

1600 SE 190th Ave, Portland OR 97233-5910 • PH. (503) 988-3043 • Fax (503) 988-3389

NOTICE OF DECISION

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

Case File: T2-2017-7280

Permit: Property Line Adjustment, Significant Environmental Concern, Administrative Decision by the Planning Director, Exception to the Secondary Fire Safety Zone, and Adjustment

Location: 12751 NW Springville Road, Portland
Tax Lot 1000, Section 16, Township 1 North, Range 1 West, W.M.
Tax Account #R961160610

Applicant: Casey Hendren

Owner: Kathy Hendren

Base Zone: Commercial Forest Use – 2 (CFU-2)

Overlays: Significant Environmental Concern for wildlife habitat (SEC-h) and streams (SEC-s), Hillside Development (HD)

Summary: The applicant is proposing a property line adjustment to reduce an approximate ten acre property to two acres. The other parcel will increase in size from ten acres to 18 acres. In addition, the applicant is proposing to construct a single family dwelling authorized via a Measure 49 approval from the State of Oregon. A Significant Environmental Concern for Wildlife Habitat Permit, Exception to the Secondary Fire Safety Zone and an Adjustment to the Forest Practice Setbacks are requested.

Decision: Approved with Conditions

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Friday, August 18, 2017, at 4:00 pm.

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

Issued by:



Lisa Estrin, Planner

For: Michael Cerbone, AICP
Planning Director

Date: Friday, August 4, 2017

Instrument Number for Recording Purposes: #2015044905



Opportunity to Review the Record: A copy of the Planning Director Decision, and all evidence submitted associated with this application, is available for inspection, at no cost, at the Land Use Planning office during normal business hours. Copies of all documents may be purchased at the rate of 30-cents per page. The Planning Director Decision contains the findings and conclusions upon which the decision is based, along with any conditions of approval. For further information on this case, contact Lisa Estrin, Staff Planner at 503-988-0167 or lisa.m.estrin@multco.us.

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Friday, August 18, 2017 at 4:00 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): *Property Line Adjustment*: MCC 33.2225(G), MCC 33.2256, MCC 33.2270, MCC 33.2275, MCC 33.7790

Administrative Decision: Measure 49 Decision and Conditions, MCC 33.2250, MCC 33.2256, MCC 33.2261, MCC 33.2285, MCC 33.2307, MCC 37.0560, MCC 33.0570

Exception to Secondary Fire Safety Zones: MCC 33.2310

Significant Environmental Concern: MCC 33.4510, MCC 33.4520, MCC 33.4570

Adjustment: MCC 33.7606, MCC 33.7611

Copies of the referenced Multnomah County Code (MCC) sections can be obtained by contacting our office at 503-988-3043 or by visiting our website at <http://www.multco.us/landuse>

Conditions of Approval

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

1. Approval of this land use permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.
2. **This land use permit expires four 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, as applicable. The request for a permit extension must be submitted prior to the expiration of the approval period.**

(A) This approval shall expire as described in (1) or (2) below:

- (1) When construction has not commenced within four years of the date of the final decision. Commencement of construction shall mean actual construction of the foundation or frame of the approved structure.**
- (2) When the structure has not been completed within four years of the date of commencement of construction. Completion of the structure shall mean completion of the exterior surface(s) of the structure and compliance with all conditions of approval in the land use approval.**

Expiration is automatic. Failure to give notice of expiration shall not affect the expiration of this Type II approval.

3. Prior to land use approval of the legal descriptions and survey for the property line adjustment:
 - a. The barn located on the property line between tax lots 1N1W16A – 00900 and 1N1W16A – 01000 is to be demolished (see Exhibit A.4).
 - b. The unauthorized house located within 8.95 feet of the southern boundary of tax lot 1N1W16A – 01000 is to be demolished (see Exhibit A.4).
 - c. Copies of the draft deeds, legal descriptions, and survey shall be provided to Land Use Planning for review prior to their recordation to ensure compliance with this decision. [MCC 33.2270(A) (4), MCC 33.7790(D) & MCC 37.0560]
4. Prior to land use approval for building plan check:
 - a. The property owner or their representative shall have the new deeds, legal descriptions and survey for the property line adjustment recorded with the County Recorder. A copy of the recorded legal descriptions and survey shall be submitted to Land Use Planning.
 - b. The property owner shall have the well for the proposed single family dwelling drilled. Documentation that the well has been completed shall be provided to Land Use Planning.
 - c. The property owner or their representative shall demonstrate that the proposed dwelling will be in compliance with the maximum height requirement of MCC 33.2250, development standards of MCC 33.2261(C) and the County's Dark Sky Lighting Standards of MCC 33.0570.
 - d. The property owner or their representative shall have an architect or engineer certify that the dwelling's design incorporates the required features for the International Fire Code Institute Urban-Wildland Interface Code Section 504 Class 2 Ignition Resistant Construction standards. The architect or engineer shall stamp the plans and indicate a statement of compliance shall be included.

- e. The property owner or their representative shall have a central station monitored alarm system and 13D sprinkler system designed for the new single family dwelling. The plans shall be included in plans submitted for review for plan check.
5. Prior to land use approval for building plan check, the property owner shall record a document or documents in the County deed records for the following:
 - a. Binding the landowner, and the landowner's successors in interest, prohibiting 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. [MCC 33.2307]
 - b. The property owner shall record with the County Recorder, the Notice of Decision including the Conditions of Approval of this decision (pages 1 through 6) and the site plan labeled as Exhibit A.5. The Notice of Decision shall run with the land and the conditions shall be met by the current and all future property owners and successor property owners(s) unless amended through a later decision by an authorized authority. Proof of recording shall be submitted to Multnomah County Land Use Planning prior to the issuance of any permits. Recording shall be at the applicant's expense. [MCC 37.0670]
6. No additional lots or parcels shall be created through the recordation of the property line adjustment. [MCC 33.7790(A)]
7. Prior to pouring of the concrete for the foundation of the single family dwelling, the applicant shall have completed a foundation survey to ensure that the proposed dwelling including any proposed eaves are located within the 55-ft wide by 65-ft long building foot print shown on Exhibit A.5 [MCC 33.2256]
 - a. The foundation survey shall be submitted to Land Use Planning prior to pouring of the concrete for the foundation and shall demonstrate that the proposed dwelling is in compliance with the submitted plans.
8. No combustible fences shall be constructed within 12 feet of the exterior surfaces of the dwelling. In addition, no type of fencing shall be built and any existing fencing shall be removed outside of areas cleared for the home site except for areas used for agricultural purposes. [MCC 33.2310(B)(3) and MCC 33.4570(C)(3)(c)]
9. The single family dwelling shall be constructed with a central station monitored alarm system and 13D sprinkler system. Monitoring of the system shall be continuous by alarm monitoring company. [MCC 33.2310(B)(5) and TVFR condition]
10. Within 90 days of occupancy being granted for the dwelling, the applicant or property owner shall have the engineer or architect who certified the building design review the constructed dwelling and certify that:
 - a. The dwelling was constructed in accordance with the International Fire Code Institute Urban-Wildland Interface Code Section 504 Class 2 Ignition Resistant Construction standards; and
 - b. The dwelling has a monitored sprinkler system as required by Condition 9.
 - c. Provide documentation that a monitoring company is monitoring the alarm system.
11. 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		Scientific Name	Common Name
<i>Chelidonium majus</i>	Lesser celandine		<i>Cortaderia selloana</i>	Pampas grass
<i>Cirsium arvense</i>	Canada Thistle		<i>Crataegus sp. except C. douglasii</i>	hawthorn, except native species
<i>Cirsium vulgare</i>	Common Thistle		<i>Cytisus scoparius</i>	Scotch broom
<i>Clematis ligusticifolia</i>	Western Clematis		<i>Daucus carota</i>	Queen Ann's Lace
<i>Clematis vitalba</i>	Traveler's Joy		<i>Elodea densa</i>	South American Water-weed
<i>Conium maculatum</i>	Poison hemlock		<i>Equisetum arvense</i>	Common Horsetail
<i>Convolvulus arvensis</i>	Field Morning-glory		<i>Equisetum telemateia</i>	Giant Horsetail
<i>Convolvulus nyctagineus</i>	Night-blooming Morning-glory		<i>Erodium cicutarium</i>	Crane's Bill
<i>Convolvulus sepium</i>	Lady's nightcap		<i>Geranium roberianum</i>	Robert Geranium
<i>Cortaderia selloana</i>	Pampas grass		<i>Hedera helix</i>	English Ivy
<i>Crataegus sp. except C. douglasii</i>	hawthorn, except native species		<i>Hypericum perforatum</i>	St. John's Wort
<i>Cytisus scoparius</i>	Scotch broom		<i>Ilex aquafolium</i>	English Holly
<i>Daucus carota</i>	Queen Ann's Lace		<i>Laburnum watereri</i>	Golden Chain Tree
<i>Elodea densa</i>	South American Water-weed		<i>Lemna minor</i>	Duckweed, Water Lentil
<i>Equisetum arvense</i>	Common Horsetail		<i>Loentodon autumnalis</i>	Fall Dandelion
<i>Equisetum telemateia</i>	Giant Horsetail		<i>Lythrum salicaria</i>	Purple Loosestrife
<i>Erodium cicutarium</i>	Crane's Bill		<i>Myriophyllum spicatum</i>	Eurasian Watermilfoil
<i>Geranium roberianum</i>	Robert Geranium		<i>Phalaris arundinacea</i>	Reed Canary grass
<i>Hedera helix</i>	English Ivy		<i>Poa annua</i>	Annual Bluegrass
<i>Hypericum perforatum</i>	St. John's Wort		<i>Polygonum coccineum</i>	Swamp Smartweed
<i>Ilex aquafolium</i>	English Holly		<i>Polygonum convolvulus</i>	Climbing Binaweed
<i>Laburnum watereri</i>	Golden Chain Tree		<i>Polygonum sachalinense</i>	Giant Knotweed
<i>Lemna minor</i>	Duckweed, Water Lentil		<i>Prunus laurocerasus</i>	English, Portugese Laurel
<i>Loentodon autumnalis</i>	Fall Dandelion		<i>Rhus diversiloba</i>	Poison Oak
<i>Lythrum salicaria</i>	Purple Loosestrife		<i>Rubus discolor</i>	Himalayan Blackberry
<i>Myriophyllum spicatum</i>	Eurasian Watermilfoil		<i>Rubus laciniatus</i>	Evergreen Blackberry
<i>Phalaris arundinacea</i>	Reed Canary grass		<i>Senecio jacobaea</i>	Tansy Ragwort

Scientific Name	Common Name		Scientific Name	Common Name
<i>Poa annua</i>	Annual Bluegrass		<i>Solanum dulcamara</i>	Blue Bindweed
<i>Polygonum coccineum</i>	Swamp Smartweed		<i>Solanum nigrum</i>	Garden Nightshade
<i>Polygonum convolvulus</i>	Climbing Binaweed		<i>Solanum sarrachoides</i>	Hairy Nightshade
<i>Polygonum sachalinense</i>	Giant Knotweed		<i>Taraxacum officinale</i>	Common Dandelion
<i>Vinca minor</i>	Periwinkle (small leaf)		<i>Utricularia vulgaris</i>	Common Bladderwort
<i>Xanthium spinosum</i>	Spiny Cocklebur		<i>Urtica dioica</i>	Stinging Nettle
<i>various genera</i>	Bamboo sp.		<i>Vinca major</i>	Periwinkle (large leaf)

12. Prior to land use approval for building plan check, the applicant or their representative shall provide a planting plan showing areas where nuisance species will be removed and what types of vegetation will be replanted. The planting plan shall include the primary and secondary fire safety zones and show the types of plant materials to be used and the spacing between trees and any proposed ground cover or understory species to be used and at what density. The planting plan within the primary and secondary fire safety zones shall comply with MCC 33.2256(D).
 - a. As part of the landscape plan, if areas adjacent to the riparian area are degraded or contain nuisance species, the area is to be cleared by hand/non-ground disturbing means and replanted with native species to enhance the stream zone. [MCC 33.4570(C)(3)(e)]
 - b. No more than 1 acre may be cleared for construction of the dwelling and placed in yard or residential type landscaping. The one acre cleared area excludes the driveway and turnaround. This one acre cleared area shall run with the land and may not be expanded unless a new wildlife conservation plan is crafted and approved via a new SEC-h permit. [MCC 33.4570(C)(3)(c)]
13. The plantings required by Condition No. 12 shall be completed by December 31, 2018. The property owner shall contact Land Use Planning once the plantings are completed and a site visit will be completed.
14. The property owner is required to maintain these plantings in a healthy state and remove any new nuisance plant species that arise. If vegetation dies, becomes diseased or is removed, it shall be replanted with new native plant or tree species by the next planting season. [MCC 33.4570(C)]
15. The property owner is required to construct and maintain the primary and secondary fire safety zone as shown on Exhibit A.5.
16. The single family dwelling and all future additions shall be designed to meet the International Fire Code Institute Urban-Wildlife Interface Code Section 504 Class 2 Ignition Resistant Construction standards. [MCC 33.2310 and MCC 37.0670]

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, Lisa Estrin, at (503) 988-0167 or lisa.m.estrin@multco.us, for an appointment for review and approval of the conditions and to sign the building permit plans. Please note, Multnomah County must review

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OF 6 SHEETS



and sign off the building permits before the applicant submits building plans to the City of Portland. 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 fee will be collected. In addition, an erosion control inspection fee may be required.

Notice to Mortgagee, Lien Holder, Vendor, or Seller:

ORS Chapter 215 requires that if you receive this notice it must be promptly forwarded to the purchaser.

Findings of Fact

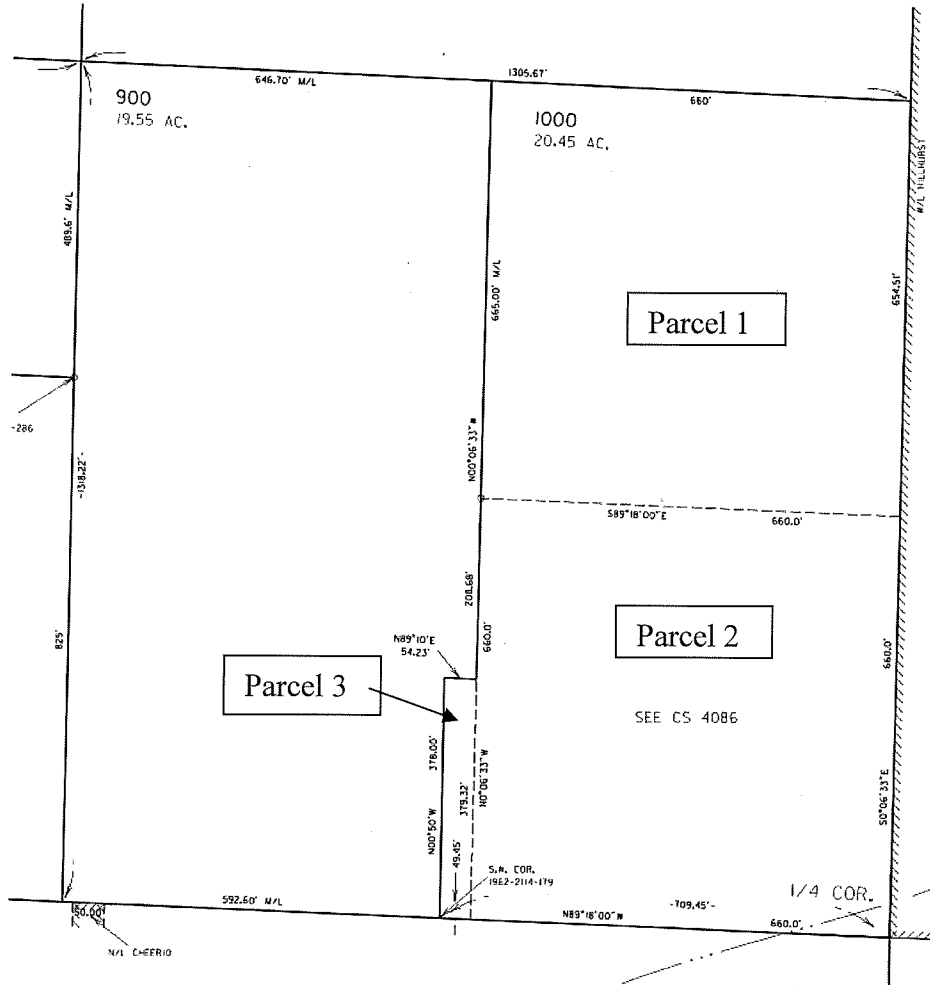
FINDINGS: Written findings are contained herein. The Multnomah County Code (MCC) criteria and Comprehensive Plan Policies are in **bold** font. Staff analysis and comments are identified as '**Staff:**' and address the applicable criteria. Staff comments may include a conclusionary statement in *italic*.

1.00 Project Description:

Staff: The applicant is proposing a property line adjustment to reduce an approximate ten acre parcel (Parcel 1) to two (2) acres in size and to increase a ten acre parcel (Parcel 2) to approximately 18 acres in the Commercial Forest Use – 2 zone. In addition, the applicant is proposing to construct a single family dwelling on the newly adjusted two acre parcel (Parcel 1). In order to construct a single family dwelling, an Administrative Decision by the Planning Director, Forest Development Standards, Exception to the Secondary Fire Safety Zone, Adjustment to the Forest Practice Setbacks and Significant Environmental Concern for wildlife life habitat is required.

2.00 Property Description & History:

Staff: Tax lot, 1N1W16A – 01000 consists of three parcels. Parcel 3 is 0.45 of an acre. Parcel 2 and 3 are each ten acres in size.



Tax lot, 1N1W16A – 01000 contains an existing single family dwelling originally constructed in 1935, three barns and one house that the applicant indicates was constructed for health hardship purposes. Planning staff found no land use permits for the dwelling or outbuildings. One of the existing barns will

need to be removed along with the health hardship house before the new dwelling can be constructed in order to comply with MCC 37.0560.

3.00 Lot Line Adjustment Approval Criteria:

3.01 § 33.2225 REVIEW USES

The following uses may be permitted when found by the approval authority to satisfy the applicable standards of this Chapter:

(G) Lot Line Adjustment pursuant to all applicable approval criteria, including but not limited to the provisions of MCC 33.2270.

Staff: The applicant has applied for a property line adjustment and has demonstrated compliance with MCC 33.2270 and MCC 33.7790.

3.02 § 33.2275 LOT OF RECORD

(A) In addition to the Lot of Record definition standards in MCC 33.0005, for the purposes of this district a Lot of Record is either:

(1) A parcel or lot which was not contiguous to any other parcel or lot under the same ownership on February 20, 1990, or

(2) A group of contiguous parcels or lots:

(a) Which were held under the same ownership on February 20, 1990; and

(b) Which, individually or when considered in combination, shall be aggregated to comply with a minimum lot size of 19 acres, without creating any new lot line.

1. Each Lot of Record proposed to be segregated from the contiguous group of parcels or lots shall be a minimum of 19 acres in area using existing legally created lot lines and shall not result in any remainder individual parcel or lot, or remainder of contiguous combination of parcels or lots, with less than 19 acres in area. See Examples 1 and 2 in this subsection.

2. There shall be an exception to the 19 acre minimum lot size requirement when the entire same ownership grouping of parcels or lots was less than 19 acres in area on February 20, 1990, and then the entire grouping shall be one Lot of Record. See Example 3 in this subsection.

3. Three examples of how parcels and lots shall be aggregated are shown below with the solid thick line outlining individual Lots of Record:

4. The requirement to aggregate contiguous parcels or lots shall not apply to lots or parcels within exception or urban zones (e.g. MUA-20, RR, BRC, R-10), but shall apply to contiguous parcels and lots within all farm and forest resource zones (i.e. EFU and CFU), or

(3) A parcel or lot lawfully created by a partition or a subdivision plat after February 20, 1990.

(4) Exceptions to the standards of (A)(2) above:

(a) Where two contiguous parcels or lots are each developed with a lawfully established habitable dwelling, the parcels or lots shall be Lots of Record that remain separately transferable, even if they were held in the same ownership on February 20, 1990.

(b) Where approval for a “Lot of Exception” or a parcel smaller than 19 acres under the “Lot Size for Conditional Uses” provisions has been given by the Hearing Authority and the parcel was subsequently lawfully created, then the parcel shall be a Lot of Record that remains separately transferable, even if the parcel was contiguous to another parcel held in the same ownership on February 20, 1990.

(B) In this district, significant dates and ordinances applicable for verifying zoning compliance may include, but are not limited to, the following:

- (1) July 10, 1958, F-2 zone applied;
- (2) December 9, 1975, F-2 minimum lot size increased, Ord. 115 & 116;
- (3) October 6, 1977, MUF-20 and CFU-38 zones applied, Ord. 148 & 149;
- (4) August 14, 1980, MUF-19 & 38 and CFU-80 zones applied, Ord. 236 & 238;
- (5) February 20, 1990, lot of record definition amended, Ord. 643;
- (6) January 7, 1993, MUF-19 & 38 zones changed to CFU-80, Ord. 743 & 745;
- (7) August 8, 1998, CFU-2 zone applied, Ord. 916 (reenacted by Ord. 997);
- (8) May 16, 2002, Lot of Record section amended, Ord. 982, reenacted by Ord. 997;

(C) A Lot of Record which has less than the minimum lot size for new parcels, less than the front lot line minimums required, or which does not meet the access requirements of MCC 33.2273, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

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

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

Staff: Parcel 3 was created in December 1953 before zoning applied to the area. Parcel 3 is 0.45 of an acre (19,696.73 sq. ft.). Parcel 2 was established in March 1952 and is 10 acres in size. Parcel 1 was created in May 1962 when the property was zoned Suburban Residential (SR). The SR zone had a variable lot size depending on the amenities available at the time, but Parcel 1’s ten (10) acre size would have far exceeded the minimum lot size. All three of these parcels were owned by Floyd Hendren Jr. and Mary Hendren on February 20, 1990. Parcel 2 contains one lawfully established single family. Parcel 1 and Parcel 3 are vacant. At the time of this application, the three parcels combined are a single lot of record.

Pursuant to MCC 33.2275(A)(4), after the property line adjustment is complete and the Measure 49 dwelling is constructed, Parcel 1 containing the new single family dwelling will be its own Lot of Record. Parcel 2 and 3 which contains the 1935 single family dwelling will remain aggregated as a single Lot of Record.

3.03 § 33.2270 LOT LINE ADJUSTMENT; PROPERTY LINE ADJUSTMENT

(A) Pursuant to the applicable provisions in MCC 33.7790, an adjustment of the common lot line between contiguous Lots of Record may be authorized based on a finding that:

(1) The permitted number of dwellings will not thereby be increased above that otherwise allowed in this district;

Staff: Parcel 2 currently contains one, lawfully established single family dwelling (Exhibit A.4). Parcel 1 is currently vacant. Parcel 1 will have one single family dwelling established on it in the future via a Measure 49 approval for the Hendren properties (Exhibit A.14 and A.5). Parcel 1 would be able to have this dwelling even if it was not adjusted from 10 acres to 2 acres in size. The number of dwellings will not be increased above that currently allowed by the Measure 49 approval. *Criterion met.*

3.04 (2) The resulting lot configuration is at least as appropriate for the continuation of the existing commercial forest practices in the area as the lot configuration prior to adjustment;

Staff: Parcel 2 will increase in size from 10 acres to 17.90 acres and the transferred land will remain available for forest practices. After the adjustment, Parcel 1 will be used for a single family dwelling and its related forest practice setbacks and fire safety zones. The alteration of Parcel 2 to a larger size will allow the forest land to be utilized for forest practices. *Criterion met.*

3.05 (3) The new lot line is in compliance with the dimensional requirements of MCC 33.2256; and

§ 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:

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)
Property Line Adjustment; Lot of Exception; Land Divisions.	May maintain current nonconforming setback to existing structures	30	30	On tracts with required Primary & Secondary FSZ as part of a land use decision, both shall be maintained.

Staff: Parcel 1 is currently vacant except for a barn that will be removed as it is over a property line with the property to the west. Parcel 2 will have three remaining structures on it after the property line adjustment (two barns and one single family dwelling). The buildings will be located as shown in the following table on Parcel 2 (Exhibit A.4):

Building	North Prop Line	South Prop Line	West Prop Line	East Prop Line
Single Family Dwelling	305+/- ft	194.54 ft	160 ft	448 ft
Barn #1	360+/- ft	143.12 ft	93.43 ft	512 ft
Barn #2	490+/- ft	12 ft	257 ft	375 ft

Since the dwelling and barns were built before the property was zoned Commercial Forest Use (CFU), no fire safety zones are required by code, but staff recommends that the property owner develop a primary fire safety zone for these structures on Parcel 2 to protect against wildfire. *Criterion met.*

- 3.06 (4) Neither of the properties is developed with a dwelling approved under the provisions for a mobile home on a Health Hardship, or a dwelling for the housing of help required to carry out a farm or forest use; and**

Staff: Parcel 2 currently has a unauthorized house that the applicant states was installed as a health hardship. A condition of approval has been included requiring its removal before the property line adjustment can be recorded. *Through a condition, this criterion will be met.*

- 3.07 (5) If the properties abut a street, the required access requirements of MCC 33.2273 are met after the relocation of the common property line.**

Staff: Both Parcel 2 and Parcel 1 do not abut a public street (Exhibit A.5). Parcel 2 and 1 are currently served via an easement over a private accessway serving a number of properties. After the property line adjustment, the two parcels will continue to access Springville Road via this accessway and then the private easement across Parcel 2 to Parcel 1 (Exhibit A.5). *Criterion not applicable.*

3.08 § 33.7790 PROPERTY LINE ADJUSTMENT

A property line adjustment is the relocation of a common property line between two abutting properties. The Planning Director may approve a property line adjustment based upon findings that the following standards are met:

- (A) No additional lot or parcel shall be created from any parcel by the property line adjustment; and**

Staff: The shared property line between Parcel 2 and Parcel 1 will be reconfigured so that Parcel 2 will be 17.90 acres and Parcel 1 will be two (2) acres (Exhibit A.5). A condition of approval will be included requiring that no new parcel be created via the property line adjustment. *Through a condition, this criterion will be met.*

- 3.09 (B) Owners of both properties involved in the property line adjustment shall consent in writing to the proposed adjustment and record a conveyance or conveyances conforming to the approved property line adjustment; and**

Staff: The applicant indicates that Kathy Hendren is the property owner of all three parcels (Exhibit A.14). Floyd Hendren III is no longer associated with the property (Exhibit A.25). Kathy Hendren has consented in writing to the proposed property line adjustment. *Criterion met.*

- 3.10 (C) The adjusted properties shall meet the approval criteria for a property line adjustment as given in the underlying zoning district; and**

Staff: The proposed property line adjustment has met or will meet through conditions of approval

the criteria for the Commercial Forest Use zone. See Sections 3.03 through 3.07 for additional findings. *Criterion met.*

3.11 (D) The procedure and forms shall be submitted for obtaining approval of a property line adjustment as provided for by the Planning Director.

Staff: The applicant has utilized the appropriate forms and procedures for the property line adjustment. *Criterion met.*

4.00 Measure 49 Approval and Conditions

In a previous application, the applicant submitted a Measure 49 (M49) claim to the State of Oregon. In February 2009, the State approved Measure 49 Final Order E122911 authorizing one additional dwelling on its own parcel on the subject Measure 49 property (Exhibit A.14). The Order states that "...the claimant qualifies for up to three home sites. However, the number of lots, parcels or dwellings that a claimant may establish pursuant to a home site authorization is reduced by the number of lots, parcels or dwellings currently in existence on the Measure 37 claim property and any contiguous property under the same ownership according to the methodology..." The Measure 49 (M49) claim indicated that tax lot 1N1W16A – 01000 contained a single parcel; that is incorrect. Tax lot 1N1W16A – 01000 is a single Lot of Record, but contains three legal parcels as discussed in Section 3.02 above. In addition, Floyd Hendren Jr. also owned tax lot 1N1W16A – 00900 at the time of the M49 claim filing through the devise of Floyd Hendren Sr. No additional lots or parcels can be authorized by a land division on tax lot 1N1W16A – 01000 pursuant to the Final Order E122911 as Hendren Jr owned four legal parcels at the time of his death.

The subject property line adjustment reviewed in Section 3.00 *et al* above does not create a new parcel via the M49 Order but just adjusts an existing 10 acre parcel to be two acres in size for the home site. M49 Final Order granted one additional dwelling that will be developed on the newly adjusted 2 acre parcel (Parcel 1). Once Parcel 1 is adjusted into its proposed size and the dwelling is constructed and becomes habitable, Parcel 1 will be a separate Lot of Record pursuant to MCC 33.2275(A)(4) and Final Order E122911.

Tax lot 1N1W16A – 01000 contains two existing dwellings. One is a lawfully established single family dwelling constructed in the year 1935. The second dwelling is a 1972 structure that does not appear to have been lawfully established as planning staff and the applicant have not found a building permit for its construction. The applicant indicated to staff that at sometime in the past it was constructed for a temporary health hardship. The applicant has stated on the plans that this dwelling and a barn straddling tax lots 1N1W16A – 01000's and 00900's common property line will be demolished. Planning staff stamped land use approval for demolition of these structures on July 18, 2017. A condition of approval has been included that the 1972 dwelling and an existing barn straddling tax lot 1N1W16A – 01000 and 00900 common property line be demolished before the property line adjustment be recorded altering the two parcels.

Tax lot 1N1W16A – 00900 currently contains a single family dwelling which was constructed during the 1980's. Assessment and Taxation indicates a date of construction in 1989. Planning staff has not found land use decision or building permit sign off for the structure. The County is not making a determination as to the lawfulness of this dwelling as part of this decision. The M49 Final Order E122911 states that if a dwelling exists on an adjacent property the number of dwellings approved by the Order is reduced. So, on tax lots 1N1W16A – 00900 and 1N1W16A – 01000, two dwellings exist and the proposed dwelling will be a third. No additional dwellings after this approval will be allowed through the Measure 49 Final Order E122911. *The conditions contained in Measure 49 Final Order E122911 are met.*

5.00 Commercial Forest Use – 2 Approval Criteria

5.01 § 33.2250 BUILDING HEIGHT REQUIREMENTS

(A) Maximum structure height – 35 feet.

(B) Structures such as barns, silos, windmills, antennae, chimneys, or similar structures may exceed the height requirements.

Staff: The applicant is proposing to construct one single family dwelling. No building elevations have been submitted at this time. A condition of approval will be included to verify building height in the future. *Through a condition, this criterion will be met.*

5.02 § 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:

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)
Heritage Tract Dwelling	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.

(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.

(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.

Staff: Parcel 1 does not and will not front onto a public right-of-way. No additional forest practices setbacks are required due to insufficient right-of-way width. The proposed dwelling footprint will be located 175.49 ft from the south property line, 80 ft from the west property line, 128.78 ft from the north property line and 101 ft from east property line. The applicant will need an adjustment to three out of four, required Forest Practice Setbacks. The applicant is requesting to reduce the forest practice setbacks on the west, east and north sides of the dwelling. The applicant has submitted a request for an Adjustment pursuant to MCC 33.7606 and MCC 33.7611. See Section 8.00 for additional findings. The Forest Practice Setbacks can be met if an adjustment is

granted. A condition of approval has been included requiring a foundation survey to ensure the dwelling is placed in the correct location to meet the Forest Practice Setbacks.

The applicant has also applied for an Exception to the Secondary Fire Safety Zone. Please see Section 6.00 for additional findings. *Criteria can be met through conditions of approval.*

5.03 (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

Staff: The applicant's tentative plan map (Exhibit A.5) shows that the primary fire safety zones can be provided. The applicant's site plan (Exhibit A.5) shows an extended primary to the southeast. The primary fire safety zone will need to be constructed and maintained for the life of the dwelling. A condition of approval has been included to remind property owners of their responsibility.

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

Staff: The location where the dwelling will be constructed will have a grade of 20% or less based on the applicant's exhibit A.8. *Criterion met.*

5.05 (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).

Staff: The applicant has requested an exception to the secondary fire safety zone. The secondary will be reduced to 50 feet on all sides. See additional findings regarding the exception under Section 6.00 below. *Criterion met through an exception.*

5.06 § 33.2261 DEVELOPMENT STANDARDS FOR DWELLINGS AND STRUCTURES

All dwellings and structures shall comply with the approval criteria in (B) through (D) below except as provided in (A). All exterior lighting shall comply with MCC 33.0570:

(B) New dwellings shall meet the following standards in (1) and (3) or (2) and (3); restored or replacement dwellings greater than 100-feet from an existing dwelling, and accessory buildings (or similar structures) greater than 100-feet from the existing dwelling shall meet the following standards in (1) and (3) or (2) and (3):

(1) The structure shall satisfy the following 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

Staff: The subject parcel (Parcel 1) does not have road frontage onto a county maintained road, so the proposed dwelling would need to be 130 feet from all property lines to comply with (B)(1) (Exhibit A.5). The applicant is proposing an 80 ft setback to the west property line. The proposed application will need to meet (B)(2) and (B)(3).

5.07 (2) The structure shall satisfy the following 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

Staff: Parcel 1 will be reduced from 10 to 2 acres. Through a property line adjustment (see Sections 3.03 through 3.11) approximately eight acres will be transferred to Parcel 2. These eight acres will be available and will continue to be used for forest practices. The proposed dwelling will meet the Forest Practice Setbacks via an Adjustment application. The Fire Safety Zones will be met by constructing the dwelling using techniques to increase its ability to withstand some fires. In addition, the dwelling will be required to have a centrally monitored fire sprinkler system installed to protect the surrounding forest from house fires. By proposing Parcel 1 be only 2 acres, it has utilized the minimum amount of forest land to construct a dwelling, its fire safety zones and on-site sewage disposal system. *Criteria (a), (b) and (c) have been met.*

The access road to the dwelling is approximately 2,086 ft in length from Springville Road to the entrance to the dwelling (Exhibit A5). From Springville Road to the southern boundary of Parcel 1 is 1,731 sq. ft. Once the property is reached, the driveway and its fire safety turnaround is only 355 ft long. The dwelling is to be located on the portion of the property that is mostly flat and is at least 100 feet from the intermittent stream crossing from the east property line through the property to the south property line. The driveway is the minimum length necessary to serve the dwelling on Parcel 1. *Criterion met.*

5.08 (3) The risks associated with wildfire are minimized. Provisions for reducing such risk shall include:

(a) Access roadways shall be approved, developed and maintained in accordance with the requirements of the structural fire service provider that serves the property. Where no structural fire service provider provides fire protection service, the access roadway shall meet the Oregon Fire Code requirements for fire apparatus access.

(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 fire apparatus access standards of the Oregon Fire Code with permanent signs posted along the access route to indicate the location of the emergency water source.

Staff: There are no permanent water sources that can provide 4,000 gallons on Parcel 1. No access to the intermittent stream on the property is required or needed. The Tualatin Valley Fire and Rescue (TVFR) has reviewed the proposed access to the proposed dwelling on Parcel 1 (Exhibit A.18) and has required a fire sprinkler system be installed. *Criterion met.*

5.09 (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.

Staff: The applicant has not yet provided building plans or elevations so that planning staff can verify that the structure will have a fire retardant roof and spark arresters. A condition of approval has been included so that staff can verify compliance. *Through a condition, the criterion can be*

met.

- 5.10 (D) The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of ground water (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a Class 1 stream as defined in the Forest Practices Rules.**
- (1) If the water supply is unavailable from public sources, or sources located entirely on the property, the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners.**
- (2) Evidence of a domestic water supply means:**
- (a) Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water; or**
 - (b) A water use permit issued by the Water Resources Department for the use described in the application; or**
 - (c) Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report to the county upon completion of the well.**

Staff: A well will be drilled to serve the dwelling on Parcel 1. Wells for a single family dwelling are exempt from water right requirements. The applicant has provided documentation of existing wells in the area and their depth and production rates (Exhibit A.16). A condition of approval has been included that the well must be drilled and water available on the site before Land Use Planning can sign off for building plan check. *Through a condition, this criterion can be met.*

5.11 § 33.2285 OFF-STREET PARKING AND LOADING

Off-street parking and loading permitted as an accessory use shall be provided as required by MCC 33.4100 through 33.4220.

Staff: The requirement for a single family dwelling is two parking spaces either in a garage or on a driveway area. The proposed dwelling will be served by a gravel driveway. Parking spaces are available on the driveway adjacent to the dwelling (Exhibit A.5). *Criterion met.*

5.12 § 33.2307 SINGLE FAMILY DWELLINGS CONDITION OF APPROVAL - PROHIBITION ON CLAIMS ALLEGING INJURY FROM FARM OR FOREST PRACTICES

As a condition of approval of a single family dwelling, the landowner for the dwelling shall sign and record in the deed records for the county a document binding the landowner, and the landowner's successors in interest, prohibiting 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.

Staff: A condition of approval has been included requiring that the property owner record a covenant before plan check of the single family dwelling. *Through a condition, criterion will be met.*

6.00 Exception to Secondary Fire Safety Zone

6.01 § 33.2310 EXCEPTIONS TO SECONDARY FIRE SAFETY ZONES

(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 including the subject site; or
- (3)** The proposed dwelling or structure is intended to be located within 130 feet of a legally existing dwelling or structure.

Staff: Parcel 1 will be 369+/- ft on the east and west property lines and 235+/- ft along its north and south property lines. Since the average lot depth is 235+/- ft, the secondary fire safety zone for the dwelling may be reduced through these provisions.

6.02 (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

Staff: The secondary fire safety zone on all sides of the dwelling will be 50 feet in width. The proposed dwelling will need to be constructed to a Class 2 Ignition Resistant Construction. *Through a condition of approval, the dwelling will meet the Class 2 Ignition Resistant Construction requirements.*

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

Staff: No fencing is shown on the plans. A condition of approval has been included that no combustible fencing be built within 12 feet of the dwelling. *Through a condition, this criterion will be met.*

6.04 (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).

Staff: The new dwelling will be required to have a monitored alarm system as the secondary

fire safety zone will be a minimum of 50 feet on all sides of the dwelling. *Through a condition, the criterion will be met.*

- 6.05 (6) All accessory structures within the fire safety zone setbacks required by MCC 33.2256 shall have a central monitored alarm system.**

Staff: No accessory structures are proposed as part of this application. *Criterion not applicable.*

- 6.06 (7) All accessory structures within 50 feet of a building containing 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.**

Staff: No accessory buildings are proposed (Exhibit A.5). *Criterion not applicable.*

- 6.07 (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.

Staff: No accessory buildings are proposed (Exhibit A.5). *Criterion not applicable.*

7.00 Significant Environmental Concern Approval Criteria

7.01 § 33.4510 USES; SEC PERMIT REQUIRED

(A) All uses permitted under the provisions of the underlying district are permitted on lands designated SEC; provided, however, that the location and design of any use, or change or alteration of a use, except as provided in MCC 33.4515, shall be subject to an SEC permit.

Staff: The applicant has applied for a Significant Environmental Concern permit for wildlife habitat.

7.02 § 33.4520 APPLICATION FOR SEC PERMIT

An application for an SEC permit for a use or for the change or alteration of an existing use on land designated SEC, shall address the applicable criteria for approval, under MCC 33.4560 through 33.4575.

(A) An application for an SEC permit shall include the following:

(1) A written description of the proposed development and how it complies with the applicable approval criteria of MCC 33.4560 through 33.4575.

(2) A map of the property showing:

- (a) Boundaries, dimensions, and size of the subject parcel;
- (b) Location and size of existing and proposed structures;
- (c) Contour lines and topographic features such as ravines or ridges;
- (d) Proposed fill, grading, site contouring or other landform changes;
- (e) Location and predominant species of existing vegetation on the parcel, areas where vegetation will be removed, and location and species of vegetation to be planted, including landscaped areas;
- (f) Location and width of existing and proposed roads, driveways, and service corridors.

Staff: The applicant has provided the above information in various exhibits submitted (Exhibit A.3 through A.24). *Criterion met.*

7.03 § 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.



Staff: The proposed parcel has significant tree cover. The applicant indicates that $\frac{3}{4}$'s of an acre is in Christmas trees (a farm use). Assessment and Taxation records indicate that 18.50 acres of tax lot 1N1W16A – 01000 is in forest land deferral and has been since at least 1999. A small area of blackberries does exist on the property but it is in an area to the south of the proposed home site. To move the dwelling to this location would impact the Primary Fire

Safety zone and increase the amount trees to be disturbed. *Criterion cannot be met due to fire safety standards.*

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

Staff: The proposed dwelling cannot be located within 200 feet of a public road. The dwelling will be 1,906+/- ft from Springville Road (Exhibit A.5). Parcel 1 does not front onto a public road. *Criterion not met.*

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

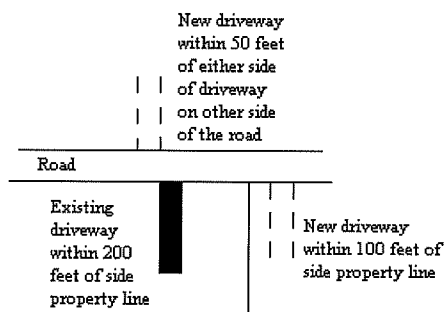
Staff: The distance between Springville Road and the southern property line of tax lot 1N1W16A – 01000 is over 1, 183 ft (Exhibit A.5). Parcel 1's southern property line is an additional 548+/- ft north of the tax lot's southern boundary. The total length of the driveway/service corridor from Springville Road to the edge of the garage will be 2,086 ft (1,183 ft + 548 ft + 355 ft = 2,086 ft) (Exhibit A.5) While it could be possible to shorten the driveway, it is not feasible to make it less than 500 feet in length. *Criterion not met.*

- 7.06 (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.



For illustrative purposes only.

(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.

Staff: The driveway to the proposed dwelling currently serves three dwellings. The addition of this dwelling to the driveway will cluster four homes on a single driveway onto Springville Road. *Criterion met.*

- 7.07 (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.**

Staff: Tax lot 1N1W16A – 00900 is to the west of Parcel 1 (development site). It has an existing dwelling, approximately 84 ft from the common property line. The proposed dwelling on Parcel 1 will be constructed so that the front elevation will be 80 feet from this common property line. *Criterion met.*

- 7.08 (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.

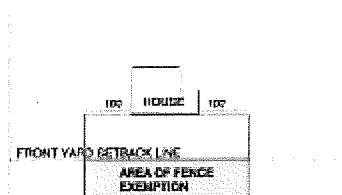
(c) Cyclone, woven wire, and chain link fences are prohibited.

(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



(f) Fencing standards do not apply where needed for security of utility facilities.

Staff: No fencing is proposed on the site plan. *Criterion met.*

- 7.09** **(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: ...**

Staff: No nuisance plants will be planted on the subject property. A condition of approval has been included to advise future property owners of this requirement. *Through a condition, criterion met.*

- 7.10** **(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

(2) The applicant can meet the development standards of Section (B), but demonstrates that the alternative conservation measures exceed the standards of Section (B) and will result in the proposed development having a less detrimental impact on forested wildlife habitat than the standards in Section (B).

Staff: Parcel 1 is not able to meet the development standards of Section (B)(2) and (B)(3) as it is not adjacent a public right-of-way. The applicant must show that the wildlife conservation plan results in the minimum departure from the standards required.

- 7.11** **(3) Unless the wildlife conservation plan demonstrates satisfaction of the criteria in subsection (C)(5), 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.

Staff: Parcel 1 will be two acres in size after completion of the property line adjustment. The construction of the dwelling, primary fire safety zone and secondary fire safety zone will require removal of significant number of small trees to the north, south, east and west. The application indicates that a tree farm exists on the site. Holiday trees are not a forest practice. Assessment and Taxation indicates that tax lot 1N1W16A – 01000 is in forest deferral (Exhibit B.3). The property owner has provided evidence to the County that this area qualifies as a forest practice and that it was able to achieve placement into forest deferral in the past. While it is possible to shift the dwelling into an area of blackberries and other nuisance plant species, the slopes increase in that area and the primary fire safety zone would possibly have to be expanded. A condition of approval has been included limiting the amount of forested area to be converted to residential use. *Through a condition, this criterion can be met.*

- 7.12** **(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.**

Staff: The applicant has indicated 35,104 sq. ft. of land will be disturbed to construct the dwelling. This disturbed area includes the driveway and fire safety turnaround, but does not include the entire primary fire safety zone (Exhibit A.5). The applicant has stated that

additional tree thinning will occur in the secondary fire safety zone to the north of the dwelling as it is in holiday trees that will be converted to forest practice trees. A condition of approval has been included requiring that no more than 1 acre is converted to the home site, primary fire safety zone and landscaping. *Through a condition, this criterion can be met.*

- 7.13 **(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.**

Staff: The applicant has committed to not constructing any fencing within or outside of the area cleared for residential use. A condition of approval has been included to advise future land owners. *Through a condition of approval, this criterion will be met.*

- 7.14 **(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.**

Staff: The application indicates that the southern 100 feet of Parcel 1 does not have significant tree coverage (Exhibit A.5). The application materials indicate that nuisance plant species exist in this area. The applicant is proposing to remove these plants. A landscape or re-vegetation plan has not been included in the plans. The County could require that upwards of two acres be re-vegetated for 1 acre of newly cleared area. A condition of approval has been included that areas outside of the 1 acre cleared area must be re-vegetated with native tree species. In addition, a landscape plan must be submitted. *Criterion met.*

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

Staff: No revegetation or enhancement has been proposed as part of the application. If nuisance plants exist in or adjacent to the riparian area, they will need to be removed by hand and the area replanted to enhance the stream. A condition of approval has been included requiring enhancement of the riparian corridor. *Through a condition, criterion can be met.*

8.00 Adjustment Approval Criteria

8.01 § 33.7606 SCOPE

(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 resource protection setback requirements within the Significant Environmental Concern (SEC) and Willamette River Greenway (WRG) overlay districts are prohibited. Additionally, reductions to the fire safety zones in the Commercial Forest Use zones are not allowed under the Adjustment process; and**
- (2) Reduction of yards and setback requirements within the Hillside Development overlay shall only be reviewed as a Variance; and**
- (3) Reduction of yards/setback/buffer/resource protection setback requirements within the Large Fills, Mineral Extraction, and Radio and Television Transmission Towers Code Sections and any increase to the maximum building height shall only be reviewed as Variances; and**
- (4) Minor modification of yards and setbacks in the off-street parking and design review standards are allowed only through the "exception" provisions in each**

respective Code section.

Staff: The applicant has requested an Adjustment to the 130-ft Forest Practice Setbacks. The proposed dwelling footprint will be located 80 ft from the west property line, 128.78 ft from the north property line and 101 ft from east property line. An adjustment is requested for these three setbacks. A 40% reduction to the 130-ft Forest Practice Setback would allow a 78 ft setback (52 ft reduction). The proposed dwelling is not located within a Hillside Development overlay. *An Adjustment application can be approved for the proposed Forest Practice Setbacks.*

8.02 § 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:

(A) Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

Staff: MCC 33.0005 Definitions states that the intent of the forest practices setbacks in the forest zones “... provides for separation between structures and property lines. This setback assures that accepted forestry practices can occur on adjacent properties without the adjacent property owner needing to alter those practices due to the close proximity of a dwelling or structure.” The Hendren family own parcel 2 and parcel 3 of tax lot 1N1W16A – 01000 and tax lot 1N1W16A – 00900. Parcel 1 (home site property) will be surrounded by the Hendren family ownership. As the Hendrens are proposing the 2 acre parcel, it would appear that its size would not hinder their forest practices on their surrounding property. *Criterion met.*

8.03 (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

Staff: No comments were received during the Opportunity to Comment period. No impacts to adjoining properties have been identified as part of the proposed application. *Criterion met.*

8.04 (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

Staff: The applicant is requesting three adjustments to the forest practice setbacks to establish the dwelling. The purpose of the Commercial Forest Use – 2 zone is “to conserve and protect designated lands for continued commercial growing and harvesting of timber... and to minimize potential hazards or damage from fire”. The proposed dwelling will be constructed using Fire Resistant materials and methods and will contain a monitored fire sprinkler system

8.05 (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

Staff: The subject property is zoned Commercial Forest Use – 2. The surrounding property is owned by the same family. No one has commented that the proposed dwelling will increase costs or significantly change practices for the area. Measure 49 has granted approval of this dwelling. *Criterion met.*

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

Staff: Parcel 1 is zoned Commercial Forest Use – 2. *This criterion is not applicable.*

7.00 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the various permits to establish a Measure 49 single family dwelling in the CFU-2 zone. This approval is subject to the conditions of approval established in this report.

8.00 Exhibits

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

‘C’ Procedural Exhibits

Exhibits with a “*” after the exhibit # have been included as part of the mailed decision. All other exhibits are available for review in Case File T2-2017-7280 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	General Application Form	3/14/2017
A.2	2	Transmittal Cover Memo	3/14/2017
A.3	29	Narrative	3/14/2017
A.4	1	Existing Conditions Plan	3/14/2017
A.5	1	Tentative Plan Map, Existing Access Plan and Access Easement Plan – C1	3/14/2017
A.6	1	Grading and Erosion Control Plan – C2	3/14/2017
A.7	1	Drainage & Utility Plan – C3	3/14/2017
A.8	1	Slope Analysis Plan – C4	3/14/2017
A.9	1	Details – C5	3/14/2017
A.10	2	Deed recorded in Book 1526, Page 222 & 223 on March 13, 1952[Describes 1N1W16D -00600 which is the access road]	3/14/2017
A.11	2	Personal Representative’s Deed recorded at 2015-044904 on April 22, 2015 [Describes 1N1W16A -00900]	3/14/2017
A.12	2	Personal Representative’s Deed recorded at 2015-006881 on January 22, 2015 [Describes 1N1W16A -00900 (western parcel) & 1N1W16D – 00600 which is the access road]	3/14/2017
A.13	2	Personal Representative’s Deed recorded at 2015-044905 on April 22, 2015 [Describes two, 10-acre parcels and one, 0.45 of an acre parcel]	3/14/2017
A.14	8	Oregon DLCD Measure 49 Final Order and Home Site	3/14/2017

		Authorization [Attachment B]	
A.15	1	Zoning Overlays [Attachment C]	3/14/2017
A.16	5	Well Log Query Results [Attachment D]	3/14/2017
A.17	1	Certification of Water Service	3/14/2017
A.18	5	Fire Service Agency Review	3/14/2017
A.19	2	Attachment F	3/14/2017
A.20	9	PA 2015-4618 Notes [Attachment G]	3/14/2017
A.21	6	Soil Survey of Multnomah County [Attachment H]	3/14/2017
A.22	14	Storm Water Certification for Land Divisions and Property Line Adjustments [Attachment I]	3/14/2017
A.23	10	Site Evaluation Report for Land Feasibility Study #10-170253-SE [Attachment J]	3/14/2017
A.24	5	Attachment K: Habitable Dwelling Pictures for Existing 1935 Dwelling	3/14/2017
A.25	1	Frank Hendren Jr. Death Certificate	7/31/2017
'B'	#	Staff Exhibits	Date
B.1	2	A&T Property Information for 1N1W16A – 01000	3/14/2017
B.2	2	A&T Property Information for 1N1W16A - 00900	
'C'	#	Administration & Procedures	Date
C.1	1	Complete Letter (Day 1 – April 13, 2017)	4/17/2017
C.2	3	Opportunity to Comment	4/26/2017
C.3	28	Administrative Decision	8/2/2017