

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

In the Matter of an application for a replacement dwelling, Conditional Use Permit for a Type C Home Occupation and Significant Environmental Concern Permit on parcel of apx. 4.91 acres zoned MUA-20 in unincorporated Multnomah County.

FINAL ORDER

Jarvis Replacement Dwelling

T3-2019-12052

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I. SUMMARY:

This Order is the decision of the Multnomah County Land Use Hearings Officer approving with conditions a replacement dwelling and Significant Environmental Concern (SEC) permit for the same and denying requests for an agricultural building and Conditional Use Permit for a Type C Home Occupation on approximately 4.91 acres zoned MUA-20 in unincorporated Multnomah County (T3-2019-12052). As explained below, the Hearings Officer denies the conditional use permit for the home occupation because there is no evidence that it will be “limited in type or scale to primarily serve the needs of the rural area,” as required by MCC 39.7015(A)(8) and Comprehensive Plan Policy 3.16. The agricultural building request is denied because the record in this case does not contain sufficient evidence that current activities on the property rise to the level of “farm use” as defined in ORS 215.203 and which is required for an agricultural exempt building by MCC 39.4310(F)(8).

II. INTRODUCTION TO THE PROPERTY AND APPLICATION:

Applicant..... Amy Jarvis
9303 SW 55th Avenue
Portland, OR 97219

Owner..... Howard and Amy Jarvis
9303 SW 55th Avenue
Portland, OR 97219

Property Legal Description: Tax Lot 500 in Section 26A, Township 3 North, Range 1 West of the Willamette Meridian (Property Id R253205, Tax Acct R695200050), Street Address: 26722 NW Reeder Road, Portland.

Applicable Laws. The following provisions and criteria from the Multnomah County Code (MCC), Multnomah County Road Rules (MCRR) and Multnomah County Comprehensive Plan apply to this application:

- General Provisions: MCC 39.1515 Code Compliance and Applications, MCC 39.2000 Definitions;
- Lot of Record requirements: MCC 39.3005 Lot of Record – Generally, MCC 39.3080 Lot of Record - Multiple Use Agriculture – 20 (MUA-20);
- Multiple Use Agriculture (MUA-20) requirements: MCC 39.4310(A) & (F) Allowed Uses, Single Family Dwelling & Accessory Structures, MCC 39.4320(D) Conditional Uses, Type C Home Occupation, MCC 39.4325 Dimensional Requirements and Development Standards, MCC 39.4335 Lot Sizes for Conditional Uses, MCC 39.4340 Off-Street Parking and Loading, MCC 39.4345 Access;
- Significant Environmental Concern (SEC) District requirements: MCC 39.5510 Uses; SEC Permit Required, MCC 39.5540 Criteria for Approval of SEC Permit;
- Parking, Loading, Circulation and Access requirements: MCC 39.6505 General Provisions, MCC 39.6510 Continuing Obligation, MCC 39.6515 Plan Required, MCC 39.6520 Use of Space, MCC 39.6525 Location of Parking and Loading

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- Exterior Lighting standards: MCC 39.6850 Dark Sky Lighting Standards;
- Conditional Use standards: MCC 39.7015 Conditional Use Approval Criteria;
- Type C Home Occupation requirements: MCC 39.7200 Approval Criteria, MCC 39.7410 Type C Home Occupation Renewal;
- Multnomah County Road Rules (MCRR): MCRR 4.000 Access to County Roads, MCRR 5.000 Transportation Impact, MCRR 6.000 Improvement Requirements, MCRR 7.000 Transportation Impact Studies, MCRR 8.000 Off-Site Improvement Requirements, MCRR 9.000 Compliance Method, MCRR 18.000 Right-of-Way Use Permits, MCRR 26.00 Stormwater and Drainage;
- Comprehensive Plan policies Ch. 3 (Farm Land) Policy 3.15 & 3.16, Ch. 5 (Natural Resources) Policy 5.14 & 5.43, Ch. 6 (Historic and Cultural Resources) Policy 6.4, Ch. 9 (Rural Economy) Policy 9.8, Ch. 11 (Public Facilities) Policy 11.12, 11.13, & 11.17

The property is a legal lot of approximately 4.91 acres on Sauvie Island, between (east of) Reeder Road and the Columbia River. There is an existing house on the property, built in 1871, that is significantly deteriorated but apparently still possesses the requisite components of a dwelling required by ORS 215.291 for a replacement. The applicants do not live on the property but elsewhere inside the Portland Metro urban area and use the home on the property as a summer cottage. The applicants maintain a small orchard and garden patch which appears to be approximately ½ acre in size, but does not appear to qualify as a “farm use” as defined in ORS 215.203.

These consolidated applications begin with a request for a replacement dwelling on this 4.91-acre parcel zoned MUA-20 under MCC 39.4302 to 39.4305. Additionally, because the site is situated on the bank of the Columbia River, it is designated Significant Environmental Concern (SEC) for scenic and natural resources related to the Columbia River and is therefore subject to the SEC standards in MCC 39.5540. Because the site is also within a designated Floodplain, it is subject to the County’s Flood Hazard (FH) regulations in MCC 39.5030. Along with the replacement dwelling, the application also seeks permission to construct an agricultural exempt building as defined in MCC 39.2000, and it seeks approval for a Type C home occupation in the new dwelling under MCC 39.7400 to 39.7410. Because home occupations in the MUA-20 zone are conditionally allowed, this proposal is also subject to compliance with the conditional use permit criteria in MCC 39.7015.

While the current condition of the existing dwelling on the property is relatively clear, the nature and scope of the proposed home occupation is less so, at least from the written application materials. At the hearing, the applicant clarified that the home occupation would consist primarily of art workshops using various media, including painting, drawing, photography, some sculpture, possibly creative writing and the like. The proposal indicates that classes will be held for 6-12 people and will include multi-day workshops that would necessitate over-night stays. The new house designs show

approximately 7,104 sf of indoor area, including 4 bedrooms, 6 bathrooms, an exercise area, a library, garage, a theater, creative space, and a garage. The applicant's narrative (Ex. A.33) describes the commercial activity as a place to "welcome small groups of fellow islanders and visitors to the Creative Space on the ground floor of [the] single-family dwelling." The business operator would aid in the facilitation of "creative exploration, reflection, expression, and collaboration." Based on this description, it appears that the business would offer workshops and/or a space for individuals to use as a workshop. For customers who wish to stay for a longer duration, the home occupation would offer short-term lodging for those customers to stay as guests on the second floor.

III. SUMMARY OF THE LOCAL PROCEEDING AND THE RECORD:

This matter began as a code enforcement case based on the property owner's construction of a well pump house in the SEC overlay area and floodplain without benefit of County permits. The result of that enforcement process was a voluntary compliance agreement (Ex. A.4) and this consolidated set of land use applications, submitted initially on June 4, 2019 (Exs. A.1 – A.21). After the County's incompleteness letter (Ex. C.1) and several conferences with planning staff about the applicable approval criteria, the applicants augmented the application and revised many of their narratives (Exs. A.22 – A.39). As a result, the County deemed the application complete on November 4, 2019 (Ex. C.3). Notice of the application and a February 7, 2020 public hearing was posted on the property and mailed to the affected neighborhood association and owners of property within 750 feet (Ex. C.4). One comment letter on the application was received from a near-by neighbor (Mark Greenfield) expressing concern that the proposed replacement dwelling was over-sized, the proposed agriculture building may in fact not qualify as an "agriculture building," and questioning the appropriateness of the proposed home occupation for the MUA-20 zone and rural district (Ex. D.1). Staff issued a comprehensive report on these consolidated applications on January 28, 2020 (Ex. C.5) recommending approval of each request with conditions.

At the commencement of the February 7th hearing, the Examiner explained the procedure, disclaimed any ex parte contacts, bias, and conflicts of interest, and provided the warnings and procedural announcements required by ORS 197.763(5) and (6) and 197.796. Present at the hearing were Lisa Estrin, Senior Planner, and Rithy Khut, County Planning staff assigned to the case, who provided a verbal summary of the proposal and explained the legal and factual basis for his recommendation. The applicant, Amy Jarvis, appeared on her own behalf, along with her husband Howard Jarvis who answered questions and expressed general agreement with staff's proposed findings and conditions in the report (Ex. C.5), with the following adjustments:

- Allow for erection of a sign at the Reeder Road entrance to the site to identify the home occupation (Ex. H.1).
- Increase the maximum number of customers from 12 to 16 and the number of on-site parking spaces from 10 to 13 (Ex. H.3 & H.4), based on two new site plans (Exs. H.2 & H.7).
- Revise Condition 5d, related to exterior house color to allow a wider range of earth tones than staff's recommended condition allowed (Exs. H.5 & H.6).

Before the conclusion of the hearing, applicant withdrew the request to increase the maximum number of customers and parking spaces, leaving them at 12 customers and 10 spaces, respectively. The applicant and her husband explained the limited nature of the orchard and vegetable garden as a “small-scale agricultural endeavor” (Ex. A.16 & A.33) and how recent donations of fruit and produce to area foodbanks and other nonprofits helped qualify the property for farm tax deferral (Ex. A.5). No one else requested the opportunity to testify at the January 9th hearing.

There were no procedural objections or challenges to the Hearings Officer’s jurisdiction or ability to impartially decide the case. The applicant requested that the record be left open for a short period of time for her to complete and format information about recent annual production of produce and fruit from the property, but there were no other requests that the remain record open or the hearing continued. At the applicant’s request, the Examiner ordered the record to remain open until close of business the same day (4 p.m., February 7, 2020) for the applicant to prepare and submit information about recent annual production of produce and fruit from the property (Ex. H.8) and to make any final rebuttal arguments she wished, after which the record closed, and the Hearings Officer took the matter under consideration.

IV. FINDINGS:

Only issues and criteria raised in the course of the application, during the hearing and before the close of the record are discussed in this section. All approval criteria not raised by staff, the applicant or a party to the proceeding have been waived as contested issues, and no argument regarding these issues can be raised in any subsequent appeal. The Examiner finds those criteria to be met, even though they are not specifically addressed in these findings. Examiner adopts the following findings in response to the approval criteria addressed in the staff report (Ex. C.5) and the application materials (A series exhibits).

A. Code compliance issues. This property was the subject of a 2019 code enforcement case (UR-2019-11503) related to the applicants expansion of an existing barn on the property within the SEC overlay to accommodate a well pump house without benefit of permits or land use approval. The applicants, however, entered into a Voluntary Compliance Agreement (VCA) with the County to bring the property into compliance (Ex. A.4). The applicant submitted this application as part of the VCA that will result in the well pump house being moved into the new single-family replacement dwelling, and the restoration of the barn to its last legal configuration. Approval of the replacement dwelling resolves the code enforcement case against the applicants.

B. Multiple Use Agriculture (MUA-20) zone – Replacement Dwelling and general development standards.

1. Lot of Record requirements (MCC 39.3005). To allow a new replacement single-family dwelling in the SEC overlay and to consider a Type C Home Occupation, the subject property first must be a legal lot of record. To be considered a lot of record, the subject property must have satisfied all applicable zoning laws (i.e., complied with all procedural, substantive, dimensional and access requirements) when it was created or last reconfigured and satisfied all applicable land division laws when it was created.

To satisfy the first requirement the property had to have satisfied all applicable zoning laws when it was created or last reconfigured. The applicant provided a copy of the subdivision plat demonstrating that when the property was created, the property met all zoning laws. The subdivision plat shows that the Reeder Estates Subdivision was approved in 1983 as cases LE 5-83 (granting Lots of exception) and LD 37-83 (granting a Land Division), and was recorded August 29, 1983 (Ex. B.3). The Lot of Exception and Land Division processes that created TL 500 through a lawful subdivision, is conclusive evidence that the lot met all applicable zoning laws in effect at the time in 1983.

To be deemed a legal lot of record, the subject parcel must have satisfied all applicable procedural requirements of the land division laws at the time of creation. TL 500 was created through a subdivision plat (Ex. B.3). The recordation of the plat (PL1216-056) is presumptive evidence that all lots in the plat, including TL 500, satisfied all applicable land division laws when it was recorded on August 29, 1983. The applicant acquired the subject property in 1991 by statutory warranty deed recorded December 16, 1991 (Book 2487, Page 1074), which described the property as Lot 1, Block 1, Reeder Estates (Ex. B.4). The deed's description matches the description of the subdivision plat; therefore, the Hearings Officer concludes this property is a legal lot and a Lot of Record. The Hearings Officer reaches this conclusion despite the fact that, as currently configured, TL 500 does not conform with all of the current dimensional and minimum lot size requirements for new lots in the MUA-20 zone.

As a final consideration, the parcel cannot qualify as a Lot of Record under the following circumstances:

- An area of land described as a tax lot solely for assessment and taxation purposes;
- An area of land created by the foreclosure of a security interest.
- An area of land created by court decree.

As discussed in the preceding paragraphs, TL 500 is a Lot of Record, and the Department of Assessment, Records, and Taxation, verifies that the entirety of the lot is contained within tax lot 500. Tax lot 500 is not an area of land described solely for assessment and taxation purposes, was not created by the foreclosure of a security interest, nor was it created by court decree. Tax lot 500 was created under land use cases LE 5-83 and LD 37-83, granting Lots of Exception and approving a Land Division, respectively, and was recorded as a final plat (PL1216-056) August 29, 1983 (Ex. B.3). From this, the Hearings Officer concludes that TL 500 is legal lot of record.

2. Allowed uses in the MUA-20 zone – Replacement Dwelling. MCC 39.4310(A) allows a single-family dwelling on a lot of record in the MUA-20 zone, which is what is proposed in this application. Additionally, ORS 215.283(1)(p) allows outright the “[a]lteration, restoration or replacement of a lawfully established dwelling, as described in ORS 215.291.” The record shows that the existing dwelling on TL 500 appears to possess all of the required features for a replacement dwelling under

ORS 215.291.¹ While the one public comment from a neighbor to the site questions whether a house this large still qualifies as a replacement dwelling or a single-family dwelling allowed in the MUA-20 zone (Ex. D.1), the County does not impose particular quantitative or dimensional limitations on single-family dwellings in this context except for the qualitative or subjective standards associated with development in the SEC area, which are discussed below. As things stand, however, the Hearings Officer lacks the authority under the MCC to condition or deny the replacement dwelling because of its size unless it fails to pass muster under the SEC criteria.

3. Allowed uses in the MUA-20 zone – Agriculture Building. MCC 39.4310(F)(1) allows a variety of accessory structures in the MUA-20 zone, including garages, pump houses, garden sheds, workshops, storage sheds, greenhouses, woodsheds, animal shelters, pool houses, hot tubs, gazebos, decks, and similar structures. On the other hand, MCC 39.4310(F)(8) provides that:

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

The applicant requests approval of new shed/storage building as an agricultural exempt structure pursuant to MCC 39.4310(F)(8) based on the assertion that the structure will be used only for agricultural uses, e.g., animal pens, parking of farm vehicles, tractor parking, and the like (Ex. A.27). However, the legal basis for an agricultural building is that it is used “in conjunction with farm uses as defined in ORS 215.203,” which is the statutory definition of “farm use” and requires:

“the current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops or the feeding, breeding, management and sale of, or the produce of, livestock, poultry, fur-bearing animals or honeybees or for dairying and the sale of dairy products or any other agricultural or horticultural use or animal husbandry or any combination thereof. ‘Farm use’ includes the preparation, storage and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. ‘Farm use’ also includes the current employment of land for the primary purpose of obtaining a profit in money by stabling or training equines including but not limited to providing riding lessons, training clinics and schooling shows. ‘Farm use’ also includes the propagation, cultivation, maintenance and harvesting of aquatic, bird and

¹ According to ORS 215.291, a “lawfully established dwelling may be altered, restored or replaced under ORS 215.213 (1)(q) or 215.283 (1)(p) if the county determines that the dwelling to be altered, restored or replaced has:

- (a) Intact exterior walls and roof structure;
- (b) Indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to a sanitary waste disposal system;
- (c) Interior wiring for interior lights; and
- (d) A heating system.

animal species that are under the jurisdiction of the State Fish and Wildlife Commission, to the extent allowed by the rules adopted by the commission. 'Farm use' includes the on-site construction and maintenance of equipment and facilities used for the activities described in this subsection."

The applicant and her husband described the current use of the property as a "small-scale agricultural endeavor," consisting of approximately 1/2 acre of orchard trees and a vegetable garden. After the hearing, the applicant clarified that production from these limited agricultural activities amount to several hundred pounds of produce per year, which is donated to area foodbanks and nonprofits. There is no indication that these activities constitute the "current employment of land for the primary purpose of obtaining a profit in money by raising, harvesting and selling crops." The record in this case does not contain a preponderance of credible evidence that current activities on the site rise to the level of "farm use" as defined in ORS 215.203 and required for an agricultural exempt building by MCC 39.4310(F)(8). The fact that a parcel may qualify for farm tax deferral under the property tax assessor's regulations does not address whether a parcel is actually put to "farm use" under state and local land use laws.

As such, there is insufficient evidence from which the Hearings Officer can conclude that current activities on the property qualify as a "farm use" under ORS 215.203, which is a prerequisite for an agricultural building under MCC 39.4310(F)(8). Moreover, given that "farm use" is not the primary use of the property, the building proposed in this application does not appear to qualify as an "agricultural building" under MCC 39.2000, and it cannot serve as an accessory structure to a primary use that does not currently exist on the property.

The buildings of the sort proposed in this application are allowed in the MUA-20 zone pursuant to MCC 39.4310(F)(1), but would be subject to all of the generally applicable SEC approval criteria. In its present form, however, the application does not contain evidence or argument addressing the approval criteria for such a structure. As this record currently stands there is insufficient evidence to demonstrate compliance with the underlying "farm use" requirements for an "agricultural building" as contemplated by the MCC and state law.

4. Dimensional and Development Standards in the MUA-20 zone. MCC 39.4325 (Dimensional Requirements and Development Standards) requires all development proposed in the MUA-20 base zone comply with the applicable dimensional and development standards in this section.
 - a. MCC 39.4325(A) & (B) relate to the creation of new parcels, and are therefore not applicable to this proposal.
 - b. MCC 39.4325(C) provides the following applicable minimum setbacks, which control where the new dwelling can be located relative to the property boundaries (dimensions in feet):

Front	Side	Street Side	Rear
30	10	30	30

Maximum Structure Height – 35 feet

Minimum Front Lot Line Length – 50 feet

The applicant provided a site plan (Ex. A.32) showing the location of the proposed single-family dwelling and all other buildings and structures on the property. The setbacks and other dimensions are required to ensure there is sufficient open space between buildings and property lines to provide space, light, air circulation, and safety from fire hazards. Additionally, MCC 39.4245(D) required minimum yard dimensions to be increased where the yard abuts a street that has insufficient right-of-way width to serve the area. The Reeder Road right-of-way adjacent to the subject property is classified as a rural local road with a 50-foot width. Staff advises that this width is below the planned dimension for rural local roads, for which MCC 39.4245(D) requires the minimum front yard setbacks to be increased by 5 feet. The applicant's site plan (Ex. A.32, site plan A101) shows the following setbacks for the proposed single-family dwelling:

	Required Setback	Setback Provided in site plan
Front (adjacent to Reeder Road)	35'	380'
Side (north property line)	10'	24'
Side (south property line)	10'	63'
Rear (west property line, adjacent to Columbia River)	30'	Greater than 300'

The applicant is not proposing any fences or retaining walls. Therefore, there are no encroachments to any of these required yards. Finally, the applicant has provided building plans showing the height of the proposed single-family dwelling at 26 feet as measured from the highest adjoining ground surface to the average height of the highest gable of a pitched roof (Ex. A.24 – A201 & A202), which is below the maximum allowed 35 feet. From this, the Hearings Officer concludes that the dimensional requirements are met.

c. MCC 39.4245(E) allows structures such as barns, silos, windmills, antennae, chimneys and the like, to exceed the maximum allowed height if located at least 30 feet from all property lines. In this case, the applicant's proposed barn is denied as an agricultural structure, and approval must be sought for one of the accessory structures allowed under MCC 39.4310(F)(1).

d. MCC 39.4245(G) provides specific requirements for on-site sewage disposal, storm water/drainage control, water systems. In particular, stormwater/ and drainage control systems are required for new impervious surfaces. These systems shall be sized and 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. The applicant provided a septic review certification, a storm water certificate, and a certification of water service. The septic review certification was completed by the City of Portland Bureau of Development Services Onsite Sanitation (Ex. A.12), and the storm water certificate was signed by Mia C. Mahedy, PE on May 30, 2019 (Ex. A.7). The Certification of Water Service was completed by the applicant (Ex. A.14).

The storm water certificate indicates that the project is exempt from flow control, as discharge of stormwater would be directly into the Columbia River. MCC 39.6235

requires that anyone creating new or replacing existing impervious surfaces exceeding 500 sf shall install a stormwater drainage system, which shall be designed to ensure that the rate of runoff for the 10-year 24-hour storm event is no greater than that which existed prior to development at the property line or point of discharge into a water body. The applicant's engineer did not apply the correct standard as it references the City of Portland Storm Water Manual. Therefore, a condition is warranted that a new storm water certificate be provided prior to authorization of building permits to ensure that stormwater/drainage control systems are 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.

The Septic Review Certification (#19-160401-SE) was reviewed by the City of Portland Bureau of Development Services Onsite Sanitation. The Septic Review Certification indicated that the new dwelling is approved to reconnect to the existing onsite wastewater treatment facility (Ex. A.12). The applicant will need to obtain an Authorization Notice to reconnect to the system after land use planning review of the building permit. Finally, the applicant supplied a Certification of Water Service which indicates there is an existing well located on the lot that supplies water at a rate of 33 gallons per minute (Ex. A.14). Based on these documents and this evidence, the Hearings Officer concludes that these criteria are met.

e. MCC 39.4245(H) requires that new, replacement, or expanded dwellings minimize impacts to existing farm uses on adjacent land (contiguous or across the street) by doing one of the following:

- (1) Recording a covenant that implements the provisions of the Oregon Right to Farm Law in ORS 30.936 where the farm use is on land in the EFU zone; or
- (2) Where the farm use does not occur on land in the EFU zone, the owner shall record a covenant that states he recognizes and accepts that farm activities including tilling, spraying, harvesting, and farm management activities during irregular times, occur on adjacent property and in the general area.

The applicant seeks to replace an existing single-family dwelling on property zoned MUA-20, that is not located adjacent to Exclusive Farm Use (EFU) zoned land. However, to minimize the impacts to existing farm uses on adjacent land the property owner must record a covenant that states they recognize and accept that farm activities including tilling, spraying, harvesting, and farm management activities during irregular times, occur on adjacent property and in the general area. As conditioned, the Hearings Officer concludes this requirement is met.

f. MCC 39.4245(I) requires parking to be provided on the same lot of record as the development being served. The applicant's site plans anticipate a Type C home occupation, with 10 parking spaces to accommodate a maximum of 12 customers. As explained below, the Hearings Officer denies the conditional use permit for the home occupation because there is no evidence that it will be limited in type and scale to primarily serve the needs of the rural area, as required by MCC 39.7015(A)(8) and Comprehensive Plan Policy 3.16. The parking thus provided, however, is sufficient

to serve the replacement dwelling and is located on the same lot (Ex. A.32 – A101). As such, this requirement is met.

g. MCC 39.4245(J) requires that all exterior lighting comply with MCC 39.6850 (Dark Sky Lighting Standards). The purpose of the Dark Sky Lighting Standards “is to protect and promote public health, safety and welfare by preserving the use of exterior lighting for security and the nighttime use and enjoyment of property while minimizing the obtrusive aspects of exterior lighting uses that degrade the nighttime visual environment and negatively impact wildlife and human health.” To accomplish this purpose, MCC 39.6850(C) provides the following substantive requirements for the exterior lighting associated with a replacement dwelling such as this one:

- (1) The light source (bulbs, lamps, etc.) must be fully shielded with opaque materials and directed downwards. “Fully shielded” means no light is emitted above the horizontal plane located at the lowest point of the fixture’s shielding. Shielding must be permanently attached.
- (2) The lighting must be contained within the boundaries of the Lot of Record on which it is located. To satisfy this standard, shielding in addition to the shielding required in paragraph (C)(1) of this section may be required.

These requirements are relatively clear and objective, but a condition is warranted to ensure compliance. On this basis, and as conditioned, the Hearings Officer concludes the standards are met.

h. MCC 39.4335 provides three criteria for conditional uses in the MUA-20 zone, addressing lot sizes, the nature of the use in relation to its impact on nearby properties, and setting a minimum 2-acre lot size, respectively. Because the Hearings Officer denies the request for the conditional use, however, this section no longer applies.

i. MCC 39.4340 simply requires off-street parking and loading in accordance with MCC 39.6500 through 39.6600, which are discussed below.

j. MCC 39.4345 requires all lots in the MUA-20 zone to abut a public street or have other access determined by the approval authority to be safe and convenient for pedestrians, passenger and emergency vehicles. However, the standard does not apply to preexisting lots such as this one and is therefore not applicable.

5. Parking, loading, circulation and access requirements. A variety of code requirements regulate vehicle parking, loading, circulation and access whenever there is an “erection of a new building or an addition to an existing building, or any change in the use of an existing building, structure or land which results in an intensified use by customers, occupants, employees or other persons, off-street parking, loading and traffic circulation and access (whether pedestrian, vehicular or otherwise). These standards include MCC 39.6505 (general provisions), MCC 39.6510 (continuing obligation), MCC 39.6520 (use of space), MCC 39.6525 (location of parking and loading spaces), MCC 39.6530 (improvements required), MCC 39.6540 (joint parking or loading facilities), MCC 39.6555 (design standards, scope), MCC 39.6560 (access), MCC 39.6565 (dimensional standards), MCC

39.6570 (improvements), MCC 39.6580 (design standards, setbacks), MCC 39.6590 (minimum required off-street parking spaces), MCC 39.6595 (minimum required off-street loading spaces). Not only are these standards applicable only where there is an intensification of use, but some are expressly not applicable to single-family dwellings. The staff report (Ex. C.5) addresses all of these standards based solely upon the home occupation aspect of this proposal and concludes that all of these requirements are or can be met. Because the Hearings Officer denies this aspect of the proposal, leaving only the replacement single-family dwelling, there is no increase in the intensity of use on this property, and none of these criteria apply. Elimination of the home occupation also obviates the need to address signs under MCC 39.6575. In the event the applicant resubmits the home occupation application, all of these criteria will come back into play and the applicant would have to demonstrate compliance with them. As things stand, these requirements are inapplicable.

6. Multnomah County Road Rules (MCRR) Standards. The MCRR provides several requirements applicable to new access points or existing access points that will serve a new, different or expanded use. The existing home on the property is served by an existing driveway and access onto Reeder Road. These standards do not apply to the existing home, nor to a simple replacement dwelling, because the use is not changed or expanded. The existing dwelling has a presumptive impact on the abutting and near-by streets and the surrounding transportation system of a single-family dwelling. The replacement dwelling will also be a single-family dwelling with presumptively the same traffic and transportation system impact. These standards would apply to this proposal only if there were a new, changed or expanded impact, such as would result from the addition of a new home occupation, which is how the staff report addresses these criteria (Ex. C.5). Because the Hearings Officer denies the home occupation aspect of this proposal, the proposal no longer includes a new, changed or expanded use, and there is no useful purpose in analyzing these criteria, which do not apply to the replacement dwelling.
7. Stormwater and Drainage requirements. MCRR 26.100 requires an on-site stormwater management system whenever a new, changed or expanded use – new development or redevelopment – is proposed. In this case, the expanded use aspect of the proposal, i.e., the home occupation component, is denied, which obviates the need to comply with the County stormwater requirements. Moreover, the applicant has demonstrated adequately that the property does not contribute stormwater to the County right-of-way. For these reasons, the stormwater requirements do not apply.

C. Significant Environmental Concern (SEC) area criteria. Given its proximity to the Columbia River, the entire parcel is encumbered with an SEC overlay for natural and scenic resources, which implicates the criteria in MCC 39.5500 to 39.5545. This application proposes three primary elements in the SEC area: (1) a replacement dwelling, (2) a new agriculture building and (3) a new Type C home occupation. As explained above for the agricultural building and below for the home occupation, neither is approvable given the current record. Therefore, only the replacement dwelling in the context of the SEC criteria, which are set forth in MCC 39.5500 to 39.5545.

1. Uses allowed with an SEC permit – MCC 39.5510. MCC 39.5510 allows in the SEC areas any use allowed in the base zone, in this case MUA-20. Because single-family homes, including replacement dwellings, are allowed in the MUA-20 zone, they are also allowed in the SEC overlay. MCC 39.5510(B) provides specific limitations on excavations and removal of materials of archaeological, historical, prehistoric or anthropological significance. While there is no evidence in this record of any such materials in the area, because there is a possibility, a condition is warranted requiring the applicant and/or property owner to stop work if artifacts or deposits are found and to contact the Oregon State Historic Preservation Office (SHPO). The applicant and/or property owner shall follow any subsequent requirements as directed by SHPO. With this, the Hearings Officer concludes the requirements of MCC 39.5510 are met.

2. SEC approval criteria – MCC 39.5540. The approval criteria for SEC permits are set forth in 14 applicable provisions of MCC 39.5540, under which the Hearings Officer adopts the following findings, again, addressing only the replacement dwelling:
 - a. MCC 39.5540(A) requires that the maximum possible landscaped area, scenic and aesthetic enhancement, open space or vegetation be provided between the use (replacement dwelling) and the Columbia River. In determining the maximum possible area between a use and the Columbia River, a baseline must be established. The existing uses on the property include a single-family dwelling, accessory buildings, and farm uses. The farm uses are located adjacent to NW Reeder Road, and the residential uses are located in the middle of the subject property. These existing uses are already established, so if additional uses were proposed, the uses would not be able to encroach, as the uses would reduce the possible landscaped area, scenic and aesthetic enhancement, open space, or vegetation.

As shown in Figure 1 below, there is approximately 2.00 acres of area between the existing single-family dwelling and other accessory buildings that constitute the residential use and the Columbia River.

Figure 1 – Area between the Single-family dwelling and Columbia River



Based on the Stormwater, Grading and Erosion plan, the proposed single-family dwelling will be located in the same location of the existing single-family dwelling (Ex.

A.32 – C1). The eastern face of the dwelling will be further from the river than the existing carport. This will result in additional area where landscaped area, scenic and aesthetic enhancement, open space or vegetation can be provided. The site plan indicates that this area will be open space that will not be developed (Ex. A.32 – A101). Further, as discussed by the applicant in the SEC-g Overlay Narrative that was reviewed by Dr. Robert D. Mangold, Environmental Consultant, “[they] intend to leave untouched the intermittent shrubbery growing in the sandy space between the river bank and grassy area...” (Ex. A.29). In leaving this area untouched, it will ensure that there will be open space and vegetation.

However as shown in the aerial photos and Google imagery, it appears that trees can grow and thrive in the environment surrounding the single-family dwelling (Exs. B.5, B.6 & B.8). Therefore, a condition will be recommended that the property owner retain the existing tree cover screening the existing single-family dwelling from the Columbia River, except as is necessary for site development or safety purposes. Any tree removal that is necessary for site development, or if any trees die or are removed from the area between the Columbia River and single-family dwelling shall be replaced immediately with similar tree species, species native to the setting, or species commonly found in the area. The replacement tree species shall be a minimum of 2-inch caliper size or greater and at least one-quarter of any trees planted for screening shall be coniferous for winter screening. The replacement tree shall be planted in the area between the proposed single-family dwelling and the Columbia River. From this, the Hearings Officer concludes that the maximum possible landscaped area, scenic and aesthetic enhancement, open space, and vegetation are provided between the single-family dwelling and Columbia River. This criterion is met.

b. MCC 39.5540(B) requires that agricultural land and forest land be preserved and maintained for farm and forest use. The property currently contains agricultural land that is being preserved and maintained for farm uses. The site plan indicates that there is a small orchard, barn, and greenhouse on the property (Exs. A.32 – A101). The applicant also describes a small vegetable garden and flower-cutting garden although they are not shown in the site plan (Ex. A.29). The applicant is also proposing to establish a new agricultural building near the NW Reeder Road. Although the agricultural building will remove some agricultural land from farm use, the agricultural building will support the farm uses that exist on the property. Additionally, as shown on the Stormwater, Grading and Erosion plan, the proposed single-family dwelling will be located in the same location of the existing single-family dwelling and the additional parking areas are adjacent to already impacted areas (Exs. A.32 – C1). This will result in very little loss of agricultural land as the front portions of the property. The Department of Assessment, Recording, and Taxation has approved the subject property for 1.0 acre of non-EFU Farmland Special Assessment and as proposed, the 1.0 acre will be preserved and maintained as agricultural land for farm use on the property (Ex. A.5). With this, the Hearings Officer concludes this criterion is met.

c. MCC 39.5540(C) requires that the building be located on the lot in a manner that will balance functional considerations and costs with the need to preserve and protect areas of environmental significance. The applicant proposes to locate the buildings on the lot in a manner that will balance the functional considerations and costs with the need to preserve and protect areas of environmental significance. As

discussed in the applicant's SEC-g Overlay Narrative that was reviewed by Dr. Robert D. Mangold, Environmental Consultant, the "proposed replacement dwelling sits on the general footprint of the existing home, carport, paved, and mowed grassy area" (Exs. A.29 & A.30). The Stormwater, Grading and Erosion plan confirms the applicant narrative (Ex. A.32 – C1). The eastern face of the dwelling will be further from the river than the existing carport. Additionally, the Conditional Use, a Type C home occupation will be located entirely within the proposed single-family dwelling. As proposed, these actions will ensure that areas of environmental significance (i.e., areas closest to the Columbia River) are preserved and protected. With this, the Hearings Officer concludes this criterion is met.

d. MCC 39.5540(D) requires that recreational needs be satisfied by public and private means in a manner consistent with the carrying capacity of the land and with minimum conflict with areas of environmental significance. The recreational needs of the property owners are generally passive. The applicant's SEC-g Overlay Narrative that was reviewed by Dr. Robert D. Mangold, Environmental Consultant, describes the recreational activities as including, badminton, swimming, paddle boarding, and kayaking" (Ex. A.29). These activities are non-consumptive uses that are associated with the single-family dwelling use. The single-family dwelling use is an allowed use in the zone and the existing single-family dwelling has been on the property since as early as 1871. As discussed previously, there is approximately 2 acres of area between the existing single-family dwelling and accessory buildings that constitute the residential use and the Columbia River. With the shoreline area preserved, the recreational needs are met in a manner consistent with the carrying capacity of the land. The recreational needs of the residential use will also have minimal conflicts with areas of environmental significance as the shoreline and Columbia River is over 300 feet from the single-family dwelling. With this, the Hearings Officer concludes this criterion is met.

e. MCC 39.5540(E) requires the protection of the public safety and of public and private property, especially from vandalism and trespass, be provided to the maximum extent practicable. The replacement dwelling appears to implicate this criterion little if at all. Therefore, to the extent this criterion applies, the Hearings Officer concludes it is met with regard to the replacement dwelling.

f. MCC 39.5540(F) requires the protection of significant fish and wildlife habitats. The applicant's SEC-g Overlay Narrative describes how significant fish and wildlife habitats are protected. The SEC-g Overlay Narrative was reviewed by Dr. Robert D. Mangold, Environmental Consultant and a supplemental letter was provided to support the application (Exs. A.29 & A.30). The narrative discusses how there are, "ground and overhead sightings of wildlife such as deer, Canadian Geese and birds of prey." Dr. Mangold also discusses in the Letter that he, "find[s] no evidence that the Jarvis property is currently occupied by [significant threatened and endangered species]." If there are significant fish and wildlife habitats, the location of the proposed single-family dwelling where the Type C home occupation will occur will also ensure that those habitats are protected. The site plan indicates that the proposed single-family dwelling is located more than 300 feet from the Columbia River's edge (Exs. A.32 – A101). This distance will limit the impacts to the riparian areas near the Columbia River. On this basis, the Hearings Officer concludes this criterion is met with regard to the replacement dwelling.

g. MCC 39.5540(G) requires the protection of natural vegetation along the Columbia River and related wetlands and streams, which shall be enhanced to the maximum extent practicable to assure scenic quality and protection from erosion, and continuous riparian corridors. The applicant's SEC-g Overlay Narrative, describes how natural vegetation along the river will be protected and enhanced to the maximum extent practicable to assure scenic quality and protection from erosion and continuous riparian corridors. The SEC-g Overlay Narrative was reviewed by Dr. Robert D. Mangold, Environmental Consultant and a supplemental letter was provided to support the application (Exs. A.29 & A.30). The narrative discusses how the location of the proposed single-family dwelling will be setback from the river in an area that has already been disturbed. As measured on the site plan the proposed single-family dwelling will be more than 300 feet from the Columbia River's edge (Exs. A.32 – A101). The site plan also indicates that a storm water system will be constructed in the area between the proposed single-family dwelling and Columbia River. The system will consist of a pipe and a level spreader. The system is designed to convey water from the single-family dwelling and discharge the water into the Columbia River. As it is currently proposed, the outfall will potentially cause erosion as it outfalls into the sandy soil. Therefore, it is recommended that the system be removed and the storm water design for the project be redesigned. To ensure that natural vegetation along the Columbia River is protected and enhanced a condition will be required that if a storm water system is proposed between the single-family dwelling and the Columbia River that it be vegetated with native plants and shrubs. Finally, the applicant's SEC-g Overlay Narrative and supplemental letter from Dr. Mangold discuss the existing landscape. Dr. Mangold describes the current slope of the cut-bank as, "very gradual and minimal current erosion was observed. There is little to no danger of home loss from erosion because they are building so far away from the river." Additionally, the applicants describe the area between the proposed single-family dwelling as having "little riparian vegetation...and efforts to restore vegetation in this area have proven impractical due to the inhospitable effects of high water wave action along the entire shoreline." As described and due to the limiting factors of high water wave action along the shoreline, it appears that the applicant is protecting and enhancing the scenic quality of a continuous riparian corridor and protecting from erosion along the continuous riparian corridor to the maximum extent practical. However, to ensure that this protection is on-going, a condition is warranted requiring that the tree density along the Columbia River be maintained and if a tree or other vegetation dies, it be replanted with a comparable species or similar native species. On this basis, the Hearings Officer concludes this criterion is met with regard to the replacement dwelling.

h. MCC 39.5540(H) requires that archaeological areas be preserved for their historic, scientific, and cultural value and protected from vandalism or unauthorized entry. As discussed previously, there is no evidence in the record of any known areas of where materials of an archaeological nature can be found on the property. Because there is a possibility that archaeological areas could be found, a condition of approval is warranted requiring the applicant and/or property owner to stop work and protect those areas, if artifacts or deposits are found. The applicants, property owners or their agents will be required to contact the Oregon State Historic Preservation Office (SHPO) and follow any subsequent requirements as directed by SHPO. On this basis, the Hearings Officer concludes this criterion is met with regard to the replacement dwelling.

i. MCC 39.5540(I) requires that areas of annual flooding, floodplains, water areas, and wetlands be retained in their natural state to the maximum possible extent to preserve water quality and protect water retention, overflow, and natural functions. As discussed previously, the applicant's SEC-g Overlay Narrative was reviewed by Dr. Robert D. Mangold, Environmental Consultant and a supplemental letter discussing areas of annual flooding, floodplains, water areas, and wetlands. The applicant also provided a Floodplain Development Narrative and an Elevation Certificate that discusses "Areas of Special Flood Hazard" that are regulated by FEMA. The Floodplain Development Narrative and Elevation Certificate are being reviewed concurrently under land use case #T1-2019-12053. The narrative discusses how the proposed development will be located outside of areas of annual flooding or floodplain areas (Exs. A.29, A.30 & A.36). Additionally, the applicant does not propose any development between the single-family dwelling and the Columbia River (Exs. A.32 – A101). The 300+ feet between the Columbia River and the proposed dwelling will be retained in its natural state to preserve water quality and protect water retention, overflow, and natural functions. Finally, the Statewide Wetland Inventory and the Local Wetland Inventory show no mapped wetlands on this site. With this, the Hearings Officer concludes this criterion is met with regard to the replacement dwelling.

j. MCC 39.5540(J) requires that areas of erosion or potential erosion shall be protected from loss by appropriate means. Appropriate means shall be based on current Best Management Practices and may include restriction on timing of soil disturbing activities. The applicant provided a Grading and Erosion Control Worksheet and multiple site plans that discuss areas of erosion or potential erosion. Areas of erosion and potential erosion are being concurrently reviewed under land use case #T1-2019-12053. As part of that application, the applicant has provided a Stormwater, Grading and Erosion plan that confirms that areas of erosion or potential erosion are being protected from loss using Best Management Practices (BMPs). The Stormwater, Grading and Erosion plan shows that silt fencing and other BMPs are being used to manage erosion concerns (Exs. A.32 – C1). Additionally, to ensure that these BMP measures are installed and maintained, the applicants, property owners, and their agents will be required to obtain an Erosion and Sediment Control permit that is being reviewed under land use case T1-2019-12053. The plan also indicates that a storm water system will be constructed in the area between the proposed single-family dwelling and Columbia River. The system will consist of a pipe and a level spreader. The system is designed to convey water from the single-family dwelling and discharge the water into the Columbia River. As it is currently proposed, the outfall will potentially cause erosion as it outfalls into the sandy soil. Therefore, it is recommended that the system be removed and the storm water design for the project be redesigned. To ensure that natural vegetation along the Columbia River is protected and enhanced, a condition is warranted requiring that if a storm water system is proposed between the dwelling and the Columbia River that it be vegetated with native plants and shrubs. On this basis, the Hearings Officer concludes this criterion is met with regard to the replacement dwelling.

k. MCC 39.5540(K) requires that the quality of the air, water, and land resources and ambient noise levels in SEC areas be preserved in the development and use of these areas. The applicant proposes a replacement single-family dwelling for the one that currently exists on the property. As the subject property has an existing residential use, the quality of the air, water, and land resources in areas classified

SEC are preserved as they currently exist due to the impact of the established residential use. On this basis, the Hearings Officer concludes this criterion is met with regard to the replacement dwelling.

I. MCC 39.5540(L) requires that the design, bulk, construction materials, color and lighting of buildings, structures and signs be compatible with the character and visual quality of SEC area. The applicant proposes a replacement single-family dwelling of two stories with an attached 3-car garage. The dwelling will be approximately 7,104 sf (1st floor: 4,562 sf, 2nd floor: 2,542 sf), which is similar to the design and bulk of other single-family dwellings in the area. Using Google Maps imaging, the development pattern of the area is already developed with single-family dwellings.

Figure 2 – 3D Image Capture from Google Maps



As shown in the Figure above, the proposed dwelling (located on the far right of the image behind the trees -- see red oval) will be located behind a set of trees and further back from the shoreline than the adjacent properties (Ex. B.6). The proposed replacement dwelling will be located in the same area of the existing single-family dwelling (Exs. A.32 – A101). The site plan indicates that the attached garage will be located on the NW Reeder Road side of the property thereby reducing the impact of the design and bulk of the single-family dwelling on the areas of significant environmental concern. Department of Assessment, Records, and Taxation data was used to compare the proposed single-family dwelling and the 5 adjacent properties. Three of the 5 adjacent properties contain a second story, which is proposed as part of this application. The main floors of the adjacent properties are between 3,484 sf and 1,632 sf. The proposed main floor for the applicant's single-family dwelling will be approximately 3,423 sf. Overall, the proposal is larger in bulk and design than the character of the adjacent properties within the areas of significant environmental concern. Therefore, additional conditions of approval are recommended to reduce the design and bulk of the proposed dwelling to ensure that the character and visual quality of areas of significant environmental concern are maintained. The following conditions will reduce the design and bulk of the single-family dwelling to achieve compliance with this criterion:

- The color of the single-family dwelling shall be earth-tones found at the specific site or in the surrounding landscape. The specific list of acceptable colors is located in the *Scenic Resources Implementation Handbook*. At the time of Land Use Planning zoning review sign-off authorizing building plan check, the color samples shall be provided and compared to the colors within the *Scenic Resources Implementation Handbook*.
- The exterior of the dwelling as seen from Columbia River shall be composed of non-reflective materials or materials with low reflectivity.
- Except as is necessary for site development or safety purposes, existing tree cover screening the existing single-family dwelling from the Columbia River shall be retained. The property owners shall be responsible for the proper maintenance and survival of the vegetation. If trees die or are removed from those areas, they must be replaced immediately with similar tree species, species native to the setting, or species commonly found in the area. The replacement tree species shall be a minimum of 2-inch caliper size or greater and at least ¼ of any trees planted for screening shall be coniferous for winter screening. The replacement tree shall be planted in the area between the proposed single-family dwelling and the Columbia River.
- Exterior lighting shall be Dark Sky Compliant as discussed below.

These additional conditions will ensure that the bulk and design of the proposed single-family dwelling will be compatible with the character and visual quality of areas of significant environmental concern. With these conditions, the Hearings Officer concludes this criterion is met with regard to the replacement dwelling.

m. MCC 39.5540(M) requires that in an area generally recognized as fragile or endangered plant habitat or which is valued for specific vegetative features, or which has an identified need for protection of the natural vegetation, be retained in a natural state to the maximum extent possible. The applicant's SEC-g Overlay Narrative was reviewed by Dr. Robert D. Mangold, Environmental Consultant, who issued a supplemental letter discussing areas generally recognized as fragile or endangered plant habitat, or which is valued for specific vegetative features, or which has an identified need for protection of the natural vegetation. As discussed previously, Dr. Mangold also states that he, "find[s] no evidence that the Jarvis property is currently occupied by [significant threatened and endangered species]" (Exs. A.29 & A.30). Additionally, the proposed replacement dwelling will be more than 300 feet from the Columbia River's edge (Exs. A.32 – A101), and that space currently contains "little riparian vegetation...and efforts to restore vegetation in this area have proven impractical due to the inhospitable effects of high water wave action along the entire shoreline." As described and due to the limiting factors of high water wave action along the shoreline, this area is being retained in a natural state, and on this basis, the Hearings Officer concludes this criterion is met with regard to the replacement dwelling.

n. MCC 39.5540(N) requires compliance with the applicable Comprehensive Plan policies, which are discussed below.

D. Type C Home Occupation criteria. The applicant seeks approval for a Type C home occupation to be contained within the replacement dwelling. Type C home occupations are conditionally allowed in the MUA-20 zone pursuant to MCC 39.4320(D) and must meet the criteria in MCC 39.7400 to 39.7410. Additionally, they must demonstrate compliance with the conditional use permit criteria in MCC 39.7015.

1. Does the proposed commercial use qualify as a Type C home occupation? As a starting point, MCC 39.7405(A) requires that, to be eligible, the proposed home occupation must be a “lawful commercial activity that is conducted in a dwelling or accessory building, but not within or in association with an accessory dwelling unit, on a parcel by a business operator, is subordinate to the residential use of the premises.” The applicant’s narrative (Ex. A.33) describes the commercial activity as a place to “welcome small groups of fellow islanders and visitors to the Creative Space on the ground floor of [the] single-family dwelling.” The business operator would aid in the facilitation of “creative exploration, reflection, expression, and collaboration.” The applicant’s further assert (Ex. A.35) that “[w]e are proposing the Creative Space on the Site Plan to originate our own work, but also to provide an inclusive gathering space for island residents and like-minded visitors to meet, share artistry inspired by the unique agrarian and island setting, deepen artistic practices, explore new skills, converse, and collaborate.” Based on this description, it appears that the business would offer workshops and/or a space for individuals to use as a workshop. For customers who wish to stay for a longer duration, the home occupation would offer short-term lodging for those customers to stay as guests on the second floor. As proposed here, the primary use of the property is residential, and the proposed home occupation will occur within the house. The floor plan indicates that the single-family dwelling provides only a single unit of complete and independent living facilities for one or more people. The proposed single-family dwelling contains all of the permanent provisions needed for living, sleeping, eating, cooking, and sanitation. As designed, there are no portions of the proposed single-family dwelling that can be partitioned or cordoned off to create a separate interior dwelling unit or could provide a second area containing complete and independent living facilities (Exs. A.23 – A131 & A132). If the applicant, however, were to apply again for a home occupation, a condition is warranted to ensure that this criterion is met, which does not allow for a second dwelling unit within the home or within an exterior structure that would meet the definition of accessory dwelling unit or duplex in MCC 39.2000. Additionally, a covenant would be needed to that states that the owner understands and agrees that the single-family dwelling cannot contain a second dwelling unit or ADU. As things stand, however, the Hearings Officer concludes that no accessory dwelling unit is proposed or approved for the property. The replacement dwelling will be the applicant’s full-time home, as she and her husband testified that they will retire and reside there. The proposed use appears to be the offering of art workshops of various media, both day-long and multi-day workshops. From this, the Hearings Officer concludes that the home occupation as proposed qualifies as a Type C home occupation.
2. Compliance with the 12 home occupation criteria in MCC 39.7405(A). To merit approval, the applicant has the burden of demonstrating that each of the 12 approval criteria in MCC 39.7405(A) are met. The Hearings Officer adopts the following findings with regard to each:

a. MCC 39.7405(A)(1) requires that the on-site business functions of the home occupation take place entirely within a dwelling unit or enclosed accessory building on the premises, except for employee and customer parking and signage. No outdoor storage, business activities, or displays shall occur outside of an enclosed building. The applicant's Narrative discussing the Type C Home Occupation standards states that the home occupation will occur within the first and second floor of the dwelling (Ex. A.28). The floor plans show the proposed locations of the business functions on the first and second floor (Exs. A.24 – A131 & A132). The applicant is not proposing to conduct any on-site business functions outside of the dwelling other than customer parking. Additionally, no outdoor storage or displays are proposed. If the applicant, however, were to apply again for a home occupation, a condition is warranted to ensure that no outdoor storage, business activities, or displays shall occur outside of the enclosed single-family dwelling. As things stand, however, the Hearings Officer concludes this criterion is met.

b. MCC 39.7405(A)(2) prohibits a Type C home occupation from exceeding 35% of the total gross floor area of the dwelling, attached garage and accessory buildings, or 1,500 sf, whichever is less. The Type C home occupation will occupy portions of the first floor and second floor of the proposed single-family dwelling. The applicant provided a floor plan and a Narrative discussing the Type C home occupation standards showing the areas being to be used for the home occupation (Exs. A.24 – A131, A.24 - A132 & A.28). The narrative states that a creative space, bathroom, laundry room, hallway, and stairway will be used on the first floor, and two guest rooms and a bathroom would be used on the second floor. The applicant subsequently requested that the en suite bedroom be used instead of the two guest rooms and a bathroom be used for short-term lodging (Ex. A.38). The site plan shows that the dwelling is ~7,104 sf (1st floor: 4,562 sf, 2nd floor: 2,542 sf), which results in 2,486.40 sf, if the 35% threshold is used. Therefore, because 2,486.40 sf is larger than 1,500 sf, the 1,500 sf maximum will be used to calculate the area that the home occupation can utilize. As measured from the Floor Plans, it appears the home occupation will occupy 1,428.58 sf of gross floor area.

Table 2: Room Measurements from Ex. B.7

Room	Area
First Floor	
Creative Space	515.17 sf
Entrance Hallway	187.00 sf
Bathroom	22.50 sf
Laundry	119.25 sf
Stairway	188.33 sf
Total	1,032.25 sf
Second Floor	
Hallway	161.33 sf
En suite Bedroom	235.00 sf
Total	396.33 sf

The library, on the second floor is potentially open to customer and guest use as part of the home occupation, which would exceed the maximum area allowed. That area is not discussed as being used as a part of the home occupation and because

adding the square footage of the library to the home occupation would exceed the 1,500 sf limit, a condition would be warranted requiring that the library be closed off to customers of the home occupation. A partition, room divider, or similar structure will be required to prevent customers from accessing that area, and a sign should be posted on the partition, room divider, or similar structure alerting customers that the area is off limits. With this condition, the Hearings Officer finds this criterion is met.

c. MCC 39.7405(A)(3) prohibits home occupations from employing more than 5 employees. The applicant does not propose to have employees at this time, much less more than 5. However, in the future if the property owners submit another home occupation application that includes employees, the application will need to address the number of employees, their vehicle trips and their parking needs. None of those issues were raised in this application, however, nor were they addressed by staff. As things stand, this criterion is met.

d. MCC 39.7405(A)(4) limits vehicle trips associated with a home occupation to a maximum of 40 vehicle trips per day, with no deliveries or pick-ups between 7 p.m. and 7 a.m., and prohibits using the access road for loading or unloading purposes. The applicant's Land Use Proposal and the Narrative state that, at a maximum, the business will not have more than 12 customers on the property per day participating in half/full-day experiences (Ex. A.28). This would result in 24 vehicle trips (one in and one out per customer per day). For customers staying overnight as part of a multi-day experience, the applicant proposes to use one of the upstairs rooms within the single-family dwelling for short-term lodging. This would result in a maximum of two individuals utilizing short-term lodging on the premises. This would result in two trips on one day and then two more trips on a subsequent day when the short-term lodgers leave the site. The applicant also proposes occasional deliveries that will average less than one or two per week. The total of 27 vehicle trips per day (24 trips for half/full day experiences, 2 trips for overnight guests, and one for deliveries) is less than the maximum of 40 total vehicle trips per day by customers/guests and delivery services of the home occupation. If the applicant were to resubmit the home occupation application, a condition would be warranted that sets a maximum of 40 vehicle trips per day by customers and delivery service providers serving the home occupation. Additionally, no deliveries or pick-ups associated with the home occupation shall occur between 7 p.m. - 7 a.m. The deliveries or pick-ups shall occur on the premises only, and the road serving the lot shall not be used for loading or unloading purposes. As things stand, however, the Hearings Officer concludes this criterion is met.

e. MCC 39.7405(A)(5) requires on-site parking to serve the dwelling and additional parking compliant with MCC 39.6500-39.6600 to accommodate the total number of employees and customers, proposed to be on the premises at any one time. The section also prohibits using, parking or storing any vehicle heavier than 11,000 pounds (GVW) on the property. The applicant discusses the required parking in the Land Use Proposal, the Narrative discussing the Type C Home Occupation standards, and Narrative discussing Parking and Loading. The applicant has also provided a site plan that shows the location of the parking area on the property (Exs. A.32 – A101). discussed in Sections 8.13 & 8.14 of the staff report (Ex. C.5), the single-family dwelling and home occupation will require 7 parking spaces and one loading space. The applicant proposes a maximum of 12 customers visiting the property at any one time. The site plan shows the location of 10 parking spaces that

are adjacent to the agricultural building and 3 parking spaces within the garage of the single-family dwelling. The applicant also indicates that individuals will be encouraged to carpool and that there are an additional 3 parking spaces adjacent to the dwelling; however, those parking spaces were not shown on the site plan. As such, the parking demand for the dwelling is met, as is the parking required to serve the proposed home occupation, with a maximum of 12 customers. The applicant does not propose to use, park, or store on the premises of any vehicle heavier than 11,000 pounds (GVW), but if a new application were submitted, a condition would be warranted prohibiting such vehicles. As things stand, however, the Hearings Officer concludes this criterion is met.

f. MCC 39.7405(A)(6) limits the number and size of signs that can be displayed on the property advertising the home occupation, and these limitations apply in addition to the sign regulations in MCC 39.6700–39.6820. The applicant did not initially propose a sign for the home occupation. At the February 7th hearing, however, she amended the proposal and requested permission for a sign. If a new application were to be submitted that included a request for a sign, a condition would be warranted requiring compliance with MCC 39.7405(A)(6) and MCC 39.6700–39.6820. As things stand, however, the Hearings Officer concludes this criterion is met.

g. MCC 39.7405(A)(7) limits noise generation from all uses on the property to a maximum of 50 dB(A) (decibels adjusted) at the property lines between 7 a.m. and 6 p.m. daily. During all other hours, the home occupation shall not create noise detectable at the property line. Vehicles entering or exiting the subject property shall be exempt from this standard, but idling vehicles are not. The applicant's Narrative discusses the applicable standards and noise generated as part of the home occupation, and state that the home occupation will not generate more noise than what occurs with normal occupancy of a single-family dwelling. This includes human conversation and occasional low volume background music (Ex. A.28). The short-term rental of a single-family dwelling is similar in use to full time occupancy of a single-family dwelling, and so the requirement can be satisfied by a condition requiring that use of the "creative space" and the short-term lodging will not generate noise above 50 dB(A) at the property lines between 7 a.m. and 6 p.m. During all other hours, the condition would limit noise generated by the home occupation so that it is not detectable at the property line. In that event, the applicants would be required to alert any short-term lodger of these noise limitations. As things stand, however, the Hearings Officer concludes this criterion is met.

h. MCC 39.7405(A)(8) prohibits the home occupation activities from generating vibration, glare, flashing lights, dust, smoke, fumes, or odors detectable at the property line. Vehicles entering or exiting the subject property would be exempt from this standard, but idling vehicles would not. All storage, use and disposal of chemicals and materials shall be in conformance with all other applicable state pollution control regulations. The applicant's Narrative discusses this criterion for the Type C Home Occupation and states that the home occupation is not expected to generate vibration, glare, flashing lights, dust, smoke, fumes, or odors beyond what occurs with normal occupancy of a single-family dwelling (Ex. A.28). That makes sense to the Hearings Officer, but if the applicant were to resubmit the home occupation application, a condition would be warranted prohibiting the generation of vibration, glare, flashing lights, dust, smoke, fumes, or odors detectable at the

property line. Additionally, the condition would prohibit all storage, use, and disposal of chemicals and require compliance with all other applicable state pollution control regulations. As things stand, however, the Hearings Officer concludes this criterion is met.

i. MCC 39.7405(A)(9) prohibits the repair or assembly of any motor or motorized vehicles, including any vehicle or equipment with an engine such as automobiles, motorcycles, scooters, snowmobiles, outboard marine engines, lawn mowers, and chain saws. The proposal does not include repair or assembly of any motor or motorized vehicles; however, if the applicant were to resubmit the home occupation application, a condition would be warranted prohibiting these activities. As things stand, however, the Hearings Officer concludes this criterion is met.

j. MCC 39.7405(A)(10) prohibits all construction and modification to existing structures in a manner not otherwise allowed in the MUA-20 zone. The section also limits requiring the building to have an occupancy rating other than R-3 or U as determined by the building official. The applicant is proposing to use portions of the replacement dwelling for the home occupation. A single-family dwelling normally has an occupancy rating of R-3, which is sufficient to meet this standard.

k. MCC 39.7405(A)(11) prohibits any home occupation in the EFU and CFU base zones from unreasonably interfering with other uses permitted in the base zone. Because the property is zoned MUA-20, this criterion is not applicable

l. MCC 39.7405(A)(12) requires all home occupations to demonstrate compliance with the conditional use permit (CUP) criteria in MCC 39.7015, which are addressed in the next section. As explained under those criteria, this home occupation proposal meets all but two of the CUP criteria: (1) the applicant has not demonstrated that the home occupation “is limited in type and scale to primarily serve the needs of the rural area,” and (2) the applicant has not demonstrated compliance with all of the applicable comprehensive plan policies, most notably the requirement in Policy 3.16 that “new non-agricultural businesses should be limited in scale and type to serve the needs of the local rural area.”

3. Compliance with MCC 39.7405(B), (C) & (D) and the renewal standards in MCC 39.7410. As just explained, the Hearings Officer denies the home occupation for reasons related to the CUP criteria and the Comprehensive Plan. As such, there is no purpose served in addressing the remaining home occupation standards in MCC 39.7405(B), (C) & (D). Suffice it to say, however, that if the applicant resubmits the home occupation application, she must address and ultimately demonstrate compliance with these additional standards. Similarly, there is no purpose in addressing the home occupation renewal criteria in MCC 39.7410 at this point in time.

E. Conditional Use Permit criteria. The Type C home occupation is conditionally allowed in the MUA-20 zone, which requires a demonstration of compliance with the standard CUP criteria in MCC 39.7015. The Hearings Officer adopts the following findings with regard to each:

1. Consistent with the character of the area – MCC 39.7015(A)(1): The character of the area is relatively undeveloped farmland and open space mixed with rural residential

uses. From aerial photos review, it can be seen that the surrounding properties are characterized by a mixture of farmland, residential uses, and various waterbodies or wetlands (Ex. B.5). The proposed home occupation will occur within the proposed single-family dwelling. The dwelling is setback approximately 380 feet from NW Reeder Road. As part of the home occupation, there should be no noticeable difference from the existing/proposed use of a single-family dwelling and the home occupation except for the construction of ten parking spaces. The home occupation standards are designed to ensure that the commercial use should be tied and indistinguishable from the single-family dwelling use. The customers visiting the subject property for full and half day creative experiences and the guest staying as part of the short-term lodging are limited in intensity and scope. Once a customer enters the property and parks, they will not be readily viewable from the adjacent properties. Other than the increased vehicle trips to and from the site, the property will continue to maintain a decidedly residential appearance and function, which is consistent with the character of this area.

2. Will not adversely affect natural resources – MCC 39.7015(A)(2): As discussed above, the applicant has met the requirements of the Significant Environmental Concern (SEC) permit to construct a new single-family dwelling. The SEC requirements discussed how the proposed uses would not adversely affect natural resources in the area, including the Columbia River and habitat between the dwelling use and the river. In replacing the single-family dwelling, the applicant is not proposing any further development or alteration of the site beyond what currently exists today. As proposed, the Hearings Officer concludes there should be no adverse effects to the natural resources from this use.
3. Meets the standards in ORS 215.296 – MCC 39.7015(A)(3): This local code criterion reflects the statutory CUP criteria in ORS 215.296, which requires a demonstration that the use will not:
 - (a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; nor
 - (b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use

Based on the applicant's description, the proposed home occupation should not force a significant change in accepted farm or forest practices or significantly increase the cost of accepted farm or forest practices on surrounding farmland. As seen in aerial photos, some parcels to the north and west are in active agricultural use, but none in the immediate area of this parcel. These agricultural uses appear to be mostly hay production on land zoned MUA-20, and the most significant impact on agricultural operations appear to be existing riparian resources (Ex. B.5). Notice of this application was provided to all property owners within 750 feet of the subject site, and the County received no comments from any near-by farmers on this proposal.

As the home occupation will occur within an existing single-family dwelling, the applicant is not proposing any further development or alteration of the site beyond the construction of 10 parking spaces. There is no evidence of, nor the suggestion of, any impact to accepted farm practices on surrounding land. The half and full day

art workshops, creative experiences and short-term lodging will be located within the single-family dwelling. The design of the home occupation is for guests to create, explore, reflect, and collaborate in an immersive rural experience on Sauvie Island.

As is typical, farm practices involve the growing of crops, harvesting of crops and other farm products, weed control, planting, etc. As proposed, the existing location of the access and single-family dwelling were established in 1871. The property owners are also currently enrolled in Non-EFU Farmland Special Assessment on one acre of their property for the farm practices that exist on the subject property. The applicant's enrollment in this property tax deferral program and their own farming practices on the property tend to show that the proposed operation will be compatible and won't force any significant changes on, accepted farm practices. At least the record does not demonstrate or suggest any. Similarly, there is no evidence that this proposed home occupation would increase the cost of accepted farm practices on surrounding land. Again, the applicant's use of the property is evidence sufficient to convince the Hearings Officer that the criteria in ORS 215.296 are met. However, because residential uses including the proposed home occupation could, theoretically, conflict, a condition is warranted requiring a covenant that recognizes the rights of adjacent farm managers and foresters to farm and practice forestry on their land. With this, the Hearings Officer concludes this criterion is met.

4. Will not require public services other than those existing or programmed for the area – MCC 39.7015(A)(4): The applicant submitted various service provider forms showing that the home occupation will not require public services other than those existing or programmed for the area. The septic review certification was completed by the City of Portland Bureau of Development Services Onsite Sanitation indicating that the private system meets Oregon Department of Environmental Quality regulations (Ex. A.12). A Fire Service Agency Review form was completed by Norvin Collins, Fire Chief (Ex. A.10). The form indicates that, "the proposed development is in compliance with the standards of the Oregon Fire Code Standards by [Sauvie Island Fire District - Rural Fire Protection District #30J]." A Certification of Water Service was completed by the applicant. The Certification of Water Service indicated that an existing well located on the lot and supplies water at a rate of 33 gallons per minute (Ex. A.14). At 33 gallons per minute, the private water system will produce safe drinking water with sufficient volume and pressure. A Police/Sheriff Services Review form was signed by Michael Reese, Sheriff, indicating that the level of police/sheriff service available to serve the proposed project is adequate (Ex. A.11). Based on this evidence, the Hearings Officer concludes this criterion is met.
5. 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 – MCC 39.7015(A)(5): The Oregon Department of Fish and Wildlife does not have a current map of Big Game Winter Habitat for western Oregon. However, in a 2017 ODFW Western Oregon Deer and Elk Habitat report, the document does contain a map showing that the subject property is not located in a Winter Concentration Area (Ex. B.9). This fact is supported by a Wildlife Habitat Map adopted by Multnomah County on February 20, 1990 that shows that this property is not located within a Sensitive Big Game Wintering Area (Ex. B.10). Based on this evidence, the Hearings Officer concludes this criterion is met.

6. Will not create hazardous conditions – MCC 39.7015(A)(6): The proposed home occupation will not create hazardous conditions. All the activities are proposed to be conducted within the replacement dwelling, and the dwelling’s design will be reviewed by the City of Portland to ensure the building meets building code standards. Additionally, the applicant does not propose any activities that would create a hazardous situation or use hazardous chemicals (Ex. A.28). On this basis, the Hearings Officer concludes this criterion is met.
7. Satisfies the applicable Comprehensive Plan policies – MCC 39.7015(A)(7): The Hearings Officer finds that the following Comprehensive Plan Policies are applicable to this request and adopts the following findings for each:
 - a. Chapter 3 (Farm Land), Policy 3.15: Protect farm land from adverse impacts of residential and other non-farm uses. (1) Ensure that new, replacement, or expanding uses on MUA zoned lands minimize impacts to farm land and forest land by requiring recordation of a covenant that recognizes the rights of adjacent farm managers and foresters to farm and practice forestry on their land. As discussed above, the replacement dwelling poses no adverse impact on farm land or farm uses, and simply replaces a dwelling that has been on the property since 1871. The home occupation is an extremely benign use and will be contained entirely within the dwelling, except for customer traffic to and from the house and outside (on-site) parking. On this basis, the Hearings Officer concludes this policy is met.
 - b. Chapter 3 (Farm Land), Policy 3.16: New non-agricultural businesses should be limited in scale and type to serve the needs of the local rural area. The plain language of this policy presents a difficult burden for any non-farm use on this property, including the applicant’s proposed home occupation. Policy 3.16 establishes that the home occupation must serve the needs of the local rural area. Unlike the CUP criterion in MCC 39.7015(A)(8), this policy does not recognize a primary rural focus and a presumptive non-rural secondary focus for the business. This policy recognizes only a rural focus for new non-agricultural businesses seeking to establish in rural areas with farm zoning. Therefore, this Policy may require an exclusive focus on serving the needs of the local rural area, not just a primary focus, which is stricter than what is required by MCC 39.7015(A)(8).

As a starting point, the applicant’s proposed home occupation is a new non-agricultural business; it is not a “farm use” nor is it an agricultural business. Even though the applicant’s narrative describing the business (Ex. A.33) states that it will be available for use by the rural residents of Sauvie Island, there is no evidence in the record that there is any near-by rural need for the services that will be offered as part of this non-agricultural home occupation. At the February 7th hearing, the applicant testified that, to date, the customers for her business have all been schools, non-profits and similar groups generally in the urban Portland area, none on Sauvie Island or rural areas. It is not enough under Policy 3.16 to simply provide a place to “welcome small groups of fellow islanders and visitors to the Creative Space on the ground floor of [the] single-family dwelling” or to aid in the facilitation of “creative exploration, reflection, expression, and collaboration” (Ex. A.33) or to “provide an inclusive gathering space for island residents and like-minded visitors...” (Ex. A.35). Policy 3.16 imposes an affirmative burden to demonstrate that a local need exists for the service and that the proposal is narrowly tailored in scale and type to meet that local need. Making the creative space available to local residents

and off-island visitors alike, does not establish a local need. It is also unlikely that any of the over-night stay workshops would be tailored to meet a local rural need because local Sauvie Island residents would already live close-by and are more likely to go home at the end of the day. Thus, the over-night, short-term rental aspect of the proposed home occupation appears to be focused exclusively on non-rural, non-local customers and is therefore particularly problematic under this Policy.

Instead, the description of the business states that the bucolic, rural agricultural environment of Sauvie Island will enhance and benefit the participants attending the creative experiences, and there is no explanation as to how the creative experiences are tailored in scale or type to serve local or rural needs. Policy 3.16 requires the reverse. Put differently, the home occupation must serve the needs of the local rural area, not the other way around. Granted, and as discussed at length in the preceding sections addressing compatibility, this home occupation does not present any noteworthy incompatibilities with Sauvie Island's rural agricultural setting. Policy 3.16 and MCC 39.7015(A)(8), however, require more than mere compatibility. Policy 3.16 requires that the non-agricultural business serve an identified and documented local rural need. In this record, the applicant's narrative does not explain how or why this non-agricultural commercial enterprise will serve local rural needs, or that any such rural need even exists. Policy 3.16 presents a difficult burden for any new non-agricultural business proposed for Goal 3 farm land and rural areas generally, and this applicant has not demonstrated that the home occupation meets the Policy's requirements.

c. Chapter 5 (Natural Resources), Water Quality and Erosion Control, Policy 5.14: Stormwater drainage for new development and redevelopment shall prioritize water quality and natural stream hydrology in order to manage stormwater runoff in accordance with the following:

1. The run-off from the site shall not adversely affect the water quality in adjacent streams, ponds, or lakes, or alter the drainage on adjoining lands, or cause damage to adjacent property or wildlife habitat.
2. Stormwater infiltration and discharge standards shall be designed to protect watershed health by requiring onsite detention and/or infiltration in order to mimic pre-development hydraulic conditions so that post-development runoff rates and volumes do not exceed pre-development conditions.
3. Apply Low Impact Development Approaches (LIDA) in order to conserve existing resources, minimize disturbance, minimize soil compaction, minimize imperviousness, and direct runoff from impervious areas onto pervious areas.
4. Protect and maintain natural stream hydrology (or flow), with an emphasis on reducing hydromodification impacts such as stream incision and widening.
5. Develop and adopt drainage system design guidelines and standards to accommodate fish and wildlife passage where appropriate.
6. Develop and adopt standards for managing stormwater in landslide hazard areas in accordance with best management practices.

The applicant provided a storm water certificate discussing the storm water drainage for the new development and redevelopment of the subject property. The storm water certificate was signed by Mia C. Mahedy, Registered Professional Engineer on May 30, 2019. The certificate indicated that the project is exempt from flow control,

as discharge of stormwater would be directly into the Columbia River. MCC 39.6235 requires anyone creating new or replacing existing impervious surfaces exceeding 500 sf to install a stormwater drainage system designed to ensure that the rate of runoff for the 10-year 24-hour storm event is no greater than existed prior to development. In this case, the applicant's engineer did not apply the correct standard, but instead appears to have applied the City of Portland Storm Water Manual.

Notwithstanding that omission, the Hearings Officer concludes that the site is sufficiently large enough, and the amount of impervious surface proposed small enough, that the requirements of Policy 5.14 and MCC 39.6235 can be met on-site. A condition, therefore, is warranted requiring that the applicant provide a new storm water certificate prior to authorization of building permits certifying that stormwater/drainage control systems are 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 as required by MCC 39.6235. In meeting the storm water requirements, the applicant must provide credible evidence that the storm water management system will prioritize water quality and natural stream hydrology in addition to ensuring that storm water run-off will not adversely affect the water quality in adjacent streams, ponds, or lakes. Additionally, in meeting these storm water requirements, the applicant's engineering certificate must ensure that storm water management will not alter the drainage on adjoining lands or cause damage to adjacent property or wildlife habitat. As conditioned, the Hearings Officer concludes this policy is met.

d. Chapter 5 (Natural Resources), Air Quality, Noise, and Lighting Impacts, Policy 5.43: Require outdoor lighting to be low intensity and designed in a manner that minimizes the amount of light pollution. As discussed previously, applicant's exterior lighting is required to meet the County's Dark Sky Lighting Standards, which will result outdoor lighting being low in intensity and designed in a manner that minimizes the amount of light pollution. As conditioned, the Hearings Officer concludes this policy is met.

e. Chapter 6 (Historic and Cultural Resources), Cultural and Archeological Resources, Policy 6.4: Require reporting of the discovery of Native American artifacts and other cultural resources to SHPO and the Native American tribes. There is no evidence, mapping or other indications that the site is within an area where materials of an archaeological nature, a historical nature, a prehistorical nature, or an anthropological nature exist or have been found. However, because there is a possibility that historical, archaeological artifacts, and/or depositions could be found during construction of the replacement dwelling, a condition of approval is warranted requiring the reporting of the discovery of Native American artifacts and other cultural resources to SHPO and the Native American tribes. As conditioned, the Hearings Officer concludes this policy is met.

f. Chapter 9 (Rural Economy), General Policies, Policy 9.8: Allow for home occupations wherever dwellings are permitted in order to assist in developing new business opportunities and to increase convenience to residents, while considering and minimizing impacts on adjacent land uses. As a theoretical matter, this Policy supports approval simply because this home occupation could be of service to the local rural community. Unlike Policy 3.16, Policy 9.8 does not require a

demonstration that, in fact, the proposed new business will serve the needs of the local rural area. As such, the Hearings Officer finds that this use satisfies Policy 9.8.

g. Chapter 11 (Public Facilities), Water Supply and Wastewater Treatment Systems, Policy 11.12: A water supply system for new development shall be by either of the following methods:

1. Connection to a public water system having adequate capacity to serve the development and all other system customers
2. A private water system that produces safe drinking water with sufficient volume and pressure to meet applicable Building Code and Fire Protection Code

The applicant completed a Certification of Water Service, which indicates that an existing well located on the lot and supplies water at a rate of 33 gallons per minute (Ex. A.14). At 33 gallons per minute, the private water system will produce safe drinking water with sufficient volume and pressure, and on this basis the Hearings Officer concludes this policy is met.

h. Chapter 11 (Public Facilities), Water Supply and Wastewater Treatment Systems, Policy 11.13: Wastewater disposal for new development shall be by any of the following methods:

1. Connection to a public sewer system having adequate capacity to serve the development and all other system customers
2. A private system that meets Oregon Department of Environmental Quality regulations

The applicant provided a septic review certification that completed by the City of Portland Bureau of Development Services Onsite Sanitation indicating that the private system meets Oregon Department of Environmental Quality regulations (Ex. A.12). On this basis the Hearings Officer concludes this policy is met.

i. Chapter 11 (Public Facilities), Police, Fire, and Emergency Response Facilities, Policy 11.17: As appropriate, include school districts, police and fire protection, and emergency response service providers in the land use process by requiring review of land use applications from these agencies regarding the agency's ability to provide the acceptable level of service with respect to the land use proposal. The applicant provided a Fire Service Agency Review form that was completed by Norvin Collins, Fire Chief (Ex. A.10). The form states that "the proposed development is in compliance with the standards of the Oregon Fire Code Standards by [Sauvie Island Fire District - Rural Fire Protection District #30J]." However, the form also states that a "defensible space of 30 feet around the structure/building/addition" and "a fire sprinkler system meeting Section 903.1.3 (NFPA 13D) shall be installed. Therefore, a condition is warranted requiring these fire suppression and protection measures. The applicant also provided a Police/Sheriff Services Review form signed by Michael Reese, Sheriff, indicating that the level of police/sheriff service available to serve the proposed project is adequate (Ex. A.11). Based on this evidence, and as conditioned, the Hearings Officer concludes this policy is met.

8. The use is limited in type and scale to primarily serve the needs of the rural area – MCC 39.7015(A)(8): This standard presents a difficult burden of proof, similar to what is required to demonstrate compliance with Policy 3.16. The wording of MCC 39.7015(A)(8), however, indicates a primary, not necessarily an exclusive, focus of the business on serving local rural needs, which presumes that a secondary purpose of serving non-rural needs is acceptable. Despite that subtle difference, this mandatory approval criterion still requires evidence of a local rural need for the service proposed and evidence that the business is limited in type and scale to primarily (but not exclusively) serve that need. The applicant’s narrative (Ex. A.33) states that the home occupation will be limited in type and scale to primarily serve the needs of the rural area, but there is no evidence of any rural need for the service offered in this application. It is not enough under MCC 39.7015(A)(8) to simply provide a place to “welcome small groups of fellow islanders and visitors to the Creative Space on the ground floor of [the] single-family dwelling” or to aid in the facilitation of “creative exploration, reflection, expression, and collaboration.” (Ex. A.33). Also, it is unlikely that any of the over-night stay workshops would be of particular interest to local rural residents because they would already live close by and are more likely simply to go home at the end of the day. Thus, the over-night, short-term rental aspect of the proposed home occupation is particularly problematic under this criterion. For these reasons, this CUP criterion is not met.

V. DECISION AND CONDITIONS:

Based on the foregoing findings and except as conditioned below, the Hearings Officer approves the replacement dwelling and SEC permit for its construction in substantial compliance with the application materials. The Hearings Officer denies the request for an agriculture building because of the absence of an underlying “farm use” as defined in ORS 215.203 and required by MCC 39.4310(F)(8). The Hearings Officer also denies the conditional use permit for the home occupation for failure to demonstrate that the use is limited in type and scale to primarily serve the needs of the rural area as required by MCC 39.7015(A)(8) and Comprehensive Plan Policy 3.16.

This replacement dwelling is approved as proposed, subject to the requirements that the developer, owner or subsequent developer (the “developer”) shall comply with all applicable code provisions, laws and standards and the following conditions of approval. The following conditions shall be interpreted and implemented consistently with the foregoing findings:

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 developer to comply with these documents and the limitations of approval described herein. MCC 39.7005(B).
2. Permit Expiration – This land use permit shall expire as follows:
 - a. Within 2 years of the date of the final decision when construction of the single-family dwelling has not commenced. MCC 39.1185(B).
 - i. For the purposes of 2.a, commencement of construction shall mean actual construction of the foundation or frame of the approved single-family dwelling and agricultural building.

- ii. For purposes of Condition 2.a, notification of commencement of construction will be given to Multnomah County Land Use Planning Division a minimum of 7 days prior to date of commencement. Work may commence once notice is completed. Commencement of construction shall mean actual construction of the foundation or frame of the approved structure.

Note: The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 39.1195, as applicable. The request for a permit extension must be submitted prior to the expiration of the approval period.

3. Prior to Land Use Planning zoning review use sign-off authorizing building plan check, the developer shall:
 - a. Record pages 1-9 and 32-36 of this Final Order with the County Recorder, in addition to Exhibit A.27 (A131, A132, A201 & A202), and Exhibit A.32 (A101 & A102). The exhibits should be reduced to a size of 8.5" x 11" for recording purposes. This Final Order shall run with the land. Proof of recording shall be made prior to the issuance of any permits and shall be filed with the Land Use Planning Division. Recording shall be at the applicant's expense. MCC 39.1175.
 - b. Record a covenant with the County Recorder's Office that states that the property owners recognize and accept that farm activities including tilling, spraying, harvesting, and farm management activities during irregular times, occur on adjacent property and in the general area. The covenant is exhibited under Exhibit B.12. MCC 39.4325(H), MCC 39.7015(A)(3), and Comprehensive Plan Policy 3.15.
 - c. Record a covenant with the County Recorder's Office that states that the owner understands and agrees that the single-family dwelling cannot contain a second dwelling unit or ADU. The covenant is exhibited under Exhibit B.13. MCC 39.7405(A).
 - d. Obtain Driveway (Access) Permit for approach to County road. The driveway permit will need to be for a 20 foot wide paved approach. Application materials are available online at <https://multco.us/roads/road-and-bridge-permit-applications>. Questions can be directed to ROW.Permits@multco.us. [MCRR 4.000, 6.000, 18.000]
 - e. Sign a non-remonstrance agreement, or deed restriction, which will require that the property participate in standard Rural Local road improvements along the site's frontage that are not completed as a part of the site's required interim improvements. The developer should contact Pat Hinds at (503) 988-3712 or patrick.j.hinds@multco.us to complete the deed restrictions. MCRR 9.400.
4. At the time of Land Use Planning zoning review sign-off authorizing building plan check, the developer shall:
 - a. Submit a fire sprinkler system plan meeting Section 903.1.3 (NFPA 13D). MCC 39.6560(B)(1), MCC 39.6570(A)(2)(a), and Comprehensive Plan Policy 11.17.

- b. Submit a revised storm water certificate and site plan that demonstrates compliance with MCC 39.4325(G) and MCC 39.6235. MCC 39.4325(G) and Comprehensive Plan Policy 5.14. The revised storm water certificate and site plan shall be revised to relocate or remove the storm water system, which includes the 20 LF Level Spreader Trench and associated piping that is located between the proposed single-family dwelling and Columbia River. If a storm water system is proposed for the area between the proposed single-family dwelling and the Columbia, the system shall be designed to minimize erosion into the Columbia River and be vegetated with native plants. MCC 39.5540(J).
 - c. Submit exterior colors of single-family dwelling. The colors shall be earth-tones found at the specific site or in the surrounding landscape. The earth tones shall match the color pallet in the *Columbia River Gorge Commission Scenic Resources Implementation Handbook*. MCC 39.5540(L).
 - d. Submit updated building plans that indicate the exterior materials of the single-family dwelling. The exterior materials shall be composed of non-reflective materials or materials with low reflectivity. All windows installed facing the Columbia River shall have a reflectivity rating of less than 11%. MCC 39.5540(L).
 - e. Submit a building plan including cut sheets and specifications showing all exterior lighting on the subject property. The exterior lighting shall be fully shielded with opaque materials and directed downwards.
 - i. "Fully shielded" means no light is emitted above the horizontal plane located at the lowest point of the fixture's shielding.
 - ii. Shielding must be permanently attached.
 - iii. The exterior lighting shall be contained within the boundaries of the parcel on which it is located. MCC 39.4325(J), MCC 39.5540(L), MCC 39.6850, and Comprehensive Plan Policy 5.43.
5. Prior to and during construction, the developer shall ensure that:
- a. All BMP measures are installed and maintained. The BMP measures shall be required to meet the Erosion and Sediment Control permit that is being reviewed under land use case T1-2019-12053. MCC 39.5540(J).
6. During construction, the developer shall comply with the following procedures.
- a. These procedures shall be in effect if any Cultural Resources and/or Archaeological Resources are located or discovered on the tax lots or within the project area, including finding any evidence of historic campsites, old burial grounds, implements, or artifacts:
 - i. Halt Construction – All construction activities within 100 feet of the discovered cultural resource shall cease. The cultural resources shall remain as found; further disturbance is prohibited.
 - ii. Notification – The project applicant shall notify the County Planning Director and the State Historic Preservation Office (SHPO) within 24 hours of the discovery. If the cultural resources are prehistoric or otherwise associated with Native Americans, the

project applicant shall also notify the Indian tribal governments within 24 hours.

- iii. Survey and Evaluation – The applicant shall follow any and all procedures outlines by SHPO and if necessary, obtain the appropriate permits. ORS 273.705 & ORS 358.905 to 358.955.
 - iv. All survey and evaluation reports and mitigation plans shall be submitted to the Planning Director and SHPO. Indian tribal governments also shall receive a copy of all reports and plans if the cultural resources are prehistoric or otherwise associated with Native Americans.
 - v. Construction activities may recommence when SHPO requirements are satisfied. MCC 39.5510(B), MCC 39.5540(H) and Comprehensive Plan Policy 6.4.
- b. The following procedures shall be in effect if human remains are discovered during excavation or construction (human remains means articulated or disarticulated human skeletal remains, bones, or teeth, with or without attendant burial artifacts):
- i. Halt Activities – All survey, excavation, and construction activities shall cease. The human remains shall not be disturbed any further.
 - ii. Notification – Local law enforcement officials, the Multnomah County Planning Director, State Historic Preservation Office and the Indian tribal governments shall be contacted immediately.
 - iii. Inspection – The State Medical Examiner shall inspect the remains at the project site and determine if they are prehistoric/historic or modern. Representatives from the Indian tribal governments shall have an opportunity to monitor the inspection.
 - iv. Jurisdiction – If the remains are modern, the appropriate law enforcement officials will assume jurisdiction and this protection process may conclude.
 - v. Treatment – Prehistoric/historic remains of Native Americans shall generally be treated in accordance with the procedures set forth in ORS 97.740 to 97.760. MCC 39.5510(B), MCC 39.5540(H) and Comprehensive Plan Policy 6.4.

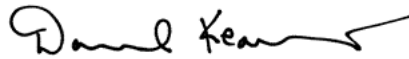
7. As an on-going condition, the developer shall:

- a. Not design or alter the single-family dwelling to contain a second dwelling unit that meets the definition of an accessory dwelling unit or duplex. At no point shall the single-family dwelling be partitioned or cordoned off to create a separate dwelling unit, which could provide a second area that contains complete and independent living facilities. The single-family dwelling shall not be used in a manner that houses two independent families. MCC 39.7405(A) & MCC 39.4310(A).
- b. Maintain a defensible space of 30 feet around the single-family dwelling. The defensible space will need to be maintained as follows: Trees within

this space shall be spaced with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches within 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height. MCC 39.5510(B), MCC 39.5540(H) and Comprehensive Plan Policy 6.4.

- c. Retain the existing tree cover screening the existing single-family dwelling from the Columbia River, except as is necessary for site development or safety purposes. The property owners shall be responsible for the proper maintenance and survival of the vegetation. Any tree removal that is necessary for site development, or if any trees die or are removed from the area between the Columbia River and single-family dwelling shall be replaced immediately with similar tree species, species native to the setting, or species commonly found in the area. The replacement tree species shall be a minimum of 2-inch caliper size or greater and at least one-quarter of any trees planted for screening shall be coniferous for winter screening. The replacement tree shall be planted in the area between the proposed single-family dwelling and the Columbia River. MCC 39.5540(L).

Date of Decision: February 26, 2020.



By: _____
 Daniel Kearns,
 Land Use Hearings Officer

Exhibit List for T3-2019-12052

Exhibit	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	General Application Form	06/04/2019
A.2	1	I. General Application Documents Table of Contents	06/04/2019
A.3	3	Legal Description	06/04/2019
A.4	4	Voluntary Compliance Agreement	06/04/2019
A.5	1	Non-EFU Farmland Special Assessment Letter	06/04/2019
A.6	1	II. Storm Water, Grading and Erosion Table Of Contents	06/04/2019

A.7	1	Storm Water Certificate	06/04/2019
A.8	8	Grading and Erosion Control Worksheet	06/04/2019
A.9	1	V. Service Provider Review Form and Certificates Table of Contents	06/04/2019
A.10	2	Fire Service Agency Review	06/04/2019
A.11	1	Police / Sheriff Services Review	06/04/2019
A.12	6	Septic Review Certification	06/04/2019
A.13	1	Transportation Planning Review	06/04/2019
A.14	1	Certification of Water Service	06/04/2019
A.15	1	VII. Narratives Table of Contents	06/04/2019
A.16	3	Proposal	06/04/2019
A.17	2	MUA-20 Narrative	06/04/2019
A.18	6	Type C Home Occupation Narrative	06/04/2019
A.19	2	Conditional Use Narrative	06/04/2019
A.20	2	Comprehensive Plan Narrative	06/04/2019
A.21	5	SEC-g Overlay Narrative	06/04/2019
A.22	13	Floodplain Development Narrative	10/10/2019
A.23	16	Off-Street Parking and Loading Narrative	10/10/2019
A.24*	7	Site Plans (24" x 34") - C1: Stormwater, Grading, Erosion Plan - A101: Site Plan - A102: Enlarged Site Plan - *A131: Floor Plan-Level 1 - *A132: Floor Plan-Level 2 - *A201: Exterior Elevations - *A202: Exterior Elevations 2	10/10/2019
A.25	2	Revised Narrative Cover Letter	10/10/2019
A.26	4	Revised Narrative Table of Contents	10/10/2019
A.27	11	Floor Plan/Building Plan for Proposed Agricultural Building - Floor Plan - Elevations - Truss Design - Building Plans (11" x 17") o PFB-01 Plan View o PFB-02 Elevation Views o PFB-03 Section A o PFB-04 Section B	10/10/2019

		<ul style="list-style-type: none"> ○ PFB-05 Framing Details ○ PFB-06 Door Framing Details ○ PFB-07 Standard Details ○ PFB-08 Construction Notes 	
A.28	6	Revised Type C Home Occupation Narrative	10/10/2019
A.29	6	Significant Environmental Concern Narrative	10/10/2019
A.30	2	Letter from Dr. Robert D. Mangold, Environmental Consultant	10/10/2019
A.31	8	Revised Grading and Erosion Control Worksheet	10/10/2019
A.32*	3	Revised Site Plans (24" x 34") <ul style="list-style-type: none"> - C1: Stormwater, Grading, Erosion Plan - *A101: Site Plan - *A102: Enlarged Site Plan 	10/10/2019
A.33	3	Revised Proposal	10/10/2019
A.34	2	Revised MUA-20 Narrative	10/10/2019
A.35	2	Revised Comprehensive Plan Narrative	10/10/2019
A.36	14	Revised Floodplain Development Narrative	10/10/2019
A.37	16	Revised Off-Street Parking and Loading Narrative	10/10/2019
A.38	1	E-mail updating bedroom usage for Home Occupation	01/08/2020
A.39	2	E-mail and Narrative Addressing MCC 39.6560	01/10/2020
'B'	#	Staff Exhibits	Date
B.1	2	A&T Property Information for 3N1W26A – 00500 (R695200050)	06/04/2019
B.2	1	A&T Tax Map for 3N1W26A – 00500 (R695200050) with Property Highlighted	06/04/2019
B.3	1	Reeder Estates Subdivision Plat (reduced from 24" x 18" to 17" x 11")	12/30/2019
B.4	1	Statutory Warranty Deed recorded in Book 2487, Page 1074 on December 16, 1991	12/30/2019
B.5	1	Aerial Photo from 2018	12/30/2019
B.6	1	Goggle Maps: 3D Image Capture	01/02/2020
B.7	1	Square Foot Calculations	01/06/2020
B.8	1	Google Maps: Streetview image from June 2016	01/10/2020
B.9	1	Deer and Elk Habitat Mapping, Apr. 201	01/10/2020

B.10	1	Wildlife Habitat Map adopted as part of Ordinance 640 on Tuesday, February 20, 1990	01/10/2020
B.11*	2	Floor Plan showing areas of the Home Occupation	01/10/2020
B.12	2	Covenant Containing Conditions and Restrictions Accepting Farm Activities	01/23/2020
B.13	2	Covenant - Notice of Zoning Compliance - Single Family Residence	01/23/2020
'C'	#	Administration & Procedures	Date
C.1	3	Incomplete Letter	06/28/2019
C.2	1	Applicant's Acceptance of 180 Day Clock	07/09/2019
C.3	1	Complete Letter (Day 1)	11/04/2019
C.4	12	Notice of Public Hearing	01/10/2020
C.5	64	Staff Report	
'D'	#	Comments Received	Date
D.1	5	E-mail and Letter from Mark Greenfield	01/16/2020
'H'	#	Hearing Exhibits	Date
H.1	1	Applicant Query – Signage	02/07/2020
H.2	1	Applicant's proposed parking site plan	02/07/2020
H.3	2	Applicant Query – Number of parking spaces	02/07/2020
H.4	1	Applicant Query – Number of customers	02/07/2020
H.5	1	Color chart	02/07/2020
H.6	6	Applicant Query – Exterior Home color & photos	02/07/2020
H.7	1	Applicant's proposed parking site plan – 13 spaces	02/07/2020
H.8	1	Agricultural Data	02/07/2020
H.9	1	Hearing sign-in sheet	02/07/2020