



**MULTNOMAH COUNTY**  
**LAND USE AND TRANSPORTATION PROGRAM**  
1600 SE 190<sup>TH</sup> Avenue Portland, OR 97233  
PH: 503-988-3043 FAX: 503-988-3389  
<http://www.multco.us/landuse>

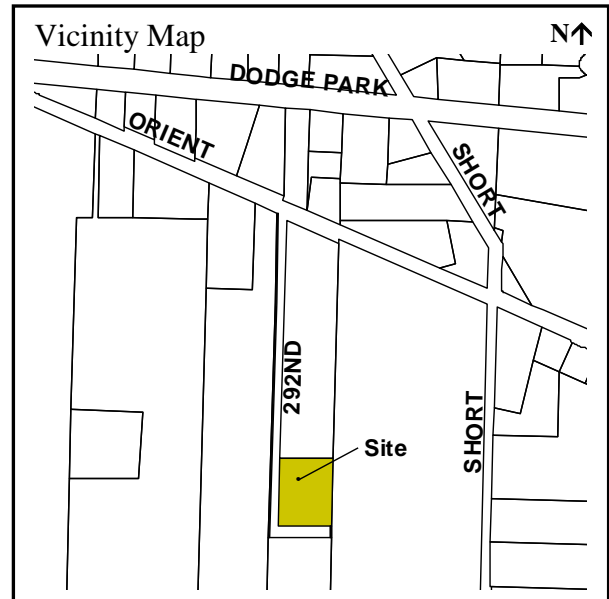
---

## NOTICE OF DECISION

---

This notice concerns a Planning Director Decision on the land use case(s) cited and described below.

**Case File:** T2-2013-2771  
**Permit:** Administrative Decision by the Planning Director for a Measure 49 Dwelling  
**Location:** Lot 2, Block 1 Dar-Mil Estates  
Tax Lot 300, Section 19D  
Township 1 South, Range 4 East, W.M.  
Tax Account #R197100110  
**Applicant:** Ryan Sugai  
**Owner:** Cheryl Carlson  
**Base Zone:** Exclusive Farm Use (EFU)  
**Overlays:** Not Applicable



---

**Summary:** Applicant is proposing to construct a single family dwelling under a Measure 49 approval from the State on an EFU zoned lot. In addition, the proposal also includes a road rules variance to reduce the width of the required roadway and maintaining the road surface as gravel.

**Decision:** Approved with Conditions

Unless appealed, this decision is effective Tuesday, September 10, 2013, at 4:00 PM.

---

Issued by:

By: \_\_\_\_\_  
Lisa Estrin, Planner

For: Karen Schilling- Planning Director

Date: Tuesday, August 27, 2013

Instrument Number for Recording Purposes: #D900160646

**Opportunity to Review the Record:** A copy of the Planning Director Decision, and all evidence submitted associated with this application, is available for inspection, at no cost, at the Land Use Planning office during normal business hours. Copies of all documents may be purchased at the rate of 30-cents per page. The Planning Director Decision contains the findings and conclusions upon which the decision is based, along with any conditions of approval. For further information on this case, contact Lisa Estrin, Staff Planner at 503-988-3043, ext. 22597.

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

**This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Tuesday, September 10, 2013 at 4:00 pm.**

**Applicable Approval Criteria:** Multnomah County Code (MCC) and Multnomah County Road Rules (MCRR): MCC Chapter 37 – Administration and Procedures, including MCC 37.0560 Code Compliance; MCC 36.0005 Definitions – Lot of Record, MCC 36.2655 Single Family Dwellings Condition of Approval – Prohibition on Claims Alleging Injury From Farm or Forest Practices, MCC 36.2660 Dimensional Requirements, MCC 36.2675 Lot of Record, MCC 36.2690 Access MCRR 4.000 Access, Measure 49 Final Order E131019

Copies of the referenced Multnomah County Code (MCC) and Multnomah County Road Rules (MCRR) sections can be obtained by contacting our office at 503-988-3043 or by visiting our website at <http://www.co.multnomah.or.us/landuse> or <http://web.multco.us/transportation-planning>.

## **Scope of Approval**

1. Approval of this land use permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.
2. **This land use permit expires four years from the date the decision is final pursuant to MCC 37.0690(C) as applicable. The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 37.0695, as applicable. The request for a permit extension must be submitted prior to the expiration of the approval period.**

## **Conditions of Approval**

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parenthesis.

1. Prior to land use sign-off of the building permit for the new dwelling, the property owner or his representative shall record pages 1 – 4 of this land use decision and the revised site plan (Exhibit A.10).

Cost of recording shall be at the owner's expense. Proof of recordation shall be provided to Land Use Planning before submittal for plan check. [MCC 37.0670]

2. A stormwater/drainage control system shall be designed and installed to handle the water generated from the 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.

a. Prior to land use sign-off of the building permit for the new dwelling, the property owners or their representative shall have a licensed Oregon engineer review the soil conditions of the site and design a storm water system. A copy of a signed Storm Water Certificate and the stormwater system's design shall be attached to the building plans.

b. Prior to occupancy of the dwelling, the stormwater system shall be installed on the lot and the stormwater from all new impervious surfaces directed to it.

c. The property owners or their contractors shall maintain the storm water system in working order and as necessary complete repairs and general maintenance to ensure functionality. [MCC 36.2660(F)]

3. Prior to land use sign-off of the building permit for the new dwelling, the property owners or their representative shall demonstrate that the proposed road improvements do not rise to the level of *Development* as defined in MCC 36.4510(A) or obtain a Significant Environmental Concern permit for water resources to allow the construction of the road improvements on 293<sup>rd</sup> Place. [MCC 36.4515]

4. Prior to land use sign-off of the building permit for the new dwelling, the property owners or their representatives shall demonstrate compliance with the County's Grading and Erosion Control ordinance and Flood Hazard Ordinance. [MCC 36.2660(G), MCC 29.600 & MCC 29.356]

5. Prior to land use sign-off of the building permit for the new dwelling, the property owners or their representative shall apply for and obtain an address for the new house. To apply for an Address Assignment application, the following will need to be provided:

a. A Type I application form;

b. A copy of a site plan showing the location of the house and its driveway onto 293<sup>rd</sup> Place; and

c. \$146 application fee. [MCC 37.1560]

6. Prior to land use sign-off of the building permit for the new dwelling, the property owner of Lot 2, Block 1 Dar-Mil Estates shall sign and record in the County's deed records a document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937. A copy of this document can be obtained at the Land Use Planning office. [Condition 10 of Final Order E131019]

7. Prior to land use sign-off of the building permit for the new dwelling, the property owner shall dedicate 5 foot of road frontage to expand the public right-of-way known as SE 293<sup>rd</sup> Place to 45 feet in width. To initiate the dedication process, please contact Ken Hoffman at 503.988.5050 ext. 22527 for more information. [MCRR 6.00]

8. Prior to land use sign-off of the building permit for the new dwelling, the property owner or her representative shall:

a. Contact Steve Farnsworth at 503.988.5050 ext. 25476 to obtain information on the necessary plan materials to construct 293<sup>rd</sup> Place;

b. Submit the required plans and access review application to Joanna Valencia at 503.988.5050 ext. 29637 for review; and

c. Obtain construction permits for widening of 293<sup>rd</sup> Place to a 15 foot wide uniform, gravel driving surface with an unobstructed width of 20 feet. Please contact Joanna Valencia at 503.988.5050 ext. 29637. [MCRR 6.00 and DCM 9.200]

9. Prior to land use sign-off of the building permit for the new dwelling, the property owner or her contractor shall construct the improvements to SE 293<sup>rd</sup> pursuant to the Multnomah County Road Rules as modified by the Road Rules Variance contained in Section 4.0. 293<sup>rd</sup> Place shall have an unobstructed width of 20 feet with a 15 foot wide uniform, graveled driving surface. 293<sup>rd</sup> Place shall have an unobstructed vertical clearance of not less than 13 feet, 6 inches. [MCRR 6.00]

10. Prior to land use sign-off of the building permit for the new dwelling, the property owners or their representative shall obtain a demolition permit from the City of Gresham Building Division and demolish the accessory building. All materials from the structure shall be removed from the property and disposed of properly. [MCC 37.0560]

11. Prior to commencement of construction of the dwelling, the property owner or his/her representative shall obtain all necessary building, electrical, plumbing, and mechanical permits from the City of Gresham Building Division and the sewage disposal permit from the Environmental Health Specialist at the City of Portland. [Condition No. 13 of Final Order E131019]

12. Prior to flammable materials being placed on the property to construct the dwelling, the property owner or her representative shall contact the Gresham Fire Department for fire access inspection.

13. Prior to occupancy of the dwelling, the property owner shall obtain final inspection of all permits required in condition #5.

**NOTE:** If the property owner was to sell off either Lot 2, Block 1, Dar-Mil Estates or Lot 1, Block 2, Dar-Mil Estates, the Lot of Record for 29334 SE 293<sup>rd</sup> Place would be destroyed and rebuilding of the house at 29334 SE 293<sup>rd</sup> Place, either due to choice or natural disaster would not be feasible under current Exclusive Farm Use zone Lot of Record requirements.

**Next Steps:** Once the decision is final, the property owners or their representative will need to complete conditions 1 – 9 of the Conditions of Approval. When ready to have building permits signed off, the property owners or their representative shall call the Staff Planner, Lisa Estrin, at (503) 988-3043 ext. 22597, for an appointment to review for compliance the conditions of approval and approval and to sign the building permit plans. Please note, Multnomah County must review and sign off the building permits before the applicant submits building plans to the City of Gresham. Three (3) sets each of the site plan and building plans are needed for building permit sign off. At the time of building permit review, a fee of \$61.00 will be collected. In addition, an erosion control inspection fee of \$82.00 may be required.

**Notice to Mortgagee, Lien Holder, Vendor, or Seller:**

ORS Chapter 215 requires that if you receive this notice it must be promptly forwarded to the purchaser.

## **Findings of Fact**

**FINDINGS:** Written findings are contained herein. The Multnomah County Code (MCC) criteria and Comprehensive Plan Policies are in **bold** font. Staff analysis and comments are identified as ‘**Staff:**’ and address the applicable criteria. Staff comments may include a conclusionary statement in *italic*.

### **1.00 Project Description & History:**

**Staff:** The applicant is proposing to demolish an existing accessory building adjacent to the 293<sup>rd</sup> Place right-of-way and construct a single family dwelling on the subject site. The property owner Cheryl Ingram was granted a Measure 49 approval to establish one dwelling on Tax Lot 300, Township 1 South, Range 4 East, Section 19D (Tax Lot 300). The subject property is zoned Exclusive Farm Use (EFU). In 1973, a three lot subdivision was recorded creating the 1.55 acre lot known as Tax Lot 300. The Administrative Decision by the Planning Director will review the proposed development for compliance with the EFU development criteria listed above and the Measure 49 Conditions of Approval contained in the State of Oregon’s Final Order and Home Site Authorization No. E131019 (Final Order).

The subject property is a corner lot with road frontage on both SE 293<sup>rd</sup> Place and SE Lexington Street. Limited improvements have occurred in the SE 293<sup>rd</sup> Place right-of-way for a dwelling south of Tax Lot 300. The applicant is requesting a Road Rules Variance to deviate from the Design and Construction Manual’s minimum street improvement requirements as described below in Section 4.00.

### **2.00 Exclusive Farm Use Criteria:**

#### **2.01 § 36.2655 SINGLE FAMILY DWELLINGS CONDITION OF APPROVAL - PROHIBITION ON CLAIMS ALLEGING INJURY FROM FARM OR FOREST PRACTICES**

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

**Staff:** A condition of approval has been added to this decision requiring that Exhibit B.3 be recorded prior to land use sign-off of the building permit.

#### **2.02 § 36.2660 DIMENSIONAL REQUIREMENTS.**

\* \* \*

##### **(C) Minimum Yard Dimensions - Feet**

<b>Front</b>	<b>Side</b>	<b>Street Side</b>	<b>Rear</b>
<b>30</b>	<b>10</b>	<b>30</b>	<b>30</b>

**Maximum Structure Height - 35 feet**

\* \* \*

**(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:** SE 293<sup>rd</sup> Place is designated a “Local” roadway on the County’s Functional Classification of Trafficways map. Transportation’s Design and Construction Manual specifies that the minimum designated right-of-way width for a “Local” roadway is 60 feet. The current dedicated right-of-way width for SE 293<sup>rd</sup> Place is only 40 feet. A 5 foot right-of-way dedication is being requested by Transportation from the applicant as part of this review. The applicant has drawn a proposed 100 foot by 100 foot building envelope at the center of the lot and has shown the proposed dwellings footprint within it. The building envelope is 69 feet from the western property line, 65 feet from the eastern property line, 97 feet from the northern property line and 97 feet from the south property line. The applicant has provided reduced copies of the building elevations. It appears from these documents that the house will be less than 35 feet in height. *Criterion met.*

**2.03 (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.**

**(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’s site plan shows that the primary and replacement drainfield will be located in the north east portion of the lot (Exhibit A.10). The County’s Environmental Health Specialist has reviewed the property through a Land Feasibility Study and finds the area suitable for an on-site sewage disposal system (Exhibit A.12). No storm water systems are shown on the site plan. The Environmental Health Specialist has indicated that the storm water system be located at least 50 ft from the drainfield and recommends the area south of the dwelling envelope. A condition of approval has been included requiring a licensed engineer review the site and the amount of impervious surfaces being created and determine the location for storm water control. *As conditioned, criterion met.*

**2.04 (G) Grading and erosion control measures sufficient to ensure that visible or measurable erosion does not leave the site shall be maintained during development. A grading and erosion control permit shall be obtained for development that is subject to MCC Chapter 29.**

**Staff:** A condition of approval has been included requiring that the property owners demonstrate compliance with the County’s Grading and Erosion Control ordinance. *As conditioned, criterion met.*

**2.05 § 36.2675 LOT OF RECORD.**

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

**(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.**

**Staff:** The subject property was established in July 1973 by the recordation of the subdivision plat Dar-Mil Estates. Cheryl Carson owned the subject property (Lot 2, Block 1, Dar-Mil Estates) along with Lot 1, Block 2, Dar-Mil Estates. The two lots are across SE Lexington Street from each other. Pursuant to the County's Exclusive Farm Use zone, "Contiguous" refers to "parcels or lots which have any common boundary, excepting a single point, and shall include, but not be limited to, parcels or lots separated only by an alley, street or other right-of-way." Since both properties are less than 2 acres, they are aggregated and are one Lot of Record pursuant to MCC 36.2675(A)(2). The State's Final Order granted an approval for a homesite on Lot 2, Block 1, Dar-Mil Estates. If the property owner was to sell off either Lot 2, Block 1, Dar-Mil Estates or Lot 1, Block 2, Dar-Mil Estates, the Lot of Record for 29334 SE 293<sup>rd</sup> Place would be destroyed and rebuilding of the house at 29334 SE 293<sup>rd</sup> Place either due to choice or natural disaster would not be feasible under current Exclusive Farm Use zone Lot of Record requirements. A note has been added above under the conditions of approval section to highlight the need to maintain the current Lot of Record.

## **2.06 § 36.2690 ACCESS.**

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

**Staff:** Lot 2, Block 1 Dar-Mil Estates abuts directly on a public right-of-way known as 293<sup>rd</sup> Place. The applicant has requested a variance to the road improvement standards contained in the Multnomah County Road Rules. Transportation has considered the variance request in Section 4 of this report.

## **3.00 Measure 49 Conditions of Approval**

### **3.01 DLCD Condition #1:**

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

**Staff:** The applicant has applied to establish a dwelling on Lot 2, Block 1, Dar-Mil Estates. No dwelling currently exists on this 1.55 acre parcel (Exhibit B.1). The subject lot is identified in the Assessment and Taxation records as 1S4E19D, Tax Lot 300 (Exhibit B.1). The State's Final Order (Exhibit A.13) specifies that the Measure 37 property identification is 1S4E19D, Tax Lot 300. The proposed dwelling will be constructed on a Measure 49 eligible property. The proposed dwelling complies with all applicable standards siting the development of the dwelling or has been granted a variance to those standards (see Section 4.00 for variance findings). *Condition met.*

### **3.02 DLCD Condition #2:**

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

**Staff:** The applicant is proposing to construct a single family dwelling on the subject property. The Environmental Health Specialist has indicated that an on-site sewage disposal system can

be utilized for disposal of waste and grey water. The proposal does not include a use that is historically recognized as a public nuisance; endangers public health and safety; violates a federal law or will sell adult entertainment. *Condition met.*

**3.03 DLCD Condition #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:** No evidence has been presented that the property owner Cheryl Ingram (a.k.a. Carlson) has obtained approval for any other Measure 49 claims. The proposal is for one single family dwelling on an existing legal lot. *Condition met.*

**3.04 DLCD Condition #4:**

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

**Staff:** The area covered under the Final Order is known as 1S4E19D, Tax Lot 300. The Final Order (Exhibit A.13) found that the property owner, Cheryl Ingram does not own any contiguous property pursuant to Measure 49's requirements. While Cheryl Ingram and her husband Dennis Ingram own Lot 1, Block 2, Dar-Mil Estates which contains a dwelling, it is not considered contiguous under Measure 49 due to the 50 ft dedicated public right-of-way known as Lexington Street separating the lots. *Condition met.*

**3.05 DLCD Condition #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:** No temporary dwellings exist on Lot 2, Block 1, Dar-Mil Estates. The property currently has an outbuilding constructed within the front yard setback, but the applicant has indicated that the structure will be removed. *Condition met.*

**3.06 DLCD Condition #6:**

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

**Staff:** The area covered under the Final Order is known as 1S4E19D, Tax Lot 300. The



applicant has applied to construct a single family dwelling on Tax Lot 300, 1S4E19D. *Condition met.*

**3.07 DLCD Condition #7:**

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

**Staff:** No dwelling currently exists on Tax Lot 300, 1S4E19D. *Condition met.*

**3.08 DLCD Condition #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 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 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 may be converted to an authorized home site.*

**Staff:** No vested right determination has been made on the subject property. *Condition met.*

**3.09 DLCD Condition #9:**

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

**Staff:** No dwelling currently exists on Tax Lot 300, 1S4E19D. *Condition met.*

**3.10 DLCD Condition #10:**

*Because the property is located in an exclusive farm use zone, the owner must comply with the requirements of ORS 215.293 before beginning construction.*

*ORS 215.293 states “**Dwelling in exclusive farm use or forest zone; condition; declaration; recordation.** The county governing body or its designate shall require as a condition of approval of a single-family dwelling under ORS 215.213, 215.283 or 215.284 or otherwise in a farm or forest zone, that the landowner for the dwelling sign and record in the deed records for the county a document binding the landowner, and the landowner’s successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937.”*

**Staff:** A condition of approval has been included requiring the recordation of this binding document. *As conditioned, condition met.*

**3.11 DLCD Condition #11:**

*If an owner of the property is authorized by other home site authorizations to subdivide, partition or establish dwellings on other Measure 37 claim properties, Measure 49 authorized*

*the owner to cluster some or all of the authorized lots, parcels or dwelling that would otherwise be located on land in an exclusive farm use zone, a forest zone or a mixed farm and forest zone on a single Measure 37 claim property that is zoned residential use or is located in an exclusive farm use zone, a forest zone or a mixed farm and forest zone but is less suitable for farm or forest use than the other Measure 37 claim properties.*

**Staff:** The property owner Cheryl Ingram (Carlson) was authorized for a single home site. Clustering is not applicable for this 1.55 acre lot. *Condition met.*

### **3.12 DLCD Condition #12:**

*If the claimant transferred his 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 settler, the subsequent owner of the property must establish the authorized dwellings within 10 years of the conveyance. A dwelling lawfully created based on a home site approval is a permitted use.*

**Staff:** The State's Final Order was issued on May 3, 2010. Cheryl Ingram (Carlson) remains the owner of the subject property, so the Final Order is valid. The County's land use decision is good for four years with the ability to obtain an extension pursuant to MCC 37.0695. A condition of approval has been included advising future property owners of the 10 year time limit if the dwelling is not established before transferring the property. *As conditioned, condition met.*

### **3.13 DLCD Condition #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:** The property owner through this applicant has applied to obtain the administrative decision and road rules variance for the project. It may be required that a Significant Environmental Concern-water resource (SEC-wr) approval be obtained depending on the amount of development which must occur along 293<sup>rd</sup> Place in the SEC-wr overlay. A condition of approval has been included that indicates that they are responsible for obtaining all necessary permits to establish the dwelling. *As conditioned, criterion met.*

## **4.00 Road Rules Variance**

### **4.01 MCRR 4.000 Access to County Roads**

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

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

**D. Sight Distance Certification from a registered traffic engineer; and**

**E. Other site-specific information requested by the County Engineer**

**MCRR 4.200: One driveway access per property will be the standard for approval.**

**MCRR 4.300: All new access points shall be located so as to meet the access spacing standards laid out in the Design and Construction Manual.**

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

**MCRR 4.500: All new access points to roads under the County's jurisdiction must have a minimum sight distance equal to the standards in the Design and Construction Manual and AASHTO's A Policy on Geometric Design of Highways and Streets.**

**Staff** All required information has been submitted. The applicant has proposed to construct a new access onto 293<sup>rd</sup> Place, a local access road for which an Access Permit is required. The applicant proposes one access driveway. Local access roads do not have spacing standards. The new access is shown on the applicant's site plan. Local access roads do not have a sight distance requirement. *These standards are met through a condition.*

#### **4.02 Local Access Roads**

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

**Staff:** The proposed property is adjacent to and the driveway approach will access onto 293<sup>rd</sup> Place, a local access road. 293<sup>rd</sup> Place is an under-developed right-of-way, which was developed in the early 70's to its existing condition of a one lane gravel road by property owners using the road. The roadway currently serves two properties with dwellings. The existing gravel surface ranges from about 8 to 10 feet wide.

Given the proposed dwelling will be accessed from Orient Drive via the 293<sup>rd</sup> Place right-of-way, the proposed single family dwelling will generate additional vehicle trips along this local access road. These vehicle trips result in transportation impacts to 293<sup>rd</sup> Place. The County Road Rules require that the applicant make improvements to the local access road consistent with the standards provided in the Design and Construction Manual (DCM).

The DCM requires a minimum of 6 meters (19.7 feet) of paved travel surface for two lanes of traffic with a minimum gravel shoulder with a width of 1.5 meters (4.9 feet). In addition, the DCM requires a 20 ft long paved approach to connect the private driveway to the 293<sup>rd</sup> Place road surface. The applicant has requested a variance to the Road Rules and DCM standards. The lesser standard variance request is described in the following sections. *This standard is met through a condition of the variance as addressed below.*

#### **4.03 Road Rules Variance from County Standards and Requirements**

**MCRR 16.100 A: Multnomah County Code 29.507 provides for a variance by the County Engineer from County standards and requirements when written documentation substantiates that the requested variance is in keeping with the intent and purpose of County Code and adopted rules, and the requested variance will not adversely affect the intended function of the County road system or related facilities. A variance approval**

**may include mitigation measures as conditions of approval.**

**Staff:** The applicant has requested a variance to the County Road Rules and the DCM standards to build 293<sup>rd</sup> Place to a lesser standard than required by the DCM. The requested variance is to not improve the existing travel lane to a 20-foot wide paved roadway with 5-foot wide graveled shoulders, but to provide a 12-foot wide graveled travel surface, without improved shoulders and a 20-foot wide emergency vehicle clearance area.

The applicant has submitted documentation from Gresham Fire stating that their emergency access requirements can be met with 12 feet of graveled surface and 20 feet of clearance. However, after review the Multnomah County Engineer has safety concerns with the proposed variance reduction from a 19.7 foot paved roadway to a 12 foot wide gravel roadway. The County Engineer finds that a reduction from the preferred width and paved surface to a minimum of 15 feet of gravel roadway can be supported based on the zoning, surrounding land uses and vehicle trips. The County Engineer has modified the request for the 12 foot roadway to a 15 foot graveled roadway. Staff finds that the 15 feet of gravel surface with 20 feet of clear width will not adversely affect the intended function of the County road system or related facilities. By providing a 15 foot wide travel surface, the proposal provides for safe travel lanes for vehicles, pedestrians and emergency vehicles. The additional width will allow for traffic to pass in opposite directions and will provide more space for pedestrians. The findings below address the Road Rules Variance criteria.

- 4.04 MCRR 16.100 B: All requests for a variance to these Road Rules that are part of a development that requires approval of that development as a “land use decision” or “limited land use decision,” as defined in ORS 197.015, shall be submitted to the County Engineer at the time that application for the land use review is submitted to the applicable planning office having land use jurisdiction. The County Engineer’ decision on the variance to these Road Rules shall not become effective until the date that the associated land use decision becomes effective.**

**Staff:** This variance request is processed as a land use decision meeting this requirement.  
*Standard met.*

**4.05 General Variance Criteria**

**MCRR 16.200 A: Special circumstances or conditions apply to the property or intended use that do not apply to other property in the same area. The circumstances or conditions may relate to the size, shape, natural features and topography of the property or the location or size of physical improvements on the site or the nature of the use compared to surrounding uses;**

**Staff:** The property is zoned Exclusive Farm Use which allows farm and forest uses as an outright use. Measure 49 has granted permission to construct a single family residence on an existing small lot. County Road Rules 11.100 requires improving the right-of-way in front of the subject property as well as the addition length between the property and the intersection with Orient Drive. The special circumstances are, while the Road Rules require the right-of-way improvements to the intersection to meet the DCM standards, those standards and the paving requirement would be a significant burden financially for developing just one dwelling. Other properties along the road are already developed and no additional primary farm dwellings can be approved at this time. As such, the burden to construct slightly less than 1,200 linear feet of road surface cannot be spread to adjacent owners who have already developed their properties without making significant improvements along this right-of-way. This variance request, as modified by planning staff, with a 15 foot graveled travel surface and 20 foot clear space, would provide the additional travel width and provides for safe passage of vehicles

traveling in opposite directions. The variance approval will grant a portion of the standard while giving some relief to the property owner and is proportional to the impacts created by the new use. *Criterion met.*

**4.06 MCRR 16.200 B: The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant and extraordinary hardship would result from strict compliance with the standards;**

**Staff:** The property owner's representative would like to develop the subject property with a single family dwelling. Building the road to the standards of the DCM would result in substantial increase in cost to develop the property. The modified standard of 15 feet wide, with no improved shoulder and the roadway having a gravel surface instead of paved would provide a functionally safe access including access for firefighting equipment for the dwellings and properties taking access from 293<sup>rd</sup> Place. The cost of developing the full width of the road which includes shoulders and paving the 20 foot wide surface would result in an extraordinary hardship given the additional cost and could prevent the development of this property with a dwelling due to making it economically unfeasible, thus the variance is necessary for the preservation and enjoyment of a substantial property right granted by Measure 49. *Criterion met.*

**4.07 MCRR 16.200 C: The authorization of the variance will not be materially detrimental to the public welfare or injurious to other property in the vicinity, or adversely affect the appropriate development of adjoining properties;**

**Staff:** Allowing a gravel travel lane without developed shoulders will provide for adequate travel width. The road will be developed to a functionally safe standard which allows for clear vision and will provide for safe passage of vehicles traveling in opposite directions and pedestrians utilizing the right-of-way. As noted above, the fire service agency will be able to use the roadway for the safe passage of emergency vehicles when there is opposing traffic. Given this is a local access road that will serve a total of three dwellings after the proposal is completed, there will be an increase in instances when two vehicles will meet on the road.

A variance allowing the widened roadway to be gravel will not be materially injurious to other properties along the public right-of-way as it continues an existing condition. By providing a continuous graveled surface for vehicles to travel along while passing opposing traffic, the safety of the road will be improved. However given the minor usage of the road, the gravel surface will be sufficient to provide for the additional safe travel. The impacts will be minor due to minimal use of the graveled lane; these impacts do not rise to the level of materially detrimental to the public welfare or injurious to other properties in the vicinity. The proposed variance will not adversely affect the appropriate development of adjoining properties or other properties in the area.

*The requested variance meets this criterion with the amendment that the reduction in width is to 15 feet rather than the requested 12 feet. The requested reduction to 12 feet does not meet the criterion due to safety concerns for public welfare.*

**4.08 MCRR 16.200 D: The circumstances of any hardship are not of the applicant's making.**

**Staff:** The existing road improvements were constructed in 1973 or 1974, when either the subdivision was recorded or the dwelling at 29334 SE 293<sup>rd</sup> Place was constructed. Roadway standards for local access roads were limited at the time and did not require the type of improvements now required by the DCM. The cost of roadway development to County standards is significant and cannot be shared by adjacent property owners. The hardship to develop the road to it full width standard is not of the applicant's or property owner's making.

*Criterion met.*

#### **4.09 Local Access Roads Variance Standards**

**MCRR 16.250:** The County Engineer will consider a variance from the improvement standards for a Local Access Road in the Design and Construction Manual if the topography or other features of the site make compliance with the improvement standards infeasible. Any variance issued under this Section must meet the criteria of section 16.200 of these rules as well as the minimum requirements of the local police, fire and emergency service providers, any applicable Building Code Requirements, any applicable Land Use Code requirements and meet any other applicable environmental requirements.

**Staff:** The features of the site making compliance with the improvement standards unfeasible is the length of the right-of-way requiring improvements to the current standards and the expense which would be borne by a single property owner. While it would be desirable to have the road built to the DCM width standards, granting a variance as described in the previous finding provides for the minimum requirements and applicable standards of the local police, fire and emergency service providers and, building code requirements. The road must be engineered and built to meet county road standards for a local access road as determined by the County Engineer with guidance from the DCM. This criterion is met through a condition of approval requiring the road to be built according to standard as required by the County Engineer along with the allowed variance for reduction of the travel width.

#### **5.00 Conclusion**

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Administrative Decision by the Planning Director and Road Rules Variance to establish a single family dwelling in the Exclusive Farm Use zone. This approval is subject to the conditions of approval established in this report.

#### **6.00 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 decision. All other exhibits are available for review in Case File T2-2013-2771 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	General Application Form	3.06.2013
A.2	4	Measure 49 Narrative with attached site plan	3.06.2013
A.3	2	Email for Water Flow for Fire Dept dated 1.22.2013	3.06.2013
A.4	1	Site / Lot Plan	3.06.2013
A.5	1	A&T Map with Property Highlighted	3.06.2013
A.6	7	Floor Plans a. Main Level b. Upper Level	3.06.2013

		c. Foundation and Floor Framing Plan d. Mid-Level Framing Plan e. Upper-Roof Framing Plan f. Left Side and Front Elevation g. Right Side and Rear Elevation	
A.7	1	Certification of Water Service	3.06.2013
A.8	1	On-Site Sewage Evaluation and Service Receipt dated 1.31.2013	3.06.2013
A.9	2	EFU Narrative and Site Plan	3.06.2013
A.10	1	Scaled Site Plan	3.06.2013
A.11	2	Fire Service Agency Review dated 2.19.13	3.06.2013
A.12	9	Certification of Onsite Sewage Disposal a. Site Evaluation Report dated 2.21.2013 b. Site Plan with Approved Septic Area and Notes signed by E. Micks on 2.21.2013 c. Soil Notes Form d. Land Feasibility Study Form e. Floor Plans	3.06.2013
A.13	8	M49 Supplemental Review of Measure 37 Claim, Final Order and Home Site Authorization	3.06.2013
A.14	2	Road Variance Narrative	3.06.2013
A.15	3	Measure 37 Lot Book Service	3.06.2013
A.16	1	Bargain and Sale Deed from Darrin, Miller and Carlson to Multnomah County transferring Tract A & B, Dar-Mil Estates recorded 9.25.1974	3.06.2013
A.17	2	Contract – Real Estate between Darrin and Carlson recorded 6.15.1978 for that area known as Lot 2, Block 1 Dar-Mil plus that portion of the roads adjacent to it.	3.06.2013
A.18	1	Warranty Deed from Darrin to Carlson recorded 9.11.1980 for Lot 2, Block 1 Dar-Mil Estates	3.06.2013
A.19	1	Warranty Deed from Darrin to Carlson – Lot 2, Block 1 Dar-Mil Estates recorded on 9.11.1980	3.06.2013
A.20	1	Deed Creating Estate by the Entirety between Cheryl Carlson/Ingram to Dennis Ingram for half interest of Lot 1, Block 2 Dar-Mil Estates recorded 10.11.1996	3.06.2013
A.21	2	Revised Fire Service Agency Review form specifying that an alternative width of 12 feet can be supported for SE 293 <sup>rd</sup> Place	5.23.2013
A.22	2	Applicant's Narrative to Multnomah County Road Rules General Variance Criteria	5.23.2013

A.23	2	Photos of SE 293 <sup>rd</sup> Place	5.23.2013
A.24	1	A&T Map showing location of existing and proposed dwellings to use SE 293 <sup>rd</sup> Place	5.23.2013
A.25	1	Letter to Gresham Fire regarding Fire Service Agency Review dated May 22, 2013	5.23.2013
'B'	#	Staff Exhibits	Date
B.1	2	A&T Property Information for 1S4E19D – 00300	3.06.2013
B.2	1	Dar-Mil Estates Subdivision Plat recorded 6.27.1973	3.28.2013
B.3	1	Farm & Forest Covenant, Condition and Restriction Document	n/a
'C'	#	Administration & Procedures	Date
C.1	6	Incomplete Letter	3.29.2013
C.2	1	Applicant's Acceptance of 180 Day Clock	5.23.2013
C.3	1	Complete Letter (Day 1)	7.03.2013
C.4	4	Opportunity to Comment mailed 7.05.2013	7.05.2013