

DEPARTMENT OF COMMUNITY SERVICES

Land Use Planning Division



www.multco.us/landuse ✦ Email: land.use.planning@multco.us ✦ Phone: (503) 988-3043

Notice of Hearings Officer Decision

This document provides notice of the Hearings Officer's decision in the matter of **RRV-2024-0004**. The decision is effective on being mailed, and the mailing date is **6/26/2025**. This notice is being mailed to those persons entitled to receive notice under MCC 39.1170(D).

This notice includes the first page of the Hearings Officer's decision which contains the following information: the name of the applicant or owner; the appellant's name; and the street address or location of the subject property along with a brief summary of the decision and the proposed use. A full copy of the decision may be obtained on the Hearings Officer page of the Land Use Planning Division website.

The Planning Director has not appealed the Hearings Officer's decision. Therefore, the Hearings Officer's Decision is the County's final decision and may be appealed to the State of Oregon Land Use Board of Appeals (LUBA) within 21 days of the date the decision is mailed by any person or organization that appeared and testified at the hearing, or by those who submitted written testimony into the record.

Appeal instructions and forms are available from:

Land Use Board of Appeals
201 High St SE, Suite 600
Salem, Oregon 97301-3398

503-373-1265
LUBA.Support@luba.oregon.gov
www.oregon.gov/LUBA

For further information, call or email the Multnomah County Land Use Planning Division at: 503-988-3043 or LUP-Hearings@multco.us.

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DECISION OF HEARINGS OFFICER

This document is a final decision on appeal of the Planning Director's Decision in the land use case cited and described below.

Case File: RRV-2024-0004

Permit: Road Rules Variance

Location: 18611 Sauvie Island Road
Tax Lot 2N1W17-00500
Alternate Account #R971170130 Property ID #R324976

Applicant: Dan Williams, Faster Permits

Owners: Morgan Smith

Proposal and appeal: Road Rules Variance for retaining three accesses onto NW Sauvie Island Road, a Rural Local Road within Multnomah County jurisdiction. The Road Rules Variance is required because more than one access exceeds the one access per property standard (MCRR 4.200) and does not meet access sight distance standard (MCRR 4.500).

The Planning Director issued a decision denying the application on January 30, 2025. (the director's decision, Exhibit C.6). The applicant filed an appeal of the director's decision on February 11, 2025. (Exhibit C 7).

Hearing Date, Time, & Place:

Friday, May 9, 2025 at 10:30 am. The hearing was conducted online.

Decision: Grant the Appeal, reverse the director’s decision, and Approve the Application with Conditions

Applicable Approval Criteria:

Multnomah County Road Rules (MCRR):

- 16.200 General Variance Criteria
- 16.225: A - Multiple Access Points
- 16.225: C - Sight Distance

DECISION: The request for Road Rules Variance is **Approved** subject to the following conditions of approval:

Conditions of Approval:

1. Applicant must submit a revised plan to County Transportation showing the sight triangle (see example below) required to show the vegetation area required to be cleared to the south of “Access #3” in order to meet AASHTO minimum Sight Distance requirements.
 - a. Applicant should show clearly the property/ROW line, with a Survey, and indicate which vegetation belongs within the ROW, and which vegetation may be within the property line of the neighboring property (18525 Sauvie Island Road).
 - b. If not removed entirely, vegetation should be no higher than two feet tall within the sight triangle area.
2. Once condition 1 has been satisfied, Applicant must submit the plan to County Transportation via email (row.permits@multco.us) or via the See Click Fix App 1 (links can be found below and on the County website) for County Maintenance to clear the vegetation within the County ROW (see applicant’s Maintenance Request Exhibit F.3). **Note:** County Transportation Maintenance has no authority to remove vegetation from the neighboring property. Applicant would require a permit to do this instead of County Transportation Maintenance (see MCRR 18.750(G)).
3. Following removal of the vegetation in the ROW by County Maintenance, applicant is required to re-evaluate and verify that the Sight Distance availability from “Access #3” meets AASHTO Standards. Please provide new photographs to update Figures K and L from the current Sight Distance Memos (Exhibits A.4 and E.1). The County Engineer is required to approve the revised Sight Distance Certification, to ensure continued safety of the transportation system prior to issuing a ROW-General (driveway) permit (see condition 5 below).

4. If conditions 1-3 demonstrate that AASHTO minimum Sight Distance standards can be achieved, Accesses #1 and #3 may be retained to serve different portions of the property.
 - a. “Access #1” will serve the residential portion of the property. “Access #3” will serve the rear/agricultural portion of the property.
5. Applicant must obtain a ROW-General (driveway) permit for the retained accesses via the [Permit Portal](#) (MCRR 18.250). Further information can be obtained at the following URL: <https://multco.us/info/permitting-driveway>.
 - a. Plan showing the two retained accesses must be clearly shown with annotations demonstrating driveway width meets DCM standards (MCRR 4.400). DCM Table Private Access Driveway Widths for Single Family properties are 12-25 feet wide. Agricultural driveway widths should be between 20-35 feet wide.
 - b. Plan must also show a permanent method of closing the “Access #2” i.e., fencing, permanent non-moveable shrubs/tree planting etc.

Dated this 26th day of June 2025



Joe Turner, Esq., AICP
Multnomah County Land Use Hearings Officer

This Decision is final when mailed. Appeals may be filed with the Oregon Land Use Board of Appeals within the time frames allowed by State law.

A. HEARING AND RECORD HIGHLIGHTS

1. Multnomah County Land Use Hearings Officer Joe Turner (the “hearings officer”) received testimony at the duly noticed online *de novo* public hearing about the appeal on May 9, 2025. At the hearing, the hearings officer received into the record and inspected electronic copies of the file maintained by the Department of Community Services Land Use and Transportation Planning Program regarding the application and appeal. The hearings officer made the declarations required by ORS 197.763. The hearings officer disclaimed any *ex parte* contacts and any bias or conflicts of interest.

2. County planner Marisol Cervantes summarized the director’s decision and the applicable approval criteria and responded to the appeal.

a. The applicant is requesting approval of a road rules variance to retain three driveway accesses onto Sauvie Island Road. However, the Code only allows two accesses pursuant to a road rules variance.

b. Accesses 2 and 3 do not meet County sight distance requirements, with vegetation blocking sight distance and there is no determination that the applicant can or will trim the vegetation to ensure compliance.

c. The applicant argues that the three driveway accesses are pre-existing. However, the County’s Existing Nonconforming Accesses (“ECNA”) regulations were not in effect in 2018.

3. Attorney Zoe Powers and planner Dan Williams appeared on behalf of the property owner, Morgan Smith.

a. Ms. Powers summarized the history of the site and presented the appeal.

i. The three existing accesses onto Sauvie Island Road are actually two driveways: a one-way circular driveway serving the residence and a second driveway providing access to the agricultural field in the rear of the site. The circular driveway allows vehicles to exit the site onto Sauvie Island Road in a forward direction. The Fire District requested that the applicant be allowed to retain the agricultural driveway in order to maintain emergency access to the rear of the site.

ii. The driveways have existed in their current condition since 1956, the year the existing residence on the site was constructed. Kristin Ford, the prior owner of the site, testified that all three accesses existed when they purchased the site in 1989 and when they obtained County approval of a lot line adjustment in 1990. (Exhibit E.2 at 5). The Code does not require minimum access spacing for residential driveways on rural local roads. The driveways meet County standards for driveway widths. It is feasible to comply with sight distance requirements and the applicant will accept a condition of approval requiring that they remove vegetation and demonstrate such compliance.

iii. She testified that Graham Martin told the applicant in 2020 that the driveways could be approved as an ENCA. Section 4.70 of the Multnomah County Road Rules (MCRR) provides that “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).” Many County records were lost due to flooding, but the applicant was able to find a County decision approving a lot line adjustment for the site. The Code in effect at that time required did not limit properties to a single access and only required the County find that there was safe and convenient access to the site. Therefore, the County must have approved the accesses at that time. The lot line adjustment plat did not show the driveways, but the loss of County records was not the applicant’s fault.

iv. An ENCA is a nonconforming situation subject to ORS 215.130(5). The applicant is only required to demonstrate the existence of the driveways over the preceding 20 years.

v. She agreed to toll the 150-day clock for seven week to accommodate the open record period.

b. Mr. Williams argued that if the accesses do not qualify as ENCA, they can be approved via a variance subject to section 16.000 of the Multnomah County Road Rules (MCRR). The need to access the agricultural field in the rear of the property is a “special circumstance” subject to MCRR 16.200. This section allows significant leeway regarding how to define what is a unique property or circumstance. The Fire District values that access for the safety of the area. The property owner would need to remove large mature trees in order to provide access to the rear of the site from the driveway serving the residence. The circular driveway functions as a one-way access, so there is no conflict with vehicles exiting both driveways simultaneously. He agreed to conditions of approval requiring signs restricting the driveway to one-way access and limiting the third driveway to agricultural and emergency access only. The applicant would also accept a condition requiring closure of one leg of the circular driveway, limiting the site to two accesses onto Sauvie Island Road.

i. He noted that he submitted a revised sight distance report demonstrating that it is feasible to meet sight distance requirements by trimming vegetation with the public right-of-way. (Exhibit E.1). He agreed to reach out to the County maintenance department to trim the vegetation within the right-of-way.

4. County engineer Rick Buen noted that the applicant cannot remove vegetation within the right-of-way without County approval. The applicant can contact the County maintenance division to remove the vegetation. Neither the applicant nor the County has any authority to remove vegetation on neighboring properties.

5. At the conclusion of the public hearing, the hearings officer ordered the record held open for two weeks, until May 23, 2025, to allow all parties to submit additional

testimony and evidence, for an additional two weeks, until June 6, 2025, to allow all parties an opportunity to respond to whatever was submitted during the first open record period, and for a final week, until June 13, 2025, to allow the applicant an opportunity to submit a final argument. The record in this case closed on June 13, 2025.

Findings of Fact

FINDINGS: Written findings are contained herein. The Multnomah County Code (MCC) criteria and Comprehensive Plan Policies are in **bold** font. Code sections that have been shortened or had non-applicable sections removed will show * * * to identify that modification. Staff analysis and comments are identified as ‘**Staff:**’ and address the applicable criteria. Staff comments may include a conclusory statement in *italic*. Staff findings have been accepted as findings by the Hearings Officer except where noted otherwise. Additional findings written by the Hearings Officer are preceded by the words “**Hearings Officer.**”

Project Description:

The applicant is requesting approval of a Road Rules Variance to allow retention of three accesses onto NW Sauvie Island Road, a Rural Local Road within Multnomah County jurisdiction. The Road Rules Variance is required because the three accesses exceeds the one access per property standard (MCRR 4.200).

Transportation Standards

MCRR 4.000 Access to County Roads

MCRR 4.100 *Application for New or Reconfigured Access:* Applicants for a new, altered or reconfigured access onto a road under County Jurisdiction are required to submit a site plan. Applicants may be required to provide all or some of the following:

- A. **Traffic Study-completed by a registered traffic engineer;**
- B. **Access Analysis-completed by a registered traffic engineer;**
- C. **Sight Distance Certification from a registered traffic engineer; and**
- D. **Other site-specific information requested by the County Engineer including a survey.**

Staff: *Criterion not applicable.*

MCRR 4.150 *Transportation Review of Existing Access:* The alteration, expansion or other change in use of any building, structure or land will require review by the County Engineer to ensure that access is consistent with these and other County rules and standards. A property owner or other party proposing an altered, expanded or other change in use of any building, structure or land may be required to provide all or some of the following:

- A. **Traffic Study-completed by a registered traffic engineer;**

- B. Access Analysis-completed by a registered traffic engineer;**
- C. Sight Distance Certification from a registered traffic engineer; and**
- D. Other site-specific information requested by the County Engineer including a survey.**

Staff: The applicant has proposed to retain three accesses shown on the applicant's site plan (Exhibit A.1). The applicant has supported the application with sight distance verification (Exhibit A.4). All required information has been submitted.

MCRR 4.200 *Number of Accesses Allowed:* Reducing the number of existing and proposed access points on Arterials and Collectors and improving traffic flow and safety on all County roads will be the primary consideration when reviewing access proposals for approval. One driveway access per property is the standard for approval pursuant to the Multnomah County Code. Double frontage lots will be limited to access from the lower classification street. Shared access may be required in situations where spacing standards cannot be met or where there is a benefit to the transportation system. If more than one access is desired, a land use application must be submitted in compliance with applicable Multnomah County Codes.

Staff: The applicant has proposed to retain three accesses shown on the applicant's site plan (Exhibit A.1). Three accesses exceed the one access per property standard. *Criterion not met.*

The applicant has applied for a Road Rules Variance from this standard. See Section 16.000 below.

MCRR 4.300 *Location:* All new access points shall be located so as to meet the access spacing standards laid out in the Design and Construction Manual.

Staff: For certain Road Classifications, all accesses are required to meet spacing standards set out in the DCM [Table 1.2.5]. Rural Local roads do not have access spacing requirements. *Criterion not applicable.*

MCRR 4.400 *Width:* Driveway, Private road and Accessway widths shall conform to the dimensions laid out in the Design and Construction Manual.

Staff: For a Residential use (single dwelling), a new or reconfigured driveway must be 12 to 25 feet wide (MCD CM Table 1.2.4). For Agricultural uses, a new or reconfigured driveway must be 20-35 feet wide. The driveways proposed to be retained are as follows (Exhibit A.5):

"Access #1" (most northern) - residential: 15 feet wide. *Criterion is met.*

"Access #3" (middle of the three) - residential: 18 feet wide. *Criterion is met.*

"Access #3" (southern) - agricultural: 20 feet wide. *Criterion is met.*

MCRR 4.500 *Sight Distance:* All new or altered access points to roads under the County's jurisdiction must have a minimum sight distance equal to the standards in

the Design and Construction Manual and AASHTO's A Policy on Geometric Design of Highways and Streets.

Staff: Multnomah County Road Rules Section 4.500 states that access points to roads under the County's jurisdiction must have a minimum sight distance equal to the standards in the County Design and Construction Manual or AASHTO's *A Policy on Geometric Design of Highway and Streets*.

The posted speed limit on NW Sauvie Island Road is 45 mph. According to MCRR 4.500, and AASHTO standards, an access onto County roads shall have a stopping sight-distance (SSD) of 360 feet or greater for speeds 45 mph. The corresponding intersection sight-distance (ISD) is 500 feet.

Hearings Officer: The applicant's traffic engineer states in their "Revised Sight Distance Memo" (Exhibit E.1) that intersection sight distance is as follows:

- **"Access #1":**
 - North:
 - SSD: greater than 500 feet. Meets standard.
 - ISD: greater than 500 feet. Meets standard.
 - South:
 - SSD: greater than 500 feet. Meets standard.
 - ISD: greater than 500 feet. Meets standard.
- **"Access #2":**
 - North:
 - SSD: greater than 500 feet. Meets standard.
 - ISD: greater than 500 feet. Meets standard.
 - South:
 - SSD: 450 feet. Meets standard.
 - ISD: 450 feet. But can be increased to 500 feet if obstructing foliage within the right-of-way is removed. As conditioned, meets standard.
- **"Access #3":**
 - North:
 - SSD: greater than 500 feet. Meets standard.
 - ISD: greater than 500 feet. Meets standard.
 - South:
 - SSD: 450 feet. But can be increased to 500 feet if obstructing foliage within the right-of-way is removed. As conditioned, meets standard.
 - ISD: 450 feet. But can be increased to 500 feet if obstructing foliage within the right-of-way is removed. As conditioned, meets standard.

MCRR 4.600 County Road Projects: When the County conducts a public works project that includes frontage or other improvements to a County Road, the following conditions are applicable:

- A. Driveway drops will be in their existing location, or in an alternative location that can be constructed to meet the standards of the Design and Construction Manual unless the permit specifies a non-standard improvement.
- B. Only one driveway drop per frontage will be constructed by the County unless permits for multiple driveways exist or a Variance Request for an additional driveway is granted by the County Engineer. The location of consolidated access points will be determined by the County Engineer. Undeveloped parcels will not have any driveway drops constructed by the County unless an access is already permitted or a Variance Request for a driveway is granted by the County Engineer.
- C. Driveway drops will be constructed to meet the standards of the Design and Construction Manual unless the permit specifies a non-standard improvement.

Staff: *Criterion not applicable.*

MCRR 4.700 Existing Nonconforming Accesses:

- 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). An ENCA is treated as any other accepted non-conforming use and may be subject to waiver of right if the non-conforming use is disrupted for a period of two (2) years or longer.
- B. It is the burden of the applicant to show prior land use approval for the ENCA, including the final approved decision of the requisite land use jurisdiction; the following must be met for a valid ENCA:
 - 1. Does not qualify for any alteration, replacement or expansion of the existing conditions.
 - 2. Must be reviewed and approved for potential stormwater impacts.
 - 3. Must be reviewed and approved by the local fire district.
- C. An ENCA must obtain an access permit once it is determined to meet these provisions.

Staff: *Criterion not applicable.*

MCRR 5.000 Transportation Impact

MCRR 5.100 To determine if a Transportation Impact is caused by a proposed development, the County Engineer will determine the number of new trips generated by a site by one of the following methods:

- A. Calculations from the most recent edition of the Institute of Transportation Engineers' Trip Generation (ITE); or
- B. A site development transportation impact study conducted by a professional engineer registered in the State of Oregon and accepted by the County.

MCRR 5.200 The County Engineer will use the information obtained pursuant to sub-section 5.100 and/or the frontage length of the subject property to determine the pro-rata share of the requirements set forth in Section 6.000. The County Engineer determination of pro-rata share of improvements will expire twelve months from the date of the County Engineer's determination or after the associated land use permit is granted or closed. If expired, a review process and new determination will be required.

MCRR 5.300 Except where special circumstances require the County Engineer to make an alternate determination, any new construction or alteration which will increase the number of trips generated by a site by more than 20 percent, by more than 100 trips per day or by more than 10 trips in the peak hour shall be found to have a *Transportation Impact*. A minimum increase of 10 new trips per day is required to find a transportation impact.

Staff: The Multnomah County Road Rules defines a Transportation Impact as the effect of any new construction or alteration which will increase the number of trips generated by a site by more than 20 percent, by more than 100 trips per day or by more than 10 trips in the peak hour [MCRR 3.000]. A minimum increase of 10 new trips per day is required to find a transportation impact. Any one of these qualifying criteria is sufficient to deem a "transportation impact."

The proposal seeks to retain access points only and does not pertain to new developments on site.

The proposal does not generate a transportation impact.

MCRR 6.000 Improvement Requirements

MCRR 6.100 Site Development: All subject parties with respect to any property proposed for development, including but not limited to the owner of the site and the applicant (if different than the owner), will be responsible for improvements to the right-of-way for any said development of the property which is found to cause a Transportation Impact, those improvements shall include:

- A. Dedication of Right of Way Requirement:** The subject parties are 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.

Staff: As there is no transportation impact, per MCRR 5.000, no ROW dedication is required. *Criterion not applicable.*

- B. Frontage Improvement Requirements: Frontage Improvement Requirements:** In addition to easement and right-of-way dedication requirements, a prorated share may include half-street improvements along all of the site's County Road frontage(s). Right of Way improvements shall satisfy the standards of the County Design and Construction Manual based upon the functional classification of the road(s). The commitment to improve the affected streets or other facilities to the required standards shall be conditions of approval of Design Review or any other development permit related to the proposal. Half-street improvements can include all of the following:
1. Street widening/improvement
 2. Utility cut restoration
 3. Curb and sidewalk
 4. Driveway relocation/replacement/removal
 5. Traffic controls
 6. Drainage facilities
 7. Lighting facilities
 8. Bicycle facilities
 9. Signal conduit facilities
 10. Street trees
 11. Other appropriate facility or right of way requirements as required by applicable statutes, codes and regulations.

Staff: As there is no transportation impact, per MCRR 5.000, no half street improvements are required. *Criterion not applicable.*

- C. Required Submissions by Subject Parties.** Subject parties shall submit to the County Engineer the following: engineered plans, traffic studies, traffic analysis, reports, surveys or similar documents as requested or required by the County Engineer under this Subsection 6.100 or as may additionally be required under Section 18.

Staff: The applicant has submitted sufficient information for the Road Rules Variance application to be deemed complete. *Criterion is met.*

- D. Transportation Demand Management Options that address strategies to reduce travel demand generated by the proposed development.**

Staff: *Criterion not applicable.*

MCRR 6.200 Land Division:

- A. Right-of-way and easement dedications needed to meet County standards may be required as a condition of all land divisions, whether by partition or subdivision.**
- B. To the extent a land division has been lawfully approved through a land use decision of the appropriate jurisdiction, and such land division impacts a Public Road under County jurisdiction, and there was no assessment in the record of said decision regarding a Transportation Impact caused by the decision or the potential development of any affected parcel in a partition or lot in a subdivision, and further provided the County will not have the opportunity as a part of the Right of Way Use Permit Approval Process under Section 18 of these Rules to review the proposed development, the County will require improvements because of the land division as a part of the Section 18 Permit. Land Divisions that create flag lots will be required to make frontage improvements along the entire length of the parent lot.**
- C. The County Engineer may allow deferral of this improvement requirement until development of the flag lot(s) occurs. When further reviews or approvals will be necessary before development can occur, the County Engineer may allow deferral of those improvement requirements and not apply them to land division proposals.**

Staff: *Criterion not applicable.*

6.250 Lot-Line Adjustments: Right-of-way and easement dedications needed to meet County standards may be required as a condition of a lot-line adjustment. Lot-line adjustments that would result in a reduction of the County road frontage of a lot planned for development or redevelopment may be conditioned to provide right of way and easement dedications, as well as deed restrictions committing the owner to improve the reconfigured lot's frontage to County standards.

Staff: *Criterion not applicable.*

6.300 Zone Change: A Transportation impact study over the 20-year planning horizon will be required for all zone changes that would allow more intensive use of a site than allowed by the site's existing zoning. Improvement requirements for zone changes will be based upon, but not bound by, the needs identified in the transportation impact study.

Staff: *Criterion not applicable.*

MCRR 11.000 Local Access Roads

MCRR 11.100 Improvement Requirements:

- A. For any proposed development where access is to be through a Local Access Road and the development is found to have a Transportation Impact, the owner, applicant or other party responsible for the**

development (the “Developer”) shall be required to improve or cause to be improved the Local Access Road to standards as further provided in this Section.

- B. Right of way and or easement dedications shall be required where the existing right of way is of a substandard width or condition.**
- C. The County Engineer may impose requirements for right of way improvements as necessary to address factors including but not limited to: traffic safety, traffic conditions, bicycle access, pedestrian access and vegetation.**
- D. Developer shall make required improvements at the County Engineer’s request if the transportation impact warrants additional road improvements. Such additional improvements shall not extend beyond the nearest intersection with the publicly maintained road. Improvements will be constructed in a manner consistent with the standards provided in the Design and Construction Manual.**
- E. All costs relating to Local Access Road improvements shall be borne by the Developer including all administrative and other costs incurred by the County including but not limited to the oversight, review, inspection, etc[.], with respect to design, installation, and construction of any improvements on any Local Access Road under County jurisdiction. County shall not begin any work under this Section unless and until an adequate deposit as determined by the County Engineer has been received by the County to cover these costs.**
- F. Notwithstanding any required improvements or other installations done in the public right of way of a Local Access Road under this Section 11 of these Rules, the County does not maintain such Local Access Road.**

Staff: A Local Access Road is a public road under Multnomah County jurisdiction that is outside a city and is not a county road, state highway, or federal road. The subject property has no frontage or access via a Local Access Road. *Criteria not applicable.*

18.250 Access/Encroachment Permit:

- A. An Access/Encroachment Permit (A/E Permit) shall be required for the following activities within the right-of-way:**
 - 1. New or altered access to roads under County jurisdiction. An access is considered altered when a change in the development that it serves has a Transportation Impact as defined in section 6.000 of these rules;**
 - 2. New or reconstructed driveway approaches, private road approaches, curb cuts, or sidewalks;**
 - 3. Structures in the right-of-way, such as signs, posts, fences, flags, non-standard mailboxes, etc.; or**

4. **Any other minor physical alteration of the County right-of-way, including but not limited to any altered landscape design, vegetation planting or placement.**

Staff: There are no valid Access/Encroachment (ROW driveway) permits for the property. Once the applicant/property owner has established a compliant driveway access through compliance with the standards or through an approved Road Rules Variance or other approvals, the property owner can obtain a ROW driveway permit.

Road Rules Variance Findings

MCRR 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 circular driveway has existed since the original house was built. The neighbor to the north has the same configuration so is consistent with the surrounding area.” (Exhibit A.2).

Exhibit A.3 (special circumstances) states:

1. The circular driveway access entrance in all research seems to indicate that it has existed likely since the original house was built in 1956 which is consistent with the neighboring lot also with a circular driveway. Google maps screen shots dating back as far as 1985 showing the circular driveway. It is unknown exactly when the entrance was in place however there is nobody remember when it wasn't there. The property has always needed access to the barn and for farming the back acreage of the lot and that access is not viable per the circular driveway access.
2. The property is classified as an Agriculture property. Access is needed to be successful in carrying out farming practices and to have access to the back of the property. This is not an access that is used on a regular basis but on a very limited based.
3. See the provided letter from the fire Marshall noting the importance and benefit to maintain this agricultural access for firefighting purposes in the case of any future fire emergency.

Staff: This criterion requires applicants to demonstrate that special circumstances apply to the property that do not apply to neighboring properties in the area.

Hearings Officer: The applicant's narrative statement mentions that the circular driveway, which does not meet current County standards, is also featured in neighboring properties. This does not make this *non-compliant* driveway access unique or provide special circumstances. There is nothing about the "[s]ize, 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" that make retention of this existing circular driveway necessary to provide reasonable access to the site. Either of the two legs of the circular driveway ("Access #1" and "Access #2") could be eliminated without impacting access to the site. *Criterion not met* with respect to the circular driveway ("Access #1" and "Access #2"). The applicant can close one leg of this driveway and, if necessary, modify the remaining driveway to allow vehicles to access the public road in a forward direction.

There are no "grandfathering" (nonconforming) provisions within the County's Transportation standards. Making the case that a non-compliant access has been present for a certain period of time does not make it an acceptable access unless it has been accepted as Existing Non-Conforming Access ("ENCA") pursuant to MCRR 4.700 by providing evidence the access has been through an approved land use application process in the past, or potentially as a nonconforming use pursuant to ORS 215.130. Approval of an ENCA or nonconforming use requires a separate application and the hearings officer has no authority to determine whether the existing driveways comply with MCRR 4.700 or ORS 215.130 through this Road Rules Variance application. Nothing in this decision precludes the applicant from submitting a separate application requesting approval of an ENCA.

"Access #3" provides access to the agricultural fields and structures in the rear (west) of the property. The Fire Service supports the retention of "Access #3" for emergency access to the rear of the property as well as for general emergency access in the community. (Exhibit A.3 at 2). The property owner would need to remove one or more large mature trees in order to provide access to the rear of the site from the driveway serving the residence, "Access #1" or "Access #2". (Williams testimony). The hearings officer finds that the location of the mature trees that must be removed to allow access to the rear of the site is a special circumstance or condition that applies to the property and does not apply to other properties in the same area. *Criterion met* with respect to "Access #3."

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: It would be costly to make this change. The new owner would like the maintain the existing configuration as it has always been (Exhibit A.2). The property owner would need to remove large mature trees in order to provide access to the rear of the site from the driveway serving the residence, "Accesses 1" or "2". (Williams testimony).

Hearings Officer: The right to develop the site is a substantial property right of the applicant. But, the site is developed and there is no evidence that three accesses are necessary to facilitate any additional development. However, the right to access the rear of the property for agricultural purposes is also a substantial property right and it is not feasible to access both the existing residence and the agricultural uses in the rear of the property from the same driveway without removing one or more mature trees on the site. Removal of the tree(s) would be an extraordinary hardship.

Criterion met with regard to retaining “Access #3” and “Access #1” or “Access #2”.

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: It has been used for many years without issue. The surrounding properties are all zoned MAU20 or EFU which limits a large developments. By maintaining the existing configuration no adverse impact is anticipated (Exhibit A.2).

Hearings Officer: This criterion requires applicants to demonstrate that the accesses will not be unsafe for ingress/egress, the traveling public or for neighboring properties. The applicant supported their application with a Sight Distance Memorandum (Exhibit A.4) and a Revised Sight Distance Memo (Exhibit E.1), both prepared by an Oregon Professional Engineer (PE). The memos state that sight distance does not currently meet AASHTO standards (as required by MCRR 4.500); two of the three accesses (“Access #2” and “Access #3”) do not meet sight distance requirements to the south. However, removal of vegetation within the right-of-way could bring the second and third accesses (“Access #2” and “Access #3”) of the property up to sight distance standards.

Criterion met as conditioned.

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

Applicant: The driveways are existing and were in place at the time of new ownership (Exhibit A.2).

Hearings Officer: This criterion seeks to establish, with evidence from the applicant, that there are circumstances present on the property that would be very hard to rectify in physical and/or monetary terms. Examples include significant grading, removal of extensive tree cover or bringing a Local Access Road up to standard. Documents verify that the property owner inherited the existing conditions and three access points when they purchased the property in 2021. As discussed above, mature trees on the property preclude the applicant from accessing the existing residence and the agricultural field and structures in the rear of the property from the same driveway and the existence and location of the trees predate the applicant’s ownership of the property. Therefore, compliance with the County Transportation standards would create a “hardship.”

Criterion met.

16.225 Access Variance Standards: Exceptions to access standards may be made by the County Engineer when spacing or other safety considerations make non-standard access acceptable. In addition to the variance requirements of Section 16.200 of these Rules, the applicant will be required to demonstrate that the proposed variance will not negatively impact the safety or capacity of the transportation system for a variance to be granted. The following are examples of variances that may be considered along with specific criteria that must be addressed before such a variance can be granted.

- A. **Multiple Access Points:** The County Engineer may allow multiple access points when all spacing standards can be met, or under the exceptions allowed under the criteria identified below so long as the additional access(es) will not negatively impact the safety or functionality of the transportation system and a single access point cannot reasonably serve a site. Movement restrictions, such as right-in, right-out, may be placed on accesses to protect the safety and/or functionality of the transportation system.

The County Engineer may approve and allow a dual access variance if the applicant meets all of the following criteria:

1. The property in question is zoned commercial, industrial, farm or resource lands and the proposed use is in conformance with all applicable laws, planning and zoning codes and regulations.
2. Proposed access points are at least 150 feet apart on any same right of way frontage.
3. The applicant has submitted adequate traffic studies and other reports and information under Subsection 4.100 that indicate the creation of two access points will not present an unsafe condition or unduly interfere with the movement of traffic, including bicycles and pedestrians.
4. Except as provided in this subsection all other aspects of the applicant's dual access proposal are in compliance with these Rules and the DCM.
5. Applicant must comply with all the requirements of Section 16 of these Rules.

Applicant:

The access has been existing for many years. Due to the close proximity of the house to the right of way the circular driveway is the safest configuration as it allows forward egress into the right of way instead of having to back out into the right of way. The ag entrance (rarely used) is gated so only accessed for ag purposes along with firefighting purposes.

1. Zoned Multiple Use Agriculture and utilized for residential and farm use.
2. This is not feasible, but again due to safety and forward egress it is requested that the owner be allowed to maintain the existing driveway as it has been for many years.
3. See exhibits and maps showing adequate site distances entering a straight level roadway. See site distance report prepared by a licensed professional
4. The driveway is existing and is requested to be maintained as existing.
5. Complies (Exhibit A.2)

Hearings Officer: As stated in the text of the rule all of the criteria must be met to approve and allow a dual access variance. With reference to the five qualifying criteria:

1. The property is zoned agricultural. *Criterion is met.*
2. Access must be 150 feet apart. The three accesses along the property frontage are spaced as follows:
 - a. Access #1-Access #2: 95 feet. Spacing requirement not met.
 - b. Access #2-Access #3: 75 feet. Spacing requirement not met. *Criterion not met.*
 - c. Access #1-Access #3: 170 feet. *Criterion is met.*
3. A Sight Distance Memorandum was submitted as part of the application (Exhibit A.4), as modified by the Revised Sight Distance Memo (Exhibit E.1). These memos show sight distance requirements can be met by clearing vegetation within the right of way, without off-site vegetation removal. *Criterion is met.*
4. Accesses consistent with MCRR 4.300 and MCRR 4.400. *Criterion met.*
5. Accesses are not in compliance with MCRR 16.200 General Criteria or Sight Distance (see MCRR 16.225 C below). *Criterion met as conditioned.*

Four of the five qualifying criteria can be met for this subsection. However, the spacing between Access #1 and Access #2 does not comply with the 150-foot spacing requirement of MCRR 16.225(A)(2). *Criteria not met.*

B. Access Spacing: If it is not feasible to access a site and meet the access spacing standards, access may be located so as to provide the best access spacing possible. The County Engineer may require additional measures to mitigate sub-standard access spacing, such as a median or other restrictions.

Applicant: Access is existing and it would be difficult and costly to modify. The circular driveway also provides forward egress into the right of way and the ag entrance provides greater fire access (Exhibit A.2).

Hearings Officer: Staff concluded that this criterion is inapplicable, because Rural Local roads do not have access spacing standards. (Exhibit C.6 at 14). However, the hearings officer finds that the “access spacing standards” referenced in this section refer to the 150-foot spacing requirement of MCRR 16.225(A)(2). To hold otherwise would preclude approval of an access variance on Rural Local roads.

However, the hearings officer finds that this criterion only applies when “[i]t is not feasible to access a site and meet the access spacing standards ...” In this case it is feasible to access the site and meet the access spacing standards of MCRR 16.225(A)(2) by closing “Access #2.” The spacing between “Access #1” and “Access #3” meets the access spacing standards of MCRR 16.225(A)(2). Therefore, this criterion does not apply because it is feasible to access the site and meet the access spacing standards.

Criterion inapplicable.

- C. Sight Distance:** If it is not feasible to provide enough sight distance to meet County/AASHTO standards, the site’s access must be located so as to provide the most sight distance possible. The County Engineer may require additional measures to mitigate sub-standard sight distance.

Applicant: Plenty of space for the driveways to meet AASHTO requirements (Exhibit A.2).

Hearings Officer: As discussed above, it is feasible to provide enough sight distance to meet County/AASHTO standards by removing vegetation within the County right-of-way. *Criterion inapplicable.*

- D. Notwithstanding any other provision in this Section 16, no variance shall be approved in a public right of way under County jurisdiction that would allow for the installation, placement, or construction of any item of any kind in the “clear zone” of the said public right of way. For purposes of these Rules the phrase “clear zone” shall have the same definition as used and applied in the AASHTO standards.**

Applicant: Nothing is installed in the noted “clear zone” (Exhibit A.2).

Staff: Rural Local roads do not have a Clear Zone standard. *Criterion not applicable.*

16.250 Local Access Roads Variance Standards: The County Engineer will consider a variance from the improvement standards for a Local Access Road in the Design and Construction Manual if the topography or other features of the site make compliance with the improvement standards infeasible. Any variance issued under this Section must meet the criteria of section 16.200 of these rules as well as the minimum requirements of the local police, fire and emergency service providers, any applicable Building Code Requirements, any applicable Land Use Code requirements and meet any other applicable environmental requirements.

Applicant:

Staff: *Criterion is not applicable.*

16.310 Completeness, Timelines, Public Notice, Decision:

- E. Public notice of an application for a variance to these Road Rules shall be as follows:**

1. For variance applications not in conjunction with a proposed development requiring a land use decision:
 - a. Notice of the application and invitation to comment shall be mailed to the applicant, the applicable recognized neighborhood association, and all property owners within 100 feet within the urban growth boundary or within 750 feet outside of the urban growth boundary. The County Engineer will accept comments for 14 days after the notice of application is mailed.

Staff: A 14-Day Opportunity to Comment was mailed to neighboring property owners in accordance with MCRR 16.310. (Exhibit C.5). The County mailed the Planning Director's Decision as required by MCRR 16.310. The County mailed and published notice of the appeal hearing as required by MCRR 17.200 and MCC 39.1170.

Hearings Officer: No public comments were received and no one other than the applicant and staff testified at the appeal hearing.

Procedures met.

Conclusion

Based on the findings and other information provided above, the hearings officer finds that the applicant has carried the burden proof that the application can comply with the approval criteria for a road rules variance. Therefore, the hearings officer hereby grants the appeal, reverses the planning director's decision, and approves the application subject to the conditions of approval established in this Final Order.

Exhibits

'A' Applicant's Exhibits
'B' Staff Exhibits
'C' Procedural Exhibits
'H' Hearing 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 RRV-2024-0004 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/Submitted
A.1	1	Application Form	7/25/2024
A.2	7	Road Rules Variance narrative	7/25/2024
A.3	2	Special Circumstances narrative - with fire service comment	7/25/2024

A.4	17	Sight Distance Verification	7/25/2024
A.5	1	Site Plan	7/25/2024
A.6	1	Survey - Existing Conditions plan	7/25/2024
A.7	3	Fire Service Provider Form	7/25/2024
A.8	1	Copy of County Transportation Letter notifying applicant Road Rules Variance EP-2023-17262 was incomplete	7/25/2024
A.9	1	Copy of County Transportation Planning Review Form EP-2020-13400, dated 7/7/2020	7/25/2024
A.10	1	Narrative addition dated 12/26/2024	12/26/2024
‘B’	#	Staff Exhibits	Date
B.1	4	Transportation Planning Review Memo, EP-2020-13400	7/7/2020
B.2	1	Email to applicant providing opportunity to revise application	9/25/2024
‘C’	#	Administration & Procedures	Date
C.1	1	Complete Letter (Day 1)	8/16/2024
C.2	1	Toll (on Day 72)	10/10/2024
C.3	1	Email from the applicant ending Toll and instructing to proceed	12/28/2024
C.4	1	Email County confirmation toll ended and review continued (from Day 72)	12/31/2024
C.5	3	Opportunity to Comment	1/7/2025
C.6	16	Administrative Decision	1/30/2025
C.7	4	Notice of Appeal	2/11/25
‘E’	#	Hearing Submittals	Date
E.1	18	Revised Sight Distance Memo	5/6/25
E.2	6	Applicant attorney letter re ENCA	5/6/25
E.3	21	Applicable Code and Land Use Case File No. LE 12-89 (Property Line Adjustment) 18611 NW Sauvie Island Road	6/17/25
‘F’	#	First Open Record Period Submittals	Date
F.1	1	Toll request form (1)	5/23/25
F.2	1	Toll request form (2)	5/23/25
F.3	4	Multnomah County Maintenance Request	5/23/25
F.4	6	MUA 20 Zone (3-23-1982 Zoning Code)	5/23/25
F.5	5	County memo to Hearing Officer	5/23/25
F.6	5	Driveway changes over time	5/23/25

‘G’	#	Second Open Record Period Submittals	Date
G.1	3	Applicant's Response in Second Open Record Period	6/6/25
G.2	1	County memo to Hearing Officer	6/6/25
‘H’	#	Applicant’s Final Argument	Date
H.1	4	Applicant's Final Legal Argument	6/12/25