

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: T2-2017-9821

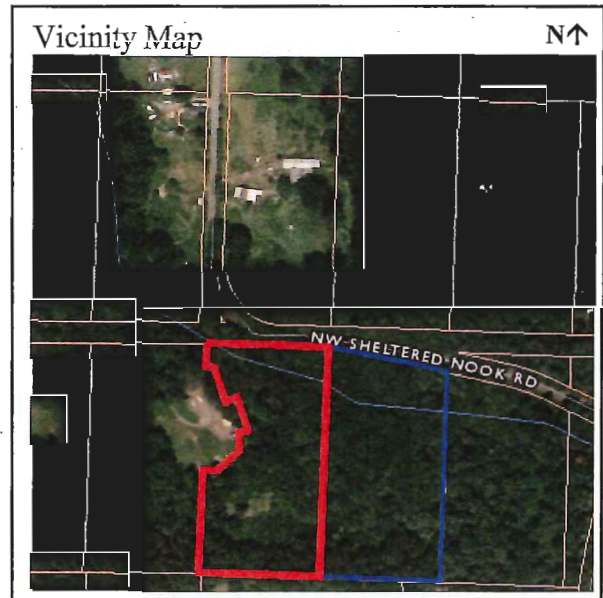
Permits: Administrative Decision by Planning Director, Forest Development Standards, Exception, Significant Environmental Concern, Hillside Development and Road Rules Variance

Location: NW Sheltered Nook Road (Lots 37 & 38 of Sheltered Nook Subdivision)
Tax Lot 1700 & 1701, Section 19 C,
Township 2 North, Range 1 West, W.M.
Alt. Acct # R764203610 & R764203710
Property ID # R269576 & R589894

**Applicants
& Owners:** Ray Friedmann & Mark Tesauro

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

**Overlay
Zones** Significant Environmental Concern for
Wildlife Habitat, Scenic Views &
Streams and Hillside Development

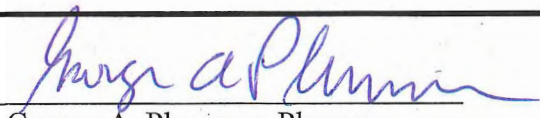


Summary: A request for permits related to building a Measure 49 Forest Dwelling on Tax Lot 1700 and related development in the Commercial Forest Use - 2 Zone including Exception to Secondary Fire Safety Zones, Significant Environmental Concern for Stream (SEC-s) Significant Environmental Concern for Views (SEC-v), Wildlife Habitat (SEC-h), Hillside Development Overlay Zones and Road Rules Variance.

Decision: Approved with Conditions

Unless appealed, this decision is effective July 16, 2018 at 4:00 PM.

Issued by:


George A. Plummer, Planner

For: Michael Cerbone, AICP
Planning Director

Issued Date: July 2, 2018

Instrument Number for Recording Purposes: # 2016139905

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 George Plummer, Planner at george.a.plummer@multco.us or (503) 988-0202 (8 am to 4 pm Tuesday through Friday). Between July 2, 2018 and July 10, 2018 contact Katie Skakel at katie.skakel@multco.us or (503) 988-0213, or contact the counter duty planner at (503) 988 3043.

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

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is July 16, 2018 at 4:00 PM.

Applicable Approval Criteria:

- Oregon Revised Statutes (ORS): ORS 195.300 to 195.336: Measure 49 Approval E118495 Conditions
- Multnomah County Code (MCC): MCC 33.2200 through 33.2310: CFU-2 Zone, MCC 33.4500 through 33.4550: SEC, MCC 33.4570: SEC-h, MCC 33.4565: SEC-v, MCC 33.4575: SEC-s, MCC 33.5500 through 33.5525: Hillside Development and MCC 33.0570 Dark Sky Lighting Standards
- Multnomah County Road Rules (MCRR): MCRR 1.000 through 8.000: Road Rules, MCRR 11.000: Local Access Roads, and MCRR 16.000: Road Rules Variance

Copies of the referenced Multnomah County Code (MCC) and Multnomah County Road Rules (MCRR) 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. Prior to building permit sign-off, the property owner shall record the Notice of Decision including the Conditions of Approval of this decision (pages 1 through 6) with the County Recorder (full decision findings and case exhibits records are maintained at County Land Use Planning Office). The Notice of Decision shall run with the land and the conditions shall be met by the current and future property owner(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 38.0670]
2. 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.

3. This land use permit expires four years from the date the decision is final pursuant to MCC 37.0690(C) as applicable. The property owners 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.
4. The property owners shall establish and maintain Primary Fire Safety Zones around each building. A Primary Fire Safety Zone shall be as follows [MCC 33.2256(D)(4) & (5)]:
 - (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: 10 % to 20% increases the primary fire safety to 80 feet. [MCC 33.2256(D)(1) and Measure 49 approval Condition 11]
5. The property owners shall establish and maintain Secondary Fire Safety Zones around the dwelling. A Secondary Fire Safety Zone shall be as follows [MCC 33.2256(D)(4) & (5)]:

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. [MCC 33.2256(D)(2)]
6. The property owners shall obtain a building permit for the dwelling and carport and ensure that structures comply with the standards of the applicable building code. The property owners shall ensure that the dwelling has a fire retardant roofs and have a spark arrester on any chimney. [MCC 33.2261(C) and Measure 49 approval Condition 11]
7. The property owners shall ensure that the dwelling meets the International Fire Code Institute Urban- Wildland Interface Code Section 505 Class 2 Ignition Resistant Construction as adopted August, 1996, or as later amended. There shall be no combustible fences within 12 feet of the exterior surface of the dwelling or structure; MCC 33.2310 (B)
8. The property owners 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. [Measure 49 approval condition 10]
9. The property owners shall implement and complete the proposed mitigation plan described in Exhibit A.33 which includes planting of 25 western hemlock, 25 grand fir, and 25 Douglas fir adjacent to the stream on the property. The mitigation plan includes a five year, annual monitoring period verifying of the survival rate of planted trees to ensure a minimum of 80 percent survival

rate. If the survival rate is less than 80 percent addition trees of the species shall be planted to achieve 80 percent survival.

10. The property owners shall implement and complete the proposed mitigation plan requiring the property owners remove litter such as trash dumped and old tires that have been dumped on the subject property from Sheltered Nook Road. The trash shall be cleaned up within one year of this decision approval date and the property shall monitor the area and remove any future dumped trash. [MCC 33.4575 (D)]
11. Based on recommendations of the Project Engineering Geologist, prior to County Land Use Planning review and stamping of the building plans for building permits, the property owners shall submit the building plans to a Certified Engineering Geologist or Geotechnical Engineer for review and certification that the building plans meet the Geotechnical Report recommendations and/or address any geotechnical concerns of the engineer. Prior to County Land Use Planning review and stamping of the building plans for building permits, the property owners shall provide proof with a profession stamp that the plans have been reviewed and certified by a Certified Engineering Geologist or Geotechnical Engineer. [MCC 33.5515(E), MCC 33.5515(F) and MCC 33.4575 (E)(6)]
12. The property owners shall ensure that the building standards recommended in the Geotechnical Report (Exhibit A.9) are met when the dwelling is constructed. The property owners shall ensure a Certified Engineering Geologist or Geotechnical Engineer observes the construction of the dwelling including observation prior to pouring of the foundation, observes the construction periodically during the consultation period. [MCC 33.5515(E), MCC 33.5515(F) and MCC 33.4575 (E)(6)]
13. Prior to the final building inspection and prior to occupancy of the dwelling, the property owners shall submit to County Land Use Planning a certifying documentation that a Certified Engineering Geologist or Geotechnical Engineer observed the construction of the dwelling and include a professional stamped statement that the dwelling meets the Geotechnical Report recommendations and/or addresses any geotechnical concerns of the engineer. [MCC 33.5515(E), MCC 33.5515(F) and MCC 33.4575 (E)(6)]
14. The property owner shall submitted the storm water control (detention) system plans to a Certified Engineering Geologist or Geotechnical Engineer for review and approval. Prior to County Land Use Planning review and stamping of the building plans for building permits, the property owners shall provide proof that the storm water control system has been reviewed and approved by a Certified Engineering Geologist or Geotechnical Engineer. [MCC 33.5515(E), MCC 33.5515(F) and MCC 33.4575 (E)(6)]
15. The property owners shall ensure that the storm water control (detention) system design as detailed on Exhibit A.31 and amended as shown on Exhibit A.37 is installed prior to the completion of the proposed buildings. The property owners shall ensure the storm water control (detention) system is designed and functions to meet the standard that post construction storm water runoff from the property will be no greater than existed prior to the development to 10 year storm standard as stated on Exhibit A.18. The storm water control (detention) system slow discharge pipe with perforations near it terminus, as detailed on Exhibit A.31, shall not be located no closer than fifty feet, preferably 100 feet from the stream. The property owners shall monitor the area with the perforations to ensure there is no erosion resulting from the flow. If there is erosion the property

owners shall place small rocks along the area to decrease the energy of the flow. Any soil disturbing activities within a Stream Conservation Area shall be limited to the period between June 15 and September 15. Revegetation/soil stabilization must be accomplished no later than October 15. [MCC 33.5520(A)(1)(d)]

16. All exterior lighting shall meet the following standards

- (1) The light source (bulbs, lamps, etc.) must be fully shielded with opaque materials and directed downwards. "Fully shielded" means no light is emitted above the horizontal plane located at the lowest point of the fixture's shielding. Shielding must be permanently attached.
- (2) The lighting must be contained within the boundaries of the Lot of Record on which it is located. To satisfy this standard, shielding in addition to the shielding required in paragraph (C)(1) of this section may be required. Any exterior lighting associated with a proposed development shall be placed, shaded or screened to avoid shining directly into a Stream Conservation Area. [MCC 33.0570(C)]
- (3) Any exterior lighting associated with a proposed development shall be placed, shaded or screened to avoid shining directly into a Stream Conservation Area. [MCC 33.4575 (E)(3)]

17. To meet the visual subordination standard for the proposed building screening and building material low reflectivity and dark earth tone colors are needed. For screening purposes the property owners shall maintain some existing trees within 50 feet of the dwelling including a couple of trees maintained to the northeast of the dwelling while meeting the Primary Fire Safety Zone requirements. These trees will break up the lines of the dwelling as seen from a distance. If there are no trees in the area within 50 feet of the dwelling to the northeast of the dwelling the property shall plant two conifers that are a minimum of five feet tall. The forested area north and northeast within 50 to 100 feet of the dwelling shall be maintained to provide some screening for identified viewing area. The dwelling shall be built with the materials detailed in the submittal in Exhibits A.26 through A.28. The exterior colors shall be dark earth tone colors as show on Exhibit A.29 or shall match any color in the Columbia Gorge Commission color chart in rows A or B or C13-C16 which are dark earth tone colors that will blend in the natural landscape colors assisting in visual subordination for the dwelling as seen from the identified viewing area. [MCC 33.4565(C)(1):

18. The property owners shall ensure that erosion control measures such as sediment fencing is installed prior to any soil disturbance on the property down slope of the building project. After soil is disturbed, the disturbed soil shall be either covered with gravel or mulch. Erosion control measures shall consist of "Best Management Practices" erosion control (those that perform as effectively as those prescribed in the currently adopted edition of the City of Portland Erosion and Sediment Control Manual and the City of Portland Stormwater Management Manual posted on the internet) including but not limited to installing sediment fencing down slope of all soil disturbance area building project area, mulching disturbed soil areas, covering spoils piles and stock-piles with a staked plastic sheet until they are removed from the property or spread out next summer dry season (more than 200 from the stream). [MCC 33.5520(A)(2)]

19. The property owners shall reseed all remaining disturbed soil areas with grass as soon as possible. Erosion control measures shall be maintained in working condition throughout the construction phase and until permanent vegetative cover such as grass is growing in the disturbance areas. Permanent plantings and any required structural erosion control and drainage measures shall be installed as soon as practical. [MCC 33.5520(A)(2)]

20. The property owners shall ensure that the storm water control (detention) system design as detailed in Exhibit A.31 and amended in Exhibit A.37 or as amended by a Certified Engineering Geologist or Geotechnical Engineer and meeting Condition 15 is installed prior to the completion of the building to meet the standard that post construction storm water runoff will be no greater than existed prior to the development as described in Finding 4.2.1.4. [MCC 33.5520(A)(1)(d)]
21. The property owners shall ensure that non-erosion pollution associated with construction such as pesticides, fertilizers, petrochemicals, solid wastes, construction chemicals, or wastewaters shall be prevented from leaving the construction site through proper handling, disposal, continuous site monitoring and cleanup activities. [MCC 33.5520(A)(2)]
22. The applicant shall acquire a driveway permit prior to building permit issuance for the site's existing access onto Sheltered Nook Road (local access road). [MCRR 4.000; 18.250]
23. The property owner will need to record deed restrictions prior to building permit issuance (provided by County Transportation) with County Records, committing the property owner to participate in future right of way improvements costs. A non-remonstrance agreement, or deed restriction, will require that the property owner to participate in standard Rural Local road improvements along the site's frontage that are not completed as a part of the site's required interim improvements. [MCRR 9.400] Contact Pat Hinds at (503) 988-3712 or patrick.j.hinds@multco.us to complete the deed restrictions.

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.

Note: Once this decision is final, application for building permits may be made with the City of Portland Building Bureau once your plans are stamped by County Land Uses Planning and County Right-of-Way Program has signed off. When ready to have building permits signed off, the applicant shall contact George Plummer, Planner at george.a.plummer@multco.us or (503) 988-0202 (8 am to 4 pm Tuesday through Friday) for an appointment for zoning review of the plans, the approval of the conditions and to stamp and sign the building permit plans. Please note, Multnomah County must review and sign off the building permits before the applicant submits building plans to the City Building Bureau. Five sets each of the site plan (on the front of each set) 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.

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. PROJECT DESCRIPTION

Staff: A request for permits related to building a Measure 49 Forest Dwelling on Tax Lot 1700 and related development in the Commercial Forest Use - 2 Zone including Exception to Secondary Fire Safety Zones, Significant Environmental Concern for Stream (SEC-s) Significant Environmental Concern for Views (SEC-v), Wildlife Habitat (SEC-h), Hillside Development Overlay Zones and Road Rules Variance .

2. PROPERTY DESCRIPTION

Staff: The project site is located on Lot 37 Sheltered Nook Subdivision (Tax Lot 1700, 2N1W19C), which is a 4.5 acre property that was reconfigured through Property Line Adjustment Case T2-06-098 prior to the Measure 49 approval. The driveway for the dwelling site crosses, via easement, through the adjacent eastern property, Lot 38 Sheltered Nook Subdivision which was recently sold by the applicants on June 28, 2018 as shown on Exhibit A.39.

The subject property slope drops to the south from Sheltered Nook Road to the Sheltered Nook Tributary of McCarthy Creek and then raises up with a relatively steep slope between 15 and 20 percent to a ridge line of a round saddle that have relatively shallow slopes of less than 10 percent where the proposed building site is located.

There are no known outstanding compliance issues related to the property.

3. COMMENTS

Staff: An Opportunity to Comment notice of a pending decision for application proposal was mailed to property owners with property within 750 feet of the subject property and to neighbor groups. We received one letter of comment from Gumaro Iniguez an owner of a neighboring property.

Mr. Iniguez commented about various wildlife in the area related to Significant Environmental Concern for Wildlife Habitat (SEC-h) permit request. The findings for the SEC-h permit can be found under Section 6 of this decision. The SEC-h review for a proposed development are not specially about certain animals. The SEC-h review is whether the proposed meets certain standards and if it must meet wildlife conservation plan standards or can meet those standard if conditions of approval are implemented. Staff has found that the proposed development meets the wildlife conservation plan standards.

Mr. Iniguez also commented about Hillside Development and Erosion Control permit request. The finding for the Hillside Development permit can be found under Section 9 of this Decision. The code requires a review of the proposed development by a Certified Engineering Geologist or Geotechnical Engineer finding the proposed development site as suitable for the proposed development. The application proposal includes a Geotechnical Report by GeoDesign LLC stamped and signed by Charles M. Clough, RG. CEG and Brett A Shipton, PE, GE and a Hillside Development Permit Form HDP-1 stamped and signed Charles M. Clough, RG. CEG in which the Engineering Geologists found the development site suitable provided certain development standards are met when the dwelling is built. Staff included two conditions of approval requiring review and approval of the building plans and storm water control plans and observation of the work by a Certified Engineering Geologist or Geotechnical Engineer. The condition addressing these are Conditions 10 and 11. Additionally there are several conditions that address grading and erosion control. Staff found the proposed development meets the standards for a Hillside Development permit with conditions.

Staff thoroughly reviewed the proposed development and found that it met all the standards or will meet those standards through implementing conditions of approval.

4. MEASURE 49

Staff: Former property owner Albert Dilnik filed a Oregon State Ballot Measure 37 Claim on property described Township 2N, Range 2W Section 24D, Tax Lots 2300 which is vacant and 2400 had a residential dwelling and Township 2N, Range 1W Section 19C, Tax Lots 1700 and 1701 which are vacant. Tax Lot 2400 was between 1700 and 2300. When Measure 37 was amended by Oregon State Measure 49 Mr. Dilnik chose to continue his claim under a Ballot Measure 49 claim. It was processed by the Oregon Department of Land Conservation and Development (DLCD) as State Election Number: E118495.

The Department of Land Conservation and Development after making finding in E118495 DLCD states, "Based on the analysis set forth above, this claim is approved, and the claimant qualifies for two home site approvals.." It continues, ... after taking into account the number of existing lots, parcels or dwellings the claimant is authorized to establish two dwellings on tax lots 1701, 2300, or reconfigured tax lot 1700 of the Measure 37 claim property. Continuing, "The claimant may choose on which of the three tax lots to locate two authorized dwellings on the property on which the claimant is eligible for Measure 49 relief, subject to the following terms." Following are conditions of the Measure 49 approval with findings of compliance by County Land Use Planning.

- 4.1. 1. Each dwelling must be on a separate lot or parcel, and must be contained within the property on which the claimant is eligible for Measure 49 relief. The establishment of a dwelling based on this home site authorization must comply with all applicable standards**

governing the siting or development of the dwelling. However, those standards must not be applied in a manner that prohibits the establishment of the dwelling, unless the standards are reasonably necessary to avoid or abate a nuisance, to protect public health or safety, or to carry out federal law.

Staff: The proposed dwelling is on Tax Lot 1700. The proposed dwelling complies with all applicable standards governing the siting or development of the dwelling. This condition is met through approval of this application request. *This condition is met.*

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

Staff: The establishment of the proposed dwelling is not in violation of a land use regulation described in ORS 195.305(3) and is not in violation of any other law that is not a land use regulation as defined by ORS 195.300(14) when the condition of approval are met.. *This condition is met.*

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

Staff: Not applicable, only three home sites were approved and this application is one of them.

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

Staff: There are two homesite approvals and this application is one of the two allowed. *This condition is met.*

- 4.5. 5. Temporary dwellings are not considered in determining the number of existing dwellings currently on the property. The claimant may choose to convert any temporary dwelling currently located on the property on which the claimant is eligible for Measure 49 relief to an authorized home site pursuant to a home site approval. Otherwise, any temporary dwelling is subject to the terms of the local permitting requirements under**

which it was approved, and is subject to removal at the end of the term for which it is allowed.

Staff: Not applicable. There are no temporary dwellings on the properties.

- 4.6. 6. A home site approval only authorizes the establishment of a new dwelling on the property on which the claimant is eligible for Measure 49 relief. No additional development is authorized on contiguous property for which no Measure 37 claim was filed.**

Staff: The application request is for a dwelling on a property approved for a Measure 49 home site authorization on December 14, 2009. The Measure 49 claimant sold the property to the applicants which under Measure 49 have ten years from the purchase date to obtain permits to establish the dwelling. The applicants purchased the property on November 8, 2016. No additional development is being considered under the Measure 49 Administrative Decision by Planning Director. The carport is allowed as an accessory use which is accessory to the dwelling use being reviewed under the other permits requested. *This condition is met.*

- 4.7. 7. The claimant may use a home site approval to convert a dwelling currently located on the property on which the claimant is eligible for Measure 49 relief to an authorized home site. If the number of dwellings existing on the property on which the claimant is eligible for Measure 49 relief exceeds the number of home site approvals the claimant qualifies for under a home site authorization, the claimant may select which existing dwellings to convert to authorized home sites.**

Staff: Not applicable. The property is current vacant.

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

Staff: Not applicable. There is no vested right Measure 37 approved development on the property.

- 4.9. 9. A home site approval does not authorize the establishment of a new dwelling on a lot or parcel that already contains one or more dwellings.**

Staff: Not applicable. The property is current vacant.

- 4.10. 10. Because the property is located in a forest zone, the owner must comply with the requirements of ORS 215 .293 before beginning construction.**

ORS 215.293 Dwelling in exclusive farm use or forest zone; condition; declaration; recordation. The county governing body or its designate shall require as a condition of approval of a single-family dwelling under ORS 215.213, 215.283 or 215.284 or otherwise in a farm or forest zone, that the landowner for the dwelling 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 will require landowner for the dwelling to 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. *This condition is met through a condition of approval.*

- 4.11. **11. If an owner of the property is authorized by other home site authorizations to subdivide, partition, or establish dwellings on other Measure 37 claim properties, Measure 49 authorizes the owner to cluster some or all of the authorized lots, parcels or dwellings that would otherwise be located on land in an exclusive farm use zone, a forest zone or a mixed farm and forest zone on a single Measure 37 claim property that is zoned residential use or is located in an exclusive farm use zone, a forest zone or a mixed farm and forest zone but is less suitable for farm or forest use than the other Measure 37 claim properties.**

Staff: The dwelling is clustered to the extent possible given the shallow slope area being the only area to build that avoids steep slopes and excessive grading. The proposed site allows for the Primary Fire Safety Zone to be met. Any closer clustering to the dwellings on adjacent lot would result in the Primary Fire Safety Zone not being met. The proposed site clusters the dwelling with the dwelling on the adjacent property to the west to the extent possible at about 360 feet apart. *This condition is met.*

- 4.12. **12. If the claimant transferred ownership interest in the Measure 37 claim property prior to the date of this order, this order is rendered invalid and authorizes no home site approvals. Provided this order is valid when issued, a home site approval authorized under this order runs with the property and transfers with the property. A home site approval will not expire, except that if a claimant who received this home site authorization later conveys the property to a party other than the claimant's spouse or the trustee of a revocable trust in which the claimant is the settlor, the subsequent owner of the property must establish the authorized dwellings within 10 years of the conveyance. A dwelling lawfully created based on a home site approval is a permitted use.**

Staff: The Measure 49 claimant sold the property to the applicants which under Measure 49 have ten years from the purchase date to obtain permits establish the dwelling. The applicants purchased the property on November 8, 2016. *This condition is met.*

- 4.13. **13. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, this home site authorization will**

not authorize the use of the property unless the claimant first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a permit as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies, and restrictions on the use of the subject property imposed by private parties.

Staff: This application is to obtain land use permits required to build the single family dwelling on the subject property. Building permits and a septic installation permits will be required. There no know compliance issues existing on the property. *This condition is met.*

5. COMMERCIAL FOREST USE 2

5.1. Allowed Uses

MCC 33.2220(A): The following uses pursuant to the Forest Practices Act and Statewide Planning Goal 4:

MCC 33.2220(T): Accessory Structures subject to the following:

(1) The Accessory Structure is customarily accessory or incidental to any use permitted or approved in this district and is a structure identified in the following list:

Staff: This application request includes an accessory building (structure) accessory to the proposed dwelling which is an allowed use. However, the accessory building must meet the CFU forest practices setbacks, Primary Fire Safety Zone, and development standards.

5.2. Forest Practices Setbacks

MCC 33.2256: 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 lo-cation	Nonconforming Setbacks	Front Property Line Adjacent to County Maintained Road (feet)	All Other Setbacks (feet)	Fire Safety Zone Requirements (FSZ)
Heritage Tract Dwelling	NA	30	130	Primary & Secondary required
Accessory structures within 100 ft. of the dwelling	N/A	30	30	Primary required
Accessory structures located more than 100 ft. from the dwelling	N/A	30	130	Primary & Secondary required

Staff: The proposed dwelling is a Measure 49 for these standards is a type of Heritage Dwelling. The proposed dwelling site on the property meets the 130 foot forest practices setback from all the property lines. The proposed location of the accessory building, a carport,

is 70 feet from the proposed dwelling site meeting the 30 foot forest practices setback from all the property lines. *The forest practice setback standards are met.*

5.3. Fire Safety Zones on the Subject Tract

5.3.1. MCC 33.2256(D)(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: Primary Fire Safety Zone is required to be established and maintained with a minimum of 30 feet in all directions around a dwelling and accessory building expanded out according to slope degree as shown on the table above. The slope to the south of the dwelling is slightly less than 20 percent requiring an 80 foot Primary Fire Safety Zone to the south as shown on Exhibit A.38. A condition can require a Primary Fire Safety Zone be established and maintained according this code section. *This standard is met through meeting conditions of approval.*

5.3.2. MCC 33.2256(D)(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 pro-visions of 33.2310.

Staff: A Secondary Fire Safety Zone is a fire break extending a minimum of 100 feet in all directions around the Primary Safety Zone for the dwelling. The accessory within 100 feet of the dwelling does not require a Secondary Fire Safety Zone. With the Primary Fire Safety Zone to the south of the dwelling extends out 80 feet, thus only 50 feet of the Secondary Fire Safety Zone can be established on the property. The Secondary Fire Safety zone south of the dwelling requires an Exception to the Secondary Fire Safety Zone approval to reduce the Secondary Fire Safety Zone. This decision includes an approval of an Exception to the Secondary Fire Safety Zone for the area south of the dwelling as shown on Exhibit A.38 with findings in Section 4.5. *This standard is met through meeting conditions of approval.*

5.3.3. MCC 33.2256(D)(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

Staff: The fire safety zones will not restrict or contradict a forest management plan approved by the State of Oregon Department of Forestry pursuant to the State Forest Practice Rules. This standard is met.

5.3.4. MCC 33.2256(D)(4) Required Primary and Secondary Fire Safety Zones shall be established within the subject tract as required by Table 1 above.

Staff: A condition can require a Primary Fire Safety Zone and Secondary Fire Safety Zones be established and maintained according to this code section to be met except for the Secondary Fire Safety Zones as described where it can not be met south of the dwelling as shown on Exhibit A.38 for which an Exception is approved. *This standard is met through meeting conditions of approval.*

5.3.5. MCC 33.2256(D)(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: A condition can require a Primary Fire Safety Zone and Secondary Fire Safety Zones be established and maintained according to this code section, except for the Secondary Fire Safety Zones as described where it can not be met south of the dwelling as shown on Exhibit A.38 for which an Exception is approved. *This standard is met through meeting conditions of approval.*

5.4 CFU-2 Forest Development Standards for Dwellings and Structures

MCC 33.2261 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:

Staff: Findings for MCC 33.0570:

5.4.1. MCC 33.2261(A) For the uses listed in this subsection, the applicable development standards are limited as follows:

* * *

(3) Accessory buildings.

(a) Accessory buildings within 100 feet of the existing dwelling: Shall meet the development standards of MCC 33.2261(C);

Staff: The carport accessory building is proposed to be within 100 feet of the dwelling. *This standard is met.*

5.4.2. MCC 33.2261(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):

Staff: The entire proposal must be reviewed under MCC 33.2261(B)(2) & (3).

- 5.4.2.1. MCC 33.2261(B)(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 entire development site exceeds (d) within 300-feet of frontage on a public road and exceeds the 500 foot driveway length from the public road to the structure, thus the entire proposal must be reviewed under MCC 33.2261(B)(2) & (3).

- 5.4.2.2. MCC 33.2261(B)(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;**

Staff: The proposed dwelling and accessory building meet the forest practices setbacks. The fire safety zones will be required to be maintained by conditions of approval, except the Secondary Fire Safety Zone down slope to the south of the dwelling is reduced through an Exception (see Section 4.5 of this Decision). Given these factors there should be no increased impact on nearby or adjoining forest or agricultural lands. *This standard is met through meeting conditions of approval.*

- (b) Adverse impacts on forest operations and accepted farming practices on the tract will be minimized;**

Staff: The property has not been farmed. The property has a measure 49 approval for a dwelling. The proposed site dwelling site is less than an acre. While the driveway is rather long the dwelling site with its shallow slope is the area of least impact for the dwellings. Siting the dwelling in other location on the property, would require significant grading, greater impact to the stream riparian area and/or more forest removal due to steep slopes. *This standard is met.*

- (c) The amount of forest land used to site the dwelling or other structure, access road, and service corridor is minimized;**

Staff: The disturbance area for siting the dwelling, carport and septic system will be about 29,000 square feet of land. That is common amount of land for establishing a dwelling.

While the driveway length is 720 feet in length, it is the minimal length needed to access the building site. The building site is the only area on the property that has a relatively shallow slope and is outside the Significant Environmental Concern for Streams Overlay Zone. This standard is met.

(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: While the driveway length is 720 feet in length, it is the minimal length needed to access the building site. The building site is the only area on the property that is relatively shallow sloped and is outside the Significant Environmental Concern for Streams Overlay Zone. *This standard is met.*

5.4.2.3. MCC 33.2261(B)(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: The application includes a Tualatin Valley Fire & Rescue review of the proposed dwelling site and driveway with contours shown on the site plan signed by Drew DeBois, Deputy Fire Marshall (Exhibit A.13). The Sheltered Nook Road spur accesses the property and could provide fire apparatus access to the creek, however it appears the creek does not have the necessary flow. *These standard is not applicable.*

5.4.3 MCC 33.2261(C): The dwelling or structure shall:

- (1) Comply with the standards of the applicable building code**

* * *

- (3) Have a fire retardant roof; and**
- (4) Have a spark arrester on each chimney.**

Staff: A condition will require building permits for the dwelling and the carport. A condition will require fire retardant roof for the buildings, and if there are any chimneys, spark arrester installed. *These standards are met through meeting conditions.*

5.4.4. MCC 33.2261(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.**

Staff: The property met this standard for domestic water supply through a well recently drilled on the adjacent property with an easement to serve the subject property (Exhibit A.39). *This standard is met.*

5.5. Exception to Secondary Fire Safety Zones

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

- (1) The tract on which the dwelling or structure is proposed has an average lot width or depth of 330 feet or less, or**
- (2) The dwelling or structure is proposed to be located within 130 feet of the centerline of a public or private road serving two or more properties 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: A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone. With the Primary Fire Safety Zone to the south of the dwelling extending out 80 feet, thus only 50 feet of the Secondary Fire Safety Zone can be established on the property. The secondary fire safety zone south of the dwelling requires an Exception to the Secondary Fire Safety Zone approval to reduce the Secondary Fire Safety Zone.

The property ownership is Tax Lot 1700. The applicant submitted a weighted averaging of Tax Lot 1700's width as show on Exhibit A.38. They determined that average width of the property is less than 330 feet, meeting Standard (1) allowing an Exception to the Secondary Fire Safety Zone. *This standard is met.*

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

Staff: The following standards are met through implementing conditions of approval. *A condition of approval will require these standards be met.*

5.5.2.1. (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

Staff: The Secondary Fire Safety Zone to the south of the dwelling needed to be reduced to 50 feet. *A condition of approval will require this standard be met.*

5.5.2.2. (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 to the south of the dwelling needed to be reduced to 50 feet. It meets the requirement for (1) above.

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

Staff: A condition of approval can require this standard be met. *A condition of approval will require this standard be met.*

* * *

5.6. Lot of Record

MCC 33.2270(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:**

MCC 33.0005 Lot of Record – Subject to additional provisions within each Zoning District, a Lot of Record is a parcel, lot, or a group thereof that, when created or re-configured, (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws, or (c) complies with the criteria for the creation of new lots or parcels described in MCC 33.7785. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.

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

Staff: The subject property was created as Lot 37 of Sheltered Nook Subdivision. It was subsequently altered through Property Line Adjustment T2-06-098 prior to the Measure 49 approval. While the property was likely owned by the same ownership on February 20, 1990 as the adjacent property to the west and east and all these properties less than 19 acres, the Measure 49 approval over-rides the aggregation requirement for establishing the dwelling. *The property is a stand-alone Lot of Record due to Measure 49 approval.*

6. SIGNIFICANT ENVIRONMENTAL CONCERN FOR WILDLIFE HABITAT

6.1. SEC-H Development Standards

- 6.1.1. MCC 33.4570(B)(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 development site is in previously approved cleared area the was forested until after 2006 when the previous owner was preparing to market the property of a residential development. Thus it was cleared for the development and not a non-forested "cleared" areas. There is no other cleared area on the property for these uses. *This standard is not met thus a wildlife conservation plan is required*

6.1.2. MCC 33.4570(B)(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 is located about 420 feet from a Sheltered Nook Road a public road. *This standard is not met thus a wildlife conservation plan is required*

6.1.3. MCC 33.4570(B)(3): The access road/driveway and service corridor serving the development shall not exceed 500 feet in length.

Staff: The access road to the dwelling is about 720 feet in length exceeding the 500 feet in length standard. *This standard is not met thus a wildlife conservation plan is required.*

6.1.4. MCC 33.4570(B)(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 drive-way approach within 200 feet of that side property line**

Staff: The driveway approach is within 100 feet of a side property line if adjacent property. *This standard is met.*

6.1.5. MCC 33.4570(B)(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: Driveway was reviewed and approved in previous cases discussed in Section 2 of this decision. *This standard is met.*

6.1.6. MCC 33.4570(B)(6): Fencing within a required setback from a public road shall meet the following criteria:

Staff: No fencing is proposed. *This standard not applicable.*

6.2. Wildlife Conservation Plan

An applicant shall propose a wildlife conservation plan if one of two situations exist.

6.2.1 MCC 33.4570(C)(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

Staff: The development standards can not be met. The site location for dwelling is the only shallow sloped area on the property and the area within 200 feet of the public road is in the SEC-s overlay near the stream and steep slope. Exhibit A.37 demonstrates that the best site is the proposed dwelling location. *The proposed development can not meet the development standards of Section (B).*

- 6.2.2. MCC 33.4570(C)(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: The proposed development can not meet the development standards of Section (B). *Thus this subsection is not applicable.*

- 6.2.3 (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.**
- (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.**
- (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.**
- (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.**
- (e) That revegetation and enhancement of disturbed stream riparian areas occurs along drainages and streams located on the property.**

Staff: The amount of forested area impacted is minimum necessary to serve the proposed development. The cleared area for the development is less than an acre. No fencing is proposed. Generally the property is heavily forested with some minor pockets of clearing. The applicant has proposed plans to revegetate and enhance some areas near the stream as well as to reforest any cleared area other than the dwelling area and the Primary Fire Safety Zone. The wildlife conservation plan standards are met.

7. SIGNIFICANT ENVIRONMENTAL CONCERN FOR STREAMS

- 7.1. MCC 33.4575 (B) Except for the exempt uses listed in MCC 33.4515, no development shall be allowed within a Stream Conservation Area unless approved by the Approval Authority pursuant to the provisions of MCC 33.4575 (C) through (F).**

Staff: The driveway that was used to log the proposed dwelling site as a forest operations access road will be converted to a residential use driveway through this decision. Portions of the proposed driveway are located within the SEC-s overlay zone, thus the SEC-s permit is

required. Additionally, the site plan included as Exhibit A.37 shows the storm water disposal running through the stream overlay to near the stream.

- 7.2. MCC 33.4575 (C) In addition to other SEC Permit submittal requirements, any application to develop in a Stream Conservation Area shall also include:**
- (1) A site plan drawn to scale showing the Stream Conservation Area boundary, the location of all existing and proposed structures, roads, watercourses, drainageways, stormwater facilities, utility installations, and topography of the site at a contour interval equivalent to the best available U.S. Geological Survey 7.5' or 15' topographic information;**
 - (2) A detailed description and map of the Stream Conservation Area including that portion to be affected by the proposed activity. This documentation must also include a map of the entire Stream Conservation Area, an assessment of the Stream Conservation Area's functional characteristics and water sources, and a description of the vegetation types and fish and wildlife habitat;**
 - (3) A description and map of soil types in the proposed development area and the locations and specifications for all proposed draining, filling, grading, dredging, and vegetation removal, including the amounts and methods;**
 - (4) A study of any flood hazard, erosion hazard, and/or other natural hazards in the proposed development area and any proposed protective measures to reduce such hazards as required by (E) (5) below;**
 - (5) A detailed Mitigation Plan as described in subsection (D), if required; and**
 - (6) A description of how the proposal meets the approval criteria listed in subsection (D) below.**

Staff: The applicant submitted the required information to review the standards for the SEC-s permit, including a narrative with an assessment of the Stream Conservation Area (Exhibit A.2 pages 13 through 17), including a mitigation plan (Exhibit A.33) and a narrative that addresses the code standards (Exhibit A.33). The submittal includes a map that shows s infrastructure proposed in the overlay. *This standard is met.*

- 7.3. MCC 33.4575 (D) For the protected stream resources, the applicant shall demonstrate that the proposal:**
- (1) Will enhance the fish and wildlife resources, shoreline anchoring, flood storage, water quality and visual amenities characteristic of the stream in its predevelopment state, as documented in a Mitigation Plan. A Mitigation Plan and monitoring program may be approved upon submission of the following:**

Staff: The stream riparian area is in relatively good condition and heavily forested mostly with early succession hardwood trees as well as understory shrubbery. Four invasive plant species have been identified including, ivy and holly, which will be removed. The mitigation plan will, "address water temperature for the longer term and illegal dumping / pollution in the short term." The mitigation plan described in Exhibit A.33 addressing stream temperature through the planting of 25 western hemlock, 25 grand fir, and 25 Douglas fir the shade areas year round in area which are currently the sunniest. The plan includes monitoring, to ensure a minimum of 80 percent survival rate. The property owners will remove litter such as trash dumped and old tires dumped. The proposed mitigation plan includes planting native conifer trees to improve shading and to remove sources of pollution illegally dumped along the road which will enhance fish and wildlife resources, improve anchoring of shoreline, may indirectly improve flood

storage improve water quality and improve visual amenities characteristic of the stream. *This standard is met through implementing a condition of approval.*

7.3.1. (a) A site plan and written documentation which contains the applicable information for the Stream Conservation Area as required by MCC 33.4575 (C);

Staff: The applicant submitted a narrative, an assessment of the Stream Conservation Area, a mitigation plan and site plan. *This standard is met.*

7.3.2. (b) A description of the applicant's coordination efforts to date with the requirements of other local, State, and Federal agencies;

Staff: The proposed development will not have any direct impacts on the stream, given the distance from the streams and absence any impacts on any wetlands that may exist along the stream. The property owners are working with the West Multnomah County Soil and Water Conservation District (WMCSWCD). There are no known impacts that would require other local, State or Federal agencies needing to be coordinated with for this permit other than technical guidance that the property owners have sought from WMCSWCD. *This standard is met.*

7.3.3. (c) A Mitigation Plan which demonstrates retention and enhancement of the resource values addressed in MCC 33.4575 (D)(1);

Staff: The proposed mitigation plan as discussed in Finding 7.3 addressed in MCC 33.4575 (D)(1) will result in "retention and enhancement of the resource values." The mitigation plan achieved by minimizing the impacts from development activities, including planting of 75 native conifer trees along the stream in area that needs more shading and removing trash illegally dumped along the stream from the road. *This standard is met.*

7.3.4. (d) An annual monitoring plan for a period of five years which ensures an 80 percent annual survival rate of any required plantings.

Staff: The property owners state they will monitor the survival rate to meet 80 percent annual survival rate of the proposed plantings. *This standard is met through implementing a condition of approval.*

7.4. MCC 33.4575 (E) Design Specifications - The following design specifications shall be incorporated, as appropriate, into any developments within a Stream Conservation Area:

Staff: The following findings address design specifications.

7.4.1. (1) A bridge or arched culvert which does not disturb the bed or banks of the stream and are of the minimum width necessary to allow passage of peak winter flows shall be utilized for any crossing of a protected streams.

Staff: There is no stream crossing proposed. *This standard is not applicable.*

- 7.4.2. (2) All storm water generated by a development shall be collected and disposed of on-site into dry wells or by other best management practice methods which emphasize groundwater recharge and reduce peak stream flows.**

Staff: The stormwater is proposed to be routed to the stream via a slow release system (Exhibit A.33). The system is designed to slowly release the water to not increase the peak stream flows. To meet this the release of the storm, it will need to be at least a distance of fifty feet from the stream unless the geotechnical engineer determines that this is not a safe practice and require a direct slow release to the stream. *This standard is met through implementing a condition of approval.*

- 7.4.3. (3) Any exterior lighting associated with a proposed development shall be placed, shaded or screened to avoid shining directly into a Stream Conservation Area.**

Staff: A condition can require this standard to be met. *This standard is met through meeting conditions of approval.*

- 7.4.4. (4) Any trees over 6" in caliper that are removed as a result of any development shall be replaced by any combination of native species whose combined caliper is equivalent to that of the trees removed.**

Staff: No trees over 6" in caliper that are proposed to be removed. *This standard is met.*

- 7.4.5 (5) Satisfaction of the erosion control standards of MCC 33.5520.**

Staff: This decision includes a Hillside Development Permit under Section 9 of this decision which includes findings for the standards of MCC 33.5520. This standard can be met through a condition. *This standard is met through implementing a condition of approval.*

- 7.4.6. (6) Soil disturbing activities within a Stream Conservation Area shall be limited to the period between June 15 and September 15. Revegetation/soil stabilization must be accomplished no later than October 15. Best Management Practices related to erosion control shall be required within a Stream Conservation Area.**

Staff: A condition can require this standard be met. *This standard is met through implementing a condition of approval.*

- 7.4.7. (7) Demonstration of compliance with all applicable state and federal permit requirements.**

Staff: No state and federal permit requirements are needed for the proposed development. *This standard is not applicable.*

- 7.5. MCC 33.4575 (F) For those Stream Conservation Areas located within Metro's jurisdictional boundaries, the following requirements apply in addition to (C) through (E) above:**

- (1) The planting of any invasive nonnative or noxious vegetation as listed in MCC 33.4570(B)(7) and MCC 33.4570(A)(4) is prohibited. A list of native plants can be found in the latest edition of the Metro Native Plant List.**

- (2) Outside storage of hazardous materials as determined by DEQ is prohibited, unless such storage began before the effective date of this ordinance; or, unless such storage is contained and approved during development review.**

Staff: The Stream Conservation Areas on the property are not located within Metro's jurisdictional boundaries. *This standard is not applicable.*

8. SIGNIFICANT ENVIRONMENTAL CONCERN FOR SCENIC VIEWS

- 8.1. MCC 33.4565(B): In addition to the information required by MCC 33.4520, an application for development in an area designated SEC-v shall include:**

- (1) Details on the height, shape, colors, outdoor lighting, and exterior building materials of any proposed structure;**
- (2) Elevation drawings showing the appearance of proposed structures when built and surrounding final ground grades;**
- (3) A list of identified viewing areas from which the proposed use would be visible; and,**
- (4) A written description and drawings demonstrating how the proposed development will be visually subordinate as required by (C) below, including information on the type, height and location of any vegetation or other materials which will be used to screen the development from the view of identified viewing areas.**

Staff: The applicant has provided sufficient information to review the proposed development. The applicant's submitted narrative addressing SEC-v code is included as Exhibits A.7, A.26., A.27, A.28 and A.29.

- 8.2. MCC 33.4565(C): Any portion of a proposed development (including access roads, cleared areas and structures) that will be visible from an identified viewing area shall be visually subordinate. Guidelines which may be used to attain visual subordination, and which shall be considered in making the determination of visual subordination include:**

Staff: The applicant is proposing a single story single family dwelling with a detached carport. The proposed development is in an area that is mostly topographically screened except for the upper portion of the dwelling which is potentially visible from identified viewing areas such as areas on Sauvie Island Roads (Exhibits A.26 and A.27). We have used the following guidelines (standards) to determine that the proposed dwelling will be visually subordinate when conditions of approval have been met. *These standard is met.*

- 8.2.1. MCC 33.4565(C)(1): Siting on portions of the property where topography and existing vegetation will screen the development from the view of identified viewing areas.**

Staff: The dwelling site is substantially screened by existing topography. The single story along with roof slanted to the south provides for a the development to be partially screened by the existing grade to screen most of the dwelling. A couple of trees need to be maintained within 50 feet of the dwelling northeast of the dwelling while meeting the Primary Fire Safety Zone requirements. These trees will break up the lines of the dwelling as seen from a distance. The forested area north and northeast of the dwelling may also help in some screening. A combination of low reflective building materials, dark colors, existing topography, a couple

existing trees to the northeast will achieve the visual subordination standard. *This standard is met through implementing a condition of approval.*

8.2.2. MCC 33.4565(C)(2): Use of nonreflective or low reflective building materials and dark natural or earthtone colors.

Staff: The applicant proposes to use cedar wood for the siding stained dark brown as shown on Exhibit A.29. While the roofing is proposed to be a dark gray metal which is relatively highly reflective it slants away from the identified viewing areas; it should not be seen from any identified viewing area. The window trim is proposed to be chestnut brown, which is a dark brown. The proposed windows will have low reflectivity rating of 11% for visible light. The use of these low reflective materials along with the dwelling design will result in the dwelling blending into the natural landscape colors assisting in visual subordination for the dwelling.

Sometimes property owners decided to amend the color choice in the future, for the exterior colors of the dwelling, thus staff allows alternative colors through finding that if a color matching a color on the Columbia Gorge Commission color chart in rows A or B or C13-C16 (Exhibit B.4) qualifies to meet dark earth tone color requirement to meet this standard. Columbia Gorge Commission color chart in rows A or B or C13-C16 are dark earth tone colors that will blend in the natural landscape colors assisting in visual subordination for the dwelling. *This standard is met through implementing a condition of approval.*

8.2.3. MCC 33.4565(C)(3): No exterior lighting, or lighting that is directed downward and sited, hooded and shielded so that it is not highly visible from identified viewing areas. Shielding and hooding materials should be composed of nonreflective, opaque materials.

Staff: A condition will require exterior lighting meet this standard. *This standard is met through implementing a condition of approval.*

8.2.4. MCC 33.4565(C)(4): Use of screening vegetation or earth berms to block and/or disrupt views of the development. Priority should be given to retaining existing vegetation over other screening methods. Trees planted for screening purposes should be coniferous to provide winter screening. The applicant is responsible for the proper maintenance and survival of any vegetation used for screening.

Staff: A couple of trees need to be maintained within 50 feet of the dwelling northeast of the dwelling while still meeting the Primary Fire Safety Zone requirements. This will help break up the lines of the dwelling as seen from a distance. The forested area north and northeast of the dwelling may also help in some screening. Existing trees will meet this standard. *This standard is met through implementing a condition of approval.*

8.2.5. MCC 33.4565(C)(5): Proposed developments or land use shall be aligned, designed and sited to fit the natural topography and to take advantage of vegetation and land form screening, and to minimize visible grading or other modifications of landforms, vegetation cover, and natural characteristics.

Staff: The site for the proposed dwelling is in the best location to take advantage of the existing topography for both a relatively shallow slope to reduce impacts to the forest area and to provide close to half of the screening of the dwelling through topographically setting. A couple

of trees need to be maintained within 50 feet of the dwelling northeast of the dwelling while meeting the Primary Fire Safety Zone requirements which will break up the lines of the dwelling as seen from a distance. The forested area north and northeast of the dwelling may also help in some screening. *This standard is met.*

8.2.6. MCC 33.4565(C)(6): Limiting structure height to remain below the surrounding forest canopy level.

Staff: The dwelling is one story, the roof height be below the surrounding forest canopy level. *This standard is met.*

8.2.7. MCC 33.4565(C)(7): Siting and/or design so that the silhouette of buildings and other structures remains below the skyline of bluffs or ridges as seen from identified viewing areas. This may require modifying the building or structure height and design as well as location on the property,

Staff: The proposed dwelling will remain below the skyline of the Tualatin Mountains ridgeline, that are to the west, northwest and southwest as seen from identified viewing areas. *This standard is met.*

* * *

8.3. MCC 33.4565(E): The approval authority may impose conditions of approval on an SECv permit in accordance with MCC 33.4550, in order to make the development visually subordinate. The extent and type of conditions shall be proportionate to the potential adverse visual impact of the development as seen from identified viewing areas, taking into consideration the size of the development area that will be visible, the distance from the development to identified viewing areas, the number of identified viewing areas that could see the development, and the linear distance the development could be seen along identified viewing corridors.

Staff: This decision will have conditions of approval that will be proportionate to the potential adverse visual impact of the development as seen from identified viewing areas, taking into consideration the size of the development area that will be visible, the distance from the development to identified viewing areas, the number of identified viewing areas that could see the development, and the linear distance the development could be seen along identified viewing corridors. Given the proposed building design and building materials, the distance to potential viewing areas, the topography of the area, the conditions related to scenic view have been limited to the use of non-reflective or low reflective building materials, predominately dark earth tone colors, retaining some trees within 50 feet of the dwelling to the northeast and hooded or recessed exterior light. *This standard is met.*

9. HILLSIDE DEVELOPMENT PERMIT

9.1. Application Information Required

* * *

9.1.1. MCC 33.5515(E): A Hillside Development permit may be approved by the Director only after the applicant provides:

* * *

- (2) A geological report prepared by a Certified Engineering Geologist or Geotechnical Engineer certifying that the site is suitable for the proposed development; or,
- (3) An HDP Form– 1 completed, signed and certified by a Certified Engineering Geologist or Geotechnical Engineer with his/her stamp and signature affixed indicating that the site is suitable for the proposed development.
 - (a) If the HDP Form– 1 indicates a need for further investigation, or if the Director requires further study based upon information contained in the HDP Form– 1, a geotechnical report as specified by the Director shall be prepared and submitted.

Staff: The application submittal includes a geological report by GeoDesign, INC, authored by Charles M. Clout. RG, CEG, Project Engineering Geologist and authored and stamped by Brett A. Shipton. P.E, GE, Principal Engineer in which they states “Based on our observations, geologic review, and stability analysis, it is our opinion that development of the building site is feasible from a geological standpoint, providing the recommendations in this report are incorporated into design and construction of the proposed development.”

Additionally, the application submittal includes HDP Form– 1 completed, signed and certified by stamp by Charles M. Clout. RG, CEG, Project Engineering Geologist stating, “It is our opinion that the proposed building site will not impact the slope stability on the property or adjacent properties. The expresses concern about the driveway stability, stating it may need periodic maintenance, repair, or mitigation...”

This standard is met with further review of the dwelling design, stormwater disposal and observation of the work conducted by a Certified Engineering Geologist or Geotechnical Engineer as a condition of approval. *This standard is met through implementing a condition of approval.*

9.1.2. MCC 33.5515(F): Geotechnical Report Requirements

- (1) A geotechnical investigation in preparation of a Report required by MCC 33.5515 (E)
 - (3) (a) shall be conducted at the applicant’s expense by a Certified Engineering Geologist or Geotechnical Engineer. The Report shall include specific investigations required by the Director and recommendations for any further work or changes in proposed work which may be necessary to ensure reasonable safety from earth movement hazards.
- (2) Any development related manipulation of the site prior to issuance of a permit shall be subject to corrections as recommended by the Geotechnical Report to ensure safety of the proposed development.
- (3) Observation of work required by an approved Geotechnical Report shall be conducted by a Certified Engineering Geologist or Geotechnical Engineer at the applicant’s expense; the geologist’s or engineer’s name shall be submitted to the Director prior to issuance of the Permit.
- (4) The Director, at the applicant’s expense, may require an evaluation of HDP Form– 1 or the Geotechnical Report by another Certified Engineering Geologist or Geotechnical Engineer.

Staff: The application submittal includes a geological report by GeoDesign, INC, authored by Charles M. Clout. RG, CEG, Project Engineering Geologist and authored and stamped by Brett A. Shipton. P.E, GE, Principal Engineer and HDP Form– 1 completed, signed and certified by

stamp by Charles M. Clout. RG, CEG, Project Engineering Geologist. The report includes specific investigations of the site and recommendations for proposed development necessary to ensure reasonable safety from earth movement hazards. The report states a further review of the design of the proposed dwelling and requires observation of the work conducted by a Certified Engineering Geologist or Geotechnical Engineer. This standard is met with further review of the dwelling design, stormwater disposal and observation of the work conducted by a Certified Engineering Geologist or Geotechnical Engineer as a condition of approval. *This standard is met through implementing a condition of approval.*

9.1.3. MCC 33.5515(G): Development plans shall be subject to and consistent with the Design Standards for Grading and Erosion Control in MCC 33.5520 (A) through (D). Conditions of approval may be imposed to assure the design meets those standards.

Staff: Findings below address the proposed developments consistency with the Design Standards for Grading and Erosion Control in MCC 33.5520 (A) through (D). Conditions of approval will be imposed to assure the design meets those standards. *These standards are met through conditions.*

9.2. Grading and Erosion Control Standards

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

9.2.1. MCC 33.5520(A)(1): Grading Standards

- (a) Fill materials, compaction methods and density specifications shall be indicated. Fill areas intended to support structures shall be identified on the plan. The Director or delegate may require additional studies or information or work regarding fill materials and compaction;**

Applicants: *"Anticipated cuts will be approximately 5 to 8 feet deep and fill will be 1 to 30 feet thick. And follow the geotechnical report recommendations. ... The material will meet the specifications provided in OSSC 00330 (Earthwork), depending on the application. In general, structural fill will have a maximum particle size of 3 inches."*

Staff: The applicants' narrative (above) from Exhibit A.30 addresses this standard. This standard is met with observation of the work conducted by a Certified Engineering Geologist or Geotechnical Engineer as a condition of approval. *This standard is met through implementing a condition of approval.*

- (b) Cut and fill slopes shall not be steeper than 3:1 unless a geological and/or engineering analysis certifies that steep slopes are safe and erosion control measures are specified;**

Staff: The applicants state that there are no cuts or fill slopes steeper than 33%. *This standard is met through a condition.*

- (c) Cuts and fills shall not endanger or disturb adjoining property;**

Staff: HDP Form- 1 completed, signed and certified by stamp by Charles M. Clout, RG, CEG, Project Engineering Geologist stating, "It is our opinion that the proposed building site will not impact the slope stability on the property or adjacent properties. This standard is met with observation of the work conducted by a Certified Engineering Geologist or Geotechnical Engineer as a condition of approval. *This standard is met through implementing a condition of approval.*

(d) The proposed drainage system shall have adequate capacity to bypass through the development the existing upstream flow from a storm of 10-year design frequency;

Staff: The application submittal includes a Storm Water Certificate signed and stamped by Jake Dylan Hofeld, PE (Exhibit A.18) certifying this standard is met by the plans dated 11/29/17. The submittal also included a Site Conditions Stormwater Analysis by Jake Dylan Hofeld, PE (Exhibit A.19). However, the most recent site plan shows an amended design for the storm water system. The geotechnical report indicated concern about storm water disposal. As a condition of approval the is decision will require a Certified Engineering Geologist or Geotechnical Engineer review and approve the storm water control system plan. This standard is met with further review of the stormwater disposal system design and observation of the work conducted by a Certified Engineering Geologist or Geotechnical Engineer as a condition of approval. *This standard is met through implementing a condition of approval.*

(e) Fills shall not encroach on natural watercourses or constructed channels unless measures are approved which will adequately handle the displaced streamflow for a storm of 10-year design frequency;

Staff: The submitted site plan included as Exhibit A.37 demonstrates compliance with this standard, with not fills in the area of the stream. *This standard is met.*

9.2.2. MCC 33.5520(A)(2): Erosion Control Standards

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

Staff: The property is not within the Tualatin River Drainage Basin. *This standard is not applicable.*

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

Applicants: *"The resulting excavations will be backfilled with structural fill to stabilize the soil as quickly as practicable."*

Staff: A condition will require this standard be met. *This standard is met through implementing a condition of approval.*

(c) Development Plans shall minimize cut or fill operations and ensure conformity with topography so as to create the least erosion potential and adequately accommodate the volume and velocity of surface runoff;

Staff: The proposed dwelling site was picked and designed to minimize cut or fill operations and ensure conformity with topography. A condition can require this standard be met. *This standard is met through a condition.*

(d) Temporary vegetation and/or mulching shall be used to protect exposed critical areas during development;

Applicants: *"There will be no exposed critical area exposed areas ..., however, we plan to use GEC-BMP recommendations along with native grass seeding for any clearing areas ..."*

Staff: A condition will require mulching of disturbed soil area and silt fencing downslope of development area. If there is soil disturbance that is done or remains disturbed during the rainy season, between October 1st and May 31st the mulching will need to be heavy enough to prevent erosion. *This standard is met through implementing a condition of approval.*

(e) Whenever feasible, natural vegetation shall be retained, protected, and supplemented;

- 1. A 100-foot undisturbed buffer of natural vegetation shall be retained from the top of the bank of a stream, or from the ordinary high watermark (line of vegetation) of a water body, or within 100-feet of a wetland;**
- 2. The buffer required in 1. may only be disturbed upon the approval of a mitigation plan which utilizes erosion and stormwater control features designed to perform as effectively as those prescribed in the currently adopted edition of the "Erosion Prevention & Sediment Control Plans Technical Guidance Handbook (1994)" and the "City of Portland Stormwater Quality Facilities, A Design Guidance Manual (1995)" and which is consistent with attaining equivalent surface water quality standards as those established for the Tualatin River Drainage Basin in OAR 340;**

Staff: The proposed disturbance area will be the minimum needed to establish the proposed development. The silt/sediment fencing down-slope of the disturbance area if installed within 20 feet of the disturbance areas will prevent damage to existing vegetation if equipment is limited to that area. The land disturbing activities will be more than 360 feet from any stream. *This standard is met through implementing a condition of approval.*

(f) Permanent plantings and any required structural erosion control and drainage measures shall be installed as soon as practical;

Staff: A condition will require this standard be met. *This standard is met through implementing a condition of approval.*

- (g) Provisions shall be made to effectively accommodate increased runoff caused by altered soil and surface conditions during and after development. The rate of surface water runoff shall be structurally retarded where necessary;**

Staff: The silt/sediment fencing down-slope of the disturbance area if installed within 20 feet of the disturbance areas will structurally retard run-off from the development site. Post development increase in storm water will be control through the storm water detention system. A condition will require this standard be met. *This standard is met through implementing a condition of approval.*

- (h) Sediment in the runoff water shall be trapped by use of debris basins, silt traps, or other measures until the disturbed area is stabilized;**

Staff: The silt/sediment fencing down-slope of the disturbance area if installed within 20 feet of the disturbance areas will trap silt. A condition will require this standard be met. *This standard is met through implementing a condition of approval.*

- (i) Provisions shall be made to prevent surface water from damaging the cut face of excavations or the sloping surface of fills by installation of temporary or permanent drainage across or above such areas, or by other suitable stabilization measures such as mulching or seeding;**

Staff: Installation of the erosion control methods proposed and seeding or gravel surface covering the disturbed areas will met this standard. A condition will require this standard be met. *This standard is met through implementing a condition of approval.*

- (j) All drainage provisions shall be designed to adequately carry existing and potential surface runoff to suitable drainageways such as storm drains, natural watercourses, drainage swales, or an approved drywell system;**

Staff: A condition will require the installation of the stormwater management systems. *This standard is met through implementing a condition of approval.*

- (k) Where drainage swales are used to divert surface waters, they shall be vegetated or protected as required to minimize potential erosion;**

Staff: No drainage swale is proposed. *This standard is not applicable.*

- (1) Erosion and sediment control devices shall be required where necessary to prevent polluting discharges from occurring. Control devices and measures which may be required include, but are not limited to:**

- 1. Energy absorbing devices to reduce runoff water velocity;**
- 2. Sedimentation controls such as sediment or debris basins. Any trapped materials shall be removed to an approved disposal site on an approved schedule;**
- 3. Dispersal of water runoff from developed areas over large undisturbed areas.**

Staff: A condition will require mulching of disturbed soil area and silt fencing downslope of development area. A condition will require the installation of erosion and sediment control devices prior to any soil disturbing earth work activities as proposed to meet this standard. *This standard is met through implementing a condition of approval.*

(m) Disposed spoil material or stock-piled topsoil shall be prevented from eroding into streams or drainageways by applying mulch or other protective covering; or by location at a sufficient distance from streams or drainageways; or by other sediment reduction measures;

Staff: Spoil material or stock-piled topsoil shall be prevented from eroding by covering and stacking a plastic cover of the pile if any is stored on-site. The applicants state the excavated soil will be removed from the site. *This standard is met through implementing a condition of approval.*

(n) Such non-erosion pollution associated with construction such as pesticides, fertilizers, petrochemicals, solid wastes, construction chemicals, or wastewaters shall be prevented from leaving the construction site through proper handling, disposal, continuous site monitoring and clean-up activities.

Staff: A condition will require this standard be met. *This standard is met through implementing a condition of approval.*

9.3. Responsibility

9.3.1. MCC 33.5520(B)(1): Whenever sedimentation is caused by stripping vegetation, regrading or other development, it shall be the responsibility of the person, corporation or other entity causing such sedimentation to remove it from all adjoining surfaces and drainage systems prior to issuance of occupancy or final approvals for the project;

Staff: A condition will include this requirement. *This requirement is met through a condition.*

9.3.2. MCC 33.5520(B)(2) It is the responsibility of any person, corporation or other entity doing any act on or across a communal stream watercourse or swale, or upon the floodplain or right-of-way thereof, to maintain as nearly as possible in its present state the stream, water-course, swale, floodplain, or right-of-way during such activity, and to return it to its original or equal condition.

Staff: A condition will include this requirement. *This requirement is met through a condition.*

10. DARK SKY LIGHTING STANDARDS

MCC 33.0570(C) The following standards apply to all new exterior lighting supporting a new, modified, altered, expanded, or replaced use approved through a development permit and to all existing exterior lighting on property that is the subject of a

development permit approval for enlargement of a building by more than 400 square feet of ground coverage.

- (1) The light source (bulbs, lamps, etc.) must be fully shielded with opaque materials and directed downwards. "Fully shielded" means no light is emitted above the horizontal plane located at the lowest point of the fixture's shielding. Shielding must be permanently attached.
- (2) The lighting must be contained within the boundaries of the Lot of Record on which it is located. To satisfy this standard, shielding in addition to the shielding required in paragraph (C)(1) of this section may be required

Staff: A condition of approval will required these standards be met.

10. CONCLUSION

Based on the findings and other information provided above, the applicant has carried the burden necessary for the approval of the Administrative Review by Planning Director determining the proposed dwelling met conditions of the Measure 49 approval, the proposal meets the Forest Development Standards with an Exception to the Secondary Fire Safety Zone, meet the SEC-h Wildlife Conservation Plan standards, meets SEC-s standards with a mitigation plan, meets the SEC-v standards, and meets Hillside Development standards for proposed development, a new single family dwelling and carport including the associated development such as on-site driveway, septic system, stormwater system and utility installation CFU-2 zone and within the SEC-h, SEC-s, SEC-v and Geologic Hazards (Slope Hazards) Overlay Zones with condition of approval. This approval is subject to the conditions of approval established in this report.

12. TRANSPORTATION PLANNING

Introduction

Applicants have submitted an application for road rules variance to standards regarding driveway placement (MCRR 4.000) and local access road improvement requirements (MCRR 6.000, 11.000). Requirements are based on the project – a single family dwelling – which creates a transportation impact. Road rules variance application requirements are addressed in section MCRR 16.000, noted below. The road rules variance application was submitted along with their Land Use Application. The applications were noticed concurrently and decision will be issued concurrently. Associated Transportation cases are the following:
EP-2016-6061 associated with Prefile case PF-2016-6041
EP-2018-10008 associated with T2-2017-9821

Transportation Access

MCRR 4.000 Access to County Roads

MCRR 4.100 Required Information: Applicants for a new or reconfigured access onto a road under County Jurisdiction may be required to provide all of the following:

- A. Site Plan;
- B. Traffic Study-completed by a registered traffic engineer;
- C. Access Analysis-completed by a registered traffic engineer;

- D. Sight Distance Certification from a registered traffic engineer; and**
- E. Other site-specific information requested by the County Engineer.**

Staff: The applicant is proposing to use the existing access to Sheltered Nook Road, a Local Access Road under County Jurisdiction. An access is considered reconfigured when it will be physically altered, or when a change in the development that it serves has a Transportation Impact as defined in section 6.000 of the Multnomah County Road Rules. The access is shown on the applicant's site plan (Exhibit T-1). All required information has been submitted.

MCRR 4.200 Number: 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 will be the standard for approval. 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.

Staff: The subject property is served by 1 existing gravel driveway. The parcel has access onto a county maintained segment of Rural Local Sheltered Nook Road. The parcel also has access to an unmaintained Local Access Road segment of Sheltered Nook Road. The driveway is on the local access road segment of Sheltered Nook Road.

The criterion is met.

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 a road classified as a Rural Local, and a use classified as residential, there is no minimum spacing standard.

The criterion is met.

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

Staff: For a single family residence use, a new or reconfigured driveway must be between 12 and 25 feet wide.

The criterion is met.

MCRR 4.500 Sight Distance: All new 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.

Applicant has provided information noting sight distance from the existing driveway looking east and west on Sheltered Nook local access road. Applicant has also provided sight distance from the intersection of Sheltered Nook local access road looking east and north on County maintained Sheltered Nook Road. See Exhibit T-2.

Staff: Applicant has submitted a road rules variance to the Site Distance requirement. Sight distance from the existing access is 233 feet looking west (toward where the local access road terminates) and

110 feet (looking east to the intersection of the local access road with the county maintained road. See section 16.000 for variance.

The criterion is met.

Transportation Impact

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.

Staff: Local access roads are not maintained by Multnomah County. Local access road improvement requirements are outlined in MCRR Section 11.000.

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 affect 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.

According to the ITE Manual, 8th Edition, a new Single Family Residence generates 10 trips per day. The property is currently vacant. Therefore, a transportation impact will be caused by the proposed development since trips generated by the site will be increased by more than 20 percent.

The criterion is met.

Transportation Improvements

MCRR 6.000 Improvement Requirements

MCRR 6.100 Site Development: The owner of the site or the applicant for a proposed development, which is found to cause a Transportation Impact will be responsible for improvements to the right-of-way as follows:

A. Dedication Requirement

Staff: The existing right of way width at this location is 60 feet. No dedication is required.
The criterion is met.

B. Frontage Improvement Requirements

Staff: The site has frontage on both a County maintained Rural Local Road and an unmaintained Local Access Road. Improvement requirements are provided in the County Design and Construction Manual and must be approved by the local fire district to assure that the site can be served by emergency service vehicles. Improvement requirements for local access roads are outlined in MCRR 11.000.

For properties with access onto County Maintained roads,

MCRR 9.000 Compliance Method

9.100 Once frontage or off-site improvement requirements have been established, one or any combination of the following methods must be used to satisfy those requirements:

9.200 Construction Permit: Property owner/developer must obtain a County Permit under Section 18 to construct any of the required improvements.

9.300 Payment in-lieu-of Construction: County may at its discretion authorize payment in lieu rather than construction of improvements if the County determines that there is a benefit to the public in delaying the construction of the development- related improvements or combining the improvements with a larger County project. In lieu of construction by the property owner, the County Engineer may require a cash payment in order to satisfy improvement requirements established as a condition of a development permit. Payment will be administered through a Payment in-Lieu-of Construction Agreement, as described in section 18.225 of these rules.

9.400 Non-Remonstrance Agreement: This agreement shall be recorded in the County's Deed Records against the affected property and "runs with the land", thereby obligating the property owner and any successors in interest to share in the cost of the necessary improvements and to not remonstrate (object) against a petition or resolution for necessary improvements. In approving this method, the County Engineer may require a temporary improvement appropriate to the circumstances.

9.500 Project Agreement: The County, the developer and the property owner execute a written agreement to share the costs of design and construction of a road project consistent with any applicable laws and regulations. The agreement shall identify the roles and responsibilities of the parties and must be signed by both the County Engineer and the developer and all property owners.

Staff: The property owner will need record deed restrictions (provided by County Transportation) with County Records, committing the property owner to participate in future right of way improvements costs. A non-remonstrance agreement, or deed restriction, will require that the property owner to participate in standard Rural Local road improvements along the site's frontage that are not completed as a part of the site's required interim improvements.

As conditioned, criterion is met.

MCRR 11.000 Local Access Roads

11.100 Improvement Requirements Any new development where access is to be to a Local Access Road and the development is found to have a transportation impact will require the developer to improve the Local Access Road. The developer shall make appropriate improvements along the frontage of the developed property or a greater distance if the transportation impact warrants additional road improvements. Such additional improvements shall not extend beyond the nearest intersection with a publicly maintained road.

Improvements will be constructed in a manner consistent with the standards provided in the Design and Construction Manual.

Staff: Multnomah County Road Rules (MCRR) Section 16.250 outlines the variance process for local access roads. Local Access Road allowable variance will be based on the number of houses served in the manner shown in the table below:

# of Homes	Width	Surface	Depth (Starting 15" below grade)
1-2	15 feet	gravel	8" gravel
3-6	20 feet	gravel	10" gravel
7-10	24 feet	gravel	13" gravel
11+	24 feet	paved	4"/13"

Applicant has completed a Road Rules Variance (Exhibit T-3).

The criterion is met.

Road Rules Variance

MCRR 16.000 Variance from County Standards and Requirements

16.100 Variance Requirements:

- A. Multnomah County Code 29.507 provides for a variance by the County Engineer from County standards and requirements when written documentation substantiates that the requested variance is in keeping with the intent and purpose of County Code and adopted rules, and the requested variance will not adversely affect the intended function of the County road system or related facilities. A variance approval may include mitigation measures as conditions of approval.
- B. All requests for a variance to these Road Rules that are part of a development that requires approval of that development as a "land use decision" or "limited land use decision," as defined in ORS 197.015, shall be submitted to the County Engineer at the time that application for the land use review is submitted to the applicable planning office having land use jurisdiction. The County Engineer' decision on the variance to these Road Rules shall not become effective until the date that the associated land use decision becomes effective.
- C. For properties within unincorporated areas of Multnomah County for which Multnomah County has not contracted for planning and zoning services, the Hearings Officer shall be the final County decision maker for all applications for variances to these Rules that are in conjunction with applications for development classified as a "Type III" or an appeal of a

“Type II” land use permit application under MCC Chapter 37 or the corresponding code parts in MCC Chapter 38, as applicable.

Applicant: The property owners / developers of Tax lot 1700 / Lot 37 request that approved access to the planned, new, single-family home be provided by a previously existing gravel access road (hereafter referred to as “the driveway”) which enters the gravel Local Access Road at a location 83 feet from the driveway centerline to the curb radius of Sheltered Nook Road. This request is made in lieu of the road rules requirements for access directly off Sheltered Nook Road with paved approach. Additionally the owners request that the variance allow use of the Local Access Road in its existing state: the impacted stretch of the Local Access Road currently being at least 20 feet wide with at least 8 inch gravel, thus meeting the Local Access Road allowable variance per MCRR Section 16.250.

Although the owners believe that the intersection of the driveway with the Local Access Road meets ASHTO sight distance stopping standards (sight distances SD1 and SD2 on the site plan), we request that the current sight distances SD1 and SD2 be allowed, if they are found to be deficient (more information on sight distances follows below). In addition a variance to road rules for traffic from this development entering and departing Sheltered Nook road with respect to ASHTO sight distance standards is requested due to the 247 foot sight distance to the north (SD3) not meeting requirements based on an assumed 55 mph speed limit on Sheltered Nook Road (no posted speed limit in place).

The variance is requested due to the special circumstances of topography, protected stream resource and geotechnical stability of the property. Use of the existing access road allows the development of a single-family home on the property under the M49 rights granted to the property owners on purchasing Tax lot 1700 without undue hardship and expense.

Staff: Applicant is requesting a variance to the following county standards:

- MCRR 4.500 Sight Distance – this criterion cannot be met at any location along the parcel’s frontage
- MCRR 11.100 Local Access Road Improvement Requirements – a road rules variance is required in order for the applicant to keep the road in its current condition. The road meets the minimum standard that Multnomah County allows through a variance.

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 special circumstances that prevent adhering to road rules are related to the site topography and slope stability as well as the presence of the tributary stream along Sheltered Nook Road. Creating a new access road with paved approach off of Sheltered Nook Road would involve significant construction in the protected stream area, installation of another stream crossing an involve steep and potentially unstable slopes. Such access would be prohibitively expensive, if not impossible. The existing improvement of an emergency services approved access road off the Local Access Road which has also been found suitable by the geotechnical study done for the Hillside Development Permit also constitute special circumstances which support granting the variance.

Staff: The special circumstances are conditions of the property. The location of the existing access is environmentally superior to building a new access. The length of the frontage does not provide a location with greater sight distance.

The criterion is met.

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

Applicant: The applicants have purchased Tax lot 1700 with due diligence (pre-filing with Land Use Services, Geotechnical pre-purchase investigation) in order to exercise the M49 granted right to construct a single-family home on the property within 10 years of purchase. Without the variance granting access from the existing Tax lot 1700 access road the applicants would not be financially able to construct a single-family home on the site due to the great expense of establishing safe and environmentally responsible access directly off Sheltered Nook Road.

Staff: Strict compliance with the sight distance standard would prohibit any access to the parcel. Strict compliance with the local access road standard would require the applicant to create a 22 foot paved road along the 85 feet of local access road. The minimum standard allowed through a variance is to build the road to 15 feet wide gravel road. The road currently meets this minimum standard.

The criterion is met.

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

Applicant: Relocation of the single-family home traffic from Sheltered Nook Road to 85 feet down the Local Access Road would not impact public welfare or adjoining properties. Satellite photography suggests that 4 single-family homes currently use the Local Access Road in question. This variance would add the traffic of one more single-family home to the last 85 feet of the Local Access Road prior to its intersection with Sheltered Nook Road.

Staff: Authorization of the variance will allow the applicants to keep the driveway where it is currently located on the local access road. The current location of the driveway is not adversely impacting neighboring properties. Decommissioning the existing driveway and building a new one over a stream in an environmentally sensitive area is more likely to have a detrimental effect than keeping the driveway where it is currently located.

The criterion is met.

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

Applicant: The circumstances of prior improvements on the property (Tax lot 1700 access road) in question and topography, slope stability and the presence of a stream are not of the applicant's making.

Staff: The circumstances of the hardship that necessitate using the existing gravel driveway instead of building a new driveway have primarily to do with the topography of the parcel, the adjacent stream, and the environmental considerations. These conditions are not of the applicant's making they are conditions of the property.

Criterion is met.

Right-of-Way Use Permits

18.000 Right-of-Way Use Permits

18.250 Access/Encroachment Permit:

A. An Access/ Encroachment Permit (A/E Permit) may 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, nonstandard 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.**

B. Unless otherwise provided in the special provisions of the permit, any work authorized pursuant to an access/encroachment permit shall be initiated within ninety days from the date the permit issued and completed within a reasonable time thereafter as determined by the County Engineer.

Staff: Property owners will need to apply for a driveway permit as noted in section 4.000. All accesses to Multnomah County rights of way need to be permitted.

As conditioned, this criterion is met.

Transportation Conclusion

Applicant has provided sufficient detail to meet the criteria necessary to be granted a variance to Multnomah County Road Rules. The conditions listed below will need to be met during the building permit stage of the development process.

Transportation 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 The applicant shall acquire a driveway permit prior to building permit issuance for the site's existing access onto Sheltered Nook Road (local access road). [MCRR 4.000; 18.250]**
- 2 The property owner will need to record deed restrictions prior to building permit issuance (provided by County Transportation) with County Records, committing the property owner to participate in future right of way improvements costs. A non-remonstrance agreement, or deed restriction, will require that the property owner to participate in standard Rural Local road improvements along the site's frontage that are not completed as a part of the site's required interim improvements. [MCRR 9.400] Contact Pat Hinds at (503) 988-3712 or patrick.j.hinds@multco.us to complete the deed restrictions.**

Issued by:

By:



Jessica Berry, AICP
Senior Transportation Planner

For: Ian B. Cannon, P.E., County Engineer

Date: Friday, June 29, 2018

13. EXHIBITS

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

‘C’ Procedural Exhibits

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	Application Form	12/19/17
A.2	25	Narrative with an Attachments List	12/19/17
A.3	1	Applicant’s Attachment 1: Site Plan with two foot contours by Scott F. Field Resister Professional Land Surveyor	12/19/17
A.4	2	Applicant’s Attachment 2: General Site Plans showing building site	12/19/17
A.5	8	Applicant’s Attachment 3: Measure 49 Decision: E118495 - Dilnik	12/19/17
A.6	9	Applicant’s Attachment 4: SEC-h Worksheet	12/19/17
A.7	8	Applicant’s Attachment 5: SEC-v Worksheet Exhibit A.7.a: Attachment 5a: SEC-v Map Lot 1700 & 1701 (1 Page) Exhibit A.7.b: Attachment 5.b: Dwelling Elevations (2 pages) Exhibit A.7.c: Attachment 5.c: Dwelling Details (5 pages) Exhibit A.7.d: Attachment 5.d: Landscape screening plan (2 pages) Exhibit A.7.e: Attachment 5.e: Maps showing topographic screening (1 page) Exhibit A.7.f Attachment 5.f: Grading Plan and “Stormwater	12/19/17

		Tank” Plan	
A.8	6	Applicant’s Attachment 6: Hillside Development Permit Reconnaissance and stability form stamped and signed by Charles M. Clough, Certified Engineering Geologist with attachments	12/19/17
A.9	55	Applicant’s Attachment 7: Geotechnical Report by GeoDesign LLC stamped and signed by Charles M. Clough, RG. CEG and Brett A Shipton, PE, GE	12/19/17
A.10	4	Applicant’s Attachment 8: Site Evaluation for Septic System	12/19/17
A.11	1	Applicant’s Attachment 9: Septic Review Certification <u>not completed</u>	12/19/17
A.12	4	Applicant’s Attachment10: Septic Installation Permit Application	12/19/17
A.13	3	Applicant’s Attachment 11: Fire Service Agency Review	12/19/17
A.14	1	Applicant’s Attachment 12: Transportation Planning Review <u>not completed</u>	12/19/17
A.15	5	Applicant’s Attachment 13: Application for a Permit to use a Public Right-of-Way not issued	12/19/17
A.16	7	Applicant’s Attachment 14: Road Rules Variance Request Narrative	12/19/17
A.17	1	Applicant’s Attachment 15: Corticated of Water Service	12/19/17
A.18	1	Applicant’s Attachment 16: Storm Water Certificate signed by Jake Dylan Hofeld, PE	12/19/17
A,19	36	Applicant’s Attachment 17: Site Conditions Stormwater Analysis by Jake Dylan Hofeld, PE	12/19/17
A.20	3	Applicant’s Attachment 18: Grading and Erosion Control Best Practices County Handout	12/19/17
A.21	1	Narrative Addendum	2/20/18
A.22	7	Application Form Addendum adding an Exception to the Secondary Fire Safety Zone Request	2/20/18
A.23	1	Addendum to Narrative Addressing Exception to the Secondary Fire Safety Zone	2/20/18
A.24	1	Exception to the Secondary Fire Safety Zone Lot Width Averaging	2/20/18
A.25	3	Addendum to Narrative Addressing Forest Development Standards	2/20/18
A.26	3	Addendum Narrative, Maps and Drawings Addressing SEC-v	2/20/18
A.27	3	Elevational Drawings Addressing SEC-v Topographic Screening	2/20/18
A.28	3	Window Manufacturer’s Brochure Addressing Visible Light	2/20/18

		Reflectivity	
A.29	1	Color Samples for the Exterior Siding, Window Trim and Metal Roofing	2/20/18
A.30	7	Hillside Development Permit (HDP) Work Sheet and Erosion Control Site Plan	2/20/18
A.31	5	Septic Review Certification	2/20/18
A.32	7	Addendum Narrative Addressing SEC-h Standards including Maps	2/20/18
A.33	9	Addendum Narrative Addressing SEC-s Standards including Maps	2/20/18
A.34	1	Addendum Narrative Addressing Storm Water	2/20/18
A.35	1	Updated Site Plan with an Unusual Scale (1 inch to 70 foot)	2/20/18
A.36	1	Updated Site Plan Blow-Up of Development Area with a Measurable Scale (1/32 inch to 1 foot)	2/20/18
A.37	1	Updated Site Plan with a Measurable Scale (1 inch to 80 foot)	3/21/18
A.38	1	Updated Site Plan Blow-Up of Development Area with a Measurable Scale (1 inch to 40 foot)	3/21/18
A.39	7	Copy of Recorded Deed Instrument #2018-068006 selling Tax Lot 1701, Lot 38 Sheltered Nook	6/28/18
T.1		Overall Site Plan	3/21/18
T.2		Site Distances at intersecting driveway and roads	12/19/17
T.3		Road Rules Variance application	12/19/17
'B'	#	Staff Exhibits	Date
B.1	2	A&T Property Information	NA
B.2	1	A&T Tax Map with Property Highlighted	NA
'C'	#	Comments Received	Date
C.1	2	Letter of comment from Gumaro Iniguez	4/23/18