

**MULTNOMAH COUNTY****LAND USE AND TRANSPORTATION PROGRAM**1600 SE 190<sup>TH</sup> Avenue Portland, OR 97233

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[http://www.co.multnomah.or.us/dbcs/LUT/land\\_use](http://www.co.multnomah.or.us/dbcs/LUT/land_use)

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## NOTICE OF DECISION

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This notice concerns a Planning Director Decision on the land use case(s) cited and described below.

**Case File:** T2-05-074

**Permit:** Lot Of Exception & Category 3 Land Division

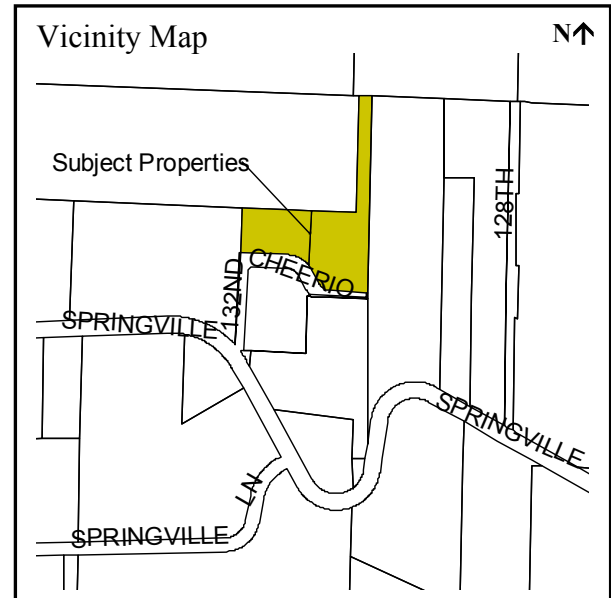
**Location:** 13147 & 13151 NW Cheerio Dr.  
TL 1600, Sec 16, T 1N, R 1W, W.M.  
Tax Account #R151500120 &  
R151500100

**Applicant:** John Lauer

**Owner:** Parcel 1: Natasha Kern & John Lauer  
Parcel 2: Tricia & Scott Cooper

**Base Zone:** Multiple Use Agriculture – 20 (MUA-20)

**Overlay Zones:** Significant Environmental Concern for Wildlife Habitat (SEC-h) and Streams (SEC-s)



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**Summary:** Applicant is proposing a Lot of Exception application and Category 3 Land Division to correct a land division problem on the subject properties in the MUA-20 zoning district.

**Decision:** Approved with conditions.

Unless appealed, this decision is effective Thursday, February 16, 2006, at 4:30 PM.

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Issued by:

By: \_\_\_\_\_  
Lisa Estrin, Planner

For: Karen Schilling- Planning Director

Date: Thursday, February 2, 2006

**Opportunity to Review the Record:** A copy of the Planning Director Decision, and all evidence submitted associated with this application, is available for inspection, at no cost, at the Land Use Planning office during normal business hours. Copies of all documents may be purchased at the rate of 30-cents per page. The Planning Director's Decision contains the findings and conclusions upon which the decision is based, along with any conditions of approval. For further information on this case, contact Lisa Estrin, Staff Planner at 503-988-3043.

**Opportunity to Appeal:** This decision may be appealed within 14 days of the date it was rendered, pursuant to the provisions of MCC 37.0640. An appeal requires a \$250.00 fee and must state the specific legal grounds on which it is based. To obtain appeal forms or information on the procedure, contact the Land Use Planning offices at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision cannot be appealed to the Land Use Board of Appeals until all local appeals are exhausted.

**This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Thursday, February 16, 2006 at 4:30 pm.**

**Applicable Approval Criteria:** Multnomah County Code (MCC):

*Administration & Procedures*

Chapter 37 particularly MCC 37.0530(B) Type II Application Process, MCC 37.0550 Initiation of Action, MCC 37.0560 - Code Compliance and Applications;

*Multiple Use Agriculture - 20*

MCC 33.2855 Dimensional Standards, MCC 33.2860(A) Lots of Exception, MCC 33.2870 Lot of Record, including MCC 33.0005(L)(13), MCC 33.2885 Access;

*Land Divisions – Category 3*

MCC 33.7855 Criteria for Approval: Category 3 Tentative Plan, including:

MCC 33.7800(B), (C) & (H) Category 1 Approval Criteria

MCC 33.7860 Contents of a Category 3 Tentative Plan, MCC 33.7885 Application of General Standards and Requirements, MCC 33.7890 Land Suitability, MCC 33.7895 Lots and Parcels, MCC 33.7905 Street Layout, MCC 33.7910 Street Design, MCC 33.7935 Easements, MCC 33.7950 Water Systems, MCC 33.7955 Sewage Disposal, MCC 33.7960 Surface Drainage, & MCC 33.7965 Electrical and Other Wires

Copies of the referenced Multnomah County Code sections can be obtained by contacting our office at 503-988-3043 or by visiting our website at [http://www.co.multnomah.or.us/dbcs/LUT/land\\_use](http://www.co.multnomah.or.us/dbcs/LUT/land_use).

**Scope of Approval**

1. Approval of this land use permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.
2. **This land use permit expires two years from the date the decision is final if; (a) development action has not been initiated; (b) building permits have not been issued; or (c) final survey, plat, or other documents have not been recorded, as required. The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 37.0690 or 37.0700, as applicable. A request for permit extension may be required to be granted prior to the expiration date of the permit.**

## **Conditions of Approval**

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parenthesis.

1. Pursuant to MCC 33.2860(A)(3), each new parcel created by the partition will have only one of the habitable dwellings.
2. Pursuant to MCC 33.7935, a storm water easement shall be shown on the final plat over the watercourse located in the panhandle and over the run-off channel of Parcel 1. The storm water easement shall substantially conform to the banks of the watercourse.
3. The property owners, or representatives thereof, shall complete the “Applicant’s Instructions for Finishing a Land Division”.
4. The property owners, or representatives thereof, shall retain a surveyor to complete the “Surveyors Instructions for Finishing a Land Division”.
5. Before the partition plat is submitted to the Multnomah County Surveyor's Office, two (2) blue line copies of the plat are to be filed with the Planning Director. Within 10 business days of filing, the Planning Director will determine whether the plat complies with this decision and the conditions of approval contained herein. At such time as the plat complies with this decision, a letter of zoning compliance will be provided to the Multnomah County Surveyor. [MCC 33.8015(A)]
6. Pursuant to MCC 33.8020, in addition to the information required to be shown on the tentative plan, the following shall be shown on the subdivision plat or partition plat:
  - (A) Corners of adjoining subdivisions or partitions.
  - (B) The location, width and centerline of streets and easements abutting the boundaries of the land division.
  - (C) Normal flood plain or high water line for any creek or other minor body of water or natural drainageway and the 100-year flood line of any major water body.
  - (D) The ownership of each private street shall be shown.

<b>Notice to Mortgagee, Lien Holder, Vendor, or Seller:</b>
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ORS Chapter 215 requires that if you receive this notice it must be promptly forwarded to the purchaser.
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## **Findings of Fact**

**FINDINGS:** Written findings are contained herein. The Multnomah County Code criteria and Comprehensive Plan Policies are in **bold font**. The applicants statements are identified below as ‘**Applicant:**’. Staff comments and analysis are identified as ‘**Staff:**’ and address the applicable criteria. Staff comments may include a conclusionary statement in *italic*.

### ***Project Description:***

#### **Applicant: I. Brief History & Description of Lot 1 Block 1 Cheerio Properties**

Until 1972 Lot 1 Block 1 CHEERIO had no residential structures and was considered one tax lot by Multnomah county. In 1972, Mr. Leach, the owner of this property, took out a VA loan which excepted the West 252 feet of the property. This is the first known record of the separation of the two parcels.

The current residential structure on the -01600 parcel (13147 Cheerio) was built in 1973. The residence has been continually occupied since being built.

In 2005 Ticor Title performed a title search on this property and a summary of their search is included in a separate document (deed history) included with this application.

In 1994 the -01700 parcel (West 252’ of Lot 1 Block 1) was sold and the current residence for that property was built. One of the items reported in the deed history is a 1994 Declaration of Deed Restriction issued by the Country to the owners (Pace). A copy of this declaration is included with this application. In this declaration the County approved development on this tract in exchange for obligating future owners to share costs for maintenance of Cheerio Drive abutting the tract. The issue of lot partitioning was not raised.

The two properties share road access from NW 132<sup>nd</sup> Ave. off of Springville Road. 132<sup>nd</sup> Ave. turns into Cheerio Drive. Both 132<sup>nd</sup> Ave. and Cheerio are graveled roads. Currently, Cheerio Drive (as shown on plat maps) effectively ends just on entry to the -01600 property – but a driveway continues on to the garage and residence on the property. Cheerio Drive was mapped out by the County to continue to the East border of the property – but the last portion of it is currently forested.

As shown on the tentative plan map (drawn to scale) the structures on both properties are well setback from the road and to each other.

Interior and exterior pictures of the two residences are included with this application.

#### **II. Description of 13147 NW Cheerio Dr. (1N1W16D – 01600) Property**

This property is a 1.9 acre parcel. As shown on the County plat maps this includes a 0.6 acre panhandle that extends northward from the northeast corner.

The residence is a 2-story, 4 bedroom, 3 bath single-family residence built in 1973. It has cedar siding, and a ceramic tile roof. The tile roof is especially durable and fire-resistant. There are wood decks in the rear off the living room and master bedroom. A 2-car garage is the only other building structure on the property. There are wood decks to the rear off the living room and master bedroom. The property is forested. The natural and garden vegetation, and highly porous soil, eliminate soil erosion problems around the property.

The septic system on the property has been well maintained and functioned without any problems since its installation.

The property shares a well with the residence on Lot 1 Block 2 Cheerio. A covenant agreement for the shared well use and maintenance, as well as a recent well test report are included with this application.

The property is additionally serviced by reliable electrical, natural gas, and telephone systems.

The front of the property, and the land on which all structures are located are level as shown on the enclosed topographical map. As shown on tentative plat map, there is a small channel (1 ½ to 2 ft wide) for water runoff that runs under the very rear (North end) of the living room. There is not a lower level below the upstairs living room, so that the channel is 10 feet below the actual level of the rear of the living room, which is supported by a concrete foundation on either side of the channel. The channel only has water in it after a recent rain, and the water level does not exceed 1 to 1 ½ inches even during a heavy rain. This channel eventually flows into Abbey Creek as indicated on the tentative plan map. The topographical map included indicates the slope that this channel takes as it exits the property to the northwest. Also, included with this application is a Flood Report from Ticor Title which shows the property is out of the Special Flood Hazard Area (SFHA).

The residence and property have been inspected and appraised numerous times in recent years (most recently in 2003) when the property was re-financed. All appraisers found the residence to be structurally sound and in good condition.

### **III. Description of 13151 NW Cheerio Dr. (1N1W16D – 01700) Property**

This is a 0.9 acre parcel comprising the West 252 feet of Lot 1 Block 1 CHEERIO. The land is lightly forested and level except for a slope into the Abbey Creek watershed that begins about 40 feet from the rear (North) of the house structure. A graveled semi-circular driveway in the front, accesses 132<sup>nd</sup> Avenue and Cheerio

#### **1.00 Administration and Procedures**

##### **1.01 Type II Case Procedures**

**MCC 37.0530(B): ...Upon receipt of a complete application, notice of application and an invitation to comment is mailed to the applicant, recognized neighborhood associations and property owners within 750 feet of the subject tract. The Planning Director accepts comments for 14 days after the notice of application is mailed and renders a decision...**

**Staff:** The application was submitted July 13, 2005 and was deemed complete as of December 15, 2005. An "Opportunity to Comment" notice was mailed on December 21, 2005 to all properties within 750 feet of the subject properties in compliance with MCC 37.0530. No written comments were received.

##### **1.02 Proof of Ownership**

###### **MCC 37.0550 Initiation of Action**

**Except as provided in MCC 37.0760, Type I – IV applications may only be initiated by written consent of the owner of record or contract purchaser. PC (legislative) actions may only be initiated by the Board of Commissioners, Planning Commission, or Planning Director.**

**Staff:** The proposed project is located on Tax Lot 1600 & 1700, Section 16D, Township: 1 North, Range: 1 West. Assessment & Taxation records show that Tax Lot 1600 is owned by Natasha Kern & John Lauer and Tax Lot 1700 is owned by Scott & Tricia Cooper. All four property owners have granted approval for John Lauer to make an application for a Lot of Exception application and Category 3 Land Division (Exhibit A.1). *This criterion has been satisfied.*

##### **1.03 MCC 37.0560 Code Compliance And Applications.**

**Except as provided in subsection (A), the County shall not make a land use decision, or issue a building permit approving development, including land divisions and property line adjustments, for any property that is not in full compliance with all applicable**

provisions of the Multnomah County Land Use Code and/or any permit approvals previously issued by the County.

(A) A permit or other approval, including building permit applications, may be authorized if:

- (1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or
- (2) It is necessary to protect public safety; or
- (3) It is for work related to and within a valid easement over, on or under an affected property.

(B) For the purposes of this section, Public Safety means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger the life, health, personal property, or safety of the residents or public. Examples of that situation include but are not limited to issuance of permits to replace faulty electrical wiring; repair or install furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel, or power; and actions necessary to stop earth slope failures.

**Staff:** It appears there was a problem in the creation of the 2 parcels from Lot 1, Block 1, Cheerio Tract in 1994. In order to correct the situation, a Land Division and Lot of Exception will need to be granted by the County. A Lot of Exception allows a variance to the minimum lot size in the district in the circumstance that 2 dwellings lawfully exist on a parcel. The Land Division is the actual review and approval of the partitioning of the land. Once this application is approved and a final plat recorded the existing land division problem will be corrected.

## 2.00 ***Multiple Use Agriculture – 20 Criteria***

### 2.01 **MCC 33.2855 Dimensional Requirements**

(A) Except as provided in MCC 33.2860, 33.2870, 33.2875 and 33.4300 through 33.4360, the minimum lot size for new parcels or lots shall be 20 acres.

(B) That portion of a street which would accrue to an adjacent lot if the street were vacated shall be included in calculating the area of such lot.

**Staff:** Parcel 1 is proposed to be 1.9 acres and Parcel 2 will be 0.9 acres in size. The applicant has applied for a Lot of Exception as provided in MCC 33.2860. The Lot of Exception criteria have been met. For additional information, please see finding 2.04 below. Cheerio Drive's right of way ranges from 25 ft to 50 ft in width (Exhibit B.4). No additional right of way is required from the subject properties pursuant to the Transportation Memo dated July 28, 2005 (Exhibit B.5).

### 2.02 **(C) Minimum Yard Dimensions - Feet**

Front	Side	Street Side	Rear
30	10	30	30

**Maximum Structure Height – 35 feet**

**Minimum Front Lot Line Length – 50 feet.**

**Staff:** The structures on Parcel 1 and Parcel 2 appear to meet the above required setbacks for the MUA-20 zoning district (Exhibit A.2 & B.6). *These criteria appear to have been met.*

2.03 **MCC 33.2860 Lots of Exception and Property Line Adjustments**

**(A) Lots of Exception**

**An exception to permit creation of a parcel of less than 20 acres, out of a Lot of Record, may be authorized when in compliance with the dimensional requirements of MCC 33.2855(C) through (E). Any exception shall be based on the following findings:**

**(1) The Lot of Record to be divided has two or more permanent habitable dwellings;**

**(2) The permanent habitable dwellings were lawfully established on the Lot of Record before October 4, 2000;**

**Staff:** The dwelling on Parcel 1 was permitted and constructed in 1973. The dwelling on Parcel 2 was permitted and constructed in 1994 (Exhibit B.6). Since both dwellings received land use approval and building permits were issued and final for both structures, it was determined that both dwellings were lawfully established. The two structures are currently habitable, permanent dwellings (Exhibit A.5). It appears that both dwellings meet the dimensional requirement of MCC 33.2855(C) through (E). See additional findings under section 2.02 above. *These criteria have been met.*

2.04 **(3) Each new parcel created by the partition will have at least one of the habitable dwellings; and**

**Staff:** The proposed tentative plan map (Exhibit A.2) shows that one dwelling will be located on each of the two parcels being created. *This criterion can be met through a condition of approval.*

2.05 **(4) The partition will not create any vacant parcels on which a new dwelling could be established.**

**Staff:** The proposed partition is for a 2 parcel partition. Each of the parcels will have one of the existing dwellings on it. *This criterion has been met.*

2.06 **MCC 33.2870 Lot of Record**

**(A) In addition to the Lot of Record definition standards in MCC 33.0005, for the purposes of this district the significant dates and ordinances for verifying zoning compliance may include, but are not limited to, the following:**

**(1) July 10, 1958, SR zone applied;**

**(2) July 10, 1958, F-2 zone applied;**

**(3) December 9, 1975, F-2 minimum lot size increased, Ord. 115 & 116;**

**(4) October 6, 1977, MUA-20 zone applied, Ord. 148 & 149;**

**(5) October 13, 1983, zone change from EFU to MUA-20 for some properties, Ord. 395;**

**(7) May 16, 2002, Lot of Record section amended, Ord. 982, reenacted by Ord. 997.**

**(B) A Lot of Record which has less than the minimum lot size for new parcels or lots, less than the front lot line minimums required, or which does not meet the access requirement of MCC 33.2885, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.**

(C) Except as otherwise provided by MCC 33.2860, 33.2875, and 33.4300 through 33.4360, no sale or conveyance of any portion of a lot other than for a public purpose shall leave a structure on the remainder of the lot with less than minimum lot or yard requirements or result in a lot with less than the area or width requirements of this district.

(D) The following shall not be deemed to be a Lot of Record:

- (1) An area of land described as a tax lot solely for assessment and taxation purposes;
- (2) An area of land created by the foreclosure of a security interest.
- (3) An area of land created by court decree.

**MCC 33.0005(L)(13) Lot of Record** – Subject to additional provisions within each Zoning District, a Lot of Record is a parcel, lot, or a group thereof which when created and when reconfigured (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.

(a) “Satisfied all applicable zoning laws” shall mean: the parcel, lot, or group thereof was created and, if applicable, reconfigured in full compliance with all zoning minimum lot size, dimensional standards, and access requirements.

(b) “Satisfied all applicable land division laws” shall mean the parcel or lot was created:

1. By a subdivision plat under the applicable subdivision requirements in effect at the time; or
2. By a deed, or a sales contract dated and signed by the parties to the transaction, that was recorded with the Recording Section of the public office responsible for public records prior to October 19, 1978; or
3. By a deed, or a sales contract dated and signed by the parties to the transaction, that was in *recordable form* prior to October 19, 1978; or
4. By partitioning land under the applicable land partitioning requirements in effect on or after October 19, 1978; and
5. “Satisfied all applicable land division laws” shall also mean that any subsequent boundary reconfiguration completed on or after December 28, 1993 was approved under the property line adjustment provisions of the land division code. (See *Date of Creation and Existence* for the effect of property line adjustments on qualifying a Lot of Record for the siting of a dwelling in the EFU and CFU districts.)

**Staff:** The Cheerio Subdivision plat was recorded in March 1973 (Exhibit B.7). Lot 1, Block 1 Cheerio Tract was lawfully created in accordance with the zoning regulations in place at the time. The proposed partition is to divide Lot 1, Block 1 into 2 parcels each containing a legally established habitable dwelling. Upon completion of the partition process, Parcel 1 and Parcel 2 of the Partition Plat will each be a Lot of Record pursuant to MCC 33.0005(L)(13).

## **2.07 MCC 33.2885 Access**

**Any lot in this district shall abut a street or shall have other access determined by the approval authority to be safe and convenient for pedestrians and for passenger and**



**emergency vehicles.**

**Staff:** Both Parcel 1 and Parcel 2 of the proposed Partition Plat front onto Cheerio Drive (Exhibit A.2). Cheerio Drive is a dedicated Local Access Road. *This criterion has been met.*

3.00 ***Land Division Criteria***

3.01 **MCC 33.7855 Criteria for Approval: Category 3 Tentative Plan**

**In granting approval of a Category 3 tentative plan, the Planning Director shall find that the criteria listed in subsections (B), (C) and (H) of MCC 33.7800 are satisfied and that the tentative plan complies with the area and dimensional requirements of the underlying zoning district.**

**(B) Approval will permit development of the remainder of the property under the same ownership, if any, or of adjoining land or of access thereto, in accordance with this and other applicable ordinances;**

**Staff:** Lot 1, Block 1 Cheerio Tract is currently owned by 2 parties (see finding 1.02 above). The proposed 2 parcel partition will divide the property and no remainder piece is involved. The proposed partition has met the Lot of Exception criteria listed under MCC 33.2860 to deviate from the minimum lot size of the MUA-20 zoning district. It appears that each of the existing dwellings proposed for Parcel 1 and Parcel 2 will meet the dimensional requirements of MCC 33.2855(C). Adjacent properties to the south may utilize Cheerio Drive to access once they dedicate right of way through any future partition request. *This criterion has been met.*

3.02 **(C) The tentative plan complies with the applicable provisions, including the purposes and intent of this Chapter.**

**Staff:** The proposed tentative plan map has met the applicable provisions for a Category 3 Land Division as found under section 3.06 through 3.14. *This criterion has been met.*

3.03 **(H) Approval will permit development to be safe from known flooding and flood hazards. Public utilities and water supply systems shall be designed and located so as to minimize or prevent infiltration of flood waters into the systems. Sanitary sewer systems shall be designed and located to minimize or prevent:**

- (1) The infiltration of flood waters into the system; and**
- (2) The discharge of matter from the system into flood waters.**

**Staff:** The existing structures are located over 190 feet from the closest stream to the north. The septic systems have been reviewed and approved by the County's Sanitarian (Exhibit A.4 and A.19) and are located over 100 feet away from any flood waters. The systems have also been designed to minimize infiltration and discharge from them during flood events. *This criterion has been met.*

3.04 **MCC 33.7860 Contents of Category 3 Tentative Plan**

**A tentative plan for a Category 3 Land Division shall consist of maps, written information and supplementary material adequate to provide the following:**

**(A) Type 3 tentative plan map contents. A tentative plan map of a sheet size and scale as specified in MCC 33.7810 shall indicate the following:**

- (1) Date, north point and scale of drawing.**
- (2) Description of the proposed land division sufficient to define its location and boundaries.**

- (3) Identification as a tentative plan map.
- (4) Location, names or purpose and width of all streets, rights-of-way or easements on or abutting the tract.
- (5) Natural features, water courses or areas covered by water.
- (6) The location and use of any buildings or structures proposed to remain after division.
- (7) The proposed parcels, their dimensions and areas.
- (8) Contiguous property under the same ownership.

**Staff:** The applicant has included the above required information on the Tentative Plan Map submitted on Exhibit A.2. *This criterion has been met.*

**3.05 (B) Written information; Category 3 tentative plan. Written information shall include:**

- (1) Name, address and telephone number of the record owner(s), owner's representative, designer(s), engineer(s) or surveyor(s), and the date of survey, if any.
- (2) Proof of record ownership of the tract and the representative's authorization.
- (3) Legal description of the tract.
- (4) Present and proposed uses.
- (5) Description of the water supply, methods of sewage disposal and storm water disposal, and the availability of other utilities.
- (6) Statements of the manner in which the criteria for approval listed in MCC 33.7855 are satisfied.
- (7) Statement of the improvements to be made or installed and the time scheduled therefore.

**(C) Supplementary material; Category 3 tentative plan. The Planning Director may require such additional information, listed in sections MCC 33.7805 through 33.7825, as the Director deems necessary to assist in the review and assessment of the land division proposal according to the provisions of this Chapter.**

**Staff:** The applicant has included the above required information on in various submitted documents including Exhibit A.1, A.2, A.4, A.9, A.10, A.15 and A.19. *These criteria have been met.*

**3.06 MCC 33.7885 Application of General Standards and Requirements**

**Every land division proposal shall comply with the applicable provisions of MCC 33.7890 through 33.7965.**

**Staff:** The proposed partition has met the applicable provisions listed under MCC 33.7890 through 33.7965. See additional findings below. *This criterion has been met.*

**3.07 MCC 33.7890 Land Suitability**

**A land division shall not be approved on land found by the approval authority to be both unsuitable and incapable of being made suitable for the intended uses because of any of the following characteristics:**

- (A) Slopes exceeding 20%;**

- (B) Severe soil erosion potential;**
- (C) Within the 100-year flood plain;**
- (D) A high seasonal water table within 0– 24 inches of the surface for three or more weeks of the year;**
- (E) A fragipan or other impervious layer less than 30 inches from the surface; or**
- (F) Subject to slumping, earth slides or movement.**

**Staff:** The Multnomah County Soil Survey indicates that the primary soil type on the site is Cascade silt loam with slopes ranging from 8 to 15%. The soil survey specifies that Cascade silt loam has moderate soil erosion potential and can have a water table depth of 18 to 30 inches from December through April and may have a fragipan at a depth of 20 to 30 inches. The existence of existing structures and septic systems demonstrate that both parcels are suitable for the proposed residential use. There is no evidence of slumping or earth movement on the property. *These criteria have been met.*

### 3.08 MCC 33.7895 Lots and Parcels

**The design of lots and parcels shall comply with the following:**

- (A) The size, shape, width, orientation and access shall be appropriate:**
  - (1) To the types of development and uses contemplated;**
  - (2) To the nature of existing or potential development on adjacent tracts;**
  - (3) For the maximum preservation of existing slopes, vegetation and natural drainage;**
  - (4) To the need for privacy through such means as transition from public to semi-public to private use areas and the separation of conflicting areas by suitable distances, barriers or screens; and**
  - (5) To the climactic conditions including solar orientation and winter wind and rain.**
- (B) The side lot lines shall be perpendicular to the front lot line or radial to the curve of a street, to the extent practicable.**
- (C) Double frontage or reverse frontage lots or parcels shall be provided only when essential for separation of land uses from arterials or to overcome specific disadvantages of topography or orientation.**
- (D) A land division may include creation of a flag lot with a pole that does not satisfy the minimum frontage requirement of the applicable zoning district, subject to the following:**
  - (1) When a flag lot does not adjoin another flag lot, as shown in MCC 33.7895 Figure 1, the pole portion of the flag lot shall be at least 16 feet wide.**
  - (2) Where two flag lots are placed back to back as shown in MCC 33.7895 Figure 2, the pole portion of each flag lot shall be at least 12 feet wide.**
- (E) Within a land division, flag lots shall not be stacked one behind the other as shown in MCC 33.7895 Figure 3. Instead, a private accessway shall be used as shown in MCC 33.7895 Figure 4.**

**Staff:** Parcel 2 is rectangular shaped. Parcel 1 is a rectangle shape with a panhandle coming

off the rear property line and extending 425.04 ft to the north. Both parcels are appropriately shaped to allow a single family dwelling and accessory uses. Dwellings of either lot can face south to allow for passive solar activity and development can be sited away from sensitive riparian areas to the north. The proposed parcel shapes take into consideration environmental and climatic conditions on the site. The proposed property lines are perpendicular to the front lot lines (Exhibit A.2). Neither parcel has double frontage. While Parcel 1 has a panhandle, it does not connect into Cheerio Drive, but extends off of the rear property line. *These criteria have been met.*

### 3.09 MCC 33.7910 Street Design

**The width, design and configuration of all streets in or abutting the land division shall comply with applicable ordinance standards as follows:**

**(A) For a public street — in accordance with the Street Standards Code and Rules; and**

**(C) A cul-de-sac shall be as short as possible and shall have a maximum length of 400 feet and serve building sites for not more than 18 dwelling units. A cul-de-sac shall terminate with a turnaround having a radius of 50 feet.**

**Staff:** Cheerio Drive is a public right of way. The Transportation Division has indicated that no additional improvements or dedications are required as part of this partition application. Cheerio Drive is designed to continue when the properties to the east development in the future. *These criteria have been met.*

### 3.10 MCC 33.7935 Easements

**Easements shall be provided and designed according to the following:**

**(A) Easements for utilities and storm or sanitary sewers may be required where appropriate to serve abutting lots or parcels. Such easements shall be not less than 10 feet in width, centered on side or rear property lines or five feet in width along front property lines.**

**(B) Where a tract is traversed by a water course such as a drainage way, channel or stream, a storm water easement or drainage right-of-way adequate to conform substantially with the lines of the water course shall be provided. In a drainage district or water control district, such easement or right-of-way shall be approved by the district board, in accordance with ORS 92.110. If not within such District, approval shall be by the County Engineer.**

**(C) Easements for pedestrian paths and bikeways shall be not less than 10 feet in width.**

**Staff:** A condition of approval has been included requiring that the waterline easement be shown over Parcel 1 and the run-off channel leading to Abbey Creek be protected by a storm water easement. *As conditioned, these criteria have been met.*

### 3.11 MCC 33.7950 Water System

**The provision of domestic water to every lot or parcel in a land division shall comply with the requirements of subsections (4) (a), (b), or (c) of ORS 92.090 and MCC 33.7985 of this Chapter.**

**Staff:** The water for Parcel 1 is via a shared well which is located on the parcel to the south of Cheerio Drive (Exhibit A.10 & A.17). Parcel 2 is served by an on-site well (Exhibit A.18). *This criterion has been met.*

3.12 **MCC 33.7955 Sewage Disposal**

**The provision for the disposal of sewage from every lot or parcel in a land division shall comply with the requirements of subsection (5) (c) of ORS 92.090 and MCC 33.7990 of this Chapter.**

**Staff:** Both parcels are served by septic systems (Exhibit A.4 & A.19) located on the respective parcels. *This criterion has been met.*

3.13 **MCC 33.7960 Surface Drainage**

**Surface drainage and storm sewer systems shall be provided as required by section MCC 33.7995. The County Engineer may require on-site water disposal or retention facilities adequate to insure that surface runoff volume after development is no greater than that before development.**

**Staff:** Information regarding the storm water systems for Parcel 1 and Parcel 2 is limited on the Tentative Plan Map (Exhibit A.2). Each parcel is currently occupied by a single family dwelling, a septic system and accessory uses. Surface run-off from these improvements is currently on-site and no additional impervious areas are proposed with this application. In the future, new structures may trigger the need for a storm water system on each of these parcels. *As conditioned, this criterion can be met.*

3.14 **MCC 33.7965 Electrical and Other Wires**

**Wires serving within a land division, including but not limited to electric power, communication, street lighting and cable television wires, shall be placed underground. The approval authority may modify or waive this requirement in acting on a tentative plan upon a finding that underground installation:**

**(A) Is impracticable due to topography, soil or subsurface conditions;**

**(B) Would result in only minor aesthetic advantages, given the existence of above-ground facilities nearby; or**

**(C) Would be unnecessarily expensive in consideration of the need for low-cost housing proposed on the lots or parcels to be served.**

**Staff:** The electrical wires have already been underground with the development of the two dwellings. *This criterion has been met.*

4.00 **Conclusion**

Based on the findings and other information provided above, the applicant has carried the burden necessary for the approval of a Lot of Exception and Category 3 Land Division application in the MUA-20 zoning district. This approval is subject to the conditions of approval established in this report.

5.00 **Exhibits**

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

‘C’ Procedural Exhibits

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	2	General Application Form	7/13/05

A.2	1	Tentative Plan Map	7/13/05
A.3	1	Topo Survey (Limited)	7/13/05
A.4	5	Certification of On-Site Sewage Disposal & Other Septic Documents for 13151 NW Cheerio Drive	7/26/05
A.5	3	Photographs of Interior of Dwellings at 13147 & 13151 NW Cheerio Drive	7/13/05
A.6	1	Floor Plan for 13147 NW Cheerio Drive	7/13/05
A.7	1	Floor Plan for 13151 NW Cheerio Drive	7/13/05
A.8	1	Flood Report for 13147 NW Cheerio Drive	7/13/05
A.9	1	Well Drillers Report for the well serving 13147 & 13151 NW Cheerio Drive	7/13/05
A.10	1	Covenant Regarding Sharing of Well and Road	7/13/05
A.11	2	Bargain & Sale Deed for TL 1600, 1N1W16D (Recorded in Book 2003-064863)	7/13/05
A.12	3	Statutory Warranty Deed for TL 1700, 1N1W16D (Recorded in Book 2000-080845)	7/13/05
A.13	2	Letter Regarding Application – Dated 7/12/05	7/13/05
A.14	2	Narrative Description of Properties	7/13/05
A.15	1	Deed History of Lot 1, Block 1 Cheerio since 1972 as Reported by Ticor Title (2005)	7/13/05
A.16	4	Declaration of Deed Restriction	7/13/05
A.17	1	Certification of Water Service for 13147 NW Cheerio Drive	7/13/05
A.18	1	Certification of Water Service for 13151 NW Cheerio Drive	7/13/05
A.19	1	Certificate of Satisfactory Completion	7/13/05

'B'	#	Staff Exhibits	Date of Document
B.1	2	A&T Property Records for TL 1600 & 1700 1N1W16D	7/13/05
B.2	1	A&T Improvement Information for 1700, 1N1W16D	7/13/05
B.3	1	A&T Improvement Information for 1600, 1N1W16D	7/13/05
B.4	1	A&T Map Blow-Up	7/13/05
B.5	2	Memorandum from Transportation Planning	7/28/05

		to Land Use Planning Regarding the Local Access Road	
B.6	1	Site Plan Approval for the Dwelling Constructed on Parcel 2	1/19/06
B.7	1	Cheerio Subdivision	1/19/06

'C'	#	Administration & Procedures	Date
C.1	2	Incomplete Letter	8/12/05
C.2	1	Complete Letter – Day 1 (12/15/05)	12/21/05
C.3	3	Opportunity to Comment	12/20/05
C.4	15	Administrative Decision	2/2/06