

APPLICATION REVIEW AND COMMENTS RELATED TO:  
A Cluster Subdivision in Neskowin  
THE COTTAGES AT NESKOWIN  
SUBMITTED BY THE NESKOWIN CPAC  
September 6, 2009

Note: These comments will be supplemented with additional testimony from the Neskowin CPAC at the hearing scheduled for September 10, 2009, or at a later date if the hearing is rescheduled.

**APPLICANT/OWNER**

Hawk Creek Land LLC  
1420 NW Lovejoy St. #716  
Portland, OR 97209

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**Neskowin CPAC Contacts:**

Charles Ciecko, Vice-chair, Treasurer  
Douglas MacCourt, Secretary

Project Name: The Cottages at Neskowin  
Project Requests: Land Division Consisting of a Cluster Subdivision.  
Tax Maps: 55 11W 25 & 36  
Tax Lots: 812  
Site Address: 5005 Schoolhouse Road, Neskowin, OR 97149  
Site Size: 35.14 acres  
Cluster Sub. Size 8.81 acres

Location: East side of US Highway 101 and North of Summit Road.  
Zoning: Neskowin Low Density- Nesk R-1

**I. VICINITY & SITE INFORMATION**

Existing Uses - The property abuts the east side of Highway 101, just south of Schoolhouse Road. Historically this site was a dairy farm, and subsequently developed as the Hawk Creek Golf Course. The golf course has been closed for 4-5 years and is rapidly returning to a natural condition. Virtually all indications of the former use as a golf course have been eliminated via natural regeneration.

Topography- In addition to information submitted by the applicants, it should be noted that Hawk Creek, after flowing through the subject property, flows under Highway 101 and then through Neskowin Marsh Golf Course, and a residential area of the Village before flowing into the Pacific Ocean.

Vegetation - The site was formerly developed as a golf course. However, management of the course ended when the course closed approximately 4 years ago and natural regeneration has

been occurring rapidly throughout the site. The vegetation varies throughout the site, including native coastal vegetation and trees such as willow, alder, Douglas fir and Sitka spruce. There are numerous trees on-site, some of which have seeded naturally since the closure of the golf course several years ago. The riparian corridor and portions of wetlands that had been previously impacted, show signs of rapid regeneration with native vegetation typical to these habitats. The parent parcel contains 7.14 acres of delineated wetlands, mostly associated with Hawk Creek, which flows through the property. There are 3.73 acres of wetlands within the Cluster Subdivision boundary. The application proposes to eliminate 47,923 square feet (+/-29%) of existing wetlands (1.1 acre). Wetland impacts associated with future phases of the development have not been evaluated in this application

**NOTE: Subsequent to the presentation of these draft comments at the August 1, 2009 CPAC meeting, applicants had the subject site mowed.**

Surrounding Land Uses - The subject site is located in an area of Nesk R-1 zoning with low density single-family residential homes surrounding the former golf course. To the west across Highway 101 are the village of Neskowin and Neskowin Marsh Golf Course.

Infrastructure:

Streets: Highway 101 is the primary access for the subject site. Proposed access into the site is provided via Summit Road, a county road. Summit Road intersects US 101 forming a 4-way intersection with Hawk Street, which is the primary access to the village of Neskowin. The access to the village of Neskowin includes a right turn lane for the south bound lane of 101 and a left turn lane for northbound 101. The proposed access for the proposed development (Summit Rd.) lacks right and left turn lanes and has a very limited sight line to the south as it is located on the inside of a curve in 101.

Sanitary Sewer: There is an existing sanitary sewer line in Highway 101. The subject property lacks sewer infrastructure.

Storm Drainage: Hawk Creek, known habitat for coastal Coho salmon (a federally listed Threatened species) and coastal cutthroat trout, runs through the center of the entire site. Hawk Creek will receive all storm water from the proposed project. The on-site storm drainage will be captured through a series of street side ditches and pipes and discharged into a proposed water quality swale that will eliminate existing wetlands.

Water: There is an existing 8" water line in Schoolhouse Road and also one running along Highway 101, with fire hydrants that serve surrounding residential lots. There is a reservoir located about 500 feet north of the property. To date, the Neskowin CPAC has not seen documentation that adequate water is available for the proposed development.

## **II. NESKOWN CPAC RESPONSE SUMMARY**

The Neskowin CPAC has expended considerable time and effort in reviewing and evaluating the proposed development. As the Tillamook County Planning Commission may be aware, the

Neskowin CPAC is very familiar with the natural and human environment of Hawk Creek and the surrounding community of Neskowin, in part because of the extensive review of the area by the CPAC as a result of the applicant's 2008 planned development proposal for Hawk Creek that was withdrawn from consideration after significant opposition from the Neskowin community.

Concerning this proposal, the CPAC met twice with the project applicants in regularly scheduled meetings and carefully reviewed application materials. Those meetings took place on April 4, 2009 and June 6, 2009. In addition, the Land Use Subcommittee met with the developers on April 4, 2009 and invited the developers to its Subcommittee meeting on June 6, 2009. The Subcommittee presented findings and recommendations to the full CPAC membership at the CPAC's regularly scheduled meeting on June 6, 2009. Following extensive discussion, CPAC membership voted to oppose the application as submitted based on issues that are elaborated in the following sections of this document.

**Neskowin Zoning**  
**Tillamook County**

**II. NESKOWIN LOW DENSITY RESIDENTIAL ZONE (Nesk R-1)**

*Section 3.322(1) Purpose: The purpose of the Nesk R-1 zone is to designate areas for low-density single-family residential development and other, compatible, uses. Suitability of land for low-density uses is determined by the availability of public sewer service, and such limitations to density such as geologic and flood hazards, shoreline erosion, and the aesthetic or resource value of nearby natural features.*

**CPAC RESPONSE:** The site is zoned Nesk R-1. The application states that “[t]he project has been reconfigured to include 100 residential lots. The first phase of construction, Phase 1, will consist of 25 lots.” Based on this statement, the County must evaluate the impacts from the proposal based on the maximum proposed density.

The application states that 25 single family residences are proposed for development on a small piece of the entire parcel. Sewer treatment capacity in Neskowin is limited and it is unclear whether necessary capacity will be available at the time construction might be initiated. It should be noted that the property is currently encumbered by one or more deed restrictions that will not permit the proposed development. The CPAC has no indication that the modification/removal of the deed restrictions is imminent.

The application fails to demonstrate that the proposed development will not exacerbate flooding hazard especially in areas downstream of and adjacent to the subject site.

The application fails to demonstrate that the aesthetic or resource value of nearby natural features will be protected. The applicant has not provided any baseline data to document the current condition of the wetlands or Hawk Creek and instead has relied on unsubstantiated statements alleging poor quality of these resources. In fact, the proposed development will result in the loss of delineated wetland and riparian resources resulting from road development, storm water treatment swale, stream crossing, lot development and walkway development. The application lacks detail related to mitigation for the proposed impacts to existing wetlands and riparian resources. The CPAC concludes that except for one stream crossing, these impacts are avoidable by limiting development activities to the upland portion of the site.

Based on the above, the purposes of the Nesk R-1 is not met.

*(2) Uses Permitted Outright: In the Nesk R-1 zone, the following uses and their accessory uses are permitted outright, and are subject to all applicable supplementary regulations contained in this ordinance.*

*(a) Single-family dwelling...*

**CPAC RESPONSE:**

*(3) Uses Permitted Conditionally: In the Nesk R-1 zone, the following uses and their accessory uses are permitted subject to the provisions of Article 6 and the requirements of all applicable supplementary regulations contained in this ordinance.*

*(a) Two -family dwelling.*

*(b) Planned Developments subject to Section 3.080, including only uses allowed in Neskowin zones and excluding commercial development, resorts, hotels, and motels. The number of attached single-family dwelling units in a cluster shall be established in the Planned Development approval process and may exceed four units per cluster if it is demonstrated that benefits in protection of natural conditions, better views, or access will be achieved by such clustering. Wetlands or other areas which cannot be developed due to the existence of sensitive natural features protected by the requirements of this ordinance shall not be used in calculating the gross area available for calculating density allowed in a clustered development.*

*(c) Churches and schools.*

*(d) Nonprofit community meeting buildings and associated facilities.*

**CPAC RESPONSE:**

*(4) Standards: Land divisions and development in the Nesk R-1 zone shall conform to the following standards, unless more restrictive supplemental regulations apply:*

*(a) The minimum lot size for permitted uses shall be 7,500 square feet, except that the minimum lot size for a two-family dwelling shall be 10,000 square feet for a single family dwelling. Where public sewers are not available, the County Sanitarian may require lot sizes greater than the minimum if necessary for the installation of adequate subsurface sewage disposal systems, or for adequate protection of public health or sensitive water bodies.*

**CPAC RESPONSE:** The project is proposed as a cluster subdivision which permits lot sizes within this district at a minimum 6,000 square feet. In this case, the proposed plat shows Lots 10, 9, 8, 7, 6, 5, 4, 3, 2, 1 extend in a northerly direction across Hawk Cr. Per the application, the riparian area and the creek are to be included in a conservation easement that will preclude all activity on significant portions of these lots. Thus, the square footage of the conservation area and the area located north of the stream are unusable. The CPAC believes these areas should be excluded from calculation of lot size. If these areas are excluded, it is unclear whether application meets the 6,000 square foot minimum criterion.

In addition, Policy 9.2 of the Neskowin Community Plan addresses the need to provide greater protection of streams within the Neskowin Community Growth Boundary. The Neskowin Community Plan specifically recommends a number of measures such as establishing riparian vegetation, establishing and increasing setbacks from the creek, and other measures to protect and enhance Hawk Creek. Since the Neskowin Community Plan was adopted in 1999, endangered species have been found in Hawk Creek and Hawk Creek has been determined to be essential habitat for these and other species. The proposed cluster subdivision ignores these policies and the density allowed by the proposal will cause further deterioration of the natural resources in and adjacent to Hawk Creek.

In addition to direct conflict with policies in the Neskowin Community Plan, the zone change proposal is inconsistent with other Tillamook County Comprehensive Plan policies applicable to Hawk Creek. For example, the Comprehensive Plan includes provisions for preservation and protection of big game in a big game corridor used by a number of wildlife species, including Roosevelt elk, cougar, deer and black bear. Recent attacks by cougar on horses in the area and consistent presence of cougar and black bear throughout Neskowin requires very careful consideration of how the Comprehensive Plan requirements are being implemented under existing densities. Adding significant new residential densities by the proposed cluster subdivision, especially at full build out, is likely exacerbate human/wildlife conflicts.

*(b) the minimum lot width shall be 60 feet.*

**CPAC RESPONSE:**

*(c) The minimum lot depth shall be 75 feet.*

**CPAC RESPONSE:**

*(d) Creation of new lots or parcels, and construction on existing lots or parcels, can only be allowed if sewer service or adequate on-site sanitation are provided, as follows:*

- (1) ...*
- (2) ...*

**CPAC RESPONSE:** A public sewer line is located near Highway 101, however, the subject site currently lacks sewer. Sewer treatment capacity in Neskowin is limited and it is unclear whether necessary capacity will be available at the time construction might be initiated. It should be noted that the property is currently encumbered by one or more deed restrictions that will not permit the proposed development. The CPAC has no indication that the modification/removal of the deed restrictions is imminent. As the application does not propose on-site sanitation, the CPAC concludes this criterion is not met.

*(e) Confirmation of water service availability from the water district, or evidence of an alternative functioning domestic water supply, shall be provided to the Department prior to approval of residential construction or other development requiring potable water.*

**CPAC RESPONSE:** The application states: “The applicant has discussed Water Service with the water district and service is adequate and available to serve the site. This criterion is met.”

As of the date of this correspondence, the CPAC has not been provided any formal documentation to support applicant’s statement. Lacking evidence requires the CPAC to conclude this criterion is not met.

*(f) Driveway connection to the street shall be limited to 25% of the street frontage of the lot, but not less than 12 feet, unless the Tillamook County Public Works Department or the Oregon Department of Transportation requires a different width.*

**CPAC RESPONSE:** The application states: “No driveway connection to the street is proposed to be less than 12 feet in width. This criterion is met.” CPAC review of application revealed no documentation in the tentative plat map or other materials to support this statement.

*(g) The minimum front yard shall be 20 feet.*

**CPAC RESPONSE:**

*(h) The minimum side yard shall be 5 feet; on the street side of a corner lot, it shall be 15 feet.*

**CPAC RESPONSE:**

*(i) The minimum rear yard shall be 20 feet; on a corner lot it shall be 5 feet.*

**CPAC RESPONSE:**

*(j) The maximum building height shall be 35 feet, except on the ocean or bay frontage lots, where it shall be 21 feet. Higher structures may be permitted only according to the provisions of Article VIII. Within the Neskowin Community Growth Boundary, building height shall be measured as the vertical distance from existing grade at a given point to the highest surface of any building element or projection above the same point. The building height shall not exceed the maximum building height at any point. Existing grade is defined as the grade prior to land disturbing activities or fill placement. The department may require a topographic survey for any building permit application. Prior to approval of a building permit for any structure that appears to be within 3 feet of the maximum building height, the applicant shall sign a legally binding statement holding Tillamook County harmless should construction of approved plans result in a structure exceeding the height limit and needing to be removed or altered.*

**CPAC RESPONSE:**

*(l) Livestock shall be located no closer than 100 feet to a residential building on an adjacent lot.*

**CPAC RESPONSE:**

*No residential structure shall be located within 100 feet of an F-1, F, or SFW-20 zone boundary, unless it can be demonstrated that natural or man-made features will act as an equally effective barrier to conflicts between resource and residential uses; or that a residential structure could not otherwise be placed on the property without requiring a variance to the 100 foot requirement. In either case, all yard requirements in this zone. (et sic).*

**CPAC RESPONSE:**

### III. SUPPLEMENTAL REGULATIONS

#### *Section 3.092, Freshwater Wetlands Overlay Zone (FW)*

- (1) *Purpose and Areas Included: The purpose of this zone is to protect significant areas of freshwater wetlands, marshes and swamps from filling, drainage or other alteration which would destroy or reduce their biological value. Areas included in this zone are:*
- a. *Significant Goal 5 Wetlands: wetlands identified as “significant” in the Goal 5 Element of the Comprehensive Plan;*
  - b. *Notification Wetlands: wetlands shown on the Statewide Wetland Inventory (discussed in the Goal 5 Element of the Comprehensive Plan).*

*When required, the verification of zone boundaries shall be carried out in conjunction with the property owner and the Oregon Division of State Lands.*

**CPAC RESPONSE:** The site contains notification wetlands which were delineated by the project biologist and a report was sent to the Division of State Lands. The Division of State Lands has concurred with the biologist’s delineation. No application for fill or removal has been submitted to or approved by the Division of State Lands. This application proposes to eliminate approximately 1.1 acres of existing wetlands.

Applicant states: “Most of the wetlands on the property used to be part of the fairways for the golf course. The fairways were leveled, planted to non-native grasses, and were kept mowed. Because of this past usage there are almost no native plants, except along the creek edge. As such, the wetlands have minimal values for most of the wetland functions. The wetlands have essentially no structural diversity for wildlife habitat, and minimal food availability. There is little shading of the creek for a significant portion of its length through the property. Storm-water detention is low since the vegetation consists mostly of grasses, which do little to slow water.”

The CPAC notes that the applicant has not provided any baseline information to support the statements above and does not believe this statement accurately describes the current site condition. In fact, the golf course was closed approximately 4 years ago and all management activities on the site were terminated. In the intervening years, natural regeneration has been occurring rapidly on all areas of the site including wetland and riparian resource areas. This includes natural seeding of native trees, shrubs and wetland plants.

**NOTE: Subsequent to the presentation of these draft comments at the August 1, 2009 CPAC meeting, applicants had the subject site mowed.**

The application further states: “Due to the constraints on the site presented by certain wetlands that have minimal values for most wetland functions, there will be some impacts associated with this development. The impacts however will be permitted through the Division of State Lands and mitigated in accordance with the permit, with the ultimate result consisting of improved wetland resource areas. This criterion is met.”

The CPAC concludes that, with the exception of one proposed road crossing of the stream, the impacts mentioned above (and shown in the application materials) including wetland filling for

creation of residential lots, road construction, water quality swale construction, trail construction etc. are, in fact, avoidable impacts. The Division of State Lands rules require avoidance of wetland impacts whenever feasible. The CPAC concludes that the subject site includes sufficient upland areas to support a reasonable level of residential development even if not at the density currently proposed/envisioned by the applicant. This criterion is not met.

In addition, Policy 9.2 of the Neskowin Community Plan addresses the need to provide greater protection of wetland resources within the Neskowin Community Growth Boundary. The Neskowin Community Plan specifically recommends a number of measures such as establishing riparian vegetation, establishing and increasing setbacks from the creek, and other measures to protect and enhance Hawk Creek. Since the Neskowin Community Plan was adopted in 1999, endangered species have been found in Hawk Creek and Hawk Creek has been determined to be essential habitat for these and other species. The proposed cluster subdivision ignores these policies and the density allowed by the proposal will cause further deterioration of the natural resources in and adjacent to Hawk Creek.

In addition to direct conflict with policies in the Neskowin Community Plan, the zone change proposal is inconsistent with other Tillamook County Comprehensive Plan policies applicable to Hawk Creek. For example, the Comprehensive Plan includes provisions for preservation and protection of big game in a big game corridor used by a number of wildlife species, including Roosevelt elk, cougar, deer and black bear. Recent attacks by cougar on horses in the area and consistent presence of elk, cougar and black bear throughout Neskowin requires very careful consideration of how the Comprehensive Plan requirements are being implemented under the existing densities. Adding significant new residential densities by the proposed cluster subdivision, especially at full build out, is likely to seriously exacerbate human/wildlife conflicts.

*(2) USES PERMITTED:*

*(a) Significant Goal 5 Wetlands:*

**CPAC RESPONSE:** Due to the significance of Hawk Creek as designated “essential salmon habitat” the wetlands immediately adjacent and connected to Hawk Creek are incorrectly omitted from the Goal 5 Wetlands inventory, and this criterion is not met. The County has been on notice of the ecological sensitivity of Hawk Creek for at least a year (see letter of August 20, 2008 to Valerie Soilihi, Tillamook County Community Development Dept., from Ron Rehn and David Nuzum, Oregon Department of Fish and Wildlife). The CPAC requests that Tillamook County re-evaluate the Goal 5 status of the Hawk Creek wetlands before permitting any development that may impact those wetlands.

*(b) Notification Wetlands:*

*(1) uses permitted outright or conditionally in the underlying zone shall be permitted subject to approval by the Oregon Division of State Lands.*

**CPAC RESPONSE:** The Division State Lands has not received an application for fill/removal for this proposed development. The CPAC believes that most wetland impacts identified in the application are avoidable and therefore may not be permitted. This criterion has not been met.

*(3) STANDARDS: The following standard shall be met in addition to the standards of the underlying zone.*

*(a) Where dwellings are permitted in the underlying zone, the density of allowed development shall be determined by the size of the entire parcel.*

**CPAC RESPONSE:**

*(b) Development activities, permits, and land-use decisions affecting a Notification Wetland require notification of the Division of State Lands, and are allowed only upon compliance with any requirements of that agency. The applicant shall be responsible for obtaining approval from the Division of State Lands for activities on Notification Wetlands.*

**CPAC RESPONSE:** The applicant has not filed an application or received approval from the Division of State Lands. This criterion is not met.

*Section 3.060, Flood Hazard Overlay Zone (FH)*

*(1) Purpose: It is the purpose of the FH zone to promote the public health, safety and general welfare and to minimize public and private losses of damages due to flood conditions in specific acres by provisions designed to:*

- a. Protect human life and health;*
- b. Minimize expenditure of public money for costly flood control projects;*
- c. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the public;*
- d. Minimize prolonged business interruptions;*
- e. Minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges located in areas of special flood hazards;*
- f. Help maintain a stable tax base by providing for the sound use and development of areas of special flood hazard so as to minimize future flood blight areas'*
- g. Ensure that those who occupy the areas with special flood hazard areas assume responsibility for their actions.*
- h. Maintain the functions and values associated with Special Flood Hazard Areas which reduce the risk of flooding.*

**CPAC RESPONSE:** The application states: "The site contains a 100 year floodplain as shown on the submitted plans. The floodplain information was taken directly from the applicable FEMA mapping for this area. No development is proposed within the floodplain area which lies at a mean sea level of plus 13 feet. The minimum anticipated finished floor for any structure within the Cluster Subdivision will be 22 feet above mean sea level which puts finished floors 9 feet above the 100 year floodplain. As a result, the proposal promotes health, safety and general welfare and minimizes public or private losses of damages due to flood conditions as required by this section. These criteria are met."

The CPAC notes that the Drainage Report in the application materials includes new impervious area for only 25 lots instead of full build out. This makes a complete evaluation of flooding and its associated impacts (including off-site/down stream flooding) impossible. The Drainage Report shows that impervious surfaces associated with the first 25 lots will increase from the existing 0% of the site to 46%. The report fails to address the conveyance capacity of the culverts that pass Hawk Creek flows under Highway 101. The report fails to give any assessment of off-site/downstream impacts (including flooding of Highway 101, Neskowin Marsh Golf Course and portions of Neskowin village) for the proposed 25 lots as well as future development phases which the applicants have stated will include 75 or more lots. The report fails to assess the impact of significantly increased storm water flows on Hawk Creek. The applicant should be required to expand the scope of the report to address deficiencies noted above. The complete report should be independently reviewed prior to any approval of this application. This criterion is not met.

*(1) GENERAL STANDARDS: In all areas of special flood hazards the following standards are required:*

#### **ANCHORING**

- (a) All new construction and substantial improvements shall be anchored to prevent flotation, collapse or lateral movement of the structure.*
- (b) All manufactured dwellings must likewise be anchored to prevent flotation, collapse or lateral movement, and shall be installed using methods and practices that minimize flood damage. Anchoring methods may include, but are not limited to, use of over-the-top or frame ties to ground anchors (See FEMA's "Manufactured Home Installation in Flood Hazard Areas" guidebook for techniques). A certificate signed by a registered architect or engineer which certifies that the anchoring system is in conformance with FEMA regulations shall be submitted prior to final inspection approval.*

#### **CPAC RESPONSE:**

#### **CONSTRUCTION MATERIALS AIVD METHODS**

- (c) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.*
- (d) All new construction and substantial improvements shall be constructed using methods and practices that minimize flood damage.*
- (e) Electrical, heating, ventilation, plumbing, and air-conditioning equipment and other service facilities shall be elevated to three feet above flood level so as to prevent water from entering or accumulating within the components during conditions of flooding.*

#### **CPAC RESPONSE:**

#### **UTILITIES**

- (f) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of flood water into the system.*
- (g) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters.*

*(h) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.*

**CPAC RESPONSE:**

***SUBDIVISION AND PARTITION PROPOSALS***

*(i) All subdivision and partition proposals governed by the Land Division Ordinance shall be consistent with the need to minimize flood damage.*

**CPAC RESPONSE:** See response to Section 3.060(1) Flood Hazard Overlay Zone above. The application materials do not demonstrate that flood damage will be minimized by failing to assess/evaluate potential downstream and adjacent property flooding impacts. There is nothing in the application materials to support a finding of compliance with the Land Division Ordinance. This criterion is not met.

*(j) All subdivision and partition proposals governed by the Land Division Ordinance shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage.*

**CPAC RESPONSE:** It is unclear from the information submitted by applicant how this criterion will be met.

*(k) All subdivisions and partition proposals governed by the Land Division Ordinance shall have adequate drainage provided to reduce exposure to flood damage.*

**CPAC RESPONSE:** As noted in previous responses, the application materials fail to provide adequate analysis to demonstrate that adequate drainage is provided to reduce exposure to flood damage on downstream and adjacent property areas. This criterion is not met.

*(l) Where base flood elevation data has not been provided or is not available from another authoritative source, it shall be generated for subdivision and partition proposals governed by the Land Division Ordinance and other proposed developments which contain at least 50 lots or 5 acres (whichever is less).*

**CPAC RESPONSE:**

***BUILDING AND MANUFACTURED DWELLING PERMITS***

*(m) Where elevation data is not available either through the Flood Insurance Study or from another authoritative source, applications for building permits and/or manufactured dwelling permits shall be reviewed to assure that proposed construction will be reasonably safe from flooding. The test of reasonableness is at local judgment and includes use of historical data, high water marks, photographs of past floodings, etc., where available. Failure to elevate at least three feet above grade in these zones may result in higher insurance rates.*

**CPAC RESPONSE:**

*(5) SPECIFIC STANDARDS FOR NUMBERED A ZONES (A1-A30). In all areas of special flood hazards where base flood data has been provided as set forth in Section 2.020 (2) or other base flood data are utilized, the following provisions are required:*

**RESIDENTIAL CONSTRUCTION**

*(a) New construction and substantial improvement of any residential structure (including manufactured dwellings) shall have the lowest floor, including basement, at a minimum of three feet above base flood elevation.*

**CPAC RESPONSE:**

*(b) Fully enclosed areas below the lowest floor that are subject to flooding are prohibited, or shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of flood waters. Designs for meeting this requirement must either be certified by a registered professional engineer or must meet or exceed the following minimum criteria:*

- (1) A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.*
- (2) The bottom of all openings shall be no higher than one foot above grade.*
- (3) Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwaters.*

**CPAC RESPONSE:**

*(12) DEVELOPMENT PERMIT PROCEDURES: A development permit shall be obtained before construction or development begins within any area of special flood hazard zone. The permit shall be for all structures including manufactured dwellings, and for all development including fill and other development activities, as set forth in the Definitions contained in this Section of the Land Use Ordinance.*

**CPAC RESPONSE:**

**ARTICLE IV - SUPPLEMENTARY REGULATIONS**

**SECTION 4.005: RESIDENTIAL AND COMMERCIAL ZONE STANDARDS**

*PURPOSE: In all RESIDENTIAL AND COMMERCIAL ZONES, the purpose of land use standards are the following:*

- (1) To ensure the availability of private open space;*
- (2) To ensure that adequate light and air are available to residential and commercial structures;*
- (3) To adequately separate structures for emergency access;*
- (4) To enhance privacy for occupants of residences;*

- (5) *To ensure that all private land uses that can be reasonably expected to occur on private land can be entirely accommodated on private land, including but not limited to dwellings, shops, garages, driveways, parking, areas for maneuvering vehicles for safe access to common roads, alternative energy facilities, and private open spaces;*
- (6) *To ensure that driver visibility on adjacent roads will not be obstructed;*
- (7) *To ensure safe access to and from common roads;*
- (8) *To ensure that pleasing views are neither unreasonably obstructed nor obtained;*
- (9) *To separate potentially incompatible land uses, ’*
- (10) *To ensure access to solar radiation for the purpose of alternative energy production.*

**CPAC RESPONSE:** The application states: “This development complies with the Land Use Standards of the Zoning and Land Division Ordinances. These standards were developed and placed within the code to ensure that the purposes above are met. By meeting the land use standards contained within the County’s Zoning and Land Division Ordinances, the development complies with these purposes.”

The CPAC believes the application fails to adequately respond to the following purposes:

- (6) *To ensure that driver visibility on adjacent roads will not be obstructed;*
- (7) *To ensure safe access to and from common roads;*

Specifically, the CPAC concludes that the application fails to address visibility and safe access to and from Highway 101 on Summit Road. Additionally, the CPAC has not been provided any comments related to the proposed development by ODOT. The application does not meet these purposes.

#### **SECTION 4.010: CLEAR-VISION AREAS**

- (1) *PURPOSE: The purpose of a CLEAR-VISION AREA is to ensure safe sight distance for drivers approaching street intersections.*
- (2) *A CLEAR-VISION AREA shall be maintained on the corners of all properties located at the intersection of two streets or private ways or a street or private way and a railroad.*
- (3) *A CLEAR-VISION AREA is a triangular area consisting of two equidistant sides which are lot lines measured from the point of intersection of the lot lines abutting streets; or, where the lot lines have rounded corners, such lines extended straight to their point of intersection, and then so measured; and a line joining the two non-intersecting ends at a distance from their intersection specified in Subsection (5) below.*
- (4) *A CLEAR-VISION AREA shall contain no planting, fence, wall, structure, parked cars, or other temporary or permanent obstructions exceeding thirty inches in height, measured from the top of the highest curb in the CLEAR-VISION AREA or, where no curb exists, from the highest established street center line grade adjacent to the CLEAR-VISION AREA. Trees exceeding this height may be located in this area, provided that all branches and foliage are removed to a height of eight feet above the specified grade.*
- (5) *The following measurements shall establish CLEAR-VISION AREAS:*

*(a) In agricultural or residential zones, the minimum distance shall be 25 feet or, at intersections including an alley, 10 feet.*

*(b) In all other zones, the minimum distance shall be 15 feet or, at intersections including an alley, 10 feet. When the angle of intersection between streets is 30 degrees or less, the distance shall be 25 feet.*

**CPAC RESPONSE:** See comment above related to intersection of Summit Road and Highway 101.

*SECTION 4.020: SIGNS*

**CPAC RESPONSE:**

*SECTION 4.030: OFF-STREET PARKING AND OFF-STREET LOADING REQUIREMENTS*

*(2) PARKING SPACE: A single parking space shall be at least 8 feet by 20 feet in size.*

**CPAC RESPONSE:** Application states: “No off street parking space is proposed that will not meet these dimensional requirements. It will be the responsibility of the homeowner or builder to ensure adequate garage and driveway depth and width for final compliance.”

It is not possible from the information provided to determine if each lot will actually allow for compliance with this criterion.

*(3) TIMING OF COMPLIANCE: At the time any structure or use is erected or enlarged, or the use of any parcel or structure is changed, all required off-street parking spaces and loading areas provided in conjunction with an existing use shall not be reduced below the minimum requirements of this Ordinance.*

**CPAC RESPONSE:**

*(5) USE OF REQUIRED PARKING AREAS: Parking areas required by this Section are designated for the operable vehicles of residents and their guests, and the owner, customer, patrons, and employees of commercial or industrial activities only. Vehicle or material storage, or the parking of vehicles used to conduct an activity, shall require additional parking areas.*

**CPAC RESPONSE:**

*(6) DRAINAGE: Areas used for standing and maneuvering of vehicles shall have a surface that is suitable for all-weather use, and shall be drained so as to avoid the flow of water across public sidewalks and streets.*

**CPAC RESPONSE:**

*(13) PARKING SPACE REQUIREMENTS; Requirements for types of building and uses not specifically listed herein shall be determined by the Department, based upon the requirements for comparable uses either listed below or active elsewhere in the county.*

*(a) RESIDENTIAL: Two spaces for the first dwelling unit, and one space for each additional dwelling unit.*

**CPAC RESPONSE:**

**SECTION 4.080. REQUIREMENTS FOR PROTECTION OF WATER QUALITY AND STREAM BANK STABILIZATION**

*(1) The following areas of riparian vegetation are defined:*

*(a) Fifty (50) feet from lakes and reservoirs of one acre or more, estuaries, and the main stems of the following rivers where the river channel is more than 15 feet in width; Nestucca, Little Nestucca, Three Rivers, Tillamook, Trask, Wilson, Kilchis, Miami. Nehalem and North and South Fork Nehalem River.*

**CPAC RESPONSE:**

*(b) Twenty-five (25) feet from all other rivers and streams where the river or stream channel is greater than 15 feet in width.*

**CPAC RESPONSE:** Application states: “Hawk Creek flows through the site and has a channel generally greater than 15 feet in width with a few areas less than 15 feet in width. Those parts of creek that are less than 15 feet in width technically require a 15 foot riparian corridor, but the proposal is to provide 25 feet along the entire creek. Furthermore, although not required, the proposal will provide a conservation easement covering the entire parcel of land proposed to be located within Open Space Tract B as well as 25-foot conservation easement along both sides of Hawk Creek from the west edge of lot 10 to the east edge of Tract F. Part of the conservation easement north of these lots will be recorded on the residual parcel. This criterion is met.”

CPAC notes that Hawk Creek is known habitat for Coho salmon (a federally listed threatened species) and coastal cutthroat trout. If this application is to be approved, a riparian zone, based on best available science along with the creation of the conservation easement should be included as conditions of approval with specific directives related to the establishment and maintenance of native riparian vegetation.

In addition, Policy 9.2 of the Neskowin Community Plan addresses the need to provide greater protection of streams within the Neskowin Community Growth Boundary. The Neskowin Community Plan specifically recommends a number of measures such as establishing riparian vegetation, establishing and increasing setbacks from the creek, and other measures to protect and enhance Hawk Creek. Since the Neskowin Community Plan was adopted in 1999, endangered species have been found in Hawk Creek and Hawk Creek has been determined to be essential habitat for these and other species. The proposed cluster subdivision ignores these

policies and the density allowed by the proposal will cause further deterioration of the natural resources in and adjacent to Hawk Creek.

In addition to direct conflict with policies in the Neskowin Community Plan, the zone change proposal is inconsistent with other Tillamook County Comprehensive Plan policies applicable to Hawk Creek. For example, the Comprehensive Plan includes provisions for preservation and protection of big game in a big game corridor used by a number of wildlife species, including Roosevelt elk, cougar, deer and black bear. Recent attacks by cougar on horses in the area and consistent presence of cougar and black bear throughout Neskowin requires very careful consideration of how the Comprehensive Plan requirements are being implemented under existing densities. Adding significant new residential densities by the proposed cluster subdivision, especially at full build out, is likely to seriously exacerbate human/wildlife conflicts.

*(c) Fifteen (15) feet from all perennial rivers and streams where the river or stream channel is 15 feet in width or less.*

**CPAC RESPONSE:**

*(3) Exemptions from (2) above and from the applicable setback requirement for the front or rear yard that is opposite the riparian area may be granted without a variance for uses on:*

*(a) Lots located in areas identified in the Comprehensive Plan's Goal 2 exception element as "built and committed" and which existed as of the date of adoption of this Ordinance, and single family residential "lots of record" as defined and used in Chapter 884 Oregon Laws 1981 as amended, with a depth measured according to (1) above that is:*

*(1) Less than 95 feet in places where the area of riparian vegetation is 50 feet wide; or*

*(2) Less than 70 feet in places where the area of riparian vegetation is 25 feet wide.*

*(b) Other lots in identified built and committed areas and other lots of record where the combination of setbacks required by this section result in a buildable lot depth of less than 45 feet.*

*Exemptions from the riparian setback shall be the minimum necessary to accommodate the proposed use after the yard opposite the riparian area has been reduced to a width of no less than ten feet.*

**CPAC RESPONSE:**

**ARTICLE V - PROPERTY USE REQUIREMENTS AND EXCEPTIONS**

**SECTION 5.060: ACCESS**

*Every lot and parcel shall abut a street other than an alley, an approved private way, or an approved private ACCESS easement, for at least 25 feet.*

**CPAC RESPONSE:**

**SECTION 5.070: DUAL USE OF REQUIRED OPEN SPACE**

*No lot area, yard, or off-street parking or loading area which is required by this Ordinance for one use shall be a required lot area, yard, or off-street parking or loading area for another use, unless otherwise specifically allowed by this Ordinance.*

**CPAC RESPONSE:**

**SECTION 5.080. DISTANCE BETWEEN BUILDINGS**

*A minimum distance of six feet shall be maintained between a building designed for dwelling purposes and any other freestanding buildings located on the same property.*

**CPAC RESPONSE:**

**TILLAMOOK COUNTY LAND DIVISION ORDINANCE**

**SECTION 3: SCOPE OF REGULATIONS**

*(1) A person proposing to divide land, through a Major Partition or a Subdivision, or by the creation of a public or private way, shall submit plans and final documents for approval as provided in this Ordinance.*

**CPAC RESPONSE:**

*(2) All Subdivision plats shall be approved by the Commission in accordance with these regulations. Partitions and other changes in property boundary lines shall be approved by the Department in accordance with these regulations.*

**CPAC RESPONSE:**

*(3) No deed for a parcel created through a Major Partition shall be filed in the office of the County Clerk without the prior approval, by the Department, of the Major Partition.*

**CPAC RESPONSE:**

*(4) No Subdivision shall be filed in the office of the County Clerk without the signature of the Chairman of the Planning Commission and all other signatures required by law.*

**CPAC RESPONSE:**

*(5) Approval of a final plat for a Subdivision or a final plan for a Major Partition shall be void 30 days after the final approving signature is made thereon, unless the plat or an instrument*

*creating the approved road in a Major Partition has been recorded in the office of the County Clerk.*

**CPAC RESPONSE:**

**SECTION 4: PRE-APPLICATION MEETING; BACKGROUND INFORMATION**

*(1) All developers shall complete a pre-application form obtained from the Department, and are encouraged to arrange a pre-application meeting for the purpose of informing the Department of their proposed land divisions.*

*(2) The Department shall make available such background information as may be on file relating to the general area of the partition or Subdivision, and any plans the County may have or know of for development in the area upon the request of the developer. The Department shall advise the developer of the design standards, improvement requirements, and procedures established by the County for the review and approval of land divisions.*

**CPAC RESPONSE:**

**SECTION 5. LARGE LOT LAND DIVISIONS**

*(1) All Major Partitions and Subdivisions which are within Community Growth Boundaries as designated in the Land Use Ordinance, or are within one mile of either Urban or Community Growth Boundaries, and which contain parcels or lots which are over 11,000 square feet in size, must provide the following materials as part of Tentative Plan or plat review:*

*(a) A map showing the entire tract hypothetically divided at urban densities sufficient to show that the proposed roads and property lines will not preclude the actual establishment of said hypothetical lot lines; and*

**CPAC RESPONSE:**

*(b) Proposed restrictions on building locations which will permit subsequent division of all proposed lots or parcels at urban densities to the extent possible given topographic or other physical constraints.*

**CPAC RESPONSE:**

*(2) All plans for land divisions in areas described above shall be accompanied by consent forms signed by the property owner agreeing to connect to, and to pay their equitable share of costs for, any sanitary sewer, storm drainage, or road improvements that may be necessary to serve the proposed development in the future. Such forms shall stipulate that the agreement is to run with the land, and shall be binding on all subsequent purchasers. The forms shall be filed in the office of the County Clerk prior to final approval of the proposed land division.*

**CPAC RESPONSE:** The applicants appear to propose to defer compliance with this criterion to a later date, and apparently, to subsequent property owners. The applicants misread the criterion. The code clearly requires that the signed consent forms accompany “all plans for land divisions.” The requirement for filing the consent forms with the County Clerk prior to final approval is a separate requirement in the plain language of the criterion. This criterion is not met.

## *SUBDIVISIONS*

### *TENTATIVE SUBDIVISION PLAT*

#### *SECTION 20: APPLICATION AND FILING FEES; DISTRIBUTION OF TENTATIVE PLAT; NOTIFICATION AND HEARING*

*(1) The developer shall prepare and file with the Department an application form together with a filing fee. Such fees shall be set by order of the Board, and must be paid before the application is deemed complete. Application fees are not refundable regardless of Commission action.*

#### **CPAC RESPONSE:**

*(2) The developer shall prepare a tentative plat, to include plans of proposed improvements, and any supplementary material required to indicate the general program and objectives of development. The tentative plat and plans need not be finished drawings, but they shall show pertinent information to scale in order that the Commission may properly review the proposed development.*

**CPAC RESPONSE:** Application states: “A tentative plat has been included in the plan set for the proposed development. The plan set includes plans of proposed improvements and the supplementary materials indicate the general program and objectives of the development. Sufficient detail has been provided on the plans so that the Commission can properly review the proposed development in accordance with the applicable land use ordinances. This criterion is met.”

As previously detailed in the forgoing sections of this document, the CPAC believes that the application is lacking adequate information that will allow a proper review by the Planning Commission. This criterion is not met.

*(3) Twenty-five copies of the tentative plat and all supplementary maps shall be submitted to the Department.*

#### **CPAC RESPONSE:**

*(4) Upon receipt of the tentative plat and supplementary material, the Department shall furnish one copy each to the County Surveyor, the County Health Department, the County Sanitarian, the County Public Works Department, the County Assessor, and the appropriate school and fire districts. If the proposed Subdivision lies within one mile of the city limits of an incorporated city, or within the Urban Growth Boundary of a city, the Department shall furnish one copy to*

*the Planning Commission or City Engineer for that city. If the proposed Subdivision is within 500 feet of a state highway, one copy shall be furnished to the Oregon State Highway Department. Where the Department determines that it is necessary to do so, it shall furnish a copy of the plans to the Soil Conservation Service, the appropriate water and sewer districts, the telephone service and electric service companies, and appropriate state or federal resource protection agencies.*

**CPAC RESPONSE:**

*(5) All officials and agencies to which the Department furnished a copy of the proposed Subdivision shall be given 30 days to review the plat and to suggest any revisions that appear to be indicated to meet the purpose of this Ordinance.*

**CPAC RESPONSE:**

*(6) Notice of Public Hearing shall be mailed to all property owners within 250 feet of the external boundary of the proposed Subdivision, and shall be published in a newspaper of general circulation in the County at least ten days prior to the date of the Planning Commission Hearing to review the tentative plat.*

**CPAC RESPONSE:**

*(7) After Public Notice, the Department shall present the tentative plat to the Commission for its review, at the first possible public hearing after the 30-day comment period has closed.*

**CPAC RESPONSE:**

**SECTION 21: TENTATIVE PLAT: GENERAL INFORMATION**

*The following information shall be required on all tentative Subdivision plats:*

- (1) Proposed name of the Subdivision, which shall neither duplicate nor resemble the name or another Subdivision in the County, and which shall be approved by the Commission.*
- (2) Date, north point, and scale of the drawing.*
- (3) Description of the Subdivision sufficient to define the location and boundaries of the proposed tract.*
- (4) Clear identification of the map as a tentative plat.*
- (5) Names and addresses of the owner(s), developer, and the engineer or surveyor.*

**CPAC RESPONSE:**

**SECTION 22: TENTATIVE PLAT; EXISTING CONDITIONS**

*The tentative plat shall contain the following information, showing the existing conditions in and surrounding the proposed Subdivision:*

- (1) A vicinity map, showing Subdivisions and undivided land ownerships adjacent to the proposed Subdivision.*
- (2) The location, width, and name of all right-of-ways and roadways within or adjacent to the tract, and all easements, section lines and monuments, where applicable.*

- (3) *The location of existing sewers, water mains, culverts, drain pipes and electric lines within and adjacent to the Subdivision, and the elevations of sewer trunk lines at the points of probable connection.*
- (4) *Contour lines related to an established bench mark or other datum approved by the County Surveyor, and having minimum intervals as follows:*
  - a) *For slopes of less than 10 percent; indicate the direction of slope by means of arrow, together with not less than four evenly distributed spot elevations per acre.*
  - b) *For slopes of 10 to 20 percent; 5 feet.*
  - c) *For slopes of 20 to 40 percent; 10 feet.*
  - d) *For slopes over 40 percent; 20 feet.*
- (5) *The location of water bodies, waterways, areas subject to flooding, floodplains and floodway boundaries.*
- (6) *Natural features such as rock outcroppings, aquifer recharge areas, marshes, beaches, dunes and tide flats.*
- (7) *Existing property uses, and the location of existing structures that are to remain on the tract after its Subdivision.*
- (8) *The location, width and type of roadway to be used as primary access to the nearest county road, city street, or state highway.*

**CPAC RESPONSE:**

**SECTION 23: TENTATIVE PLAT; PROPOSED PLAN OF LAND DIVISION**

*The Tentative Plat shall contain the following information, showing the proposed plan of land division:*

- (1) *The name, location, width, approximate grades, and curve radii of streets and pedestrian ways, showing how proposed streets may be extended to intersect existing streets.*
  - a) *All streets and roads reserved for private use shall be clearly indicated, and the reservations or restrictions relating to such streets shall be described.*
- (2) *Typical cross section of all proposed roadways.*
- (3) *The location, width, and purpose of all easements.*
- (4) *The location and approximate dimensions of all lots, and proposed lot and block numbers.*
- (5) *A Tentative Plan for storm water drainage.*
- (6) *The location and use of all lots intended for uses other than single family dwellings.*
- (7) *A Tentative Plan for the supply and distribution of water.*
- (8) *A Tentative Plan for sewage disposal.*
- (9) *Certificates or letters from utility companies or districts proposed to be used to serve the Subdivision, stating that they are capable of providing service to the proposed development.*
- (10) *Proposed deed restrictions, if any, in outline form.*

**CPAC RESPONSE:**

**SECTION 24: TENTATIVE PLAT; SUPPLEMENTAL INFORMATION**

*Any of the following information may be required by the Department to supplement the proposed plan of Subdivision:*

- (1) *If the Subdivision plat occupies only part of a tract owned or controlled by a developer, a sketch of tentative street layout in the undivided portion.*

**CPAC RESPONSE:**

- (2) *Special studies of areas which appear to be hazardous due to local geologic conditions.*

**CPAC RESPONSE:**

- (3) *Were the plat includes natural features subject to the conditions or requirements contained in the County's Land Use Ordinance, materials shall be provided to demonstrate that those conditions and/or requirements can be met.*

**CPAC RESPONSE:** Application states: "Hawk Creek and its associated wetlands are the dominant natural features on site subject to requirements contained in the County's Land Use Ordinance. Two other small tributaries are also protected. The applicant has submitted a wetland delineation completed by a licensed biologist and this delineation has concurrency with the Division of State Lands. The applicant has included a conservation easement over then entire open space Tract B and along both sides of Hawk Creek from the western boundary of lot 10 to the eastern boundary of Tract F for protection as shown on the plans. In addition, the applicant, as required by the State and County, will file a permit for minor impacts to wetland areas. The permit will result in requirements for the applicant to mitigate for the impacts thus improving the wetland resources on site overall. This permit is the responsibility of the State and by complying with its requirements; the applicant complies with County Ordinances."

Previous comments have addressed shortcomings regarding the site's natural features and recommend that the conservation easements be required as a condition of approval. CPAC notes that at the time of application no conservation easement has been applied and more importantly, no organization or agency has been identified to hold the conservation easement. In meetings with the applicants, it was suggested that the conservation easement might be granted to the homeowner's association. CPAC questions the appropriateness of this option in light of the obvious conflict of interest as well as the clear lack of expertise that would be offered by a homeowners association. CPAC recommends that applicant's be required to identify a suitable third party organization or agency that will accept and manage the conservation easement prior to the approval of this application. This criterion is not met.

- (4) *Approximate center line profiles of streets, including extensions for a reasonable distance beyond the limits of the proposed Subdivision, showing the proposed finished grades and the nature and extent of construction.*

**CPAC RESPONSE:**

- (5) *Profiles of proposed drainage ways.*

**CPAC RESPONSE:** Application states: "There are no proposed drainage ways. This item does not apply."

CPAC notes that application materials indicate that impervious surfaces after development of just the first 25 lots will increase to 46% of the site up from the existing 0%. This change to the site will significantly impact storm water runoff and alter drainage of the site thereby requiring the establishment of new drainage ways. CPAC believes this item is applicable and must be addressed by the applicant's prior to approval of this application. This criterion is not met.

*(6) In areas subject to flooding, materials shall be submitted to demonstrate that the requirements of the Flood Hazard Overlay (FHO) zone of the County's Land Use Ordinance will be met.*

**CPAC RESPONSE:** Application states: "The site contains a FEMA designated 100 year floodplain near the highway. This floodplain is shown on the submitted plans and no development is proposed to occur within the designated 100 year floodplain. The floodplain elevation on the site is 13 feet above mean sea level. The homes are proposed to have finished floors anticipated at an elevation of 9 feet above the 100 year floodplain. This places them substantially higher than the flood plain as demonstrated on the grading plans and within this narrative. The locations of the lots and the finished floor heights are designed to protect the proposed homes from water intrusion."

As previously noted in this document, CPAC concludes that the Flood Hazard Overlay zone applies not only to the subject site but adjacent and downstream properties as well. Application materials fail to address the significant increase in runoff from the subject property and the associated impacts to Highway 101, adjacent private property and downstream properties such as Neskowin Marsh Golf Course and portions of the village of Neskowin. This criterion is not met.

*(7) If lot areas are to be graded, a plan showing the nature of cuts and fills, and information on the character of the soil.*

**CPAC RESPONSE:**

*(8) Proposed method of financing the construction of common improvements such as street, drainage ways, sewer lines and water supply lines.*

**CPAC RESPONSE:**

#### **SECTION 25: REVIEW OF TENTATIVE PLAT**

- (1) The Commission, after public notice, shall review the tentative plat and the reports of appropriate officials and agencies at a regular public hearing. The Commission may approve, approve with conditions, or disapprove the tentative plat as submitted.*
- (2) Approval of the tentative plat shall indicate approval of the final plat, provided that there is no change in the Subdivision plan and the developer complies with the conditions of approval and the requirements of this Ordinance.*
- (3) Approval of the tentative plat shall be for a period of 21 months. Such approval may be extended according to the provisions of Section 30 of this ordinance.*

- (4) *If the Commission does not approve the tentative plat, it shall express its reasons for disapproval. The Department shall ensure that such reasons have been addressed or rectified before the preliminary plat is again considered by the Commission.*
- (5) *Notification of the Commission’s decision shall be provided by letter to the developer, utilizing an annotated copy of the preliminary plat where necessary.*

**CPAC RESPONSE:**

**SECTION 35: CLUSTER SUBDIVISIONS**

*(1) All Cluster Subdivisions shall be reviewed according to the provisions contained in this Ordinance. Standards for improvements in Cluster Subdivisions shall be as set forth in this Ordinance. All applicable Land Use Ordinance standards shall be as set forth therein. Notwithstanding minimum lot size requirements found in the Land Use Ordinance, minimum lot sizes in Cluster Subdivisions for detached single-family dwellings shall be as follows:*

**CPAC RESPONSE:**

*ZONE MINIMUM CLUSTER LOT SIZE (square feet)*

<i>R-1.....</i>	<i>6,000</i>
<i>R-2.....</i>	<i>4,000</i>
<i>R-3.....</i>	<i>4,000</i>
<i>RR.....</i>	<i>12,000</i>

*Lot sizes may be further reduced only in Cluster Subdivisions which involve condominiums or other types of attached, individually owned, dwellings.*

**CPAC RESPONSE:** See previous comment for Section 3.322 (4)

*(2) Setbacks shall be as follows in Cluster Subdivisions for detached single family dwellings;*

<i>Front/Rear yards.....</i>	<i>10 feet</i>
<i>Side yards.....</i>	<i>5 feet</i>
<i>Street side yards.....</i>	<i>10 feet</i>

*The Department may require greater setbacks from collector or arterial roads. All multifamily dwellings must maintain 25-foot setbacks from all plat boundaries. Attached row houses or condominiums may be platted with no side yards. No two buildings situated on multiple lots shall be constructed closer than 20feet to each other, unless, based on topography, view enhancement, preservation of additional open space, or other similar benefits, a different separation standard is established by the Planning Commission in approving a Subdivision or planned development. This standard shall take into account applicable regulations which address public health and safety.*

**CPAC RESPONSE:**

*(3) The plans submitted for review of Cluster Subdivisions, as defined in Section 2 of this Ordinance, shall include the following, in addition to meeting the Subdivision review requirements of this Ordinance.*

*(a) Tentative Plan:*

*(1) An analysis of the allowable development density of the tract to be developed, according to the applicable provisions of the Tillamook County Land Use Ordinance, and calculated as follows:*

*(a) The total acreage of the tract to be developed, minus the total area of all existing easements, roads or road right-of-ways, and all other areas which cannot be developed due to the existence of sensitive natural features protected by the requirements of the Land use ordinance, is considered the gross acreage of the tract to be developed;*

*(b) The gross acreage, reduced by fifteen percent (15%) for proposed roads and parking areas, is considered to be the net acreage for development;*

*(c) The net acreage of the tract shall be divided by the minimum lot size for lots for single-family dwellings in the applicable zone, under the applicable provisions for sewage disposal, to determine the maximum number of dwellings allowed in the Cluster.*

**CPAC RESPONSE:**

*(2) A map of the proposed areas designated for common ownership, accompanied by a discussion of the nature of their proposed uses and the site limitations or justifications for creating a Cluster subdivision on the tract.*

**CPAC RESPONSE:** Application states, in part: “Tract F is a recreational common area which will be reserved for future uses such as but not limited to: recreational facilities, landscaped areas/benches, clubhouse, common outdoor area for small events, BBQ/picnic area and a playground. Final amenity selection and improvements will take place at a later date.”

CPAC is concerned that application lacks clarity and certainty related to type and timing of recreational amenities. This short coming makes full evaluation of the cluster subdivision difficult, if not impossible. CPAC recommends that applicant select recreational amenities as part of this application and commit to a schedule to construct these amenities. Additionally, selected amenities and construction schedule should be included as a condition of approval.

Application further states, in part: “Tract G will remain as a natural open space feature including wetlands and trees. Some wetland mitigation may occur within this tract to enhance its natural character.”

As previously noted, CPAC concludes the majority of the proposed impacts to existing wetlands are avoidable and that the subject site contains sufficient upland property to accommodate a reasonable level of development.

*(3) A map of the proposed lots and their building lines showing that each can be built upon within setbacks.*

**CPAC RESPONSE:**

*(4) A map showing parking areas and emergency access routes.*

**CPAC RESPONSE:**

*(5) A draft of the legal documents providing for the ownership and maintenance of the lands held in common, and preventing re-division of any land within the boundaries of the Cluster Subdivision under review.*

**CPAC RESPONSE:** Application states: “The application package includes a draft copy of the proposed CC& R’s providing for the ownership and maintenance of the lands held in common and preventing re-division of any land within the boundaries of the Cluster Subdivision under review which includes lots 1 through 25 and Tracts A through G.”

CPAC finds the draft CC&R’s woefully inadequate in regards to the environmental assets of the site especially in light of applicant’s statements under the heading “Description of Developer’s

Intent” (pages 5-7). Examples of short comings in the draft CC&R’s include but are not limited to:

- Riparian and wetland resources stewardship
- Fencing (wildlife movement)
- Use of native plant material in landscapes
- Prohibition on use of nuisance/invasive species in landscapes
- Disturbance/harassment of wildlife
- Use of herbicides/insecticides within environmentally sensitive areas of the site.

CPAC recommends that CC&R’s be expanded to fully address items above and all items listed in the “Description of Developer’s Intent” prior to the approval of this application.

*(b) Final Plat:*

*(1) The final plat for a Cluster Subdivision shall indicate that further division of any lot within the boundaries of the Subdivision shall not be permitted.*

*(2) The final plat shall indicate that development will be permitted only in accordance with the land uses indicated on the final plat.*

*(3) A copy of the final, recorded legal documents showing ownership, utilization and maintenance of all common areas shown on the final plat. All covenants and agreements shall be perpetual and recorded along with the final plat.*

## **CPAC RESPONSE:**

### **SECTION 41: IMPROVEMENT REQUIREMENTS**

*(1) The following improvements shall be installed at the expense of the developer:*

*(a) WATER SUPPLY. All lots or parcels shall either be served by a public domestic water supply system conforming to State specifications, or the lot size shall be increased to provide such separation of water sources and sewage disposal facilities as the Sanitarian considers adequate for soil and water conditions. Lot sizes in areas without public water supplies shall be adequate to maintain a separation of at least 100 feet between each well and sewage disposal facility, and shall be at least 100 feet wide and 20,000 square feet in area.*

**CPAC RESPONSE:** As discussed above, given the limitations on the Neskowin water supply system and the lack of information in the application to confirm compliance with this criterion, this criterion is not met.

*(b) SEWAGE: All lots or parcels shall either be served by a public or community sewage disposal system conforming to state specifications and the policies and intent of the Comprehensive Plan, or the lot size shall be increased to provide sufficient area for an individual subsurface sewage disposal system. Such systems shall be approved by the*

*County Sanitarian, considering soil and water conditions and the nature of the water supply.*

**CPAC RESPONSE:** See previous comment related to sewer service availability on page 4/5

*(c) STREETS: The developer shall grade and improve all streets in the Subdivision or partition, and shall extend such streets to the paving line of existing streets, in conformance with standards contained in this Ordinance. Street improvements shall include related improvements such as curbs and shoulders to the extent that they are required by the density or character of development. Improvements may be required by the Public Works Department on streets serving, but not within the boundaries of, the Subdivision or through the Major Partition of a parcel with a build out potential of 5 or more parcels. Such improvements which are required in areas not within the plat perimeter shall be limited to the extent required to serve the proposed Subdivision or Major Partition.*

**CPAC RESPONSE:**

*(d) ACCESS: All parcels or lots shall abut a street other than an alley for a minimum of 25 feet at a point which can be developed for safe access.*

**CPAC RESPONSE:**

*(e) DRAINAGE: Such grading shall be performed and drainage facilities installed conforming to County specifications as are necessary to provide proper drainage within the development and other affected areas in order to secure safe, healthful and convenient conditions for the residents of the Subdivision and the general public. When feasible, and when such offsite drainage facilities have the capacity to carry the increased drainage flow, drainage facilities in the development shall be connected to drainage facilities outside the development. Areas subject to inundation shall comply with the applicable provisions of the Tillamook County Land Use Ordinance.*

**CPAC RESPONSE:** The applicant proposes to discharge all storm water into Hawk Creek. Hawk Creek flows in westerly direction from the subject site and is passed under Highway 101 via existing culverts. Applicant has not evaluated the capacity of these culverts or the flood gates located near Neskowin Marsh Golf Course. Additionally, application materials fail to evaluate/analyze the potential for exacerbated flooding of downstream and adjacent properties. This criterion is not met.

*(2) When lot sizes are increased to provide separation of water sources and sewage disposal systems, but are likely to be capable of further division as described in Section 5 of this Ordinance, the requirements of Section 5 must be met.*

**CPAC RESPONSE:**

*(3) Where required by the density or the character of the development, the following improvements may be required:*

*(a) PEDESTRIAN WAYS: A sidewalk not less than five feet wide shall be installed in the center of pedestrian ways.*

**CPAC RESPONSE:** The applicant proposes a cluster development that, at full development, will result in 100 or more single family units in close proximity. The pedestrian way proposed in this application is proposed to be constructed on existing wetlands, is extremely short, is not directly accessed from most of the proposed lots and appears to lead no where. CPAC believes the entire pedestrian system should be at least conceptually designed now and at least 25% constructed as part of this first phase. The pedestrian system should support circulation throughout the site including access to tracts held in common for recreational use. The pedestrian ways should be designed and constructed to comply with the Americans With Disabilities Standards. This criterion is not met.

#### *SECTION 42: IMPROVEMENT STANDARDS*

*The design, improvement, and construction of all roads and streets resulting from the division of land shall comply with the following standards and requirements, to the extent possible given topography, aesthetics, safety, or other design considerations.*

#### *(A) STREETS*

##### *(1) GENERAL*

*(a) The design, improvement, and construction of all streets resulting from the division of land or creation of an access easement shall comply with the following standards and requirements.*

#### **CPAC RESPONSE:**

*(b) These standards apply for both public and private streets.*

#### **CPAC RESPONSE:**

*(c) These standards apply for improvements required within the land division and for any street improvements required to access the land division.*

#### **CPAC RESPONSE:**

*(d) Design exceptions to these standards may be approved by the County Engineer. For subdivisions, such approval is subject to approval ratification by the Planning Commission. The County Engineer may, in concurrence with the Community Development Department, approve design exceptions to these standards for partitions. Design exceptions may only be approved if any one of the following conditions are met;*

#### **CPAC RESPONSE:**

*(e) Except for design exceptions to standards as provided in Section 1.4, deviations from the standards may only be approved through the Variance procedures in Section 51 "VARIANCE APPLICATION" of this ordinance.*

**CPAC RESPONSE:**

**(2) ROADWAY WIDTH AND ALIGNMENT STANDARDS**

*(a) The current edition of "A POLICY on GEOMETRIC DESIGN of HIGHWAYS and STREETS" by the American Association of State Highway and Transportation Officials (AASHTO Manual) shall be used for all roadway standards unless the standards of this ordinance are more restrictive.*

*(b) Average Daily Traffic (ADT) for design is to be determined based on the anticipated future usage of the roadway based on maximum density allowed by the zoning. For residential developments the ADT is assumed to be vehicles per day per residence.*

*(c) The traveled way shall be paved except for:*

*(1) Minimum Local Streets, and*

*(2) Minor Local Streets in zoning with minimum lot sizes of greater than ten (10) acres.*

*All roadways with a profile grade in excess of 12% shall be paved, including the exceptions listed.*

**(3) MINIMUM RIGHT-OF-WAY WIDTHS:**

*(a) The minimum Right-of-Way width for roadways shall be based on their functional classification as follows:*

	<i>Width</i>
<i>Arterial &amp; Collectors</i>	<i>60 ft.</i>
<i>Major Local</i>	<i>60 ft.</i>
<i>Minor Local</i>	<i>50 ft.</i>
<i>Minimum Local</i>	<i>25 ft.</i>

*(b) Side slope easements are required whenever roadway cuts or fills extend beyond the right-of-way.*

*(c) Additional right-of-way may be required when features such as left turn refuges or deceleration tapers are needed.*

*(d) Any right-of-way less than 50 feet wide shall be a private street and be dedicated as an easement.*

**CPAC RESPONSE:**

**4) DEAD END STREETS**

*(a) A dead end street is allowed if all of the following conditions exist:*

- (1) The street is a Minor Local Street or a Minimum Local Street, and*
- (2) the street is not more than 2000 feet in length, and*
- (3) the street serves no more than 18 dwellings.*

**CPAC RESPONSE:**

*(b) A dead end street shall terminate with a turnaround adequate for emergency vehicle turn-around. Temporary dead end streets shall have temporary turnarounds within temporary easements which may expire upon the extension of the street into adjacent land.*

**CPAC RESPONSE:**

**(5) FUTURE EXTENSION OF STREETS:**

*(a) Streets shall be extended to the parcel boundary where they are necessary to serve adjoining properties or to improve traffic circulation in and around the tract.*

*(b) Public streets may be required through the subdivisions when it is necessary to;*

- (1) provide for continuation, through projection, of an existing principal street in the surrounding areas; or*
- (2) permit future subdivision of adjoining land.*

**CPAC RESPONSE:**

**(6) INTERSECTIONS**

*(a) Streets shall be in alignment with existing streets by continuations of the centerlines thereof. Staggered street alignment resulting in T-intersections shall, wherever practical,*

*leave a minimum distance of 250 feet between the center lines of intersecting . Such intersections shall not be less than 125 feet apart.*

**CPAC RESPONSE:**

*(b) Streets shall be laid out to intersect as near to right angles as practical. In no case shall the angle be less than 60 degrees unless there is a special intersection design.*

**CPAC RESPONSE:**

*(c) Arterial or collector streets shall have at least 100 feet of tangent adjacent to any intersection. Local streets shall have at least 50 feet of tangent adjacent to any intersection.*

**CPAC RESPONSE:**

*(7) IMPROVEMENTS TO EXISTING STREETS: Whenever existing streets adjacent to or within a tract are of inadequate width, additional right-of-way and surfacing shall be provided by the applicant as part of the Subdivision or Partition*

**CPAC RESPONSE:**

*(8) STREET NAMES: Except for extensions of existing streets, no street name shall be used which will duplicate or be confused with the names of existing streets.*

**CPAC RESPONSE:**

*(9) FRONTAGE STREETS: Where a Subdivision abuts or contains an existing or proposed arterial, the County may require limited access streets, reverse frontage lots with suitable depth, screen planting contained in a non-access reservation, or other treatment necessary to afford separation of through and local traffic and incompatible land uses.*

**CPAC RESPONSE:** The applicants fail to demonstrate how the existence of wetlands or floodplains eliminates the need for compliance with this criterion. Indeed, neither the wetlands nor the floodplain will provide any mitigation or separation of through and local traffic and incompatible land uses. The fact that no development is proposed *immediately* adjacent to the highway due to the location of existing wetlands and floodplains is irrelevant. The density proposed by the applicants will be seen from the local community and from Highway 101, and will dramatically alter the look and feel of the community. These impacts are directly linked to Highway 101, what passes for an arterial in Neskowin, in direct contradiction with a variety of Neskowin Community Plan policies. This criterion certainly applies and is not met.

*(10) ALLEYS: Alleys shall be provided in commercial and industrial districts, unless other permanent provisions for access to utilities and off street parking and loading facilities are approved by the Commission.*

**CPAC RESPONSE:**

*(11) FEATURES PROHIBITED IN PUBLIC STREETS: Roadway gates, parking lots and islands are not allowed in public street right-of-ways.*

**CPAC RESPONSE:** The applicant's fail to respond to the criterion. The subdivision proposed by the applicants will not accommodate roadway gates, parking lots and islands in the rights of way, whether they are public or private easements. The application ignores this criterion and states it does not apply, when the applicants also concede that they will grant public rights of way if required. They can't have it both ways. The criterion is not met.

## ***B. BLOCKS***

*(1) GENERAL: The length, width and shape of blocks shall take into account the need for adequate lot size and street width, and shall recognize the limitations of the topography.*

**CPAC RESPONSE:** The applicant's use of the "residual parcel" concept does not render this or any other criteria inapplicable. The applicants admit that future potential development may establish block patterns, and state clearly in the application that this is merely the "first phase" of a 100-lot subdivision. This criterion is applicable to this development and it is not met.

*(2) SIZE: No block shall be more than 1,000 feet in length between street corner lines unless it is adjacent to an arterial street or unless topography or the location of adjoining streets requires otherwise. The recommended minimum length of blocks along an arterial is 2,000 feet.*

**CPAC RESPONSE:** The applicant's use of the "residual parcel" concept does not render this or any other criteria inapplicable. The applicants admit that future potential development may establish block patterns, and state clearly in the application that this is merely the "first phase" of a 100-lot subdivision. This criterion is applicable to this development and it is not met.

## ***C. EASEMENTS***

*(1) UTILITY LINES. Easements for sewers, water mains, electric lines, or other public utilities shall be dedicated whenever necessary. The easements shall be at least 10 feet wide. Utility line tieback easements may be 5 feet wide.*

**CPAC RESPONSE:**

*(2) WATER COURSES: If a Subdivision is traversed by a watercourse such as a drainage way, channel or stream, a storm water easement or drainage right-of-way shall be created.*

**CPAC RESPONSE:**

*(3) PEDESTRIAN WAYS: When desirable for public convenience, pedestrian ways may be required to connect cul-de-sacs or to pass through unusually long or oddly-shaped blocks.*

**CPAC RESPONSE:**

*D. LOTS*

*(1) SIZE: Lot sizes shall conform to standards contained in the Tillamook County Land Use Ordinance. Lots reserved for commercial or industrial purposes shall be adequate to provide off-street parking and service facilities required by the type of use contemplated.*

*(a) In areas that will not be served by a public water supply or a public sewer, minimum lot sizes shall conform to the requirements of the County Health Department and shall take into consideration requirements for water supply and sewage disposal.*

**CPAC RESPONSE:** As described in detail previously, the application fails to demonstrate that “public water and sewer” is available to serve the development. This criterion is not met.

*(2) ACCESS: Each lot shall abut upon a street or private road, other than an alley, for a width of at least 25 feet.*

**CPAC RESPONSE:**

*(3) THROUGH LOTS. Through lots shall be avoided except where they are essential to provide separation of residential development from major traffic arteries or adjacent nonresidential activities or to overcome specific disadvantages of topography and orientation.*

**CPAC RESPONSE:**

*(4) LOT SIDE LINES: Where possible, the side lines of lots shall run at right angles to the street upon which the lots face, unless a different angle is required to provide optimum solar orientation, or is necessary to conform to topography or road orientation.*

**CPAC RESPONSE:**

*(5) LOT GRADING: Lot grading shall conform to the following standards unless topography, soil type, or other physical conditions require otherwise. In such cases, grading shall conform to a plan approved by the County Public Works Director.*

*(a) CUT SLOPES: Cut slopes shall not exceed one-and-one-half feet horizontally to one foot vertically.*

*(b) FILL SLOPES: Fill slopes shall not exceed two feet horizontally to one-foot vertically.*

*(c) SOIL CHARACTER: The character of soil for fill and the characteristics of lots made usable by -fill shall be suitable for the purpose intended.*

**CPAC RESPONSE:** Tillamook County is in the process of finalizing a grading and erosion control ordinance. The application should demonstrate compliance with the intent of this ordinance and applicable provisions of the Neskowin Community Plan.

*E. BUILDING LINES*

*If special building setback lines are to be established in the Subdivision, they shall be shown on the Subdivision plat. If setbacks are proposed which are less than the minimum yard requirements contained either in the Land Use Ordinance or in Section 35 (2) of this Ordinance, the Planning Commission may approve such special setbacks only in accordance with the requirements of Section 51 of this Ordinance. Special setback lines shall not be established which would preclude the use of insulation for alternative energy production on adjacent lots.*

**CPAC RESPONSE:**

**F. LAND FOR PUBLIC PURPOSES**

*If the County has an interest in acquiring any portion, besides dedicated roads, of any proposed Subdivision for a public purpose, or if the County has been advised of such interest by a school district or other public agency, and there is written notification to the developer from the County that steps will be taken to acquire the land, then the Commission may require that those portions of the Subdivision be reserved, for a period not to exceed one year, for public acquisition at a cost not to exceed the value of the land.*

**CPAC RESPONSE:**

**G. DEDICATIONS**

*The Commission may require as a condition of approval the dedication to the public of rights-of-way for public purposes, on or off of the property subject to the approval. All dedications must appear on the final plat, and be approved by the County prior to recordation.*

**CPAC RESPONSE:**

**SECTION 43: IMPROVEMENT SPECIFICATIONS**

*(1) The County Public Works Department shall prepare and submit to the Board of Commissioners specifications to supplement the standards of this Ordinance. Such specifications shall be based on engineering standards appropriate for the improvements of concern. Specifications shall be prepared for the construction of the following improvements:*

- (a) Streets, including related improvements such as curbs, shoulders, sidewalks and cul-de-sacs and including suitable provisions for necessary slope easements.*
- (b) Drainage facilities.*
- (c) Sidewalks.*
- (d) Sewer trunk lines.*
- (e) Public water supply and distribution systems.*

*(2) Until such specifications are adopted by the County, all improvements must comply with the requirements of the Public Works Department as determined during its review of any land division proposal.*

**CPAC RESPONSE:**

*SECTION 52: PLANNING COMMISSION HEARING*

*(l) Commission actions required in this Ordinance shall be taken only after a public hearing noticed and conducted in the manner prescribed for Quasi-Judicial Land Use Hearings in Article X of the Tillamook County Land Use Ordinance.*

**CPAC RESPONSE:**

**VIII. FINAL CONCLUSION**

The Tillamook County Board of Commissioners approved the Neskowin Community Plan in 1999 after five years and thousands of hours of collaborative effort by the citizens of Neskowin. The Executive Summary includes the statement that “The people of Neskowin recognize that growth will continue to occur in their community. But we are determined to have an active role in shaping that growth so that it will support and enhance those aspects of this community that we all value.” That role has continued in recent years with the formation of a Neskowin Citizens Planning Advisory Committee (CPAC) that is committed to reviewing development proposals that have a significant impact on our community.

CPAC members are very concerned about how development may occur on this 35-acre site of the former Hawk Creek Golf Course in a narrow stream valley. Hawk Creek, an anadromous fish-bearing stream, runs through the center of the proposed development for more than 3500 feet. The Oregon Department of Fish and Wildlife’s (ODFW) comments and concerns are expressed in the attached August 20, 2008 letter to the Tillamook County Department of Community Development. They note that the Oregon Department of State Lands (DSL) lists Hawk Creek as an Essential Salmon Habitat Stream (ESH), and that the creek contains a variety of salmonid species including coastal coho, winter steelhead, chum and coastal cutthroat trout. ODFW recommends denial of the zone change request because “the current zoning requirements provide the best protection to fish and wildlife, habitat, and water quality in the area.”

The cluster subdivision proposal is inconsistent with many of the policies adopted by Tillamook County in the Neskowin Community Plan. The applicant’s proposal is opposed by the vast majority of Neskowin residents because it will permanently mar the Neskowin community. The CPAC urges the County to reject the application.

Respectfully Submitted on Behalf of the Neskowin CPAC,

Charles Ciecko, vice-chair