

## Decision of Hearings Officer

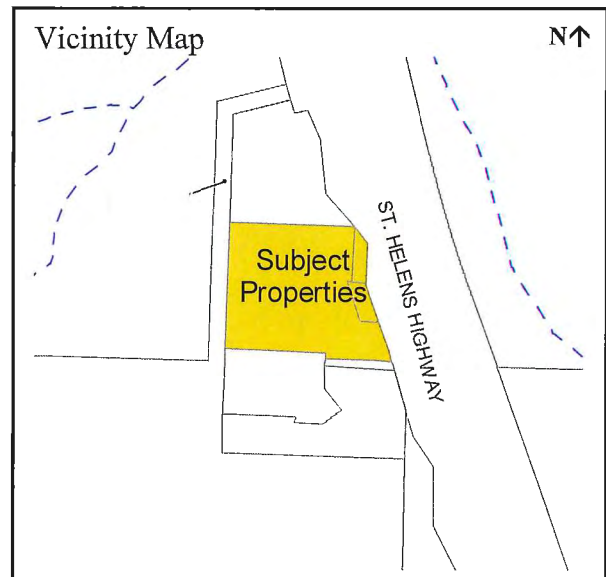
### Community Service Conditional Use Permit, Design Review Permit

**Case File:** T3-2014-3459

**Hearings Officer:** Liz Fancher

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

**September 12, 2014, at 10:30 am** or soon thereafter,  
in Room 103 at the Land Use Planning Division office  
located at 1600 SE 190<sup>th</sup> Avenue, Portland, OR 97233



**Location:** Adjacent to and north of 21201 NW St Helens Highway  
Tax Lots 100, 200, 300 & 400, Section 12AB, Township 2 North, Range 2 West,  
W.M.  
Alt. Tax Accounts: R972120160, R972120120, R972120090, & R972120350

**Applicant:** ICOP, Ali Houdroge      Property Owner(s): Islamic Center of Portland Inc

**Summary:** A request for a Modification of Prior Approval and Extension of Case T3-2012-2239, a Community Service Conditional Use and Design Review Permits for establishment of a cemetery. The request also includes Significant Environment Concern for Wildlife Habitat and Scenic Views and Sign Permits for the cemetery located on an approximately 5.5 acre site with a shared access driveway at 21201 NW St. Helens Highway. The proposed changes include the driveway access location, parking area location, addition of a 256 square foot shed and a sign.

**Base Zone:** Rural Residential

**Overlay Zones:** Significant Environmental Concern for Wildlife Habitat (SEC-h), Scenic Views (SEC-v) and Streams and Slope Hazard

**Site Size:** 5.5 acres

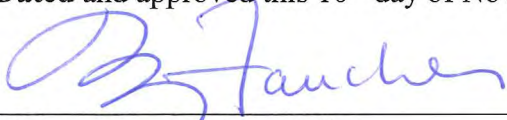
**Applicable Approval Criteria:**

Multnomah County Code (MCC): MCC 33.3100 et. al: RR Zone, MCC 33.6000-.6020: Community Service Conditional Use, and MCC 33. 7000 et. al: Design Review, and MCC 33.4500 et al (for SEC-h & SCE-v sections): Significant Environmental Concern, MCC 33.4400 et al: Off-Street Parking and Loading MCC 33.7450, MCC 33.7465: Signs in the RR Zone and Placement of Signs and MCC 37.0695 Extension of a Type III Decision.

**Hearing Officer Decision:**

The Hearings Officer approves the requested modifications to the previously approved Community Service Conditional Use and Design Review Permits subject to compliance with conditions of approval. The Hearings Officer also approves the Significant Environment Concern for Wildlife Habitat and Views subject to conditions of approval. The sign permit is also approved.

**Dated** and approved this 10<sup>th</sup> day of November, 2014.



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Liz Fancher, Hearings Officer

The following conditions of approval apply:

1. Prior to any work on the property, the property owners shall record the Notice of Decision including the Conditions of Approval of this decision with the County Recorder. The Notice of Decision shall run with the land and the conditions shall be met by the current and future property owner(s) unless amended through a later decision by an authorized authority. Proof of recording shall be submitted to Multnomah County Land Use Planning prior to the issuance of any permits. Recording shall be at the applicant's expense. [MCC 37.0670]
2. This land use permit is based on the submitted written narrative and plans (Exhibits A.1 through A.22) except as required to be modified by this approval. No work shall occur under this permit other than that which is specified within these documents or in this decision. It shall be the responsibility of the property owners to comply with these documents and the limitations of this permit as described herein. [MCC 37.0610]
3. Both cases, T3-2014-3459 and T3-2012-2239, expire two years from the date the decision is final for this case pursuant to MCC 37.0690(A) as applicable if actions and improvements required by the conditions have not been completed, these include Condition Numbers 4, 5, 6, and 7. The property owners 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. [MCC 37.0690]
4. Prior to use of the cemetery, the property owners shall construct the parking area (Exhibit A.2 and A.17). The parking area shall be modified to provide a minimum of two landscape islands in the parking area between and parallel to the parking spaces with one island on each side of the lot. The islands, together, shall be at least 275 square feet in area. No island may be less than five feet wide. A revised site plan that shows these islands shall be filed and approved by the Planning Director and followed by the applicant. The off-street parking shall be provided for the visitors of the cemetery

without charge as a continuing obligation of the property owners. Parking spaces shall be provided on the cemetery property which provide for the maneuvering and parking of all vehicles on the property. On-site parking shall be limited to the approved parking area only. No parking shall be allowed on the easement driveway. No parking is allowed in the ODOT right-of-way unless prior approval has been obtained from ODOT. The parking area shall be surfaced with gravel with the exception of the handicap parking space, which shall be paved. The outer boundary of a parking area shall be provided with a bumper rail or curbing at least four inches in height. During a funeral arrival at the parking area, the parking of vehicles shall be directed by an attendant. There shall be a handicap parking space with signage labeling the space as handicap parking located at the east end of the parking area. The property owners shall install a no smoking sign on the east end of the parking area and viewable from the parking area to prevent wildfire impact on the nearby forests. [MCC 33.2045, MCC 33.4115, MCC 33.4130 (A), MCC 33.4165(B), MCC 33.4170(B), MCC 33.4180(A), and MCC 33.7050(A)(3)]

5. The property owners shall provide an unobstructed paved access driveway not less than 20 feet in width for two-way traffic, leading to St. Helens Highway as shown on Exhibit A.2, with traffic directions plainly marked at the entrance of the driveway from the highway. [MCC 33.4170(A), MCC 33.6010(G) and MCC 33.4180(D)] This improvement shall be completed prior to use of the cemetery unless the applicant posts a bond to assure completion of the improvement as allowed by MCC 33.4135. The driveway improvement shall, in that case, be completed no later than one year following the date of the first burial on the subject property. MCC 33.4.135(B).
6. The property owners shall screen the parking area with a site-obscuring four to six-foot tall fence along the south and west sides of the parking area. [MCC 33.7050(A)(7) and MCC 33.7055(C)(3)]
7. The property owners shall maintain a minimum 15% landscaped area for the 5.5-acre tract by maintaining a 10 foot landscape strip along the north, west, and south property lines and a 40 foot landscape strip along the east property line. No burials shall be placed in the landscape areas to provide a buffer of the use from neighboring properties. To provide for the best possible survival of landscape plantings, the property owners shall plant native Douglas fir saplings along the 10 foot north and south landscape stripes. The trees shall be planted during early fall tree planting season at 25 feet apart with the exception of the power line easement area. The property owners shall maintain of the shrubs planted around the parking area and the other landscape areas. The property owners shall maintain the existing tree canopy density within the east and west landscape areas as shown on Exhibit A.18. Maximum height of tree species shall be considered and easement requirements abided by if planting under overhead utility lines. The area in the BPA easement shall be exempt from the landscape planting requirements. [MCC 33.7050(A)(2), MCC 33.7055(C)(1), MCC 33.7055(C)(5) and MCC 33.7055(C)(6)]
8. The applicant shall make provisions to water the landscaped islands and required landscaped areas, if needed. Watering will be needed if the plants provided in the landscaped areas or in required landscaped area die due to a lack of adequate water. In that case, a cistern, well, reservoir or other source of water and means of irrigation shall be provided on site to provide water for the planting areas and the areas shall be irrigated to sustain the required landscaped areas. [MCC 33.7055(C)(3)]
9. Prior to obtaining building permit zoning sign-off for the shed, color chips demonstrating that the dark earth colors requirement will be met for the exterior colors of the shed. [MCC 33.4565]
10. Prior to building and paving the access drive, the property owner shall file and obtain approval of a Grading and Erosion Control Permit.[MCC 29.330] The Grading and Erosion Control permit plans shall provide for the retention or, where required, relocation of the existing guard rail to a location

where it will serve the same function it presently serves. The plans shall, if required, provide guard rails in other locations where steep side hill grades are present and where the Planning Director determines guard rails should be provided.

11. The following nuisance plants listed in the following table shall not be planted on the subject property and shall be removed and kept removed from cleared areas of the subject property [MCC 33.4570(B)(7)]:

Scientific Name	Common Name	Scientific Name	Common Name	Scientific Name	Common Name
<i>Chelidonium majus</i>	Lesser celandine	<i>Equisetum telemateia</i>	Giant Horsetail	<i>Polygonum sachalinense</i>	Giant Knotweed
<i>Cirsium arvense</i>	Canada Thistle	<i>Erodium cicutarium</i>	Crane's Bill	<i>Prunus laurocerasus</i>	English, Portugese Laurel
<i>Cirsium vulgare</i>	Common Thistle	<i>Geranium roberianum</i>	Robert Geranium	<i>Rhus diversiloba</i>	Poison Oak
<i>Clematis ligusticifolia</i>	Western Clematis	<i>Hedera helix</i>	English Ivy	<i>Rubus discolor</i>	Himalayan Blackberry
<i>Clematis vitalba</i>	Traveler's Joy	<i>Hypericum perforatum</i>	St. John's Wort	<i>Rubus laciniatus</i>	Evergreen Blackberry
<i>Conium maculatum</i>	Poison hemlock	<i>Ilex aquafolium</i>	English Holly	<i>Senecio jacobaea</i>	Tansy Ragwort
<i>Convolvulus arvensis</i>	Field Morning-glory	<i>Laburnum watereri</i>	Golden Chain Tree	<i>Solanum dulcamara</i>	Blue Bindweed
<i>Convolvulus nyctagineus</i>	Night-blooming Morning-glory	<i>Lemna minor</i>	Duckweed, Water Lentil	<i>Solanum nigrum</i>	Garden Nightshade
<i>Convolvulus seppium</i>	Lady's nightcap	<i>Loentodon autumnalis</i>	Fall Dandelion	<i>Solanum sarrachoides</i>	Hairy Nightshade
<i>Cortaderia selloana</i>	Pampas grass	<i>Lythrum salicaria</i>	Purple Loosestrife	<i>Taraxacum oficinale</i>	Common Dandelion
<i>Crataegus sp. except C. douglasii</i>	hawthorn, except native species	<i>Myriophyllum spicatum</i>	Eurasian Watermilfoil	<i>Urtica dioica</i>	Stinging Nettle
<i>Cytisus scoparius</i>	Scotch broom	<i>Phalaris arundinacea</i>	Reed Canary grass	<i>Vinca major</i>	Periwinkle (large leaf)
<i>Daucus carota</i>	Queen Ann's Lace	<i>Poa annua</i>	Annual Bluegrass	<i>Vinca minor</i>	Periwinkle (small leaf)
<i>Elodea densa</i>	South American Water-weed	<i>Polygonum coccineum</i>	Swamp Smartweed	<i>Xanthium spinosum</i>	Spiny Cocklebur
<i>Equisetum arvense</i>	Common Horsetail	<i>Polygonum convolvulus</i>	Climbing Binaweed	<i>various genera</i>	Bamboo sp.

## **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*. The Hearings Officer has accepted the findings of Staff as findings of the Hearings Officer (with corrections where appropriate) and has provided supplemental findings. The supplemental findings are identified as 'Hearings Officer:' and address issues that arose during the hearing and post-hearing review period.

### **1. PROJECT DESCRIPTION:**

**Staff:** The applicant is requesting a Modification of Prior Approval and Extension of Case T3-2012-2239 a Community Service Conditional Use and Design Review for establishment of a cemetery. The request also includes Significant Environment Concern for Wildlife Habitat and Scenic Views and Sign Permits for the cemetery located on an approximately 5.5 acre site with a shared access driveway at 21201 NW St. Helens Highway. The proposed changes include the driveway access location, parking area location, addition of a 256-square foot shed and a sign. This application was deemed complete on June 24, 2014 (Exhibit C.2) and on the day of the hearing it is on Day 87. The applicant submitted materials are included as Exhibits A.1 through A.22.

### **2. PROPERTY DESCRIPTION AND HISTORY**

**Staff:** The subject properties (three properties shown on Exhibit B.2) are located in the Rural Residential Zone and the Significant Environment Concern for Wildlife Habitat (SEC-h) and Scenic Views (SEC-V) and the Slope Hazard Overlay Zones. The applicant has demonstrated that the proposal is exempt under MCC 33.5510 from the Hillside Development (Slope Hazard) permit requirement. Thus the proposed project including grading to expand the access driveway width to the required 20 foot width standard and to develop the parking area will require a Grading and Erosion Control Permit.

This proposal modifies previous Case T3-2012-2239 (Exhibit A.4) an approval of Community Service Conditional Use and Design Review for a cemetery including an access by easement from Gallaher Rd. and a parking area and landscaping.

The previous case (T3-2012-2239) included an easement access driveway from Gallaher Rd. running along and accessing the property from the back (west side) with the easement located in the Commercial Forest Use – 1 (CFU-1) Zone. This proposal includes a different access driveway and the previously approved access driveway will not be used. The entire proposal is located in the Rural Residential Zone.

The subject tract includes three parcels totaling 5.5 acres that is accessed from St. Helens Highway via an access driveway located in ODOT right-of-way and via an easement to cross over the adjacent property to the south (Exhibits A.2, B.1, and B.2). The access drive located in the ODOT right-of-way climbs from St. Helens Highway with slopes of about 18 percent, along a 150 foot stretch, with lesser slopes along the rest of the driveway (Exhibit A.2 and A.18). The property is predominately shallow sloped, located on a rounded knob on top of a bench with about a ten foot elevation change over most of the proposed cemetery area. Approximately 50 feet of the eastern portion of the tract has relatively steep slopes of 20 to 30 percent dropping down to the highway. The eastern steep sloped area and the west property line are vegetated with trees and will remain

as vegetated landscape area that will not be used for graves. A Bonneville Power Administration easement with high voltage electric lines crosses the property (Exhibit B.2).

### **3. RURAL RESIDENTIAL ZONE DISTRICTS**

#### **3.1. Community Service Conditional Use in the RR Zone**

**MCC 33.3130:** The following uses may be permitted when found by the Hearings Officer to satisfy the applicable Ordinance standards:

**(A) Community Service Uses under the provisions of MCC 33.6000 through 33.6230;**

**Staff:** The application request is for a modification of a prior case approval for a Community Service Conditional Use permit. Community Service (CS) Uses listed under MCC 33.6015(3) includes cemeteries as a use allowed through a Community Service Conditional Use permit when the development meets the provisions of MCC 33.6000 through 33.6230. The applicable sections for a cemetery use are MCC 33.6000 through 33.6020.

#### **3.2 Dimensional Requirements**

**MCC 33.3156(C): Minimum Yard Dimensions - Front 30 feet, Side 10 feet and Rear 30 feet and Maximum Structure Height – 35 feet.**

**Staff:** The minimum yard requirements will need to be met for the off-street parking as addressed in the findings for the off-street parking and design review in Sections 5 and 6 of this staff report. The submitted plan (Exhibit A.2) shows the minimum yard requirements for the shed will be setback more than 300 feet from the front yard, 200 feet from the rear yard and approximately 95 feet from the closest side yard. The proposed shed is one story thus meeting the maximum building height (Exhibit A.13). *These standards are and must be met by the approved development, when constructed.*

#### **3.3. Lot of Record**

##### **3.3.1. MCC 33.3170(A): In addition to the Lot of Record definition standards in MCC 33.0005**

**MCC 33.0005: Definition - Lot of Record – Subject to additional provisions within each Zoning District, a Lot of Record is a parcel, lot, or a group thereof that, when created or reconfigured, (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws, or (c) complies with the criteria for the creation of new lots or parcels described in MCC 33.7785. 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:** The subject tract is made up of three parcels. The properties were found to be lots of record in the previous case (T3-2012-2239). The largest parcel Tax Lot 400 was created in 1942 through a deed filed with County Records in Book 703 on Page 102 (Case T3-2012-2239 Exhibit A.6). The two smaller parcels, Tax Lots 200 and 300, were created in 1952 through a deed filed with County Records in Book 1730 on Page 235 and Book 1538 on Page 346 (Case T3-2012-2239 Exhibit A.6). There was no land division or zoning requirements when the parcels were created. The subject properties satisfy the lot of record standards. *The properties are lots of record.*

- 3.3.2. MCC 33.3170(B): A Lot of Record which has less than the minimum lot size for new parcels or lots, less than the front lot line minimums required, or which does not meet the access requirement of MCC 33.3185, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.**

**Staff:** Two of the parcels, Tax Lots 200 and 300, are less than the minimum lot size for new parcels but may be occupied with the proposed use given they are lots-of-record.

#### **4. COMMUNITY SERVICE CONDITIONAL USE**

##### **4.1. Purpose**

**MCC 33.6000: MCC 33.6010 through 33.6230 provides for the review and approval of the location and development of special uses which, by reason of their public convenience, necessity, unusual character or effect on the neighborhood, may be appropriate as specified in each district.**

**Staff:** The applicable criteria and standards for a cemetery are in sections MCC 33.6010 and MCC 33.6020. The findings provided below address those criteria and standards.

##### **4.2. General Provisions**

**MCC 33.6005 (A) Community Service approval shall be for the specific use or uses approved together with the limitations or conditions as determined by the approval authority.**

**MCC 33.6005 (B) Uses authorized pursuant to this section shall be subject to Design Review approval under MCC 33.7000 through 33.7065.**

**Staff:** This Community Service approval is for the specific use of a cemetery as described in the applicant’s submittal and as approved by the decision issued for Multnomah County file T3-2012-2239. Section 6 of this decision includes findings in support of approval for the Design Review permit.

##### **4.3. Approval Criteria**



**4.3.1. MCC 33.6010(A): Is consistent with the character of the area;**

**Staff:** The character of the area includes large lot (three to five acres), low density, residential development with small farming use, nearby forested lands, a golf course, and Metro wetland wildlife habitat areas located across the highway. The area includes natural and altered open space landscape similar to cemeteries. The cemetery has been approved on this site through Case T3-2012-2239 as consistent with the low-density residential and small farm uses, forestry uses and Metro wildlife habitat uses which define the character of the area. The proposed change of the access driveway location will reduce impacts to the residence on the adjacent property to the north and should not impact the residence on the adjacent property to the south to any greater degree than the previous approval. The applicant projects 3 to 4 burials a year with infrequent visitations averaging a few times a year per grave. The proposed small shed is consistent with development on other properties in the area. The proposed changes in the access driveway, parking area and the addition of a small shed are consistent with the character of the area. *This criterion is met.*

**Hearings Officer:** The Rojeski family lives in the property to the south of the subject property. They object to approval of this application due to concerns that the any cemetery, no matter how configured will harm the value of their property. The decision for Case T3-2012-2239 addressed and resolved this concern. The Rojeskis have not claimed that the modification will have a greater or different impact on the character of the area.

Nicole Pierce expressed concern that the cemetery will be the site of large events. An indirect limit has been imposed on the size of events through conditions related to parking in order to address this concern. If a single-family home were built on this property, a bad neighbor could have an unlimited number of large parties. It is highly unlikely that burial services or memorial services would have similar negative impacts on the character of the area. The applicant has not proposed to use the cemetery for other public gatherings or events and, therefore, none are authorized by this permit. *This criterion is met.*

**4.3.2. MCC 33.6010(B): Will not adversely affect natural resources;**

**Staff:** The cemetery will need to meet Oregon State standards for sanitary burial of human remains ensuring no adverse environmental impacts thus preventing an adverse affect on natural resources. This proposal is to change the location of the parking area and access driveway locations from the previous approved locations and includes a small shed. The new proposed driveway will be located further away from streams. A Storm Water Certificate stamped and signed by Hassan Abbas Ibrahim P.E. has been submitted certifying no increase of stormwater flow of the property for up to a 10 year/24 hour storm. The proposed changes will not adversely impact natural resources. *This criterion is met.*

**4.3.3. MCC 33.6010(C): The use will not:**

- (1) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; nor**
- (2) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.**

**Staff:** The property to the north includes small farm uses. The proposed change of the access driveway location, parking area and small shed will not impact the farm uses on that property. In fact the proposed changes move the access driveway to a greater distance from the farmed



property to the north, reducing any potential impacts from the infrequent traffic accessing the site for that property. The applicant projects 3 to 4 burials a year with infrequent visitations averaging a few times a year per grave. The nature of the use will not result in any significant impact to farm or forest uses.

The proposed use will not affect any farming or forest practices on surrounding lands nor will the use significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use. *This criterion is met.*

**4.3.4. MCC 33.6010(D): Will not require public services other than those existing or programmed for the area;**

**Staff:** Additional public services are not needed for the proposed changes of the use on the subject tract. *This criterion is met.*

**4.3.5 MCC 33.6010(E): Will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable;**

**Staff:** The property is outside the big game winter habitat area. *This criterion is met.*

**4.3.6. MCC 33.6010(F): Will not create hazardous conditions;**

**Staff:** The cemetery will need to meet state standards for sanitary burial of human remains ensuring no adverse environmental impacts thus preventing any hazardous condition related to burial of human remains as addressed in the prior approval. The expansion of the impervious paved access drive, paved handicap parking space and roof of the proposed shed requires that stormwater be managed on site for up to a 10 year/24 hour storm. A Storm Water Certificate stamped and signed by Hassan Abbas Ibrahim P.E. has been submitted certifying no increase of stormwater flow of the property for up to a 10 year/ 24 hour storm for the proposed development. ODOT has reviewed the proposal and stated no approach permit is needed with no additional concerns regarding the access to the highway (Exhibit A.6 and A.7). The proposed changes will not create hazardous conditions. *This criterion is met.*

**Hearings Officer:** Neighbors/opponents of the project have raised a concern that the use of the existing shared access driveway will create hazardous conditions. The grade of the road is, in places, extremely steep. During ice storms or other severe weather events the road will, most likely, not be passable. The shared driveway, currently, is narrow. The driveway has, on one prior occasion, been blocked by a vehicle that lost traction while using the road. Neighbors are concerned that the driveway will become blocked by vehicles traveling to the cemetery. This is a reasonable concern but this hazard is an existing condition. As a result, the issue is whether the use by the cemetery will create a hazardous condition that either does not presently exist or that is greater than exists or could exist if the property were used for uses permitted outright on the property.

The use of the roadway by cemetery traffic may slightly increase the hazard of using the driveway. The evidence, however, shows that the use of the roadway by the cemetery will be similar to that of a single-family residence – a use that may occur on the subject property without special review and approval. There are also concerns that the use will become more intense than expected and that burials will attract a large number of cars at one time. The Hearings Officer finds that this is a

reasonable concern. As a result, the Hearings Officer has required that vehicles park in the approved parking lot only or, if approval is obtained from ODOT, in the ODOT right-of-way for Highway 30. If, over time, the parking lot and right-of-way is not of sufficient size to accommodate all vehicles associated with the cemetery use, the applicant will either need to find an effective way to limit the number of vehicles that travel to the cemetery or obtain approval of a modified community service approval. Any modification would need to show that a more intensive use will continue to comply with the relevant approval criteria. This limitation will also have the benefit of preventing vehicles associated with the cemetery from parking on the access road. This condition will address concerns raised by Ms. Pierce that the driveway will be inaccessible to emergency vehicles in the event of a fire if vehicles are parked on the driveway and assure that there will be adequate room for vehicles to pass each other on the driveway.

Nicole Pierce has claimed that the driveway exceeds grade limits for the cemetery use. None of the applicable approval criteria identified by the County impose a grade limit on driveways that serve cemeteries or community service uses. Ms. Pierce has not identified which provision of law she believes sets a grade limit for this use so the Hearings Officer is unable to respond to her claim. The grade in one part of the shared driveway is very steep but suitable for access to single-family residential homes. As the amount and type of traffic associated with single-family homes and reasonably expected for the cemetery is not materially different, the Hearings Officer finds that the access is suitable for use by the cemetery. In winter months, their homes and the cemetery may not be accessible due to weather. This means that burials and visits to the cemetery will need to be moved to a later date but it does not mean that the cemetery use will make the driveway more dangerous; especially since parking will not be allowed on the driveway.

The applicant will be required to widen the driveway to a width of 20 feet. The County is currently considering reducing the requirements for driveways and the applicant has asked the Hearings Officer to allow it to develop the driveway to reduced standards, if they are adopted. The Hearings Officer, however, lacks the legal authority to grant this request because Oregon law provides that the law in effect when a land use application is filed is the law that must be used by the Hearings Officer in making this decision. ORS 215.427 (3)(a).

The applicant also asked to be allowed to use the subject property as a cemetery before improving the road. MCC 33.4135(B) allows the County to allow an applicant to defer making parking area improvements. The driveway functions as an access aisle for the parking area. The Hearings Officer finds that bonding may be used to delay the construction of the widened roadway for a period not to exceed one year. The code ties the one year period to issuance of a certificate of occupancy. As the cemetery use can occur without need for a certificate of occupancy, the Hearings Officer finds that the duration of the bonding may not exceed one year from the date of the first burial on the subject property.

The driveway will be widened within the easement area. Opponents are concerned that a widened road will place cars close to the edge of the road. The applicant's evidence is that the road can be built within the easement area without creating unsafe conditions. The applicant has submitted photographs that illustrate the location of the easement area. The photos are generally more favorable to the applicant than to the opponents. The photos show that a guard rail is currently a part of the driveway development. That guard rail appears necessary due to the steep grade. The Hearings Officer, therefore, has required that the existing guard rail be retained in approximately the same location when the road is widened. Also, based on testimony from opponents, other areas along the road may merit a guard rail once the road is widened and is closer to areas that drop off steeply. As a result, the Hearings Officer has required the applicant to provide new

guard rails if deemed necessary by the Planning Director during the review of the grading and erosion control permit.

Nicole Pierce is concerned that there is no limit on large events. The applicant has explained that the number of burials each year will be low. The Hearings Officer has indirectly limited the size of burial events by requiring that all vehicles park in the parking lot and ODOT right-of-way so that it is less likely that “events” will be large. This limitation has been imposed to protect the character of the area and to prevent the use of the cemetery from creating hazardous conditions on the driveway. The Hearings Officer has not placed a limit on the number of burials. The number of burials has a much lesser chance of creating hazardous conditions than would large gatherings that would overflow the parking area.

#### **4.3.7. MCC 33.6010(G): Will satisfy the applicable policies of the Comprehensive Plan;**

**Staff:** The applicable plan policies for this proposal are *Comprehensive Plan Framework Plan* Policies 37 and 38 addressing the need for fire protection, police protection and for water, sewage disposal, and stormwater when applicable for the use. Fire District Review states the property is within Scappoose Rural Fire District and the district has indicated that the proposed use is in compliance with fire district access standards (Exhibit A.11) The Sheriff's Department has stated that policing services should be adequate (Exhibit A.10). There is no sewage disposal use proposed for the property because there will not be any building inhabited or prolonged visitation of the site. There will be new impervious surfaces for the handicap parking area and additional pavement along the access driveway to widen existing pavement to a 20 foot width. A Storm Water Certificate stamped and signed by Hassan Abbas Ibrahim PE has been submitted certifying no increase of stormwater flow of the property for up to a 10 year/ 24 hour storm. *This criterion is met.*

#### **4.4. Restrictions**

**A building or use approved under MCC 33.6015 through 33.6050 shall meet the following requirements:**

##### **4.4.1. MCC 33.6020(A): Minimum yards in EFU, MUA-20, RR, and BRC, Districts:**

- (1) Front yards shall be 30 feet.**
- (2) Side yards for one-story buildings shall be 20 feet; for two-story buildings, 25 feet.**
- (3) Rear yards shall be as required in the district.**

**Staff:** The proposed shed will be located more than 95 feet from the nearest property line. *The proposed use meets the yard standards.*

##### **4.4.2 MCC 33.6020(B): Minimum yards in other districts shall be as required in the district.**

**Staff:** Yard setback requirements are addressed in Finding 3.2 of this staff report. Compliance with those standards ensures this criterion is met. *This standard is met.*

\* \* \*

##### **4.4.3. MCC 33.6020(D): Off-street parking and loading shall be provided as required in MCC 33.4100 through 33.4220.**

**Staff:** Off-street parking is addressed in the following section of this staff report. *This standard is met.*

**4.4.4. MCC 33.6020(E): Signs for Community Service Uses pursuant to the provisions of MCC 33.7400 through 33.7505.**

**Staff:** The applicant has proposed a sign as shown in Exhibit A.13. Section 9 of this staff report includes findings addressing applicable code sections. *This standard is met.*

**5. OFF-STREET PARKING AND LOADING**

**5.1. Continuing Obligation**

**MCC 33.4115:** The provision for and maintenance of off-street parking and loading facilities without charge to users shall be a continuing obligation of the property owner. No building or any other required permit for a structure or use under this or any other applicable rule, ordinance or regulation shall be issued until satisfactory evidence in the form of a site development plan, plans of existing parking and loading improvements, a deed, lease, contract or similar document is presented demonstrating that the property is and will remain available for the designated use as a parking or loading facility.

**Staff:** A condition of approval that will require that on-site parking be continually maintained has been imposed. *This standard is met through a condition.*

**5.2. Plan Required**

**MCC 33.4120:** A plot plan showing the dimensions, legal description, access and circulation layout for vehicles and pedestrians, space markings, the grades, drainage, setbacks, landscaping and abutting land uses in respect to the off-street parking area and such other information as shall be required, shall be submitted in duplicate to the Planning Director with each application for approval of a building or other required permit, or for a change of classification to O-P.

**Staff:** The applicant has submitted sufficient plans for the proposed use as demonstrated in Exhibit A.2 and A.17. *This requirement was met.*

**5.3. Use of Space**

**MCC 33.4125(A):** Required parking spaces shall be available for the parking of vehicles of customers, occupants, and employees without charge or other consideration.

**MCC 33.4125(B):** No parking of trucks, equipment, materials, structures or signs or the conducting of any business activity shall be permitted on any required parking space.

**MCC 33.4125(C):** A required loading space shall be available for the loading and unloading of vehicles concerned with the transportation of goods or services for the use associated with the loading space.

**Staff:** A condition of approval requiring installation and maintenance of parking spaces has been imposed. A loading space is not required for this use. A condition of approval requires that the parking area be built prior to establishing the cemetery use on the tract. *This standard is met through a condition.*

**5.4. Location Of Parking And Loading Spaces**

- 5.4.1. MCC 33.4130 (A):** Parking spaces required by this Section shall be provided on the lot of the use served by such spaces.

**Staff:** A condition of approval requires the installation and maintenance of parking spaces and the maneuvering areas on the property. *This standard is met.*

**5.5. Design Standards: Scope**

**MCC 33.4165(A):** The design standards of this section shall apply to all parking, loading, and maneuvering areas except those serving a single or two-family residential dwelling or mobile home on an individual lot.

**MCC 33.4165(B):** All parking and loading areas shall provide for the turning, maneuvering and parking of all vehicles on the lot. After July 26, 1979 it shall be unlawful to locate or construct any parking or loading space so that use of the space requires a vehicle to back into the right-of-way of a public street.

**Staff:** A condition of approval that will require the installation and maintenance of parking spaces and the maneuvering areas on the property has been imposed. *This standard is met through a condition.*

**5.6. Access**

- 5.6.1. MCC 33.4170(A):** Where a parking or loading area does not abut directly on a public street or private street approved under MCC 33.7700 et seq., the Land Division Chapter, there shall be provided an unobstructed paved drive 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 proposed parking area for the property does not abut a public street or road (Exhibit A.2 and Exhibit B.2). The applicant has proposed to widen the access driveway to meet the 20 foot paved width. A condition of approval that requires an unobstructed paved access drive not less than 20 feet in width for two-way traffic, leading to St. Helens Highway with directions clearly marked is imposed. This improvement may be bonded, as discussed earlier in this decision. *This standard is met through a condition.*

- 5.6.2. MCC 33.4170(B):** Parking or loading space in a public street shall not be counted in fulfilling the parking and loading requirements of this section. Required spaces may be located in a private street when authorized in the approval of such private street.

**Staff:** Parking has not been approved on St. Helens Highway for this use. A condition of approval forbids parking on the highway without prior approval from ODOT. *This standard is met through a condition.*

**5.7. Dimensional Standards**

- 5.7.1. MCC 33.4175(A):** Parking spaces shall meet the following requirements:

- (1) At least 70% of the required off-street parking spaces shall have a minimum width of nine feet, a minimum length of 18 feet, and a minimum vertical clearance of six feet, six inches.

- (2) Up to 30% of the required off-street parking spaces may have a minimum width of eight-and-one-half feet, a minimum length of 16 feet, and a vertical clearance of six feet if such spaces are clearly marked for compact car use.**
- (3) For parallel parking, the length of the parking space shall be 23 feet.**
- (4) Space dimensions shall be exclusive of access drives, aisles, ramps or columns.**

**Staff:** The submitted plan shows 20 spaces all meeting the 18 foot by nine foot (labeled 9' x 20') width requirements (Exhibit A.2). *These standards will be met.*

**Hearings Officer:** The grading and erosion control plan shows 21 parking spaces – 11 on the north side of the lot and ten on the south side (Exhibit A.17). The earlier site plans show a large area on the north side and east end of the lot that appears to be wide enough for two cars that is not “striped.” As the spaces are not going to be marked, a lot with 21 parking spaces is what is approved and required by this decision.

**5.7.2. MCC 33.4175(B): Aisle width shall be not less than:**

- (1) 25 feet for 90 degree parking,**
- (2) 20 feet for less than 90 degree parking, and**
- (3) 12 feet for parallel parking.**
- (4) Angle measurements shall be between the center line of the parking space and the center line of the aisle.**

**Staff:** The submitted plan shows 90 degree parking and a 25-foot wide drive aisle maneuvering area (Exhibit A.2). *These standards are met.*

**5.8. Improvements**

**5.8.1. MCC 33.4180(A): Surfacing**

- (1) All areas used for parking, loading or maneuvering of vehicles shall be surfaced with two inches of blacktop on a four inch crushed rock base or six inches of Portland cement or other material providing a durable and dustless surface capable of carrying a wheel load of 4,000 pounds.**
- (2) Large parking fields for intermittent uses such as amusement parks, race tracks, stadiums, and the like may be surfaced with gravel or grass and spaces may be unmarked if the parking of vehicles is supervised.**

**Staff:** A gravel surface for the parking area was approved in the previous Case T3-2012-2239 due to the intermittent use of the parking area. For this case the applicant is requesting moving that parking area and maintaining the approval for the gravel parking surface. For the proposed use as represented by the applicant, staff expects the parking area to be used on a very intermittent basis. The applicant projects 3 to 4 burials a year with infrequent visitations, a few times a year per grave. Given the intermittent use of the parking area located in a large field (cemetery), staff finds that area is similar to a sports field. As a result, the parking area can be surfaced with gravel as proposed under subsection (2) above. The spaces may to be unmarked, provided the parking of vehicles is supervised by a parking attendant during funeral arrivals. The handicap parking and unloading areas, however, must be paved so that they can be marked and reserved for wheelchair accessibility. *This standard is met through a condition.*

**5.8.2. MCC 33.4180(B): Curbs and Bumper Rails**

- (1) All areas used for parking, loading, and maneuvering of vehicles shall be physically separated from public streets or adjoining property by required landscaped strips or yards or in those cases where no landscaped area is required, by curbs, bumper rails or other permanent barrier against unchanneled motor vehicle access or egress.
- (2) The outer boundary of a parking or loading area shall be provided with a bumper rail or curbing at least four inches in height and at least three feet from the lot line or any required fence.

**Staff:** A condition of approval that the property owner install curbs, bumper rails or other permanent barrier against unchanneled motor vehicle access or egress for the for the parking area use has been imposed. *This standard is met through a condition.*

**5.8.3. MCC 33.4180(C): Marking – All areas for the parking and maneuvering of vehicles shall be marked in accordance with the approved plan required under MCC 33.4120, and such marking shall be continually maintained.**

**Staff:** For intermittent parking areas authorized by MCC 33.4180 (A) marking is not necessary except for the handicapped parking spaces. *The standard is not applicable.*

**5.8.4. MCC 33.4180(D): Drainage – All areas for the parking and maneuvering of vehicles shall be graded and drained to provide for the disposal of all surface water on the lot.**

**Staff:** Given the proposed parking area is to be a gravel surface except for the handicap parking area, storm water runoff from the parking area. Runoff from the small shed should also be minimal. A Storm Water Certificate stamped and signed by Hassan Abbas Ibrahim P.E. has been submitted certifying no increase of stormwater flow of the property for up to a 10 year/ 24 hour storm. *This standard is met.*

**5.9. Lighting**

**MCC 33.4185:** Any artificial lighting which may be provided shall be shielded or deflected so as to not shine into adjoining dwellings or other types of living units, and so as not to create a hazard to the traveling public on any street.

**Staff:** No lighting is proposed. *The standard is not applicable.*

**5.10. Signs**

**MCC 33.4190:** Signs, pursuant to the provisions of MCC 33.7465

**Staff:** The applicant has proposed a sign as shown in Exhibit A.13. Section 9 of this staff report includes findings addressing the applicable code sections. Findings in that section provide recommended conditions of approval. *This standard is met.*

**5.11. Design Standards: Setbacks**

**MCC 33.4195(A):** Any required yard which abuts upon a street lot line shall not be used for a parking or loading space, vehicle maneuvering area or access drive other than a drive connecting directly to a street.



**MCC 33.4195(B):** A required yard which abuts a street lot line shall not be paved, except for walkways which do not exceed 12 feet in total width and not more than two driveways which do not exceed the width of their curb cuts for each 150 feet of street frontage of the lot.

**Staff:** The front yard abutting the highway is not proposed to be used for parking and will not be paved except for the access driveway. *These standards are met.*

## **5.12. Landscape and Screening Requirements**

**MCC 33.4200(A):** The landscaped areas requirements of MCC 33.7055 (C) (3) to (7) shall apply to all parking, loading or maneuvering areas which are within the scope of design standards stated in MCC 33.4165 (A).

**Staff:** The landscaped area requirements of MCC 33.7055 (C) (3) to (7) for parking and maneuvering areas are addressed below in the Design Review sections of this staff report. *This standard is met through conditions.*

## **5.13. Minimum Required Off-Street Parking Spaces**

\* \* \*

**MCC 33.4205 (E) Unspecified Uses - Any use not specifically listed above shall have the requirements of the listed use or uses deemed most nearly equivalent by the Planning Director.**

**Staff:** The proposed cemetery is an unspecified use with little chance for off-site impacts given site access is provided by an easement. There is no equivalent use. It is in the applicant's best interest to design a parking area that meets their needs thus the Planning Director has left it up to the applicant to determine the amount of parking to propose. The applicant has proposed 20 spaces. The site plan, Exhibit A.17 provides 21 parking spaces. The Planning Director finds that 20 parking spaces is sufficient but also finds that 21 parking spaces are shown on Exhibit A.17.

## **6. DESIGN REVIEW**

### **6.1. Design Review Criteria**

**MCC 33.7050(A):** Approval of a final design review plan shall be based on the following criteria:

**Staff:** The findings addressing the design review are provided in the following sections.

#### **6.1.1. MCC 33.7050(A)(1): Relation of Design Review Plan Elements to Environment.**

- (a) The elements of the design review plan shall relate harmoniously to the natural environment and existing buildings and structures having a visual relationship with the site.**
- (b) The elements of the design review plan should promote energy conservation and provide protection from adverse climatic conditions, noise, and air pollution.**
- (c) Each element of the design review plan shall effectively, efficiently, and attractively serve its function. The elements shall be on a human scale, interrelated, and shall provide spatial variety and order.**

**Staff:** The proposed cemetery will be very similar to the natural environment. The parking area and widening of the access drive and placement of a shed, along with the landscaping requirements will be the only changes to the site. The proposed design will conserve energy in that the area will predominately remain as a natural setting thus there will be no issues with adverse climatic conditions, noise, and air pollution. The stormwater from the access drive will be disposed of on the property. The parking area, access drive, and the shed are the only proposed development elements. The development elements will be on a human scale and provide spatial variety and order with a small 21 vehicle parking area on the 5.5-acre property. *This standard is met.*

**6.1.2. MCC 33.7050(A)(2): Safety and Privacy – The design review plan shall be designed to provide a safe environment, while offering appropriate opportunities for privacy and transitions from public to private spaces.**

**Staff:** The proposed use is to be accessed from an existing access point from St. Helens Highway. ODOT has reviewed the proposal and stated an approach permit is not needed (Exhibit A.6 and A.7). The previous decision (T3-2012-3339) required a ten-foot setback from the north, west and south property lines for a landscaped area with required plantings. Exhibit A.15 shows a landscape hedge along the western and southern side of the parking area. The Rojeskis expressed a preference for a privacy fence. One was agreed upon by the applicant. The fence will provide a buffer between the parking area and the Rojeskis' dwelling. The new parking area and access driveway design will provide a better transition for privacy and transitions from public to private spaces. The landscaping required through approval of application T3-2012-2239 is still required to be installed. *This standard is met.*

**6.1.3. MCC 33.7050(A)(3): Special Needs of Handicapped – Where appropriate, the design review plan shall provide for the special needs of handicapped persons, such as ramps for wheelchairs and braille signs.**

**Staff:** The proposed use will not result in any special needs of handicapped persons other than paved handicapped parking at the east end of the parking area. The handicap parking will need to be paved for wheelchair accessibility. Staff recommends a condition of approval requiring a designated paved handicap parking space as shown on the submitted parking area plan. *This standard is met through a condition.*

**6.1.4. MCC 33.7050(A)(4): Preservation of Natural Landscape – The landscape and existing grade shall be preserved to the maximum practical degree, considering development constraints and suitability of the landscape or grade to serve their functions. Preserved trees and shrubs shall be protected during construction.**

**Staff:** The natural landscape and existing grade will be preserved except for minor grading for the development of the parking area and widening of the access drive. This is the maximum practical degree. *This standard is met.*

**6.1.5 MCC 33.7050(A)(5): Pedestrian and Vehicular circulation and Parking – The location and number of points of access to the site, the interior circulation patterns, the separations between pedestrians and moving and parked vehicles, and the arrangement of parking areas in relation to buildings and structures, shall be designed to maximize safety and convenience and shall be harmonious with proposed and neighboring buildings and structures.**

**Staff:** The proposal includes a small parking area with one access point. Vehicle circulation will provide direct access to the parking spots with a 25 foot wide drive maneuvering aisle. The parking lot will be about 100 feet long by about 64 feet wide. Each parking spot has direct pedestrian access to the cemetery area (Exhibit A.2). *This standard is met.*

**6.1.6 MCC 33.7050(A)(6): Drainage – Surface drainage systems shall be designed so as not to adversely affect neighboring properties or streets.**

**Staff:** The plan includes a new impervious surface for the access driveway, about 100 feet long and 20 feet wide and the handicap parking space 16 feet wide by 20 feet long. Additionally the roof of the 16' by 16' shed is a new impervious surface. The installation of new impervious surface requires that stormwater be managed on site for up to a 10 year/ 24 hour storm. A Storm Water Certificate stamped and signed by Hassan Abbas Ibrahim, P.E. has been submitted certifying no increase of stormwater flow off of the property will occur for up to a 10 year/24 hour storm. *This standard is met.*

**6.1.7. MCC 33.7050(A)(7): Buffering and Screening – Areas, structures and facilities for storage, machinery and equipment, services (mail, refuse, utility wires, and the like), loading and parking, and similar accessory areas and structures shall be designed, located, buffered or screened to minimize adverse impacts on the site and neighboring properties.**

**Staff:** The parking area facility is buffered from the dwelling on the adjacent property to the south by about a minimum setback of 60 feet at the closest point to the parking area. A condition of approval requiring that the parking area be screened by a fence has been imposed by this approval. *This standard is met through a condition of approval.*

**6.1.8. MCC 33.7050(A)(8): Utilities – All utility installations above ground shall be located so as to minimize adverse impacts on the site and neighboring properties.**

**Staff:** No utilities are proposed. *This standard is not applicable.*

**6.1.9. MCC 33.7050(A)(9): Signs and Graphics – The location, texture, lighting, movement, and materials of all exterior signs, graphics or other informational or directional features shall be compatible with the other elements of the design review plan and surrounding properties.**

**Staff:** The applicant has proposed a sign as shown in Exhibit A.13. Section 9 of this staff report includes findings addressing the applicable code sections. Findings in that section recommend conditions of approval. *This standard is met.*

**6.2. Required Minimum Standards**

**MCC 33.7055(C): Required Landscape Areas - The following landscape requirements are established for developments subject to design review plan approval:**

**Staff:** The findings addressing the required landscape areas are provided in the following sections.

**6.2.1. MCC 33.7055(C)(1): A minimum of 15% of the lot area shall be landscaped; provided, however, that computation of this minimum may include areas landscaped under subpart 3 of this subsection.**

**Staff:** The minimum 15% landscaped area for the 5.5-acre tract equals 35,937 square feet of required landscape area. The 15% landscaping requirement can be met by requiring a 10-foot wide landscape strip areas along the the north, west and south property lines along with a 40- foot wide natural landscape strip along the front property line (east) of the tract, and landscaping five feet in width around the parking area. The applicant will be providing a fence along the western and southern side of the parking area. This will create an additional buffer between the parking area and the dwelling on the adjacent property to the south. Given the steep slopes of the 40-foot area at the front of the tract (east) adjacent to St. Helens Highway, this area is not well-suited for a burial area, thus is included it as a natural landscape area, with existing trees maintained. Additionally, the natural landscape and tree canopy of the 40-foot area will provide a buffer and screening from the highway. A condition of approval has been imposed to require that a ten-foot landscape strip area along the north, west and east property lines, and that the 40-feet wide landscape area along the east property lines of the tract be maintained as a natural or planted landscaping buffer and not be used for burials. *This standard is met through a condition.*

**6.2.2. MCC 33.7055(C)(2): All areas subject to the final design review plan and not otherwise improved shall be landscaped.**

**Staff:** This review included the entire tract as depicted in Exhibit A.15. Applicant's Site Plan. *This standard is met.*

**6.2.3. MCC 33.7055(C)(3): The following landscape requirements shall apply to parking and loading areas:**

- (a) A parking or loading area providing ten or more spaces shall be improved with defined landscaped areas totaling no less than 25 square feet per parking space.
- (b) A parking or loading area shall be separated from any lot line adjacent to a street by a landscaped strip at least 10 feet in width, and any other lot line by a landscaped strip at least 5 feet in width.
- (c) A landscaped strip separating a parking or loading area from a street shall contain:
  - 1. Street trees spaces as appropriate to the species, not to exceed 50 feet apart, on the average;
  - 2. Low shrubs, not to reach a height greater than 3'0", spaced no more than 5 feet apart, on the average; and
  - 3. Vegetative ground cover.
- (d) Landscaping in a parking or loading area shall be located in defined landscaped areas which are uniformly distributed throughout the parking or loading area.
- (e) A parking landscape area shall have a width of not less than 5 feet.

**Hearings Officer:** The five-foot landscape strip around the parking area proposed by the applicant is being replaced by fencing. Contrary to the findings proposed by staff, however, the strip would not have met the code requirements for no less than 25 square feet of landscaping per space to be uniformly distributed throughout the parking or loading area. This part of the code requires that landscaping be in the parking area, not around or outside of it. As a result, the applicant has been required to revise the parking area plan to provide a minimum of two landscape islands in the parking area between and parallel to the parking spaces with one island on each side of the lot. The islands, together, shall be at least 275 square feet in area as the parking area shown on Exhibit A.17 shows a total of 21 parking spaces. No island may be less than five feet wide.

The applicant has proposed a minimum of a 10-foot wide landscaped strip along all property boundaries. This strip separates the parking lot from adjoining properties and meets or exceeds

the 5'/10' minimum landscape buffer required by this code section. The parking area is not adjacent to a street. The landscape strip of five feet surrounding the parking area can be required by a condition. *These standards are met through conditions.*

**6.2.4. MCC 33.7055(C)(4): Provision shall be made for watering planting areas where such care is required.**

**Hearings Officer:** The applicant shall make provision to water the landscaped islands and required buffer areas, if needed. Watering will be needed if the plants provided in the required landscaped areas die due to a lack of adequate water. In that case, a cistern, well, reservoir or other source of water and means of irrigation shall be provided on site to provide water for the planting areas and the areas shall be irrigated to sustain the required landscaped areas.

**6.2.5 MCC 33.7055(C)(5) Required landscaping shall be continuously maintained.**

**Staff:** A condition requires that landscaping be maintained and that, if necessary, irrigation be provided for the landscaping. *This standard is met through a condition.*

**6.2.6. MCC 33.7055(C)(6) Maximum height of tree species shall be considered when planting under overhead utility lines.**

**Staff:** A condition of approval can require maximum height of tree species to be considered when planting under overhead utility lines. In previous case T3-2012-2239 staff has been informed by BPA that their easements do not allow planting of trees or shrubs.

**Hearings Officer:** The BPA easement is developed with a road used by BPA to access and service the line. Trees are not appropriate nor are they required in developed areas of the site. *This criterion is met.*

**6.2.7. MCC 33.7055(C)(7) Landscaped means the improvement of land by means such as contouring, planting, and the location of outdoor structures, furniture, walkways and similar features.**

**Hearings Officer:** This part of the code describes what qualifies as landscaping. The landscaped areas proposed by the applicant meet this definition. *This criterion is met.*

**7. SIGNIFICANT ENVIRONMENTAL CONCERN FOR WILDLIFE HABITAT**

**7.1. Development standards**

**7.1.1. MCC 33.4570 (B) (1) Where a parcel contains any non-forested "cleared" areas, development shall only occur in these areas, except as necessary to provide access and to meet minimum clearance standards for fire safety.**

**Staff:** The cemetery, proposed parking area, and proposed shed will be located in a cleared area that has been maintained as a grass field. *This standard is met.*

**7.1.2. MCC 33.4570 (B) (2) Development shall occur within 200 feet of a public road capable of providing reasonable practical access to the developable portion of the site.**

**Staff:** The proposed parking area is about 220 feet from St. Helens Highway right-of-way. The proposed shed building will be about 315 feet from the St. Helens Highway right-of-way. *This standard is not met, thus the project needs to meet MCC 33.4570(C). Findings for MCC 33.4570(C) are in Section 7.2 of this decision.*

**7.1.3. MCC 33.4570 (B) (3) The access road/driveway and service corridor serving the development shall not exceed 500 feet in length.**

**Staff:** The driveway to the proposed building site is about 320 feet long after leaving the St. Helens Highway right-of-way. *This standard is met.*

**7.1.4. MCC 33.4570 (B) (4) For the purpose of clustering access road/driveway approaches near one another, one of the following two standards shall be met:**

- (a) The access road/driveway approach onto a public road shall be located within 100 feet of a side property line if adjacent property on the same side of the road has an existing access road or driveway approach within 200 feet of that side property line; or**
- (b) The access road/driveway approach onto a public road shall be located within 50 feet of either side of an existing access road/driveway on the opposite side of the road.**
- (c) Diagram showing the standards in (a) and (b) above.**
- (d) The standards in this subsection (4) may be modified upon a determination by the County Road Official that the new access road/driveway approach would result in an unsafe traffic situation using the standards in the Multnomah County “Design and Construction Manual,” adopted June 20, 2000, (or all updated versions of the manual). Standards to be used by the Road Official from the County manual include Table 2.3.2, Table 2.4.1, and additional referenced sight distance and minimum access spacing standards in the publication A Policy on Geometric Design of Highways and Streets by the American Association of State Highway and Transportation Officials (AASHTO) and the Traffic Engineering Handbook by the Institute of Transportation Engineers (ITE).**
  - 1. The modification shall be the minimum necessary to allow safe access onto the public road.**
  - 2. The County Road Official shall provide written findings supporting the modification.**

**Staff:** The property uses a driveway that is used by two other properties, possibly three for access. The access driveway approach onto a public road is located on the property adjacent to the south meeting the 200 foot standard. *This standard is met.*

**7.1.5. MCC 33.4570 (B) (5) The development shall be within 300 feet of a side property line if adjacent property has structures and developed areas within 200 feet of that common side property line.**

**Staff:** The development on the existing property is within 100 feet of a property line in which the adjacent property has structures within 200 feet of the common side yard property line. *This standard is met.*

**7.1.6. MCC 33.4570 (B) (6) Fencing within a required setback from a public road shall meet the following criteria:**

- (a) Fences shall have a maximum height of 42 inches and a minimum 17 inch gap between the ground and the bottom of the fence.**
- (b) Wood and wire fences are permitted. The bottom strand of a wire fence shall be barbless. Fences may be electrified, except as prohibited by County Code.**

- (c) Cyclone, woven wire, and chain link fences are prohibited.
- (d) Fences with a ratio of solids to voids greater than 2:1 are prohibited.
- (e) Fencing standards do not apply in an area on the property bounded by a line along the public road serving the development, two lines each drawn perpendicular to the principal structure from a point 100 feet from the end of the structure on a line perpendicular to and meeting with the public road serving the development, and the front yard setback line parallel to the public road serving the development.

**Staff:** No fence is proposed. *This standard is met.*

**7.1.7. MCC 33.4570 (B) (7) The following nuisance plants shall not be planted on the subject property and shall be removed and kept removed from cleared areas of the subject property:**

**Staff:** A condition will require this standard be met. *This standard is met through a condition.*

**7.2. Wildlife Conservation Plan.**

**7.2.1. MCC 33.4570(C) An applicant shall propose a wildlife conservation plan if one of two situations exist.**

- (1) The applicant cannot meet the development standards of Section (B) because of physical characteristics unique to the property. The applicant must show that the wildlife conservation plan results in the minimum departure from the standards required in order to allow the use; or
- (2) The applicant can meet the development standards of Section (B), but demonstrates that the alternative conservation measures exceed the standards of Section (B) and will result in the proposed development having a less detrimental impact on forested wildlife habitat than the standards in Section (B).

**Staff:** The applicant cannot meet the development standards of Section (B) because the slope on the front 180 feet of the property and the location the BPA power-line and access easement location forcing the parking area and shed to the proposed location as shown on applicant's site plan included as Exhibit A.2. Thus the development cannot meet the 200 foot from the right-of-way standard. The proposed location meets the minimum departure from the standards by locating the development in the area closest to the right-of-way possible given the topographic and the BPA easement constraints. *The standards in (C)(1) are met.*

**7.2.2. MCC 33.4570(C) (3) The wildlife conservation plan must demonstrate the following:**

- (a) That measures are included in order to reduce impacts to forested areas to the minimum necessary to serve the proposed development by restricting the amount of clearance and length/width of cleared areas and disturbing the least amount of forest canopy cover.
- (b) That any newly cleared area associated with the development is not greater than one acre, excluding from this total the area of the minimum necessary accessway required for fire safety purposes.
- (c) That no fencing will be built and existing fencing will be removed outside of areas cleared for the site development except for existing cleared areas used for agricultural purposes.
- (d) That revegetation of existing cleared areas on the property at a 2:1 ratio with newly cleared areas occurs if such cleared areas exist on the property.
- (e) That revegetation and enhancement of disturbed stream riparian areas occurs along drainages and streams located on the property.



**Staff:** The existing vegetation on the property will be maintained except for a minor amount that will be removed to establish the access driveway and parking area. The development on the property is in cleared area on the property. Newly cleared areas are not proposed. Additionally, there will be extensive landscape plantings that will also function to provide habitat for many species of animals found within the area including nesting areas for raptors in an ideal hunting area for those birds. No fencing is proposed. There are no stream riparian areas, drainages, or streams located on the property. *The standards for the wildlife conservation plan have been met by the proposed development.*

## **8. SIGNIFICANT ENVIRONMENTAL CONCERN FOR SCENIC VIEW**

### **8.1. MCC 33.4565(B): In addition to the information required by MCC 33.4520, an application for development in an area designated SECv shall include:**

- (1) Details on the height, shape, colors, outdoor lighting, and exterior building materials of any proposed structure;**
- (2) Elevation drawings showing the appearance of proposed structures when built and surrounding final ground grades;**
- (3) A list of identified viewing areas from which the proposed use would be visible; and,**
- (4) A written description and drawings demonstrating how the proposed development will be visually subordinate as required by (C) below, including information on the type, height and location of any vegetation or other materials which will be used to screen the development from the view of identified viewing areas.**

**Staff:** The applicant provided adequate information (Exhibit A.3) to determine the proposed development can meet the visually subordinate standard (see findings below).

### **8.2. MCC 33.4565(C): Any portion of a proposed development (including access roads, cleared areas and structures) that will be visible from an identified viewing area shall be visually subordinate. Guidelines which may be used to attain visual subordination, and which shall be considered in making the determination of visual subordination include:**

**Staff:** Given bench topography, the approximate 220-foot setback from the east edge of the bench area, the significant amount of amount of vegetation located on the east side of the property along the St. Helens Highway right-of-way and distance to the identified viewing areas on Sauvie Island, Kelley Point Park and Smith/Bybee Lakes (about a mile to 7 miles east, southeast and northeast), the small 16'by 16' shed will blend into the surrounding environment if built with low-reflective materials and with dark earth tone exterior colors. The recommended conditions will include low reflective building materials such as wood or fiber board siding and composite asphalt shingles for the building along with exterior colors that are dark earth tones as the applicant has proposed and maintenance of existing tree density. Low reflective building materials as discussed with dark earth tone exterior colors and screen vegetation are components that assist in achieving visual subordinate for the building. This standard can be met with conditions that maintain the existing tree density on the property, requiring low reflective building materials as discussed with dark earth tone exterior colors with the proposed dark earth tone colors represented by paint chips submitted prior to obtaining a building permit for the shed. *This standard is met through conditions.*

#### **8.2.1. MCC 33.4565(C)(1) Siting on portions of the property where topography and existing vegetation will screen the development from the view of identified viewing areas.**

**Staff:** The proposed building is in a location where topography assists with screening of the development from some identified viewing areas to the east, northeast and south east within a mile but not all viewing area to the east. Existing vegetation on the property will screen the development from the view of identified viewing areas to the east and northeast. While existing vegetation located on an adjacent property, not owned by the applicant, will also screen the proposed building (from viewing area to the northeast), the property owners do not have control of maintaining that vegetation. *This standard is met.*

**8.2.2. MCC 33.4565(C)(2) Use of nonreflective or low reflective building materials and dark natural or earth-tone colors.**

**Staff:** Given the amount of vegetation and distance to the identified viewing areas on Sauvie Island, Kelley Point Park and Smith/Bybee Lakes (about one to seven miles east, southeast, and northeast), if the building is built according to recommended conditions of approval the building will meet the visually subordinate standard. The recommended conditions include low reflective building materials such as wood or fiber board siding composite asphalt shingles for the building along with exterior colors that are dark earth tones. Low reflective building materials and dark earth tones are components that assist in achieving visual subordinate for the building. This standard can be met with recommended conditions. *This standard is met through conditions.*

**8.2.3. MCC 33.4565(C)(3) No exterior lighting, or lighting that is directed downward and sited, hooded and shielded so that it is not highly visible from identified viewing areas. Shielding and hooding materials should be composed of nonreflective, opaque materials.**

**Staff:** The recommend condition can require this standard be met. *This standard is met through a condition.*

**8.2.4. MCC 33.4565(C)(4) Use of screening vegetation or earth berms to block and/or disrupt views of the development. Priority should be given to retaining existing vegetation over other screening methods. Trees planted for screening purposes should be coniferous to provide winter screening. The applicant is responsible for the proper maintenance and survival of any vegetation used for screening.**

**Staff:** This standard can be met through a condition that requires that the tree density on the property be maintained. *This standard is met through a condition.*

**8.2.5. MCC 33.4565(C)(5) Proposed developments or land use shall be aligned, designed and sited to fit the natural topography and to take advantage of vegetation and land form screening, and to minimize visible grading or other modifications of landforms, vegetation cover, and natural characteristics.**

**Staff:** The proposed building is aligned, designed and sited to fit the natural topography and to take advantage of vegetation and landform screening, and to minimize visible grading or other modifications of landforms, vegetation cover, and natural characteristics. *This standard is met.*

**8.2.6. MCC 33.4565(C)(6) Limiting structure height to remain below the surrounding forest canopy level.**

**Staff:** The proposed building height of approximately 14 feet will remain below the surrounding forest canopy level (Exhibit A.13). *This standard is met.*

**8.2.7. MCC 33.4565(C)(7) Siting and/or design so that the silhouette of buildings and other structures remains below the skyline of bluffs or ridges as seen from identified viewing areas. This may require modifying the building or structure height and design as well as location on the property, except:**

- (a) New communications facilities (transmission lines, antennae, dishes, etc.), may protrude above a skyline visible from an identified viewing area upon demonstration that:**
- 1. The new facility could not be located in an existing transmission corridor or built upon an existing facility;**
  - 2. The facility is necessary for public service; and**
  - 3. The break in the skyline is the minimum necessary to provide the service.**

**Staff:** The silhouette of the proposed building will be below the skyline of bluffs or ridges as seen from identified viewing areas. *This standard is met.*

**8.2.8. MCC 33.4565(C)(E) The approval authority may impose conditions of approval on an SEC-v permit in accordance with MCC 33.4550, in order to make the development visually subordinate. The extent and type of conditions shall be proportionate to the potential adverse visual impact of the development as seen from identified viewing areas, taking into consideration the size of the development area that will be visible, the distance from the development to identified viewing areas, the number of identified viewing areas that could see the development, and the linear distance the development could be seen along identified viewing corridors.**

**Staff:** This decision includes conditions in order to make the development visually subordinate. The extent and type of conditions are proportionate to the potential adverse visual impact of the development as seen from identified viewing areas, taking into consideration the size of the development area that will be visible, the distance from the development to identified viewing areas, the number of identified viewing areas that could see the development, and the linear distance the development could be seen along identified viewing corridors. *This standard is met.*

## **9. SIGN**

### **9.1. Signs Generally in the RR Zones**

**MCC 33.7450 For all uses and sites in the above listed zones, the following types, numbers, sizes and features of signs are allowed. All allowed signs must also be in conformance with the sign development regulations of MCC 33.7460 through 33.7500.**

**(A) Free Standing Signs:**

- (1) Allowable Area – Free standing signs are allowed .25 square feet of sign face area per linear foot of site frontage, up to a maximum of 40 square feet.**
- (2) Number – One free standing sign is allowed per site frontage.**
- (3) Height – The maximum height of a free standing sign is 16 feet.**
- (4) Extension into the Right-Of-Way – Free standing signs may not extend into the right-of-way.**

**Staff:** The application includes one free standing sign on the property that the applicant states is less than 40 square feet is area size with a height of about six feet. These standards are met.

## **9.2. Sign Placement**

### **9.2.1. MCC 33.7465 (A) Placement**

**All signs and sign structures shall be erected and attached totally within the site except when allowed to extend into the right-of-way.**

**Staff:** The proposed sign will be located on the property. *This standard is met.*

*This standard is met.*

### **9.2.2. MCC 33.7465 (C) Vision Clearance Areas**

**(1) No sign may be located within a vision clearance area as defined in subsection (C) (2) below. No support structure(s) for a sign may be located in a vision clearance area unless the combined total width is 12 inches or less and the combined total depth is 12 inches or less.**

**(2) Location of Vision Clearance Areas – Vision clearance areas are triangular shaped areas located at the intersection of any combination of rights-of-way, private roads, alleys or driveways. The sides of the triangle extend 45 feet from the intersection of the vehicle travel area (See MCC 33.7505 Figure 2). The height of the vision clearance area is from three feet above grade to ten feet above grade.**

**Staff:** Given the sign will be located on the property, it will be outside vision clearance areas. *This standard is met.*

### **9.2.3. MCC 33.7465 (D) Vehicle Area Clearances**

**When a sign extends over a private area where vehicles travel or are parked, the bottom of the sign structure shall be at least 14 feet above the ground. Vehicle areas include driveways, alleys, parking lots, and loading and maneuvering areas.**

**Staff:** The proposed sign will be located outside area where vehicles travel. *The standard is not applicable.*

## **10. EXTENSION OF CASE T3-2012-2239 APPROVAL**

**MCC 37.0695 (A) The Planning Director shall grant one extension period of 24 months for approvals of dwellings listed in Section 37.0690(C) and shall grant one extension period of up to 12 months for all other approvals provided:**

- (1) An applicant makes a written request for an extension of the development approval period;**
- (2) The request is submitted to the county prior to the expiration of the approval period;**
- (3) The applicant states reasons that prevented the applicant from beginning or continuing development within the approval period; and**
- (4) The county determines that the applicant was unable to begin or continue development during the approval period for reasons for which the applicant was not responsible.**

**Staff:** This application request for a modification of a previous case was submitted on April 29, 2014 prior to the expiration date of Case T3-2012-2239 (September 27, 2014). The reason for the extension is the request for the modification of the conditions approving the cemetery. This request is more than a simple extension request. This request modifies the previous approval

changing the configuration of the cemetery and obtains other necessary permit required for the establishment of the cemetery. Given this case includes a modification of a prior case, by the nature of this case an extension of the prior case approval should be linked to this case approval date and expiration date as part of the modifications of condition of that case. Staff recommends that the modification of the prior case include an extension linked to the expiration date of this case. The standards are met for an extension of Case T3-2012-2239.

## 11. CONCLUSION

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Community Service Conditional Use and Design Review Permits to modify the previous Case T3-2012-2239 to establish a Cemetery in Rural Residential Zone modifying the access driveway location, parking lot location, approving a small shed and a sign. This approval is subject to the conditions of approval established in this decision.

## 12. EXHIBITS

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

‘C’ Procedural Exhibits

Exhibit #	# of Pages	Description of Applicant’s Exhibit	Date Received/ Submitted
A.1	1	Application Form	4/29/14
A.2	1	Site Plan	4/29/14
A.3	25	Narrative	4/29/14
A.4	26	Previous Community Service Conditional Use and Design Review approval to establish a cemetery on the subject property (Applicant’s Exhibit 1)	4/29/14
A.5	6	Pre-Application Notes (Applicant’s Exhibit 2)	4/29/14
A.6	3	ODOT Indenture of Access (Applicant’s Exhibit 3)	4/29/14
A.7	3	ODOT Notification of Satisfactory Construction and Transmittal of Permit to Operate, Maintain and Use a State Highway Approach (Applicant’s Exhibit 4 )	4/29/14
A.8	8	Easement (Applicant’s Exhibit 5)	4/29/14
A.9	1	Land Use Compatibility Statement (Applicant’s Exhibit 6)	4/29/14
A.10	1	Police Service Review (Applicant’s Exhibit 7)	4/29/14
A.11	3	Fire Service Agency (Applicant’s Exhibit 7)	4/29/14
A.12	3	Warranty Deed 2013-025396 (Applicant’s Exhibit 8)	4/29/14
A.13	5	Drawing of proposed sign and drawings of proposed shed (Applicant’s Exhibit )	4/29/14
A.14	2	Handicap parking space detail and sign drawing (Applicant’s Exhibit 9)	4/29/14

A.15	1	Site plan showing previously approved parking area and new proposed parking area, new access and shed locations (Applicant's Exhibit 10)	4/29/14
A.16	9	Photos of the proposed parking area and of the existing access driveway	4/29/14
A.17	4	Erosion Control Plan (Applicant's Exhibit 12)	
A.18	2	Existing Conditions Map (topographic) and Aerial photo showing site, previously approved parking location and proposed parking location (Applicant's Exhibit 13)	4/29/14
A.19	1	Slope Analysis Map (Applicant's Exhibit 14)	4/29/14
A.20	3	West Hills Scenic Resources Map, Significant Wildlife Area Map and Zoning Map (Applicant's Exhibit 15)	4/29/14
A.21	1	Storm Water Certification stamped and completed by Hassan Abbas Ibrahim	6/24/14
A.22	5	Site Plan showing grading and new pavement highlighted with erosion control methods	6/24/14
'B'	#	Staff Exhibits	Date
B.1	6	County Assessment Property Information	4/5/12
B.2	1	County Assessment Map with subject properties labeled	7/18/12
B.3	1	2012 Aerial Photo showing subject properties and vicinity	7/18/12
'C'	#	Administration & Procedures	Date
C.1	4	Incomplete Letter	5/29/14
C.2	1	Complete Letter	7/17/14
C.3	1	Notice of Public Hearing and Mailing List	8/21/14
'H'	#	Hearing Documents	Date
I.1	1	Sign In Sheet	9/12/14
'I'	#	Post-Hearing Documents	Date
I.1	2	E-Mail Correspondence between G. Plummer and L. Fancher re extension of deadlines for post-hearing comments	9/25/14
I.2	1	Letter from R.S. Rojeski received September 25, 2014	9/25/14
I.3	2	Letter from Marge Rojeski received September 25, 2014	9/25/14
I.4	1	Letter from Nicole Pierce dated September 26, 2014	9/26/14
I.5		E-Mail and letter from R. O'Brien dated October 3, 2014	10/3/14