

Application for a Permit to Use Ground Water



Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, Oregon 97301-1266
(503) 986-0900
www.wrd.state.or.us

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JUN 16 2011

WATER RESOURCES DEPT
SALEM, OREGON

SECTION 1: APPLICANT INFORMATION AND SIGNATURE

Applicant Information

NAME MELVIN OLSON		PHONE (HOME)	
PHONE (WK) 503-312-9206		CELL 503-312-9206	FAX 503-554-9215
ADDRESS 61375 BARGER ROAD			
CITY SAINT HELENS	STATE OR	ZIP 97051	E-MAIL PIPEDOC.MEL@GMAIL.COM

Organization Information

NAME HILAND WATER CORP – THE STABLES		PHONE (503) 554-8333	
ADDRESS 61375 BARGER ROAD		CELL 503-312-9206	
CITY SAINT HELENS	STATE OR	ZIP 97051	E-MAIL PIPEDOC.MEL@GMAIL.COM

Agent Information – The agent is authorized to represent the applicant in all matters relating to this application.

AGENT / BUSINESS NAME JOHN BORDEN		PHONE 503-723-4257	
ADDRESS 5597 RIVER ST.		CELL --	
CITY WEST LINN	STATE OR	ZIP 97068	E-MAIL JEBORDEN@COMCAST.NET

Note: Attach multiple copies as needed

By my signature below I confirm that I understand:

- I am asking to use water specifically as described in this application.
- Evaluation of this application will be based on information provided in the application.
- I cannot use water legally until the Water Resources Department issues a permit.
- Oregon law requires that a permit be issued before beginning construction of any proposed well, unless the use is exempt. Acceptance of this application does not guarantee a permit will be issued.
- If I get a permit, I must not waste water.
- If development of the water use is not according to the terms of the permit, the permit can be cancelled.
- The water use must be compatible with local comprehensive land-use plans.
- Even if the Department issues a permit, I may have to stop using water to allow senior water-right holders to get water to which they are entitled.

I (we) affirm that the information contained in this application is true and accurate.



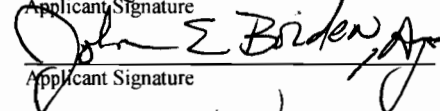
Applicant Signature

Melvin Olson

Print Name and title if applicable

6-14-11

Date



Applicant Signature

John Borden

Print Name and title if applicable

6-19-2011

Date

For Department Use		
App. No. <u>G-17470</u>	Permit No. _____	Date _____

SECTION 2: PROPERTY OWNERSHIP

Please indicate if you own all the lands associated with the project from which the water is to be diverted, conveyed, and used.

Yes

- There are no encumbrances.
- This land is encumbered by easements, rights of way, roads or other encumbrances.

No

- I have a recorded easement or written authorization permitting access.
- I do not currently have written authorization or easement permitting access.
- Written authorization or an easement is not necessary, because the only affected lands I do not own are state-owned submersible lands, and this application is for irrigation and/or domestic use only (ORS 274.040).
- Water is to be diverted, conveyed, and/or used only on federal lands.

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List the names and mailing addresses of all affected landowners (*attach additional sheets if necessary*).

Coyote Creek Group LLC, 700 Deborah Road, Suite 200, Newberg, Oregon 97132 – subdivision owner

SECTION 3: WELL DEVELOPMENT

WELL NO.	NAME OF NEAREST SURFACE WATER	IF LESS THAN 1 MILE:	
		DISTANCE TO NEAREST SURFACE WATER	ELEVATION CHANGE BETWEEN NEAREST SURFACE WATER AND WELL HEAD
The Stables #1	Un-named stream	Stream is 2026 feet north and 695 feet west of well (2142 feet line-of-sight)	Stream is 62 feet below well head

Please provide any information for your existing or proposed well(s) that you believe may be helpful in evaluating your application. For existing wells, describe any previous alteration(s) or repair(s) not documented in the attached well log or other materials (*attach additional sheets if necessary*).

N/A

G-17470

SECTION 3: WELL DEVELOPMENT, CONTINUED

Source (aquifer), if known: _____

Total maximum rate requested: 100 gpm (each well will be evaluated at the maximum rate unless you indicate well-specific rates and annual volumes in the table below).

Complete the table below. If this is an existing well, the following information may be found on the applicable well log. *(If a well log is available, please submit it in addition to completing the table.)* If this is a proposed well, or well-modification, consider consulting with a licensed well driller, geologist, or certified water right examiner.

017470

OWNER'S WELL NAME OR NO.	PROPOSED	EXISTING	WELL ID (WELL TAG) NO.* OR WELL LOG ID**	FLOWING ARTESIAN	CASING DIAMETER	CASING INTERVALS (IN FEET)	PERFORATED OR SCREENED INTERVALS (IN FEET)	SEAL INTERVALS (IN FEET)	MOST RECENT STATIC WATER LEVEL & DATE (IN FEET)	PROPOSED USE			
										SOURCE AQUIFER***	TOTAL WELL DEPTH	WELL-SPECIFIC RATE (GPM)	ANNUAL VOLUME (ACRE-FEET)
The Stables #1	<input type="checkbox"/>	<input checked="" type="checkbox"/>	YAMH 55859	<input type="checkbox"/>	See Log	See Log	See Log	See Log	See Log	See Log	301 feet	100	
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>									
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>									
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>									
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>									
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>									
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>									
	<input type="checkbox"/>	<input type="checkbox"/>		<input type="checkbox"/>									

* Licensed drillers are required to attach a Department-supplied Well Tag, with a unique Well ID or Well Tag Number to all new or newly altered wells. Landowners can request a Well ID for existing wells that do not have one. The Well ID is intended to serve as a unique identification number for each well.
 ** A well log ID (e.g. MARI 1234) is assigned by the Department to each log in the agency's well log database. A separate well log is required for each subsequent alteration of the well.
 *** Source aquifer examples: Troutdale Formation, gravel and sand, alluvium, basalt, bedrock, etc.

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SECTION 4: WATER USE

USE	PERIOD OF USE	ANNUAL VOLUME (ACRE-FEET)
Quasi-Municipal	Year Round	See Form M

Exempt Uses: Please note that 15,000 gallons per day for single or group **domestic** purposes and 5,000 gallons per day for a single **industrial or commercial** purpose are exempt from permitting requirements.

For irrigation use only:

Please indicate the number of primary and supplemental acres to be irrigated (*must match map*).

Primary: _____ Acres Supplemental: _____ Acres

List the Permit or Certificate number of the underlying primary water right(s): _____

Indicate the maximum total number of acre-feet you expect to use in an irrigation season: _____

- If the use is **municipal or quasi-municipal**, attach **Form M** (*Attached*)

- If the use is **domestic**, indicate the number of households: _____

If the use is **mining**, describe what is being mined and the method(s) of extraction: _____

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SECTION 5: WATER MANAGEMENT

A. Diversion and Conveyance

What equipment will you use to pump water from your well(s)?

Pump (give horsepower and type): 7-1/2 HP submersible

Other means (describe): _____

Provide a description of the proposed means of diversion, construction, and operation of the diversion works and conveyance of water. _____

B. Application Method

What equipment and method of application will be used? (e.g., drip, wheel line, high-pressure sprinkler)

Water meters will be installed for home domestic use with a rate schedule for water purchase and use.

Homes will have efficient water fixtures. Domestic irrigation will use drip irrigation or next-most efficient system possible.

C. Conservation

Please describe why the amount of water requested is needed and measures you propose to: prevent waste; measure the amount of water diverted; prevent damage to aquatic life and riparian habitat; prevent the discharge of contaminated water to a surface stream; prevent adverse impact to public uses of affected surface waters.

See Form M

SECTION 6: STORAGE OF GROUND WATER IN A RESERVOIR

If you would like to store ground water in a reservoir, complete this section (*if more than one reservoir, reproduce this section for each reservoir*).

G-77470

Reservoir name: N/A Acreage inundated by reservoir: _____

Use(s): "Bladder-tanks" maintain pressure on the system. A variable frequency drive (VFD) is on the pump so adjusts as demand fluctuates. The VFD may turn off if there is sufficient water and pressure in the bladder tanks.

Volume of Reservoir (acre-feet): _____ Dam height (feet, if excavated, write "zero"): _____

Note: If the dam height is greater than or equal to 10.0' above land surface AND the reservoir will store 9.2 acre feet or more, engineered plans and specifications must be approved prior to storage of water.

SECTION 7: USE OF STORED GROUND WATER FROM THE RESERVOIR

If you would like to use stored ground water from the reservoir, complete this section (*if more than one reservoir, reproduce this section for each reservoir*).

Annual volume (acre-feet): N/A

USE OF STORED GROUND WATER	PERIOD OF USE
N/A	

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SECTION 8: PROJECT SCHEDULE

Date construction will begin: April 1, 2011

Date construction will be completed: October 1, 2014

Date beneficial water use will begin: October 1, 2015

SECTION 9: REMARKS

Use this space to clarify any information you have provided in the application (*attach additional sheets if necessary*).

Well/water right will be used to supply water for quasi-municipal purposes to 16 residential dwellings and watering appurtenant lawns and landscaping and provide fire protection.

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Land Use Information Form



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NOTE TO APPLICANTS

In order for your application to be processed by the Water Resources Department (WRD), this Land Use Information Form must be completed by a local government planning official in the jurisdiction(s) where your water right will be used and developed. The planning official may choose to complete the form while you wait, or return the receipt stub to you. Applications received by WRD without the Land Use Form or the receipt stub will be returned to you. Please be aware that your application will not be approved without land use approval.

This form is NOT required if:

- 1) Water is to be diverted, conveyed, and/or used only on federal lands; **OR**
- 2) The application is for a water right transfer, allocation of conserved water, exchange, permit amendment, or ground water registration modification, and **all** of the following apply:
 - a) The existing and proposed water use is located entirely within lands zoned for exclusive farm-use or within an irrigation district;
 - b) The application involves a change in place of use only;
 - c) The change does not involve the placement or modification of structures, including but not limited to water diversion, impoundment, distribution facilities, water wells and well houses; **and**
 - d) The application involves irrigation water uses only.

NOTE TO LOCAL GOVERNMENTS

The person presenting the attached Land Use Information Form is applying for or modifying a water right. The Water Resources Department (WRD) requires its applicants to obtain land-use information to be sure the water rights do not result in land uses that are incompatible with your comprehensive plan. Please complete the form or detach the receipt stub and return it to the applicant for inclusion in their water right application. You will receive notice once the applicant formally submits his or her request to the WRD. The notice will give more information about WRD's water rights process and provide additional comment opportunities. You will have 30 days from the date of the notice to complete the land-use form and return it to the WRD. If no land-use information is received from you within that 30-day period, the WRD may presume the land use associated with the proposed water right is compatible with your comprehensive plan. Your attention to this request for information is greatly appreciated by the Water Resources

Land Use Information Form



Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, Oregon 97301-1266
(503) 986-0900
www.wrd.state.or.us

Applicant: Coyote Creek Group, LLC and Hiland Water Corp.

First

Last

Mailing Address: 700 Deborah Road, Suite 200

Newberg

City

OR

State

97132

Zip

Daytime Phone: (503) 538-8311

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A. Land and Location

Please include the following information for all tax lots where water will be diverted (taken from its source), conveyed (transported), and/or used or developed. Applicants for municipal use, or irrigation uses within irrigation districts may substitute existing and proposed service-area boundaries for the tax-lot information requested below.

Township	Range	Section	¼ ¼	Tax Lot #	Plan Designation (e.g., Rural Residential/RR-5)	Water to be:			Proposed Land Use:
3S	3W	14	NE SE	3100	EFU-20	<input checked="" type="checkbox"/> Diverted	<input checked="" type="checkbox"/> Conveyed	<input checked="" type="checkbox"/> Used	Residential
3S	3W	14	SE SE	3100		<input checked="" type="checkbox"/> Diverted	<input checked="" type="checkbox"/> Conveyed	<input checked="" type="checkbox"/> Used	//
						<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input type="checkbox"/> Used	
						<input type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input type="checkbox"/> Used	

List all counties and cities where water is proposed to be diverted, conveyed, and/or used or developed:

Yamhill County for diversion, conveyance and use.

B. Description of Proposed Use

Type of application to be filed with the Water Resources Department:

- Permit to Use or Store Water
 Water Right Transfer
 Permit Amendment or Ground Water Registration Modification
 Limited Water Use License
 Allocation of Conserved Water
 Exchange of Water

Source of water: Reservoir/Pond Ground Water Surface Water (name) _____

Estimated quantity of water needed: 100 cubic feet per second gallons per minute acre-feet

Intended use of water: Irrigation Commercial Industrial Domestic for _____ household(s)
 Municipal Quasi-Municipal Instream Other _____

Briefly describe:

Water is pumped from an existing well to a storage tank. Bladder tanks maintain pressure. Up to 16 homes will be served.

Note to applicant: If the Land Use Information Form cannot be completed while you wait, please have a local government representative sign the receipt at the bottom of the next page and include it with the application filed with the Water Resources Department.

See bottom of Page 3. →

For Local Government Use Only

The following section must be completed by a planning official from each county and city listed unless the project will be located entirely within the city limits. In that case, only the city planning agency must complete this form. This deals only with the local land-use plan. Do not include approval for activities such as building or grading permits.

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Please check the appropriate box below and provide the requested information

- Land uses to be served by the proposed water uses (including proposed construction) are allowed outright or water regulated by your comprehensive plan. Cite applicable ordinance section(s): _____.
- Land uses to be served by the proposed water uses (including proposed construction) involve discretionary land-use approvals as listed in the table below. (Please attach documentation of applicable land-use approvals which have already been obtained. Record of Action/land-use decision and accompanying findings are sufficient.) **If approvals have been obtained but all appeal periods have not ended, check "Being pursued."**

Type of Land-Use Approval Needed (e.g., plan amendments, rezones, conditional-use permits, etc.)	Cite Most Significant, Applicable Plan Policies & Ordinance Section References	Land-Use Approval:	
Site design review (SOR-0711)	402.02(f)	<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input checked="" type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued
		<input type="checkbox"/> Obtained <input type="checkbox"/> Denied	<input type="checkbox"/> Being Pursued <input type="checkbox"/> Not Being Pursued

Local governments are invited to express special land-use concerns or make recommendations to the Water Resources Department regarding this proposed use of water below, or on a separate sheet.

Name: _____ Title: Stephanie Armstrong, Associate Planner
 Signature: [Signature] Phone: 503-434-7516 Date: 5/5/11

Government Entity: Yamhill County

Note to local government representative: Please complete this form or sign the receipt below and return it to the applicant. If you sign the receipt, you will have 30 days from the Water Resources Department's notice date to return the completed Land Use Information Form or WRD may presume the land use associated with the proposed use of water is compatible with local comprehensive plans.

Receipt for Request for Land Use Information

Applicant name: _____

City or County: _____ Staff contact: _____

Signature: _____ Phone: _____ Date: _____

Date _____

(For staff use only)



Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, Oregon 97301-1266
(503) 986-0900
www.wrd.state.or.us

WE ARE RETURNING YOUR APPLICATION FOR THE FOLLOWING REASON(S):

- SECTION 1: _____
- SECTION 2: _____
- SECTION 3: _____
- SECTION 4: _____
- SECTION 5: _____
- SECTION 6: _____
- SECTION 7: _____
- SECTION 8: _____
- SECTION 9: _____
- Land Use Information Form _____
- Provide the legal description of: (1) the property from which the water is to be diverted, (2) any property crossed by the proposed ditch, canal or other work, and (3) any property on which the water is to be used as depicted on the map.
- Fees _____

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SALEM, OREGON

MAP

- Permanent quality and drawn in ink
- Even map scale not less than 4" = 1 mile (example: 1" = 400 ft, 1" = 1320 ft, etc.)
- North Directional Symbol
- Township, Range, Section, Quarter/Quarter, Tax Lots
- Reference corner on map
- Location of each well, and/or dam if applicable, by reference to a recognized public land survey corner (distances north/south and east/west). Each well must be identified by a unique name and/or number.
- Indicate the area of use by Quarter/Quarter and tax lot clearly identified
- Number of acres per Quarter/Quarter and hatching to indicate area of use if for primary irrigation, supplemental irrigation, or nursery
- Location of main canals, ditches, pipelines or flumes (if well is outside of the area of use)
- Other _____

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Authorization Permitting Access
May 3, 2011

JUN 16 2011
WATER RESOURCES DEPT
SALEM, OREGON

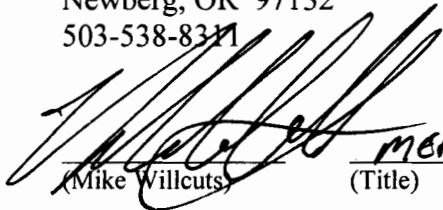
I, Coyote Creek Group LLC am the OWNER of the tax lots described in the Land Use Information Form incorporated as part of this Water Use Permit Application. Said tax lots have been replatted as "The Stables at Coyote Run" as shown in the attached map. Yamhill County approved this development pursuant to a Measure 37 ruling which, among other things, requires that a community water system be developed rather than development of a well for each individual lot or combination of lots up to three lots per well.

The Hiland Water Corporation is the current and proposed owner of the community water system consisting, or to consist of, a well, storage tank, pressure tanks, pumps, water mains, water meters, service lines and ancillary facilities. Mr. Melvin Olson is the President of the Hiland Water Corporation.

I hereby authorize access for Mr. Olson, and any Hiland Water Corporation employees, contractors and other persons associated with the water system or its business and for Mr. Olson's successors in interest, if any, to construct, operate, maintain and perform any other duties associated with said water system on and within the lands, roads and rights-of-way comprising The Stables at Coyote Run.

If the Oregon Water Resources Department has any questions concerning this Access Authorization, I may be contacted at the address below:

Coyote Creek Group, LLC
700 Deborah Road, Ste. 200
Newberg, OR 97132
503-538-8311



(Mike Willcuts) MEMBER
(Title)

5-5-11

(Date)



Oregon Water Resources Department

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WATER RESOURCES DEPT
SALEM, OREGON

FORM M

FOR MUNICIPAL AND QUASI MUNICIPAL WATER SUPPLIES

Unless otherwise noted, water use information should be in acre-feet per year (AFY).
1 acre-foot is equal to 325,851 gallons.

Background Information

Name of water supplier: Hiland Water Corporation - The Stables

Name and size of area to be served: Coyote Run - The Stables; 16 subdivision lots; 41.3 acres
(in square miles)

Present population of service area: 12 persons
(Contact county planning staff, if needed.)

Projected population in 20 years: 48 - based upon build-out of 16 lots at 4 persons per lot
(Cite source and year. For example: "20,595 Based upon 1995 Portland State University projections.")

List present water rights and permits held:

Date of Issuance:	Natural Source of Water:	Amount Permitted:	Utilization:
None. This is a new application			

Water Use

Average **yearly** demand: 8.09 AFY Year: 2014

Per-capita daily consumption (in gallons): 150 gallons per day
(Divide average annual water sales by population to arrive at consumption, then divide by 365 to get daily values.)

Peak season (by month/day): July 1 to September 30 **Total peak season demand:** 4.03 Acre-feet

Peak season per-capita daily consumption: 300 gallons per day
(Divide total peak season demand by population and the number of days during the peak.)

Annual amount of water:

Produced: 8.09 acre-feet or 2,636,531 gallons per year
(diverted or pumped)

Delivered: Same

Is your system fully metered? Yes No

Describe your rate structure: See "F" on page 2 of Form M.

(e.g. flat rate, increasing or decreasing block rate or combination of different systems)

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Request for Water

A. Discuss the reason(s) for your request for additional water

(e.g. loss of current supply, peak demand, growth, or other):

This is the first and only water use application associated with this proposed 16-home development. Thus, there will be no request for additional water at this time.

B. How long is the amount of water requested in this application expected to meet future needs?

(e.g. until the year 2040) For the life of the development - 80 years.

C. Briefly discuss operation of water system and the most constraining component of the system:

At this time, the most constraining component of the system is "storage." We may need to install "constant-on" pumps to maintain pressure or perhaps construct one or more small hydro-pneumatic tanks to supplement the bladder-tanks.

D. Percentage of water use by type:

Residential: and associated irrigation: 100% Commercial: _____

Public Authority: _____ Agricultural: _____

Unaccounted for use: _____ Industrial: _____

Other (specify use): _____

E. List cost to implement proposed request.

Compare cost and benefits with other water supply, or combination of supply options. This should include water efficiency measures such as replacing current showerheads with low-flow types. (Attach documentation, as available.)

We see no comparison of alternatives at this time as we are unable to obtain connections to other subdivision water systems or municipal water systems (we are outside any municipal service areas at this time).

F. How and by how much will your proposed water use efficiency programs increase efficiency?

(Express as a percentage of per-capita consumption.)

We intend to install water meters for each home site. The rate-schedule for water purchase/use will be "conservation-based," i.e., there will be increasing costs and even penalties associated with water use in excess of a base amount each month. Efficient water fixtures will be installed in each home. Domestic irrigation systems will be encouraged to be drip irrigation or the next-most efficient system possible. We will encourage xerascaping. While not fully under our control, these factors should significantly reduce ultimate per-capita per-day demand.

State of Oregon
WATER WELL REPORT (as required by ORS 537.765)

Page 1 of 1

State Well ID L104537
Start Card # 1012626

JUN 16 2011

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SALEM, OREGON

(1) OWNER: Well No. 2705
Name COYOTE CREEK GROUP LLC
Address POB 490
City NEWBERG St OR Zip 97132

(2) TYPE OF WORK: NEW WELL

(3) DRILL METHOD: ROTARY AIR

(4) PROPOSED USE: DOMESTIC

(5) BORE HOLE CONSTRUCTION:

Special Construction Approval NO	Depth of Compl. Well	285 ft
Explosives used NO	Type	Amount
BORE		SEAL
Diam.	From To	Material From To Amount
10	0 101	BENTONITE CHIP 0 50 36 SAX
8	101 277	ANNULAR BACTYL
6	277 301	W/BENTONITE CHI 50 98 14 SAX
		CEMENT 98 277 38 SAX

Seal placement method A AND POURED

Backfill: from 285 ft to 301 ft Material CAVING SLOUGH
Gravel: from ___ ft to ___ ft Size _____

(6) CASING/LINER:

Casing	Diam.	From To	Gauge	Material	Connection
6	6	+3 277	.25	STEEL	WELDED

Liner

Final Location of shoe(s)

(7) PERFORATIONS/SCREENS:

From	To	Slot Size	Number	Diam.	Tels/pipe Size	Casing/liner

(8) WELL TESTS: Minimum testing time is 1 hour
Test type AIR

Yield GPM	Draw-down	Drill stem at	Time
100		285	1 hr.
80		260	1
60		200	1/4

Temperature of water 53F Depth Artesian Flow Found _____
Was water analysis done? YES By whom BLUE H2O
Reason for water not suitable for use MINERAL/IRON
Depth of strata 99

(9) LOCATION OF WELL by legal description:
County YAMHILL Lat. ' ' ' Long. ' ' '
Township 3 S Range 3 W W.M.
Section 23 NE 1/4 NE 1/4
Tax Lot 3100 Lot 16 Block Subdivision
Street Address of Well (or nearest Address)
R3314-3100 COYOTE LOOP NEWBERG, OR

(10) STATIC WATER LEVEL:
62 ft. below land surface. Date 03/21/11
Artesian pressure ___ lb per square in. Date _____

(11) WATER BEARING ZONES:
Depth at which water was first found 7

From	To	Est Flow Rate	SWL
7	13	2	3
99	127	12	DWH
269	301	100	62

(12) WELL LOG:

Material	Ground elevation		SWL
	From	To	
TOP SOIL	0	5	
CLAY, BROWN	5	22	
CLAY, RED	22	45	
CLAY, GRAY	45	54	
CLAY, DARK BROWN	54	88	
CLAY, GRAY W/RED	88	109	
CLAY, BROWN W/OCC RED	109	171	
CLAY/CLAYSTONE W/COLORED GRIT	171	185	
BASALT, DECAVED	185	215	
CLAY, BROWN W/DECAVED BASALT	215	221	
BASALT, DECAVED	221	232	
BASALT, DECAVED BROWN W/SOME GRAY	232	256	
BASALT, RED GRAY W/OCC BROWN	256	269	
BASALT, DECAT W/GRAY SEAMS	269	285	
BASALT, DECAT/BROKEN CAVEY	285	301	

DAVE PAYSINGER, BLUE WATER DRILLING CO.
Date started 03/14/11 Completed 03/21/11

(unbonded) Water Well Constructor Certification: I certify that the work I performed on the construction, alteration, or abandonment of this well is in compliance with Oregon water supply well construction standards. Materials used and information reported above are true to my best knowledge and belief.

Signed _____ WWC Number _____
Date _____

(bonded) Water Well Constructor Certification: I accept responsibility for the construction, alteration, or abandonment work performed on this well during the construction dates reported above. All work performed during this time is in compliance with Oregon water supply well construction standards. This report is true to the best of my knowledge and belief.

Signed *David A. Paysinger* WWC Number 1438
Date 03/22/11

G-17490

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APR 19 2011

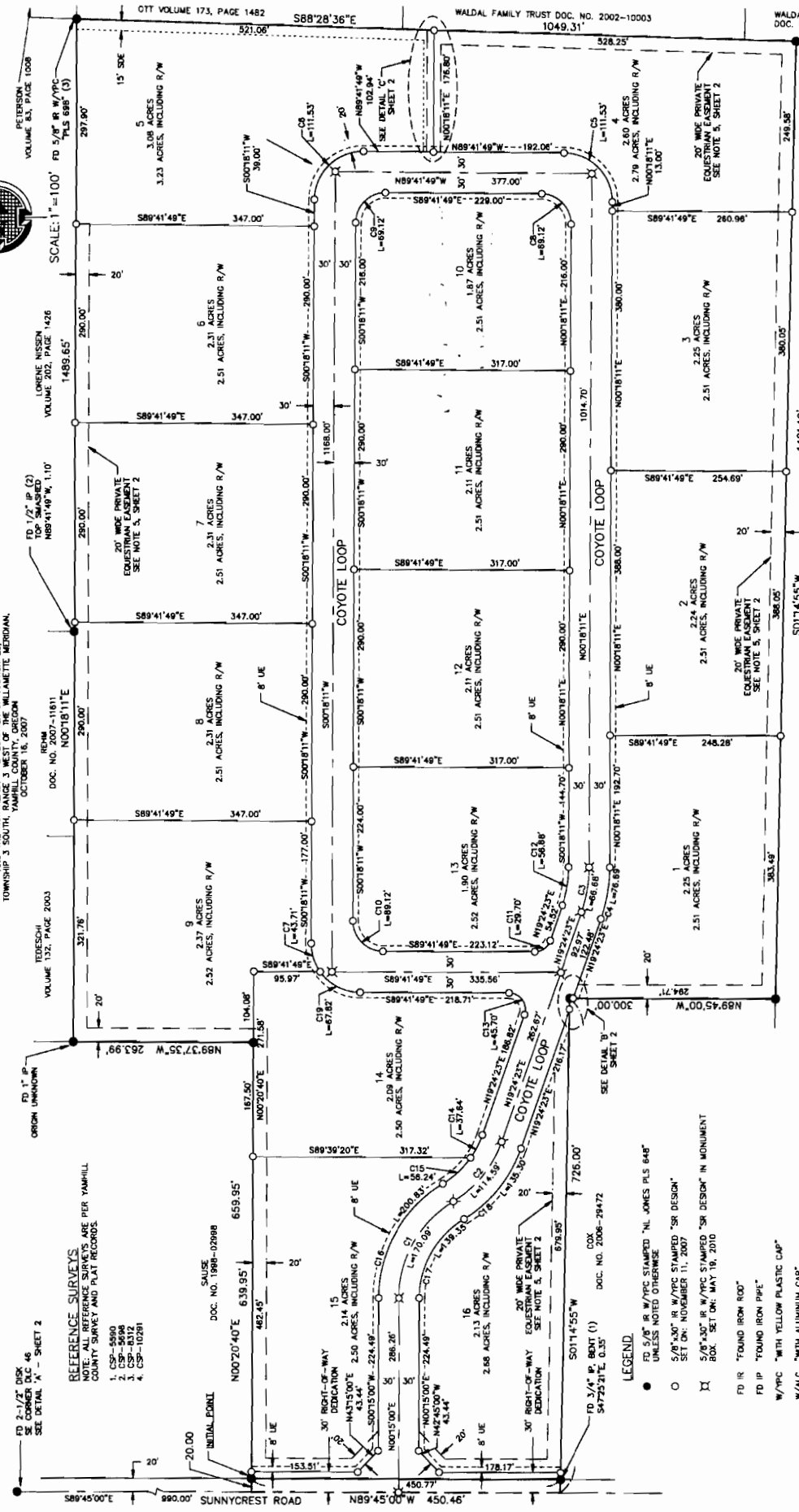
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SALEM, OREGON

Vol 14 P 62
 Received 8/17/2010
 County Surveyor

RECEIVED
 JUN 16 2011

THE STABLES AT COYOTE RUN

A PORTION OF THE HALL D.C. NO. 72, IN THE SOUTHWEST ONE-QUARTER OF SECTION 14, TOWNSHIP 3 SOUTH, RANGE 3 WEST OF THE WILLAMETTE MERIDIAN, YAMHILL COUNTY, OREGON
 OCTOBER 16, 2007



WATER RESOURCES DEPT
 SALEM, OREGON



8196 SW Hall Boulevard,
 Salem, Oregon 97308
 phone (503) 469-1213
 fax (503) 469-6553
 www.srdc.com

REGISTERED
 PROFESSIONAL
 LAND SURVEYOR
 OREGON
 JULY 13, 2004
 TOBY G. BOLDEN
 6537

DECEMBER 31, 2011
 RENEWAL DATE

SURVEYOR'S CERTIFICATE
 I, TOBY G. BOLDEN, HEREBY CERTIFY THAT I HAVE CORRECTLY SURVEYED AND MARKED WITH PROPER MONUMENTS THE LAND REPRESENTED ON THE ANNEXED MAP OF "THE STABLES AT THE COYOTE RUN," THE BOUNDARIES OF WHICH ARE MORE PARTICULARLY DESCRIBED AS FOLLOWS: BEGINNING AT THE INITIAL POINT, BEING A "FOUND 5/8" IRON ROD WITH YELLOW PLASTIC CAP MARKED "NL JONES PLS #48", BEING SOUTH 89°45'00" EAST, 99.00 FEET; AND NORTH 00°20'00" WEST, 20.00 FEET; THENCE SOUTH 89°45'00" WEST, 263.89 FEET; THENCE NORTH 00°18'11" EAST, 148.95 FEET; THENCE SOUTH 89°28'38" EAST, 1048.31 FEET; THENCE SOUTH 01°14'55" WEST, 728.00 FEET TO THE CENTERLINE OF SUNNYCREST ROAD; THENCE SOUTH 01°14'55" WEST, 728.00 FEET TO THE CENTERLINE OF SUNNYCREST ROAD; THENCE ALONG SAID CENTERLINE, CONTAINING 4185 ACRES, INCLUDING RIGHT-OF-WAY.

AS PER O.R.S. 92.020(2), I ALSO CERTIFY THAT THE DELAYED MONUMENTATION OF THE REMAINING MONUMENTS WILL BE ACCOMPLISHED WITHIN 90 DAYS OF THE DATE OF THIS RECORDING. THE REMAINING MONUMENTS WILL BE ACCOMPLISHED FOLLOWING THE RECORDING OF THIS PLAN, WHO-EVER COMES FIRST, IN ACCORDANCE WITH O.R.S. 92.060.

JOHNSON
 DOC. NO. 1988-02787

REFERENCE SURVEYS
 NOTE: ALL REFERENCE SURVEYS ARE PER YAMHILL COUNTY SURVEY AND PLAT RECORDS.
 1. CSP-5990
 2. CSP-5998
 3. CSP-10281
 4. CSP-10281

RECESS/
 VOLUME 132, PAGE 2003
 DOC. NO. 2007-11011
 N0071811"E
 290.00'

RECESS/
 VOLUME 132, PAGE 2003
 DOC. NO. 2007-11011
 N0071811"E
 290.00'

RECESS/
 VOLUME 132, PAGE 2003
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 VOLUME 132, PAGE 2003
 DOC. NO. 2007-11011
 N0071811"E
 290.00'

RECESS/
 VOLUME 132, PAGE 2003
 DOC. NO. 2007-11011
 N0071811"E
 290.00'

G-17470

SHEET 1 OF 2
 FD 2-1/2" DISK
 SEE DETAIL A - SHEET 2

LEGEND
 ● FD 5/8" IR W/TPC STAMPED "NL JONES PLS #48" UNLESS NOTED OTHERWISE
 ○ 5/8"X30" IR W/TPC STAMPED "SR DESIGN" SET ON: NOVEMBER 11, 2007
 ⊠ 5/8"X30" IR W/TPC STAMPED "SR DESIGN" IN MONUMENT BOX, SET ON: MAY 10, 2010
 FD IR "FOUND IRON ROD"
 FD IP "FOUND IRON PIPE"
 W/TPC "WITH YELLOW PLASTIC CAP"
 W/ALC "WITH ALUMINUM CAP"
 SEE "STORM DRAINAGE EASEMENT-SEE NOTE 6, SHEET 2"
 UE "UTILITY EASEMENT"
 DRG "DESTROYED BY CONSTRUCTION"

CURVE	RADIUS	DELTA	CHORD	CHORD	CHORD
			LENGTH	DELTA	LENGTH
C1	106.00	98.42	170.09	528.26	182.74
C2	188.00	89.43	114.59	1035.10	272.84
C3	200.00	18.96	66.88	1029.51	56.42
C4	230.00	18.96	76.89	1029.51	56.42
C5	71.00	80.00	111.33	1443.41	106.41
C6	71.00	80.00	111.33	1443.41	106.41
C7	71.00	80.00	111.33	1443.41	106.41
C8	44.00	80.00	66.12	1443.41	106.41
C9	44.00	80.00	66.12	1443.41	106.41
C10	44.00	80.00	66.12	1443.41	106.41

YAMHILL COUNTY CLERK RECORDING STAMP

OFFICE: YAMHILL COUNTY RECORDS
 REBECCA STEIN DOLL, COUNTY CLERK
 201011054
 \$81.00
 REC-PPR Cnt1 s1-w2 RWLTR
 08/12/2010 02:11:57 PM
 \$45.00 \$10.00 \$11.00 \$15.00

COUNTY APPROVALS
 APPROVED THIS 20th DAY OF July, 2010
 YAMHILL COUNTY SURVEYOR
 APPROVED THIS 9th DAY OF August, 2010
 YAMHILL COUNTY PLANNING DIRECTOR
 APPROVED THIS DAY OF DAY OF 20th, 2010
 YAMHILL COUNTY ENGINEER
 APPROVED THIS DAY OF DAY OF 20th, 2010
 YAMHILL COUNTY SANITARIAN

8-12-2010
 YAMHILL COUNTY COMMISSIONER
 8-12-2010
 YAMHILL COUNTY COMMISSIONER

PURSUANT TO O.R.S. 82.095, ALL TAXES, FEES, ASSESSMENTS OR OTHER CHARGES HAVE BEEN EITHER PAID OR BONDED AS OF THIS 30 DAY OF August, 2010

RECEIVED
 JUN 16 2011
 WATER RESOURCES DEPT
 SALEM, OREGON



8196 SW Hall Boulevard,
 Suite 232
 Beaverton, Oregon 97008
 phone (503) 469-1213
 fax (503) 469-8553
 www.srdllc.com
 Planning | Surveying | Landscape Architecture

REGISTERED PROFESSIONAL LAND SURVEYOR
 OREGON
 ASST. SURVEYOR
 TOBY C. BOLDEN
 603.777
 DECEMBER 31, 2011
 RENEWAL DATE

THE STABLES AT COYOTE RUN

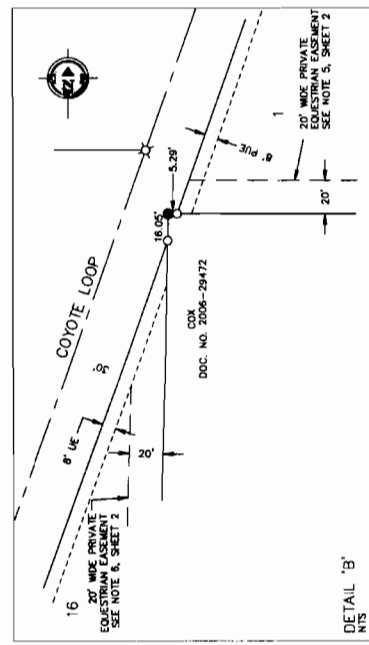
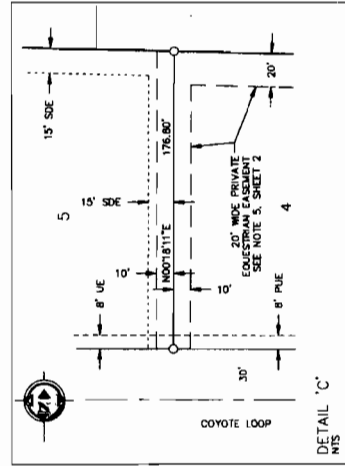
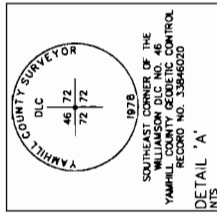
A PORTION OF THE HALL DLC NO. 72, SOUTHEAST ONE-QUARTER OF SECTION 14, TOWNSHIP 3 SOUTH, RANGE 3 WEST OF THE WILLAMETTE MERIDIAN, YAMHILL COUNTY, OREGON
 OCTOBER 16, 2007

NARRATIVE

THIS SURVEY IS TO SUBDIVIDE THAT TRACT OF LAND CONNECTED TO SHALLENBARGER EASTMAN TRACT DEED RECORDED IN VOLUME 87 PAGE 844 YAMHILL COUNTY DEED RECORDS. FOR MY BASIS OF BEARINGS, I HELD SOUTH 07°14'55" WEST ALONG THE WEST LINE OF SAID EASTMAN TRACT PER SURVEY NO. CS-12365, YAMHILL COUNTY SURVEY RECORDS.

NOTES

- BOUNDARY DETERMINATION AND BASIS OF BEARINGS PER CS-12365.
- THIS SUBDIVISION IS SUBJECT TO THE COVENANTS, CONDITIONS AND RESTRICTIONS AS RECORDED IN INSTRUMENT NO. 201011055, YAMHILL COUNTY RECORDS.
- LOTS SHOWN ON THIS PLAT WERE AUTHORIZED BY WAIVERS OF LAND USE REGULATIONS BY YAMHILL COUNTY AND THE STATE OF OREGON PURSUANT TO ORS 197.352, 2005 REPLACEMENT PART (MEASURE 37). YAMHILL COUNTY WAIVER IS FOUND IN BOARD ORDER CS-760, RECORDED IN THE YAMHILL COUNTY DEED AND RECORDS. THIS SURVEY IS SUBJECT TO THE COVENANTS, CONDITIONS AND RESTRICTIONS AND REPRESENTATIONS OR WARRANTIES AS TO THE TRANSFERABILITY OF THE LOTS OR ANY DEVELOPMENT RIGHTS RELATED TO THE LOTS.
- THERE SHALL BE AN EIGHT FOOT WIDE UTILITY EASEMENT OVER ALL LOTS ALONG ALL STREET FRONTAGES.
- THE 20 FOOT WIDE EQUESTRIAN EASEMENT IS FOR THE BENEFIT OF LOTS 1 THROUGH 16.
- THE STORM DRAINAGE EASEMENT OVER LOT 5 IS A PRIVATE STORM DRAINAGE EASEMENT FOR THE BENEFIT OF LOTS 1 THROUGH 16.
- NO SEWERAGE, PUBLIC UTILITY, COMMUNITY WATER OR FLOOD CONTROL SYSTEM SHALL BE LOCATED OR PLACED ON ANY OF THE LOTS.



SHEET 2 OF 2

DECLARATION
 I, MICHAEL R. WILLOUTS, MEMBER OF COYOTE CREEK GROUP, LLC IS THE OWNER OF SAID LAND AND I HEREBY CERTIFY THAT THE COYOTE RUN WIDE PRIVATE EQUESTRIAN EASEMENT HAS BEEN HEREBY DEDICATED TO THE PUBLIC FOR PUBLIC USE. ALL STREET RIGHTS-OF-WAY AND ALSO DO HEREBY GRANT ALL EASEMENTS FOR THE PURPOSES AS SHOWN OR NOTED ON SAID MAP.

MICHAEL R. WILLOUTS, MEMBER
 COYOTE CREEK GROUP, LLC



ACKNOWLEDGMENT

STATE OF OREGON }
 COUNTY OF YAMHILL }
 THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON JUNE 24, 2010
 BY MICHAEL R. WILLOUTS, MANAGING MEMBER OF COYOTE CREEK GROUP, LLC.
 LEONA TODD
 NOTARY PUBLIC FOR OREGON (PRINT NAME)
 COMMISSION NO. 014724 BY COMMISSION EXPIRES DEC. 3, 2011

CONSENT AFFIDAVIT

A SUBDIVISION CONSENT AFFIDAVIT BY SAMUEL W. EASTMAN AND MILDRED EASTMAN, BENEFICIARY PER INSTRUMENT NO. 200906299, YAMHILL COUNTY RECORDS, HAS BEEN RECORDED AS INSTRUMENT NO. 201011055, YAMHILL COUNTY RECORDS.

CONSENT AFFIDAVIT

A SUBDIVISION CONSENT AFFIDAVIT BY MARY GRACE JOHNSON, AS TRUST DEED BENEFICIARY PER INSTRUMENT NO. 200906299, YAMHILL COUNTY RECORDS, HAS BEEN RECORDED AS INSTRUMENT NO. 201011055, YAMHILL COUNTY RECORDS.

G-17470

All lots

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JUN 16 2011

WATER RESOURCES DEPT
SALEM, OREGON



After recording return to:
Coyote Creek Group LLC
P.O. Box 490
Newberg, OR 97132

Until a change is requested all tax statements
shall be sent to the following address:
Coyote Creek Group LLC
P.O. Box 490
Newberg, OR 97132


File No.: 1032-683385 (JLW)
Date: September 30, 2009

THIS SPACE RESERVED FOR RECORDER'S USE

OFFICIAL YAMHILL COUNTY RECORDS
REBEKAH STERN DOLL, COUNTY CLERK

200916155

\$51.00



00335260200900161550030034

10/08/2009 02:32:04 PM

DMR-DDMR Cnt=1 Stn=2 ANITA
\$15.00 \$10.00 \$11.00 \$15.00

STATUTORY WARRANTY DEED

Samuel W. Eastman and Mildred Eastman, as tenants by the entirety, Grantor, conveys and warrants to **Coyote Creek Group, LLC, an Oregon limited liability company**, 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. 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.
2. The **2009-2010** Taxes, a lien not yet payable.

The true consideration for this conveyance is **\$1,705,320.00**. (Here comply with requirements of ORS 93.030)

FIRST AMERICAN TITLE

G17470

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JUN 16 2011

WATER RESOURCES DEPT
SALEM, OREGON

APN: 70611

Statutory Warranty Deed
- continued

File No.: 1032-683385 (JLW)
Date: 09/30/2009

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, OF CHAPTER 424, OREGON LAWS 2007. 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, OF CHAPTER 424, OREGON LAWS 2007.

Dated this 7th day of October, 20 09.

Samuel W. Eastman
Samuel W. Eastman

Mildred Eastman
Mildred Eastman

STATE OF Oregon)
)ss.
County of Yamhill)

This instrument was acknowledged before me on this 7th day of October, 20 09
by **Samuel W. Eastman and Mildred Eastman.**



Janet Winder
Notary Public for Oregon
My commission expires: 5/6/2013

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JUN 16 2011

WATER RESOURCES DEPT
SALEM, OREGON

File No.: 1032-683385 (JLW)
Date: 09/30/2009

APN: 70611

Statutory Warranty Deed
- continued

EXHIBIT A

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

Being a part of the D.L.C. of Malinda Hall and the Heirs at Law of Mathew Hall, deceased, Notification No. 1775, Claim No. 72 in Sections 13, 14, 23, and 24, Township 3 South, Range 3 West of the Willamette Meridian in Yamhill County, Oregon, said part being particularly described and bounded as follows, to-wit:

BEGINNING at a point which is 32.59 chains North and 11.00 chains East of the SE corner of the D.L.C. of John Williamson and wife, said beginning point being also the NE corner of a tract of land conveyed by L. F. Hall and wife to T. S. Sutton and wife and running thence East 15.90 chains to a point which is 12.732 chains West of the NW corner of a tract of land conveyed by L. F. Hall and wife to N. Bigalow by deed which was duly recorded and is now of record in Volume 38, Page 188 of the Deed Records of said Yamhill County, Oregon; thence running South 32.23 chains to the center of the County Road; thence West 11.38 chains to the SE corner of a tract of land conveyed by L. F. Hall and wife to Ida B. Glick by deed which was recorded and is now of record in Volume 66, Page 105 of the Deed Records of said Yamhill County, Oregon; running thence in a Northerly direction following the East line of the said Ida B. Glick tract of land 10.00 chains; running thence in a Westerly direction following the North line of the said Ida B. Glick tract of land 4.00 chains to the SE corner of the tract of land conveyed by L. F. Hall and wife to George B. Slator and running thence in a Northerly direction following the East line of the said George B. Slator tract of land and the East line of the aforesaid T. S. Sutton and wife tract of land 22.39 chains to the place of beginning.

SAVING AND EXCEPTIONG therefrom that portion conveyed to Samuel W. Eastman and Mildred Y. Eastman, husband and wife in Bargain and Sale Deed recorded March 8, 1991 in Film Volume 252, Page 1388, Deed and Mortgage Records of Yamhill County, Oregon.

Lots 4, 5, 6 + 9

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JUN 16 2011

WATER RESOURCES DEPT
SALEM, OREGON



After recording return to:
Patrick M. Casey and Susan K. Casey
3206 NW Van Buren
Corvallis, OR 97330

Until a change is requested all tax statements shall be sent to the following address:
Patrick M. Casey and Susan K. Casey
3206 NW Van Buren
Corvallis, OR 97330


File No.: 1031-1609721 (JLW)
Date: August 04, 2010

THIS SPACE RESERVED FOR RECORDER'S USE

OFFICIAL YAMHILL COUNTY RECORDS
REBEKAH STERN DOLL, COUNTY CLERK

201011061

\$51.00



00353982201000110610030036

08/12/2010 02:37:22 PM

DMR-DDMR Cnt=1 Stn=2 ANITA
\$15.00 \$10.00 \$11.00 \$15.00

FIRST AMERICAN TITLE 1609721

STATUTORY WARRANTY DEED

Coyote Creek Group, LLC, an Oregon limited liability company, Grantor, conveys and warrants to **Patrick M. Casey and Susan K. Casey, Husband and Wife**, Grantee, the following described real property free of liens and encumbrances, except as specifically set forth herein:

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

Lots 4, 5, 6 and 9, The Stables at Coyote Run, Yamhill County, Oregon

Subject to:

1. 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 **\$500,000.00**. (Here comply with requirements of ORS 93.030)

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WATER RESOURCES DEPT

File No.: 1031-160971 (AW) OREGON

Date: 08/04/2010

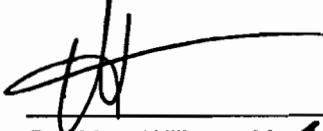
APN:

Statutory Warranty Deed
- continued

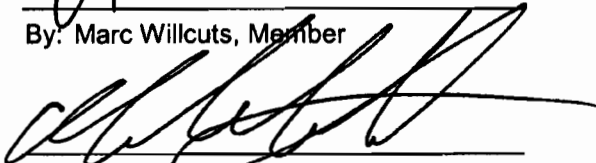
BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, OF CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009. THIS INSTRUMENT 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, OF CHAPTER 424, OREGON LAWS 2007, AND SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009.

Dated this 12 day of August, 2010.

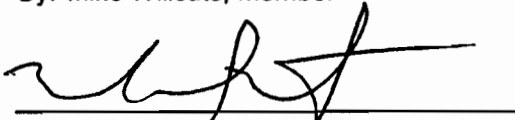
Coyote Creek Group, LLC, an Oregon limited liability company



By: Marc Willcuts, Member



By: Mike Willcuts, Member



By: Matt Willcuts, Member

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WATER RESOURCES DEPT

File No.: 1034150072 (RECORD)
Date: 08/04/2010

APN:

Statutory Warranty Deed
- continued

STATE OF Oregon)
)ss.
County of Yamhill)

This instrument was acknowledged before me on this 12 day of August, 20 10
by Marc Willcuts as Member of Coyote Creek Group, LLC, on behalf of the limited liability company.



Janet L. Winder
Notary Public for Oregon
My commission expires: 5/6/2013

G-17470

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JUN 16 2011

WATER RESOURCES DEPT
SALEM, OREGON

FILED
STATE OF OREGON
YAMHILL COUNTY
TRIAL COURT

09 MAY 13 PM 3:51

TRIAL COURT ADMINISTRATION

BY _____

ENTERED

Count Decision
Approving Measure 37 claim

IN THE CIRCUIT COURT FOR THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

SAMUEL AND MILDRED EASTMAN, individuals
residing in the State of Oregon,

Petitioners,

v.

YAMHILL COUNTY, OREGON, a public
Municipality, by and through the Board of
Commissioners of Yamhill County, and
Timothy S. Sadlo, a.k.a, "Todd Sadlo"
Independent Vesting Officer,

Respondents.

Case No.: CV08-0516

GENERAL JUDGMENT



This matter came before the Court on Petitioners' Petition for Writ of Review in which
Petitioners sought judicial review of Respondents' decision under Yamhill County Ordinance
823 dated September 15, 2008 made by and through Independent Vesting Officer Timothy S.
Sadlo (the "Vesting Decision"). The Vesting Decision found that, pursuant to Yamhill County
Ordinance 823, and interpreting the common law of vesting and Oregon Laws Chapter 424

PAGE 1 - GENERAL JUDGMENT

Buckley LeChevallier, P.C.
Three Centerpointe Drive, Suite 250
Lake Oswego, Oregon 97035

Telephone (503) 620-8900 - Facsimile (503) 620-4878

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WATER RESOURCES DEPT
SALEM, OREGON

1 §5(3) (2007), Petitioners did not have a vested right to complete and continue the use described
2 in the Measure 37 waivers. Petitioners appeared through their attorney, Charles E. Harrell, of
3 BUCKLEY LECHEVALLIER P.C. Respondents Yamhill County, Oregon by and through its Board
4 of Commissioners and Timothy "Todd" Sadlo, appeared through Rick Sanai, Yamhill County
5 Assistant Counsel. The Court reviewed the Record, the Petition and the memoranda filed by
6 the parties. The parties waived oral argument. The Court issued a letter ruling dated May 8,
7 2009, attached hereto as Exhibit "1" (the "Letter Opinion"). In the Letter Opinion, the Court
8 held that the Vesting Decision was modified or amended as follows:

9
10 A. The Court found that a final, un-appealed land use decision is not necessary for
11 or a pre-condition to a finding that the subdivision use is vested under the common law and that
12 Petitioners have a constitutional, vested right to complete and continue the subdivision use
13 allowed in the Valid Measure 37 Waivers;

14 B. The Court found that a final, un-appealed land use decision is not necessary for
15 or a pre-condition to a finding/determination that the subdivision use is vested under Oregon
16 common law and Ordinance 823, that the absence of a final, un-appealed land use decision is
17 irrelevant to the vesting determination under Ordinance 823, and that Petitioners have a vested
18 right to complete and continue the subdivision use allowed in the Valid Measure 37 Waivers.

19
20 C. The Court found, with regard to Ordinance 823, Section 4.01 as applied in the
21 Vesting Decision, that the existence or absence of a final, un-appealed land use decision is not a
22 basis for finding/determining whether the Petitioners have a common law vested right as of
23 December 6, 2007 to complete and continue the subdivision use described in the Valid Measure
24 37 Waivers and that Petitioners have a vested right to complete and continue the subdivision
25 uses allowed in the Valid Measure 37 Waivers;

26
PAGE 2 – GENERAL JUDGMENT

Buckley LeChevallier, P.C.
Three Centerpointe Drive, Suite 250
Lake Oswego, Oregon 97035

Telephone (503) 620-8900 – Facsimile (503) 620-4878

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WATER RESOURCES DEPT
SALEM, OREGON

1 D. The Court found, with regard to Ordinance 823, Section 4.01(1) as applied in the
2 Vesting Decision, that the costs of clearing and grading, road improvements and installation of
3 stormwater systems and other development costs as part of the amount of money spent on
4 developing the subdivision use shall be included as part of the equation and ratio under
5 Ordinance 823, Section 4.01(1), and that this factor weighs in favor of a finding that Petitioners
6 have a vested right to continue and complete the subdivision use allowed under the Valid
7 Measure 37 Waivers;

8 E. The Court found that there is substantial evidence in the whole record that the
9 costs of clearing and grading, road improvements and installation of stormwater systems and
10 other development costs as part of the amount of money spent on developing the subdivision
11 use, totaling over \$414,390, shall be included as part of the equation and ratio under Ordinance
12 823, Section 4.01(1), and that there is substantial evidence in the whole record that the ratio test
13 does aid and construe in favor of the Petitioners in this case because all of the physical costs of
14 the development were incurred in good faith by virtue of being legally authorized and permitted
15 actions at the time they were taken, and that there is substantial evidence in the whole record
16 that this factor weighs in favor of a finding that Petitioners have a vested right to continue and
17 complete the subdivision use allowed under the Valid Measure 37 Waivers;

18 F. The Court found that the Petitioners do not need an objectively reasonable basis,
19 objective color of claim of right or the authority of an un-appealed preliminary plat approval in
20 order to establish that they are or were proceeding in good faith under Ordinance 823, Section
21 4.01(2), and that the Petitioners have proceeded in good faith in all respects and that the "good
22 faith" equities are in favor of the Petitioners, and that this factor weighs in favor of a finding
23
24
25
26

PAGE 3 – GENERAL JUDGMENT

*Buckley LeChevallier, P.C.
Three Centerpointe Drive, Suite 250
Lake Oswego, Oregon 97035*

Telephone (503) 620-8900 – Facsimile (503) 620-4878

G-17470

RECEIVED

JUN 16 2011

WATER RESOURCES DEPT
SALEM, OREGON

1 that Petitioners have a vested right to continue and complete the subdivision use allowed under
2 the Valid Measure 37 Waivers;

3 G. The Court found that there is substantial evidence in the whole record that the
4 Petitioners do not need an objectively reasonable basis, objective color of claim of right or the
5 authority of an un-appealed preliminary plat approval in order to establish that they are or were
6 proceeding in good faith under Ordinance 823, Section 4.01(2), that there is substantial
7 evidence in the whole record that the Petitioners have proceeded in good faith in all respects
8 and that the "good faith" equities are in favor of the Petitioners, and that there is substantial
9 evidence in the whole record that this factor weighs in favor of a finding that Petitioners have a
10 vested right to continue and complete the subdivision use allowed under the Valid Measure 37
11 Waivers;

12
13 H. The Court found that the Petitioners are not required to reach some relevant
14 "finish line" such as a preliminary or final plat approval or the filing of a final recorded plat
15 prior to the effective date of Measure 49, in order to justify as legitimate most of the
16 expenditures made to develop the Real Property, and specifically the costs to improve the roads
17 and to install the stormwater and septic systems, in order to establish that they are proceeding
18 in good faith under Ordinance 823, Section 4.01(2), that the Petitioners' construction-related
19 expenditures in this case were provident and, because a preliminary decision of the Yamhill
20 County Board of Commissioners approving a subdivision is presumptively correct (even on
21 appeal absent a stay), were not evidence of a race to vest, and that this factor weighs in favor of
22 a finding that Petitioners have a vested right to continue and complete the subdivision use
23 allowed under the Valid Measure 37 Waivers;
24
25
26

PAGE 4 – GENERAL JUDGMENT

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1 I. The Court found that, with regard to Ordinance 823, Section 4.01(3) as applied
2 in the Vesting Decision, the Petitioners had no knowledge or notice of the proposed change in
3 law (HB 3540) prior to beginning development, that the Petitioners began development under
4 the Valid Measure 37 Waivers no later than November 30, 2006, that the alleged risk of
5 subsequent denial of the underlying land use application is not relevant to the vesting
6 determination of Ordinance 823, and that this factor weighs in favor of a finding that the
7 Petitioners have a vested right to continue and complete the subdivision use allowed under the
8 Valid Measure 37 Waivers;

9
10 J. The Court found that, with regard to Ordinance 823, Section 4.01(5) as applied
11 in the Vesting Decision, the kind of use, location and cost of the subdivision use is consistent
12 with the surrounding properties and uses, that the equities should be construed in favor of the
13 Petitioners, and that this factor weighs in favor of a finding that Petitioners have a vested right
14 to continue and complete the subdivision use allowed under the Valid Measure 37 Waivers;

15 K. The Court found that, with regard to Ordinance 823, Section 4.01(6) as applied
16 in the Vesting Decision, that a final, un-appealed land use approval is not necessary or relevant
17 to this factor, that the Petitioners' acts and actions rise beyond mere contemplated use or
18 preparation, that the equities should be construed in favor of the Petitioners, and that this factor
19 weighs in favor of a finding that Petitioners have a vested right to continue and complete the
20 subdivision use allowed under the Valid Measure 37 Waivers;

21
22 L. The Court found that, with regard to Ordinance 823, Section 4.01(6) as applied
23 in the Vesting Decision, there is substantial evidence in the whole record that a final, un-
24 appealed land use approval is not necessary or relevant to this factor, that there is substantial
25 evidence in the whole record that the Petitioners' acts and actions rise beyond mere
26

PAGE 5 – GENERAL JUDGMENT

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WATER RESOURCES DEPT
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1 contemplated use or preparation, that the equities should be construed in favor of the
2 Petitioners, and that there is substantial evidence in the whole record that this factor weighs in
3 favor of a finding that Petitioners have a vested right to continue and complete the subdivision
4 use allowed under the Valid Measure 37 Waivers;

5 M. The Court found that, as a matter of law and with regard to Ordinance 823,
6 Section 4.01 (all factors) as applied in the Vesting Decision, Measure 49 provided affirmative
7 notice to Petitioners of the right to continue to develop the subdivision use described and
8 authorized in the Valid Measure 37 Waivers until December 6, 2007;

9
10 N. The Court found that, with regard to Ordinance 823, Section 4.01 (all factors) as
11 applied in the Vesting Decision, the fact that Petitioners did not have a final, un-appealed land
12 use decision prior to December 6, 2007 is not a negative factor to be weighed against
13 Petitioners or that prevents Petitioners from being found to have a vested right to continue and
14 complete the subdivision use allowed under the Valid Measure 37 Waivers as of December 6,
15 2007;

16 O. The Court found that, with regard to Ordinance 823, Section 4.01 (all factors) as
17 applied in the Vesting Decision, the fact that Petitioners did not have a final land use decision
18 by December 6, 2007, is irrelevant to all factors or a vesting determination.
19

20
21 IT IS HEREBY ORDERED AND ADJUDGED as follows:

22 1. The September 15, 2008 Vesting Decision of Vesting Officer Timothy S. Sadlo is
23 modified or amended as provided in paragraphs A through O above and the holdings are
24 incorporated herein as if set forth in full.
25
26

PAGE 6 – GENERAL JUDGMENT

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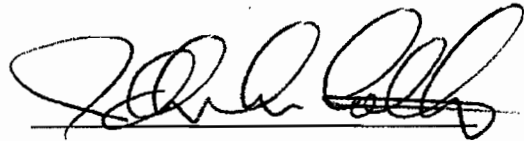
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- 1 2. Petitioners Samuel and Mildred Eastman have a vested right under Yamhill County
2 Ordinance 823 to continue all construction and development necessary to complete and
3 then continue the subdivision and residential uses consistent with the Yamhill County
4 Board Order 05-760 (Measure 37) and State of Oregon Amended Final Order M118505
5 (Measure 37).
6 3. Pursuant to Yamhill County Ordinance 823, Section 8, Petitioners Samuel and Mildred
7 Eastman's vested right to continue and complete the use(s) described in their Measure
8 37 Order "runs with the land" and is freely transferable.
9 4. Attorneys' fees and costs are not allowed to any party.
10

11
12 DATED: May 12, 2009

13
14 

15 THE HONORABLE JOHN L. COLLINS
16 CIRCUIT COURT JUDGE

17 Submitted by:
18 Charles E. Harrell, OSB No. 012761
19 Of Attorneys for Petitioners

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21
22
23
24
25
26

PAGE 7 – GENERAL JUDGMENT

*Buckley LeChevallier, P.C.
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THE CIRCUIT COURT OF THE STATE OF OREGON
TWENTY-FIFTH JUDICIAL DISTRICT
YAMHILL COUNTY

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WATER RESOURCES DEPT
SALEM, OREGON

JOHN L. COLLINS
PRESIDING JUDGE

Yamhill County Courthouse
McMinnville, Oregon 97128
Phone (503) 434-7497
FAX (503) 435-3067

May 8, 2009

Mr. Charles Harrell
Attorney at Law
Three Centerpointe Drive, Suite 250
Lake Oswego, Or 97035

SENT BY E-MAIL AND USPS

Mr. Rick Sanai
Assistant County Counsel
535 NE Firth Street
McMinnville, Or 97128

RE: *Samuel and Mildred Eastman v. Yamhill County*, CV08-0516

Counsel:

Petitioners seek review of a Measure 49 vesting decision of the county made by the county's duly appointed vesting officer, Todd Sadlo. Petitioner submitted a brief. The county opted to stand on the decision of the vesting officer and did not submit a response brief. Oral argument was waived by both sides. I have reviewed petitioner's brief and record submitted. This letter constitutes the court's findings, conclusions and ruling.

Background. The parties have agreed upon the factual background and summary of the record set forth in petitioner's trial memorandum. The court accepts that agreement and adopts that background and summary.

Analysis. Petitioner submits 12 claims of error.¹ This court could analyze each claim, but almost all have one common theme: The Vesting Officer misconstrued applicable law and/or made a decision not supported by substantial evidence by concluding that the right to complete construction on the properties was not vested because the Eastmans had not obtained an un-appealed final plat approval.

As noted by petitioner, this court has analyzed this same issue in prior rulings, most notably *Kroo v. Yamhill County and DLCD*, CV08-0398. Rather than repeat that analysis, that opinion is incorporated into this opinion by this reference and is attached hereto. The background and record in *Kroo* is not distinguishable from the background and record in this case in any way that would change the outcome. If anything, the Eastmans have a more favorable set of facts supporting vesting, but for the vesting officer's application of the plat approval factor.

I conclude that the vesting officer misconstrued the law by concluding that the right to complete construction on the properties was not vested because the Eastmans had not obtained an un-appealed plat approval. When this error is extirpated from the vesting officer's analysis, the factors in Ordinance 823 clearly support a finding that the Eastmans have established a vested right to continue the development of the subject real property under

¹ The last claim is numbered 13. However, I do not find a claim 6.

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SCANNED

Date: 05-13-09

Sent to: alexis

principles of common law.

Ruling: I decline exercise this court's discretionary authority to remand the decision to the vesting officer because it is clear that but for the misapplication of the law the record would support a finding that the Eastmans established a vested right to continue development of the property under principles of common law.

The decision of the County, through its duly appointed vesting officer, is modified or amended consistent with paragraph numbered 2 on page 54 of their petition. The vesting officer misconstrued the applicable law and that error was woven though the vesting officer's decision.

Mr. Harrell, you may submit the judgment.

Sincerely,



JOHN L. COLLINS
Presiding Judge



THE CIRCUIT COURT OF THE STATE OF OREGON
TWENTY-FIFTH JUDICIAL DISTRICT
YAMHILL COUNTY

JOHN L. COLLINS
PRESIDING JUDGE

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February 26, 2009

Mr. Samuel R. Justice
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SALEM, OREGON

Mr. Rick Sanai
Assistant County Counsel
535 NE. Fifth Street
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Ms. Darsey Staley
Assistant Attorney General
1162 Court Street NE
Salem, OR 97301-4096

Re: *John and Elizabeth Kroo v. Yamhill County (BOC) and State of Oregon DLCD, CV08-0398*

Counsel and Parties:

Introduction. This matter comes before the court on judicial review of a Measure 49 vesting decision as authorized by ORS 195.318 and declaratory judgment regarding vesting-related issues. Specifically, petitioners seek review, and declaratory relief, regarding a decision by the county vesting officer, Mr. Sadlo, in which he concluded that the Kroos (landowners) had failed to establish a common law vested right to complete and continue development of their real property in accordance with waivers obtained pursuant to Measure 37. The development in question is located on Yamhill County land which became subject to agricultural or forest use restrictions after the Kroos acquired the property.

The court heard oral argument from the parties and took the matter under advisement in order to more thoroughly study the briefs, arguments and record of the proceeding leading to the vesting decision. Unfortunately, the intervention of numerous other matters has delayed completion of the analysis and this opinion.

General Background. The stated purpose of Measure 49 is to “modify Ballot Measure 37 (2004) to provide that Oregon law provides just compensation for unfair burdens while retaining Oregon’s protections for farm and forest uses and the state’s water resources.” As noted in a prior opinion of this court, the method by which Measure 49 modified Measure 37 is “not gentle.” All Measure 37 rights were extinguished.¹ New options were created which may, or may not, allow use and/or continued development of property the landowners contemplated under Measure 37 waivers.

¹ See, *Frank v. DLCD*, 217 Or App 498 (2008); *Corey v. DLCD*, 344 Or 457 (2008); *Cyrus et al v. BOC of Deschutes County*, ___ Or App ___ (slip opinion, February 18, 2009).

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John and Elizabeth Kroo v. Yamhill County and DLCD - Page 2 JUN 16 2011

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In furtherance of Measure 49, Section 5(3), the Board of Commissioners, on December 21, 2007, enacted Ordinance 823 establishing a process whereby Measure 49 vested rights claims were to be reviewed by a duly appointed "County Vesting Officer" to determine if the right to use and/or continue development of a use had become vested. That ordinance delegates exclusive authority to the vesting officer for vested rights decisions and sets forth criteria arising from *Clackamas County v. Holmes*, 265 Or 193 (1973), the sentinel case on "vested rights". Attorney Todd Sadlo was appointed vesting officer.

As stated, the Kroos sought a determination that the landowner established a common law vested right to continue an existing use of their property that was authorized under Measure 37, or complete a use of that property that was begun prior to December 6, 2007, where that use or completion of that use is consistent with the Measure 37 waivers.

On matters of judicial review, it is important to note what *is* and *is not* in issue. This is not a question of whether this court agrees or disagrees with the decision of the vesting officer. This is not an appeal, nor is it *de novo* review where the court has latitude to substitute its own assessment of the facts. It is a judicial review of the vesting officer's decisions for correct application of the law, jurisdiction and sufficiency of the evidence in support of factual findings or conclusions.²

On petition for review "burden of proof" is not so much an issue. One does not "prove" an error of law, though one might have to *persuade* the court that one or more such errors were, or were not, made. One does not "prove" that a fact-finder did not have "sufficient evidence", though one might persuade the court that findings of fact were or were not supported by evidence from which a reasonable person could make the finding made by the vesting officer.

On judicial review there is no specific burden of proof *or* persuasion, just review by the court. Each side has opposing arguments: petitioners seek to persuade the court that there was an error of law and/or insufficient evidence to support one or more findings; respondents seek to persuade the court that there was not an error of law and/or sufficient evidence. It is that simple. If I am wrong about this issue, I would say that given the presumption that the law has been followed, that any burden of *persuasion* would at least initially be on petitioners and the court approached the analysis here with the concept that the decision below is presumed valid unless the court is persuaded otherwise.

The court also owes no deference to the tribunal whose decision is under review except insofar as there may be a presumption that the law was followed.³ This review is not akin to appeal or appeal *de novo* where appellate courts give appropriate deference to lower court findings if supported by the record, especially regarding findings of credibility of witnesses whose testimony was observed by the trial court and not the appellate or reviewing court.

Pursuant to ORS 34.010 *et sec*, then, the issue on judicial review, broadly speaking, is whether in the exercise of its function of determining vested rights claims pursuant to Measure 49 and reflected in Yamhill County Ordinance 823, the County,⁴ through its vesting officer, erred in one or more of the following ways:

2 "Substantial evidence", is the "probable cause" of judicial review.. It is an objective standard: "evidence that a reasonable person could accept as adequate to support a conclusion." *Constant Velocity Corp v. City of Aurora*, 136 Or App 81 (1995).

3 *Sanchez v. Clatsop County*, 146 Or App 159 (1997); *Clackamas County v. Marson*, 128 Or App 18 (1994). ORS 40.135.

4 The decisions of Mr. Sadlo become the decisions of the county, so the court may refer to the county as the decision maker.

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- (a) Exceeded its jurisdiction;
- (b) Failed to follow the procedure applicable to the matter before it;
- (c) Made a finding or order not supported by substantial evidence in the whole record;
- (d) Improperly construed the applicable law; or
- (e) Rendered a decision that is unconstitutional.

Common Law Vested Rights: This court, in *Johnson-Abrams-McClure-Gregg-Cook*, ruled that the vesting officer misconstrued the law in deeming a recorded plat to be, *per se*, a completed use. In the court's view, a recorded plat is not a completed use nor is it prerequisite to obtaining a vested right. The basic principle is that landowners may still be entitled to continue and complete development of a residential use of their land consistent with Measure 37 waivers if they have established a vested right to do so under the common law.

The factors in *Holmes* and Ordinance 823 are guidelines, not a "checklist". Though it appears the expenditure factor is the most significant no one factor is determinative. The commencement of construction must have been substantial or substantial costs toward completion of the project must have been incurred. The overarching precept, however, is fairness. The question of whether a landowner has proceeded far enough is an issue of fact to be decided on a case-by-case basis. The factors the vesting officer is to consider in this analysis are as follows:

- 1) *Expenditures Ratio:* The amount of money spent on developing the use in relation to the total cost of establishing the use.
- 2) *Good Faith:* The good faith of the property owner.
- 3) *Notice:* Whether the property owner had notice of the proposed change in law before beginning development.
- 4) *Adaptability:* Whether the improvements could be used for other uses that are allowed under the new law.
- 5) *Use/location/cost:* The kind of use, location and cost of the development.
- 6) *Mere preparation:* Whether the owner's acts rise beyond mere contemplated use or preparation, such as the leveling of land, boring test holes, or preliminary negotiations with contractors or architects.
- 7) *Other:* Other relevant factors.

Factual Background as Established in the Record. This matter involves 31 acres located in the Bald Peak area of north Yamhill County. The property is identified as tax lots 4100 and 3900, and referred to as Mountain Top Estates. The Kroos acquired the property on February 20, 1965. After that time, land use restrictions were enacted by both the county and the state that petitioners assert, and the county and state agree, reduced the fair market value of the property.

On December 2, 2004, Measure 37 became effective and gave the Kroos and others the right to seek compensation for the reduction in value of their land resulting from state and county land use restrictions enacted after the property was acquired. Measure 37 provided that the county and/or state had the option of paying compensation or waiving application of land use restrictions enacted after acquisition of the property.

On September 5, 2005, petitioner filed a Measure 37 claim seeking \$1,925,000 for loss of fair market value to their land based on land use restrictions enacted after their acquisition of the property. The Board of Commissioners accepted that claim, but exercised its option to waive restrictions in lieu of compensation. That waiver allowed the Kroos to "make application to divide the subject property into 10 2.5 acre lots; and ... to establish dwellings on undeveloped lots under land use regulations in effect on February 20, 1965."

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In April, 2006, petitioners began survey work.

On July 25, 2006, DLCD also approved the petitioner's state claim. The state waived application of land use regulations to "the extent that the use was permitted when [Petitioners] acquired the property on February 20, 1965.

On August 1, 2006, the Kroos submitted an application for a subdivision and paid over \$6600 for septic evaluations. Thereafter the Kroos obtained road permits, commissioned studies, obtained planning commission approval of the subdivision and other permits, incurred other expenses and contributed substantial personal labor. All actions were legal and within the scope of their Measure 37 waivers.

On May 23, 2007, the Board issued its final approval of the subdivision. On June 13, 2007, the last day to file an appeal, opponents appealed this decision to LUBA. There was delay in that appeal involving records objections by the opponents. The matter was remanded by LUBA. Additional determinations were made and the matter re-appealed.

The Kroos produced evidence before the vesting officer and in the record before this court that they spent \$166,000 prior to December 6, 2007. Work included, but was not limited to, installation of six septic systems, construction of gravel roads (over relatively steep terrain), obtained fire access approval, contracted additional surveying and engineering, all consistent with applicable laws at the time. All work was approved.

The County's final decision of the subdivision remained on appeal as of December 6, 2007.

Measure 49, Section 5(3) is the key provision that applies to this and similar cases (with editing and dates inserted for simplicity):

A claimant that filed a claim under Measure 37 on or a before June 15, 2007 is entitled to just compensation as provided in a waiver issued before December 6, 2007, to the extent that the claimant's use of the property complies with the waiver and the claimant has a common law vested right on December 6, 2007, to complete and continue the use described in the waiver.

OAR 660-041-0060, applicable to DLCD waivers contains similar language (similarly edited):

Any authorization for a Claimant to use Property without application of a DLCD Regulation provided by a DLCD Measure 37 Waiver expired on December 6, 2007, as did the effect of any order of DLCD denying a Claim. A Claimant may continue an existing use of Property that was authorized under Measure 37, or complete a use of Property that was begun prior to December 6, 2007, only if the Claimant had a common law vested right to complete and continue that use on December 6, 2007, and the use complies with the terms of any applicable Measure 37 waiver.

There is no question the Kroos obtained Measure 37 authorization prior to December 6, 2007. There is substantial evidence in the record to support the vesting officer's finding that the proposed 10-lot subdivision is consistent with the county and State waivers issued to the Kroos.

The question before the vesting officer was whether the Kroos had perfected a common law vested right to complete and continue that use as of December 6, 2007. The vesting officer concluded that they had not done so

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factors in Ordinance 823 must still be determined and weighed.

Expenditure Ratio: According to *Holmes*, the denominator in the ratio is the “total cost of establishing the use.” “Use” is not the submission and final approval of a subdivision plat. It is the completion of the permitted use.⁵ That use must be a residential use permitted at the time the property was purchased and subsequently prohibited by zoning, and it must be consistent with the terms of the Measure 37 waiver that allow the non-conforming use. In general terms applicable to the case here, it means subdivision of the property into smaller lots and establishment of single family dwellings on those lots.

A specific determination of the denominator in each case is not necessarily required. Further, even it is, consideration of the other factors may be so favorable to the landowner that the absence of a denominator is simply not fatal to the ultimate conclusion which requires consideration of *all* factors. The Kroos here did provide substantial evidence of both the numerator and the denominator of the ratio test. The vesting officer erred concluding that appeal of the land use decision precluded application of the expenditure ratio test. The vesting officer further erred in concluding that the Kroos are “not entitled to equitable treatment” because of the appeal.

Petitioners also assert that the vesting officer erred in discounting expenses incurred while the Board’s subdivision approval was on appeal. I conclude that expenditures made in furtherance of development pursuant to Measure 37 waivers, up until December 6, 2007, count. It was a misapplication of the law to discount expenditures based on lack of an unappealed, or post-appeal, final land use approval.

The record appears to prove ample evidence from which the vesting officer could conclude the Kroos met the ratio test, but for the erroneous application of the vesting officer’s “unappealed decision” criteria. The vesting officer concluded, based on substantial evidence, that the Kroos had invested over \$166,000 by December 6, 2007. The vesting officer declined to make a determination as to a denominator, though there was substantial evidence in the record regarding the cost to construct infrastructure and build homes on the lots. Utilizing the facts found by the vesting officer and applying the correct legal standard, the facts taken as a whole present sufficient evidence to support a conclusion that the Kroos met the substantial investment criteria of the expenditure factor.⁶

The vesting officer did not err by failing to consider the “premium” in determining the amount of expenditure/investment by the Kroos. Such “reduction in value” is not a “cost incurred”. As argued by the state in this case, the common law vesting analysis involves expenses actually paid or incurred in furtherance of the use at issue, not expense that theoretically might have been incurred in purchase of the property.

Good Faith Factor: There is substantial evidence in the record to support the vesting officer’s conclusion that all the expenses were legal and incurred in good faith. The Kroos are entitled to presume the validity and correctness of the land use decision regardless of whether opponents express their disagreement by appeal. Stated otherwise, the appeal is the opponents’ right, but does not signal that the Board’s decision was erroneous. That is for LUBA to determine, not the appellants. The Kroos are entitled to rely upon the presumptive validity of the Board’s decision and they did so in good faith.

⁵ See this court’s prior ruling in *Johnson-Abrams-McClure-Gregg-Cook* (November 19, 2008).

⁶ Though Mr. Sadlo did not make the specific finding, ample evidence of both numerator and denominator were presented and, together, establish an expenditure *at least* as substantial as the ratio in the sentinel case, *Holmes*.

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The effect of the vesting officer's decision to discount expenses incurred while the approval was on appeal is to treat those expenditures as if made in bad faith. The vesting officer's own finding contradicts this.

The vesting officer's conclusion that the Kroos acted in good faith is further bolstered by acquisition of the permits, septic evaluations and other actions. The work was done openly and in consultation with Yamhill County.

Notice Factor: This factor is much debated by the parties. It is, in this context, important not to impute one's own perception of the amount of publicity regarding potential restriction of Measure 37 to come out of the legislature and subsequent vote.⁷ It is about what the Kroos perceived and/or a reasonable person would perceive or should be aware of in diligent prosecution of the development of property under these circumstances. The question, once again, on this factor is not whether the court might reach a different conclusion, but rather whether there is substantial evidence in the record to support the conclusions of the vesting officer.

The vesting officer's conclusion regarding this factor is supported by sufficient evidence in the record and favors vesting. The potential of reversal of the Board's decision by LUBA does *not* give the Kroo some additional type of notice of change in the law.

In addition, as stated in the prior decision of this court, Measure 49 actually encourages landowners to continue development to establish a vested right up until December 6, 2007. I conclude that the notice factor does not negate any otherwise qualified expenditures incurred before December 6, 2007, regardless of pending appeal.

Adaptability Factor: The issue here is whether the work performed on the property could be adapted to a conforming use, or one of the two alternatives established by Measure 49 -- express approval to build up to 3 homes or somewhat more complicated approval to develop 4 to 10 homes. Landowners must show before the vesting officer that the restrictions would deprive them of any opportunity to derive reasonable economic value from their investment.⁸ It is significant that what we are talking about is significantly more than the limited development established by Measure 49. The infrastructure established in this case -- streets, utilities, septic systems, *etc.* -- is considerably more consistent with the development the Kroos have described, as opposed to some other permitted use or a use that might be allowed by Measure 49's other remedies.

Furthermore, whether the Kroos could obtain approval for development consistent with the 4 to 10 home provisions of Measure 49 is speculative, at best. Measure 49 does not provide for approval itself, it only leads to a process for obtaining the approval.⁹

Use/Location/Cost Factor: There is nothing in the record that would make this factor weigh against vesting as found by the vesting officer. However, as stated, the vesting officer did misconstrued Ordinance 823 by stating that the equities should generally be construed against an applicant where the applicant has not obtained an unappealed final land use decision and a recorded plat.

⁷ Measure 37 was poorly written, to boot, making the form of revision, or even if it would be revised, contributed to the uncertainty. Also, I am not sure if it is in the record, but the court takes judicial notice that Measure 37 passed by a wide margin.

⁸ If the vesting officer so finds, then the question for this court is whether there is substantial evidence to support that finding and, when considered together with all the other factors a common law vested right has been established.

⁹ It was noted at oral argument that no property had yet qualified for the 10 lot approach in Yamhill County due primarily to water restrictions. The Kroos had, in fact, reduced their plan at one point from a 12 lot subdivision to a 10 lot subdivision in recognition of the restricted availability of water to serve the subdivision.

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This court could remand this matter to the vesting officer for re-evaluation of the expenditures, but only if a specific ratio was found. However, I decline to exercise that discretion because it is abundantly clear that but for the error of law woven through the analysis, the vesting officer would have found a vested right had been established, and that finding would be supported by substantial evidence.

Having ruled for petitioners on this issue, the court could decline to address petitioner's declaratory judgment claim. However, in the interest of avoiding further costs in the event an appellate review of this decision results in a different conclusion, I will address the declaratory judgment claim, at least in part.

Constitutional Issues. Petitioners also contend that the vesting officer's decision was an "unconstitutional application of Ordinance 823 to the Petitioners in this matter in that it impairs contract(s) in violation of Article I, section 21 of the Oregon Constitution". Petitioners also contend that the vesting officer's decision breaches the contractual obligation of the State and County in granting Measure 37 waivers.

The Supreme Court, in *MacPherson v. DAS*, 340 Or 117 (2006), held that Measure 37 did not create contractual obligations limiting the legislature's power to amend the measure's provisions. The voters amended – indeed terminated – Measure 37 in enacting Measure 49. Benefits conferred by legislation may be altered or even eliminated by subsequent legislation.

I respectfully disagree with the decision in *Citizens for Constitutional Fairness v. Jackson County, et al*, No 08-3015-PA (November 12, 2008), insofar that court found that a Measure 37 waiver is a contract between the County/State and the landowner. I do not see Measure 37 as giving a landowner a right to receive monetary compensation. Such payment is the County/State's option, not the landowners. Accordingly, a waiver cannot be a contract because the County/State does not receive consideration in the form of giving up the pursuit of monetary compensation.

Judgment: The decision of the county, through its duly appointed vesting officer, is annulled. The vesting officer misconstrued the applicable law and that error was woven through the vesting officer's decision.

I decline exercise this court's discretionary authority to remand the decision to the vesting officer because it is clear that but for the misapplication of the law the record would support a finding that the Kroos established a vested right to continue development of the property under principles of common law.

Mr. Justice, you may submit a judgment. A draft, of course, should be sent for approval as to form by opposing counsel before submission to the court.

Sincerely,

JOHN L. COLLINS
Presiding Judge

cc: file

G-17470

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/>

June 3, 2011

Coyote Creek LLC
Attn: Marc Willcuts
700 N. Deborah Road
Newberg, OR 97132

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WATER RESOURCES DEPT
SALEM, OREGON

Re: **Docket SDR-09-11, Tax Lot 3314-3100 and -3102 thru -3116**

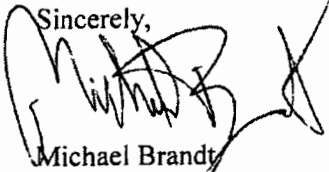
In regards to your application for a site design review for a community water system to supply water to the 16-lot subdivision known as "The Stables at Coyote Run", planning staff has reviewed your application and finds that, with conditions, it complies with the requirements of the *Yamhill County Zoning Ordinance*. Your application for site design review is approved subject to the following conditions:

1. All building and electrical permits required by Yamhill County shall be obtained.
2. The proposal shall comply with the site map submitted with the application (see enclosure).
3. The applicant shall obtain any required permits from the Oregon Water Resources Department and the Yamhill County Health Department.
4. Modification of any of the above conditions requires approval by the Planning Director.

Please be advised that this approval is issued for one year unless substantial construction has taken place before that time. The *Yamhill County Zoning Ordinance* provides for appeal of any action or ruling of the Planning Director to the Board of Commissioners within fifteen (15) days of the decision on a proposed action. Anyone wishing to appeal the Director's decision must file an appeal form, together with a \$250.00 fee, with this Department no later than **5:00 p.m., June 20, 2011**. If no appeal is filed, the Director's decision will be final and this letter will serve as your official notice of decision.

If you have any questions, please contact this office.

Sincerely,



Michael Brandt
Planning Director

Enclosure

cc: Board of Commissioners
Assessor
Public Works
SPO's

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SALEM, OREGON

Staff Report
Yamhill County Planning Department

DATE: May 31, 2011

DOCKET NO.: SDR-09-11

REQUEST: For a site design review for a community water system to supply water to the 16-lot subdivision known as "The Stables at Coyote Run."

APPLICANT: Coyote Creek, LLC

TAX LOT: 3314-3100, and -3102 to 3116

LOCATION: Approximately 1,000 feet east of the intersection of Red Hills Road and Sunnycrest Road, on the north side of Sunnycrest Road, Newberg Oregon

ZONE: EF-20 Exclusive Farm Use

CRITERIA: Section 402.02(F), (S) and 1101.02 of the Yamhill County Zoning Ordinance. Oregon Revised Statute 215.275.

FINDINGS:

A. Background Facts

1. *Lot Size:* The subdivision is made up of 16-lots that vary in size from 1.87 to 3.08 acres.
2. *Access:* Sunnycrest Road borders the southern property line. The road serving the subdivision is Coyote Loop.
3. *On-Site Land Use and Zoning:* The property gently slopes down to the east. The property is predominantly cleared with some trees.
4. *Surrounding Zoning and Land Use:* The surrounding area is zoned EF-20 to the east, AF-10 to the north and west, and VLDR 2.5 to the south. The area is characterized by small scale agriculture and rural residential uses.
6. *Soils:* The Yamhill County Soil Survey shows the majority of the soils, approximately 98%, are composed of Amity (Am) and Woodburn (WuB) soils, which are rated as Class II soils, prime farmland.
7. *Water:* To be provided by an on-site well.
8. *Sewage Disposal:* On-site subsurface septic systems are the only option.

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STAFF REPORT
SDR-09-11, (Coyote Creek, LLC)
Page 2

9. *Fire Protection:* Newberg Rural Fire Department.
10. *Previous Actions:* Samuel and Mildred Eastman filed an application under Measure 37 (2004) to remove, modify or not apply the land use regulations in effect when they first acquired the property. Their claim was approved as detailed in Board Order 05-760. Similarly, the State of Oregon processed and approved a claim from Samuel and Mildred Eastman through Claim No. M118505. Subsequent to these Measure 37 claims a subdivision application was made and approved through Docket S-14-06. In 2007, Measure 49 was passed which modified the Measure 37 approvals unless a project was far enough through the process that it could be found to be "vested". A "vesting" determination was approved through Docket VEST-32-08 which judged that the subdivision was vested so each of the lots could be developed with a single-family dwelling, subject to compliance with relevant health and safety standards (septic and building permits).
11. *Natural Hazards:* No apparent natural hazards.

B. Zoning Considerations

Section 402.02(F) lists utility facilities necessary for public service subject to Section 1101.02, site design review. The applicant is proposing a community water system. The initial application noted 402.03(S) which lists irrigation canals and accessory structures. It appears that processing the community water system as a utility facility would more closely follow the intent of the ordinance. Therefore, staff will review the use under the site design review standards for a utility facility described in 402.02(F) since it is the most comparable option.

Section 402.02(F) of the Yamhill County Zoning Ordinance (YCZO) also states in part: ". . . A facility is "**necessary**" if it must be situated in a farm or forest zone in order for the service to be provided."

The application is subject to criteria set out in ORS 215.275. The language and the criteria as listed in the statute are as follows:

To demonstrate that a utility facility is necessary, an applicant for approval under ORS 215.213 (1)(d) or 215.283 (1)(d) must show that reasonable alternatives have been considered and that the facility must be sited in an exclusive farm use zone due to one or more of the following factors:

- (a) *Technical and engineering feasibility;*

- (b) *The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;*
- (c) *Lack of available urban and non-resource lands;*
- (d) *Availability of existing rights of way;*
- (e) *Public health and safety; and*
- (f) *Other requirements of state or federal agencies.*

The proposed facility is locationally dependent. The well serving the subdivision is located on the southeast corner of the subdivision. The distribution lines need to cross the EF-20 zone in order to provide the service to the lots in the subdivision. While the well could be located across the street in an area zoned for rural residential use, the aforementioned utility lines would still need to cross the EF-20 zone in order to provide the service. Therefore, due to the use being locationally dependent, the use satisfies ORS 215.275(b).

C. Site Design Review

1. Section 1101.02 of the YCZO governs site design review.

Review of a site development plan shall be based upon consideration of the following:

- (1) *Characteristics of adjoining and surrounding uses;*
- (2) *Economic factors relating to the proposed use;*
- (3) *Traffic safety, internal circulation and parking;*
- (4) *Provisions for adequate noise and/or visual buffering from noncompatible uses;*
- (5) *Retention of existing natural features on site;*
- (6) *Problems that may arise due to development within potential hazard areas.*
- (7) *Comments and/or recommendations of adjacent and vicinity property owners whose interests may be affected by the proposed use.*

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STAFF REPORT
SDR-09-11, (Coyote Creek, LLC)

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2. Regarding criterion (1) above, the surrounding area is predominantly rural residences with some farm uses.
3. Regarding criterion (2) above, there have been no identified economic issues that would prevent the applicant from completing the proposed use.
4. Regarding criterion (3) above, the proposed use will not generate any additional traffic to the site and an area for parking is not required.
5. Regarding criterion (4) above, the well, pumphouse and tank are proposed to be near Sunnycrest Road. Based on the proposed location, the use and existing uses in the surrounding area, no conditions requiring noise or visual screening are recommended. The proposed use is not anticipated to create noise beyond what is expected and already existing in the area.
6. Regarding criterion (5) above, the applicants are not proposing to modify any existing natural features.
7. Regarding criterion (6) above, no potential hazard areas have been identified.
8. Regarding criterion (7) above, no comments were solicited because the request is processed as a Type "A" application pursuant to Section 1300 of the Yamhill County Zoning Ordinance. Additional comments will be presented if the decision is appealed. It should be noted that during the hearings related to the subdivision there were concerns related to water supply. A community water system requires more review and monitoring than a well so it was noted as a better option during the hearing process than individual on-site wells.

CONCLUSIONS:

1. This request is for a site design review for a community water system to supply water to the 16-lot subdivision known as "The Stables at Coyote Run."
2. The subject parcel is zoned EF-20, which lists utility facilities subject to Section 1101.02, site design review.
3. The request is consistent with the standards of the Exclusive Farm District and the site design review standards of Section 1101.


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DECISION:

Based upon the above findings and conclusions, the request by Coyote Creek, LLC, for a site design review for a community water system to supply water to the 16-lot subdivision known as "The Stables at Coyote Run", located on Tax Lots 3314-3100 and -3102 thru 3116, is approved subject to the following conditions:

1. All building and electrical permits required by Yamhill County shall be obtained.
2. The proposal shall comply with the site map submitted with the application (see enclosure).
3. The applicant shall obtain any required permits from the Oregon Water Resources Department and the Yamhill County Health Department.
4. Modification of any of the above conditions requires approval by the Planning Director.

DATED AND SIGNED this 2nd day of June, 2011, at McMinnville,
Oregon



Michael Brandt, Planning Director
Yamhill County Planning and Development

MB:kf

F:\Share\SDR\SDR-09-11.SR.wpd

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/>

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NOTICE OF PLANNING DIRECTOR DECISION

Notice is hereby given that the Director of the Yamhill County Department of Planning and Development has approved the request described below.

DOCKET NO.: SDR-09-11

REQUEST: Site design review for a community water system to supply water to the 16 lot subdivision known as "The Stables at Coyote Run".

APPLICANT: Coyote Creek, LLC

TAX LOTS: 3314-3100, and -3102 to 3116

LOCATION: Approximately 1,000 feet east of the intersection of Red Hills Road and Sunnycrest Road, on the north side of Sunnycrest Road, Newberg Oregon

ZONE: EF-20 Exclusive Farm Use

CRITERIA: Section 402.02(F), (S) and 1101.02 *Yamhill County Zoning Ordinance*. Oregon Revised Statute 215.275.

Any aggrieved person(s) wishing to appeal the decision to a hearing before the Board of County Commissioners must file an appeal, together with a \$250.00 fee, stating the ordinance, statute or rule provisions which have not been satisfied. In the event that an appeal is not filed by an affected party, such party waives the right to further appeal. Dated June 4, 2011

**AN APPEAL MUST BE FILED NO LATER THAN
5:00 p.m. June 20, 2011**

For further information, contact Ken Friday at (503) 434-7516.

NOTICE TO MORTGAGEE, LIENHOLDER, VENDOR, OR SELLERS: ORS Chapter 215 requires that if you receive this notice, it must be promptly forwarded to the purchaser.

SDR-09-11

- City UGB
- County Parks
- County Roads
- County Roads
- Planning Tractor Connection
- Tractor Connection Circ...
- Tractor Connection Line...
- Subdivisions Names
- Tractor
- Cartographic Arrows
- right of ways
- tractor lines
- tractor polygons

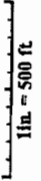
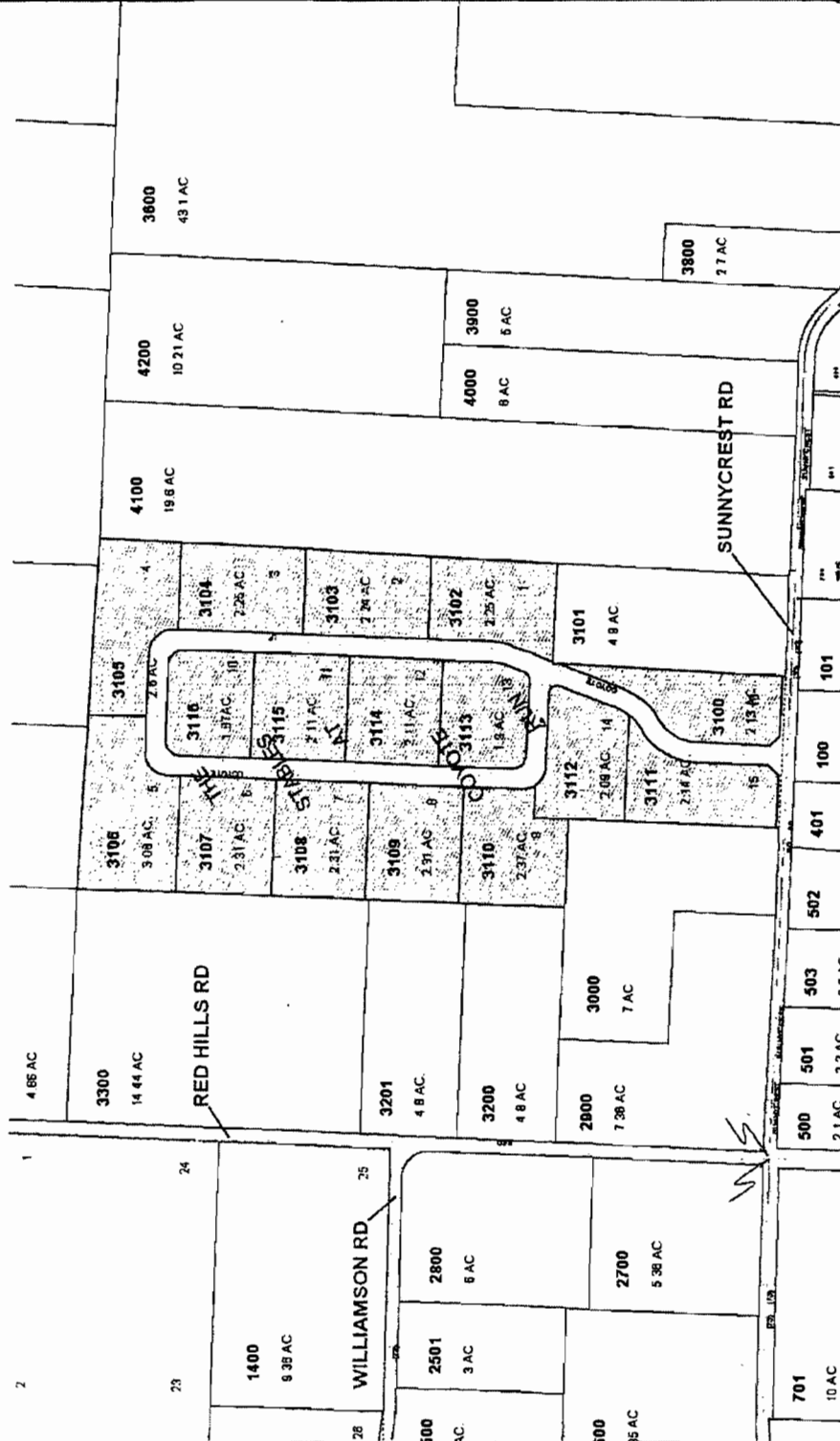
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6/1/2011



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SALÉM, OREGON

WILLIAMSON RD

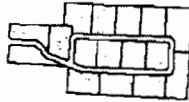
RED HILLS RD

SUNNYCREST RD

HIDDEN SPRINGS RD

RED HILLS RD

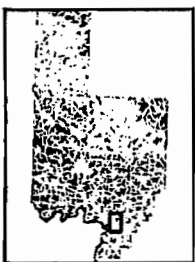
NEWBERG



Yamhill County Map

County Parks
Tenths

1 in. = 2000 ft.



6/1/2011



G-7470

This map was produced using the Yamhill County GIS data. The GIS data is maintained by the county to support its governmental activities. The county is not responsible for map errors, omissions, misuses or misinterpretation.

*Yamhill County BoC
allows development
following "Court Decision"*

BEFORE THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

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WATER RESOURCES DEPT
SALEM, OREGON

In the Matter of the Subdivision Application and Conditional)
Use Application for Yamhill County Tax Lot 3314-3100)
On Sunnycrest Road and Authorizing Sixteen (16) Lots And) **ORDINANCE 839**
Dwellings, Applicant Coyote Homes, Inc., representing Property)
Owners Samuel and Mildred Eastman, Docket Nos. S-14-06)
And C-20-07, and Declaring an Emergency.)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the "Board") sat for the transaction of Yamhill County business on July 29, 2009, Commissioners Leslie Lewis and Kathy George being present, and Mary P. Stern being excused.

IT APPEARING TO THE BOARD that Coyote Homes, Inc., representing Samuel and Mildred Eastman initially submitted a Subdivision Application to Yamhill County Department of Planning (Planning Docket Nos. S-14-06 and C-20-07) for a nineteen (19) lot subdivision, which Subdivision Application was later amended to a sixteen (16) lot subdivision and Conditional Use Permit Application for Yamhill County Tax Lot 3314-3100, located on Sunnycrest Road in Yamhill County (the "Subdivision Application"); and

IT APPEARING TO THE BOARD that the sixteen (16) lot Subdivision and Conditional Use Permit Application was approved by the Board on June 20, 2007 as memorialized in Board Order 07-545 and Ordinance No. 811 ("Ordinance 811").

WHEREAS, the Subdivision Application approval contained in Ordinance 811 was appealed to the Land Use Board of Appeals by Marilyn Reeves and Friends of Yamhill County (LUBA Case No. 2007-122) ("Appellants"). Appellants cited five (5) assignments of error in their appeal. LUBA denied three of Appellants' assignments of error, but remanded two (2) assignments of error for further findings. Specifically, LUBA directed Yamhill County to adopt findings regarding the availability of water for the proposed subdivision pursuant to Yamhill County Land Division Ordinance ("LDO") 6.090 and the applicability of Yamhill County's 1959 Subdivision Ordinance; and

WHEREAS, the Board provided due notice and held a public hearing on the remanded issues for the Subdivision Application regarding Yamhill County Land Division Ordinance Section 6.090 and the applicability of the Yamhill County 1959 Subdivision Ordinance on July 15, 2009 and accepted written and oral testimony regarding those limited issues on that date. The Board received written comments and evidence and oral statements in favor of the Subdivision Application from Charles Harrell, attorney for Coyote Homes, Inc., and Samuel and

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SALEM, OREGON

Mildred Eastman and written comments and evidence and oral statements in opposition to the Application from Marilyn Reeves on behalf of Friends of Yamhill County and Mark Bortone and Roz Ott, both adjacent property owners. After due consideration of the Subdivision Application and the testimony and evidence presented, the Board tentatively voted 3 to 0 in favor of granting preliminary approval of the Subdivision Application, incorporating by reference the findings in Ordinance 811 and the findings attached hereto as noted in Exhibit A, NOW, THEREFORE,

IT IS HEREBY ORDAINED BY THE BOARD, that the Amended Subdivision and Conditional Use Application (Planning Docket Nos. S-14-06 and C-20-07) are approved as detailed in the Findings for Approval contained in Ordinance 811 (incorporated herein by reference) and attached as Exhibit "A" hereto and by this reference incorporated herein. This Ordinance, being necessary for the health, safety, and welfare of the citizens of Yamhill County, and an emergency having been declared to exist, is effective upon passage. A map of the affected area is appended as Exhibit "B". A map generally describing the approved subdivision is appended as Exhibit "C".

DONE this 29th day of July, 2009, at McMinnville, Oregon.

ATTEST:

YAMHILL COUNTY BOARD OF COMMISSIONERS:

REBEKAH STERN DOLL
County Clerk

Leslie Lewis

LESLIE LEWIS

By: *Anne Britt*
Deputy Anne Britt



Kathy George

Commissioner: _____
KATHY GEORGE

Unavailable for signature

Commissioner: MARY P. STERN

APPROVED AS TO FORM:

Rick Sanai

Rick Sanai
Assistant County Counsel

FINDINGS AND CONCLUSIONS FOR ORDINANCE 839

Exhibit "A"

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WATER RESOURCES DEPT
SALEM, OREGON

The following findings of fact and conclusions of law are hereby adopted, and are based on substantial evidence and testimony in the record in this matter:

1. The Findings and Conclusions set forth in the Staff Report for the May 23, 2007, Public Hearing are hereby adopted in full, just as if they were set forth verbatim herein, except as specifically provided below. A copy of the said Staff Report is attached hereto as Exhibit "1" and by this reference incorporated herein.
2. The Findings and Conclusions set forth in Yamhill County Board Order 07-545 and Ordinance No. 811 are hereby adopted in full, just as if they were set forth verbatim herein, except as specifically provided below. A copy of the said Board Order and Ordinance is attached hereto as Exhibit "2" and by this reference incorporated herein.
3. The Measure 37 waivers granted in Yamhill County Board Order No. 05-760 and State of Oregon Final Order No. M118505 are vested under Yamhill County Ordinance 824. Specifically, the Board noted and found that Yamhill County Presiding Judge John Collins issued a letter opinion on May 8, 2009 finding that Applicant Samuel Eastman had clearly reached the necessary level for a vesting finding. In fact, instead of remanding the vesting decision to Yamhill County Planning Department for findings consistent with his decision, Judge Collins modified or amended the County's vesting decision by order to find that the Eastman development was vested.
4. Yamhill County Land Division Ordinance ("LDO") 6.090 requires that all "lots within a partition or subdivision shall have an adequate quality and quantity of water to support the proposed use." LDO 6.090 further provides that no "final plat of a subdivision or partition shall be approved unless the Director and engineer have received and accepted" one of three specified certificates of water supply. In lieu of such certificates, when no public or private water supply is available, the final plat must state that "no municipal, public utility, community water supply or private well system will be provided to the purchasers of the lots noted herein." The Board considered the following evidence and testimony in determining that there is an adequate quality and quantity of water to support the proposed use:
 - a) Well logs from the State of Oregon Water Resources Department were provided for the four (4) sections surrounding the subject property dating from 1955 to the present. The well logs revealed that, prior to the 1970s, the average well yield was less than 15 gallons. Starting the 1980s, the average well yield was in excess of 20 gallons, and in the 2000s, the average well yield was in excess of 53 gallons. In fact, the majority wells drilled in the 2000s had yields in excess of 30 gallons. This is substantial

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evidence that supports a finding that there is an adequate quality and quantity of water to support the proposed use.

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SALEM, OREGON

- b) The Applicants submitted written evidence from David Paysinger of Blue Water Drilling dated June 25, 2009 that specifically addressed the water quantity and quality available in the Sunnycrest area. Blue Water Drilling has been drilling wells in Yamhill County for 45 years, and Mr. Paysinger himself has been drilling wells in Yamhill County for 21 years. Mr. Paysinger stated that the deeper wells access the “deeper rock aquifer instead of the shallower alluvial clay aquifer” and that the yields from the deeper rock aquifers usually have better “chemistry and yield.” Further, Mr. Paysinger noted that the deeper wells are “constructed to prevent co-mingling with the shallower aquifer thereby eliminating interference with nearby older and shallower wells.” Mr. Paysinger notes that, in his professional experience and opinion, an adequate quality and quantity of water is available in the Sunnycrest area. The Board found Mr. Paysinger’s evidence and written testimony to be credible and to support a finding that there is an adequate quality and quantity of water to support the proposed use.
- c) The Applicants submitted written evidence from EnviroLogic Resources, Inc., a water and hydrology firm, that provided that, based upon their research and analysis, the vast majority of wells in the study area (the study area was Sections 13, 14, 23 & 24) yielded water (as measured in gallons per minute) far in excess of the amount that is generally considered adequate for domestic water supply. The report noted that over 90% of the wells in the study area produce over 5 gallons per minute and nearly half of the wells produce greater than 25 gallons per minute. 5 gallons per minute and above is generally considered average to above average for domestic water use. After reviewing the well logs that are on file with the Oregon Department of Water Resources for Township 3 South, Range 3 West, Sections 13 and 14 (the same location as the Eastman property), EnviroLogic determined that “an adequate water supply may be available from wells drilled at the development, either in the form of a community water system or individual wells for each lot.” The Board found EnviroLogic’s evidence and written testimony to be credible and to support a finding that there is an adequate quality and quantity of water to support the proposed use.
5. LUBA directed Yamhill County to review LDO 6.090 and how the County applies LDO 6.090 consistent with statutory requirements for public input, and specifically whether LDO 6.090, particularly its first sentence, applies during preliminary or final plat review. The Board determined that the first sentence of LDO 6.090 (All lots within a partition or subdivision shall have an adequate quantity and quality of water to support the proposed use of the land) applies during preliminary plat review and that, as noted above, Applicants had met the necessary burden of proof for this requirement.

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6. The current Land Division Ordinance remains applicable to the Application and one of the current Land Division Ordinance was waived by the Measure 37 claims and the 1959 Subdivision Ordinance is not applicable to the Application. Measure 37 was not a law or even a concept when the current Land Division Ordinance was drafted and amended. Therefore, there was no reason to bifurcate the Land Division Ordinance into two sections: one that deals with health and safety matters and one that deals with design and construction standards; they were both included in the same Land Division Ordinance. However, Measure 37 exempted out health and safety issues, thereby waiving certain portions of the Land Division Ordinance.
7. When the current Land Division Ordinance is compared to 1959 Subdivision Ordinance, it becomes clear that the 1959 Subdivision Ordinance addresses only primarily health and safety issues and was therefore superseded in its entirety by the public health and safety provisions of the current Land Division Ordinance.

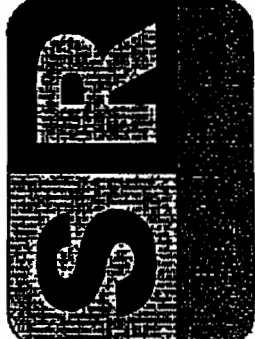
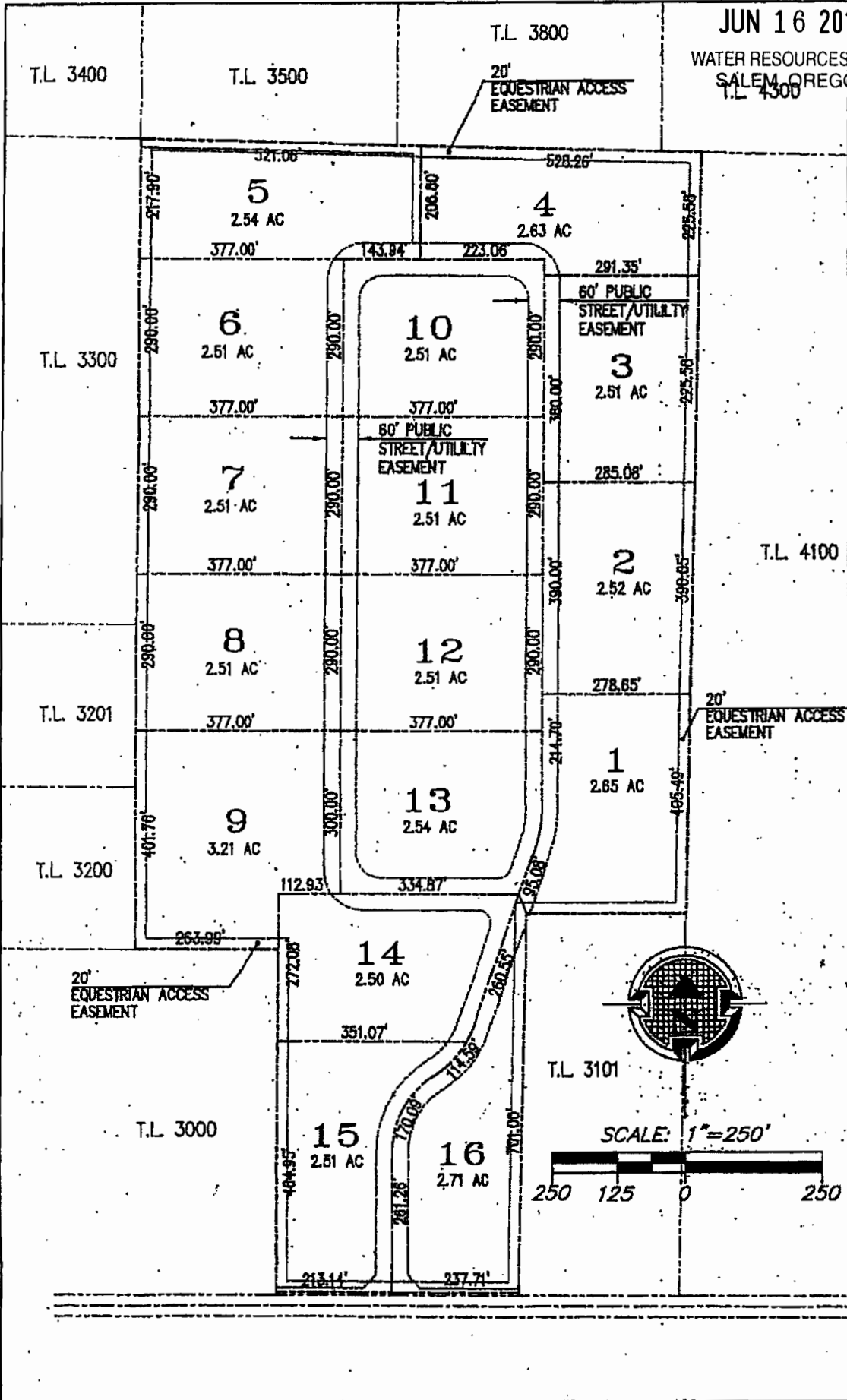
JUN 16 2007

PROJECT NO. CHI-009

WATER RESOURCES DEPT.
SALEM, OREGON
T.L. 4300

DATE: 3/27/2007

BY: S NELSON



8196 SW Hill Boulevard,
Suite 232
Beaverton, Oregon 97008
phone (503) 469-1213
fax (503) 469-9553
www.srdllc.com

PRELIMINARY PLAT
THE STABLES
AT THE COYOTE RUN
SUNNYCREST
YAMHILL COUNTY, OREGON
FOR COYOTE HOMES, INC.

SHEET NO.

EX 1

a-17470

B.O. 09-455

JUN 16 2011

**16-Lot Subdivision and Conditional Use Staff Report
Yamhill County Planning Department**

WATER RESOURCES DEPT
SALEM, OREGON

DATE: Original: November 22, 2006
Supplemental: January 31, 2007
16-Lot Subdivision/Conditional Use: May 1, 2007

DOCKET NO.: S-14-06/C-20-07

REQUEST: The applicant has requested conditional use approval, under the standards in effect in 1971, to allow the creation of 2.5 acre lots. The applicant has also amended the request from a 19-lot subdivision to a 16-lot subdivision on an 41.9 acre property. The proposed lot sizes are 2.5 acres or greater. This application is being made subsequent to the approval of a Measure 37 claim which allows application for development under the land use regulations in effect on December 4, 1971, when the present owner acquired the property. The details of the Measure 37 approval are found in Board Order 05-760 and State Claim M118505.

APPLICANT: Coyote Homes, Inc. representing Samuel and Mildred Eastman

TAX LOT: 3314-3100

LOCATION: Approximately 1,000 feet east of the intersection of Red Hills Road and Sunnycrest Road, on the north side of Sunnycrest Road, Newberg Oregon

ZONE: EF-20 Exclusive Farm Use

CRITERIA: Board Order 05-760 and the *Yamhill County Land Division Ordinance*

COMMENTS: *Yamhill Co. Public Works* - No comment to date.
City of Newberg - There may not be sufficient groundwater supply for this subdivision. Groundwater testing should be required prior to subdivision. Newberg ordinances prohibit connection to the City water supply outside of City limits. The City water supply should not be looked at as a source of water for this subdivision. - Barton Brierley, Planning and Building Director
SWCD - See letter dated October 2, 2006.
Watermaster - The watermaster gave detailed comments related to water rights.
Newberg Fire District - 1. Driveable surface for roadway must be maintained at 20' minimum width. No parking allowed on 20' wide street. Road must meet all fire dept. standards. 2. Road name must also be approved by Newberg Fire. 3. On site water supply required for firefighting purposes. Alternative to this is fire sprinklers installed in all homes with a recorded covenant running with the property. 4. If gate at entrance is installed, must meet access requirements, see fire marshal for details.

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STAFF REPORT

S-14-06/C-20-07, (Coyote Homes representing Eastman) 16-Lot Subdivision/Conditional Use Staff Report

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Page 2

John & Levina Lawson, 11650 NE Red Hills Rd., Dundee- See comments in opposition to application.

Mark Bortnem, 21650 NE Sunnycrest Rd., Newberg - See comment letter dated October 1, 2006.

FINDINGS:

A. Background Facts

1. *Lot Size:* 41.9 acres.
2. *Access:* Sunnycrest Road borders the southern property line. Yamhill County has designated Sunnycrest Road as a major collector.
3. *On-Site Land Use and Zoning:* Currently, the property is zoned EF-20 Exclusive Farm Use. The property gently slopes down to the east. The property is predominantly cleared with some trees.
4. *Surrounding Zoning and Land Use:* The surrounding area is zoned EF-20 to the east, AF-10 to the north and west, and VLDR 2.5 to the south. The area is characterized by small scale agriculture and rural residential uses.
6. *Soils:* The Yamhill County Soil Survey shows the majority of the soils, approximately 98%, are composed of Amity (Am) and Woodburn (WuB) soils, which are rated as Class II soils, prime farmland.
7. *Water:* To be provided by a well.
8. *Sewage Disposal:* On-site subsurface septic systems are the only option.
9. *Fire Protection:* Newberg Rural Fire Department.
10. *Previous Actions:* Samuel and Mildred Eastman filed an application under Measure 37 (2004) to remove, modify or not apply the land use regulations in effect when they first acquired the property. Their claim was approved as detailed in Board Order 05-760. The Board Order states that:

Claimant is authorized to make application to divide the subject property into twenty 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

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WATER RESOURCES DEPT
SALEM, OREGON

STAFF REPORT

S-14-06/C-20-07, (Coyote Homes representing Eastman) 16-Lot Subdivision/Conditional Use Staff Report

Page 3

in effect on December 4, 1971, a use permitted on the subject property at the time the claimant acquired the property.

Similarly, the State of Oregon has processed and approved a claim from Samuel and Mildred Eastman through Claim No. M118505. This claim stated:

In lieu of paying just compensation under ORS 197.352, the State of Oregon will not apply the following laws to Samuel and Mildred Eastman's division of their property into approximately two-acre parcels or to their establishment of dwelling on each parcel: applicable provisions of Statewide Planning Goal 3, ORS 215, and OAR 660, division 33. These land use regulations will not apply to the Eastmans' use of their property only to the extent necessary to allow them to use the property for the use described in this report, to the extent that use was permitted at the time they acquired the property in 1971.

Measure 37 does not allow the local jurisdiction to remove, modify or not apply regulations related to public health and safety. Section 1.(3)(b) of Ordinance 749 defines exempt land use regulations as a regulation that:

(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.

Therefore, Yamhill County health and safety regulations will need to be complied with in evaluating this land division.

11. *Natural Hazards:* No apparent natural hazards.
12. *Taxes:* The property is not receiving farm or forest deferral.
13. On April 2, 2007 the Board of Commissioners met for the purpose of interpreting Ordinance 29. The Board interpreted the "A" Agriculture zone in Board Order 07-289. The Measure 37 claim goes back to a time prior to the adoption of SB 100 (1973) so Subsection J of Board Order 07-289 applies. It states:

Ordinance 29 did not establish minimum lot sizes within an Agricultural Zone A. However, based on the purpose of the zone as stated in Section 3.050, it is reasonable to imply a minimum lot size appropriate for a dwelling in the zone. Thus, the Board finds that the appropriate minimum lot size for a land division allowed by Measure 37 subject to Ordinance 29 before SB 100 became effective is five acres for dwellings allowed as a permitted use and 2.5 acres for dwellings

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allowed as a conditional use. In circumstance where division of a parcel is proposed to separate a dwelling from resource use and the size of the lot containing the dwelling is less than 2.5 acres, the Board finds the division may be allowed as a conditional use following a hearing if the division meets the conditional, use standards in Ordinance 29 and the purpose established for an Agricultural Zone A by Ordinance 29.

After the Board passed the above interpretation, the applicant revised the preliminary plat down from 19 lots to 16 lots and applied for a conditional use approval to create the proposed 2.5 acre lots. The conditional use is considered in Section D of this staff report.

B. Zoning Considerations

1. Presently the property is zoned EF-20 Exclusive Farm Use. However, as noted above the property has received approval through Measure 37 for the property to be developed under the land use regulations in effect at the time the property was acquired by the applicant. The Board of Commissioner's approval of the applicant's Measure 37 claim records an ownership date of December 4, 1971. The subject property was designated as zone "A" Agriculture in 1968.
2. The applicant has applied using the present subdivision standards. The planning staff has tried to evaluate the request keeping in mind that many of the standards would not be applied when the owner first acquired the property. Notably, the measure does not allow the local jurisdiction to remove, modify or not apply regulations related to public health and safety. Section 1.(3)(b) of Ordinance 749 defines exempt land use regulations as a regulation that:

(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.

Therefore, health and safety regulations, like the requirement to have the soil evaluated for the safe installation of a sewage disposal system, will need to be complied with in evaluating this land division. Standards unrelated to health and safety issues will not be required. The following staff report is intended to evaluate the request and determine which of the present standards are health and safety standards that need to be addressed. In certain circumstances there are some suggestions that have been submitted that can not be required but may be listed as suggestions for the applicant to consider. These suggestions will not be required but may be something for the applicant to consider.

Lastly, there have been two letters in opposition to this request. There were many concerns expressed but one overriding concern appears to be providing water to the lots within the

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subdivision. The applicant has indicated that he intends to establish on-site wells for each proposed lot. The drilling of additional wells to support the development would be regulated by the Water Resources Department.

C. Subdivision Ordinance Provisions and Analysis

1. The Yamhill County Land Division Ordinance (LDO) Chapter 6 contains general design standards for subdivisions. Applicable standards will be addressed in the following findings.
2. Section 6.000 of the LDO requires subdivisions to conform with the requirements of the Comprehensive Plan and other ordinances. As noted in Finding A.10, the subject property was granted state and local approval for a claim under Measure 37. The approval directed that the county remove, modify or not apply certain land use regulations so that the applicant can be allowed to develop the property under the regulations in place when it was purchased. The proposed development does not comply with the local comprehensive plan (i.e. preservation of Class I-IV soils for agriculture). However, the local comprehensive plan will not be applied to this property because the plan was a land use regulation adopted after the property was acquired by the applicant.
3. Section 6.010(1) requires that road improvements be completed or proper security posted as specified in Section 13.000. The Planning Department believes the installation and completion of a safe road system is a matter of public safety. While the Public Works Department did not provide a written response to the initial referral, the Public Works Director did meet with the applicant and did talk with County Planning Staff. The Public Works Director stated the applicant will be required to submit an engineered road design that includes a full plan and profile and construction cost estimate for approval by the County Public Works Department. In addition, the applicant will be required to submit a traffic impact study prepared by a traffic engineer and a report from a traffic engineer demonstrating that the new intersection of Sunnycrest Road and the proposed right-of-way will satisfy AASHTO safety standards. Conditions related to the safe design and function of roads will be required on any approval.

The appellant stated in his appeal:

“a. Some valid concerns and recommendations submitted for review were noted in the Staff Report, but were not made approval conditions in the Preliminary Subdivision Approval letter.

b. The content of some valid comments and recommendations were not even included in the analysis portion of the Staff Report.”

When the appellant was in the office reviewing the application he was asked about what “. . . valid concerns (comments) and recommendations. . .” were absent from the staff report. The

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appellant said he could not recall all of them but said one concern was that our office had required a report from a traffic engineer, but the condition did not specify what road improvements would be required. He also desired to see off-site improvements, like intersection improvements to Highway 240. The difficulty with listing specific road improvement requirements is that there needs to be a basis for those requirements, like a report from a traffic engineer. However, the condition was not intended to only require a report. The report is to be the basis for the requirement for road and intersection improvements. This will be noted in the condition. In addition, the Public Works Director will not sign-off on the final plat without these road improvements being in place or a bond set aside for them to be completed. Even if the condition were absent, certain road improvements can be required based on Ordinance 787, Yamhill County Public Safety and Infrastructure.

As for off-site improvements, our office will recommend off-site improvements recommended by the Public Works Director that have some rough proportionality to the overall effect of the proposed development.

4. Section 6.010(2) requires that the subdivision provide for continuation of the principal streets existing in the area. The road does not need to provide for the continuation of the principal streets since there is no street across from, or close to, alignment with the proposed right-of-way. The Public Works Director did express concern about the proposed intersection with the proposed right-of-way and Sunnycrest Road. This intersection needs to be designed by a registered traffic engineer and the design submitted to the Yamhill County Department of Public Works for review and approval. This will be made a condition of approval.
5. Section 6.010(4) indicates that the Planning Director may require an arrangement of lots and streets that will permit a later re-division of the properties. The property is currently outside the urban growth boundary and Urban Reserve Area. In addition, the Newberg Planning Director did not request a shadow plat. Therefore, a shadow plat will not be required.
6. Subsection 6.010(6) and (7) outlines specific road standards for public dedication and easements. County standards require a 20' wide improved surface. The proposed roadway is to be constructed within 60 foot right-of-way. The County Land Division Ordinance requires a 60-foot wide dedicated right-of-way for what was proposed by the applicant. Road dedication and construction standards will be made as conditions on any approval.
7. Subsection 6.010(8) lists the option of property being served by a private drive or easement. The applicant has not proposed a private easement so this subsection does not apply.
8. Subsection 6.015 requires the dedication of additional right-of-way when requested by the Public Works Director. The Director indicated that he is requesting additional right-of-way along Sunnycrest Road. The subsection indicates that the dedication shall bring the half road up

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to a minimum right-of-way width of 30-feet. The half road is presently 20-feet so an additional 10 feet of right-of-way will be required. This will be made a condition on any approval.

9. Subsection 6.030 requires that all lots should form or approximate conventional shapes, with lot side lines running at right angles to the street as far as practical, except for lots on cul-de-sac streets, where side lot lines shall be radial to the curve. The Planning Director does not believe this is a health and safety issue that can be applied to this request. Nonetheless, the lots proposed on the preliminary plat meet the requirements of subsection 6.030.
10. Section 6.030(6) of the LDO requires lot drainage to be designed to the specifications adopted by the Board of Commissioners. A condition of approval will be made that the applicant be required to submit an engineered drainage plan that maintains the natural drainage to the maximum extent possible.
11. Subsection 6.070 deals with lands subject to hazardous conditions. The property is not in the Flood Hazard Overlay zone and is not designated in any hazard area.
12. Subsection 6.090 gives the options for water supply to lots within a subdivision. There were a number of comments submitted related to water supply. The ordinance gives the following four options:
 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*

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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 stated that he plans to establish on-site wells for each lot. Permits for wells would need to be obtained from the Water Resources Department. The applicant has indicated that private wells will provide water for the subdivision and their location and number will be determined prior to filing the final plat. If wells are drilled prior to the final plat, then the applicant will need to submit a map showing the location of the wells and the well report for each well. It should also be noted that the applicant also has option #4 above which allows the applicant to place a disclaimer on the face of the final plat which states that no water system is to be provided. The applicant will be required to comply with one of the options listed above.

13. Subsection 6.100 contains options and requirements for sewage disposal. The provision of adequate sewage disposal is a health and safety issue that is exempt from Measure 37 so it will be required on any approval. No public or city sewer services are available, so each lot will be required to be served by an individual on-site subsurface sewage disposal system. Site evaluations will be required for each lot. The site evaluation is required to assure there is adequate area to locate a septic system so that it will not adversely affect the groundwater in the area. In addition to the drainfield location, the site evaluation also identifies a replacement area for the septic system. Because of the lot size it may be difficult to site a septic system on each newly created parcel. Easements or larger lots may be required. If parcels cannot be served by an on-site system, then the subdivision will still be allowed but certain lots may not be able to be created. An existing system evaluation will be required for the existing dwelling to assure that the system is properly functioning. A site evaluation will be required for each lot to assure there is adequate area for the septic tank and drainfield.
14. Section 6.120 contains requirements and standards for surveying subdivisions. Since all lots will be less than 10 acres in size, a survey complying with these standards will be required.

D. Ordinance 29 Conditional Use Standards

1. Subsection 6 of Ordinance 29 governs conditional use requests. Ordinance 29 does not contain criteria for conditional use approvals. However, conditional uses may have conditions applied to them as noted in the conditional use standards. Subsection 6.010 lists the authority to grant or deny conditional uses:

Section 6.010. Authorization to Grant or Deny Conditional Uses.

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- (1) *Conditional uses listed in this ordinance may be permitted, enlarged, or otherwise altered upon authorization by the planning commission¹ in accordance with the standards and procedures set forth in ARTICLE 6 of this ordinance.*
 - (2) *In permitting a conditional use or the modification of a conditional use, the planning commission may impose in addition to those standards and requirements expressly specified by the ordinance, any additional conditions which the planning commission considers necessary to protect the best interests of the surrounding property or the county as a whole. These conditions may include prescribing a time limit; increasing the required lot size or yard dimensions; limiting the height of buildings; controlling the location and number of vehicular access points to the property; controlling the location and number of off-street parking and loading spaces required; limiting the number, size, and location of signs; and requiring diking, fencing, screening, landscaping, or other facilities to protect adjacent or nearby property.*
 - (3) *In the case of a use existing prior to the effective date of this ordinance and classified in this ordinance as a conditional use, any change in use or in lot area or an alteration of structure shall conform with the requirements dealing with conditional uses.*
 - (4) *The planning commission may require that the applicant for a conditional use furnish the county with a performance bond of up to the value of the cost of the improvement to be guaranteed by such bond, in order to assure that the conditional use is completed according to the plans as approved by the planning commission.*
2. Subsection 6.010(2) allows the decision maker the ability to impose additional standards and requirements expressly specified by the ordinance and any additional conditions that are determined to be necessary to protect the best interests of the surrounding property or the County as a whole. The health and safety conditions of the zoning ordinance are proposed to be applied to the application and are noted in the above section and in the conditions for approval at the end of this report. The other condition that the Board intends to apply to requests for 2.5 acre lots is noted in the interpretation listed in Board Order 07-289(M) as follows:

M. Where authorized by applicable Oregon tax law, any land divisions allowed by virtue of an order granting Measure 37 relief should be subject to disqualification

¹ The Board of Commissioners is the decision making authority on this land use application because the original request was appealed to the Board.

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of special assessment and payment of back taxes if the basis of the disqualification is that the land divisions created non-farm parcels. It is the Board's belief that land divisions subject to Ordinance 29 prior to October 5, 1973 that create lots less than five acres in the Agricultural Zone A are non-farm parcels. Further, it is the Board's belief that land divisions subject to Ordinance 29 on October 5, 1973 through February 11, 1976 that create lots less than 10 acres in the Agricultural Zone A are non-farm parcels. (Underline added)

The property is not receiving farm or forestry deferral. If it had been receiving deferral then a condition would have been placed on any approval requiring the removal of that deferral prior to the creation of the 2.5 acre lots. However, this will not be required as the property is not receiving deferral.

OTHER ISSUES:

One neighbor submitted a nine page letter, with exhibits, outlining issues related to the subdivision. These issues will be discussed below.

Proposed plat design: The neighbor has described in detail what he believes (and what appear) to be dimensional errors on the initial 19-lot preliminary map. The dimensional errors appear to be 20 to 50 feet. These apparent errors have been passed on to the applicant and will need to be fixed prior to the filing of the final plat. The opponent requested that a new plat be required to be submitted with a reduced number of lots. This was submitted by the applicant. It should be remembered though that the preliminary map is just that, preliminary. The first condition on any preliminary approval will state that, "The final plat shall substantially conform to that of the preliminary map." Dimensional adjustments frequently occur at the final plat stage and are allowed as long as the final plat substantially conforms to that of the preliminary map.

Lot size: The operative language in the applicant's Measure 37 claim is as follows:

"Claimant is authorized to make application to divide the subject property into 20 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 December 4, 1971, a use permitted on the subject property at the time claimant acquired the property."

Therefore, based on the Measure 37 approval the applicant can apply to divide the property into a maximum of 20 lots. The Board of Commissioners has interpreted the A Agriculture zone of Ordinance 29 to allow 5-acre lots as a permitted use and 2.5 acre lots with conditional use approval. The applicant has amended the request from 19-lots to 16-lots measuring a minimum of 2.5 acres and has submitted a conditional use approval to create the 2.5 acre lots.

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Sewage disposal systems: As noted in Finding B.12 above, a site evaluation will be required for each proposed lot. The opponent detailed concerns about nearby water supplies that may be in close proximity to the proposed septic systems. The location of existing wells and streams are items that are considered with the site evaluation inspection. These will be considered and addressed prior to final plat approval. As noted above, if proposed parcels cannot accommodate the septic system then easements or reconfiguration of the lots will be necessary. If the septic system still can not be accommodated, then the lot will not be allowed to be created.

Groundwater: The opponent submitted a substantial amount of information related to groundwater. He recommended that the applicant be encouraged to work very closely with concerned neighbors, Yamhill County and the Oregon Water Resources Department (OWRD). Our office will pass on this request to the applicant.

Bike improvements: The applicant indicated that they will provide a 6-foot wide bicycle improvement along Sunnycrest Road. The opponent asked if this was to extend out to all of Sunnycrest Road. In a ruling by the U.S. Supreme Court in the Case Dolan v. the City of Tigard it was ruled that any exactions need to have a "rough proportionality" to the proposed development. Requiring a 16 lot subdivision to provide the entire bike lane along the entire two mile length of Sunnycrest Road is not proportional to the use generated by the proposed development. Therefore, any requirement for a bike path would be limited to only the subdivision frontage onto Sunnycrest Road.

Legal issues: The opponent asked if a substantial vested interest has been defined for this subdivision. There has been no definition adopted for this subdivision. In addition, the opponent lists various concerns related to Measure 37 and transferability of the land use approval. The courts are in the (very slow) process of determining the rights of the applicant to transfer the Measure 37 approval to new owners. In the interim, Yamhill County has required that a disclaimer be placed on the face of the final plat which notifies potential owners that the lots were created as part of a successful Measure 37 claim and that Yamhill County makes no representations or warranties as to the transferability of the lots or any development rights related to the lots.

CONCLUSIONS FOR APPROVAL:

1. The applicant is requesting a conditional use and subdivision approval to develop a 16-lot subdivision on a 41.9 acre property.
2. The comprehensive plan designation and zoning are not applied due to the approval of a claim under Measure 37 (2004) as found in Board Order 05-760 and State Claim M118505.
3. With conditions the request can be made consistent with the health and safety standards and criteria of the Land Division Ordinance.

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STAFF RECOMMENDATION:

The Yamhill County Planning Director recommends the request by Coyote Homes Inc., representing Sam and Mildred Eastmen, for a conditional use and subdivision approval to allow a 16-lot subdivision on Tax Lot 3314-3100, be granted preliminary approval with the following conditions:

1. A final subdivision plat pursuant to the requirements of the *Yamhill County Land Division Ordinance* shall be prepared and submitted to the Planning Director. All existing and proposed easements shall be shown on the face of the plat. The Yamhill County Planning Docket Number "S-14-06" shall appear on the face of the plat. The subdivision lines shall substantially conform to that of the preliminary map.
2. The applicant shall dedicate the 60-foot right-of-way along the route as shown on the face of the plat. Said right of way shall be brought up to current Public Road Standards. The proposed roadways shall have a minimum unobstructed driving surface width of 20 feet and shall have an all-weather surface that is capable of supporting not less than 12,500 pounds point load (wheel load) and 50,000 pounds live load (gross vehicle weight). The access shall have an unobstructed horizontal clearance of not less than 25 feet and an unobstructed vertical clearance of not less than 14 feet. Average road grade shall not exceed 10% and no grade shall exceed 15%. A maximum of 200 feet at 15% grade may be allowed.
3. For the dedicated road, the applicant shall submit an engineered road design that includes a full plan and profile and construction cost estimate to the County Public Works Department. The improved road surfacing needs to be an all weather hard surfacing provided on the proposed road. All road improvements shall be constructed to county road standards and inspected by the Public Works Department or a private engineer prior to final plat approval, or security shall be posted pursuant to Chapter 13 of the Land Division Ordinance.
4. The applicant shall dedicate an additional 10-foot of road right-of-way along the Sunnycrest Road frontage. In addition, the applicant shall provide a bikeway with a width of 6-feet along the Sunnycrest Road frontage. The design and location of the bikeway shall be reviewed and approved by the Public Works Director.
5. The applicant shall provide a traffic impact study of the proposed subdivision with Sunnycrest Road and an engineered design of the intersection with Sunnycrest Drive subject to the AASHTO intersection standards. The traffic impact study and intersection design shall be done by a registered traffic engineer. The internal road improvements and intersection design shall be completed, or a bond posted, prior to final plat approval.
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

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registered engineer. The drainage plan shall be submitted to and approved by the County Public Works Director prior to final approval.

7. Prior to final subdivision plat approval, the applicant shall obtain an approval for on-site subsurface sewage disposal for Lots 1 thru 16 pursuant to Section 6.100 of the *Land Division Ordinance*. All septic systems shall be located on the individual lots 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*.
8. The subdivision shall be shown to have adequate quality and quantity of water to support the proposed use. 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 service shall be so identified.

9. Prior to final approval, the applicant shall provide a plan for water supply for fire suppression to the Newberg Rural Fire Department for their review and approval.
10. The applicant shall name the proposed right-of-way. Said name shall be reviewed and approved by the Planning Director.
11. The following language shall be placed on the face of the final plat:

Lots shown on this plat were authorized by waivers of land use regulations by Yamhill County and the State of Oregon pursuant to ORS 197.352, 2005 replacement part (Measure 37). The Yamhill County waiver is found in Board Order 05-760, recorded in the Yamhill County Deed & Mortgage Records as Instrument No. 200520679. Yamhill County makes no representations or warranties as to the transferability of the lots or any development rights related to the lots.

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Suggestion:

The following is not a condition of approval because it is not directly related to issues of health and safety. This is considered by the Yamhill County Planning Staff as being worthy of consideration so it is suggested for the applicant to consider when completing this subdivision.

1. Since the development is near farmland, development of the lots should be tied to waivers of the right to complain about farm practices and/or strong CC&Rs stipulating that residents shall not complain about neighboring farm practices.

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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 the Subdivision Application and Conditional)
Use Application for Yamhill County Tax Lot 3314-3100)
on Sunnycrest Road and Authorizing Sixteen (16) Parcels) ORDINANCE 811
And Dwellings, Applicant Coyote Homes, Inc., representing)
Property Owner Samuel and Mildred Eastman, Docket Nos.)
S-14-06 and C-20-07, and Declaring an Emergency)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (the "Board") sat for the transaction of county business on June 20, 2007, Commissioners Kathy George, Mary P. Stern, and Leslie Lewis and being present.

IT APPEARING TO THE BOARD that Coyote Homes, Inc., representing Samuel and Mildred Eastman applied to the Yamhill County Department of Planning (Planning Docket Nos. S-14-06 and C-20-07) initially applied for a nineteen (19) parcel subdivision, which application was later amended to a sixteen (16) parcel subdivision application and conditional use permit application for Yamhill County Tax Lot 3314-3100, located on Sunnycrest Road in Yamhill County, and

IT APPEARING TO THE BOARD that such applications are authorized pursuant to ORS 197.352, Yamhill County Ordinance 749 and approved by Yamhill County Board Order No. 05-760 and State of Oregon Final Order No. M118505.

IT APPEARING TO THE BOARD that Subdivision Application S-14-06 was considered and approved by the Yamhill County Planning Director as provided in the Yamhill County Ordinances, which approval was appealed to the Yamhill County Board of Commissioners by Mark Bortnem on December 15, 2006, which appeal was considered by the Board of Commissioners at a duly noticed public hearing scheduled for February 7, 2007, which meeting was continued to March 7, 2007, and March 28, 2007, after which the Subdivision Application was amended to request only sixteen (16) parcels and to include a Conditional Use Application, C-20-07 as required by 1968 Ordinance 29, which amended Subdivision Application and Conditional Use Applications were considered by the Board of Commissioners at a duly notice public hearing scheduled for May 9, 2007, meeting was continued to May 23, 2007, at which meetings the Applicant, Property Owners, Opponents and other parties appeared and testified. The Board received oral objections from Mark Bortnem, an adjacent property owner, Marilyn Reeves on behalf of Friends of Yamhill, Sid Freidman on behalf of 1000 Friends of Oregon, and also received written comments and objections to the Subdivision Application and Amended Subdivision Application. After due consideration of the Application and the objections presented, the Board tentatively voted 3 to 0 to grant preliminary approval of the Application with 11 conditions, as noted in Exhibit A, NOW, THEREFORE,

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IT IS HEREBY ORDAINED BY THE BOARD, that the Amended Subdivision Application and Conditional Use Permit are approved as detailed in the Findings for Approval, attached as Exhibit "A" and by this reference incorporated herein. This ordinance, being necessary for the health, safety, and welfare of the citizens of Yamhill County, and an emergency having been declared to exist, is effective upon passage. A map of the area is appended as Exhibit "B".

DONE this 20th day of June, 2007, at McMinnville, Oregon.

ATTEST:

YAMHILL COUNTY BOARD OF COMMISSIONERS

Jan Coleman
County Clerk

Kathy George
Chair: Kathy George

By: Anne Britton
Deputy Anne Britton



Mary P. Stern
Commissioner: Mary Stern

Leslie Lewis
Commissioner: Leslie Lewis

APPROVED AS TO FORM:

Rick Sanai
Rick Sanai, Assistant County Counsel

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FINDINGS AND CONCLUSIONS for Ordinance 811
Exhibit "A"

The following findings of fact and conclusions of law are hereby adopted, and are based on substantial evidence in the record in this case:

1. The Findings and Conclusions set forth in the Staff Report for the May 23, 2007, Public Hearing are hereby adopted in full, just as if they were set forth verbatim herein, except as specifically provided below. A copy of said Staff Report is attached hereto and by this reference incorporated herein.
2. The Subject Property area currently consists of one lot of 41.9 acres currently zoned Exclusive Farm Use (EF-20). The Amended Subdivision Application and Conditional Use Permit Application will subdivide the Subject Property in sixteen parcels, with the size of the parcels ranging from 2.50 acres to 3.21 acres in size with an average parcel size of 2.58 acres.
3. The subdivision of the Subject Property into sixteen (16) parcels is permitted, despite the EF-20 zoning, pursuant to Ballot Measure 37, codified at Oregon Revised Statute 197.352, which provides waiver of restrictive land use regulations enacted or adopted after the property owner acquired the Subject Property. Property owners Samuel and Mildred Eastman acquired the Subject Property on December 4, 1971.
4. Property owners Samuel and Mildred Eastman received waiver of the restrictive land use regulations, including the restrictions of the EF-20 zoning, enacted or adopted after December 4, 1971, from the State of Oregon in State of Oregon Measure 37 Final Order No. M118505, and from Yamhill County in Yamhill County Final Board Order No. 05-760, both of which authorized subdivision of the Subject Property into a maximum of twenty (20) parcels.
5. Yamhill County zoning records indicate that the Subject Property was subject to Yamhill County zoning on December 4, 1971. On December 4, 1971, the Subject Property was zoned Agriculture under Yamhill County Zoning Ordinance 29, which was enacted and adopted in 1968.
6. On March 22, 2007 and April 2, 2007, the Yamhill County Board of Commissioners sat in a work session to interpret the requirements of the Ag-A zoning under Ordinance 29. In that work session, and based upon the information available to the Board of Commissioners, determined that the Agriculture zoning permitted outright dwellings on five (5) acre minimum parcels, and that, in 1971, dwellings would be allowed on parcels at least two and half acres (2½) in size subject to a Conditional Use Permit. The Board of Commissioners further determined that the only condition of approval for dwellings on parcels at least two and half acres (2½) in size would be mandatory removal of the property from farm tax deferral of ORS 318.
7. The Board of Commissioners considered Judge John Collins' ruling in the Yamhill County Circuit Court Case Marla Robison v. State of Oregon, by and through its Department of Administrative Services and Department of Land Conservation and Development (Case No. CV05-0305) with regard to Yamhill County property that was zoned Agriculture under

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Ordinance 29, and determined that the facts and circumstances regarding the Subject Property owned by Samuel and Mildred Eastman was factually distinguishable and therefore not binding on their decision. Specifically, the Board of Commissioners noted that the Robison ruling was based primarily upon the stipulated fact that the Robison property, as well as all other Yamhill County rural property, was automatically placed in farm tax deferral under ORS 318. The Board of Commissioners received written documentation, including a signed affidavit from David Lawson, Yamhill County Assessor, that the Eastman Subject Property, as well as other parcels in rural Yamhill County (including the Robison property), were not automatically placed in farm tax deferral under ORS 318, and that those property owners were required to apply for farm tax deferral. The Board of Commissioners believed that, had this true fact been presented to Judge Collins, his decision in Robison would likely have been different.

The Board of Commissioners determined that the Subject Property is not currently in farm tax deferral under ORS 318, and therefore had satisfied the Conditional Use Permit.

The Board of Commissioners also considered and determined that Judge Collins' correlation between ORS 215 and ORS 318 to be untenable. ORS 215 is land regulation statute and ORS 318 is a taxation statute. The Board of Commissioners determined that the application of one statute (ORS 318) did not automatically incorporate or apply the provisions of another, unrelated land use regulation statute (ORS 215).

The Subject Property is bordered to the south by rural residential properties that are zoned VLDR 2½, to the east by property zoned EF-20, and to the north and west by property zoned AF-10. The VLDR 2½ - zoned areas to the east consist predominantly of parcels that are less than three (3) acres in size, and most of the VLDR 2½ acre parcels are developed.

The Planning Director and the Board of Commissioners determined that the Amended Subdivision Application and Conditional Use Application satisfy the health and safety standards of the Yamhill County Land Division Ordinance ("LDO") Certain provisions of LDO Chapter 6, such as Section 6.000, are not applicable to the Amended Subdivision Application because of the Measure 37 waivers. The subdivision will have to comply with the health and safety requirements of Section 6.010(1), 6.010(2), 6.010(5), 6.010(7), 6.015, 6.030, and 6.090.

The following are the conditions of preliminary approval:

1. A final subdivision plat pursuant to the requirements of the Yamhill County Land Division Ordinance shall be prepared and submitted to the Planning Director. All existing and proposed easements shall be shown on the face of the plat. The Yamhill County Planning Docket Number "S-14-06" shall appear on the face of the plat. The subdivision lines shall substantially conform to that of the preliminary map.
2. The applicant shall dedicate the 60-foot right-of-way along the route as shown on the face of the plat. Said right of way shall be brought up to current Public Road Standards. The proposed roadways shall have a minimum unobstructed driving surface width of 20 feet and shall have an all-weather surface that is capable of supporting not less than 12,500 pounds point load (wheel load) and 50,000 pounds live load (gross vehicle weight). The access shall have an

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6. The applicant shall submit an engineered drainage plan that maintains the natural drainage to the maximum extent possible. The plan shall be prepared by a registered engineer. The drainage plan shall be submitted to and approved by the County Public Works Director prior to final approval.

7. Prior to final subdivision plat approval, the applicant shall obtain an approval for on-site subsurface sewage disposal for Lots 1 thru 16 pursuant to Section 6.100 of the Land Division Ordinance. All septic systems shall be located on the individual lots 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.

8. The subdivision shall be shown to have adequate quality and quantity of water to support the proposed use. 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 service shall be so identified.

9. Prior to final approval, the applicant shall provide a plan for water supply for fire suppression to the Newberg Rural Fire Department for their review and approval.

10. The applicant shall name the proposed right-of-way. Said name shall be reviewed and approved by the Planning Director.

11. The following language shall be placed on the face of the final plat:

Lots shown on this plat were authorized by waivers of land use regulations by Yamhill County and the State of Oregon pursuant to ORS 197.352, 2005 replacement part (Measure 37). The Yamhill County waiver is found in Board Order 05-760, recorded in the Yamhill County Deed & Mortgage Records as Instrument No. 200520679. Yamhill County makes no representations or warranties as to the transferability of the lots or any development rights related to the lots.

END.

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