

POLK COUNTY BOARD OF COMMISSIONERS

DATE: November 23, 2022
TIME: 9:00 a.m.
PLACE: Polk County Courthouse, Dallas, Oregon

THE LOCATION OF THIS MEETING IS ADA ACCESSIBLE. PLEASE ADVISE THE BOARD OF COMMISSIONERS AT (503-623-8173), AT LEAST 24 HOURS IN ADVANCE, OF ANY SPECIAL ACCOMMODATIONS NEEDED TO ATTEND OR TO PARTICIPATE IN THE MEETING VIRTUALLY.

PAGE: **AGENDA ITEMS**

1. CALL TO ORDER AND NOTE OF ATTENDANCE
2. ANNOUNCEMENTS
 - (a) Regular meetings of the Board of Commissioners are held on Tuesday and Wednesday each week. Each meeting is held in the Courthouse Conference Room, 850 Main Street, Dallas, Oregon. Each meeting begins at 9:00 a.m. and is conducted according to a prepared agenda that lists the principal subjects anticipated to be considered. Pursuant to ORS 192.640, the Board may consider and take action on subjects that are not listed on the agenda. The Board also holds a department staff meeting at 9:00am on every Monday in the Commissioners Conference Room at 850 Main Street, Dallas, Oregon.
3. COMMENTS (for items not on this agenda)
4. APPROVAL OF AGENDA
5. APPROVAL OF THE MINUTES FROM November 9, 2022
6. APPROVAL OF CONSENT CALENDAR
7. PUBLIC SAFETY LEVY UPDATE – Greg Hansen

CONSENT CALENDAR

- (a) Polk County Order No. 22-14, Ratify the Hearings Officer's decision on the appeal of Polk County Planning File LUD 22-42
(Sidney Mulder, Community Development Planning Manager)

**THE BOARD OF COMMISSIONERS WILL MEET IN EXECUTIVE SESSION
PURSUANT TO ORS 192.660.**

ADJOURNMENT

POLK COUNTY BOARD OF COMMISSIONERS
MINUTES November 9, 2022

1. CALL TO ORDER & ATTENDANCE

At 9:00 a.m., Commissioner Mordhorst declared the meeting of the Polk County Board of Commissioners to be in session. Commissioner Gordon and Commissioner Pope were present.

Staff present: Greg Hansen, Administrative Officer
Morgan Smith, County Counsel
Matt Hawkins, Administrative Services Director

2. ANNOUNCEMENTS

Regular meetings of the Board of Commissioners are held on Tuesday and Wednesday each week. Each meeting is held in the Courthouse Conference Room, 850 Main Street, Dallas, Oregon. Each meeting begins at 9:00 a.m. and is conducted according to a prepared agenda that lists the principle subjects anticipated to be considered. Pursuant to ORS 192.640, The Board may consider and take action on subjects that are not listed on the agenda. The Board also holds a department staff meeting at 9:00 a.m. on every Monday in the Commissioners Conference Room at 850 Main Street, Dallas, Oregon.

The Tuesday 11/15/2022 & Wednesday 11/16/2022 BOC meetings will be canceled due to the Commissioners and Staff attending the Association of Oregon Counties Conference that week.

3. COMMENTS

Fred Hertel, Fire Chief of SW Polk Fire District, wanted to address the Board of Commissioners in regards to recognizing Polk County Staff. Mr. Hertel wanted to recognize Greg Hansen, Morgan Smith, Val Unger, Valerie Patoine, Todd Whitaker, Dean Bender, Mark Garton, Austin McGuigan and Blaine Curry and Mr. Hertel wanted to say thank you from SW Polk and wanted to give them a coin commemorating 75 years of service.

4. APPROVAL OF AGENDA

MOTION: COMMISSIONER GORDON MOVED, COMMISSIONER POPE SECONDED, TO APPROVE THE AGENDA.

MOTION PASSED BY UNANIMOUS VOTE OF THE BOARD.

5. APPROVAL OF MINUTES OF BOARD MEETING OF November 2, 2022

MOTION: COMMISSIONER POPE MOVED, COMMISSIONER GORDON SECONDED, TO APPROVE THE MINUTES OF November 2, 2022.

MOTION PASSED BY UNANIMOUS VOTE OF THE BOARD.

6. LENGTH OF SERVICE AWARDS:

The Board of Commissioners and staff recognized and thanked the following employees for their length of service.

- Eric Berry, 30 years
- Melanie Edwards, 25 Years
- Scott Eastlund, 20 years
- Ken Dunagan, 15 years
- Martin Axford, 10 years
- Kristin Beck, 10 years

8. MONMOUTH URBAN RENEWAL AMENDMENT (NOTICE TO TAXING DISTRICT):

Suzanne Dufner (Community & Economic Development Director), Marty Wine (City of Monmouth City Manager), & Elaine Howard (Consultant for the City of Monmouth) presented to the Board of Commissioners an amendment for the Monmouth Urban District. Ms. Howard went over a power point presentation that discussed the role of Polk County, the details of the amendment, and what the next steps are. The changes being made to the plan are: Increase spending authority, remove duration, revenue sharing commences, adding property, adding projects and general updating of the plan. Next Ms. Howard shared what the potential revenues would be in 3 different scenarios. Greg Hansen, Administrative Officer, asked how many times an urban renewal district can be amended. Ms. Howard stated as many times as they want, however, this is the last time the City of Monmouth can ask for this due to an increase. Mr. Hansen asked if the City of Monmouth wants revenue sharing, because if the answer is no, then this is irrelevant. Ms. Wine stated that they haven't figured that out just yet. Commissioner Pope stated that he is curious about the 2 parcels in this expansion. Ms. Dufner talked about the zoning and stated that they have had a hard time in developing these parcels due to wetlands and some other factors. They are trying to be strategic with pulling these 2 parcels into the Urban Renewal District. Commissioner Pope asked what the real tax impact is once this development is finished. Ms. Dufner stated that these will have a smaller tax impact and more of a housing development impact. Commissioner Mordhorst stated that he understand the need for these districts due to the sharing of infrastructure costs.

The following items were approved by Motion under **5. APPROVAL OF CONSENT CALENDAR:**

n/a

At 9:45 a.m. County Counsel announced that the meeting was recessed to Executive Session pursuant to ORS 192.660(2)(h) To consult with counsel concerning the legal rights and duties of a public body with regard to current litigation or litigation likely to be filed. The Executive Session ended at 9:56 a.m.

POLK COUNTY BOARD OF COMMISSIONERS

Lyle Mordhorst, Chair

Craig Pope, Commissioner

Jeremy Gordon, Commissioner



POLK COUNTY

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

COMMUNITY DEVELOPMENT

AUSTIN M'GUIGAN
Director

MEMORANDUM

TO: Board of Commissioners
FROM: Sidney Mulder, Planning Manager
Polk County Community Development
DATE: November 18, 2022
SUBJECT: Ratify the Hearings Officer's Decision on an Appeal; Planning File LUD 22-42

November 23, 2022 Consent Agenda

ISSUE:

Ratify the Hearings Officers final local decision on the appeal of Polk County Planning File LUD 22-42.

RECOMMENDATION:

Staff recommends that the Board of Commissioners ratify the Hearings Officers final local decision affirming the Planning Directors approval of Polk County Planning File LUD 22-42.

BACKGROUND:

The applicant is proposing to construct a 73 foot tall wood monopole communication tower and associated ground equipment within a 100 square foot compound area. The proposed tower would be located within the Exclusive Farm Use (EFU) zone, which permits "utility facilities necessary for public service", subject to administrative review. The utility that the proposed communication facility would provide is high speed internet services.

On September 7, 2022 the Polk County Planning Director approved the application with 14 conditions of approval. A timely appeal was submitted on September 19, 2022. On September 27, 2022 the Polk County Board of Commissioners directed staff to set the matter for a hearing before the Polk County Hearings Officer, pursuant to PCZO 111.280.

The Hearings Officer conducted a duly noticed public hearing on November 1, 2022. An opportunity was provided for the Appellant, Applicant, and members of the public to submit oral and written testimony at the hearing. The Hearings Officer issued a final local decision affirming the Planning Directors decision on November 17, 2022. Pursuant to PCZO 111.280, the Polk County Board of Commissioners shall ratify the final local decision issued by the Hearings Officer.

DISCUSSION / ALTERNATIVES:

1. Adopt Order Number 22-14 ratifying the Hearings Officers final local decision affirming the Planning Directors approval of Polk County Planning Division file LUD 22-42; or
2. Other.

FISCAL IMPACTS:

No fiscal impacts to the County have been identified.

ATTACHMENTS:

Order Number 22-14

Exhibit A: Hearings Officer's Decision

**BEFORE THE BOARD OF COMMISSIONERS
FOR THE COUNTY OF POLK, STATE OF OREGON**

In the matter of Polk County Planning Division)
File LUD 22-42 authorizing the establishment)
of a new communication tower on an)
approximately 56.0 acre parcel zoned Exclusive)
Farm Use. The subject property is located at)
13955 Highway 22, Dallas OR 97338 (T7S,)
R5W, Section 5, Tax Lot 202).)

ORDER NO. 22-14

WHEREAS, on September 7, 2022 the Polk County Planning Director approved Planning Division application LUD 22-42, with conditions, authorizing a new communication tower and associated equipment within the Exclusive Farm Use zone; and

WHEREAS, a timely appeal was submitted on September 19, 2022; and

WHEREAS, on September 27, 2022 the Polk County Board of Commissioners directed staff to set the matter for a hearing before the Polk County Hearings Officer, pursuant to PCZO 111.280; and

WHEREAS, the Polk County Hearings Officer conducted a duly noticed public hearing on November 1, 2022 where an opportunity was provided for the Appellant, Applicant and members of the public to submit oral and written testimony; and

WHEREAS, the Hearings Officer issued a final local decision affirming the Planning Directors decision on November 17, 2022, included as Exhibit A; and

WHEREAS, pursuant to PCZO 111.280, the Board of Commissioners shall ratify the final local decision issued by the Hearings Officer; now therefore,

THE POLK COUNTY BOARD OF COMMISSIONERS ORDERS AS FOLLOWS:

Sec. 1. That Polk County Board of Commissioners ratify the Hearings Officer's final local decision.

Sec. 2. An emergency is declared, and the provisions of this order become effective upon its adoption.

Dated this 23th day of November, 2022 at Dallas, Oregon.

POLK COUNTY BOARD OF COMMISSIONERS

Lyle Mordhorst, Chair

Criag Pope, Commissioner

Jeremy Gordon, Commissioner

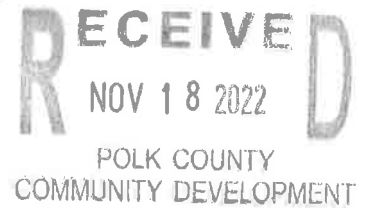
Approved as to form:

Morgan Smith
County Counsel

First Reading: _____

Second Reading: _____

Recording Secretary: _____

**BEFORE THE PLANNING DIVISION
FOR POLK COUNTY, OREGON****In the Matter of the Application of:****File No: LUD 22-42****Alyrica Networks, Inc****HEARING DECISION****I. SUMMARY OF PROCEEDINGS****A. BACKGROUND**

This matter arose on the application of Alyrica Networks, Inc. ("Applicant") to construct a 73 foot tall wood monopole communication tower and associated ground equipment within a 100 square foot compound area. The proposed tower would be located within the Exclusive Farm Use (EFU) zone, which permits "utility facilities necessary for public service", subject to administrative review. The utility that the proposed communication facility would provide is high speed internet services.

The Applicant's plot plans depicting the proposed communication tower location and access is included as Attachments A-1 through A-4. Attachment B is a map created by Polk County Community Development Staff ("County Staff") intended to depict the subject property and surrounding areas.

1. PROCEDURAL HISTORY

The application was received on June 6, 2022 and was deemed complete on July 21, 2022.

On September 7, 2022, the Polk County Planning Director approved planning file LUD 22-42 with fourteen (14) conditions of approval. A timely appeal was submitted on September 19, 2022. On September 27, 2022, the Polk County Board of Commissioners directed County Staff to set the matter for a hearing before the Polk County Hearings Officer, pursuant to PCZO 111.280.

The Appellant, Tim Kinkade, identified concerns primarily related to the appeal fee; starting work before the Decision becoming effective; potential impacts on an existing underground power line; terms of existing easements; road maintenance; and dust from additional vehicles affecting vineyards.

The Hearings Officer's decision will constitute the final local decision subject to ratification by the Board of Commissioners.

2. COMPREHENSIVE PLAN AND ZONING DESIGNATIONS

Location:	Comprehensive Plan Designation	Zoning Designation
Subject Property	Agriculture	Exclusive Farm Use
Property North	Agriculture	Exclusive Farm Use
Property East	Agriculture	Exclusive Farm Use

Property South	Agriculture	Exclusive Farm Use
Property West	Agriculture	Exclusive Farm Use

3. PROPERTY DESCRIPTION:

The subject property is located at 13955 Highway 22, Dallas, Oregon (T7S, R5W, Section 5, Tax Lot 202) and contains approximately 56.0 acres. According to the 2022 Polk County Assessor's records, the subject property currently contains one (1) single family dwelling and one (1) accessory farm structure. The existing dwelling was lawfully constructed as evidenced by Polk County building permit 687-16-001565, which was authorized as a replacement dwelling by planning file RD 12-03.

The subject property was lawfully created pursuant to Polk County Subdivision and Partition Ordinance (PCSO) Section 91.950(1)(b), as evidenced by a partition plat recorded in Polk County Book of Record 229, Page 1664, dated December 30, 1989. The subject property is currently described in a Bargain and Sale Deed recorded in Polk County Clerk Document 2021-007252, recorded April 27, 2021.

Based on a review of Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) panel number 41053C0250F, dated December 19, 2006, the subject property is not located within the Special Flood Hazard Area (SFHA). Based on a review of the Polk County Significant Resource Area (SRA) Map, the subject property does not contain inventoried significant resources. There are no identified historic sites, or Willamette River Greenway areas on the subject property.

According to the National Wetlands Inventory (NWI) Map, Dallas Quadrangle, the western portion of the subject property contains a riverine wetland associated with a tributary of Salt Creek. This tributary is not identified on the SRA map as being a significant fish bearing stream; therefore, staff finds that this wetland is not subject to the requirements found in PCZO Chapter 182. The applicant is not proposing any development near any inventoried wetland areas. Nevertheless, this report serves as notice to the property owners of the presence of wetland areas on the subject property. Future development activities, such as remove and fill material within any wetland area may require a permit from the Oregon Department of State Lands (DSL). The property owner shall be responsible for obtaining all necessary Local, State, and Federal permits prior to any development activities within any wetland areas.

4. SERVICES:

Access: The subject property is accessed from Highway 22 via an existing private road and easement. Highway 22 is a Principle Arterial as defined in the Polk County Transportation Systems Plan, Figure 3.

Services: The proposed use does not require on-site water or an on-site septic system.

School: Dallas School District 2

Fire: Southwest Polk RFPD

Police: Polk County Sheriff

B. COMMENTS

Prior to the hearing, the following comments were received into the record:

Environmental Health:	The subject property contains an onsite septic system that was installed and finalized on October 5, 2016 under permit number 687-16-000563-SEP. All foundation lines of any buildings and/or structure, must stay 10 feet from the initial septic drainfield and future repair area and five (5) feet from the septic tank.
Oregon Department of Aviation:	The Oregon Department of Aviation (ODAV) has reviewed the application and determined that we have no comments. The proposed structure does not appear to require that notice be sent to the FAA or ODAV, as specified in OAR 738-070-0070 and FAR Part 77.9(b).
Tim Kinkade:	A neighboring property owner provided comments with concerns regarding the existing utility and access easements; potential impacts of the proposed development on the existing powerline and private road; and increased dust affecting vineyard crops along the easement road. Comments were also provided with concerns about the tower being stored on-site, prior to the Decision being issued.

Full comments are included in the record.

II. PUBLIC HEARING

A duly advertised hearing was held on November 1, 2022, at the Polk County Courthouse. The Hearings Officer called the meeting to order at the appointed hour. There were no objections as to notice, jurisdiction, or conflicts of interest. County Staff recited the applicable review and decision criteria and recommended approval. The Applicant presented testimony in agreement with the County Staff Report. The Appellant presented written and oral testimony against the application. No other public testimony was received in favor or against the application. There was no request to keep the record open, or for a continuance. The Hearings Officer thereupon declared the record closed and adjourned the meeting. All of the testimony, evidence, and arguments are a part of the record and were considered in this matter.

III. REVIEW AND DECISION CRITERIA

An application for a Utility Facility Necessary for Public Service within the Exclusive Farm Use Zoning District is subject to review based upon the criteria listed in Polk County Zoning Ordinance (PCZO) Sections 136.040(V) and 112.135.

- A. **Utility Facilities Necessary for Public Service [OAR 660-033-0130(16)], including wetland waste treatment systems, except commercial facilities for the purpose of generating power for public use by sale and transmission towers over 200 feet in height. [PCZO 136.040(V)]**
 - a. **A utility facility is necessary for public service if the facility must be sited in an exclusive farm use zone in order to provide the service. To demonstrate that a utility facility is necessary, an applicant must show that reasonable alternatives have been considered and that the facility must be sited in an Exclusive Farm Use zone due to one or more of the following factors:**
 - b. **Technical and engineering feasibility;**

- c. **The proposed facility is locationally dependent. A utility facility is locationally dependent if it must cross land in one or more areas zoned for exclusive farm use in order to achieve a reasonably direct route or to meet unique geographical needs that cannot be satisfied on other lands;**
- d. **Lack of available urban and nonresource lands;**
- e. **Availability of existing rights of way;**
- f. **Public health and safety; and**
- g. **Other requirements of state and federal agencies. [PCZO 136.040(V)(1)(a) through (f)]**

The Applicant is proposing to construct a 73 foot tall wood monopole communication tower and associated equipment in the EFU Zoning District. Alyrica Network Inc. (Alyrica) would design, construct, and manage the tower, and would locate their equipment on the tower to provide internet service to their customers. The above criteria require the Applicant to demonstrate that a utility facility is necessary for public service and that reasonable alternative locations have been considered.

According to the Applicant, constructing this tower is part of a larger rural broadband project that is intended to achieve a minimum coverage area of 90% of the County. In the summer of 2019, Polk County's Information Technology (IT) Department sent out over 5,000 surveys to rural property owners to better understand internet services that are being provided to rural citizens. The results of that survey demonstrated that there is a rural broadband deficit in Polk County. Providing reliable competitive internet service has become increasingly important for commercial and economic development in rural areas, and provides benefits to local farms, rural schools, and rural residents of Polk County. The Applicant states that this site was selected because the facility is locationally dependent due to the elevation and line of sight it provides, which is necessary to provide an effective, high-coverage network area. A higher coverage area from the proposed tower would reduce the need for future additional towers.

The Applicant stated that siting the tower within the existing nearby Right of Way (ROW), which is approximately 3,100 feet away towards the west, would not be feasible due to the elevation being more than 300 feet lower than the proposed site, which would result in significantly decreased coverage. County Staff used elevation tools to measure the relative elevation of the nearest available ROW and the proposed tower site and confirmed that the nearest ROW is more than 300 feet lower in elevation than the proposed tower site. Given that based on the lower elevation of the nearest available ROW, the Hearings Officer finds that establishing the utility within the ROW is not a reasonable alternative to the proposed site due to the technical and engineering requirements of line-of-site to meet service coverage needs.

The Applicant also considered co-location on a nearby tower, which is located approximately 1,800 feet southwest of the proposed tower site. The Applicant provided propagation maps, which are included in the record, showing the desired level of coverage from the proposed tower site compared to the service coverage area from co-locating on the existing nearby tower. The proposed tower would provide coverage as far north as the Yamhill-Polk County boundary line, past the unincorporated community of Rickreall towards the south, and as far east as Zena Road. The co-location service area would be much more centralized near the Salt Creek Road area, west of Baskett Slough Wildlife Refuge and south of Perrydale Road. It is evident that co-location would significantly reduce the service coverage area.

The Applicant states that there are not any urban and non-resource lands available in any nearby locations that can provide proximity to other towers, line of site, or elevation requirements that are needed to meet the desired level of coverage. County Staff reviewed the Polk County Zoning map and finds that the nearest non-resource lands are located approximately one (1) mile (T7S, R5W,

Section 8, Tax Lot 406) southwest of the proposed tower site. County Staff used elevation profile tools, accessed through Polk County's GIS, and finds that the elevation of the nearest non-resource land site is more than 300 feet lower in elevation than the proposed tower site.

The Appellant re-asserts his argument that the Applicant's easement only provides "egress" and does not include access for this utility company but that the Applicant does have a utilities easement on another location of his property. The terms of the easement and any conflicting interpretation is not subject to review in this matter because these concerns are a civil matter. However, it is worth noting that based on the current deed language, the Hearings Officer has no reason to believe that the proposed access could not be used by the utility provider. According to a survey for a minor partition (CS 12209), which created the subject property, the existing access road is "a non-exclusive easement for ingress and egress and utilities". This easement varies in width between 30-31 feet. The current deed for the Appellant's property (Polk County Clerk Document 2013-007734) states, "Subject to and excepting:....easements of record." The Appellant also continues to argue it is a "conflict of interest" with Polk County and the easements. The record does not contain any information about what the potential conflict of interest is with Polk County and easements. The Appellant also raises concerns that the Applicant began construction on the tower before the appeal period ended and that he contacted County Staff and was informed he needed to file a Code Enforcement Complaint. The record contains information that the Appellant did contact Code Enforcement and that the matter was discussed with the Applicant and any construction ceased. Therefore, the Hearings Officer finds that while easements are a civil matter, the record contains evidence that the existing easements can be used to access the proposed tower and that any concern regarding construction before the expiration of the appeal is moot because a Code Enforcement complaint was initiated and construction ceased.

Based on the above findings, the Hearings Officer finds that the application demonstrates that a utility facility is necessary for public service and must be sited on the subject property due to the proposed tower being locationally dependent, technical and engineering feasibility, lack of available urban and nonresource lands, and proximity to existing ROW. The Hearings Officer also finds that reasonable alternative locations have been considered but would not provide the desired level of service coverage area. Thus, the application complies with these criteria.

- 2. Costs associated with any of the factors listed in subsection (S)(1) of this section may be considered, but cost alone may not be the only consideration in determining that a utility facility is necessary for public service. Land costs shall not be included when considering alternative locations for substantially similar utility facilities and the siting of utility facilities that are not substantially similar. [PCZO 136.040(V)(2)]**

The Applicant states that this section is not applicable to the application or tower build. As stated above, reasonable alternatives were considered based on the tower being locationally dependent, technical and engineering feasibility, lack of available urban and non-resource lands, and undesirable elevations of nearby ROW. Cost was not considered in determining if this utility facility is necessary for public service.

Therefore, the Hearings Officer finds this criteria does not apply to this application.

- 3. The owner of a utility facility approved under this section shall be responsible for restoring, as nearly as possible, to its former condition any agriculture land and associated improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the utility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration. [PCZO 136.040(V)(3)]**

The Applicant states that they agree to this criterion. The proposed tower would be sited within a 100 square foot compound area. County Staff's review of the 2020 aerial photograph, accessed through Polk County's GIS, finds that the tower location does not appear to be currently managed for agricultural purposes, but rather is composed of a few young trees. If the tower was removed, restoration of the site could be reasonably accomplished due to the relatively small footprint of the tower. County Staff recommends that this criterion be listed as a condition of approval.

The Hearings Officer concurs with County Staff and with the conditions of approval above, the application complies with this criterion.

- 4. The governing body of the county or its designee shall impose clear and objective conditions on an application for utility siting to migrate and minimize the impacts of the proposed facility, if any, on surrounding lands devoted to farm use in order to prevent a significant change in accepted farm practices or a significant increase in the cost of farm practices on surrounding farmlands. [PCZO 136.040(V)(4)]**

The subject property is located within the EFU zone and is approximately 56.0 acres in size. Neighboring properties are also located within the EFU zone and range in size from approximately 80.0 acres to approximately 110.5 acres. Based on County Staff's review of the 2020 aerial photograph, neighboring properties are primarily managed for agricultural purposes, with dense stands of oak trees. Agricultural practices on surrounding properties may include, but are not limited to: tilling, planting, pruning, harvesting, and transporting of agricultural products.

The Appellant raised concerns about the potential impact to farm practices, in particular regarding increased dust from "a metal slag on part of the road", which affects vineyard crops along the existing private road. The Appellant states that the dust would coat the vineyard and affect photosynthesis and the months of July, August, and September are typically the most vulnerable months for grapes, as well as October this year because "everything is late". The Appellant argues when construction improperly began, the Applicant did not apply dust control measures as promised. The Appellant also asserts that allowing construction of the tower would financially affect him as additional road usage will require additional road maintenance.

The existing private road that currently serves the subject property is proposed to be used to access the tower site. According to the Applicant's plot plan and a survey of a minor partition (CS 12209), which created the subject property, this access road goes through the neighboring properties towards the south and leads to Highway 22. County Staff reviewed the 2020 aerial photograph, accessed through Polk County's GIS, and confirmed that there are approximately 12 acres of planted vineyard on the neighboring property towards the southeast, which borders the existing access road. The Applicant addressed these concerns by stating that they are proposing to employ dust control measures while the tower is being constructed, and only 5-6 maintenance and inspections trips on-site (10-12 vehicle trips) are anticipated annually after construction. The proposed dust control measures would include hiring Pratum Co-Op to deliver and apply a lignin dust control product prior to bringing heavy equipment up the road or when frequent trips during construction are required. Lignin is a common dust abatement product that is authorized by the Polk County Public Works Department to be used on public roads. Employing dust control measures during construction is a reasonable mitigation method to address concerns about increased dust. County Staff recommends a condition of approval that while the tower is being constructed, the Applicant shall employ dust control measures along the private access road that serves the subject property.

The Hearings Officer acknowledges during construction, additional vehicle trips on-site would be required. However, the most vulnerable months for grapes (as stated by the Appellant) have passed for 2022 and construction is temporary. The record lacks substantial evidence that the construction trips will create a significant change in accepted farm practices or a significant increase in the cost of farm practices on surrounding farmlands. Additionally, after construction, the Hearings Officer

finds that 10-12 additional vehicle trips annually are not a significant amount of trips. Other permitted uses in the EFU zone, such as a winery or farm stand, which are typically next to vineyards, create far more traffic than the proposed communication tower facility. The record lacks any substantial evidence to demonstrate that 10-12 additional vehicle trips per year would cause a significant change in or significantly increase the cost of farm practices on surrounding lands.

PCZO Section 112.135 provides standards for communication towers that are intended to mitigate potential negative offsite impacts on neighboring properties. This report considers those standards in Section III, Subsection B below. In addition, the EFU zone has minimum setback requirements from property lines. County Staff recommends a condition of approval that the proposed tower and any associated structures shall comply with the setback requirements for the EFU zone as required by PCZO 112.430(A). The required yard setback standards for the EFU Zoning District are as follows: front - 30 feet, side - 20 feet, and rear - 20 feet. Based on a review of the Applicant's plot plan (Attachment A-1), the proposed tower would be located approximately 147 feet from the northern property line, and approximately 354 feet from the eastern property line, which are the two closest property lines from the proposed tower location. The setback distances are more than 100 feet greater than the minimum setbacks distances for the EFU zone; thus, there would be a significant buffer distance between the proposed tower location and neighboring properties.

The Appellant raised concerns about an existing underground powerline, and states that it is very fragile and "bursts a few times a year." The Appellant is concerned that if Alyrica is permitted to use the powerline, that it could cause additional power outages.

In response, the Applicant addressed these concerns, stating:

"In order to provide power to our tower location we must extend the existing distribution line from where it terminates, at a transformer just west of Mark Wetzler's home, 400' to the north. This requires permitting approval, communication and coordination with the power provider/owner, Pacific Power. We are working closely with Pacific Power through this process now. It is Alyrica's opinion that the condition of this power line and whether it needs replaced is best assessed and determined by its owner and operator. We will follow PacifiCorp's permitting procedures and comply with any and all requirements that are imparted to us."

Pacific Power is a utility provider who is regulated by the Federal Energy Regulatory Commission and the Oregon Public Utility Commission (PUC). The PUC oversees the investor-owned utilities and are required to maintain safe, reliable, and secure operation of electric power and thousands of miles of telecommunication lines located throughout Oregon. The PUC establishes and enforces regulations and promotes practices so the state's right-of-ways, both underground and overhead power lines, are constructed, operated, and maintained in a safe and efficient manner. Issues of concern include joint use of utility poles and conduits, reliability of service, security, and incidents involving contact with electrical utility facilities. Because Pacific Power is a utility provider who is regulated by State and Federal law, County Staff finds that Pacific Power is ultimately responsible for determining whether or not any updates to the existing infrastructure are necessary prior to allowing the service connection.

For this reason, County staff recommends a condition of approval that the Applicant shall obtain any required permits from Pacific Power. In addition, although communication towers typically do not require a structural building permit, County Staff recommends a condition of approval that the Applicant shall obtain all necessary permits from the Polk County Building Division. Such permits may include, but are not limited to: building, mechanical, and electrical permits. Thus, the Hearings Officer finds that with these conditions of approval the Appellant's concerns with the use and ability of the power line will be assessed by Pacific Power who is ultimately responsible for monitoring and providing any updates to the existing infrastructure.

The Hearings Officer finds that with the above mentioned conditions of approval the application complies with this criteria.

5. **The utility facility necessary for public service may include on-site and off-site facilities for temporary workforce housing for workers constructing a utility facility. Such facilities must be removed or converted to an allowed use under OAR 660-033-0130(19) or other statute or rule when project construction is complete. Off-site facilities allowed under this paragraph are subject to OAR 660-033-0130(5). Temporary workforce housing facilities not included in the initial approval may be considered through a subsequent application. Such a request shall have no effect on the original approval. [PCZO 136.040(V)(5)]**

The Applicant is not proposing temporary workforce housing as part of this proposal. Therefore, the Hearings Officer finds this criterion is not applicable to this application

6. **In addition to the provisions of subsections (T)(1) to (4) of this section, the establishment or extension of a sewer system as defined by OAR 660-011-0060(1)(f) in an exclusive farm use zone shall be subject to the provisions of OAR 660-011-0060.**
7. **The provisions of subsections (T)(1) to (4) of this section do not apply to interstate natural gas pipelines and associated facilities authorized by and subject to regulations by the Federal Energy Regulatory Commission.**
8. **Communication towers authorized under this section shall comply with the standards listed in Section 112.135. [PCZO 136.040(V)(6-8)]**

The Applicant is proposing to construct a new communication tower, and has addressed the tower standards listed in PCZO 112.135, discussed in Subsection (B) below. The establishment or extension of a sewer system is not proposed as part of this application. The Applicant is also not proposing a natural gas pipeline.

The Hearings Officer finds the application complies with these criteria.

B. TOWER STANDARDS. The following standards apply to all new or replacement communication towers and all new or replacement non-commercial wind energy systems utilizing a tower and meteorological towers. The standards of this section are not applicable to roof-mounted, building-integrated, building-mounted and architectural wind energy systems that extend no more than an additional 5 feet above the highest ridge of the building's roof or 15 feet above the highest eave, whichever is higher, and do not exceed the height limitation of the zone. The standards of this section are also not applicable to commercial power generating facilities. [PCZO 112.135]

1. **All new or replacement communication towers shall be reviewed through the administrative review process as a land use determination, unless otherwise provided for in the zoning district for the proposed location. A utility provider shall be the applicant or co-applicant for any communication tower that is proposed in unincorporated Polk County, or a condition of approval shall be that the tower may not be constructed until such time as a utility provider is identified, and all other conditions have been met. Public agencies are also subject to the standards of this section. It is the intent of this section to provide for maximum compatibility between communication towers and the surrounding land uses. [PCZO 112.135(A)]**
2. **All new or replacement communication towers, non-commercial wind energy systems utilizing a tower, and meteorological towers shall comply with the following standards:**
 - a. **All communication towers shall be less than 180 feet in height. Wind energy systems utilizing a tower and meteorological towers outside of a UGB shall be 150 feet or less in height. Communication towers shall be a monopole type of construction unless otherwise provided. Wind and**

meteorological towers shall be a monopole, monopole with guy wires, lattice, or lattice with guy wires type of construction. An applicant may request modification of these height limitations or types of construction (e.g. a lattice communication tower) through a Land Use Determination review process. Such height modification or type of construction shall include a demonstration for any modification requested. Such justification shall include documentation showing:

- i. Coverage limitations,**
- ii. Type of system (e.g. broadcast, FM radio, television),**
- iii. Technical and engineering feasibility;**
- iv. Public safety; or**
- v. Other requirements of local, state, and federal agencies. [PCZO 112.135(C)(1)(a) through (e)]**

Alyrica Networks, Inc. submitted an application to construct a new 73 foot tall monopole tower and would be the utility provider. The Applicant states that the purpose of the proposed communication tower is to provide high speed internet to the surrounding rural areas of Polk County. A proposed new 73 foot tall monopole tower is not subject to the additional justification standards. To ensure compliance, County Staff recommends a condition stating that this approval is for a monopole communication tower that shall not exceed 73 feet in height.

With the above condition, the Hearings Officer finds the application complies with these criteria.

- b. No lighting of towers and associated facilities is allowed, except as required by the Federal Aviation Administration or other federal or state agency. In coordination with the applicable federal or state agency, the applicant shall determine the maximum height of the tower that would not require lighting. If a proposed tower would require lighting, the applicant shall demonstrate that a tower height that requires lighting is necessary. Such justification shall include documentation showing:**

- i. Coverage limitations,**
- ii. Type of system (e.g. broadcast, FM radio, television),**
- iii. Technical and engineering feasibility; and**
- iv. Other requirements of local, state, and federal agencies.**

If a tower height that requires lighting is justified, the applicant shall demonstrate how the lighting will be shielded from the ground. Shielding of tower lighting onto nearby properties shall be installed as part of construction of the tower. [PCZO 112.135(C)(3)(a) through (d)]

The Applicant states that no lighting of any type would be employed on the proposed tower. County Staff provided notice of the Applicant's proposal to the Oregon Department of Aviation (ODAV) and the Independence State Airport. Brandon Pike, Aviation Planner with ODAV, provided comments indicating that the proposed tower does not appear to require that notice be sent to the FAA or ODAV, as specified in OAR 738-070-0070 and FAR Part 77.9(b). The record contains no comments from the Independence State Airport.

Pursuant to OAR 738-070-0090, when a notification is provided to ODAV, the response will contain information on how the structure should be marked and lighted in accordance with the Advisory Circular. Because the ODAV's comments did not provide any lighting or marking requirements, County Staff has no reason to believe that lighting is required by ODVA or the FAA.

Nevertheless, County Staff recommends a condition of approval that the Applicant shall not establish lighting on the proposed tower unless required by the Oregon Department of Aviation or the Federal Aviation Administration. If lighting is required by the ODA or FAA, a subsequent land use application would be required to address the criteria listed in PCZO 112.135(C)(3)(a) through (d).

With the above recommended conditions of approval, the Hearings Officer finds the application complies with this criterion.

- c. The setbacks for a communication, wind, or meteorological tower shall be the setback otherwise allowed for all other structures in the zone; however, greater setbacks shall be required as follows:**
 - i. A communication tower shall be setback at least the height of the tower from an existing dwelling on adjacent property.**
 - ii. A tract (contiguous property under the same ownership) may be considered as a single parcel for purposes of setbacks. [PCZO 112.135(C)(4)(a) and (c)]**

The Applicant is proposing a 73 foot tall monopole communication tower with associated ground equipment. Communication towers are required to be setback at least the height of the tower from any existing dwellings on adjacent properties, which in this case would be 73 feet. The Applicant states that the closest property line from the proposed tower would be approximately 150 feet away. County Staff reviewed the 2020 aerial photograph, 2022 Polk County Assessor's records, and County Staff's measurements utilizing tools accessed through Polk County's GIS, the closest dwelling on an adjacent property is more than 2,000 feet away from the proposed tower site. Therefore, County Staff finds that the proposed communication tower would be located at least the height of the tower (73 feet) from any existing dwellings on adjacent properties. Nevertheless, in order to ensure compliance with this criterion, County Staff recommends a condition of approval that the proposed tower shall be setback at least 73 feet from any existing dwellings on adjacent properties.

With the above recommended conditions of approval, the Hearings Officer finds the application complies with this criterion.

- d. Equipment areas may be enclosed by a chain link fence or equivalent with or without slats for screening. [PCZO 112.135(C)(5)]**

The Applicant is proposing the tower and associated equipment to be within a 100 square foot compound area that would be enclosed by an 8 foot tall chain linked fenced.

The Hearings Officer finds the application complies with this criterion.

- e. Warning and safety signs, up to three square feet in area, are allowed. All other signs are prohibited. [PCZO 112.135(C)(6)]**

The Applicant states that no signs, other than warning signs under three square feet in size, would be installed. County Staff recommends that this criterion be listed as a condition of approval. All other signs are prohibited unless otherwise required by Local, State, or Federal law.

With the above recommended conditions of approval, the Hearings Officer finds the application complies with this criterion.

- f. If a tower is discontinued from operating as a communication, wind, or meteorological tower for a period of one year, the tower shall be removed. The operator shall be responsible for removal of the tower and equipment facilities within six (6) months; however, equipment facilities accessory to wind energy systems or meteorological towers may be converted to accommodate an approved on-site use within six (6) months. The property**

owner shall bear the ultimate responsibility for removal of facilities. The property owner is responsible for removal of the tower and shall sign a document that is recorded in the deed history of the subject property with the Polk County Clerk recognizing such responsibility. Nothing in this subsection shall prevent the owner of the property or Polk County from requiring a bond or other security from a communication tower operator or otherwise imposing on a communication tower operator the responsibility for removal and restoration. [PCZO 112.135(C)(7)]

The Applicant has stated that they agree with this criterion. In order to ensure compliance, County Staff recommends that a condition of approval require the property owner sign a restrictive covenant that meets the standards of PCZO 112.135(C)(7), included as Attachment C. The covenant shall require that the tower be removed if operation as a communication, wind, or meteorological tower is discontinued for a period of one year. Additionally, the operator shall be responsible for removal of the tower and equipment facilities within six (6) months. The property owner shall bear the ultimate responsibility for removal of facilities. The property owner shall provide a copy of the recorded covenant to the Polk County Planning Division for inclusion in the record.

With the above recommended conditions of approval, the Hearings Officer finds the application complies with this criterion.

- g. Upon receipt of an application for a tower, the Planning Director shall mail notification to the Independence State Airport and the Oregon Department of Aviation and provide at least ten (10) days to comment on the application. [PCZO 112.135(C)(8)]**

The Independence State Airport and the ODAV were both provided notice of this application with a ten (10) day comment period. As discussed above, Brandon Pike, Aviation Planner with ODAV, provided comments in the record, but no comments were received from the Independence State Airport prior to the record being closed.

The Hearings Officers finds the application complies with this notice requirement.

3. Additional Communication Tower Standards

- a. Whip antennae shall not exceed the height of the tower by more than twenty (20) feet. [PCZO 112.135(D)(1)]**

The Applicant states that whip antenna are not proposed on this tower. To ensure compliance, County Staff recommends a condition of approval that no whip antennas shall exceed the height of the tower by more than twenty (20) feet. Any future co-locations would also be subject to this condition.

With the above recommended conditions of approval, the Hearings Officer finds the application complies with this criterion.

- b. Directional / parabolic antennae shall not exceed seven (7) feet in diameter or width and a rectangular type antenna shall not exceed seven (7) feet in width and fifteen (15) feet in height when attached to a tower. [PCZO 112.135(D)(2)]**

The Applicant states that Alyrica is not proposing to mount any antenna greater than seven (7) feet in diameter nor would any rectangular type of antenna be greater than seven (7) feet in width and fifteen (15) feet in height. To ensure compliance, County Staff recommends a condition of approval that directional / parabolic antennas shall not exceed seven (7) feet in diameter or width and a rectangular type antenna shall not exceed seven (7) feet in width and fifteen (15) feet in height when attached to a tower. Any future co-locations would also be subject to this condition.

With the above recommended conditions of approval, the Hearings Officer finds the application complies with this criterion.

- c. **The applicant shall identify all existing structures, or properties that have obtained approval for a tower or currently contain a communications antenna within two miles of the proposed tower location. The applicant shall provide evidence that co-location at all existing or approved towers and structures within two miles is not feasible, and provide documentation for locating a new tower, based on either of the following:**
 - i. **Lack of available co-location space; or**
 - ii. **Inability to meet service coverage area needs. [PCZO 112.135(D)(3)(a) and (b)]**

The intent of this criteria is to prevent speculative towers and to ensure that existing towers within a two-mile radius could not be utilized to achieve the desired level of coverage. The Applicant identified one (1) existing communication tower that is located southwest of the proposed tower location. County Staff used measurement tools and reviewed the 2020 aerial photograph and determined that this tower is approximately 1,800 feet southwest of the proposed tower site. The Applicant states that the proposed tower site is approximately 300 feet higher in elevation than the existing tower's elevation. County Staff used elevation profile tools, accessed through Polk County's GIS, and determined that the proposed tower site has an elevation of approximately 560 feet, while the existing tower has an elevation of approximately 360 feet. Based on these calculations, County Staff finds that the proposed tower site appears to be approximately 200 feet higher than the existing tower's elevation, which is still a significant elevation difference considering the proposed tower requires line-of-site technology to meet service coverage needs.

County Staff reviewed Polk County's tower location data, accessed through Polk County's GIS, and confirmed that there are no other towers located within two miles of the proposed tower site.

Regardless of these elevation discrepancies described above, the Applicant provided propagation maps showing the desired level of coverage from the proposed tower site compared to the service coverage area from co-locating on the existing nearby tower. When comparing the propagation maps, it is evident that co-location would significantly reduce the service coverage area. The proposed tower would provide coverage as far north as the Yamhill-Polk County boundary line, past the unincorporated community of Rickreall towards the south, and as far east as Zena Road. The co-location service area would be much more centralized near the Salt Creek Road area, west of Baskett Slough Wildlife Refuge and south of Perrydale Road. This would require more towers to meet the coverage needs in those areas.

Based on these propagation maps provided by the Applicant, the Hearings Officer finds that co-location on an existing tower within two miles would not be feasible due to the inability to meet service coverage area needs.

The Hearings Officer finds the application complies with this criterion.

- d. **The tower shall comply with all required State of Oregon and Federal licenses for communication tower facilities. The application shall include a certification that the completed installation will comply with all Federal standards. The applicant shall submit documentation demonstrating compliance with the radio frequency emission standards as set forth by the Federal Communications Commission (FCC). If the calculated radio frequency emission level at any point is calculated at more than one-third the maximum radio frequency emission level permitted by the FCC, then the documentation shall be**

prepared by an Oregon registered professional engineer qualified to conduct radio frequency analyses. [PCZO 112.135(D)(4)]

The Applicant states that all radio frequency emitting equipment would be compliant with FCC guidelines. The Applicant submitted an emission report signed and stamped by B.J. Thomas P.E. which concludes that the proposed wireless communications facility would comply with current FCC guidelines for human exposure to radiofrequency electromagnetic fields. County Staff recommends a condition of approval that the tower shall comply with all required State of Oregon and Federal licenses for communication tower facilities.

With the above recommended conditions of approval, the Hearings Officer finds the application complies with this criterion.

- e. The applicant shall submit a site-specific study of the tower site identifying the proposed color and surfacing of the tower and associated fixtures. Based on the existing conditions and vegetation at the proposed site, the tower must be constructed with material to reduce visibility of the tower by:**
 - i. Use of non-reflective materials that minimize glare and are colored similar to the sky or adjacent background. A light gray shade is appropriate for blending the tower into the sky background. Nothing in this subsection preempts the coloring requirements of the Federal Aviation Administration or the Oregon Department of Aviation.**
 - ii. Use of non-reflective materials painted to match the existing or attached structure to blend into the surrounding environment, and**
 - iii. Antenna and associated equipment shall be surfaced in a non-reflective material color to match the structure on which it is located. [PCZO 112.135(D)(5)(a) through (c)]**

The purpose of this criterion is for the applicant to evaluate the proposed site and determine an appropriate color and surfacing that would reduce the tower's visual impact on the surrounding area. The Applicant states that the proposed tower would be brown in color in order to be aesthetically pleasing by blending into the background of Douglas fir trees that surround the property on all sides. The antennas and associated equipment are all proposed to be surfaced in a non-reflective material to match the pole structure.

County Staff reviewed the 2020 aerial photograph, and confirmed that the predominant background of the tower site is composed of trees, although they appear to be oak trees, not Douglas fir trees. Nevertheless, County Staff finds that a non-metallic brown color and surfacing would be appropriate for reducing visibility of the tower. County Staff recommends that a condition of approval state that the surfacing of the communication tower and associated structures shall be of a non-reflective material. The tower, antenna, and associated equipment shall be brown in color. Nothing in this subsection preempts the coloring requirements of the Federal Aviation Administration or the Oregon Department of Aviation.

With the above recommended conditions of approval, the Hearings Officer finds the application complies with this criterion.

- f. If access is obtained from a private road, the applicant shall be responsible as required by Oregon law for providing for improvements and maintenance to the private road that provides access to the subject property. In general, the applicant is responsible for impacts to the private road as a result of activities conducted by the applicant. The applicant shall maintain all necessary access easements and**

**maintenance agreements for the private road as required by State law.
[PCZO 112.135(D)(6)]**

The above criterion is intended to make sure the applicant is aware of their responsibility to improve any private roads that are impacted by the proposed development, as required by Oregon law. This criterion is not the basis of denial of a land use decision, as easements and road maintenance agreements are a civil matter. Oregon law for maintenance of easements in repairs, costs, and agreements can be found in ORS 105.175.

The proposed tower would be accessed via an existing private road and easement that leads to Highway 22, which currently serves the subject property. The Appellant raised concerns about potential impacts on the road and asserts that he has primarily maintained the road through grading and re-rocking. County Staff reviewed Polk County Clerk records and did not find any formal road maintenance agreements. However, email correspondence between County Staff and the Appellant demonstrates that the Applicant has attempted to financially compensate the Appellant for use of the private road.

The Applicant states that they understand that Alyrica would be responsible for improvements and maintenance of the private road that resulted from the activities that Alyrica conducts. As discussed above, the anticipated amount of additional vehicle trips on-site would be 10-12 annually, which is not a significant amount of trips. The greatest potential for impacts to the existing road would be from additional vehicle trips during construction, which could require road maintenance after construction is completed. Although a formal road maintenance agreement was not provided, the Applicant has acknowledged this responsibility. To ensure compliance, County Staff recommends this criterion be listed as a condition of approval.

The Hearings Officer finds the record contains evidence that the Applicant accepts the responsibility for impacts to the private road as a result of activities conducted by the Applicant, thereby satisfying the criteria in this application as well as responding to and acknowledging the Appellant's concerns with road maintenance for this application.

With the above recommended conditions of approval, the Hearings Officer finds the application complies with this criterion.

g. An Oregon registered professional engineer shall certify that the construction of the tower complies with building code structural standards. [PCZO 112.135(D)(7)]

The Applicant states that in order to complete the certification of the tower construction, a geological survey is needed for determining the final engineering that would be certified by an Oregon registered professional engineer. Although a structural building permit is not required, this criterion still requires an Oregon registered professional engineer to certify the proposed tower's design. For these reasons, County Staff recommends a condition of approval that an Oregon registered professional engineer shall certify that the construction of the tower complies with building code structural standards.

With the above recommended conditions of approval, the Hearings Officer finds the application complies with this criterion.

h. Prior to submission of an application, the applicant must notify and hold a meeting with area property owners as outlined in (a) and (b) below. The applicant shall submit evidence of the notification and meeting with the application. The applicant must provide evidence of the following:

i. The applicant has mailed notification of the proposed tower to property owners that would otherwise be notified pursuant to Polk County Zoning Ordinance Section 111.350. The notification shall state that the topic has been scheduled for

discussion at a community meeting as described in (b) below. The notification shall state the date, time, and location of the meeting.

- ii. The applicant shall post the subject property as described in Polk County Zoning Ordinance Section 111.360 and hold a meeting with the community to allow for concerns regarding the proposed tower to be addressed. Nothing in this subsection limits the applicant from providing additional opportunity for input from area property owners and residents. [PCZO 112.135(D)(8)(a) and (b)]**

The Applicant states that notification was sent to all surrounding property owners in compliance with the criteria found in PCZO 111.350. The Applicant provided a copy of the letter that was sent to neighboring property owners and pictures of the certified mail receipts. The Applicant also provided a picture of the sign that was posted on April 4, 2022, demonstrating compliance with this criteria. The notification letter indicates that the meeting was held on April 25, 2022, at the Cross Creek Golf Course parking lot.

The Hearings Officer finds that based on the information in the record the Applicant complied with the notification requirements listed in PCZO Sections 111.350 and 111.360. Therefore, the Hearings Officer finds the application complies with these criteria.

- i. All new or replacement tower facilities under 100 feet in height shall provide for a minimum of two (2) users (the primary user and one co-location site). [PCZO 112.135(D)(9)]**

The proposed communication tower would be 73 feet in height. The Applicant states that the tower would have adequate space to accommodate two (2) users. To ensure compliance, County Staff recommends a condition of approval that the proposed tower shall provide for a minimum of two (2) users (the primary user and one co-location site).

With the above recommended conditions of approval, the Hearings Officer finds the application complies with this criterion.

IV. CONCLUSION

Based on the Review and Decision Criteria above, the Hearings Officer believes there is sufficient evidence in the record, and hereby APPROVES the application to construct a communication tower within the Exclusive Farm Use Zoning District. The Hearings Officer concurs with County Staff in imposing the conditions of development listed below in order to ensure that the proposed use is consistent with the findings in the Review and Decision Criteria (Sections III) and as required by the Polk County Zoning Ordinance and other provisions of law.

Appeals to the Land Use Board of Appeals (LUBA) may only be based on Review and Decision Criteria contained in Section III.

Any modifications to the conditions listed below would require approval in accordance with provisions of law (e.g., variance, subsequent land use application, etc.).

Conditions of Development:

- 1. This approval is for a monopole communication tower that shall not exceed 73 feet in height (85 feet buried 12 feet below grade). Whip antenna shall not exceed the height of the tower by more than twenty (20) feet. Directional / parabolic antenna shall not exceed seven (7) feet in diameter or width and a rectangular type antenna shall not exceed seven (7) feet in width and fifteen (15) feet in height when attached to a tower.**
- 2. The owner of the communication tower and associated facilities shall be responsible for restoring, as nearly as possible, to its former condition any agriculture land and associated**

improvements that are damaged or otherwise disturbed by the siting, maintenance, repair or reconstruction of the facility. Nothing in this subsection shall prevent the owner of the utility from requiring a bond or other security from a contractor or otherwise imposing on a contractor the responsibility for restoration.

3. The applicant shall not establish lighting on the proposed tower unless required by the Oregon Department of Aviation (ODA) or the Federal Aviation Administration (FAA). If lighting is required by the ODA or FAA, a subsequent Land Use Application would be required to address the criteria listed in PCZO 112.135(C)(3)(a) through (d).
4. The proposed communication tower facility shall be setback at least the height of the tower (73 feet) from any existing dwelling on adjacent properties. The tower and any associated structures shall comply with the setback requirements for the EFU zone as required by PCZO 112.430(A). The required yard setback standards for the Exclusive Farm Use (EFU) Zoning District are as follows: front - 30 feet, side - 20 feet, and rear - 20 feet.
5. Warning and safety signs, up to three square feet in area, may be used. All other signs are prohibited unless required by Local, State or Federal law.
6. The property owner shall sign and record a deed restriction (Attachment C) requiring removal of the tower should the tower be removed from service for a period exceeding one-year. The owner shall submit the original documents to the Polk County Clerk's Office for recording in the deed history of the subject property (the property owner shall pay the applicable recording fees). The owner shall provide a copy of the recorded documents to the Polk County Planning Division for inclusion in the record.
7. The surfacing of the communication tower and associated structures shall be of a non-reflective material. The tower, antenna, and associated equipment shall be brown in color. Nothing in this subsection preempts the coloring requirements of the Federal Aviation Administration or the Oregon Department of Aviation.
8. The applicant shall be responsible as required by Oregon law for providing improvements and maintenance to the private road that provides access to the subject property. In general, the applicant is responsible for impacts to the private road as a result of activities conducted by the applicant. The applicant shall maintain all necessary access easements and maintenance agreements for the private road as required by State law.
9. The applicant shall obtain all necessary permits from the Polk County Building Division. Such permits may include, but are not limited to: building, mechanical, and electrical permits. The applicant shall also obtain any required permits from Pacific Power.
10. An Oregon registered professional engineer shall certify that the construction of the tower complies with building code structural standards.
11. The proposed tower shall provide for a minimum of two (2) users (the primary user and one co-location site).
12. Prior to any future development activities within a wetland area, the property owners shall obtain all necessary State or Federal permits. Such permits may include but are not limited to, a Removal/Fill Permit from the Oregon Department of State Lands (DSL).
13. The applicant shall employ dust control measures along the private access road that serves the subject property, as proposed in this application.
14. The tower shall comply with all required State of Oregon and Federal licenses for communication tower facilities.

V. ATTACHMENTS

Attachments A-1 through A-4: Applicant's Plot Plans

Attachment B: Map Created by County Staff to Intending to Depict Subject Property and Surrounding Areas

VI. EFFECTIVE DATE; APPEAL

This Order takes effect upon the expiration of the time allowed for an appeal, if no appeal is filed.

If an appeal is filed, this Order does not take effect until the final decision on the appeal has taken effect. The Polk County Planning Division cannot assist in preparation of an appeal but will provide information on how an appeal can be filed. **TIME IS OF THE ESSENCE IN FILING AN APPEAL.** The Planning Division will provide information on applicable deadlines.

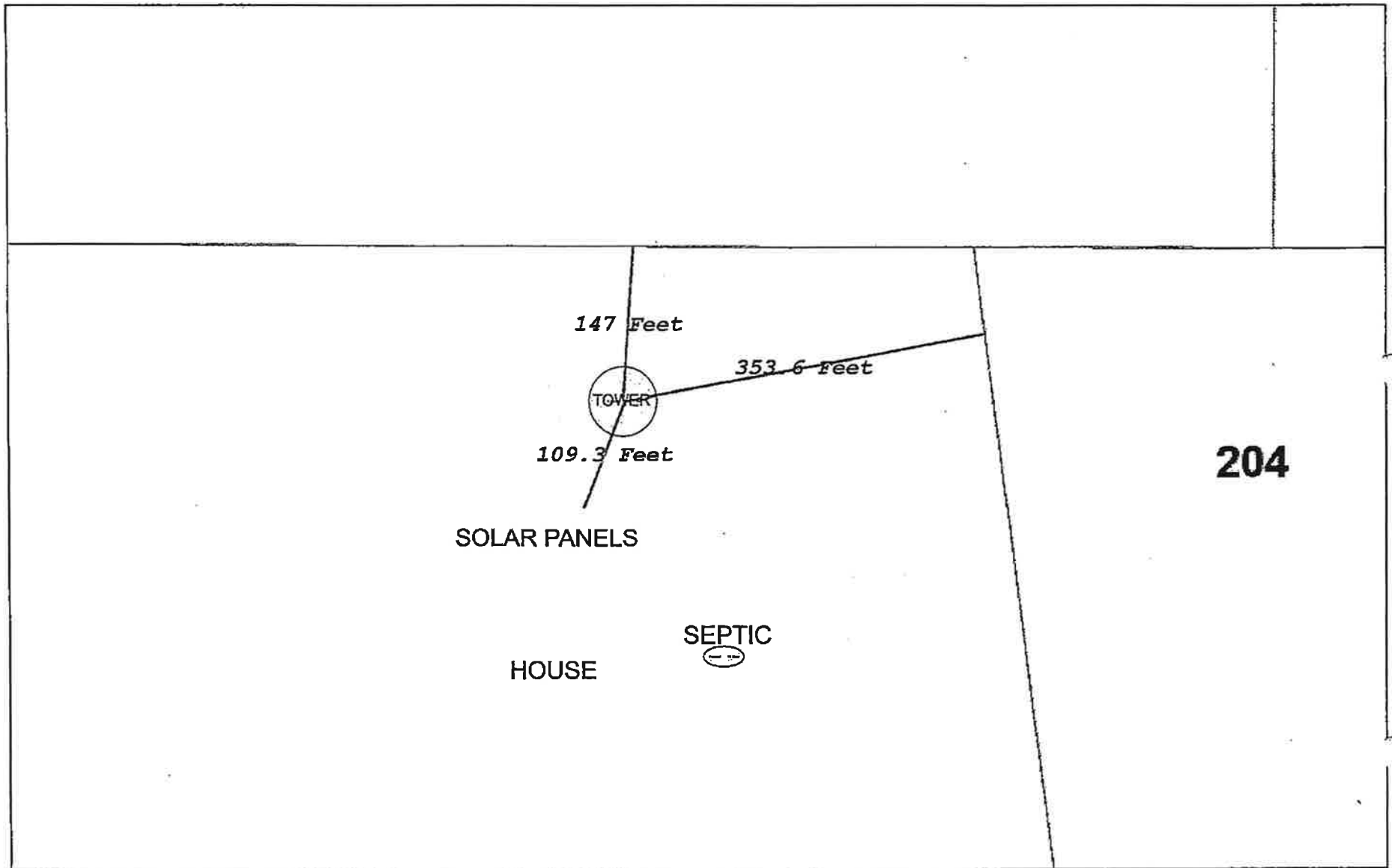
Dated this 17th day of November, 2022.

Leslie Howell

Leslie Howell
Dallas, Oregon
Polk County Hearings Officer

CROSS CREEK 1

ATTACHMENT A-1



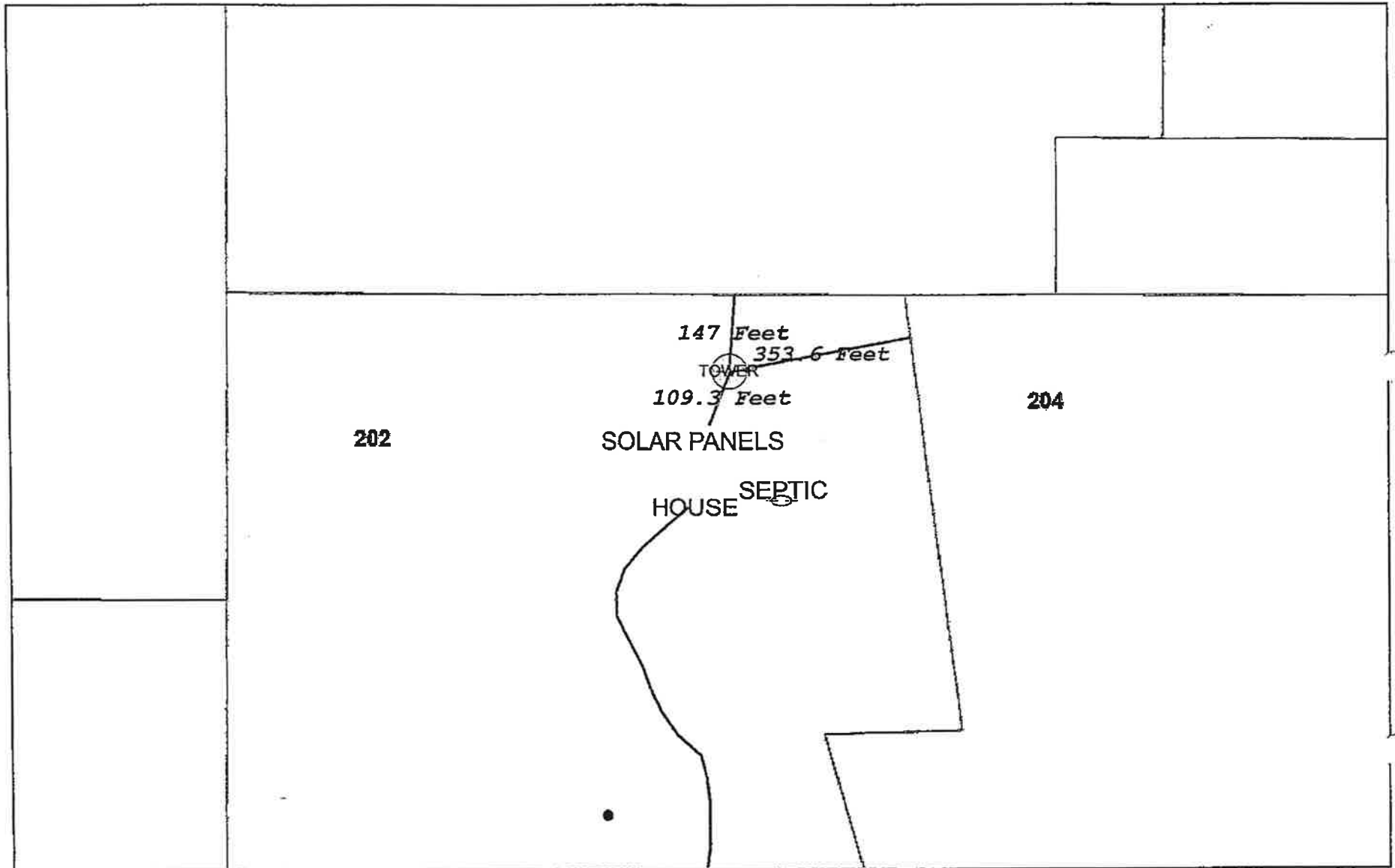
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 Taxlots

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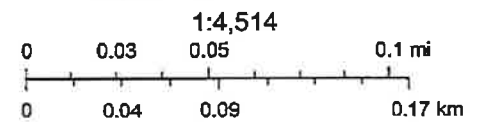
CROSS CREEK 2

ATTACHMENT A-2



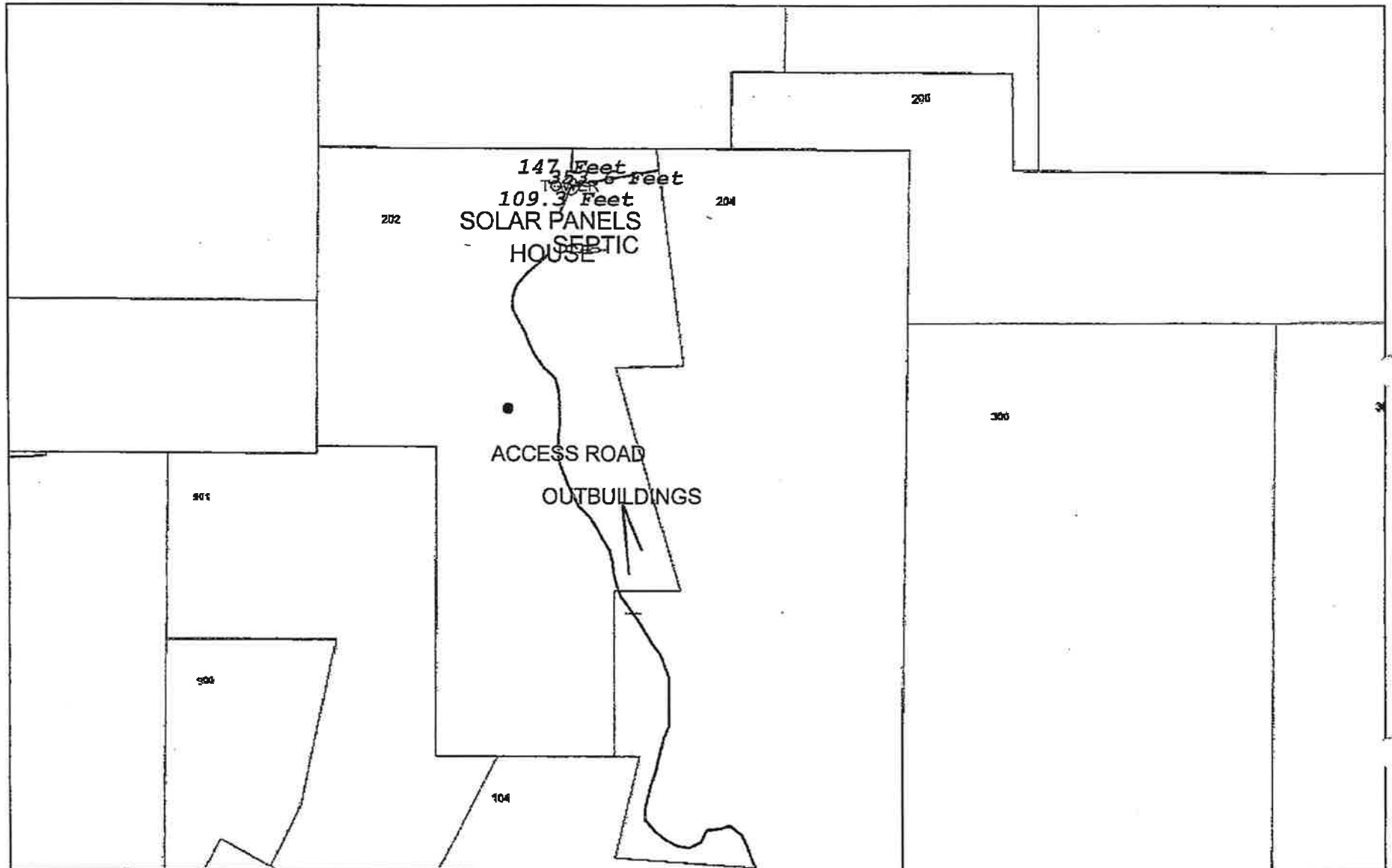
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 Taxlots



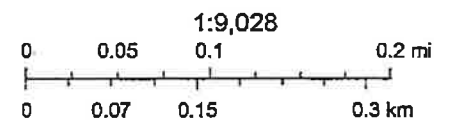
CROSS CREEK 3

ATTACHMENT A-3



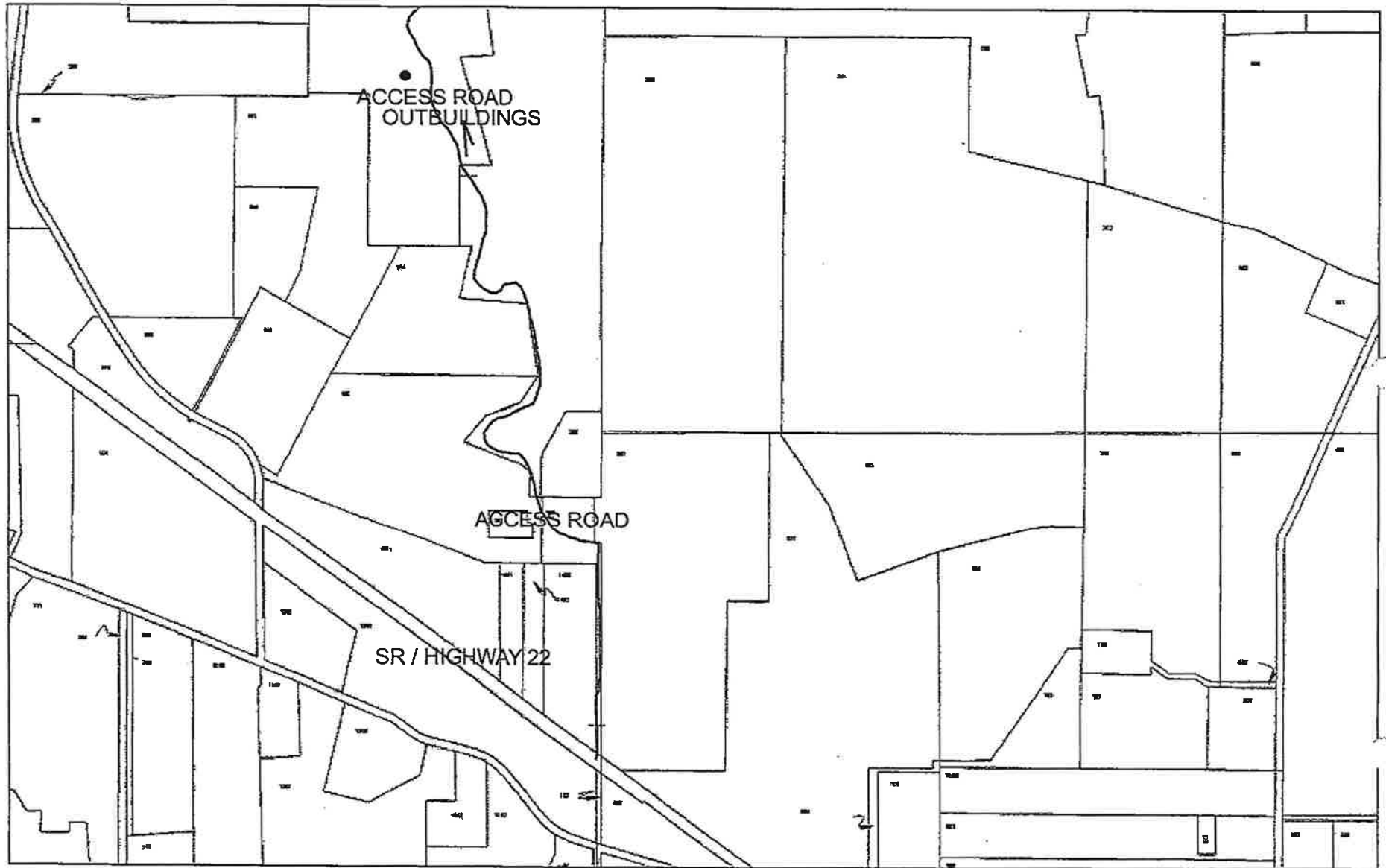
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 Taxlots



CROSS CREEK 4

ATTACHMENT A-4



7/11/2022, 12:14:00 PM

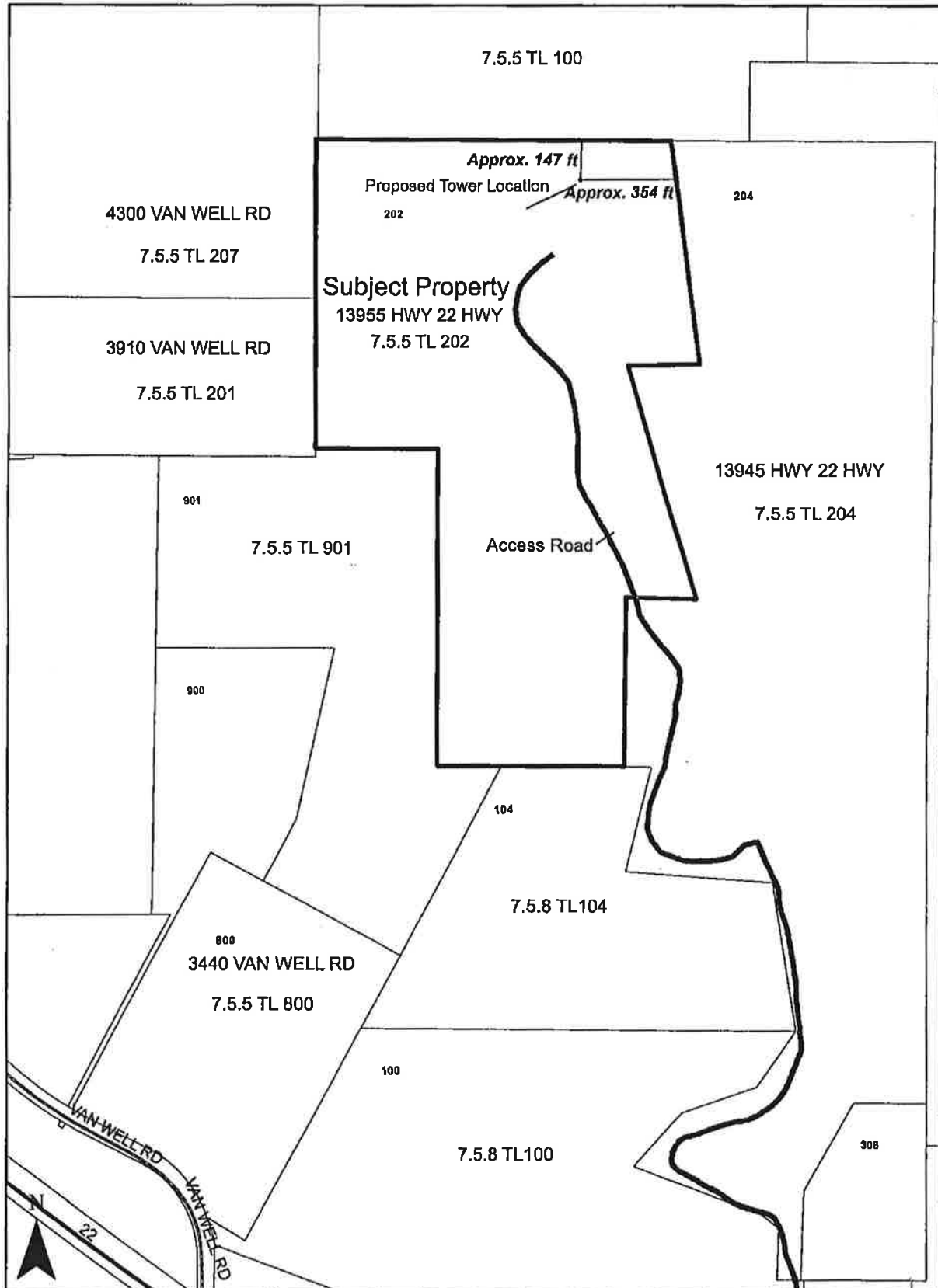
 Taxlots

 400 Scale

1:18,056
0 0.1 0.2 0.4 mi
0 0.17 0.35 0.7 km

STAFF MAP (LUD 22-42)

ATTACHMENT B



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

RESTRICTIVE COVENANT

Owner: Subversive Plots, LLC

File Number: LUD 22-42

Request: To construct a new communication tower

Location: 13955 Highway 22, Dallas, OR 97338

(T7S, R5W, Section 5, Tax Lot 202)

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

If the tower is discontinued from operating as a communication, wind, or meteorological tower for a period of one year, the tower shall be removed. The operator shall be responsible for removal of the tower and equipment facilities within six (6) months; however, equipment facilities accessory to wind energy systems or meteorological towers may be converted to accommodate an approved on-site use within six (6) months. The property owner shall bear the ultimate responsibility for removal of facilities.

Legal Description:

See Exhibit A.

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

Owner(s) SignaturePrinted Name(s)Address

1. _____
2. _____
3. _____

State of Oregon)
 County of Polk) ss

On this ____ day of _____, 20____, before me personally appeared _____ whose identity is personally known to me (or proved to me on the basis of satisfactory evidence) and who by me duly sworn (or affirmed), did say that he (she) is the _____ (title) of the _____, and that said document was signed by him (her) in behalf of said corporation by authority of its bylaws (or of a Resolution of its Board of Directors), and acknowledged to me that said corporation executed the same. Before me:

This space
 reserved for use
 by the Polk
 County Recorder

 Notary Public of Oregon

My Commission Expires: _____

AFTER RECORDING, RETURN TO:

Community Development Department

Polk County Courthouse, 850 Main Street, Dallas, Oregon 97338