

## Notice of Hearings Officer Decision

Attached please find notice of the Hearings Officer's decision in the matter of **T3-2021-14961** mailed 01/21/2022. 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](http://www.oregon.gov/LUBA)

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

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1600 SE 190<sup>th</sup> Ave, Portland OR 97233-5910 • PH. (503) 988-3043 • Fax (503) 988-3389

**DECISION OF THE HEARINGS OFFICER**

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**Case File:** T3-2021-14961

**Hearing Date, Time, & Place:**

**Friday, January 14, 2022 at 9:00 am.** The hearing was conducted online.

**Permits:** Administrative Decision by the Planning Director, Category 1 Land Division, Creation of a parcel/lot not abutting a street, Variance

**Location:** 13801 NW Charlton Road, Portland  
Tax Lot 00900, Section 16, Township 2 North, Range 1 West, W.M.  
Alternate Account # R971160060 Property ID: R324933

**Applicant:** Mercedes Serra, 3J Consulting, Inc.

**Property Owner:** Wiley Farm Enterprises LLC

**Summary:** The applicant is requesting an Administrative Decision by the Planning Director to implement a Measure 49 Final Order and a Category 1 Land Division. The land division will create three (3) parcels, which requires a Hearing to authorize a parcel that does not abut a street and multiple variances to the minimum front lot line length.

**Base Zone:** Exclusive Farm Use (EFU)

**Overlay Zones:** Significant Environmental Concern for Wetlands (SEC-w)

**Site Size:** 103.04 acres

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**Applicable Approval Criteria:**

Multnomah County Code (MCC): General Provisions: MCC 39.1515 Code Compliance and Applications, MCC 39.2000 Definitions

Lot of Record: MCC 39.3005 Lot of Record – Generally, MCC 39.3070 Lot of Record – Exclusive Farm Use (EFU)

Exclusive Farm Use (EFU): MCC 39.4245 Dimensional Requirements and Development Standards, MCC 39.4260 Access

Parking, Loading, Circulation and Access: MCC 39.6560 Access

Variances: MCC 39.8205 Scope, MCC 39.8215 Variance Approval Criteria

Category 1 Land Division: MCC 39.9035(D) Category 1 Land Divisions; MCC 39.9400 Criteria for Approval, Category 1 and Category 2 Tentative Plan and Future Street Plan; MCC 39.9405 Contents Of Category 1 and Category 2 Tentative Plan; MCC 39.9410 Category 1 and Category 2 Tentative Plan Map Specifications; MCC 39.9415 Category 1 and Category 2 Tentative Plan Map Contents; MCC 39.9420 Written Information: Category 1 and Category 2 Tentative Plan; MCC 39.9425 Supplementary Material: Category 1 and Category 2 Tentative Plan; MCC 39.9500 Application of General Standards and Requirements; MCC 39.9505 Land Suitability; MCC 39.9510 Lots and Parcels; MCC 39.9515 Acreage Tracts; MCC 39.9520 Street Layout; MCC 39.9525 Street Design; MCC 39.9530 Street Reserve Strips; MCC 39.9535 Temporary Turnarounds; MCC 39.9540 Street Names; MCC 39.9545 Required Improvements; MCC 39.9550 Streets, Sidewalks, Pedestrian Paths and Bikeways; MCC 39.9555 Easements; MCC 39.9560 Street Trees; MCC 39.9565 Street Lighting; MCC 39.9570 Water System; MCC 39.9575 Sewage Disposal; MCC 39.9580 Surface Drainage and Storm Sewer Systems; MCC

39.9585 Electrical and Other Wires; MCC 39.9587 Required Improvements; MCC 39.9588 Streets, Sidewalks, Pedestrian Paths and Bikeways, Water System, Sewage Disposal, Surface Drainage and Storm Water Systems, 39.9590 Other Utilities

Comprehensive Plan Policies: Chapter 3 – Farm Land: Policy 3.11, Policy 3.12

Chapter 11 – Public Facilities: Policy 11.17

Oregon Revised Statues (ORS): Measure 49 Final Order Approval E129631: ORS 195.300 through ORS 195.336

**Hearing Officer Decision:**

The request for Administrative Decision by the Planning Director, Category 1 Land Division, creation of a parcel that does not abut a street, and two (2) Variances are approved subject to the conditions of approval included in this Final Order.

**Conditions of Approval:**

1. Approval of this land use permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.
  2. Permit Expiration – This land use permit shall expire as follows:
    - a. This permit shall expire two (2) years after the date of the final decision, unless the plat is established according to all specifications and conditions of approval in the land use approval. [MCC 39.1185(A)]
      - i. For the purposes of 1.a, expiration of an approval means that a new application is required for uses that are not established during the approval period. For land divisions, “established” means the final plat has been recorded with the County Recorder.
- Note:** Expiration of an approval means that a new application is required for uses that are not established during the approval period. The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 39.1195, as applicable. The request for a permit extension must be submitted prior to the expiration of the approval period. Expiration is automatic. Failure to give notice of expiration shall not affect the expiration of an approval.
3. No parcel shall be sold, transferred, or assigned until the partition plat has been approved by the Planning Director and County Surveyor and recorded with the public office responsible for public records. [MCC 39.9620(C)]
  4. Prior to submittal of the plat, the property owners or their representative shall:
    - a. Acknowledge in writing that they have read and understand the conditions of approval and intend to comply with them. A Letter of Acknowledgement has been provided to assist you. The signed document shall be sent to Rithy Khut at rithy.khut@multco.us. [MCC 39.1170(A) & (B)]

- b. Retain a surveyor to complete the instructions as described in "Finishing a Land Division" handout (Exhibit B.19) and submit to the County Surveyor a plat in accordance with the requirements of Oregon Revised Statutes (ORS), Chapters 92. [MCC 39.9605]
  - i. The surveyor shall ensure that all lots created are surveyed, monumented and platted, regardless of parcel area. [MCC 39.9605(B)]
- c. Submit and obtain Land Use Planning sign off for Zoning Approval to:
  - i. Convert the modular home as indicated and shown in Exhibit A.15 into an accessory building by providing building plans showing the floor plan of the single-family dwelling has been converted into an accessory building. For the purposes of this condition, the plans for existing single-family dwelling will show that the accessory building does not contain: (a) More than one story; (b) Cooking Facilities; (c) A toilet or toilets; (d) Bathing facilities such as a shower or bathing tub; or (f) A closet or closets built into a wall. One sink may be shown. [MCC 39.4220(O)(2) through (4). [E129631.IV.1, E129631.IV.6, E129631.IV.7, and E129631.IV.9]
  - ii. Modify the private driveway to have a width of 20 feet to accommodate two-way traffic. Alternatively, if the road is not expanded to a width of 20 feet, turnouts 10 feet wide and 30 feet long are required every 400 feet. [MCC 39.4260 and MCC 39.8215(D)]
5. Prior to Land Use Planning sign off for the plat, the property owner shall contact Code Compliance at (503) 988-5508 and request a site inspection to verify that:
  - a. The "shed" accessory building, located on Parcel #1 as shown in Exhibit A.15, which is 3.7 feet from the property line, is removed or relocated to meet the minimum yard requirement of 30 feet. [MCC 39.4245(C)]
6. At the time of Land Use Planning sign off for the plat, the property owners or their representative shall:
  - a. Pay the required fee and submit two (2) blue-line copies of the plat to the case planner, Rithy Khut conforming to all applicable requirements as established by the Oregon Revised Statutes (ORS) Chapters 92 and 209. The Planning Director will determine whether the plat conforms to this decision and the conditions of approval contained herein. When the Planning Director determines the plat complies with this decision and applicable conditions, a letter of zoning compliance will be provided by the Land Use Planning Division to the Multnomah County Surveyor. If the Planning Director determines that there is not such conformity, the applicant shall be so advised and afforded an opportunity to make corrections. When the plat is found to be in conformity and the County Surveyor finishes their plat check, it shall be signed and dated by the Planning Director. [MCC 39.9605 and MCC 39.9620]
    - i. The plat shall show:
      1. A total of three (3) parcels will be reflected in the Partition Plat as shown in Exhibit A.15. [MCC 39.9605]
      2. A five (5) foot wide utility easement along the front property line abutting a street for Parcel #1. Utility infrastructure may not be placed within one foot of a survey monument location noted on the partition plat [MCC 39.9555(A)]

3. A stormwater easement for drainageway, channel, or stream. The stormwater easement shall be to the benefit of the Sauvie Island Drainage District unless evidence is provided that no drainageway, channel, or stream exists on the property or the Drainage District does not require the easement. [MCC 39.9555(B)]
- ii. Ensure that the partition plat shows the following, if applicable:
    1. Corners of adjoining subdivisions or partitions.
    2. The location, width, and centerline of streets and easements abutting the boundaries of the land division.
    3. Any plat that includes land in areas of Special Flood Hazard or includes a water body or watercourse, as those features are described in MCC 39.2000, shall contain a plat note indicating that portions of the plat are subject to flooding and/or high water.
    4. The ownership of each private street shall be shown.
    5. Other certifications required by law. [MCC 39.9610]
  - b. Provide, if needed, a copy of any deed restrictions applicable to the partition; a copy of any dedication requiring separate documents; a copy of the future street plan, when required, as recorded according to MCC 39.9465(A); and a map, prepared by an Oregon licensed surveyor, of the partition plat that depicts the normal flood plain or high water line for any water body or watercourse and the extent of areas of Special Flood Hazard as defined in MCC 39.5005. [MCC 39.9615]
  - d. Contact Multnomah County Land Use Planning Division - Code Compliance Program and/or Rithy Khut, Land Use Planner to schedule a site inspection. At the time of scheduling, photos or other evidence shall be provided to the County confirming the following:
    - i. The northern modular home on Parcel #1 as indicated and shown in Exhibit A.15 converted into an accessory building. To convert the single-family dwelling into an accessory building the following items are required to be removed from the building: Cooking facilities, a toilet or toilets, bathing facilities such as a shower or bathing tub, a closet or closets built into a wall. One sink may be allowed to remain. [MCC 39.4220(O)(2) through (4). [E129631.IV.1, E129631.IV.6, E129631.IV.7, and E129631.IV.9]
    - ii. The private driveway has a width of 20 feet to accommodate two-way traffic unless turnouts 10 feet wide and 30 feet long are provided every 400 feet. The private driveway will also have driving surface capable of supporting the imposed load of a fire apparatus weighting up to 75,000 lbs. (34,050 kg). [MCC 39.4260 and MCC 39.8215(D)]
  - e. Record a covenant with Division of Assessment, Recording, and Taxation (“County Records”) that states that the owner understands and agrees that accessory structure cannot be occupied as a dwelling or for any other form of permanent or temporary residential use. [MCC 39.4220(O)(5) and MCC 39.8860]
7. As an on-going condition, the property owner shall:
    - a. Ensure that modular home as indicated and shown in Exhibit A.15 shall not be used, whether temporarily or permanently, as a primary dwelling, accessory dwelling unit,

apartment, guesthouse, housing rental unit, sleeping quarters or another residential use.  
[MCC 39.4220(O)(2)]

- b. Ensure that within the modular home as indicated and shown in Exhibit A.15, a mattress, bed, Murphy bed, cot, or any other similar item designed to aid in sleep as a primary purpose is disassembled for storage. [MCC 39.4310(F)(4)]

**Note:** The County Surveyor has a separate process and fee for their review. The County Recorder also has rules and a fee for recording documents.

**Note:** State law requires that property taxes be paid before a plat can be recorded.

**Dated** this 21 day of January 2022



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

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

## **A. HEARING AND RECORD HIGHLIGHTS**

1. Multnomah County Land Use Hearings Officer Joe Turner received testimony at the duly noticed public hearing about this application on January 14, 2022. At the hearing, the hearings officer received into the record and physically inspected the file maintained by the Department of Community Services Land Use and Transportation Planning Program regarding the application. The hearings officer made the declarations required by ORS 197.763. The hearings officer disclaimed any *ex parte* contacts and any bias or conflicts of interest.
2. County planner Rithy Khut summarized the Staff Report, the applicable approval criteria, and his PowerPoint presentation.
  - a. He noted that three new exhibits were submitted after the Staff Report was issued: A clarified lot of record image (Exhibit H.1), a copy of the applicant's PowerPoint presentation that was shown at the hearing (Exhibit H.2), and a post-hearing memorandum dated January 14, 2021 (Exhibit H.3).
  - b. The applicant requests approval of an Administrative Decision by the Planning Director to implement a Measure 49 Final Order, a Category 1 Land Division, the creation of two parcels that do not abut a street, and multiple variances to the minimum front lot line length. Proposed Parcels 2 and 3 do not abut a county road and do not comply with minimum front lot line requirements.
  - c. The development is proposed on a 103.4-acre parcel located at 13801 NW Charlton Road (the "site"). The site and the majority of surrounding properties are zoned EFU (Exclusive Farm Use). Properties abutting the northwest corner of the site are zoned MUA-20 (Multiple Use Agriculture, 20-acre minimum lot size). The site is also subject to the Significant Environmental Concern for Wetlands (SEC-w) overlay zone.
  - d. The site includes a section of Gilbert River and wetlands identified on the Statewide Wetland Inventory. However, the proposed development will not impact these features.
  - e. The site currently contains three single-family dwellings; one located on proposed Parcel 2 and two located on proposed Parcel 1. Proposed Parcel 3 is currently vacant.
  - f. The applicant originally proposed to remove or demolish one of the two existing single-family dwellings on proposed Parcel 1. The applicant now proposes to retain the second dwelling structure and convert it to an accessory building. He requested the hearings officer consider the issues raised in his memorandum, Exhibit H.3, adopt additional findings, and, if the hearings officer approves the proposal to convert the existing residence into an accessory building, modify the conditions of approval to that effect.
3. Carlos Callava appeared in support of the application and summarized his PowerPoint presentation, Exhibit H.2. The site is currently developed with three dwellings and several accessory structures, sheds and barns. He waived the applicant's right to submit a final argument.
4. The hearings officer closed the record at the end of the public hearing and announced his intention to approve the application, generally subject to the conditions in the Staff Report. The hearings officer took under advisement the applicant's revised proposal to retain one of the existing residences on proposed Parcel 1 as an accessory building.

## B. FINDINGS OF FACT

**FINDINGS:** Written findings are contained herein. The Multnomah County Code (MCC) criteria and Comprehensive Plan Policies are in **bold** font. Hearings officer analysis and comments are identified as “**Hearings Officer:**” and address the applicable criteria. Hearings officer comments may include a conclusory statement in *italic*.

### 1.0 Project Description:

**Staff:** The applicant is requesting an Administrative Decision by the Planning Director to implement a Measure 49 Final Order and a Category 1 Land Division for the creation of three (3) parcels. The two newly created parcels will not abut a street and both will require a variance to the minimum front lot line length. The third parcel will be designed as a flag lot. These permits will allow for the establishment of a single-family dwelling on each parcel where a single-family dwelling does not already exist.

### 2.0 Property Description & History:

**Staff:** This application is for 2N1W16 -00900, otherwise known as 13801 NW Charlton Road, Portland. The subject property is located on the intersection of NW Charlton Road and NW Charlton Drive in unincorporated west Multnomah County in the area known as the Sauvie Island/Multnomah Channel Rural Planning Area. The subject property is zoned Exclusive Farm Use (EFU). The subject property is approximately 103.04 acres in size and contains primarily farmed areas. The middle of the property is bisected by a riparian area that contains the Gilbert River. There are also areas on the subject property that are identified on the Statewide Wetland Inventory as Freshwater Emergent Wetlands and Freshwater Ponds.

The subject property is being assessed for farm-use special assessment. Aerial photo review from 2020 shows the presence of multiple structures on the subject property (Exhibit A.7). It appears that three of the structures are individual single-family dwellings and two of the larger buildings are agricultural buildings.

### 3.0 Public Notice:

#### 3.1 § 39.1150 HEARINGS NOTICE – TYPE II APPEALS, TYPE III OR TYPE IV APPLICATIONS.

**Except for appeals of Hearings Officer decisions by the Planning Director which have different notice requirements in MCC 39.1160(B), notice for all public hearings for Type III, IV or an appeal of a Type II application shall conform to the requirements of this section. At least 20 days prior to the hearing, the county shall prepare and send, by first class mail, notice of the hearing to all owners of record, based upon the most recent Multnomah County records, of property within 750 feet of the subject tract and to any county- recognized neighborhood association or identified agency whose territory includes the subject property. The county shall further provide notice at least 20 days prior to a hearing to those persons who have identified themselves in writing as aggrieved or potentially aggrieved or impacted by the decision prior to the required mailing of such notice. The county shall also publish notice in a newspaper of**

**general circulation within the county at least 20 days prior to the hearing. Notice of the hearing shall include the following information:**

- (A) The time, date and location of the public hearing;**
- (B) Street address or other easily understood location of the subject property and County assigned case file number;**
- (C) A description of the applicant's proposal, along with a list of citations of the approval criteria that the County will use to evaluate the proposal;**
- (D) A statement that any interested party may testify at the hearing or submit written comments on the proposal at or prior to the hearing, and that a staff report will be prepared and made available to the public at least 7 days prior to the hearing;**
- (E) A statement that any issue which is intended to provide a basis for an appeal to the Land Use Board of Appeals must be raised before the close of the public record. Issues must be raised and accompanied by statements or evidence sufficient to afford the County and all parties to respond to the issue;**
- (F) A statement that the application and all supporting materials and evidence submitted in regard to the application may be inspected at no charge, and that copies may be obtained at cost, at the Multnomah County Land Use Planning Division during normal business hours; and**
- (G) The name and telephone number of the planning staff person responsible for the application and who is otherwise available to answer questions about the application.**
- (H) Notice published in a newspaper shall include the information in (A), (B) and (G) above, along with a brief description of the applicant's proposal, and a statement that all interested parties may testify at the hearing or submit written comments on the proposal at, or prior to the hearing.**

**Hearings Officer:** Staff mailed and published notice of the application as required by this section. (Exhibits C.2 and C.3). No public comments were submitted and no one testified at the hearing, other than the applicant's representative and county staff.

The applicant modified the proposal after the Staff Report was issued. The applicant originally proposed to "[d]ecommission or relocate one of the existing dwellings currently located on Parcel 1 such that one dwelling would be on each proposed parcel in accordance with the Measure 49 Order and applicable provisions of the MCC." (Page 3 of Exhibit A.2). The applicant now proposes to convert one of the dwellings to a permitted accessory (storage) use. (Oral communication between the applicant and staff and Exhibit H.2).

The hearings officer finds that this change does not require additional notice. The applicant's current proposal to convert one of the two dwellings on proposed Parcel 1 to an accessory (storage) use is consistent with the text of the application, to decommission or relocate the second dwelling. Converting the second dwelling to a permitted accessory use hearing would require decommissioning of the existing residential use, consistent with applicant's original proposal.

In addition, a proposal to convert an existing dwelling to a permitted accessory use would be subject to Type I review, with no public notice required. The public notice provided in this case makes no mention of the applicant's plans for the existing second dwelling located on proposed Parcel #1. Therefore, the hearings officer finds that this change in the proposal did not have any impact on the public's rights to participate in the review this application and no additional notice is required.

## 4.0 Code Compliance and Applications Criteria:

### 4.1 § 39.1515 CODE COMPLIANCE AND APPLICATIONS.

**Except as provided in subsection (A), the County shall not make a land use decision approving development, including land divisions and property line adjustments, or issue a building permit for any property that is not in full compliance with all applicable provisions of the Multnomah County Zoning Code and/or any permit approvals previously issued by the County.**

**(A) A permit or other approval, including building permit applications, may be authorized if:**

- (1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Zoning Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or**
- (2) It is necessary to protect public safety; or**
- (3) It is for work related to and within a valid easement over, on or under an affected property.**

**(B) For the purposes of this section, Public Safety means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger the life, health, personal property, or safety of the residents or public. Examples of that situation include but are not limited to issuance of permits to replace faulty electrical wiring; repair or install furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel, or power; and actions necessary to stop earth slope failures.**

**Staff:** This standard provides that the County shall not make a land use decision approving development for a property that is not in full compliance with County Code or previously issued County approvals, except in the following instances: approval will result in the property coming into full compliance, approval is necessary to protect public safety, or the approval is for work related to or within a valid easement.

This standard was originally codified in the Zoning Code chapter related to land use application procedures and, by its terms, expressly applies to the application review process. Although now codified in the enforcement Part of the Zoning Code as a result of the more recent code consolidation project, the language and intent was not changed during that project and remains applicable to the application review process and not to the post-permit-approval enforcement process.

Importantly, a finding of satisfaction of this standard does not mean that a property is in full compliance with the Zoning Code and all prior permit approvals (and, accordingly, does not preclude future enforcement actions relating to uses and structures existing at the time the finding is made). Instead, a finding of satisfaction of this standard simply means that there is not substantial evidence in the record affirmatively establishing one or more specific instances of noncompliance. As such, an applicant has no initial burden to establish that all elements of the subject property are in full compliance with the Zoning Code and all previously approved permits; instead, in the event of evidence indicating or establishing one or more specific instances of noncompliance on the subject property, the applicant bears the burden to either rebut that evidence or demonstrate satisfaction of one of the exceptions in MCC 39.1515.

For purposes of the current application, staff is not aware of any open compliance cases on the subject property, and there is no evidence in the record of any specific instances of noncompliance on the subject property. *This criterion is met.*

## **5.0 Lot of Record Criteria:**

### **5.1 § 39.3005- LOT OF RECORD – GENERALLY.**

**(A) An area of land is a “Lot of Record” if it meets the standards in Subsection (B) of this Section and meets the standards set forth in this Part for the Zoning District in which the area of land is located.**

**(B) A Lot of Record is a parcel, lot, or a group thereof that, when created or reconfigured, either satisfied all applicable zoning laws and satisfied all applicable land division laws, or complies with the criteria for the creation of new lots or parcels described in MCC 39.9700. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.**

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

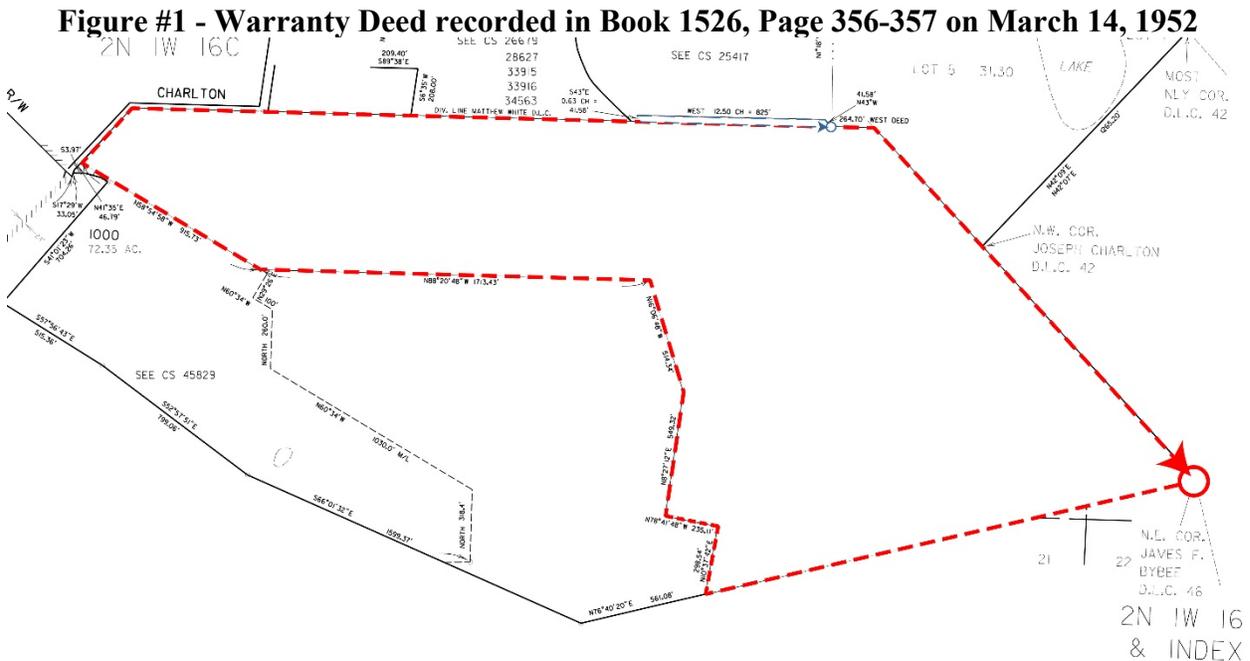
**(b) “Satisfied all applicable land division laws” shall mean the parcel or lot was created:**

- 1. By a subdivision plat under the applicable subdivision requirements in effect at the time; or**
- 2. By a deed, or a sales contract dated and signed by the parties to the transaction, that was recorded with the Recording Section of the public office responsible for public records prior to October 19, 1978; or**
- 3. By a deed, or a sales contract dated and signed by the parties to the transaction, that was in recordable form prior to October 19, 1978; or**
- 4. By partitioning land under the applicable land partitioning requirements in effect on or after October 19, 1978; and**
- 5. “Satisfied all applicable land division laws” shall also mean that any subsequent boundary reconfiguration completed on or after December 28, 1993 was approved under the property line adjustment provisions of the land division code. (See Date of Creation and Existence for the effect of property line adjustments on qualifying a Lot of Record for the siting of a dwelling in the EFU and CFU districts.)**

**Staff:** To qualify as a Lot of Record, the subject property, when created or reconfigured, must meet MCC 39.3005(B) of this section and meet the Lot of Record standards set forth in the EFU zoning district. More specifically, section (B) above requires demonstration that the subject properties: (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws. The Lot of Record standards set forth in the EFU district establish additional requirements unique to the district, which are evaluated in Sections 5.2 of this decision. The findings below analyze whether the Lot of Record provisions in section (B) have been met.

The earliest deed provided was from 1952 (Exhibit A.3). The deed was recorded on March 14, 1952 and contains a legal description describing the subject property and two adjacent tax lots, 2N1W16C -00500 and 2N1W16C -00600 as one unit of land (red dashed line). The deed also

contained a second description for “Parcel II” that is the area north of Matthew White D.L.C. as a separate unit of land (blue dashed line).



In 1952, the two units of land were not subject zoning. The first Interim Zoning Ordinance was adopted on May 26, 1953.

However, the subject property in its current configuration was not described in one deed until March 1, 2017 (Exhibit A.4). The subject property, in its current configuration was created through two deed transfers in 1975 (Exhibit B.6 and B.7). In 1975, tax lot 2N1W16C -00500 (TL 500) and 2N1W16C -00600 (TL 600) were transferred from “Parcel I” described in 1952. Both TL 500 and TL 600 were transferred from the “Parcel I” on October 17, 1975 through a Deed of Gift. In 1975, TL 500 and TL 600 were zoned F-2 per historical County zoning maps (Exhibit B.9). The F-2 zone had a minimum lot size of two acres (Exhibit B.10). There was no requirement for road frontage or minimum front lot line length or lot width. TL 500 is approximately 3.61 and TL 600 is 2.01 acres, which met the minimum lot size at the time.

*The subject property is comprised of two (2) units of land. The two (2) units of land known as “Parcel I” and “Parcel II” complied with all applicable zoning laws at the time of their reconfiguration in 1975.*

In 1975, the process to divide a property required a deed or sales contract dated and signed by the parties to the transaction. The document needed to be in recordable form or recorded with the County Recorder prior to October 19, 1978. As evidenced by the 1975 deed, the applicable land division laws were satisfied (Exhibit B.6 and B.7).

*Based upon the above, “Parcel I” satisfied all applicable land division laws when it was reconfigured in 1975. “Parcel II has not been reconfigured since 1952 and therefore also satisfied all applicable land division laws.*

**(c) Separate Lots of Record shall be recognized and may be partitioned congruent with an “acknowledged unincorporated community” boundary which intersects a Lot of Record.**

**1. Partitioning of the Lot of Record along the boundary shall require review and approval under the provisions of the land division part of this Chapter, but not be subject to the minimum area and access requirements of this district.**

**2. An “acknowledged unincorporated community boundary” is one that has been established pursuant to OAR Chapter 660, Division 22.**

**Staff:** The property subject to this land use application is not congruent with an “acknowledged unincorporated community” boundary, which intersects a Lot of Record. The subject property is entirely located in an area zoned EFU. *This criterion is not applicable.*

## **5.2 § 39.3070 LOT OF RECORD – EXCLUSIVE FARM USE (EFU).**

**(A) In addition to the standards in MCC 39.3005, for the purposes of the EFU district a Lot of Record is either:**

**Staff:** The deeds indicate that the tax lot is comprised of two (2) units of land. The two (2) units of land are contiguous and were under the same ownership on February 20, 1990. As such, the two (2) units of land are required to meet the requirements of MCC 39.3030(A)(2) below.

**(1) A parcel or lot which was not contiguous to any other parcel or lot under the same ownership on February 20, 1990, or**

**(2) A group of contiguous parcels or lots:**

**(a) Which were held under the same ownership on February 20, 1990; and**

**(b) Which, individually or when considered in combination, shall be aggregated to comply with a minimum lot size of 19 acres, without creating any new lot line.**

**1. Each Lot of Record proposed to be segregated from the contiguous group of parcels or lots shall be a minimum of 19 acres in area using existing legally created lot lines and shall not result in any remainder individual parcel or lot, or remainder of contiguous combination of parcels or lots, with less than 19 acres in area. See Examples 1 and 2 in this subsection.**

**2. There shall be an exception to the 19 acre minimum lot size requirement when the entire same ownership grouping of parcels or lots was less than 19 acres in area on February 20, 1990, and then the entire grouping shall be one Lot of Record. See Example 3 in this subsection.**

**3. Three examples of how parcels and lots shall be aggregated are shown in Figure 1 below with the solid thick line outlining individual Lots of Record:**

**4. The requirement to aggregate contiguous parcels or lots shall not apply to lots or parcels within exception or urban zones (e.g., MUA-20, RR, RC, SRC, BRC, R-10), but shall apply to contiguous parcels and lots within all farm and forest resource zones (i.e. EFU and CFU), or**

**Staff:** As described in the deeds referenced in the above section, the subject property consists of Parcel I and Parcel II. Parcel I is approximately 102.46 acres. Parcel II is approximately 0.58

acres. The deeds supplied by the applicant indicate that Parcel I and Parcel II were under the same ownership on February 20, 1990.

As part of the second requirement under MCC 39.3030(A)(2), if the contiguous parcels or lots were under the same ownership on February 20, 1990, and were less than 19 acres, they would be required to be aggregated to comply with the minimum lot size of 19 acres. Based on deeds provided by the applicant, Parcel II is under 19 acres in size. Therefore, Parcel II shall be aggregated with Parcel I into one Lot of Record.

*The subject property was found to be two (2) separate units of land. They shall be aggregated in order to comply with the minimum lot size of 19 acres. Together, the two (2) units of land known as "Parcel I" and "Parcel II" are one Lot of Record.*

**(3) A parcel or lot lawfully created by a partition or a subdivision plat after February 20, 1990.**

**Staff:** The two (2) units of land were not created by partition or subdivision plat after February 20, 1990; therefore, this criterion is not applicable. *This criterion is not applicable.*

**(4) Exception to the standards of (A)(2) above:**

**(a) Where approval for a "Lot of Exception" or a parcel smaller than 19 acres under the "Lot size for Conditional Uses" provisions has been given by the Hearing Authority and the parcel was subsequently lawfully created, then the parcel shall be a Lot of Record that remains separately transferable, even if the parcel was contiguous to another parcel held in the same ownership on February 20, 1990.**

**Staff:** The two (2) units of land were not created through a Lot of Exception application. Therefore, these criteria do not apply. *This criterion is not applicable.*

**(B) In this district, significant dates and ordinances applicable for verifying zoning compliance may include, but are not limited to, the following:**

- (1) July 10, 1958, F-2 zone applied;**
- (2) December 9, 1975, RL-C zone applied, F-2 minimum lot size increased, Ord. 115 & 116;**
- (3) October 6, 1977, MUA-20 and EFU-38 zones applied, Ord. 148 & 149;**
- (4) August 14, 1980, zone change from MUA-20 to EFU-38 for some properties, zone change from EFU-38 to EFU-76 for some properties. Ord. 236 & 238;**
- (5) February 20, 1990, lot of record definition amended, Ord. 643;**
- (6) April 5, 1997, EFU zone repealed and replaced with language in compliance with 1993 Oregon Revised Statutes and 1994 Statewide Planning Goal 3 Oregon Administrative Rules for farmland, Ord. 876;**
- (7) May 16, 2002, Lot of Record section amended, Ord. 982, reenacted by Ord. 997;**

**Staff:** Criterion (B) does not affect the determination on this case, as the text is a list of significant dates and ordinances. *This criterion is not applicable.*

**(C) A Lot of Record which has less than the minimum lot size for new parcels, less than the front lot line minimums required, or which does not meet the access requirements of MCC**

**39.4260 may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.**

**Staff:** The Lot of Record is approximately 103.04 acres. The minimum lot size to create a new parcel in the EFU zone is 80 acres. The EFU zone has a required 50-foot Front Lot Line length for the creation of new parcels or lots. The front lot line of the subject property fronts onto a public right-of-way known as NW Charlton Drive. The frontage length is approximately 45 feet (Exhibit B.2). As the subject property is less than the minimum front lot line length, the Lot of Record is subject to subsection (C) above. As such, it may be occupied by any allowed, review, or conditional use when in compliance with the other requirements of the EFU district provided that it remains a Lot of Record. These requirements are discussed below in Section 7.0 *This criterion is met.*

**(D) The following shall not be deemed a Lot of Record:**

- (1) An area of land described as a tax lot solely for assessment and taxation purposes;**
- (2) An area of land created by the foreclosure of a security interest;**
- (3) A Mortgage Lot.**
- (4) An area of land created by court decree.**

**Staff:** As discussed above under section 5.1, the subject property is not an area of land described as a tax lot solely for assessment and taxation purposes. The subject property is also not an area of land created by the foreclosure of a security interest, a mortgage lot, or created by court decree. *These criteria are met.*

## **6.0 Oregon State Measure 49 (M49) Approval Criteria:**

**Staff:** Former property owner Elinor D. Wiley filed a Oregon State Ballot Measure 37 Claim on property described Township 2N, Range 1W Section 16D, Tax Lots 900 which contains three (3) single-family dwellings. When Measure 37 was amended by Oregon State Measure 49 Elinor D. Wiley chose to continue their claim under a Ballot Measure 49 claim. It was processed by the Oregon Department of Land Conservation and Development (DLCD) as State Election Number: E129631 (Exhibit A.8).

The Department of Land Conservation and Development after making findings in E129631 DLCD states, “Based on the analysis set forth above, this claim is approved, and the claimant qualifies for three home site approvals.” It continues, “... after taking into account the number of existing lots, parcels or dwellings the claimant is authorized for two additional lots or parcels and no additional dwellings on the property...” Following are conditions of the Measure 49 approval with findings of compliance by County Land Use Planning.

### **6.1 E129631.IV.1.**

**Each dwelling must be on a separate lot or parcel, and must be contained within the property on which the claimant is eligible for Measure 49 relief. The establishment of a land division or dwelling based on this home site authorization must comply with all applicable standards governing the siting or development of the land division or dwelling. However, those standards must not be applied in a manner that prohibits the establishment of the land division or dwelling, unless the standards are reasonably necessary to avoid or abate a nuisance, to protect public health or safety, or to carry out federal law.**

**Staff:** The proposal is for a Land Division to create two additional parcels in order to accommodate a dwelling on a separate parcel. This decision includes the Category 1 Land Division, which is discussed in Section 10.0 below. Additionally, if the Land Division is approved, one of the parcels will contain two (2) single-family dwellings, therefore a condition will be required that one of the single-family dwellings be removed or converted into an allowed use as only one single-family dwelling can be located on each individual parcel. *As conditioned, this criterion can be met.*

## 6.2 E129631.IV.2.

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

**Staff:** This decision will include a requirement for a Final Partition Plat recorded with the County Survey Division. The application also includes a Fire Service Agency Review, Certification of Water Service, Septic Review Certification, and a Storm Water Drainage Control Certificate. These reviews did not indicate a violation of any other law. (Exhibit A.9, A.10, A.11, and A.14). *This criterion is met.*

## 6.3 E129631.IV.3.

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

**Staff:** The original claimant, Elinor Wiley conveyed the property to a Revocable Living Trust and the Trust conveyed the property to the current owner. The existing claim is for three (3) home site approvals. There is no additional evidence that the claimant has filed additional claims. *This criterion is met.*

## 6.4 E129631.IV.4.

**The number of lots, parcels or dwellings a claimant may establish under a Measure 49 home site authorization is reduced by the number of lots, parcels and dwellings currently in existence on the Measure 37 claim property and contiguous property in the same ownership, regardless of whether evidence of their existence has been provided to the department. If, based on the information available to the department, the department has calculated the number of currently existing lots, parcels or dwellings to be either greater than or less than the number of lots, parcels or dwellings actually in existence on the Measure 37 claim property or contiguous property under the same ownership, then the number of additional lots, parcels or dwellings a claimant may establish pursuant to this home site authorization must be adjusted according to the methodology stated in Section 6(2)(b) and 6(3) of Measure 49.**

**Staff:** At the time of the Measure 37 claim, the claimant did not own contiguous property subject to a Measure 37 claim. Further, as discussed previously in this Section, the existing claim is for three (3) home site approvals. There is no additional evidence that additional lots, parcels, or dwellings on contiguous property were in the same ownership of the claimant. *This criterion is met.*

#### 6.5 E129631.IV.5.

**Temporary dwellings are not considered in determining the number of existing dwellings currently on the property. The claimant may choose to convert any temporary dwelling currently located on the property on which the claimant is eligible for Measure 49 relief to an authorized home site pursuant to a home site approval. Otherwise, any temporary dwelling is subject to the terms of the local permit requirements under which it was approved, and is subject to removal at the end of the term for which it is allowed.**

**Staff:** Based on the permit history of the property, there are no temporary dwellings that exist on this property. *This condition is not applicable.*

#### 6.6 E129631.IV.6.

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

**Hearings Officer:** The subject property currently contains three (3) existing single-family dwellings. The applicant is proposing to divide the subject property into three (3) parcels. One of the newly created parcels ("Parcel 2") will accommodate an existing single-family dwelling. The second created parcel ("Parcel 3") will be vacant. The remaining parcel ("Parcel 1") will contain two single-family dwellings. The applicant originally indicated that one of the existing dwellings will be removed so that a new single-family dwelling can be established on the vacant parcel (Exhibit A.15 and A.17). After the Staff Report was issued, the applicant changed the proposal, indicating that one of the dwellings would be retained on Parcel 1 and converted to use as accessory building. (Oral communication with staff and Exhibit H.2). The result leading to one single-family dwelling on each of the three (3) parcels. *As conditioned, this criterion can be met.*

#### 6.7 E129631.IV.7

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

**which existing lots, parcels or dwellings to convert to authorized home sites; or may reconfigure existing lots, parcels or dwellings so that the number is equivalent to the number of home site approvals.**

**Hearings Officer:** The approval authorizes the creation of two (2) new parcels. One of the parcels, Parcel #2 will accommodate an existing single-family dwelling and the second parcel, Parcel #3 will be vacant (Exhibit A.15 and A.17). The applicant will be required to convert one of the single-family dwellings on the remainder parcel, Parcel #1, to an allowed accessory use or remove the structure to ensure that each parcel will contain one single-family dwelling per parcel. *As conditioned, this criterion can be met.*

#### **6.8 E129631.IV.8.**

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

**Staff:** There is no evidence that the claimant has been determined in a final judgment or final order to have a common law vested right to a use described in a Measure 37 waiver for the property, therefore this criterion is not applicable. *This criterion is not applicable.*

#### **6.9 E129631.IV.9.**

**A home site approval does not authorize the establishment of a new dwelling on a lot or parcel that already contains one or more dwellings. The claimant may be required to alter the configuration of the lots or parcels currently in existence on the Measure 37 claim property and contiguous property so that each additional dwelling established on the property on which the claimants are eligible for Measure 49 relief, pursuant to this home site authorization, is sited on a separate lot or parcel.**

**Hearings Officer:** As discussed previously in this Section, the proposal is for the creation of two (2) new parcels. One of the parcels, Parcel #2 will accommodate an existing single-family dwelling and the second parcel, Parcel #3 will be vacant (Exhibit A.15 and A.17). The applicant will also be required to convert one of the single-family dwellings on the remainder parcel, Parcel #1, to an allowed accessory use or remove the structure to ensure that each parcel will contain one single-family dwelling per parcel. *As conditioned, this criterion can be met.*

**6.10 E129631.IV.10.**

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

**Hearings Officer:** The subject property is located in an exclusive farm use zone and on high-value farmland; therefore, two (2) parcels may not exceed five acres each. The proposed plat shows two of the parcels at two acres with the 98.9-acre remnant parcel exceeding two acres. *This criterion is met.*

**6.11 E129631.IV.11**

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

**Hearings Officer:** The proposed land division will result in two single-family dwellings on Parcel #1 (the remainder parcel) and one single-family dwelling on Parcel #2. The third parcel, Parcel #3 will be vacant. In order to place a new single-family dwelling on Parcel #3, the applicant is proposing to convert the more northern single-family dwelling on Parcel #1 to an allowed accessory use, so the home site authorization can be moved to Parcel #3 (Exhibit A.17). The two remaining single-family dwellings on Parcel #1 and Parcel #2 are approximately 675 feet from each other. If a single-family dwelling were proposed for Parcel #3, the dwelling would be within 600 feet from the two remaining single-family dwellings. Further each of the home sites are located within 600 feet from NW Charlton Road/Drive and are located in an area that has already been developed with a private driveway and multiple agricultural buildings (Exhibit A.15). The proposed location of the single-family dwellings ensure that development is clustered leaving the remainder of the land area to be used farm uses.

Lastly, it does not appear that the owner of the property is authorized by other home site authorizations to subdivide, partition, or establish dwellings on other Measure 37 claim properties. *This criterion is met.*

**6.12 E129631.IV.12**

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

**Staff:** The Measure 49 claim order was issued on May 27, 2009. Subsequent to that claim, the claimant, Elinor D. Wiley transferred their ownership to a revocable trust on March 1, 2017. Then on August 15, 2018, a Bargain and Sale Deed was recorded, conveying the subject property to the current property owner, Wiley Farm Enterprises LCC (Exhibit A.5). The current property owner is not a party that is the claimant's spouse or the trustee of a revocable trust in which the claimant is the settlor. As the claim was transferred to a party that is not claimant's spouse or the trustee of a revocable trust in which the claimant is the settlor party, the home site approval will expire within 10 years of the conveyance. The Measure 49 claim is valid until August 15, 2028, and this application request was submitted prior to the 10-year expiration. *This criterion is met.*

**6.13 E129631.IV.13.**

**To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, this home site authorization will not authorize the use of the property unless the claimant first obtains that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a permit as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies, and restrictions on the use of the subject property imposed by private parties.**

**Staff:** This application is to obtain land use permits required to divide the subject property into three parcels. To lawfully establish a new dwelling on the newly created Parcel #3, the property owner or any subsequent owner will be required to obtain permits to establish the new single-family dwelling. *As conditioned, this criterion can be met.*

**7.0 Exclusive Farm Use (EFU) Criteria:**

**7.1 § 39.4220 ALLOWED USES**

**The following uses and their accessory uses are allowed, subject to all applicable supplementary regulations contained in MCC Chapter 39.**

\* \* \*

**(O) Accessory Structures subject to the following:**

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

- (a) Garages or carports;**
- (b) Pump houses;**
- (c) Garden sheds;**
- (d) Workshops;**
- (e) Storage sheds, including shipping containers used for storage only;**
- (f) Greenhouses;**
- (g) Woodsheds;**
- (h) Shelter for pets, horses or livestock and associated buildings such as: manure storage, feed storage, tack storage, and indoor exercise area;**
- (i) Swimming pools, pool houses, hot tubs, saunas, and associated changing rooms;**
- (j) Sport courts;**
- (k) Gazebos, pergolas, and detached decks;**
- (l) Fences, gates, or gate support structures; and**
- (m) Mechanical equipment such as air conditioning units, heat pumps and electrical boxes; and**
- (n) Similar structures.**

**(2) The Accessory Structure shall not be designed or used, whether temporarily or permanently, as a primary dwelling, accessory dwelling unit, apartment, guesthouse, housing rental unit, sleeping quarters or any other residential use.**

**(3) The Accessory Structure may contain one sink.**

**(4) The Accessory Structure shall not contain:**

- (a) More than one story;**
- (b) Cooking Facilities;**
- (c) A toilet;**
- (d) Bathing facilities such as a shower or bathing tub;**
- (e) A mattress, bed, Murphy bed, cot, or any other similar item designed to aid in sleep as a primary purpose, unless such item is disassembled for storage; or**
- (f) A closet built into a wall.**

**(5) Compliance with MCC 39.8860 is required.**

**(6) The combined footprints of all Accessory Buildings on a Lot of Record shall not exceed 2,500 square feet.**

**(7) An Accessory Structure exceeding any of the Allowed Use provisions above shall be considered through the Review Use provisions.**

**(8) Buildings in conjunction with farm uses as defined in ORS 215.203 are not subject to these provisions. Such buildings shall be used for their allowed farm purposes only and, unless so authorized, shall not be used, whether temporarily or permanently, as a primary dwelling, accessory dwelling unit, apartment, guesthouse, housing rental unit, sleeping quarters or any other residential use.**

\* \* \*

**Hearings Officer:** As discussed above, the applicant now proposes to retain the second dwelling structure on proposed Parcel #2 and convert it to an accessory building. The hearings officer finds that the existing second dwelling structure on proposed Parcel #2 can be modified to comply with the requirements of this section. The structure is single-story structure and can be modified to remove all cooking facilities, toilets, bathing facilities such as a shower or bathing tub, or closets

built into a wall, and remove or disassemble and store any mattresses, beds, Murphy beds, cots, or any other similar item designed to aid in sleep as a primary purpose. With these modifications the structure can be used as a workshop, storage shed, garden shed, or other structure similar to those listed in MCC § 39.4220(O)(1). The conditions of approval should be modified to this effect.

**7.2 § 39.4245 DIMENSIONAL REQUIREMENTS AND DEVELOPMENT STANDARDS.**

**(A) Except as provided in MCC 39.3070, the minimum lot size for new parcels shall be 80 acres in the EFU base zone.**

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

**Staff:** The State of Oregon, Department of Land Conservation and Development (DLCD) issued a Measure 49 (M49) approval E129631 authorizing the division of the subject property into three parcels in order to establish one dwelling on each of the parcels. As the Measure 49 approval supersedes the 80-acre minimum, this criterion is not applicable. *This criterion is not applicable.*

**(C) Minimum Yard Dimensions – Feet**

| Front | Side | Street Side | Rear |
|-------|------|-------------|------|
| 30    | 10   | 30          | 30   |

**Maximum Structure Height – 35 feet**

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

**(1) Notwithstanding the Minimum Yard Dimensions, but subject to all other applicable Code provisions, a fence or retaining wall may be located in a Yard, provided that a fence or retaining wall over six feet in height shall be setback from all Lot Lines a distance at least equal to the height of such fence or retaining wall.**

**(2) An Accessory Structure may encroach up to 40 percent into any required Yard subject to the following:**

**(a) The Yard being modified is not contiguous to a road.**

**(b) The Accessory Structure does not exceed five feet in height or exceed a footprint of ten square feet, and**

**(c) The applicant demonstrates the proposal complies with the fire code as administered by the applicable fire service agency.**

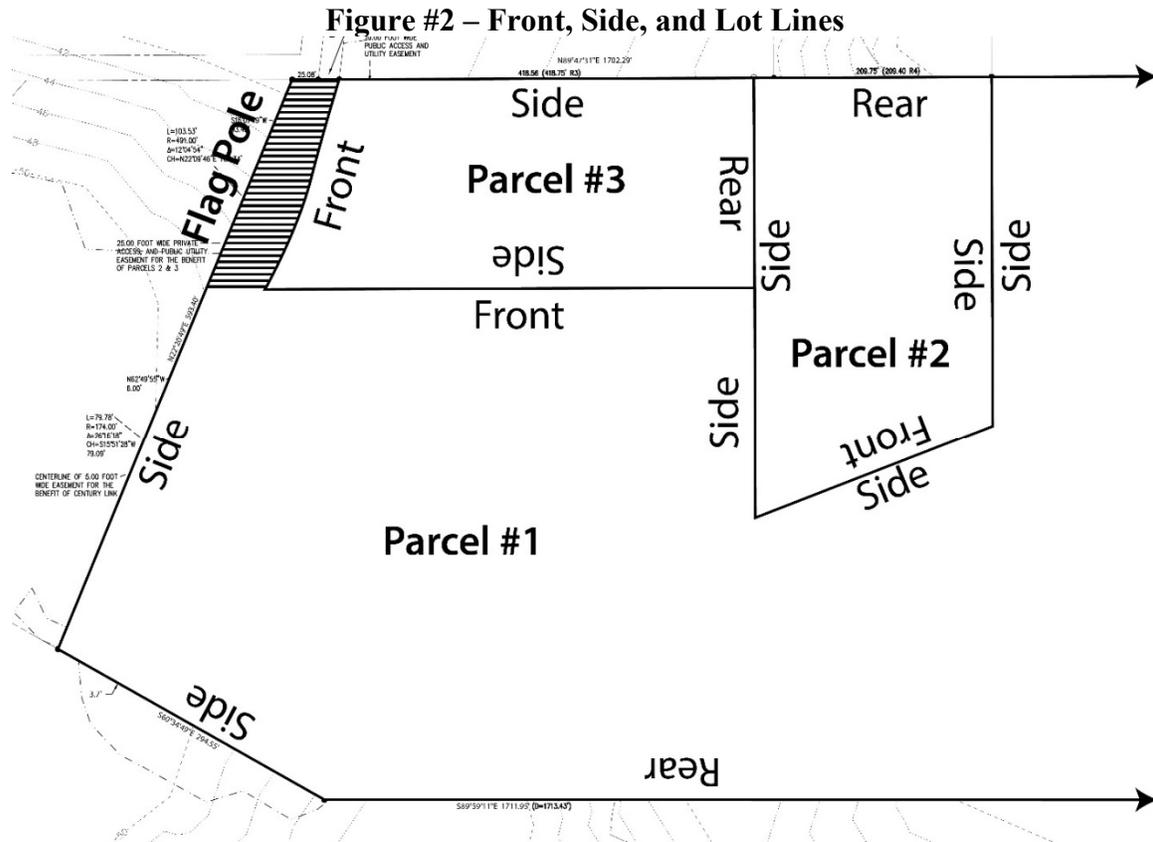
**(3) A Variance is required for any Accessory Structure that encroaches more than 40 percent into any required Yard.**

**(D) The minimum yard requirement shall be increased where the yard abuts a street having insufficient right-of-way width to serve the area. The county Road Official shall determine the necessary right-of-way widths based upon the county “Design and Construction Manual” and the Planning Director shall determine any additional yard requirements in consultation with the Road Official.**

**Staff:** The yard dimensions are required to ensure that there is sufficient open space between buildings and property lines to provide space, light, air circulation, and safety from fire hazards. Additionally, as required under criterion (D), minimum yard dimensions are required to be increased where the yard abuts a street having insufficient right-of-way width to serve the area. The right-of-way adjacent to the subject property is NW Charlton Drive, a rural local road. A rural local road requires a 60 foot of right-of-way (Exhibit A.7). As indicated in DART assessment

maps, right-of-way along NW Charlton Drive is approximately 27 feet wide (Exhibit B.11). The right-of-way along the property is insufficient by 16.5 feet to serve the area.

As required by the Table in MCC 39.4245(C), the minimum yard dimensions need to be met by all buildings and structures on each of the newly reconfigured parcels. The applicant has provided a site plan showing the location of all the existing buildings and structures on the property (Exhibit A.15). The Figure below indicates the front<sup>1</sup>, side<sup>2</sup>, and rear<sup>3</sup> lot lines.



As Parcel #1 is utilizing a Flag Lot and an access easement configuration, the flagpole portion of the lot is not included in the determination of the lot lines<sup>4</sup>. The lot lines on Parcel #2 and 3 are based on alignment of the Access Easement driveway being utilized to provide access.

The site plan indicates all but one building is more than 30 feet from the closest property line. The building that is not in excess of 30 feet from the property line is a shed on Parcel #1. The shed is 3.7 feet from the rear property line. A condition will be required that the building be moved to 30

<sup>1</sup> Lot Line (Front) – In the case of an interior lot, a line separating the lot from the street or accessway; in the case of a corner lot, a line separating the narrowest frontage of the lot from a street or accessway; and in the case of a flag lot, the lot line closest to and most nearly parallel with the street which serves the lot. A minimum front lot line length is a dimensional requirement to assure that a parcel or lot has sufficient street frontage and lot width near the street to accommodate a safe access driveway and reasonable building area after considering the required side yards.

<sup>2</sup> Lot Line (Side) – Any lot line not a front or rear lot line.

<sup>3</sup> Lot Line (Rear) – The line dividing one lot from another and on the opposite side of the lot from the front lot line; and in the case of an irregular or triangular shaped lot, a line ten feet in length within the lot, parallel to and at the maximum distance from the front lot line.

<sup>4</sup> Lot Lines – The lines bounding a lot, but not the lines bounding the private driveway portion of a flag lot.

feet unless it can be shown that the building meets MCC 39.4245(G), which reduces the yard to 10 feet.

Lastly, the minimum front lot length of each property is:

**Table 1: Front Lot Line Length**

|           | <b>Minimum Front Lot Line Length</b> | <b>Front Lot Line Length</b> |
|-----------|--------------------------------------|------------------------------|
| Parcel #1 | 50 feet                              | ± 46 feet                    |
| Parcel #2 | 50 feet                              | 0 feet                       |
| Parcel #3 | 50 feet                              | 0 feet                       |

As shown in the table above, the three parcels do not meet the minimum front lot line length. However, Parcel #1 is designed as a Flag Lot. As discussed in Section 10, MCC 39.9510(D) allows for the pole portion of the flag lot to be as short as 16 feet wide. Parcel #2 and 3, will require a Variance as discussed in Section 9.0. *As conditioned or otherwise allowed by variance, these criteria can be met.*

**(E) Structures such as barns, silos, windmills, antennae, chimneys or similar structures may exceed the height requirement if located at least 30 feet from any property line.**

**Staff:** The applicant is not proposing a barn, silo, windmill, antennae, chimney, or similar structure as part of this application. Therefore, this criterion is not applicable. *This criterion is not applicable.*

**(F) On-site sewage disposal, storm water/drainage control, water systems unless these services are provided by public or community source, shall be provided on the Lot of Record.**

- (1) Sewage and stormwater disposal systems for existing development may be off-site in easement areas reserved for that purpose.**
- (2) Stormwater/drainage control systems are required for new impervious surfaces. The system shall be adequate to ensure that the rate of runoff from the lot for the 10-year 24-hour storm event is no greater than that before the development.**

**Staff:** The applicant has provided a tentative plan map, Septic Review Certification, Storm Water Certificate, and a Certification of Water Service. The Septic Review Certification was reviewed and approved by Lilly Peterson, Registered Environmental Health Specialist on November 13, 2019 (Exhibit A.11 and Exhibit B.4). The Septic Review Certification states, “Proposed land division approved by Septic Sanitation. Parcels 1 & 2 have full repair areas and existing systems that meet required setbacks to proposed property lines. Parcel #3 approved for septic under SER #26-19.” (Exhibit A.7). A Site Evaluation was also completed for Parcel #3. Completed by Lilly Peterson, REHS on November 12, 2019, the Site Evaluation indicated that Parcel #3 could be approved for a standard septic tank and drainfield disposal system (Exhibit B.16).

The Storm Water Drainage Control Certificate was reviewed and signed by John Middleton, Registered Professional Engineer. The Certificate states that construction of an on-site storm water control system is not required for any of the parcels (Exhibit A.14). The accompanying report states that, “the permeability rate of the native soils is high so the degree of certainty that runoff from future new impervious areas will be treated and disposed of on each individual parcel is high” (Exhibit A.14).

The Certification of Water Service was provided by the property owner. The Certification states that the subject property obtains water from a well. The well provides yield of 75 gallons per minute (Exhibit A.10). *These criteria are met.*

**(G) Agricultural structures and equine facilities such as barns, stables, silos, farm equipment sheds, greenhouses or similar structures that do not exceed the maximum height requirement may have a reduced minimum rear yard of less than 30 feet, to a minimum of 10 feet, if:**

- (1) The structure is located at least 60 feet from any existing dwelling, other than the dwelling(s) on the same tract, where the rear property line is also the rear property line of the adjacent tract, or**
- (2) The structure is located at least 40 feet from any existing dwelling, other than the dwelling(s) on the same tract, where the rear property line is also the side property line of the adjacent tract.**
- (3) Placement of an agricultural related structure under these provisions in (F) do not change the minimum yard requirements for future dwellings on adjacent property.**

**Staff:** The applicant is not proposing an agricultural structure or equine facility such as a barn, stable, silo, farm equipment shed, greenhouse, or similar structure as part of this application. Therefore, these criteria are not applicable. *These criteria are not applicable.*

**(H) All exterior lighting shall comply with MCC 39.6850.**

**Staff:** As required, all exterior lighting shall comply with MCC 39.6850, if it meets the thresholds within MCC 39.6850<sup>5</sup>. As the applicant is not proposing a new, modified, altered, expanded, or replaced use, nor is the applicant seeking approval for the enlargement of a building by more than 400 square feet of ground coverage; therefore, these criteria are not applicable. *These criteria are not applicable.*

## **8.0 Creation of a parcel/lot not abutting a street Criteria:**

### **8.1 § 39.4260 ACCESS.**

**All lots and parcels in this base zone shall abut a public street or shall have other access determined by the approval authority to be safe and convenient for pedestrians and for passenger and emergency vehicles. This access requirement does not apply to a pre-existing lot and parcel that constitutes a Lot of Record described in MCC 39.3070(C).**

**Staff:** The applicant is requesting a land division. The access requirement is applicable as the newly created parcels are not pre-existing. The land division that is part of this application will result in two of the three parcels not abutting a public street. Therefore, the applicant is requesting to have other access determined to be safe and convenient for pedestrians and for passenger and emergency vehicles. As outlined in the Approval Process Table contained in MCC 39.1105,

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<sup>5</sup> MCC 39.6850(C) The following standards apply to all new exterior lighting supporting a new, modified, altered, expanded, or replaced use approved through a development permit and to all existing exterior lighting on property that is the subject of a development permit approval for enlargement of a building by more than 400 square feet of ground coverage.

“Creation of a parcel/lot not abutting a street” is processed as a Type III Hearings Officer Decision.

To demonstrate that the access is safe and convenient for pedestrians, for passenger vehicles, and emergency vehicles, the applicant has provided a narrative discussing how access will be obtained for ingress and egress to the two parcels that do not abut a street. The proposed access will be through the use of a 25 foot wide private access easement that Parcel #1 will grant to the benefit of Parcel #2 and 3 (Exhibit A.15). The applicant has also provided photos of the private driveway that traverses the property. The driveway is surfaced with packed gravel (Exhibit A.18). As measured using digital mapping software, the driveway is approximately nine to 11 feet in width, which can typically accommodate the width of one vehicle. The distance from Charlton Road/Drive to the single-family dwelling on Parcel #2 is over 900 feet. The distance to obtain access to Parcel #3 from Charlton Road will be up to 200 feet depending on the location of the any newly proposed single-family dwelling on that parcel.

Based on the measurement and design, the existing driveway appears to be insufficient to ensure that access is safe and convenient for pedestrians, for passenger vehicles, and emergency vehicles. Guidance from the Oregon Fire Code typically requires an access road to have an unobstructed width of not less than 20 feet exclusive of shoulders (Exhibit B.17 and B.18). This requirement is mirrored in MCC 39.6560, which also requires a private driveway to have a width of 20 feet to accommodate two-way traffic.<sup>6</sup> The Oregon Fire Code also requires that the access have an approved driving surface capable of supporting the imposed load of a fire apparatus weighting up to 75,000 lbs. (34,050 kg). If the driveway is not expanded to a width of 20 feet, but will exceed 400 feet in length, turnouts can be provided that are ten feet wide and 30 feet long. The turnouts should be placed every 400 feet (Exhibit B.17 and B.18). Therefore, to ensure that the easement access is safe and convenient for pedestrians, for passenger vehicles, and emergency vehicles, these additional conditions will be required. *As conditioned, this criterion can be met.*

## 9.0 Variances Criteria

### 9.1 § 39.8205 SCOPE.

\* \* \*

**(B) Dimensional standards that may be modified under a Variance review are yards, setbacks, forest practices setbacks, buffers, minimum front lot line length, building height, sign height, flag lot pole width, cul-de-sac length, cul-de-sac turnaround radius, and dimensions of a private street, except the following:**

- (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.**

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<sup>6</sup> (A) Where a parking or loading area does not abut directly on a public street or private street approved under Part 9 of this Chapter, there shall be provided an unobstructed driveway not less than 20 feet in width for two-way traffic, leading to a public street or approved private street. Traffic directions therefore shall be plainly marked.

**Staff:** The applicant is requesting a reduction of the minimum yards requirement within MCC 39.4245(C). As proposed, the applicant is proposing a three (3) parcel partition. Two of the parcels will have no front lot line length (Exhibit A.15). The required minimum front lot line length is 50 feet. The applicant will need to demonstrate that the proposal meets the approval criteria in MCC 39.8215 as discussed below in this Section.

**(C) The dimensional standards listed in (A) and (B) above are the only standards eligible for Adjustment or Variance under these provisions. Adjustments and Variances are not allowed for any other standard including, but not limited to, minimum lot area, modification of a threshold of review (e.g. cubic yards for a Large Fill), modification of a definition (e.g. 30 inches of unobstructed open space in the definition of yard), modification of an allowed density in a Planned Development or houseboat moorage, or to allow a land use that is not allowed by the Base zone.**

**Staff:** The applicant is requesting a reduction of the minimum yard requirement, which is a dimensional standard, listed in (B). The applicant is not seeking a Variance to the minimum lot area, modification of a threshold of review (e.g. cubic yards for a Large Fill), modification of a definition (e.g. 30 inches of unobstructed open space in the definition of yard), modification of an allowed density in a Planned Development or houseboat moorage, or to allow a land use that is not allowed by the Base zone. *This criterion is met.*

## **9.2 § 39.8215 VARIANCE APPROVAL CRITERIA.**

**The Approval Authority may permit and authorize a variance from the dimensional standards given in MCC 39.8205 upon finding that all the following standards in (A) through (G) are met:**

### **9.2.1 (A) A circumstance or condition applies 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 may relate to:**

- (1) The size, shape, natural features and topography of the property, or**
- (2) The location or size of existing physical improvements on the site, or**
- (3) The nature of the use compared to surrounding uses, or**
- (4) The zoning requirement would substantially restrict the use of the subject property to a greater degree than it restricts other properties in the vicinity or base zone, or**
- (5) A circumstance or condition that was not anticipated at the time the Code requirement was adopted.**
- (6) The list of examples in (1) through (5) above shall not limit the consideration of other circumstances or conditions in the application of these approval criteria.**

**Staff:** For the County to be able to consider a Variance request, the applicant must demonstrate that a circumstance or condition applies to the property that does not apply generally to other property in the same vicinity or zoning district. The subject property is 103.04 acres and is located in the EFU zone. The property is adjacent to the public right-of-way known as NW Charlton Road/Drive. The portion of NW Charlton Drive that abuts the subject property is approximately 46 feet, which is below the width required for a minimum front lot line length. In comparing this property to other properties in the same vicinity and base zone, many of those properties have a front lot line length that exceeds 200 feet (Exhibit B.2). In some cases, properties to the south have

a front lot line length over 2,000 feet. As the property only abuts 46 feet of NW Charlton Drive and the land division will result in two additional parcels, those parcels would not be able to abut the road without requesting a Variance, as the minimum lot line length is already below the minimum required. It is due to the circumstance of the subject property that could impact the use of the property; the applicant is eligible to request a Variance.

**9.2.2 (B) The circumstance or condition in (A) above that is found to satisfy the approval criteria is not of the applicant's or present property owner's making and does not result solely from personal circumstances of the applicant or property owner. Personal circumstances include, but are not limited to, financial circumstances.**

**Staff:** As discussed in Section 5.0, the property was last reconfigured in 1975 and has remained in its current configuration since that time. Since 1975, the property owner Elinor Wiley conveyed the property to a Revocable Living Trust and then the Trust conveyed the property to the current owner; Wiley Farm Enterprises LCC. The current owner acquired the property in 2018 (Exhibit A.5). As such, the unique shape of the property and limited road frontage does not result solely the personal or financial circumstance of the property owner. *This criterion is met.*

**9.2.3 (C) There is practical difficulty or unnecessary hardship to the property owner in the application of the dimensional standard.**

**Staff:** As discussed in above in this Section, the subject property has a front lot line length that is below the minimum required by the zone. The subject property currently has a front lot line length of approximately 46 feet (Exhibit A.15). If the applicant were to modify their land division request so that Parcel #1 had a 16-foot front lot line length, the minimum allowed for a flag lot pursuant to MCC 39.9510, Parcel #3 would have a 30-foot front lot line length. The front lot line length of 30 feet is a reduction of 40-percent, which would still require an Adjustment. Parcel #2 would still have a zero-foot front lot line length.

The only method to accommodate a front lot line length for each of the parcels would be the creation of stacked flag lots. However, as required by MCC 39.9510(E), a land division is not permitted to stack one flag lot behind the other. Further, as discussed in Section 6.0, the Measure 49 order only allows for the creation of three parcels. To accommodate an accessway as discussed in MCC 39.9525 would result in the need to subdivide the property into a four-lot subdivision.

Due to the unique circumstance of the property as discussed above, there is a practical difficulty to the property owner in the application of the dimensional standard as there is no configuration that is allowed by the Zoning Code that would allow the land division to occur and meet the minimum front lot line length. *This criterion is met.*

**9.2.4 (D) The authorization of the variance will not be materially detrimental to the public welfare or injurious to property in the vicinity or base zone in which the property is located, or adversely affects the appropriate development of adjoining properties.**

**Staff:** The granting of the variance will allow for the creation of two parcels that have no front lot line. As previously defined in this Section, a front lot line is needed in order to accommodate a safe access driveway. To accommodate a safe access driveway, the applicant is proposing an

access easement along a private driveway on Parcel #1 to ensure that the property owners and the public have access to the two parcels not abutting the street. As discussed in Section 8.0, the shared driveway is approximately nine to 11 feet in width, which can typically accommodate the width of one vehicle. This existing width of the driveway is materially detrimental to the public welfare as vehicles traveling to and from the property would have no place of retreat if another vehicle were driving in the opposite direction. Therefore, a condition of approval is warranted that the private driveway be widened to accommodate two-way traffic or have pullouts. If the private driveway is improved, it will ensure that the public traveling to Parcel #2 and #3 is not materially detrimental to the public welfare.

The adjoining property to the north is currently developed with a single-family dwelling. The single-family dwelling was built recently in 2021 and is more than 100 feet away from the common property line. As the variance is needed in order to create two parcels that could both be eligible for a single-family dwelling, the single-family dwellings on those parcels would still need to meet the yard requirements of MCC 39.4245. The existing single-family dwelling on Parcel #2 already meets those requirements and if a single-family dwelling were proposed on Parcel #3, it would need to meet those requirements. The dimensional standards will help ensure that potential development activity does not adversely affects the appropriate development of adjoining properties. *As conditioned, this criterion can be met.*

**9.2.5 (E) The Variance requested is the minimum necessary variation from the Code requirement which would alleviate the difficulty.**

**Staff:** The applicant has requested a variance to the minimum front lot line length in order to create two parcels that do not abut a street. As discussed in Section 9.2.3, there is no other configuration of the parcels, which would alleviate the difficulty. Therefore, granting of the variance in order to create two parcels is the minimum necessary variation to alleviate the difficulty. *This criterion is met.*

**9.2.6 (F) Any impacts resulting from the variance are mitigated to the extent practical. That mitigation may include, but is not limited to, such considerations as provision for adequate light and privacy to adjoining properties, adequate access, and a design that addresses the site topography, significant vegetation, and drainage.**

**Staff:** As discussed in Section 9.2.4, the creation of Parcel #3 will result in a vacant parcel. If the property owner or any subsequent owner later elects to propose development, the proposal at that time would need to meet the yard requirements of MCC 39.4245. As the yard requirements ensure that there is adequate space, light, air circulation, and safety from fire hazards between buildings and property lines, the future impacts will be mitigated to the extent practical. The creation of Parcel #2 will also have minimal additional impacts, as there is already a single-family dwelling on that parcel (Exhibit A.15). The existing single-family dwelling meets and exceeds the yard requirements of MCC 39.4245 thereby mitigating any impacts from the creation of a parcel without a front lot line length. *This criterion is met.*

**9.2.7 (G) The variance must be in support of a lawfully established use or in support of the lawful establishment of a use.**

**Staff:** As discussed in Section 6.0, the land division and creation of two parcels that do not have a minimum lot line length is in support of a Measure 49 claim processed by the Oregon Department of Land Conservation and Development (DLCD). One variance will allow for an existing single-family dwelling, which was a lawfully established use, to be located entirely on a separate parcel. The second variance will allow for the creation of a parcel that will be vacant and can support a lawfully established use. *This criterion is met.*

## **10.0 Land Division Criteria**

### **10.1 § 39.9035 CATEGORY 1 LAND DIVISIONS.**

**The following proposals are designated Category 1 Land Divisions:**

**\* \* \***

**(D) A subdivision or partition associated with an application affecting the same property for any action requiring a public hearing under this Chapter; and**

**Staff:** The applicant is requesting a partition as authorized by a Measure 49 claim processed by the Oregon Department of Land Conservation and Development (DLCD). As defined in MCC 39.9055, the partitioning of land<sup>7,8</sup> will result in the subject property becoming three parcels. This is shown in the tentative plan map as Parcel #1, #2, and #3 (Exhibit A.15). The map also shows that two of the parcels will not abut a public road and require a Variance to the minimum front lot line length. The two variances and the request for two parcels not abutting a public road both require a public hearing. As that is the case, this application is subject to Category 1 Land Division requirements, which are discussed within this Section below.

### **10.2 § 39.9400- CRITERIA FOR APPROVAL, CATEGORY 1 AND CATEGORY 2 TENTATIVE PLAN AND FUTURE STREET PLAN.**

**In granting approval of a Category 1 or Category 2 tentative plan, the approval authority shall find that:**

**(A) The tentative plan or future street plan is in accordance with the applicable elements of the Comprehensive Plan;**

**Staff:** The applicable elements of the Comprehensive Plan are discussed in Section 11.0 below.

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

**Staff:** In granting approval of the Category 1 Land Division, the approval will permit development of the remainder of the property under the same ownership as allowed in the base zone of Exclusive Farm Use (EFU). At this time, the subject property contains multiple buildings as shown in aerial photos and matches the site plan that was reviewed by the County on September

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<sup>7</sup> Partition means either an act of partitioning land or an area or tract of land partitioned as defined in this Chapter.

<sup>8</sup> Partition land means to divide an area or tract of land into not more than three parcels within a calendar year when such area or tract of land exists as a unit or contiguous units of land under single ownership at the beginning of such year...

15, 2009 (Exhibit B.12 and B.15). As the subject property will be partitioned, there will be one single-family dwelling on Parcel #1 and a separate single-family dwelling on Parcel #2, with Parcel #3 being left vacant, the property owner or any subsequent property owner will continue to be able to seek future permits in accordance with the base zone. *This criterion is met.*

**(C) The tentative plan [or future street plan] complies with the applicable provisions, including the purposes and intent of this Ordinance.**

**Staff:** The applicant has provided a tentative plan map showing the partition plat. The applicable provisions including the purpose and intent of this ordinance are discussed in this Section below.

**(D) The tentative plan or future street plan complies with the Zoning Code or a proposed change thereto associated with the tentative plan proposal;**

**Staff:** The applicant has provided a tentative plan map showing the partition plat. As discussed in Section 7.0, a building on Parcel #1 of the tentative plan will be required to be moved to comply with the minimum yard requirements within the Zoning Code. The remaining Zoning Code requirements are discussed in Section 5.0, 8.0, and 9.0.

**(E) If a subdivision, the proposed name has been approved by the County Surveyor and does not use a word which is the same as, similar to or pronounced the same as a word in the name of any other subdivision in Multnomah County, except for the words town, city, place, court, addition or similar words, unless the land platted is contiguous to and platted by the same applicant that platted the subdivision bearing that name or unless the applicant files and records the consent of the party that platted the subdivision bearing that name and the block numbers continue those of the plat of the same name last filed.**

**Staff:** The applicant is not proposing a subdivision; therefore, this criterion is not applicable. *This criterion is not applicable.*

**(F) The streets are laid out and designed so as to conform, within the limits of MCC 39.9520 and 39.9525 and the Multnomah County Road Rules and Design and Construction Manual, to the plats of subdivisions and maps of partitions already approved for adjoining property unless the approval authority determines it is in the public interest to modify the street pattern; and,**

**Staff:** As shown in the tentative plan map and discussed in the narrative, the applicant is not proposing a street. Alternatively, the applicant is proposing to use an access easement along the existing private driveway to provide access to the three (3) parcels (Exhibit A.15 and A.17). As no street is required as part of this land division, this criterion is not applicable. *This criterion is not applicable.*

**(G) Streets held for private use are laid out and designed so as to conform with MCC 39.9520 and 39.9525 and the Multnomah County Road Rules and Design and Construction Manual, and are clearly indicated on the tentative plan and all reservations or restrictions relating to such private streets, including ownership, are set forth thereon.**

**Staff:** As discussed in (H) above, the applicant is proposing to use an access easement along the existing private driveway to provide access instead of creating a street for private use. As no street

is being held for private use will be required as part of this land division, this criterion is not applicable. *This criterion is not applicable.*

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

- (1) The infiltration of flood waters into the system; and**
- (2) The discharge of matter from the system into flood waters.**

**Staff:** The approval of this land division must be safe from known flooding and flood hazards in addition to minimizing or preventing infiltration of floodwaters into public utilities and water supply systems. The subject property is not located within an area of Special Flood Hazard as mapped by the Federal Emergency Management Agency (FEMA). The applicant has also provided a tentative plan map, Septic Review Certification, and Storm Water Certificate. An Onsite Sanitation – Site Evaluation was also obtained from the City of Portland.

The Septic Review Certification was reviewed and approved by Lilly Peterson, Registered Environmental Health Specialist on November 13, 2019 (Exhibit A.11 and Exhibit B.4). The Septic Review Certification states, “Proposed land division approved by Septic Sanitation. Parcels 1 & 2 have full repair areas and existing systems that meet required setbacks to proposed property lines. Parcel #3 approved for septic under SER #26-19.” (Exhibit A.7). A Site Evaluation was also completed for Parcel #3. Completed by Lilly Peterson, REHS on November 12, 2019, the Site Evaluation indicated that Parcel #3 could be approved for a standard septic tank and drainfield disposal system (Exhibit B.16).

The Storm Water Drainage Control Certificate was reviewed and signed by John Middleton, Registered Professional Engineer. The Certificate states that construction of an on-site storm water control system is not required for any of the parcels (Exhibit A.14). The accompanying report states that, “the permeability rate of the native soils is high so the degree of certainty that runoff from future new impervious areas will be treated and disposed of on each individual parcel is high.”

As there are no areas of Special Flood Hazard and the documents indicate that there is ample space for utilities and water supply systems, the proposal will have a minimal infiltration of floodwaters into those systems. *This criterion is met.*

### **10.3 § 39.9500- APPLICATION OF GENERAL STANDARDS AND REQUIREMENTS.**

**Every land division proposal shall comply with the applicable provisions of MCC 39.9505 through 39.9585.**

**Staff:** As required above, the Category 1 Land Division must comply with the applicable provisions of MCC 39.9505 through 39.9585 as discussed below.

#### 10.4 § 39.9505 LAND SUITABILITY.

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

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

**Staff:** A review of the topography and potential environmental hazards show that the subject property does not exceed 20-percent and is not located within an area of Special Flood Hazard. The subject property is also not located in an area identified on the County's Comprehensive Plan Natural Hazards map as having a historic landslide. Further, the Storm Water Drainage Control Certificate reviewed and signed by John Middleton, Registered Professional Engineer indicates that the soil type is Burlington, a Hydrologic Group "A" soil (Exhibit A.14). This soil has a high permeability rate and as stated in the Certificate, "is an excellent candidate for installation of a surface and sub-surface stormwater treatment and disposal system." This statement is supported by the Septic Review Certification and a Site Evaluation (Exhibit A.11, B.4, and B.16). The Certification and Evaluation did not indicate that there were concerns of a high seasonable water table or fragipan. The Certification and Evaluation showed the location of existing drainfields and an area of a potential drainfield for a new septic system.

Based on this understanding of the intended use, a single-family dwelling on each property, the land within the partition is suitable for division because there are areas provided on the land to support that use. *These criteria are met.*

#### 10.5 § 39.9510 LOTS AND PARCELS.

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

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

**Staff:** The design of the parcels that will be created as part of this land division will potentially each contain a single-family dwelling. The contemplated and existing uses for Parcel #1 will continue to be a single-family dwelling that is located on a farm. Parcel #2 also has an existing use, which is a single-family dwelling. Lastly, Parcel #3 will be vacant initially with the contemplated use of a single-family dwelling.

In comparing the development pattern of the area, the nature of the existing development is of a rural nature with farmland and typically one single-family dwelling on each property. The slopes of the area indicate that the area is generally flat. It is not anticipated that more development of this area is expected as the minimum lot size and zoning of the area limit potential development. This insures that the existing slopes, vegetation, and natural drainage will be preserved.

**Figure #3 Vicinity Map**

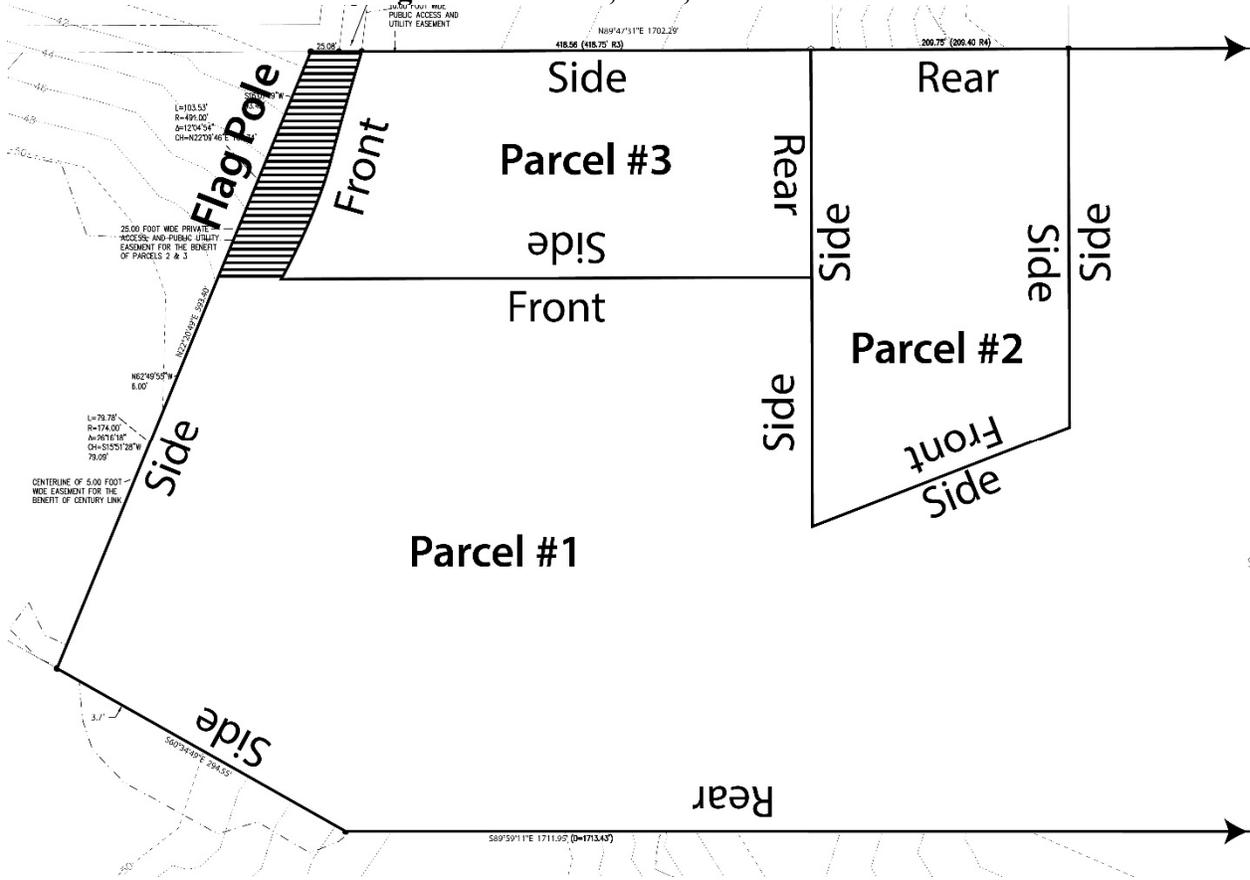


Additionally, the dimensional requirements of the EFU zone require adequate yard space between building and property boundaries, these standards will ensure that the privacy of semi-public and private areas will not be encroached upon at this time. As was discussed in Section 7.1, the single-family dwellings that will remain on each of the parcels meet the dimensional standards for the Exclusive Farm Use (EFU) zoning district. However, one building on Parcel #1 will need to be moved out of the yard. After that is completed, each of the parcels will have sufficient open space between buildings and property lines to provide privacy and the separation of conflicting areas and will be sized to be appropriate to the type of development and use contemplated. *These criteria are met.*

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

**Staff:** The applicant has provided a tentative plan map showing the configuration of parcels within the partition. As shown in the Figure below, the front and side lot lines are indicated.

**Figure #4 – Front, Side, and Lot Lines**



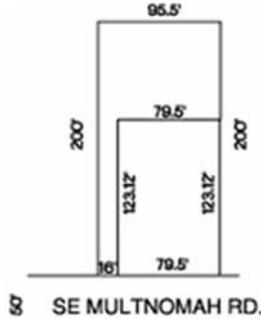
As shown in the tentative plan map and the figure above, the side lot lines are all perpendicular to the front lot line (Exhibit A.15). *This criterion is met.*

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

**Staff:** As shown in the tentative plan map, the applicant is not proposing a double frontage or reserve frontage parcel. Parcel #1 is a flag lot that abuts Charlton Drive, which is a rural local road, and Parcel #2 and #3 do not abut a public road (Exhibit A.15). *This criterion is met.*

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

(1) When a flag lot does not adjoin another flag lot, as shown in MCC 39.9510 Figure 1, the pole portion of the flag lot shall be at least 16 feet wide.



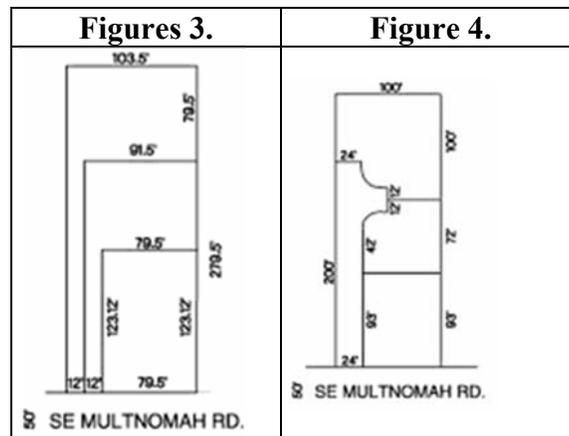
(2) Where two flag lots are placed back to back as shown in MCC 39.9510 Figure 2, the pole portion of each flag lot shall be at least 12 feet wide.

Figure 2.



**Staff:** The applicant is proposing a land division that will include the creation of a flag lot with a pole that does not satisfy the minimum frontage requirement of the EFU zone. The flag lot, Parcel #1, does not meet the minimum front lot length of 50 feet as required in MCC 39.4245(C). The applicant is proposing to meet the minimum front lot line length of a pole at 16 feet as provided above. The tentative plan map shows that the pole portion of the flag lot is approximately 46 feet. *This criterion is met.*

(E) Within a land division, flag lots shall not be stacked one behind the other as shown in MCC 39.9510 Figure 3. Instead, a private accessway shall be used as shown in MCC 39.9510 Figure 4.



**Staff:** The applicant is proposing a land division that will include the creation of a flag lot. Parcel #1 will be a flag lot with Parcel #2 and #3 being parcels that do not abut a road. As configured, Parcel #2 and #3 will be landlocked and access will be provided by an access easement. As only one parcel will be a flag lot this criterion is not applicable, and the land division will not be required to provide a private accessway. *This criterion is not applicable.*

#### 10.6 § 39.9515 ACREAGE TRACTS.

**Where a tract of land is to be divided into lots or parcels capable of redivision in accordance with this or any other ordinance, the approval authority shall require an arrangement of lots, parcels and streets which facilitates future redivision. In such a case, building setback lines may be required in order to preserve future rights-of-way or building sites.**

**Staff:** The tract of land to be divided will not be capable of revision as the newly created parcels, #1, #2, and #3 will be 98.9 acres, two acres, two acres respectively. The minimum lot size in the EFU zone is 80 acres. As all of the parcels will be less than the acreage needed to divide further, this criterion is not applicable. *This criterion is not applicable.*

#### 10.7 § 39.9520 STREET LAYOUT.

**(A) Except as otherwise provided in subsections (B) and (C) of this Section, the arrangement of streets in a land division shall be designed:**

- (1) To conform to the arrangement established or approved in adjoining land divisions;**
- (2) To continue streets to the boundary of any adjoining undivided tract where such is necessary to the proper development of the adjoining land;**
- (3) To assure the maximum possible preservation of existing slopes, vegetation and natural drainage;**
- (4) To limit unnecessary through traffic in residential areas;**
- (5) To permit surveillance of street areas by residents and users for maximum safety;**
- (6) To assure building sites with appropriate solar orientation and protection from winter wind and rain;**
- (7) To assure storm water drainage to an approved means of disposal; and**
- (8) To provide safe and convenient access.**

**(B) Where topography or other conditions make conformance to the existing street pattern or continuance to an adjoining tract impractical, the street layout shall conform to an alternate arrangement authorized by the approval authority.**

**(C) Where a street layout affecting the proposed land division has been established by the Comprehensive Plan, the arrangement of streets in the land division shall conform to the established layout.**

**Staff:** The applicant has provided a tentative plan map showing the proposed street layout. In comparing the existing conditions to the proposed tentative plan map, the applicant is not proposing to alter any streets as part of this partition nor is the applicant proposing any streets to bisect the property (Exhibit A.15). The existing roads, NW Charlton Road and NW Charlton Drive conform to the established arrangement as the street pattern was already established in accordance with the Comprehensive Plan. *These criteria are met.*

**(D) A half street may be permitted only where appropriate to the future division of adjoining undeveloped property, provided that when possible, additional dedicated right-of-way exceeding one-half of a street may be required to provide adequate width to accommodate two-way vehicle traffic.**

**Staff:** The applicant is not requesting or required to provide a half street, as no road is required to be created as part of the land division. Therefore, this criterion is not applicable as no right-of-way is being requested by the County. *This criterion is not applicable.*

**(E) When necessary for adequate protection of existing or proposed land uses or to afford separation of through and local traffic, a land division abutting or containing an existing or proposed arterial may be required to include, among other things, a frontage street, reverse frontage lots with extra depth, or screen plantings in a non-access reservation along a property line.**

**Staff:** The applicant has provided a tentative plan map showing the existing street layout. The land division is not required to create an arterial road. The street layout does include an arterial abutting the land division. Therefore, this criterion is not applicable as no arterials abut the land division or are being proposed. *This criterion is not applicable.*

## **10.8 § 39.9525 STREET DESIGN.**

**The width, design and configuration of all streets in or abutting the land division shall comply with applicable ordinance standards as follows:**

**(A) For a public street, in accordance with the Multnomah County Road Rules and Design and Construction Manual; and**

**(B) For a private street, in accordance with the Multnomah County Road Rules and Design and Construction Manual, subject to the following additional requirements:**

**(1) Accessways shall be designed in accordance with Permit Requirements for Accessway Construction published by the Multnomah County Department of Community Services Transportation Division. Accessways shall have a maximum length of 300 feet.**

**(C) A cul-de-sac shall be as short as possible and shall have a maximum length of 400 feet and serve building sites for not more than 18 dwelling units. A cul-de-sac shall terminate with a turnaround having a radius of 50 feet.**

**Staff:** The subject parcels that are part of the land division are not required to meet the applicable ordinance standards for width, design, and configuration. The streets within the land division are subject Multnomah County Road Rules and Design and Construction Manual. However, the Multnomah County Transportation Division through their Road Rules has not requested right of way dedication, street exactions, or frontage improvements, as a Transportation Impact has not been triggered. Therefore, these criteria for width, design, and configuration are not applicable at this time. *These criteria are not applicable.*

## **10.9 § 39.9530 STREET RESERVE STRIPS.**

**The land division shall provide for the appropriate extension or widening of streets serving the division or for allocating the improvement costs among future land divisions. A reserve**

**strip or street plug may be required for such purposes. The control and disposition of reserve strips or plugs shall be placed within the jurisdiction of the County.**

**Staff:** The County is not requesting a reserve strip or plug, nor is the County requesting an allocation for the improvement cost. Multnomah County Transportation Division through their Road Rules have not requested a reserve strip, street plug or a portion of the improvement cost, as a Transportation Impact has not been triggered. Therefore, these criteria are not applicable at this time. *This criterion is not applicable.*

**10.10 § 39.9535 TEMPORARY TURNAROUNDS.**

**A temporary turnaround shall be provided on any street that is appropriate for continuation, either within the land division or beyond, when the street serves more than six interior lots.**

**Staff:** The County is not requiring temporary turnarounds as no street is being proposed as part of this land division. Therefore, this criterion is not applicable. *This criterion is not applicable.*

**10.11 § 39.9540 STREET NAMES.**

**Names for public streets shall conform to the street naming system of Multnomah County. In order to discourage unnecessary traffic, the nature of a private street, a dead end street or a cul-de-sac shall be identified by a sign approved as to design, content and placement by the County Engineer.**

**Staff:** As no new public streets are proposed, this criterion is not applicable. *This criterion is not applicable.*

**10.12 § 39.9545 REQUIRED IMPROVEMENTS.**

**Improvements in a land division shall be made in accordance with the provisions of MCC 39.9550 through 39.9590 and 39.9600.**

**Staff:** As discussed subsequently in this Section, if any required improvements are needed, they will be discussed below.

**10.13 § 39.9550 STREETS, SIDEWALKS, PEDESTRIAN PATHS AND BIKEWAYS.**

**(A) Sidewalks shall be required in Urban Area public streets in accordance with the provisions of the Multnomah County Road Rules and Design and Construction Manual.**

**Staff:** The subject property is not located in an Urban Area; therefore, this criterion is not applicable. *This criterion is not applicable.*

**(B) A sidewalk shall be required along any private street serving more than six dwelling units.**

**Staff:** The proposed partition will not result in a private street serving more than six dwelling units; therefore, this criterion is not applicable. *This criterion is not applicable.*

**(C) A pedestrian path located outside a street right-of-way may be substituted for a required sidewalk when it serves the same circulation function.**

**Staff:** The proposed partition does not require the creation of a sidewalk so a pedestrian path is not required; therefore, this criterion is not applicable. *This criterion is not applicable.*

**(D) Where a pedestrian path and bikeway is part of an approved plan for the area or has been approved on adjoining property, the approval authority may require the provision of a pedestrian path or bikeway within the land division.**

**Staff:** The proposed partition does not require a pedestrian path or bikeway; therefore, this criterion is not applicable. *This criterion is not applicable.*

**(E) In order to provide for an appropriate circulation system, the approval authority may require a pedestrian path and bikeway across an unusually long or oddly-shaped block.**

**Staff:** The proposed partition does not require the creation pedestrian path or a bikeway; therefore, this criterion is not applicable. *This criterion is not applicable.*

**(F) The width, design and configuration of sidewalks and pedestrian paths and bikeways shall comply with applicable standards, as follows:**

**(1) In a public right-of-way, in accordance with the Multnomah County Road Rules and Design and Construction Manual; and**

**(2) On private property, as approved by the Planning Director in accordance with the Design Review provisions of this Chapter.**

**Staff:** The proposed partition does not require the creation of a sidewalk, pedestrian path or a bikeway; therefore, these criteria are not applicable. *These criteria are not applicable.*

**(G) Any street, pedestrian path or bikeway shall be improved as follows:**

**(1) In a public street, in accordance with this Chapter and the Multnomah County Road Rules and Design and Construction Manual; and**

**(2) In a private street, in accordance with the this Chapter and the Multnomah County Road Rules and Design and Construction Manual;**

[Typographical error in original].

**Staff:** The proposed partition does not require the creation of a street, pedestrian path, or bikeway; therefore, these criteria are not applicable. *These criteria are not applicable.*

**(H) Underground utilities and street lighting facilities, sanitary sewers, storm drains and water mains located in a street shall be installed prior to the surfacing of the street.**

**Staff:** The proposed partition does not involve the surfacing of a street; therefore, this criterion is not applicable. *This criterion is not applicable.*

**10.14 § 39.9555 EASEMENTS.**

**Easements shall be provided and designed according to the following:**

**(A) Along the front property line abutting a street, a five foot utility easement shall be required. The placement of the utility easement may be modified as requested by a public or private utility provider. Utility infrastructure may not be placed within one foot of a survey monument location noted on a subdivision or partition plat.**

**(B) Where a tract is traversed by a water course such as a drainage way, channel or stream, a storm water easement or drainage right-of-way adequate to conform substantially with the lines of the water course shall be provided. In a Drainage District or Water Control District, such easement or right-of-way shall be approved by the District Board, in accordance with ORS 92.110. If not within such District, approval shall be by the County Engineer.**

**(C) Easements for pedestrian paths and bikeways shall be not less than 10 feet in width.**

**Staff:** A five (5) foot wide utility easement is required on the flagpole portion of Parcel #1, at the northern property line abutting the street. The property also contains a watercourse, the Gilbert River; therefore, a storm water easement will be required. Lastly, the newly created parcels are located within the rural areas of Multnomah County, where no facilities for pedestrian paths and/or bikeways are planned or are being planned. *As conditioned, this criterion can be met.*

**10.15 § 39.9560 STREET TREES.**

**Street trees shall be planted by the applicant according to the street tree planting plan and schedule approved by the County Engineer as an element of the tentative plan. Trees which have not survived for one year after initial planting shall be replaced by the applicant within four months of loss.**

**Staff:** No street trees are required to be planted, as the land division is not located in an area with a street tree planting plan. Therefore, this criterion is not applicable. *This criterion is not applicable.*

**10.16 § 39.9565 STREET LIGHTING.**

**Street lighting shall be provided in all Urban Area subdivisions in accordance with the requirements of the Multnomah County Road Rules and Design and Construction Manual.**

**Staff:** No street lighting is required to be constructed, as the land division is not an Urban Area subdivision. Therefore, this criterion is not applicable. *This criterion is not applicable.*

**10.17 § 39.9570 WATER SYSTEM.**

**The provision of domestic water to every lot or parcel in a land division shall comply with the requirements of Subsections (4)(a), (b), or (c) of ORS 92.090 and the following:**

**(A) Water mains, service and fire hydrants shall meet the requirements of the Water District and shall be located as follows:**

- (1) In a public street, in accordance with the Multnomah County Road Rules and Design and Construction Manual; and**
- (2) In a private street, as approved by the approval authority.**

**Staff:** The applicant is proposing a partition; therefore, they are not required to comply with the requirements of subsections (4)(a), (b), or (c) of ORS 92.090. The revised statute only applies to the subdivision of land and not the partitioning of land; therefore, this criterion is not applicable. *This criterion is not applicable.*

#### **10.18 § 39.9575 SEWAGE DISPOSAL.**

**The provision for the disposal of sewage from every lot or parcel in a land division shall comply with the requirements of Subsections (5)(a), (b) or (c) of ORS 92.090 and the following:**

**(A) Except as provided in Subsection (B) of this Section, a sanitary sewer line shall be installed to serve every lot or parcel in a land division by extension of an existing sewer line:**

**(1) In a public street, in accordance with the Multnomah County Road Rules and Design and Construction Manual; and**

**(2) In a private street, as approved by the approval authority.**

**(B) Where sanitary sewer is not available to the site or where the State Department of Environmental Quality determines that it is impractical to serve any lot or parcel by an existing sewer system, a private sewage disposal system approved by the Department shall be provided. All lots or parcels in a proposed land division which will utilize private subsurface sewage disposal system shall apply for and obtain approval of a Land Feasibility Study confirming the ability to utilize the system prior to tentative plan approval. In such cases, the approval authority may require that a sanitary sewer line, with branches to the right-of-way line for connection to a future sewer system, be constructed and sealed.**

**(C) Where a private subsurface sewage disposal system is used, the parcel or lot shall contain adequate land area to accommodate both a primary and reserve septic system drainfield area, and for surface and storm drainage systems.**

**Staff:** As required, the approval of this land division must meet the provisions for the disposal of sewage from every parcel in a land division. However, the applicant is proposing a partition; therefore, they are not required to comply with the requirements of subsections (5)(a), (b), or (c) of ORS 92.090.

The applicant has provided a Septic Review Certification. The certification was reviewed and approved by Lilly Peterson, Registered Environmental Health Specialist, who is an agent of the Department of Environmental Quality (DEQ). Approved on November 13, 2019, the Septic Review Certification states, “Proposed land division approved by Septic Sanitation. Parcels 1 & 2 have full repair areas and existing systems that meet required setbacks to proposed property lines. Parcel #3 approved for septic under SER #26-19” (Exhibit A.11 and Exhibit B.4). A Site Evaluation was also completed for Parcel #3. Completed by Lilly Peterson, REHS on November 12, 2019, the Site Evaluation indicated that Parcel #3 could be approved for a standard septic tank and drainfield disposal system (Exhibit B.16). *These criteria are met.*

#### **10.19 § 39.9580 SURFACE DRAINAGE AND STORM WATER SYSTEMS.**

**Surface drainage and storm water control systems shall be provided as required by this section.**

**(A) On-site water disposal or retention facilities shall be adequate to insure that surface runoff rate or volume from the new parcels after development is no greater than that before development.**

**(B) Drainage facilities shall be constructed as follows:**

**(1) In a public street, in accordance with the Multnomah County Road Rules and Design and Construction Manual; and**

**(2) In a private street and on lots or parcels, in accordance with the plans prepared by an Oregon licensed and registered professional engineer and approved by the approval authority.**

**Staff:** The Storm Water Drainage Control Certificate was reviewed and signed by John Middleton, Registered Professional Engineer. The Certificate states that construction of an on-site storm water control system is not required for any of the parcels (Exhibit A.14). The accompanying report states that, “the permeability rate of the native soils is high so the degree of certainty that runoff from future new impervious areas will be treated and disposed of on each individual parcel is high.” Therefore, no drainage facilities will be required to be constructed in a public street, private street, or on the parcel at this time. *These criteria are met.*

## **10.20 § 39.9585 ELECTRICAL AND OTHER WIRES.**

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

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

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

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

**Staff:** The land division is required to underground utilities unless one of the standards of (A) through (C) are met. Based on visual review of the parcels subject to the land division, there are utility poles along NW Charlton Road that provide electricity to the buildings on the subject property. If the electrical and other wires are placed underground it would require the over 600 feet of trenching. The undergrounding of utilities would only result in a minor aesthetic advantage. Therefore, this requirement is waived as to require a undergrounding of the utilities would provide minimal gain and be unnecessarily expensive in regards to the rural land use pattern of the area. *This criterion is met.*

## **10.21 § 39.9587 REQUIRED IMPROVEMENTS.**

**Improvements in a land division shall be made in accordance with the provisions of MCC 39.9587 through 39.9590 and 39.9600.**

**Staff:** As discussed subsequently, if any required improvements are needed, they will be discussed below.

**10.22 § 39.9588 STREETS, SIDEWALKS, PEDESTRIAN PATHS AND BIKEWAYS, WATER SYSTEM, SEWAGE DISPOSAL, SURFACE DRAINAGE AND STORM WATER SYSTEMS.**

**(A) Any street, pedestrian path or bikeway shall be improved as follows:**

- (1) In a public street — in accordance with this Chapter and the Street Standards Code and Rules; and,**
- (2) In a private street — in accordance with the Street Standards Code and Rules.**
- (3) Underground utilities and street lighting facilities, storm drains and water mains located in a street shall be installed prior to the surfacing of the street.**

**Staff:** As discussed in Section 10.8 and 10.13, the applicant is not required to improve a public street. As no street is required to be improved, the requirements of subsection (A)(3) are also not applicable. *These criteria are not applicable.*

**(B) Water mains, service and fire hydrants shall meet the requirements of the Water District and shall be located as follows:**

- (1) In a public street - in accordance with the Street Standards Code and Rules; and**
- (2) In a private street - as approved by the approval authority.**

**Staff:** The subject property is not located within a Water District; therefore, these criteria are not applicable. *These criteria are not applicable.*

**(C) A sewage disposal system approved by the State Department of Environmental Quality, shall be provided. All lots or parcels in a proposed land division which will utilize private subsurface sewage disposal system shall apply for and obtain approval of a Land Feasibility Study confirming the ability to utilize the system prior to tentative plan approval. In such cases, the approval authority may require that a sanitary sewer line, with branches to the right-of-way line for connection to a future sewer system, be constructed and sealed.**

**Staff:** As discussed in Section 10.18, the applicant provided a Septic Review Certification and Site Evaluation from the City of Portland Bureau of Development Services: Onsite Sanitation. As agents for the State Department of Environmental Quality, the Multnomah County Sanitarians have confirmed the ability to utilize a system, if needed, on the parcel as each parcel contains adequate land area to accommodate both a primary and reserve septic system drainfield area, and for surface and storm drainage systems. *This criterion is met.*

**(D) Drainage facilities shall be constructed as follows:**

- (1) In a public street - in accordance with the Street Standards Code and Rules; and**
- (2) In a private street and on lots or parcels - in accordance with the plans prepared by an Oregon licensed and registered professional engineer and approved by the approval authority.**

**Staff:** As discussed in Section 10.8 and 10.13, the applicant is not required to provide a drainage facility as part of a public or private street. As no street is required, these criteria are not applicable. *These criteria are not applicable.*

**10.23 § 39.9590 OTHER UTILITIES.**

**Other utilities, including electric, gas, street lighting and cable television facilities shall be provided as required by this Ordinance and as follows:**

**(A) In a public street, in accordance with the Multnomah County Road Rules and Design and Construction Manual; and**

**(B) In a private street, as approved by the approval authority.**

**Staff:** The subject property will be divided into three parcels so that each parcel could contain a single-family dwelling. Two of the parcels already have connections to other utilities, including electricity, natural gas, and cable television. Electricity is available from Portland General Electric, natural gas is available from NW Natural, and cable television is available from Xfinity by Comcast. As those utilities are already provided in the public street, no additional requirements are needed. *This criterion is met.*

**10.24 § 39.9595 ADJUSTMENTS AND VARIANCES.**

**An adjustment or variance from certain dimensional requirements in MCC 39.9500 through 39.9590 of this Ordinance may be authorized by the Approval Authority under the provisions of MCC 39.8200 through 39.8215.**

**Staff:** As discussed in Section 9.0, the applicant is requesting a variance from the minimum front lot line width. The authorization of the variance is discussed in Section 9.2.

**10.25 § 39.9605 FINAL DRAWING AND PRINTS.**

**(A) Two prints of the subdivision or partition plat shall accompany the final drawing, conforming to all applicable requirements as established by the Oregon Revised Statutes (ORS), Chapters 92 and 209.**

**(B) Notwithstanding optional provisions in ORS Chapter 92, all parcels created shall be surveyed, monumented and platted, regardless of parcel area.**

**Staff:** As required above, a condition of approval will be required that two prints of the partition plat shall accompany the final drawing. The final drawing shall conform to all applicable requirements of ORS 92 and 209. Additionally, all lots created as part of this land division shall be surveyed, monumented, and platted. *As conditioned, these criteria can be met.*

**10.26 § 39.9610 INFORMATION REQUIRED ON SUBDIVISION PLAT OR PARTITION PLAT.**

**In addition to the information required to be shown on the tentative plan, the following shall be shown on the subdivision plat or partition plat:**

**(A) Corners of adjoining subdivisions or partitions.**

**(B) The location, width and centerline of streets and easements abutting the boundaries of the land division.**

- (C) Any plat that includes land in areas of Special Flood Hazard or includes a water body or watercourse, as those features are described in MCC 39.2000, shall contain a plat note indicating that portions of the plat are subject to flooding and/or high water.**
- (D) The ownership of each private street shall be shown.**
- (E) Other certifications required by law.**

**Staff:** As required above, a condition of approval will be required that the partition plat shows the following, if applicable:

- Corners of adjoining subdivisions or partitions.
- The location, width, and centerline of streets and easements abutting the boundaries of the land division.
- Any plat that includes land in areas of Special Flood Hazard or includes a water body or watercourse, as those features are described in MCC 39.2000, shall contain a plat note indicating that portions of the plat are subject to flooding and/or high water.
- The ownership of each private street shall be shown.
- Other certifications required by law.

*As conditioned, these criteria can be met.*

#### **10.27 § 39.9615 SUPPLEMENTAL INFORMATION WITH SUBDIVISION PLAT OR PARTITION PLAT.**

**The following shall accompany the subdivision plat or partition plat, as appropriate:**

- (A) A copy of any deed restrictions applicable to the subdivision or partition.**
- (B) A copy of any dedication requiring separate documents.**
- (C) A copy of the future street plan, when required, as recorded according to MCC 39.9465(A).**
- (D) As used in this section, "lot" means a unit of land that is created by a subdivision of land, and a "tract" will be considered a lot, except for street plugs.**
- (E) A map, prepared by an Oregon licensed surveyor, of the subdivision plan or partition plat that depicts the normal flood plain or high water line for any water body or watercourse and the extent of areas of Special Flood Hazard as defined in MCC 39.5005.**

**Staff:** As required above, a condition of approval will be required that the partition plat shows the following, if applicable:

- A copy of any deed restrictions applicable to the subdivision or partition.
- A copy of any dedication requiring separate documents.
- A copy of the future street plan, when required, as recorded according to MCC 39.9465(A).
- A map, prepared by an Oregon licensed surveyor, of the subdivision plan or partition plat that depicts the normal flood plain or high water line for any water body or watercourse and the extent of areas of Special Flood Hazard as defined in MCC 39.5005.

*As conditioned, these criteria can be met.*

**10.28 § 39.9620 TECHNICAL REVIEW AND APPROVAL OF SUBDIVISION PLAT OR PARTITION PLAT.**

**(A) The subdivision plat or partition plat and all required material shall be filed with the Planning Director for final approval. Within 10 business days of filing, the Planning Director shall determine whether the material conforms with the approved tentative plan and with the applicable requirements of this Ordinance. If the Planning Director determines that there is not such conformity, the applicant shall be so advised and afforded an opportunity to make corrections. When the plat is found to be in conformity, it shall be signed and dated by the Planning Director.**

**Staff:** As required above, a condition of approval will be required that the partition plat and all required materials shall be filed with the Planning Director for final approval. If the Planning Director determines that there is not such conformity, the applicant shall be so advised and afforded an opportunity to make corrections. When the plat is found to be in conformity, it shall be signed and dated by the Planning Director. *As conditioned, this criterion can be met.*

**(B) On a subdivision plat, the approval signature of the Chair of the Board of County Commissioners or the Chair's delegate, shall be required to certify that the plat is approved.**

**Staff:** The applicant is applying for a partition and not a subdivision; therefore, this criterion is not applicable. *This criterion is not applicable.*

**(C) No building permit shall be issued or parcel sold, transferred or assigned until the partition plat has been approved by the Planning Director and County Surveyor and recorded with the public office responsible for public records.**

**Staff:** As required above, a condition of approval will be required that no building permit shall be issued or parcel sold, transferred, or assigned until the partition plat has been approved by the Planning Director and County Surveyor and recorded with the public office responsible for public records. *As conditioned, this criterion is met.*

**11.0 Comprehensive Plan Policy Criteria**

**11.1 Chapter 3 – Farm Land Policy 3.11**

**Require approval of dwellings and other development to be contingent upon compliance with Lot of Record standards as contained in the EFU zoning code.**

**Staff:** As discussed in Section 5.0, the subject property was found to comply with the Lot of Record standards contained in the EFU zoning code. *This criterion is met.*

**11.2 Chapter 11 – Public Facilities: Policy 11.17**

**As appropriate, include school districts, police and fire protection, and emergency response service providers in the land use process by requiring review of land use applications from these agencies regarding the agency's ability to provide the acceptable level of service with respect to the land use proposal.**

**Strategy 11.17-1: Encourage school districts to review land use proposals for, among other factors as determined by the school district, impacts to enrollment and the district’s ability to meet community educational needs within existing or planned district facilities and impacts to traffic circulation and pedestrian safety.**

**Strategy 11.17-2: Encourage police, fire protection, and emergency response service providers to review land use proposals for, among other factors as determined by the agency, sufficiency of site access and vehicular circulation and, for fire protection purposes, the availability of adequate water supply, pressure, and flow, whether provided on-site or delivered from off-site.**

**Staff:** The application included a Fire Service Agency Review, Certification of Water Service, School District Review, and Police/Sheriff Services Review. All of the service provided indicated that there are acceptable levels of service (Exhibit A.9, A.10, A.12, and A.13). *These criteria are met.*

## 12.0 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for an Administrative Decision by the Planning Director and Category 1 Land Division to implement a Measure 49 Final Order in the Exclusive Farm Use (EFU) zone. The applicant has also carried the burden necessary as part of the land division for two (2) Variances create two (2) parcels that do not abut a street. This approval is subject to the conditions of approval established in this report.

## 13.0 Exhibits

- ‘A’ Applicant’s Exhibits
- ‘B’ Staff Exhibits
- ‘C’ Procedural Exhibits

Exhibits with a “\*” after the exhibit # have been included as part of the mailed hearing notice. Those exhibits have been reduced to a size of 8.5” x 11” for mailing purposes. All other exhibits are available for digital review by contacting the Land Use Planning office and referencing Case File T3-2021-14961.

| Exhibit # | # of Pages | Description of Exhibit  | Date Received / Submitted |
|-----------|------------|---|---------------------------|
| A.1       | 1          | General Application Form  | 08/21/2021                |
| A.2       | 26         | Narrative   | 08/21/2021                |
| A.3       | 2          | Warranty Deed recorded in Book 1743, Page 598 on September 8, 1955          | 08/21/2021                |
| A.4       | 3          | Limited Warranty Deed recorded as Document #2017-026320 on March 01, 2017   | 08/21/2021                |
| A.5       | 3          | Bargain and Sale Deed recorded as Document # 2018-085998 on August 15, 2018 | 08/21/2021                |
| A.6       | 12         | Pre-application Conference Notes - PA-2020-13605                            | 08/21/2021                |

|            |          |  |             |
|------------|----------|--|-------------|
| A.7        | 6        | Memorandum from Natalie Warner, Multnomah County Transportation concerning EP-2020-12924   | 08/21/2021  |
| A.8        | 8        | Oregon Department of Land Conservation and Development (DLCD) – ORS 195.300 to ORS 195.336 (Measure 49) Supplemental Review of Measure 37 Claim: Final Order and Home Site Authorization – E129631 | 08/21/2021  |
| A.9        | 2        | Fire Service Agency Review   | 08/21/2021  |
| A.10       | 3        | Certification of Water Service   | 08/21/2021  |
| A.11       | 1        | City of Portland – Bureau of Development Services: Onsite Sanitation – Septic Review Certification – 19-243913-SE  | 08/21/2021  |
| A.12       | 1        | School District Review   | 08/21/2021  |
| A.13       | 1        | Police / Sheriff Services Review   | 08/21/2021  |
| A.14       | 9        | Storm Water Drainage Control Certificate for Land Divisions and Property Line Adjustments completed by John Middleton, Registered Professional Engineer  | 08/21/2021  |
| A.15*      | 2        | Tentative Plan Maps<br>- C200: Existing Conditions Plan<br>- C201: Tentative Plan Map  | 08/21/2021  |
| A.16       | 1        | Email from the applicant requesting withdrawal of the Category 3 Land Division and addition of a Category 1 Land Division  | 11/02/2021  |
| A.17       | 27       | Revised Narrative  | 11/05/2021  |
| A.18       | 9        | Photos of existing private driveway  | 12/03/2021  |
| <b>'B'</b> | <b>#</b> | <b>Staff Exhibits</b>  | <b>Date</b> |
| B.1        | 2        | Division of Assessment, Recording, and Taxation (DART): Property Information for 2N1W16 -00900 (Alt Acct #R971160060)  | 08/21/2021  |
| B.2        | 1        | Division of Assessment, Recording, and Taxation (DART): Map with 2N1W16 -00900 (Alt Acct #R971160060) highlighted  | 08/21/2021  |
| B.3        | 2        | Oregon Secretary of State Corporation Division: Amended Annual Report for Wiley Farm Enterprises, LLC  | 08/21/2021  |
| B.4        | 3        | City of Portland – Bureau of Development Services: Onsite Sanitation – Septic Review Certification   | 08/21/2021  |

|            |          |   |             |
|------------|----------|---|-------------|
| B.5        | 7        | Parcel Record – Cartographic Unit Card for 2N1W16 -00900 (Alt Acct #R971160060)   | 11/24/2021  |
| B.6        | 2        | Deed of Gift recorded in Book 1067, Page 944-945 on October 17, 1975  | 11/24/2021  |
| B.7        | 2        | Deed of Gift recorded in Book 1067, Page 946-947 on October 17, 1975  | 11/24/2021  |
| B.8        | 2        | Warranty Deed recorded in Book 1526, Page 356-357 on March 14, 1952   | 11/24/2021  |
| B.9        | 1        | Map showing Zoning on and after November 15, 1962   | 11/29/2021  |
| B.10       | 2        | Zoning Ordinance 100 as amended on May 17, 1974 - Page 12-13  | 11/29/2021  |
| B.11       | 1        | Division of Assessment, Recording, and Taxation (DART): Map of 2N1W16C  | 12/01/2021  |
| B.12       | 1        | Aerial Photo taken on June 2021 provided by Google Earth  | 12/01/2021  |
| B.13       | 1        | Site Plan showing zoning approval from January 28, 1992   | 12/01/2021  |
| B.14       | 1        | Site Plan showing zoning approval from March 18, 2002   | 12/01/2021  |
| B.15       | 1        | Site Plan showing zoning approval from September 15, 2009   | 12/01/2021  |
| B.16       | 8        | City of Portland – Bureau of Development Services: Onsite Sanitation – Site Evaluation #19-243937-SE / Report # 26-19         | 12/01/2021  |
| B.17       | 9        | Oregon Fire Code Application Guide from the City of Gresham Fire  | 12/03/2021  |
| B.18       | 18       | Tualatin Valley Fire & Rescue – New Construction Fire Code Applications Guide for One- and Two-Family Residential Development | 12/03/2021  |
| B.19       | 2        | Applicant’s and Surveyor’s Finishing a Land Division handout  | 12/10/2021  |
| <b>‘C’</b> | <b>#</b> | <b>Administration &amp; Procedures</b>  | <b>Date</b> |
| C.1        | 2        | Complete Letter (Day 1)   | 09/10/2021  |
| C.2        | 8        | Hearing Notice & mailing list   | 12/17/2021  |
| C.3        | 1        | Oregonian Notice  | 12/22/2021  |
| C.4        | 48       | Staff Report  |             |
| <b>‘H’</b> | <b>#</b> | <b>Hearing Exhibits</b>   | <b>Date</b> |

|     |   |                              |            |
|-----|---|------------------------------|------------|
| H.1 | 1 | Lot of Record Image          | 08.17.2021 |
| H.2 | 2 | Applicant's PowerPoint       | 08.17.2021 |
| H.3 | 3 | January 14, 2021, Staff Memo | 01.14.2022 |