

1600 SE 190<sup>th</sup> 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:** T2-2018-9995

**Permit:** Administrative Review by Planning  
Director and Category 3 Land Division

**Location:** 29644 SE Division Drive  
Township 1 South, Range 4 East WM  
Section 07D, Tax Lot 00100  
Tax Acct: R994070640  
Prop. Id. R341570

**Applicants:** Kelli Grover

**Owners:** Ron Barber

**Base Zone:** Exclusive Farm Use

**Overlays:** Significant Environmental Concern for  
Water Resources and Wildlife Habitat




**Summary:** Request is to divide the property and establish a new dwelling on the new vacant parcel through a Measure 49 approval requiring an Application for an Administrative Decision by Planning Director to verify Measure 49 conditions are met and Category 3 Land Division Review.

**Decision:** Approved with Conditions

**Unless appealed, this decision is effective September 4, 2018 at 4:00 PM.**

Issued by:

By:   
George A. Plummer, Planner

For: Michael Cerbone, AICP  
Planning Director

Date: August 20, 2018

**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](mailto:george.a.plummer@multco.us) or (503) 988-0202 (8 am to 4 pm Tuesday through Friday).

**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 September 4, 2018 at 4:00 pm.**

**Applicable Approval Criteria:** Multnomah County Code (MCC) **Approval Criteria:** Multnomah County Code (MCC): Oregon State Ballot Measure 49, MCC 36.2600-.2690: EFU, MCC 36.7700-.8035: Section applicable to Category 3 Land Divisions.

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> West of the Sandy River Rural Plan Area.

### **Scope of Approval**

1. Approval of this land use permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.

### **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. This land use permit expires on September 29, 2019, per Measure 49 expiration requirement as stated in Final Order and Home Site Authorization State Election Number E118468 Authorization Condition Number 8. The expiration date is based on the 10 year anniversary of the transfer of the property. The current owner or subsequent owners of the property complete the final partition plat and record with Multnomah County Survey Office and establish the dwelling prior to the expiration date. To establish the dwelling under MCC 37.0690, prior to the expiration date, a building permit must be issued for the dwelling and construction must commence. Per MCC 37.0690 "Commencement of construction shall mean actual construction of the foundation or frame of the approved structure." The building permit shall be kept active (not expired) until the final inspection sign-off for the dwelling. Please note, there is no time

extension allowed for the Measure 49 approval and expiration is 10 years from date of sale.  
[Measure 49 and MCC 37.0690]

2. As a condition of approval of a single family dwelling, the property owner for the proposed dwelling shall sign and record in the deed records for the county a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937. [MCC 36.2655]
3. Prior to Land Use Planning sign-off on the building permit, the applicant shall provide a Septic Review Certification, with a site plan attached and floor plans for the dwelling signed by the County Sanitarian. [MCC 36.7955]
4. Prior to Land Use Planning sign-off on the building permit, the applicant shall provide a Storm Water Certificate for the proposed storm water from new impervious surfaces will be controlled or detained by the designed storm water control systems to provide on-site water disposal or retention facilities which shall be adequate to insure that surface runoff rate or volume from the new parcel after development is no greater than that before development. That system shall be installed. [MCC 36.7960 and MCC 36.7995].
5. Wires serving the new dwelling, including but not limited to electric power, communication, street lighting and cable television wires, shall be placed underground.

**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 Gresham. 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 review and approval of the conditions and to sign the building permit plans. Please note, Multnomah County must review and sign off the building permits before the applicant submits building plans to the City of Gresham, three sets each of the site plan (attached on the top of each plan 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:** Request is to divide the property and establish a new dwelling on the new vacant parcel through a Measure 49 approval requiring an Application for an Administrative Decision by Planning Director to verify Measure 49 conditions are met, and Category 3 Land Division Review.

### **2. PROPERTY DESCRIPTION & HISTORY:**

**Staff:** The 19 acre subject property was divided into its current configuration in 1986 through approval of Land Division Case LD 20-86 (Exhibit B.5). On October 31, 2008 the State of Oregon, Department of Land Conservation and Development issued a Measure 49 (M49) approval, E118468 (Exhibit B.6), which approved dividing the subject property into three parcels, essentially establishing two additional parcels and two additional dwellings.

The subject application (T2-2018-9995) requests one additional parcel and one additional dwelling. While this is not the maximum approved by the Measure 49 claim, it is the property owner's choice to request the proposed configuration. The Measure 49 approval requires one of the proposed parcels to be maximum two acres formed out of the 19 acre parent parcel with a 17 acre remainder parcel.

The subject has a gentle slope (about 7 to 9 percent) in the section near the road, proposed Parcel 1 (Exhibit A.13), with an increased slope percentage of about 11 to 12 for the majority of proposed Parcel 2, with substantially greater slopes of about 20 to 21 percent toward the back of the proposed parcel running along the creek (from the creek to about 500 feet from the creek).

The subject property has areas with Significant Environmental Concern for Water Resources (SEC-wr) and Significant Environmental Concern for Wildlife Habitat Overlay Zones (Exhibit B.4). The proposed single family dwelling is located outside these overlay zones.

Currently there is a small shed on the property that is located too close to the west side property line, located at seven feet from the property line, not meeting the 10 foot minimum yard

requirement (Exhibit A.13). This is a code compliance issue that will need to be resolved by this decision. A condition of approval will require this to be resolved prior to signing of the final plat by Land Use Planning. The applicant has verbally stated that the property owner has agreed to remove the shed. Once it is verified that it is demolished, the property will meet the requirements of full compliance required by MCC 37.0560.

### **3. EXCLUSIVE FARM USE ZONE**

#### **3.1. Single Family Dwellings Condition of Approval - Prohibition on Claims Alleging Injury from Farm or Forest Practices**

**MCC 36.2655** As a condition of approval of a single family dwelling, the landowner for the dwelling shall sign and record in the deed records for the county a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.

**Staff:** This decision will include a condition of approval that prior to County Land Use Planning sign-off for the building permit for the proposed single family dwelling, the landowner 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 standard is met through meeting a condition of approval.*

#### **3.2. Dimensional Requirements**

##### **3.2.1. MCC 36.2660 (A) Except as provided in MCC 36.2675, the minimum lot size for new parcels shall be 80 acres in the EFU district.**

**Staff:** The State of Oregon, Department of Land Conservation and Development issued a Measure 49 (M49) approval E118468 (Exhibit B.6) to divide the subject property into three parcels to establish two additional lots or parcels and two additional dwellings. The application requests one additional parcel and one additional dwelling. Because the property is zoned EFU and is high value farmland as defined by the high value soils, the Measure 49 approval allows only one of the new parcels can be more than two acres. Thus one of the proposed parcels is two acres and the other, the vacant parcel approved for a dwelling, is 17 acres. Measure 49 approval supersedes the 80 acre minimum. *The proposal meets that Oregon law related to Measure 49.*

##### **3.2.2. MCC 36.2660 (B) That portion of a street which would accrue to an adjacent lot if the street were vacated shall be included in calculating the size of such lot.**

**Staff:** The portion of a street which would accrue to an adjacent lot if the street were vacated is calculated into the size of the proposed parcels. *This standard is met.*

### 3.2.3. MCC 36.2660 (C) Minimum Yard Dimensions – Feet

Front	Side	Street Side	Rear
30	10	30	30

**Maximum Structure Height - 35 feet**

**Minimum Front Lot Line Length - 50 feet.**

**MCC 36.0005: Definitions – Lot Line (Front) –** In the case of an interior lot, a line separating the lot from the street or accessway; in the case of a corner lot, a line separating the narrowest frontage of the lot from a street or accessway; and in the case of a flag lot, the lot line closest to and most nearly parallel with the street which serves the lot. A minimum front lot line length is a dimensional requirement to assure that a parcel or lot has sufficient street frontage and lot width near the street to accommodate a safe access driveway and reasonable building area after considering the required side yards.

**Staff:** The existing dwelling meets the minimum yard setbacks, however there is a small shed shown on the survey that is seven feet from the side yard not meeting 10 foot minimum side yard setback. The applicant has stated that shed will be removed. A condition will be required that the shed be removed prior to County Land Use Planning signing the final partition plat.

The proposed dwelling and all other buildings will need to meet the minimum yard requirements and maximum structure height which will need to be shown on the site plan and building plans for County Land Use Planning sign-off building permit for the proposed single family dwelling.

Proposed Parcel 1 has a front lot line of 159.34 feet, meeting the minimum 50 foot requirement. Proposed Parcel 2 is a flag parcel (with a flag pole) with less than 50 width allowed per MCC 36.7895(D). For a flag lot, the front line is the lot line closest to and most nearly parallel with the street which serves the lot. That lot line is 375.99 feet, meeting the minimum 50 foot requirement. *These standards are met or are met through implementing the conditions of approval.*

### 3.3. EFU Lot of Record

**MCC 36.2675 (A)** In addition to the Lot of Record definition standards in MCC 36.0005, for the purposes of this district a Lot of Record is either:

- (1) A parcel or lot which was not contiguous to any other parcel or lot under the same ownership on February 20, 1990, or
- (2) A group of contiguous parcels or lots:
  - (a) Which were held under the same ownership on February 20, 1990; and
  - (b) Which, individually or when considered in combination, shall be aggregated to comply with a minimum lot size of 19 acres, without creating any new lot line.

**MCC 36.0005: Definition – 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 reconfigured, (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 de-

scribed in MCC 36.7785. Those laws shall include all required zoning and land division re-view 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 through a Land Division Case LD 20-86 (Exhibit B.). The subject property is 19 acres and the adjacent parcel had been in the same ownership since 1990, is 37.39 acres, thus there is no aggregation requirement. The subject property is a lot of record. *This standard is met.*

### 3.4. Access

**MCC 36.2690** All lots and parcels in this district shall abut a public street or shall have other access determined by the approval authority to be safe and convenient for pedestrians and for passenger and emergency vehicles. This access requirement does not apply to a pre-existing lot and parcel that constitutes a Lot of Record described in MCC 36.2675(C).

**Staff:** Both proposed parcels abut Division Drive which is a public road. *This standard is met.*

## 4. **MEASURE 49 AUTHORIZATION CONDITIONS SECOND LAND USE PERMIT**

Based on the analysis set forth above, this claim is approved, and the claimants qualify for three home sites approvals. As a result, the claimants are authorized to establish two additional lots or parcels and two additional dwellings on the Measure 37 claim property, subject to the following terms.

**Staff:** The State of Oregon, Department of Land Conservation and Development issued a Measure 49 (M49) approval E118468 (Exhibit B.6) to divide the subject property into three parcels to establish two additional lots or parcels and two additional dwellings. The application requests one additional parcel and one additional dwelling. Following are findings for the M49 conditions.

- 4.1. **1. Each dwelling must be on a separate lot or parcel, and must be contained within the Measure 37 claim property. The establishment of a land division or dwelling based on this home site authorization must comply with all applicable standards governing the siting or development of the land division or dwelling. However, those standards must not be applied in a manner that prohibits the establishment of the land division or dwelling, unless the standards are reasonably necessary to avoid or abate a nuisance, to protect public health or safety, or to carry out federal law.**

**Staff:** The proposal is for a Land Division to create one additional parcel and one additional dwelling. This decision includes the Category 3 Land Division and will include the review for the dwelling. *This condition is met.*

- 4.2. **2. This home site authorization will not authorize the establishment of a land division or dwelling in violation of a land use regulation described in ORS 195.305(3) or in violation**

of any other law that is not a land use regulation as defined by ORS 195.300(14).

**Staff:** This decision will include a requirement for a Final Partition Plat recorded with the County Survey Division. The application includes a Septic Review Certification finding a septic system is feasibility for proposed vacant parcel (Exhibit A.11). An installation permit will be required to install the system. Also included is a Fire District Review (Exhibit A.6) and a Storm Water Certificate. *This condition is met.*

- 4.3. 3. The number of lots, parcels or dwellings a claimant may establish under this home site authorization is reduced by the number of lots, parcels and dwellings currently in existence on the Measure 37 claim property and contiguous property in the same ownership, regardless of whether evidence of their existence has been provided to the department. If lots, parcels or dwellings currently exist on the Measure 37 claim property or on contiguous property under the same ownership and the lots, parcels or dwellings have not been disclosed to the department, then the number of additional lots, parcels or dwellings a claimant may establish pursuant to this home site authorization must be reduced according to the methodology stated in Section 6(2)(b) and 6(3) of Measure 49.**

**Staff:** The current property owner owns the contiguous property to the west with a dwelling and purchased the subject property on September 29, 2009. The request is for one additional parcel and one additional dwelling. *This condition is met.*

- 4.4. 4. Temporary dwellings are not considered in determining the number of existing dwellings currently on the property. The claimants may choose to convert any temporary dwelling currently located on the Measure 37 claim property to an authorized home site pursuant to a home site approval. Otherwise, any temporary dwelling is subject to the terms of the local permit requirements under which it was approved, and is subject to removal at the end of the term for which it is allowed.**

**Staff:** No temporary dwelling exists on this property. *This condition is not applicable.*

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

**Staff:** The proposal is for one additional parcel created for a new dwelling. *This condition is met.*

- 4.6. 6. The claimants may use a home site approval that does not authorize a new lot parcel or dwelling to convert a lot, parcel or dwelling currently located on the Measure 37 claim property to an authorized home site. If the number of lots parcels or dwellings existing on the Measure 37 claim property exceeds the number of home site approvals the claimants qualifies for under a home site authorization, the claimants may select which existing lots, parcels or dwellings to convert to authorized home sites; or may reconfigure existing lots parcels or dwellings so that the number is equivalent to the number of home site**



approvals.

**Staff:** The approval authorizes a new parcel. *This condition is not applicable.*

- 4.7. **7. A home site approval does not authorize the establishment of a new dwelling on a lot or parcel that already contains one or more dwellings. The claimants may be required to, alter the configuration of the lots or parcels currently in existence on the Measure 37 claim property and contiguous property so that each additional dwelling established on the Measure 37 claim property, pursuant to this home site authorization, is sited on a separate lot or parcel.**

**Staff:** The proposal is for one additional parcel created for a new dwelling. There is an existing dwelling on the property to be divided. Each dwelling will be on a separate parcel. *This condition is met.*

- 4.8. **8. If the claimants transferred their 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 lots, parcels and dwellings within 10 years of the conveyance. A lot or parcel lawfully created based on this home site authorization will remain a discrete lot or parcel, unless the lot or parcel lines are vacated or the lot or parcel is further divided, as provided by law. A dwelling lawfully created based on a home site approval is a permitted use.**

**Staff:** The date of the order (E118468) is October 31, 2008. A Warranty Deed Instrument 2009137788 was recorded on September 9, 2009, conveying the property to the current property owner. The current owner or subsequent owner of the property must establish the authorized lots, parcels and dwellings within 10 years of the conveyance, by September 9, 2019. A condition of approval of this decision will include an expiration of this approval on the 10 year anniversary of the transfer of the property on September 9, 2009.

To establish the dwelling under MCC 37.0690, a building permit must be issued for the dwelling and construction must commence prior to the expiration date of this Type II approval. Per MCC 37.0690 "Commencement of construction shall mean actual construction of the foundation or frame of the approved structure." The building permit must be issued and construction must commence by September 9, 2019, and the building permit must be kept active (not expired) until the final dwelling inspection. *This M49 condition is met through a Condition of Approval of this decision.*

- 4.9. **9. Because the property is located in an exclusive farm use zone, the home site authorization does not authorize new lots or parcels that exceed five acres. However, existing lots or parcels may exceed five acres. Before beginning construction, the owner must comply with the requirements of ORS 215.293. Further, the home site authorization will not authorize new lots or parcels that exceed two acres if the new lots or parcels are located on high-value farmland, on high-value forestland or on land within a ground**

**water restricted area. However, existing lots or parcels may exceed two acres.**

**Staff:** The subject property has soils that are high-value farmland, thus one of the parcels will need to not exceed two acres. The proposed plat shows one of the properties at two acres. *This condition is met.*

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

**Staff:** The proposed dwelling site on Parcel 2 is located within 150 feet of the dwelling on the adjacent property to the east (Exhibit B.3). The nearest other dwelling is located on the adjacent property to the west at about 560 feet from the northern property line of Parcel 2. If a dwelling was placed here, it would be about 590 feet from that dwelling. There is a cluster of four dwellings to the southeast of which the closest dwelling is about 750 feet from the proposed building site. The only dwelling close to the property for truly clustering the dwelling location is the property adjacent to the east. The proposed dwelling site is clustered with a nearby dwelling. The building footprint would be about the same in any location of the property, thus dedicating the same amount of land to non-farm residential use. This proposal meets the condition. *This condition is met.*

- 4.11. 11. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, this home site authorization will not authorize the use of the property unless the claimants first 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:** A building permit is required to lawfully establish the dwelling. An installation permit is required for installing the septic system. The property has been reviewed and confirmed for septic system feasibility (Exhibit A.11). A driveway access permit is required and has been obtained (Exhibit A.12). *This M49 condition is met through a condition of Approval of this Decision.*

## **5. CATEGORY 3 LAND DIVISION**

### **5.1. Criteria for Approval: Category 3 Tentative Plan.**

**MCC 36.7855 In granting approval of a Category 3 tentative plan, the Planning Director shall find that the criteria listed in subsections (B), (C) and (H) of MCC 36.7800 are**

**satisfied and that the tentative plan complies with the area and dimensional requirements of the underlying zoning district.**

**Staff:** Findings for MCC 36.7800(B), (C) and (H) follow. The tentative plan complies with the area and dimensional requirements of the underlying zoning district. Findings for the proposed land division meeting the requirements of the underlying zoning district are in Section 3.2 of this decision. *These standards are met.*

**5.1.1. MCC 36.7800(B): Approval will permit development of the remainder of the property under the same ownership, if any, or of adjoining land or of access thereto, in accordance with this and other applicable ordinances;**

**Staff:** Approval will permit development of the remainder of the property under the same ownership, if any, or of adjoining land or of access thereto, in accordance with this and other applicable ordinances. Proposed Parcel 2 is currently vacant but is approved for a Measure 49 dwelling. *This criteria is met.*

**5.1.2. MCC 36.7800(C): The tentative plan complies with the applicable provisions, including the purposes and intent of the Multnomah County Land Division Ordinance, and the applicable General Standards and Requirements of MCC 36.7885 through 36.7965.**

**Staff:** Findings in the follow section for MCC 36.7885 through 36.7965 will show that the tentative plan complies with the applicable provisions, including the purposes and intent of the Multnomah County Land Division Ordinance and the applicable General Standards and Requirements of MCC 36.7885 through 36.7965 (see the following findings). *This criteria is met.*

**5.1.3. MCC 36.7800(H): Approval will permit development to be safe from known flooding and flood hazards. Public utilities and water supply systems shall be designed and located so as to minimize or prevent infiltration of flood waters into the systems. ...**

**Staff:** The development areas on the subject property is not located in a known flooding area and is not mapped as flood hazards. *This criteria is met.*

**5.2. Contents of Category 3 Tentative Plan**

**MCC 36.7860: A tentative plan for a Category 3 Land Division shall consist of maps, written information and supplementary material adequate to provide the following:**

**(A) Category 3 tentative plan map contents. A tentative plan map of a sheet size and scale as specified in MCC 36.7810 shall indicate the following:**

- (1) Date, north point and scale of drawing.**
- (2) Description of the proposed land division sufficient to define its location and boundaries.**
- (3) Identification as a tentative plan map.**
- (4) Location, names or purpose and width of all streets, rights-of-way or easements on or abutting the tract.**
- (5) Natural features, water courses or areas covered by water.**
- (6) The location and use of any buildings or structures proposed to remain after division.**

- (7) The proposed parcels, their dimensions and areas.
- (8) Contiguous property under the same ownership.
- (B) Written information; Category 3 tentative plan. Written information shall include:
  - (1) Name, address and telephone number of the record owner(s), owner's representative, designer(s), engineer(s) or surveyor(s), and the date of survey, if any.
  - (2) Proof of record ownership of the tract and the representative's authorization.
  - (3) Legal description of the tract.
  - (4) Present and proposed uses.
  - (5) Description of the water supply, methods of sewage disposal and storm water disposal, and the availability of other utilities.
  - (6) Statements of the manner in which the criteria for approval listed in MCC 36.7855 are satisfied.
  - (7) Statement of the improvements to be made or installed and the time scheduled therefore.

**Staff:** The application includes a tentative plan with sufficient information. *This standard is met.*

### 5.3. Application of General Standards and Requirements

**MCC 36.7885:** Every land division proposal shall comply with the applicable provisions of MCC 36.7890 through 36.7965.

**Staff:** Findings for MCC 36.7890 through 36.7965 follow in this decision. *This standard is met.*

### 5.4. Land Suitability

**MCC 36.7890** A land division shall not be approved on land found by the approval authority to be both unsuitable and incapable of being made suitable for the intended uses because of any of the following characteristics:

- (A) Slopes exceeding 20%;
- (B) Severe soil erosion potential;
- (C) Within the 100-year flood plain;
- (D) A high seasonal water table within 0-24 inches of the surface for three or more weeks of the year;
- (E) A fragipan or other impervious layer less than 30 inches from the surface; or
- (F) Subject to slumping, earth slides or movement.
- (G) Pre-existing field drains or other subsurface drainage systems.

**Staff:** Proposed Parcel 1 has an existing dwelling outside the 100-year floodplain. The County Sanitarian has stated the land division is no threat to the existing septic system (Exhibit A.11) given there is an existing dwelling, thus it is suitable for that use. The proposed vacant parcel (Parcel 2) has significant area outside the 100-year floodplain and the County Sanitarian has signed the tentative plan stating the land is suitable for a septic system (Exhibit A.11). Parcel 2 has shallow slopes in the area where a dwelling could be built and there is no indication that the proposed parcel has any issue with the listed items. The vacant property is suitable for the residential use (allowed by Measure 49). *This standard is met.*

## **5.5. Lots and Parcels**

**MCC 36.7895** The design of lots and parcels shall comply with the following:

### **5.5.1. (A) The size, shape, width, orientation and access shall be appropriate:**

- (1) To the types of development and uses contemplated;**
- (2) To the nature of existing or potential development on adjacent tracts;**
- (3) For the maximum preservation of existing slopes, vegetation and natural drainage;**
- (4) To the need for privacy through such means as transition from public to semi-public to private use areas and the separation of conflicting areas by suitable distances, barriers or screens; and**
- (5) To the climactic conditions including solar orientation and winter wind and rain.**

**Staff:** The size, shape, width, orientation and access for the proposed parcels are appropriate for the existing dwelling use and for a new Measure 49 dwelling on the new vacant parcel. The parcels are appropriate given the existing or potential development on adjacent tracts, with maximum preservation of existing slopes, vegetation and natural drainage. Distances are suitable to provide for privacy. The climactic conditions will be the same or similar as other properties in the area. *These standards are met.*

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

**Staff:** The side lot lines shall be perpendicular to the front lot line to the extent practicable as shown on the Tentative Plan (Exhibit A.13).

### **5.5.3. (C) Double frontage or reverse frontage lots or parcels shall be provided only when essential for separation of land uses from arterials or to overcome specific disadvantages of topography or orientation.**

**Staff:** The proposed parcels are not double frontage or reverse frontage lots or parcels. *This standard is met.*

### **5.5.4. (D) A land division may include creation of a flag lot with a pole that does not satisfy the minimum frontage requirement of the applicable zoning district, subject to the following:**

- (1) When a flag lot does not adjoin another flag lot, as shown in MCC 36.7895 Figure 1, the pole portion of the flag lot shall be at least 16 feet wide.**
- (2) Where two flag lots are placed back to back as shown in MCC 36.7895 Figure 2, the pole portion of each flag lot shall be at least 12 feet wide.**

**Staff:** The proposed vacant parcel will be a flag lot with a pole that is 40.7 feet width, not satisfying the minimum frontage requirement of 50 feet. The width of the flag pole meets the minimum width requirement. *This standard is met.*

### **5.5.5. (E) Within a land division, flag lots shall not be stacked one behind the other as shown in MCC 36.7895 Figure 3. Instead, a private accessway shall be used as shown in MCC 36.7895 Figure 3.**

**Staff:** The proposed flag lot is not stacked one behind the other as shown in MCC 36.7895 Figure 3. There are not three parcels as shown in Figure 3. *This standard is met.*

**5.6. Water System**

**MCC 36.7950** The provision of domestic water to every lot or parcel in a land division shall comply with the requirements of subsections (4) (a), (b), or (c) of ORS 92.090 and MCC 36.7985 of this Chapter.

**Staff:** The application submittal included a Certification of Water Service signed by a Lusted Water District official indicating that the water district will provide service (Exhibit A.7). *This standard is met.*

**5.7. Sewage Disposal**

**MCC 36.7955** The provision for the disposal of sewage from every lot or parcel in a land division shall comply with the requirements of subsection (5) (c) of ORS 92.090 and MCC 36.7990 of this Chapter. Each parcel or lot shall contain adequate land area to accommodate both a primary and reserve septic system drainfield area, and for surface and storm drainage systems

**Staff:** The application submittal includes a septic system certification with the county sanitarian stating the land division is no threat to the existing septic system (Exhibit A.11) on Parcel 1), and that Parcel 2 is suitable for septic system. The County sanitarian has signed the tentative plan stating every lot or parcel in a land division is suitable for a septic system. *This standard is met.*

**5.7. Surface Drainage**

**MCC 36.7960** Surface drainage and storm water control systems shall be provided as required by section MCC 36.7995. On -site water disposal or retention facilities shall be adequate to insure that surface runoff rate or volume from the new parcels after development is no greater than that before development.

**Staff:** The application submittal includes a Storm Water Certificate completed by Kelli A. Grover, PE with a storm water soakage trench plan for Parcel 2 (Exhibit A.8). Ms. Grover certified that the surface runoff rate or volume from the new parcels after development is no greater than that before development. A condition will require installation of the storm water control system. *This standard is met.*

**5.8. Electrical And Other Wires**

**MCC 36.7965** Wires serving within a land division, including but not limited to electric power, communication, street lighting and cable television wires, shall be placed underground. The approval authority may modify or waive this requirement in acting on a tentative plan upon a finding that underground installation:

(A) Is impracticable due to topography, soil or subsurface conditions;

(B) Would result in only minor aesthetic advantages, given the existence of above-ground facilities nearby; or

**(C) Would be unnecessarily expensive in consideration of the need for low-cost housing proposed on the lots or parcels to be served.**

**Staff:** The proposed land division is not being proposed for low-cost housing; the proposal is for a Land Division for one single family dwelling. There are electric wires serving Parcel 2, including but not limited to, electric power, communication, and cable television wires to be placed underground. *This standard met through implementing a condition.*

**6. CONCLUSION**

Based on the findings and other information provided above, the applicant has carried the burden necessary for an Administrative Decision by Planning Director Measure 49 review. The Measure 49 approval includes a Category 3 Land Division creating two parcels and a Measure 49 claim to establish a single family dwelling in the EFU zone. This approval is subject to the conditions of approval established in this report.

**7. 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	2/2/18
A.2	8	Narrative	2/2/18
A.3	1	Site Plan	2/2/18
A.4	1	School District Review	2/2/18
A.5	1	Sheriff Services Review	2/2/18
A.6	1	Fire Service Agency Review	2/2/18
A.7	1	Certificate of Water Service	2/2/18
A.8	1	Storm Water Certification	2/2/18
A.9	6	Revised Narrative	4/24/18
A.10	1	Revised Tentative Plan	4/24/18
A.11	2	Septic Review Certification	4/24/18
A.12	7	Right-of-Way Access Permit	4/24/18
A.13	1	Revised Tentative Plan	5/11/18
A.14	2	Copy of deed for adjacent property to the east recorded October 27, 1992 in Book 2605 on Pages 1375 and 1376 transferring property from the Rosers to the Barbers	5/11/18

'B'	#	Staff Exhibits	Date
B.1	2	County Assessment Property Information Sheet	NA
B.2	1	A&T Tax Map with Property Highlighted	NA
B.3	2	2016 Aerial Photos showing subject property and vicinity	NA
B.4	1	2016 Aerial Photo showing the SEC Overlys	NA
B.5	1	Land Division Case LD 20-86 approval signed by Land Use Planning staff	NA
B.6	8	The State of Oregon, Department of Land Conservation and Development issued a Measure 49 (M49) approval E118468	NA