BEFORE THE LAND USE BOARD OF APPEALS

OF THE STATE OF OREGON

FRIENDS OF YAMHILL COUNTY,
Petitioner,

vs.

YAMHILL COUNTY,
Respondent,

and

LOUIS WEST and JUDY WEST,
Intervenors-Respondent.

LUBA No. 2001-179

FINAL OPINION
AND ORDER

Appeal from Yamhill County.

Charles Swindells, Portland, filed the petition for review and argued on behalf of petitioners.

No appearance by Yamhill County.

Michael Robinson, Portland, filed the response brief and argued on behalf of intervenors-respondent. With him on the brief was Perkins Coie LLP.

HOLSTUN, Board Chair; BASSHAM, Board Member; BRIGGS, Board Member, participated in the decision.

AFFIRMED 3/06/2002

You are entitled to judicial review of this Order. Judicial review is governed by the provisions of ORS 197.850.

1 Opinion by Holstun.

2 **NATURE OF THE DECISION**

3 Petitioner appeals a county decision granting conditional use approval for a public
4 road across land zoned for exclusive farm use (EFU).

5 **MOTION TO INTERVENE**

6 Louis West and Judy West move to intervene on the side of respondent in this appeal.
7 There is no opposition to the motion, and it is allowed.

8 **INTRODUCTION**

9 The challenged decision in this appeal is the county's decision following our remand
10 in *Friends of Yamhill County v. Yamhill County*, 39 Or LUBA 478, *aff'd* 174 Or App 564, 27
11 P3d 535 (2001).[1] That decision includes a map that assists in understanding the facts.

12 The central dispute in this appeal concerns road access for seven lots that are part of
13 Walnut Hill Subdivision, which was platted in 1911. The seven lots lie some distance west
14 of Lafayette Highway, which is a state highway. The county's decision to approve the
15 access alternative that was requested by intervenors, which crosses the large EFU-zoned
16 parcel that separates those lots from Layfayette Highway, is governed by OAR 660-012-
17 0065(5)(a)-(c).[2]

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[1]The record in the current appeal includes the record in the prior appeal. We cite the record in the prior appeal as Record (2000-112). We cite the record that was compiled following our remand as Record (2001-179).

[2]As relevant OAR 660-012-0065(5) provides:

> "For transportation uses or improvements * * * within an exclusive farm use (EFU) * * * zone, a jurisdiction shall, in addition to demonstrating compliance with the requirements of ORS 215.296:
>
> "(a) Identify reasonable build design alternatives, such as alternative alignments, that are safe and can be constructed at a reasonable cost, not considering raw land costs, with available technology. * * * The jurisdiction need not consider alternatives that are inconsistent with applicable standards or not approved by a registered professional engineer;

1 We refer to the road that the county approved in the appealed decision as the
2 conditional use alignment. The conditional use alignment has already been improved to
3 county standards and is a total of 3,240 feet long.[3] The conditional use alignment follows a
4 previously existing farm driveway for 1,140 feet from Lafayette Highway and then extends
5 westerly an additional 2,100 feet and terminates in a cul-de-sac. Replacing the existing farm
6 driveway with the conditional use alignment requires approximately 60,000 square feet of
7 farmland.[4] Record (2001-179) 118. The lots that do not adjoin the cul-de-sac are connected
8 to the cul-de-sac by private easements.

9 Petitioner contends that adequate access to the seven lots already exists over platted
10 rights of way in Walnut Hill Subdivision to the west (the subdivision alignment). Portions of
11 the subdivision alignment will have to be improved and additional easements must be
12 acquired to use the subdivision alignment for access to the seven lots.[5] Use of the
13 subdivision alignment for access from the seven lots to Lafayette Highway requires
14 significant out-of-direction travel. The applicant's engineer estimated that the subdivision
15 alignment is approximately 5,900 feet long and will require an additional 25,000 square feet

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> "(b) Assess the effects of the identified alternatives on farm and forest practices, considering impacts to farm and forest lands, structures and facilities, considering the effects of traffic on the movement of farm and forest vehicles and equipment and considering the effects of access to parcels created on farm and forest lands; and
>
> "(c) Select from the identified alternatives, the one, or combination of identified alternatives that has the least impact on lands in the immediate vicinity devoted to farm or forest use."

[3]Although a road has already been constructed on the conditional use alignment, that road construction was done without conditional use approval. Use of that alignment to provide access to the seven lots requires conditional use approval.

[4]Intervenors explain:

> "This square footage is derived from the widening of the existing farm driveway and the westerly extension of the conditional use road to the cul-de-sac." Intervenors-Respondent's Brief 4.

[5]The parties dispute how much the subdivision road must be improved and the cost of required improvements.

of farmland for right of way widening to meet county standards. Record (2001-179) 118, 122.[6] Under OAR 660-012-0065(5)(a), the county is only required to consider "reasonable * * * alternatives." The county found the improvements that would be required to use the subdivision alignment would be three times as expensive as the cost of constructing the conditional use alignment, making the subdivision alignment an unreasonable alternative for that reason alone. Petitioner assigns error to that finding. Under OAR 660-012-0065(5)(b) and (c), if more than one reasonable alternative is identified under OAR 660-012-0065(5)(a), the county is required to select the alignment that will have the least impacts on "land in the immediate vicinity devoted to farm or forest use." The county also found that even if the subdivision alignment did have to be considered as a reasonable alternative to the conditional use alignment, it would have more impacts on farm and forest uses than the conditional use alignment. Petitioner also assigns error to that finding.

FIRST ASSIGNMENT OF ERROR

As noted earlier, OAR 660-012-0065(5)(a) imposes the following alternatives analysis requirement:

> "Identify reasonable build design alternatives, such as alternative alignments, that are safe and can be constructed at a reasonable cost, not considering raw land costs, with available technology. * * * The jurisdiction need not consider alternatives that are inconsistent with applicable standards or not approved by a registered professional engineer[.]"

As we explained in our prior decision, the way OAR 660-012-0065(5)(a) is worded makes it somewhat awkward to apply in a circumstance where there are existing roads that may be reasonable alternatives.[7] However, we concluded in our prior decision that the county could

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[6]The 5,900-foot length is derived by adding the lengths of Kestrel Heights Road, a private easement, Walnut Grove Lane, and Hillview Drive. Record (2001-179) 122.

[7]It may well be that this is more than a case of awkward rule language. Based on the questions that arose during the county's proceedings following our remand and the parties' arguments based on those questions, we may well have been wrong in construing OAR 660-012-0065(5)(a) to require that existing roads must be considered as potential "reasonable build design alternatives." Nevertheless, in the posture that this case returns to us, we do not consider here whether we misconstrued OAR 660-012-0065(5)(a) in our prior decision.

1 not simply dismiss the subdivision alignment because it currently did not meet county road
2 standards or was unsafe. We explained that before the county may dismiss the subdivision
3 alignment as a reasonable alternative under OAR 660-012-0065(5)(a):

4 "[t]he county must establish that the roadway located in the subdivision
5 alignment could not be improved to be 'safe,' meet 'applicable standards' and
6 be 'approved by a registered professional engineer' 'at reasonable cost, not
7 considering raw land costs, with available technology. * * *'"[8] 39 Or LUBA
8 at 485.

9 We also noted in our prior decision, that "[o]ne of the difficulties in this appeal is a
10 lack of clarity about what the county road standards require." 39 Or LUBA at 489 n 10.
11 However, we did not resolve the questions of what county standards apply or what those
12 county standards might require. Although we did not explicitly direct the county to identify
13 the relevant standards and what those standards require, our remand effectively required that
14 the county do so.[9]

15 In its proceedings on remand, the county found that the road standards that appear at
16 Record (2001-179) 310 apply to both the conditional use alignment and the subdivision
17 alignment.[10] In support of its position that county road construction standards apply to the
18 subdivision alignment, the challenged decision cites a number of Yamhill County
19 Comprehensive Plan (YCCP), Yamhill County Transportation System Plan (YCTSP) and
20 Yamhill County Land Division Ordinance (YCLDO) provisions. The county considered the
21 applicant's estimates of the costs of improving the conditional use alignment and the
22 subdivision alignment to full county road standards and found that improving the subdivision

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[8]No one disputes that the conditional use alignment, as presently improved, is "safe," meets "applicable standards" and has been "approved by a registered professional engineer."

[9]As we explained in our prior opinion, it was not clear whether maximum road grade under the applicable standards was 13 percent or 15 percent and while it appeared that various portions of the existing roadway along the subdivision alignment would need to be improved to meet county requirements, it was not clear how much improvement would be required. 39 Or LUBA at 489 n 10.

[10]Those standards require a 60-foot right of way, impose grade limitations and impose other requirements that the subdivision alignment currently does not meet.

1 alignment to full county standards would cost three times as much as improving the
2 conditional use alignment to full county standards.[11]

3 Petitioner apparently agrees that applicable county legislation requires that the
4 conditional use alignment be improved to full county standards. However, petitioner argues
5 that there is no requirement under applicable county legislation that the existing subdivision
6 alignment must be improved to full county standards before it can be used to provide access
7 to the seven lots.[12] We understand petitioner to argue that because much more limited
8 improvements may suffice to allow the subdivision alignment to be used for access to the
9 seven lots, the county artificially inflated the cost of using the subdivision alignment as an
10 alternative and improperly relied on that inflated cost to reject the subdivision alignment as
11 an unreasonable alternative under OAR 660-012-0065(5)(a).[13]

12 **A. Waiver**

13 There is no dispute that the issue petitioner presents under the first assignment of
14 error was presented during the proceedings on remand. Therefore that issue was not waived

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[11]The applicant's cost estimates for making required improvements to the subdivision alignment and conditional use alignment are $285,000 and $93,000 respectively. Record (2001-179) 123-24.

[12]Indeed, petitioner argues that the dwellings that were approved for the seven lots were approved with the understanding that they would be provided access over the subdivision alignment. Intervenors dispute that argument. The only documents concerning those dwellings that the parties cite in the record are inconclusive regarding this issue. Record (2000-112) 324-27.

[13]Petitioner apparently does not dispute that the county could consider any costs that would necessarily be incurred to make the subdivision alternative "safe." Although the challenged decision never really articulates why, the county apparently views the subdivision alignment as unsafe. Record (2001-179) 15-16. However, the challenged decision never finds that improving the existing subdivision alignment to full county standards is necessary to make it safe.

It would also appear that under petitioner's view of the rule the county could consider any costs that would be required before the subdivision alignment could be "approved by a registered professional engineer," as the rule provides. The applicant's engineer stated during the local proceeding that he would not approve the subdivision alignment unless it was improved to full county standards. Record (2001-179) 121. However, the county did not find that improvement to full county standards was necessary to obtain approval "by a registered professional engineer" for the subdivision alignment.

1 under ORS 197.763 and 197.835(3).[14] However, intervenors suggest that under our
2 reasoning in *Louisiana Pacific v. Umatilla County*, 28 Or LUBA 32 (1994), because
3 petitioner did not argue in the first appeal that *no standards* apply to require improvement of
4 the subdivision alignment before it can be used for access to the seven lots, petitioner waived
5 that argument. Intervenor-Respondent's Brief 18.[15] The waiver doctrine that is discussed in
6 our opinion in *Louisiana Pacific* is based on the Oregon Supreme Court's decision in *Beck v.*
7 *City of Tillamook*, 313 Or 148, 831 P2d 678 (1992). We explained in that case:

8 "Based on the court's holding in *Beck*, * * * we conclude the permissible
9 scope of local proceedings following a LUBA remand of a local government's
10 decision, is framed by LUBA's resolution of the assignments of error in the
11 first appeal. Resolved issues, which may not be considered in the local
12 government proceedings on remand, include (1) issues presented in the first
13 appeal and rejected by LUBA; and (2) issues which could have been, but were
14 not, raised in the first appeal. Unresolved issues, which may be considered in
15 a local government proceeding on remand, include (1) issues presented in the
16 first appeal that LUBA either sustains or does not consider, and (2) issues that
17 could not have been raised in the first appeal. Thereafter, in a subsequent
18 appeal to LUBA of a local decision on remand, a petitioner may raise issues
19 concerning the local government's determinations regarding such unresolved
20 issues." 28 Or LUBA at 35 (footnote omitted).

21 We believe the issue of what county road improvement standards apply and how they
22 apply was presented in the first appeal. In our prior decision we explicitly noted the lack of

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[14]ORS 197.763(1) provides:

"An issue which may be the basis for an appeal to the Land Use Board of Appeals shall be raised not later than the close of the record at or following the final evidentiary hearing on the proposal before the local government. Such issues shall be raised and accompanied by statements or evidence sufficient to afford the governing body, planning commission, hearings body or hearings officer, and the parties an adequate opportunity to respond to each issue."

ORS 197.835(3) provides:

"Issues shall be limited to those raised by any participant before the local hearings body as provided by ORS 197.195 or 197.763, whichever is applicable."

[15]Although this waiver argument is raised in intervenors' discussion of the third and fourth assignments of error, it appears to be directed at the argument that is presented under the first assignment of error.

1 clarity concerning that issue and specifically did not answer the question. The issue
2 presented under this assignment of error was not waived under *Beck*.

3 **B. The County's Interpretation of YCLDO 7.020(4)**

4 As we have already noted, the board of county commissioners cited a number of
5 YCCP, YCTSP and YCLDO provisions in concluding that the subdivision alignment must be
6 improved to the same county standards that apply to new roads before it may be used for
7 access to the seven lots. Most of the YCCP, YCTSP and YCLDO provisions the board of
8 commissioners cite to support that conclusion in fact do not support that conclusion.[16]
9 However, one of the reasons the board of commissioners gave in support of its conclusion is
10 not challenged in the petition for review. That reason is set out in the following findings:

11 "[T]here are other reasons for finding that there are County standards [that
12 apply to the subdivision alignment]. [YCLDO] 7.020(4) requires that all lots
13 resulting from a lot line adjustment shall have legal access to a public road
14 pursuant to [YCLDO] 6.010 and 6.020. [YCLDO] 6.010(1) and (7) set forth
15 the requirements for street improvements. Because the lots served by this
16 road resulted from property line adjustments, this standard applies to establish
17 the applicable standard for the road improvement." Record (2001-179) 16.

18 It is not disputed that the seven lots were approved in their current configuration
19 through lot line adjustments. As the above-quoted findings explain, YCLDO 7.020(4)
20 provides that:

21 "All lots resulting from a lot-line adjustment shall have legal access to a
22 public road pursuant to [YCLDO] 6.010 and 6.020."[17]

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[16]Petitioner argues that by their terms the provisions cited by the county do not apply in the circumstances presented in this case because they are not mandatory, apply only to subdivisions and major partitions, or specifically exempt local roads in resource zones. Petition for Review 9-12. We generally agree with petitioner's reasoning for why those provisions do not apply and no point would be served in describing or repeating that reasoning here.

[17]YCLDO 6.010(1) provides as follows:

"No major partition or subdivision plat shall be granted final approval until street improvements are completed in accordance with this ordinance, or proper security is posted as specified in Section 13.000 of this ordinance."

As relevant here, YCLDO 6.010 requires that roads that are created to serve lots that are created by *subdivisions* and parcels that are created by *major partitions* must be constructed to county standards. We understand the above-quoted findings to take the position that this requirement of YCLDO 6.010 also applies where lot lines are adjusted, by virtue of YCLDO 7.020(4).

Stated slightly differently, if access were to be provided to the seven lots over the subdivision alignment, YCLDO 6.010 by itself clearly would not require that the road over the subdivision alignment be improved to full county standards. This is because the present configuration of the seven lots resulted from property line adjustments rather than by subdivision or partition. YCLDO 6.010, by its terms, only applies to subdivisions and major partitions and not to lot line adjustments. However, the above-quoted board of county commissioners' finding interprets YCLDO 7.020(4) to make the otherwise inapplicable requirements of YCLDO 6.010 apply *indirectly* when lot lines are adjusted. While that interpretation is certainly not compelled by the words of YCLDO 7.020(4), we believe it is within the board of county commissioners' interpretive discretion under ORS 197.829(1) and *Clark v. Jackson County*, 313 Or 508, 836 P2d 710 (1992) to interpret and apply YCLDO 7.020(4) in that manner.

Because the above-described interpretation of YCLDO 7.020(4) and how it applies in this case is not challenged in the petition for review, and because we conclude that the interpretation is not reversibly wrong under ORS 197.829(1) and *Clark* in any event, petitioner fails to demonstrate error in the county's reliance on that interpretation to conclude that the subdivision alignment must meet the county standards that apply to new roads before

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YCLDO 6.010(7)(A) provides as follows:

> "The creation of any road and the standard street section requirements shall conform to the county road standards and this ordinance. * * *"

that alignment must be considered as a reasonable alternative under OAR 660-012-0065(5)(a).

The first assignment of error is denied.

SECOND ASSIGNMENT OF ERROR

Petitioner next contends the county erred by rejecting the subdivision alignment because improving it to county standards will cost approximately three times as much as improving the conditional use alignment to county standards. Petitioner's arguments include the following:

> "[Under a] proper construction of the reasonable cost analysis required by OAR 660-012-0065(5), [the question] is not whether an alternative alignment is more expensive than a proposed EFU alignment. Presumably, many alternative alignments envisioned by the rule will be. Under a proper construction of the rule, the issue is closer to one of feasibility. The county must determine whether the costs are inordinate, or whether developing an alternative alignment would require extraordinary engineering or undue measures to assure safety.
>
> "The challenged decision interprets the term 'reasonable' to mean 'not expensive,' then rejects the subdivision alignment as 'overly expensive.' But the decision finds that the subdivision alignment is overly expensive only because it is more expensive than the [conditional use alignment]. It does not explain any basis for concluding that improvements to the subdivision alignment are in any way inordinately expensive relative to comparable road projects. It does not describe anything resembling extraordinary engineering requirements or undue measures to assure safety.
>
> "The decision instead refers to what appears to a layperson to be nothing more than ordinary road construction pursuant to code requirements. Is $285,000 a high amount relative to the cost of the many other roads in the county which cover similar distances and terrain? Is $285,000 a high amount for a road which will potentially serve 20 or more dispersed residential lots with dwellings which were sited by the county along a ridge top in a rural area?" Petition for Review 15-16 (record citations omitted).

Under petitioner's argument, a 10-mile long alternative that avoided EFU-zoned land could not be rejected as an unreasonable alternative to a one-quarter mile long alternative that crossed EFU-zoned land, so long as there would be no unusual engineering difficulties

1 in building the longer alternative and the construction cost per mile would be reasonable.[18]
2 The rule does not explicitly require a comparison of the costs of identified alternatives and
3 does not explicitly allow an alternative to be rejected because it is comparatively much more
4 costly. However, for the reasons explained below, we believe an alternative may be rejected
5 because compared to other alternatives it is unreasonably costly.

6 As an initial point, had the Land Conservation and Development Commission
7 (LCDC) intended to limit rejection of alternatives that do not impact EFU-zoned land to
8 cases where road construction is infeasible, it could have said so as it has in other contexts.[19]
9 One consideration in identifying alternatives is "reasonable cost." *See* n 2. We believe
10 comparative cost is an inherent consideration in determining whether a road construction
11 alternative can be built at a reasonable cost. If comparative cost is not a relevant
12 consideration, potential alternatives are likely to be unlimited.

13 With regard to petitioner's point that other existing residences along the subdivision
14 alignment might benefit from an improved right of way, petitioner is no doubt correct.
15 However, we do not believe that such resulting benefits to persons unrelated to the
16 application are a required consideration under OAR 660-012-0065(5)(a).[20] Without a clearer
17 indication in the rule that LCDC intended to require counties to approach the "reasonable
18 cost" inquiry in that way, we reject petitioner's suggestion that possible benefits to properties

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[18]As intervenors correctly point out, the present case does not present a choice between one alternative that crosses EFU-zoned land and another alternative that does not cross EFU-zoned land. Both alternatives cross at least some EFU-zoned land.

[19]For example, under ORS 215.275(2)(a) and OAR 660-033-0130(16) a utility facility necessary for public service may be sited on EFU-zoned land after consideration of non-EFU-zoned alternatives. One of the factors that may be relied upon to site such facilities on EFU-zoned land rather than on non-EFU-zoned alternatives is "[t]echnical and engineering feasibility."

[20]Petitioner's argument on this point also applies to the conditional use alignment. The record includes a letter from a person who has farmed the property that the conditional use road crosses. In that letter the farmer states the conditional use road has improved access for farm operations. Record (2001-179) 100-01.

1 other than the seven lots to be served by the proposed road must be considered under the
2 rule.

3 Returning to the county's decision, the question of whether an alternative is
4 unreasonably expensive is obviously a subjective one. LCDC has not attempted to define or
5 limit the term. The county cited the following dictionary definition of "reasonable":

> 6 "[A]ble to reason; amenable to reason; just; using or showing reason, or sound
> 7 judgment; sensible; not extreme, immoderate or excessive; not expensive."
> 8 Record (2001-179) 10.

9 We agree with the county that the above definition supports its conclusion that alternatives to
10 the conditional use alignment that are disproportionately expensive to construct are
11 unreasonable. Although we need not and do not adopt a generally applicable "three times as
12 expensive" rule, we do not agree with petitioner that the county erred as a matter of law in
13 this case in concluding that the subdivision alignment may be rejected as unreasonable
14 because at $285,000 it is three times as expensive as the $93,000 conditional use alignment.
15 In our view, the clear legislative policy favoring protection of agricultural land is the only
16 thing that makes the question debatable. However, even with that legislative policy in mind,
17 we agree with the county that if it costs $285,000 to improve the subdivision alignment to
18 meet county standards, that amount is sufficiently high in comparison with the conditional
19 use alignment to support its finding that the subdivision alignment is, for that reason, an
20 *unreasonable* alternative that may be rejected from further consideration under OAR 660-
21 012-0065(5)(a).

22 The second assignment of error is denied.

THIRD ASSIGNMENT OF ERROR

Citing YCTSP 5.2.8 and YCLDO 6.015, petitioner argues the county erred by failing to consider half-road improvements, which petitioner contends those sections authorize.[21] Petitioner explains:

> "Even if the Yamhill County Revised Public and Private Road Standards document applies to the subdivision alignment, it is not clear why some or all of the short, straight sections of the subdivision alignment proposed for improvements could not be improved as half-roads. It is impossible to tell to what extent the cost estimate is inflated as a result." Petition for Review 17-18.

We understand petitioner to argue that cited YCTSP and YCLDO provisions effectively allow county road construction standards to be met by constructing an 11-foot driving surface on a 30-foot right of way rather than a 22-driving surface on a 60-foot right of way. Petitioner argues the county erred in assuming the entire subdivision alignment must be widened to a 60-foot right of way and a 22-foot driving surface.

Intervenors conceded at oral argument that petitioner raised this issue during the local proceedings following our remand, and therefore did not waive the issue under ORS 197.763 and 197.835(3). However, intervenors again argue the issue was waived under *Beck* because the possibility of allowing a narrower right of way and driving surface could have been raised there. We reject intervenors' argument under *Beck* here for the same reason we

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[21] As relevant, YCTSP 5.2.8 provides:

> "* * * Yamhill County encourages road widening of substandard width roads in all areas, zones, and plan designations where deemed necessary to provide for an adequate means of access, transportation, walkways, maintenance and the placement of utilities. The widening shall be sufficient to bring a full road up to the minimum right-of-way width of 60 feet, or a half road up to a minimum right-of-way width of 30 feet. * * *"

As relevant, YCLDO 6.015(1) provides:

> "Road widening of substandard width roads will be encouraged in all areas, zones and plan designations where deemed necessary to provide for an adequate means of access, transportation, walkways, maintenance and the placement of utilities. The widening shall be sufficient to bring a full road up to a minimum right-of-way width of 60 feet, or a half road up to a minimum right-of-way width of 30 feet. * * *"

1 rejected intervenors' similar argument under the first assignment of error. The question of
2 how much improvement is required before the subdivision alignment could be used for
3 access by the seven lots was sufficiently raised in the first appeal and was not resolved in our
4 prior decision.

5 Nevertheless, we reject petitioner's argument under this assignment of error.
6 Petitioner makes no attempt to explain why it believes YCTSP 5.2.8 and YCLDO 6.015
7 operate in the manner that it suggests, and we do not believe they do. The most that can be
8 said is that these policies recognize the possible existence of "half roads" and establish as a
9 *minimum* that they have a 30-foot right of way.[22] Petitioner makes no attempt to explain
10 why the existing roadway on the subdivision alignment is properly viewed as a "half road."
11 More importantly, petitioner makes no attempt to explain why it believes the cited provisions
12 *require* that the county consider allowing half road improvements to the existing subdivision
13 alignment when comparing that alignment to the proposed conditional use alignment under
14 OAR 660-012-0065(5)(a). As we have already explained in our resolution of the first
15 assignment of error, the county's conclusion that the subdivision alignment must be
16 improved to the county standards set out at YCLDO 6.010 is based in part on an
17 unchallenged interpretation of YCLDO 7.020(4). Petitioners do not explain how they
18 believe YCTSP 5.2.8 and YCLDO 6.015(1) operate in conjunction with YCLDO 7.020(4) to
19 require consideration of 30-foot rights of way and 11-foot driving surfaces for the
20 subdivision alignment.

21 The third assignment of error is denied.

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[22]We note that YCLDO 6.010 does not authorize half streets and prohibits approval of half streets that would adjoin proposed subdivisions:

> "Half-streets proposed along a subdivision boundary or within any part of a subdivision or partition shall not be approved." YCLDO 6.010(7)(E).

1 **FOURTH ASSIGNMENT OF ERROR**

2 Under its fourth assignment of error, petitioner argues that the county erred by failing 3 to consider the cost of the required approach road from Layfayette Highway to access the 4 conditional use alignment. Petitioner conceded at oral argument that this issue was not 5 raised below during the county proceedings following our remand and for that reason is 6 waived. ORS 197.835(3).

7 The fourth assignment of error is denied.

8 **FIFTH ASSIGNMENT OF ERROR**

9 Under this assignment of error, petitioner alleges the county erred in applying OAR 10 660-012-0065(b) and (c) and concluding that the conditional use alignment would have "the 11 least impact on lands in the immediate vicinity devoted to farm or forest use."[23]

12 Because we reject petitioner's first four assignments of error, the county's decision 13 that the subdivision alternative may be rejected as an unreasonable alternative is affirmed. 14 Accordingly, even if the subdivision alternative would have fewer impacts on land devoted 15 to farm and forest use, that would provide no basis for reversing or remanding the county's 16 decision. We therefore do not consider the fifth assignment of error.

17 The county's decision is affirmed.

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[23]The existing subdivision alignment is already improved and already impacts the existing small farm and forest parcels that adjoin that alignment. Petitioner focuses on these existing impacts and downplays any additional impacts that might be associated with the approximately 70 additional daily trips that would likely be generated by the seven lots. Petitioner argues that taking 60,000 square feet of EFU-zoned land out of production and constructing a road across the existing farming operation on that property will have a greater impact than improving the subdivision alignment.

Intervenors point out that the rule protects farm and forest uses without regard to whether those farm and forest operations are on large or small parcels. The additional traffic that would cross the subdivision alignment will affect many more farm and forest properties than the conditional use alignment would affect. Intervenors also point to testimony that the conditional use alignment will not adversely affect the farming operations that adjoin that alignment.