



Board of Commissioners

216 S. E. 4th Street
Pendleton, OR 97801
541-278-6204

Daniel N. Dorran
541-278-6201

John M. Shafer
541-278-6203

Celinda A. Timmons
541-278-6202

BOARD OF COMMISSIONERS MEETING

Wednesday, November 13, 2024, 9:00am
Umatilla County Courthouse, Room 130

- A. Call to Order
- B. Chair's Introductory Comments & Opening Statement
- C. New Business

APPEAL OF PLANNING DIVISION DECISION TO DENY TYPE II LAND DIVISION REQUEST #LD-5N-912-24: KALVIN GARTON, APPLICANT / OWNER. A "Request for Appeal" was filed on August 14, 2024 to appeal the Umatilla County Planning Division's decision to deny Land Division Request #LD-5N-912-24. The applicant's proposal is to partition the property located on Assessor's Map 5N2722, Tax Lot 809. The applicant's proposed partition would create three (3) lots of at least 2 acres in size. The Land Use standards applicable to the applicant's request are found in Umatilla County Development Code 152.684, Type II Land Divisions.

- D. Adjournment

COMMUNITY &
BUSINESS
DEVELOPMENT

MEMO

LAND USE
PLANNING,
ZONING AND
PERMITTING

TO: Umatilla County Board of Commissioners
FROM: Robert Waldher, Community Development Director
DATE: November 6, 2024

CODE
ENFORCEMENT

RE: **November 13, 2024 Board of Commissioners Hearing**
Appeal of Planning Commission Decision
Type II Land Division, LD-5N-912-24
Map 5N 27 22, Tax Lot #809

SOLID WASTE
COMMITTEE

SMOKE
MANAGEMENT

GIS AND MAPPING

Request

RURAL ADDRESSING

A “Request for Appeal” was filed by Calvin Garton (applicant/owner) to appeal the Umatilla County Planning Commission’s unanimous decision to deny Land Use Request #LD-5N-912-24. The applicant’s proposal is to partition the property located on Assessor’s map Township 5N, Range 27E, Section 22; Tax Lot #809. As shown in the vicinity map (**Exhibit A**), the subject property is located south of Highway 730 and east of Pleasant View Road. The property is located along the Umatilla/Morrow County border, approximately three (3) miles west of the City of Umatilla. The proposed partition would result in the following parcel sizes: Proposed Parcel 1 – 2.06 acres, Proposed Parcel 2 – 2.02 acres, and Proposed Parcel 3 – 4.02 acres.

LIAISON, NATURAL
RESOURCES &
ENVIRONMENT

Background Information

PUBLIC TRANSIT

The applicant submitted a Type II Land Division request to the Planning Division on March 4, 2024. Planning Division staff conducted a completeness review of the application and identified that the proposed parcel configuration did not show adequate buildable space required for rural residential properties, and staff noted several omissions in addressing the criteria of approval for the partition request. A map (**Exhibit B**) prepared by planning staff shows area of developable space on the subject property after required setbacks are applied. On March 25, 2024, Planning Division staff emailed (**Exhibit C**) the applicant and their surveyor, Mr. Bill Wells (Wells Surveying), requesting that they submit the omitted information along with paperwork to assist in addressing the criteria of approval required for the Type II Land Division request. Mr. Wells responded that he needed to speak with his client and later requested that staff delay sending out the Preliminary Findings until the applicant and surveyor had a chance to respond to the concerns. On April 8, 2024, planning staff followed up with a “Completeness Letter” (**Exhibit D**) sent to the applicant and their surveyor that formally clarified what information was still necessary in order to proceed with deeming the application complete. The Completeness Letter provided that the applicant had 180 days to respond to the requested information or the application would become void per ORS 215.427.

In April 2024, planning staff provided a wetland land use notification to Oregon Department of State Lands (DSL), the agency responsible for administering removal/fill laws in the state. A response (**Exhibit E**) from DSL staff on April 17, 2024 identified the likely presence of additional wetlands and recommended that the applicant hire a wetland consultant to prepare a wetland delineation report for DSL’s review and approval prior to any ground disturbing activities. The response from DSL was added to the project record.

Memo

Board of Commissioners Public Hearing – November 13, 2024
Land Division Request LD-5N-912-24

On June 18, 2024, the applicant submitted a letter (**Exhibit F**) to Planning Division staff that disagreed with the concerns highlighted in the county's completeness letter and requested the land division request to be processed immediately. Planning staff continued processing the application as requested by the applicant. Affected agencies and nearby property owners were notified of the land division request and, on July 5, 2024, were sent a copy of the Preliminary Findings and Conclusions which denied the land division request. The Planning Division received one email comment (**Exhibit G**) from Morrow County Planning Department regarding access permits. A comment letter from the applicant (**Exhibit H**) was received during the 21-day comment period. The letter disagreed with Umatilla County's decision to deny the request. No requests for a hearing were received during 21-day comment period.

A Decision letter (**Exhibit I**) and Final Findings and Conclusions (**Exhibit J**) were mailed on July 31, 2024 to the applicant and commenting parties. On August 14, 2024, before the end of the 15-day appeal period, the applicant filed an appeal (**Exhibit K**) of the Planning Division's decision to deny the Type II Land Division.

An evidentiary hearing before the Umatilla County Planning Commission was held September 26, 2024. Planning staff presented an overview of the proposal and introduced new documents to the record. These documents include the following: [1] Follow-up Email Communication from Jessica Saldago, DSL (**Exhibit L**), [2] Written testimony from neighbor, Justin Berry in opposition of appeal (**Exhibit M**), [3] Excerpt from 2020 Findings for Garton Land Division #LD-5N-881-20 (**Exhibit N**) stating that future partitioning of the subject property requires a wetland mitigation plan, and [4] Umatilla County Environmental Health Site Evaluation Reports (**Exhibit O**) indicating hydric soil conditions present on subject property. After hearing testimony from the applicant, the Planning Commission voted unanimously to uphold the decision of the Planning Division and denied the appeal.

A Decision letter (**Exhibit P**) and Final Findings and Conclusions (**Exhibit Q**) were mailed on October 1, 2024 to the applicant and commenting parties. On October 15, 2024, before the end of the 15-day appeal period, the applicant filed an appeal (**Exhibit R**) of the Planning Division's decision to deny the Type II Land Division.

Criteria of Approval

Criteria of approval for Type II Land Divisions (partitions in a non-resource zone) are found in Umatilla County Development Code (UCDC) Sections 152.684.

Notice

Notice of the public hearing was mailed on October 24, 2024 to the owners of properties located within 250-feet of the perimeter of Tax Lot 809. Notice was also published in the East Oregonian notifying the public of the applicant's request before the Board of Commissioners, scheduled for November 13, 2024.

Conclusion

The Board of Commissioners is tasked with making a decision whether or not to uphold the decision of the Planning Commission to deny the Type II Land Division request. Approval or Denial must be based on substantive, factual evidence in the record, not conclusory statements. The decision made by the Board of Commissioners is final unless timely appealed to the Land Use Board of Appeals.

Staff have provided a sample motions for the Umatilla County Board of Commissioners consideration below.

Memo

Board of Commissioners Public Hearing – November 13, 2024
Land Division Request LD-5N-912-24

PLANNING COMMISSION MOTION OPTIONS

Motion to Uphold the Planning Commission Decision Based on Evidence in the Record

I, Commissioner _____, make a motion to UPHOLD the decision of the Planning Commission and DENY the Garton Type II Land Division, based on foregoing Findings of Fact and Conclusions of Law.

Motion to Reverse the Planning Commission Decision Based on Evidence in the Record

I, Commissioner _____, make a motion to REVERSE the decision of the Planning Commission and Approve the Garton Type II Land Division, based on evidence in the record and with the following additional Findings of Fact: _____.

Attachments

- **Exhibit A**– Vicinity Map
- **Exhibit B** – Setback Map
- **Exhibit C** – Email Communication Re: Completeness Review (03/25/24)
- **Exhibit D** – Completeness Letter (04/08/24)
- **Exhibit E** – DSL Wetland Notification Response (04/17/24)
- **Exhibit F** – Letter from Applicant Requesting Processing of Application (06/18/24)
- **Exhibit G** – Email from Morrow County Received During 21-day Comment Period (07/23/24)
- **Exhibit H** – Letter from Applicant Received During 21-day Comment Period (07/26/24)
- **Exhibit I** – Planning Division Decision Letter (07/31/24)
- **Exhibit J** – Planning Division Findings and Conclusions
- **Exhibit K** – Appeal Filing (08/14/24)
- **Exhibit L** – Email Communication from Jessica Saldago, DSL (09/13/24)
- **Exhibit M** – Written Testimony in Opposition from Justin Berry (09/24/24)
- **Exhibit N** – Excerpt of Findings from Approved 2020 Garton Land Division #LD-5N-881-20
- **Exhibit O** – Umatilla County Environmental Health Site Evaluation Reports
- **Exhibit P** – Planning Commission Decision Letter (10/01/24)
- **Exhibit Q** – Planning Commission Findings and Conclusions
- **Exhibit R** – Appeal Filing (10/15/24)

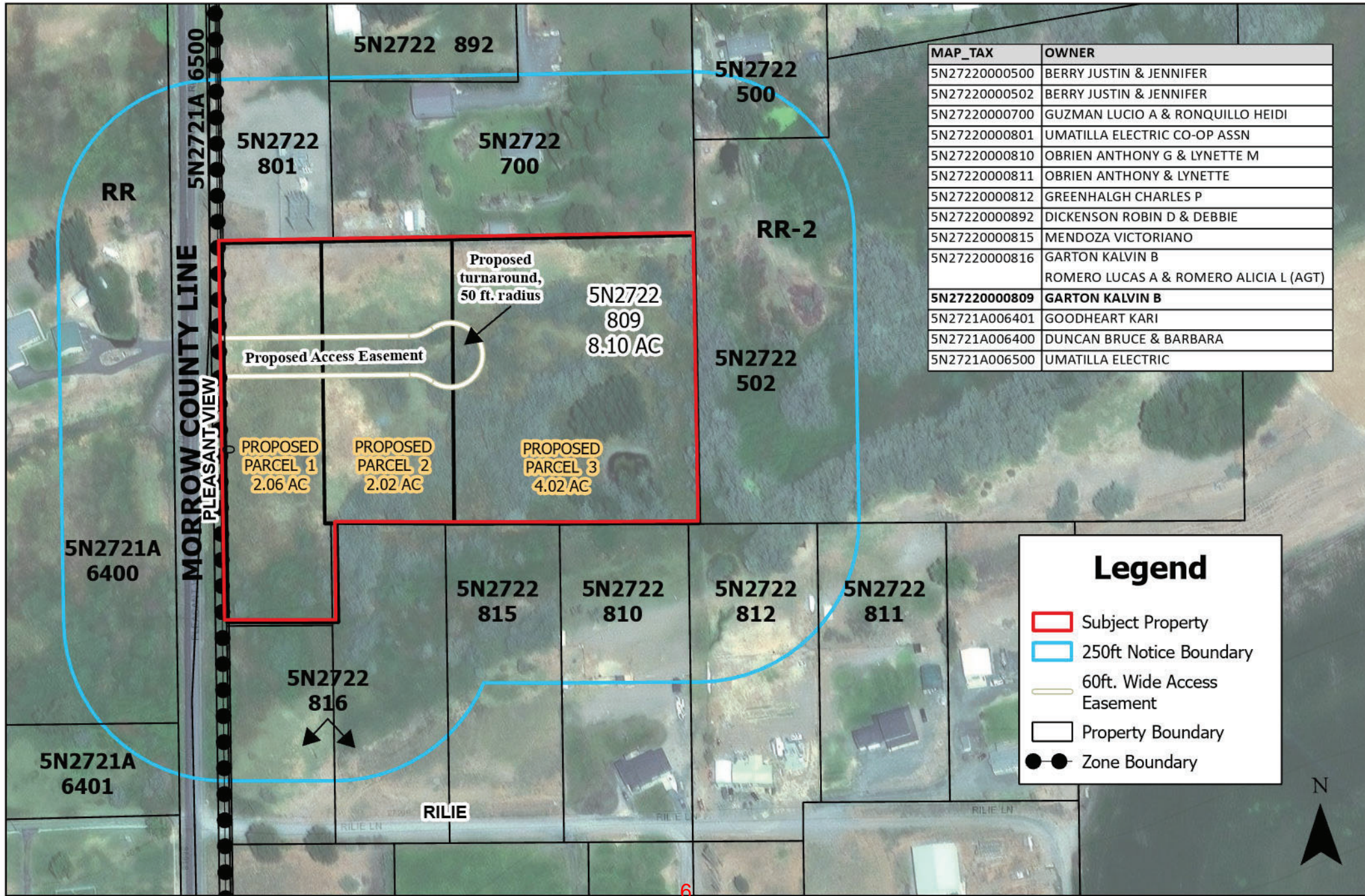
EXHIBIT A

Vicinity Map

MAP 5N 27 22, TAX LOT #809

REQUEST FOR APPEAL: LAND DIVISION #LD-5N-912-24

Notified property owners within 250 feet of Subject Parcel



MAP_TAX	OWNER
5N27220000500	BERRY JUSTIN & JENNIFER
5N27220000502	BERRY JUSTIN & JENNIFER
5N27220000700	GUZMAN LUCIO A & RONQUILLO HEIDI
5N27220000801	UMATILLA ELECTRIC CO-OP ASSN
5N27220000810	OBRIEN ANTHONY G & LYNETTE M
5N27220000811	OBRIEN ANTHONY & LYNETTE
5N27220000812	GREENHALGH CHARLES P
5N27220000892	DICKENSON ROBIN D & DEBBIE
5N27220000815	MENDOZA VICTORIANO
5N27220000816	GARTON KALVIN B ROMERO LUCAS A & ROMERO ALICIA L (AGT)
5N27220000809	GARTON KALVIN B
5N2721A006401	GOODHEART KARI
5N2721A006400	DUNCAN BRUCE & BARBARA
5N2721A006500	UMATILLA ELECTRIC

Legend

- Subject Property
- 250ft Notice Boundary
- 60ft. Wide Access Easement
- Property Boundary
- Zone Boundary



EXHIBIT B

Setback Map

KALVIN GARTON, APPLICANT/OWNER
MAP 5N 27 22, TAX LOT #809
LAND DIVISION REQUEST



**WETLANDS MAP/
BUILDABLE SPACE**

Map Disclaimer: No warranty is made by Umatilla County as to the accuracy, reliability or completeness of the data. Parcel data should be used for reference purposes only. Created by T. Cimmiyotti, Umatilla County Planning Department Date: 9/17/2024

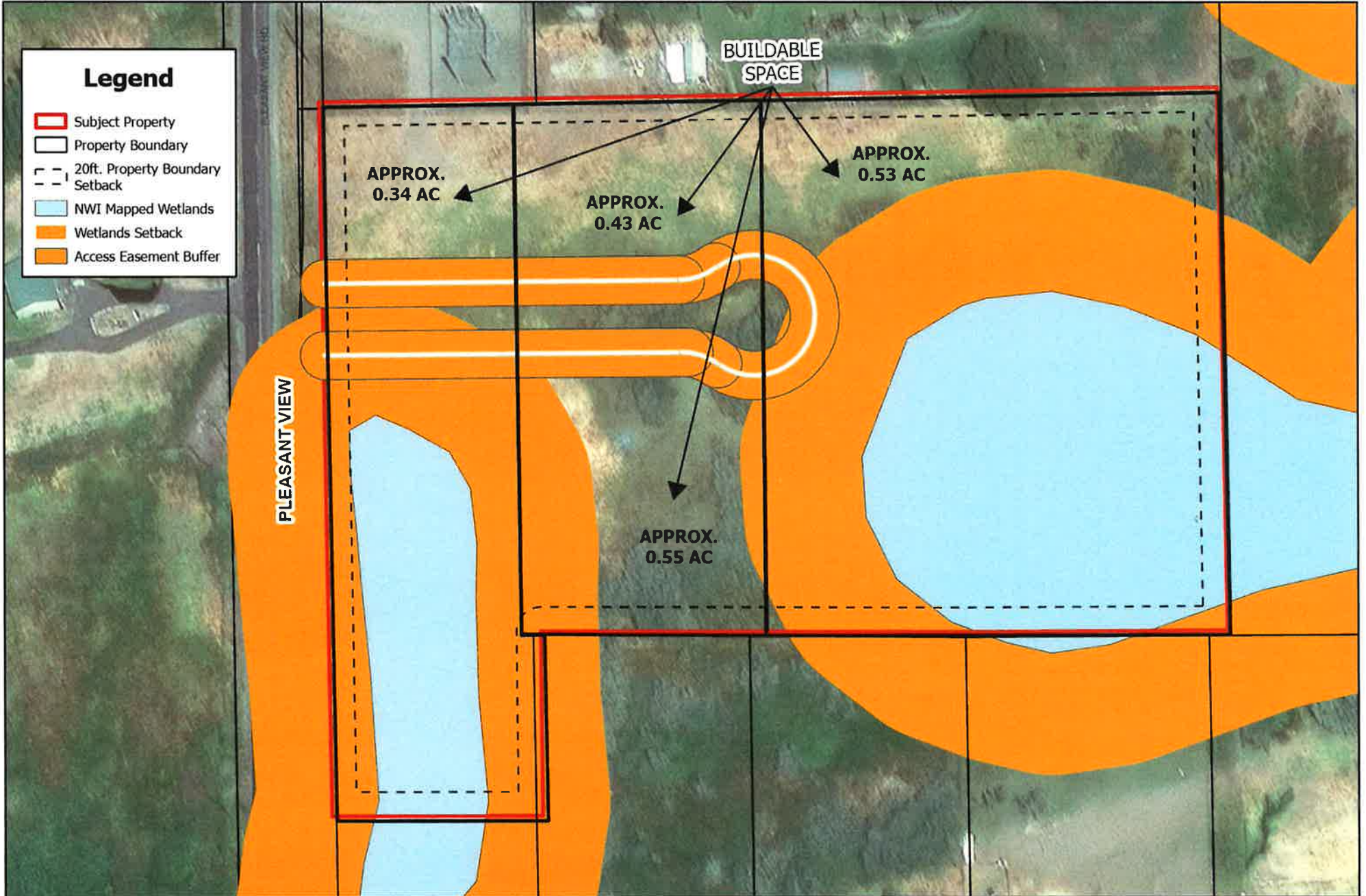


EXHIBIT C

Email Communication Re: Completeness Review (03/25/24)



Megan Davchevski <megan.davchevski@umatillacounty.gov>

Garton Partition

5 messages

Megan Davchevski <megan.davchevski@umatillacounty.gov>

Mon, Mar 25, 2024 at 1:23 PM

To: Bill Wells <bill@wellssurveying.com>

Cc: Planning Department <planning@umatillacounty.gov>

Hi Bill,

I've worked up the preliminary findings and have discussed the proposal with my colleagues and County Counsel. We do not think the 3 parcel partition will provide adequate buildable space required for rural residential properties, nor meet the requirements of UCDC §152.684 (B) and (K). In addition to these criteria not being met, it appears the proposal will create 3 parcels which will likely require variances to setback requirements for development to occur. As you are aware, we cannot create new parcels that require variances for development.

It may be possible to meet these requirements by reducing the request to two parcels, rather than 3. A robust response by the applicant for both of these requirements would be required.

Please let me know how Mr. Garton would like to proceed. I will hold off on mailing the public notice until I hear from you. If you would like to discuss this in person, I am available for most of tomorrow and Wednesday until 3PM. I will be on vacation beginning Thursday, returning on April 5th.

Thank you,

Megan

--

Megan Davchevski, CFM

Planning Division Manager

Community Development Department



Tel: 541-278-6246 | Fax: 541-278-5480

216 SE 4th Street | Pendleton, OR 97801

<http://www.umatillacounty.gov/planning>

Please Be Aware - Documents such as emails, letters, maps, reports, etc. sent from or received by the Umatilla County Department of Land Use Planning are subject to Oregon Public Records law and are NOT CONFIDENTIAL. All such documents are available to the public upon request; costs for copies may be collected. This includes materials that may contain sensitive data or other information, and Umatilla County will not be held liable for its distribution.

Bill Wells <billwellssurveying@gmail.com>

Tue, Mar 26, 2024 at 7:43 AM

Reply-To: bill@wellssurveying.com

To: Megan Davchevski <megan.davchevski@umatillacounty.gov>

Megan,

Kal is out of town until next week. I need to talk with him.

Bill Wells

Wells Surveying
P.O. Box 1696
200 SE Hailey #108
Pendleton, OR 97801
Phone: 541-276-6362
Cell: 541-969-8881

[Quoted text hidden]

Megan Davchevski <megan.davchevski@umatillacounty.gov>
To: bill@wellssurveying.com

Fri, Apr 5, 2024 at 12:17 PM

Hi Bill,

I've returned to the office today. Curious as to what the decision was?

[Quoted text hidden]

Bill Wells <billwellssurveying@gmail.com>
Reply-To: bill@wellssurveying.com
To: Megan Davchevski <megan.davchevski@umatillacounty.gov>

Mon, Apr 8, 2024 at 1:03 PM

Megan,

Kal and I have met and ask that you hold up on sending out the preliminary findings until we have had a chance to respond to your concerns.

Thank you,

Bill Wells

Wells Surveying
P.O. Box 1696
200 SE Hailey #108
Pendleton, OR 97801
Phone: 541-276-6362
Cell: 541-969-8881

[Quoted text hidden]

Megan Davchevski <megan.davchevski@umatillacounty.gov>
To: bill@wellssurveying.com

Mon, Apr 8, 2024 at 2:57 PM

Thank you. I do have some statutory guidelines I must abide by for the timeline, therefore the 30 day review for completeness letter is attached. This is a formality.

Please keep me posted.

Best,

[Quoted text hidden]

 **20240408195338.pdf**
103K

EXHIBIT D

Completeness Letter (04/08/24)



PLANNING DIVISION

216 SE 4th ST, Pendleton, OR 97801, (541) 278-6252

Email: planning@umatillacounty.gov

COMMUNITY &
BUSINESS
DEVELOPMENT

April 8, 2024

LAND USE
PLANNING,
ZONING AND
PERMITTING

Bill Wells
via email

CODE
ENFORCEMENT

Re: Completeness Letter; Template Dwelling Request, Map #4N3726C, Tax Lot #600

SOLID WASTE
COMMITTEE

Dear Bill,

SMOKE
MANAGEMENT

Please accept this letter as comment on the completeness of the Land Use Request Application and supporting documents submitted for a Type II Land Division. Your application materials have been reviewed for completeness and the following are additional items that need to be addressed in order to proceed in deeming your application complete.

GIS AND
MAPPING

RURAL
ADDRESSING

LIAISON,
NATURAL
RESOURCES &
ENVIRONMENT

Provide Complete Responses to Type II Land Division Standards in the Umatilla County Development Code;

PUBLIC TRANSIT

- § 152.684(B) If approved, will permit development on the remainder of the property under the same ownership, if any, or of adjoining land or of access thereto, in accordance with this and other applicable ordinances;
- § 152.684(K) The land division plan must adequately address known development limitations within the proposed Type II Land Division and provide appropriate measures to mitigate the limitation

On March 25, 2024 I sent an email request for you to submit the omitted information along with paperwork to assist in addressing the criteria of approval required for the Type II Partition request. You responded that you needed to speak with your client and on April 8, 2024 responded to my email requesting more time to respond to concerns.

In summary, the intent of this letter is to clarify what information is still necessary in order to proceed in deeming your application complete. As stated in my initial email, Planning Staff do not believe that the land division request, as proposed, satisfies all criteria of approval. Specifically, there is a lack of buildable space, and the application does not address UCDC 152.684 (B) and (K). There are multiple development limitations on the subject property: wetlands, 100-foot wetland setback requirement, and multiple existing and proposed easements.

From the date of this letter you have 180-days, or until October 5, 2024, in which to

respond in writing with some, all, or none of the requested information. Unless the Planning Division receives a response prior to October 5, 2024, your application request will become void on the 181st day, October 6, 2024. On October 6, 2024, all submitted materials, except application fee, will be returned to you.

Please feel free to visit with me about your application or this letter by calling me at 541-278-6246, or if it is more convenient you may contact me via e-mail at Megan.Davchevski@umatillacounty.gov. Thank you for your attention to the above request for additional information.

Respectfully,

A handwritten signature in black ink that reads "Megan Davchevski". The signature is written in a cursive, flowing style.

Megan Davchevski

Planning Division Manager

Enclosures: Email Chain

CC: Calvin Garton, Property Owner
File

EXHIBIT E

DSL Wetland Notification Response (04/17/24)



Response Page

Department of State Lands (DSL) WN# *

WN2024-0190

Responsible Jurisdiction

Staff Contact Megan Davchevski	Jurisdiction Type County	Municipality Umatilla
Local case file # LD-5N-912-24	County Umatilla	

Activity Location

Township 05N	Range 27E	Section 22	QQ section	Tax Lot(s) 809
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Street Address

NE Corner of Rilie Ln and Pleasant View Rd

Address Line 2

City

Umatilla

Postal / Zip Code

97882

State / Province / Region

OR

Country

Umatilla

Latitude

45.905037

Longitude

-119.430854

Wetland/Waterway/Other Water Features

- 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 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.

Your Activity

- The proposed parcel division may create a lot that is largely wetland and thus create future development problems.

Applicable Oregon Removal-Fill Permit Requirement(s)

- 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.

Closing Information

Additional Comments

Based on a review of the submitted site plan, the proposed subdivision appears that it may create future development problems with regard to wetlands. The subdivision itself does not propose ground-disturbing activities and does not require a state Removal-Fill permit.

For efficient site planning, I do recommend that the applicant hire a qualified wetland consultant to prepare a wetland delineation report for DSL's review/approval prior to any ground-disturbing activities. A state Removal-Fill permit may be required for construction of the proposed access road and future homes.

Please note that the National Wetlands Inventory (NWI) mapping is one of several desktop resources that should be used to estimate wetland areas. NRCS predominantly hydric soils (shown on the Statewide Wetlands Inventory) and aerial imagery suggest that additional areas beyond the NWI polygons may meet wetland criteria. A site visit by a qualified wetland professional is the only way to be certain of where wetlands are located.

As you move forward with this project, please take a look at the "Hiring a Consultant" section on DSL's "Identifying Wetlands and Waters" webpage for the link to a list of wetland consultants. I would also be happy to provide this contact list directly via email (jessica.salgado@dsl.oregon.gov) if that is easier.

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

Contact Information

- For information on permitting, use of a state-owned water, wetland determination or delineation report requirements please contact the respective DSL Aquatic Resource, Proprietary or Jurisdiction Coordinator for the site county. The current list is found at: <http://www.oregon.gov/dsl/ww/pages/wwstaff.aspx>
- The current Removal-Fill permit and/or Wetland Delineation report fee schedule is found at: <https://www.oregon.gov/dsl/WW/Documents/Removal-FillFees.pdf>

Response Date

4/17/2024

Response by:
Jessica Salgado

Response Phone:
541-408-1892

EXHIBIT F

Letter from Applicant Requesting Processing of Application (06/18/24)

RECEIVED

JUN 18 2024

UMATILLA COUNTY
COMMUNITY DEVELOPMENT

May 3, 2024

Megan Davchevski
Planning Division Manager
216 SE 4th Street
Pendelton, Oregon 96801

Re: Template Dwelling Request Map #4N3726C, Tax Lot # 600

Megan,

Page 198 (CD) Review III. "The following review and approval of a Type IV, Review III Land Division Application may create, upon approval, of up to two new non farming parcels that will be smaller than the minimum parcel size for land zoned E.F.U."

This is the same process that i have used on my last three minor partitions!

I am not applying for anything else except my legal right to create two new tax lots with a remainder of 4+ acres. It does not have to be included. I am not doing a subdivision! I did not find verbiage that gave you "complete authority" to decide that I was doing a subdivision. Your wetland study does not need to be done until I try to develop the remaining parcel. This wetland is manmade! The West Extension District has not pressurized its waters. They have done a lot to reduce their water waste since this existing wetlands map was created. "If" the new owner of the remaining parcel wants to do the Wetland Challenge, he should be allowed to. I believe the "100 foot" buffer could easily be reduced to 50 feet. The flood irrigation canal has been removed and pressurized since the wetland study was done.

Your antigrowth attitude is clearly exposed by your irrational behavior.

I am again asking the Commissioners to terminate your employment.

Please process my two lot application immediately. There is clearly enough building envelope area on the remaining lot. What is your minimum building envelope requirement?

Very truly yours,


Kalvin B. Garton

Accredited Land Consultant, Retired

Cc: Umatilla and Morrow County Board of Commissioners
Michael Breiling, Attorney
Bill Wells, Surveyor
Oregon Taxpayers Association

Editors

Dave Hunnicutt, Oregonian
Property Owners Assoc.
All State Legislators
Governor Tina Kotek

EXHIBIT G

Email from Morrow County Received During 21-day Comment Period
(07/23/24)



Robert Waldher <robert.waldher@umatillacounty.gov>

LD-5N-912-24 Public Notice

2 messages

Daisy Goebel <dgoebel@co.morrow.or.us>
To: Robert Waldher <robert.waldher@umatillacounty.gov>
Cc: Tamra Mabbott <tmabbott@co.morrow.or.us>

Tue, Jul 23, 2024 at 1:25 PM

Hello Bob,

Thank you for sending us notice of the above-referenced land division request. We see that the tentative decision is to deny the request, however if it is approved at a later time, we would agree with the wording of Condition of Approval #3, requiring the applicant to receive a road approach permit from Morrow County Public Works. We do not have further comments on the application at this time. Please don't hesitate to reach out with questions or requests related to our requirements or standards.

Thank you,

Daisy Goebel, AICP
Principal Planner
Morrow County Planning Department
dgoebel@co.morrow.or.us
(541) 922-4624 x 5506

Robert Waldher <robert.waldher@umatillacounty.gov>
To: Daisy Goebel <dgoebel@co.morrow.or.us>
Cc: Tamra Mabbott <tmabbott@co.morrow.or.us>

Mon, Jul 29, 2024 at 11:23 AM

Hi Daisy - Thank you for taking the time to provide comments. They have been added to the record.

Kind Regards -

Bob
[Quoted text hidden]

--
Robert Waldher, RLA
Director
Umatilla County Community Development Department
Tel: 541-278-6251 | Fax: 541-278-5480
216 SE 4th Street | Pendleton, OR 97801
<http://www.umatillacounty.gov/planning>



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EXHIBIT H

Letter from Applicant Received During 21-day Comment Period (07/26/24)

RECEIVED

JUL 26 2024

UMATILLA COUNTY
COMMUNITY DEVELOPMENT

6
July 24th, 2024

Robert T. Walden

Community Development Director

Umatilla County Planning Division

216 SE 4th ST

Pendleton, Oregon 97801

Re: Land Division Request #LD-5N-912-24

Dear Robert:

I did not apply for a three-lot subdivision. I applied for two lot minor partition.

In 2023 I withdrew my application because of the added subdivision requirements.

I am currently offering the property for sale as one piece. I have no idea what the new owners will want. They may only want one house. I currently own 1.85 acres x 43,560 = 80,586 square feet of developable land. The wetlands study will be easy to do when the road is built, and the septic designs are done. I was planning on putting all the backup drain fields with easements on the proposed lot two below the proposed access easement. What is the logic for setbacks from an already over sized road easement? You can clearly see that there is an abundance of buildable envelopes. These two lots are all that I am asking for in my minor partition. I may or may not request another minor partition next year. This is the same process I have done three times previously.

This denial only provides more evidence of why this planning division needs to be gutted! You are totally anti-growth!

The wetland issues will be challenged. The irrigation canal of WEST End Extension has been abandoned and pressurized. No one will want to hook onto their water as well water is much cheaper, and most of this pasture sub irrigates. I believe that the setback buffers can be reduced to 50' vs 100 ft'. Please change my application back to a two-lot minor partition

Truly yours,



Kalvin B. Garton

CC:

Bill Wells

Jim Hatley

County Commissioner

Sam Tucker, Planning Commissioner

Don Wysocki, Planning Commissioner

Doug Olson, County Council

3:15 PM
07/26/24 - Attempted to call applicant to ask if they wanted to appeal to PC. No answer after several attempts and voicemail was full.

RTW

EXHIBIT I

Planning Division Decision Letter (07/31/24)



PLANNING DIVISION

216 SE 4th ST, Pendleton, OR 97801, (541) 278-6252
Email: planning@umatillacounty.gov

COMMUNITY &
BUSINESS
DEVELOPMENT

July 31, 2024

LAND USE
PLANNING,
ZONING AND
PERMITTING

Kalvin Garton
1328 NW King Avenue
Pendleton, OR 97801

CODE
ENFORCEMENT

Re: Garton Land Division Final Decision Letter
Land Division Request, #LD-5N-912-24
Map #5N 27 22, Tax Lot #809, Account #149725

SOLID WASTE
COMMITTEE

SMOKE
MANAGEMENT

Dear Mr. Garton:

GIS AND
MAPPING

The 21-day comment period for your Land Division request has elapsed without a request for a public hearing. Two comments (see enclosed) were received during the public comment period, one from Morrow County, and one from you, the applicant. A summary of each letter and a response from Umatilla County is provided below:

RURAL
ADDRESSING

LIAISON,
NATURAL
RESOURCES &
ENVIRONMENT

Morrow County Planning Department Email (Received 07-23-24)

Planning staff from Morrow County confirmed that if the land division were to be approved, they agreed with the imposition of Condition of Approval #3, requiring the applicant to receive road approach permit from Morrow County Public Works.

PUBLIC TRANSIT

Umatilla County Response

Umatilla County concurs that if the land division were to be approved, Condition #3 would apply.

Applicant Letter (Received 07-26-24)

In general, Mr. Garton, you disagreed with Umatilla County's decision to deny the request and suggested that the request should have been processed as a "two lot minor partition," rather than a three lot subdivision. You also suggested that the wetland study "will be easy to do when the road is built, and the septic designs are done" and, that "the setback requirements for wetland buffers could be reduced for this proposal."

Umatilla County Response

Oregon Revised Statute ORS 92 defines partitioning as the act of dividing land to create not more than three parcels of land in a calendar year. A subdivision means to divide land to create four or more lots within a calendar. Since your requests involves the creation of three parcels, it was processed as a Type II Land Division (Partition in a non-resource zone) and does not qualify as a subdivision.

As described in the enclosed Findings and Conclusions, Aerial imagery, as well as NRCS hydric soil mapping, suggests that wetlands may extend beyond the National Wetlands Inventory (NWI) mapped polygons, and through the area of the proposed access easement. In April, 2024 planning staff submitted a wetland land use notification to Oregon Department of State Lands (DSL) which is the agency responsible for administering removal/fill laws in the state. A response from DSL staff recommended that the applicant hire a wetland consultant to prepare a wetland delineation report for DSL's review and approval prior to any ground disturbing activities. Since construction of the proposed access easement would involve ground disturbing activities, a wetland delineation is required.

In addition, a wetland delineation is necessary to accurately determine the amount of buildable space that is available on each parcel. If current NWI mapping is accurate, the buildable area of all three parcels is extremely constrained, creating a situation where variances would likely be required for future development to meet required wetland and easement setbacks. In the RR-2 zone, structures must abide by a minimum 20-foot setback to all property lines and access easements. Additionally, structures cannot be built within existing utility easements, and all wetlands have a minimum setback requirement of 100-feet to new structures and septic systems. These setback requirements cannot be reduced and would not meet the requirements for a future variance.

On July 31, 2024, the Final Findings were signed, signifying the final decision (Denial) for your partition request. The date the Findings were signed and mailed commenced a statutory 15-day appeal period. This appeal period will be over August 14, 2024.

All notified property owners, affected agencies, and you, the applicant, who participated or testified during the approval process, may appeal the County's decision. Appeals must be made in writing on the proper form available at the County Planning Department office and should include the reasons for the appeal and the alleged errors that the appellant believes were made by the Planning Division in addressing specific land division approval criteria. Appeal of an administrative decision would result in a first evidentiary hearing and the fee for requesting the appeal is \$250.

In conclusion if you have questions about the denial or need additional clarification, please feel free to contact me at 541-278-6252, or if more convenient you may e-mail me at Robert.waldher@umatillacounty.gov

Cordially,



Robert Waldher,
Community Development Director

Enclosures: Signed Final Findings, Comment Letters from Morrow County Planning Department and Calvin Garton (Applicant)

cc: Bill Wells, surveyor
Umatilla County GIS

EXHIBIT J

Final Findings and Conclusions

**UMATILLA COUNTY COMMUNITY DEVELOPMENT DEPARTMENT
FINAL FINDINGS AND CONCLUSIONS
LAND DIVISION REQUEST, #LD-5N-912-24
MAP #5N 27 22, TAX LOT #809, ACCOUNT #149725**

1. APPLICANT: Calvin Garton, 1328 NW King Ave, Pendleton, OR 97801
2. OWNER: Calvin Garton, 1001 SE Byers Ave, Pendleton, OR 97801
3. REQUEST: The request is to divide Tax Lot #809 into three (3) parcels for future residential development.
- The proposed partition would result in the following parcel sizes: Proposed Parcel 1 – 2.06 acres, Proposed Parcel 2 – 2.02 acres, and Proposed Parcel 3 – 4.02 acres (See attached vicinity map for parcel locations).
- In 2023, the Applicant requested approval of rural residential 4-lot subdivision of Tax Lot #809, Subdivision Request #S-062-23. The Applicant later withdrew the application prior to the Planning Commission hearing.
- Tax Lot #809 is largely encumbered by several mapped wetlands, resulting in very limited buildable area. This issue is later addressed under UCDC 152.684(B).
4. LOCATION: The subject property is located south of Highway 730 and east of Pleasant View Road. The property is located along the Umatilla/Morrow County border, approximately three (3) miles west of the City of Umatilla.
5. SITUS: The property is not currently addressed. An address will be assigned at the time development is proposed.
6. ACREAGE: Tax Lot 809 is approximately 8.1 acres.
7. PERMITS: County Planning does not have any permits currently on file for the subject parcel. However, there have been several land division approvals for this request. The following Tax Lots were once a portion of Tax Lot 809: 800, 802, 804, 808, 810, 811, 812, 813, 814, 815 and 816.
8. COMP PLAN: The Comprehensive Plan designation for the subject property is “Rural Residential.”
9. ZONING: The subject property is zoned Rural Residential – 2 acre minimum parcel size (RR-2).

10. ACCESS: The subject property has frontage on Pleasant View Road, Morrow County Road #2625. The applicant proposes a new 60-foot wide private access easement to serve Parcels 1 through 3.
11. ROAD TYPE: Pleasant View Road is a paved, two-lane Morrow County Road #2625.
12. EASEMENTS: The proposed access easement will be 60-feet wide, all 60 feet of width are located on the subject parcel. There is also an existing 15-foot irrigation easement located on the east side of Parcel 3. A new 20-foot irrigation easement is proposed to serve Parcels 1 and 2, the easement will cross the near center of Parcel 3. There is also a blanket easement serving Umatilla Electric across the entire property.
13. LAND USE: The subject property is currently vacant.
14. ADJACENT USE: Surrounding land uses largely consist of farm and rural residential uses.
15. BUILDINGS: There are currently no buildings on the subject parcel.
16. UTILITIES: Currently the property does not contain utilities.
17. WATER/SEWER: The subject property does not currently contain a well or septic system. The applicant understands that these will be required at the time of development.
18. FIRE SERVICE: The subject property is within the service area of Umatilla Rural Fire District.
19. IRRIGATION: The subject property is within the West Extension Irrigation District.
20. FLOODPLAIN: This property is NOT in a floodplain.
21. WETLANDS: According to the US Fish and Wildlife Service National Wetlands Inventory (NWI), the subject parcel contains two Freshwater Emergent Wetlands. These wetlands make up a large majority of Parcels 1 and 3.

Aerial imagery, as well as NRCS hydric soil mapping, suggests that wetlands may extend beyond the NWI mapped polygons, and through the area of the proposed access easement. On July 1, 2024, county staff conducted a site visit to the subject property to view conditions. The property was viewed from several locations along Pleasant View Road and photos were taken. Photos and a description are included below:



Wetland Photo 1 – View of wetlands from Pleasant View Road facing southeast. Vegetation such as rushes, sedges, Russian Olive trees, cattails and reed canary grass was observed, indicating the presence of wetland vegetation outside the NWI mapped area.



Wetland Photo 2 – View of wetlands from Pleasant View Road facing east. Photo taken from approximate location of the proposed 60 foot access easement.

In April 2024, planning staff submitted a wetland land use notification to Oregon Department of State Lands (DSL) which is the agency responsible for administering removal/fill laws in the state. A response from DSL staff recommended that the applicant hire a wetland consultant to prepare a wetland delineation report for DSL's review and approval prior to any ground disturbing activities.

22. NOTICES SENT: July 5, 2024

23. COMMENTS DUE: July 26, 2024

24. AGENCIES: Umatilla Electric Cooperative, Umatilla Rural Fire District, Oregon State Water Resources, Oregon Department of State Lands, Umatilla County Assessor, Umatilla County Public Works, Morrow County Public Works, Morrow County Planning Department, Umatilla County Environmental Health, Umatilla County GIS, West Extension Irrigation District and Umatilla County Surveyor

25. COMMENTS: Umatilla County received a response to Wetland Land Use Notice (WN2024-0190) which was sent to Oregon Department of State Lands (DSL). DSL comments were provided by Jessica Salgado. The comments identified permits that would be required for ground-disturbing activities and recommended hiring a qualified consultant to perform a wetland delineation. WN2024-0190 has been included in the project record.

Morrow County Planning Department provided comment on the proposed Land Division request on July 23, 2024. Morrow County Planning staff confirmed that if the land division were to be approved, they agreed with the imposition of Condition of Approval #3, requiring the applicant to receive road approach permit from Morrow County Public Works. The comments have been included in the project record.

The applicant, Mr. Calvin Garton, provided comment on the proposed Land Division request on July 26, 2024. In general, Mr. Garton disagreed with Umatilla County's decision to deny the request. He suggested that the wetland study "will be easy to do when the road is built, and the septic designs are done." He also argued that the request should have been processed as a "two lot minor partition" and that "the setback requirements for wetland buffers could be reduced for his proposal." Mr. Garton did not request an appeal of the County's decision. The comment letter has been included in the project record.

26. STANDARDS OF THE UMATILLA COUNTY DEVELOPMENT CODE FOR LAND DIVISIONS, §§ 152.301-152.306 and § 152.684, Land Divisions, Type II contains the criteria of approval for property that is not in a resource zone. The following standards of approval are underlined and the findings are in normal text.

§ 152.684 STANDARDS FOR APPROVAL.

In granting approval of a Type II Land Division, the Planning Director shall find that the Type II Tentative Plan and required supplementary material:

(A) Complies with applicable elements of the Comprehensive Plan, including, but not limited to, policies listed in the public facilities and services and the transportation elements of the Comprehensive Plan. The Umatilla County Comprehensive Plan and Transportation System Plan apply to the rural areas of the county. The applicant's property is designated Rural Residential in the County Comprehensive Plan. The County's Plan was acknowledged by the State of Oregon and subsequently was zoned RR-2 in compliance with the County's acknowledged Comprehensive Plan.

(B) If approved, will permit development on the remainder of the property under the same ownership, if any, or of adjoining land or of access thereto, in accordance with this and other applicable ordinances; Umatilla County finds that development on all three parcels will be extremely limited due to the presence of existing wetlands and new and existing easements. In the RR-2 zone, structures must abide by a minimum 20-foot setback to all property lines and access easements. Additionally, structures cannot be built within existing utility easements, and all wetlands have a minimum setback requirement of 100-feet to new structures and septic systems, limiting the buildable space on all three proposed parcels.

Using ArcGIS Pro, Umatilla County developed mapping that overlays existing NWI mapping and existing/proposed easements in order to calculate the potential buildable area¹ as the following:

Parcel 1: 0.34 acres

Parcel 2: north of access easement = 0.43 acres, south of access easement = 0.55 acres, total = 0.98 acres

Parcel 3: 0.53 acres

Of the three proposed parcels, Parcel 2 has the most buildable area at 0.98 acre of the 2.02 total acres. However, the applicant's tentative plat proposes that Parcel 2's buildable area be bisected by the proposed access easement, further limiting building potential of a rural residence, accessory structures, well, drain field and replacement drain field area. While Parcel 3 has a larger buildable area, the area available for development is oddly shaped and is less conducive to rural residential amenities and utilities. Parcel 1 has the least buildable area and is largely encumbered by a freshwater emergent wetland. Furthermore, based on wetland

¹ The Umatilla County Development Code §152.003 defines buildable area as *the space remaining on a zoning lot after the minimum open space requirements (coverage, yards, setbacks) have been met.*

conditions observed in the field by county staff and information received from state DSL staff, it is likely that additional, unmapped, wetlands are present on the subject property, further limiting the buildable area of all three proposed parcels.

Umatilla County finds that if approved, development will be extremely limited on all three parcels. Umatilla County finds that the tentative plan will create three parcels that will likely require variances to wetland setbacks and/or property line setbacks in order to be developed. Furthermore, a criterion for approval of variances includes the following: §152.627 Circumstances for granting a variance (A) Exceptional or extraordinary circumstances apply to the property... or other circumstances over which the owners of property since enactment of this chapter have had no control (emphasis added). Therefore, approval of a variance on either of the three proposed parcels would be extremely problematic to justify. Umatilla County finds and concludes that development of a single-family dwelling, accessory structure, well, septic system and replacement drain field area on Parcels 1, 2 and 3 would be extremely limited and difficult with the RR-2 setback standards and development limitations of wetlands and easements. This criterion is not satisfied.

(C) Complies with the zoning requirements or a proposed change thereto associated with the partition map proposal: Umatilla County finds that the Umatilla County Development Code requires a minimum lot size of two (2) acres for Rural Residential. Tax Lot 809 is 8.10 acres. The proposed partition would result in the following parcel sizes: Proposed Parcel 1 – 2.06 acres, Proposed Parcel 2 – 2.02 acres, and Proposed Parcel 3 – 4.02 acres (See attached vicinity map for parcel locations). As outlined in this section, each parcel created by this land division meets the minimum parcel size for the RR-2 zone. This criterion is satisfied.

(D) Complies with provisions of § 152.019, Traffic Impact Analysis, as applicable. The standards of applicability of UCDC 152.019 will be addressed below:

UCDC 152.019 (B) Applicability: A Traffic Impact Analysis shall be required to be submitted to the County with a land use application, when one or more of the following actions apply:

(1) A change in plan amendment designation; or
(2) The proposal is projected to cause one or more of the following effects, which can be determined by field counts, site observation, traffic impact analysis or study, field measurements, crash history, Institute of Transportation Engineers Trip Generation manual; and information and studies provided by the local reviewing jurisdiction and/or ODOT:

(a) An increase in site traffic volume generation by 250 Average Daily Trips (ADT) or more (or as required by the County Engineer). The latest edition of the Trip Generation manual, published by the Institute of Transportation Engineers (ITE) shall be used as standards by which to gauge average daily vehicle trips; or
Umatilla County finds that there will not be an increase of more than 250 ADT. Three (3) parcels will be created through this land division and potentially three

(3) dwellings will be constructed. A single-family dwelling generates approximately 9.52 ADTs during the week day (p. 296, *Trip Generation Manual 9th Edition*, ITE). Thus, three (3) single family dwellings would generate some 30 ADTs, far less than the required 250 ADTs required to complete a Traffic Impact Analysis. This standard is not applicable.

(b) An increase in use of adjacent streets by vehicles exceeding the 20,000 pound gross vehicle weights by 10 vehicles or more per day; or Umatilla County finds that the land division is for single-family dwellings and will not increase traffic by vehicles with a 20,000 pound gross vehicle weight. The majority of the increase in vehicle traffic will be personal use cars and pickups. This standard is not applicable.

(c) The location of the access driveway does not meet minimum intersection sight distance requirements, or is located where vehicles entering or leaving the property are restricted, or vehicles queue or hesitate, creating a safety hazard; or Umatilla County finds that the proposed parcels are currently served by Pleasant View Road, a Morrow County Road. The applicant proposes to dedicate and develop a new private access road to serve all three parcels. As a condition of approval, the applicant is required to submit verification from Morrow County Public Works that sight distance requirements will be met with the proposed road location.

(d) A change in internal traffic patterns that may cause safety problems, such as back up onto the highway or traffic crashes in the approach area; or Umatilla County finds that there are no anticipated changes to the internal traffic patterns, thus the proposal will not cause safety issues. This standard is not applicable.

(e) For development within the I-82/US 730 Interchange Area Management Plan (IAMP) Management Area, the location of the access driveway is inconsistent with the Access Management Plan in Section 7 of the IAMP. Umatilla County finds that the proposed development is not within the I-82/US 730 IAMP Management Area. This standard is not applicable.

(E) Roads and recorded easements for access purposes are laid out so as to conform, within the limits of the development standards, to the plats of subdivisions and maps of partitions already approved for adjoining property unless the Planning Director determines it is in the public interest to modify the road pattern; Umatilla County finds that the applicant's land division plan demonstrates that the parcels will utilize a new 60-foot wide private access and utility easement. Modifications to the road pattern are not proposed. However, based on wetland conditions observed in the field by county staff and information received from state DSL staff, it is likely that additional, unmapped, wetlands are present on the subject property, including the area identified for dedication of the 60-foot wide private access and utility easement. Any ground disturbing activities (including construction of access roads) within a

wetland require review and approval from Department of State Lands. Since a wetland delineation of the subject property has not been conducted, Umatilla County is unable to determine if the proposed easement conforms with the development standards. Therefore, as a condition of approval, a wetland delineation shall be submitted to and approved by DSL prior to any on-site ground disturbing activities and construction of the proposed 60-foot wide private access and utility easement. Umatilla County finds and concludes the imposition of the above precedent condition of approval satisfies the criteria.

(F) Dedicated road or public recorded easement shall be provided to each parcel and conform to right-of-way and improvement standards as follows:

(1) If a recorded easement for access purposes in a Type II Land Division will serve three or fewer parcels and will not likely serve other parcels or lots due to existing conditions, such as topography or the size or shape of land, or the parcels are not buildable, the easement or right-of-way is required to be improved to meet the Option 1 or "P-1" County Road Standard as provided in § 152.648 (D). The easement or right-of-way shall be a minimum of 30 foot wide and improved with a surface width of at least 16-feet. Umatilla County finds that if Parcel 3 were not heavily encumbered by wetlands, then it would have the potential to be divided once more. The applicant is proposing a 60-foot wide right-of-way easement that would comply with the County's P-2 Road Standard, therefore, this criterion is not applicable.

(2) If the partition is located within a rural fire district or a hospital district which provides service, emergency vehicle considerations for recorded easements which dead-end shall provide either circle drives or driveway turnarounds. The Planning Director or Public Works Director shall determine which type of emergency vehicle access above is most appropriate. Circle drives and turnarounds shall be improved to the same standard as the road they serve as provided in § 152.648 (D), shall be kept clear and shall be of adequate circumference to provide turn around space for emergency vehicles.

The partition is located within the Umatilla Rural Fire District. Umatilla County finds that the proposed access easement will also include a 50' radius cul-de-sac turnaround for emergency vehicles. A precedent condition of approval is imposed that the final plat will show a 50' radius cul-de-sac, said turnaround must also meet the P-2 County Road Standard. Umatilla Rural Fire District will receive notice of this request. The applicant is required, as a condition of approval, to provide confirmation from Umatilla Rural Fire District that the access easements and turn-around areas are adequate for emergency vehicles ingress and egress.

(3) If a public road or recorded easement for access purposes in a Type II Land Division will serve four or more parcels and will likely serve additional parcels or lots, or likely be an extension of a future road as specified in a future road plan, the right-of-way or easement shall be required to be improved to meet the Option 2 or "P-2" County Road Standard as provided in § 152.648 (D). The 60-foot right-of-way or easement shall be improved with a surface width of at least 22-feet. All 60-foot rights-of-way or easements

are to be named prior to final approval of the partition plat and the road name must be included on the final partition plat map. Road signs are to be paid for prior to the final partition plat approval.

The applicant has proposed a 60-foot wide private access and utility easement to serve Parcels 1 through 3. Umatilla County finds that if Parcel 3 were not heavily encumbered by wetlands, then it would have the potential to be divided once more, for a total of four parcels to be served by the proposed private easement. Umatilla County finds that the 60-foot access and utility easement shall be improved with a surface width of at least 22-feet. Umatilla County finds that the easement shall be named and the road name must be included on the final partition plat. The applicant is responsible for submitting a road naming application to the Planning Division along with applicable fees. The applicant is responsible for paying for the signs and the County Road Department is the agency that will install the signs. The sign may be installed either on the applicant's property near the County right of way, or within the County right of way, where allowed by County Public Works.

A precedent condition of approval is imposed to improve the proposed road to the County P-2 road standard.

A precedent condition of approval is imposed to improve the proposed cul-de-sac to the P-2 road standard.

A precedent condition of approval is imposed that the applicant submit a Private Lane Road Naming application with applicable fees.

Umatilla County finds and concludes the imposition of the above precedent conditions of approval satisfies the criteria.

(4) Recorded easements or dedicated public roads required in the Type II Land Division may warrant the installation of road signs at intersections with named or numbered county roads, state highways, or with other existing easements or public roads within or abutting the partitioned land. The Public Works Director will determine if road signs are necessary at these intersections. Such signs shall be of a type approved by the Public Works Director. Easement or public road names or numbers shall be the same as existing named or numbered county or public roads if an extension of such county or public road. All other road names or numbers shall be selected by the Planning Director as provided in Umatilla County Code of Ordinance, Chapter 93. Road signs shall be installed and maintained by the county, provided the partitioner pays the expense of the initial investment of making and placing the sign.

Umatilla County finds that Public Works will install a road sign for the proposed private easement as determined above. This criterion is satisfied.

(5) Existing County or Public Roads shall be improved pursuant to the requirements of this chapter. See J. below.

(6) Shall obtain necessary approval and/or permits from either the State Highway Department or County Public Works Director for location, design, and improvement standards of access points onto County Roads, (approved) public roads, or state highways. Umatilla County finds that access shall be provided from the newly created and unnamed private access and utility easement. As a condition of approval, the applicant is required to obtain road approach approval for Pleasant View Road, Morrow County Road #2625 for the new private easement. Umatilla County and Morrow County Road Departments will be notified of this request and given the opportunity to provide comment, any comments may result in additional conditions of approval.

(G) Each parcel under four acres in size, both those partitioned or the remaining piece which are to be for residential purposes, have a site suitability approval from County Environmental Health. A waiver to this requirement may be granted if the applicant makes a written request to the Planning Director and the Planning Director finds

(1) The parcel, four acres or under, is to be used for non-residential purposes and the owner's signature to this effect is on the partition form;

(2) The parcel remaining has an existing dwelling and zoning densities will not permit additional dwellings.

Umatilla County finds that Parcels 1 and 2 created out of this partition are proposed to be less than four acres in size and used for residential purposes. The Umatilla County Development Code specifically prohibits the placement of septic systems within 100-feet of a wetland. Additionally, because of the limited buildable area on Parcel 3, County Planning finds that site suitability is also required for Parcel 3. A precedent condition of approval is imposed that Parcels 1, 2 and 3 receive site suitability from Umatilla County Environmental Health.

(H) Shall provide easements along existing irrigation ditches that traverse or abut the partition where no such easements have yet been recorded. The purpose of the easement shall be for perpetual maintenance of the ditch and if within an irrigation district, said easement width and purpose shall be approved by the Irrigation District Board. Irrigation ditches were not identified on or abutting the subject property. The property is located within the West Extension Irrigation District, the district will have the opportunity to provide comment on this land division request. The applicant has identified several existing and proposed irrigation easements on the tentative plat. Satisfaction of this criterion is pending.

(I) Considers energy conservation measures (e.g. road, lot and building orientation for solar and wind usage) unless vegetation, topography, terrain, or adjacent development will not allow these energy conservation measures. Umatilla County finds that due to known and potential encumbrances from wetlands, it is undetermined whether or not the proposed parcel size is adequate to accommodate on-site energy conservation measures. Energy conservation recommendations are specifically identified in the findings and policies of the Umatilla County Comprehensive Plan. Satisfaction of this criterion is pending.

(J) All required improvements have signed agreements with the Board of Commissioners to meet the standards of this chapter or improvements specified by the Planning Commission or Public Works Director, and are recorded in the Recorder's Office at the time, and as a condition of approval for a Type II Land Division. Umatilla County finds Irrevocable Consent Agreements are required for all newly created roads, including private easements. A precedent condition is imposed that the property owner sign and record an Irrevocable Consent Agreement for the newly created to-be-named road. The agreement will be provided by County Planning. Morrow County Planning and Public Works will be notified of this request and may provide comments regarding any road improvement agreements for Pleasant View Road, Morrow County Road # 2625. Satisfaction of this criterion is pending.

(K) Adequately addresses any known development limitations within the proposed Type II Land Division, outlining appropriate measures to mitigate the limitation. Umatilla County finds that there are two areas identified on US Fish and Wildlife's National Wetland Inventory that are classified as Freshwater Emergent Wetlands located on the subject property. Furthermore, based on wetland conditions observed in the field by county staff and information received from state DSL staff, additional unmapped wetlands are present on the subject property, and possibly encumbering the proposed access easement and further limiting the buildable area of all three proposed parcels. On this land division request application, the applicant noted, "Wetlands impact portions of proposed parcels. New structures will be placed outside of wetlands and wetland buffers." However, the applicant did not demonstrate how structures, including onsite septic systems, would potentially meet setbacks and not require variances. In addition, a wetland delineation of the property has not been conducted so county staff are unable to determine the extent of wetlands and whether the proposed access easement will impact existing wetlands.

In the 2020 land division findings² which created the subject property's current configuration, Umatilla County found that, "*Parcel 3 [Tax Lot 809] appears to be the only parcel impacted by the presence of wetlands. Furthermore, it will also be the only parcel that could be further partitioned in the future. Therefore, the applicant should develop a wetland mitigation plan when considering future partition configuration, as there is a limited amount of remaining land that would be developable.*"

The applicant submitted an application to Umatilla County without completing the recommended wetland delineation. In addition, the applicant has not addressed the protection of wetlands, nor provided a mitigation plan. As found above, the location of the two NWI mapped wetlands and the likelihood of additional unmapped wetlands makes development on all three parcels extremely difficult and nearly impossible without variances to setback standards to property lines, the wetlands or easements. It is not clear whether or not the proposed access easement impacts unmapped wetlands or if there is adequate buildable space to accommodate utilities required in the rural residential zone such as a well, septic system and replacement drain field area.

² This land division request was process administratively in 2020 as Land Division Request LD-5N-881-20.

Umatilla County finds and concludes the applicant has not addressed the known development limitations of the proposed land division, nor has the applicant outlined measures to mitigate the limitation or impacts to wetlands. This criterion is not satisfied.

(L) Addresses the comments of the appropriate water agency if the proposed Type II Land Division has a water right. Umatilla County finds that the subject property is located within West Extension Irrigation District. West Extension Irrigation District and Oregon State Water Resources will be notified and sent a copy of these findings. Any comments may result in additional conditions of approval.

26. SURVEYING REQUIRED - 152.644 (A) (2) PARCELS CREATED SMALLER THAN 10 ACRES IN A NON-RESOURCE ZONE NEED TO BE SHOWN ON A PARTITION PLAT: Umatilla County finds that this request involves parcels located in a non-resource zone and smaller than 10 acres in size thus the request requires a partition plat to be submitted. The appropriate recording fee for this document will be required.

FINAL DECISION: DENIED

THE GARTON LAND PARTITION REQUEST DOES NOT COMPLY WITH ALL APPLICABLE STANDARDS OF THE UMATILLA COUNTY DEVELOPMENT CODE, AND IS THEREFORE DENIED.

IF THE REQUEST COULD BE APPROVED, IT WOULD BE SUBJECT TO THE FOLLOWING CONDITIONS OF APPROVAL:

Precedent Conditions: The following precedent conditions must be fulfilled prior to final approval of this request, signified by the recording of the Final Partition Plat:

1. Pay public notice fee charges as invoiced by the Planning Division. *(Received 07/26/24)*
2. Submit verification from Morrow County Public Works that sight distance requirements will be met with the proposed road location.
3. Submit road approach permit approval from Morrow County Public Works for the 60-foot wide private access and utility easement. If no road approach permit is required, submit verification as such from Morrow County Public Works.
4. A wetland delineation shall be submitted to and approved by DSL prior to any on-site ground disturbing activities and construction of the proposed 60-foot wide private access and utility easement.
5. Improve the new private access and utility easement, to be named, and the 50-foot radius cul-de-sac to the P-2 County Road Standard.

6. Submit a Road Naming Application and the applicable fee to the Planning Division. Receive road naming approval for the new private access and utility easement.
7. Sign and Record an Irrevocable Consent Agreement for the 60-foot wide private access and utility easement, to be named. The agreement will be provided by County Planning.
8. Receive site suitability from Umatilla County Environmental Health for Parcels 1, 2 and Parcel 3. Site suitability reports must be submitted to County Planning.
9. Provide written confirmation from the West Extension Irrigation District that irrigation water rights and easement requirements of the District are satisfied. This may also be satisfied by signatures on the partition plat.
10. Pay, and if applicable, prepay property taxes to the County Assessor's Office.

Subsequent Conditions: The following subsequent conditions must be fulfilled following final approval of the Partition Plan by Umatilla County:

11. Record the Final Partition Plat within two years and prior to signing any deeds. The Final Partition Plat shall include the approved road name on the face of the plat.
12. Obtain zoning permits from the Umatilla County Planning Department to place structures on the parcels with an approved site plan showing setbacks, wetlands, driveways, utilities, etc.
13. Obtain all other permits necessary for development (i.e. septic, building, wetland removal/fill, etc.)

UMATILLA COUNTY COMMUNITY DEVELOPMENT DEPARTMENT

Dated 31ST day of JULY, 2024



Robert T. Waldher, *Community Development Director*

Mailed 31ST day of JULY, 2024

EXHIBIT K

Appeal Filing (08/14/24)

Request for a Public Hearing

RECEIVED

AUG 14 2024

UMATILLA COUNTY
COMMUNITY DEVELOPMENT



216 SE 4th ST, Pendleton, OR 97801, (541) 278-6252
Email: planning@umatillacounty.gov

Process taken from UCDC 152.769

REQUEST FOR A HEARING

The purpose of a notice for a land use request application is to provide affected property owners and agencies the opportunity to review the request and the tentative findings and conclusions of the Department, and to either offer comments or requested conditions, or request a public hearing be held to deliberate on issues they deem are significant.

FILING FEE

Requesting a Public Hearing - \$250

It is the responsibility of the applicant to submit a complete application with all necessary attachments. Planning staff can refuse an incomplete application.

Version: December 21, 2023
File Location: H:\shared\FORMS_Master\Request Public
Hearing_DEC 2023.doc

Section 1: Request and Description of Application

This information deals with the Land Use Request Application where a Public Hearing is being requested.

DESCRIPTION OF THE LAND USE REQUEST APPLICATION IN QUESTION:

- Land Use Request Application File Number: LD-SN-912-24
- Type of Land Use Request Application: Land Division Type II
- Decision-Making Body: Planning Director or Other _____
- For a Request of a Public Hearing, Date Notice was sent: _____

Section 2: Contact Information

Name of Submitter(s): Kalvin Garton

Address: 1328 NE King Ave

City, State, Zip: Pendleton, OR 97801

Telephone Number & Email Address: _____

Date of Submittal for Request of a Public Hearing: 08/14/2024

Section 3: Basis for the Request for a Public Hearing

Complete only for a Request for a Public Hearing

The Request for a Public Hearing must be based on issues you feel should be addressed in a public forum. Please describe the reasons you feel that a public hearing should be held before the Umatilla County Planning Commission in relation to the land use request application specified above:

Section 4: Certification

I/We, the undersigned, swear under penalty of perjury that the above responses are made truthfully and to the best of my knowledge.

X _____
Signature of Submitter Date

Printed Name of Submitter

X _____
Signature of Submitter Date


Printed Name of Submitter

X _____
Signature of Submitter Date

Printed Name of Submitter

X _____
Signature of Submitter Date

Printed Name of Submitter

Office Use Only	
Date this paperwork was received: <u>08/14/2024</u>	
Accepted by: <u>Shawna Van Sickle</u> <u>Shawna Van Sickle</u> Signature of Planning Staff & Printed Name	
Fee Paid? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	Receipt Number: <u>22905</u>

August 14th, 2024

To: Robert Waldher, Umatilla County Planning Division

Re: Appeal of your denial of LD#5N912-24

Attached please find my previous letter from July 26th 2024 and my \$250.00 fee to appeal your administrative decision. Your “administrative decision” is a retaliatory move because I challenged Megan’s “absolute authority”. You are simply proving my arguments that your planning department is anti-growth. I think this review should go into your department’s performance to Umatilla County. I think your department needs to provide a vision statement to the public of what rural residential growth could occur. The governor wants more rural development to occur. Real planners have visions of what growth should look like. They should be trained in smart growth, affordability, density and should encourage technologies like incinerator toilets, infiltrator drain fields, etc.

Why did your department sue the county for approving Costco at Stateline? Do you have a vision for the commercial development between Milton-Freewater and Stateline? Why did Tamara Mabbot and Carol Johnson fight the retirement community at the Pendleton County Club? Do you have a vision statement for a potential retirement community? Would this minor partition be approved if it was only for two lots? ... Yes, it would. Your argument that it must be three is completely false. Your logic would always create three lots. The remaining parcel was previously created in every case. Why were no wetland studies done years before? I already have septic approvals for standard systems on lots one and two. Your wetlands map shows Pleasant View Lane in the wetlands setback zone. On August 9th I met with Brady Rettkowski of Done Rite Septic installations. He pointed out that the wetlands are distinguishable because Russian Olive trees can not survive unless within five feet of their water source. He thinks the road should be moved to the south 25 feet. He also said that drain fields and back up drain fields could fit in to 4000-5000 feet.

With the 50 cubic yard in or out exemption, it would be foolish to require a study on lot one or two. I talked with Anderson Perry about doing the wetlands study. They agreed to do it for around \$8,000-\$9,000. They said it would take 5-6 months. They only test 2-3 feet down. The D.E.Q. test holes are more accurate.

You have failed to answer:

1. What developmental envelope size is adequate?
2. How many variances are too many?

Your no variance policy further proves your anti-growth attitude.

It appears to me that 10,000 square feet would be an adequate building envelope size. I do not plan on putting the irrigation easement in at all. I would agree to the smaller road easement if it could be expanded in the future to accommodate a fourth home site on the next minor partition. I think I would like to move the smaller road 25 feet to the south. I want your review to appeal my two tax lot minor partition. I will again ask the county commissioners to clean their antigrowth socialist planning commission out be terminations of.

1. Robert Waldher
2. Megan Davidersk

Umatilla County cannot afford their antigrowth visions. Saying “no” to everything is not planning!



Very Truly Yours,
Kalvin B. Garton

CC:
Bills Wells, Surveyor
Brady Rettowski, Done Rite Septic
County Commissioners
Doug Olson – County Council

Jim Hatley, Contractor
Don Wysocki, Planning Commissioner
The Editor
Sam Trexer, Planning Commissioner

6
July 24th, 2024

Robert T. Walden

Community Development Director

Umatilla County Planning Division

216 SE 4th ST

Pendleton, Oregon 97801

Re: Land Division Request #LD-5N-912-24

Dear Robert:

I did not apply for a three-lot subdivision. I applied for two lot minor partition.

In 2023 I withdrew my application because of the added subdivision requirements.

I am currently offering the property for sale as one piece. I have no idea what the new owners will want. They may only want one house. I currently own 1.85 acres x 43,560 = 80,586 square feet of developable land. The wetlands study will be easy to do when the road is built, and the septic designs are done. I was planning on putting all the backup drain fields with easements on the proposed lot two below the proposed access easement. What is the logic for setbacks from an already over sized road easement? You can clearly see that there is an abundance of buildable envelopes. These two lots are all that I am asking for in my minor partition. I may or may not request another minor partition next year. This is the same process I have done three times previously.

This denial only provides more evidence of why this planning division needs to be gutted! You are totally anti-growth!

The wetland issues will be challenged. The irrigation canal of WEST End Extension has been abandoned and pressurized. No one will want to hook onto their water as well water is much cheaper, and most of this pasture sub irrigates. I believe that the setback buffers can be reduced to 50' vs 100 ft'. Please change my application back to a two-lot minor partition

Truly yours,



Kalvin B. Garton

CC:

Bill Wells

Jim Hatley

County Commissioner

Sam Tucker, Planning Commissioner

Don Wysocki, Planning Commissioner

Doug Olson, County Council

EXHIBIT L

Email Communication with Jessica Saldago, DSL (09/13/24)



RE: Umatilla Notice of Public Hearing

Fri, Sep 13, 2024 at 2:27 PM

SALGADO Jessica * DSL <Jessica.SALGADO@dsl.oregon.gov>
To: "robert.waldher@umatillacounty.gov" <robert.waldher@umatillacounty.gov>
Cc: FITZGERALD Richard W * DSL <Richard.W.FITZGERALD@dsl.oregon.gov>

Hi Robert,

Thank you for notifying DSL that an appeal was made on this local planning decision. I haven't heard from the applicant since my Wetland Land Use Notice (WLUN) Response in April (attached).

I would just like to reiterate my comments from WN2024-0190:

- DSL recommends a wetland delineation report be submitted to our Department for review & approval prior to any ground-disturbing activities on-site (including construction of the proposed access road).
- A list of qualified wetland consultants can be found here: <https://societyofwetlandscientists.growthzoneapp.com/ap/CloudFile/Download/LqWKN0yp>

Thanks,

Jessica Salgado, PWS (*she/her*)
Wetland Ecologist | Central & Eastern Oregon
[Department of State Lands](#) | 541-408-1892

RECEIVED
SEP 13 2024
UMATILLA COUNTY
COMMUNITY DEVELOPMENT

From: COIL Elysian * DSL <Elysian.Coil@dsl.oregon.gov>
Sent: Friday, September 13, 2024 2:01 PM
To: SALGADO Jessica * DSL <Jessica.SALGADO@dsl.oregon.gov>; FITZGERALD Richard W * DSL <Richard.W.FITZGERALD@dsl.oregon.gov>; BROWN Jevra * DSL <Jevra.BROWN@dsl.oregon.gov>
Subject: Umatilla Notice of Public Hearing

Hi All,

We rec'd this notice in the mail this week; Erin advised me to forward it along.

Thank you.

Elysian Coil (*she/her hers*)
Administrative Specialist

Real Property Program

Oregon Department of State Lands

Bend Field Office

951 SW Simpson Ave., Ste. 104

Bend, OR 97702-3244

(541) 388-6132 phone

(971) 374-3363 cell

2 attachments



Umatilla Notice.pdf

1975K



WN2024-0190-Response.pdf

1235K

EXHIBIT M

Written Testimony in Opposition from Justin Berry (09/24/24)



Statement Opposing Land Division Request #LD-5N-912-24 Calvin Garton

Justin Berry <j.berry8228@gmail.com>
To: Planning Department <planning@umatillacounty.gov>

Tue, Sep 24, 2024 at 3:50 PM

To whom it may concern,

I am Justin Berry and reside at 27298 Hwy 730, Umatilla OR 97882. I am in opposition to the appeal of Land Division Request #LD-5N-912-24 by Calvin Garton. This land division will have major negative effects on my property along with causing undue burden on myself and family. Our property borders the East side of Lot 5N2722 809 owned by Calvin Garton with over 400 Feet of fence. The Pond that is on the Lot 809 already leeches onto my property and creates a pond and a muddy mess because the pond only holds so much water. Calvin's High water table already adds to the water table on my property and I have not been provided or seen any solution to mitigate this issue. We are not being provided a solution to mitigate the water drainage, and I believe was a contributing factor to why the County denied his Land Division request last time. I understand there is a high water table in this area but the proper steps on mitigating it have not been done. Any land clearing or back filling in an attempt to make these parcels buildable will force high ground water to my parcel, in turn just adding to the water that is already leeching onto my property from Calvin's Lot 809.

Also the property is for sale on Zillow by a relative of Calvin's and the way it reads is seems deceiving and borderline unethical. It states " 8.10 Total Acres Zoned RR2 Possibility of four lots. Current partition for first 2-2 acre parcel underway. Mostly sub-irrigated. West End extension water rights. Duck pond. The owner would prefer to sell together. Road frontage on Pleasant View Lane. Owner is related to listing brokerages' Principal Broker. Power to the site, standard septic pre-approval. Owner will carry contract \$390,000. It is know that there is a high water table in the area by satellite images. I would like to know who pre-approved a standard septic at the county level? Or is this a misleading statement that is not true? I know that a sand filter system should be used with the water issue because that is something we had to do on our property at a cost of \$17,000. I feel that Calvin and his relative are not acting in good faith regarding this property.

The County has already stated that there is not enough buildable land to support these 3 parcels. The proper steps have not been taken to ensure that the land is safely buildable but here we are wasting valuable time and resources. I recommend that this issue is not granted/approved until the proper steps have been completed correctly by Calvin Garton or land owner.

--
Justin Berry
(509) 216-7701
j.berry8228@gmail.com

RECEIVED

SEP 24 2024

**UMATILLA COUNTY
COMMUNITY DEVELOPMENT**

EXHIBIT N

Excerpt of Findings from Approved 2020 Garton Land Division #LD-5N-881-20

and policies of the Umatilla County Comprehensive Plan. This criterion is met.

(J) All required improvements have signed agreements with the Board of Commissioners to meet the standards of this chapter or improvements specified by the Planning Commission or Public Works Director, and are recorded in the Recorder's Office at the time, and as a condition of approval for a Type II Land Division. The subject property is a portion of Parcel 3 of Partition Plat 1992-22. This partition, which received Land Use Approval as LD-5N-453-92, required an ICA agreement for future improvements to Rilie Lane. Although Irrevocable Consent Agreements follow the land, a new ICA is required to be signed and recorded with this partition. A precedent condition is imposed that the property owner sign and record an Irrevocable Consent Agreement for Rilie Lane. The agreement will be provided by County Planning. Satisfaction of this criterion is pending.

(K) Adequately addresses any known development limitations within the proposed Type II Land Division, outlining appropriate measures to mitigate the limitation. The Umatilla County Planning Department finds that there are two wetland areas that are located on Parcel 3. The two areas are identified on US Fish and Wildlife's National Wetland Inventory, and are classified as Freshwater Emergent Wetland. The applicant has not addressed the presence of wetlands or a mitigation plan to County Planning.

Parcel 3 appears to be the only parcel impacted by the presence of wetlands. Furthermore, it will also be the only parcel that could be further partitioned in the future. Therefore, the applicant should develop a wetland mitigation plan when considering future partition configuration, as there is a limited amount of remaining land that would be developable. This criterion is not applicable at this time.

(L) Addresses the comments of the appropriate water agency if the proposed Type II Land Division has a water right. The Umatilla County Planning Department finds that the subject property is located within West Extension Irrigation District. West Extension Irrigation District and Oregon State Water Resources will be notified and sent a copy of these findings. Any comments may result in additional conditions of approval.

26. SURVEYING REQUIRED - 152.644 (A) (2) PARCELS CREATED SMALLER THAN 10 ACRES IN A NON-RESOURCE ZONE NEED TO BE SHOWN ON A PARTITION PLAT: The Umatilla County Planning Department finds that this request involves parcels located in a non-resource zone and smaller than 10 acres in size thus requiring a partition plat to be submitted. The appropriate recording fee for this document will be required.

DECISION: THE GARTON LAND PARTITION REQUEST COMPLIES WITH THE STANDARDS OF THE UMATILLA COUNTY DEVELOPMENT CODE, SUBJECT TO THE FOLLOWING CONDITIONS OF APPROVAL:

Precedent Conditions: The following precedent conditions must be fulfilled prior to final approval of this request, signified by the recording of the Final Partition Plat:

PARTITION OF PARCEL 1 OF
UMATILLA COUNTY PARTITION PLAT NO. 1998-54
LOCATED IN THE NW 1/4 OF SECTION 22, T5N, R27E, W1W
UMATILLA COUNTY, OREGON
FEBRUARY, 2022

PARTITION PLAT NO. 2022-11



LEGEND

- SET 5/8" IRON REBAR WITH 1 1/4" RIGID PLASTIC CAP MARKED "OR PLS 1106 WA PLS 17972"
- FOUND 5/8" IRON REBAR WITH YELLOW PLASTIC CAP PER PARTITION PLAT NO. 1998-54
- ⊙ FOUND 1/2" IRON REBAR REFERENCED ON PARTITION PLAT NO. 1997-27
- MONUMENT FOUND AS NOTED
- ⊕ FOUND 5/8" REBAR WITH YELLOW PLASTIC CAP FROM PARTITION PLAT NO. 1998-38
- (X) RECORD DIMENSION FROM UMATILLA COUNTY PARTITION PLAT NO. 1998-54 OR 1999-26.

OTHER ENCUMBRANCES OF RECORD

EASEMENTS AS SHOWN ON PARTITION PLAT NO. 1992-22

IRREVOCABLE CONSENT AGREEMENT, RECORDED OCTOBER 26, 1992, NEEL 277, PAGE 1, UMATILLA COUNTY DEED RECORDS (RUE LANE)

EASEMENTS AS SHOWN ON PARTITION PLAT NO. 1998-54

IRREVOCABLE CONSENT AGREEMENT, RECORDED DECEMBER 21, 1998, INSTRUMENT NO. 1998-3429407, UMATILLA COUNTY DEED RECORDS (RUE LANE)

ROAD MAINTENANCE AGREEMENT, RECORDED SEPTEMBER 21, 2006, INSTRUMENT NO. 2006-508006, UMATILLA COUNTY DEED RECORDS (RUE LANE)

REGISTERED PROFESSIONAL LAND SURVEYOR

WILL R. WELLS

OREGON 6750722
WILLIAM R. WELLS
1106
RENEWS 6/30/22

SURVEYOR'S CERTIFICATE AND NARRATIVE

I HEREBY CERTIFY THAT I HAVE CORRECTLY SHOWN AND MARKED WITH LEGAL MONUMENTS AS REFERRED TO IN THIS SURVEY, THE CORRECT NETWORK OF BOUNDARIES FOR THE OVERALL BOUNDARY WAS SURVEYED AND MONUMENTED IN PARITION PLAT NO. 1998-54. BOUNDARY MONUMENTS WERE REVISITED AND RE-SET WITH A LEICA GEOTEC GPS RECEIVER CONNECTED TO THE OREGON REAL-TIME CORRECTIVE NETWORK. NEW BOUNDARIES WERE SET BY GPS METHODS AND VERIFIED BY REBOUNDARY OBSERVATIONS.

REAL PROPERTY DESCRIPTION

PARCEL 1 OF UMATILLA COUNTY PARTITION PLAT NUMBER 1998-54, RECORDED DECEMBER 24, 1998 IN THE RECORDS OF UMATILLA COUNTY PLATS AS INSTRUMENT NO. 1998-3429405 AND PARCEL 13 STATED IN THE NORTHWEST QUARTER OF SECTION 22, T5N, R27E, W1W, UMATILLA COUNTY, OREGON.

WILLIAM R. WELLS
WILLIAM R. WELLS PLS 1106

WELLS SURVEYING
200 SE HAILEY SUITE 108
P.O. BOX 1696
BENDLETON, OR 97801
PHONE: (541) 276-8362

DATE: 02/22 DR BY: WW
CK BY: WW NO: 20-1770

PROJECT: VXA-202107BAC
PARTITION PLAT FOR
KALVIN B. GARTON

A PARTITION OF PARCEL 1 OF PARTITION PLAT NO. 1998-54 LOCATED IN THE NORTHWEST QUARTER OF SECTION 22, TOWNSHIP 5 NORTH, RANGE 27 EAST, W1W, UMATILLA COUNTY, OREGON

OWNER'S DECLARATION

I, KALVIN B. GARTON, OWNER, DO HEREBY ACKNOWLEDGE THAT I HAVE CAUSED THIS PARTITION PLAT TO BE PREPARED AND THIS LAND PARTITIONED IN ACCORDANCE WITH OREGON STATUTE 92, AS REVISED, AND THE UMATILLA COUNTY DEVELOPMENT DEPARTMENT HAS REVIEWED AND APPROVED THIS PARTITION PLAT AND I HAVE DEDICATED TO THE WEST EXTENSION IRRIGATION DISTRICT THE WEST EXTENSION IRRIGATION DISTRICT AND I HAVE AGREED TO THE MAINTENANCE OF AN IRRIGATION PERMITS.

KALVIN B. GARTON, OWNER
STATE OF OREGON)
COUNTY OF UMATILLA)

ACKNOWLEDGMENT

THIS INSTRUMENT WAS ACKNOWLEDGED BEFORE ME ON

THIS 1ST DAY OF APRIL, 2022

BY KALVIN B. GARTON, OREGON

PRINTED NAME OF NOTARY PUBLIC: **TRINA N. WICKLANDER**

MY COMMISSION EXPIRES: 12-1-2023

MY COMMISSION NUMBER: 994324

APPROVALS

EXAMINED AND APPROVED THIS

14TH DAY OF APRIL, 2022

LAND PARTITION APPROVED BY: **LOREN SMITH**

UMATILLA COUNTY PLANNING DIRECTOR

EXAMINED AND APPROVED THIS

7 DAY OF APRIL, 2022

UMATILLA COUNTY SURVEYOR

EXAMINED AND APPROVED THIS

1ST DAY OF APRIL, 2022

WEST EXTENSION IRRIGATION DISTRICT

TAXES ARE CURRENT THIS

DAY OF APRIL, 2022

RECORDING INFORMATION

UMATILLA COUNTY OFFICE OF RECORDS

STATE OF OREGON

COUNTY OF UMATILLA

OFFICE OF COUNTY RECORDS

DATE: 02/22

FILE NO. 2022-11

RECORDED

EXHIBIT O

Umatilla County Environmental Health Site Evaluation Reports



Fwd: SE Reports 1-6 / Calvin Garton

2 messages

Thu, Sep 26, 2024 at 4:00 PM

Byron Morris <byron.morris@umatillacounty.gov>
To: Robert Waldher <robert.waldher@umatillacounty.gov>

Bob,

Attached are the Site Evaluation Reports we have done for his project.

Best,

----- Forwarded message -----
From: **Kalyn Frankson** <kalyn.frankson@umatillacounty.gov>
Date: Thu, Sep 26, 2024 at 3:36 PM
Subject: SE Reports 1-6 / Calvin Garton
To: Byron Morris <byron.morris@umatillacounty.gov>

Best Regards,

Kalyn Frankson

Environmental Health Admin
Umatilla County Health Department
200 SE 3rd St Pendleton, OR 97801
P: 541-278-5432
F: 541-278-5433



--
Byron Morris, MBio, REHS
Environmental Health Supervisor
Umatilla County Public Health
200 SE 3rd Street
Pendleton, OR 97801
Office: (541) 278-6394
Cell: (541) 314-3342

E-mail: byron.morris@umatillacounty.gov



6 attachments

 **5N27E22_TL_809_Parcel_6_SE_Report.pdf**
567K

 **5N27E22_TL_809_Parcel_4_SE_Report.pdf**
711K

 **5N27E22_TL_809_Parcel_2_SE_Report.pdf**
566K

 **5N27E22_TL_809_Parcel_3_SE_Report.pdf**
704K

 **5N27E22_TL_809_Parcel_5_SE_Report.pdf**
709K

 **5N27E22_TL_809_Parcel_1_SE_Report.pdf**
670K

Byron Morris <byron.morris@umatillacounty.gov>
To: Robert Waldher <robert.waldher@umatillacounty.gov>

Thu, Sep 26, 2024 at 4:12 PM

Bob,

While DEQ has no specific setback to Wetlands, we take into consideration the possibility of water in the surrounding area. Site Evaluations are conducted to ensure that water will not be detrimental to the drainfield in its ability to provide treatment and that the drainfield will not be installed in a place that will cause a public health hazard. As you can see in one of the Site Evaluation Reports there is a denial. Also, there are approvals for a capping and fill system in order to stay away from a water table. There were only a couple of spots where approval of a standard system was acceptable due to water not being observed in that area.

I hope this helps. Let me know if there are any questions.

Best,

[Quoted text hidden]



Umatilla County Public Health

Environmental Health For Umatilla & Morrow

200 SE 3rd St., Pendleton, OR 97801
 Office: 541-278-6394 Fax: 541-278-5433

www.ucohealth.net E-Mail - Health@umatillacounty.net



Serving Umatilla and Morrow Counties

SITE EVALUATION REPORT

- This is not a Permit -

June 01, 2021

Dear **Kalvin** Garton:

UCO Health has evaluated the property referenced below to determine if an onsite wastewater disposal system that complies with the State of Oregon Rules could be located on the property. This evaluation runs with the land and will automatically benefit subsequent owners. This evaluation report is valid until the approved system is constructed under a Umatilla County construction permit or unless the site is altered without approval from this office (excavation that could affect setbacks, placement of wells or utilities, etc.) Alterations made to the site may invalidate this evaluation.

Evaluation Result: Acceptable

Property Information

Property Owner: Kalvin Garton	County: Umatilla
Mailing: 1001 SE Byers Pendleton, OR 97801 Email: silvergarton11@gmail.com	Physical Address: TBD Umatilla, OR 97882
	Legal Description: 5N27E22 Tax Lot: 809 (Parcel #1)

Facility Information

Facility Type: Single Family Bedrooms: 4	Design Flow: 450 gallons per day Distribution Type: Drop Box
---	---

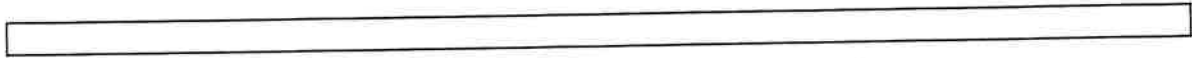
Site Notes

Hole #	Horizon	Depth (in.)	Description of color, texture, etc.	Texture Group
1	Ap	0 - 9	Very Dark Brown (10YR 2/2) FS (Fine Sand) Single grain, loose, many fine and very fine roots	B
	C1	9 - 24	Very Dark Gray (10YR 3/1) FS (Fine Sand) Single grain, loose, common fine roots, mottling, many, medium, prominent, dark reddish brown 5 YR (3/3), irregular, in the matrix	B
	C2	24 - 34	Dark Gray (10YR 4/1) FS (Fine Sand) Single grain, loose, few fine roots, depleted matrix without iron concentrations, standing water at 34 inches	B

Hole #	Horizon	Depth (in.)	Description of color, texture, etc.	Texture Group
2	Ap	0 - 9	Very Dark Brown (10YR 2/2) FS (Fine Sand) Single grain, loose, many fine and very fine roots	B

	C1	9 - 36	Very Dark Brown (10YR 2/2) FS (Fine Sand) Single grain, loose, common fine roots	B
	C2	36 - 55	Dark Gray (10YR 4/1) FS (Fine Sand) Single grain, loose, depleted matrix, soil at saturation capacity, water at 55 inches	B

Hole #	Horizon	Depth (in.)	Description of color, texture, etc.	Texture Group
3	Ap	0 - 5	Very Dark Brown (10YR 2/2) FS (Fine Sand) Single grain, loose, many fine and very fine roots	B
	C1	5 - 33	Very Dark Brown (10YR 2/2) FS (Fine Sand) Single grain, loose, few fine roots	B
	C2	33 - 50	Very Dark Brown (10YR 2/2) S (Sand) Coarse sand, single grain, loose, few fine roots	A



Lot Size: 2.06 acres	% Slope: 2 to 4
----------------------	-----------------

Landscape Position: Foothlope Position Satisfactory: Yes	Depth to Water Table: = 34 inches Free Water Present: Yes
---	--

Effective Soil Depth: > 55 inches

Approved System Type: Capping Fill System

Minimum Septic Tank Size: 1000 gallons	Total Trench Length: 225 feet
Minimum Trench Depth: 12 inches	Maximum Trench: 18 inches

Install tracer wire.

The system must be installed by the property owner or a licensed installer.

Vehicular traffic and livestock must be restricted from the system area.

Meet all required setbacks.

Filter fabric is required over the drain media.

All roof drains must be directed away from the system.

A confining layer at Parcel #3 Test pit #2.

Cap material must be inspected prior to placement.

Construction of capping fills must occur between June 1 and October 1.

Absorption area and the borrow site must be scarified to destroy the vegetative mat.

Fill material must be evenly graded to a final depth of 16 inches over the drain media for a serial system.

Minimum 10-foot separation between edge of fill and absorption facility.

If you believe the site evaluation is in error or that a variance from approval conditions is necessary, please contact our office for more details.

A Construction/Installation permit is required before you construct your system. Please submit the Construction permit packet to apply for a permit. We cannot sign off on any Building Codes forms until we issue your permit.

If you have any questions regarding this report, please contact UCO Health at 541-278-6394 or Health@umatillacounty.net.

Prepared By:

Byron Morris, REHS
Environmental Health Specialist

Joseph P. Fiumara Jr. MSEH, REHS
Public Health Director



Umatilla County Public Health

Environmental Health For Umatilla & Morrow

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SITE EVALUATION REPORT

- This is not a Permit -

June 01, 2021

Dear **Kalvin** Garton:

UCO Health has evaluated the property referenced below to determine if an onsite wastewater disposal system that complies with the State of Oregon Rules could be located on the property. This evaluation runs with the land and will automatically benefit subsequent owners. This evaluation report is valid until the approved system is constructed under a Umatilla County construction permit or unless the site is altered without approval from this office (excavation that could affect setbacks, placement of wells or utilities, etc.) Alterations made to the site may invalidate this evaluation.

Evaluation Result: Acceptable

Property Information

Property Owner: Kalvin Garton	County: Umatilla
Mailing: 1001 SE Byers Pendleton, OR 97801 Email: silvergarton11@gmail.com	Physical Address: TBD Umatilla, OR 97882
	Legal Description: 5N27E22 Tax Lot: 809 (Parcel #2)

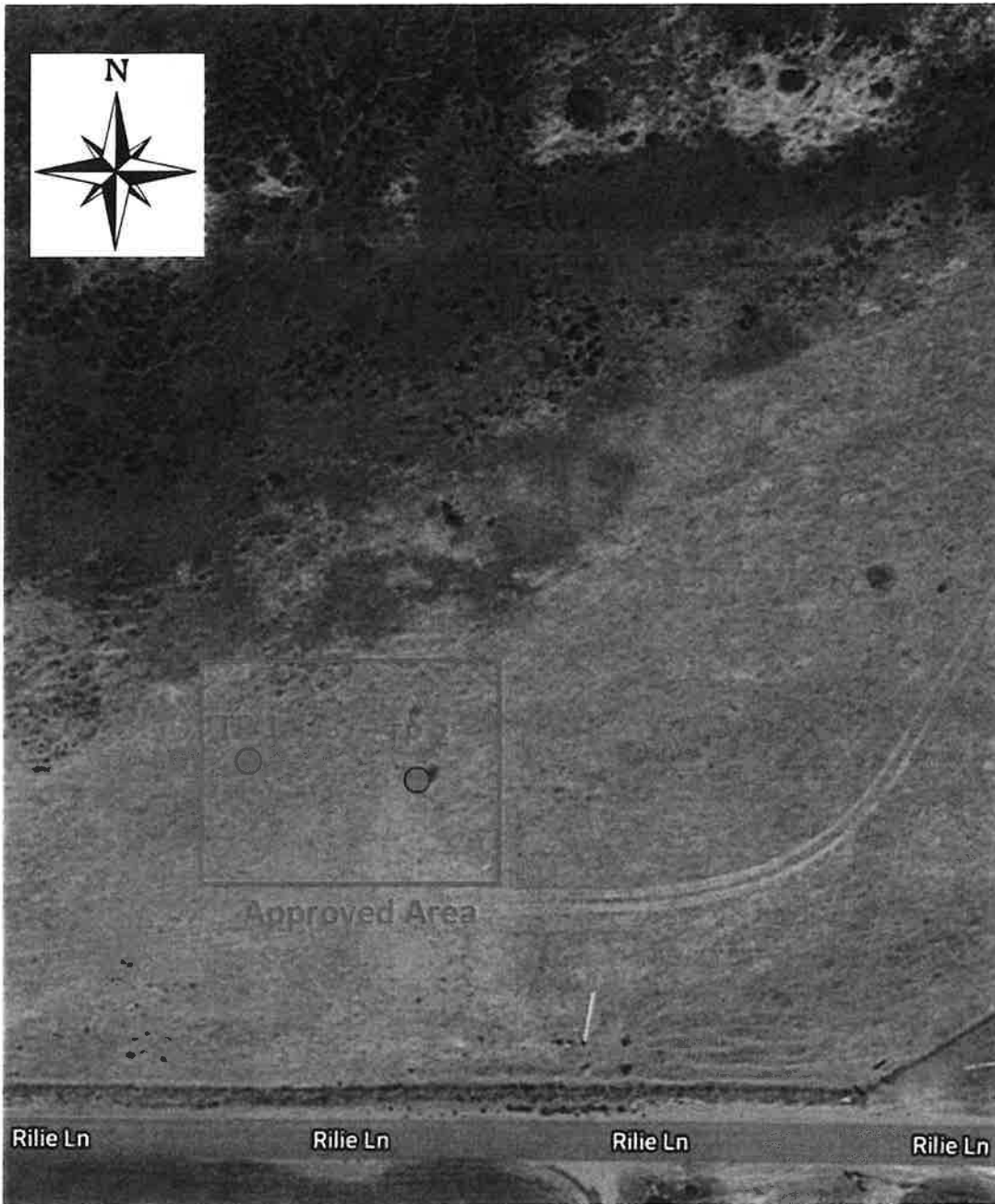
Facility Information

Facility Type: Single Family Bedrooms: 4	Design Flow: 450 gallons per day Distribution Type: Drop Box
---	---

Site Notes

Hole #	Horizon	Depth (in.)	Description of color, texture, etc.	Texture Group
1	Ap	0 - 7	Very Dark Brown (10YR 2/2) FS (Fine Sand) Single grain, loose, many very fine roots	B
	C	7 - 54	Very Dark Brown (10YR 2/2) FS (Fine Sand) Single grain, loose, few fine roots	B

Hole #	Horizon	Depth (in.)	Description of color, texture, etc.	Texture Group
2	Ap	0 - 8	Very Dark Brown (10YR 2/2) FS (Fine Sand) Single grain, loose, many fine and very fine roots, few coarse roots	B
	C	8 - 56	Very Dark Brown (10YR 2/2) FS (Fine Sand) Single grain, loose, common fine roots, few coarse roots	B



Lot Size: 2.06 acres	% Slope: 2 to 4
Landscape Position: Foothlope Position Satisfactory: Yes	Depth to Water Table: > 56 inches Free Water Present: No

Effective Soil Depth: > 56 inches

Approved System Type: Standard System

Minimum Septic Tank Size: 1000 gallons	Total Trench Length: 225 feet
Minimum Trench Depth: 18 inches	Maximum Trench: 30 inches

Install tracer wire.

The system must be installed by the property owner or a licensed installer.

Vehicular traffic and livestock must be restricted from the system area.

Meet all required setbacks.

Filter fabric is required over the drain media.

All roof drains must be directed away from the system.

If you believe the site evaluation is in error or that a variance from approval conditions is necessary, please contact our office for more details.

A Construction/Installation permit is required before you construct your system. Please submit the Construction permit packet to apply for a permit. We cannot sign off on any Building Codes forms until we issue your permit.

If you have any questions regarding this report, please contact UCO Health at 541-278-6394 or Health@umatillacounty.net.

Prepared By:

Byron Morris, REHS
Environmental Health Specialist



Joseph P. Fiumara Jr. MSEH, REHS
Public Health Director



Umatilla County Public Health

Environmental Health For Umatilla & Morrow

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Serving Umatilla and Morrow Counties

SITE EVALUATION REPORT

- This is not a Permit -

June 01, 2021

Dear **Kalvin** Garton:

UCO Health has evaluated the property referenced below to determine if an onsite wastewater disposal system that complies with the State of Oregon Rules could be located on the property. This evaluation runs with the land and will automatically benefit subsequent owners. This evaluation report is valid until the approved system is constructed under a Umatilla County construction permit or unless the site is altered without approval from this office (excavation that could affect setbacks, placement of wells or utilities, etc.) Alterations made to the site may invalidate this evaluation.

Evaluation Result: Acceptable

Property Information

Property Owner: Kalvin Garton	County: Umatilla
Mailing: 1001 SE Byers Pendleton, OR 97801 Email: silvergarton11@gmail.com	Physical Address: TBD Umatilla, OR 97882
	Legal Description: 5N27E22 Tax Lot: 809 (Parcel #3)

Facility Information

Facility Type: Single Family Bedrooms: 4	Design Flow: 450 gallons per day Distribution Type: Distribution Box
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Site Notes

Hole #	Horizon	Depth (in.)	Description of color, texture, etc.	Texture Group
1	Ap	0 - 8	Very Dark Brown (10YR 2/2) FS (Fine Sand) Single grain, loose, many fine and very fine roots	B
	C1	8 - 54	Very Dark Brown (10YR 2/2) FS (Fine Sand) Single grain, loose, few fine roots	B
	C2	54 - 75	Dark Gray (10YR 4/1) FS (Fine Sand) Single grain, loose, few fine roots, depleted matrix, soil at saturation capacity 50 inches, standing water at 72 inches	B

Hole #	Horizon	Depth (in.)	Description of color, texture, etc.	Texture Group
2	Ap	0 - 12	Very Dark Brown (10YR 2/2) FS (Fine Sand) Single grain, loose, many fine and very fine roots	B
	C1	12 - 36	Very Dark Brown (10YR 2/2) FS (Fine Sand) Single	B

			grain, loose, common fine roots	
	C2	36 - 52	Dark Gray (10YR 4/1) FS (Fine Sand) Single grain, loose, common fine roots, depleted matrix, fractured bedrock below this layer	B



--

Lot Size: 2.47 acres	% Slope: 1 to 3
Landscape Position: Foothlope Position Satisfactory: Yes	Depth to Water Table: = 72 inches Free Water Present: Yes

Effective Soil Depth: = 52 inches

Approved System Type: Standard System

Minimum Septic Tank Size: 1000 gallons	Total Trench Length: 225 feet
Minimum Trench Depth: 18 inches	Maximum Trench: 30 inches

Install tracer wire.

The system must be installed by the property owner or a licensed installer.

Vehicular traffic and livestock must be restricted from the system area.

Meet all required setbacks.

Filter fabric is required over the drain media.

All roof drains must be directed away from the system.

If you believe the site evaluation is in error or that a variance from approval conditions is necessary, please contact our office for more details.

A Construction/Installation permit is required before you construct your system. Please submit the Construction permit packet to apply for a permit. We cannot sign off on any Building Codes forms until we issue your permit.

If you have any questions regarding this report, please contact UCO Health at 541-278-6394 or Health@umatillacounty.net.

Prepared By:

Byron Morris, REHS
Environmental Health Specialist



Joseph P. Fiumara Jr. MSEH, REHS
Public Health Director



Umatilla County Public Health

Environmental Health For Umatilla & Morrow

200 SE 3rd St., Pendleton, OR 97801

Office: 541-278-6394 Fax: 541-278-5433

www.ucohealth.net E-Mail - Health@umatillacounty.net



Serving Umatilla and Morrow Counties

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June 01, 2021

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Dear **Kalvin** Garton:

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Evaluation Result: Acceptable

Property Information

Property Owner: Kalvin Garton	County: Umatilla
Mailing: 1001 SE Byers Pendleton, OR 97801 Email: silvergarton11@gmail.com	Physical Address: TBD Umatilla, OR 97882
	Legal Description: 5N27E22 Tax Lot: 809 (Parcel #4)

Facility Information

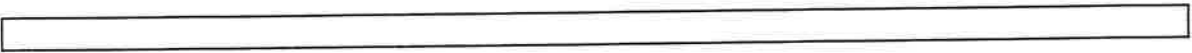
Facility Type: Single Family Bedrooms: 4	Design Flow: 450 gallons per day Distribution Type: Distribution Box
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Site Notes

Hole #	Horizon	Depth (in.)	Description of color, texture, etc.	Texture Group
1	Ap	0 - 12	Very Dark Brown (10YR 2/2) FS (Fine Sand) Single grain, loose, many fine and very fine roots	B
	C1	12 - 36	Very Dark Brown (10YR 2/2) FS (Fine Sand) Single grain, loose, common fine roots, mottling, many, medium, prominent, dark reddish brown 5 YR (3/3), irregular, in the matrix	B
	C2	36 - 47	Dark Gray (10YR 4/1) FS (Fine Sand) Single grain, loose, few fine roots, depleted matrix, soil at saturation capacity	B

Hole #	Horizon	Depth (in.)	Description of color, texture, etc.	Texture Group
2	Ap	0 - 12	Very Dark Brown (10YR 2/2) FS (Fine Sand) Single grain, loose, many fine and very fine roots	B

	C1	12 - 30	Very Dark Brown (10YR 2/2) FS (Fine Sand) Single grain, loose, common fine roots	B
	C2	30 - 43	Dark Gray (10YR 4/1) FS (Fine Sand) Single grain, loose, few fine roots, depleted matrix, soil at saturation capacity	B



Lot Size: 2.47 acres	% Slope: 1 to 3
Landscape Position: Foothlope Position Satisfactory: Yes	Depth to Water Table: = 43 inches Free Water Present: Yes

Effective Soil Depth: > 47 inches

Approved System Type: Capping Fill System

Minimum Septic Tank Size: 1000 gallons	Total Trench Length: 225 feet
Minimum Trench Depth: 12 inches	Maximum Trench: 18 inches

Install tracer wire.

The system must be installed by the property owner or a licensed installer.

Vehicular traffic and livestock must be restricted from the system area.

Meet all required setbacks.

Filter fabric is required over the drain media.

All roof drains must be directed away from the system.

A confining layer at Parcel #3 Test pit #2.

Cap material must be inspected prior to placement.

Construction of capping fills must occur between June 1 and October 1.

Absorption area and the borrow site must be scarified to destroy the vegetative mat.

Fill material must be evenly graded to a final depth of 10 inches over the drain media for an equal system.

Minimum 10-foot separation between edge of fill and absorption facility.

If you believe the site evaluation is in error or that a variance from approval conditions is necessary, please contact our office for more details.

A Construction/Installation permit is required before you construct your system. Please submit the Construction permit packet to apply for a permit. We cannot sign off on any Building Codes forms until we issue your permit.

If you have any questions regarding this report, please contact UCO Health at 541-278-6394 or Health@umatillacounty.net.

Prepared By:

Byron Morris, REHS
Environmental Health Specialist

Joseph P. Fiumara Jr. MSEH, REHS
Public Health Director



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SITE EVALUATION REPORT

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June 01, 2021

Dear **Kalvin** Garton:

UCO Health has evaluated the property referenced below to determine if an onsite wastewater disposal system that complies with the State of Oregon Rules could be located on the property. This evaluation runs with the land and will automatically benefit subsequent owners. This evaluation report is valid until the approved system is constructed under a Umatilla County construction permit or unless the site is altered without approval from this office (excavation that could affect setbacks, placement of wells or utilities, etc.) Alterations made to the site may invalidate this evaluation.

Evaluation Result: Acceptable

Property Information

Property Owner: Kalvin Garton	County: Umatilla
Mailing: 1001 SE Byers Pendleton, OR 97801 Email: silvergarton11@gmail.com	Physical Address: TBD Umatilla, OR 97882
	Legal Description: 5N27E22 Tax Lot: 809 (Parcel #5)

Facility Information

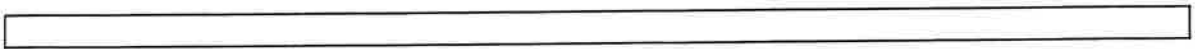
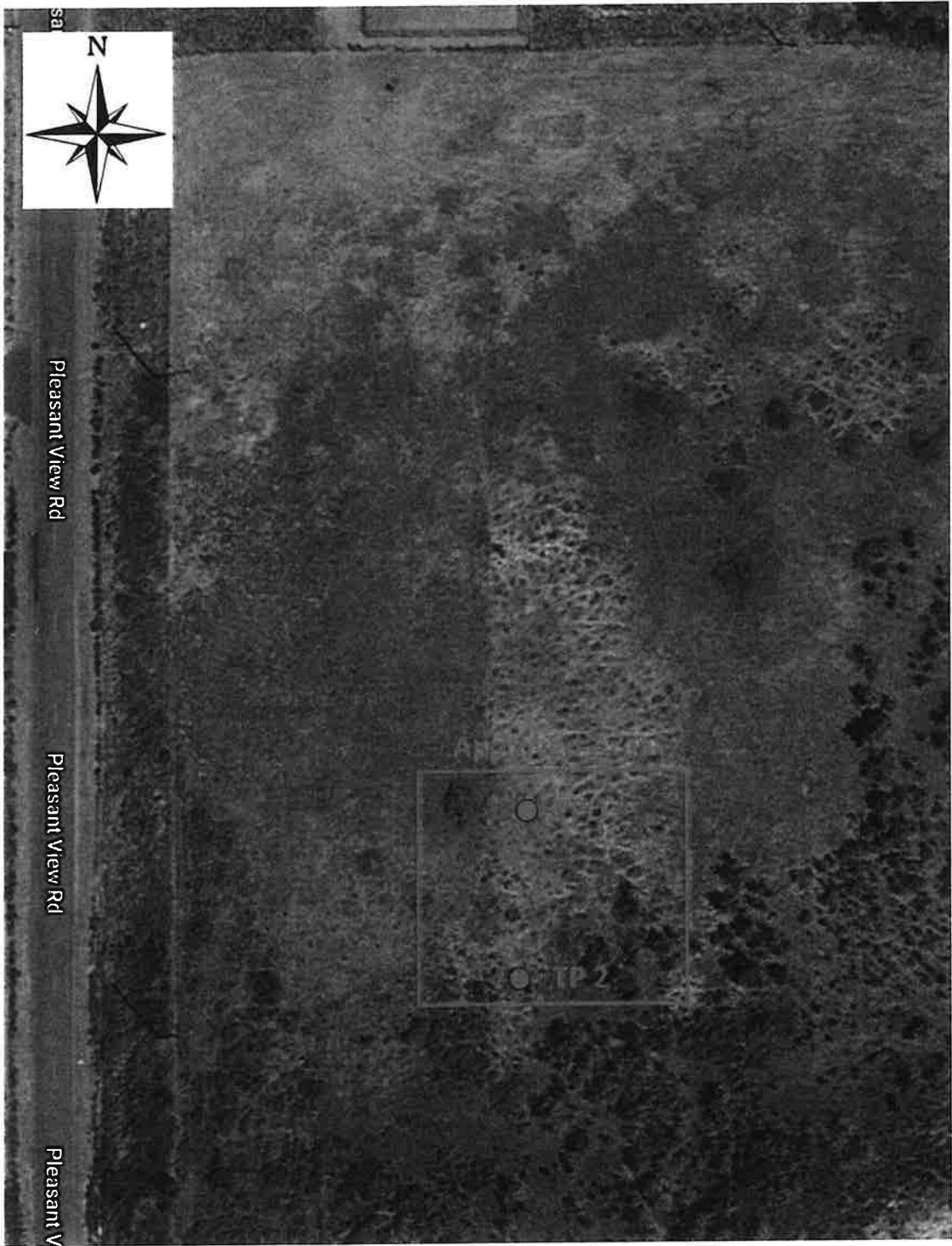
Facility Type: Single Family Bedrooms: 4	Design Flow: 450 gallons per day Distribution Type: Distribution Box
---	---

Site Notes

Hole #	Horizon	Depth (in.)	Description of color, texture, etc.	Texture Group
1	Ap	0 - 10	Very Dark Brown (10YR 2/2) FS (Fine Sand) Single grain, loose, many fine and very fine roots, few coarse roots	B
	C1	10 - 36	Very Dark Brown (10YR 2/2) FS (Fine Sand) Single grain, loose, common fine roots	B
	C2	36 - 60	Dark Gray (10YR 4/1) FS (Fine Sand) Single grain, loose, few fine roots, depleted matrix, soil at saturation capacity, standing water at 60 inches	B

Hole #	Horizon	Depth (in.)	Description of color, texture, etc.	Texture Group
2	Ap	0 - 12	Very Dark Brown (10YR 2/2) FS (Fine Sand) Single grain, loose, many fine and very fine roots	B
	C1	12 - 36	Very Dark Grayish Brown (10YR 3/2) FS (Fine Sand)	B

			Single grain, loose, few fine roots, mottling, many, medium, prominent, dark reddish brown 5 YR (3/3), irregular, in the matrix	
	C2	36 - 55	Dark Gray (10YR 4/1) FS (Fine Sand) Single grain, loose, few fine roots, depleted matrix, soil at saturation capacity, standing water at 55 inches	B



Lot Size: 2.48 acres	% Slope: 1 to 3
Landscape Position: Foothlope Position Satisfactory: Yes	Depth to Water Table: = 55 inches Free Water Present: Yes

Effective Soil Depth: > 60 inches

Approved System Type: Capping Fill System

Minimum Septic Tank Size: 1000 gallons	Total Trench Length: 225 feet
Minimum Trench Depth: 12 inches	Maximum Trench: 18 inches

Install tracer wire.

The system must be installed by the property owner or a licensed installer.

Vehicular traffic and livestock must be restricted from the system area.

Meet all required setbacks.

Filter fabric is required over the drain media.

All roof drains must be directed away from the system.

A confining layer at Parcel #3 Test pit #2.

Cap material must be inspected prior to placement.

Construction of capping fills must occur between June 1 and October 1.

Absorption area and the borrow site must be scarified to destroy the vegetative mat.

Fill material must be evenly graded to a final depth of 10 inches over the drain media for an equal system.

Minimum 10-foot separation between edge of fill and absorption facility.

If you believe the site evaluation is in error or that a variance from approval conditions is necessary, please contact our office for more details.

A Construction/Installation permit is required before you construct your system. Please submit the Construction permit packet to apply for a permit. We cannot sign off on any Building Codes forms until we issue your permit.

If you have any questions regarding this report, please contact UCO Health at 541-278-6394 or Health@umatillacounty.net.

Prepared By:

Byron Morris, REHS
Environmental Health Specialist

Joseph P. Fiumara Jr. MSEH, REHS
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SITE EVALUATION REPORT

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June 01, 2021

Dear **Kalvin** Garton:

UCO Health has evaluated the property referenced below to determine if an onsite wastewater disposal system that complies with the State of Oregon Rules could be located on the property. This evaluation runs with the land and will automatically benefit subsequent owners. This evaluation report is valid until the approved system is constructed under a Umatilla County construction permit or unless the site is altered without approval from this office (excavation that could affect setbacks, placement of wells or utilities, etc.) Alterations made to the site may invalidate this evaluation.

Evaluation Result: Denial

Temporary ground water level is too close to the ground surface for test pit 1 and 2. *This can cause 2 potential issues:*

- 1) *Very little treatment occurs in saturated soils - the presence of air is required for good treatment.*
- 2) *Sewage may be "forced" to the surface where it poses a potential public health hazard.*

Property Information

Property Owner: Kalvin Garton	County: Umatilla
Mailing: 1001 SE Byers Pendleton, OR 97801 Email: silvergarton11@gmail.com	Physical Address: TBD Umatilla, OR 97882
	Legal Description: 5N27E22 Tax Lot: 809 (Parcel #6)

Facility Information

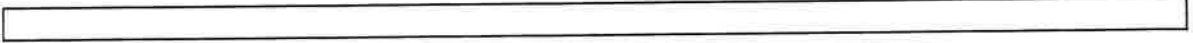
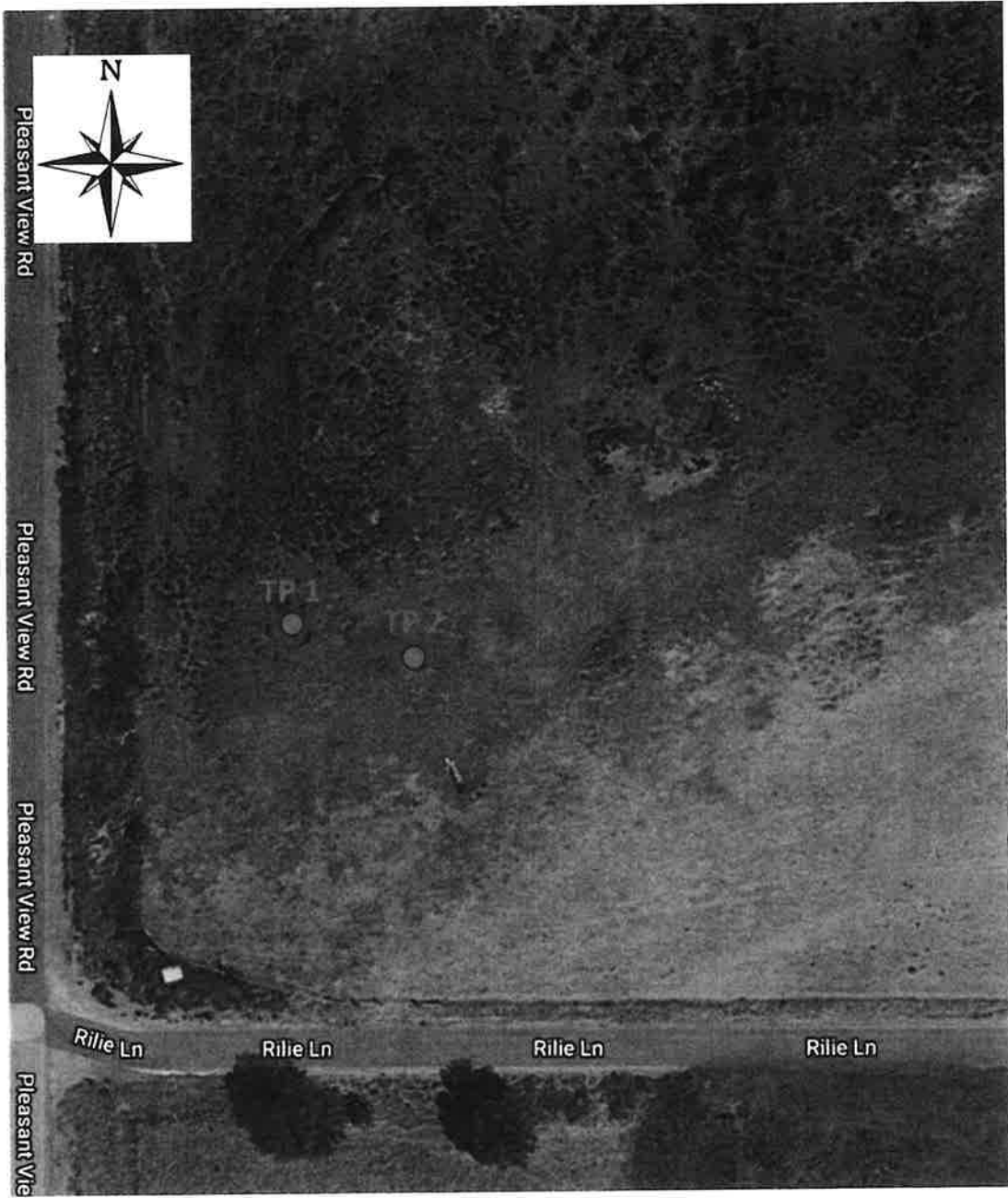
Facility Type: Single Family Bedrooms: 4	Design Flow: 450 gallons per day Distribution Type: N/A
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Site Notes

Hole #	Horizon	Depth (in.)	Description of color, texture, etc.	Texture Group
1	AP	0 - 8	Dark Gray (10YR 4/1) FS (Fine Sand) Single grain, loose, many fine and very fine roots, mottling, many, medium, prominent, dark reddish brown 5 YR (3/3), irregular, in the matrix, standing water at 8 inches	B

Hole #	Horizon	Depth (in.)	Description of color, texture, etc.	Texture Group
2	Ap	0 - 9	Very Dark Brown (10YR 2/2) FS (Fine Sand) Single grain, loose, many fine and very fine roots	B
	C	9 - 20	Black (10YR 2/1) FS (Fine Sand) Single grain, loose, common fine roots, mottling, many, medium,	B

prominent, dark reddish brown 5 YR (3/3), irregular, in the matrix, soil at saturation capacity, standing water at 20 inches



Lot Size: 2.08 acres	% Slope: 2 to 4
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Landscape Position: Foothlope Position Satisfactory: No	Depth to Water Table: = 8 inches Free Water Present: Yes
Effective Soil Depth: > 8 inches	

If you believe the site evaluation is in error or that a variance from approval conditions is necessary, please contact our office for more details.

Although the area evaluated in this site evaluation did not meet rules for onsite wastewater treatment systems, it may still be possible to find an acceptable area either on the site or on an adjacent property if you can obtain an easement from a neighbor. Additional test pits on other areas of your property will be evaluated for free within 90 days from the date of this report.

If you have any questions regarding this report, please contact UCO Health at 541-278-6394 or Health@umatillacounty.net.

Prepared By:

Byron Morris, REHS
Environmental Health Specialist



Joseph P. Fiumara Jr. MSEH, REHS
Public Health Director

EXHIBIT P

Planning Commission Decision Letter (10/01/24)



PLANNING DIVISION

216 SE 4th ST, Pendleton, OR 97801, (541) 278-6252

Email: planning@umatillacounty.gov

COMMUNITY &
BUSINESS
DEVELOPMENT

October 1, 2024

LAND USE
PLANNING,
ZONING AND
PERMITTING

Kalvin Garton
1328 NW King Avenue
Pendleton, OR 97801

CODE
ENFORCEMENT

Re: Garton Land Division Final Decision Letter
Land Division Request, #LD-5N-912-24
Map #5N 27 22, Tax Lot #809, Account #149725

SOLID WASTE
COMMITTEE

SMOKE
MANAGEMENT

Dear Mr. Garton:

GIS AND
MAPPING

The Umatilla County Planning Commission, at their September 26, 2024 hearing, upheld the **Denial** of Land Division Request, #LD-5N-912-24. Enclosed is a copy of the Final Findings and Conclusions signed on September 30, 2024 by the Planning Commission Chair.

RURAL
ADDRESSING

LIAISON,
NATURAL
RESOURCES &
ENVIRONMENT

The date the Findings are signed commences a statutory 15-day appeal period in which those who participated or testified during the permitting process, may appeal the Planning Commission decision to the Board of Commissioners. This appeal period will close on October 15, 2024. The fee for requesting a public hearing is \$800. All notified property owners, affected agencies, and you, the applicant, who participated or testified during the permitting process, may appeal the County's decision. Appeals must be made in writing on the proper form available at the Community Development Department and should include the reasons for the appeal and the alleged errors that the appellant believes were made by the Planning Commission in addressing specific land division approval criteria.

PUBLIC TRANSIT

In conclusion if you have questions about the denial or need additional clarification, please feel free to contact me at 541-278-6251, or if more convenient you may e-mail me at Robert.waldher@umatillacounty.gov

Cordially,

Robert Waldher,
Community Development Director

Enclosures: Signed Final Findings

cc: Bill Wells – surveyor, Jessica Salgado – DSL, Justin Berry – neighbor, Morrow Co. Planning Department, Umatilla County GIS

216 S.E. 4th Street • Pendleton, OR 97801 • Ph: 541-278-6252 • Fax: 541-278-5480

Website: co.umatilla.or.us/departments/community-development/planning-division • Email: planning@umatillacounty.gov

EXHIBIT Q

Planning Commission Findings and Conclusions

**UMATILLA COUNTY PLANNING COMMISSION
FINDINGS AND CONCLUSIONS
LAND DIVISION REQUEST, #LD-5N-912-24
MAP #5N 27 22, TAX LOT #809, ACCOUNT #149725**

1. APPLICANT: Calvin Garton, 1328 NW King Ave, Pendleton, OR 97801
2. OWNER: Calvin Garton, 1001 SE Byers Ave, Pendleton, OR 97801
3. REQUEST: The request is to divide Tax Lot #809 into three (3) parcels for future residential development.

The proposed partition would result in the following parcel sizes: Proposed Parcel 1 – 2.06 acres, Proposed Parcel 2 – 2.02 acres, and Proposed Parcel 3 – 4.02 acres (See attached vicinity map for parcel locations).

In 2023, the Applicant requested approval of rural residential 4-lot subdivision of Tax Lot #809, Subdivision Request #S-062-23. The Applicant later withdrew the application prior to the Planning Commission hearing.

Tax Lot #809 is largely encumbered by several mapped wetlands, resulting in very limited buildable area. This issue is later addressed under UCDC 152.684(B).
4. LOCATION: The subject property is located south of Highway 730 and east of Pleasant View Road. The property is located along the Umatilla/Morrow County border, approximately three (3) miles west of the City of Umatilla.
5. SITUS: The property is not currently addressed. An address will be assigned at the time development is proposed.
6. ACREAGE: Tax Lot 809 is approximately 8.1 acres.
7. PERMITS: County Planning does not have any permits currently on file for the subject parcel. However, there have been several land division approvals prior to this request. The following Tax Lots were once a portion of Tax Lot 809: 800, 802, 804, 808, 810, 811, 812, 813, 814, 815 and 816.
8. COMP PLAN: The Comprehensive Plan designation for the subject property is “Rural Residential.”
9. ZONING: The subject property is zoned Rural Residential – 2 acre minimum parcel size (RR-2).

10. ACCESS: The subject property has frontage on Pleasant View Road, Morrow County Road #2625. The applicant proposes a new 60-foot wide private access easement to serve Parcels 1 through 3.
11. ROAD TYPE: Pleasant View Road is a paved, two-lane Morrow County Road #2625.
12. EASEMENTS: The proposed access easement will be 60-feet wide, all 60 feet of width are located on the subject parcel. There is also an existing 15-foot irrigation easement located on the east side of Parcel 3. A new 20-foot irrigation easement is proposed to serve Parcels 1 and 2, the easement will cross the near center of Parcel 3. There is also a blanket easement serving Umatilla Electric across the entire property.
13. LAND USE: The subject property is currently vacant.
14. ADJACENT USE: Surrounding land uses largely consist of farm and rural residential uses.
15. BUILDINGS: There are currently no buildings on the subject parcel.
16. UTILITIES: Currently the property does not contain utilities.
17. WATER/SEWER: The subject property does not currently contain a well or septic system. The applicant understands that these will be required at the time of development.
18. FIRE SERVICE: The subject property is within the service area of Umatilla Rural Fire District.
19. IRRIGATION: The subject property is within the West Extension Irrigation District.
20. FLOODPLAIN: This property is NOT in a floodplain.
21. WETLANDS: According to the US Fish and Wildlife Service National Wetlands Inventory (NWI), the subject parcel contains two Freshwater Emergent Wetlands. These wetlands make up a large majority of Parcels 1 and 3.
- Aerial imagery, as well as NRCS hydric soil mapping, suggests that wetlands may extend beyond the NWI mapped polygons, and through the area of the proposed access easement. On July 1, 2024, county staff conducted a site visit to the subject property to view conditions. The property was viewed from several locations along Pleasant View Road and photos were taken. Photos and a description are included below:



Wetland Photo 1 – View of wetlands from Pleasant View Road facing southeast. Vegetation such as rushes, sedges, Russian Olive trees, cattails and reed canary grass was observed, indicating the presence of wetland vegetation outside the NWI mapped area.



Wetland Photo 2 – View of wetlands from Pleasant View Road facing east. Photo taken from approximate location of the proposed 60 foot access easement.

PLANNING COMMISSION FINDINGS AND CONCLUSIONS

GARTON, Type II Land Division, #LD-5N-912-24

Page 4 of 12

In April 2024, planning staff submitted a wetland land use notification to Oregon Department of State Lands (DSL) which is the agency responsible for administering removal/fill laws in the state. A response from DSL staff recommended that the applicant hire a wetland consultant to prepare a wetland delineation report for DSL's review and approval prior to any ground disturbing activities.

22. NOTICES SENT: September 6, 2024

23. AGENCIES NOTIFIED: Umatilla Electric Cooperative, Umatilla Rural Fire District, Oregon State Water Resources, Oregon Department of State Lands, Umatilla County Assessor, Umatilla County Public Works, Morrow County Public Works, Morrow County Planning Department, Umatilla County Environmental Health, Umatilla County GIS, West Extension Irrigation District and Umatilla County Surveyor

24. PC HEARING: A "Request for Appeal" was filed by Calvin Garton (applicant/owner) to appeal the Umatilla County Planning Division's decision to deny Land Use Request #LD-5N-912-24. A public hearing before the Umatilla County Planning Commission was held September 26, 2024.

25. STANDARDS OF THE UMATILLA COUNTY DEVELOPMENT CODE FOR LAND DIVISIONS, §§ 152.301-152.306 and § 152.684, Land Divisions, Type II contains the criteria of approval for property that is not in a resource zone. The following standards of approval are underlined and the findings are in normal text.

§ 152.684 STANDARDS FOR APPROVAL.

In granting approval of a Type II Land Division, the Planning Director shall find that the Type II Tentative Plan and required supplementary material:

(A) Complies with applicable elements of the Comprehensive Plan, including, but not limited to, policies listed in the public facilities and services and the transportation elements of the Comprehensive Plan. The Umatilla County Comprehensive Plan and Transportation System Plan apply to the rural areas of the county. The applicant's property is designated Rural Residential in the County Comprehensive Plan. The County's Plan was acknowledged by the State of Oregon and subsequently was zoned RR-2 in compliance with the County's acknowledged Comprehensive Plan.

(B) If approved, will permit development on the remainder of the property under the same ownership, if any, or of adjoining land or of access thereto, in accordance with this and other applicable ordinances; Umatilla County finds that development on all three parcels will be extremely limited due to the presence of existing wetlands and new and existing easements. In the RR-2 zone, structures must abide by a minimum 20-foot setback to all property lines and access easements. Additionally, structures cannot be built within existing utility easements, and all wetlands have a minimum setback requirement of 100-feet to new structures and septic systems, limiting the buildable space on all three proposed parcels.

Using ArcGIS Pro, Umatilla County developed mapping that overlays existing NWI mapping and existing/proposed easements in order to calculate the potential buildable area¹ as the following:

Parcel 1: 0.34 acres

Parcel 2: north of access easement = 0.43 acres, south of access easement = 0.55 acres,
total = 0.98 acres

Parcel 3: 0.53 acres

Of the three proposed parcels, Parcel 2 has the most buildable area at 0.98 acre of the 2.02 total acres. However, the applicant's tentative plat proposes that Parcel 2's buildable area be bisected by the proposed access easement, further limiting building potential of a rural residence, accessory structures, well, drain field and replacement drain field area. While Parcel 3 has a larger buildable area, the area available for development is oddly shaped and is less conducive to rural residential amenities and utilities. Parcel 1 has the least buildable area and is largely encumbered by a freshwater emergent wetland. Furthermore, based on wetland

¹ The Umatilla County Development Code §152.003 defines buildable area as *the space remaining on a zoning lot after the minimum open space requirements (coverage, yards, setbacks) have been met.*

conditions observed in the field by county staff and information received from state DSL staff, it is likely that additional, unmapped, wetlands are present on the subject property, further limiting the buildable area of all three proposed parcels.

Umatilla County finds that if approved, development will be extremely limited on all three parcels. Umatilla County finds that the tentative plan will create three parcels that will likely require variances to wetland setbacks and/or property line setbacks in order to be developed. Furthermore, a criterion for approval of variances includes the following: §152.627 Circumstances for granting a variance (A) Exceptional or extraordinary circumstances apply to the property... or other circumstances over which the owners of property since enactment of this chapter have had no control (emphasis added). Therefore, approval of a variance on either of the three proposed parcels would be extremely problematic to justify. Umatilla County finds and concludes that development of a single-family dwelling, accessory structure, well, septic system and replacement drain field area on Parcels 1, 2 and 3 would be extremely limited and difficult with the RR-2 setback standards and development limitations of wetlands and easements. This criterion is not satisfied.

(C) Complies with the zoning requirements or a proposed change thereto associated with the partition map proposal; Umatilla County finds that the Umatilla County Development Code requires a minimum lot size of two (2) acres for Rural Residential. Tax Lot 809 is 8.10 acres. The proposed partition would result in the following parcel sizes: Proposed Parcel 1 – 2.06 acres, Proposed Parcel 2 – 2.02 acres, and Proposed Parcel 3 – 4.02 acres (See attached vicinity map for parcel locations). As outlined in this section, each parcel created by this land division meets the minimum parcel size for the RR-2 zone. This criterion is satisfied.

(D) Complies with provisions of § 152.019, Traffic Impact Analysis, as applicable. The standards of applicability of UCDC 152.019 will be addressed below:

UCDC 152.019 (B) Applicability: A Traffic Impact Analysis shall be required to be submitted to the County with a land use application, when one or more of the following actions apply:

- (1) A change in plan amendment designation; or
- (2) The proposal is projected to cause one or more of the following effects, which can be determined by field counts, site observation, traffic impact analysis or study, field measurements, crash history, Institute of Transportation Engineers Trip Generation manual; and information and studies provided by the local reviewing jurisdiction and/or ODOT:
 - (a) An increase in site traffic volume generation by 250 Average Daily Trips (ADT) or more (or as required by the County Engineer). The latest edition of the Trip Generation manual, published by the Institute of Transportation Engineers (ITE) shall be used as standards by which to gauge average daily vehicle trips; or Umatilla County finds that there will not be an increase of more than 250 ADT. Three (3) parcels will be created through this land division and potentially three

(3) dwellings will be constructed. A single-family dwelling generates approximately 9.52 ADTs during the week day (p. 296, *Trip Generation Manual 9th Edition*, ITE). Thus, three (3) single family dwellings would generate some 30 ADTs, far less than the required 250 ADTs required to complete a Traffic Impact Analysis. This standard is not applicable.

(b) An increase in use of adjacent streets by vehicles exceeding the 20,000 pound gross vehicle weights by 10 vehicles or more per day; or Umatilla County finds that the land division is for single-family dwellings and will not increase traffic by vehicles with a 20,000 pound gross vehicle weight. The majority of the increase in vehicle traffic will be personal use cars and pickups. This standard is not applicable.

(c) The location of the access driveway does not meet minimum intersection sight distance requirements, or is located where vehicles entering or leaving the property are restricted, or vehicles queue or hesitate, creating a safety hazard; or Umatilla County finds that the proposed parcels are currently served by Pleasant View Road, a Morrow County Road. The applicant proposes to dedicate and develop a new private access road to serve all three parcels. As a condition of approval, the applicant is required to submit verification from Morrow County Public Works that sight distance requirements will be met with the proposed road location.

(d) A change in internal traffic patterns that may cause safety problems, such as back up onto the highway or traffic crashes in the approach area; or Umatilla County finds that there are no anticipated changes to the internal traffic patterns, thus the proposal will not cause safety issues. This standard is not applicable.

(e) For development within the I-82/US 730 Interchange Area Management Plan (IAMP) Management Area, the location of the access driveway is inconsistent with the Access Management Plan in Section 7 of the IAMP. Umatilla County finds that the proposed development is not within the I-82/US 730 IAMP Management Area. This standard is not applicable.

(E) Roads and recorded easements for access purposes are laid out so as to conform, within the limits of the development standards, to the plats of subdivisions and maps of partitions already approved for adjoining property unless the Planning Director determines it is in the public interest to modify the road pattern; Umatilla County finds that the applicant's land division plan demonstrates that the parcels will utilize a new 60-foot wide private access and utility easement. Modifications to the road pattern are not proposed. However, based on wetland conditions observed in the field by county staff and information received from state DSL staff, it is likely that additional, unmapped, wetlands are present on the subject property, including the area identified for dedication of the 60-foot wide private access and utility easement. Any ground disturbing activities (including construction of access roads) within a

wetland require review and approval from Department of State Lands. Since a wetland delineation of the subject property has not been conducted, Umatilla County is unable to determine if the proposed easement conforms with the development standards. Therefore, as a condition of approval, a wetland delineation shall be submitted to and approved by DSL prior to any on-site ground disturbing activities and construction of the proposed 60-foot wide private access and utility easement. Umatilla County finds and concludes the imposition of the above precedent condition of approval satisfies the criteria.

(F) Dedicated road or public recorded easement shall be provided to each parcel and conform to right-of-way and improvement standards as follows:

(1) If a recorded easement for access purposes in a Type II Land Division will serve three or fewer parcels and will not likely serve other parcels or lots due to existing conditions, such as topography or the size or shape of land, or the parcels are not buildable, the easement or right-of-way is required to be improved to meet the Option 1 or "P-1" County Road Standard as provided in § 152.648 (D). The easement or right-of-way shall be a minimum of 30 foot wide and improved with a surface width of at least 16-feet. Umatilla County finds that if Parcel 3 were not heavily encumbered by wetlands, then it would have the potential to be divided once more. The applicant is proposing a 60-foot wide right-of-way easement that would comply with the County's P-2 Road Standard, therefore, this criterion is not applicable.

(2) If the partition is located within a rural fire district or a hospital district which provides service, emergency vehicle considerations for recorded easements which dead-end shall provide either circle drives or driveway turnarounds. The Planning Director or Public Works Director shall determine which type of emergency vehicle access above is most appropriate. Circle drives and turnarounds shall be improved to the same standard as the road they serve as provided in § 152.648 (D), shall be kept clear and shall be of adequate circumference to provide turn around space for emergency vehicles.

The partition is located within the Umatilla Rural Fire District. Umatilla County finds that the proposed access easement will also include a 50' radius cul-de-sac turnaround for emergency vehicles. A precedent condition of approval is imposed that the final plat will show a 50' radius cul-de-sac, said turnaround must also meet the P-2 County Road Standard. Umatilla Rural Fire District will receive notice of this request. The applicant is required, as a condition of approval, to provide confirmation from Umatilla Rural Fire District that the access easements and turn-around areas are adequate for emergency vehicles ingress and egress.

(3) If a public road or recorded easement for access purposes in a Type II Land Division will serve four or more parcels and will likely serve additional parcels or lots, or likely be an extension of a future road as specified in a future road plan, the right-of-way or easement shall be required to be improved to meet the Option 2 or "P-2" County Road Standard as provided in § 152.648 (D). The 60-foot right-of-way or easement shall be improved with a surface width of at least 22-feet. All 60-foot rights-of-way or easements

are to be named prior to final approval of the partition plat and the road name must be included on the final partition plat map. Road signs are to be paid for prior to the final partition plat approval.

The applicant has proposed a 60-foot wide private access and utility easement to serve Parcels 1 through 3. Umatilla County finds that if Parcel 3 were not heavily encumbered by wetlands, then it would have the potential to be divided once more, for a total of four parcels to be served by the proposed private easement. Umatilla County finds that the 60-foot access and utility easement shall be improved with a surface width of at least 22-feet. Umatilla County finds that the easement shall be named and the road name must be included on the final partition plat. The applicant is responsible for submitting a road naming application to the Planning Division along with applicable fees. The applicant is responsible for paying for the signs and the County Road Department is the agency that will install the signs. The sign may be installed either on the applicant's property near the County right of way, or within the County right of way, where allowed by County Public Works.

A precedent condition of approval is imposed to improve the proposed road to the County P-2 road standard.

A precedent condition of approval is imposed to improve the proposed cul-de-sac to the P-2 road standard.

A precedent condition of approval is imposed that the applicant submit a Private Lane Road Naming application with applicable fees.

Umatilla County finds and concludes the imposition of the above precedent conditions of approval satisfies the criteria.

(4) Recorded easements or dedicated public roads required in the Type II Land Division may warrant the installation of road signs at intersections with named or numbered county roads, state highways, or with other existing easements or public roads within or abutting the partitioned land. The Public Works Director will determine if road signs are necessary at these intersections. Such signs shall be of a type approved by the Public Works Director. Easement or public road names or numbers shall be the same as existing named or numbered county or public roads if an extension of such county or public road. All other road names or numbers shall be selected by the Planning Director as provided in Umatilla County Code of Ordinance, Chapter 93. Road signs shall be installed and maintained by the county, provided the partitioner pays the expense of the initial investment of making and placing the sign.

Umatilla County finds that Public Works will install a road sign for the proposed private easement as determined above. This criterion is satisfied.

(5) Existing County or Public Roads shall be improved pursuant to the requirements of this chapter. See J. below.

(6) Shall obtain necessary approval and/or permits from either the State Highway Department or County Public Works Director for location, design, and improvement standards of access points onto County Roads, (approved) public roads, or state highways. Umatilla County finds that access shall be provided from the newly created and unnamed private access and utility easement. As a condition of approval, the applicant is required to obtain road approach approval for Pleasant View Road, Morrow County Road #2625 for the new private easement. Umatilla County and Morrow County Road Departments will be notified of this request and given the opportunity to provide comment, any comments may result in additional conditions of approval.

(G) Each parcel under four acres in size, both those partitioned or the remaining piece which are to be for residential purposes, have a site suitability approval from County Environmental Health. A waiver to this requirement may be granted if the applicant makes a written request to the Planning Director and the Planning Director finds

(1) The parcel, four acres or under, is to be used for non-residential purposes and the owner's signature to this effect is on the partition form;

(2) The parcel remaining has an existing dwelling and zoning densities will not permit additional dwellings.

Umatilla County finds that Parcels 1 and 2 created out of this partition are proposed to be less than four acres in size and used for residential purposes. The Umatilla County Development Code specifically prohibits the placement of septic systems within 100-feet of a wetland. Additionally, because of the limited buildable area on Parcel 3, County Planning finds that site suitability is also required for Parcel 3. A precedent condition of approval is imposed that Parcels 1, 2 and 3 receive site suitability from Umatilla County Environmental Health.

(H) Shall provide easements along existing irrigation ditches that traverse or abut the partition where no such easements have yet been recorded. The purpose of the easement shall be for perpetual maintenance of the ditch and if within an irrigation district, said easement width and purpose shall be approved by the Irrigation District Board. Irrigation ditches were not identified on or abutting the subject property. The property is located within the West Extension Irrigation District, the district will have the opportunity to provide comment on this land division request. The applicant has identified several existing and proposed irrigation easements on the tentative plat. Satisfaction of this criterion is pending.

(I) Considers energy conservation measures (e.g. road, lot and building orientation for solar and wind usage) unless vegetation, topography, terrain, or adjacent development will not allow these energy conservation measures. Umatilla County finds that due to known and potential encumbrances from wetlands, it is undetermined whether or not the proposed parcel size is adequate to accommodate on-site energy conservation measures. Energy conservation recommendations are specifically identified in the findings and policies of the Umatilla County Comprehensive Plan. Satisfaction of this criterion is pending.

(J) All required improvements have signed agreements with the Board of Commissioners to meet the standards of this chapter or improvements specified by the Planning Commission or Public Works Director, and are recorded in the Recorder's Office at the time, and as a condition of approval for a Type II Land Division. Umatilla County finds Irrevocable Consent Agreements are required for all newly created roads, including private easements. A precedent condition is imposed that the property owner sign and record an Irrevocable Consent Agreement for the newly created to-be-named road. The agreement will be provided by County Planning. Morrow County Planning and Public Works will be notified of this request and may provide comments regarding any road improvement agreements for Pleasant View Road, Morrow County Road # 2625. Satisfaction of this criterion is pending.

(K) Adequately addresses any known development limitations within the proposed Type II Land Division, outlining appropriate measures to mitigate the limitation. Umatilla County finds that there are two areas identified on US Fish and Wildlife's National Wetland Inventory that are classified as Freshwater Emergent Wetlands located on the subject property. Furthermore, based on wetland conditions observed in the field by county staff and information received from state DSL staff, additional unmapped wetlands are present on the subject property, and possibly encumbering the proposed access easement and further limiting the buildable area of all three proposed parcels. On this land division request application, the applicant noted, "Wetlands impact portions of proposed parcels. New structures will be placed outside of wetlands and wetland buffers." However, the applicant did not demonstrate how structures, including onsite septic systems, would potentially meet setbacks and not require variances. In addition, a wetland delineation of the property has not been conducted so county staff are unable to determine the extent of wetlands and whether the proposed access easement will impact existing wetlands.

In the 2020 land division findings² which created the subject property's current configuration, Umatilla County found that, "*Parcel 3 [Tax Lot 809] appears to be the only parcel impacted by the presence of wetlands. Furthermore, it will also be the only parcel that could be further partitioned in the future. Therefore, the applicant should develop a wetland mitigation plan when considering future partition configuration, as there is a limited amount of remaining land that would be developable.*"

The applicant submitted an application to Umatilla County without completing the recommended wetland delineation. In addition, the applicant has not addressed the protection of wetlands, nor provided a mitigation plan. As found above, the location of the two NWI mapped wetlands and the likelihood of additional unmapped wetlands makes development on all three parcels extremely difficult and nearly impossible without variances to setback standards to property lines, the wetlands or easements. It is not clear whether or not the proposed access easement impacts unmapped wetlands or if there is adequate buildable space to accommodate utilities required in the rural residential zone such as a well, septic system and replacement drain field area.

² This land division request was process administratively in 2020 as Land Division Request LD-5N-881-20,

Umatilla County finds and concludes the applicant has not addressed the known development limitations of the proposed land division, nor has the applicant outlined measures to mitigate the limitation or impacts to wetlands. This criterion is not satisfied.

(L) Addresses the comments of the appropriate water agency if the proposed Type II Land Division has a water right. Umatilla County finds that the subject property is located within West Extension Irrigation District. West Extension Irrigation District and Oregon State Water Resources will be notified and sent a copy of these findings. Any comments may result in additional conditions of approval.

26. SURVEYING REQUIRED - 152.644 (A) (2) PARCELS CREATED SMALLER THAN 10 ACRES IN A NON-RESOURCE ZONE NEED TO BE SHOWN ON A PARTITION PLAT: Umatilla County finds that this request involves parcels located in a non-resource zone and smaller than 10 acres in size thus the request requires a partition plat to be submitted. The appropriate recording fee for this document will be required.

FINAL DECISION: DENIED

THE GARTON LAND PARTITION REQUEST DOES NOT COMPLY WITH ALL APPLICABLE STANDARDS OF THE UMATILLA COUNTY DEVELOPMENT CODE, AND IS THEREFORE DENIED.

UMATILLA COUNTY PLANNING COMMISSION

Dated 1 day of OCT., 2024



Suni Danforth, *Planning Commission Chair*

Mailed 1ST day of OCTOBER, 2024

EXHIBIT R

Appeal Filing (10/15/24)



Appeal Application - Umatilla County

Garton & Associates Realtors LLC <gartonar@gmail.com>
To: Shawna Van Sickle <shawna.vansickle@umatillacounty.gov>

Tue, Oct 15, 2024 at 2:46 PM

Good afternoon Shawna,
I received the application, thank you so much for your help with this. I've attached it with Calvin's signature below and will print him a hard copy here at the office for tomorrow morning.

Thank you again,

Sierra F. Cullinan, Broker, Property Manager
Garton and Associate Realtors, LLC
207 SW 9th Street
Pendleton, Oregon 97801
(541) 215-3842 / (541) 276-0931

On Tue, Oct 15, 2024 at 2:10 PM Shawna Van Sickle <shawna.vansickle@umatillacounty.gov> wrote:
Hello Sierra,

Thank you for dropping by today. As we discussed it is required for the applicant to file the appeal paperwork. Mr. Garton needs to fill out the information on the property application on page 2, and sign the document as property owner on Page 4. This needs to be returned before 5pm today. After such time I will scan a copy of the document and a copy of the receipt for the appeal payment and send that to you.

https://umatillacounty.net/fileadmin/user_upload/Planning/Application_Notice_of_Appeal_DEC_2023.pdf

Thank you,

Shawna Van Sickle
Administrative Assistant

Umatilla County, Community Development


Tel: 541-278-6249 | Fax: 541-278-5480

216 SE 4th Street | Pendleton, OR 97801

<https://umatillacounty.gov/departments/community-development>



Please Be Aware - Documents such as emails, letters, maps, reports, etc. sent from or received by the Umatilla County Department of Land Use Planning are subject to Oregon Public Records law and are NOT CONFIDENTIAL. All such documents are available to the public upon request; costs for copies may be collected. This includes materials that may contain sensitive data or other information, and Umatilla County will not be held liable for its distribution.

 **Application_Notice_of_Appeal_DEC_2023 (1).pdf**
309K

Notice of Appeal

RECEIVED

OCT 15 2024

UMATILLA COUNTY
COMMUNITY DEVELOPMENT



216 SE 4th ST, Pendleton, OR 97801, (541) 278-6252
Email: planning@umatillacounty.gov

Process taken from UCDC 152.766

APPEALS

(A) An appeal from a ruling of the Planning Director. An appeal of an administrative review decision or a ministerial action on a land use request made by the Planning Director or authorized agent shall be made to the Planning Commission. Such appeals must be made within 15 days of the date of the ruling or decision.

(B) An action or ruling of the Planning Commission pursuant to this chapter may be appealed to the County Board of Commissioners within 15 days after the Planning Commission has signed its findings of facts and conclusions of law.

(1) If the appeal is filed it shall be in writing stating the reasons for appeal pursuant to the criteria for review.

(2) The County Board of Commissioners shall receive the written findings of the decision and the minutes from the Planning Commission hearing and shall hold a public hearing on the appeal.

(3) The Board may amend, rescind, affirm or remand the action of the Planning Commission.

(C) All appeals shall be made in writing, accompanied by the appropriate fee, and shall state the reasons for the appeal and the alleged errors made on the part of the Planning Director or authorized agent or the Planning Commission. If the decision being appealed utilized criteria for review established elsewhere in this chapter, the reasons for the appeal shall be stated pursuant to these criteria.

(D) All appeals shall be on a de novo basis. The body hearing the appeal shall be able to receive any additional testimony presented by the applicant or proponent.

E) Appeals of a Board of Commissioners decision shall be made to the Land Use Board of Appeals within 21 days of the date of the decision. Such appeals shall not be based on issues that are not raised at the local hearings with “sufficient specificity” as to afford the decision-makers and parties involved an opportunity to respond to the issue.

FILING FEE

Filing of an Appeal - \$800.00

(Effective July 1, 2007 via Ord. #2007-06)

It is the responsibility of the applicant to submit a complete application with all necessary attachments. Planning staff can refuse an incomplete application.

Version: December 21, 2023

File Location: H:\shared\FORMS_Master\Application_Notice of Appeal_DEC 2023.doc

Section 1: Request and Description of Application

This information deals with the Land Use Request Application that an Appeal is being filed against.

THE REQUEST IS FOR... *(Check the one that applies)*

- an Appeal to the Planning Commission from a decision of the Planning Department
 an Appeal to the Board of Commissioners from a decision of the Planning Commission

DESCRIPTION OF THE LAND USE REQUEST APPLICATION IN QUESTION:

- Land Use Request Application File Number: LD#4N3726C#600 OR LD#5N912-24
- Type of Land Use Request Application: Minor Partition
- Decision-Making Body: Planning Director or Planning Commission
- Date of Decision (date on Findings): September 30th 2024
- Date you received notice of the decision or learned of the decision: September 30th 2024

Section 2: Contact Information

Name of Appellant(s): Kalvin B. Garton

Address: 1328 NW KING AVE

City, State, Zip: Pendleton, OR 97801

Telephone Number & Email
Address: 541-310-6832 / gartonar@gmail.com

Date of Submittal for the Appeal: Kalvin B. Garton

Section 3: Basis of Appeal

Complete only when appealing a decision made by the Planning Department or Planning Commission.

The Appeal is based on the belief that certain policies and/or procedures of the Comprehensive Plan and/or provisions of the Development Code were not properly administered or followed. Please specify the chapter, section and page numbers of the Comprehensive Plan and/or Development Code where the policies and/or procedures are found; as well as a narrative explaining the issues that the Appeal is based upon (*use additional pages if necessary*):

Section 4: Certification

I/We, the undersigned, swear under penalty of perjury that the above responses are made truthfully and to the best of my knowledge.

X  10/15/24 9:43 PM 2:43 pm ^{8V}

Signature of Appellant Date

Kalvin B. Garton
Printed Name of Applicant

X _____
Signature of Appellant Date

Printed Name of Applicant

X _____
Signature of Appellant Date

Printed Name of Applicant

X _____
Signature of Appellant Date

Printed Name of Applicant

Office Use Only

Date this paperwork was received: 10/15/2024 @ 2:46 pm

Accepted by:  Shawonna Van Sickle
Signature of Planning Staff & Printed Name

Fee Paid? Yes No

Receipt Number: 22979

Umatilla County

Department of Land Use Planning



216 S.E. 4th Street • Pendleton, OR 97801
Ph: 541-278-6252 • Fax: 541-278-5480

Receipt

Fee Receipt Number: 22979 Permit Number: LD-5N-912-24
Transaction Date: 10/15/2024
Transaction Time: 7:26:53 AM
Payor: Calvin Garton (c/o Sierra Cullinan, Garton and
Associate Realtors LLC)
Paid in Cash: \$0.00
Paid via Check: \$800.00 Check# 1012Bank#
Paid via EFT: \$0.00

Comments:
Appeal of Planning Commission and Planning Director Decision to Deny
this application.
Request to go before the Umatilla Board of County Commissioner.

<u>Fee Description</u>	<u>Quantity</u>	<u>Fee</u>	<u>Total</u>
Appeal	1	\$800.00	\$800.00

Total:	\$800.00
Amount Received:	\$800.00
Amount Paid:	\$800.00
Change:	\$0.00
Amount Left Owing:	\$0.00

RECEIVED

OCT 15 2024

SV
UMATILLA COUNTY
COMMUNITY DEVELOPMENT

10/15/2024

Robert Waldher

Umatilla County Planning Division manager

216 SE 4th ST

Pendleton Oregon 97801

Re: LD 4N3726C#600 OR LD#5N912-24

Robert,

Attached please find Exhibit "A". This is my official notice of the appeal of your September 30th denial. I am attaching the \$800 fee. On Wednesday I met with Umatilla Electric Co-op about their blanket utility easement on the above-mentioned property. They showed me three older blanket easements on the property. They decided to put their easements on the East side of Pleasant View Lane. Instead of putting underground easements down the access road, they can simply drop lines to the homes off of their existing tall poles. They agreed to allow us to move the one line across the site to along the north property line in a 10' easement. They plan to abandon this site in the next few years. John Stanley was very observant to catch that. I could not answer his objection. Bill Wells and I decided to eliminate the road and put in one hammerhead access point on the East side of the wetland against Pleasant View Lane. Please note that Pleasant View Lane is included in the wetland setback area. The building sites will all run East/West instead of North/South. The two northern lots will be two acres and the southern one lot will be 4.10+-. Please notice that the replat will allow very adequate building envelopes because the road with its setback requirements will be eliminated. Please provide me with your definition of an adequate building envelope area. There are five standard septic approvals in this area already completed. This should make Suni Danforth happy. I still only want to do two-lot minor partitions. Please provide me with Tina Koteks changes to my rights to do my two-lot minor partition. I have completely read the county ordinances and her changes and could not find what Sam Tucker was ranting about. She actually asked for 30,000 more housing sites created outside of urban growth boundaries. Please provide me with your wetland study. It's the same one that you have used for my last three minor partitions. You decided you needed a new one this time because you wanted to say "no". Also please provide the transcribed testimony of the hearing.

Sam Tucker was rude and wrong for pointing out that you don't always say no. Why didn't you correct him when he went on his rant about the one out of six septic test holes that was denied? It was not the only one described. I could not believe your actions. I ask for the planning department's vision on Highway 11 Milton-Freewater to the state line and for a retirement condo golf course development in this county. I really struck a nerve when I asked the planning commission about their visions. The planning commission chairwoman exploded on me and said it has "nothing" to do with this hearing. I still think it does.

I have always wondered why Costco was killed by Tamara Mabbott and Jon Jennings. I believe that Sam Tucker really hates me and is still on the planning commission to make sure it never happens. These big box stores could simply put in their own septic systems. There is lots of water. Milton-Freewater wanted

to make them pump their septic four miles uphill and annex them into their city limits. Look at the Space Age Truck Stop on the Buttercreek Highway. The state of Oregon rest stops on I-84. Barnhart Road, Biggs, Westland Express. They are all in the counties. These big box stores could all be in Umatilla County vs Milton-Freewater. Think about all of the lost jobs in Milton-Freewater. Umatilla, Rogers and Utah, Canneries. Key equipment. Majonier and Stademans packing companies. Milton-Freewater needs to be able to take advantage of its sales tax advantage with Washington. This town needs jobs. I again ask the commissioner to ask the planning department and individual planning department commissioners for their visions. This planning department and staff have failed this county. It has to be changed! I will have Jim Hatley Construction dig another 6-10 septic test holes before this hearing to prove my wetland argument.

I again ask for the commissions to remove

1. Megan Davchenski
2. Robert Waldher
3. Sam Tucker
4. Suni Danforth

I still have a vision of growth of a golf course/retirement/condo development in this county. This planning commission and staff have done nothing but harm Umatilla County. I also see several big box stores with all of their high-paying jobs on the Highway 11 corridor. The sales tax difference with Washington needs to be capitalized on. Over time this could all be in Milton-Freewater. Again, you have no reason for denying my partition.

Very truly yours,

Kalvin B. Garton

Accredited Land Consultant #997, Retired

CC :

The Editor

Umatilla County Commissioners

Sam Tucker, Attorney

Doug Olson, County Attorney

Malcolm Millar

Suni Danforth

John Stanley

Bill Wells

William Hansell, Previous County Commissioner

August 14th, 2024

To: Robert Waldher, Umatilla County Planning Division

Re: Appeal of your denial of LD#5N912-24

Attached please find my previous letter from July 26th 2024 and my \$250.00 fee to appeal your administrative decision. Your “administrative decision” is a retaliatory move because I challenged Megan’s “absolute authority”. You are simply proving my arguments that your planning department is anti-growth. I think this review should go into your department’s performance to Umatilla County. I think your department needs to provide a vision statement to the public of what rural residential growth could occur. The governor wants more rural development to occur. Real planners have visions of what growth should look like. They should be trained in smart growth, affordability, density and should encourage technologies like incinerator toilets, infiltrator drain fields, etc.

Why did your department sue the county for approving Costco at Stateline? Do you have a vision for the commercial development between Milton-Freewater and Stateline? Why did Tamara Mabbot and Carol Johnson fight the retirement community at the Pendleton County Club? Do you have a vision statement for a potential retirement community? Would this minor partition be approved if it was only for two lots? ... Yes, it would. Your argument that it must be three is completely false. Your logic would always create three lots. The remaining parcel was previously created in every case. Why were no wetland studies done years before? I already have septic approvals for standard systems on lots one and two. Your wetlands map shows Pleasant View Lane in the wetlands setback zone. On August 9th I met with Brady Rettkowski of Done Rite Septic installations. He pointed out that the wetlands are distinguishable because Russian Olive trees can not survive unless within five feet of their water source. He thinks the road should be moved to the south 25 feet. He also said that drain fields and back up drain fields could fit in to 4000-5000 feet.

With the 50 cubic yard in or out exemption, it would be foolish to require a study on lot one or two. I talked with Anderson Perry about doing the wetlands study. They agreed to do it for around \$8,000-\$9,000. They said it would take 5-6 months. They only test 2-3 feet down. The D.E.Q. test holes are more accurate.

You have failed to answer:

1. What developmental envelope size is adequate?
2. How many variances are too many?

Your no variance policy further proves your anti-growth attitude.

It appears to me that 10,000 square feet would be an adequate building envelope size. I do not plan on putting the irrigation easement in at all. I would agree to the smaller road easement if it could be expanded in the future to accommodate a fourth home site on the next minor partition. I think I would like to move the smaller road 25 feet to the south. I want your review to appeal my two tax lot minor partition. I will again ask the county commissioners to clean their antigrowth socialist planning commission out be terminations of.

1. Robert Waldher
2. Megan Davidersk

Umatilla County cannot afford their antigrowth visions. Saying “no” to everything is not planning!



Very Truly Yours,
Kalvin B. Garton

CC:

Bills Wells, Surveyor
Brady Rettowski, Done Rite Septic
County Commissioners
Doug Olson – County Council

Jim Hatley, Contractor
Don Wysocki, Planning Commissioner
The Editor
Sam Trexer, Planning Commissioner

6
July 24th, 2024

Robert T. Walden

Community Development Director

Umatilla County Planning Division

216 SE 4th ST

Pendleton, Oregon 97801

Re: Land Division Request #LD-5N-912-24

Dear Robert:

I did not apply for a three-lot subdivision. I applied for two lot minor partition.

In 2023 I withdrew my application because of the added subdivision requirements.

I am currently offering the property for sale as one piece. I have no idea what the new owners will want. They may only want one house. I currently own 1.85 acres x 43,560 = 80,586 square feet of developable land. The wetlands study will be easy to do when the road is built, and the septic designs are done. I was planning on putting all the backup drain fields with easements on the proposed lot two below the proposed access easement. What is the logic for setbacks from an already over sized road easement? You can clearly see that there is an abundance of buildable envelopes. These two lots are all that I am asking for in my minor partition. I may or may not request another minor partition next year. This is the same process I have done three times previously.

This denial only provides more evidence of why this planning division needs to be gutted! You are totally anti-growth!

The wetland issues will be challenged. The irrigation canal of WEST End Extension has been abandoned and pressurized. No one will want to hook onto their water as well water is much cheaper, and most of this pasture sub irrigates. I believe that the setback buffers can be reduced to 50' vs 100 ft'. Please change my application back to a two-lot minor partition

Truly yours,



Kalvin B. Garton

CC:

Bill Wells

Jim Hatley

County Commissioner

Sam Tucker, Planning Commissioner

Don Wysocki, Planning Commissioner

Doug Olson, County Council

May 3, 2024

Megan Davchevski
Planning Division Manager
216 SE 4th Street
Pendelton, Oregon 96801

Re: Template Dwelling Request Map #4N3726C, Tax Lot # 600

Megan,

Page 198 (CD) Review III. "The following review and approval of a Type IV, Review III Land Division Application may create, upon approval, of up to two new non farming parcels that will be smaller than the minimum parcel size for land zoned E.F.U."

This is the same process that i have used on my last three minor partitions!

I am not applying for anything else except my legal right to create two new tax lots with a remainder of 4+ acres. It does not have to be included. I am not doing a subdivision! I did not find verbiage that gave you "complete authority" to decide that I was doing a subdivision. Your wetland study does not need to be done until I try to develop the remaining parcel. This wetland is manmade! The West Extension District has not pressurized its waters. They have done a lot to reduce their water waste since this existing wetlands map was created. "If" the new owner of the remaining parcel wants to do the Wetland Challenge, he should be allowed to. I believe the "100 foot" buffer could easily be reduced to 50 feet. The flood irrigation canal has been removed and pressurized since the wetland study was done.

Your antigrowth attitude is clearly exposed by your irrational behavior.

I am again asking the Commissioners to terminate your employment.

Please process my two lot application immediately. There is clearly enough building envelope area on the remaining lot. What is your minimum building envelope requirement?

Very truly yours,


Kalvin B. Garton

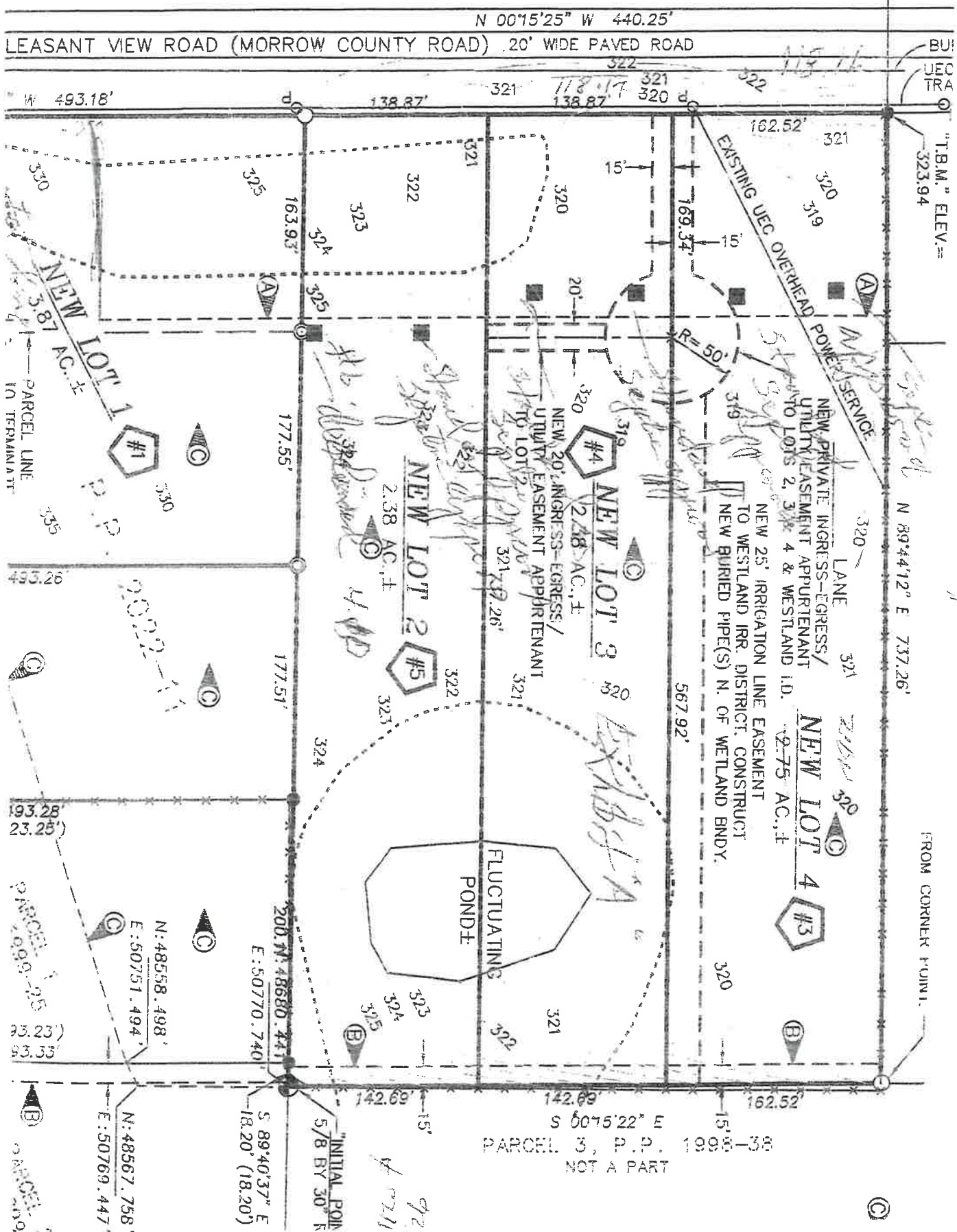
Accredited Land Consultant, Retired

Cc: Umatilla and Morrow County Board of Commissioners
Michael Breiling, Attorney
Bill Wells, Surveyor
Oregon Taxpayers Association

Editors

Dave Hunnicutt, Oregonian
Property Owners Assoc.
All State Legislators
Governor Tina Kotek

"BASIS OF BEARINGS"
 THE COMPUTED BEARING BETWEEN THE NW CORNER OF
 LAT NO 1998-54 AND THE WEST 1/4 CORNER OF SEC.
 IS COMPUTED FROM PARTITION PLAT NO. 1998-54.



S 60°15'22" E
 PARCEL 3, P.P. 1998-38
 NOT A PART

FINAL MINUTES

**APPEAL OF PLANNING DIVISION DECISION
TO DENY TYPE II LAND DIVISION REQUEST
#LD-5N-912-24:**

KALVIN GARTON, APPLICANT/OWNER.

A “Request for Appeal” was filed on August 14, 2024 to appeal the Umatilla County Planning Division’s decision to deny Land Division Request #LD-5N-912-24. The applicant’s proposal is to partition the property located on Assessor’s Map 5N2722, Tax Lot 809. The applicant’s proposed partition would create three (3) lots of at least 2 acres in size. The Land Use standards applicable to the applicant’s request are found in Umatilla County Development Code 152.684, Type II Land Divisions.

**UMATILLA COUNTY
PLANNING COMMISSION HEARING
September 26, 2024**

MINUTES
UMATILLA COUNTY PLANNING COMMISSION
Meeting of Thursday, September 26, 2024, 6:30pm

COMMISSIONERS

PRESENT: Suni Danforth, Chair, Sam Tucker, Vice Chair, John Standley, Malcolm Millar, Tami Green and Emery Gentry

COMMISSIONER

PRESENT VIA ZOOM: Kim Gillet

COMMISSIONERS

ABSENT: Andrew Morris, and Ann Minton

PLANNING STAFF:

Robert Waldher, Community Development Director, Charlet Hotchkiss, Planner, and Shawna Van Sickle, Administrative Assistant

NOTE: THE FOLLOWING IS A SUMMARY OF THE MEETING. RECORDING IS AVAILABLE AT THE PLANNING OFFICE.

CALL TO ORDER

Chair Danforth called the meeting to order at 6:31PM and read the Opening Statement.

NEW HEARING

APPEAL OF PLANNING DIVISION DECISION TO DENY TYPE II LAND DIVISION REQUEST #LD-5N-912-24: KALVIN GARTON, APPLICANT/OWNER: A “Request for Appeal” was filed on August 14, 2024 to appeal the Umatilla County Planning Division’s decision to deny Land Division Request #LD-5N-912-24. The applicant’s proposal is to partition the property located on Assessor’s Map 5N2722, Tax Lot 809. The applicant’s proposed partition would create three (3) lots of at least 2 acres in size. The Land Use standards applicable to the applicant’s request are found in Umatilla County Development Code 152.684, Type II Land Divisions.

Chair Danforth called for any abstentions, bias, conflicts of interest, declarations of ex parte contact or objections to jurisdiction. Commissioner Tucker stated he has known the applicant for many years and has represented him in the past. He has received several letters from the applicant in regard to this application but didn’t read them in detail and feels this should not influence his decision nor cause any conflict. Chair Danforth asked if there were any concerns based on Commissioner Tucker’s statement, no feedback was given. No other reports were made.

Chair Danforth called for the Staff Report.

STAFF REPORT

Mr. Robert Waldher explained today's hearing is a "Request for Appeal" filed by Mr. Calvin Garton (applicant/owner) to challenge the Umatilla County Planning Division's decision to deny Land Use Request #LD-5N-912-24. The applicant's proposal is to partition the property located on Assessor's map Township 5N, Range 27E, Section 22; Tax Lot #809. As shown in the vicinity map (Attachment A), the subject property is located south of Highway 730 and east of Pleasant View Road. He stated the property is located along the Umatilla/Morrow County border, approximately three miles west of the city of Umatilla. The proposed partition would result in the following parcel sizes: Proposed Parcel 1 – 2.06 acres, Proposed Parcel 2 – 2.02 acres, and Proposed Parcel 3 – 4.02 acres.

Mr. Waldher added, the applicant submitted a Type II Land Division request to the Planning Division on March 4, 2024. Planning Division staff conducted a completeness review of the application and identified that the proposed parcel configuration did not appear to provide adequate buildable space required for rural residential properties, and staff noted several omissions in addressing the criteria of approval for the partition request. He described that the map (Attachment B) prepared by planning staff showed the lack of developable space on the subject property when required setbacks are applied. He added, on March 25, 2024, Planning Division staff emailed (Attachment C) the applicant and their surveyor, Mr. Bill Wells (Wells Surveying), requesting they submit the omitted information along with paperwork to assist in addressing the criteria of approval required for the Type II Land Division request. He stated, Mr. Wells responded that he needed to speak with his client and later requested staff delay sending out the Preliminary Findings until the applicant and surveyor had a chance to respond to the concerns. On April 8, 2024, planning staff followed up with a "Completeness Letter" (Attachment D) sent to the applicant and their surveyor that formally clarified what information was still necessary in order to proceed with deeming the application complete. He reiterated that the Completeness Letter stated the applicant had 180 days to respond to the requested information or the application would become void.

Mr. Waldher continued explaining that in April 2024, Planning Staff submitted a wetland land use notification to Oregon Department of State Lands (DSL), which is the agency responsible for administering removal/fill laws in the state. He added that a response (Attachment E) from DSL staff on April 17, 2024 identified the likely presence of additional wetlands and recommended that the applicant hire a wetland consultant to prepare a wetland delineation report for DSL's review and approval prior to any ground disturbing activities. The response from DSL was added to the project record.

Mr. Waldher added, on June 18, 2024, the applicant submitted a letter (Attachment F) to Planning Division staff disagreeing with the concerns highlighted in the county's completeness letter and requested the land division request to be processed immediately. Planning staff continued processing the application as requested by the applicant. He stated, affected agencies and nearby property owners were notified of the land division request and, on July 5, 2024, were sent a copy

of the Preliminary Findings and Conclusions which denied the land division request. The Planning Division received one email comment (Attachment G) from Morrow County Planning Department regarding access permits. He further explained, the applicant also provided a comment letter (Attachment H) during the 21-day comment period which disagreed with Umatilla County's decision to deny the request. No requests for a hearing were received during 21-day comment period.

Mr. Waldher stated a Decision letter (Attachment I) and Final Findings and Conclusions (Attachment J) were mailed on July 31, 2024 to the applicant and commenting parties. On August 14, 2024, before the end of the 15-day appeal period, the applicant filed an appeal (Attachment K) of the Planning Division's decision to deny the Type II Land Division.

Mr. Waldher explained the criteria of approval for Type II Land Divisions (partitions in a non-resource zone) are found in Umatilla County Development Code (UCDC) Sections 152.684. He added that the notice of the public hearing was mailed on September 6, 2024 to the owners of properties located within 250-feet of the perimeter of Tax Lot 809. Additionally, notice was also published in the East Oregonian on September 11, 2024 notifying the public of the applicant's request before the Planning Commission on September 26, 2024.

Mr. Waldher stated the Planning Commission is tasked with deciding whether or not to uphold the decision of the Planning Division to deny the Type II Land Division request. He stated either Approval or Denial must be based on substantive, factual evidence in the record, not conclusory statements. The decision made by the Planning Commission is final unless timely appealed to the County Board of Commissioners.

Mr. Waldher added they received comments from a few agency representatives and wanted to share those with the Planning Commissioners. These would be Exhibits L through O and would need to be added to the record. The first was a follow-up email from Wetland Ecologist, Jessica Salgado, from Department of State Lands, marked as Exhibit L. He read this in its' entirety. Mr. Waldher also stated that Ms. Salgado also included a list of qualified wetland consultants and provided a link as well.

Mr. Waldher further read an emailed comment from a neighbor, Mr. Justin Berry, marked as Exhibit M. He also read an excerpt from Exhibit N, Final Findings and Conclusions Garton Type II Land Division #LD-5N-881-20, approved in 2021. He stated the subject property of the current application is Parcel 3 from the 2021 partition that was previously approved. He added, previous criteria required the applicant to adequately address any known development limitations within the proposed land division, outlining appropriate mitigation measures. Planning Staff made the following finding, "Parcel 3 appears to be the only parcel impacted by the presence of wetlands. Furthermore, it will also be the only parcel that could be further partitioned in the future. Therefore, the applicant should develop a wetland mitigation plan when considering future partition configuration, as there is a limited amount of remaining land that would be developable. This

criterion is not applicable at that at this time.” Mr. Waldher stated he wanted to highlight these Findings were binding as of 2021, therefor the applicant has been aware of the wetland issue for some time. The Findings from this previous partition demonstrate that a wetland mitigation was formally suggested during previous permitting actions.

Mr. Waldher concluded with reading an email from Umatilla County Environmental Health Specialist Byron Morris, and in that email, he attached site evaluation reports that were done with the previous 2021 partition application. The site evaluations were only applicable to that project but some of the test sites were located on this applications’ proposed partition. Mr. Waldher quoted the email in its’ entirety, and he added this was done under the previous configuration, including a denial of one of the site evaluation reports. There were approvals for a capping and fill system in order to stay away from the water table. However, there were only a few sites where approval of a standard system was acceptable due to water not being observed in those areas. Mr. Waldher stated it was important to reference that in the report samples collected include notes where soils displayed hydrate conditions, such as modeling, saturated and red-colored soils indicated anaerobic conditions. He added these factors are traditional indicators of hydric soils or wetland-type conditions.

Commissioner Standley referenced Exhibit N and the map associated with the previous Partition application under #LD-5N-881-20. He stated on the map shows Pleasant View Road on the west side of the property, and an Umatilla Electric Cooperative easement extends east approximately 154 foot into the property. He asked if this easement is still in effect and if it serves the substation nearby. Mr. Waldher stated he still believed this substation exists in the northwest. Commissioner Standley asked Mr. Waldher if this area would not be buildable due to the easement. Mr. Waldher confirmed the applicant would need to follow the applicable regulations for this easement which means it could not be built within.

Commissioner Standley asked if there was any research regarding nearby wells. Mr. Waldher said that he was not certain of the depth of surrounding wells. Commissioner Gentry requested clarification on which part of the property the septic denial was from and where it is located on the map. Mr. Waldher stated it would have been associated with Parcel 6 of the previous partition done by Mr. Garton. He added, upon looking at the site evaluation on page 7, Exhibit O, Riley Lane runs east to west, the test pits are located north but quality of the image isn’t great. They can be identified as TP 1 and TP 2. Mr. Waldher also added, upon checking the Public Notice Map, there was a staff error with regard to naming the proposed partition, these should be listed as Proposed Parcel 1-3 and not Proposed Lot 1-3. Mr. Kalvin Garton interjected and was trying to show where the subject test area was located but was asked by Chair Danforth to wait for his opportunity to provide testimony until questions with staff have concluded.

Mr. Waldher stated the applicant might be able to clear some of the questions up, but that this information was provided by the County Environmental Health department. He added that there have been site suitability test pits dug in the vicinity of this project but nothing specific to this

partition, because these are typically completed after a tentative approval has been provided. He stated it would have been a condition of approval if the parcel is less than four acres to submit a site suitability test.

Commissioner Tucker asked about a policy question regarding Exhibit L, received September 13, 2024. He asked when a comment or exhibit comes in ahead of the hearing does a policy exist that instructs to provide a copy of those documents to the applicant. Mr. Waldher stated, there was no requirement in our policies that require that. The comment he received from Department of State Lands initially was addressed in the preliminary findings before a decision was made, but the most recent comment was received after the packet was sent out and a copy of that comment was not sent to the applicant. Commissioner Tucker asked if this is something we could do to help benefit the applicant to receive it ahead of time.

Chair Danforth asked if Staff had knowledge if Mr. Garton hired a wetland specialist at all. Mr. Waldher stated he was not aware if the applicant had hired anyone and had not included information pertaining to that in the application. Chair Danforth referenced Commissioner Standley's earlier comment regarding the transmission line and 154-foot easement and asked for some further clarification on the maps. Mr. Waldher stated he was unsure if it was either a distribution or transmission line, but on page 44 of the packet, it is listed as a blanket easement across this property. He stated page 45 shows a picture of the line, and also referenced Exhibit N, page 2, where it states, "Easement granted is to place, construct, operate, repair, maintain, relocate and replace electrical transmission or distribution line or system, including the right to turn trees, endangering overhead lines. Surveyors note the only visible UEC line in the easement area is the overhead service line near the north side of the easement area."

Commissioner Standley asked if the map on page 11, Wetlands Map/Buildable Space -Attachment B, indicates there is .34-acres of buildable space along Proposed Parcel 1. If this easement still exists, then this would encroach on that space and would no longer be buildable at that point.

Chair Danforth asked about Exhibit M, where Mr. Berry says an ad is running on this property being sold and stated a preapproval for a standard septic was received. Mr. Waldher stated the only information provided was from Mr. Morris, received that day as Exhibit O. He added, Mr. Morris did not indicate any new site evaluations had been completed. Mr. Waldher stated, the applicant would need to provide more information regarding if new approvals have been granted with the new configuration of this current application. Commissioner Tucker added that if they did approve any further site evaluations they had not provided the subsequent approval to the Planning Department. Mr. Waldher agreed that nothing further has been reported at this time.

Commissioner Standley asked the source of the water in the area is, and if this raises or lowers at different times of the year. Mr. Waldher stated he wasn't certain the source but suspected it could vary due to being closer to the Columbia River. He added, notes within the site evaluations from Environmental Health state saturation levels hitting at a depth of 20 inches. Obviously varies

depending on where samples might be taken from the land. Commissioner Standley asked if pressurization of the irrigation canals have anything to do with it. Mr. Waldher stated it could be the case, coming from the West Extension, but couldn't confirm for certain. Commissioner Tucker asked if a timeframe could be established as to how long it has been pressurized. Mr. Waldher stated he could not provide those details, but perhaps the applicant could advise further.

Applicant Testimony: Mr. Calvin Garton, 1328 NW King Street, Pendleton, OR 97801; Mr. Garton began by handing out some brochures of his ad copy. He stated, he's trying to sell the piece as one piece as a whole. He added there are two standard septic approvals. He then referred to the map and started explaining his intention of the road and new electric easement along the road and intend to request to bury the electric line. He stated, there is one line to one house and visited with the Umatilla Electric and reassured Planning Commissioners that is something Umatilla Electric said they could do with ease.

Mr. Garton explained he dug the test holes from north to south and stated he did a wetland study. He stated he hired someone to dig all the test site holes and they are actually deeper than a wetland study goes. He added that wetland studies only go 2-feet-deep and don't reach the water table.

Mr. Garton referred to the map on-screen, he stated the West End Extension Canal came through the area, and when the canal was removed and pressurized, the irrigation district put a drainage system to the pond and then water runs through a culvert and the water line goes under the road and it drains into this neighbor's pond to the east.

Mr. Garton stated a wetlands study has been done for years. He added that the Planning Department states there's not enough buildable area, but he didn't apply for three lots. He explained he applied for two lots. He further explained that he's developed all of the lots in this lower area and they don't sell very fast. He stated, they actually take maybe one to two years to sell one lot.

Mr. Garton stated when he developed these previous lots, every one of them had an impact of some kind to the wetland. He stated, his current application involves a little bit more. Mr. Garton spoke about potential other proposals but stated he had to change the configuration due to not receiving septic approval on some of the lots. He added he has standard septic approvals for three (3) different areas and a cap and fill approval as well. He stated he changed the configuration on the plat, so the septic would go along the north side of the proposed parcels due to sand with a depth of 10 feet.

Chair Danforth asked the applicant if he had a wetland study and why he didn't submit it. Mr. Garton stated he did the study himself, and that he is more knowledgeable than any wetland study will show. Chair Danforth stated he didn't hire anyone. Mr. Garton stated he did contact someone from La Grande, Oregon, but did not name the source, the quote provided was overly priced and it would be six months wait to get one completed. There were some round circle questions asked by Chair Danforth, Commissioner Tucker and the applicant referring to the wetland study. The applicant confirmed no new wetland study was completed by a professional but insisted Umatilla

County has a wetland study that has been mapped for years. Commissioner Tucker stated when a wetland study is completed a document is given to the requestor and asked if Mr. Garton has this document and Mr. Garton continued to state that the Planning Department has this documentation. Mr. Garton stated a wetland study is just a reason to say no, and that he was not trying to develop the part where the wetland is. Chair Danforth stated she asked the questions because the Planning Department recommended that a wetland study be completed and that was not done. Mr. Garton stated he could provide a better study because he dug the tests holes deeper than any wetland study would and it was a waste of money.

Commissioner Standley asked the applicant about the 154-foot UEC easement to the east and asked how he intends to build under that easement. Mr. Garton stated he was going to have the easement moved down the road and that the only line goes down to a house south of the property. Commissioner Standley stated he was referring to the transmission line and under this easement he would not be able to build underneath it. Mr. Garton stated he intends to move it and that he believes UEC would be easy to work with to get this changed.

Chair Danforth stated the applicant wanted to do three parcels in this partition. Much disagreement came from the applicant and continued for a bit between himself and continued controversy over the applicants' want to do a minor two lot partition between himself, Chair Danforth and Commissioner Tucker.

Commissioner Standley asked about the easement for the proposed cul-de-sac that goes through the middle of Proposed Parcel 2. He stated as a homebuyer he wouldn't want an easement to bisect his property to serve the purpose of others. Mr. Garton stated he understood with what Commissioner Standley meant, but stated the proposal offered by Mrs. Megan Davchevski, Planning Department Manager, along the north side and submitting a Traffic Impact Analysis (TIA) wasn't conducive with getting septic approval due to the wetlands. He then went into detail regarding the Planning Departments hindrance on saying no to his projects and that they do not have any vision for the future of Umatilla County. Commissioner Millar stated the Planning Department has said yes to many of the other lots he has developed. Commissioner Tucker stated the applicant's statements show many inconsistencies. Additional controversy from the applicant persisted and Commissioner Tucker stated again that the statements Mr. Garton has mentioned are inconsistent. Commissioner Tucker stated the Planning Department has said yes on many projects, but because they have said no on this project that makes him upset.

Commissioner Tucker and Mr. Garton went back and forth on the same subject regarding the previous approvals and controversy over their approvals for some time. Chair Danforth asked Mr. Garton to take a seat and stated the applicant hasn't provided any factual information to support his claims that would help rule in his favor.

Mr. Waldher wanted to clarify any discrepancies before moving forward because Mr. Garton made the point in which he only applied for two parcels in the partition. He passed around the surveyor's

partition plat submitted by Mr. Wells, that shows three parcels. He added, the current application was for two partitions so thus making three parcels. Mr. Garton added that he has done the same thing the past three times, and now the Planning Department wants to say no. He stated he would do the wetland study for the next minor partition, if someone doesn't purchase this entire parcel he'll split it again. He concluded that he has always created two new tax lots and the third remaining lot was always there.

Opponents: None

Public Agencies: None

Rebuttal Testimony: Mr. Kalvin Garton, 1328 NW King Street, Pendleton, OR 97801; Mr. Garton stated the wetlands are mapped and have always been mapped. He explained the irrigation company put in a pond and set the drainage to go there. He stated, the water table is from the West End Extension district and it's from their uncontrolled use of water, especially when they removed the irrigation canal and pressurized it.

Commissioner Millar asked if when he said pressurizing it, he meant they piped it underground. Mr. Garton agreed and said it was gravity pressure. Commissioner Millar asked if Mr. Garton knew how far from this location the irrigation lines were piped. Mr. Garton stated it extends past his property and up the hill above him. He added the water table is stable in this area. He also added, the Planning Department has made the setbacks further away from the wetlands to make it more difficult. He expressed the property has sand and that filters great. He is confident that he can do two more building sites in this same location next year and not just get three now.

Chair Danforth asked the applicant to demonstrate on the map where the irrigation canal was located. It was determined the piped irrigation runs east of Mr. Garton's property pertaining to this application. Commissioner Tucker asked where the open irrigation ditches are, and Mr. Garton indicated on the map. There was continued conversation over the ponds that have water, and which do not, and each Mr. Garton indicated on the map which were dry and those still holding water. Commissioner Tucker stated other than his word Mr. Garton had not supplied any information regarding proof to substantiate his claims.

Chair Danforth stated Commissioner Tucker brought up a good point, because if the ponds are dry and a new wetland study was completed then it would be applicable to his application. Commissioner Tucker stated the applicant appears to not want to spend the \$8,000 to get it completed. Mr. Garton added he didn't want to wait the six months wait to build two homes on-site. Chair Danforth asked how long he has been working on this project and what another six months would be. Mr. Garton answered he started these projects ten years ago, and expressed the cost was substantial.

Commissioner Standley stated, until the applicant can correct this easement and establish the ability to create a buildable lot, he doesn't feel comfortable making a motion to allow ground to

be built upon when this easement has been established since 1938. There was continued conversation about identifying the transmission line that was given as a large blanket easement and spans the distance of the Proposed Parcel 1. It was determined that space would not be buildable until the easement was removed and the applicant would need to do that before members of the Planning Commission would approve the applicant to build there.

Chair Danforth reiterated the application before the Planning Commissioner that evening. She stated the proposal includes three parcels. She restated the Proposed Parcel 2 shows two areas with possible buildable space bisected by a turn-around going through the middle of the parcel. She asked why someone would want to deal with having their property essentially split in two. Mr. Garton stated, so they can live in the country, there is no place else to live and not many places for sale. He added, he doesn't develop properties that aren't going to sell. Commissioner Tucker questioned Mr. Garton on his statement regarding there not being many places to sell and earlier stated that these parcels he's done prior are really not selling quickly. Mr. Garton interjected and stated it was because he requires stick-built homes and doesn't allow manufactured homes. Commissioner Tucker stated that there were lots of inconsistencies with his statements and reiterated his previous statement.

Mr. Garton explained, again, his requirement for development was stick-built homes. He added if he allowed manufactured homes, these lots would fill up quickly. He stated there was no exception to the Planning Departments approval and this was an admission of them stating no. Commissioner Tucker asked if Mr. Garton's major objection is the Planning policies and rules that apply. He stated, it seemed like the applicant had strong feels about those policies and perhaps he is justified, but other people might disagree. He stated until he is able to become governor and change the laws that the Planning Commissioner is going to be bound by the rules that apply to this situation. Mr. Garton stated he has not seen anything change regarding his ability to do a two-parcel partition each year. Commissioner Tucker agreed that he can still do two per year, so long as it complies with the rules the applicant does not like. Mr. Garton stated all he wants to do is a minor partition with creating two new lots, not three. He added, he will do the wetland study if he has to and believes his 5-foot-deep test holes, dug by Jim Hatley, are more accurate than any \$10,000 wetland study, when it has already been mapped. He added he has the ability to remove 50-cubic-yards of wetland legally and yet the Planning Department wants him to move another fifty feet away from the wetlands.

At that point Chair Danforth asked if any other Commissioners had questions for the applicant. Mr. Garton left the meeting without hearing any deliberation or decision from the Planning Commission.

Chair Danforth called for any requests for the hearing to be continued, or for the record to remain open. There were none.

Chair Danforth closed the hearing for deliberation.

Chair Danforth adopted the following exhibits into the record:

Exhibit L; September 13, 2024, Agency comment from Oregon Department of State Lands submitted by Jessica Salgado, Wetland Ecologist for Central & Eastern Oregon.

Exhibit M; September 24, 2024, Local Landowner comment by Mr. Justin Berry, 27298 Highway 730, Umatilla OR.

Exhibit N; Dated November 20, 2020, Pages 7 & 8 from Final Findings and Conclusions Garton, Type II Land Division #LD-5N-881-20, submitted by Mr. Robert Waldher, Community Development Director.

Exhibit O; September 26, 2024, Agency comment from Umatilla County Environmental Health Division submitted by Byron Morris, Environmental Health Supervisor

DELIBERATION & DECISION

Commissioner Millar asked if a new wetlands study was done, could this have changed the information for the applicant in their favor. Mr. Waldher stated that potentially the wetlands could have changed, that is why a new wetland delineation was requested. The areas shown on Attachment B, which shows the wetlands in blue, are from the National Wetlands Inventory (NWI), which is what the US Fish and Wildlife Service compiled in the 1970s based off aerial imagery and digitized at that time. He added, if you read the information from Ms. Salgado's response she speaks to the NWI document. Chair Danforth and Commissioner agreed that if Mr. Garton states it was completed, per his own admission, it could have affected his ability to make this application successful.

Mr. Waldher stated the NWI is a great desktop resource and that is how the Planning Department uses it. He stated, it looked like wetlands exist in the area and it likely needed further review and that is why we contacted DSL to let them know. Mr. Waldher added, that prior to his career with Planning he was a Wetland Specialist. He had personally performed a site visit at this location and based on his observations it did appear that there was hydrophytic vegetation outside of the area of what is shown on the NWI.

Commissioner Millar asked how recent the applicant's prior land divisions were and if no problems were observed with those applications. Mr. Waldher stated the previous partition was completed in 2021 and it was approved.

Commissioner Standley asked what obligation the Planning Commissioner has to hold the applicant to complete before they may develop it. Mr. Waldher stated, the applicant's submission was appealing the Planning Departments' denial, so this has already been denied by our department. He explained it is the Planning Commission's decision to either agree with the appeal

and find a way to approve the application or to uphold the decision by the Planning Department to deny the application. He added, if the applicant decides he wants to do a wetland delineation or figure out a fix for the UEC easement situation, then he could submit a new application to the Planning Department.

Mr. Waldher stated the reason the original Planner, Mrs. Megan Davchevski, who processed this application sent a letter to Mr. Garton and his surveyor, Mr. Wells, notified them of some of the potential issues with the application. He explained, we wanted to give the applicant the opportunity to correct those before we deemed the application complete and he chose not to.

Commissioner Green made a motion to uphold the decision by the Umatilla County Planning Department and deny the Garton Type II Land Division, based on foregoing Findings of Fact and Conclusions of Law.

Commissioner Gentry seconded the motion. Motion carried with a vote of 7:0.

MINUTES

Chair Danforth called for any corrections or additions to the April 11, 2024 meeting minutes. No additions nor corrections were noted.

Commissioner Tucker moved to approve the draft minutes from the April 11, 2024 meeting minutes, as presented. Commissioner Gentry seconded the motion. Motion carried by consensus.

Chair Danforth called for any corrections or additions to the May 2, 2024 meeting minutes. Commissioner Millar asked if a correction could be made to his statement that was meant as hypothetical regarding the number of roosters someone could have owned on their property and compliance under the current code. No other additions nor corrections were noted.

Commissioner Tucker moved to approve the draft minutes from the May 2, 2024 meeting minutes, as presented. Commissioner Gentry seconded the motion. Motion carried by consensus.

Chair Danforth called for any corrections or additions to the May 23, 2024 meeting minutes. No additions nor corrections were noted.

Commissioner Tucker moved to approve the draft minutes from the May 23, 2024 meeting minutes, as presented. Commissioner Gentry seconded the motion. Motion carried by consensus.

Chair Danforth called for any corrections or additions to the June 27, 2024 meeting minutes. No additions nor corrections were noted.

Commissioner Gentry moved to approve the draft minutes from the June 27, 2024 meeting minutes, as presented. Commissioner Standley seconded the motion. Motion carried by consensus.

OTHER BUSINESS

Mr. Robert Waldher stated we have a hearing in October for a rezone of a property along Highway 11 outside Milton Freewater. The property is owned by Click-it RV and the required 35-day notice was sent to the State since this is a legislative matter. During this hearing the Planning Commission will be making a recommendation to the Board of County Commissioners.

ADJOURNMENT

Chair Danforth adjourned the meeting at 7:50PM.

Respectfully submitted,

Shawna Van Sickle,

Administrative Assistant

Minutes adopted by the Planning Commission on October 24, 2024.