MULTNOMAH COUNTY
LAND USE AND TRANSPORTATION PROGRAM
1600 SE 190TH Avenue Portland, OR 97233
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http://www.multco.us/landuse

DECISION OF HEARINGS OFFICER

Administrative Decision by the Planning Director; Category 1 Land Division; Conditional Use Permit for Development Within the Protected Aggregate and Mineral Resources Overlay Subdistrict; Road Rules Variance; Significant Environmental Concern Permit; Hillside Development Permit; Exception to Secondary Fire Safety Zone, Adjustment to Forest Practices Setback

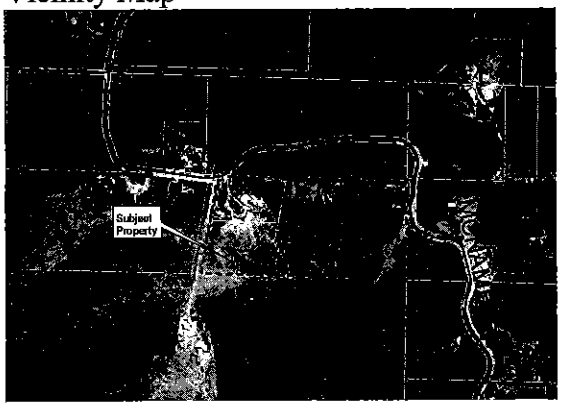
Case File: T3-2012-2097

Hearings Officer: Liz Fancher

Hearing Date, Time, & Place:

April 13, 2012 at 8:30 a.m., in Room 103 at the Land Use Planning Division office located at 1600 SE 190th Avenue, Portland, OR 97233

Vicinity Map N↑



Location:	13225 NW McNamee Road Map: 2N1W32B, Tax Lots: 700 & 800 W.M. Tax Account: R971320410 & R971320400
Applicant(s):	Larry and Laura Luethe
Owner(s):	Larry and Laura Luethe
Summary:	The applicants request approval of a Conditional Use Permit for a Category 1 Land Division and for residential development within the Protected Aggregate and Mineral Resources Overlay Subdistrict (PAM), Administrative Decision for implementation of state Measure 49 approval, Significant Environmental Concern for wildlife habitat (SEC-h) permit, Hillside Development permit for residential development, Exception to Secondary Fire Safety Zone, Adjustment to Forest Practices Setbacks and a Road Rules Variance for proposed access onto NW McNamee Road.
Base Zone:	Commercial Forest Use – 2 (CFU-2)
Overlay Zones:	Protected Aggregate and Mineral Resources Overlay Subdistrict (PAM), Significant Environmental Concern for wildlife habitat (SEC-h), Significant Environmental Concern for streams (SEC-s), and Hillside Development (HD).
Site Size:	18.91 acres

Applicable Approval Criteria: Multnomah County Code (MCC):

Category 1 Land Division: MCC 33.7705, 33.7765, 33.7770, 33.7800-33.7825, 33.7865-33.8035

Conditional Use Permit for Dwellings in the Protected Aggregate Mineral Impact Area Overlay: MCC 33.6300 – 33.6350 and 33.5700 – 33.5745

Significant Environmental Concern for Wildlife Habitat: MCC 33.4500-33.4550, 33.4570

Hillside Development Permit: MCC 33.5500-33.5525

Commercial Forest Use Zone: MCC 33.2200-33.2310

Exceptions for Secondary Fire Safety Zones: MCC 33.2310

Adjustments: MCC 33.7601-33.7611

Road Rules Variance: Multnomah County Road Rules (MCRR) 16.000 MCRR 4.000

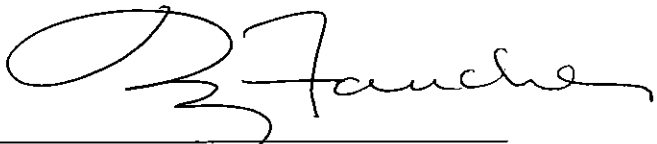
Administration and Procedures: MCC Chapter 37

Measure 49: Oregon Administrative Rules (OAR) 660-041-0000 – 660-041-0530

Hearings Officer's Decision

The Hearings Officer approves, with conditions of approval, the application request for Conditional Use Permit for a Category 1 Land Division and for residential development within the Protected Aggregate and Mineral Resources Overlay Subdistrict (PAM), Administrative Decision for implementation of state Measure 49 approval, Significant Environmental Concern for wildlife habitat (SEC-h) permit, Hillside Development permit for residential development, Exception to Secondary Fire Safety Zone, Adjustment to Forest Practices Setbacks and a Road Rules Variance for proposed access onto NW McNamee Road.

Approved this 7th day of May, 2012.



Liz Fancher, Hearings Officer
Multnomah County, Oregon

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 brackets.

1. Approval of these permits is based on the submitted written narratives and most current plans (prior to date of decision), including the wildlife conservation plans [Exhibits A.4 and A.7.8]. 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 the approvals described herein.

2. This land use permit expires four (4) years from the date the decision is final pursuant to MCC 37.0690(C). The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 37.0695. The request for a permit extension must be submitted prior to the expiration of the approval period.

3. Before the final plat of the partition is submitted to the Multnomah County Surveyor's Office, two (2) blue-line copies of the final plat shall 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. When the final plat complies with this decision, a letter of zoning compliance will be provided to the Multnomah County Surveyor by the Planning Director and the final plat may be submitted to the Multnomah County Surveyor's Office. [MCC 33.8015(A)].

4. No building permits will be issued, nor shall any of the parcels be sold, transferred or assigned until the final plat is signed by the Planning Director and County Surveyor and the Final Plat has been recorded with the Multnomah County Recorder's Office. The Final Plat shall show all new lots and parcels. The Final Plat must be 18" x 24" in size and shall contain the information required by Chapter 92 of Oregon Revised Statutes as amended by Oregon Laws, Chapter 772. [MCC 33.8015] Two prints of the subdivision or partition plat shall accompany the final drawing, conforming to all applicable requirements as established by the Oregon Revised Statutes (ORS), Chapters 92 and 209. Notwithstanding optional provisions in ORS Chapter 92, all parcels created shall be surveyed, monumented and platted, regardless of parcel area.

5. The land owner is to complete the procedures as described in the "Applicant's Instructions for Finishing a Land Division" (Exhibit B.10). The land owner is also to provide his/her surveyor the enclosed "Surveyor's Instructions for Finishing a Land Division" (Exhibit B.11) which provide instructions for drafting required materials. [MCC 33.7797(D)(6)]

6. Prior to building plan sign-off, the land owner shall obtain all required sanitation permits from the City of Portland Bureau of Environmental Services and copies shall be submitted to the Planning office. [MCC 33.7955]

7. A five-foot wide utility easement along all property lines abutting a street, as those lines are located after land is dedicated for additional right-of-way per Condition of Approval 40, is required and must be shown on the Final Plat. The placement of the utility easement may be modified as requested, in writing filed with the Planning Director, by a public or private utility provider. Utility infrastructure may not be placed within one foot of a survey monument location noted on a subdivision or partition plat. A stormwater or drainage easement that complies with the requirements of MCC 33.7935 (B), as confirmed in writing by the Planning Director, shall also be shown on the final plat. [MCC 33.7935]

8. The statement, in Exhibit B.12 that required by ORS 215.293 shall be recorded with the Multnomah County Division of Records prior to Planning Division approval of a building permit to construct a single-family residence approved in this application. The waiver shall be recorded in the chain of title for the parcel that is being developed with an approved single-family residence. It need not be recorded in the chain of title of any other parcel until such time as the other parcel is developed with an approved single-family residence. The required statement shall provide that the owner of the parcel being developed with a single-family home and the successors in interest acknowledge the rights of owners of nearby property to conduct agricultural and forestry operations and practices for which no action or claim is allowed under ORS 30.936 or 30.937. [ORS 215.293]

9. The State of Oregon (DLCD) conditions of approval (Final Order E118605 – Exhibit A.7.26), as interpreted by this decision, are also conditions of approval of this permit [ORS 195.300 to 195.336].

10. Prior to building plan sign-off, the property owner shall obtain right-of-way permits from the Land Use and Transportation office for any new accesses and/or work within the County right-of-way or for any increase in storm-water drainage from the site to the right of way. The property owner shall provide a minimum 20-foot long paved approach to County right-of-way. [MCRR 4.000]

11. New dwellings shall be connected to an approved domestic water supply. [MCC 33.7715]

12. After the decision is final and prior to building permit sign-off, the property owner shall record the Notice of Decision cover sheet through the conditions of approval with the County Recorder. The Notice of Decision shall run with the land. Proof of recording shall be made prior to building permit sign-off and a copy filed with Land Use Planning. Recording shall be at the applicant's expense [MCC 37.0670].

13. The property owner shall ensure that the proposed development work is observed by a Certified Engineering Geologist or Geotechnical Engineer. This observation shall be at the owner's expense. The name, address and phone number of the Certified Engineering Geologist or Geotechnical Engineer that will be conducting the observation of the development shall be submitted to the Planning Director prior to zoning review for a building permit. The observation of the development activities by the Certified Engineering Geologist or Geotechnical Engineer shall include but is not limited to foundation work, confirmation on installation and effectiveness of all erosion and sediment control measures, and a final observation prior to the final building permit inspection.

14. Prior to building permit final occupancy, the property owner shall submit to the County Land Use Planning Office a report from the observing Certified Engineering Geologist or Geotechnical Engineer which confirms that proper measures were implemented to meet recommendations of the of the Addendum to the Hillside Development Permit Application (Exhibits A.5, A.7.23 and A.7.26) as well as any other recommendations of the Certified Engineering Geologist or Geotechnical Engineer deemed necessary to achieve site suitability for the development. This report shall be signed by the Certified Engineering Geologist or Geotechnical Engineer with their seal (stamp) affixed to the report.

15. The property owner shall implement the erosion and sediment control measures as shown and listed on the erosion control plan (Exhibit A.7.5) unless amended by the observing Certified Engineering Geologist or Geotechnical Engineer to achieve better site suitability for the development and improve erosion and sediment control.

16. The property owner shall consistently maintain the erosion and sediment control measures to ensure the measures are in proper working order. The property owner and observing Certified Engineering Geologist or Geotechnical Engineer shall monitor the erosion and sediment control measures to ensure the measures are in proper working order. Additional measures shall be immediately installed to remedy the problem if sediment is determined to be escaping the development area. Silt fencing shall be used on all downhill portions adjacent to new development during construction.

17. All excavated spoils from the project shall be removed from the property. Spoil materials removed off-site shall be taken to a location approved for the disposal of such material by applicable Federal, State and local authorities. Any stockpiles of top soil to be used for fill shall be covered with plastic sheeting anchored to prevent disruption from wind.

18. The property owner shall ensure that non-erosion pollution associated with construction such as pesticides, fertilizers, petrochemicals, solid wastes, construction chemicals, or wastewaters are prevented from leaving the construction site through proper handling, disposal, continuous site monitoring and clean-up activities. On-site disposal of construction debris is not authorized under this permit. This permit does not authorize dumping or disposal of hazardous or toxic materials, synthetics (i.e. tires, etc), petroleum-based materials, or other solid wastes which may cause adverse leachates or other off-site water quality effects.

19. The property owner is responsible for removing any sedimentation caused by development activities from all neighboring surfaces and/or drainage systems. If any features within the adjacent public right-of-way are disturbed, the property owner shall be responsible for returning such features to their original condition or a condition of equal quality.

20. The County may supplement described erosion control techniques if turbidity or other down slope erosion impacts resulting from on-site grading work. The Portland Building Bureau (Special Inspections Section), the local Soil and Water Conservation District, or the U.S. Soil Conservation Service can also advise or recommend measures to respond to unanticipated erosion or sedimentation effects.

21. The erosion control permit notice card (provided at plan signoff) shall be posted at the location of the driveway entrance to the property as it leaves the easement access road in a clearly visible location (print towards the road) prior to any soil disturbance. This notice is to remain posted until such time as the grading/excavating work is completed and the vegetation has been re-established in disturbed areas. The erosion control permit notice shall be obtained during zoning review of building permit plans. In the event this sign is lost, destroyed, or otherwise removed prior to the completion of the grading work, the applicant shall immediately contact the County Land Use Planning Office to obtain a suitable replacement.

22. The property owner shall install the stormwater disposal system designed by GeoPacific Engineers, in the early phase of the development as shown on the site plan/erosion control plan (Exhibit A.7.5). This system shall collect and disposed of stormwater from new impervious surfaces and shall properly control the rate of flow for a 10year/24hour storm event with the runoff no greater than that which existed prior to development.

23. All disturbed areas are to be seeded or planted within thirty (30) days of the date grading activities are concluded.

24. Stripping of vegetation, grading, or other soil disturbance shall be done in a manner which will minimize soil erosion, stabilize the soil as quickly as practicable, and will expose the smallest practical area at any one time during construction.

25. Mulching shall be used to protect exposed critical areas during development.

26. Silt fencing shall be installed down slope of the disturbed soil area prior to soil disturbance and maintained until project is finalized and vegetation has been re-established. The location of all silt fencing, other grading and erosion control measures to be installed, and soil stockpiles must be shown on all final plan sets.

27. Stockpiled topsoil shall be protected from erosion by applying a 6-mil plastic sheet cover. Disposed spoil areas shall be seeded as soon as permanent placement is completed. All disturbed areas are to be seeded or planted within thirty (30) days of the date grading activities are concluded.

28. The Property Owner shall maintain best erosion control practices through all phases of development. Erosion control measures are to include hay-bale sediment barriers on the down slope of all disturbed areas in accordance with the submitted application materials of this permit. Reseeding at a rate of 100 pounds per acre shall be accomplished as soon as ground disturbing activities have been completed. If hydromulch will be employed it shall be installed at a rate of 2,000 pounds per acre. All erosion control measures are to be implemented as prescribed in the current edition of the *Erosion Prevention Sediment Control Plans Technical Guidance Handbook,* copies of which are available for purchase at our office, or through the City of Portland. The property owner or representative shall verify that all erosion control measures are properly installed and in working order prior to initiating grading activities.

29. The recommendations listed in the Geotechnical Reports prepared by GeoPacific Engineers (Exhibits A.5, A.7.23 and A.7.26), shall be implemented during all stages of the development. If a recommendation contained with this report conflicts with any of the Conditions of Approval outlined in this Staff Decision (T3-2012-2097), said Conditions shall supersede those contained within the report.

30. The property owner shall maintain a primary and a secondary fire safety zone on Parcels 2 and 3 as outlined below and show the fire safety zones on the building permit site plan.

    a. A primary fire safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure. Trees within this safety zone shall be spaced with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches within 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height.

    b. A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone on the subject property, except as noted below:

    Parcel 2 secondary fire safety zone:
    North: 50 feet.
    South: 50 feet.
    East: 100 feet.
    West: 50 feet.

Parcel 3 secondary fire safety zone:
North: 100 feet.
South: 100 feet.
East: 55 feet.
West: 100 feet.

The goal of the secondary fire safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Maintenance of the secondary fire safety zone is required only on land surrounding the dwelling that is owned or controlled by the property owner of each parcel.

31. The dwelling shall be constructed in accordance with the International Fire Code Institute Urban-Wildland Interface Code Section 504 Class 1 Ignition Resistant Construction as adopted August, 1996, or as later amended. The dwelling shall have a central station monitored alarm system. There shall be no combustible fences within 12 feet of the exterior surface of the dwelling.

32. Prior to building permit final inspection the property owner shall install the proposed residential driveways serving all three proposed parcels. The driveways shall meet the following standards [MCC 33.2261(A)]:
    a. Supports a minimum gross vehicle weight (GVW) of 52,000 lbs.
    b. Provide an all-weather surface of at least 12 feet in width for a driveway;
    c. Provide minimum curve radii of 48 feet or greater;
    d. Provide an unobstructed vertical clearance of at least 13 feet 6 inches;
    e. Provide a turnaround with a radius of 48 feet or greater at the end of any access exceeding 150 feet in length; and
    f. The driveway meets fire district standards. [MCC 33.2261]

33. The proposed dwellings shall comply with the standards of the applicable building code. Prior to zoning sign off for building plan check, the property owner or their representative shall provide documentation on the building plans that the proposed dwellings comply with the following [MCC 33.2261(C)]:
    a. A fire retardant roof; and
    b. A spark arrester on each chimney.

34. Prior to starting construction work of the dwelling the property owner or their representative shall obtain the required building department permits for the type of construction proposed. It is the property owner's responsibility to confirm that the work performed under the building permit shall be completed with a final inspection.

35. There shall be no combustible fences erected within 12 feet of the exterior surface of the proposed buildings. [MCC 33.2310(B)(3)]

36. If any fencing is installed along the front property line in the future it shall meet the fencing requirements of County code, currently MCC 33.4570(B)(6).

37. No new fencing is authorized by this permit except for fencing associated with agricultural production.

38. No nuisance plants listed in MCC 33.4570(B)(7) shall be planted on the subject property.

39. The property owner shall trim and/or remove vegetation bordering the proposed driveway to Parcel 3 (Exhibit A.7.5) in order to improve sight distance when the driveway is installed. Thereafter, this vegetation shall be periodically maintained in order to maintain the maximum sight distance [MCRR 16.100 and MCRR 16.225].

40. Prior to final plat approval, the property owner shall dedicate 5 feet of road frontage along each of the property's two frontages along NW McNamee Road.

41. Any work within the County Right of Way requires a Right of Way permit from Multnomah County. The Multnomah County Road Rules requires a permit for all driveway approaches to roads under County jurisdiction. The property owner is required to obtain a Right of Way permit will be required to obtain an access/encroachment permit for the proposed driveway accesses onto NW McNamee Road [MCRR 18.250]. Please contact Alan Young at (503) 988-3582 for more information on how to obtain a permit.

42. A paved road approach is required for each new access drive. The paved approach shall be 20 feet deep and shall be measured from the edge of pavement of NW McNamee Road. The paved approach must not create any drainage problems along the County road. This paved approach standard will help to protect the County road from debris from the new driveway, and will improve the safety of this access. Note that a $1,000 deposit is required for the paved approach.

43. Any work in the right of way, including the removal of trees, or any increase in storm-water drainage from the site to the right of way will require review and a permit from Multnomah County. [MCRR 18.750, DCM 5.1]

44. Any deviation from the County Standards, as set forth in the Road Rules or the County's Design and Construction Manual, shall be reviewed through the variance process as described under Road Rules Section 16.000.

45. Prior to building plan sign-off for the dwellings, the driveways and fire breaks shall be completed by the property owner and inspected and approved by the Tualatin Valley Fire District.

46. The following Fire District requirements (Exhibit A.7.22) shall be met by the property owner and verified by the Tualatin Valley Fire District prior to building plan sign-off:

    A. Access roads shall be within 150 feet of all portions of the exterior wall of the first story of the building. An approved turn-around is required if the remaining distance to an approved intersecting roadway, as measured along the fire apparatus access road, is greater than 150 feet. The access drives shall be inspected and approved by the Tualatin Valley Fire District prior to building plan sign-off.

    B. When buildings are completely protected with an approved automatic fire sprinkler system, the requirements for fire apparatus access may be modified as approved by the fire code official in writing filed with the Planning Director in the file for T3-2012-2097.

    C. The access roads shall be an all-weather surface that is easily distinguishable from the surrounding area and is capable of supporting not less than 12,500 wheel load and 60,000 pounds gross vehicle

weight. The Fire District may require documentation from a registered engineer that the access roads meet the standard.

D. Access drive grades shall not exceed 10 percent. Intersections and turn-arounds shall be level (maximum 5%) with the exception of crowning for water run-off. When fire sprinklers are installed, a maximum grade of 15% may be allowed. The approval of fire sprinklers as an alternate shall be accomplished in accordance with provisions of ORS 455.610(5).

E. Gates securing access roads shall comply with all of the following: Minimum unobstructed width shall be 16 feet or two 10 foot sections with a center post or island. Gates serving one or two-family dwellings shall be a minimum of 12 feet in width. Gates shall be set back at minimum of 30 feet from the intersecting roadway. Gates shall be of the swinging or sliding type. Manual operation shall be capable by one person. Electric gates shall be equipped with a means for operation by fire department personnel. Locking devices shall be approved.

F. Required fire flow for rural and suburban areas in which adequate and reliable water supply systems do not exist may be calculated in accordance with National Fire Protection Association Standard 1142, 2001 Edition when approved by the fire code official. Contact the Fire Marshall's office for special assistance and other requirements that may apply.

G. Approved fire apparatus access roadways and fire fighting water supplies shall be installed and operational prior to any combustible construction or storage of combustible materials on the site.

H. Buildings shall have approved address numbers or approved building identification placed in a position that is plainly legible and visible from the street or road fronting the property. These numbers shall contrast with their background. Address numbers shall be Arabic numerals or alphabet numbers. Numbers shall be a minimum of 4 inches high with a ½ inch stroke.

I. The above Fire District requirements may be modified by the Tualatin Valley Fire District, provided said modifications must be approved by the District in writing and filed with the Planning Director in the record of this land use application to be allowed by this permit.

47. Prior to building plan sign-off for each dwelling the property owner shall obtain the required sanitation permits from the City of Portland Bureau of Environmental Services.

48. Prior to final approval of the partition final plat by the County Engineer, the applicant shall execute and file with the County Engineer an agreement with the County, which shall include:

A. A schedule for the completion of required improvements;

B. Provision that the applicant file with the County Engineer a maintenance bond, on forms provided by the Engineer, guaranteeing the materials and workmanship in the improvements required by this Chapter against defects for a period of 12 months following the issuance of a certificate of acceptance by the County Engineer; and

C. A surety bond, executed by a surety company authorized to transact business in the State of Oregon, or a certified check or other assurance approved by the County Attorney, guaranteeing complete performance. Such assurance shall be for a sum equal to 110% of the actual costs of the improvements as estimated by the County Engineer.

49. In addition to the information required to be shown on the tentative plan, the following shall be shown on the 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.

    E. Other certifications required by law.

50. The following shall accompany the subdivision plat or partition plat, as appropriate:

    A. A copy of any deed restrictions applicable to the subdivision or partition.

    B. A copy of any dedication requiring separate documents.

    C. Normal as used in this section, "lot" means a unit of land that is created by a subdivision of land, and a "tract" will be considered a lot, except for street plugs.

51. A restrictive covenant in favor of the mining operator shall be recorded on parcels 1 and 2. The restrictive covenant shall incorporate all approval conditions, and an agreement not to object to the conduct of lawful operations conducted at the nearby surface mine.

52. Stripping of vegetation, grading, or other soil disturbance shall be done in a manner which will minimize soil erosion, stabilize the soil as quickly as practicable, and expose the smallest practical area at any one time during construction. Development Plans shall minimize cut or fill operations and ensure conformity with topography so as to create the least erosion potential and adequately accommodate the volume and velocity of surface runoff. Temporary vegetation and/or mulching shall be used to protect exposed critical areas during development. Whenever feasible, natural vegetation shall be retained, protected, and supplemented. A 100-foot undisturbed buffer of natural vegetation shall be retained from the top of the bank of a stream, or from the ordinary high watermark (line of vegetation) of a water body, or within 100-feet of a wetland. The above mentioned buffer may only be disturbed upon the approval of a mitigation plan which utilizes erosion and stormwater control features designed to perform as effectively as those prescribed in the currently adopted edition of the "Erosion Prevention & Sediment Control Plans Technical Guidance Handbook (1994)" and the "City of Portland Stormwater Quality Facilities, A Design Guidance Manual (1995)" and which is consistent with attaining equivalent surface water quality standards as those established for the Tualatin River Drainage Basin in OAR 340;

53. A performance bond may be required to assure the full cost of any required erosion and sediment control measures. The bond may be used to provide for the installation of the measures if not completed by the contractor. The bond shall be released upon determination the control measures have or can be expected to perform satisfactorily. The bond may be waived if the Director determines the scale and duration of the project and the potential problems arising therefrom will be minor. If

inspection by County staff reveals erosive conditions which exceed those prescribed by the Hillside Development, work may be stopped until appropriate correction measures are completed.

54. The dwellings proposed for Parcel 2 and Parcel 3 shall not exceed 35 feet in height.

55. Prior to building plan sign-off the owners of Parcel 2 and Parcel 3 shall annex into a fire protection district or the proposed dwellings shall be provided with residential fire protection by contract.

56. The applicant's final partition plat shall provide an access strip that is at least a 16-foot wide for Parcel 2. If all necessary permits are obtained, however, the required vehicle and fire access road for Parcel 2 may be constructed within the 60'-wide road easement that adjoins the west boundary of Parcels 1 and 2. The owner of Parcel 2 shall, however, develop an on-site access road for Parcel 2 if the owner of Parcel 2 does not have or loses the right to use the easement for ingress and egress to Parcel 2 from NW McNamee Road.

DEQ NPDES 1200-CN PERMIT

This project disturbs approximately four acres and is eligible for automatic coverage under the NPDES Stormwater Discharge General Permit No.1200-CN issued by the (DEQ) Oregon Department of Environmental Quality. You are required to review the attached "GENERAL PERMIT NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM STORMWATER DISCHARGE PERMIT" provisions in Exhibit B.9.

*Please note that projects disturbing over 5-acres are not eligible for automatic coverage under the DEQ 1200-CN program and are subject to additional permitting requirements under the DEQ 1200-C program.

Note: Once this decision is final, application for building permits may be made with the City of Portland. When ready to have building permits signed off, the applicant shall call the Staff Planner, Kevin Cook, at (503) 988-3043 ext. 26782, for an appointment for review and approval of the conditions and to sign the building permit plans. Please note, Multnomah County must review and sign off the building permits before the applicant submits building plans to the City of Portland. Three Five (5) sets each of the site plan and building plans are needed for building permit sign off. At the time of building permit review, a review fee (currently $53.00) will be collected. In addition, an erosion control inspection fee (currently $77.00) may be required.

Findings of Fact

FINDINGS: Written findings are contained herein. The Multnomah County Code (MCC) criteria and Comprehensive Plan Policies are in **bold** font. Staff analysis and comments are identified as '**Staff:**' and address the applicable criteria. Staff comments may include a conclusionary statement in *italic*.

1.00 Project Description:

The applicants seek to implement a Measure 49 approval (State Final Order E118605 - Exhibit A.7.26) and to obtain approval of a three parcel partition of an existing 18.91-acre tract. Proposed Parcel 1 will be a 2-acre parcel located in the northwest portion of the existing tract. Parcel 1 will have approximately 87 feet of road frontage along NW McNamee Rd. Parcel 2 will be a 2-acre flag lot. The bulk of the parcel will be located in southwest part of the existing tract. Parcel 2 will have at least 30 feet of road frontage along NW McNamee Rd. Parcel 3 will be approximately 15 acres in size and will make up the remainder of the existing tract after Parcels 1 and 2 are created. Parcel 3 will have approximately 58 feet of road frontage along NW McNamee Road.

The land use applications include a request for approval of a new driveway access onto NW McNamee Road to serve Parcel 3. The applicants are requesting a Road Rules Variance because the proposed access location for Parcel 3 does not meet the sight distance standards of the Multnomah County Road Rules (MCRR).

The majority of the existing subject property is located in the Protected Aggregate and Mineral Resources Overlay Subdistrict (PAM). The proposed residential development on Parcel 3 will be located within the PAM overlay. As a result, a Conditional Use Permit is required to evaluate the potential impacts of residential development on the extraction of the nearby aggregate resources. Although access to Parcel 2 runs though the PAM overlay, the proposed dwelling site is located outside of the overlay.

The majority of the existing subject property is located in the Hillside Development (HD) overlay. A HD permit is required in order to evaluate the proposed residential development in steep slope areas.

The entire existing subject property is located in the Significant Environmental Concern for wildlife habitat overlay (SEC-h). An SEC permit is required in order to evaluate and mitigate the proposed development's impacts to wildlife habitat.

The entire existing property is located within the Commercial Forest Use – 2 (CFU-2) zoning district. The proposal must meet the applicable standards of the CFU-2 zone.

No development is proposed within the Significant Environmental Concern for Streams (SEC-s) overlay.

The applicant has applied for an Exception to the Secondary Fire Safety Zone and for an Adjustment to the Forest Practices Setbacks for Parcels 2 and 3.

2.00 Property Description & History:

The existing 19-acre, CFU-2 zoned subject property is a tract comprised of two tax lots (Lots 700 and 800 of Section 32B, Township 2 North, Range 1 West, Willamette Meridian). The property is located south and west of NW McNamee Road. The western third of the property is cleared and contains the existing dwelling and outbuildings on the northwest portion. This western third of the property contains slopes that are predominately less than 25 percent. The middle third of the property is wooded and contains a north to south oriented ravine with relatively steep sides and a stream at the floor of the ravine. The stream begins on the property and runs from north to south. The eastern third of the property contains mostly steep slopes (in excess of 25 percent). A relatively small, cleared portion of the eastern third contains slopes less than 25 percent. An area adjacent to NW McNamee Road near the east property line

was the location of a landslide that resulted from fill material located at the top of the slope giving way in 2009. Slope stabilization measures were employed in order to prevent further slope failures; the slope stabilization measures were reviewed and approved by the County through file T2-09-050.

The applicants previously submitted an application (T3-2010-907 – Exhibit A.7.20) for a similar 3-lot partition with two additional dwellings based upon the same Measure 49 final approval (State Final Order E118605 - Exhibit A.7.26) that is the basis for this application. T3-2010-907 was denied by this hearings officer because the configuration of the new parcels did not comply with the clustering requirement imposed by the Measure 49 final order. The current application is a different configuration that clusters the new two-acre properties (Parcels 1 and 2) while leaving Parcel 3 as the remainder lot.

3.00 Code Compliance:

3.01 MCC 37.05600 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: There is an existing large metal shop building that is currently located across the existing common property line between the two existing properties (Exhibit A.7.5). The current proposal will result in the existing shop building being located entirely on Parcel 1.

4.00 Administrative Decision (Compliance with Measure 49 State Final Order):

On September 22, 2009 the Oregon Department of Land Conservation and Development (DLCD) conditionally approved a Measure 49 (ORS 195.300 to 195.336) claim filed by the applicants, Larry and Laura Luethe (Exhibit A.7.26). The approval allows for the creation of three parcels that are less than the 80 acre minimum lot size called for in the CFU-2 zone and allows one single-family dwelling on each of the new parcels (Parcel 1 currently has an existing dwelling and Parcels 2 and 3 will each have a new single-family dwelling. The final order authorizes no more than one single family dwelling on each of the three parcels (two new dwellings in addition to the existing dwelling.)

The review in this section (Section 4) confirms that the property owner has a valid Measure 49 approval from the State of Oregon and that the proposed land division and residential development is in compliance with the state's thirteen conditions of approval. The following sections list each of the DLCD conditions of approval (*in italics*) followed by findings addressing the proposal's compliance with the conditions.

4.01 DLCD Condition #1:

Each dwelling must be on a separate lot or parcel, and must be contained within the property on which the claimants are eligible for Measure 49 relief. The establishment of a land division or dwelling based on this home site authorization must comply with all applicable standards governing the siting or development of the land division or dwelling. However, those standards must not be applied in a manner that prohibits the establishment of the land division or dwelling, unless the standards are reasonably necessary to avoid or abate a nuisance, to protect public health or safety, or to carry out federal law.

Hearings Officer: The applicant is seeking approval for 3 parcels. The applicant's proposed partition plan (Exhibit A.7.4) shows a land division of the Measure 49 claim property (Lots 700 and 800). The application does not meet all applicable standards governing the establishment of the proposed dwellings. Also, the application does not comply with all otherwise applicable land division regulations. In particular, the current law imposes an 80-acre minimum lot size. If a Measure 49 claim had not been approved, a land division would be prohibited. Additionally, the hearings officer has been advised by the county's staff that Lot of Record requirements, which require the aggregation of lawfully created lots and parcels and may hinder the ability to partition and develop land are not applied to this proposal because the Lot of Record standards are not "reasonably necessary to avoid or abate a nuisance, to protect public health or safety, or to carry out Federal law."

The proposal is divided two tax lots that are a single tract of land under current Multnomah County CFU2 zoning regulations into three parcels with one single-family dwelling on each parcel. The applicant's proposed partition map (Exhibit A.7.5) shows a land division of the Measure 49 claim property (Lots 700 and 800). The site plan shows a proposed single-family dwelling for proposed Parcel 2 and a proposed single-family dwelling for proposed Parcel 3. Proposed Parcel 1 will contain the existing single-family dwelling. The application meets the standards for a Land Division (see findings in Section 5 below). The hearings officer finds that 80-acre minimum parcel size for the creation of new parcels set forth in MCC 33.2263 and the Lot of Record provisions of MCC 33.2275 are effectively superseded by ORS 195.305. Additionally, the hearings officer finds that the qualifying standards for a dwelling in the CFU-2 zone (MCC 33.2235 and MCC 33.2240) are effectively superseded by ORS 195.305.

4.02 DLCD Condition #2:

This home site authorization will not authorize the establishment of a land division or dwelling in violation of a land use regulation described in ORS 195.305(3) or in violation of any other law that is not a land use regulation as defined by ORS 195.300(14).

Hearings Officer: The proposal for three parcels each containing one single-family dwelling is consistent with the findings and conclusions made in DLCD's Final Order of September 22, 2009 (Exhibit A.7.26). It does not appear that the establishment of three parcels with one single-family dwelling on each parcel is prohibited by the land-use regulations defined in ORS 195.305(3) or by any other law that is not a land use regulation as defined by ORS 195.300(14). Condition #2 is also a condition of approval of this decision (Condition 9).

4.03 DLCD Condition #3:

A claimant is not eligible for more than 20 home site approvals under Sections 5 to 11 of Measure 49 regardless of how many properties a claimant owns or how many claims a claimant filed. If the claimants have developed the limit of twenty home sites under Measure 49, the claimants are no longer eligible for the home site approvals that are the subject of this order.

Hearings Officer: The applicants have not filed any other Measure 49 claims and have not developed more than twenty home sites under the authority of Measure 49. The above condition of approval is also a County condition of approval (Condition 9).

4.04 DLCD Condition #4:
The number of lots, parcels or dwellings a claimant may establish under this home site authorization is reduced by the number of lots, parcels and dwellings currently in existence on the Measure 37 claim property and contiguous property in the same ownership, regardless of whether evidence of their existence has been provided to the department. If, based on the information available to the department, the department has calculated the number of currently existing lots, parcels or dwellings to be either greater than or less than the number of lots, parcels or dwellings actually in existence on the Measure 37 claim property or contiguous property under the same ownership, then the number of additional lots, parcels or dwellings a claimant may establish pursuant to this home site authorization must be adjusted according to the methodology stated in Section 6(2)(b) and 6(3) of Measure 49. Statements in this final order regarding the number of lots, parcels or dwellings currently existing on the Measure 37 claim property and contiguous property are not a determination on the current legal status of those lots, parcels or dwellings.

Hearings Officer: The applicants do not own contiguous property. The total number of parcels allowed by the Measure 49 claim is three. The applicant is proposing a partition with two new parcels and a remainder parcel for a total of three parcels. The above condition of approval is also a County condition of approval (Condition 9).

4.05 DLCD Condition #5:
Temporary dwellings are not considered in determining the number of existing dwellings currently on the property. The claimant may choose to convert any temporary dwelling currently located on the property on which the claimant is eligible for Measure 49 relief to an authorized home site pursuant to a home site approval. Otherwise, any temporary dwelling is subject to the terms of the local permit requirements under which it was approved, and is subject to removal at the end of the term for which it is allowed.

Hearings Officer: There are no temporary dwellings located on the existing subject property. The above condition of approval is also a County condition of approval (Condition 9).

4.06 DLCD Condition #6:
A home site approval only authorizes the establishment of a new lot, parcel or dwelling on the property on which the claimant is eligible for Measure 49 relief. No additional development is authorized on contiguous property for which no Measure 37 claim was filed or on Measure 37 claim property on which the claimant is not eligible for Measure 49 relief. A lot or parcel established pursuant to a home site approval must either be the site of a dwelling that is currently in existence or be the site of a dwelling that may be established pursuant to the home site approval.

Hearings Officer: All parcels and dwellings that may be created under the authority of this approval will be created from the property on which the claimant is eligible for Measure 49. The applicants do not own contiguous property. No development is authorized to occur on contiguous property. The proposal does not exceed the three parcels and three dwellings allowed in the State's Final Order (Exhibit A.7.26).

Parcel 1 includes the applicants' existing dwelling, as allowed by this condition. The two additional dwellings are authorized by the home site approval of the Measure 47 order.

4.07 DLCD Condition #7:
The claimants may use a home site approval to convert a lot, parcel or dwelling currently located on the property on which the claimants are eligible for Measure 49 relief to an authorized home site. If the number of lots, parcels or dwellings existing on the property on which the claimants are eligible for Measure 49 relief exceeds the number of home site approvals the claimants qualify for under a home site authorization, the claimants may select which existing lots, parcels or dwellings to convert to authorized home sites; or may reconfigure existing lots, parcels or dwellings so that the number is equivalent to the number of home site approvals.

Hearings Officer: Currently there is one single-family dwelling located on the existing subject property (Lots 700 and 800). The proposal would divide the existing property into three parcels and would result in the construction of two additional dwellings (each on a separate lot) (Exhibit A.7.5). The State Final Order (Exhibit A.7.26) allows the claimants (applicants) to create up to a total of three parcels each containing no more than one single-family dwelling.

4.08 DLCD Condition #8:
The claimants may not implement the relief described in this Measure 49 Home Site Authorization if a claimant has been determined to have a common law vested right to a use described in a Measure 37 waiver for the property. Therefore, if a claimant has been determined in a final judgment or final order that is not subject to further appeal to have a common law vested right as described in Section 5(3) of Measure 49 to any use on the Measure 37 claim property, then this Measure 49 Home Site Authorization is void. However, so long as no claimant has been determined in such a final judgment or final order to have a common law vested right to a use described in a Measure 37 waiver for the property, a use that has been completed on the property pursuant to a Measure 37 waiver may be converted to an authorized home site.

Hearings Officer: The applicants' attorney testified that the applicants filed a vested rights claim relating to their Measure 37 claim but that their claim was rejected. The above condition of approval is also a County condition of approval (Condition 9).

4.09 DLCD Condition #9:
A home site approval does not authorize the establishment of a new dwelling on a lot or parcel that already contains one or more dwellings. The claimants may be required to alter the configuration of the lots or parcels currently in existence on the Measure 37 claim property and contiguous property so that each additional dwelling established on the property on which the claimants are eligible for Measure 49 relief, pursuant to this home site authorization, is sited on a separate lot or parcel.

Hearings Officer: The proposal would include one new single family dwelling on proposed Parcel 2 and one new single-family on proposed Parcel 3. The existing single family dwelling and existing accessory buildings would be located on proposed Parcel 1. No parcel would contain more than one single-family dwelling. The above condition of approval is also a County condition of approval (Condition 9).

4.10 DLCD Condition #10:
Because the property is located in a forest zone, the home site authorization does not authorize new lots or parcels that exceed five acres. However, existing or remnant lots or parcels may exceed five acres. Before beginning construction, the owner must comply with the requirements of ORS 215.293. Further, the home site authorization will not authorize new lots or parcels that exceed two acres if the new lots or

parcels are located on high-value farmland, on high-value forestland or on land within a ground water restricted area. However, existing or remnant lots or parcels may exceed two acres.

Hearings Officer: The existing subject property (Tax Lots 700 and 800) is located entirely on high-value forest land. ORS 195.300 defines high-value forest lands as land that is in a forest zone or a mixed farm and forest zone, that is located in western Oregon and composed predominantly of soils capable of producing more than 120 cubic feet per acre per year of wood fiber and that is capable of producing more than 5,000 cubic feet per year of commercial tree species. The existing subject property is located on the following soil types according to the Natural Resources Conservation Service (NRCS) (Exhibit B.6): Goble silt loam (55%), and Cascade silt loam (45%). Both of these soil types are capable of producing more than 120 CF/Acre of wood fiber per year according to the NRCS. The proposed partition would result in two newly created parcels of 2 acres each, and one remnant parcel of 15.08 acres. ORS 215.293 requires a condition of approval for new single-family dwellings in farm or forest zones; the condition of approval requires the land owner to sign and record a document binding the landowner, and the landowner's successors in interest, that prohibits them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937. Condition 8 implements this requirement.

4.11 DLCD Condition #11:

Because the property is located in a forest zone, Measure 49 requires new home sites to be clustered so as to maximize suitability of the remnant lot or parcel for farm or forest use. Further, if an owner of the property is authorized by other home site authorizations to subdivide, partition, or establish dwellings on other Measure 37 claim properties, Measure 49 authorizes the owner to cluster some or all of the authorized lots, parcels or dwellings that would otherwise be located on land in an exclusive farm use zone, a forest zone or a mixed farm and forest zone on a single Measure 37 claim property that is zoned residential use or is located in an exclusive farm use zone, a forest zone or a mixed farm and forest zone but is less suitable for farm or forest use than the other Measure 37 claim properties.

Hearings Officer: This condition of approval requires that new home sites be clustered. The meaning of the term "home site" and this condition of approval is not clear. It is not clear whether a home site is a single-family home, a parcel, or a parcel with approval to construct a single-family home. The text of the Final Measure 49 Order authorizes "three home site approvals" and explains that this allows one additional parcel and two additional homes. This implies that approvals include both the home and the parcel. That interpretation, however, does not make sense when applied to the clustering requirement of Condition #11 because it is impossible to cluster all three parcels.

To make sense of Condition #11, I looked to the text of Measure 49. It says that in a forest zone, "*new lots or parcels* created must be clustered so as to maximize the suitability of the remnant lot or parcel for farm or forest use." This language is cited in the Final Measure 49 Order. This language makes it clear that a "new home-site" is a new lot or parcel. Only new parcels, not every home on the subject property, must be clustered to preserve the remainder of the tract for resource use. In a typical partition, all parcels are "new parcels" because the partition creates each and every parcel shown on the partition plan. Under Measure 49, however, partitions create "new parcels" and a remnant parcel. In the case of high value forest land, new parcels are limited to a maximum area of 2 acres and the remnant parcel is not subject to the maximum lot size.

The current proposal shows two new 2-acre parcels along the western portion of the existing tract and one 15 acre remainder parcel. The two new parcels are clustered because they adjoin each other and the eastern boundary of the parent parcel and create a single remainder parcel. The above condition of approval is also a County condition of approval (Condition 9).

4.12 DLCD Condition #12:

If the claimants transferred ownership interest in the Measure 37 claim property prior to the date of this order, this order is rendered invalid and authorizes no home site approvals. Provided this order is valid when issued, a home site approval authorized under this order runs with the property and transfers with the property. A home site approval will not expire, except that if a claimant who received this home site authorization later conveys the property to a party other than the claimant's spouse or the trustee or a revocable trust in which the claimant is the settlor, the subsequent owner of the property must establish the authorized lots, parcels and dwellings within 10 years of the conveyance. A lot or parcel lawfully created based on this home site authorization will remain a discrete lot or parcel, unless the lot or parcel lines are vacated or the lot or parcel is further divided, as provided by law. A dwelling lawfully created based on a home site approval is a permitted use.

Hearings Officer: The property owners, Larry and Laura Luethe, are the same property owners listed in the State's Final Order. Multnomah County Assessment and Taxation records indicate that Larry and Laura Luethe are the current property owners. The above DLCD condition of approval is also a condition of this approval (Condition 9).

4.13 DLCD Condition #13:

To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, this home site authorization will not authorize the use of the property unless the claimants first obtain that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a permit as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies, and restrictions on the use of the subject property imposed by private parties.

Hearings Officer: As part of meeting the above requirement, the applicant has applied for land-use approvals from Multnomah County through this permit. The land owner must obtain building permits, sanitation permits, driveway access permits, and water resources permits (Conditions 4, 6, 9,10, and 11). Condition 9 requires that the land owner secure any additional approvals from public or private parties who have the authority and/or right to require authorization for the proposal.

5.00 Category 1 Land Division:

5.01 MCC 33.7770 Category 1 Land Divisions

The following proposals are designated Category 1 Land Divisions:

(A) A Rural Area subdivision;
(B) A Rural Area partition which creates a new street when the Planning Director determines that:
(1) The proposal includes the continuation of an existing or planned street to adjacent property, or,
(2) The proposal either eliminates or makes impractical the continuation of an existing street or the provision of needed access to adjacent property.
(C) A subdivision or partition associated with an application affecting the same property for any action proceeding requiring a public hearing under MCC Chapter 33; and
(D) Any other land division proposal which, as determined by the Planning Director, will have a substantial impact on the use or development of nearby property such that determination at a public hearing is required, considering:

(1) The nature of nearby land uses or the pattern of existing land divisions in relation to the applicable elements of the Comprehensive Plan;
(2) Plans or programs for the extension of the street or utility systems on or near the proposed division; or
(3) Physical characteristics of the tract or nearby area such as steep slopes, a history of flooding, poor drainage, land slides or other existing or potential hazards.

Hearings Officer: The proposed partition is located in an area dominated by steep slopes and has a history of land slides. The proposal, therefore, is being reviewed as a Category 1 Land Division.

5.02 MCC 33.7800 Criteria for Approval, Category 1 Tentative Plan

In granting approval of a Category 1 tentative plan, the approval authority shall find that

(A) The tentative plan is in accordance with the applicable elements of the Comprehensive Plan;
(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;
(C) The tentative plan complies with the applicable provisions, including the purposes and intent of the Multnomah County Land Division Ordinance.
(D) The tentative plan complies with the Zoning Ordinance or a proposed change thereto associated with the tentative plan proposal;

Hearings Officer: The proposed tentative plan complies with the Comprehensive Plan and the Land Division Ordinance.

5.03 (E) If a subdivision, the proposed name has been approved by the County Surveyor and does not use a word which is the same as, similar to or pronounced the same as a word in the name of any other subdivision in Multnomah County, except for the words town, city, place, court, addition or similar words, unless the land platted is contiguous to and platted by the same applicant that platted the subdivision bearing that name or unless the applicant files and records the consent of the party that platted the subdivision bearing that name and the block numbers continue those of the plat of the same name last filed.
(F) The streets are laid out and designed so as to conform, within the limits of MCC 33.7905 and 33.7910 and the Street Standards Code and Rules, to the plats of subdivisions and maps of partitions already approved for adjoining property unless the approval authority determines it is in the public interest to modify the street pattern; and,
(G) Streets held for private use are laid out and designed so as to conform with MCC 33.7905 and 33.7910 and the Street Standards Code and Rules, and are clearly indicated on the tentative plan and all reservations or restrictions relating to such private streets, including ownership, are set forth thereon.

Hearings Officer: The applicants are proposing a partition; not a subdivision. Aside from the required five-foot right-of-way dedication, no street dedications are proposed or required.

5.04 (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.

Hearings Officer: There is no mapped flood plain on the property and the proposed home-sites and related infrastructure (driveways and sanitation facilities) are proposed approximately 100 feet higher than the creek located on the property.

5.05 MCC 33.7805 Contents of Category 1 Tentative Plan
A tentative plan shall consist of maps, written information and supplementary material adequate to provide the information required in MCC 33.7810 through 33.7825.

Hearings Officer: The applicants have provided the tentative plan maps and a written narrative in accordance with the above standard.

5.06 MCC 33.7810 Category 1 Tentative Plan Map Specifications
The tentative plan map shall be drawn on a sheet 18 x 24 inches or 11 x 17 inches in size or a size approved by the Planning Director. The scale of the map shall be 10, 20, 30, 40, 50, 60, 100 or 200 feet to the inch or multiples of ten of any of these scales. The map shall include one copy of a scaled drawing of the proposed subdivision, on a sheet 8.5 x 11 inches, suitable for reproduction, mailing and posting with the required notices.

Hearings Officer: The applicants have provided a tentative plan map on an 11 x 17 inch sheet (Exhibit A.7.5).

5.07 MCC 33.7815 Category 1 Tentative Plan Map Contents
The tentative plan map shall indicate the following:
(A) General information:
(1) In the case of a subdivision, the proposed name which shall be in accord with subsection (E) of MCC 33.7800.
(2) Date, north point and scale of drawing.
(3) Description of the proposed land division sufficient to define its location and boundaries.
(4) Identification as a tentative plan map.
(B) Existing conditions:
(1) Streets: the location, name and present width of each street, alley or right-of-way in or serving the tract.
(2) Easements: location, width and nature of any easement of record on or serving the tract.
(3) Utilities: location and identity of all utilities on or serving the tract.
(4) Contour lines at ten foot intervals. The map shall state the source of the contour information.
(5) The location of at least one temporary bench mark within the land division.
(6) Any natural features such as rock outcroppings, marshes, wooded areas, major vegetation, etc., which may affect the proposal.
(7) Water courses on and abutting the tract, including their location, width and direction of flow.
(8) The approximate location of areas subject to periodic inundation and all areas covered by water.
(9) The location of any harbor line.
(10) Scaled location and size of all existing driveways and pedestrian walkways, and the scaled location and size and present use of all existing buildings or other structures, and designation of any existing buildings or structures proposed to remain on the property after division.

(C) Proposed improvements:
(1) Streets: location, proposed name, right-of-way width and approximate radii of curves of each proposed street.
(2) Any proposed pedestrian path or bikeway.
(3) Easements: location, width and nature of all proposed easements.
(4) Lots or parcels: location and approximate dimensions of all lots or parcels, the minimum lot or parcel size and, in the case of a subdivision, the proposed lot and block numbers.
(5) Water supply: the proposed domestic water supply system.
(6) Sewage disposal: the proposed method of sewage disposal.
(7) Drainage: proposed methods for surface water disposal and any proposed drainage easements.
(8) Other utilities: the approximate location and nature of other utilities including the location of street lighting fixtures.
(9) Railroad rights-of-way, if any.
(10) Changes to navigable streams, if any.
(11) A street tree planting plan and schedule.

Hearings Officer: This section specifies information needed for a complete application. It is not an approval criterion. The County accepted the application as complete so this code section is not longer applicable. The finding does not excuse compliance with Final Plat requirements.

5.08 MCC 33.7820 Written Information: Category 1 Tentative Plan
Written information shall include:
(A) Name, address and telephone number of the record owner(s), owner's representative, and designer(s) of the proposed land division and the name of the engineer(s) or surveyor(s) and the date of the survey, if any.
(B) Proof of record ownership of the tract and the representative's authorization.
(C) Legal description of the tract.
(D) Present and proposed uses of the tract including all areas proposed to be dedicated to the public.
(E) Statements of the manner in which the criteria for approval listed in MCC 33.7800 are satisfied.
(F) Statement of the improvements to be made or installed, including street tree planting, and the time such improvements are to be made or completed.

Hearings Officer: The applicants have provided the information listed above.

5.09 MCC 33.7825 Supplementary Material: Category 1 Tentative Plan
The following supplementary material may be required by the Planning Director:
(A) A survey of the tract.
(B) A vicinity map showing existing divided and undivided land adjacent to the proposed land division, the existing uses and structures thereon, and an indication of the manner in which the proposed streets and utilities may be extended to connect to existing streets and utilities or to serve future land divisions.
(C) Proposed deed restrictions and methods of proposed ownership.
(D) Such other material as the Planning Director deems necessary to assist in the review and assessment of the land division proposal according to the provision of this Chapter.

Hearings Officer: The site was surveyed by Northwest Surveying Inc.; the site plan (Exhibit A.7.5) reflects the survey information.

5.10 **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.

Hearings Officer: See findings below beginning in Section 5.11.

5.11 **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.

Hearings Officer: The proposed parcels contain areas with slopes in excess of 20 percent, however each of the proposed lots contain relatively level areas suitable for residential development. The geotechnical reports prepared GeoPacific Engineering, Inc. (Exhibits A.5, A.7.15 and A.7.23) indicate that the areas of previous fill is stable provided development is set back from the break of the slope for Parcel 2 as shown in Exhibit A.7.5. The home site and associated driveway for Parcel 3 has been certified as suitable.

5.12 **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 semipublic 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.

Hearings Officer: The proposed lots are suitable for residential development and associated infrastructure such as driveways and sanitation systems.

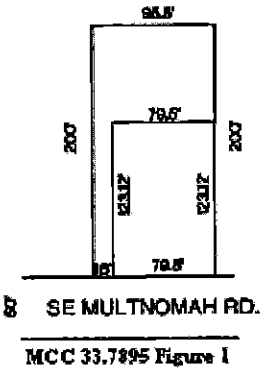
5.13 **(B) The side lot lines shall be perpendicular to the front lot line or radial to the curve of a street, to the extent practicable.**

Hearings Officer: While not forming perfectly straight lines the side property lines are roughly perpendicular to the front property lines.

5.14 **(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.**

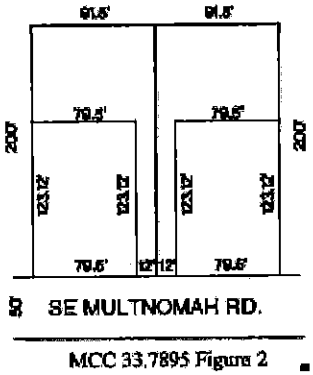
Hearings Officer: No double frontage parcels are proposed.

5.15 **(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.**



MCC 33.7895 Figure 1

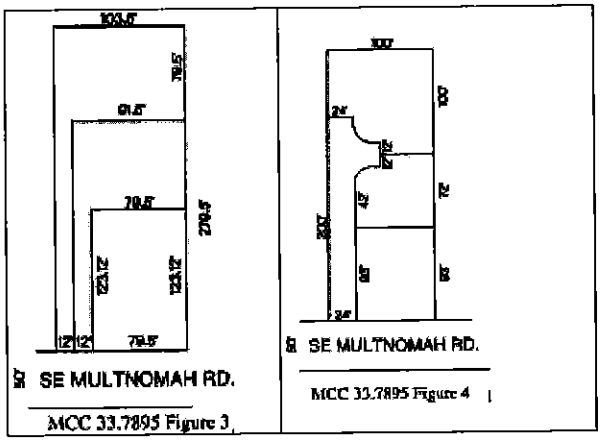
(2) Where two flag lots are placed back to back as shown in MCC 33.7895 Figure 2, the pole portion of each flag lot shall be at least 12 feet wide.



MCC 33.7895 Figure 2

Hearings Officer: Parcel 2 is proposed as a flag lot. Parcel 2 will have approximately 30 feet of road frontage. The applicant's partition plan shows a 15-foot wide access strip, however the applicants have agreed that the final plat will show the correct, 16-foot width (condition of approval 56).

5.16 **(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.**



Hearings Officer: The proposed parcels will not result in creating two stacked flag lots like those shown in MCC 33.7895 Figure 3 (Exhibit A.7.5).

5.17 MCC 33.7935 Easements
Easements shall be provided and designed according to the following:

(A) Along the front property line abutting a Street, a five foot utility easement shall be required. The placement of the utility easement may be modified as requested by a public or private utility provider. Utility infrastructure may not be placed within one foot of a survey monument location noted on a subdivision or partition plat.

(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.

Hearings Officer: Condition 7 requires that the applicants provide the utility easement required by subsection (A), above, on the final plat. Condition 7 also requires that the stormwater or drainage easement required by subsection (B), above, be shown on the final plat. Bikeways and pedestrian paths are not proposed and are not required.

5.18 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.

Hearings Officer: An existing well provides water for the existing home on Parcel 1. The applicant proposes to use on-site wells to provide water to Parcels 2 and 3. As this source of water does not comply with ORS 92.090(4)(a) or (b), the information required by ORS 92.090(4)(c) must be provided on the final plat and to lot purchasers. This is not a condition of tentative plan approval. ORS 92.090(4), however, makes compliance with ORS 92.090(4)(c) a condition of final plat approval and requires disclosures about the source of water when the parcels are sold. MCC 33.7985 requires that water mains, service and fire hydrants shall meet the requirements of

the Water District. This requirement does not apply, however, because the applicants are not proposing to obtain water from a water district.

5.19 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.

Hearings Officer: The proposed septic systems have been reviewed and tentatively approved by the City of Portland Bureau of Development Services which achieves compliance with MCC 33.7990. As septic systems do not comply with ORS 92.090(5)(a) or (b), the information required by ORS 92.090(5)(c) must be provided on the final plat and to lot purchasers. This is not a condition of tentative plan approval. ORS 92.090(4), however, makes compliance with ORS 92.090(4)(c) a condition of final plat approval and requires disclosures about sewage disposal when the parcels are sold.

5.20 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.

Hearings Officer: Storm-water containment systems have been proposed by GeoPacific Engineering, Inc. in their geotechnical reports (Exhibits A.5, A.7.15 and A.7.23). Condition 22 requires the installation of the storm-water systems as proposed or as otherwise modified by an Oregon licensed engineer.

5.21 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.

Hearings Officer: Electrical wires serving the parcels will run underground from existing poles in the right-of-way.

5.22 MCC 33.8010 Improvement Agreement

Prior to approval of a subdivision plat or partition plat by the County Engineer, the applicant shall execute and file with the County Engineer an agreement with the County, which shall include:
(A) A schedule for the completion of required improvements;
(B) Provision that the applicant file with the County Engineer a maintenance bond, on forms provided by the Engineer, guaranteeing the materials and workmanship in the improvements required by this Chapter against defects for a period of 12 months following the issuance of a certificate of acceptance by the County Engineer; and

(C) A surety bond, executed by a surety company authorized to transact business in the State of Oregon, or a certified check or other assurance approved by the County Attorney, guaranteeing complete performance. Such assurance shall be for a sum equal to 110% of the actual costs of the improvements as estimated by the County Engineer.

Hearings Officer: Condition 49 requires the above agreement.

5.23 **MCC 33.8015 Final Drawing and Prints**
(A) Two prints of the subdivision or partition plat shall accompany the final drawing, conforming to all applicable requirements as established by the Oregon Revised Statutes (ORS), Chapters 92 and 209.
(B) Notwithstanding optional provisions in ORS Chapter 92, all parcels created shall be surveyed, monumented and platted, regardless of parcel area.

Hearings Officer: Condition 4 requires compliance with ORS 92 and 209.

5.24 **MCC 33.8020 Information Required on Subdivision Plat or Partition Plat**
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.
(E) Other certifications required by law.

Hearings Officer: Condition 50 requires the above information on the final plat. The normal high water line for McCarthy creek will be required on the final plat as well as access, utility, and drainage easements.

5.25 **MCC 33.8025 Supplemental Information with Subdivision Plat or Partition Plat**
The following shall accompany the subdivision plat or partition plat, as appropriate:
(A) A copy of any deed restrictions applicable to the subdivision or partition.
(B) A copy of any dedication requiring separate documents.
(C) As used in this section, "lot" means a unit of land that is created by a subdivision of land, and a "tract" will be considered a lot, except for street plugs.

Hearings Officer: Condition 51 requires the above information with the final plat.

5.26 **MCC 33.8030 Technical Review and Approval of Subdivision Plat or Partition Plat**
(A) The subdivision plat or partition plat and all required material shall be filed with the Planning Director for final approval. Within 10 business days of filing, the Planning Director shall determine whether the material conforms with the approved tentative plan and with the applicable requirements of this Ordinance. If the Planning Director determines that there is not such conformity, the applicant shall be so advised and afforded an opportunity to make corrections. When the plat is found to be in conformity, it shall be signed and dated by the Planning Director.

(B) On a subdivision plat, the approval signature of the Chair of the Board of County Commissioners or the Chair's delegate, shall be required to certify that the plat is approved.

(C) No building permit shall be issued or parcel sold, transferred or assigned until the partition plat has been approved by the Planning Director and County Surveyor and recorded with the public office responsible for public records.

Hearings Officer: The proposal is for a partition plat, so B does not apply. Conditions 3 and 4 require conformance with A and C above.

6.00 Road Rules Variance:

Variance Request Procedure
For the County Engineer to consider a variance request, it must be submitted in writing with the appropriate fee to the County prior to the issuance of any development permit. The written variance request shall be signed by a person with the authority to bind the applicant and shall include the following information as applicable:
A. Applicant name, telephone/fax number(s), email address, mailing address,
B. Property location and zoning;

Hearings Officer: The above information has been provided. The Variance request is for the proposed access from NW McNamee Road to proposed Parcel 2.

C. Current or intended use of the property;

Applicant: *Intended Use- driveway access to serve a residential lot*

D. The nature and a full description of the requested variance;

Applicant: *McNamee Road is currently classified by Multnomah County as a Rural Local road and a speed limit is not posted. According to the County Code, vehicles are allowed to travel at 55 mph (90 km/hr) (or the sheriff's opinion of a safe speed for the conditions). The intersection sight distance required using a design speed of 55 mph is 246 feet (75 m) in either direction based on the County Design Standards Section 2.3.7.*

Sight distance from the proposed access to NW McNamee Road were measured to be 190 feet to the southeast of the eastern driveway access for a left hand turn. This measurement was taken using an eye height of 3.5 feet and an object height of 4.25 feet above the road; and it was assumed that the front of a stopped vehicle was 10 feet from the near edge of the pavement. (Actual measurement was taken 15 feet from pavement edge.)

Applicant requested review: Approval of a variance to Section 2.3.7 as provided for in Section 29.507 of the Multnomah County Code and in Section 16.000 of the County Road Rules. A variance is requested for the sight distance of the east driveway.

E. Site plan, sight distance, pedestrian traffic, intersection alignment, traffic generation, vehicle mix, traffic circulation including impact on through traffic, and other similar traffic safety considerations;

Hearings Officer: A site plan has been submitted and is included in the case file.

F. Existing right-of-way or improvement limitations, and utility considerations;

Hearings Officer: None are anticipated as part of this variance request.

G. Adjacent land uses, their types, access requirements, and impact of traffic on them;

Hearings Officer: Adjacent uses include residential and forest uses. No impacts to these uses are anticipated.

H. Topography, grade, side hill conditions, and soil characteristics;

Hearings Officer: The proposed driveway location is in the vicinity of a landslide that occurred to the south. The landslide was the result of unsupported fill that was previously placed on the site. The land slide has since been repaired and certified as stable.

I. Drainage characteristics and problems;

Hearings Officer: None identified.

J. Fire Department access requirements within a public right-of-way and their written approval of the proposed modification;

Hearings Officer: The Fire District has considered the proposed access and has not raised concerns.

K. Natural and historic features including but not limited to trees, shrubs or other significant vegetation, water courses, wetlands, rock outcroppings, development limitation, areas of significant environmental concern, etc;

Hearings Officer: A creek has been identified that bisects the site. In addition the subject property is located within the Protected Aggregate and Mineral Sites (PAM) Impact Area overlay, Significant Environmental Concern for Wildlife Habitat (SEC-h) overlay, Significant Environmental Concern for Streams (SEC-s), and Hillside Development (HD) overlays. The applicant has submitted land use permits for a request for a Category 1 Land Division to create three parcels and a Conditional Use Permit for the construction of one dwelling in the PAM, and SEC Wildlife Habitat, and Hillside Development overlays.

L. Multnomah County Comprehensive Plan policies applicable to the particular parcel or location.

Hearings Officer: None have been identified.

The Applicant's Proposal Meets the General Variance Criteria

16.200 General Variance Criteria: In order to be granted a variance, the applicant must demonstrate that:

A. Special circumstances or conditions apply to the property or intended use that do not apply to other property in the same area. The circumstances or conditions may relate to the size, shape, natural features and topography of the property or the location or size of physical improvements on the site or the nature of the use compared to surrounding uses;

Applicant: *The driveway has been proposed in the only location that McNamee Road contacts the property along the east side. Relocating the driveway would require crossing a neighboring property to access McNamee, which is not feasible.*

Hearings Officer: As indicated by the applicant, the configuration of the site creates a special condition that does not typically apply to other property in the area. As indicated in the site plan, the proposed location of the driveway access is the only location on the subject property that touches the NW McNamee Road right-of-way that can provide reasonable and appropriate access to the east side of the subject property. This is a result of the configuration of the right-of-way due to the natural features and topography of the surrounding area. The topography slopes uphill on the east side and slopes downhill along the west side of the road. The proposed driveway location is proposed to be located on an area where the subject property touches the road right-of-way and is where topography is not as steep. To locate the driveway elsewhere along the frontage would result in having to cross a property not in the ownership of the applicant where topography may also become an issue due to the slope. It may be physically possible to build a driveway down the steep slopes found in the center of the property but it is unlikely that such a driveway would comply with all applicable approval criteria. A large bridge might be able to be constructed. A driveway or a bridge across the stream and steep terrain would certainly cause negative impacts to the areas of the property protected by the significant environmental overlay zone, would require a creek crossing, extensive grading and filling, and cutting down trees in the heavily wooded natural area that bisects the property. Given these facts, the Hearings Officer finds that special circumstances or conditions apply to the property or intended use that do not apply to other property in the same area. This criterion is met.

B. The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant and extraordinary hardship would result from strict compliance with the standards;

Applicant: *The provisions of Section 60.60.40.6 would require the driveway to access from the west side of the site, which would result in the need for a bridge crossing over the creek that bisects the site and excessive paving through the wooded area. This would impact the natural resources on the site, and place an extraordinary hardship on the owner.*

Hearings Officer: The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant and extraordinary hardship would result from strict compliance with the standards. As indicated by the applicant, a driveway access from the west side of the site would result in a need for a bridge crossing over the creek that bisects the site, and would require extensive grading and paving through an existing wooded area that is identified as a significant environmental concern zoning overlay. Further, the access of Parcel 3 is located in the area where the subject property comes in contact with the road right-of-way. This is the only location where the subject property touches the right-of-way that provides reasonable access to the only suitable home site on Parcel 3. Relocating the road would require the applicant to obtain an easement for access across property that isn't owned by the applicant. In addition, due to the topography of the site, this may involve extensive grading and fill in order to provide for access.

The applicants' engineer provided his professional opinion that septic requirements, County setbacks and topography of over 25% grade on a significant part of the subject property prevent the applicants from developing all three home sites on the western part of the subject property. The applicant's site plan (Exhibit A.7.5) supports this conclusion.

The Hearing Officer finds, as supported in the findings above, that the variance request for the sight distance for the proposed driveway location to access the proposed Parcel 3 is necessary for the

preservation and enjoyment of a substantial property right of the applicant and extraordinary hardship would potentially result from strict compliance with the standards. This criterion has been met.

C. The authorization of the variance will not be materially detrimental to the public welfare or injurious to other property in the vicinity, or adversely affect the appropriate development of adjoining properties;

Applicant: *The authorization of the variance will not be materially detrimental to the public welfare or injurious to other property in the vicinity because sight distance of 190 feet of the southeast is sufficient for a design speed of 40 mph. In 1999, Multnomah County did a comprehensive survey of NW McNamee Road and determined the centerline of the traveled way. This survey was recorded as Survey No. 59579. Centerline radii for NW McNamee Road range from 130' to 400', with most being near 150'. Based on the 2004 Geometric Design of Highways and Streets published by American Association of State Highway and Transportation Officials (AASHTO) this road should have a design speed of 25 mph. As noted, the sight distance to the southeast was measured by MGH Associates is 190 feet and is sufficient for a design speed of 40 mph, according to the County Design Standards. A peed study for vehicles travelling on this section of NW McNamee Road was conducted by All Traffic Data Services, Inc. on December 13 and 14, 2011 which found that the 85th percentile speed was 32 mph, which is less than the 40 mph design speed. Since sight distance from the proposed access is sufficient, authorization of the variance will not be materially detrimental to the public welfare or injurious to other properties.*

The sight distance measured to the southeast is 190 feet. According to the County Design Standards, this is sufficient for a design speed of 40 mph. Using a 55 mph design speed is excessive in this case.

Hearings Officer: In reviewing the requested variance and the hardships indicated, the Hearings Officer finds that approval of the variance will not be materially detrimental to the public welfare and that the project will not be injurious to other property in the vicinity. In addition, the variance will not adversely affect the appropriate development of adjoining properties. The request is a variance to the sight distance standards for the driveway to the home site on Parcel 3. The applicant has submitted a Sight Distance Certification for the proposed accesses to the lots being created as part of this Land Division as well as a speed study. Two access points are being proposed as part of this land division. The first access is proposed on the west side of the lot to serve the proposed Parcel 1 and Parcel 2 which will have the existing single family dwelling and accessory structures. The second access is proposed on the east portion of the property to serve the proposed Parcel 3. The sight distance analysis and speed study finds that sight distance for the access points are adequate.

The Sight Distance Certification found that the proposed west access point that will serve the proposed Parcel 1 and Parcel 2 adequately meets the sight distance requirement for McNamee Road which was identified to require 246 feet in either direction for intersection sight distance at a design speed of 55 miles per hour. The sight distance from the proposed western most access for the land division was measure to be 699 feet to the west of the access for a right hand turn, and 271 feet to the east of the access for a left hand turn. The Sight Distance Certification found that the east access point that will serve as the access to Parcel 3 was found to be inadequate, and therefore requires a road rules variance. Of the required 246 feet of sight distance, the sight distance was measured to be 375 feet to the north of the access for a right hand turn and 190 feet to the southeast of the access for a left hand turn. The 190 feet of sight distance is inadequate and doesn't meet the required 246 feet standard, based on a 55 miles per hour design speed. As addressed by the applicant's engineer, 190 feet is sufficient for a design speed of 40 miles per hour, and in 1999 the county did a comprehensive survey of NW McNamee Road and determined the centerline of the traveled way (Survey No. 59579). The applicant adds that the centerline radii for NW McNamee Road ranges from 130' to 400', with most being near 150'. According to the

applicant's engineer, based on the 2004 Geometric Design of Highways and Streets published by the American Association of State Highway and Streets published by the American Association of State Highway and Transportation Officials (AASHTO) this road should have a design speed of 25 mph. The County adds that since the road is not posted for speed, drivers can legally drive at 55mph, and therefore required the sight distance certification to address the speeds at 55 miles per hour. The applicant in order to address this submitted a speed study that found that the 85th percentile speed was 32 mph, which is less than the 40mph design speed. With this information along with the information submitted for sight distance certification, it is found that adequate sight distance is available for the circumstances in the area.

As identified in the in the findings above, the proposed access is located at the only point where the subject property comes in contact with the right-of-way that could provide reasonable and appropriate access to the home site on Parcel 3. Adequate property is available to locate the driveway in a manner in which the property owner doesn't have to obtain an easement over other private property not under the applicant's ownership, and further information is needed to support the applicant's finding that 190 feet is a safe and sufficient amount of sight distance. A condition has been added to maintain the vegetation located on the subject property in order to ensure that the sight distances are maintained. As conditioned, this criterion is met.

D. The circumstances of any hardship are not of the applicant's making.

Applicant: *McNamee road was actually built outside of the right-of-way. Sight distance would most likely have been achieved if it had been built in the correct location. The sight distance issue was not made by the applicant.*

Hearings Officer: As indicated by the applicant, the configuration of the lot and road are issues that are not of the applicant's making. Staff concurs that the physical characteristics of the site and the road are not within the applicant's control. The proposed variance allows for a reduced variance while continuing to allow the property owner the substantial right to use their property, and not affect adjoining properties not in the applicant's ownership. This criterion is met.

7.00 Conditional Use Permit for Development in the Protected Aggregate Mineral Impact Area:

7.01 MCC 33.5705 Area Affected

This subsection shall apply to those lands designated PAM on the Multnomah County Zoning Map. On the Zoning Map shall also be a reference to the relevant site-specific Comprehensive Plan documents.

Exemption activities as described in MCC 33.5710 (A) and (B) are allowed in all districts, not only those designated PAM.

Hearings Officer: The majority of the property is located within the Protected Aggregate and Mineral Resources Impact Area Overlay Subdistrict (PAM-IA).

7.02 MCC 33.5710 Exemptions

(A) The following activities are exempt from the requirements of MCC 33.5700 through 33.5745 and 33.6500 through 33.6535. Operators or land owners have the burden of qualifying for any exemption.

(1) Mining on forest lands auxiliary to forestry operations occurring in compliance with the Forest Practices Act as administered by the Oregon Department of Forestry.

(2) Lawful mining operating under a DOGAMI "Grant of Total Exemption" on December 3, 1994 on property owned or controlled by the operator. Abandonment, restoration, or alteration of this use shall be in compliance with the non-conforming use provisions of MCC 33.7200 through 33.7214.

(B) Mining less than 1,000 cubic yards of material in conjunction with mining an area of less than one acre is exempt from the requirements of MCC 33.5700 through 33.5745 and 33.6500 through 33.6535, but shall require the approval of a Hillside and Erosion Control Permit and any other permits as may be required in any overlay subdistrict.

(C) Mining a quantity in excess of (B), but mining less than 5,000 cubic yards of material or disturbing less than one acre of land within a period of 12 consecutive months until mining affects five or more acres is exempt from the requirement in MCC 33.6520 and 33.6525 to obtain a DOGAMI operating permit. However, mining at this level of activity shall:

(1) Be on a "protected site" as determined by, and subject to restrictions warranted by, the Goal 5 process;

(2) Be approved as a mining conditional use pursuant to the provisions and requirements of MCC 33.6500 through 33.6535; and

(3) Obtain approval of a Hillside and Erosion Control Permit in conjunction with the mining conditional use approval. The Hillside and Erosion Control permit shall be required in place of all references in the plan and MCC Chapter 33 to obtaining a DOGAMI operating permit in recognition that this level of mining activity is exempted by DOGAMI rules for such a permit.

Hearings Officer: No mining is proposed on the subject property.

7.03 MCC 33.5720 PAM Overlay Special Subdistricts

The Protected Aggregate and Mineral Resource Subdistrict (PAM) comprises two areas, the *Extraction Area* (PAM-EA) and the *Impact Area* (PAM-IA).

(A) The *Extraction Area* shall be applied to the portion of *protected sites* where mining and associated processing is to occur. The *Extraction Area* may consist of one or more parcels or portions of parcels, and may be applied to contiguous properties under different ownership. The *Extraction Area* boundary may be modified through the *Goal 5 process* to reduce conflicts with *conflicting uses* existing when the overlay is applied. The *Extraction Area* shall be shown on the zoning map with the designation PAM-EA.

(B) The *Impact Area* shall be applied to parcels or portions of parcels adjacent to the *Extraction Area* and within the *Impact Area* deemed appropriate through the *Goal 5 process*. The *Impact Area* shall be shown on the zoning map with the designation PAM-IA.

Hearings Officer: The majority of the property is located within the Protected Aggregate and Mineral Resources Overlay Subdistrict (PAM-IA).

7.04 MCC 33.5735 Impact Area (PAM-IA) – Allowed Uses

Notwithstanding the use provisions of the underlying district, the following use provisions shall apply in the PAM-IA Subdistrict. Primary Uses, Uses Permitted Outright, Uses Permitted Under Prescribed Conditions, and Conditional Uses allowed in the underlying district may be permitted subject to the underlying district provisions and criteria of approval, except as follows:

(A) Uses identified through the *Goal 5 process* to be prohibited within the *Impact Area* shall not be permitted;

(B) *Noise* or *dust sensitive* uses not prohibited in (A) may be permitted under the conditional use procedural provisions of MCC 33.6300 through 33.6350 when found by the Hearing Authority to satisfy the approval criteria of MCC 33.5740 and the approval criteria of the underlying district; and
(C) *Conflicting uses* required by the *Goal 5 process* to be conditionally approved may be permitted under the procedural provisions of MCC 33.6300 through 33.6350 when found by the Hearing Authority to satisfy the approval criteria of MCC 33.5740 and the approval criteria of the underlying district.

Hearings Officer: The proposal is for two single-family dwellings to be reviewed under the Conditional Use Permit process. Single-family dwellings are noise and dust-sensitive uses as defined in MCC 33.5715(B). They are not a use that is prohibited within the impact area by the Goal 5 process.

7.05 MCC 33.5740 Use Approval Criteria

(A) In acting to approve a Conditional Use subject to these provisions, the Hearing Authority shall find that:

(1) The proposed use will not interfere with or cause an adverse impact on lawfully established and lawfully operating mining operations;
(2) The proposed use will not cause or threaten to cause the mining operation to violate any applicable standards of this chapter, or the terms of a state agency permit. The applicant for a new *noise sensitive use* shall submit an analysis prepared by an engineer or other qualified person, showing that applicable DEQ noise control standards are met or can be met by a specified date by the nearby mining operation; and
(3) Any setbacks or other requirements imposed through the *Goal 5 process* have been met, or can be met by a specified date.

Hearings Officer: The proposed dwellings will not interfere with or cause an adverse impact on lawfully established and lawfully operating mining operations due to the distance (over 3000 feet) and intervening topography (a ridge) between the subject site and the mining operation.

7.06 (B) Approval Conditions.

(1) Compliance with the use approval criteria may be satisfied through the imposition of clear and objective conditions of approval.
(2) Approval of any *conflicting use* in the *extraction area* or *impact area* shall be conditioned upon execution of a *restrictive covenant* in favor of the mining operator. The *restrictive covenant* shall incorporate all approval conditions, and an agreement not to object to the conduct of lawful operations conducted at the nearby surface mine.

Hearings Officer: Condition 1 requires the proposed dwellings be placed as proposed in the applicant's site plan (Exhibit A.7.5) and Condition 52 requires the above restrictive covenant to be recorded and requires the conditions of this approval to be recorded.

8.00 Hillside Development Permit:

8.01 MCC 33.5505 Permits Required

Hillside Development Permit: All persons proposing development, construction, or site clearing (including tree removal) on property located in hazard areas as identified on the "Slope Hazard Map," or on lands with average slopes of 25 percent or more shall obtain a

Hillside Development Permit as prescribed by this subdistrict, unless specifically exempted by MCC 33.5510.

Hearings Officer: A hillside development permit is required for this proposal due to the proposed development, driveways and for the fill activities that took place on the subject property in 1995. An application for fill was denied by the Multnomah County Hearings Officer in 1998. The current application for fill is meant to address the full extent of the fill that was placed in 1995 along the western portion of the existing property.

8.02 MCC 33.5505 Exempt Land Uses and Activities

The following are exempt from the provisions of this Chapter:

(A) Development activities approved prior to February 20, 1990; except that within such a development, issuance of individual building permits for which application was made after February 20, 1990 shall conform to site-specific requirements applicable herein.
(B) General Exemptions – Outside the Tualatin River and Balch Creek Drainage Basins, all land-disturbing activities outlined below shall be undertaken in a manner designed to minimize earth movement hazards, surface runoff, erosion, and sedimentation and to safeguard life, limb, property, and the public welfare. A person performing such activities need not apply for a permit pursuant to this subdistrict, if :
(1) Natural and finished slopes will be less than 25 percent; and,
(2) The disturbed or filled area is 20,000 square feet or less; and,
(3) The volume of soil or earth materials to be stored is 50 cubic yards or less; and,
(4) Rainwater runoff is diverted, either during or after construction, from an area smaller than 10,000 square feet; and,
(5) Impervious surfaces, if any, of less than 10,000 square feet are to be created; and,
(6) No drainageway is to be blocked or have its stormwater carrying capacities or characteristics modified.
(C) Categorical Exemptions – Notwithstanding MCC 33.5510 (A) and (B) (1) through (6), the following activities are exempt from the permit requirements, except that in the Tualatin River Drainage Basin, activities which effect water quality shall require a Permit pursuant to OAR 340-41-455 (3):
(1) An excavation below finished grade for basements and footings of a building, retaining wall, or other structure authorized by a valid building permit. This shall not exempt any fill made with the material from such excavation, nor exempt any excavation having an unsupported finished height greater than five feet.
(2) Cemetery graves, but not cemetery soil disposal sites.
(3) Excavations for wells, except that sites in the Tualatin Basin shall require Erosion Control Plans for spoils or exposed areas consistent with OAR 340-41-455 (3).
(4) Mineral extraction activities as regulated by MCC 33.6500 through 33.6535, except that sites in the Tualatin Basin shall require Erosion Control Plans for spoils or exposed areas consistent with OAR 340-41-455 (3).
(5) Exploratory excavations under the direction of certified engineering geologists or geotechnical engineers.
(6) Routine agricultural crop management practices.
(7) Residential gardening and landscape maintenance at least 100-feet by horizontal measurement from the top of the bank of a watercourse, or the mean high watermark (line of vegetation) of a body of water or wetland.
(8) Emergency response activities intended to reduce or eliminate an immediate danger to life, property, or flood or fire hazards.

(9) Forest practices as defined by ORS 527 (The State Forest Practices Act) and approved by the Oregon Department of Forestry.

Hearings Officer: The Hillside Development permit is required for the fill and grading activities that occurred in 1995 and for the proposed development and associated driveways.

8.03 MCC 33.5515 Application Information Required

An application for development subject to the requirements of this subdistrict shall include the following:

(A) A map showing the property line locations, roads and driveways, existing structures, trees with 8-inch or greater caliper or an outline of wooded areas, watercourses and include the location of the proposed development(s) and trees proposed for removal.
(B) An estimate of depths and the extent and location of all proposed cuts and fills.
(C) The location of planned and existing sanitary drainfields and drywells.
(D) Narrative, map or plan information necessary to demonstrate compliance with MCC 33.5520 (A). The application shall provide applicable supplemental reports, certifications, or plans relative to: engineering, soil characteristics, stormwater drainage, stream protection, erosion control, and/or replanting.
(E) A Hillside Development permit may be approved by the Director only after the applicant provides:
(1) Additional topographic information showing that the proposed development to be on land with average slopes less than 25 percent, and located more than 200 feet from a known landslide, and that no cuts or fills in excess of 6 feet in depth are planned. High groundwater conditions shall be assumed unless documentation is available, demonstrating otherwise; or
(2) A geological report prepared by a Certified Engineering Geologist or Geotechnical Engineer certifying that the site is suitable for the proposed development; or,
(3) An HDP Form– 1 completed, signed and certified by a Certified Engineering Geologist or Geotechnical Engineer with his/her stamp and signature affixed indicating that the site is suitable for the proposed development.
(a) If the HDP Form– 1 indicates a need for further investigation, or if the Director requires further study based upon information contained in the HDP Form– 1, a geotechnical report as specified by the Director shall be prepared and submitted.
(F) Geotechnical Report Requirements
(1) A geotechnical investigation in preparation of a Report required by MCC 33.5515 (E) (3) (a) shall be conducted at the applicant's expense by a Certified Engineering Geologist or Geotechnical Engineer. The Report shall include specific investigations required by the Director and recommendations for any further work or changes in proposed work which may be necessary to ensure reasonable safety from earth movement hazards.
(2) Any development related manipulation of the site prior to issuance of a permit shall be subject to corrections as recommended by the Geotechnical Report to ensure safety of the proposed development.
(3) Observation of work required by an approved Geotechnical Report shall be con-ducted by a Certified Engineering Geologist or Geotechnical Engineer at the applicant's expense; the geologist's or engineer's name shall be submitted to the Director prior to issuance of the Permit.
(4) The Director, at the applicant's expense, may require an evaluation of HDP Form– 1 or the Geotechnical Report by another Certified Engineering Geologist or Geotechnical Engineer.

(G) Development plans shall be subject to and consistent with the Design Standards For Grading and Erosion Control in MCC 33.5520 (A) through (D). Conditions of approval may be imposed to assure the design meets those standards.

Hearings Officer: Geotechnical reports by Paul A. Crenna, C.E.G. and James D. Imbrie, G.E., C.E.G of GeoPacific Engineering, Inc. (Exhibits A.5, A.7.15 and A.7.23) have been submitted with the application and the reports address the volume and extent, as well as the stability of the fill on the subject property. An HDP Form 1 has also been submitted by Paul A. Crenna of GeoPacific Engineering, Inc. (Exhibit A.5).

8.04 MCC 33.5520 Grading and Erosion Control Standards

Approval of development plans on sites subject to a Hillside Development Permit shall be based on findings that the proposal adequately addresses the following standards. Conditions of approval may be imposed to assure the design meets the standards:

(A) Design Standards For Grading and Erosion Control
(1) Grading Standards
(a) Fill materials, compaction methods and density specifications shall be indicated. Fill areas intended to support structures shall be identified on the plan. The Director or delegate may require additional studies or information or work regarding fill materials and compaction;
(b) Cut and fill slopes shall not be steeper than 3:1 unless a geological and/or engineering analysis certifies that steep slopes are safe and erosion control measures are specified;
(c) Cuts and fills shall not endanger or disturb adjoining property;
(d) The proposed drainage system shall have adequate capacity to bypass through the development the existing upstream flow from a storm of 10-year design frequency;
(e) Fills shall not encroach on natural watercourses or constructed channels unless measures are approved which will adequately handle the displaced streamflow for a storm of 10-year design frequency;

Hearings Officer: A limited amount of grading will occur for the construction of the home sites driveways, wells, and sanitation systems. The slopes are certified as stable in the Geotechnical reports (Exhibits A.5, A.7.15 and A.7.23). Construction of the home sites, driveways, and associated improvements are subject to the recommendations in the Geotechnical reports (Conditions 13 and 14).

8.05 (2) Erosion Control Standards
(a) On sites within the Tualatin River Drainage Basin, erosion and stormwater control plans shall satisfy the requirements of OAR 340. Erosion and storm-water control plans shall be designed to perform as prescribed by the currently adopted edition of the "*Erosion Prevention & Sediment Control Plans Technical Guidance Handbook (1994)*" and the "*City of Portland Stormwater Quality Facilities, A Design Guidance Manual (1995)*". Land-disturbing activities within the Tualatin Basin shall provide a 100-foot undisturbed buffer from the top of the bank of a stream, or the ordinary high watermark (line of vegetation) of a water body, or within 100-feet of a wetland; unless a mitigation plan consistent with OAR 340 is approved for alterations within the buffer area.

Hearings Officer: The subject property is not located within the Tualatin River Drainage Basin.

8.06 **(b) Stripping of vegetation, grading, or other soil disturbance shall be done in a manner which will minimize soil erosion, stabilize the soil as quickly as practicable, and expose the smallest practical area at any one time during construction;**
(c) Development Plans shall minimize cut or fill operations and ensure conformity with topography so as to create the least erosion potential and adequately accommodate the volume and velocity of surface runoff;
(d) Temporary vegetation and/or mulching shall be used to protect exposed critical areas during development;
(e) Whenever feasible, natural vegetation shall be retained, protected, and supplemented;
1. A 100-foot undisturbed buffer of natural vegetation shall be retained from the top of the bank of a stream, or from the ordinary high watermark (line of vegetation) of a water body, or within 100-feet of a wetland;
2. The buffer required in 1. may only be disturbed upon the approval of a mitigation plan which utilizes erosion and stormwater control features designed to perform as effectively as those prescribed in the currently adopted edition of the *"Erosion Prevention & Sediment Control Plans Technical Guidance Handbook (1994)"* and the *"City of Portland Stormwater Quality Facilities, A Design Guidance Manual (1995)"* and which is consistent with attaining equivalent surface water quality standards as those established for the Tualatin River Drainage Basin in OAR 340;

Hearings Officer: Condition 53 requires compliance with the above standards.

8.07 **(f) Permanent plantings and any required structural erosion control and drainage measures shall be installed as soon as practical;**
(g) Provisions shall be made to effectively accommodate increased runoff caused by altered soil and surface conditions during and after development. The rate of surface water runoff shall be structurally retarded where necessary;
(h) Sediment in the runoff water shall be trapped by use of debris basins, silt traps, or other measures until the disturbed area is stabilized;
(i) Provisions shall be made to prevent surface water from damaging the cut face of excavations or the sloping surface of fills by installation of temporary or permanent drainage across or above such areas, or by other suitable stabilization measures such as mulching or seeding;
(j) All drainage provisions shall be designed to adequately carry existing and potential surface runoff to suitable drainageways such as storm drains, natural watercourses, drainage swales, or an approved drywell system;
(k) Where drainage swales are used to divert surface waters, they shall be vegetated or protected as required to minimize potential erosion;

Hearings Officer: According to the applicant's narrative (Exhibit A.6), sediment fencing will be used to prevent erosion. Silt fencing will be required on all downhill portions adjacent to new development (Condition 16).

8.08 **(1) Erosion and sediment control devices shall be required where necessary to prevent polluting discharges from occurring. Control devices and measures which may be required include, but are not limited to:**
1. Energy absorbing devices to reduce runoff water velocity;
2. Sedimentation controls such as sediment or debris basins. Any trapped materials shall be removed to an approved disposal site on an approved schedule;
3. Dispersal of water runoff from developed areas over large undisturbed areas.

(m) Disposed spoil material or stock-piled topsoil shall be prevented from eroding into streams or drainageways by applying mulch or other protective covering; or by location at a sufficient distance from streams or drainageways; or by other sediment reduction measures;
(n) Such non-erosion pollution associated with construction such as pesticides, fertilizers, petrochemicals, solid wastes, construction chemicals, or wastewaters shall be prevented from leaving the construction site through proper handling, disposal, continuous site monitoring and clean-up activities.
(o) On sites within the Balch Creek Drainage Basin, erosion and stormwater control features shall be designed to perform as effectively as those prescribed in the "*Erosion Prevention & Sediment Control Plans Technical Guidance Handbook (1994)*". All land disturbing activities within the basin shall be confined to the period between May first and October first of any year. All permanent vegetation or a winter cover crop shall be seeded or planted by October first the same year the development was begun; all soil not covered by buildings or other impervious surfaces must be completely vegetated by December first the same year the development was begun.

Hearings Officer: The site is not located within the Balch Creek Basin. Conditions 15 through 20 requires proper disposal of non-erosion sources of pollution. Condition 17 requires removal of spoils associated with construction and/or excavation activities.

8.09 (B) Responsibility
(1) Whenever sedimentation is caused by stripping vegetation, regrading or other development, it shall be the responsibility of the person, corporation or other entity causing such sedimentation to remove it from all adjoining surfaces and drainage systems prior to issuance of occupancy or final approvals for the project;
(2) It is the responsibility of any person, corporation or other entity doing any act on or across a communal stream watercourse or swale, or upon the floodplain or right-of-way thereof, to maintain as nearly as possible in its present state the stream, water-course, swale, floodplain, or right-of-way during such activity, and to return it to its original or equal condition.
(C) Implementation
(1) Performance Bond – A performance bond may be required to assure the full cost of any required erosion and sediment control measures. The bond may be used to provide for the installation of the measures if not completed by the contractor. The bond shall be released upon determination the control measures have or can be expected to perform satisfactorily. The bond may be waived if the Director determines the scale and duration of the project and the potential problems arising therefrom will be minor.
(2) Inspection and Enforcement. The requirements of this subdistrict shall be enforced by the Planning Director. If inspection by County staff reveals erosive conditions which exceed those prescribed by the Hillside Development, work may be stopped until appropriate correction measures are completed.
(D) Final Approvals
A certificate of Occupancy or other final approval shall be granted for development subject to the provisions of this subdistrict only upon satisfactory completion of all applicable requirements.

Hearings Officer: Condition 54 requires compliance with the above criteria.

9.00 Significant Environmental Concern for Wildlife Habitat Permit:

9.01 MCC 33.4570 Criteria for Approval of SEC-h Permit -Wildlife Habitat

(B) Development standards:

(1) Where a parcel contains any non-forested "cleared" areas, development shall only occur in these areas, except as necessary to provide access and to meet minimum clearance standards for fire safety.

Hearings Officer: The proposed dwellings will be located in existing cleared areas. *Criterion Met.*

9.02 (2) Development shall occur within 200 feet of a public road capable of providing reasonable practical access to the developable portion of the site.

Hearings Officer: The proposed development on Parcel 2 is greater than 200 feet from the NW McNamee Road right-of-way and will be accessed by a driveway approximately 650 feet in length. The proposed development on Parcel 3, also, will not meet the above standards because the new dwelling site will be over 200 feet away from NW McNamee Road. Because the proposed development on Parcels 2 and 3 will not meet the above standards, a wildlife conservation plan is required per MCC 33.4570(C)(1).

9.03 (3) The access road/driveway and service corridor serving the development shall not exceed 500 feet in length.

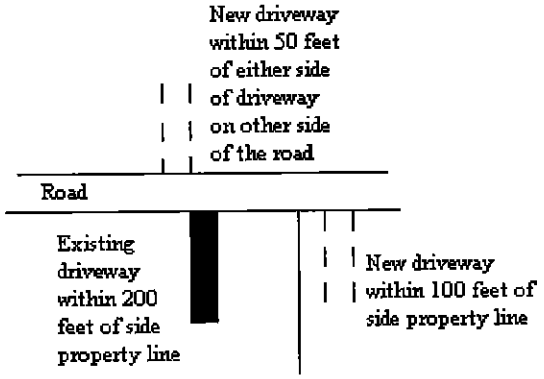
Hearings Officer: The proposed access road/driveway serving development on Parcel 2 will be approximately 650 feet in length. The existing development on Parcel 1 will meet the above standard. The proposed driveway for Parcel 3 will also meet the above standards as shown by Exhibit A.7.8. As a result, a wildlife conservation plan is required per MCC 33.4570(C)(1).

9.04 (4) For the purpose of clustering access road/driveway approaches near one another, one of the following two standards shall be met:

(a) The access road/driveway approach onto a public road shall be located within 100 feet of a side property line if adjacent property on the same side of the road has an existing access road or driveway approach within 200 feet of that side property line; or

(b) The access road/driveway approach onto a public road shall be located within 50 feet of either side of an existing access road/driveway on the opposite side of the road.

(c) Diagram showing the standards in (a) and (b) above.



(d) The standards in this subsection (4) may be modified upon a determination by the County Road Official that the new access road/driveway approach would result in an unsafe traffic situation using the standards in the Multnomah County "Design and Construction

Manual," adopted June 20, 2000 (or all updated versions of the manual). Standards to be used by the Road Official from the County manual include Table 2.3.2, Table 2.4.1, and additional referenced sight distance and minimum access spacing standards in the publication A Policy on Geometric Design of Highways and Streets by the American Association of State Highway and Transportation Officials (AASHTO) and the Traffic Engineering Handbook by the Institute of Transportation Engineers (ITE).
1. The modification shall be the minimum necessary to allow safe access onto the public road.
2. The County Road Official shall provide written findings supporting the modification.

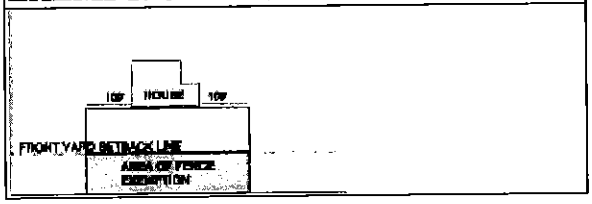
Hearings Officer: The driveway access for the adjacent property to the west of Parcel 1 of the subject property is within 200 feet of the common property line. As a result, criterion (4)(a) applies to the driveway. The shared access for Parcels 1 and 2 will be located within 100 feet of the west boundary of Parcel 1 as shown by Exhibit A.7.5. Criterion (4)(a) does not apply to Parcel 3 because there is no driveway access to McNamee Road within 200 feet of the property boundary for Parcel 3 on the same side of the road. *See*, aerial photographs in the record, including Exhibit A.7.18. The applicants' engineer stated that the accesses for Parcels 1 and 2 are within 50 feet of a driveway on the opposite side of the road. The aerial photographs in the record indicate that there are no driveways on properties across the street from Parcel 3 where it adjoins McNamee Road. As a result, Criterion (4)(b) is met for Parcels 1 and 2 and does not apply to Parcel 3.

The proposed access serving Parcel 3 is the only possible location for a dwelling on the eastern proposed parcel 3 because it is the only location adjacent to a public right-of-way. The County Transportation Section has approved the access location (see findings in Sections 6 and 13).

9.05 **(5) The development shall be within 300 feet of a side property line if adjacent property has structures and developed areas within 200 feet of that common side property line.**

Hearings Officer: Exhibit A.7.18 shows that there is a home on the lot that adjoins the west side lot line of Parcel 2. The home appears to be located within 200 feet of the common side property line. The new home on Parcel 2 will be located within 300 feet of the side property line if built in the location proposed by the applicants. There is a home and a developed, disturbed area on the parcel that adjoins the side lot line of Parcel 3. The developed, disturbed area may be within 300 feet of the side lot line for Parcel 3. The home site proposed for Parcel 3, however, complies with this code criterion because it is within 300 feet of the common side property line.

9.06 **(6) Fencing within a required setback from a public road shall meet the following criteria:**
(a) Fences shall have a maximum height of 42 inches and a minimum 17 inch gap between the ground and the bottom of the fence.
(b) Wood and wire fences are permitted. The bottom strand of a wire fence shall be barbless. Fences may be electrified, except as prohibited by County Code.
(c) Cyclone, woven wire, and chain link fences are prohibited.
(d) Fences with a ratio of solids to voids greater than 2:1 are prohibited.
(e) Fencing standards do not apply in an area on the property bounded by a line along the public road serving the development, two lines each drawn perpendicular to the principal structure from a point 100 feet from the end of the structure on a line perpendicular to and meeting with the public road serving the development, and the front yard setback line parallel to the public road serving the development.

FIGURE 33.4570A FENCE EXEMPTION AREA


Hearings Officer: No fences are proposed. *Criterion met.*

9.07 (7) The following nuisance plants shall not be planted on the subject property and shall be removed and kept removed from cleared areas of the subject property:

Scientific Name	Common Name
Chelidonium majus	Lesser celandine
Cirsium arvense	Canada Thistle
Cirsium vulgare	Common Thistle
Clematis ligusticifolia	Western Clematis
Clematis vitalba	Traveler's Joy
Conium maculatum	Poison hemlock
Convolvulus arvensis	Field Morning-glory
Convolvulus nyctagineus	Night-blooming Morning-glory
Convolvulus seppium	Lady's nightcap
Cortaderia selloana	Pampas grass
Crataegus sp. except C. douglasii	hawthorn, except native species
Cytisus scoparius	Scotch broom
Daucus carota	Queen Ann's Lace
Elodea densa	South American Water-weed
Equisetum arvense	Common Horsetail
Equisetum telemateia	Giant Horsetail
Erodium cicutarium	Crane's Bill
Geranium roberianum	Robert Geranium
Hedera helix	English Ivy
Hypericum perforatum	St. John's Wort
Ilex aquafolium	English Holly
Laburnum watereri	Golden Chain Tree
Lemna minor	Duckweed, Water Lentil
Loentodon autumnalis	Fall Dandelion

Scientific Name	Common Name
Lythrum salicaria	Purple Loosestrife
Myriophyllum spicatum	Eurasian Watermilfoil
Phalaris arundinacea	Reed Canary grass
Poa annua	Annual Bluegrass
Polygonum coccineum	Swamp Smartweed
Polygonum convolvulus	Climbing Binaweed
Polygonum sachalinense	Giant Knotweed
Prunus laurocerasus	English, Portugese Laurel
Rhus diversiloba	Poison Oak
Rubus discolor	Himalayan Blackberry
Rubus laciniatus	Evergreen Blackberry
Senecio jacobaea	Tansy Ragwort
Solanum dulcamara	Blue Bindweed
Solanum nigrum	Garden Nightshade
Solanum sarrachoides	Hairy Nightshade
Taraxacum otficinale	Common Dandelion
Ultricularia vuigaris	Common Bladderwort
Utica dioica	Stinging Nettle
Vinca major	Periwinkle (large leaf)
Vinca minor	Periwinkle (small leaf)
Xanthium spinoseum	Spiny Cocklebur
various genera	Bamboo sp.

Hearings Officer: A condition of approval shall require the property owner to maintain the development area free of the listed nuisance plants.

9.08 **(C) Wildlife Conservation Plan. An applicant shall propose a wildlife conservation plan if one of two situations exist.**
(1) The applicant cannot meet the development standards of Section (B) because of physical characteristics unique to the property. The applicant must show that the wildlife conservation plan results in the minimum departure from the standards required in order to allow the use; or

Hearings Officer: The applicant cannot meet the development standards of section B because of physical characteristics unique to the property. Prior development and topography prevent compliance with the requirement that the new dwellings will be located within 200 feet of a public

road. The fact that the applicant is proposing to build in parts of the property that have been cleared and compliance with the wildlife conservation plan will result in the minimum departure from the standards required to allow the use. Condition of Approval 1 requires the applicants and future owners to comply with the wildlife conservation plans [Exhibits A.4 and A.7.8] that accompany the Luethes' land use applications.

9.09 **(3) The wildlife conservation plan must demonstrate the following:**
(a) That measures are included in order to reduce impacts to forested areas to the minimum necessary to serve the proposed development by restricting the amount of clearance and length/width of cleared areas and disturbing the least amount of forest canopy cover.

Hearings Officer: No clearing of forest cover is required for the placement of the dwellings on either Parcel 2 or 3 so no direct impacts to the forest will result. *Criterion met.*

9.10 **(b) That any newly cleared area associated with the development is not greater than one acre, excluding from this total the area of the minimum necessary accessway required for fire safety purposes.**

Hearings Officer: No new areas will be cleared for the proposed dwelling. *Criterion met.*

9.11 **(c) That no fencing will be built and existing fencing will be removed outside of areas cleared for the site development except for existing cleared areas used for agricultural purposes.**

Hearings Officer: No new fencing is proposed. *Criterion met.*

9.12 **(d) That revegetation of existing cleared areas on the property at a 2:1 ratio with newly cleared areas occurs if such cleared areas exist on the property.**

Hearings Officer: No new clearing is taking place. *Criterion is not applicable.*

9.13 **(e) That revegetation and enhancement of disturbed stream riparian areas occurs along drainages and streams located on the property.**

Hearings Officer: A wildlife conservation plan has been proposed by the applicant. The plan includes the revegetation of approximately 24,000 square feet of degraded area with Douglas fir, Vine maple and Oregon grape. The revegetation would amount to an approximately 2:1 mitigation for the new access drives that may result in impact to wildlife. *Criterion met.*

9.14 **(4) For Protected Aggregate and Mineral (PAM) resources within a PAM subdistrict, the applicant shall submit a Wildlife Conservation Plan which must comply only with measures identified in the Goal 5 protection program that has been adopted by Multnomah County for the site as part of the program to achieve the goal.**

Hearings Officer: See findings in Section 8.

10.00 Commercial Forest Use – 2 Zone Criteria:

10.01 MCC 33.2250 Building Height Requirements
(A) Maximum structure height – 35 feet.

Hearings Officer: Condition 55 requires the dwellings to meet this standard.

10.02 MCC 33.2256 Forest Practices Setbacks and Fire Safety Zones

The Forest Practice Setbacks and applicability of the Fire Safety Zones is based upon existing conditions, deviations are allowed through the exception process and the nature and location of the proposed use. The following requirements apply to all structures as specified:

Table 1

Use	Forest Practice Setbacks			Fire Safety Zones
Description of use and location	Nonconforming Setbacks	Front Property Line Adjacent to County Maintained Road (feet)	All Other Setbacks (feet)	Fire Safety Zone Requirements (FSZ)
Other Structures	N/A	30	130	Primary & Secondary required

(A) Reductions to a Forest Practices Setback dimension shall only be allowed pursuant to approval of an adjustment or variance.

Hearings Officer: The structures and homes that may be built on the subject property are subject to the above-listed setback for "other structures." The proposed homes are "other structures" because they are a type of home not listed in Table 1. The applicant is seeking a reduction to the 130-foot Forest Practices Setbacks for the proposed dwellings on Parcels 2 and 3. See findings in Section 12 below.

10.03 (B) Exception to the Secondary Fire Safety Zone shall be pursuant to MCC 33.2310 only. No reduction is permitted for a required Primary Fire Safety Zone through a nonconforming, adjustment or variance process.

Hearings Officer: The applicant is seeking an Exception to the Secondary Fire Safety Zone pursuant to MCC 33.2310. See findings in Section 11, below.

10.04 (C) The minimum forest practices setback requirement shall be increased where the setback abuts a street having insufficient right-of-way width to serve the area. The county Road Official shall determine the necessary right-of-way widths based upon the county "Design and Construction Manual" and the Planning Director shall determine any additional setback requirements in consultation with the Road Official.

Hearings Officer: A five foot right-of-way dedication is required (Condition 41) to provide the necessary right-of-way for McNamee Road. Once dedicated, the subject property will not abut a street with insufficient right-of-way width to serve the areas. Given this fact, an increase in the forest practices setback is not required.

10.05 (D) Fire Safety Zones on the Subject Tract
(1) Primary Fire Safety Zone

(a) A primary fire safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure. Trees within this safety zone shall be spaced with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches within 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height.
(b) On lands with 10 percent or greater slope the primary fire safety zone shall be extended down the slope from a dwelling or structure as follows:

Percent Slope	Distance In Feet
Less than 10	No additional required
Less than 20	50 additional
Less than 25	75 additional
Less than 40	100 additional

(c) The building site must have a slope less than 40 percent.

Hearings Officer: As shown in Exhibit A.7.5, the proposed dwelling on proposed Parcel 2 will meet the Primary Fire Safety Zone of 30 feet because the proposed dwelling will be situated on relatively level ground of less than 10 percent. The proposed dwelling on proposed Parcel 3 will be situated on a slope between 10 percent and 20 percent. As a result, the Primary Safety Zone is increased to 80 feet down slope (west and south). Exhibit A.7.5 shows that the proposed dwelling site on Parcel 3 will be located over 80 feet from all property lines. These areas must be maintained as required, above. *Criteria met with imposition of conditions of approval.*

10.06 (2) Secondary Fire Safety Zone
A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Assistance with planning forestry practices which meet these objectives may be obtained from the State of Oregon Department of Forestry or the local Rural Fire Protection District. The secondary fire safety zone required for any dwelling or structure may be reduced under the provisions of 33.2310.
(3) No requirement in (1) or (2) above may restrict or contradict a forest management plan approved by the State of Oregon Department of Forestry pursuant to the State Forest Practice Rules; and
(4) Required Primary and Secondary Fire Safety Zones shall be established within the subject tract as required by Table 1 above.
(5) Required Primary and Secondary Fire Safety Zones shall be maintained by the property owner in compliance with the above criteria listed under (1) and (2).

Hearings Officer: The applicant is seeking an Exception to the Secondary Fire Safety Zone pursuant to MCC 33.2310. See findings in Section 11 below.

10.07 MCC 33.2261 Development Standards for Dwellings and Structures
(B) New dwellings, replacement dwellings greater than 100-feet from an existing dwelling, and accessory buildings (or similar structures) greater than 100-feet from a dwelling shall meet the following standards in (1) and (3) or (2) and (3):

(1) The structure shall satisfy the following Option 1, Non-discretionary Type 1 Permit requirements:
(a) To meet the Forest Practices Setback, the structure shall be located a minimum of 30-feet from a front property line adjacent to a county maintained road and 130-feet from all other property lines;
(b) The structure shall be located in a cleared area of at least 10,000 square feet that meets the tree spacing standards of a primary fire safety zone;
(c) The entirety of the development site is less than 30,000 square feet in total cleared area, not including the driveway;
(d) The structure is sited within 300-feet of frontage on a public road and the driveway from the public road to the structure is a maximum of 500-feet in length;
(e) The local Fire Protection District verifies that their fire apparatus are able to reach the structure using the proposed driveway; or
(2) The structure shall satisfy the following Option 2, Discretionary Type 2 Permit requirements:
(a) It has the least impact on nearby or adjoining forest or agricultural lands and satisfies the standards in MCC 33.2256;
(b) Adverse impacts on forest operations and accepted farming practices on the tract will be minimized;
(c) The amount of forest land used to site the dwelling or other structure, access road, and service corridor is minimized;
(d) Any access road or service corridor in excess of 500 feet in length is demonstrated by the applicant to be necessary due to physical limitations unique to the property and is the minimum length required; and
(3) The risks associated with wildfire are minimized. Provisions for reducing such risk shall include:
(a) The proposed dwelling will be located upon a tract within a fire protection district or the dwelling shall be provided with residential fire protection by contract;
(b) Access for a pumping fire truck to within 15 feet of any perennial water source of 4,000 gallons or more within 100 feet of the driveway or road on the lot. The access shall meet the driveway standards of MCC 33.2261(E) with permanent signs posted along the access route to indicate the location of the emergency water source;

Hearings Officer: The proposed dwelling on proposed Parcel 2 meets MCC 33.2261(B)(2) and (3) because it is not anticipated to have any adverse affect on nearby farm or forest operations since it is located near similar residential development; there are no active farm or forest operations on the subject tract and the development would not interfere with future farm or forest harvests due to it's location along the margin of the subject property; the siting of the dwelling and driveway will occur in existing clearings and will not utilize existing forest land; the proposed 550 foot long driveway is the minimum length needed to serve the dwelling location; Condition 56 requires Parcels 2 and 3 to annex into the adjacent Tualatin Valley Fire District or gain Fire protection by contract; Condition 47 requires an adequate water supply or fire sprinklers for the new dwellings as required by the Tualatin Valley Fire District (Exhibit A.7.22).

The proposed dwelling on proposed Parcel 3 meets MCC 33.2261(B 2 and 3) because it is not anticipated to have any adverse affect on nearby farm or forest operations since it is located near similar residential development; there are no active farm or forest operations on the subject tract and the development would not interfere with future farm or forest harvests due to it's location along the margin of the subject property; the siting of the dwelling and driveway will occur in existing clearings and will not utilize existing forest land; the proposed driveway will be

approximately 280 feet in length; Condition 56 requires Parcels 2 and 3 to annex into the adjacent Tualatin Valley Fire District or gain Fire protection by contract; Condition 47 requires the fire sprinklers for the new dwellings as required by the Tualatin Valley Fire District (Exhibit A.7.22).

10.08 (C) The dwelling or structure shall:
(1) Comply with the standards of the applicable building code or as prescribed in ORS 446.002 through 446.200 relating to mobile homes;
(2) If a mobile home, have a minimum floor area of 600 square feet and be attached to a foundation for which a building permit has been obtained;
(3) Have a fire retardant roof; and
(4) Have a spark arrester on each chimney.

Hearings Officer: A condition of approval requires compliance with the above standards. *Criteria met with conditions of approval.*

10.09 MCC 33.2273 Access
All lots and parcels in this district shall abut a street, or shall have other access deemed by the approval authority to be safe and convenient for pedestrians and for passenger and emergency vehicles, except as provided for Lots of Record at MCC 33.2275(C).

Hearings Officer: Parcels 1, 2 and 3 will be accessed from NW McNamee Road. The proposed driveways have been reviewed and approved by Tualatin Valley Fire District (Exhibit A.29) and have been certified by an engineer (Exhibits A.5, A.7.23 and A.7.26). *Criterion met.*

10.10 MCC 29.012 Fire Apparatus Means of Approach - Standards for Private Streets and Private Driveways Serving New and Replacement One and Two Family Dwellings:
(A) Private streets and private driveways shall meet the standards in this section for fire apparatus access to new and replacement one- and two-family dwellings. The purpose of these standards is to establish minimum criteria for evaluating the adequacy of fire apparatus access during the review of building permit applications for proposed one- and two-family dwellings.
(1) Review and determination of compliance with the standards in § 29.012, or more stringent standards adopted by the fire protection service provider, shall be made by the Fire Marshal or designated fire official of that service district. If the Fire Marshal, or designee, fails to review and make a determination of compliance, then the building official shall, after consultation with the appropriate fire official, make a determination of compliance.

Hearings Officer: Tualatin Valley Fire & Rescue has reviewed the development and signed off on the Fire Flow and Fire Access certification forms (Exhibit A.7.22). *Criterion met.*

10.11 (2) The standards in this section implement the requirements in OAR 918-480-0100 through 918-480-0120 (2002), appropriate use of alternate methods of construction in the One and Two-Family Specialty Code.
(3) An alternative to the minimum requirements of (D) below may be allowed by the building official, after consultation with the fire official, subject to the requirements of § 29.013.
(B) As used in § 29.012, "private street" and "private driveway" shall have the meanings given in the land division definition parts of the applicable Zoning Code Chapter of the Multnomah County Code.

(C) A building permit application for a new or replacement one- or two-family dwelling shall include sufficient information to determine compliance with the standards of § 29.012. A review form evaluating the proposal and signed by the applicable fire official shall also be submitted with the permit application.
(1) For those fire protection service districts that have adopted more stringent standards than given in (D) below, the more stringent standards shall prevail. The signed review by a fire district official shall state if the proposal is in compliance with the most stringent standards, either the district or those in (D) below.

Hearings Officer: The fire official has signed off on the proposed dwellings for proposed Parcels 2 and 3 and is requiring an NFPA 13D fire sprinkler system as a condition of approval. The applicant meets the standards of MCC 29.012(D). *Criterion met.*

11.00 Exception to Secondary Fire Safety Zone:

11.1 MCC 33.2310(A) The secondary fire safety zone for dwellings and structures may be reduced pursuant to the provisions of 33.2310 (B) when:

(1) The tract on which the dwelling or structure is proposed has an average lot width or depth of 330 feet or less, or

(2) The dwelling or structure is proposed to be located within 130 feet of the centerline of a public or private road serving two or more properties; or

(3) The proposed dwelling or structure is proposed to be clustered with a legally existing dwelling or structure.

Hearings Officer: Parcels 1 and 2 are required to be no more than two acres per the Measure 49 final order. The proposed dwelling on Parcel 2 has been clustered with the existing dwelling on Parcel 1. None of the conditions that allow the county to reduce the secondary fire safety zone apply to the dwelling on Parcel 3.

The Luethes' Measure 49 waiver prevents Multnomah County from limiting the relief granted by subsections (1) through (3) to dwellings and structures in the above-described locations as the location restrictions are not clearly imposed as a condition for safety reasons. This means that relief from the requirements of the secondary fire safety zone should be considered under the terms of MCC 33.2310(B), below.

11.2.1 MCC 33.2310(B) Exceptions to secondary fire safety zones shall only be granted upon satisfaction of the following standards:

(1) If the proposed secondary fire safety zone is between 50 and 100 feet, the dwelling or structure shall be constructed in accordance with the International Fire Code Institute Urban–Wildland Interface Code Section 505 Class 2 Ignition Resistant Construction as adopted August, 1996, or as later amended, or

(2) If the proposed secondary fire safety zone is less than fifty feet, the dwelling or structure shall be constructed in accordance with the International Fire Code Institute Urban-Wildland Interface Code Section 504 Class 1 Ignition Resistant Construction as adopted August, 1996, or as later amended, and

Hearings Officer: For Parcel 1, the accessory buildings are located within 100 feet of an existing dwelling on the site. As a result, the primary fire break, but not the secondary fire break, applies to the accessory buildings. All structures on Parcel 1 will be a minimum of 30 feet from property lines if located as promised by the submitted site plan.

For Parcel 2, the primary fire safety zone will be located entirely on the parcel. An exception to the secondary fire safety zone of 50 feet is requested towards the south and west.

For Parcel 3 the primary fire safety zone will be located entirely on the parcel. An exception to the secondary fire safety zone for a 55-foot secondary fire zone is requested towards the east and for a 158-foot secondary fire zone to the south.

Because the proposed reduced secondary fire safety zones are proposed to be between 50 and 100 feet the new dwellings proposed for Parcels 2 and 3 are subject to subsection 1 above. Condition 30 requires that the proposed dwellings be sited as proposed and be constructed in accordance with the International Fire Code Institute Urban-Wildland Interface Code Section 505 Class 2 Ignition Resistant Construction as adopted August, 1996, or as later amended. *As conditioned, the criterion is satisfied.*

11.2.2 MCC 33.2310(B)(3) There shall be no combustible fences within 12 feet of the exterior surface of the dwelling or structure; and

Hearings Officer: Condition 32 prohibits combustible fences within 12 feet of the exterior surface of the structures. *As conditioned, the criterion is satisfied.*

11.2.3 MCC 33.2310(B)(4) A dwelling shall have a central station monitored alarm system if the secondary fire safety zone equivalents of MCC 33.2310 (B) (1) are utilized, or (5) A dwelling shall have a central station monitored 13D sprinkler system if the secondary fire safety zone equivalents of MCC 33.2310 (B) (2) are utilized. Exception: Expansions of existing single family dwellings as allowed by MCC 33.2225 (A) shall not be required to meet this standard, but shall satisfy the standard of MCC 33.2261(C)(3).

Hearings Officer: Condition 32 requires the new dwellings to have a central station monitored alarm system. *As conditioned, the criterion is satisfied.*

11.2.4 MCC 33. 2310(B)(6) All accessory structures within the fire safety zone setbacks required by MCC 35.2256, and all accessory structures within 50 feet of a dwelling, shall have a central monitored alarm system.

Hearings Officer: No accessory structures are proposed. *The criterion does not apply at this time.*

11.2.5 MCC 33.2310(B)(7) All accessory structures within 50 feet of a building shall have exterior walls constructed with materials approved for a minimum of one-hour-rated fire-resistive construction, heavy timber, log wall construction or constructed with noncombustible materials on the exterior side.

Hearings Officer: No accessory structures are proposed. *The criterion does not apply at this time.*

11.2.6 MCC 33. 2310(B)(8) When a detached accessory structure is proposed to be located so that the structure or any portion thereof projects over a descending slope surface greater than 10 percent, the area below the structure shall have all underfloor areas enclosed to within 6 inches of the ground, with exterior wall construction in accordance with Section 504.5 of

the International Fire Code Institute Urban– Wildland Interface Code Class 1 Ignition Resistant Construction as adopted August, 1996, or as later amended, or underfloor protection in accordance with Section 504.6 of that same publication.
Exception: The enclosure may be omitted where the underside of all exposed floors and all exposed structural columns, beams and supporting walls are protected as required for exterior one-hour-rated fire- resistive construction or heavy-timber construction.

Hearings Officer: No accessory structures are proposed. *The criterion does not apply at this time.*

12.00 Adjustment to Forest Practices Setbacks:

12.1 MCC 33.7606 (A) Dimensional standards that may be modified under an Adjustment review (modified no more than 40 percent) are yards, setbacks, forest practices setbacks, buffers, minimum front lot line length, flag lot pole width, cul-de-sac length, cul-de-sac turnaround radius, and dimensions of a private street, except the following:

(1) Reduction of yards/setback/buffer requirements within the Significant Environmental Concern (SEC) and Willamette River Greenway (WRG) overlay districts and the Commercial Forest Use fire safety zone are not allowed under the Adjustment process; and

(2) Reduction of yards/setback/buffer requirements within the Hillside Development, Large Fills, Mineral Extraction, and Radio and Television Transmission Towers Code Sections and any increase to the maximum building height shall only be re-viewed as Variances; and

(3) Minor modification of yards/setbacks/buffers in the off-street parking and design review standards are allowed only through the "exception" provisions in each respective Code section.

Hearings Officer: The applicants have requested approval of a reduction of the forest practices setback from 130 feet to a setback of at least 80 feet for Parcels 2 and 3. This request is reviewed as an adjustment because it requests a reduction by less than 40 percent (38.5% reduction requested) of the required setback. The fires safety zones are not being reduced using the adjustment process.

12.2 MCC 33.7611 Adjustment Approval Criteria

The Approval Authority may permit and authorize a modification of no more than 40 percent of the dimensional standards given in MCC 33.7606 upon finding that all the following standards in (A) through (E) are met:

Hearings Officer: The forest practices setback that applies to Parcels 1, 2 and 3 is 130 feet in all directions for new dwellings and structures. The applicant is requesting a reduction of the setback to as low as 80 feet, a 38.5 percent reduction for Parcels 2 and 3. The following findings demonstrate that the proposal meets the standards in subsection (A) through (E). Condition 1 requires that the dwellings be sited in the approximate locations shown on the applicants' site plan (Exhibit A.7.5).

12.3 (B) Any impacts resulting from the adjustment are mitigated to the extent practical. That mitigation may include, but is not limited to, such considerations as provision for adequate light and privacy to adjoining properties, adequate access, and a design that addresses the site topography, significant vegetation, and drainage; and

Hearings Officer: Concerns regarding light, noise, privacy, and storm-water runoff are adequately mitigated by the fact that the home-sites will be relatively centered on their respective lots and thus will have minimal impact on surrounding properties. *This criterion is met.*

12.4 (C) If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the zoning district; and

Hearings Officer: More than one adjustment is requested. The overall purpose of the zoning district is to provide for timber cultivation and harvesting. The home site on Parcel 2 will be close to the center of the parcel. The parcel is required to be small (2 acres) in order to comply with Measure 49 requirements designed to preserve the maximum amount of land on the parent parcel for future timber production. This is achieved by keeping the remainder lot as large as possible. The small lot size for the new parcels, makes compliance with the full 130' forest practices setback infeasible. Yet, on balance, the approach of restricting Parcel 2 to a small parcel size achieves the purpose of the zoning district of protecting forest resource land for resource uses. The home site selected for Parcel 3 is consistent with the overall purpose of the zoning district because a site that complies with the forest practices setback would be located outside the existing cleared area of the parcel. This approach keeps the rest of the property available to grow trees. *The criterion is met.*

12.5 (D) If the properties are zoned farm (EFU) or forest (CFU), the proposal will not force a significant change in, or significantly increase the cost of, accepted forestry or farming practices on the subject property and adjoining lands; and

Hearings Officer: The two new parcels will each be developed with a single-family dwelling. It is not anticipated that significant levels of commercial forestry and/or farming will occur on the 2 acre parcels. No significant change in, or significant increase in the cost of accepted forestry or farming practices on adjoining lands is anticipated because the impacts of a single family dwelling are largely limited to the subject property giving its setting. *This criterion is met.*

12.6 (E) If in a Rural Residential (RR) or Rural Center (RC) zone, the proposal will not significantly detract from the livability or appearance of the residential area.

Hearings Officer: The property is in the CFU-2 zone thus this criterion does not apply.

13.00 General Transportation Findings

13.01 Access and Sight Distance

Hearings Officer: The required sight distance for proposed Parcels 1 and 2 meets the required sight distance to the east and west.

13.02 Access Spacing

Hearings Officer: The county standard for minimum driveway access for a local street at this location is 50 feet. As shown on the applicant's site plan (Exhibit A.7.5) and the aerial photograph in Exhibit A.7.2 the proposed driveways will be greater than 50 feet from the nearest existing driveways.

13.03 Dedication of Right of Way

Hearings Officer: The County standard right of way for a Rural Local facility is 50 feet. The applicant is required to dedicate 5 feet (Condition 41) in order to achieve a proportional share of this standard. This right of way will be used to improve the roadway to serve growing travel demand which, in part, will be generated by this proposed action.

The owner is responsible for a pro-rata share, as determined by the County Engineer, of right-of-way and easement dedications necessary to bring the affected, existing, created or planned public streets and other facilities within and abutting the development to the current County standard. The dedication of the required easements and right-of-way may be conditions of approval of Design Review or any other development permit related to the proposal. (Multnomah County Road Rules Section 6.100.A)

13.04 Access Permits

Hearings Officer: All driveway accesses to County roads require a driveway permit. The paved approach will be measured from the edge of pavement of NW McNamee Road. The road approach shall not create any drainage problems along the County road. This paved approach standard helps protect the County road from debris from the new driveway, and will improve the overall safety of new access drives. A $1,000 deposit is required for the paved approach.

The Multnomah County Road Rules require a permit for all driveway approaches to roads under County jurisdiction; in addition the site plan shows that the driveway will be asphalted. An access permit will be required to obtain an access/encroachment permit for the site's access onto NW McNamee Road. [MCRR 18.250] Please contact Alan Young at (503) 988-3582 for more information on how to obtain a permit.

14.00 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden of proof of compliance with all relevant criteria that applies to their requests for a Conditional Use Permit for a Category 1 Land Division, for residential development within the Protected Aggregate and Mineral Resources Overlay Subdistrict (PAM), Administrative Decision for implementation of state Measure 49 approval, Significant Environmental Concern for wildlife habitat (SEC-h) permit, Hillside Development permit for residential development, Exception to Secondary Fire Safety Zone, Adjustment to Forest Practices Setbacks and a Road Rules Variance for proposed access onto NW McNamee Road. This approval is subject to the conditions of approval established in this report.

15.00 Exhibits

'A' Applicant's Exhibits
'B' Staff Exhibits
'C' Procedural Exhibits

All exhibits are available for review in Case File T3-2012-2097 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	2	Applicant's coversheet	01/17/12
A.2	1	General Application Form	01/17/12
A.3	10	CFU Zone Development Standards Application Form	01/17/12
A.4	11	Significant Environmental Concern for Wildlife Habitat	01/17/12
A.5	5	Hillside Development Permit Application Form (HDP Form 1)	01/17/12
A.6	64	Applicant's Narrative	01/17/12
A.7.0	1	List of Applicant's Exhibits	01/17/12
A.7.1	1	Cover Sheet/Vicinity Map/Index of Drawings	01/17/12
A.7.2	1	Aerial Photograph	01/17/12
A.7.3	1	Existing Conditions	01/17/12
A.7.4	1	Preliminary Plat	01/17/12
A.7.5	1	Preliminary Site Plan and Grading and Erosion Control Plan	01/17/12
A.7.6	1	Parcel 2 Profiles and Details	01/17/12
A.7.7	1	Parcel 3 Profiles	01/17/12
A.7.8	1	Wildlife Conservation Plan for Parcel 2	01/17/12
A.7.9	5	Pre-Application Notes Dated 12/1/11	01/17/12
A.7.10	3	Service Provider Forms	01/17/12
A.7.11	1	Tax Map	01/17/12
A.7.12	1	Soils Map	01/17/12
A.7.13	2	Impact Analysis Area Map and Table	01/17/12
A.7.14	1	Slope Analysis	01/17/12
A.7.15	42	Geotechnical Report by GeoPacific Engineers Includes Stormwater Certificate for Parcels 2 and 3	01/17/12
A.7.16	20	Groundwater Reports Prepared by Pacific Hydro Geology Inc.	01/17/12
A.7.17	6	Sight Distance Certification for Easterly and Westerly Access Points Prepared by MGH Associates	01/17/12

A.7.18	1	Home Site Clustering Analysis	01/17/12
A.7.19	1	Fire Breaks and 1995 Tax Lot 800 Grading Plan	01/17/12
A.7.20	15	Case File T3-20110-907 Hearings Officer Decision	01/17/12
A.7.21	40	County Decision SEC 17-97 (Significant Environmental Concern Permit Review for proposed grading and fill)	01/17/12
A.7.22	8	TVF&R Fire Marshall Comments	01/17/12
A.7.23	5	1995 Fill Geotech Report Prepared by GeoPacific Engineers	01/17/12
A.7.24	1	Off-site Deed and Access Easement – dated 8/8/73	01/17/12
A.7.25	11	Septic System Approvals	01/17/12
A.7.26	9	State Measure 49 Final Order E118605	01/17/12
A.7.27	4	NW McNamee Rd Traffic Counts & Speed Study of Easterly Access dated December 13 & 14, 2011	01/17/12
A.7.28	9	Site Photographs	01/17/12
A.8	8	Applicant's Supplemental Findings	02/21/12
A.9	1	'Applicant's Response' Form	02/22/12
'B'	#	Staff Exhibits	Date
B.1	2	A&T Property Information for Existing Lot 700	03/30/12
B.2	2	A&T Property Information for Existing Lot 800	03/30/12
B.3	15	OAR 660.041.0000 et. Seq. (Measure 49)	03/30/12
B.4	1	Aerial with Slopes Map	03/30/12
B.5	1	Slopes Map with Contours	03/30/12
B.6	1	Aerial Soils Map	03/30/12
B.7	1	Soils Classification List	03/30/12
B.8	33	County Decision SEC HDP 9-97 (Hillside Development Permit Review for proposed grading and fill)	03/30/12
B.9	5	National Pollutant Discharge Elimination System Stormwater Discharge Permit	03/30/12
B.10	1	Applicant's Instructions for completing a Land Division	03/30/12
B.11	1	Surveyor's Instructions for completing a Land Division	03/30/12
B.12	1	Covenant Acknowledging Farm and Forest Practices	03/30/12
'C'	#	Administration & Procedures	Date
C.1	3	Incomplete Letter	2/16/12
C.2	2	Letter Deeming Application Complete – Application complete as of 2/21/2012	02/28/12
C.3	3	Notice of Public Hearing + Mailing Labels	03/15/12

'H'	#	Exhibits Filed at Hearing and After Hearing	Date
H.1	41	June 13, 2005 Letter from Mark P. O'Donnell to Cecilia Johnson with Measure 37 Claim Form and its attachments	4/13/12
H.2	1	Supplemental Statement of Facts prepared by Kristian Roggendorf, OSB #013990	4/19/12