

Christe C. White
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971-634-0204

May 5, 2025

Department of Community Services
Transportation Planning & Development
1620 SE 190th Ave, Portland OR 97233-5910

Re: RRV-2024-0004; Request to Approve an ENCA under MCC 4.700

Department of Community Services,

This office represents the Applicant in the road rules appeal to be heard by Multnomah County on May 9, 2025.

The purpose of this letter is to share the legal and factual basis for concluding that the current circular driveway approach and the agricultural entrance are Existing Nonconforming Accesses ("ECNAs") that the County should re-affirm in this proceeding.

The County denied the road rules variance under RRV-2024-0004 in part based on MCRR 4.700 *Existing Nonconforming Accesses*. The County found that this criterion was not applicable. However, as a matter of law, the existing circular driveway, and the agricultural entrance, were previously approved through a prior lot line adjustment for which there is only a partial record. Under MCRR 4.700(A), "access locations that were previously approved through a prior land use decision but for which there is no record of an access permit having been granted by the County, are accepted as Existing Non-Conforming Accesses (ENCA)."

Thus, the County should accept these access points as ENCAs. Under MCRR 4.700, an ENCA is treated as any other accepted non-conforming use and may be subject to waiver of right if the nonconforming use is disrupted for a period of two (2) years or longer. The driveway and farm entrance have been in operation since well before the lot line adjustment approval in 1989-90 and there has been no period of disruption for two years or longer. In fact, the driveway has provided continued access to the occupied dwelling for decades and the farm entrance has provided that same access to the agricultural operations. The prior land use approval for the ENCA is attached as Exhibit A, and under MCRR 4.700, we are not requesting any alteration, replacement or expansion of the existing conditions and the local fire district has no objections.

The balance of this letter provides further support for this ENCA determination. The County approved the existing property configuration in November of 1990 through an Exempt Minor Partition, under Multnomah County Ordinance No. 174. The Survey for Lot Line Adjustment stamped by the County is attached as Exhibit A. The survey shows the location of the house on the site. The only access to the house is along Sauvie Island Road. This was the case at the time of the survey and is the case today. The driveway was present on the site by 1956-57, which was the year the house was constructed. Further, as

documented in the letter attached as Exhibit B, the prior owner attests that at the time they submitted the property line adjustment, the circular drive and farm entrance were in existence and provided access to the property, providing safe forward egress and ingress to the residence and access to the agricultural operations. Notably, the prior owner also testifies that the neighboring property has the same circular driveway configuration shown in an aerial photo attached to the prior owner's letter. Thus, the driveway existed in the circular configuration by November of 1990 and demonstrated access to the property that was the subject of the property line adjustment.

Importantly here, under an ENCA analysis, the County was required to, and therefore must have determined in November of 1990, that the lot line adjustment met the standards of the code to approve the lot line adjustment.

MCC 33.4330(B) required the County to make the following finding before approving a property line adjustment:

(B) Property Line Adjustment Pursuant to the applicable provisions in MCC 39.9300, the approval authority may grant a property line adjustment between two contiguous Lots of Record upon finding that the approval criteria in (1) and (2) are met.

...

(1) The following dimensional and access requirements are met: (a) The relocated common property line is in compliance with all minimum yard and minimum front lot line length requirements; (b) If the properties abut a street, the required access requirements of MCC 39.4345 are met after the relocation of the common property line; and (Emphasis added).

...

In turn, MCC 39.4345 states that all lots and parcels in this base zone shall abut a public street or shall have other access determined by the approval authority to be safe and convenient for pedestrians and for passenger and emergency vehicles. This access requirement does not apply to a pre-existing lot and parcel that constitutes a Lot of Record described in MCC 39.3080(B).

This means that in order to approve the November 1990 lot line adjustment, the County was required to, and must have found, that the circular driveway and agricultural entrance that have existed since before the lot line adjustment were "safe and convenient" access for "pedestrians and for passengers and emergency vehicles." This finding would have been consistent with the historic use of the driveway, and farm entrance, similar to the neighboring driveway, particularly here where the circular access allows forward egress and ingress to the residential site with adequate sight distance, as documented by the expert reports submitted with this appeal.

While the County faults the argument relied on below that the driveways have existed in their prior configuration and so should be allowed to remain, this conclusion misses the legal point. Under MCRR 4.700, the driveways must have been approved under MCC 39.4330(B), through the property line adjustment. The driveways are therefore permitted by the County's prior decision and are valid ENCAs.

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It is our understanding that there is no evidence to the contrary that would undermine or disprove the existence of the driveways or the date on which they were constructed or previously existed. They most certainly existed before the County's approval of the property line adjustment.¹ And the ENCA process itself assumes that there is an incomplete record of the access permit under a previously approved land use decision ("Access locations that were previously approved through a prior land use decision but for which there is no record of an access permit having been granted by the County, are accepted as Existing Non-Conforming Accesses (ENCA). MCRR 4.700(A)). (Emphasis added).

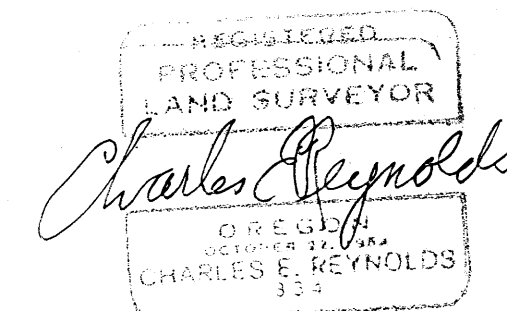
Because the applicant has submitted substantial evidence a reasonable person would rely on to prove the prior existence of the driveways and to prove that they must have been approved as part of a prior land use decision, we are requesting that the County reaffirm the right to continue using the driveways in their current configurations as ENCAs.

Best regards,



Christie C White

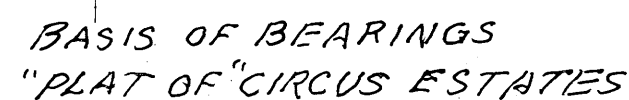
¹ We reviewed historic aerial photography which was inconclusive based on the significant canopy cover that existed in the relevant time periods, obscuring the site frontage along Sauvie Island Road.



- * - CORNER MONUMENTS FOUND
- o - SET 5/8" 30" IRON ROD WITH PLASTIC CAP STAMPED "C REYNOLDS 334"

BOOK 2251 PAGE 628

11-6-89 *LEA*
Multnomah County Oregon
Division of Assessment & Taxation
610 S.W Alder, Room 320
Portland, Oregon 97205-3603



NARRATIVE: BASED ON
P.S. NO. 47562, FOUND
THREE POINTS SET IN THIS
SURVEY ALONG SAVVIE ISLAND
ROAD AND SET LOT LINE
CHANGE

SURVEY for LOT LINE ADJUSTMENT

TL5 13423

Client Edwin Brown

SCALE

1500

Section 17, T. 2N. R. 1N. W. 1N. W.
Multnomah Co. Ore.

DATE
10/16/89

Charles E. Reynolds
5819 NE 25th Portland OR

Multnomah County Planning Department

Re: Circular Driveway and agricultural entrance at 18611 NW Sauvie Island Road

5/1/2025

Dear Multnomah County,

My name is Kristin Ford. My husband and I, Rich Ford, purchased the property at 18611 NW Sauvie Island Road in 1989 which included a pre-existing home on 20 acres. As a condition of that sale, we requested a property line adjustment from the County to reconfigure the legal lots with one 4.5-acre parcel for the sellers and one 15.5-acre parcel for us. We deeded the 4.5-acre parcel to the seller and previous owner Ed and Betty Brown so that they could build a home on the property. We retained the 15.5-acre parcel and the existing home and outbuildings.

We completed the property line adjustment with the County while living in the guest house of the Browns. Once the Browns home was completed, they moved into their new residence which became 18655 NW Sauvie Island Rd, and we occupied the main home at 18611.

I can unequivocally and without any reservation state and attest that the circular driveway was in existence providing access to the home prior to the application for property line adjustment and has existed in the same configuration since before the County approved the property line adjustment. In the property line adjustment proceeding in 1989-1990, we demonstrated access to the newly configured parcel by relying on the circular driveway and its direct access to Sauvie Island Road. There were criteria we had to respond to related to access because both properties had to show legal and safe access, or the lot line adjustment would not have been approved. Additionally, the agricultural entrance which allows access to the farm fields and structures behind the home which is a separate driveway south of the circular driveway was also present before the property line adjustment. In summary all 3 entrances to the property at 18611 NW Sauvie Island Road were present before the lot reconfiguration.

This circular access was typical along Sauvie Island Road. Our neighbors Ed and Betty Brown at 18655 NW Sauvie Island Road had the same driveway configuration which they constructed in accordance with the lot line adjustment and the building of their home on the newly created 5.5-acre parcel, please see the aerial attached to this letter.

These driveways have been operating safely in this configuration for as long as I can remember on Sauvie Island Road and at least since 1989, a period which is before the County approved the property line adjustment and the related access to Sauvie Island Road.

Thank you for your consideration of this evidence in support of the circular driveway and farm access at 18611 Sauvie Island Road.

Sincerely,



Kristin Ford

