in Exhibit "A" except that, rather than adopting a compensation value, the Board finds simply that it is more likely than not that there has been some reduction in the fair market value of the subject property as a result of land use regulations enforced by Yamhill County.

H. Even though the Board may waive Yamhill County land use regulations, it cannot waive state land use regulations. State land use regulations continue to apply.

IT IS HEREBY ORDERED BY THE BOARD IN ACCORDANCE WITH ORS 192.352 AS FOLLOWS WITH REGARD TO DOCKET NUMBER M37-175-06:

1. The Measure 37/Ordinance 749 claim of Marvel L. Pendergraft, Trustee in Docket Number M37-175-06 is a valid claim pursuant to Ordinance 749, Section 6(1)(c). The Board declines to pay just compensation for the claim. In lieu of payment of just compensation, the Yamhill County land use regulations identified in Exhibit "A" are modified, removed or not applied against the subject property with the effect stated in the next paragraph, but only to the extent the use now sought by claimant was permitted when claimant acquired the subject property on July 11, 1962.

Claimant is authorized to make application to divide the subject property into not more than 15 lots and, upon the Planning Director's issuance of land division approval, to make applications to establish dwellings on undeveloped lots under land use regulations

then in effect on July 11, 1962; provided, however, that under no circumstances will the Planning Director waive any exempt land use regulations as defined by ORS 197.352(3), including the following: Regulations that restrict or prohibit activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations.

2. This order does not effect any land use regulations of the State of Oregon. If the use allowed by numbered paragraph 1, above, remains prohibited by a State of Oregon land use regulation, the Planning Director shall send notice of the Board's decision to the Director of the Department of Land Conservation and Development.

3. This Board Order is subject to the provisions of Ordinance 749, Section 7, as amended.

4. Pages 1 through 3 of this Board Order shall be recorded in the Yamhill County Deed and Mortgage Records together with portions from the deed or other instrument in Exhibit "A" sufficient to identify the subject property. The entirety of this Board Order, including all of Exhibit "A," shall be filed in the Commissioners Journal.

AYES George, Lewis NAYS Stern

DONE at McMinnville, Oregon on March 14, 2007.

ATTEST

YAMHILL COUNTY BOARD OF COMMISSIONERS

JAN COLEMAN  
County Clerk

Chair

Kathy George

KATHY GEORGE

By Anne Britt  
Deputy ANNE BRITT

Commissioner

Mary P Stern

MARY P. STERN

FORM APPROVED BY:

John M. Gray, Jr.

JOHN M. GRAY, JR.  
Yamhill County Legal Counsel

Commissioner

Leslie Lewis

LESLIE LEWIS

EX A

**PLANNING DIRECTOR'S RECOMMENDATION ON MEASURE 37 CLAIM  
YAMHILL COUNTY DEPARTMENT OF PLANNING AND DEVELOPMENT**

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**DATE:** January 31, 2007

**DOCKET:** M37-175-06

**REQUEST:** To divide the property into 15 lots and to establish a dwelling on each vacant lot.

**APPLICANT:** Marvel L. Pendergraft

**TAX LOT:** 6304-303

**LOCATION:** 24725 SE Wallace Road, Salem, Oregon

**ZONE DESIGNATION:** EF-80 Exclusive Farm. Much of the property is within the Willamette River Greenway.

**REVIEW CRITERIA:** Ordinance 749, Measure 37 Implementation Ordinance  
(Note: Ballot Measure 37 was adopted by the voters of the State of Oregon on November 2, 2004 to add provisions to ORS Chapter 197 to require, under certain circumstances, payment of just compensation to landowners if a government land use regulation reduces property value. In lieu of payment of just compensation, Measure 37 authorizes the governing body of a local government to modify, remove or not apply the land use regulation. Ordinance 749 was adopted December 2, 2004 to implement Measure 37.)

**FINDINGS:**

**A. Background Facts**

1. *Parcel Size:* 32.65 acres.
2. *Ownership:* The applicant has submitted a warranty deed and mortgage verifying ownership of Tax Lot 6304-303 by Marvel Pendergraft since July 11, 1962 (Film Volume 27, page 21).
3. *Surrounding Zoning:* The surrounding area is zoned EF-80.
4. *Property Valuation:* The applicant has submitted an estimated loss of value of \$1,584,619.
5. *County Land Use Regulations:* On April 1, 1959, the county adopted subdivision regulations by order of the County Court. On August 30, 1968, the county adopted Ordinance 29 which

- b. Ordinance 83, adopted February 11, 1976.
  - c. Ordinance 205, as amended, adopted June, 1979.
  - d. Ordinance 310, as amended, adopted December 1, 1982.
2. Regarding Section 4(1)(b). The Planning Director finds that this criterion has been satisfied. Based upon discussion with the Yamhill County Assessor, the restrictions on use imposed by the regulations cited above had the effect of reducing the fair market value of the subject property or any interest therein. The specific reduction in fair market value is discussed below under **Recommendation**.
3. Regarding section 4(1)(c). The Planning Director finds that this criterion has been satisfied. As provided in Section 1(2)(b) of Ordinance 749, the challenged Yamhill County land use regulations were enforced by letter from the Planning Director on November 22, 2006. This date is after the current owner of the property (the applicant) became the owner. A mortgage indicates the ownership date of 1962 for the tax lot owned by the applicant.
4. Regarding Section 4(1)(d). The Planning Director finds that this criterion has been satisfied. Section 1(3) of Ordinance 749 defines exempt land use regulation as a regulation that:
- (a) Restricts or prohibits activities commonly and historically recognized as public nuisances under common law;*
  - (b) Restricts or prohibits activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations;*
  - (c) Is required to comply with federal law;*
  - (d) Restricts or prohibits the use of property for the purpose of selling pornography or performing nude dancing; or*
  - (e) Was enacted prior to the date of acquisition of the property by the owner or a family member.*

The challenged land use regulations do not constitute an “exempt land use regulation” as defined in Section 1(3) of Ordinance 749.

### **C. Recommendation**

Section 4(3) of Ordinance 749 provides as follows:

STAFF REPORT

Docket M37-175-06 (Pendergraft)

Page 4

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*If the claim application meets all of the criteria in subsection (1) of this section, the Planning Director shall issue a written recommendation to the Board recommending acceptance of the claim application as a valid claim and explaining the basis for the Director's recommendation. The recommendation shall include the following components:*

*(a) The Planning Director's determination of the amount of compensation to which the applicant may be entitled as a result of a reduction in property value due to the imposition of a land use regulation; and*

*(b) The Planning Director's determination whether it is necessary to modify, remove or not to apply a Yamhill County land use regulation to avoid owner entitlement to compensation under the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004). The determination shall include a recommendation on the extent of the adjustment of the land use regulation needed to avoid the entitlement to such compensation; and*

*(c) The Planning Director's determination that the public interest is served by modifying, removing or not applying the subject land use regulation in lieu of paying compensation; taking into consideration the financial resources of the County for the payment of such claims.*

Based upon satisfaction of the criteria established by Section 4(1) of Ordinance 749, the Planning Director concludes as follows:

1. The applicant is claiming a reduction in value of \$1,584,619 based upon the property being divided and developed with dwellings. Due to the imposition of land use regulations cited above the applicant would be entitled to compensation of \$1,584,619.
2. The applicant desires to divide the property into 15 lots for residential development. Such proposed uses are not allowed by several land use regulations adopted after acquisition of the property by the current owner. These include Section 402 of the Yamhill County Zoning Ordinance and the Goals and Policies of the Yamhill County Comprehensive Plan that have the effect of reducing the fair market value of the subject property or any interest therein by imposing the 80 acre minimum lot size, the \$80,000 income test for dwellings, and the specific use provisions of the EF-80 District which do not allow the development proposed. Further, ordinances in effect prior to the current zoning ordinance such as Ordinance 62 and Ordinance 83 further restrict the use of the property in the manner desired by the applicant. These ordinances were enacted after the owner acquired the property. In order to allow such development, density, dwelling siting standards sought by the owner on the subject property pursuant to rights established by Measure 37 and Ordinance 749, it is necessary to modify, remove or not to apply use restrictions within the EF-80 District that were established by the regulations cited in this report.

STAFF REPORT

Docket M37-175-06 (Pendergraft)

Page 5

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3. There is evidence in the record that compensation due the applicant for reduction of the fair market value of the subject property would be approximately \$1,584,619 based upon the uses requested by the owner. Taking into consideration the financial resources of the County for the payment of the applicant's claim, the Planning Director finds that the public interest is served by modifying, removing or not applying the regulations identified in the preceding paragraph that would prohibit the proposed development.

Based upon the findings and conclusions stated above, the Planning Director recommends that the Board of Commissioners approve the request by Marvel L. Pendergraft to divide the property into 15 lots and to establish a dwelling on each vacant lot on Tax Lot 6304-303 in lieu of paying compensation for the reduction in property value caused by the application of land use regulations enacted after the current owner acquired the property. In order to allow the proposed development, the Planning Director recommends that the Board of Commissioners modify, remove or not apply land use regulations listed in Section B(1) against the subject property when the current owner seeks development permits on the subject property. Note: Since the property was acquired by the current owner in 1962, it would be subject to the land division ordinance in place prior to the purchase date.

**IMPORTANT NOTE:** This recommendation regarding Yamhill County land use regulations will be considered by the Board of Commissioners. After considering the recommendation, the Board has three options. First, it can determine the claim is not valid. Second, it can determine the claim is valid and order compensation to be paid. Third, it can determine the claim is valid and decide whether to modify, remove or not apply the challenged land use regulation(s) in lieu of paying compensation.

However, a decision by the Board of Commissioners to adopt the Planning Director's recommendation does not entitle the applicant to a building permit in every case. The Board has no authority to modify, remove or not apply a state land use regulation. Section 6(1)(c) of Ordinance 749 applies when a use prohibited by a Yamhill County land use regulation is also prohibited by a state land use regulation. Part of Section 6(1)(c) provides as follows:

“ . . . In those circumstances where the Board has decided to modify, remove or not to apply the challenged Yamhill County land use regulation but the use remains prohibited by a State of Oregon land use regulation, the Planning Director shall send notice of the Board's decision to the Director of the Department of Land Conservation and Development. The notice shall include a statement that the County will not accept an application for a building permit related to the newly allowed use of the property until the earlier of the following events: (i) notice by the Department of Land Conservation and Development that it concurs with the Board's decision, or (ii) a date 180 days from issuance of the Board's decision where no response is made to the notice by the Department of Land Conservation and Development.”

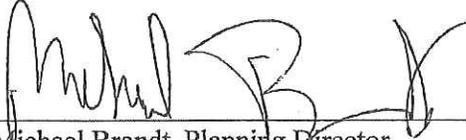
STAFF REPORT

Docket M37-175-06 (Pendergraft)

Page 6

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DATED AND SIGNED this 2<sup>nd</sup> day of February, 2007, at  
McMinnville, Oregon.



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Michael Brandt, Planning Director  
Yamhill County Planning and Development

MB:mb

YAMHILL COUNTY DEPARTMENT OF PLANNING & DEVELOPMENT

MEASURE 37 APPLICATION

401 NE Evans Street, McMinnville, OR 97128 • Tel: 503-434-7516 • Fax: 503-434-7544

Docket: M37-75-06  
 Date: 11-30-06  
 Rec'd By: Lowe  
 Receipt#: 65538  
 Fee: **\$250.00**

LEGAL OWNER			ADDITIONAL OWNER (IF ANY)		
Pendergraft	Marvel	L.			
Last Name	First	M	Last Name	First	M
24725 Wallace Road			Mailing Address (Street or PO Box)		
Mailing Address (Street or PO Box)			Mailing Address (Street or PO Box)		
Salem	OR	97304			
City	State	Zip	City	State	Zip
(503) 868-7504			Telephone		
Telephone			Telephone		
PROPERTY INFORMATION					
Tax Lot(s)	303	<u>6304-303</u>	Current Zone	<u>EF-80</u> Exclusive Farm Use (EFU)	
Parcel size =	32.65 acres				

**COMPENSATION INFORMATION:**

Preferred Resolution (Check One):

- Waiver, Modification, or Non-Application of a Regulation  
 Compensation

Date of Acquisition by:

Current Owner: Marvel Pendergraft

or

Family Member: \_\_\_\_\_

Zoning Designation(s) (if any) at Time of Acquisition by:

Current Owner: None

or

Family Member: \_\_\_\_\_

**Please State the Desired Use of the Property:**

Rural residential dwelling sites.

15 lots approximately 2 acres each  
per Frank Walker.

**Regulation Enacted Restricting Use: (Text of regulation if applicable):**

Yamhill County Zoning Ordinance Chapter 402, Exclusive Farm Use Zone

Ordinance Citation (if applicable): 402.02 Permitted Uses A-V; 402.03 Permitted Dwellings A-G  
and I-L; 402.04 A-S; 402.05; 402.06; 402.07 A-D; 402.08 A 1-7; 402.09 A-I; 402.10 A-I.

Date Enacted: October 5, 1973 through November 2, 2004

Provide evidence as to the date the regulation was first enforced on the subject property. (A letter from the Yamhill County Planning Department stating that your desired use would be denied under the present land use code is evidence that the regulation was enforced.)

Loss of Fair Market Value (\$ amount): \$1,584,619.00

Describe how this figure was derived (List any attachments):

Comparable sales of similarly situated properties in Amity, Salem, Sheridan, and  
Willamina were examined. The section entitled "Comparable Sales" lists all of the  
search parameters utilized to determine comparable sales values.

Note: The planning Director may require a written appraisal by an appraiser licensed by the Appraiser Certification and Licensure Board of the State of Oregon, addressing the requirements of the provisions added to ORS Chapter 197 by Ballot Measure 37 (November 2, 2004).

**Application Review and Recommendation**

Please explain how this application qualifies for compensation consideration if the applicant has shown that all of the following criteria are met:

1. Please explain how Yamhill County has either adopted or enforced a land use regulation that restricts the use of private real property or any interest therein.

Yamhill County has devalued property by progressively increasing the minimum parcel size thereby reducing the potential for any land divisions. Yamhill County also adopted stringent standards for allowing dwellings in resource zones.

2. Please describe how the restriction on use has the effect of reducing the fair market value of the property or any interest therein, upon which the restriction is imposed.

Restrictions on land divisions and dwellings are very significant in this case because the owner could have created approximately 30 lots when she purchased the property. Now only one dwelling is permitted.

3. Please explain how the challenged Yamhill County land use regulation was adopted, enforced or applied after the current owner of the property (the applicant) became the owner.

On October 5, 1973, the Interim Rule was put into effect, and it required a 20-acre minimum lot size in an EFU Zone which restricted land divisions and dwellings.

4. Please describe how the challenged Yamhill County land use regulation is not an exempt land use regulation.

Exempt land use regulations include those that:

- a. Restricts or prohibits activities commonly and historically recognized as public nuisances under common law;
- b. Restricts or prohibits activities for the protection of public health and safety, such as fire and building codes, health and sanitation regulations, solid or hazardous waste regulations, and pollution control regulations;
- c. Is required to comply with federal law;
- d. Restricts or prohibits the use of property for the purpose of selling pornography or performing nude dancing; or
- e. Was enacted prior to the date of acquisition of the property by the owner or a family member.

Residences and land divisions are not exempt under Ballot Measure 37.

**Representative(s) if different than Owner:**

Frank D. Walker		11/8/06
Printed Name	Signature	Date

Printed Name	Signature	Date

Printed Name	Signature	Date

Printed Name	Signature	Date

**Owner(s):** Please see attached authorization.

Printed Name	Signature	Date

Printed Name	Signature	Date

Printed Name	Signature	Date

Printed Name	Signature	Date

Printed Name	Signature	Date

Printed Name	Signature	Date

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**PLEASE ATTACH:**

1. A title report or information report issued by a title company licensed to do business in Oregon issued within 30 days of the application's submittals, including title history and including a statement of the date the applicant acquired ownership of the subject property and showing the ownership interests of all owners of the property or, as an alternative to the title report, a copy of the deed(s) granting all existing ownership interests to the owner(s) of the subject property signing the applications.
2. Attach evidence as to the date the regulation was adopted, first enforced or applied to the subject property. A letter from the Yamhill County Planning Department stating that your desired use would be denied under the present land use code is evidence that the regulation was enforced.
3. Attach copies of any leases or covenants, conditions and restrictions applicable to the subject property if any exist that impose restrictions on the use of the property.
4. Completed application form, signed by the applicant and property owner(s) (if different).
5. Written justification of how the application complies with the approval criteria. Attach additional sheets to this form.
6. Filing fee- \$250.00 (Make check payable to Yamhill County)

***NOTE: Fees are not transferrable or refundable.***

---

**SIGNATURES:** (Includes all property owner(s) whose collective interest's amount to fee simple title and any authorized representative):

I/We, the undersigned Owner(s) and authorized Representative, affirm by my/our signature(s) that:

1. The information contained in this claim form and any associated submissions is true and correct; and
2. A decision by Yamhill County to waive, modify, or not apply a land use regulation does not relieve me/us of the responsibility of seeking a waiver from the State of Oregon or any other agency if the local regulation waived by the County is also contained in State law, administrative rules, or the regulations of any other agency; and
3. A decision by Yamhill County to waive, modify, or not apply a land use regulation to allow a use may result in an increase in property tax due to reassessment; and/or a loss of special assessment status and additional taxes in accordance with existing assessment statutes if applicable; and
4. Subsequent to a decision by Yamhill County to waive, modify, or not apply a land use regulation to allow a use permitted at the time the current property owner(s) acquired the property, the use must be reviewed subject to any review process and land use regulations that were in effect at the time and there is no guarantee of approval.
5. I hereby declare under penalties of false swearing (ORS 162.075 and 162.085) that the above information is true and correct to the best of my knowledge. I understand that issuance of an approval based on this application will not excuse me from complying with other effective ordinances and laws regulating the use of the land and buildings.
6. I hereby grant permission for and consent to Yamhill County, its officers, agents, and employees coming upon the above-described property to gather information and inspect the property whenever it is reasonably necessary for the purpose of processing this application.

AUTHORIZATION TO ACT AS AGENT

Frank Walker & Associates and individual employees of the firm are hereby authorized to act as an agent before the appropriate jurisdiction(s) for the processing of land use application(s) and associated permits. As such, inquiries can be directed to Frank Walker & Associates. The signature(s) affixed to this document affirm the status of Frank Walker & Associates as an official agent or representative. The names of all persons appearing on the deed for the property must sign this authorization.

x Marcel L. Bendoriczyk

\_\_\_\_\_

\_\_\_\_\_

Date: 7-12-06

(Reserved for Notary, if requested.)

REGULATIONS RESULTING IN LOSS OF FAIR MARKET VALUE

Section 402.00 of the Yamhill County Zoning Ordinance

402.02 M

402.02 N

402.02 O

402.02 Q

402.03 A through L

402.04 A through S

402.05

402.07

402.08

402.09

402.10

FRANK WALKER & ASSOCIATES

P.O. Box 7170

Salem, Oregon 97303

(503) 588-8001

Fax: (503) 588-8007

Cell: (503) 949-5545

E-mail: [frankwalker@comcast.net](mailto:frankwalker@comcast.net)

November 8, 2006

Yamhill County Planning Dept.  
401 N.E. Evans St.  
McMinnville, OR 97128

Re: Subdivision in EFU Zone

Dear Sir or Madam:

My client wants to establish whether or not she can build a 33-lot subdivision in the EFU Zone on Tax Lot 303 in Township 6 South, Range 3 West, Section 4. The property occupies a high bluff above the Willamette River on Wallace Road. It is not affected by the flood plain.

I would appreciate receiving a response today because a letter of denial of her request is required in order for a Ballot Measure Claim to be filed.

Sincerely yours,



Frank D. Walker

FDW/jw

cc: Marvel L. Pendergraft

# Yamhill County

## DEPARTMENT OF PLANNING AND DEVELOPMENT

525 NE FOURTH STREET • McMinnville, Oregon 97128

Phone:(503) 434-7516 • Fax:(503)434-7544 • Internet Address: <http://www.co.yamhill.or.us/plan/>

November 22, 2006

Frank D. Walker  
P.O. Box 7170  
Salem, OR 97303

Re: Your Letter of 11/08/06-Measure 37

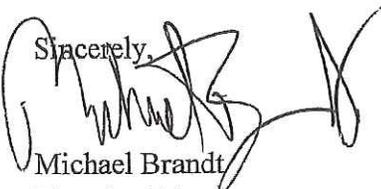
Dear Mr. Walker:

In response to your letter on behalf of your client, Marvel L. Pendergraft, requesting to divide Tax Lot 6304-303 into 33 lots and to establish a dwelling on each vacant lot, please be advised that this property is zoned EF-80. Pursuant to Section 402 of the Yamhill County Zoning Ordinance, No 310 as amended, the minimum size for creation of a new parcel is 80 acres. That is to say that your client would need at least 160 acres to partition property into two, 80 acre parcels. In addition, Section 402.03(A) provides that establishment of a principal dwelling in this zone requires demonstration that the property on which the dwelling will be located has generated \$80,000 in gross annual income from the sale of farm products.

Because your client only has approximately 33 acres and because she desires to create additional lots, your request to divide the property is denied. Because you have not provided evidence that the proposed lots generate any income from the sale of farm products your request to establish dwellings is denied.

If you have further questions, please contact this office.

Sincerely,



Michael Brandt  
Planning Director

cc: Marvel L. Pendergraft

WARRANTY DEED

17393

Arb 9 Sec 04 TCR3

YAMHILL COUNTY REC'D & INDEXED 1/31/95

Don D. FENDERGRAFF

hereinafter called grantor, does hereby grant, sell and convey unto

WAYNE P. FENDERGRAFF AND MARVEL L. FENDERGRAFF, Trustees under the WAYNE P. FENDERGRAFF Revocable Living Trust dated October 23, 1991 as to an undivided 1/2 interest and MARVEL L. FENDERGRAFF AND WAYNE P. FENDERGRAFF, Trustees under the MARVEL L. FENDERGRAFF Revocable Living Trust dated October 23, 1991, as to an undivided 1/2 interest, together as tenants in common

hereinafter called grantees, and grantees heirs, successors and assigns, the following described real property with the easements, hereditaments and appurtenances thereto belonging, situated in Yamhill County, Oregon:

Legal description on attached Exhibit "A"

Said grantor hereby covenants that grantor is owner of the above described property free of all encumbrances except those exceptions shown on Yamhill County Title & Escrow, Inc. report #136407 - and that grantor will warrant and forever defend the same against the legal claims and demands of all persons whatsoever, except those claiming under the above described encumbrances.

The property described herein has been assessed under farm and/or forest use and a change in classification may result in additional taxes and impose a filing period.

THE TOTAL CONSIDERATION PAID FOR THIS TRANSFER IS \$120,000.00

THIS INSTRUMENT WILL NOT AFFECT USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAW OR LAW AND REGULATIONS, ORDINANCES OR DECISIONS OF THIS JURISDICTION, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPLICABLE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USE AND TO DETERMINE ANY LIMITS ON LIENS OR LIENS RIGHTS OR FOREST PRACTICES AS APPLICABLE, IN ORS 39.930.

In witness whereof, grantor executed this instrument dated December 22, 1994.

*Don D. Fendergraff*  
DON D. FENDERGRAFF

GRANTOR OF RECORD, COUNTY OF YAMHILL, OR.

This instrument was acknowledged before me on Dec 22, 1994 by Don D. Fendergraff -



*Robert E. Bates*  
Notary Public for Yamhill County  
by Commission Expires August 8, 1998

RECEIVED BY THE STATE OF OREGON  
Notary Public - Yamhill County  
STATE OF OREGON  
Notary Public  
by Commission Expires Aug 8, 1998

DON D. FENDERGRAFF

Recorded in Official Yamhill County Records  
BOOKED STATE COUNTY CLERK

WAYNE P. FENDERGRAFF, Trustee  
MARVEL L. FENDERGRAFF, Trustee

19951220 9:50am 12/27/95  
001 000017 12 00 000000  
1 1 000 0.00 00.00 00.00 0.00 0.00 0.00

and receive into a tin envelope to  
WAYNE P. FENDERGRAFF, Trustee  
MARVEL L. FENDERGRAFF, Trustee  
20725 SE WALKER ROAD  
ORANGE, OR 97146

12-27-95

102

Part of the William Miller Donation Land Claim No. 59 in Section 4 of Township 6 South, Range 3 West, U.M., Yamhill County, Oregon, described as follows: Commencing at the southwest corner of the Daniel Matheny Donation Land Claim No. 28, being a point in State Highway No. 150, in Section 33 of Township 5 South, Range 3 West, U.M.; thence East on the south line of said Matheny claim, 40.27 feet to an iron pipe on the east side of said highway; thence S 4°30'20" E 490.64 feet to an iron rod on the east line of said highway; thence southerly along said east line of the highway, on a long chord line bearing S 00°40'42" N 831.56 feet to an iron rod; thence S 84°16'22" E 270.00 feet to an iron rod marking the Point of Beginning; thence N 05°47'02" E 590.21 feet to an iron rod; thence S 47°17'37" E 191.32 feet to an iron rod; thence S 23°49'35" N 57.60 feet to a point in the center of a paved private roadway; thence S 4°21'55" E 223.60 feet to an iron rod at an angle point in a private roadway; thence along the center of said roadway as follows: S 39°38'00" E 146.01 feet; thence S 59°29'35" E 75.27 feet; thence easterly on a 117 foot radius curve left (with long chord bearing N 88°51'15" E 122.80 feet) a distance of 129.27 feet; thence N 57°12'05" E 71.07 feet; thence N 31°51'30" E 98.74 feet to an iron rod at the end of said roadway; thence S 50°20'40" E 110.00 feet to an iron rod; thence continuing S 50°20'40" E 67.66 feet to the Willamette River; thence southeasterly along the west bank of the river, with a long chord bearing S 48°37'23" N 2092.42 feet; thence N 60°20'10" W 20 feet to an iron rod set atop the high bank; thence N 60°20'10" W 210.72 feet to an iron rod set on the east line of said Highway No. 150, from which the South-east corner of Lot 5 of County Survey No. 2815 bears N 61°58'26" E 69.05 feet distant, and also from which the initial point of land described in Elm Volume 109, page 106, Yamhill County Deed records, bears S 60°20'10" E 57.39 feet distant; thence northerly along the east line of said highway, on a 1213.21 foot radius curve left (with long chord bearing N 16°38'35" E 611.57 feet) a distance of 618.25 feet to a point from which an iron pipe bears N 05°57'20" W 80.60 feet distant; thence N 4°02'48" E along said highway line, 562.04 feet to an iron rod; thence S 84°19" E 130.07 feet; thence S 48°05'40" E 175.37 feet to an iron pipe; thence N 6°28'53" E 423.65 feet to said Point of Beginning.

Excepting therefrom, that portion of Lot 5 of County Survey No. 2815 that lies east of State Highway No. 150.

Subject to the following described roadway easements for the use of owners:

Subject to an easement for roadway purposes upon and across a strip of land 30 feet in width, being fifteen feet on each side of the following described center-line: Commencing at an iron pipe set on the south line of the Daniel Matheny Donation Land Claim No. 30 in Section 33 of Township 5 South, Range 3 West, U.M., being on the east side of Highway No. 150, and 40.27 feet east of the southwest corner of said Matheny claim; thence southerly along the east line of said highway, by the following course: S 4°30'20" E 490.64 feet; thence S 00°40'42" N 831.56 feet; thence S 4°28'54" N 320.00 feet to an iron rod marking the Point of Beginning; thence along the center of a paved driveway, on the following course: S 84°26'20" E 85.86 feet, S 77°02'53" E 35.26 feet, S 67°21'04" E 34.77 feet, S 60°29'30" E 34.32 feet, S 49°57'48" E 33.24 feet, S 47°23'52" E 37.53 feet, S 38°52'16" E 64.50 feet, S 41°22'03" E 47.21 feet, S 49°31'20" E 56.41 feet, S 67°35'07" E 61.19 feet, S 08°55'32" E 64.40 feet, N 78°23'24" E 68.67 feet, N 68°50'13" E 59.63 feet, N 55°47'34" E 33.72 feet, N 43°14'20" E 137.13 feet; thence N 41°11'02" E 304.75 feet to the end point, from which an iron rod bears N 47°16'16" W 17.25 feet distant.

Also, an easement for roadway purpose upon and across a strip of land 15 feet in width, lying fifteen feet on the southerly side of the following described center-line of road: Commencing at the southwest corner of the Daniel Matheny Donation Land Claim No. 38 in Section 33 of Township 5 South, Range 3 West, U.M.; being a point in State Highway No. 150; thence S 3°02'55" E 1330.39 feet to an iron rod set on the east line of said highway; thence N 09°15'50" E 767.67 feet to an iron rod; thence S 47°17'37" E 191.32 feet to an iron rod at the westerly side of a paved private roadway; thence S 23°49'35" N 57.60 feet to a point in the center of said paved road, being the Point of Beginning; thence S 4°21'55" E along the center of an unpaved road, 223.60 feet to an iron rod; thence S 39°38'00" E 146.01 feet to an angle point in said road; thence S 59°29'35" E 75.27 feet; thence easterly on a 117 foot radius curve left (with long chord bearing N 88°51'15" E 122.80 feet) a distance of 129.27 feet; thence N 57°12'05" E 71.07 feet; thence N 31°51'30" E 98.74 feet to an iron rod at the end of said road.

125-27-95

**This  
LIVING TRUST  
prepared for  
MARVEL L. PENDERGRAFT**

**by**

**DAVID B. BECKHAM**

**Attorney at Law  
319 Sixth Ave. S.W.  
Albany, OR 97321**

**Telephone: (503) 928-5855**

WA

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REVOCABLE LIVING TRUST AGREEMENT

DATED: 23 October, 1991

BETWEEN: MARVEL L. PENDERGRAFT, as Trustor

AND: MARVEL L. PENDERGRAFT and WAYNE F. PENDERGRAFT, herein called Trustee, each with the power to act individually on behalf of the trust.

ARTICLE ONE  
CREATION OF MY TRUST

Section 1. My Trust

I, MARVEL L. PENDERGRAFT, as Trustor, hereby establish a trust with my Trustee. My trust is a revocable living trust. For purposes of this agreement and for all legal purposes, my trust shall be referred to as a Living Trust. All references to "my trust", "trust", "estate", or "trust estate", unless otherwise stated, shall refer to this Living Trust and the trusts created in it. All references to Trustee shall refer to my initial Trustee or Trustees, or their successors or successors in trust.

Notwithstanding anything in my trust to the contrary, when I am serving as a Trustee under my trust, I may act for and conduct business on behalf of my trust as a Trustee without the consent of any other Trustee.

Section 2. Name of My Trust

For convenience, my trust shall be known as the:

MARVEL L. PENDERGRAFT Revocable Living Trust  
dated 23 October, 1991.

For purposes of beneficiary designations and transfers directly to my trust, my trust shall be referred to as:

MARVEL L. PENDERGRAFT and WAYNE F. PENDERGRAFT, Trustee, or their successors in trust, under the MARVEL L. PENDERGRAFT Revocable Living Trust dated 23 October, 1991, and any amendments thereto.

REVOCABLE LIVING TRUST  
Marvel L. Pendergraft



CERTIFICATION OF TRUST

In accordance with ORS 128.005, the undersigned MARVEL L. PENDERGRAFT Trustee hereby makes the following certification:

- 1. Name and Date of Trust: MARVEL L. PENDERGRAFT Revocable Living Trust dated October 23, 1991.
- 2. The Trust was created by: MARVEL L. PENDERGRAFT
- 3. The Trustees shall have all of the trust powers contained in the Uniform Trust Code set forth in ORS 130.001 to 130.910.
- 4. Name(s) and Address(es) of currently acting Trustee or Trustees:  
MARVEL L. PENDERGRAFT  
24725 Wallace Rd. NW  
Salem, OR 97304
- 5. The trust is a revocable trust and may be amended or revoked by the Trustor.
- 6. If there is more than one Trustee serving at a time, each Trustee shall have the power to act individually on behalf of the trust.
- 7. The name of the successor Trustee is: ROGER MILLS
- 8. Trust Identification No. 529-20-2131
- 9. The manner in which title to trust assets should be taken:  
"MARVEL L. PENDERGRAFT, Trustee under the MARVEL L. PENDERGRAFT Revocable Living Trust dated October 23, 1991."
- 10. The trust has not been revoked, modified or amended in any manner that would cause the representations contained in this certification to be incorrect.

Dated: 9-14, 2006.

Marvel L. Pendergraft  
MARVEL L. PENDERGRAFT, TRUSTEE

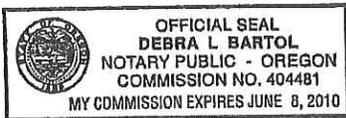
STATE OF OREGON )  
County of Marion ) ss.

Personally appeared the above-named MARVEL L. PENDERGRAFT, and acknowledged the foregoing certification of trust to be true and correct.

Dated: 9-14, 2006.

Before me:

Debra L Bartol  
Notary Public for Oregon  
My commission expires: 06-08-10



= METROSCAN PROPERTY PROFILE =  
Yamhill (OR)

Parcel Number :235347

MH APN 1 : MH APN 3 : Lot APN :  
MH APN 2 : MH APN 4 :

PROPERTY CHARACTERISTICS

Bedrooms :3	Building SF :1,539	Lot Acres :32.65
Bathrooms :2.00	Living SF :1,539	Lot SqFt :1,422,234
Fireplace :	1st FloorSF :1,539	Foundation :Concrete
Fireplace2 :	2nd FloorSF :	Wall Matl :Bevel Wood
Heat/AC :Frod Air\cool	2nd+FloorSF :	Roof Matl :Comp Shingle
Heat/AC 2 :	Cellar SF :	Roof Shape :Gable
Dishwasher :Yes	BsmtTotalSF :	Floor Cvr :Carpet
Hood/Fan :	BasementType :	Floor Base :Double
Microwave :	Garage SqFt :550	Year Built :1991
Grbg Disp :	Garage Type :Grg-att-fin	Stat Class :141 ONE STORY

Appliances

:Kit Appl - Range  
:Plumb - Kitchen Sink  
:  
:

Mobile Home

ID Number : Dimensions :  
Title : Skirt :  
Make :

Farm Buildings

Units

:  
:  
:  
:  
:

*Information compiled from various sources. Real Estate Solutions makes no representations or warranties as to the accuracy or completeness of information contained in this report.*



**First American Title Insurance Company of Oregon**

MARION COUNTY MAIN OFFICE WILLAMETTE DIVISION  
280 Liberty St. S.E., Suite 100, 97301 P.O. Box 825, Salem, Oregon 97308  
Phone (503) 581-0555 FAX (503) 362-9871 Or (503) 399-2465

**= M E T R O S C A N P R O P E R T Y R E P O R T =**

**Polk (OR)**

\*\*\*\*\*

**Date : 11/27/2006**

**Prepared For :**

:  
:  
:

**# Parcels : 34**

**Prepared By : ZOE**

\*\*\*\*\*

\*\*\*\*\*  
\* **Search Parameters** \*  
\*\*\*\*\*

Improved %...10073  
0 thru 10

Site City & Zip Code...11837  
AMITY 97101  
SALEM 97304  
SHERIDAN 97378  
WILLAMINA 97396

Zoning...26709  
EXCLUSIVE FARM USE  
ACREAGE RESIDENTIAL  
ACREAGE RESIDENTIAL, 5 ACRE  
FARM FOREST OVERLAY  
FARM FOREST ZONE  
GENERAL  
LOW DENSITY RESIDENTIAL  
NOT KNOWN  
RESIDENTIAL AGRICULTURAL  
RESIDENTIAL HIGH DENSITY  
RESIDENTIAL MEDIUM DENSITY  
RESIDENTIAL MULTI-FAMILY  
RESIDENTIAL SINGLE FAMILY  
SUBURBAN RESIDENTIAL

\*Lot Acreage...1365  
2.00 thru 4.00

# 1	*-----: <i>First American / Polk (OR)</i> :-----*	
Owner	:United States Of America	Parcel:R 063050000400
Site	:9045 Wallace Rd NW Salem 97304	Xferd :
Mail	:9045 Wallace Rd NW Salem Or 97304	Price :
Land Use	:970 Misc,Non-assbl,Fed Owned,Vacant	OwnerPh :
RefPcl #	:328287 Bldg#:of	TenantPh :
Bedrm:	Bth: YB:	TotSF: Ac:2.53
# 2	*-----: <i>First American / Polk (OR)</i> :-----*	
Owner	:Woods Philip A Et Al	Parcel:R 063070000102
Site	:3050 Lone Star Rd NW Salem 97304	Xferd :09/11/1989
Mail	:832 Buren Rd #98 Ketchikan Ak 99901	Price :\$61,000 ✓
Land Use	:409 Tract,Mobile Home,H&B Use	OwnerPh :
RefPcl #	:275981 Bldg#:1f 1	TenantPh :
Bedrm:2	Bth:1.00 YB:1940	TotSF:1,328 Ac:2.25
# 3	*-----: <i>First American / Polk (OR)</i> :-----*	
Owner	:United States Of America	Parcel:R 063290001800
Site	:2730 Zena Rd NW Salem 97304	Xferd :
Mail	:2730 Zena Rd NW Salem Or 97304	Price :
Land Use	:970 Misc,Non-assbl,Fed Owned,Vacant	OwnerPh :
RefPcl #	:327813 Bldg#:of	TenantPh :
Bedrm:	Bth: YB:	TotSF: Ac:3.50
# 4	*-----: <i>First American / Polk (OR)</i> :-----*	
Owner	:United States Of America	Parcel:R 063290003400
Site	:5300 Four H Rd NW Salem 97304	Xferd :
Mail	:5300 Four H Rd NW Salem Or 97304	Price :
Land Use	:970 Misc,Non-assbl,Fed Owned,Vacant	OwnerPh :
RefPcl #	:327868 Bldg#:of	TenantPh :
Bedrm:	Bth: YB:	TotSF: Ac:3.90
# 5	*-----: <i>First American / Polk (OR)</i> :-----*	
Owner	:United States Of America	Parcel:R 063290003500
Site	:5300 Four H Rd NW Salem 97304	Xferd :
Mail	:5300 Four H Rd NW Salem Or 97304	Price :
Land Use	:970 Misc,Non-assbl,Fed Owned,Vacant	OwnerPh :
RefPcl #	:327871 Bldg#:of	TenantPh :
Bedrm:	Bth: YB:	TotSF: Ac:2.06
# 6	*-----: <i>First American / Polk (OR)</i> :-----*	
Owner	:Walker Robert T	Parcel:R 065100001000
Site	:8475 SW Broadmead Rd Amity 97101	Xferd :04/09/1992
Mail	:8475 SW Broadmead Rd Amity Or 97101	Price :\$370,400 ✓
Land Use	:550 Vacant,Farm Land,Fuv,Efu Zone	OwnerPh :
RefPcl #	:233156 Bldg#:of	TenantPh :
Bedrm:	Bth: YB:	TotSF: Ac:3.44
# 7	*-----: <i>First American / Polk (OR)</i> :-----*	
Owner	:Eichler Kenneth W Et Al, Rvc Lvg Tr	Parcel:R 065110000901
Site	:8185 Perrydale Rd Amity 97101	Xferd :12/13/2002
Mail	:8250 Tucker Rd Amity Or 97101	Price :
Land Use	:550 Vacant,Farm Land,Fuv,Efu Zone	OwnerPh :503-843-3304
RefPcl #	:232344 Bldg#:of	TenantPh :
Bedrm:	Bth: YB:	TotSF: Ac:2.36
# 8	*-----: <i>First American / Polk (OR)</i> :-----*	
Owner	:Morey Robert C	Parcel:R 066160001001
Site	:7860 Harmony Rd Sheridan 97378	Xferd :02/06/1995
Mail	:8020 Harmony Rd Sheridan Or 97378	Price :
Land Use	:470 Vacant,Tract,Perm Fu Disq,Efu Zone	OwnerPh :503-843-3952
RefPcl #	:500290 Bldg#:of	TenantPh :
Bedrm:	Bth: YB:	TotSF: Ac:2.00
# 9	*-----: <i>First American / Polk (OR)</i> :-----*	
Owner	:Wright Lawrence H & Kathleen M	Parcel:R 066200000413
Site	:6645 Ridgeway Rd Sheridan 97378	Xferd :01/05/1990
Mail	:6645 Ridgeway Rd Sheridan Or 97378	Price :\$26,537 ✓
Land Use	:640 Vacant,Forest Land,Wlo,Designated	OwnerPh :
RefPcl #	:472618 Bldg#:of	TenantPh :
Bedrm:	Bth: YB:	TotSF: Ac:3.76

3  
455,987

The Information Provided Is Deemed Reliable, But Is Not Guaranteed.

# 10	*-----: First American / Polk (OR) :-----*			
Owner	:Herring Joe & Janet Kay	Parcel:R	06628B000400	
Site	:19655 Highway 22 Sheridan 97378	Xferd	:01/08/1999	
Mail	:19655 Highway 22 Sheridan Or 97378	Price	:	
Land Use	:409 Tract,Mobile Home,H&B Use	OwnerPh	:	
RefPcl #	:233705	Bldg#:of	TenantPh :	
Bedrm:3	Bth:1.00	YB:	TotSF:200	Ac:2.36
# 11	*-----: First American / Polk (OR) :-----*			
Owner	:Smith Kenneth W & Anita L	Parcel:R	066330000302	
Site	:4585 Mill Creek Rd Sheridan 97378	Xferd	:08/01/1988	
Mail	:4585 Mill Creek Rd Sheridan Or 97378	Price	:\$60,000	
Land Use	:450 Vacant,Tract Land,Fu Def,Efu Zone	OwnerPh	:	
RefPcl #	:457121	Bldg#:of	TenantPh :	
Bedrm:	Bth:	YB:	TotSF:	Ac:2.45
# 12	*-----: First American / Polk (OR) :-----*			
Owner	:Herber Barsen M & Sheila K	Parcel:R	066330000508	
Site	:2707 Bald Eagle Ave NW Salem 97304	Xferd	:08/12/2004	
Mail	:4430 Mill Creek Rd Sheridan Or 97378	Price	:\$270,000	
Land Use	:400 Vacant,H&B Use,Tract Land	OwnerPh	:503-843-2469	
RefPcl #	:566302	Bldg#:of	TenantPh :	
Bedrm:	Bth:	YB:	TotSF:	Ac:2.42
# 13	*-----: First American / Polk (OR) :-----*			
Owner	:Fox Donald D & Rebecca S	Parcel:R	067250000406	
Site	:5655 Violet Dr Sheridan 97378	Xferd	:10/08/2003	
Mail	:5655 Violet Dr Sheridan Or 97378	Price	:\$64,900	
Land Use	:640 Vacant,Forest Land,Wlo,Designated	OwnerPh	:	
RefPcl #	:565633	Bldg#:of	TenantPh :	
Bedrm:	Bth:	YB:	TotSF:	Ac:2.26
# 14	*-----: First American / Polk (OR) :-----*			
Owner	:Hill Patrick G	Parcel:R	067280000500	
Site	:6380 Gold Crk Willamina 97396	Xferd	:07/07/1999	
Mail	:6800 Gold Crk Willamina Or 97396	Price	:\$60,000	
Land Use	:401 Tract,Improved,H&B Use	OwnerPh	:	
RefPcl #	:286491	Bldg#:of	TenantPh :	
Bedrm:	Bth:	YB:	TotSF:216	Ac:4.00
# 15	*-----: First American / Polk (OR) :-----*			
Owner	:Hulling David H & Fisher Stacy A	Parcel:R	067350000707	
Site	:23745 Gooseneck Creek Rd Sheridan 97378	Xferd	:05/02/2002	
Mail	:23745 Gooseneck Creek Rd Sheridan Or 97378	Price	:\$39,000	
Land Use	:649 For,Mobile Home,Wlo,Designated	OwnerPh	:	
RefPcl #	:403186	Bldg#:of	TenantPh :	
Bedrm:	Bth:	YB:	TotSF:330	Ac:3.70
# 16	*-----: First American / Polk (OR) :-----*			
Owner	:Gehring Mark W	Parcel:R	073050000401	
Site	:3992 Wallace Rd NW Salem 97304	Xferd	:04/29/2005	
Mail	:3600 Wallace Rd NW Salem Or 97304	Price	:\$20,000	
Land Use	:550 Vacant,Farm Land,Fuv,Efu Zone	OwnerPh	:	
RefPcl #	:439055	Bldg#:of	TenantPh :	
Bedrm:	Bth:	YB:	TotSF:	Ac:3.00
# 17	*-----: First American / Polk (OR) :-----*			
Owner	:Ahlstrom Burton O, Survivor's Tr Et Al	Parcel:R	073080000701	
Site	:2655 Brush College Rd NW Salem 97304	Xferd	:12/20/1998	
Mail	:2655 Brush College Rd NW Salem Or 97304	Price	:	
Land Use	:400 Vacant,H&B Use,Tract Land	OwnerPh	:	
RefPcl #	:267229	Bldg#:of	TenantPh :	
Bedrm:5	Bth:4.00	YB:	TotSF:4,170	Ac:2.76
# 18	*-----: First American / Polk (OR) :-----*			
Owner	:Dalke John/Angela	Parcel:R	07308D001500	
Site	:2590 Brush College Rd NW Salem 97304	Xferd	:10/21/2005	
Mail	:2590 Brush College Rd NW Salem Or 97304	Price	:\$45,000	
Land Use	:400 Vacant,H&B Use,Tract Land	OwnerPh	:	
RefPcl #	:267315	Bldg#:of	TenantPh :	
Bedrm:	Bth:	YB:	TotSF:432	Ac:2.36

The Information Provided Is Deemed Reliable, But Is Not Guaranteed.

**M E T R O S C A N**  
**Reference Farm**  
**Polk (OR)**

Owner	Address	Phone	Ref Number
Ahlstrom Burton O, Survivor	2655 Brush College Rd NW Salem 97		17
Cemetery Falls City	3935 Oak Knoll Rd NW Salem 97304		33
Chilom Florian;Camelia M	135 50th Ave NW Salem 97304	503-390-4923	27
City Of Independence	150 Patterson St NW Salem 97304	503-838-1212	30
City Of Independence	3772 Echo Dr NW Salem 97304	503-838-1212	29
Dalke John;Angela	2590 Brush College Rd NW Salem 97		18
Dallas Cemetery District #4	444 53rd Ave NW Salem 97304		32
East Edwards Limited Partne	22300 Business 18 Willamina 97396		31
Eichler Kenneth W Et Al, Rv	8185 Perrydale Rd Amity 97101	503-843-3304	7
Fox Donald D;Rebecca S	5655 Violet Dr Sheridan 97378		13
Gehring Mark W	3992 Wallace Rd NW Salem 97304		16
Herber Barsen M;Sheila K	2707 Bald Eagle Ave NW Salem 9730	503-843-2469	12
Herring Joe;Janet Kay	19655 Highway 22 Sheridan 97378		10
Hill Patrick G	6380 Gold Crk Willamina 97396		14
Hulling David H;Fisher Stac	23745 Gooseneck Creek Rd Sheridan		15
Hy, Llc	3300 Eola Dr NW Salem 97304		23
Melhuse Kathleen	3987 Orchard Heights Rd NW Salem		22
Morey Robert C	7860 Harmony Rd Sheridan 97378	503-843-3952	8
Salem Audobon Society	480 Eola Dr NW Salem 97304		24
Salem Audobon Society	201 Senate St NW Salem 97304		25
Sheehan Edward A;Kathleen A	2280 Wallace Rd NW Salem 97304		20
Smith Kenneth W;Anita L	4585 Mill Creek Rd Sheridan 97378		11
State Of Oregon, Aeronautic	25591 Yamhill River Rd Willamina		28
State Of Oregon,Researchfor	4590 Mill Creek Rd Sheridan 97378		34
United States Of America	2730 Zena Rd NW Salem 97304		3
United States Of America	5300 Four H Rd NW Salem 97304		4
United States Of America	5300 Four H Rd NW Salem 97304		5
United States Of America	9045 Wallace Rd NW Salem 97304		26
United States Of America	9045 Wallace Rd NW Salem 97304		1
Walker Robert T	8475 SW Broadmead Rd Amity 97101		6
Westgate Assembly Of God,St	1518 Kenard St NW Salem 97304		21
Wigington Kenneth	2300 Brush College Rd NW Salem 97		19
Woods Philip A	3050 Lone Star Rd NW Salem 97304		2
Wright Lawrence H;Kathleen	6645 Ridgeway Rd Sheridan 97378		9

# 19	*-----: First American / Polk (OR) -----*				
Owner	:Wigington Kenneth Et Al		Parcel:R	07308D001700	
Site	:2300 Brush College Rd NW Salem 97304		Xferd	:03/02/2001	
Mail	:PO Box 5305 Salem Or 97304		Price	:\$77,500	
Land Use	:400 Vacant,H&B Use,Tract Land		OwnerPh	:	
RefPcl #	:269984	Bldg#:of	TenantPh	:	
Bedrm:	Bth:	YB:	TotSF:	Ac:3.50	
# 20	*-----: First American / Polk (OR) -----*				
Owner	:Sheehan Edward A & Kathleen A		Parcel:R	07316AB02700	
Site	:2280 Wallace Rd NW Salem 97304		Xferd	:05/12/1999	
Mail	:2280 Wallace Rd NW Salem Or 97304		Price	:\$196,000	
Land Use	:044 Misc,Historic,Tract		OwnerPh	:	
RefPcl #	:270423	Bldg#:1f 1	TenantPh	:	
Bedrm:5	Bth:2.50	YB:1848	TotSF:2,660	Ac:2.17	
# 21	*-----: First American / Polk (OR) -----*				
Owner	:Westgate Assembly Of God,St Or		Parcel:R	07316DD00100	
Site	:1518 Kenard St NW Salem 97304		Xferd	:	
Mail	:PO Box 5990 Salem Or 97304		Price	:	
Land Use	:910 Misc,Non-assbl,Church,Vacant		OwnerPh	:	
RefPcl #	:243669	Bldg#:of	TenantPh	:	
Bedrm:	Bth:	YB:	TotSF:	Ac:3.66	
# 22	*-----: First American / Polk (OR) -----*				
Owner	:Melhuse Kathleen		Parcel:R	07318B000900	
Site	:3987 Orchard Heights Rd NW Salem 97304		Xferd	:09/10/2003	
Mail	:3997 Orchard Heights Rd NW Salem Or 97304		Price	:	
Land Use	:400 Vacant,H&B Use,Tract Land		OwnerPh	:	
RefPcl #	:267852	Bldg#:of	TenantPh	:	
Bedrm:3	Bth:2.00	YB:	TotSF:3,654	Ac:3.76	
# 23	*-----: First American / Polk (OR) -----*				
Owner	:Hy, Llc		Parcel:R	073190001506	
Site	:3300 Eola Dr NW Salem 97304		Xferd	:06/19/2002	
Mail	:1855 Commercial St SE Salem Or 97302		Price	:	
Land Use	:400 Vacant,H&B Use,Tract Land		OwnerPh	:	
RefPcl #	:272894	Bldg#:of	TenantPh	:	
Bedrm:	Bth:	YB:	TotSF:	Ac:2.53	
# 24	*-----: First American / Polk (OR) -----*				
Owner	:Salem Audobon Society		Parcel:R	07328BA05000	
Site	:480 Eola Dr NW Salem 97304		Xferd	:	
Mail	:1313 Mill St SE Salem Or 97301		Price	:	
Land Use	:981 Misc,Non-assbl,Benevolent,Fraternal		OwnerPh	:	
RefPcl #	:261412	Bldg#:1f 1	TenantPh	:	
Bedrm:	Bth:	YB:	TotSF:	Ac:2.85	
# 25	*-----: First American / Polk (OR) -----*				
Owner	:Salem Audobon Society		Parcel:R	07328BA05003	
Site	:201 Senate St NW Salem 97304		Xferd	:	
Mail	:1313 Mill St SE Salem Or 97301		Price	:	
Land Use	:980 Misc,Non-assbl,Benevolent,Fraternal		OwnerPh	:	
RefPcl #	:261441	Bldg#:of	TenantPh	:	
Bedrm:	Bth:	YB:	TotSF:	Ac:2.62	
# 26	*-----: First American / Polk (OR) -----*				
Owner	:United States Of America		Parcel:R	073290001400	
Site	:9045 Wallace Rd NW Salem 97304		Xferd	:	
Mail	:9045 Wallace Rd NW Salem Or 97304		Price	:	
Land Use	:970 Misc,Non-assbl,Fed Owned,Vacant		OwnerPh	:	
RefPcl #	:328261	Bldg#:of	TenantPh	:	
Bedrm:	Bth:	YB:	TotSF:	Ac:3.03	
# 27	*-----: First American / Polk (OR) -----*				
Owner	:Chilom Florian & Camelia M		Parcel:R	07425B000110	
Site	:135 50th Ave NW Salem 97304		Xferd	:09/12/2003	
Mail	:2085 Claxter Rd NE Salem Or 97301		Price	:\$85,000	
Land Use	:400 Vacant,H&B Use,Tract Land		OwnerPh	:503-390-4923	
RefPcl #	:525604	Bldg#:of	TenantPh	:	
Bedrm:	Bth:	YB:	TotSF:	Ac:2.51	

The Information Provided Is Deemed Reliable, But Is Not Guaranteed.

# 28	*-----: First American / Polk (OR) :-----*	
Owner	:State Of Oregon, Aeronautics Division	Parcel:R 084170000903
Site	:25591 Yamhill River Rd Willamina 97396	Xferd :
Mail	:355 Capitol St NE #420 Salem Or 97301	Price :
Land Use	:960 Misc,Non-assbl,State Owned,Vacant	OwnerPh :
RefPcl #	:562393 Bldg#:of	TenantPh :
Bedrm:	Bth: YB:	TotSF: Ac:3.97
# 29	*-----: First American / Polk (OR) :-----*	
Owner	:City Of Independence	Parcel:R 084200002342
Site	:3772 Echo Dr NW Salem 97304	Xferd :
Mail	:240 Monmouth St Independence Or 97351	Price :
Land Use	:940 Misc,Non-assbl,City,Vacant	OwnerPh :503-838-1212
RefPcl #	:432324 Bldg#:of	TenantPh :
Bedrm:	Bth: YB:	TotSF: Ac:3.12
# 30	*-----: First American / Polk (OR) :-----*	
Owner	:City Of Independence	Parcel:R 084200002414
Site	:150 Patterson St NW Salem 97304	Xferd :
Mail	:240 Monmouth St Independence Or 97351	Price :
Land Use	:940 Misc,Non-assbl,City,Vacant	OwnerPh :503-838-1212
RefPcl #	:562454 Bldg#:of	TenantPh :
Bedrm:	Bth: YB:	TotSF: Ac:2.25
# 31	*-----: First American / Polk (OR) :-----*	
Owner	:East Edwards Limited Partnership	Parcel:R 084300001205
Site	:22300 Business 18 Willamina 97396	Xferd :
Mail	:8930 Suver Rd Monmouth Or 97361	Price :
Land Use	:440 Vacant,Tract Land,Fu Def,Non-efu Zn	OwnerPh :
RefPcl #	:567288 Bldg#:of	TenantPh :
Bedrm:	Bth: YB:	TotSF: Ac:3.00
# 32	*-----: First American / Polk (OR) :-----*	
Owner	:Dallas Cemetery District #4	Parcel:R 08505B000903
Site	:444 53rd Ave NW Salem 97304	Xferd :
Mail	:694 Main St Dallas Or 97338	Price :
Land Use	:930 Misc,Non-assbl,Cemetery,Vacant	OwnerPh :
RefPcl #	:502380 Bldg#:of	TenantPh :
Bedrm:	Bth: YB:	TotSF: Ac:2.56
# 33	*-----: First American / Polk (OR) :-----*	
Owner	:Cemetery Falls City	Parcel:R 086220001100
Site	:3935 Oak Knoll Rd NW Salem 97304	Xferd :
Mail	:PO Box 10 Falls City Or 97344	Price :
Land Use	:930 Misc,Non-assbl,Cemetery,Vacant	OwnerPh :
RefPcl #	:329693 Bldg#:of	TenantPh :
Bedrm:	Bth: YB:	TotSF: Ac:3.27
# 34	*-----: First American / Polk (OR) :-----*	
Owner	:State Of Oregon,Researchforest	Parcel:R 105040000401
Site	:4590 Mill Creek Rd Sheridan 97378	Xferd :
Mail	:Pvy Hall #218 Forest Mgr/& Dir Corvallis Or 97331	Price :
Land Use	:960 Misc,Non-assbl,State Owned,Vacant	OwnerPh :
RefPcl #	:480651 Bldg#:of	TenantPh :
Bedrm:	Bth: YB:	TotSF: Ac:2.00

8 1,378,357

13 CITIES

AVE SALE 8 105,641.31

2

27<sup>th</sup> Feb 21

KNOW ALL MEN BY THESE PRESENTS, That  
FRIDERICK H. ELEY and BESSIE ELEY, husband and wife,

Grantor s.  
in consideration of TEN AND NO/100 Dollars,  
to <sup>paid by the Grantees herein, do</sup> hereby grant, bargain, sell and convey unto  
WAYNE F. PENDERGRAFT and MARVEL L. PENDERGRAFT <sup>husband</sup>  
and wife, Grantees, as tenants by the entirety, the following described real property, situate in the County of  
Yamhill and State of Oregon, to-wit:

All of that part of the following described property which is situated within the  
bounds of the Adam Matheny Donation Land Claim No. 60 in Township 5 South,  
Range 3 West and the William Miller Donation Land Claim in Townships 5 and  
6 South, Range 3 West of the Willamette Meridian in Yamhill County, Oregon:  
Beginning in the center of the old County Road before the same was relocated  
and established as a State Secondary Highway, said beginning point being the  
Southwest corner of the Daniel Matheny Donation Land Claim in said County,  
and State, thence running in a Southerly direction in the center of said Market  
Road to the South line of the said William Miller Donation Land Claim; thence  
East to the low water mark of the Willamette River; thence Northeasterly following  
the low water mark of said Willamette River to the North line of the said William  
Miller Donation Land Claim; thence North along the East line of the Adam Matheny  
Donation Land Claim to the South line of the Daniel Matheny Donation Land Claim;  
thence West on the South line of the Daniel Matheny Donation Land Claim to the  
place of beginning.

Subject to: Rights of the public in and to that portion of the premises lying in  
roads and roadways.

770 P.W.  
J.R.S.

To Have and to Hold the granted premises unto the said Grantees, as tenants by the entirety, their Heirs  
and Assigns forever.  
The Grantor s. do covenant that they are lawfully seized in fee simple of the above granted  
premises free from all incumbrances.

and that they will and their heirs, executors and administrators, shall warrant and forever  
defend the granted premises against the lawful claims and demands of all persons, except as above stated.  
Witness our hand s and seal s this 11 day of July 19 62

*Friderick H. Eley* (SEAL)  
*Bessie Eley* (SEAL)  
\_\_\_\_\_  
\_\_\_\_\_  
(SEAL)

STATE OF OREGON  
County of Marion  
On this 11 day of July 1962  
personally appeared the above named  
FRIDERICK H. ELEY and BESSIE ELEY,  
husband and wife.

69709  
STATE OF OREGON  
County of Yamhill  
I certify that the within instrument was received for record on  
December 24 1962  
at 3:58 o'clock P.M. and was recorded  
in Book Page Recorder of  
Deeds of said county.

and subscribed all the foregoing instrument to be their  
willing act and deed.  
*Jack S. Book*  
Notary Public for Oregon  
3/24/62  
Commission Expires

*Jack B. Beecher*  
Recorder of Conveyances  
By *Alice Sherman* Deputy  
Return to: *Salmon Title Co*  
70 Box 129  
*Salmon Ore*

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VOL. 27 PAGE 22  
31st day of July

THIS MORTGAGE, Made this 31st day of July 1962, by WAYNE F. PENDERGRAFT and MARVEL L. PENDERGRAFT, husband and wife; Mortgagee, to FREDERICK H. ELEY Mortgagee.

WITNESSETH, That said mortgagor, in consideration of FIFTY THOUSAND AND NO/100 Dollars, to him paid by said mortgagee, does hereby grant, bargain, sell and convey unto said mortgagee, his heirs, executors, administrators and assigns, that certain real property situated in Yamhill County, State of Oregon, bounded and described as follows, to-wit:

All of that part of the following described property which is situated within the bounds of the Adam Matheny Donation Land Claim No. 60 in Township 5 South, Range 3 West and the William Miller Donation Land Claim in Townships 5 and 6 South, Range 3 West of the Willamette Meridian in Yamhill County, Oregon: Beginning in the center of the old County Road before the same was relocated and established as a State Secondary Highway, said beginning point being the Southwest corner of the Daniel Matheny Donation Land Claim in said County and State; thence running in a Southerly direction in the center of said Market Road to the South line of the said William Miller Donation Land Claim; thence East to the low water mark of the Willamette River; thence Northeasterly following the low water mark of said Willamette River to the North line of the said William Miller Donation Land Claim; thence North along the East line of the Adam Matheny Donation Land Claim to the South line of the Daniel Matheny Donation Land Claim; thence West on the South line of the Daniel Matheny Donation Land Claim to the place of beginning.

Subject to: Rights of the public in and to that portion of the premises lying in roads and roadways

Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and which may hereafter thereto belong or appertain, and the rents, issues and profits therefrom, and any and all fixtures upon said premises at the time of the execution of this mortgage or at any time during the term of this mortgage.

TO HAVE AND TO HOLD the said premises with the appurtenances unto the said mortgagee, his heirs, executors, administrators and assigns forever.

This mortgage is intended to secure the payment of One promissory note, of which the following is a substantial copy:

\$50,000.00	Salem, Oregon, July 31, 1962.
For value received, I	promise to pay to
<b>FREDERICK H. ELEY</b>	or order, at Salem, Oregon
<b>FIFTY THOUSAND AND NO/100</b>	***** Dollars,
in lawful money of the United States of America, with interest thereon, in like lawful money at the rate of	
5% per cent per annum from December 1, 1962 until paid, payable in annual	
installments, at the dates and in amounts as follows:	
\$5,000.00, or more, on or before the 1st day of December, 1962; and	
\$5,000.00, or more, on or before the 1st day of December of each year,	
thereafter.	
	plus the full amount
of interest due on this note at time of payment of each installment, until the whole sum, principal and interest,	
has been paid; if any of said installments are not so paid, the whole sum of both principal and interest to be-	
come immediately due and collectible at the option of the holder of this note. And in case suit or action is	
instituted to collect this note or any portion thereof, I	promise to pay such additional
sum as the Court may adjudge reasonable as attorney's fees in such suit or action.	
Due	19
At	WAYNE F. PENDERGRAFT
No	MARVEL L. PENDERGRAFT

And said mortgagor covenants to and with the mortgagee, his heirs, executors, administrators and assigns, that he is lawfully seized in fee simple of said premises and has a valid, unencumbered title thereto

and will warrant and defend the same against all persons; that he will pay said note(s), principal and interest, according to the terms thereof; that while any part of said note(s) remains unpaid he will pay all taxes, assessments and other charges of every nature which may be levied or assessed against said property, or this mortgage or the note(s) above described, when due and payable and before the same may become delinquent; that he will promptly pay and satisfy any and all liens or encumbrances that are or may become liens on the premises or any part thereof superior to the lien of this mortgage; that he will keep the buildings now on or which may be hereafter erected on the premises insured in favor of the mortgagee against loss or damage by fire in the sum of \$ in such company or companies as the mortgagee may designate, and will have all policies of insurance on said property made payable to the mortgagee as the interest may appear and will deliver all policies of insurance on said premises to the mortgagee as soon as insured; that he will keep the buildings and improvements on said premises in good repair and will not commit or suffer any waste of said premises.

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Now, therefore, if said mortgagor shall keep and perform the covenants herein contained and shall pay said note(s) according to its terms, this conveyance shall be void, but otherwise shall remain in full force as a mortgage to secure the performance of all of said covenants and the payment of said note(s); it being agreed that a failure to perform any covenant herein, or if proceeding to foreclose any lien on said premises or any part thereof, the mortgagee shall have the option to declare the whole amount unpaid on said note(s) or on this mortgage as once due and payable, and this mortgage may be foreclosed at any time thereafter. And if the mortgagor shall fail to pay any taxes or charges or any lien, encumbrance or insurance premiums as above provided for, the mortgagee may at his option do so, and any payment so made shall be added to and become a part of the debt secured by this mortgage, and shall bear interest at the same rate as said note(s) without waiver, however, of any right arising to the mortgagee for breach of covenant. And this mortgage may be foreclosed for principal, interest and all sums paid by the mortgagee at any time while the mortgagor neglects to repay any sums so paid by the mortgagee. And if suit be commenced to foreclose this mortgage, the attorney's fees provided for in said note(s) shall be included in the lien of this mortgage. Each and all of the covenanted and agreements herein contained shall apply to and bind the heirs, executors, administrators and assigns of said mortgagor and of said mortgagee respectively.

In case suit or action is commenced to foreclose this mortgage, the Court may, upon motion of the mortgagee, appoint a receiver to collect the rents and profits arising out of said premises during the pendency of such foreclosure, and apply the same to the payment of the amount due under this mortgage, first deducting all proper charges and expenses attending the execution of said trust.

In construing this mortgage, it is understood that the mortgagor or mortgagee may be more than one person; that if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that generally all grammatical changes shall be made, assumed and implied to make the provisions hereof apply equally to corporations and to individuals.

It is also understood and agreed between the parties hereto, it is a condition of this mortgage that mortgagors shall not cut or permit the cutting of growing trees or timber on the above described premises without first obtaining the written consent of the mortgagee to such cutting until such time as the principal balance of the obligation which is secured by this mortgage has been reduced to \$35,900.00.

IN WITNESS WHEREOF, said mortgagor has hereunto set his hand and seal the day and year first above written.

Executed in the presence of

*Wayne F. Pendergraft* (SEAL)  
*Marvel L. Pendergraft* (SEAL)  
 (SEAL)  
 (SEAL)

69710  
**MORTGAGE**  
 (FORM NO. 182A)

WAYNE F. PENDERGRAFT  
 and MARVEL L. PENDERGRAFT

FREDERICK H. ELEY,

ss.  
 STATE OF OREGON,  
 County of Yamhill.

I certify that the within instrument was received for record on the 24th day of August, 1962, at 4:00 o'clock P. M., and recorded in book \_\_\_\_\_ or \_\_\_\_\_, Record of Mortgages of said County.

Witness my hand and seal of County aforesaid.

*Rich. Beatty*  
 County Clerk-Recorder.  
*By: [Signature]*  
 Deputy.

STATE OF OREGON,  
 County of Marion } ss.

BE IT REMEMBERED, That on this 17th day of August, 1962, before me, the undersigned, a Notary Public in and for said County and State, personally appeared the within named WAYNE F. PENDERGRAFT and MARVEL L. PENDERGRAFT, husband and wife, known to me to be the identical individual(s) described in and who executed the within instrument and acknowledged to me that they executed the same freely and voluntarily.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

*Dorothy J. Cook*  
 Notary Public for Oregon  
 My Commission expires March 24, 1966

= METROSCAN PROPERTY PROFILE =  
Yamhill (OR)

OWNERSHIP INFORMATION

Parcel Number :235347 R:03W T:06S S:04 Q: QQ:  
Ref Parcel :R6304 00303  
Owner :Pendergraft Wayne F & Marvel L Trustees  
CoOwner :  
Site Address :24725 Wallace Rd NW Salem 97304  
Mail Address :24725 Wallace Rd NW Salem Or 97304  
Telephone :Owner: Tenant:

SALES AND LOAN INFORMATION

Transferred :12/27/1995 Loan Amount :  
Document # :17393 Lender :  
Sale Price :\$130,000 Loan Type :  
Deed Type :Warranty Interest Rate :  
% Owned : Vesting Type :

ASSESSMENT AND TAX INFORMATION

Mkt Land :\$248,057 Exempt Type :  
Mkt Structure :\$144,800 Levy Code :4.4  
Mkt Total :\$392,857 05-06 Taxes :\$1,940.33  
% Improved :37 04-05 Taxes :\$1,895.40  
MEASURE 50 03-04 Taxes :\$1,550.79  
Assd Land :\$17,242  
Assd Stct :\$123,874  
Assd Total :\$151,116

PROPERTY DESCRIPTION

Thomas Brothers :  
Census :Tract:309.00 Block:3  
Zoning :55 Exclusive Farm Use  
Special District :  
Neighborhood Code :RLX3 RURAL DAYTON  
Land Use :551 Farm, Efu, Improved  
Legal :32.65 ACRES IN SEC 04 T6S R3W  
:  
:  
Subdivision/Plat :

Profile-Page 1 of 2

Information compiled from various sources. Real Estate Solutions makes no representations or warranties as to the accuracy or completeness of information contained in this report.

B.O.07-749

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# **EXHIBIT A-2**

**Measure 49 Approval by the State**



# Oregon

Theodore R. Kulongoski, Governor

Department of Land Conservation and Development  
Measure 49 Development Services Division

635 Capitol Street, Suite 150

Salem, Oregon 97301-2540

Phone: (503) 373-0050

Fax: (503) 378-5318

<http://www.oregon.gov/LCD/MEASURE49>

December 11, 2009

To: Claimant

From: Richard Whitman, Director

RECEIVED  
DEC 14 2009  
YAMHILL COUNTY PLANNING



Re: *Ballot Measure 49 (ORS 195.300 to 195.336) Election Number E131580*

Claimant: *Marvel Pendergraft*

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Enclosed is the Department of Land Conservation and Development's (department) Final Order and Home Site Authorization for the above-referenced Measure 49 election, based on the Supplemental Review of the claimant's Measure 37 claim.

This Final Order and Home Site Authorization sets forth the department's decision on the claim under Measure 49 and is final. No further action will be taken on this matter.



**OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT**

**ORS 195.300 to ORS 195.336 (MEASURE 49) SUPPLEMENTAL REVIEW OF MEASURE 37 CLAIM  
Final Order and Home Site Authorization**

**STATE ELECTION NUMBER:** E131580

**CLAIMANT:** Marvel Pendergraft  
24725 Wallace Road SE  
Salem, OR 97304

**MEASURE 37 PROPERTY IDENTIFICATION:** Township 6S, Range 3W, Section 4  
Tax lot 303  
Yamhill County

**AGENT/  
PRIMARY CONTACT INFORMATION:** Frank D. Walker  
Frank Walker and Associates  
PO Box 7170  
Salem, OR 97303

The claimant, Marvel Pendergraft, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on November 29, 2006, for property located at 24725 Wallace Road SE, near Salem, in Yamhill County. ORS 195.300 to ORS 195.336 (Measure 49) entitles claimants who filed Measure 37 claims to elect supplemental review of their claims. The claimant has elected supplemental review of her Measure 37 claim under Section 6 of Measure 49, which allows the Department of Land Conservation and Development (the department) to authorize up to three home site approvals to qualified claimants.

This Final Order and Home Site Authorization is the conclusion of the supplemental review of this claim.

**I. ANALYSIS OF CLAIM**

**A. Maximum Number of Home Sites for Which the Claimant May Qualify**

Under Section 6 of Measure 49, the number of home site approvals authorized by the department cannot exceed the lesser of the following: three; the number stated by the claimant in the election materials; or the number described in a Measure 37 waiver issued by the state, or if no waiver was issued, the number of home sites described in the Measure 37 claim filed with the state. The claimant has requested three home site approvals in the election material. No waiver was issued

for this claim. The Measure 37 claim filed with the state describes more than three home sites. Therefore, the claimant may qualify for a maximum of three home site approvals under Section 6 of Measure 49.

## **B. Qualification Requirements**

To qualify for a home site approval under Section 6 of Measure 49, the claimant must meet each of the following requirements:

### **1. Timeliness of Claim**

A claimant must have filed a Measure 37 claim for the property with either the state or the county in which the property is located on or before June 28, 2007, and must have filed a Measure 37 claim with both the state and the county before Measure 49 became effective on December 6, 2007. If the state Measure 37 claim was filed after December 4, 2006, the claim must also have been filed in compliance with the provisions of OAR 660-041-0020 then in effect.

### **Findings of Fact and Conclusions**

The claimant, Marvel Pendergraft, filed a Measure 37 claim, M131580, with the state on November 29, 2006. The claimant filed a Measure 37 claim, M37-175-06, with Yamhill County on November 30, 2006. The state claim was filed prior to December 4, 2006.

The claimant timely filed a Measure 37 claim with both the state and Yamhill County.

### **2. The Claimant Is an Owner of the Property**

Measure 49 defines "Owner" as: "(a) The owner of fee title to the property as shown in the deed records of the county where the property is located; (b) The purchaser under a land sale contract, if there is a recorded land sale contract in force for the property; or (c) If the property is owned by the trustee of a revocable trust, the settlor of a revocable trust, except that when the trust becomes irrevocable only the trustee is the owner."

### **Findings of Fact and Conclusions:**

According to the deed submitted by the claimant, Marvel Pendergraft is the settlor of a revocable trust into which she conveyed the Measure 37 claim property and, therefore, is an owner of the property under Measure 49.

Yamhill County has confirmed that the claimant is the current owner of the property.

### **3. All Owners of the Property Have Consented in Writing to the Claim**

All owners of the property must consent to the claim in writing.

**Findings of Fact and Conclusions:**

All owners of the property have consented to the claim in writing.

**4. The Property Is Located Entirely Outside Any Urban Growth Boundary and Entirely Outside the Boundaries of Any City**

The Measure 37 claim property must be located entirely outside any urban growth boundary and entirely outside the boundaries of any city.

**Findings of Fact and Conclusions:**

The Measure 37 claim property is located in Yamhill County, outside the urban growth boundary and outside the city limits of the nearest city, Salem.

**5. One or More Land Use Regulations Prohibit Establishing the Lot, Parcel or Dwelling**

One or more land use regulations must prohibit establishing the requested lot, parcel or dwelling.

**Findings of Fact and Conclusions:**

The property is currently zoned Exclusive Farm Use (EF-80) by Yamhill County, in accordance with ORS chapter 215 and OAR 660, division 33, because the property is "agricultural land" as defined by Goal 3. Goal 3 requires agricultural land to be zoned exclusive farm use. Applicable provisions of ORS chapter 215 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, generally prohibit the establishment of a lot or parcel less than 80 acres in size in an EFU zone, and regulate the establishment of dwellings on new or existing lots or parcels.

The claimant's property consists of 32.65 acres. Therefore, state land use regulations prohibit the claimant from establishing on the Measure 37 claim property the three home sites the claimant may qualify for under Section 6 of Measure 49.

**6. The Establishment of the Lot, Parcel or Dwelling Is Not Prohibited by a Land Use Regulation Described in ORS 195.305(3)**

ORS 195.305(3) exempts from claims under Measure 49 land use regulations:

- (a) Restricting or prohibiting activities commonly and historically recognized as public nuisances under common law;
- (b) Restricting or prohibiting activities for the protection of public health and safety;
- (c) To the extent the land use regulation is required to comply with federal law; or
- (d) Restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing.

### **Findings of Fact and Conclusions**

Based on the documentation submitted by the claimant, it does not appear that the establishment of the three home sites for which the claimant may qualify on the property is prohibited by land use regulations described in ORS 195.305(3).

### **7. On the Claimant's Acquisition Date, the Claimant Lawfully Was Permitted to Establish at Least the Number of Lots, Parcels or Dwellings on the Property That Are Authorized Under Section 6 of Measure 49**

A claimant's acquisition date is "the date the claimant became the owner of the property as shown in the deed records of the county in which the property is located. If there is more than one claimant for the same property under the same claim and the claimants have different acquisition dates, the acquisition date is the earliest of those dates."

### **Findings of Fact and Conclusions**

Yamhill County deed records indicate that the claimant acquired the property on July 11, 1962.

On July 11, 1962, the Measure 37 claim property was not subject to any local or state laws that would have prohibited the claimant from establishing at least three lots or parcels and at least three dwellings. Therefore, the claimant lawfully could have established the three home sites the claimant qualifies for under Section 6 of Measure 49.

## **II. COMMENTS ON THE PRELIMINARY EVALUATION**

The department issued its Preliminary Evaluation for this claim on October 19, 2009. Pursuant to OAR 660-041-0090, the department provided written notice to the owners of surrounding properties. No written comments were received in response to the 28-day notice.

## **III. CONCLUSION**

Based on the analysis above, the claimant qualifies for up to three home sites. However, the number of lots, parcels or dwellings that a claimant may establish pursuant to a home site authorization is reduced by the number of lots, parcels or dwellings currently in existence on the Measure 37 claim property and any contiguous property under the same ownership according to the methodology stated in Section 6(2)(b) and 6(3) of Measure 49.

Based on the documentation provided by the claimant and information from Yamhill County, the Measure 37 claim property includes one lot or parcel and one dwelling. There is no contiguous property under the same ownership. Therefore, the three home site approvals the claimant qualifies for under Section 6 of Measure 49 will authorize the claimant to establish up to two additional lots or parcels and two additional dwellings on the Measure 37 claim property.

#### IV. HOME SITE AUTHORIZATION

Based on the analysis set forth above, this claim is approved, and the claimant qualifies for three home site approvals. As explained in section III above, after taking into account the number of existing lots, parcels or dwellings, the claimant is authorized for two additional lots or parcels and two additional dwellings on the property on which the claimant is eligible for Measure 49 relief, subject to the following terms:

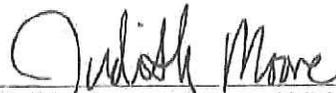
1. Each dwelling must be on a separate lot or parcel, and must be contained within the property on which the claimant is eligible for Measure 49 relief. The establishment of a land division or dwelling based on this home site authorization must comply with all applicable standards governing the siting or development of the land division or dwelling. However, those standards must not be applied in a manner that prohibits the establishment of the land division or dwelling, unless the standards are reasonably necessary to avoid or abate a nuisance, to protect public health or safety, or to carry out federal law.
2. This home site authorization will not authorize the establishment of a land division or dwelling in violation of a land use regulation described in ORS 195.305(3) or in violation of any other law that is not a land use regulation as defined by ORS 195.300(14).
3. A claimant is not eligible for more than 20 home site approvals under Sections 5 to 11 of Measure 49 regardless of how many properties a claimant owns or how many claims a claimant filed. If the claimant has developed the limit of twenty home sites under Measure 49, the claimant is no longer eligible for the home site approvals that are the subject of this order.
4. The number of lots, parcels or dwellings a claimant may establish under this home site authorization is reduced by the number of lots, parcels and dwellings currently in existence on the Measure 37 claim property and contiguous property in the same ownership, regardless of whether evidence of their existence has been provided to the department. If, based on the information available to the department, the department has calculated the number of currently existing lots, parcels or dwellings to be either greater than or less than the number of lots, parcels or dwellings actually in existence on the Measure 37 claim property or contiguous property under the same ownership, then the number of additional lots, parcels or dwellings a claimant may establish pursuant to this home site authorization must be adjusted according to the methodology stated in Section 6(2)(b) and 6(3) of Measure 49. Statements in this final order regarding the number of lots, parcels or dwellings currently existing on the Measure 37 claim property and contiguous property are not a determination on the current legal status of those lots, parcels or dwellings.
5. Temporary dwellings are not considered in determining the number of existing dwellings currently on the property. The claimant may choose to convert any temporary dwelling currently located on the property on which the claimant is eligible for Measure 49 relief to an authorized home site pursuant to a home site approval. Otherwise, any temporary dwelling is subject to the terms of the local permit requirements under which it was approved, and is subject to removal at the end of the term for which it is allowed.

6. A home site approval only authorizes the establishment of a new lot, parcel or dwelling on the property on which the claimant is eligible for Measure 49 relief. No additional development is authorized on contiguous property for which no Measure 37 claim was filed or on Measure 37 claim property on which the claimant is not eligible for Measure 49 relief. A lot or parcel established pursuant to a home site approval must either be the site of a dwelling that is currently in existence or be the site of a dwelling that may be established pursuant to the home site approval.
7. The claimant may use a home site approval to convert a lot, parcel or dwelling currently located on the property on which the claimant is eligible for Measure 49 relief to an authorized home site. If the number of lots, parcels or dwellings existing on the property on which the claimant is eligible for Measure 49 relief exceeds the number of home site approvals the claimant qualifies for under a home site authorization, the claimant may select which existing lots, parcels or dwellings to convert to authorized home sites; or may reconfigure existing lots, parcels or dwellings so that the number is equivalent to the number of home site approvals.
8. The claimant may not implement the relief described in this Measure 49 Home Site Authorization if a claimant has been determined to have a common law vested right to a use described in a Measure 37 waiver for the property. Therefore, if a claimant has been determined in a final judgment or final order that is not subject to further appeal to have a common law vested right as described in Section 5(3) of Measure 49 to any use on the Measure 37 claim property, then this Measure 49 Home Site Authorization is void. However, so long as no claimant has been determined in such a final judgment or final order to have a common law vested right to a use described in a Measure 37 waiver for the property, a use that has been completed on the property pursuant to a Measure 37 waiver may be converted to an authorized home site.
9. A home site approval does not authorize the establishment of a new dwelling on a lot or parcel that already contains one or more dwellings. The claimant may be required to alter the configuration of the lots or parcels currently in existence on the Measure 37 claim property and contiguous property so that each additional dwelling established on the property on which the claimant is eligible for Measure 49 relief, pursuant to this home site authorization, is sited on a separate lot or parcel.
10. Because the property is located in an exclusive farm use zone, the home site authorization does not authorize new lots or parcels that exceed five acres. However, existing or remnant lots or parcels may exceed five acres. Before beginning construction, the owner must comply with the requirements of ORS 215.293. Further, the home site authorization will not authorize new lots or parcels that exceed two acres if the new lots or parcels are located on high-value farmland, on high-value forestland or on land within a ground water restricted area. However, existing or remnant lots or parcels may exceed two acres.

11. Because the property is located in an exclusive farm use zone, Measure 49 requires new home sites to be clustered so as to maximize suitability of the remnant lot or parcel for farm or forest use. Further, if an owner of the property is authorized by other home site authorizations to subdivide, partition, or establish dwellings on other Measure 37 claim properties, Measure 49 authorizes the owner to cluster some or all of the authorized lots, parcels or dwellings that would otherwise be located on land in an exclusive farm use zone, a forest zone or a mixed farm and forest zone on a single Measure 37 claim property that is zoned residential use or is located in an exclusive farm use zone, a forest zone or a mixed farm and forest zone but is less suitable for farm or forest use than the other Measure 37 claim properties.
12. If the claimant transferred ownership interest in the Measure 37 claim property prior to the date of this order, this order is rendered invalid and authorizes no home site approvals. Provided this order is valid when issued, a home site approval authorized under this order runs with the property and transfers with the property. A home site approval will not expire, except that if a claimant who received this home site authorization later conveys the property to a party other than the claimant's spouse or the trustee of a revocable trust in which the claimant is the settlor, the subsequent owner of the property must establish the authorized lots, parcels and dwellings within 10 years of the conveyance. A lot or parcel lawfully created based on this home site authorization will remain a discrete lot or parcel, unless the lot or parcel lines are vacated or the lot or parcel is further divided, as provided by law. A dwelling lawfully created based on a home site approval is a permitted use.
13. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, this home site authorization will not authorize the use of the property unless the claimant first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a permit as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies, and restrictions on the use of the subject property imposed by private parties.

IT IS HEREBY ORDERED that this Final Order and Home Site Authorization is entered by the Director of the Department of Land Conservation and Development as a final order of the department and the Land Conservation and Development Commission under ORS 197.300 to ORS 195.336 and OAR 660-041-0000 to 660-041-0160.

FOR THE DEPARTMENT AND THE LAND  
CONSERVATION AND DEVELOPMENT  
COMMISSION:



Judith Moore, Measure 49 Division Manager  
Dept. of Land Conservation and Development  
Dated this 11<sup>th</sup> day of December 2009.

#### NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

You are entitled, or may be entitled, to judicial remedies including the following:

1. Judicial review is available to anyone who is an owner of the property as defined in Measure 49 that is the subject of this final determination, or a person who timely submitted written evidence or comments to the department concerning this final determination.
2. Judicial review under ORS 183.484 may be obtained by filing a petition for review within 60 days from the service of this order. A petition for judicial review under ORS 183.484 must be filed in the Circuit Court in the county in which the affected property is located. Upon motion of any party to the proceedings, the proceedings may be transferred to any other county with jurisdiction under ORS 183.484 in the manner provided by law for change of venue.
3. Judicial review of this final determination is limited to the evidence in the record of the department at the time of its final determination. Copies of the documents that comprise the record are available for review at the department's office at 635 Capitol St. NE, Suite 150, Salem, OR 97301-2540. Judicial review is only available for issues that were raised before the department with sufficient specificity to afford the department an opportunity to respond.

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## **EXHIBIT A-3**

**2020 Partition Approval for the Adjacent Lot**

# Yamhill County

## DEPARTMENT OF PLANNING AND DEVELOPMENT

525 NE FOURTH STREET • McMinnville, Oregon 97128

Phone: (503) 434-7516 • Fax: (503) 434-7544 • TTY 1-800-735-2900 • Internet Address: <http://www.co.yamhill.or.us/planning>

September 29, 2020

Cindy Christenson  
16107 SE Wallace Road  
Dayton, OR 97114

**Re: Docket No. P-07-20, Tax Lot 6304-303**

Dear Ms. Christenson:

Your application to partition a 32.65-acre parcel into two parcels of approximately 1.12 and 31.45-acres as allowed to be created due to the Measure 49 approval, E131580, 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-07-20" shall appear on the face of the plat.
2. Prior to final partition approval, a survey of the resulting 1.12-acre parcel, shall be completed by a registered land surveyor pursuant to Section 6.120 of the Yamhill County Land Division Ordinance.
3. Prior to final partition approval, the applicant shall have an existing system evaluation or authorization notice done for the septic system serving the 1.12-acre parcel to assure that there is no sign of failure. Pursuant to OAR 340-071-0220(1)(j), the property line shall maintain a setback approved by the Yamhill County Sanitarian from the drainfield and replacement area.
4. 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 a separate map submitted to the file, 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.

The decision for approval of the partition was based upon substantial compliance with the Yamhill County Land Division and Zoning Ordinances, wherein the required procedures of referral and review were followed and the relevant factors considered. The *Yamhill County Land Division Ordinance* provides for appeal of any action of the Planning Director to the Board of Commissioners within fifteen days of the decision on the proposed action. Anyone wishing to appeal the Director's decision must file

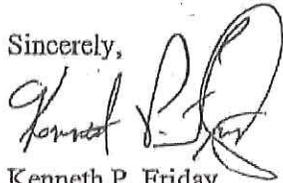
Docket P-07-20  
Cindy Christenson  
Page 2

an appeal form, together with a \$250.00 filing fee, with this Department no later than **5 p.m., October 14, 2020**. If no appeal is filed, the Director's decision will be final and this letter will serve as your official notice of approval of your application.

You now have twelve (12) months within which to complete the requirements stated above and file the final partition plat. If not filed within this time period, the preliminary approval shall be rendered null and void. Also please be aware that the Yamhill County Building Official, pursuant to Section 6 of Ordinance 514, shall not issue a building permit for construction of a residence until the applicant has submitted a statement from the chief of the rural fire department that the proposed residence has suitable access for fire protection equipment, or otherwise meets fire protection standards.

If you have any questions or require assistance, please contact this office at (503) 434-7516.

Sincerely,



Kenneth P. Friday  
Planning Director

cc: Board of Commissioners  
Assessor  
Public Works  
Dundee Rural Fire Department  
SPOs

# **EXHIBIT A-4**

**Partition Application, as Amended**

**PARTITION  
WRITTEN STATEMENT**

**Applicants:**

Larry and Cindy Christenson  
16107 SE Wallace Rd  
Dayton, OR 97114

RECEIVED  
SEP 06 2023  
YAMHILL COUNTY  
PLANNING DEPARTMENT

**Applicants' Representatives:**

Joe Huddleston  
Mannix Law Firm  
2009 State Street  
Salem, OR 97301  
jhuddleston@mannixlawfirm.com

Stephanie Schuyler  
Heltzel Williams PC  
PO Box 1048  
Salem, OR 97038  
stephanie@heltzel.com

**Proposal:**

Applicants are proposing to partition a 31.52-acre parcel to create a 1.66-acre parcel and a 29.2-acre parcel in an Exclusive Farm Use (EFU) zone under the Yamhill County Land Division Ordinance. This partition is possible due to a Measure 49 Final Order and Home Site Authorization, E131580, approved by the Oregon Department of Land Conservation and Development (the "Final Order"). **Exhibit 1.**

**Subject Property:**

Applicants own certain real property located in Yamhill County, Oregon, consisting of approximately 31.52 acres of land, located at 24725 SE Wallace Rd, Dayton, identified as Tax Lot 6304-00307, and more particularly described in **Exhibit 2** (the "Property"). The Property is accessed via SE Wallace Road and contains an agricultural shed and a well.

**Background:**

On December 11, 2009, Marvel Pendergraft ("Pendergraft") received approval for this Property through the Final Order for two (2) additional parcels and two (2) additional home

sites. *See* Exhibit 1. The Property is also identified on the Oregon Department of Land Conservation and Development's (DLCD) Measure 49 Analyzer. **Exhibit 3.**

In 2020, this Property was partitioned to create one (1) additional 1.12-acre parcel. **Exhibit 4.** Once this partition was completed, the creation of one (1) additional parcel remained under the Final Order, leaving one (1) remainder, buildable homesite.

Pendergraft conveyed the Property to Applicants on July 22, 2015. *See* Exhibit 2. Based on the terms of the Final Order, Applicants, or any subsequent owner(s), have until July 22, 2025 to establish the authorized lots, parcels, and dwellings.

#### **Measure 49 Final Order:**

The terms of the Final Order required "new home sites to be clustered so as to maximize suitability of the remnant lot or parcel for farm or forest use." No. 11, Final Order. Applicants have sited the proposed 1.66-acre parcel on the southern tip of the Property, adjacent to the parcel created in 2020. *See* **Exhibit 5** and **Exhibit 6.** This placement maximizes suitability of the remnant 29.2-acre parcel for farm use, as well as the final homesite. This criterion is satisfied.

#### **Conclusion:**

Applicants originally proposed to site the parcel on the northern portion of the Property. However, in response to concerns over proximity to northern neighbors, they have moved the location to the southern-most point of the Property. This change addresses neighbor apprehensions and attempts to maintain accord within the area.

This proposal meets all relevant approval criteria. For the reasons set forth herein and in the application, this partition should be approved as submitted.

#### **List of Exhibits:**

- Exhibit 1 – Measure 49 Final Order and Home Site Authorization
- Exhibit 2 – Vesting Deed
- Exhibit 3 – DLCD Measure 49 Analyzer Map
- Exhibit 4 – 2020 Partition Decision
- Exhibit 5 – Proposed Partition Map
- Exhibit 6 – Tax Map



**OREGON DEPARTMENT OF LAND CONSERVATION AND  
DEVELOPMENT**

**ORS 195.300 to ORS 195.336 (MEASURE 49) SUPPLEMENTAL REVIEW  
OF MEASURE 37 CLAIM  
Final Order and Home Site Authorization**

**STATE ELECTION NUMBER:** E131580

**CLAIMANT:** Marvel Pendergraft  
24725 Wallace Road SE  
Salem, OR 97304

**MEASURE 37 PROPERTY  
IDENTIFICATION:** Township 6S, Range 3W, Section 4  
Tax lot 303  
Yamhill County

**AGENT/  
PRIMARY CONTACT INFORMATION:** Frank D. Walker  
Frank Walker and Associates  
PO Box 7170  
Salem, OR 97303

The claimant, Marvel Pendergraft, filed a claim with the state under ORS 197.352 (2005) (Measure 37) on November 29, 2006, for property located at 24725 Wallace Road SE, near Salem, in Yamhill County. ORS 195.300 to ORS 195.336 (Measure 49) entitles claimants who filed Measure 37 claims to elect supplemental review of their claims. The claimant has elected supplemental review of her Measure 37 claim under Section 6 of Measure 49, which allows the Department of Land Conservation and Development (the department) to authorize up to three home site approvals to qualified claimants.

This Final Order and Home Site Authorization is the conclusion of the supplemental review of this claim.

### I. ANALYSIS OF CLAIM

#### A. Maximum Number of Home Sites for Which the Claimant May Qualify

Under Section 6 of Measure 49, the number of home site approvals authorized by the department cannot exceed the lesser of the following: three; the number stated by the claimant in the election materials; or the number described in a Measure 37 waiver issued by the state, or if no waiver was issued, the number of home sites described in the Measure 37 claim filed with the state. The claimant has requested three home site approvals in the election material. No waiver was issued

for this claim. The Measure 37 claim filed with the state describes more than three home sites. Therefore, the claimant may qualify for a maximum of three home site approvals under Section 6 of Measure 49.

## **B. Qualification Requirements**

To qualify for a home site approval under Section 6 of Measure 49, the claimant must meet each of the following requirements:

### **1. Timeliness of Claim**

A claimant must have filed a Measure 37 claim for the property with either the state or the county in which the property is located on or before June 28, 2007, and must have filed a Measure 37 claim with both the state and the county before Measure 49 became effective on December 6, 2007. If the state Measure 37 claim was filed after December 4, 2006, the claim must also have been filed in compliance with the provisions of OAR 660-041-0020 then in effect.

### **Findings of Fact and Conclusions**

The claimant, Marvel Pendergraft, filed a Measure 37 claim, M131580, with the state on November 29, 2006. The claimant filed a Measure 37 claim, M37-175-06, with Yamhill County on November 30, 2006. The state claim was filed prior to December 4, 2006.

The claimant timely filed a Measure 37 claim with both the state and Yamhill County.

### **2. The Claimant Is an Owner of the Property**

Measure 49 defines "Owner" as: "(a) The owner of fee title to the property as shown in the deed records of the county where the property is located; (b) The purchaser under a land sale contract, if there is a recorded land sale contract in force for the property; or (c) If the property is owned by the trustee of a revocable trust, the settlor of a revocable trust, except that when the trust becomes irrevocable only the trustee is the owner."

### **Findings of Fact and Conclusions:**

According to the deed submitted by the claimant, Marvel Pendergraft is the settlor of a revocable trust into which she conveyed the Measure 37 claim property and, therefore, is an owner of the property under Measure 49.

Yamhill County has confirmed that the claimant is the current owner of the property.

### **3. All Owners of the Property Have Consented in Writing to the Claim**

All owners of the property must consent to the claim in writing.

**Findings of Fact and Conclusions:**

All owners of the property have consented to the claim in writing.

**4. The Property Is Located Entirely Outside Any Urban Growth Boundary and Entirely Outside the Boundaries of Any City**

The Measure 37 claim property must be located entirely outside any urban growth boundary and entirely outside the boundaries of any city.

**Findings of Fact and Conclusions:**

The Measure 37 claim property is located in Yamhill County, outside the urban growth boundary and outside the city limits of the nearest city, Salem.

**5. One or More Land Use Regulations Prohibit Establishing the Lot, Parcel or Dwelling**

One or more land use regulations must prohibit establishing the requested lot, parcel or dwelling.

**Findings of Fact and Conclusions:**

The property is currently zoned Exclusive Farm Use (EF-80) by Yamhill County, in accordance with ORS chapter 215 and OAR 660, division 33, because the property is "agricultural land" as defined by Goal 3. Goal 3 requires agricultural land to be zoned exclusive farm use. Applicable provisions of ORS chapter 215 and OAR 660, division 33, enacted or adopted pursuant to Goal 3, generally prohibit the establishment of a lot or parcel less than 80 acres in size in an EFU zone, and regulate the establishment of dwellings on new or existing lots or parcels.

The claimant's property consists of 32.65 acres. Therefore, state land use regulations prohibit the claimant from establishing on the Measure 37 claim property the three home sites the claimant may qualify for under Section 6 of Measure 49.

**6. The Establishment of the Lot, Parcel or Dwelling Is Not Prohibited by a Land Use Regulation Described in ORS 195.305(3)**

ORS 195.305(3) exempts from claims under Measure 49 land use regulations:

- (a) Restricting or prohibiting activities commonly and historically recognized as public nuisances under common law;
- (b) Restricting or prohibiting activities for the protection of public health and safety;
- (c) To the extent the land use regulation is required to comply with federal law; or
- (d) Restricting or prohibiting the use of a property for the purpose of selling pornography or performing nude dancing.

### **Findings of Fact and Conclusions**

Based on the documentation submitted by the claimant, it does not appear that the establishment of the three home sites for which the claimant may qualify on the property is prohibited by land use regulations described in ORS 195.305(3).

### **7. On the Claimant's Acquisition Date, the Claimant Lawfully Was Permitted to Establish at Least the Number of Lots, Parcels or Dwellings on the Property That Are Authorized Under Section 6 of Measure 49**

A claimant's acquisition date is "the date the claimant became the owner of the property as shown in the deed records of the county in which the property is located. If there is more than one claimant for the same property under the same claim and the claimants have different acquisition dates, the acquisition date is the earliest of those dates."

### **Findings of Fact and Conclusions**

Yamhill County deed records indicate that the claimant acquired the property on July 11, 1962.

On July 11, 1962, the Measure 37 claim property was not subject to any local or state laws that would have prohibited the claimant from establishing at least three lots or parcels and at least three dwellings. Therefore, the claimant lawfully could have established the three home sites the claimant qualifies for under Section 6 of Measure 49.

## **II. COMMENTS ON THE PRELIMINARY EVALUATION**

The department issued its Preliminary Evaluation for this claim on October 19, 2009. Pursuant to OAR 660-041-0090, the department provided written notice to the owners of surrounding properties. No written comments were received in response to the 28-day notice.

## **III. CONCLUSION**

Based on the analysis above, the claimant qualifies for up to three home sites. However, the number of lots, parcels or dwellings that a claimant may establish pursuant to a home site authorization is reduced by the number of lots, parcels or dwellings currently in existence on the Measure 37 claim property and any contiguous property under the same ownership according to the methodology stated in Section 6(2)(b) and 6(3) of Measure 49.

Based on the documentation provided by the claimant and information from Yamhill County, the Measure 37 claim property includes one lot or parcel and one dwelling. There is no contiguous property under the same ownership. Therefore, the three home site approvals the claimant qualifies for under Section 6 of Measure 49 will authorize the claimant to establish up to two additional lots or parcels and two additional dwellings on the Measure 37 claim property.

#### IV. HOME SITE AUTHORIZATION

Based on the analysis set forth above, this claim is approved, and the claimant qualifies for three home site approvals. As explained in section III above, after taking into account the number of existing lots, parcels or dwellings, the claimant is authorized for two additional lots or parcels and two additional dwellings on the property on which the claimant is eligible for Measure 49 relief, subject to the following terms:

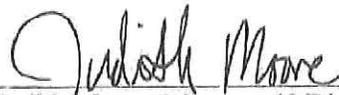
1. Each dwelling must be on a separate lot or parcel, and must be contained within the property on which the claimant is eligible for Measure 49 relief. The establishment of a land division or dwelling based on this home site authorization must comply with all applicable standards governing the siting or development of the land division or dwelling. However, those standards must not be applied in a manner that prohibits the establishment of the land division or dwelling, unless the standards are reasonably necessary to avoid or abate a nuisance, to protect public health or safety, or to carry out federal law.
2. This home site authorization will not authorize the establishment of a land division or dwelling in violation of a land use regulation described in ORS 195.305(3) or in violation of any other law that is not a land use regulation as defined by ORS 195.300(14).
3. A claimant is not eligible for more than 20 home site approvals under Sections 5 to 11 of Measure 49 regardless of how many properties a claimant owns or how many claims a claimant filed. If the claimant has developed the limit of twenty home sites under Measure 49, the claimant is no longer eligible for the home site approvals that are the subject of this order.
4. The number of lots, parcels or dwellings a claimant may establish under this home site authorization is reduced by the number of lots, parcels and dwellings currently in existence on the Measure 37 claim property and contiguous property in the same ownership, regardless of whether evidence of their existence has been provided to the department. If, based on the information available to the department, the department has calculated the number of currently existing lots, parcels or dwellings to be either greater than or less than the number of lots, parcels or dwellings actually in existence on the Measure 37 claim property or contiguous property under the same ownership, then the number of additional lots, parcels or dwellings a claimant may establish pursuant to this home site authorization must be adjusted according to the methodology stated in Section 6(2)(b) and 6(3) of Measure 49. Statements in this final order regarding the number of lots, parcels or dwellings currently existing on the Measure 37 claim property and contiguous property are not a determination on the current legal status of those lots, parcels or dwellings.
5. Temporary dwellings are not considered in determining the number of existing dwellings currently on the property. The claimant may choose to convert any temporary dwelling currently located on the property on which the claimant is eligible for Measure 49 relief to an authorized home site pursuant to a home site approval. Otherwise, any temporary dwelling is subject to the terms of the local permit requirements under which it was approved, and is subject to removal at the end of the term for which it is allowed.

6. A home site approval only authorizes the establishment of a new lot, parcel or dwelling on the property on which the claimant is eligible for Measure 49 relief. No additional development is authorized on contiguous property for which no Measure 37 claim was filed or on Measure 37 claim property on which the claimant is not eligible for Measure 49 relief. A lot or parcel established pursuant to a home site approval must either be the site of a dwelling that is currently in existence or be the site of a dwelling that may be established pursuant to the home site approval.
7. The claimant may use a home site approval to convert a lot, parcel or dwelling currently located on the property on which the claimant is eligible for Measure 49 relief to an authorized home site. If the number of lots, parcels or dwellings existing on the property on which the claimant is eligible for Measure 49 relief exceeds the number of home site approvals the claimant qualifies for under a home site authorization, the claimant may select which existing lots, parcels or dwellings to convert to authorized home sites; or may reconfigure existing lots, parcels or dwellings so that the number is equivalent to the number of home site approvals.
8. The claimant may not implement the relief described in this Measure 49 Home Site Authorization if a claimant has been determined to have a common law vested right to a use described in a Measure 37 waiver for the property. Therefore, if a claimant has been determined in a final judgment or final order that is not subject to further appeal to have a common law vested right as described in Section 5(3) of Measure 49 to any use on the Measure 37 claim property, then this Measure 49 Home Site Authorization is void. However, so long as no claimant has been determined in such a final judgment or final order to have a common law vested right to a use described in a Measure 37 waiver for the property, a use that has been completed on the property pursuant to a Measure 37 waiver may be converted to an authorized home site.
9. A home site approval does not authorize the establishment of a new dwelling on a lot or parcel that already contains one or more dwellings. The claimant may be required to alter the configuration of the lots or parcels currently in existence on the Measure 37 claim property and contiguous property so that each additional dwelling established on the property on which the claimant is eligible for Measure 49 relief, pursuant to this home site authorization, is sited on a separate lot or parcel.
10. Because the property is located in an exclusive farm use zone, the home site authorization does not authorize new lots or parcels that exceed five acres. However, existing or remnant lots or parcels may exceed five acres. Before beginning construction, the owner must comply with the requirements of ORS 215.293. Further, the home site authorization will not authorize new lots or parcels that exceed two acres if the new lots or parcels are located on high-value farmland, on high-value forestland or on land within a ground water restricted area. However, existing or remnant lots or parcels may exceed two acres.

11. Because the property is located in an exclusive farm use zone, Measure 49 requires new home sites to be clustered so as to maximize suitability of the remnant lot or parcel for farm or forest use. Further, if an owner of the property is authorized by other home site authorizations to subdivide, partition, or establish dwellings on other Measure 37 claim properties, Measure 49 authorizes the owner to cluster some or all of the authorized lots, parcels or dwellings that would otherwise be located on land in an exclusive farm use zone, a forest zone or a mixed farm and forest zone on a single Measure 37 claim property that is zoned residential use or is located in an exclusive farm use zone, a forest zone or a mixed farm and forest zone but is less suitable for farm or forest use than the other Measure 37 claim properties.
12. If the claimant transferred ownership interest in the Measure 37 claim property prior to the date of this order, this order is rendered invalid and authorizes no home site approvals. Provided this order is valid when issued, a home site approval authorized under this order runs with the property and transfers with the property. A home site approval will not expire, except that if a claimant who received this home site authorization later conveys the property to a party other than the claimant's spouse or the trustee of a revocable trust in which the claimant is the settlor, the subsequent owner of the property must establish the authorized lots, parcels and dwellings within 10 years of the conveyance. A lot or parcel lawfully created based on this home site authorization will remain a discrete lot or parcel, unless the lot or parcel lines are vacated or the lot or parcel is further divided, as provided by law. A dwelling lawfully created based on a home site approval is a permitted use.
13. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, this home site authorization will not authorize the use of the property unless the claimant first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a permit as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies, and restrictions on the use of the subject property imposed by private parties.

IT IS HEREBY ORDERED that this Final Order and Home Site Authorization is entered by the Director of the Department of Land Conservation and Development as a final order of the department and the Land Conservation and Development Commission under ORS 197.300 to ORS 195.336 and OAR 660-041-0000 to 660-041-0160.

FOR THE DEPARTMENT AND THE LAND  
CONSERVATION AND DEVELOPMENT  
COMMISSION:



Judith Moore, Measure 49 Division Manager  
Dept. of Land Conservation and Development  
Dated this 11<sup>th</sup> day of December 2009.

#### NOTICE OF RIGHT TO APPEAL OR OTHER JUDICIAL RELIEF

You are entitled, or may be entitled, to judicial remedies including the following:

1. Judicial review is available to anyone who is an owner of the property as defined in Measure 49 that is the subject of this final determination, or a person who timely submitted written evidence or comments to the department concerning this final determination.
2. Judicial review under ORS 183.484 may be obtained by filing a petition for review within 60 days from the service of this order. A petition for judicial review under ORS 183.484 must be filed in the Circuit Court in the county in which the affected property is located. Upon motion of any party to the proceedings, the proceedings may be transferred to any other county with jurisdiction under ORS 183.484 in the manner provided by law for change of venue.
3. Judicial review of this final determination is limited to the evidence in the record of the department at the time of its final determination. Copies of the documents that comprise the record are available for review at the department's office at 635 Capitol St. NE, Suite 150, Salem, OR 97301-2540. Judicial review is only available for issues that were raised before the department with sufficient specificity to afford the department an opportunity to respond.



# Oregon

Theodore R. Kufongoski, Governor

## Department of Land Conservation and Development Measure 49 Development Services Division

635 Capitol Street, Suite 150

Salem, Oregon 97301-2540

Phone: (503) 373-0050

Fax: (503) 378-5318

<http://www.oregon.gov/LCD/MEASURE49>

December 11, 2009

To: Claimant

From: Richard Whitman, Director

RECEIVED  
DEC 14 2009  
YAMHILL COUNTY PLANNING



*Re: Ballot Measure 49 (ORS 195.300 to 195.336) Election Number E131580*

*Claimant: Marvel Pendergraft*

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Enclosed is the Department of Land Conservation and Development's (department) Final Order and Home Site Authorization for the above-referenced Measure 49 election, based on the Supplemental Review of the claimant's Measure 37 claim.

This Final Order and Home Site Authorization sets forth the department's decision on the claim under Measure 49 and is final. No further action will be taken on this matter.

Exhibit 2



After recording return to:  
Larry C. Christenson and Cindy A.  
Christenson  
16107 SE Wallace Rd.  
Dayton, OR 97114

Until a change is requested all tax  
statements shall be sent to the  
following address:  
Larry C. Christenson and Cindy A.  
Christenson  
16107 SE Wallace Rd.  
Dayton, OR 97114

File No.: 1031-2481259 (JLW)  
Date: July 21, 2015

THIS SPACE RESERVED FOR RECORDER'S USE

Yamhill County Official Records	<b>201511468</b>
DMR-DDMR	
Stn=4 MILLSA	<b>07/24/2015 01:17:12 PM</b>
4Pgs \$20.00 \$11.00 \$5.00 \$20.00	<b>\$56.00</b>
I, Brian Van Bergen, County Clerk for Yamhill County, Oregon, certify that the instrument identified herein was recorded in the Clerk records.	
Brian Van Bergen - County Clerk	

FIRST AMERICAN TITLE 2481259

**STATUTORY WARRANTY DEED**

**Wayne F. Pendergraft and Marvel L. Pendergraft, Trustees under the Wayne F. Pendergraft Revocable Living Trust dated October 23, 1991 as to an undivided 1/2 interest and Marvel L. Pendergraft and Wayne F. Pendergraft, Trustees under the Marvel L. Pendergraft Revocable Living Trust dated October 23, 1991, as to an undivided 1/2 interest, together as tenants in common, Grantor, conveys and warrants to Larry C. Christenson and Cindy A. Christenson, husband and wife, Grantee, the following described real property free of liens and encumbrances, except as specifically set forth herein:**

See Legal Description attached hereto as Exhibit A and by this reference incorporated herein.

**Subject to:**

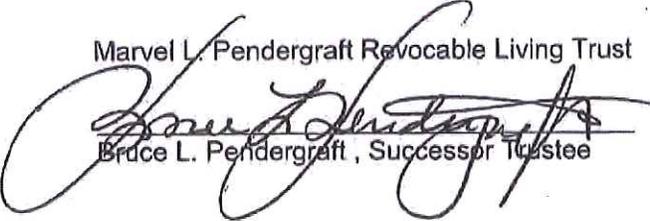
1. The **2015-16** Taxes, a lien not yet payable.
2. Covenants, conditions, restrictions and/or easements, if any, affecting title, which may appear in the public record, including those shown on any recorded plat or survey.

The true consideration for this conveyance is **\$515,000.00- however the consideration includes additional property or value which is a part of the consideration.** (Here comply with requirements of ORS 93.030)

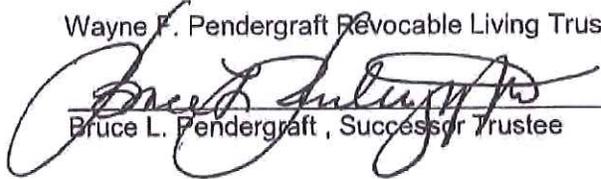
BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

Dated this 22 day of July, 20 15.

Marvel L. Pendergraft Revocable Living Trust

  
Bruce L. Pendergraft, Successor Trustee

Wayne F. Pendergraft Revocable Living Trust

  
Bruce L. Pendergraft, Successor Trustee

STATE OF California )  
 )ss.  
County of \_\_\_\_\_ )

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ by Bruce L. Pendergraft as Successor Trustee of Marvel L. Pendergraft Revocable Living Trust and Bruce L. Pendergraft as Successor Trustee of the Wayne F. Pendergraft Revocable Living Trust, on behalf of the Trusts dated October 23, 2015.

\_\_\_\_\_  
Notary Public for California  
My commission expires: \_\_\_\_\_

*SEE Attached*

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

**CIVIL CODE § 1189**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of MARIN )  
On July 22, 2015 before me, SILVER CLARK, Notary Public  
Date Here Insert Name and Title of the Officer  
personally appeared BRUCE PENDERGRAFT  
Name(s) of Signer(s) ✓

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) (is) are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Silver Clark  
Signature of Notary Public

Place Notary Seal Above

**OPTIONAL**

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

**Description of Attached Document**

Title or Type of Document: Statutory Warranty Deed Document Date: 7/22/15  
Number of Pages: four Signer(s) Other Than Named Above: No other signer

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: BRUCE PENDERGRAFT  
 Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_  
Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_  
 Corporate Officer — Title(s): \_\_\_\_\_  
 Partner —  Limited  General  
 Individual  Attorney in Fact  
 Trustee  Guardian or Conservator  
 Other: \_\_\_\_\_  
Signer Is Representing: \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION:** Real property in the County of Yamhill, State of Oregon, described as follows:

**Part of the William Miller Donation Land Claim NO. 59 in Section 4 of Township 6 South, Range 3 West, W.M., Yamhill County, Oregon, described as follows:**

Commencing at the Southwest corner of the Daniel Matheny Donation Land Claim No. 88, being a point in State Highway No. 150, in Section 33 of Township 5 South, Range 3 West, W.M., thence East on the South line of said Matheny Claim, 40.27 feet to an iron pipe on the East side of said Highway; thence South 4°38'20" East 498.64 feet to an iron rod on the East line of said Highway; thence Southerly along said East line of the highway, on a long chord line bearing South 00°40'42" West 831.56 feet to an iron rod; thence South 84°16'22" East 270.00 feet to an iron rod marking the point of beginning; thence North 85°47'02" East 500.21 feet to an iron rod; thence South 47°17'37" East 191.32 feet to an iron rod; thence South 23°49'35" West 57.80 feet to a point in the center of a paved private roadway; thence South 4°29'55" East 223.68 feet to an iron rod at an angle point in a private roadway; thence along the center of said roadway as follows: South 39°38'00" East 146.01 feet; thence South 59°29'35" East 75.27 feet; thence Easterly on a 117 foot radius curve left (with long chord bearing North 88°51'15" East 122.80 feet) a distance of 129.27 feet; thence North 57°12'05" East 71.87 feet; thence North 31°51'30" East 98.74 feet to an iron rod at the end of said roadway; thence South 50°28'40" East 110.84 feet to an iron rod; thence continuing South 50°28'40" East 67.66 feet to the Willamette River; thence Southwesterly along the west bank of the river, with a long chord bearing South 46°37'23" West 2092.42 feet; thence North 60°28'18" West 20 feet to an iron rod set atop the high bank; thence North 60°28'18" West 210.72 feet to an iron rod set on the East line of said Highway No. 150, from which the Southeast corner of Lot 5 of County Survey No. 2815 bears North 61°58'26" East 69.05 feet distant; and also from which the initial point of land described in Film Volume 109, Page 106, Yamhill County Deed Records, bears South 60°28'18" East 57.39 feet distant; thence Northerly along the East line of said Highway, on a 1213.21 foot radius curve left (with long chord bearing North 18°38'35" East 611.57 feet) a distance of 618.24 feet, to a point from which an iron pipe bears North 85°57'20" West 80.00 feet distant; thence North 4°02'40" East along said Highway line, 962.04 feet to an iron rod; thence South 84°19' East 130.87 feet; thence South 48°05'40" East 175.37 feet to an iron pipe; thence North 4°28'54" East 423.65 feet to said point of beginning.

**EXCEPTING THEREFROM,** that portion of Lot 5 of County Survey No. 2815 that lies East of State Highway No. 150.

Exhibit 3

The screenshot displays the Measure 49 Analyzer web application interface. At the top, the navigation menu includes 'Home', 'Layers', 'Tools', and 'Reports'. The main header features the 'OREGON EXPLORER' logo and the text 'Measure 49 Analyzer' and 'Oregon Department of Land Conservation and Development'. The left sidebar contains navigation options: 'Home', 'Layers', 'Tools', 'Reports', 'Initial View', 'Previous Ex.', 'Full Export', 'Navigation', 'Find Data', 'Find a Measure 49 Election', 'Measure 49 Criteria Definitions', and 'Measure 49 Tools'. The central map area shows a large orange polygon representing a land claim. A search results panel on the left displays the following information: 'E31580 - PENDERGRAFT', 'Yamhill county', 'Zoom to location', 'Farm record', and a 'Search Results' section with instructions: 'Click "Zoom to location" to center the claim on the map. Claim details and constraints will be displayed in a box just to right. Use the filter box below to search the results.' Below this, a 'Filter Results' box shows 'E31580 - PENDERGRAFT', 'Number: E131580', 'Name: PENDERGRAFT', and 'County: Yamhill'. To the right of the filter box are buttons for 'View Final Order (PDF)', 'View Map Constraints', and 'View Additional Details'. The bottom right corner of the map area includes a scale bar (0 to 300m) and a 'BASEMAPS' dropdown menu. The footer of the page reads 'Oregon Metro Bureau of Land Management, State of Oregon'.

Exhibit 4

# Yamhill County

## DEPARTMENT OF PLANNING AND DEVELOPMENT

525 NE FOURTH STREET • McMinnville, Oregon 97128

Phone:(503) 434-7516 • Fax:(503)434-7544 • TTY 1-800-735-2900 • Internet Address: <http://www.co.yamhill.or.us/planning>

September 29, 2020

Cindy Christenson  
16107 SE Wallace Road  
Dayton, OR 97114

**Re: Docket No. P-07-20, Tax Lot 6304-303**

Dear Ms. Christenson:

Your application to partition a 32.65-acre parcel into two parcels of approximately 1.12 and 31.45-acres as allowed to be created due to the Measure 49 approval, E131580, 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-07-20" shall appear on the face of the plat.
2. Prior to final partition approval, a survey of the resulting 1.12-acre parcel, shall be completed by a registered land surveyor pursuant to Section 6.120 of the Yamhill County Land Division Ordinance.
3. Prior to final partition approval, the applicant shall have an existing system evaluation or authorization notice done for the septic system serving the 1.12-acre parcel to assure that there is no sign of failure. Pursuant to OAR 340-071-0220(1)(j), the property line shall maintain a setback approved by the Yamhill County Sanitarian from the drainfield and replacement area.
4. 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 a separate map submitted to the file, 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.

The decision for approval of the partition was based upon substantial compliance with the Yamhill County Land Division and Zoning Ordinances, wherein the required procedures of referral and review were followed and the relevant factors considered. The *Yamhill County Land Division Ordinance* provides for appeal of any action of the Planning Director to the Board of Commissioners within fifteen days of the decision on the proposed action. Anyone wishing to appeal the Director's decision must file

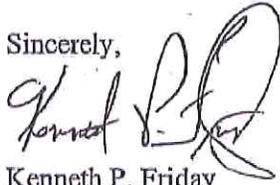
Docket P-07-20  
Cindy Christenson  
Page 2

an appeal form, together with a \$250.00 filing fee, with this Department no later than **5 p.m., October 14, 2020**. If no appeal is filed, the Director's decision will be final and this letter will serve as your official notice of approval of your application.

You now have twelve (12) months within which to complete the requirements stated above and file the final partition plat. If not filed within this time period, the preliminary approval shall be rendered null and void. Also please be aware that the Yamhill County Building Official, pursuant to Section 6 of Ordinance 514, shall not issue a building permit for construction of a residence until the applicant has submitted a statement from the chief of the rural fire department that the proposed residence has suitable access for fire protection equipment, or otherwise meets fire protection standards.

If you have any questions or require assistance, please contact this office at (503) 434-7516.

Sincerely,



Kenneth P. Friday  
Planning Director

cc: Board of Commissioners  
Assessor  
Public Works  
Dundee Rural Fire Department  
SPOs

# EXHIBIT MAP

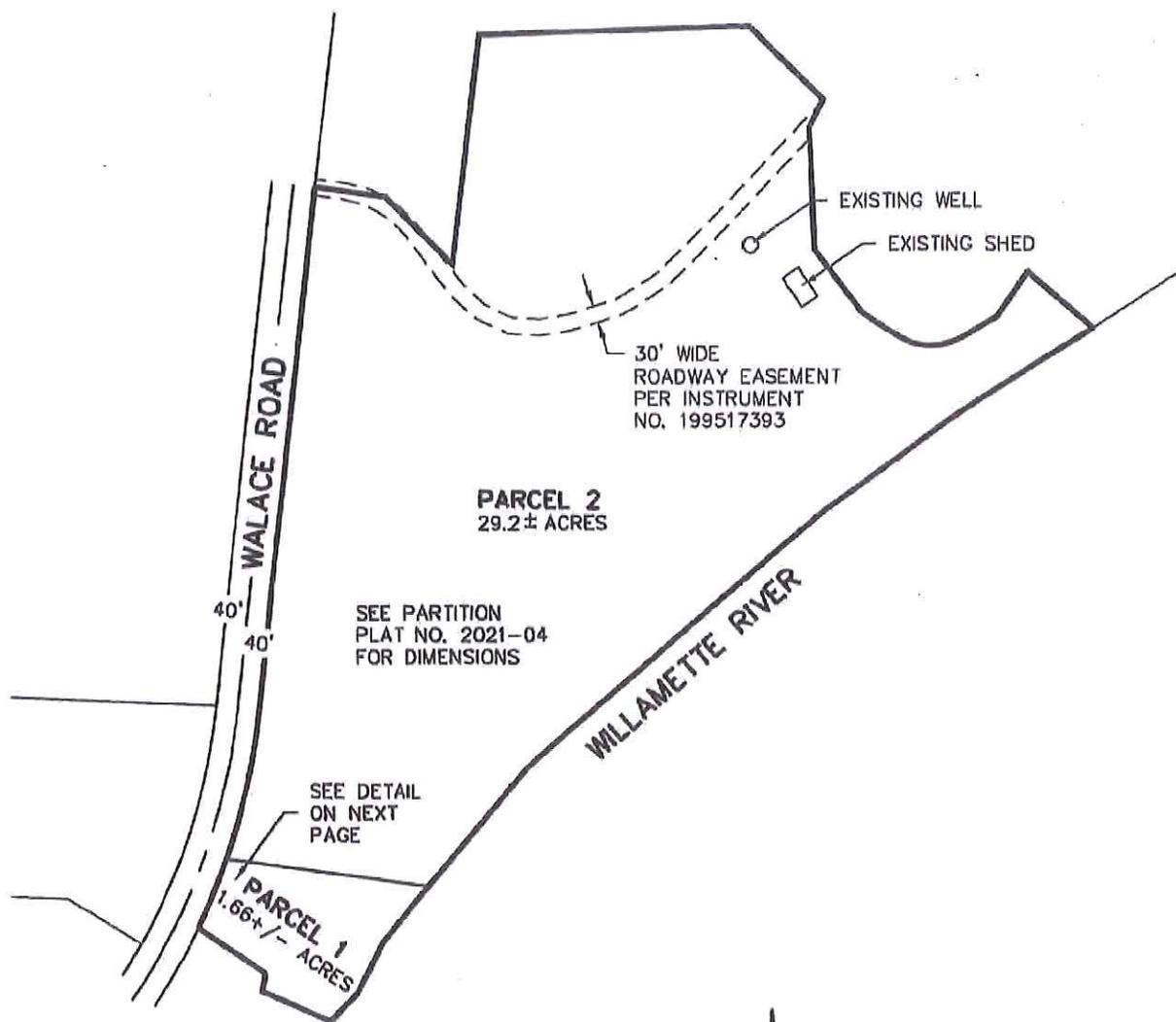
PROPOSED PARTITION  
A PORTION OF PARCEL 2 OF PARTITION PLAT NO. 2021-04  
LOCATED IN THE NORTHWEST ONE-QUARTER OF SECTION 4,  
TOWNSHIP 6 SOUTH, RANGE 3 WEST, W.M.  
YAMHILL COUNTY, OREGON  
MAY 30, 2023

OWNER:  
LARRY & CINDY CHRISTENSON  
PARCEL 2 OF PARTITION PLAT 2021-04  
RECORDED AS INST. #202101220  
TAX LOT: 6304 00307

RECEIVED

JUN 14 2023

YAMHILL COUNTY  
PLANNING DEPARTMENT



SCALE: 1" = 300'

PREPARED BY:

**TerraCalc**  
Land Surveying Inc.

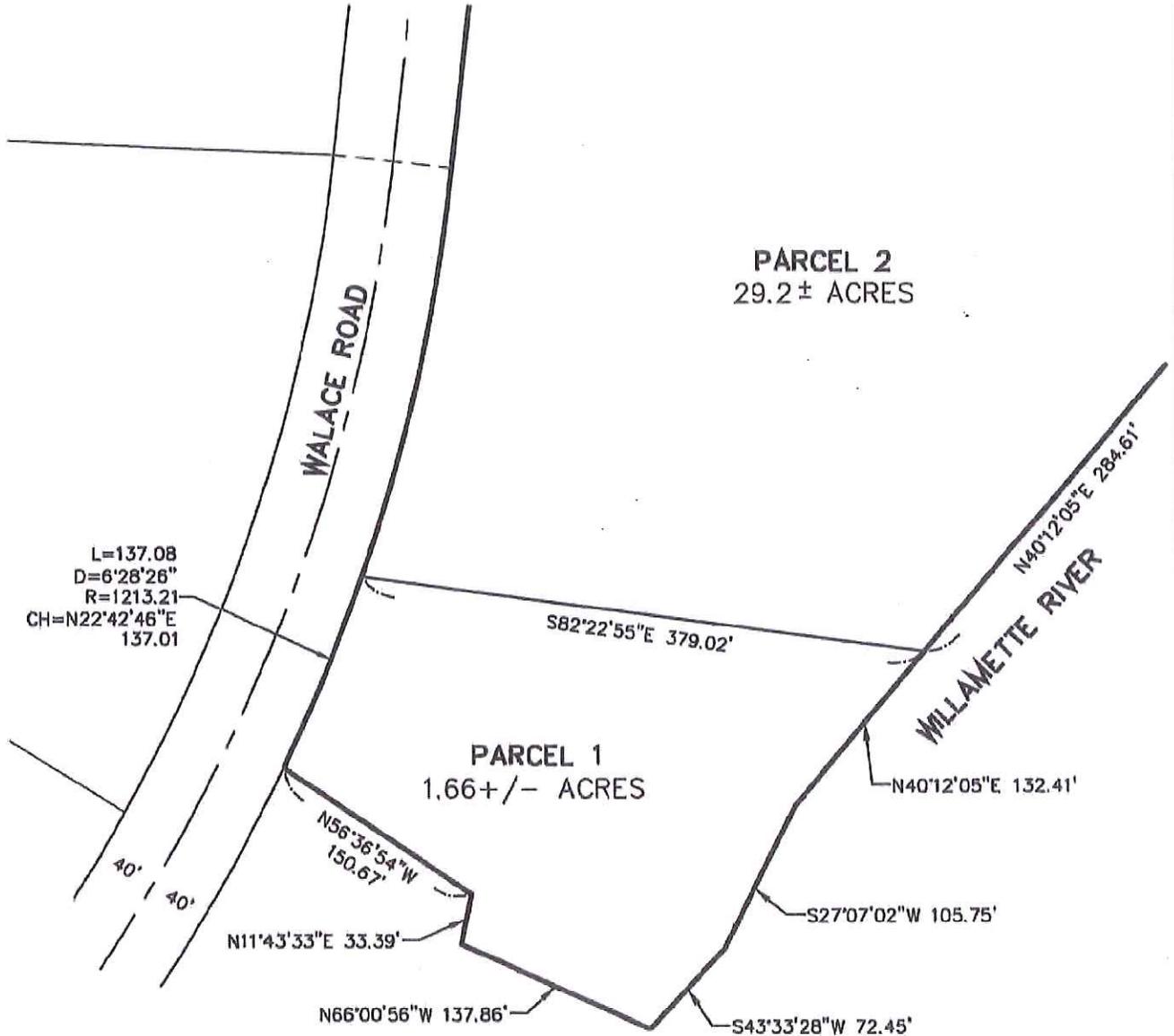
1615 N.E. Miller Street  
McMinnville, OR 97128  
(503) 857-0935  
www.Terra-calc.com

# EXHIBIT MAP

## PROPOSED PARCEL 1

A PORTION OF PARCEL 2 OF PARTITION PLAT NO. 2021-04  
LOCATED IN THE NORTHWEST ONE-QUARTER OF SECTION 4,  
TOWNSHIP 6 SOUTH, RANGE 3 WEST, W.M.  
YAMHILL COUNTY, OREGON

MAY 30, 2023



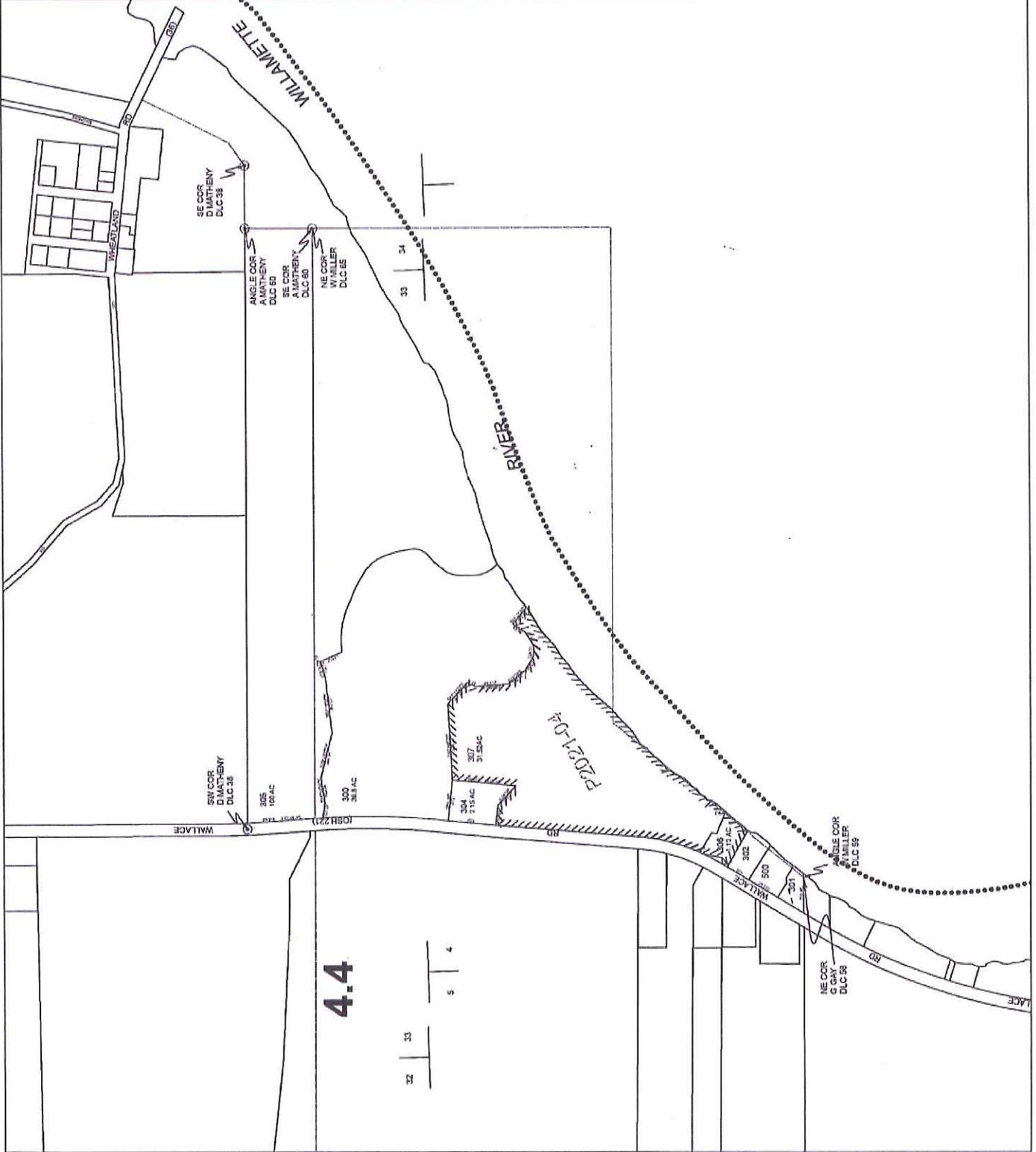
PREPARED BY:  
**TerraCalc**  
Land Surveying Inc.  
1615 N.E. Miller Street  
McMinnville, OR 97128  
(503) 857-0935  
www.Terra-calc.com

SCALE: 1" = 100'



ASSESSMENT & TAX  
CARTOGRAPHY

SECTION 4 T6S. R.3W. W.M.  
YAMHILL COUNTY OREGON  
1" = 400'



CANCELLED TABLETS:  
400  
200  
100  
303

DATE PRINTED: 5/26/2021

This product is for Assessment and Taxation (AST) purposes only and has not been prepared or is suitable for legal, engineering, surveying or any professional assessment and layout.

979-23-00009/6PLNG

Docket P-03-23  
Date 3/28/23  
Rec'd by [Signature]  
Receipt # 923724  
Fee \$2077.00  
\$2432.00

Yamhill County Department of Planning & Development  
**APPLICATION FOR PARTITION**

525 NE Fourth Street, McMinnville, OR 97128 • Tel: 503-434-7516 • Fax: 503-434-7544

APPLICANT				LEGAL OWNER (IF DIFFERENT)			
Larry & Cindy Christenson							
Last name	First	MI		Last name	First	MI	
16107 SE Wallace Rd							
Mailing address (Street or PO Box)				Mailing address (Street or PO Box)			
City	State	Zip		City	State	Zip	
Dayton	Or	97114					
Telephone: 503-435-7923				Telephone:			
E-mail address: christensonfarms@gmail.com				E-mail address:			
PROPERTY INFORMATION							
Tax Lot(s) R6304 00307 Acct # 713534				Zone: EF-80			
Size of original parcel:		31.5200		Plan designation:			
PROPOSED PARTITION							
Parcel #1	29.52	acres	Dimensions:	Width:			
			(Average)	Depth:			
Parcel #2	2.0	acres	Dimensions	Width:			
			(Average)	Depth:			
Parcel #3		acres	Dimensions	Width:			
			(Average)	Depth:			

**PROPERTY INFORMATION:**

- Is there a septic system on the property?  Yes  No *approval only*  
If yes, which parcel(s) is the septic system on? *Parcel #1 approval only*
- How will water be provided?  Well:  existing  proposed *shared with the 2 parcels*  
 On-site spring or creek  Water Association (name) \_\_\_\_\_
- What road or easement will be used as access? *current driveway*
- Is the property in a Fire District? *yes?* Name of Fire District: *Dayton?*
- Is the property within two miles of any city limits? *NO* If yes, name of city: \_\_\_\_\_



## **PARTITION APPLICATION PROCEDURES AND FEES**

The information supplied in this section applies to most partitions in Yamhill County. There may, however, be additional requirements that will be explained at the time of the pre-application conference.

**PREAPPLICATION CONFERENCE** This conference involves discussion of the proposal, explanation of zoning and other requirements that pertain to the request, and identification of potential problems. There is no fee for this conference.

**SUBMITTAL OF PRELIMINARY PLAT** The application must include a preliminary plat on a separate sheet. 8 1/2 x 11 paper is preferred. The plat should be drawn on reproducible paper at a scale no less than 1" to 200'. A copy of an Assessor's map is acceptable to use as a base. The drawing should be labeled as a preliminary plat and include a north arrow, the date, the map scale, and the name, address, and telephone number of the property owner, the owner's representative, applicant, and surveyor. All proposed parcels should be numbered in consecutive order. The estimated dimensions and boundaries of all parcels to be created should be shown, along with the size of each lot in acres or square feet. The preliminary plat should show all existing and proposed access roads, easements, and public rights-of-way, and their dimensions, the location of sewage disposal facilities and wells, if known, and the location of all existing and proposed structures.

**PARCEL SIZE AVERAGING** In the AF-10, VLDR, and LDR zones, some of the parcels that will be created may be smaller than the minimum lot size, as long as the average size of all of the parcels complies with the minimum lot size. For example, a 30-acre parcel in the AF-10 zone may be partitioned into three parcels, but each parcel need not be ten acres in size as long as the average parcel size is ten acres.

**NOTICE** Yamhill County is required to send notice of all partition requests to surrounding property owners, and to publish a notice in a newspaper of general circulation in the county, prior to making a decision on the request. The notice distance varies by zone, from 100 to 500 feet. Those people that receive notice, and others that may be affected, can make comments or request that the application be considered at a public hearing before the county Planning Commission. If no one requests a hearing, the Planning Director will make the decision on whether to approve or deny the partition application.

**PRELIMINARY DECISION** Upon review and recommendation by Planning Department staff, the Planning Director renders a decision to approve, approve with modifications, or deny the request. The decision will be based on whether the application complies with the requirements of the Yamhill County Land Division Ordinance and the standards of the zoning district. The applicant and surrounding property owners will receive written notice of the decision. If the request is approved, the decision will be preliminary, subject to satisfaction of any conditions placed on the approval.

**APPEALS** The applicant is entitled to appeal a denial or any condition of a preliminary approval to the Board of County Commissioners. Anyone else that is aggrieved by the decision also has the right to appeal. There is a \$250 fee to file an appeal. This fee is refunded if the appellant prevails in the appeal. The Board will hold a public hearing on the appeal, and their decision may be appealed to the state Land Use Board of Appeals.

**ROADWAY DEDICATION REQUIREMENTS** A maximum of three parcels of land may have access to a public road via one easement. Dedication of a public road to serve the parcels will be required if the partition would result in more than three parcels having access by one easement. Also, if a parcel being partitioned abuts a county road with a right-of-way less than 60 feet wide, additional dedication along the frontage may be required prior to final plat approval.

**ROADWAY CONSTRUCTION** Generally, all roadways providing access to a new parcel (not driveways to building sites) shall be constructed, or security arranged, prior to final plat approval. If the access is an easement (not dedicated right-of-way), you may enter into a road construction agreement in lieu of the security requirement. Road construction standards are available from the Public Works Department. Fees are available by contacting Public Works or from the Public Works Web site. New accesses on a state highway must be approved by the Oregon Department of Transportation.

## **PARTITION APPLICATION**

Page 4 of 4

**SURVEY REQUIREMENTS** All parcels resulting from the partition that are 10 acres or less in size, and the centerline of any access easement or new public right-of-way, must be surveyed prior to final plat approval. Fees are available by contacting the County Surveyor or the County Surveyor web site.

**SEPTIC APPROVAL REQUIREMENTS** New parcels are required to be approved for on-site subsurface sewage disposal prior to final plat approval, unless it can be demonstrated that other sewage disposal facilities are available. The septic site evaluation is required for all vacant parcels created by the partition. The only way to waive this requirement is if a parcel is labeled on the final plat as nonresidential, and a statement is placed on the face of the final plat attesting that no sewage disposal system will be provided for parcels labeled as nonresidential. The fee for a septic site evaluation is \$769 per lot. In some instances, an evaluation of an existing septic system may also be required when there is a concern about the location of the system and replacement area in relation to the new property lines. The fee for an existing system evaluation is \$480.

**FINAL PLAT APPROVAL** When all conditions of the preliminary approval have been satisfied and a final partition plat prepared, final approval can be granted. The final plat is prepared by a registered land surveyor, even if no lot or road surveys are required. The property owner must sign the plat in black india type ink (not ball point pen) before a notary public. The plat must be delivered to the County Surveyor's office, where it will be reviewed by the County Engineer and County Surveyor and signed if no deficiencies are found. The plat will be forwarded by the County Surveyor to the Planning Department, where it will be reviewed and signed by the County Sanitarian and Planning Director if all conditions of the preliminary approval have been met. The Planning Department will forward the plat to the County Tax Collector. Before the County Tax Collector will sign the plat, all taxes must have been paid in full. Once the plat has all the necessary signatures, it must be recorded in the deed and mortgage records with the County Clerk. This is the applicant's responsibility. The fee for recording a plat is \$121. The fee for recording other documents, such as a road construction agreement, affidavits, or covenants, is \$81 for the first page and \$5 for each additional page. The final plat must be submitted within one year from the date of preliminary approval, and recorded within 90 days of that date, or the preliminary approval becomes null and void. Please contact the Surveyors Department.

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### **THE APPLICATION MUST INCLUDE:**

1. Completed application form, signed by the applicant and property owner (if different). The owner's signature must be notarized.
2. Preliminary plat.
3. Deed or other proof of ownership.
4. Filing fee (Make check payable to Yamhill County).

**NOTE: Fees are not refundable.**

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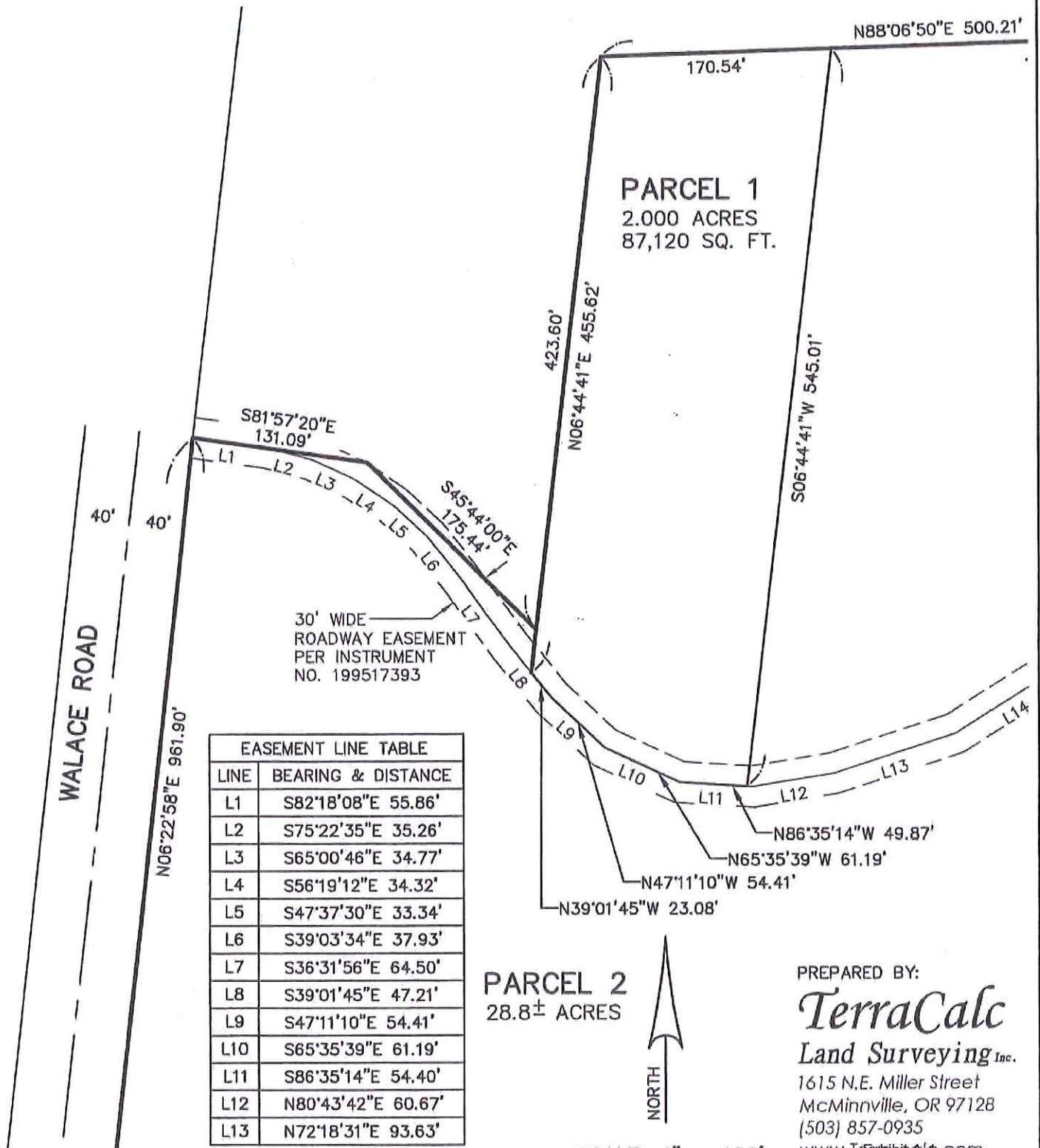
# EXHIBIT MAP

## PROPOSED PARCEL 1

A PORTION OF PARCEL 2 OF PARTITION PLAT NO. 2021-04  
 LOCATED IN THE NORTHWEST ONE-QUARTER OF SECTION 4,  
 TOWNSHIP 6 SOUTH, RANGE 3 WEST, W.M.

YAMHILL COUNTY, OREGON

MARCH 3, 2023



EASEMENT LINE TABLE	
LINE	BEARING & DISTANCE
L1	S82°18'08\"E 55.86'
L2	S75°22'35\"E 35.26'
L3	S65°00'46\"E 34.77'
L4	S56°19'12\"E 34.32'
L5	S47°37'30\"E 33.34'
L6	S39°03'34\"E 37.93'
L7	S36°31'56\"E 64.50'
L8	S39°01'45\"E 47.21'
L9	S47°11'10\"E 54.41'
L10	S65°35'39\"E 61.19'
L11	S86°35'14\"E 54.40'
L12	N80°43'42\"E 60.67'
L13	N72°18'31\"E 93.63'

PARCEL 2  
 28.8± ACRES



SCALE: 1" = 100'

PREPARED BY:

**TerraCalc**  
 Land Surveying Inc.

1615 N.E. Miller Street  
 McMinnville, OR 97128  
 (503) 857-0935

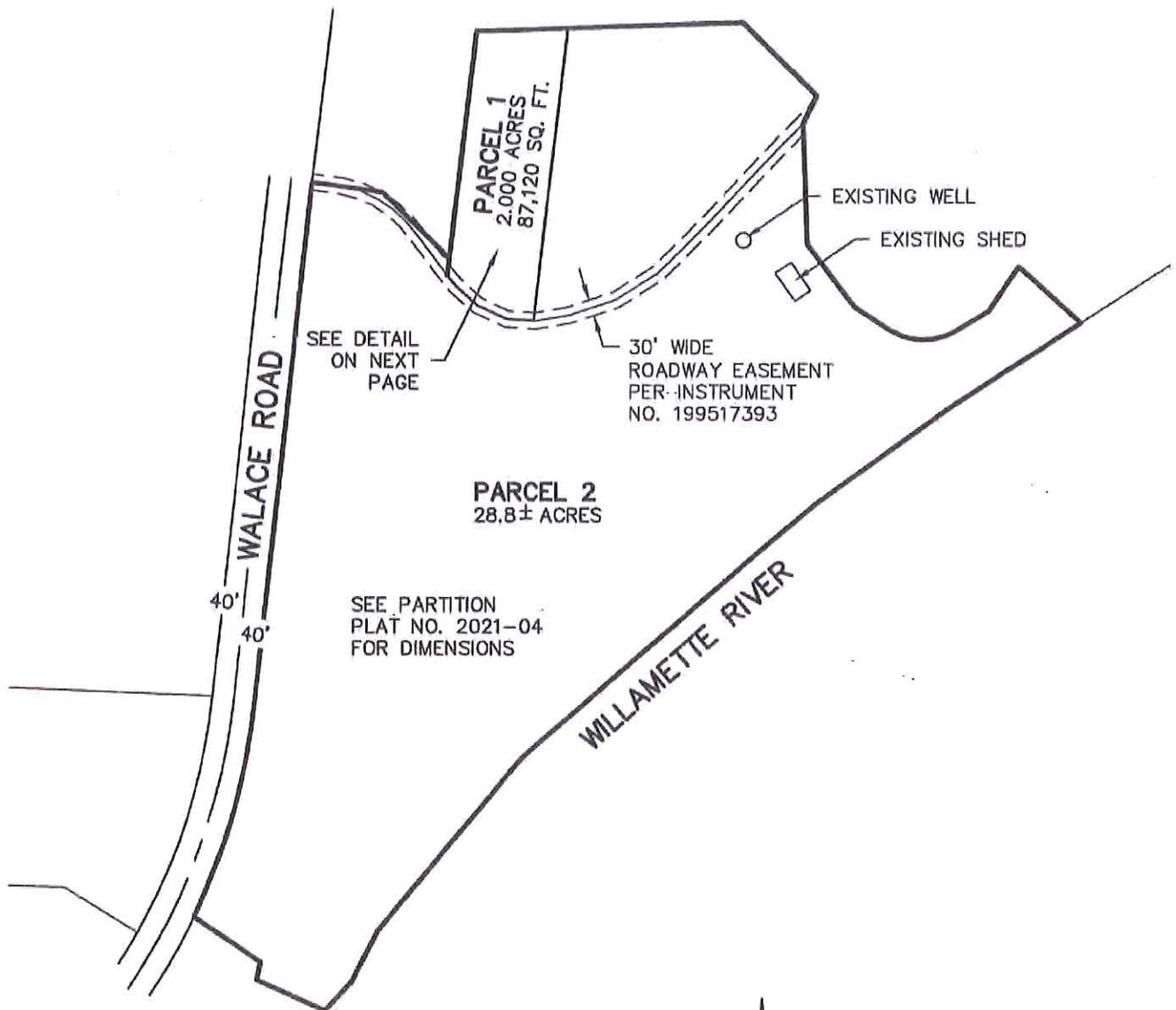
www.TerraCalc.com  
 Page 26 of 30

# EXHIBIT MAP

## PROPOSED PARTITION

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TOWNSHIP 6 SOUTH, RANGE 3 WEST, W.M.  
YAMHILL COUNTY, OREGON

MARCH 3, 2023



SCALE: 1" = 300'

PREPARED BY:

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McMinnville, OR 97128  
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YAMHILL COUNTY, OREGON

MAY 30, 2023

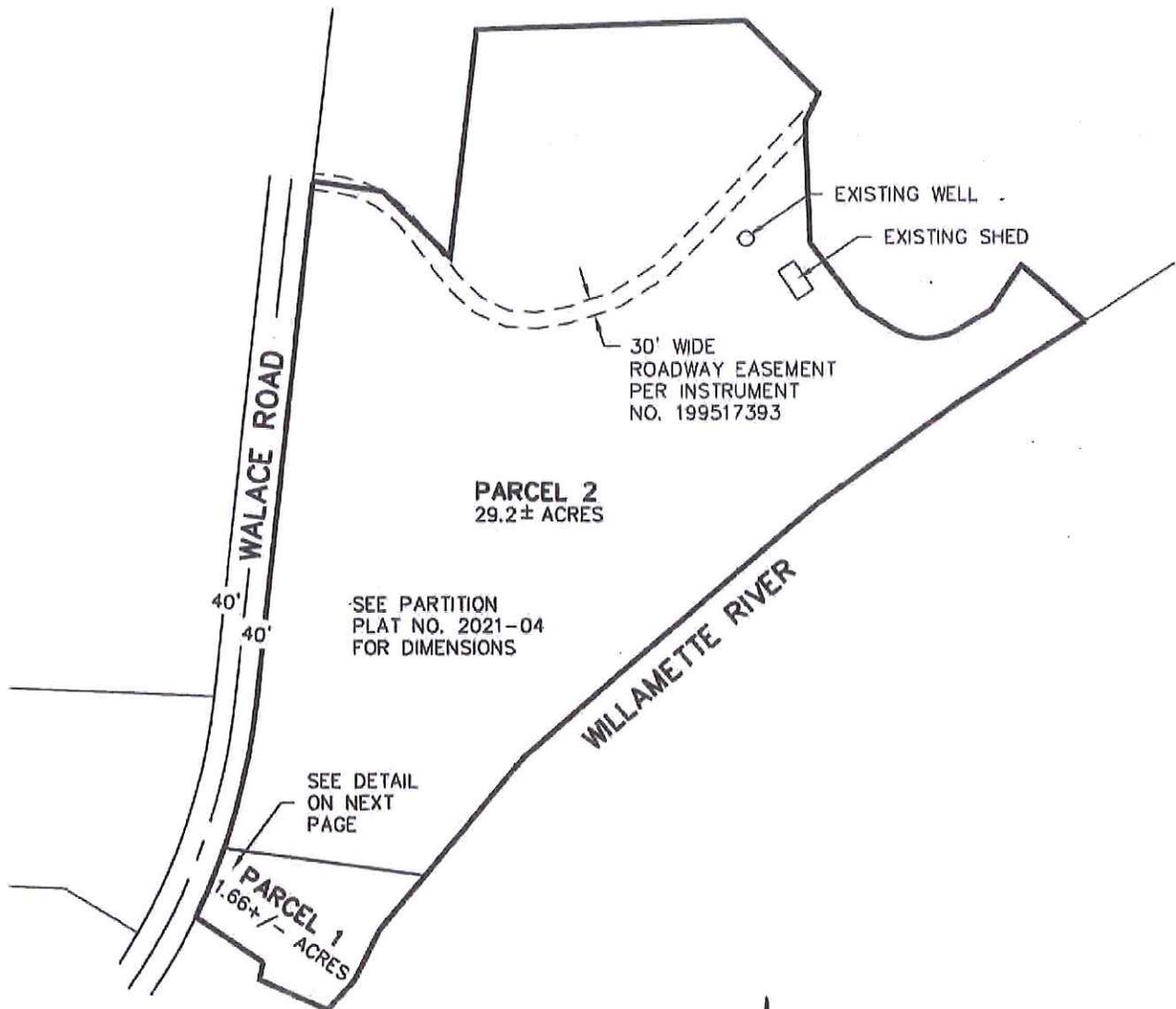
**OWNER:**

LARRY & CINDY CHRISTENSON  
PARCEL 2 OF PARTITION PLAT 2021-04  
RECORDED AS INST. #202101220  
TAX LOT: 6304 00307

RECEIVED

JUN 14 2023

YAMHILL COUNTY  
PLANNING DEPARTMENT



SCALE: 1" = 300'

PREPARED BY:

**TerraCalc**

Land Surveying Inc.

1615 N.E. Miller Street  
McMinnville, OR 97128  
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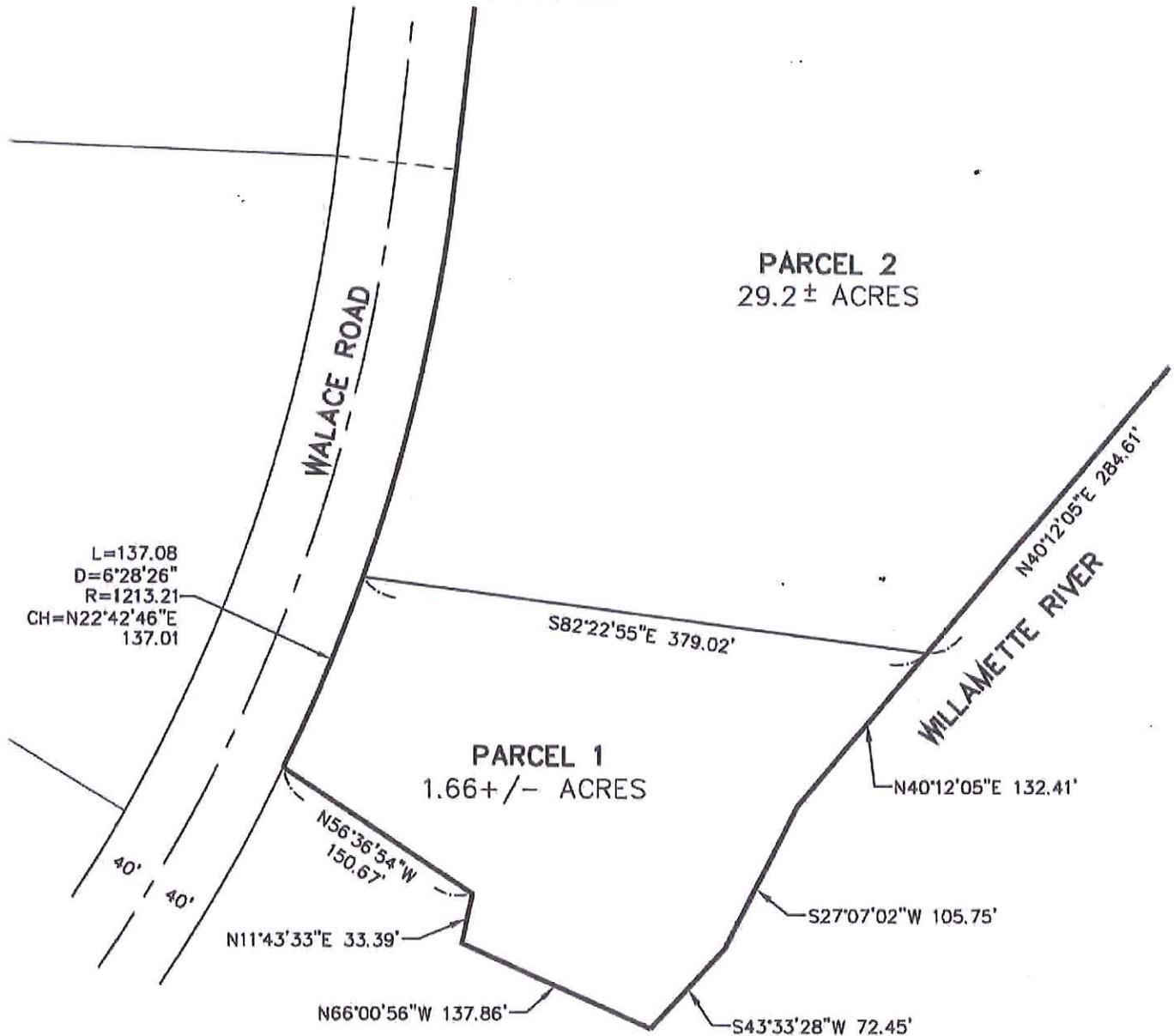
[www.Terra-calc.com](http://www.Terra-calc.com)

# EXHIBIT MAP

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YAMHILL COUNTY, OREGON

MAY 30, 2023



PREPARED BY:

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www.Terra-calc.com

SCALE: 1" = 100'

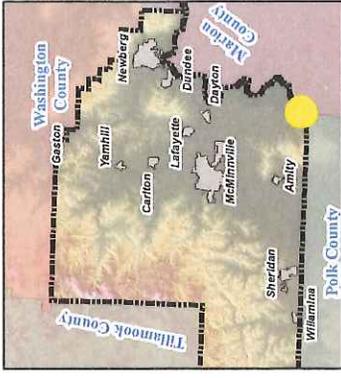
Exhibit A-4



# **EXHIBIT A-5**

**Base Flood Elevation and 100-year Flood Zone Map**

**YAMHILL COUNTY  
TAX LOT INFORMATION  
&  
CONTEXTUAL MAP**



**Property Information**  
Docket: P-03-23

SE Wallace Rd



Subject Parcel(s)

Tax Lot: R6304 00307

Lot Acreage: 31.52



Proposed Parcel #1

Approximately 1.66-acres



Wetland

**FEMA Flood Zone**

Base Flood Elev (ft)



100 Year Zone



Floodway

1 inch = 239.8 feet

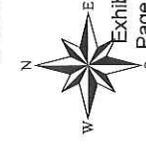
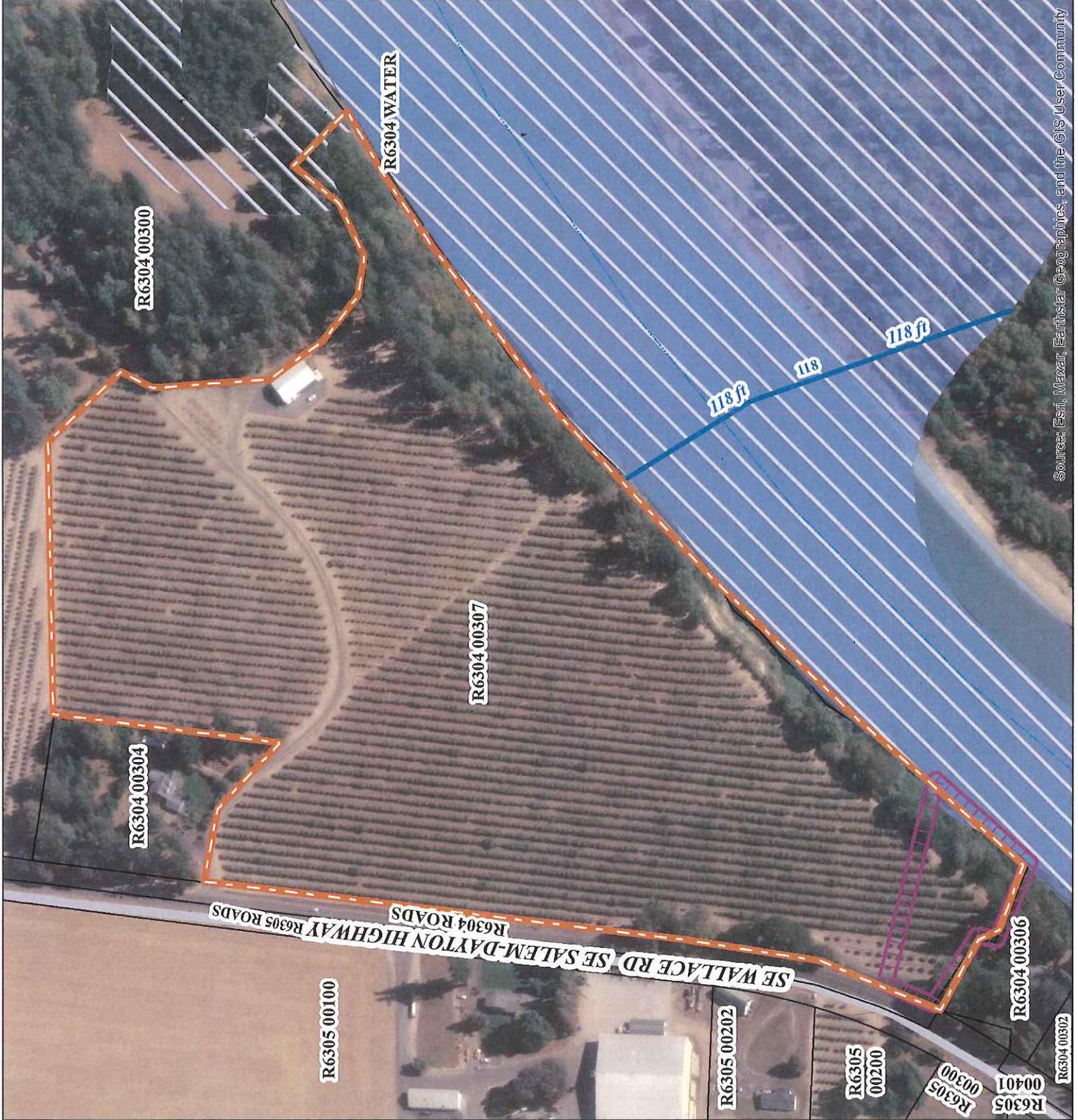


Exhibit A-8  
Page 1 of 1

Last Update: December 14, 2023



Source: Esri, Maxar, Earthstar Geographics, and the GIS User Community