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Notice of Hearings Officer Decision

Attached please find notice of the Hearings Officer's decision in the matter of **T3-2021-14603** mailed 01/12/2022. This notice is being mailed to those persons entitled to receive notice under MCC 39.1170(D).

The Hearings Officer's Decision is the County's final decision and may be appealed to the State of Oregon Land Use Board of Appeals (LUBA) by any person or organization that appeared and testified at the hearing, or by those who submitted written testimony into the record.

Appeal instructions and forms are available from:

Land Use Board of Appeals
775 Summer Street NE, Suite 330
Salem, Oregon 97301

503-373-1265
www.oregon.gov/LUBA

For further information call the Multnomah County Land Use Planning Division at: 503-988-3043.

**BEFORE THE LAND USE HEARINGS OFFICER
FOR MULTNOMAH COUNTY, OREGON**

In the Matter of a Type III application for a variance to the Forest Practices Setbacks, an SEC-h Permit, Geologic Hazard Permit, and an exception to the Secondary Fire Safety Zone for a single-family dwelling on approximately 2 acres zoned Commercial Forest Use 2 (CFU-2) in unincorporated Multnomah County, Oregon

FINAL ORDER

Miranda/Ali Dwelling

T3-2021-14603

I. Summary:

This Order is the decision of the Multnomah County Land Use Hearings Officer approving with conditions this application for the permits required to site and construct a Measure 49 exempt dwelling on ~2 acres of land zoned CFU-2, including a variance to the Forest Practices Setbacks, an SEC-h Permit, Geologic Hazard Permit, and an exception to the Secondary Fire Safety Zone.

II. Introduction to the Property and Application:

Applicant..... NW Engineers, Inc.
Attn: Matt Newman
3409 NE John Olsen Avenue
Hillsboro, OR 97124

Owners Katie Miranda and Ahmed Al Ali
4345 SW 94th Avenue
Portland, OR 97225

Property Legal Description: Tax Lot 702 in Section 32B, Township 2 North, Range 1 West of the Willamette Meridian, Tax Account: R649631860, Street Address: 13221 NW McName Road.

Applicable Laws Multnomah County Code (MCC) 39.1515 (Code Compliance and Applications), 39.3005 (Lot of Record – Generally), 39.3030 (Lot of Record-CFU-2 zoning), 39.6850 (Dark Sky Lighting Standards), 39.6235 (Stormwater Drainage); 39.4105 (Building Height Requirements); 39.4110 (Forest Practices Setbacks and Fire Safety Zone); 39.4115 (Development Standards for Dwellings and Structures); 39.4150 (Single Family Dwellings Condition of Approval); 39.4155 Exceptions to Secondary Fire Safety Zone); 39.5520 (Application for SEC Permit); 39.5860 (Criteria for SEC-h Permit); 39.5075 (Geologic Hazards - Permits Required); 39.5090 (Geologic Hazards Permit Standards); 39.8205 (Variance – Scope); 39.8215 (Variance Approval Criteria); 39.5415 (Definitions - Protected Aggregate Impact Area), 39.5420 (PAM Overlay); 39.5435 (PAM-IA Impact Area, Allowed Uses).

The subject site is a single, undeveloped 2-acre legal lot (TL 702) zoned CFU-2, with a Significant Environmental Concern overlay for wildlife habitat (SEC-h), a Geologic Hazards (GH) overlay, and a Protected Aggregate & Minerals Impact Area (PAM-IA) designation. This parcel, along with an adjacent property that is already developed with a single-family dwelling, received Measure 49 approval for two dwellings in a clustered configuration in 2009 (Ex. B.4 - State Final Order E118605) on the original 18.91-acre parent parcel. The owner obtained a 3-lot partition in 2012 (Ex. B.3) that created two 2-acre parcels and a ~15-acre remainder lot. Dwellings were approved for both parcels in 2012 (Case File T2-2-12-2097), but only the first dwelling was constructed, and approval for the second dwelling expired. The present application, therefore, is the second time a dwelling has been requested for this 2-acre parcel.

The initial application, design plans and supporting documentation were submitted May 3, 2021 (Exs. A.1 to A.15), supplemented with new/revised documentation at the end of June 2021 (Exs. A.16 to A.26). The County followed a Type III process to review the application, and issued an incomplete letter on May 28, 2021 (Ex. C.1). The applicant responded, made the application complete (Ex. C.2), and the County deemed the application complete on July 9, 2021 (Ex. C.3). The County then mailed notice of a November 9, 2021 hearing to the owners of property within the 750-foot notice range as required by MCC 39.1105(C) (Ex. C.4) and posted notice on the property.

III. The Public Hearing Process:

The County's notice for the November 9th public hearing (Ex. C.4) indicated it would be held remotely via a Zoom internet platform, in which everyone participating via video or telephone audio could hear everything that everyone said. At the commencement of the hearing, the Hearings Officer made the disclosures and announcements required by ORS 197.763(5) and (6) and 197.796 and disclaimed any *ex parte* contacts, conflict of interest or bias. No one raised any procedural objections or challenged the Hearings Officer's ability to decide the matter impartially, or otherwise challenged the Officer's jurisdiction.

At the November 9th public hearing, Chris Liu, Land Use Planner for the County, provided a verbal summary of the application and the basis for staff's report (Ex. C.5), which recommended approval of the administrative home site application, the variance to the forest practices setback, and the exception to the secondary fire safety zone. Staff recommended denial of the Geologic Hazard and SEC-h permits because there was insufficient information to document that all of the requirements for these permits was met. By implication, staff suggested that the applicant request an open-record period during which the necessary missing information could be submitted, which would change staff's recommendation.

The applicant was represented by Matt Newman, of NW Engineers, LLC, who explained the proposal and expressed the applicant's acceptance of and agreement with staff's favorable recommendation and conditions of approval. The applicants also appeared and confirmed Mr. Newman's representations. Mr. Newman also provided a summary of the history of the parcel from its approval for two Measure 49 dwellings, through partitioning and the prior home site approval for this parcel to the present application for another home site approval. Mr. Newman and the applicants requested that the record be kept open following the hearing to allow them to prepare and submit

the additional information that staff indicated was needed to substantiate the final elements of the Geologic Hazard and SEC-h permit criteria. The applicant's agreed to extend the due date for issuance of the final decision (Ex. I.6)

No one else requested an opportunity to testify, and no written comments on the proposal were received into the record. At the conclusion of the November 9th public hearing, the Hearings Officer ordered the following open-record schedule, to which the applicants' and staff agreed:

December 10, 2021 – Submission of any new/additional documents on any relevant issue, most notably the missing documents needed to address the Geologic Hazard and SEC-h permit requirements.

December 17, 2021 – Any response to the materials submitted during the first segment, most notably staff's review and response to the applicant's submissions.

December 27, 2021 – Applicant's final rebuttal, no new evidence.

During the open-record period, the Hearings Officer received new submissions from the applicant (Exs. I.1, I.2, I.3, I.4 & I.5), a post-hearing memorandum from staff (Ex. J.1), and the applicant's final rebuttal (Ex. K.1). The record closed on December 27, 2021.

IV. Findings:

Only issues and approval criteria raised in the course of the application, during the hearing or before the close of the record are discussed in this section. All approval criteria and issues not raised by staff, the applicant or a party to the proceeding have been waived as contested issues, and no argument with regard to these issues can be raised in any subsequent appeal. The Hearings Officer finds those criteria to be met, even though they are not specifically addressed in these findings, and the Hearings Officer adopts and incorporates herein by this reference the staff report (Ex. C.5) to augment the following findings:

Generally Applicable Provisions:

1. MCC 39.1515 Code Compliance and Applications. MCC 39.1515 prohibits the County from issuing or otherwise approving permits for any property that is not in full compliance with all applicable provisions of Multnomah County Zoning Code. As written, this provision could be construed to impose an impossible burden on every applicant to prove a negative – to prove there is nothing about the property and all uses thereon that is contrary to the Zoning Code or any previously issued permit. Staff takes the position in the report (Ex. C.5) that MCC 39.1515, in fact, does not impose such a burden on applicants, but only requires that an applicant respond to any specific allegations or known instances of a violation on the property. Absent any argument to the contrary, the Hearings Officer accepts staff's interpretation and notes there is no evidence or allegation of a code violation in this record, which is apparently enough to satisfy this provision.
2. MCC 39.3005 Lot of Record – Generally. MCC 39.3005 requires the applicant to provide documentation that the subject parcel is a legal lot of record. The record

shows that this property was created by partition in 2012 (Plat No. 2012-047), which satisfies this requirement.

3. MCC 39.6850 Dark Sky Lighting Standards. MCC 39.6850 generally requires all new lighting to comply with the County's dark sky lighting requirements. This warrants a condition of approval. See Condition 4.c.
4. MCC 39.6235 Stormwater Drainage Control. MCC 39.6235 requires compliance with the County's substantive stormwater collection, treatment and detention requirements whenever a project proposes 500 sf of new or replaced impervious surface. The present proposal meets this threshold, for which the applicant provided a storm water certificate and drainage report completed by Steve White of NW Engineers that states an onsite storm water drainage control system is necessary (Ex. A.16). The applicant's report indicates all roof and driveway drainage will be piped to a single, lined storm water flow-thru planter facility on the east side of the dwelling. Water will be piped to a flow dispersal trench (Ex. A.22). Geo Pacific Engineering (Exs. A.4 & A.18) recommends the lining consist of an impermeable barrier and stormwater should not be discharged directly to slopes. GeoPacific Engineering considered the location of the flow dispersal trench and found it acceptable; although, the location appears to be on steeper slopes (Ex. A.25).

Flow from the driveway areas will be collected in a sump catch basin to limit the amount of oil and floatables reaching the storm water planter facility, whereas roof discharge will be directed directly to the storm water planter facility. Overflow from the planter facility will be piped to the east (downslope) and outfall into a flow dispersal trench (Ex. A.16).

The septic review certification from the City of Portland Sanitarian did not indicate any concerns with the proposed storm water drainage control system (Ex. A.6). As proposed, the facility will limit the discharge rate under a 24-year storm event to no more than that which currently occurs from the area (Ex. A.16). A condition is warranted requiring the applicant to install the storm water drainage control system designed by Steve White, PE and consistent with GeoPacific Engineering's recommendations. See Condition 8.c. Based on the applicant's site and stormwater plans, staff's review and favorable recommendation, the Hearings Officer concludes that the County's stormwater requirements can be met.

Measure 49 Implementation

1. M49 Order and Homesite Authorization. State Final Order No. E118605 authorized the establishment of one additional lot or parcel and two additional dwellings on the Measure 37 parent parcel. Partition Plat 2012-047 created the subject property, described as Parcel 2. The applicant requests approval of one of the two additional dwellings authorized by Final Order E118605. The present decision accomplishes this, fulfills all of the entitlements allowed by the Final Order, and after this approval, no further single-family dwellings or land divisions are allowed on the parcels that came from the property addressed in Final Order No. E118605, at least based on the current zoning.
2. Requirements of M49 Order – 2 additional dwellings. Final Order E118605 approved the creation of one additional parcel, for a total of 3 parcels, and authorized the

development of two dwellings. The partition was approved in 2012 (Partition Plat 2012-047), and a home was approved and constructed on Parcel 1. The building site proposed for the single-family dwelling in this application is located entirely on Parcel 2, which is undeveloped. The application includes requests for all additional permits and approvals needed to address the various overlays that encumber Parcel 2 and any development standards that cannot be met. The present application satisfies this requirement of Final Order E118605.

3. Requirements of M49 Order – 1 additional parcel. Final Order E118605 approved the creation of one additional parcel, for a total of 3 parcels. The partition was approved in 2012 (Partition Plat 2012-047) that established 3 parcels: two 2-acre parcels and a ~15-acre remainder. The present application does not seek a land division, and none are permitted under the Final Order. The proposed single-family dwelling on the subject property (Parcel 2) does not appear to be prohibited by land-use regulations defined in ORS 195.305(3) or by any other law that is not a land-use regulation as defined by ORS 195.300(14). To ensure compliance with this limitation in Final Order E118605, a condition is warranted. See Condition 3.

Commercial Forest Use (CFU-2) Zone:

1. MCC 39.4105 Maximum Building Height. The maximum allowed building height in the CFU-2 zone is 35 feet. The applicant's elevational drawings (Ex. A.23) show that the structures planned for this parcel will not exceed that limit.
2. MCC 39.4110 Forest Practices Setbacks and Fire Safety Zone. Table 1 in MCC 39.4110 prescribes forest practices setbacks in the Commercial Forest Use districts, including the fire safety zone setbacks. The "other structures" category applies to this M49 dwelling and provides a 30-foot setback from the front property line adjacent to a county-maintained road and 130 feet for all other setbacks. Given the parcel's configuration, the "front property line" is the north property line, which does not abut a county-maintained road. This means that a 130-foot setback applies on all sides, which cannot be met by this flaglot-shaped 2-acre M49 parcel on three sides. While the dwelling can achieve the 130-foot setback between the dwelling and the east property line (Ex. A.21), the applicant requests a variance to the 130-foot setback everywhere else and can achieve the following:
 - North setback to the dwelling – 80 feet
 - South setback to the dwelling – 80 feet
 - West setback to the dwelling – 40 feet

The variance criteria for this request are in MCC 39.8215 and are discussed below in findings. Additionally, the applicant requests an exception to the secondary fire safety zone requirements, and those criteria from MCC 39.4155 are discussed below. MCC 39.4110(C) allows for an increase of the forest practices setback where the setback abuts a street with below-standard width. In those cases, the County Road Official shall determine the necessary right-of-way width based upon the County's adopted design standards. In this case, however, the County Road Official has not indicated that additional right-of-way width is necessary (Ex. B.5). Therefore, as proposed and based on the variance and fire safety zone exception discussions below, the Hearings Officer concludes these standards are satisfied.

3. Fire Safety Zones on this Parcel. MCC 39.4110(D)(1) requires a 30-foot primary fire safety zone in all directions around a dwelling or structure, with at least 15 feet between tree crowns within this zone. The fire safety zone is increased in proportion to the slope of the site. The 30-foot primary fire safety zone can be met in all directions around the proposed buildings (Ex. A.21), and the finished slopes are less than the 10% threshold for increasing this zone. A condition is warranted requiring the property owner to establish and maintain the required Primary and Secondary Fire safety zones. See Condition 9. With this and the exception to the secondary fire safety zones discussed below, the Hearings Officer finds this criterion is satisfied.
4. Secondary Fire Safety Zone. MCC 39.4110(D)(2) requires a 100-foot secondary fire safety zone in all directions beyond the primary fire safety zone, and this is the requirement that the applicant cannot meet due to the odd configuration of this 2-acre parcel. Therefore, the applicant has requested an exception to this standard. The applicant can meet the following secondary fire safety zone dimensions:
 - Secondary fire safety zone to the west – 10 feet
 - Secondary fire safety zone to the north – 50 feet
 - Secondary fire safety zone to the south – 50 feet
 - Secondary fire safety zone to the east – 100 feet

Thus, the secondary fire safety zone can only be met to the east. The exception criteria from MCC 39.4155 are discussed below.

5. Forest Management Plan. MCC 39.4110(D)(3)-(5) prohibits the fire safety zones from contradicting an adopted forest management plan, but no such plan has been adopted for this property. Therefore, this section does not apply.
6. Development Standards for Dwellings and Structures in Forest Zones. MCC 39.4115 requires that all dwellings and structures comply with the criteria in MCC 39.4115 (B) through (D) below except as provided in (A) and that all exterior lighting complies with MCC 39.6850. MCC 39.4115(B) requires that all new dwellings meet the standards in MCC 39.4115(B)(1) and (3) or MCC 39.4115(B)(2) and (3). This applicant has elected to meet MCC 39.4115(B)(2) and (3), about which the Hearings Officer adopts the following findings:

(2) The structure shall satisfy the following requirements:

(a) It has the least impact on nearby or adjoining forest or agricultural lands and satisfies the standards in MCC 39.4110;

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

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

(d) Any access road or service corridor in excess of 500 feet in length is demonstrated by the applicant to be necessary due to physical limitations unique to the property and is the minimum length required; and

The applicant requested reductions to the forest practices setbacks and an exception to the secondary fire safety zones required by MCC 39.4110 for relief from the requirements that cannot be met on a particular parcel. The neighboring properties to the south and west appear to be in a combination of farm and forest use. The proposed dwelling will be located ~80 feet from the south property line and 40 feet from the west property line. Both abutting property owners received notice of the public hearing, but neither submitted comments. Tualatin Valley Fire & Rescue (TVFR) requires the use of an enhanced 13D fire sprinkler system and a Class A building envelope for the dwelling (Ex. A.7). Construction of the dwelling with a fire sprinkler system and Class A building envelope will minimize the dangers to the surrounding farm and forest uses from any fire that might start from the proposed dwelling. Conditions are warranted to ensure that the property owner complies with TVFR requirements. See Conditions 4.f, 4.g & 4.h.

The subject property is 2 acres, and county tax records (Ex. B.1) show that the property is not enrolled in either the Farm Deferral or Forest Deferral programs. As this property is not actively being used for farm or forest practices, impacts on possible farm or forest uses from the construction of the dwelling and related improvement is minimized.

The service corridor is ~700 feet long, and the access drive for this property has a significant curve due to the shape of the flag lot's pole. While the service corridor could be shortened, a larger variance to the Forest Practice Setback to the north would be required. The proposed service corridor is therefore the minimum necessary given the physical limitations of this particular property and its odd shape. The applicant shall provide documentation of a legal easement for the fire turnout which appears to be located on adjacent property to the east. A condition of approval is warranted to ensure that documentation of a legal easement exists. See Condition 4.j. With this, the Hearings Officer finds this criterion is satisfied.

(3) The risks associated with wildfire are minimized. Provisions for reducing such risk shall include:

- (a) Access roadways shall be approved, developed and maintained in accordance with the requirements of the structural fire service provider that serves the property. Where no structural fire service provider provides fire protection service, the access roadway shall meet the Oregon Fire Code requirements for fire apparatus access;*
- (b) Access for a pumping fire truck to within 15 feet of any perennial water source of 4,000 gallons or more within 100 feet of the driveway or road on the lot. The access shall meet the fire apparatus access standards of the Oregon Fire Code with permanent signs posted along the access route to indicate the location of the emergency water source;*

This property is within the TVFR's service territory, and a fire service agency review was completed by Drew Debois, Deputy Fire Marshall. This review indicates that TVFR is able to provide service to the property (Ex. A.7), and that TVFR does not require an additional water source. On this basis, the Hearings Officer finds this standard is satisfied.

7. Building Standards for Dwellings and Structures. MCC 39.4115(C) requires the following of all dwellings and structures:

(1) Comply with the standards of the applicable building code or as prescribed in ORS 446.003 through 446.200 relating to mobile homes;

(2) If a mobile home, have a minimum floor area of 600 square feet and be attached to a foundation for which a building permit has been obtained;

(3) Have a fire retardant roof; and

(4) Have a spark arrester on each chimney.

The proposed dwelling is not a mobile home. The dwelling will need to obtain a building permit for its construction and meet the applicable building codes. No building elevations were provided as part of this land use application. A condition of approval is warranted to ensure that the dwelling has a fire retardant roof and a spark arrester on any chimney. See Condition 4.g. With this, the Hearings Officer finds this criterion is satisfied.

8. Domestic Water Supply. MCC 39.4115(D) requires the applicant to provide evidence that the domestic water supply is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of ground water (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a Class 1 stream as defined in the Forest Practices Rules. The application's narrative indicates the owner will construct a well in compliance with Oregon Department of Water Resources rules. A condition is warranted requiring the property owner to submit a well contractor's report upon completion of the well. See Condition 8.f. On this basis, the Hearings Officer finds this criterion is satisfied.

9. Covenant regarding farm and forest practices. MCC 39.4150 requires the landowner for a dwelling in the county's resource zones to execute and record in the county's property deed records a covenant binding the landowner and all 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. A condition is warranted that requires compliance with MCC 39.4150. See Condition 4.b. On this basis, the Hearings Officer finds this criterion is satisfied.

10. Exceptions to Secondary Fire Safety Zones. MCC 39.4155(A) allows an exception to the secondary fire safety zone standards required by MCC 39.4110(D)(2), when a parcel qualifies under any one of the following:

(1) The tract on which the dwelling or structure is proposed has an average lot width or depth of 330 feet or less, or

(2) The dwelling or structure will be located within 130 feet of the centerline of a public or private road serving two or more properties including the subject site; or

- (3) The proposed dwelling or structure will be clustered with a legally existing dwelling or structure.*

The subject property has an average depth of ~255 feet and a width of ~301 feet (Ex. A.21) and, therefore, qualifies for an exception to the secondary fire safety zone under MCC 39.4155(B).

11. Exceptions to Secondary Fire Safety Zones Criteria. A parcel that is eligible for an exception to the secondary fire safety zones under MCC 39.4155(A), must meet the following criteria in MCC 39.4155(B) to obtain the exception:

- (1) If the proposed secondary fire safety zone is between 50 and 100 feet, the dwelling or structure shall be constructed in accordance with the International Fire Code Institute Urban-Wildland Interface Code Section 505 Class 2 Ignition Resistant Construction as adopted August, 1996, or as later amended, or*
- (2) If the proposed secondary fire safety zone is less than fifty feet, the dwelling or structure shall be constructed in accordance with the International Fire Code Institute Urban-Wildland Interface Code Section 504 Class 1 Ignition Resistant Construction as adopted August 1996, or as later amended, and*
- (3) There shall be no combustible fences within 12 feet of the exterior surface of the dwelling or structure; and*
- (4) A dwelling shall have a central station monitored alarm system if the secondary fire safety zone equivalents of subsection (B)(1) above are utilized, or*
- (5) A dwelling shall have a central station monitored 13D sprinkler system if the secondary fire safety zone equivalents of subsection (B)(2) above are utilized.*

The proposed secondary fire safety zone is 10 feet for the area west of the dwelling and 50 feet for the area south and north, and therefore the second criterion is satisfied. The dwelling shall be constructed in accordance with the International Fire Code Institute Urban-Wildland Interface Code Section 504 Class 1 Ignition Resistance Construction. The dwelling shall also have a central station monitored 13D sprinkler system. Conditions are warranted that require compliance with (2), (3) and (5) above. The applicant's site plan (Ex. A.21) shows there are no fences within 12 feet of the exterior surface of the dwelling, but this standard is an on-going requirement that runs with title to the property in perpetuity. See Conditions 8.e & 9.c. As conditioned, this dwelling qualifies for an exception to the secondary fire safety zone standards.

Significant Environmental Concern – Wildlife Habitat

1. SEC Permit – Uses that trigger permit requirement. This parcel is encumbered with the County's SEC overlay for wildlife habitat. Pursuant to MCC 39.5510(A), a SEC permit is required for all uses allowed in the base zone, and the application in this case also includes a request for an SEC-h permit.

2. Cleared areas only. MCC 39.5860(B)(1) provides that, where a parcel contains any nonforested "cleared" areas, development shall only occur in these areas, except as necessary to provide access and to meet minimum clearance standards for fire safety. The application seeks approval for a dwelling in a preexisting non-forested, cleared area (Ex. A.19) and does not propose any new/additional clearing (Exs. A.21-A.24). This satisfies this requirement.
3. Proximity to public road. MCC 39.5860(B)(2) requires that development occur within 200 feet of a public road capable of providing reasonable practical access to the developable portion of the site. The aerial photograph of the site (Ex. A.19) shows that the single-family dwelling will be ~500 feet from the portion of NW McNamee Road that is capable of providing reasonable practical access to the developable portion of the site. NW McNamee Road is a public road. Because of the parcel's unique size, shape and physical circumstances, it cannot meet this requirement, and a Wildlife Conservation Plan is required under MCC 39.5860(C). This Plan is discussed in findings below.
4. Maximum length of access drive/ service corridor. MCC 39.5860(B)(3) limits the access road/ driveway and service corridor serving the development to a maximum length of 500 feet. The driveway and service corridor proposed to serve this dwelling is ~700 feet long (Ex. A.21), which exceeds the standard. Because of the parcel's unique size, shape and physical circumstances, it cannot meet this requirement, and a Wildlife Conservation Plan is required under MCC 39.5860(C). This Plan is discussed in findings below.
5. Clustering driveway approaches. For the purpose of clustering access road/ driveway approaches near one another, MCC 39.5860(B)(4) requires that one of the following two standards be met:
 - (a) *The access road/driveway approach onto a public road shall be located within 100 feet of a side property line if adjacent property on the same side of the road has an existing access road or driveway approach within 200 feet of that side property line; or*
 - (b) *The access road/driveway approach onto a public road shall be located within 50 feet of either side of an existing access road/driveway on the opposite side of the road.*

The proposed driveway is immediately adjacent to the neighboring property's access point to the west (Ex. A.19), and the subject parcel is a flag lot. MCC 39.2000 defines "Lot Lines" as "the lines bounding a lot, but not the lines bounding the private driveway portion of a flag lot." While the private driveway portion of the flag lot is not considered a lot line under this definition, its proposed location immediately adjacent to the driveway to the west meets the intent of the code. In addition, it is the only feasible driveway location for this parcel (Exs. A.19 – A.21). The proposed driveway location, therefore, meets the intent if not the requirements of this standard.

6. Proximity to property line near existing structures. MCC 39.5860(B)(5) requires that the development be within 300 feet of a side property line if adjacent property has

structures and developed areas within 200 feet of that common side property line. In this case, however, there are no structures within 300 feet of a common side property line for the subject property and an adjacent property (Exs. A.19 – A.21). On this basis, the Hearings Officer finds this requirement is satisfied.

7. Fence standards. MCC 39.5860(B)(6) requires that any fencing within a required setback from a public road shall be no taller than 42 inches and have a minimum 17-inch gap between the ground and the bottom of the fence. While the proposed site plan does not show any fencing, the proposed revegetation plan (Ex. A.26) includes deer fencing around a large portion of the property and around the mitigation plantings. Elevation drawings for the deer fencing and gate(s) are not included; however, typical deer fencing would not meet the requirements of MCC 39.5860(B)(6). To ensure compliance with this requirement, a condition is warranted. See Condition 9.c.
8. Listed nuisance plants prohibited. MCC 39.5860(B)(7) prohibits any of the nuisance plants in MCC 39.5580 Table 1 from being planted on the subject property and any such plants shall be removed and kept removed from cleared areas of the property. To ensure compliance with this requirement, a condition is warranted that prohibits the planting of nuisance plants identified in MCC 39.5580. See Condition 4.e. This condition requires a final revegetation plan for the site that lists all plant species, so that staff can verify this requirement. On this basis, the Hearings Officer finds this requirement is satisfied.
9. Wildlife Conservation Plan Required. According to MCC 39.5860(C)(1), a wildlife conservation plan is required for this development because this application cannot meet all of the development standards in MCC 39.5860(B) due to the property's unique physical characteristics. This requires the applicant to show that the wildlife conservation plan results in the minimum departure from the standards required in order to allow the use. In particular, the proposal cannot meet the 500-foot maximum driveway/service corridor required by MCC 39.5860(B)(2) nor can it meet the 200-foot maximum distance from a public road providing access under MCC 39.5860(B)(3). The driveway exceeds the 500-foot standard by ~245 feet to the dwelling site (Ex. I.4). The parcel configuration, when combined with site topography, limits the areas where development can safely occur. Therefore, the applicant proposes an ~44,000 sf mitigation area containing native trees, shrubs, and ground cover (Exs. I.1 & I.4 p.9). Following the public hearing, the applicant submitted a proposed Wildlife Conservation Plan (Ex. I.4, pp. 4-10) that is a "hybrid" plan employing elements of subsection (C)(3) and (C)(5), described below, which staff concluded (Ex. J.1) should improve and provide wildlife habitat on the property. As no fencing is included in the proposal, the wildlife are free to roam through the on-site habitat. Conditions of approval ensure the implementation and maintenance of the proposed Wildlife Conservation Plan and that the final mitigation complies with the SEC-h requirements. See Condition 9.d
10. Wildlife Conservation Plan. MCC 39.5860(C)(3) requires that if the wildlife conservation plan does not demonstrate compliance with the criteria in MCC 39.5860(C)(5) it must demonstrate the following:

(a) That measures are included in order to reduce impacts to forested areas to the minimum necessary to serve the proposed development by restricting the

amount of clearance and length/width of cleared areas and disturbing the least amount of forest canopy cover.

(b) That any newly cleared area associated with the development is not greater than one acre, excluding from this total the area of the minimum necessary accessway required for fire safety purposes.

No new clearing is proposed in this application request (Ex. I.4). To mitigate the ~50,000 sf disturbed area caused by the installation of the ~745 foot long service corridor and development associated with the dwelling, the applicant proposes a mitigation area of ~44,000 sf (Ex. I.3, pp. 4-10). The proposed mitigation area includes planting 42 native trees, 200 blueberries, 100 additional shrubs, and groundcover, including wildflowers and clover (Exs. I.1 & I.4 p.9). Staff concluded (Ex. J.1) that the proposed mitigation should improve and increase the wildlife habitat on the property, which is the objective of the Wildlife Conservation Plan. Conditions of approval are warranted to ensure the County reviews and approves the final landscaping plan prior to building plan review, and that the property owner provides proof of the implementation of the plantings prior to issuance of the Certificate of Occupancy. See Condition 8.g. On this basis, the Hearings Officer finds that this requirement is satisfied.

11. No new fencing. MCC 39.5860(C)(5)(c) prohibits new fencing and requires existing fencing to be removed outside of areas cleared for the site development except for existing cleared areas used for agricultural purposes. The applicant removed the deer fencing and gates from the previous plans. According to the revised plans (Exs. I.1 & I.4) and property owner letter (Ex. I.5), no fencing is included as part of this proposal. A condition of approval is warranted that prohibits fencing on the property without approval from County Land Use Planning. See Condition 9.c. On this basis, the Hearings Officer finds this requirement is satisfied.
12. Revegetation of existing cleared areas. MCC 39.5860(C)(5)(d) requires revegetation of existing cleared areas on the property at a 2:1 ratio. As previously noted, the development plans do not propose any new clearing (Ex. I.4). The revised plans submitted after the November 19, 2021 public hearing show ~44,000 sf of mitigation area planted with native trees, shrubs, and groundcover (Exs. I.1 & I.4 p.9). The proposal does not include stream riparian area disturbance or stream riparian area revegetation. On this basis, the Hearings Officer finds that the requirement is satisfied.
13. Mitigation Plan addresses Subsection (5) criteria. MCC 39.5860(C)(3) provides that the wildlife conservation plan must demonstrate satisfaction of the criteria in subsection (C)(3) or (C)(5). The applicant's original plan was deficient, but the revised plan submitted after the November 19, 2021 public hearing achieves the standard by presenting a hybrid proposal combining elements of subsection (C)(3) and (C)(5), resulting in a mitigation area of ~44,000 sf (Ex. I.3, pp. 4 -10). Staff reviewed and confirmed that the revised plan addresses the following requirements from Subsection (C)(5):
 - (C)(5)(e): The proposed mitigation area is within the boundaries of the subject property, a single lot of record (Ex. I.4), and the entire property is within the SEC-h overlay.

- (C)(5)(f): A condition of approval requires that all work areas be flagged and/or fenced with silt fencing to reduce potential damage to habitat outside of the work area. See Condition 9.d. The work area shall remain marked through all phases of development.
- (C)(5)(h): A condition of approval is warranted that requires native soils disturbed during development be conserved on the property. See Condition 5.n.
- (C)(5)(i): The applicant proposed that plantings meet the sizing requirements in this section, and a condition is warranted requiring that the plantings meet the section's sizing requirements. See Condition 4.k.
- (C)(5)(k) & (l): The applicant proposed that plantings meet the requirements in these sections, and a condition is warranted requiring the plantings meet the standards in these sections. See Condition 4.k.
- (C)(5)(n): A condition is warranted requiring that the planting date be within one year following the approval of the application. See Condition 8.g.
- (C)(5)(o): A condition is warranted requiring monitoring and reporting of the mitigation site for a minimum of 5 years as outlined in this section. See Condition 9.d.

Based on the revised Habitat Conservation Plan, submitted after the November 19, 2021 public hearing, staff's favorable review, the foregoing findings and the above-referenced conditions, the Hearings Officer finds that the proposal now meets the requirements for the approval of a SEC-h permit.

14. Protected Aggregate and Mineral (PAM) Overlay – not applicable. MCC 39.5860(C)(6) requires compliance with the applicable Goal 5 requirements if there are protected aggregate and mineral resources on the property that would be affected by the development plans. This provision is not applicable because the proposal does not include any aggregate and mineral resources within a designated PAM overlay.

Geologic Hazard Permit

1. Permit Required. MCC 39.5075 generally requires a Geologic Hazard Permit for any development or ground disturbing activity on land located in hazard areas as identified on the Geologic Hazards Overlay map, or where the disturbed area or the land on which the development will occur has average slopes of 25% or more. This property is identified as within a Geologic Hazards overlay. Construction of the driveway, garden, foot path and other improvements will occur within the hazard overlay and trigger the requirement for a Geologic Hazards Permit. The application also includes a request for a Geologic Hazards Permit, along with supporting documentation (Exs. A.3, A.4, A.18, A.20, A.21, A.22 & A.25), and the applicant supplemented this documentation after the November 19, 2021 public hearing (Exs. I.2, I.3 & I.4).

2. Geologic Hazards Permit Standards. MCC 39.5090 prescribes the approval requirements for a Geologic Hazards Permit. MCC 39.5090(A) limits the total cumulative deposit of fill on the site for the 20-year period preceding the date of the application for the GH permit, to a maximum of 5,000 cubic yards. For purposes of this provision, the term “site” means either a single lot of record or contiguous lots of record under same ownership, whichever results in the largest land area. MCC 39.5090(B) limits allowed fill to earth materials only. MCC 39.5090(C) provides that cut and fill slopes shall not exceed 33% grade (3 Horizontal: 1 Vertical) unless a Certified Engineering Geologist or Geotechnical Engineer certifies in writing that a grade in excess of 33% is safe (including, but not limited to, not endangering or disturbing adjoining property) and suitable for the proposed development. MCC 39.5090(D) prohibits unsupported finished cuts and fills greater than 1 foot in height and requires fills up to 4 feet in height at any point to meet a setback from any property line of a distance at least twice the height of the cut or fill, unless a Certified Engineering Geologist or Geotechnical Engineer certifies in writing that the cuts or fills will not endanger or disturb adjoining property. All unsupported finished cuts and fills greater than 4 feet in height at any point require a Certified Engineering Geologist or Geotechnical Engineer to certify in writing that the cuts or fills will not endanger or disturb adjoining property. The fill volume on the site is ~118 cubic yards (Exhibit A.3). As explained in the applicant’s Geotechnical Reports (Exs. A.3, A.4, A.18, I.2 & I.3), all fill activity was less than 5,000 cy of soil imported in 2015 and 2016 for construction of the roadway within the flaglot and stabilized off-site to the east. The fill was composed of earth materials, the cut and fill slopes were less than 33% grade, and there are no unsupported finished cuts and fills requiring additional setback. The applicant’s geotechnical engineer monitored the fill activities at the time and certified the compaction upon completion. The 2:1 or 3:1 slope has now been stabilized with grass for five years and no additional fill is proposed with the present development. This satisfies this section’s requirements.
3. Additional requirements – floodplain encroachment and Sauvie Island. MCC 39.5090(E) prohibits fills that encroach on any water body unless an Oregon licensed Professional Engineer certifies in writing that the altered portion of the waterbody will continue to provide equal or greater flood carrying capacity for a storm of 10-year design frequency. Subsection (F) prohibits deposition of dredge spoils on Sauvie Island except to assist in flood control or to improve a farm’s soils or productivity, except that it may not be deposited in any SEC overlay, WRG overlay, or designated wetland. According to the applicant’s Grading & Erosion control plan (Ex. A.22), no fills are proposed to encroach on any water body, and none are proposed for Sauvie Island (Ex. A.19). These requirements are met.
4. Additional requirements – Tualatin River Drainage. MCC 39.5090(G) imposes certain requirements on all ground-disturbing developments within the Tualatin River Drainage system. This site is in the Columbia River drainage system, not the Tualatin River drainage system; therefore, this provision is not applicable.
5. Additional requirements – ground disturbance and vegetation removal. MCC 39.5090(H) to (L) impose additional requirements on ground disturbing work and vegetation removal. Following the November 19, 2021 public hearing, the applicant provided revised detailed plans showing the erosion control plan and slopes throughout the property (Ex. I.4). Additionally, the applicant submitted a new letter signed and stamped by a licensed Engineering Geologist and Geotechnical Engineer

(Ex. I.2) and the applicant's principal Professional Engineer of record (Ex. I.3) attesting to the feasibility of these plans and compliance with the County's erosion control and slope stability requirements. Staff declined to provide an analysis, opinion or recommendation as to whether these plans adequately addressed these standards (Ex. J.1).

- a. MCC 39.5090(H) requires the stripping of vegetation, ground disturbing activities, or other soil disturbance to be done in a manner that will minimize soil erosion, stabilize the soil as quickly as practicable, and expose the smallest practical area at any one time during construction. The preliminary and revised slope analysis and erosion control plans submitted by the applicant (Exs. A.11, A.13, A.22, A.25 & I.4) show that compliance with these standards is feasible, a conclusion that is attested to by the applicant's engineers (Exs. A.3, A.4, A.18, I.2 & I.3). ~12,162 sf will be stripped for development of the gravel road and homesite. It will be done in a manner that minimizes soil erosion since it is a minimum 30 feet from the break in slope and 10 feet from any property line. Plan Sheet 5 (Ex. I.4) demonstrates compliance with this section and shows installation of proposed sediment fencing for the duration of the project, and erosion control notes describing temporary seeding and mulch over disturbed areas after October 1. A condition is warranted requiring compliance with these measures. See Condition 5.o.
- b. MCC 39.5090(I) requires the development plans to minimize cut or fill operations and ensure conformity with topography so as to create the least erosion potential and adequately accommodate the volume and velocity of surface runoff. The preliminary and revised slope analysis and erosion control plans submitted by the applicant (Exs. A.11, A.13, A.22, A.25 & I.4) show that compliance with these requirements is feasible, a conclusion that is attested to by the applicant's engineers (Exs. A.3, A.4, A.18, I.2 & I.3). Cut and fill has been minimized to ~2 feet cut for construction of the hammerhead and building foundations. No fill is proposed with the exception of the previously-mentioned star gazing mound. This requirement is satisfied.
- c. MCC 39.5090(J) requires temporary vegetation and/or mulching to be used to protect exposed critical areas during development. Plan Sheet 5 (Ex. I.4) shows the required erosion control notes for temporary seeding and mulching exposed soil during development. The only disturbance is for road and house construction, along with trenching for the septic system and stormwater outfall. All other areas on-site will be maintained in grass. The mitigation area will be planted in the summer and stabilized prior to October 1. The trenches will be seeded or covered with mulch as required. A condition is warranted requiring these measures. See Condition 5.o.
- d. MCC 39.5090(K) requires that, whenever feasible, natural vegetation shall be retained, protected, and supplemented, and provides two specific requirements related to natural vegetation near a stream bank, waterbody or wetland. Because there are no stream banks, waterbodies or wetlands on the development project or within 100 feet, the requirements of this section are met to the extent they are applicable.

- e. MCC 39.5090(L) requires permanent plantings and any required structural erosion control and drainage measures to be installed as soon as practical. With the exception of trenching for the septic system and storm outfall, all construction or ground disturbance is limited to the 12,162 sf area for road and home construction. Temporary seeding of the septic and storm water outfall area will be performed upon installation. Mulch or hay will be provided where necessary until the disturbed soil is stabilized. The septic drainfield trench lines will be restored with grass. The stormwater outfall area will be restored with grass, clover or wildflowers as part of the mitigation plan. All other permanent plantings are located in the 44,000 sf mitigation area. The applicant's revegetation plans (Exs. A.15 & A.26) demonstrate compliance with these requirements.
5. Additional requirements – runoff control measures. MCC 39.5090(M) to (R) impose additional requirements related to runoff control. Following the November 19, 2021 public hearing, the applicant provided revised detailed plans showing the erosion control plan and slopes throughout the property (Ex. I.4). Additionally, the applicant submitted a new letter signed and stamped by a licensed Engineering Geologist and Geotechnical Engineer (Ex. I.2) and the applicant's principal Professional Engineer of record (Ex. I.3) attesting to the feasibility of these plans and compliance with the County's erosion control and slope stability requirements. Staff declined to provide an opinion or recommendation as to whether these plans adequately address these standards (Ex. J.1).
- a. MCC 39.5090(M) requires provisions to effectively accommodate increased runoff caused by altered soil and surface conditions during and after development. The rate of surface water runoff shall be structurally retarded where necessary. The applicant's proposed stormwater drainage control system has been sized and designed to handle the stormwater runoff that will be generated from the new impervious surfaces (Ex. A.16). The plan includes treatment in a flow-thru planter and discharge of stormwater in a dispersion trench spreader downslope. Based on associated stormwater calculations, this project will generate 0.03 cfs into the spreader, which has capacity for ~15x more water at a maximum flow rate of 0.5 cfs. GeoPacific states in its December 8, 2021 addendum (Ex. I.2) that in their opinion, "the erosion and sedimentation hazard at the dispersal trench is low given the flow rate...and the proposed sediment fence downslope of the trench." This satisfies the requirements of this section.
 - b. MCC 39.5090(N) requires that sediment in the runoff water be trapped by use of debris basins, silt traps, or other measures until the disturbed area is stabilized. The applicant's erosion control plans (Exs. A.11, A.13, A.22, A.25 & I.4) show that any sediment will be trapped in the flow-thru planter and/or sediment fencing provided downslope of the development. The geotechnical engineer attests to the feasibility and effectiveness of this design (Exs. A.3, A.4, A.18, I.2 & I.3). This satisfies the requirements of this section.
 - c. MCC 39.5090(O) requires provisions to prevent surface water from damaging the cut face of excavations or the sloping surface of fills by installation of temporary or permanent drainage across or above such areas, or by other suitable stabilization measures such as mulching or seeding. The applicant asserts (Ex. I.3) that no stormwater from the building or driveway will be conveyed toward the

slope on the east side of the site and that any overland water during construction of the driveway and house will be intercepted by the sediment fencing as shown on Plan Sheet 5 (Ex. I.4). This satisfies the requirements of this section.

- d. MCC 39.5090(P) requires all drainage measures to be designed to prevent erosion and adequately carry existing and potential surface runoff to suitable drainageways such as storm drains, natural water bodies, drainage swales, or an approved drywell system. The applicant's engineer explains (Ex. I.3) that drainage from the development will be conveyed to the flow-thru planter for treatment, then to the bottom of the slope and discharged into the spreader. It is unlikely that this design will result in erosion impacts due to the large capacity of the dispersion trench spreader. The applicant's engineers attest that compliance with these requirements is feasible (Exs. A.3, A.4, A.18, I.2 & I.3). This satisfies the requirements of this section.
- e. MCC 39.5090(Q) requires that any drainage swales used to divert surface waters to be vegetated or protected as required to minimize potential erosion. A drainage swale is not proposed with this development. Instead, a sealed flow-thru planter will be used so no stormwater will be discharged at the top of bank (Ex. I.3). On this basis, the Hearings Officer finds this requirement is satisfied.
- f. MCC 39.5090(R) requires erosion and sediment control measures to be used such that no visible or measurable erosion or sediment shall exit the site, enter the public right-of-way or be deposited into any water body or storm drainage system. The section provides examples of energy absorbing devices, sediment controls and dispersal measures. The revised plans (Ex. I.4) and engineering reports (Exs. I.2 & I.3) demonstrate that the dispersion trench spreader will slow stormwater down and infiltrate at the bottom of the slope across its entire 50-foot length. On this basis, the Hearings Officer finds this requirement is satisfied.
- g. MCC 39.5090(S) requires disposed spoil material or stockpiled topsoil to be prevented from eroding into water bodies by applying mulch or other protective covering, or by location at a sufficient distance from water bodies, or by other sediment reduction measures. The applicant's engineer (Ex. I.3) explains that strippings will be used for the 6-foot tall star gazing mound that will be planted with clover and that temporary seeding or mulch will be provided if the clover is not established by October 1. This satisfies the requirements of this section.
- h. MCC 39.5090(T) requires that non-erosion pollution associated with construction such as pesticides, fertilizers, petrochemicals, solid wastes, construction chemicals, or wastewaters be prevented from leaving the construction site through proper handling, disposal, continuous site monitoring and clean-up activities. The applicant's engineer (Ex. I.3) explains that the applicant does not intend to use any of these chemicals on-site once the construction is complete and mitigation is installed. However, should any be used during construction, the applicant and contractor will provide the required monitoring. A condition is warranted requiring compliance with this requirement. See Condition 5.I.
- i. MCC 39.5090(U) imposes erosion control measures for sites within the Balch Creek drainage basin. This site is not within the Balch Creek drainage basin; therefore, this section is not applicable.

- j. MCC 39.5090(V) imposes requirements for in-water work. No in-water work is proposed in this development; therefore, this section is not applicable.
- k. MCC 39.5090(W), (X) & (Y) impose requirements on the importation of fill to the site. The applicant's engineer reiterates (Ex. I.3) that no fill will be imported to this site; therefore, these sections are not applicable.

General Permit Requirements

- 1. MCC 39.6210(E) requires the person in charge of the project to remove all sedimentation from all adjoining surfaces and drainage systems prior to issuance of occupancy or final approvals for the project. It is also the responsibility of the person in charge of the project to maintain as nearly as possible in its present state the water body, floodplain, or right-of-way during ground disturbing activity, and to return the same to a functional condition equal to or better than the condition existing immediately prior to the ground disturbing activity. A condition is warranted to ensure compliance with these requirements. See Conditions 5.c.
- 2. MCC 39.6210(F) requires a performance bond in the amount of the full cost of the establishment and maintenance of all erosion, sedimentation and stormwater control measures for activity authorized through any permit listed in MCC 39.6210(A). The bond may be used to provide for the installation of the measures if not completed by the contractor. The bond shall be released upon determination the control measures have or can be expected to perform satisfactorily. The bond may be waived if the director determines the scale and duration of the project and the potential problems arising therefrom will be minor. MCC 39.6210(F) requires an inspection and verification that all requirements of this development approval have been fulfilled prior to issuance of a certificate of occupancy. Conditions of approval are warranted ensuring that these requirements are satisfied. See Conditions 8.h. Additionally, a condition is warranted requiring periodic inspection by the applicant's Geotechnical Engineer or Certified Engineering Geologist. See Conditions 6 & 7. With these conditions, the Hearings Officer finds the requirements of these sections will be satisfied.

Variance Criteria

- 1. Variance Required. MCC 39.8205 (Scope) authorizes a variance to the County's dimensional land use standards except for the following situations:
 - (1) *Reduction of resource protection setback requirements within the Significant Environmental Concern (SEC) and Willamette River Greenway (WRG) Overlays; and*
 - (2) *Modification of fire safety zone standards given in Commercial Forest Use base zones; and*
 - (3) *Increase to any billboard height or any other dimensional sign standard.*

The applicant requests a reduction of the required forest practice setbacks within the Geologic Hazards Overlay, which according to MCC 39.8205(A)(2), requires a

Variance. The applicant also proposes ~70% reduction to the Forest Practice Setbacks to the west property line. If approved, the applicant would be allowed to site the dwelling ~40 feet from the west side property line and 80 feet from the south side property line (Ex. A.21). The Variance request does not include a reduction of resource protection setbacks within the SEC/WRG overlay, or an increase to a billboard/dimensional sign height standard. A reduction to the secondary fire safety zone is included with the application and evaluated under MCC 39.4155. The request is eligible for the variance as proposed.

2. Variance Approval Criteria. To merit approval, MCC 39.8215 requires the applicant for a variance to demonstrate that the standards in MCC 39.8215 (A) through (G) are met:

- a. Unusual Circumstance. MCC 39.8215(A) & (B) require a circumstance or condition applicable to the property or to the intended use that does not apply generally to other property in the same vicinity or base zone. The circumstance or condition cannot be of the applicant's/owner's making and does not result solely from personal circumstances of the applicant/owner. The subject property has a unique configuration due to the approved M49 final order that led to the creation of a parcel through partition plat 2012-047 (Ex. B.3), which would not otherwise be permissible in the CFU zones. When combined with the site's topographical limitations, the configuration of this property limits available areas to site a dwelling. Because of these limitations, the proposed dwelling must be located within a significant portion of the 130-foot Forest Practice Setback area (Ex. A.21). Without the requested reduction, an alternative buildable area on the subject property would not exist. The applicants and current property owners are the successors in interest to the original party who obtained the M49 authorization. Hence, the current property owners assumed these limitations that are inherent in the property and stand privity with the original owner. The requirements of these sections are satisfied.
- b. Practical Difficulty. MCC 39.8215(C) requires there to be a practical difficulty or unnecessary hardship to the property owner in the application of the dimensional standard. Without an approved reduction to the required Forest Practices Setbacks, the property owner would not be able to build a dwelling on the property as authorized by the M49 Final Order (Ex. B.4). Due to the size and shape of the parcel, a practical difficulty exists, and this requirement is satisfied.
- c. Not Materially Detrimental to the Public Welfare. MCC 39.8215(D) prohibits a variance from being materially detrimental to the public welfare or injurious to property in the vicinity or base zone in which the property is located, or adversely affect the appropriate development of adjoining properties. Fire safety measures required by MCC 39.4155 will aid in protecting against the spread of a potential fire to neighboring properties. These measures include construction of the dwelling in accordance with the International Fire Code Institute Urban-Wildland Interface Section 504 Class 1 Ignition Resistant Construction, a central station monitored 13D sprinkler system, fire sprinklers and a Class A envelope as required by the TVF&R (Ex. A.7). A condition is warranted to ensure compliance with these fire safety measures. With this, the Hearings Officer finds this requirement is satisfied.

- d. Minimum Necessary Variance. MCC 39.8215(E) requires the variance to be the minimum necessary variation from the Code requirement to alleviate the difficulty. Due to the above-described physical limitations of the parcel, the requested variance would allow the applicant to site this single-family dwelling on the property within the forest practices setback area (Ex. A.21). The applicant did not request any additional variances as part of this application. The requested variance appears to be the minimum necessary variation from the required forest practices setback applicable to structures in the CFU-2 zone. As such, the Hearings Officer finds that this requirement is satisfied.
- e. Impacts are Mitigated to the Extent Practical. MCC 39.8215(F) requires that the impacts resulting from the variance are mitigated to the extent practical. The adjacent property to the northwest contains existing development and the adjacent property to the east holds an approval for a dwelling. McCarthy Creek and significant areas of vegetation provide a barrier between the subject property and the adjacent property to the east (Ex. A.19), ensuring adequate privacy. The installation of the various fire safety measures should ensure that the properties to the south and west will not be impacted should the development catch fire. A notice of application and public hearing was mailed to the property owners of the adjacent properties to the (Ex. C.4), and no one submitted any comments on the request. There is no evidence or argument that granting this variance would impact light, privacy, access, etc. or that any mitigation is warranted. In this light, the Hearings Officer finds that this requirement is satisfied.
- f. The Use is Lawful. Finally, MCC 39.8215(G) requires that the use proposed is lawful and will be lawfully established. The Hearings Officer finds that this single-family dwelling was authorized by a duly approved M49 Final Order (Exs. A.21 & B.4), which satisfies this requirement.

Protected Aggregate and Minerals (PAM) Overlay

- 1. Affected Area. The PAM Overlay regulations in MCC 39.5400 to 5445 apply to all areas so mapped and designated on the County's zoning map. As shown in this aerial photograph with the PAM Overlay imposed, this parcel is partially encumbered by the PAM Overlay:



As this aerial photograph shows, the boundary of the PAM-IA overlay on the subject property does not include the proposed home site. The proposed dwelling will be located outside of the PAM Overlay boundary, which does not require compliance with the PAM Overlay regulations or a conditional use permit for that purpose. The Hearings Officer concludes that the PAM Overlay regulations are not applicable to this proposed dwelling.

V. Decision and Conditions:

Based on the foregoing Findings, the Hearings Officer approves the applicant's request to develop a single-family dwelling on the subject property as described in the application materials (Exs. A1 – A.26) as supplemented (Exs. I.1 – I.4), subject to the following conditions. These conditions 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 is included. Approval of this land use permit is based on the applicant's submitted narrative, plans and other representations made to the County. No work shall occur under this permit other than what is described in these documents and approved in this Final Order. While the property owners are responsible for compliance with these requirements and adhering to the limitations of approval described herein, these conditions may be fulfilled by the property owner's contractor(s), engineer(s) or other agents. Nonetheless, the property owners remain responsible for ensuring that these conditions are fully satisfied.

1. Approval of this land use permit is based on the submitted written narrative(s) and plan(s) and all other documents provided by or behalf of the applicant. No work shall occur under this permit except what is specified within those documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.
2. Permit Expiration – This land use permit shall automatically expire and be null and void upon the occurrence of either of the following two circumstances:

- a. Within two years of the date of this Final Order when construction has not commenced.
 - i. For the purposes of 2.a, commencement of construction shall mean actual construction of the foundation or frame of the approved structure.
 - ii. For purposes of Condition 2.a, the developer shall provide notification of commencement of construction to Multnomah County Land Use Planning Division a minimum of 7 days prior to date of commencement. Work may commence once notice is completed. Commencement of construction shall mean actual construction of the foundation or frame of the approved structure.
 - b. Within 4 years of the date of commencement of construction if the structure has not been completed. For the purposes of this Condition, "completion of the structure" shall mean completion of the structure's exterior surfaces and compliance with all conditions of approval in the land use approval.
3. The State of Oregon conditions of approval in Final Order E118605 (Ex. B.4), as interpreted by this decision, are also express conditions of this approval. See ORS 195.300 to 195.335. The right to a home site on the subject property authorized by Final Order no. E118605 expires on February 2, 2028 or after 10 years of the initial conveyance to another party pursuant to condition 12 of the Final Order whichever comes first, unless a single-family dwelling has been lawfully established as authorized by this approval.
 4. Prior to land use sign-off for building plan check, the property owners or their representative shall complete/perform all of the following:
 - a. The property owners shall acknowledge in writing that they have read and understand the conditions of approval and intend to comply with them. A form Letter of Acknowledgement has been provided to assist you. The signed document shall be sent to *chris.liu@multco.us*. MCC 39.1170(A) & (B)
 - b. The property owners shall sign and record the following at the County Recording:
 - i. 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 39.4150
 - ii. The cover page of the hearings officer final decision and all pages containing conditions of approval; the approved Wildlife Conservation Plan; and the approved site plan with primary and secondary fire safety zones shown. MCC 39.1175
 - c. All exterior lighting associated with the single-family dwelling shall be shown on the site plan. Lighting details and model numbers for all light fixtures shall be shown in the building plan set. All exterior light fixtures shall comply with the County's Dark Sky Lighting Standards in MCC 39.6850.
 - d. The property owners shall provide the name, address and phone number of the Certified Engineering Geologist or Geotechnical Engineer that will be conducting the observation of the development. MCC 39.5090
 - e. The property owners shall provide a final revegetation plan for all areas that have been disturbed for the construction of the dwelling and its related physical

- improvements. The plan shall identify all plant species that will be used and the time period for the installation of the temporary and permanent plantings. MCC 39.5860(C)
- f. The property owners shall provide the plans for the 13D fire sprinklers to be installed in the dwelling. The property owners shall also verify with Tualatin Valley Fire and Rescue that the building envelope meets the Class A standards. MCC 39.4115(B)(2)
 - g. The property owners shall demonstrate that the dwelling will have a fire retardant roof and a spark arrester on any chimney. MCC 39.4115(C)
 - h. The property owners shall demonstrate that the dwelling will be constructed in accordance with the International Fire Code Institute Urban-Wildland Interface Class 1 Ignition Resistance Construction standards. The property owners shall have the designer or architect certify that the building plan drawings meet these standards. MCC 39.4155(B)(2)
 - i. The property owners shall provide proof of review of the final grading and building plans by the project Certified Engineering Geologist or Geotechnical Engineer, as per the Geotechnical Report recommendations. MCC 39.5090
 - j. The property owners shall provide documentation demonstrating that they have a legally enforceable easement to place physical improvements such as structures (i.e., fencing), plantings, turnouts, or other development on adjacent properties as necessary to implement this decision. MCC 39.1115
 - k. The property owners shall provide a final landscaping plan identifying all native trees, shrubs, groundcover, and other vegetation that will serve as mitigation plantings associated with the Wildlife Conservation Plan. County Land Use Planning shall review and approve this plan if it demonstrates compliance with the Wildlife Conservation Plan requirements. The approved plan shall serve as the reference plan to demonstrate satisfaction of Condition 8.f. MCC 39.5860(C)
 - i. Trees planted shall be at least ½ inch in caliper, measured at 6 inches above the ground level for field grown trees or above the soil line for container grown trees. Trees that are oak or madrone may be one gallon size. Shrubs shall be at least a 1-gallon container or the equivalent in ball and burlap size and shall be at least 12 inches in height. MCC 39.5860(C)(5)(i)
 - ii. Trees shall be native and planted between 8 and 12 feet on-center. No more than 50% of the trees may be of the same genus. The shrubs shall be planted between 4 and 5 feet on-center, or clustered in single species groups of no more than 4 plants; with each cluster planted between 8 and 10 feet on-center. Shrubs shall consist of at least 2 different species. MCC 39.5860(C)(5)(k)-(l)
5. Prior to and during construction, the property owners shall ensure that:
- a. All/any fill trucks used shall be loaded, covered, or otherwise operated to prevent any of their load from dropping, sifting, leaking, or otherwise escaping from the vehicle. No fill materials shall be tracked or discharged in any manner onto any public right-of-way. MCC 39.5090(X)
 - b. No compensation, monetary or otherwise, shall be received by the property owner for the receipt or placement of fill. MCC 39.5090(Y)

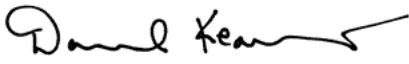
- c. Whenever sedimentation is caused by ground disturbing activity, the property owners or their contractor shall be responsible for removal of that sedimentation from all adjoining surfaces and drainage systems prior to issuance of occupancy or final approvals for the project. MCC 39.6210(E)
- d. It is the responsibility of any person, corporation or other entity doing ground disturbing activity in or adjacent to a right-of-way, to maintain as nearly as possible in its present state during such activity, and to return the same to a functional condition equal to or better than the condition existing immediately prior to the ground disturbing activity. MCC 39.6210(E)
- e. A performance bond may be required in the amount of the full cost of the establishment and maintenance of all erosion, sedimentation, revegetation and stormwater control measures for activity authorized by this permit. The County may use the bond to provide for the installation of the measures if not completed by the contractor. The bond shall be released once the County verifies the control measures have or can be expected to perform satisfactorily. MCC 39.6210(F)
- f. The property owners shall post the Erosion Control Permit notice card (Card) at the driveway entrance in a clearly visible location. The Card has been included with the mailed paper copy of this decision. This Card shall remain posted until such time as the project is complete and the ground has been revegetated. In the event the Card is lost, destroyed, or otherwise removed prior to completion of the work, the applicant shall immediately contact the Land Use Planning office and obtain a replacement. MCC 39.5090
- g. When ground-disturbing activities authorized by this decision are ready to commence, the property owners shall contact by e-mail Staff Planner, Chris Liu at chris.liu@multco.us. Work may commence after written notice is completed and erosion control measures have been installed. The County's inspector will visit the project site to ensure that Best Management Practices occur throughout the duration work. MCC 39.5090
- h. The property owners shall install erosion control measures consistent with the final approved grading and erosion control plan. These measures shall remain in place and in good working order until such time as all ground disturbing activities are complete and all disturbed ground is revegetated. MCC 39.5090
- i. The property owners shall maintain best erosion control practices through all phases of development. The erosion control measures shown on the final grading and erosion control plan shall remain in place and in good working order until construction is completed and the disturbed ground is reseeded and mulched. Straw mulch, erosion blankets, or 6-mil plastic sheeting shall be used as a wet weather measure to provide erosion protection for exposed soils. All erosion control measures shall be implemented using Best Management Practices (BMP). MCC 39.5090
- j. The property owners shall remove any sedimentation caused by development activities from all neighboring surfaces and/or drainage systems. If any features within adjacent public right-of-way are disturbed, the property owner shall be responsible for returning those features to their original condition or a condition of equal quality. MCC 39.5090

- k. The property owners shall seed and mulch all disturbed soils to prevent erosion and shall monitor daily to ensure vegetation is sprouting and that no erosion or sedimentation is occurring. Monitoring may cease when vegetation on the disturbed soils has stabilized the disturbed soils. MCC 39.5090
 - l. On-site disposal of construction debris is prohibited. Any spoil materials removed off-site shall be taken to a location approved for the disposal of these materials by applicable Federal, State and local authorities. This permit also prohibits dumping or disposal of hazardous or toxic materials, synthetics (e.g., tires), petroleum-based materials, or other solid wastes that may cause adverse leachates or other off-site water quality effects. MCC 39.5090 In the event that any pesticides, fertilizers, petrochemicals, solid wastes, or construction chemicals are used on-site during construction, the property owners and contractor shall provide the required monitoring of their use to ensure that none are allowed to seep into the ground or flow off-site. MCC 39.5090(T)
 - m. All work areas shall be flagged and/or fenced with silt fencing to reduce potential damage to habitat outside of the work area. The work area shall remain marked through all phases of development. MCC 39.5860(C)(5)(f)
 - n. Native soils disturbed during development shall be conserved on the property. MCC 39.5860(C)(5)(h)
 - o. Ground stripping for development of the gravel road and homesite shall be done in a manner that minimizes soil erosion. The operator shall install and maintain sediment fencing for the duration of the project and shall spread temporary seeding and mulch over disturbed areas after October 1. The mitigation area will be planted in the summer and stabilized prior to October 1. The trenches will be seeded or covered with mulch as required.
6. The property owners shall ensure that a Certified Engineering Geologist or Geotechnical Engineer observes the development activities. This observation shall be at the owners' expense. The name, address and phone number of the Certified Engineering Geologist or Geotechnical Engineer that will be conducting the observation of the development shall be submitted to Land Use Planning prior to zoning review for a building permit. The observation of the development activities by the Certified Engineering Geologist or Geotechnical Engineer shall include but is not limited to foundation work, confirmation on installation and effectiveness of all erosion and sediment control measures, and a final observation prior to the final building permit inspection. The Certified Engineering Geologist or Geotechnical Engineer shall certify in writing that the development is in compliance with the approved Geologic Hazard permit and the required observations were made. MCC 39.5090
 7. The property owner shall implement the erosion and sediment control measures as shown on the preliminary Grading and Erosion Control Plan (Ex. I.4 p.5) except as amended herein. If while observing the development, the Certified Engineering Geologist or Geotechnical Engineer determines additional changes are needed, they shall contact the case planner and discuss the proposed erosion control changes. Once approved by County Land Use Planning, the altered erosion control measures shall be implemented immediately. MCC 39.5090
 8. Prior to issuance of the Certification of Occupancy, the property owners shall:

- a. Demonstrate that the building permits required to construct the single-family dwelling have been obtained from the City of Portland Bureau of Development Services.
- b. Submit to County Land Use Planning a report from the observing Certified Engineering Geologist or Geotechnical Engineer. The report shall confirm that proper measures were implemented to meet the recommendations of the Geotechnical Report(s) (Exs. A.3-A.4, A.18 & I.2), as well as any other recommendations of the Certified Engineering Geologist or Geotechnical Engineer. The Certified Engineering Geologist or Geotechnical Engineer shall sign the report with their seal (stamp) affixed to the report. The Certified Engineering Geologist or Geotechnical Engineer shall certify in writing that the development is in compliance with the approved Geologic Hazards Permit and the required observations were made. MCC 39.5090
- c. Provide documentation that the stormwater drainage control system designed by NW Engineers has been installed according to the specifications outlined by Engineer Steve White (Ex. A.16), and as shown on the site plan and grading and erosion control plan (Ex. A.22). Steve White shall certify the documentation demonstrating that the stormwater drainage control system has been installed and is functioning as designed. MCC 39.6325
- d. Demonstrate that the dwelling has been constructed in accordance with the International Fire Code Institute Urban-Wildland Interface Code Section 504 Class 1 Ignition Resistant Construction and contains a central station monitored 13D sprinkler system. MCC 39.4155(B)
- e. Demonstrate that there are no combustible fences within 12 feet of the exterior surface of the dwelling. MCC 39.4155(B)
- f. Provide a well contractors report documenting completion of the well. MCC 39.4115(D)
- g. Demonstrate that the approved mitigation plantings associated with the SEC-h permit have been planted on the subject property in the designated area shown in the Preliminary Landscaping Plans (Exs. I.1 & I.4 p.9). Plantings shall be completed within one year following the date of this Final Order. MCC 39.5860
- h. Demonstrate that all requirements and express conditions of this development approval have been fulfilled. MCC 39.6210(F)
- i. The person in charge of the project to remove all sedimentation from all adjoining surfaces and drainage systems. MCC 39.6210(E)
9. On-going Conditions. The following conditions shall apply in perpetuity, and compliance shall be required on an on-going basis:
 - a. The property owner shall maintain a primary and secondary fire safety zone within the confines of the lot as outlined below:
 - i. A primary fire safety zone extending a minimum of 30 feet in all directions around the dwelling. Trees within this safety zone shall be spaced with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches within 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height. MCC 39.4110(D)(1)(a)

- ii. A secondary fire safety zone extending a minimum 10 feet for the area west of the dwelling, 50 feet for the area south and north, and 100 feet for the area east around the primary fire safety zone. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing under larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Assistance with planning forestry practices that meet these objectives may be obtained from the State of Oregon Department of Forestry or the local Rural Fire Protection District. MCC 39.4110(D)(2)
- b. No nuisance plants listed in MCC 39.5580 Table 1 shall be planted on the subject property. MCC 39.5860(B)(7)
- c. The property owners shall not install any fencing on the subject property without first obtaining land use approval for it. Fencing constructed within 12 feet of the dwelling shall be constructed of noncombustible materials. Any fencing within a required setback from a public road shall be no taller than 42 inches and have a minimum 17-inch gap between the ground and the bottom of the fence. MCC 39.5860(B)(6), MCC 39.4065, MCC 39.4155(B)(3)
- d. The property owners are responsible for implementing and maintaining compliance with the Final Wildlife Conservation Plan, including the following elements:
 - i. All work areas shall be flagged and/or fenced with silt fencing to reduce potential damage to habitat outside of the work area. The work area shall remain marked through all phases of development.
 - ii. All plantings shall meet the sizing requirements in MCC 39.5860(C)(5)(i) and other requirements in MCC 39.5860(C)(5)(k) & (l). The planting date shall be within one year following the date of this Final Order.
 - iii. The property owners shall monitor the plantings and report on their condition as required by MCC 39.5860(C)(5)(o) for a minimum of 5 years post-planting. Any plants that die shall be replaced in kind so that a minimum of 80% of the trees and shrubs planted remain alive on the 5th anniversary of the planting date. The County may extend the 5-year monitoring and reporting period if the property owners fail to provide the annual reports or fail to keep 80% of the trees and shrubs alive. The County shall provide a written release from the monitoring and reporting requirement upon a determination that the property owners have satisfied these requirements. MCC 39.5860(C)(5)(o)

Date of Decision: January 10, 2022.


By: _____
Daniel Kearns,
Land Use Hearings Officer

Notice of Appeal Rights

This is the County's final decision on this application and appeal. Anyone with standing may appeal any aspect of the Hearings Officer's decision, to the Oregon Land Use Board of Appeals within 21 days of the date of this decision pursuant to ORS Chapter 197.

**Exhibit List for T3-2021-14603
(Miranda/Ali Dwelling)**

A	Application Exhibits	Date
A.1	General Application Form	05.03.2021
A.2	Applicant Narrative	05.03.2021
A.3	Geotechnical Reconnaissance And Stability Preliminary Study	05.03.2021
A.4	Geotechnical Report from GeoPacific Engineering	05.03.2021
A.5	Stormwater Drainage Report	05.03.2021
A.6	Septic Review Certification	05.03.2021
A.7	Fire Service Agency Review	05.03.2021
A.8	Aerial Photograph of Site	05.03.2021
A.9	Existing Conditions Site Plan	05.03.2021
A.10	Preliminary Site Plan	05.03.2021
A.11	Preliminary Grading & Erosion Control Plan	05.03.2021
A.12	Parcel Profile & Details	05.03.2021
A.13	Slope Analysis Site Plan	05.03.2021
A.14	Wildlife Conservation Site Plan	05.03.2021
A.15	Preliminary Revegetation Plan	05.03.2021
A.16	Revised Stormwater Drainage Report	07.01.2021
A.17	Revised Applicant Narrative	07.01.2021
A.18	Geotechnical Addendum from GeoPacific Engineering	07.01.2021
A.19	Revised Aerial Photograph of Site	07.01.2021
A.20	Revised Existing Conditions Site Plan	07.01.2021
A.21	Revised Preliminary Site Plan	07.01.2021

A.22	Revised Preliminary Grading & Erosion Control Plan	07.01.2021
A.23	Revised Parcel Profile & Details	07.01.2021
A.24	Revised Wildlife Conservation Site Plan	07.01.2021
A.25	Revised Slope Analysis Site Plan	07.01.2021
A.26	Revised Preliminary Revegetation Plan	07.01.2021
B	Staff Exhibits	Date
B.1	Division of Assessment, Recording, and Taxation (DART): Property Information for 2N1W32B -00702 (Alt Acct#R649631860)	05.03.2021
B.2	Division of Assessment, Recording, and Taxation (DART): Map for 2N1W32B	05.03.2021
B.3	Copy of Partition Plat 2012-047	07.09.2021
B.4	Copy of M49 Final Order E118605	07.09.2021
B.5	Transportation Planning Review	10.20.2021
B.6	Measured Development Area Plan	11.04.2021
C	Administration & Procedures	Date
C.1	Incomplete Letter	05.28.2021
C.2	Applicant's Acceptance of 180 Day Clock	06.11.2021
C.3	Complete Letter (Day 1)	07.09.2021
C.4	Hearing Notice	10.28.2021
C.5	Staff Report	11.09.2021
H	Hearing Documents	Date
H.1	Luethe Property Photos 2010-2015	11.19.2021
H.2	T3-2015-3856 Hearings Officer Decision 07.10.2016	11.19.2021
H.3	T3-2012-2097 Hearings Officer Decision 05.07.2012	11.22.2021
I	Post Hearing Open Record	Date
I.1	Drawing Katies Place Scale 1 to 100 at A0 3	12.10.2021

I.2	Memorandum GeoPacific Engineering 12.08.2021	12.10.2021
I.3	Addendum NW Engineers 12.09.2021	12.10.2021
I.4	N0713-Plans 12.09.2021	12.10.2021
I.5	Property Owners Letter 12.09.2021	12.10.2021
I.6	Applicant Decision Clock Extension Request 12.24.2021	12.24.2021
J	Post Hearing Rebuttal	Date
J.1	T3-2021-14603 Staff Post Hearing Memorandum 12.17.2021	12.17.2021
K	Final Argument	Date
K.1	T3-2021-14603 Applicant Post Hearing Final Argument 12.24.2021	12.27.2021