

Application for a Permit to
Store Water in a Reservoir
 Alternate Review (ORS 537.409)



Oregon Water Resources Department
 725 Summer Street NE, Suite A
 Salem, Oregon 97301-1266
 (503) 986-0900
 www.oregon.gov/OWRD

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You may use this form for any reservoir storing less than 9.2 acre-feet *or* with a dam less than 10 feet high

Use a separate form for each reservoir

SECTION 1: APPLICANT INFORMATION AND SIGNATURE

Applicant

NAME HALONA VINEYARDS, LLC JOHN WAGNER, MEMBER MANAGER			PHONE (HM)
PHONE (WK) 707.310.6925 MITCHELL KLUG, VINEYARD CONSULTANT	CELL		FAX
ADDRESS 15300 VENTURA BOULEVARD, SUITE 210			
CITY SHERMAN OAKS	STATE CA	ZIP 91403	E-MAIL * jbreesewagner@gmail.com mitchellklug101@gmail.com

Organization

NAME			PHONE	FAX
ADDRESS				CELL
CITY	STATE	ZIP	E-MAIL *	

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

AGENT / BUSINESS NAME JEANNE BOATWRIGHT			PHONE 503.363.9225	FAX
ADDRESS BOATWRIGHT ENGINEERING, INC. 2613 12TH STREET SE				CELL
CITY SALEM	STATE OR	ZIP 97302	E-MAIL * jeanne@boatwrightengr.com	

Note: Attach multiple copies as needed

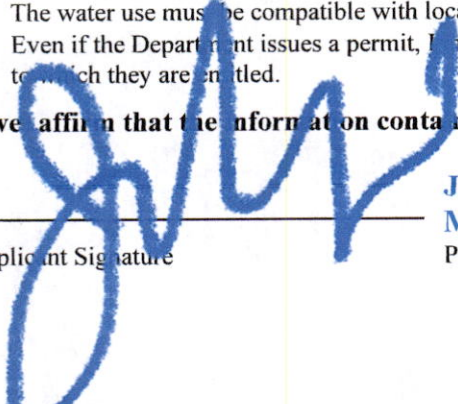
* By providing an e-mail address, consent is given to receive all correspondence from the department electronically. (paper copies of the final order documents will also be mailed.)

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 legally store water until the Water Resources Department issues a permit.
- Oregon law requires that a permit be issued before beginning construction. 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

**John Breese Wagner, Member
 Manager, Halona Vineyards, LLC**

 Print Name and Title if applicable

8-71

 Date

SECTION 2: SOURCE OF WATER AND LOCATION OF RESERVOIR

Reservoir name:	RESERVOIR				
Source*:	Surface Runoff	Tributary:	of Cooper Hollow Creek, tributary of Little Luckiamute River		
County:	Polk				
Quantity:	3 Acre-Feet [length x width x depth / 43,560]				
Reservoir Location:	Township (N or S)	Range (E or W)	Section	Quarter-Quarter	Tax Lot #
	8S	5W	20	SE-SE	705
Maximum Height of Dam:	9.9 feet	If excavated write "zero feet."			

* Provide the name of the water body or other source from which water will be diverted, and the name of the stream or lake it flows into. Indicate if source is run-off, seepage, an unnamed stream, or spring.

SECTION 3: WATER USE

Indicate the proposed use(s) of the stored water: **MULTIPURPOSE for uses allowed outright, or those approved by the Polk County Community Development Department Planning Division**

NOTE: You may wish to consider filing for "Multipurpose use" for your reservoir. Multipurpose use does not limit the types of future uses for the stored water. Multipurpose covers all uses including: stock water, fish and wildlife, aesthetics, domestic, irrigation, agriculture, fire protection and pollution abatement.

SECTION 4: PROPERTY OWNERSHIP

Do you own all the land where you propose to divert, transport, and use water?

- Yes (please check appropriate box below then skip to section 5)
- There are no encumbrances
 - This land is encumbered by easements, right of way, roads of way, roads or other encumbrances
- No (Please check the appropriate box below)
- 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 irrigated and/or domestic use only (ORS 274.040). (Do not check this box if you described your use as "Multipurpose" in #3 above.)

List the names and mailing addresses of all affected landowners:

NA

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SECTION 5: ENVIRONMENTAL IMPACT

Channel: Is the Reservoir: in-stream or off channel?

Wetland: Is the project in a wetland? YES NO unknown

Existing: Is this an existing reservoir? YES NO

If YES, how long has it been in place?

Fish Habitat: Is there a fish habitat upstream of the proposed structure? YES NO unknown

If YES, how much? _____ miles.

Existing: Have you been working with other agencies? YES NO

Indicate agency, staff and phone numbers of those involved. Also indicate any agencies that are cost sharing in this project.

SECTION 6: WITHIN A DISTRICT

Check here if the point of diversion or place of use are located within or served by an irrigation or other water district.

Irrigation District Name:		Address:	
City:	State:	Zip:	

SECTION 7: DESCRIPTION

Provide a short description of the design and operation of the proposed diversion, including a description of how live flow will be passed outside the authorized storage season. Use this space for narrative. You may also provide narrative and sketches on separate pages.

Reservoir will be filled from upgradient surface sheet flow runoff from an area of about 13.5 acres.

If the diversion involves a dam, use this space below for sketches of the diversion (e.g. cross-section of the dam with its dimensions, dimension and placement of outlet pipe, means of passing live flow outside of the authorized storage season, and means for providing fish passage).

See Attached Plans

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Watermaster Alternate Reservoir Application Review Sheet

In lieu of the water right application process set forth in ORS 537.140 to 537.211, an owner of a reservoir may submit an alternate reservoir application for a reservoir that has a storage capacity less than 9.2 acre-feet or a dam or impoundment structure less than 10 feet in height. ORS 537.409 describes the criteria used to evaluate alternate reservoir applications.

The review shall be limited to issues pertaining to: a) water availability, b) potential detrimental impact to existing fishery resources; and c) potential injury to existing water rights. (ORS 537.409 (6))

Within 60 days after the Water Resources Department provides public notice, any person may submit detailed, legally obtained information in writing, requesting the Department to deny the application for a permit on the basis that the reservoir: (a) Would result in injury to an existing water right; or (b) Would pose a significant detrimental impact to existing fishery resources. (ORS 537.409 (5))

Applicant's Name Halona Vineyards LLC 8S 5W Sec 20		
1. Does the proposed reservoir have the potential to injure existing water rights? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO Explain:		
2. Can conditions be applied to mitigate the potential injury to existing water rights? <input type="checkbox"/> YES <input type="checkbox"/> NO Explain: NA		
3. Is water available for the proposed reservoir? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		
4. If yes, during what period? Beginning: Sept 1 End: July 31 Attach a WARS printout at 50% exceedance. If WARS does not cover the proposed location, make a recommendation for a storage season based upon regulation history and your knowledge of the location. (Water Availability for Reservoir Policy found under OAR 690-410-0070(2)(c))		
5. Did you meet with staff from another agency to discuss this application? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		
Who:	Agency:	Date:
Who:	Agency:	Date:

Watermaster Name: Joel Plahn

Watermaster Signature: Joel Plahn Date: 4/27/2022

Digitally signed by Joel Plahn
DN: cn=Water Resources, cn=Joel Plahn,
email=joel.plahn@water.wa.gov
Reason: I am the author of this document
Location: your signing location here
Date: 2022.04.27 10:30:07-0700
Four PDF Editor Version: 11.2.0

NOTE: This completed form must be returned to the applicant

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ODFW Alternate Reservoir Application Review Sheet

This portion to be completed by the applicant.

Applicant Name: Halona Vineyards, LLC
 Address: 15300 Ventura Blvd Suite 210, Sherman Oaks, CA 91430
 Phone/Email: 707-310-6925/mitchellklug101@gmail.com
 Reservoir Name: Reservoir 1
 Source: Run-off
 Basin Name: Cooper Ck<Little Luckiamute R<Luckiamute R
 Twp Rng Sec QQ: 8S 5W 20 SESE

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Volume (AF): 3.0 AF
 in-channel
 off-channel

Note: It is unlikely that ODFW will be able to complete this form while you wait, nevertheless we recommend making an appointment to submit the form so as to provide any necessary clarifications. See pg. 6 of Instructions for contact information.

This portion to be completed by Oregon Department of Fish and Wildlife (ODFW) staff.

1) Is the proposed project and AO¹ off channel?..... YES* NO
 (if yes then proceed to #4; if no then proceed to #2)

**Based on available information, the proposed use does not appear to involve instream structures that would create or maintain an artificial obstruction. However, if the applicant creates or maintains an artificial obstruction to fish passage for the proposed use, the applicant will need to address Oregon's fish passage laws.*

2) Is the proposed project or AO located where NMF² are or were historically present?..... YES NO
 (if yes then proceed to #3; if no then proceed to #4)

3) If NMF are or were historically present:

- a. Is there an ODFW-approved fish-passage plan?..... YES NO
- b. Is there an ODFW-approved fish-passage waiver or exemption?..... YES NO

If fish passage is required under ORS 509.580 through .910, then either 3(a) or 3(b) must be "Yes" to move forward with the application. If responses to 3(a) and 3(b) are "No", then the proposed reservoir does not meet the requirements of Oregon Fish Passage Law and shall not be constructed as proposed.

4) Would the proposed project pose any other significant detrimental impact to an existing fishery resource locally or downstream?..... YES NO

Explain below (for example, list STE species or other existing fishery resources that would be impacted negatively.)

Any diversion or appropriation of water for storage during the period April 1-November 30 poses a significant detrimental impact to existing fishery resources. *(For example, if diversion of water for storage during a certain time period would cause a significant detrimental impact to an existing fishery resource, then ODFW should recommend conditions or limitations.)*

¹ AO = Artificial Obstruction means any dam, diversion, culvert or other human-made device placed in waters of this state that precludes or prevents the migration of native migratory fish. ORS 509.580 (1)

² NMF = Native Migratory Fish Species in Oregon as defined by OAR 635 - 412 - 0005 (32)

If NMF fish are present at the project site or point of water diversion then the applicant should be advised that a fish screen consistent with screening criteria will be required.

- This proposed pond or reservoir contemplates impounding water in the Columbia Basin above Bonneville Dam. ODFW has determined that additional diversions of water in this area pose a significant detrimental impact to existing fishery resources during the period April 15 through September 30.

ESA-listed fish (winter steelhead and spring Chinook Salmon), sensitive species (Coastal Cutthroat Trout and Pacific Lamprey), and other game fish (Coho Salmon) may be present in Cooper Creek, Little Luckiamute River, and/or the Luckiamute River during the period of impact. ODFW has identified biologically necessary flows not captured in an instream water right (e.g., flows in a Basin Investigation Report, Persistence Flow Determination, Seasonally Varying Flow prescription, or other flow analysis) that would benefit fishery resources at the Point of Diversion or downstream.

In addition to existing instream water rights and pending instream water right applications, ODFW recommends the following biologically necessary flows be available in the Luckiamute River at the mouth to protect public uses:

JAN	200 cfs	APR	200 cfs	JUL	40 cfs	OCT	40 cfs
FEB	200 cfs	MAY	200 cfs	AUG	25 cfs	NOV	200 cfs
MAR	200 cfs	JUN	70 cfs	SEP	25 cfs	DEC	200 cfs

Luckiamute River above Soap Creek:

JAN	153 cfs	APR	153 cfs	JUL	30.6 cfs	OCT	30.6 cfs
FEB	153 cfs	MAY	153 cfs	AUG	19.1 cfs	NOV	153 cfs
MAR	153 cfs	JUN	53.5 cfs	SEP	19.1 cfs	DEC	153 cfs

Based on parameters assessed by ODFW, instream flows are currently below those essential to support the biological needs of an existing fishery resource during July 1-November 30. In addition, ODFW reviewed available information (Willamette River Basin Temperature TMDL; DEQ) regarding water quality impairment and determined that the proposed use would impair water quality that supports existing fishery resources (e.g., habitat) at or downstream of the Point of Diversion. The proposed pond would be located in the Willamette River basin and subject to the Willamette River Temperature TMDL which identifies the critical period for water temperatures as April 1-October 31. High stream temperatures can be directly lethal to aquatic life but may also have sublethal effects on growth and development during different life stages, as well as the swimming, feeding and reproductive ability of juveniles and adults.

Because of these reasons, the proposed use will diminish water quality, physical habitat, and/or alter the flow regime to which fish are naturally adapted. These changes will negatively affect their distribution, productivity, and abundance. Therefore, a further reduction in flow or alteration of habitat from the proposed use would result in a significant detrimental impact to an existing fishery resource without appropriate conditions and/or mitigation.

Impairment to Fishery Resource	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Water Quantity												
Water Quality												

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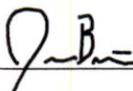
If YES, can conditions be applied to mitigate the significant detrimental impact to an existing fishery resource?

NO (explain) YES

See applicable conditions selected from "Menu of Conditions" on next page

Water is only available to support the quality and quantity of biologically necessary flows at the POD and/or downstream during **December 1-March 31**. ODFW recommends the storage season be restricted to coincide with this period or the proposed use be mitigated prior to issuance of a Proposed Final Order for any storage outside of this period. Without appropriate mitigation and/or conditions (see below), a further reduction in flow or alteration of habitat from the proposed water use outside of this period will result in a significant detrimental impact to an existing fishery resource.

Mitigation is often complicated, time consuming, and expensive, and may include, but is not limited to, actions such as replacing the proposed amount of water through purchasing or transferring an existing water right. **If the applicant chooses to pursue mitigation after application submittal to WRD, ODFW will provide a Mitigation Obligation consistent with the goals and standards of OAR 635-415-0025 (ODFW Habitat Mitigation Recommendations) to compensate for any potential impact from the proposed use.** Upon request, the WRD caseworker can schedule a consultation with ODFW for more information.

ODFW Signature: 

Print Name: Jason Brandt

ODFW Title: SW Hydro Coordinator

Date: 5/31/22

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MENU OF CONDITIONS FOR WRD, ODFW, DEQ AND ODA

Revised May 12, 2020, March 25, 2021

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Use this menu to identify appropriate conditions to be included in the permit:

- Agricultural Water Quality Management Area Rules:** The permittee shall comply with basin-specific Agricultural Water Quality Management Area Rules described in Oregon Administrative Rule Chapter 603-095. The permittee shall protect riparian areas, including through irrigation practices and the management of any livestock, allowing site capable vegetation to establish and grow along streams, while providing the following functions: shade (on perennial and some intermittent streams), bank stability, and infiltration or filtration of overland runoff.
- b52** Water may be diverted only when Department of Environmental Quality sediment standards are being met.
- b5** The water user shall install and maintain adequate treatment facilities meeting current DEQ requirements to remove sediment before returning the water to the stream.
- b51a** The period of use has been limited to December 1-March 31.
- b57** Before water use may begin under this permit, a totalizing flow meter must be installed at each diversion point.
- b58** Before water use may begin under this permit, a staff gage that measures the entire range and stage between full reservoir level and dead-pool storage must be installed in the reservoir. The staff gage shall be United States Geological Survey style porcelain enamel iron staff gage style A, C, E or I.
- blv:** Water must be diverted to a trough or tank through an enclosed water delivery system. The delivery system must be equipped with an automatic shutoff or limiting flow control mechanism or include a means for returning water to the stream source through an enclosed delivery system. The use of water shall not exceed 0.10 cubic feet per second per 1000 head of livestock.

- Bypass Flows:** Per 690-410-0070 (2)(c), the following flows shall be bypassed or passed through the reservoir during the filling season:
- 1) When the biologically necessary flows identified below are not available immediately upstream of the impacted area, the permittee shall pass all live flow downstream at a rate equal to the inflow, minus the amount of mitigation water provided upstream, if applicable, and
 - 2) When the biologically necessary flows identified below are available immediately upstream of the impacted area, the permittee shall pass flow downstream at a rate equal to or greater than the biologically necessary flows.
- Once the reservoir has reached the permitted volume, all live flow shall be passed downstream at a rate equal to the inflow.

The permittee shall quantify and document inflow and outflow and maintain the bypass flows for the life of the permit and subsequent certificate per the approved Bypass Plan. The bypass flow data shall be available upon request by the Oregon Water Resources Department, Oregon Department of Fish and Wildlife, Oregon Department of Environmental Quality, or Oregon Department of Agriculture.

- Construction Activities:** For construction activities (clearing, grading, excavation, staging, and stockpiling) that will disturb one or more acres and may discharge to state waters, the permittee is required to obtain from DEQ a 1200-C NPDES Stormwater Construction Permit prior to project construction.
- fence:** The stream and its adjacent riparian area shall be fenced to exclude livestock.
- fishapprove:** The permittee shall install, maintain, and operate fish screening and by-pass devices consistent with current Oregon Department of Fish and Wildlife (ODFW) standards. Fish screening is to prevent fish from entering the proposed diversion while by-pass devices provide adequate upstream and downstream passage for fish. The required screen and by-pass devices are to be in place and functional, and approved in writing by ODFW prior to diversion of any water. The permittee may submit evidence in writing that ODFW has determined screens and/or by-pass devices are not necessary.
- fishdiv33:** If the riparian area is disturbed in the process of developing a point of diversion, the permittee shall be responsible for restoration and enhancement of such riparian area in accordance with ODFW's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. For purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR 635-415, shall be followed.

The use may be restricted if the quality of the source stream or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards due to reduced flows.

The permittee shall install, maintain, and operate fish screening and by-pass devices consistent with current Oregon Department of Fish and Wildlife (ODFW) standards. Fish screening is to prevent fish from entering the proposed diversion while by-pass devices provide adequate upstream and downstream passage for fish. The required screen and by-pass devices are to be in place and functional, and approved in writing by ODFW prior to diversion of any water. The permittee may submit evidence in writing that ODFW has determined screens and/or by-pass devices are not necessary.

- fishmay:** Notwithstanding that ODFW has made a determination that fish screens and/or by-pass devices are not necessary at the time of permit issuance, the permittee may be required in the future to install, maintain, and operate fish screening and by-pass devices to prevent fish from entering the proposed diversion and to provide adequate upstream and downstream passage for fish.

- fishpass:** As required by ORS 509.585, a person owning or operating an artificial obstruction (AO) may not construct or maintain any AO across any waters of this state that are inhabited, or historically inhabited, by native migratory fish (NMF) without providing passage for NMF. A person owning or operating an AO shall, prior to construction, fundamental change in permit status or abandonment of the AO in any waters of this state, obtain a determination from ODFW as to whether NMF are or historically have been present in the waters. If ODFW determines that NMF are or historically have been present in the waters, the person owning or operating the AO shall either submit a proposal for fish passage to ODFW or apply for a waiver or exemption. Approval of the proposed fish-passage facility, waiver, or exemption must be obtained from the department prior to construction, permit modification or abandonment of the AO. Approved fish-passage plans, waivers, and exemptions shall maintain adequate passage of NMF at all times (ORS 509.601) as per the approved plan, waiver or exemption.
- fishself:** The permittee shall install, maintain, and operate fish screening and by-pass devices consistent with current Oregon Department of Fish and Wildlife (ODFW) standards. Fish screening is to prevent fish from entering the proposed diversion while by-pass devices provide adequate upstream and downstream passage for fish. The required screen and by-pass devices are to be in place and functional prior to diversion of any water. Permittee shall obtain written approval from ODFW that the installation of the required screen and by-pass devices meets the state's criteria or the permittee shall submit documentation that ODFW has determined screens and/or by-pass devices are not necessary.
- Fish Stocking:** Per ORS 498.222 and OAR 635-007-0600, all persons transporting fish in Oregon need to have a fish transport permit issued by the Oregon Department of Fish and Wildlife (ODFW). The permittee shall not stock fish in the reservoir without a fish transport permit approved by ODFW. As part of the permitting process, the permittee must also screen the inlet and outlet of their pond to insure that fish cannot escape into public waters and/or to keep wild fish from entering the pond.
- futile call:** The use of water allowed herein may be made only at times when waters from the (NAME OF SURFACE WATER) would not otherwise flow into a tributary of the type here River or sufficient water is available to satisfy all prior rights, including rights for maintaining instream flows.
- In-Water or Riparian Construction:** For in-water or riparian construction, permittee may be required to obtain additional permits from the Oregon Department of State Lands, the U.S. Army Corps of Engineers, and the DEQ Section 401 certification program prior to construction. The applicant must contact these agencies to confirm requirements.
- In-Water Work:** Any in-water work related to construction, development, or maintenance of the proposed use shall be conducted during the preferred work period of July 1-October 31 unless an alternate time period is approved by the Oregon Department of Fish and Wildlife.
- Live Flow:** Once the allocated volume has been stored, permittee shall pass all live flow downstream at a rate equal to inflow, using methods that protect instream water quality.
- Off-Channel Stored Water Releases:** The permittee shall not release polluted water from this off-channel reservoir into waters of the state except when the release is directed by the State Engineer to prevent dam failure.
- On-Channel Reservoir:** The permittee shall design and operate the water storage facility such that all waters within and below the reservoir meet water quality criteria. The permittee shall develop a reservoir operations plan that details how water quality criteria and standards will be met. A Certified Water Rights Examiner shall verify that the reservoir operations are consistent with the plan before a certificate is issued. The reservoir operator shall maintain a copy of the plan and make it available for review upon request.
- riparian:** If the riparian area is disturbed in the process of developing a point of diversion, the permittee shall be responsible for restoration and enhancement of such riparian area in accordance with ODFW's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. For purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR 635-415, shall be followed.
- Water Quality:** All water use under this permit shall comply with state and federal water quality laws. The permittee shall not violate any state and federal water quality standards, shall not cause pollution of any waters of the state, and shall not place or cause to be placed any wastes in a location where such wastes are likely to escape or be carried into the waters of the state by any means. The use may be restricted if the quality of source stream or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards.
- wetland:** The permittee must submit an offsite determination request to the Oregon Department of State Lands (DSL) to determine the need for a wetland delineation prior to disturbance or development of the point of diversion and/or diversion of water.
- wq:** The use may be restricted if the quality of the source stream or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards due to reduced flows.

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Land Use Information Form



Oregon Water Resources Department
 725 Summer Street NE, Suite A
 Salem, Oregon 97301-1266503-986-0900
 www.oregon.gov/OWRD

NAME HALONA VINEYARDS, LLC		PHONE (HM)	
PHONE (WK) 707.310.6925	CELL	FAX	
ADDRESS MITCHELL KLUG, VINEYARD CONSULTANT			
ADDRESS 15300 VENTURA BLVD, SUITE 210			
CITY SHERMAN OAKS	STATE CA	ZIP 91403	E-MAIL* mitchellklug101@gmail.com

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:
8S	5W	20	SE-SE	8.5.20 705	Farm/Forest/ FF	<input checked="" type="checkbox"/> Diverted	<input type="checkbox"/> Conveyed	<input checked="" type="checkbox"/> Used	Farming
						<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:

Polk County

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) **Surface Runoff, tributary of Cooper Hollow Creek**

Estimated quantity of water needed: **3** 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 **Storage for Agricultural/Irrigation Use**

Briefly describe:

Store water for use on the adjacent vineyard under a future secondary water right permit for Irrigation and Agricultural use. Secondary permit cannot be applied for until the storage permit is issued.

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.

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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.

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 are not 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."** *CU 22-04 (attached)*

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:	
<i>Conditional-use</i>	<i>PCZO 119.070, 138.060(DD), 138.100(A-G)</i>	<input checked="" 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
		<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: Wayland Gardner Title: Planner Trainee

Signature: Wayland Gardner Phone: 503.623.9237 Date: 8/5, 2022

Government Entity: Polk County Community Development - Planning Division

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

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Applicant name: _____

City or County: _____ Staff contact: _____

Signature: _____ Phone: _____ Date: _____



POLK COUNTY

POLK COUNTY COURTHOUSE * DALLAS, OREGON 97338
(503) 623-9237 * FAX (503) 623-6009

COMMUNITY DEVELOPMENT

AUSTIN M'GUIGAN
Director

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NOTICE OF LAND USE APPLICATION AND DECISION

APPLICATION FOR:	The applicant is proposing to construct a reservoir to store water for agricultural use (irrigation). The proposed reservoir would have a storing capacity between 2.5 to 3.0 acre-feet of water, and would be approximately 1.0 acre in size. The subject property contains approximately 47.2 acres and is located within the Farm/Forest (F/F) Zoning District.
APPLICANT:	Mitchell Klug
OWNER:	John Breese Wagner
LOCATION:	One property south of 5250 Cooper Hollow Road, Monmouth, OR 97361 (T8S, R5W, Section 20, Tax Lot 705)
FILE NUMBER:	CU 22-04
REVIEW AND DECISION CRITERIA:	Polk County Zoning Ordinance (PCZO) Sections 119.070, 138.060(DD), 138.100(A-C).
STAFF CONTACT:	Morgan Snyder Phone: (503) 623-9237; Email: Snyder.morgan@co.polk.or.us

DECISION

Based on the Review and Decision Criteria above, the application is **approved** to construct a reservoir within the Farm/Forest Zoning District. The application shall be subject to compliance with the conditions listed below, as required by the findings in the Review and Decision Criteria (Section III). Any modifications to conditions shall be approved in accordance with provisions of law (e.g., variance, subsequent land use application, etc.).

Conditions of Approval:

1. This approval is to construct a reservoir that is approximately 1.0 acre in size and capable of storing 2.5 to 3.0 acre-feet of water on the subject property, as depicted in the applicant's plot plans (Attachments A-1 and A-2).
2. The reservoir shall comply with the setback standards of the F/F Zoning District found in PCZO 112.430(B), as follows: front yard 30 feet, rear yard 20 feet, and side yards 20 feet. The reservoir shall also comply with any other applicable setback standards listed in the PCZO.
3. It is the property owner's responsibility to ensure that all applicable State and Federal permits are obtained and approved prior to construction of the reservoir. Agencies that require further permits may include, but are not limited to, the Oregon Water Resources Department and Dam Safety Program, Oregon Department of Environmental Quality, Oregon Department of State Lands, and the Army Corp of Engineers.
4. Prior to any future development within the regulated 100-year floodplain, a Floodplain Development Permit and/or a Land Use Determination application and approval may be required prior to development activities, pursuant to PCZO Chapter 178. Development includes any man-made change to improved or unimproved real estate, including but not

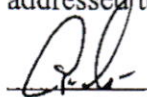
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limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials located within floodplains.

5. The property owner shall sign and record with the Polk County Clerk a non-remonstrance deed restriction (Attachment B), recognizing the rights of adjacent and nearby land owners to conduct forest operations consistent with the Forest Practices Act and Rules, pursuant to PCZO 138.100(C). In addition, the deed restriction shall bind the landowners and landowner's successors in interest from pursuing a claim for relief or cause of action injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 to 30.937, pursuant to PCZO 138.140. Prior to beginning construction of the reservoir, the property owners shall submit a copy of the recorded deed restriction to the Planning Division for inclusion in planning file CU 22-04. The property owner shall pay the applicable recording fees.
6. Pursuant to PCZO 119.140, the Hearings Officer, Planning Director, or Board of Commissioners may rescind any conditional use permit granted under the conditional use ordinance if it is ascertained that the application contains any false statements. In case of such rescission, the matter may be referred to County Counsel for an opinion. In such case, it shall be unlawful for any person to exercise any right granted by the Hearings Officer, Planning Director, or the Board of Commissioners pursuant to such application.
7. Pursuant to PCZO 119.100, discontinuance of the exercise of any right heretofore or hereafter authorized for any conditional use for a continuous period of six (6) months shall be deemed an abandonment of such conditional use.

EFFECTIVE DATE: April 25, 2022 at 5:00 p.m. This application and approval must be exercised within one (1) year from its effective date or it shall be null and void. If additional time is required, the applicant shall file a written request for extension, with the appropriate fee, addressed to the Polk County Planning Director, at least **thirty (30)** days prior to the expiration.



 Austin McGuigan, Planning Director

4/13/22

 Date

Decisions of the Polk County Planning Director may be appealed to the Polk County Board of Commissioners by any person whose interests are adversely affected or who is aggrieved by the decision. Such appeals must be filed within 12 days of the mailing of the decision, with the Polk County Community Development Department, Courthouse, Dallas, Oregon, on the form supplied by that department and the appropriate fee paid at the time of filing. Failure of an issue to be raised in person or by letter, or failure to provide sufficient specificity to afford the decision maker an opportunity to respond to the issue, precludes an appeal to the Land Use Board of Appeals (LUBA) based on that issue. Appeals to the Land Use Board of Appeals (LUBA) may only be based on Review and Decision Criteria contained in Section III, below. This decision becomes effective only if a written appeal is not filed within the appeal period. If an appeal is filed, this decision is stayed until a determination is made by the governing body.

The decision granted herein does not vest (guarantee) the right of the property owner to use the property as authorized in this land use decision. The property owner is responsible for completing required conditions and establishing and continuing the use in order to retain a vested right. The property owner is advised to consult with an attorney to determine the appropriate actions necessary to obtain and retain rights of use authorized by this decision. A copy of the application, all documents and evidence relied upon by the applicant, and the applicable criteria are available for inspection at no cost and will be provided at the Community Development Department for the cost of copying.

Polk County Community Development, Polk County Courthouse, 850 Main Street, Dallas, OR 97338; (503) 623-9237

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

cc: Area Property Owners

Polk County Community Development Department
 Planning Division Staff Report

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APPLICATION FOR: The applicant is proposing to construct a reservoir to store water for agricultural use (irrigation). The proposed reservoir would have a storing capacity between 2.5 to 3.0 acre-feet of water, and would be approximately 1.0 acre in size. The subject property contains approximately 47.2 acres and is located within the Farm/Forest (F/F) Zoning District.

APPLICANT: Mitchell Klug

OWNER: John Breese Wagner

LOCATION: One property south of 5250 Cooper Hollow Road, Monmouth, OR 97361 (T8S, R5W, Section 20, Tax Lot 705)

FILE NUMBER: CU 22-04

REVIEW AND DECISION CRITERIA: Polk County Zoning Ordinance (PCZO) Sections 119.070, 138.060(DD), 138.100(A-C).

STAFF CONTACT: Morgan Snyder Phone: (503) 623-9237;
 Email: Snyder.morgan@co.polk.or.us

I. PROJECT AND PROPERTY DESCRIPTION

REQUEST: The applicant is proposing to construct a reservoir to store water for agriculture use (irrigation). The proposed reservoir would have a capacity of storing approximately 2.5 to 3.0 acre-feet of water and would be approximately 1.0 acre in size. The subject property contains approximately 47.2 acres and is located within the Farm/Forest (F/F) Zoning District. This conditional use application is being reviewed under the legal criteria for “reservoir and water impoundments”, which requires a conditional use permit pursuant to Polk County Zoning Ordinance (PCZO) 138.060(DD).

The application was submitted and deemed complete on February 10, 2022.

PROPERTY DESCRIPTION:

Subject Property Size: Approximately 47.2 acres

Location	Comprehensive Plan Designation	Zoning Designation
Subject Property	Farm/Forest	Farm/Forest (F/F)
Property North	Farm/Forest	Farm/Forest (F/F)
Property East	Farm/Forest	Farm/Forest (F/F); Farm/Forest Overlay (FFO)
Property South	Farm/Forest	Farm/Forest (F/F)
Property West	Farm/Forest	Farm/Forest (F/F)

PROPERTY DESCRIPTION: The subject property is located one property south of 5250 Cooper Hollow Road, Monmouth, Oregon (T8S, R5W, Section 20, Tax Lot 705). The subject property contains approximately 47.2 acres and is part of a larger tract containing approximately 60.2 acres. According to the Polk County Assessor’s Records, the subject property is vacant of any structures. The location of the proposed reservoir is shown on the applicant’s plot plans provided

as Attachments A-1 and A-2. Attachment A-3 is a map created by staff intended to depict the subject property's location and surrounding area.

According to the National Wetlands Inventory (NWI) Map, Airlie North Quadrangle, an inventoried freshwater pond is located in the southeastern portion of the property. According to the Polk County Significant Resource Areas (SRA) Map, this freshwater pond is not inventoried as being fish bearing, therefore, staff finds that the requirements in PCZO Chapter 182 are not applicable. The applicant states that the proposed reservoir would be located approximately 110 feet away from this wetland, and that the reservoir is intended to avoid any other wetland areas. The Oregon Department of State Lands (DSL) provided comments which indicated that the proposed location of the reservoir is likely to be near or within a wetland area, and that inspection and/or evaluation of the wetland area by a qualified professional is recommended. These comments are discussed further in section III below. This report serves as additional notice to the property owner of the presence of wetlands on the subject property, and the possible need for State or Federal permits. Prior to any future development within the wetland areas, the property owner shall be responsible for ensuring that all applicable State or Federal permits have been obtained. Such permits may include, but are not limited to, a Removal Fill Permit from DSL. It is advised to contact DSL with any additional questions related to development within or near a wetland area.

According to Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) panel number 41053C0400F, dated December 18, 2006, the southeastern portion of the subject property is located within the Special Flood Hazard Area (SFHA). The applicant states that the proposed reservoir would be located approximately 250 feet away from the portion of the subject property located within the SFHA. Nevertheless, this report serves as notice to the property owners that the subject property is partially located within the SFHA. Future development within the SFHA may require a Floodplain Development Permit and/or a Land Use Determination application and approval pursuant to PCZO Chapter 178. Development includes any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials located within floodplains.

According to the Polk County SRA Map, there are no inventoried significant resources located on the subject property. The subject property is not located within the Willamette River Greenway and does not contain any inventoried historic sites.

Access: The subject property has frontage along and access to Cooper Hollow Road. Cooper Hollow Road is a local road as defined in the Polk County Transportation Plan, Figure 3.

Services: No septic records were found for the subject property. The subject property is located within the area served by the Luckiamute Domestic Water Cooperative. The proposed reservoir is not a use or structure that requires potable water or on-site sewage disposal.

School: Dallas School District 2.

Fire: Southwest Polk Rural Fire Protection District.

Police: Polk County Sheriff.

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II. COMMENTS

Environmental Health: No septic records were found for the subject property.

Department of State Lands (DSL): There are/may be wetlands, waterways or other water features on the property that are subject to the State Removal-Fill Law based upon a review of wetland maps, the

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county soil survey and other available information. The National Wetlands Inventory shows wetland, waterway or other water features on the property. The county soil survey shows hydric (wet) soils on the property. Hydric soils indicate that there may be wetlands.

It appears that the proposed project may impact wetlands and may require a State permit. An onsite inspection by a qualified wetland consultant is recommended prior to site development to determine if the site has wetlands or other waters that may be regulated. The determination or delineation report should be submitted to DSL for review and approval. Approved maps will have a DSL stamp with approval date and expiration date.

A state permit is required for 50 cubic yards or more of fill removal or other ground alteration in wetlands, below ordinary high water of waterways, within other waters of the state, or below highest measured tide.

Based on the available information, it appears likely that a jurisdictional wetland is present in the area of the proposed reservoir. An onsite wetland delineation by a qualified professional is the only way to know with certainty where wetlands may be located. Information on finding a qualified wetland professional consultant is listed under Resources at <http://www.oregon.gov/dsl/WW/Pages/WetlandConservation.aspx>. This is a preliminary jurisdictional determination and is advisory only. This report is for the State Removal-Fill law only. City or County permits may be required for the proposed activity. A Federal permit may be required by the Army Corps of Engineers: (503)-808-4373.

No other comments were received as of the writing of this staff report. Full comments are included in the record.

III. REVIEW AND DECISION CRITERIA

This application is for a conditional use to construct a reservoir in the Farm/Forest (F/F) Zone District. The requirements for the proposed conditional use are found in PCZO Sections 119.070, 138.060(DD), 138.100(A-C), and 138.140. Staff findings and analysis are provided below.

1. **Reservoirs and Water Impoundments [OAR 660-006-0025(4)(m)], subject to compliance with Sections 138.100(A), (B), and (C).** [PCZO 138.060(DD)]
 - a. **The use will not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands.** [PCZO 138.100(A)]

Findings: The subject property contains approximately 47.2 acres and is part of a larger tract containing approximately 60.2 acres. The subject property is located within the Farm/Forest (F/F) Zoning District. Based on the applicant's narrative and staff's review of the 2020 Aerial Photograph accessed through Polk County Geographic Information System (GIS), the subject property is primarily managed for farm use (vineyards) and forestry use. The applicant states that the reservoir is proposed to support the existing farm use on the subject property by providing the potential for on-site water storage for irrigation. Managing the land for farm use is an outright permitted use within the F/F zone pursuant to PCZO 138.040(A). The proposed reservoir would be located in the southeastern portion of the subject property, as shown in

Attachments A-1 and A-2, and is intended to be used for irrigation, which is a commonly accepted farming practice.

Surrounding properties are zoned F/F, and one property to the east is zoned FFO. The surrounding F/F properties range in size from approximately 5.9 to 71.7 acres, and the FFO property to the east is approximately 169.2 acres. Staff's review of 2020 Aerial Photograph found that surrounding properties are primarily managed for forestry and agricultural purposes, with some residential uses. Farming practices on surrounding properties may include, but are not limited to, plowing, disking, seeding, fertilizing, harvesting, and livestock grazing. Common forestry practices on adjacent properties may include, but are not limited to, spraying, thinning, harvesting, planting, and transporting of forest products.

Oregon Water Resources Department (OWRD) regulates water resources, and determines whether water rights can be granted. Typically, through their permitting process, OWRD imposes conditions such as monitoring and reporting requirements when granting water rights to ensure that senior water rights are not negatively affected by junior water rights. OWRD also limits the timeframe during which water may be accumulated for water storage to minimize impact to existing irrigation practices. Staff recommends a condition of approval that all Local, State, and Federal permits must be obtained prior to constructing the proposed reservoir, including all OWRD permits. Nothing in this land use decision overrides any regulations administered by another government entity.

Staff finds that obtaining the required permits from OWRD would ensure that neighboring farms are not negatively impacted and that senior water rights are not negatively affected by the proposed reservoir. With the above condition, staff concludes that the proposed reservoir would not force a significant change in, or significantly increase the cost of, accepted farming or forest practices on agriculture or forest lands.

With the above condition, the application complies with this criterion.

- b. The use will not significantly increase fire hazard or significantly increase fire suppression costs or significantly increase risks to fire suppression personnel; [PCZO 138.100(B)]**

Findings: The proposed reservoir would impound between 2.5 and 3.0 acre-feet of water, and would be approximately 1.0 acre in size. The applicant states that the proposed reservoir would not be constructed with flammable materials, and could be a potentially suitable source of water for fire suppression. Based on the applicant's statements, and the design of this structure as a water impoundment, staff has not identified an increased risk of loss from wildfire. The application complies with this criterion.

- c. A written statement recorded with the deed or written contract with the county or its equivalent shall be obtained from the land owner that recognizes the rights of adjacent and nearby land owners to conduct forest operations consistent with the Forest Practices Act and Rules. [PCZO 138.100(C)]**

Findings: As required by PCZO 138.100(C), the property owner shall sign and record with the Polk County Clerk a non-remonstrance deed restriction (Attachment B), recognizing the rights of adjacent and nearby land owners to conduct forest operations consistent with the Forest Practices Act and Rules. Prior to beginning construction of the reservoir, the property owners shall submit a copy of the recorded deed restriction to the Planning Division for inclusion in planning file CU 22-04. The property owner shall pay the applicable recording fee.

With the condition above, the application complies with this criterion.

- 2. FINDINGS OF THE HEARINGS OFFICER OR PLANNING DIRECTOR. Before granting a conditional use, the Hearings Officer or Planning Director shall determine:**

- a. **That he or she has the power to grant the conditional use;** [PCZO 119.070(A)]

Findings: Pursuant to PCZO sections 111.250(A) and 119.030, the Planning Director has the power to make a decision on conditional use permits.

- b. **That such conditional use, as described by the applicant, will be in harmony with the purpose and intent of the zoning district;** [PCZO 119.070(B)]

- i. **The Farm/Forest (F/F) Zone is designed to provide for the full range of agricultural and forest uses for such lands, while providing for the maximum property tax benefits available (e.g. farm use assessment, timber tax treatment, open space deferral, wildlife habitat, etc.) and conformity with the Farm/Forest objectives and policies of the Polk County Comprehensive Plan.**

Upon periodic revision of the Polk County Comprehensive Plan, the lands within the F/F designation shall be reviewed by the County Commissioners as to their continued appropriateness in such a designation or, alternatively rezoning to a more appropriate category.

As with other natural resource zones, there are isolated lands within the F/F Zone which have no actual or potential use for agricultural or forest purposes. In those cases, other non-natural resource uses may be permitted only as provided in this Chapter and in the Polk County Comprehensive Plan. Such uses must not be adverse to accepted agricultural or forest practices. Further, consistent with the diverse character of this zone and recognizing that the actual and potential land use conditions vary from intensive to extensive cultivation and use, the Board of County Commissioners has adopted this zone to deal with myriad potential uses, while recognizing the primary orientation of this zone towards farm and forest uses. [PCZO 138.010]

Findings: The purpose and intent of the F/F zone is to allow for a full range of agricultural and forestry uses consistent with the objectives and policies of the Polk County Comprehensive Plan. The proposed reservoir would impact approximately 1.0 acre of land, but is intended to support existing agricultural uses by providing water storage for irrigation. The applicant states that the subject property is predominantly managed for vineyards. According to staff's review of 2020 Aerial Photograph and measurement tools accessed through Polk County GIS, the subject property contains approximately 23.0 acres of vineyards and approximately 15.0 acres forest lands. Pursuant to PCZO 138.040(A), farm uses are outright permitted in the F/F zone and irrigation is an accepted farming practice.

The proposal would comply with the purpose and intent of the zone.

- c. **That such conditional use, as described by the applicant, complies with any specific provisions for such a use as provided by the zone or by Section 119.150.** [PCZO 119.070(C)]

Findings: There are no special provisions for the proposed conditional use identified in PCZO Section 119.150 that are applicable to this application.

- d. **That the imposition of conditions is deemed necessary for the public health, safety, or welfare, or to protect the health or safety of persons working or residing in the area, or for the protection of property or improvements in the neighborhood.** [PCZO 119.070(D)]

Findings: In order to meet the requirements of this criterion, staff recommends the following conditions of approval that address the safety and protection of property or improvements in the neighborhood, and requires that all other Local, State, and Federal permits be obtained prior to

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construction of the proposed reservoir. Nothing in this land use decision overrides any regulations administered by another government entity.

The OWRD has a Dam Safety Program which regulates dam construction. Dam safety rules do not apply to dams that are less than 10 feet high or that store less than 9.3 acre-feet (3,000,000 gallons), as they do not generally present a significant risk. The proposed reservoir would be less than 10 feet high. Dam Safety and permit requirements are found in OAR 690-020. At the time of writing the staff report, staff has not received comments from OWRD. Staff recommends that the applicant contact OWRD to discuss the proposed reservoir to determine if any permits are required prior to construction.

Staff received comments from DSL which indicated that the proposed location of the reservoir is likely to be near or within a wetland area, and that inspection and/or evaluation of the wetland area by a qualified professional is recommended. Additionally, these comments indicated that a removal/fill permit could be required, depending on the outcome of the inspection and/or evaluation. Staff recommends that the applicant contact DSL to discuss the proposed reservoir to determine if any permits are required prior to construction.

The proposed reservoir would impound between 2.5 and 3.0 acre-feet of water, and would be approximately 1.0 acre in size. Due to size of footprint of the proposed reservoir and the quantity of water, the Oregon Department of Environmental Quality (DEQ) and the Army Corp of Engineers could have additional permitting requirements. It is the property owner's responsibility to ensure that all applicable State and Federal permits are obtained and approved prior to construction of the reservoir. Agencies that require further permits may include, but are not limited to, the Oregon Water Resources Department, Oregon Department of Environmental Quality, Oregon Department of State Lands, and the Army Corp of Engineers.

Pursuant to PCZO 119.090, this conditional use authorization shall be effective only when exercised within one (1) year after the effective date of that conditional use, unless a longer period is specified or allowed by the Hearings Officer or Planning Director. In case such right has not been exercised or extension obtained as allowed, the conditional use shall be void. A written request for an extension of time shall be filed with the Planning Director at least 30 days before the expiration of the approval, and shall extend the running of the one year period until the Planning Director has acted on said request.

Pursuant to PCZO 119.100, discontinuance of the exercise of any right heretofore or hereafter authorized for any conditional use for a continuous period of six (6) months shall be deemed an abandonment of such conditional use.

Pursuant to PCZO 119.140, the Hearings Officer, Planning Director, or Board of Commissioners may rescind any conditional use permit granted under the conditional use ordinance if it is ascertained that the application contains any false statements. In case of such rescission, the matter may be referred to County Counsel for an opinion. In such case, it shall be unlawful for any person to exercise any right granted by the Hearings Officer, Planning Director, or the Board of Commissioners pursuant to such application.

With the above conditions, the application complies with this criterion.

- 3. NON-REMONSTRANCE DEED RESTRICTION: Pursuant to OAR 660-006-0029 (4)(e), for any dwelling, residential facility, private park, reservoir or water impoundment, home occupation, or private fishing or hunting accommodations approved under sections 138.050, 138.060, 138.080 and 138.090, and partitions approved under subsections 138.130(D) and (H) through (K), the landowner for the property shall be required to sign and record a deed restriction binding the landowner and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 to 30.937. [PCZO 138.140]**

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Findings: For any reservoir approved under PCZO 138.060(DD), the property owner shall be required to sign and record a deed restriction binding the landowners and landowner's successors in interest from pursuing a claim for relief or cause of action injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 to 30.937. Staff recommends that a condition of approval require the property owner to record a restrictive covenant (Attachment B) that complies with PCZO 138.140 prior to construction of the reservoir. The property owner shall submit the original document to the Polk County Clerk's Office for the recording in the deed history of the subject property. The property owner shall pay the applicable recording fees. The property owner shall submit a copy of the recorded deed restriction to the Planning Division for inclusion in the record of CU 22-04 prior to the issuance of building permits.

With the above condition, the application complies with this criterion.

4. RESOURCE ZONE DEVELOPMENT STANDARDS: Farm Forest Zoning District [PCZO 112.430(B)]

Setbacks for All Buildings and Structures

Front	Side	Rear
30 feet	20 feet	20 feet

Findings: Based on the applicant's plot plan and staff's review of 2020 Aerial Photograph and measurement tools accessed through Polk County GIS, the reservoir is proposed to be located approximately 450 feet from the southern property line, and approximately, but no less than, 20 feet from the eastern property line, which are the two closest property lines to the proposed reservoir location. Staff finds that the proposed location would meet or exceed the required setback distances. To ensure compliance, staff recommends a condition of approval that the proposed reservoir shall comply with the setback standards in PCZO 112.430(B). Those setbacks are: front yard 30-feet, rear yard-20 feet, and side yards-20 feet. The reservoir shall also comply with any other applicable setback standards listed in the PCZO.

With the above condition, the application complies with these criteria

IV. CONCLUSION

Based on the Review and Decision Criteria above, staff finds that the proposed reservoir is consistent with the PCZO provisions for a reservoir or water impoundment in the F/F zone. As discussed in Section III of this report, staff finds that the following conditions are required in order to ensure compliance with the applicable review and decision criteria.

Conditions of Approval:

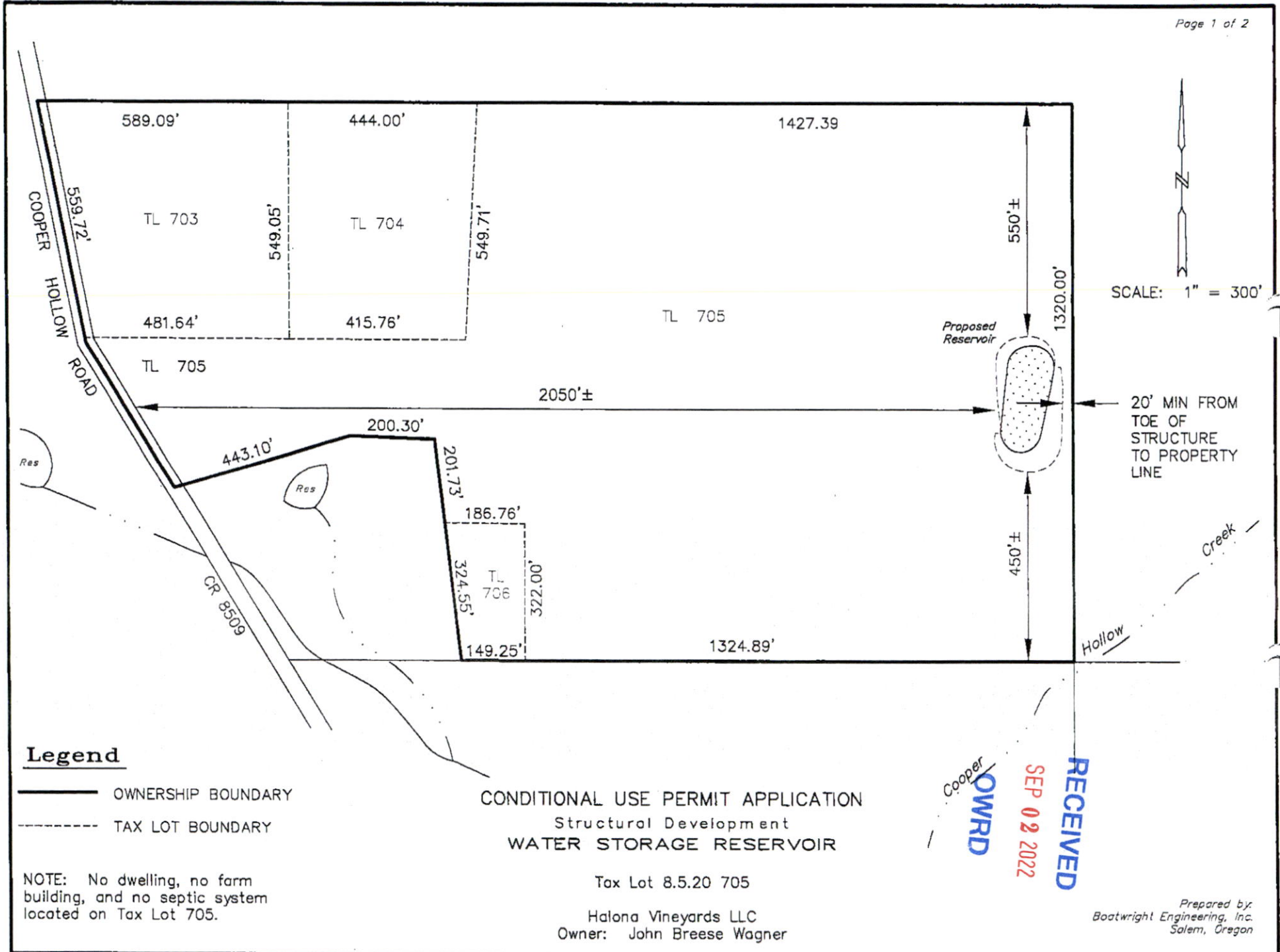
1. This approval is to construct a reservoir that is approximately 1.0 acre in size and capable of storing 2.5 to 3.0 acre-feet of water on the subject property, as depicted in the applicant's plot plans (Attachments A-1 and A-2).
2. The reservoir shall comply with the setback standards of the F/F Zoning District found in PCZO 112.430(B), as follows: front yard 30 feet, rear yard 20 feet, and side yards 20 feet. The reservoir shall also comply with any other applicable setback standards listed in the PCZO.
3. It is the property owner's responsibility to ensure that all applicable State and Federal permits are obtained and approved prior to construction of the reservoir. Agencies that require further permits may include, but are not limited to, the Oregon Water Resources Department and Dam Safety Program, Oregon Department of Environmental Quality, Oregon Department of State Lands, and the Army Corp of Engineers.

4. Prior to any future development within the regulated 100-year floodplain, a Floodplain Development Permit and/or a Land Use Determination application and approval may be required prior to development activities, pursuant to PCZO Chapter 178. Development includes any man-made change to improved or unimproved real estate, including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials located within floodplains.
5. The property owner shall sign and record with the Polk County Clerk a non-remonstrance deed restriction (Attachment B), recognizing the rights of adjacent and nearby land owners to conduct forest operations consistent with the Forest Practices Act and Rules, pursuant to PCZO 138.100(C). In addition, the deed restriction shall bind the landowners and landowner's successors in interest from pursuing a claim for relief or cause of action injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 to 30.937, pursuant to PCZO 138.140. Prior to beginning construction of the reservoir, the property owners shall submit a copy of the recorded deed restriction to the Planning Division for inclusion in planning file CU 22-04. The property owner shall pay the applicable recording fees.
6. Pursuant to PCZO 119.140, the Hearings Officer, Planning Director, or Board of Commissioners may rescind any conditional use permit granted under the conditional use ordinance if it is ascertained that the application contains any false statements. In case of such rescission, the matter may be referred to County Counsel for an opinion. In such case, it shall be unlawful for any person to exercise any right granted by the Hearings Officer, Planning Director, or the Board of Commissioners pursuant to such application.
7. Pursuant to PCZO 119.100, discontinuance of the exercise of any right heretofore or hereafter authorized for any conditional use for a continuous period of six (6) months shall be deemed an abandonment of such conditional use.

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Legend

- OWNERSHIP BOUNDARY
- - - TAX LOT BOUNDARY

NOTE: No dwelling, no farm building, and no septic system located on Tax Lot 705.

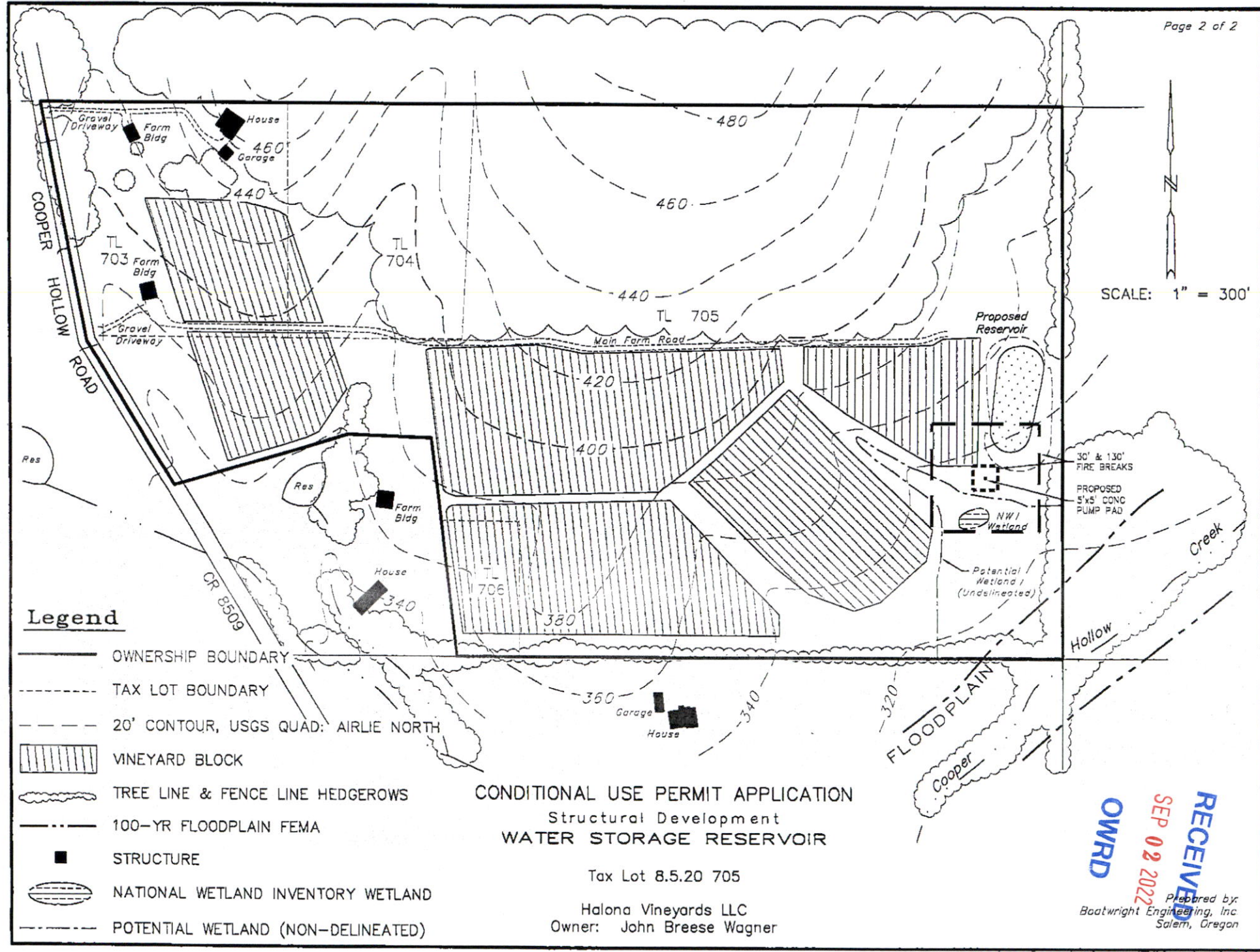
CONDITIONAL USE PERMIT APPLICATION
 Structural Development
WATER STORAGE RESERVOIR

Tax Lot 8.5.20 705

Halona Vineyards LLC
 Owner: John Breese Wagner

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Prepared by:
 Boatwright Engineering, Inc.
 Salem, Oregon



SCALE: 1" = 300'

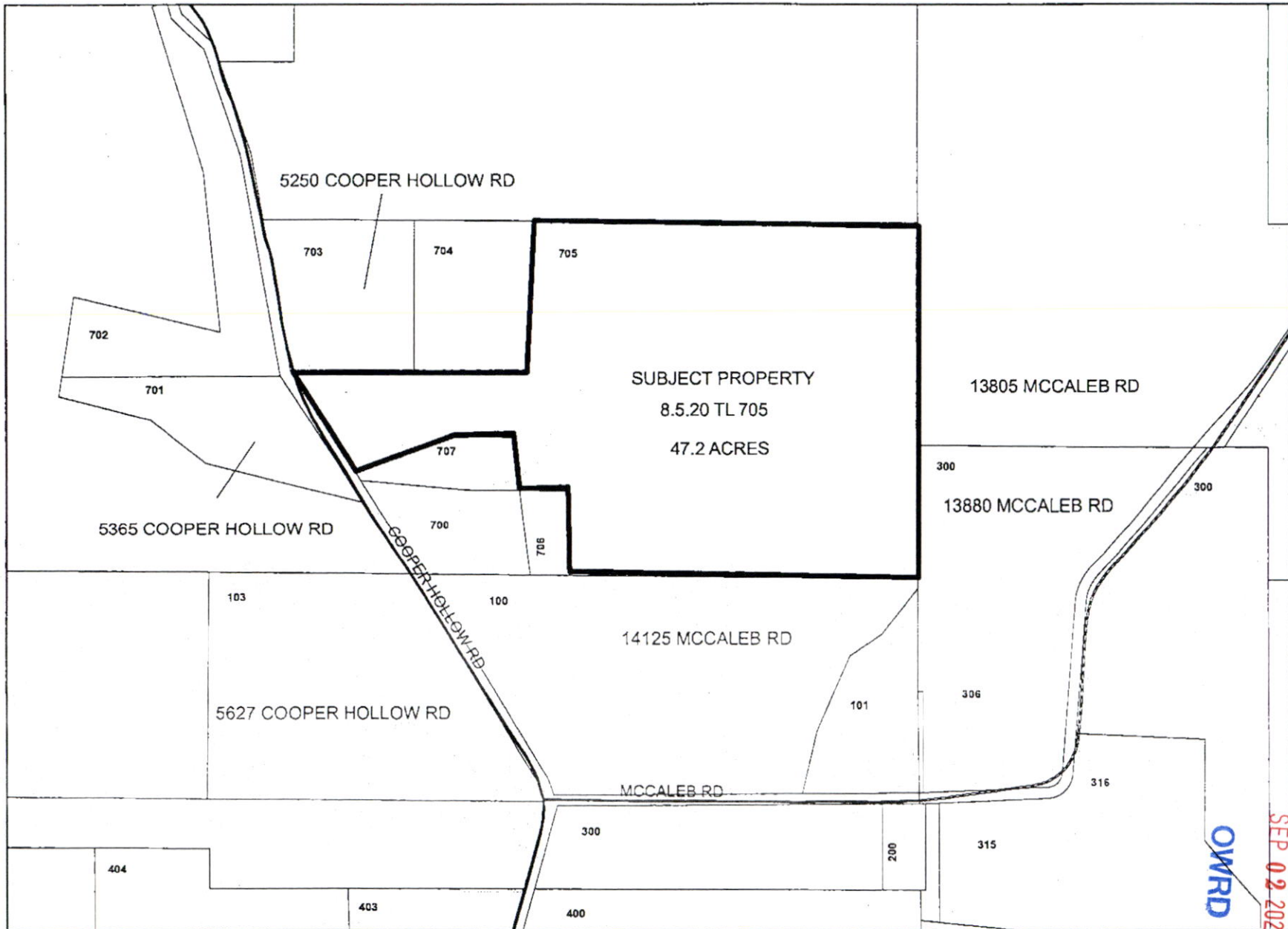
Legend

- OWNERSHIP BOUNDARY
- - - TAX LOT BOUNDARY
- - - 20' CONTOUR, USGS QUAD: AIRLIE NORTH
- ▨ VINEYARD BLOCK
- ~ TREE LINE & FENCE LINE HEDGEROWS
- - - 100-YR FLOODPLAIN FEMA
- STRUCTURE
- NATIONAL WETLAND INVENTORY WETLAND
- - - POTENTIAL WETLAND (NON-DELINEATED)

CONDITIONAL USE PERMIT APPLICATION
 Structural Development
WATER STORAGE RESERVOIR

Tax Lot 8.5.20 705
 Halona Vineyards LLC
 Owner: John Breese Wagner

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 Prepared by:
 Boatwright Engineering, Inc
 Salem, Oregon



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Date: 3/1/2022
This map was produced from the Polk County geographic databases to support its governmental activities. This product is for informational purposes and may not have been prepared for, or be suitable for legal, engineering, or surveying purposes. The county is not responsible for any map errors, possible misuse, or misinterpretation. To report a map error, please call (503)623-0713.

RESTRICTIVE COVENANT

Owner: John Wagner

File Number: CU 22-04, Request: Construct a Reservoir

Location: One property south of 5250 Cooper Hollow Road, Monmouth, OR 97361
(T8S, R5W, Section 20, Tax Lot 705)

Be it known to all that the undersigned, being the legal owner of the real property described below, hereby consent and covenant as follows:

The property herein described is situated in a farm or forest zone in Polk County, Oregon where the intent is to encourage and minimize conflicts with farm and forest uses. Specifically, property owners may be subjected to common, customary and accepted farm and/or forest management practices conducted in accordance with federal and state laws which ordinarily and necessarily produce noise, dust, smoke and other impacts.

The owner, including their heirs, assigns and lessees, by the recording of this declaratory statement, and in return for allowing a water reservoir on this property, hereby accept the potential impacts from farm and forestry practices as normal and necessary in this area. The property owner acknowledges the need to avoid activities that conflict with nearby farm and forest uses. The property owner, including successors in interest, are hereby prohibited from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 to 30.937.

In addition the owner, including heirs, assigns and lessees, by recording of this declaratory statement, and in return for allowing a water reservoir on this property, hereby recognize the rights of adjacent and nearby land owners to conduct forest operations consistent with the Forest Practices Act and Rules

Legal Description:

See Exhibit A.

This covenant shall be binding upon the undersigned and their heirs, successors, and assigns as a covenant running with the land or released by Polk County and/or as otherwise noted above.

Owner(s) Signature

Printed Name(s)

Address

1. _____
2. _____

State of Oregon)
County of Polk) ss

On _____,
20____, before me a notary public personally appeared by
above-named _____ and
acknowledged the foregoing instrument to be a voluntary
act and deed. Before me:

Notary Public of Oregon

My Commission Expires: _____

This space
reserved for use
by the Polk
County Recorder

AFTER RECORDING, RETURN TO:
Community Development Department
Polk County Courthouse, 850 Main Street
Dallas, Oregon 97338

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3/17/22, 1:53 PM

co.polk.or.us Mail - WN2022-0196 Response to Local Case File #CU 22-04



Snyder, Morgan <snyder.morgan@co.polk.or.us>

WN2022-0196 Response to Local Case File #CU 22-04


Snyder, Morgan <snyder.morgan@co.polk.or.us>
To: Jeanne Boatwright <jeanne@boatwrightengr.com>

Thu, Mar 17, 2022 at 1:53 PM

For your records, these are the comments we received from DSL regarding CU 22-04. No action is needed at this time.
[Quoted text hidden]

2 attachments

 **Wetland Land Use Notice.pdf**
851K

 **Wetland Land Use Notice Response.pdf**
790K

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After recording return to:
John Breese Wagner
5250 Cooper Hollow Road
Monmouth, OR 97361

Until a change is requested all tax
statements shall be sent to the
following address:
John Breese Wagner
5250 Cooper Hollow Road
Monmouth, OR 97361

File No.: 1031-3543993 (MWG)
Date: August 11, 2020

FIRST AMERICAN TITLE 3543993

THIS SPACE RESERVED FOR RECORDER'S USE

RECORDED IN POLK COUNTY
Valerie Unger, County Clerk

2020-013342

09/15/2020 01:34:59 PM

REC-WD Cnt=1 Str=5 K. WILLIAMS
\$25.00 \$11.00 \$10.00 \$60.00 \$5.00

\$111.00

STATUTORY WARRANTY DEED

Steven J. Wheat and Margie L. Wheat, as tenants by the entirety, Grantor, conveys and warrants to **John Breese Wagner**, 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:

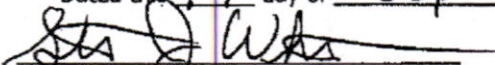
1. Covenants, conditions, restrictions and/or easements, if any, affecting title, which may appear in the public record, including those shown on any recorded plat or survey.
2. The **2020-2021** Taxes, a lien not yet payable.
3. The assessment roll and the tax roll disclose that the within described premises were specially zoned or classified for Farm use. If the land has become or becomes disqualified for such use under the statute, an additional tax or penalty may be imposed.

The true consideration for this conveyance is **\$1,375,000.00**. (Here comply with requirements of ORS 93.030)

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

Dated this 14 day of September, 2020.

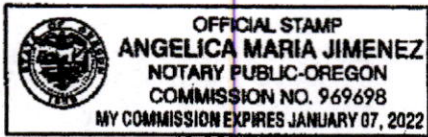


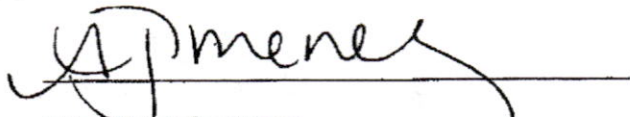
Steven J. Wheat

Margie L. Wheat

STATE OF Oregon)
)ss.
County of Polk)

This instrument was acknowledged before me on this 14th day of Sept, 2020
by ~~Steven J. Wheat and Margie L. Wheat.~~





Notary Public for Oregon.
My commission expires: 01-07-2022

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

Dated this 14th day of September, 2020.

Steven J. Wheat

Margie L. Wheat
Margie L. Wheat

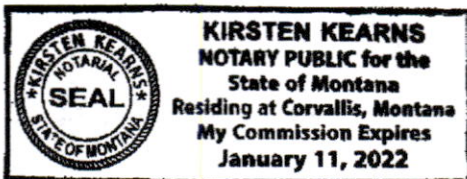
STATE OF ~~Oregon~~ MONTANA ^{KK}

County of ~~Polk~~ RAVALLI ^{SS. KK}

This Instrument was acknowledged before me on this 14th day of September, 2020 by ~~Steven J. Wheat and Margie L. Wheat.~~ ^{KK}

Kirsten Kearns

Notary Public for ~~Oregon~~ MONTANA ^{KK}
My commission expires:



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EXHIBIT A**LEGAL DESCRIPTION:** Real property in the County of Polk, State of Oregon, described as follows:**PARCEL I:** 8-5-20 TL 703

Beginning at an iron bar which is 2001.48 feet North 67° 44' 11" West from the Southeast corner of Section 20, Township 8 South, Range 5 West of the Willamette Meridian, Polk County, Oregon; running thence North 89° 51' 47" West 481.64 feet to the center of the County Road, from which an iron bar bears South 89° 51' 47" East 33.55 feet; thence along said centerline North 11° 04' 07" West 559.72 feet from which an iron bar bears South 89° 51' 47" East 20.39 feet; thence South 89° 51' 47" East 589.09 feet to an iron bar; thence South 549.05 feet to the place of beginning.

PARCEL II: 8-5-20 TL 704

Beginning at an iron bar which is 2001.48 feet North 67° 44' 11" West from the Southeast corner of Section 20, Township 8 South, Range 5 West of the Willamette Meridian, Polk County, Oregon; running North 549.05 feet to an iron bar; thence South 89° 51' 47" East 444.00 feet to an iron bar; thence South 02° 56' 39" West 549.71 feet to an iron bar; thence North 89° 51' 47" West 415.76 feet to the place of beginning.

PARCEL III: 8-5-20 TL 705

That portion of the South one-half of the Southeast quarter of Section 20 in Township 8 South, Range 5 West of the Willamette Meridian in Polk County, Oregon, lying East of Cooper Hollow Road No. 859.

SAVE AND EXCEPT: Beginning at an iron bar which is 2001.48 feet North 67° 44' 11" West from the Southeast corner of Section 20, Township 8 South, Range 5 West of the Willamette Meridian, Polk County, Oregon; running thence North 89° 51' 47" West 481.64 feet to the center of the County Road, from which an iron bar bears South 89° 51' 47" East 33.55 feet; thence along said centerline North 11° 04' 07" West 559.72 feet from which an iron bar bears South 89° 51' 47" East 20.39 feet; thence South 89° 51' 47" East 589.09 feet to an iron bar; thence South 549.05 feet to the place of beginning. 8-5-20 TL 703

ALSO SAVE AND EXCEPT: Beginning at an iron bar which is 2001.48 feet North 67° 44' 11" West from the Southeast corner of Section 20, Township 8 South, Range 5 West of the Willamette Meridian, Polk County, Oregon; running North 549.05 feet to an iron bar; thence South 89° 51' 47" East 444.00 feet to an iron bar; thence South 02° 56' 39" West 549.71 feet to an iron bar; thence North 89° 51' 47" West 415.76 feet to the place of beginning. 8-5-20 TL 704

ALSO SAVE AND EXCEPT: Beginning at an iron rod on the South line of Section 20, Township 8 South, Range 5 West of the Willamette Meridian, Polk County, said rod being 1300.39 feet North 89° 27' 12" West from the Southeast corner of said Section 20; thence North 89° 27' 12" West, along the South line of said Section, 580.00 feet to an iron rod in the center of a County road; thence North 32° 36' 50" West 424.06 feet to a point in the center of said County Road from which an iron rod bears South 85° East 25.25 feet; thence South 85° 00' 8-5-20 TL 700 & 706

East 425.17 feet to an iron rod; thence South 89° 27' 12" East 385.00 feet to an iron rod; thence South 322.00 feet to the point of beginning.

ALSO SAVE AND EXCEPT: Beginning at a point which is 1449.64 feet North 89° 27' 12" West and 324.55 feet North 06° 39' 16" West from the Southeast corner of Section 20 in Township 8 South, Range 5 West of the Willamette Meridian in Polk County, Oregon; thence North 89° 27' 12" West, along the Northerly line of that tract of land conveyed to Marsha Marie Schulz and Russell W. Schulz and recorded in Book of Records 144, Page 835 of the Deed Records of Polk County, Oregon, a distance of 198.24 feet to an iron rod; thence North 85° 00' 19" West 425.13 feet to a point in the center of the County Road which is the Northwest corner of said Schulz tract of land; thence North 32° 37' 26" West, along the center of said road, 48.09 feet; thence North 73° 10' 23" East 20.78 feet to an iron rod; thence continuing North 73° 10' 23" East a distance of 422.32 feet to an iron rod; thence South 87° 54' 37" East 200.30 feet to an iron rod; thence South 06° 39' 16" East 201.73 feet to the point of beginning.

8-5-20
TL 707

PARCEL IV: 8-5-20 TL 706

Beginning at an iron rod on the South line of Section 20 which is 1449.64 feet North 89° 27' 12" West from the Southeast corner of said Section 20 in Township 8 South, Range 5 West of the Willamette Meridian in Polk County, Oregon; thence North 06° 39' 16" West 324.55 feet to a point on the Northerly line of that tract of land conveyed to Marsha Marie Schulz and Russell W. Schulz and recorded in Book of Records 144, Page 835 of the Deed Records of Polk County, Oregon; thence South 89° 27' 12" East 186.76 feet to an iron rod at the Northeast corner of said Schulz tract of land; thence South 00° 01' East 322.00 feet to an iron rod on the South line of said Section 20; thence North 89° 27' 12" West 149.25 feet to the point of beginning.

NOTE: This legal description was created prior to January 1, 2008.

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Date Received (Date Stamp Here)

OWRD Over-the-Counter Submission Receipt

Applicant Name(s) & Address: Halona Vineyards, LLC (John Wagner)
15300 Ventura Blvd Suite 210 Sherman Oaks, CA

Transaction Type: Res App

Fees Received: \$ 1213.00

Cash

Check:

Check No. 1564

Name(s) on Check: Breeze Ranch LLC

Thank you for your submission. Oregon Water Resources Department (Department) staff will review your submittal as soon as possible.

If your submission is determined to be complete, you will receive a receipt for the fees paid and an acknowledgement letter stating your submittal is complete.

If determined to be incomplete, your submission and the accompanying fees will be returned with an explanation of deficiencies that must be addressed in order for the submittal to be accepted.

If you have any questions, please feel free to contact the Department's Customer Service staff at 503-986-0801 or 503-986-0810.

Sincerely,

OWRD Customer Service Staff

Submission received by:

Dante Luongo
(Name of OWRD staff)

Instructions for OWRD staff:

- Complete this Submission Receipt and make two (2) copies. Place one copy with the check/cash; and place the other copy with the submission (i.e., the application or other document).
- Date-stamp all pages. (NOTE: Do not stamp check.)
- Give this original Submission Receipt to the applicant.
- Record Submission Receipt information on the "RECEIVED OVER THE COUNTER" log sheet.
- Fold and put one copy of the Submission Receipt with check/cash into the Safe slot. Place the other copy of the Submission Receipt with submission (application/other document) in the top drawer of filing cabinet.