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September 10, 2026

Multnomah County Land Use Planning
1600 SE 190th Ave,
Portland, OR 97233

Officer Doughman,

This office represents Scott and Stacy Reed in their appeal regarding Code Case CCPR1-2025-0003. We respectfully submit this memorandum, along with the attached declarations and supporting evidence, for inclusion in the record prior to the public hearing scheduled for September 11, 2026.

As explained herein, the County's enforcement action is legally and procedurally flawed because the County cannot meet its requisite evidentiary burden. To support its claims, the County relies almost exclusively on unverified historical aerial Google Earth imagery without on-the-ground documentation. Because the County has failed to collect necessary evidence, the County relies on misinterpretation of its own code and assumptions to generate alleged development activity. Furthermore, several of the assumptions relied upon by the County depend on alleged activities that predate Respondents' use and ownership of the property. The County cannot lawfully impose penalties on Respondents for actions undertaken by third parties.

Furthermore, many of the activities at issue constitute protected agricultural and forestry practices on resource-zoned land that are preempted from local regulation pursuant to ORS 215.253 and ORS 527.722. Rather than conducting thorough fact-finding or engaging in constructive dialogue to understand the operational realities of the property, the County has improperly subjected the Reeds to civil penalties for carrying out standard, protected farm and forestry practices.

Finally, this enforcement action raises fundamental issues of equity regarding any proposed remedy. The County has never conducted an inspection or accurately measured any of the alleged activity, yet it seeks to enforce violations spanning multiple years, including periods that predate Respondents' ownership of the property. Because the County lacks a verified baseline, it is incapable of providing Respondents with an intelligible standard for remediation. As such, Respondents are potentially subject to never-ending daily fines for over a dozen violations. These fines can only be remedied if the County grants discretionary approval of retroactive permits based on completely subjective criteria. This imposes an impossible standard for remediation that violates basic principles of fair notice, due process, and protection from excessive fines and coercive penalties under the Eighth Amendment to the U.S. Constitution.

A local government cannot satisfy its evidentiary burden through conjecture, nor can it hold current property owners liable for historical alterations that it cannot accurately measure or describe. Imposing ongoing penalties without articulating a clear, achievable path to compliance renders the proposed remedy unnecessarily punitive and legally unenforceable. Accordingly, if the Hearings Officer does find that Respondents engaged in unlawful activity, the Hearings Officer should decline to assess penalties or order remediation.

I. FACTS

Scott and Stacy Reed own real property located at 12424 NW Springville Rd, Portland, OR 97229 ("the Property"). The Property is approximately 84 acres in size and is split into three separate parcels. See Resp. Ex. A. The County describes the property as being zoned for Exclusive Farm Use (EFU). See Staff Report Pg. 1. Of note, the property is actually split-zoned EFU and Commercial Forest Use (CFU2). Resp. Ex. B.

Respondents bought the property in 2014. See Declaration of Scott Reed, ("Resp. Ex. C.") at 1 ¶ 5. Prior to their purchase of the Property, the Property was used as a working farm and commercial forestry operation. Id. This documented use goes back to the 1930's – long before Multnomah County even had a planning department. Id.

Respondents purchased the property with the intention of continuing to farm and produce timber on the property and have used the property since acquisition exclusively for farm use and forest practices. Id ¶ 7. Today, the Property is home to both Fat Goat Co. and Springwood Acres Farm – two commercial farming ventures run by the Respondents. Additionally, the Eastern Portion of the property includes approximately 20 acres of commercial timber that Respondents actively manage. Id ¶ 6. Those operations are described in more detail below.

Fat Goat Co. – Commercial Boer Goat Sales

As a part of their commercial farming operation, Respondents breed, raise, and sell Boer Goats, which are a large, horned, meat goat breed. Id at 3, ¶ 22; Resp. Ex. D. Raising and selling Boer Goats has become the global standard for goat meat production. Id. Male Boer Goats are notoriously large and aggressive – the average male Boer Goat weighs approximately 250lbs and stands over 3 ft tall. Id.

The goats graze across a majority of the Property through several fenced pastures. Id at 2, ¶ 10. Respondents access the pastures and move goats to and from different pastures using a network of farm roads on the property. Id. These roads are referred to as "Private Driveways" A, B, C, D, E, F in the Staff Report.

Because of their abnormal size and aggression, handling of the goats (which is required for Respondents to provide veterinary care, hoof trimming, weight management, and preparation for sale) requires specialized equipment and safety precautions. When Respondents first started raising these goats, they utilized a primitive make-shift corral on a grass surface to conduct standard animal husbandry and prepare the goats for sale. Id at 3-4, ¶ 23. That corral was located on the southwest corner of the Property where the current corral in question is located. Resp. Ex. A. The corral area is described as "Corral Area H" in the Staff Report, and is the most efficient location for large trucks to enter the Property to pick up the goats after they are sold. Res. Ex. C. at 4, ¶ 25.

In 2024, Respondents began improving the corral with stronger fencing and a new configuration for safety and efficiency. Id ¶ 24. In addition, consistent with the accepted agricultural practices for heavy use areas, Respondents leveled the area for proper drainage and added gravel to manage mud and ensure that the heavy trucks that frequent the Property were able to safely park and haul out the goats after they are sold. Id. Today, Corral Area H is the primary location where Respondents provide medical care, prepare for market, and sell their livestock. Id ¶ 22. Resp. Ex. E.

Springwood Acres – Commercial Egg Sales

Respondents also maintain a flock of laying hens for egg production, utilizing a sustainable pasture-raised model. Id at 2, ¶ 15. Rather than being confined, the flock ranges freely across designated, predator-protected pasture areas to forage naturally. Id. Respondents manage the birds using a rotational grazing system, systematically moving the hens between distinct pasture sections to allow the vegetation to regenerate naturally while providing the flock with fresh, varied forage. Id ¶ 10 The chickens are kept safe in mobile chicken shelters, which need to be moved and frequently maintained to avoid predation. Id ¶ 15; Resp. Ex. F.

Respondents also have multiple agricultural structures that they use to sell their eggs directly to the public. Id. For example, Respondents have two separate farm stands that they fill daily with eggs. Resp. Ex. G. Members of the public can drive up to the stands, place money in the cash box, and go home with a carton of fresh eggs. Resp. Ex. C. at 2 ¶ 9, 16. These farmstands are the primary method to which Springwood Acres sells its eggs directly to the public. Id.

Respondents access their chickens and their farm stands using a network of farm roads on the property. Id ¶ 10, 16. These roads are referred to as "Private Driveways" A, B, C, D, E, F in the Staff Report.

Douglas Fir Timber Stands

Respondents actively cultivate and manage Douglas Fir (*Pseudotsuga menziesii*), a primary merchantable tree species central to Oregon timber production. These trees were established as seedlings in 2007 after the prior owners clear cut most of the existing tree stands. Id at 1 ¶ 6, 11; Resp. Ex. I.1., I.2. To maintain these timber stands, Respondents perform regular stand maintenance and timber release activities, such as mechanical vegetative clearing and precommercial thinning, to ensure appropriate tree spacing and unimpeded canopy growth. Id at 2-3, ¶ 11; Ex. H.1. Respondents also carry out vital forest protection and infrastructure measures required to sustain a healthy working tree farm. Id. These routine operations include seedling protection from browse damage, insect and disease management, and slash disposal to mitigate wildfire risk. Id. Respondents use timber harvested from their properties to create merchantable wood products such as firewood, slabs, and boards. H.2.-H.4. Additionally, to ensure continuous equipment and vehicular access across the terrain, Respondents perform necessary road construction and routine road maintenance. Id at 3 ¶ 19.

Respondents access and maintain their timber stand using the network of roads on the property. Id at 2 ¶ 11. These roads are referred to as "Private Driveways" A, B, C, D, E, F in the Staff Report.

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Alleged Violations

In relation to these activities, the County alleges that Respondents have engaged in both unpermitted ground-disturbing activity under MCC 39.6210, and unpermitted SEC-s overlay development under MCC 39.5510. More specifically, the County alleges that soil, rock, and other material were deposited to develop Private Driveways A through D, Loading Area G, and Corral Area H. The County contends that filling requires a ground-disturbing activity permit even if the work supports farm operations. The County also alleges that development within the Significant Environmental Concern (Stream) ("SEC-s") Overlay occurred without a required SEC permit. More specifically, the County alleges that Respondents engaged in excavation, filling, grading, and deposits of non-earth materials associated with driveways A, B, D, E, and F; loading area G; and Corral H.

II. PROCEDURAL ERRORS

The Respondents have already raised several procedural issues in the Motion to Dismiss and Reply in Support of Motion to Dismiss, which are already a part of the record in this matter. Rather than setting forth the arguments contained in those documents in this memorandum, Respondents incorporate them in their entirety as if fully set forth herein, and urge the Hearings Officer to reconsider each argument raised in the Motion and dismiss this matter.

As the argument set forth below demonstrates, this is simply not the type of case for a quasi-judicial proceeding before a Hearings Officer using what amounts to normal land use procedures. Instead, this is a case that deserves the procedural protections offered by a formal court proceeding presided over by a trial court judge. The legislature never intended ORS 153.030(4) to authorize a local government to impose potential fines potentially exceeding $1 million through a quasi-judicial land use process.

In addition, Respondents raise the following additional procedural errors:

A. The County's Notice of Violation Fails to Identify the Civil Fine It Seeks to Impose Upon Respondents, in Contravention to MCC §39.1530(A), the Due Process Clause, and the Eighth Amendment Prohibition on Excessive Fines

MCC §39.1530(A) requires the County to issue a Notice of Violation (NOV) to a property owner accused of violating a provision of MCC Chapter 39. The requirements of the NOV are set forth in the subsection, which reads:

> *"(A) The CCS may issue respondent, and property owner, if different, a Notice of Violation and may require the respondent and property owner, if different, to abate the violation and/or enter into a voluntary compliance agreement within a specified time period. The Notice of Violation shall contain: name and address of the person committing the violation and property owner, if different; address or location of the alleged violation; nature of violation, including, County Code provisions, statute or administrative rules section violated; relief sought; department initiating procedure, and the fine to be paid as a result of committing the violation."*

In this case, the NOV issued to Respondents by the County on March 5, 2026 is materially flawed and invalid because it does not adequately indicate either the relief sought by the County or the

fine to be paid by Respondents as a result of the alleged ordinance violation. For the following reasons, the NOV is invalid and cannot serve as a charging instrument sufficient to support the imposition of a fine in this matter. The lack of a proper charging instrument is not immaterial, as it deprives Respondents of the due process owed to adequately prepare a defense and infringes upon their 8th Amendment protections from excessive fines.

1. The NOV fails to satisfy the requirements of MCC §39.1530(a).

As set forth above, MCC §39.1530(A) requires a NOV issued by the County in a code enforcement proceeding to identify, among other things, both the relief sought by the County and the fine to be paid by the Respondent for the alleged violation. The NOV issued by the County in this case does neither.

The County alleges a total of 13 separate violations by Respondents – six violations of conducting ground disturbing activities without a permit, as required by MCC §39.6210, and seven violations for excavation or fill activity within a SEC-s overlay without a permit, in violation of MCC §39.5510. For these violations, the County asserts that Respondents engaged in the alleged improper activities on multiple occasions (at least 33 separate occasions) spanning multiple years (from at least 2020-2025). See Record Ex. C.6.

Despite alleging numerous instances of non-compliance in the Staff Report, the County's NOV seeks to impose a continuing civil fine of $525 fine/per day upon Respondents. More specifically, the NOV states:

> *"A. CONTINUING CIVIL FINE of $525.00 per day (the total of two daily civil fines of $210. 00 and $315. 00) beginning on the date of the Hearings officer Final Order and continuing until the violations are corrected, except that the civil fine shall not accrue from the time that an application seeking to resolve the below violations is received by the Land Use Planning office and until a written determination is made on that application or the application is withdrawn by the applicant."*

Id at 2-3. While it is clear that the County intends to fine the Respondents, the NOV fails to specify whether the $525.00 fine amount is a cumulative daily fine for *all* of the alleged violations on the subject property (i.e. $525/day or $191,625/yr); a daily fine for *each* of the 13 alleged violations (i.e. 13 x $525 = $6,825/day - $2,491,125/yr.), or a daily fine for *each* instance of alleged unlawful activity over the span of the alleged years (i.e. 33 x $525 = $17,325/day - $6,323,625/yr.).

The County's failure to specify the amount of the fine is a material violation for multiple reasons:

First, the failure by the County to clarify the fine amount fails to satisfy the requirements of MCC §39.1530(A), as Respondents (and the Hearings Officer) are unable to understand either the relief sought by the County or the amount of the fine the County seeks. That is required under a plain reading of the County's code.

By failing to inform Respondents of the amount being sought by the County, the County prevents Respondents from understanding their financial exposure. Each of the alternative interpretations of proposed fines burden a significant property interest of Respondent, particularly since the County is seeking a daily fine until the alleged violations are "cured". The imposition of the latter two interpretations of the fines will result in fines exceeding the fair market value of Respondents'

property within a year, effectively eliminating Respondents' farm and forest operation. If the County (and Hearings Officer) intends to seek fines in an amount that would bankrupt the Respondents, Respondents are entitled to know that. This is the precise reason for the specific language in MCC §39.1530(A).

Second, the NOV fails to properly inform Respondents of the relief sought because it fails to specify a clear, objective, and certain path that Respondents can take to cure the alleged violations. In other words, not only are Respondents unsure of the potential fine being sought by the County, but Respondents are also unclear how they are to take any of the proposed compliance actions to toll the daily fines – mainly because it is unclear from the NOV whether there are two alleged violations, thirteen, or thirty-three.

More specifically, to remedy the alleged violations, the County seeks an order from the Hearings Officer requiring Respondents to take the following compliance actions:

> *"A. Immediately cease all unpermitted development, including ground disturbing activity and development within the SEC-s overlay, until such time that an application for the necessary permits is approved by the County.*
>
> *B. Of the following:*
>
> *1. Submit to the Land Use Planning office an application seeking approval for the ground disturbing activity and development within the SEC-s overlay.-OR*
>
> *2. Remove all earthen and non-earthen materials deposited on the subject properties in order to develop the four private driveways, the loading area, and ground preparation for a corral, and return the properties to their pre-development condition.*
>
> *C. Of the following:*
>
> *1. If the required permit application(s) are approved: Complete all work and conditions of approval required by the permit application approval in the timeline specified by the approval.-OR*
>
> *2. If the required permit application(s) are not approved and you have either accepted the decision or have utilized all appeal rights provided by relevant code and statute, then the following needs to be undertaken: Within 15 days of the final decision, schedule and attend a meeting with staff from the Code Compliance and Land Use Planning offices to discuss the options available for moving forward with the resolution of this compliance case."*

Id at 3. Ironically, the County does not seek a requirement that Respondents pay any outstanding fines incurred *prior* to the date of resolution of all three of the required steps set forth above, meaning that the fines can continue to accrue until the Respondents have satisfied each compliance action.

In plain terms, the County seeks the following three-step process as a way of resolution of this matter. However, given the vagueness of the NOV, it is unclear how Respondents can or should comply, and really, how the Hearings Officer will successfully be able to issue a final Order requiring Respondents' compliance:

STEP ONE: Respondents must cease all unpermitted development, including ground disturbing activity and development within the SEC-s overlay, until such time that an application for the necessary permits is approved by the County.

This first step is problematic for a variety of reasons. First, because the County has not made its theory of the case clear in either the NOV or the accompanying Staff Report, it is unclear what specific ground disturbing activity or development Respondents are supposed to stop doing. Is the alleged violation the cumulative action of disturbing the ground over a five-year period, or is the unpermitted activity each of the alleged actions already undertaken by Respondents? Since farming activity apparently falls within the definition of ground disturbing activity, is the County demanding that Respondents stop all farming activity on the subject property or only the alleged "unpermitted activity" set out in the NOV? There is simply no way for Respondents to know what the ban on unpermitted development entails without a clear directive from the County in its NOV.

Additionally, both MCC §39.6215 and MCC §39.5515 contain numerous exceptions allowing ground disturbing activities and development in the SEC-s overlay without a permit, including the maintenance of roads and many types of farm and forest activities that Respondents engage in as part of their farm/forest operation. Is the County seeking an order from the Hearings Officer mandating that Respondents stop maintaining their farm roads or farming in an exclusive farm/forest zone until they receive land use approval? As explained *infra*, it is unclear whether the County or the Hearings Officer have the authority to issue such a decision.

STEP TWO: Respondents must either (1) submit an application retroactively seeking approval for the alleged ground disturbing activities or (2) remove all earthen and non-earthen materials from the subject properties and restore the properties to their "pre-development" condition.

Again, Respondents are unable to determine what relief is sought here because the County has not indicated what the actual alleged violations are: are there two violations, thirteen, or thirty-three?

This matters as Respondents try to understand practically the relief sought. The language in MCC Chapter 39 is not clear as to how retroactive land use applications are resolved. Are Respondents required to submit one land use application for the entire property to retroactively get approval or activities that have occurred over the past five years? Or are Respondents supposed to submit land use applications for the SEC-s permit and a second for all of the ground disturbing activities under MCC §39.6210? Or are Respondents supposed to submit 13 different applications for each of the alleged violations or 33 applications for each of the alleged instances when they allegedly worked without a permit? Will the County charge Respondents a separate application fee for each application and process them separately? The number of questions that arise from this compliance pathway are staggering, but without a proper charging instrument, it is nearly impossible for Respondents to understand the relief sought.[1]

[1] The number of questions that arise from this compliance pathway are staggering: What if a neighbor appeals one or more of the applications to LUBA? Do the fines accumulate during that period? What if the County agrees to an extension of time during the LUBA appeal period at the request of a neighbor/appellant? Do Respondents have to pay $525 for every day of the extended period? What if some applications are approved and others aren't? Do the fines accumulate during that period? Who makes that decision – a county staff person? What are the standards applicable to each permit? The County has alleged

The second option is for Respondents to remove all materials and restore the properties to their "pre-development condition". There is no definition of "pre-development condition" in MCC Chapter 39, and no process or criteria for obtaining a permit to restore the property to its "pre-development" condition". What does this mean, what evidence are Respondents required to submit, what are the approval criteria, if any, and who gets to decide the "pre-development condition" of the property, and whether an appeal of that decision is allowed? Again, the failure of the County to accurately describe the alleged violations makes this nearly impossible for Respondents to understand. Are respondents supposed to remove all material filled over the totality of their ownership of the property? Are Respondents supposed to remove material added on a specific day or in a specific amount? As explained below, the County has no measurements of any material added on a specific day or in a specific amount, nor does the County have an accurate baseline to work from – the County makes only blanket allegations based on assumptions and aerial images. How is anyone, including the County Planning Department or the Hearings Officer, to know how much material is to be removed? If there is a disagreement between Respondents and the County regarding the completion of the work, what is the process for resolving that dispute? Do the daily fines continue during that process?

Regardless of which path Respondents choose to satisfy Step Two, it is simply impossible to determine how to comply, meaning Respondents are unable to determine the relief sought. The lack of detail in the charging instrument makes it impossible for both the Respondents to evaluate how to proceed in this matter and the Hearings Officer to issue an equitable remedy. Unless and until the NOV provides a clear path demonstrating how Respondents can comply with the County's suggested remedy and abate the fines, it has not satisfied its requirement of specifying the relief sought under MCC §39.1530(A).

> **STEP THREE: Respondents must either complete all work necessary to comply with the permit(s) they received from the County in Step Two. If they receive approval for all of the permit(s) the County chooses to require them to apply to receive, then the daily fine is abated during the period while they complete necessary work to comply with the permit(s). If they do not receive a permit(s), for whatever reason, they must schedule and attend a meeting with County staff to discuss the options available for moving forward.**

In plain terms, if Respondents cannot get land use permits for undefined retroactive development (which they likely cannot), or restore the subject properties to their "pre-development condition"(which is undefined and not subject to any proscribed procedural process), their remedy is to reach out to the County for a meeting, where County's staff will – in essence – make something up for compliance.

As with proposed Compliance Steps One and Two, Step Three also fails to comply with the requirements of MCC §39.1530(A) because it neither specifies a fine nor relief sought. Instead,

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that the violations were the result of Respondents work over a number of years. Do the criteria in the MCC at the time of the alleged work apply to the issuance of the permit (the SEC-s permitting requirements have changed multiple times in the last few years), or will the County apply the current approval criteria? What if there are approval criteria that Respondent simply cannot satisfy for some alleged violations, like the 100-foot requirement in MCC §39.5590(A)(1)(a)? Does that preclude Respondent from resolving the matter through a successful application?

Step Three offers relief that is entirely discretionary with the County, subject to the unfettered interpretation and work schedule of County staff, and something the Hearings Officer cannot know. In the meantime, Respondents face uncertain daily fines ranging from $525/day to $17,325/day /day depending upon how the County intends to proceed under the NOV, which they have not made clear to Respondents or the Hearings Officer. Step Three simply cannot be deemed to comply with the requirements of MCC §39.1530(A).

The failure by the County to comply with the requirements of MCC §39.1530(A) renders the NOV invalid. As explained below, these failures are not immaterial. The Hearings Officer should dismiss the matter, or at the very least, require the County to issue a new NOV that makes it clear what relief the County seeks and the amount of the fine, and start this process over.

2. The Failure to Prepare a Proper Charging Instrument is Unlawful and Violates Respondents' Due Process Rights.

The County seeks to impose an ongoing daily fine upon Respondents for the alleged failure by Respondents to obtain one or more ground disturbing activity permits and SEC-s permits. As explained above, what the County leaves out is significant. Neither the NOV or the subsequent County Staff Report specify whether the "violations" are two violations amounting to the sum total of all instances of alleged non-compliance, thirteen (13) violations for developing or disturbing each of the identified areas, or thirty-three (33) violations for each alleged incident of unpermitted activity allegedly committed by Respondents in the 13 different areas identified by the County as outlined in the Staff Report. Depending on the County's intent, the amount of the daily fine is either $525/day, $6,825/day, or $17,325/day.[2]

This vagueness creates a due process problem as it deprives Respondents of their right to be properly informed of the allegations brought against them, which impair their ability to prepare a proper defense. The Due Process Clause of the Fourteenth Amendment to the United States Constitution prohibits states from depriving persons of "life, liberty, or property without due process of law." *Naina v. Or. Med. Bd.*, 312 Or App 392, 398, 494 P3d 1018, 1025 (2021); US Const, Amend XIV, § 1. Money and real property are property interests protected by the Due Process Clause. *Carr v. SAIF Corp*., 65 Or App 110 (1983).

As the Oregon Court of Appeals has noted, the procedural Due Process requirements are "flexible" and call for "such procedural protections as the particular situation demands." *Naina*, 312 Or App at 399 (quoting *Morrissey v. Brewer*, 408 US 471 (1972)). In applying that flexible test to each individual case, the Oregon Court of Appeals applies the three-prong test from *Matthews v. Eldridge*, 424 US 319 (1976):

(1) The private interest affected by the government action;

[2] In this case, the County has completely failed to explain the method of calculating the amount of the fine it seeks from Respondents. The NOV provides that the County seeks a "continuing civil fine of $525 per day," that the fine begins "on the date of the Hearings Officer Final Order, and that the daily fine will be abated "from the time that an application seeking to resolve the below violations is received by the Land Use Planning office and until a written determination is made on that application or the application is withdrawn by the applicant." That is the sum total of the County's proposed fine.

(2) The risk of erroneous deprivation under the procedures used and the probable value of additional or substitute safeguards; and

(3) The government's interest, including the fiscal and administrative burdens of additional procedures.

Mathews v. Eldridge, 424 US 319, 335, 96 S Ct 893, 903, 47 LEd2d 18, 33 (1976). Oregon courts apply that same framework in administrative adjudications. See *Sachdev v. Oregon Medical Board*, 312 Or. App. 392, 494 P.3d 1018 (2021).

Here, the private interests of the Respondents are significant. Depending on how the County chooses to present its case – which they have not made clear in their NOV or the staff report – Respondents face potentially dozens of violations with financial penalties of up to $17,325/day – a sum that would bankrupt their family. They also face the possibility of having to remove an undefined amount of material from their property or make significant modifications to their property, which could cost them substantial amounts of capital and/or depreciate the value of their land. Additionally, the risk of erroneous deprivation of their property under the NOV and Staff Report is high, given that these are the charging instruments that Respondents must rely upon in preparing their defense, and that the Hearings Officer must rely upon in making a decision.[3] The government should have a significant interest in properly defining nature of the violations, and it's administrative burden would be *de minimis*.

In addition, the County fails in their NOV (and Staff Report) to provide an objective action which Respondents can complete to abate the daily fines, whatever the amount. Instead, as noted above, the County gives Respondents three choices – submit and complete an application(s), restore the property to its pre-development condition, or meet with County staff and hope something good comes out of it.

Neither the NOV or Staff Report clarify whether the Respondents are required to submit two applications (one for the alleged SEC-s violations and the other for the alleged ground disturbing activity violations), 13 applications (one for each allegation), or 33 applications (one for each alleged violation in each of the 13 areas identified by the County). The County does not specify what happens to the fines if Respondents successfully complete some, but not all, of the applications, whether daily fines will continue for County caused delays (staff is sick, wants to do something else, goes on vacation, is busy etc.), or what criteria staff will apply if everything breaks down and the only avenue left for Respondents under the NOV is the "sit down with the Staff and talk about it" option.

Applying *Matthews* to the foregoing demonstrates the complete inadequacy of the NOV and the proposed Compliance Actions outlined by the County. Again, the private interests of the Respondents are significant. Depending on how the County chooses to present their case – which they have not made clear in their NOV or the staff report – Respondents face potentially dozens of violations with financial penalties of up to $17,325/day. This excludes the costs of preparing and applying for the multiple land use applications they may have to apply for. Respondents also

[3] If this case was brought in Circuit Court, Respondents would have the ability to file a motion to make the NOV more definite and certain. However, given the choice of the County to keep this in a local administrative proceeding, that motion is not available to the Respondents.

face having to possibly remove an undefined amount of material from their property, or make significant modifications to their property, which could cost them significant amounts of capital and/or depreciate the value of their land. The risk of erroneous deprivation is obvious and high – the Notice of Violation and Staff Report are the charging instruments that Respondents must rely upon in preparing their defense, and that the Hearings Officer must rely upon in making a decision, and determining the adequate remedy. The government should have a significant interest in creating a realistic path for compliance, otherwise they risk wasting the Hearings Officer time and their staff's resources.

Respondents anticipate that the County will argue that the three-step approach in the "compliance actions" section of NOV are clear and objective and can be understood and complied with by Respondents if they so choose. The County will likely argue that the Respondents can restore their property to "pre-development condition" if they so choose, thereby satisfying compliance action B.2., or can apply and receive SEC-s and ground disturbance permits pursuant to MCC §39.5530 and 5590 and MCC §6210(A) respectively, thereby satisfying compliance actions B.1. and C.1, and can therefore determine the financial impact to their property interest for purposes of the Due Process Clause. That argument is wrong and should be rejected.

The County's proposed compliance remedies in the Notice of Violation (NOV) violate Due Process because they are illusory, undefined, and legally impossible for an active farm operation to satisfy. The County's position that Respondents can simply restore the property to its "pre-development condition" fails because the Multnomah County Code provides no definition, baseline timeframe, application process, or objective standards for determining what constitutes "pre-development," leaving compliance entirely to unbridled staff discretion. Furthermore, because the property is an active farm, restoring it to bare farmland restricts important farm uses and/or would merely re-trigger the County's overly broad definition of "development," which categorize routine agricultural tasks – such as discing, road repairs, and even harvest activates – as regulated filling and excavation the moment they exceed ten cubic yards. This would trap Respondent in a perpetual cycle of having to obtain SEC-S Overlay permits for its routine farm activities, which stands in direct contravention to the protections provided by the Legislature in ORS 215.253 and triggers regulatory taking concerns.

Alternatively, attempting to resolve the NOV by applying for retroactive permits under the Significant Environmental Concern (SEC-s) overlay is virtually impossible. The code criteria under MCC 39.5530 and 39.5590 – such as maximizing natural vegetative buffers, preserving ambient noise levels, and avoiding work near intermittent waterways – irreconcilably conflict with accepted farming practices and require subjective balancing tests that staff can use to deny any application.[4] Because Respondents are trapped between an undefined restoration pathway, an unachievable permitting process, and a vague directive to informally negotiate with staff while daily fines accumulate, the enforcement scheme is unconstitutionally vague and discretionary, warranting dismissal by the Hearings Officer.

[4] In fact, there is no possible way that Respondents can comply with the requirements needed to obtain a SEC-s permit for Areas A, B, D, E, F, G, and H. They cannot meet the required alternatives test in MCC 39.5590(C)(3)(a)(b)(c) or (d), and they cannot meet the "good corridor" condition in MCC 33.5590(C)(4)(d). Even if Respondents wanted to obtain SEC-s permits from the County, they could not do so, making the suggested remedy a complete fiction.

3. The Indeterminate and Cumulative Nature of the County's Proposed Fine Violates the Excessive Fines Clause of the Eighth Amendment to the United States Constitution.

The Eighth Amendment to the United States Constitution prohibits the government from imposing "excessive fines" on individuals. The United States Supreme Court has held that the Eighth Amendment applies to the states through the Fourteenth Amendment Due Process Clause (*Timbs v. Indiana*, 586 U.S. 146 (2019)) and applies to civil fines that serve both remedial and retributive and/or deterrent purposes, like the fines sought by the County in this case. See *Austin v. United States*, 509 US 602 (1993).

The test for whether a fine is "excessive" for purposes of the Eighth Amendment is one of proportionality – the amount of the fine must bear a proportional relationship to the gravity of the offense. See *United States v. Bajakajian*, 524 US 321 (1998). Accordingly, to demonstrate a violation of the Eighth Amendment excessive fines clause, the Court requires a showing that the fine is "grossly disproportional to the gravity of the offense." Id. at 334. In this case, that showing is easy.

The County seeks to impose daily fines of at least $525 on Respondents. Because the County has failed to provide a methodology for calculating the fine, the amount of the daily fine can range from $525/day to $17,325/day/day – the County won't say how the fine should be calculated. At its lowest rate, the County's fine amounts to $191,625/yr. At the top end, the fine amounts to $6,323,625/yr. As explained *infra*, the County has no accurate baseline nor has the County offered to Respondents a compliance path that will not result in a significant accumulation of fines – if not indefinite fines.

The County seeks to impose these potentially indefinite daily fines upon Respondents for maintaining farm roads, a woodlot, and a goat corral – all activities that are considered accepted farm practices and/or forest practices on a working farm in a farm zone. See Letter from Multnomah County Farm Bureau Ex. E-4, Declaration of Matt Cyrus ("Resp. Ex. J"). Despite the County's choice to place Respondents property in the County's Exclusive Farm Use and Commercial Forest Use zones, the clear legislative direction embodied in ORS 215.243, 215.253, and 527.722, the plain and exceedingly clear purpose statement in Goal 3 (which the County violates through the permit requirements of MCC §39.5510 and MCC §39.6210 as they apply to farm uses defined in ORS 215.203 in an EFU zone, in contravention of ORS 197.250), and the County's own EFU zoning purpose statement in MCC §39.4200, the County is seeking to punish Respondents for doing the exact thing the EFU zone was designed to encourage.

The County has not disputed that the use of the Property in this case is farm use, as defined in ORS 215.203. The Respondents purchased a property that has been in active farm and forest management use for decades, well before the County zoning ordinance was first enacted. Resp. Ex. C. Respondents have maintained that road network for their own farm and forest management uses, and have built a farm/forest operation that serves the community. Id. But for caveats in the County's own code, the activities undertaken by Respondents are literally what Exclusive Farm Use zoning was designed for. There has also been no damage caused to anyone or any natural resource because of Defendant's activities. In fact, the Oregon Department of Agriculture has confirmed as much. See Resp. Ex. K.

While the Oregon Department of Environmental Quality retains overall responsibility for administering Oregon's water-quality program and implementing the federal Clean Water Act, the Oregon Department of Agriculture (ODA) is the state agency with lead responsibility for agricultural water-quality management on agricultural lands. See ORS 568.930; OAR 603-095-0020. ODA develops and implements agricultural water-quality management plans and implements DEQ-established water quality standards for agricultural sources. See Id. Thus, ODA is the authority on whether any agricultural practice is causing harm to the general public through the impairment of water quality.

In 2025, at the same time complaints about Respondents' activities were filed with the County, a similar complaint was filed with the ODA. Id. This complaint likely came from the same anonymous individual(s) who filed complaints with Multnomah County. See Staff Report, Pg. 3. The complaint raised concerns with Respondents' farm activities and the impact those activities may be having on the "significant stream" in question. After an investigation, the ODA found that there were no water quality concerns from these activities and that "conditions on the property are in compliance with water quality requirements in the Tualatin River Subbasin Agricultural Water Quality Management Area (OAR 603-095-0140)." Id.

The County has also put forth no evidence indicating that Respondents activities have harmed the public's health or safety, or has caused any damage to any natural resource. Again, concern from anyone other than the County Planning staff comes from a small handful of area residents who have filed complaints about Respondents because they are annoyed about having to live next to a working farm. Commercial farm and forest operations are noisy, dirty, dusty, and smelly, and often don't shape up to idyllic pastoral landscapes some neighbors have envisioned. Farmers also use and rely upon heavy equipment, including trucks, which are loud, dusty, and take up space on rural roads. By its nature, farming requires the movement of dirt – lots of it –and if a farmer raises livestock or chickens at commercial scale, the farm is going to produce unpleasant smells.

Here, Respondents raise both, quite successfully. As explained herein, their only offense is farming in the farm zone. A daily fine of $525/day to $17,325/day /day – which could go on indefinitely – is completely disproportionate to the "offense" (farming in a farm zone) at issue here. As such, if the Hearings Officer finds Respondents at fault, we respectfully ask the Hearings Officer not to issue the proposed civil penalties outlined by the County.

III. STANDARD OF REVIEW

MCC 39.1550(C)(1) requires the County to prove each element of all violations alleged in this matter by a preponderance of the evidence. This requires the Hearings Officer to weigh all the evidence in the record to determine whether the County has demonstrated that it is more probable than not that the Respondents have violated MCC §§39.5510 and 39.6210. *State v. Rider*, 157 Or App 480, 482, 970 P2d 258, 259 (1998); quoting *Cook v. Michael*, 214 Ore. 513, 527, 330 P.2d 1026 (1958). If the County cannot carry that burden due to a lack of evidence or contrary evidence of equal or greater persuasion, then the fact finder cannot find that the fact exists. *State v. James*, 339 Or 476, 486, 123 P3d 251, 258 (2005).

The preponderance of the evidence standard is not the same as the substantial evidence standard. In fact, it is a heightened standard where the fact-finder owes no deference to the County's proffered evidence. As LUBA has noted:

> "*Intervenors do not cite any case suggesting that "substantial evidence" is the correct standard the initial trier of fact in a land use proceeding should apply in weighing the evidence or adopting findings of fact. We recently held to the contrary in Warren v. Washington County ____ OR LUBA ____ (LUBA No. 2018-045, August 20, 2018 (slip op at 12) (the hearings officer's task is not to determine whether the applicant has provided substantial evidence to support compliance with approval standards, but to weigh all of the evidence to determine whether the applicant has met its burden of proof to demonstrate that the approval standards are satisfied).*

*At the same time, we are not aware of any case establishing as a general rule that "preponderance of the evidence" represents the standard the trier of fact in land use proceedings must apply in weighing the evidence or adopting findings of fact. Nonetheless, "preponderance of the evidence" or something similar probably best articulates the appropriate evidentiary standard the initial trier of fact should apply in land use proceedings. The "substantial evidence" test that LUBA and the courts apply in their review is somewhat deferential to the local government fact-finder's evidentiary judgments. However, the fact-finder's evidentiary determinations themselves should not be deferential at all. * * * The fact-finder's role in a de novo land use permit proceeding is to determine whether, based on the whole record, the applicant has met its burdens of proof and persuasion in establishing that the applicable permit standards are met. That determination is fundamentally non-deferential in nature. If the fact-finder instead expressly applies a deferential standard of review to determinate whether approval standards are met, such as the "substantial evidence" standard, then the fact-finder may have erred.*

See *Morgan v. Jackson County,* LUBA No. 2017-053, slip op. at 12 (Mar. 16, 2018).

Not only must Multnomah County carry the burden of proof that the Respondents have violated the requirements of MCC §§39.5510 and 39.6210, if Respondents introduce evidence demonstrating a plausible basis for an exception from the permit requirements, the County bears the burden of proving that Respondents do not qualify for an exception under MCC §§39.5515 or 39.6215, or that MCC §§39.5510 and 39.6210 are not preempted by ORS 215.253 and/or ORS 527.722. See *Hood River County v. Mazzara*, 193 Or App 272 (2004); ORS 161.055.

In this case, the County attempts to meet its burden by making unsubstantiated allegations or showing that its allegations are possible. That is not good enough. The County must prove that each necessary fact necessary is more likely true than false, and if there is equally competing evidence, then the Hearings Officer must resolve the evidentiary question against the County. If the Respondents introduce evidence providing a plausible basis to determine that they qualify for an exception to the permit requirements or that their activities are protected farm or forest practices, then the County must prove by a preponderance of the evidence that Respondents do not qualify for an exception and that their activities are not protected farm or forest practices. The County cannot meet that burden.

IV. ARGUMENT

The County cannot prevail in the case for two primary reasons. First, the County has failed to carry its burden of proving the alleged SEC-s and ground-disturbance violations by a preponderance of the evidence. As explained in greater detail below, the County relies almost exclusively on historic aerial imagery taken from Google Earth, a handful of photos taken from a public ROW, and general

assumptions to prove that unlawful activity has occurred. The County never obtained consent or a warrant to inspect the property, never conducted engineering review, and never measured any of the alleged unlawful activity. The County does not even have a baseline for what the "pre-development condition" of the property should be.

The County's own code is highly detailed in what constitutes "ground disturbing activity" and "development" in the SEC-s Overlay. The County's code requires a requisite level of earth moving activity via motorized means to occur before SEC-s permits are required. The County has put forth no evidence accurately quantifying the alleged unlawful activity or proof that any of the excavation or fill occurred through motorized means. Additionally, the County allows dozens of "exempt" activities to occur without obtaining permits. Because the County relies on aerial photos, assumptions, and flawed methodology instead of site inspections and engineering reviews, the County is unable to differentiate between lawful and unlawful activity based on the evidence presented. Again, the County bears the burden of proof. It cannot meet that burden in this case.

Second, even the County's evidence is sufficient to meet its burden of persuasion, the County still lacks the authority to fine and require Respondents to obtain permits for the alleged activity as the County's interpretation and implementation of MCC §39.6210 and MCC §39.5510 unreasonably restrict Respondents' farm practices and farm structures in contravention of ORS 215.253 and ORS 527.722. The County has put forth no evidence to overcome these statutory preemptions.

A. <u>The County's Permit Requirements Under MCC §39.5510 and MCC §39.6210, as Applied to Respondents, Are Preempted by ORS 215.253 and ORS 527.722 and Cannot Be Enforced.</u>

The Hearings Officer must find that the County's permit requirements under MCC §39.5510 and MCC §39.6210, as applied to Respondents, are preempted by ORS 215.253 and ORS 527.722 and cannot be enforced.

It is undisputed in this case that the various activities allegedly committed by Respondents without County permits pursuant to MCC §39.5510 and MCC §39.6210, grouped and labeled as violations A – H, constitute either farm use or forest use. For over 60 years, the Oregon legislature has indicated a policy preference for protecting exclusive farm use zones for farm and forest uses. See ORS 215.203, first enacted in 1963.

In furtherance of the desire to ensure that farm and forest uses would be encouraged on lands zoned exclusive farm use, the 1973 legislature, as part of Senate Bill 101, the companion bill to Senate Bill 100, created ORS 215.253. In its original form, ORS 215.253 provided:

> *"(1) No state agency, city, county or political subdivision of this state may exercise any of its powers to enact local laws or ordinances or impose restrictions or regulations affecting any farm use land situated within an exclusive farm use zone established under ORS 215.203 in a manner that would unreasonably restrict or regulate farm structures or that would unreasonably restrict or regulate accepted farming practices because of noise, dust, odor or other materials carried in the air or other conditions arising therefrom if such conditions do not extend beyond the boundaries of the exclusive farm use zone within which they are created in such manner as to interfere with the use of adjacent lands. "Accepted farming practice" as used in this subsection shall have the meaning set out in ORS 215.203.*

(2) Nothing in this section is intended to limit or restrict the lawful exercise by any state agency, city, county or political subdivision of its power to protect the health, safety and welfare of the citizens of this state."

ORS 215.253 (1973). The statute was further amended in 1983 and 1985 in ways that are immaterial to this case. In 1995, the legislature made significant changes to the statute, including changes that further limited the authority of local governments. The current statute reads:

"(1) No state agency, city, county or political subdivision of this state may exercise any of its powers to enact local laws or ordinances or impose restrictions or regulations affecting any farm use land situated within an exclusive farm use zone established under ORS 215.203 or within an area designated as marginal land under ORS 197.247 (1991 Edition) in a manner that would restrict or regulate farm structures or that would restrict or regulate farming practices if conditions from such practices do not extend into an adopted urban growth boundary in such manner as to interfere with the lands within the urban growth boundary. "Farming practice" as used in this subsection shall have the meaning set out in ORS 30.930.

(2) Nothing in this section is intended to limit or restrict the lawful exercise by any state agency, city, county or political subdivision of its power to protect the health, safety and welfare of the citizens of this state."

See ORS 215.253. The primary changes between the existing language of ORS 215.253 and the language in place prior to 1995 are two-fold. First, the Legislature removed the limiting phrase "unreasonably" from subsection (1), prohibiting any state agency or local government provisions affecting farm use land in an EFU zone, broadening the scope of the preemption significantly and eliminating a state agency or local government from arguing that the proposed rule or local ordinance was "reasonable".

Second, the legislature further broadened the scope of the preemption by removing the limitation on the types of ordinances subject to the preemption. Prior to the 1995 amendments, ORS 215.253 only applied to agency rules/local ordinances that regulated farm practices based upon "noise, dust, odor or other materials." The 1995 amendments now apply the preemption to any agency rule/local ordinance that restricts or regulates either "farm structures" or "farm practices." "Farm structures" are undefined by the statute, while "farm practices" are defined by ORS 30.930(2) as:

"Farming practice" means a mode of operation on a farm that:

(a) Is or may be used on a farm of a similar nature;

(b) Is a generally accepted, reasonable and prudent method for the operation of the farm to obtain a profit in money;

(c) Is or may become a generally accepted, reasonable and prudent method in conjunction with farm use;

(d) Complies with applicable laws; and

(e) Is done in a reasonable and prudent manner.

In sum, the legislature has been quite clear – state agencies and local governments are prohibited from enacting any rule/ordinance that "restricts or regulates" (a broad phrase) "farm structures" (undefined) or "farm practices" (defined by ORS 30.930(2)).

There are only two exceptions to the broad prohibition in ORS 215.253. First, if the farm structures or farm practices extend into the urban growth boundary in a manner that interferes with the land inside the UGB, then they may be regulated. Second, agencies and local governments retain the power to "protect the health, safety and welfare of the citizens of this state".

Additionally, ORS 527.722 independently bars the County from applying its permit requirements to Respondents' qualifying forest practices. Subject only to its enumerated exceptions, ORS 527.722 provides that "no unit of local government shall adopt any rules, regulations or ordinances or take any other actions that prohibit, limit, regulate, subject to approval or in any other way affect forest practices on forestlands located outside of an acknowledged urban growth boundary." See ORS 527.722(1). Thus, the statute does not merely prohibit a local government from banning a forest practice outright. It also prohibits the County from conditioning that practice on a local permit or otherwise regulating it.

Oregon law defines "forest practice" broadly to include "any operation conducted on or pertaining to forestland," expressly including "road construction and maintenance." See ORS 527.620(6). "Forestland," in turn, means land used to grow and harvest forest-tree species "regardless of how the land is zoned or taxed." See ORS 527.620(8). The Forest Practices Act therefore expressly includes the creation and maintenance of roads, where the roads support the establishment, management, or harvest of forest tree species.

With this in mind, and explained in greater detail below, it is clear that the permit requirements in MCC §39.5510 and MCC §39.6210, as applied to Respondents, are preempted by both ORS 215.253 and ORS 527.722.

1. **The County's permit requirements under MCC §39.5510 and MCC §39.6210, as applied to Respondents, are preempted by ORS 215.253.**

The NOV and the County Staff Report accuse Respondents of engaging in a series of unpermitted ground disturbing activities related to the development of four private driveways (A, B, C, and D), a loading area (G), and ground preparation for a corral (H). The County further accuses Respondents of excavating and/or filling (or both) five private driveways (A, B, D, E, and F), a loading area (G) and ground preparation for a corral (H) without a SEC-s permit required by MCC §39.5510.

From the language of the NOV, it is clear that Respondents informed the County that any alleged activities in the areas listed above were done as part of Respondents farm operations, as the County indicates in the NOV that farming practices are not exempt from either permit. In fact, as noted in Respondent Scott Reed's Declaration offered in this case, all work done by Respondents in any of the areas (A-H) since the Respondents acquisition of the property in 2014 has been done in furtherance of its existing farm and forest operation. Not some of the work or most of the work – all of it.

On its face, the MCC §39.5510 and MCC §39.6210 are not automatically preempted by ORS 215.253 –ORS 215.253 allows local governments to regulate farm practices and farm structures

upon a showing that the regulation is within the local governments' power to protect the health, safety, and wellbeing of its citizens. See ORS 215.253(2). The County may argue that the permit requirements from both MCC §39.5510 and MCC §39.6210 *are* designed to protect the public's health, safety, or welfare and therefore exempt from preemption pursuant to ORS 215.253(2). That argument fails. .

First, nothing in MCC §39.5500, the general-purpose statement for SEC overlays, contains language providing that protection of the public health, safety or welfare. The SEC overlays are designed to "protect, conserve, enhance, restore, and maintain significant natural and human-made features which are of public value," not for protection of public health, safety and welfare.

Respondents acknowledge that the purpose of the ground disturbing permit requirements, MCC §39.6210, is to "promote public health, safety and general welfare." MCC §39.6200. But nothing in ORS 215.253 indicates that the legislature intended to allow a state agency or local government to avoid the limits of ORS 215.253 by simply adopting a purpose statement within the zoning ordinance indicating that the purpose of each ordinance is the protection of the public health, safety, and welfare. This would eviscerate any real meaning or effect of the preemption, rendering avoidance of ORS 215.253(1) a routine drafting exercise for DOJ or local government counsel. Given the significant tightening of the language by the 1995 legislature in favor of preemption and the legislative context of ORS 215.253 in the grander scheme of Oregon's land use system (see ORS 215.243; Statewide Planning Goal 3), it is unlikely that the preemption could be so easily defeated. To interpret otherwise would allow the exception to swallow the rule. See *1000 Friends of Or. v. Land Conservation & Dev. Com.*, 303 Or 430, 441, 737 P2d 607, 613 (1987).

Second, the County may argue that any of the Respondents alleged actions within areas A-H that constitute "farm practices" (as opposed to maintenance or development of "farm structures"), are exempt from the preemption because they were done without a permit and therefore have not "complied with applicable laws" as required for an action to be considered a "farm practice" under ORS 30.930(2)(d). In other words, applying circular logic, a County would be able to prohibit a farm practice and then argue that the ordinance prohibiting the farm practice would prevent the application of ORS 215.253 because the farm practice no longer "complies with applicable laws" as required by ORS 30.930(2)(d). That would be a strange result indeed, and would again eviscerate the legislative intent expressed in ORS 215.253.

There is nothing in the record offered by the County to demonstrate that any of the permits the County is alleging the Respondents failed to seek are necessary to protect the public's health or safety. In fact, the County has nothing more than aerial photographs to allege that the Respondents are undertaking any possible permit activity at all. If the County doesn't know what the Respondents are doing, how can they determine whether Respondents activities create a risk to the public health, safety or welfare? Moreover, the County's own code defeats this argument. According to Multnomah County, "forest practices", which includes the maintenance and construction of roads, are wholly exempt from obtaining Minimal Impact Project Permit and Erosion And Sediment Control Permits. See MCC § 39.6215(I).[5] If a landowner can construct a

[5] Under MCC 39.6215, the County exempts over a dozen other earth-disturbing activities that arguably carry far greater potential safety risks than routine farm maintenance. For example, the code allows utility trenching, exploratory geological excavations, and even the removal and replacement of contaminated underground storage, septic, and fuel oil tanks without requiring MIP or ESC permits. Given that the County allows these excavations by

new road to access their timber stand without triggering these permit requirements, why can't a farmer? There is nothing inherently more dangerous or risky in maintaining a timber road than a farm road. If it is safe for a woodland owner, it should be safe for a farmer. In this case, the Respondent happens to be both – highlighting how arbitrary this distinction really is.

The same goes for the SEC-s Overlay permit exemptions. Under MCC 39.5515(A), the County exempts dozens of activities, many of which could carry far greater potential safety risks than farming on farmland; installing utility infrastructure, establishing commercial businesses as home occupations, and even installing up to 400 square feet of solar or geothermic power infrastructure. Additionally, pursuant to § 39.5515(B), "farm use" as defined in ORS 215.203 (which includes the maintenance of agricultural facilities) is actually exempt from obtaining an SEC-s Overlay permit, provided that the farm is located outside of Metro's 2009 jurisdictional boundary. It makes little sense that an arbitrary administrative line like Metro's 2009 boundary would dictate public health and safety. Under the County's regulatory approach, a farmer on one side of that line can spread rock to maintain an access road safely and by right, while a farmer on the other side doing the exact same maintenance is deemed an environmental threat and subjected to a burdensome permitting process. Ground conditions, soil stability, and routine farm practices do not change simply because a boundary line appears on a map, and treating identical maintenance activities differently based solely on that line highlights how disconnected this regulation is from genuine health and safety concerns.

Certainly, agricultural development can occasionally present genuine public health and safety concerns, and the County retains authority to address those specific risks on a case-by-case basis. That is precisely the narrow balance ORS 215.253 accommodates. Here, however, the County is not addressing an actual, documented hazard; it is imposing a sweeping restriction on ordinary farm maintenance where no health or safety threat exists. As explained above, any claim to the contrary is directly refuted by the Oregon Department of Agriculture's investigation of this very issue. Resp. Ex. K.

In sum, the County asserts that the Respondents must obtain permits under MCC §39.5510 and MCC §39.6210, even when the permits restrict or regulate farm structures or farm practices. Respondents' argue this is a clear contravention of ORS 215.253, unless the County can show that this regulation is required for public health, safety, or welfare. In this case, the County bears the burden of proving that the Respondents alleged uses are not protected under ORS 215.253. See ORS 161.055; *Hood River County v. Mazzara*, 193 Or App 272 (2004). The County has not met its burden here.

2. The County's permit requirements under MCC §39.5510 and MCC §39.6210, as applied to Respondents, are preempted by ORS 527.722.

ORS 527.722 also bars the County from applying its permit requirements to Respondents' qualifying forest practices, which include the construction and maintenance of Driveways A through F and Loading Area G. Subject only to its enumerated exceptions, which do not apply in this case, the statute provides that "no unit of local government shall adopt any rules, regulations or ordinances or take any other actions that prohibit, limit, regulate, subject to approval or in any

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right, claiming that requiring a farmer to obtain permits before placing gravel in a goat corral is necessary to protect public health and safety lacks any credible foundation.

other way affect forest practices on forestlands located outside of an acknowledged urban growth boundary." ORS 527.722(1). A "forest practice" expressly includes "road construction and maintenance." ORS 527.620(6). "Forestland," means land used to grow and harvest forest-tree species "regardless of how the land is zoned or taxed." ORS 527.620(8). Thus, the Forest Practices Act preempts local regulation of the construction and operation of roads used to support the establishment, management, or harvest of commercial tree species.

That is the situation here. The Property is considered "forestland", and it exists outside any urban growth boundary. Respondents' evidence establishes that the Property includes a commercial timber operation and that the road network the County labels as Private Driveways A through F provides access to the timber stand. Resp. Ex. C. at 2 ¶ 11. Respondents use those roads to conduct forest practices, including stand maintenance, vegetative clearing, precommercial thinning, forest protection, and timber access. Id at 3 ¶ 16-19. Additionally, Respondents use Loading Area G for the storage of slash and other wood products. Id ¶ 20.

The County has failed to gather even the baseline evidence needed to recognize that commercial forestry occurs on the property, let alone rebut Respondents' showing. Because these activities support commercial timber management, the Hearings Officer should conclude that MCC 39.5510 and 39.6210 are preempted under state law as applied to Respondents' road construction, maintenance, and related ground alterations auxiliary to their forest practices on forestland outside an acknowledged urban growth boundary.

B. <u>The County's Evidence Is Insufficient To Prove That Either Unlawful Ground Disturbing Activity Or Development Within The SEC-S Overlay Occurred.</u>

Even if the Hearings Officer finds that the County's permit requirements are not preempted by ORS 215. 253 and ORS 527.722, the County has failed to establish by a preponderance of the evidence that unlawful ground disturbing activity or development as occurred. As explained *supra*, it is unclear how many violations the county is alleging. For the sake of preserving all arguments, Respondents are required to address each alleged violation as outlined in the Staff Report. Respondents recognize that this will be tedious and potentially repetitive for the Hearings Officer. However, the County has left Respondents with no other option. Note: each location on the Property is unique and there are different factual circumstances that apply to each alleged violation. Accordingly, while the arguments may be similar, they are <u>not</u> verbatim to each other. The County Has Not Demonstrated By A Preponderance Of The Evidence That Unlawful "Ground Disturbing Activity" Has Occurred.

Under MCC 39.6210(A), no "ground disturbing activity", unless exempt, shall occur except pursuant to a permit. According to Multnomah County's Code, there are several permits a property owner can be required to obtain: a Minimal Impact Project (MIP) permit, an Erosion and Sediment Control permit (ESC), an Agricultural Fill permit (AF), a Geologic Hazards permit (GH), or a Large Fill permit (LF). See 39.6210(A). However, the NOV and Staff Report do not indicate which permit Respondent was required to obtain to abate the alleged violations.

Pursuant to MCC 39.2000, the following definitions apply (reordered for ease of readability):

Ground Disturbing Activity – Any excavating or filling or combination thereof.

Excavation – The motorized removal of earth material or other motorized activity resulting in the exposure of the ground surface or other earth layer to wind, water, ice, gravity, or other element, including, but not limited to, cutting, digging, grading, stripping, trenching, dredging, bulldozing, benching, terracing, mining or quarrying, and vegetation or tree removal. Work conducted by hand without the use of motorized equipment is not excavating.

Fill – The deposit (noun or verb) of any earth materials by motorized means for any purpose, including, but not limited to, stockpiling, storage, dumping, raising elevation or topography, and tracking materials such as mud onto a road surface with vehicle tires. Work conducted by hand without the use of motorized equipment is not filling. For the purposes of this code, fill does not include materials included in a design by a registered professional engineer to physically support and/or protect a structure or access road for essential and public facilities subject to earthquake or tsunami building code requirements of the Oregon Structural Specialty Code.

Earth Materials – Any rock, natural soil or any combination thereof. Earth materials do not include non-earth or processed materials including, but not limited to, construction debris (e.g., concrete, asphalt, wood), organic waste (e.g., cull fruit, food waste) and industrial byproducts (e.g., slag, wood waste).

Thus, to prove that "ground disturbing activity" has occurred, the County must prove by a preponderance of the evidence that a property owner has engaged in either "excavating" or "filling" "earth materials" by "motorized" means on their property, unless otherwise exempt.

MCC 39.6215 includes a host of exemptions from obtaining one of the permits required for ground disturbing activity.[6] Again, it is not clear which permit the County asserts Respondent should have obtained. However, given that the Staff Report references MCC 39.6215, we assume that the County is arguing that Respondent should have obtained a Minimal Impact Project Permit or Erosion and Sediment Control Permit. Staff Report at 9 of 15.[7]

Among other activities, the following activities are exempt from a Minimal Impact Project Permit or Erosion and Sediment Control Permit under MCC 39.6215:

"(F) Farming practices other than filling or the placement of structures."

"(I) Forest Practices."

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[6] MCC 39.6215, 39.5080, 38.5510

[7] A logical permit given these facts would be an agricultural fill permit. However, MCC 39.2000 defines "agricultural fill" to include only topsoil, and in this case the County alleges that Respondents used material other than topsoil. If that were true, than Respondents could not apply for an agricultural fill permit. A geologic hazard permit is only required within areas subject to the County's geologic hazard overlay, which the County has not alleged in this case. See MCC 39.5070. MCC 39.2000 defines "large fill" – the County has not alleged that Respondents have engaged in fill activities sufficient to require a large fill permit.

"(P) Placement of gravel or asphalt for the maintenance of existing driveways, roads and other travel surfaces."

Pursuant to MCC 39.2000, the following definitions apply (reordered for ease of readability):

"Farming Practice – As defined in ORS 30.930. "[8]

"Forest Practice – As defined in ORS 30.930. "[9]

"Gravel – Aggregate composed of hard and durable stones or pebbles, crushed or uncrushed, more than half of which is retained on a No. 4 sieve (2 mm)."[10]

"Maintenance – An activity that restores the size, scope, configuration, and design of a serviceable structure to its previously authorized and undamaged condition. Activities that change the size, scope and configuration of a structure beyond its original design are not included."

"Existence – To continue to be in being; to remain."

"Driveway – See private driveway."

"Private Driveway – A private means of access to a public road or private road which is part of and provides access only to one lot or parcel."

Accordingly, even if a property owner is engaged in ground disturbing activity, the activity is exempt from the Minimal Impact Project Permit or Erosion and Sediment Control Permit

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[8] Under ORS 30.930(2), "Farming Practice" means:

> "Farming practice" means a mode of operation on a farm that:
> (a) Is or may be used on a farm of a similar nature;
> (b) Is a generally accepted, reasonable and prudent method for the operation of the farm to obtain a profit in money;
> (c) Is or may become a generally accepted, reasonable and prudent method in conjunction with farm use;
> (d) Complies with applicable laws; and
> (e) Is done in a reasonable and prudent manner.

[9] Under ORS 30.930(4), "Forest practice" means:

> "[A] mode of operation on forestland that:
> (a) Is or may be used on forestland of similar nature;
> (b) Is a generally accepted, reasonable and prudent method of complying with ORS 527.610 to 527.770 and the rules adopted pursuant thereto;
> (c) Is or may become a generally accepted, reasonable and prudent method in conjunction with forestland;
> (d) Complies with applicable laws;
> (e) Is done in a reasonable and prudent manner; and
> (f) May include, but is not limited to, site preparation, timber harvest, slash disposal, road construction and maintenance, tree planting, precommercial thinning, release, fertilization, animal damage control and insect and disease control."

[10] Asphalt and "other travel surfaces" are undefined.

requirements if the activity in question constitutes a farming practice (other than filling or the placement of structures), a forest practice, or the placement of gravel or asphalt for the maintenance of existing driveways, roads, or other travel surfaces.

Here, the County alleges that Respondents engaged in unlawful "ground disturbing activity" by "filling" related to "the development of private driveways A, B, C and D, loading area G, and ground preparation for corral placement in fill area H" in violation of MCC 39.6210. The County characterizes the alleged unlawful activity as follows:

> *"Respondents engaged in filling activity outlined below, which is not exempt from ground disturbing permit requirements under MCC 39.6215(F), even if done in support of farming practices. Specifically:*
>
> - *Soil and/or rock was deposited to driveway A in May 2021 (Ex. B.8, page. 7); and*
> - *Soil was deposited to driveway B in June 2022 (Ex. B.9, page 8), May 2023 (Ex. B.9, page 7), August 2023 (Ex. B.9, page 4), April 2024 (Ex. B.9, page 3), and November (Ex. B.9, page 2);*
> - *Soil was deposited to driveway C in June 2022 (Ex. B.10, page 4), August 2023 (Ex. B.10, page 3), April 2024 (Ex. B.10, page 2), June 2025 (Ex. B.14, photos 9284, 3285, and 9295), and July 2025 C (Ex. B.16, photos 9522 and 9525); and*
> - *Soil was deposited to driveway D in June 2022 (Ex. B.11, page 5); and*
> - *Soil was deposited to loading area G in June 2022 (Ex. B.12, page 6) and September 2025 (Ex. B.24, photo 0074); and*
> - *Soil was deposited to fill area H in August 2023 (Ex. B.12, page 4), July 2024 (Ex. B. 12, page 3), November 2024 (Ex. B.12, page 2), and June 2025 (Ex. B.14, photos 9296-9299)."*

To support their allegations, the County relies exclusively on historic aerial images taken from Google Earth Images, and in a handful of instances, photos taken by a County inspector from a public right of way. As explained below, the County cannot prevail on these claims because they cannot meet their evidentiary burden of proving by a preponderance of the evidence that the Respondents engaged in ground disturbing activity beyond exempt activities.

a. Alleged Violation: "Soil and/or rock was deposited to driveway A in May 2021 (Ex. B.8, page. 7)"

Response: Respondents dispute this allegation. Respondents assert that the aerial image merely depicts the maintenance of existing roads used for their farming and forestry operation, which is exempt from permit requirements pursuant to MCC 39.6215.

"Driveway A" is a road that has been in existence since the 1930's. Resp. Ex. C. at 2 ¶ 12; Record Ex. D.2. The Property has continuously been used as a commercial farm and forest operation since that time Id at 1 ¶ 5. Respondents use Driveway A for their farm and forest activities. Resp. Ex. C. at 2 ¶ 13. Specifically, Respondents use Driveway A to access their pastures and transport forest products from the timbered areas of the Property to their woodlot, which the County calls "Loading Area G." Id ¶ 14. Respondents have routinely placed rock and other material on

Driveway A (and the other roads) to keep the roads usable for their farm and forestry operation. Resp. Ex. C. at 3 ¶ 19.

The aerial image submitted by the County (Ex. B.8, page 7) does not prove that Respondents engaged in "ground disturbing activity" as defined in MC 39.2000. First, the aerial image, which is a low-quality "birds-eye view" of the property taken from an undetermined height, at an undetermined scale, on an undermined date via satellite imagery, shows small brown and white blotches along Private Driveway A. Absent field notes or photos from a site visit on the day in which this photo was taken, there is no way to tell definitively what these blotches are. The County's description that it is "soil and/or rock" is complete conjecture and cannot be relied upon by the Hearings Officer.

Further, if the blotches are soil or rock, there is no way for the County to prove that any fill material was deposited by motorized means. Pursuant to the County's code, for deposited material to constitute "fill" it must be deposited through motorized means, and "work conducted by hand without the use of motorized equipment" does not constitute fill. See MC 39.2000 (definition of "Fill"). The County has the burden of proving every necessary element by a preponderance of the evidence. There is no evidence indicating that the alleged fill activity took place with the use of motorized equipment and was not placed by hand. Thus, the County cannot prove by a preponderance of the evidence that his activity is "ground disturbing activity" as defined in MC 39.2000.

Additionally, there is no way for the County to prove that the activity depicted is not one of several exempted activities under Multnomah County's code. First, there is no way to tell this activity is not the "[p]lacement of gravel or asphalt for the maintenance of existing driveways, roads and other travel surfaces" under MCC 39.6215(P). Moreover, there is no way to tell this is not "forest practice" "road construction or maintenance" exempted under MCC 39.6215(I).The property in question is "forestland" under ORS 30.930(3). "Road construction and maintenance" are considered a "forest practice" under ORS 30.930. Additionally, road construction and maintenance are "forest practices" under ORS 527.620(6)(b), and not subject to County regulation under ORS 527.722. Respondents use Driveway A to support their forest operation. Resp. Ex. C. at 2 ¶ 13. Accordingly, Respondents do not need to obtain Minimal Impact Project (MIP) permits or Erosion and Sediment Control permit (ESC) to maintain these roads as that activity is exempted under MCC 39.6215.

Last, the alleged fill activity took place in May of 2021 – over five years ago. At that time, Multnomah County's Code was the same as it is now in relevant part. Thus, at the time the alleged filling activity took place, Respondents did not need to obtain Minimal Impact Project (MIP) permits or Erosion and Sediment Control permit (ESC) permits, as the activity was exempted under Multnomah County's Code.

b. Alleged Violation: "Soil was deposited to driveway B in June 2022 (Ex. B.9, page 8), May 2023 (Ex. B.9, page 7), August 2023 (Ex. B.9, page 4), April 2024 (Ex. B.9, page 3), and November (Ex. B.9, page 2)

Response: Respondents dispute this allegation. Respondents assert that the aerial images merely depict the maintenance of existing roads used for their farming and forestry operation, which is exempt from permit requirements pursuant to MCC 39.6215.

For similar reasons as stated above, the aerial images (Record Ex. B.9, page 2, 3, 4, 7, and 8) do not prove that Respondents engaged in "ground disturbing activity" as defined in MC 39.2000. First, the aerial images, which are again low-quality "birds-eye view" images of the property show small various shades of brown blotches along Private Driveway B at various times. Absent field notes or up-close photos from a site visit on the day in which these photos were taken, there is no way to tell definitively what these blotches are. The County's description that it is "soil" is complete speculation.

Further, if the blotches are soil, there is no way for the County to prove that any fill material was deposited by motorized means. As stated above, pursuant to the County's code, for deposited material to constitute "fill" it must be deposited through motorized means, and "work conducted by hand without the use of motorized equipment" does not constitute fill. See MC 39.2000 (definition of "Fill"). The County has the burden of proving every necessary element by a preponderance of the evidence. There is no evidence indicating that the alleged fill activity took place with the use of motorized equipment and was not placed by hand. Thus, the County cannot prove by a preponderance of the evidence that his activity is "ground disturbing activity" as defined in MC 39.2000.

Additionally, there is no way for the County to prove that the activity depicted is not one of several exempted activities under Multnomah County's code. First, there is no way to tell this activity is not the "[p]lacement of gravel or asphalt for the maintenance of existing driveways, roads and other travel surfaces" under MCC 39.6215(P). Moreover, there is no way to tell this is not "forest practice" "road construction or maintenance" exempted under MCC 39.6215(I).The property in question is "forestland" under ORS 30.930(3). "Road construction and maintenance" are considered a "forest practice" under ORS 30.930. Additionally, road construction and maintenance are "forest practices" under ORS 527.620(6)(b), and not subject to County regulation under ORS 527.722. Respondents use Driveway B to support their forest operation. Resp. Ex. C. at 2 ¶ 13. Accordingly, Respondents do not need to obtain Minimal Impact Project (MIP) permits or Erosion and Sediment Control permit (ESC) to maintain these roads as that activity is exempted under MCC 39.6215.

Lastly, the alleged fill activity took place over a span of five years. During that time, Multnomah County's Code was the same in relevant part. Thus, at the time that each of the alleged activity took place, Respondents did not need to obtain MIP permits or ESC permits, as the activity was exempted under Multnomah County's Code.

c. Alleged Violation: Soil was deposited to driveway C in June 2022 (Ex. B.10, page 4), August 2023 (Ex. B.10, page 3), April 2024 (Ex. B.10, page 2), June 2025 (Ex. B.14, photos 9284, 3285 (sic), and 9295), and July 2025 C (Ex. B.16, photos 9522 and 9525)

Response: Respondents dispute this allegation. Respondents assert that the aerial images depict the construction and maintenance of a road used primarily for its forestry operation, which is an

exempt activity under MCC 39.6215(I). Driveway C also serves as a critical road for Respondents' farming operation, which as explained *infra*, is precluded from regulation by the County under ORS 215.253.

Driveway C is the most direct access route to the commercial timber stand at the southeast potion of the Property. See Resp. Ex. A. Respondents utilize this road to transport forest products grown on the Property to the woodlot, which the County identifies as "Loading Area G" in the NOV. Resp. Ex. C. at 2 ¶ 14. Driveway C also cuts through one of the pastures, so Respondents also use Driveway C to manage its mobile chicken enclosure and herd and transport goats from pasture to pasture. Id.

For similar reasons as stated above, the aerial images do not prove that Respondents engaged in "ground disturbing activity" as defined in MC 39.2000. First, the aerial images, which are again low-quality aerial images of the property, show small various shades of brown blotches along Driveway C at various times. Absent field notes or up-close photos from a site visit on the day in which these photos were taken, there is no way to tell definitively what these blotches are. The County's assertion that is the blotches are "soil" is complete speculation.

Further, if the blotches are soil, there is no way for the County to prove that any fill material was deposited by motorized means. As stated above, pursuant to the County's code, for deposited material to constitute "fill" it must be deposited through motorized means, and "work conducted by hand without the use of motorized equipment" does not constitute fill. See MC 39.2000 (definition of "Fill"). Additionally, Record Ex. B.14, photos 9284, 9285, and 9295 do not remedy this issue as they merely show piles of dirt in a non-descript location. These photos do not show fill material being deposited onto Driveway C through motorized means. Neither do these photos show any evidence of when the fill was deposited. Record Ex. B.16, photos 9522 and 9525 fail for similar reasons. These photos do not show fill being deposited onto Driveway C through motorized means on any of the dates alleged.

If the Hearings Officer finds that this is sufficient evidence to prove ground disturbing activity, the County bears the burden of proving that the ground distributing activity from these images does not depict exempt ground disturbing activity under Multnomah County's code – particularly "road construction or maintenance", which is a "forest practice" under ORS MCC 39.6215(I). The property in question is "forestland" under ORS 30.930(3). Road construction and maintenance are considered a forest practice under ORS 527.620(6)(b). Counties are prohibited from imposing regulations limiting forest practices outside of urban growth boundaries in both EFU and forest zones. ORS 527.722. Respondents use their property for growing and harvesting commercial timber. See Resp. Ex. C. at 2 ¶ 14. Driveway C is the most direct point of access to Respondent's timber stand from many of the high traffic areas of the farm. See Resp. Ex. A. Accordingly, Respondents did not need to obtain MIP permits or ESC permits to construct or maintain Driveway C as that activity is exempted under MCC 39.6215.Additionally, there is no way to tell that activity depicted in the photos is not the "[p]lacement of gravel or asphalt for the maintenance of existing driveways, roads and other travel surfaces" under MCC 39.6215(P).

d. Alleged Violation: Soil was deposited to driveway D in June 2022 (Ex. B.11, page 5)

Response: Respondents dispute this allegation. Respondents assert that the aerial image merely depicts the maintenance of a road used for its farm and forestry operation, which is an exempt activity under MCC 39.6215.

Driveway D was established as early as 1958. See Record Ex. D.5. However, there is evidence of the road being in existence in 1990, 2004, 2011, and so forth. Resp. Ex. L.1.- L.3. From Respondents' understanding, Driveway D has always been in the same location, running east-west along the south property line as a natural extension of Driveway B and access point to Loading Area G. Driveway D enables direct access from the Property to Redfox Drive, which is where many of Respondents customers enter the Property to purchase goats and is the location of Respondents farmstands. See Resp. Ex. C. at 3 ¶ 16-17. It is the most direct access point from Red Fox Drive to the goat corral (H), which is where Respondents prepare and sell goats. Id. It also is the most direct point of access from Red Fox Drive, and the Southeast timber stands to the woodlot ("Loading Area G"), where it serves as a logging road for the transport of forest materials. Id. Respondents made maintenance improvements to "private driveway" D in 2022 to support heavy truck traffic, completing them prior to August, 2022. See Resp. Ex. C. at 3 ¶ 17.

For similar reasons as stated above, the aerial image (Record Ex. B.11, page 5) does not prove that Respondents engaged in "ground disturbing activity" as defined in MC 39.2000. First, the aerial images, which are again low-quality "birds-eye view" images of the property show small various shades of brown blotches along Private Driveway D. It is not clear from the Staff Report or the evidence presented what the County considers "fill". Additionally, absent field notes or up-close photos from a site visit on the day in which this photo was taken, there is no way to tell definitively what constitutes fill, and if it is the blotches on the photo, what the blotches even are. The County's assertion that it is "soil" is complete speculation and their allegations are vague.

Further, if the blotches are soil, there is no way for the County to prove that any fill material was deposited by motorized means. As stated above, pursuant to the County's code, for deposited material to constitute "fill" it must be deposited through motorized means, and "work conducted by hand without the use of motorized equipment" does not constitute fill. See MC 39.2000 (definition of "fill"). There is no evidence in the record explaining what specific activity constitutes "fill" and how that fill was deposited in any given area.

If the Hearings Officer finds that this is sufficient evidence to prove ground disturbing activity, the County bears the burden of proving that the ground distributing activity from these images does not depict exempt ground disturbing activity under Multnomah County's code – particularly "[p]lacement of gravel or asphalt for the maintenance of existing driveways, roads and other travel surfaces" under MCC 39.6215(P). As explained above, Driveway D is an existing roadway. Additionally, even if the Hearings Officer finds that the image depicts the construction of a new road (which it does not) "road construction or maintenance" is an exempt "forest practice" under ORS MCC 39.6215(I). The Property is "forestland" under ORS 30.930(3). "Road construction and maintenance" are considered a "forest practice" under the County's code and ORS 527.620(6)(b). Counties are prohibited from imposing regulations limiting forest practices outside of urban growth boundaries in both EFU and forest zones. ORS 527.722. Respondents use their Property for growing and harvesting commercial timber. See Resp. Ex. C. at 2 ¶ 14. Driveway D is used to haul timber products to and from their woodlot ("Loading Area G"). See Resp. Ex. C. at 3 ¶ 16;

Resp. Ex. H.1. -H.4. Accordingly, Respondents did not need to obtain MIP permits or ESC permits to construct or maintain Driveway D as that activity is exempted under MCC 39.6215.

e. Soil was deposited to loading area G in June 2022 (Ex. B.12, page 6) and September 2025 (Ex. B.24, photo 0074)

Response: Respondents dispute this allegation and the characterization of this area. Respondents assert that the aerial images merely depict forest practices and the maintenance of a road used for its farm and forestry operation, which is an exempt activity under MCC 39.6215.

"Loading Area G" is Respondents' woodlot, which is used primarily for the storage and disposal of logs and other slash harvested from the subject properties. See Resp. Ex. C. at 3 ¶ 20; Resp. Ex. H.3. - H.4.. Respondents also store materials to repair their farm roads, store their ag and forest equipment, and feed for their goats. See Resp. Ex. C. at 3 ¶ 20.

For similar reasons as stated above, the aerial image (Record Ex. B.12, page 6) does not prove that Respondents engaged in "ground disturbing activity" as defined in MC 39.2000. First, the aerial image, which are again low-quality "birds-eye view" images of the property show small various shades of brown and gray blotches in Loading Area G. It is not clear from the Staff Report or the evidence presented what whether the brown blotches or the gray blotches are they alleged "soil". Additionally, absent field notes or up-close photos from a site visit on the day in which this photo was taken, there is no way to tell definitively what constitutes fill, and if it is the blotches on the photo, what the blotches even are. The County's assertion that it is "soil" is complete speculation and their allegations are sufficiently vague.

Further, if the blotches are soil, there is no way for the County to prove that any fill material was deposited by motorized means. As stated above, pursuant to the County's code, for deposited material to constitute "fill" it must be deposited through motorized means, and "work conducted by hand without the use of motorized equipment" does not constitute fill. See MC 39.2000 (definition of "fill"). There is no evidence in the record explaining what specific activity constitutes "fill" and how that fill was deposited in any given area.

Record Ex. B.24, Photo 0074 fails for similar reasons. Photo 0074 was taken on September 2, 2025. It depicts numerous logs, irrigation equipment, goat feed, and a pile of material. As noted in the notes of the field visit, the inspector was "unsure" as to whether the alleged code violations were verified or causing erosion or sedimentation, and the field inspector noted:

> "At the time of inspection, there did not appear to be any active ground disturbance in the SEC-s, and there was no evidence that additional fill material had been deposited in the SEC-s following the SWO."

See Ex. B.24, Pg 1. Thus, the inspector acknowledges that Photo 0074 does not depict active ground disturbing activity. Additionally, this Photo 0074 helps support Respondents assertion that this area is used for forest practices, because it clearly shows the storage of the materials described above. The burden is on the County to demonstrate that the use of the area is not exempt from the permit requirements pursuant to MCC 39.6215 or preempted by either ORS 215.253 or 527.722. The County has failed to meet that burden.

Even if the Hearings Officer finds that this evidence is sufficient to prove that Respondents engaged in ground disturbing activity or Loading Area G, Respondents are still are exempt from obtaining ESC and MIP for the creation, use, or maintenance of Loading Area G because the use of this area constitutes a forest practice under ORS 30.930(4)(f), which is exempt from permit requirements under MCC 39.6215(I). In addition, Counties are preempted from regulating forest practices, which include operations conducted on or pertaining to forestland (which includes EFU land used for the growing and harvesting of tree species), including harvesting of forest tree species, road maintenance, and slash removal. See ORS 527.722.

f. Soil was deposited to fill area H in August 2023 (Ex. B.12, page 4), July 2024 (Ex. B. 12, page 3), November 2024 (Ex. B.12, page 2), and June 2025 (Ex. B.14, photos 9296-9299).

Response: Respondents dispute this allegation in part.

For all of the reasons already stated, the County cannot rely on the aerial photos in Record Ex B.12 2-4 to prove that ground disturbing activity had taken place from 2023 to 2024. The County's own code requires "fill" to be deposited through motorized means. These photos do not show any fill being deposited by motorized means.

Regardless, Respondents do not dispute that soil was deposited by motorized means in Corral Area H in June of 2025, to which Ex. B.14 photos 9296-9299 depicts. Soon thereafter, Respondents also deposited gravel over the soil in Corral Area H. See Resp. Ex. C. at 3 ¶ 24-25. That said, Respondents dispute that the evidence provided by the County depicts anything other than exempt activity or activity that is preempted by ORS 215.253. Specifically, Respondents assert that the images depict the maintenance of existing travel surfaces under MCC 39.6215(P) as Corral Area H is where the trucks and trailers travel to pick up the goats on their farm.

As explained previously, because of their abnormal size and aggression, handling of Boer goats requires specialized equipment and infrastructure, including a "corral" used to safely hold goats while they are receiving medical care or are being prepared for sale. "Corral Area H" includes both the actual corral structure itself, and the driveway area around the Corral Structure where customers' trucks and trailers pull up to receive the goats. When Respondents first started raising goats, they utilized a primitive make-shift corral on a grass surface to conduct standard animal husbandry and prepare the goats for sale. See Resp. Ex. C. at 3 ¶ 23. The old corral and loading area were located in the same location as Corral Area H. Id.

Beginning in 2024, Respondents began a multi-year project to replace the makeshift corral with a larger, more sophisticated corral and improve the corral's loading area. See Resp. Ex. C. at 3 ¶ 24. In addition to building and installing new corral fencing, Respondents placed dirt and gravel in the corral and corral loading area. Id. This was necessary for both the care of Respondents' animals, who cannot stand in mud or wet waste for extended periods of time, and also to level out the area to make it possible to load goats safely into the trucks or trailers used by our customers. Id. Additionally, Corral H serves as the central hub where Respondents administer veterinary care, stage livestock for market, and manage sales. Each of these routine animal husbandry and marketing activities constitutes a protected farm use and accepted farm practice and farm structure pursuant to ORS 215.253. As explained *infra*, local governments are prohibited from unnecessarily

restricting farm practices under ORS 215.253. Requiring Respondents, or any farmer in the County, from placing soil and rock underneath heavy use and livestock areas restricts accepted farm practices and is preempted by ORS 215.253.

Accordingly, Respondents did not need to obtain ESC or MIP permits to repair and maintain Corral Area H as that is exempt from obtaining permits under both MCC 39.6215(P) and ORS 215.253.

1. The County Has Not Demonstrated By A Preponderance Of The Evidence That Unlawful "Development" Occurred In The SEC-S Overlay Besides Exempt Activities.

MCC 39.5510 requires an SEC overlay permit for all "development" unless otherwise exempt. Under MCC 39.5520, "development" means:

> *Development - Any human-made change defined as buildings or other structures, mining, dredging, paving, filling, or grading in amounts greater than ten (10) cubic yards on any lot or excavation. Any other activity that results in the removal of more than 10 percent of the existing vegetation in the Riparian Area on a lot or parcel.*[11]

Again, "filling" and "excavation" are defined in MCC 39.2000 as:

> *Excavation – The motorized removal of earth material or other motorized activity resulting in the exposure of the ground surface or other earth layer to wind, water, ice, gravity, or other element, including, but not limited to, cutting, digging, grading, stripping, trenching, dredging, bulldozing, benching, terracing, mining or quarrying, and vegetation or tree removal. Work conducted by hand without the use of motorized equipment is not excavating.*[12]
>
> *Fill – The deposit (noun or verb) of any earth materials by motorized means for any purpose, including, but not limited to, stockpiling, storage, dumping, raising elevation or topography, and tracking materials such as mud onto a road surface with vehicle tires. Work conducted by hand without the use of motorized equipment is not filling. For the purposes of this code, fill does not include materials included in a design by a registered professional engineer to physically support and/or protect a structure or access road for essential and public facilities subject to earthquake or tsunami building code requirements of the Oregon Structural Specialty Code.*

Thus, to prove that "development" in the SEC-s Overlay has occurred, the County must prove by a preponderance of the evidence that a property owner has engaged in either "excavating" or

[11] The phrase "on any lot or excavation" creates inherent ambiguity and circularity. While a "lot" is a defined parcel or unit of land, "excavation" is defined under the code as an activity (the motorized removal or exposure of earth), not a spatial location. Furthermore, the definition of "Excavation" already encompasses grading, dredging, and mining, making it unclear whether the ten-cubic-yard threshold applies to the excavation itself, whether an excavation is a prerequisite site where other activities must occur, or whether any motorized earth movement automatically triggers regulated "development" regardless of volume. This conflation in itself deprives landowners of fair notice regarding what specific conduct is regulated and stands in contravention to ORS 215.253, as explained herein.

"filling" "earth materials" by "motorized" means in excess of ten (10) cubic yards on any individual lot or excavation, unless otherwise exempt.

Among other activities, the following are exempt from obtaining an SEC-s Overlay permit under MCC 39.5515(A):

> *(2)(c) Customary dredging and channel maintenance and the removal or filling, or both, for the maintenance or reconstruction of structures such as dikes, levees, groins, riprap, drainage ditch, irrigation ditches and tile drain systems as allowed by ORS 196.906.*
>
> *"(4) Change, alteration, or expansion of a lawfully established use or structure provided that: […] (b) Within the […] SEC-s, there is no change to, or alteration or expansion of, the structure's or a driveway's ground coverage in excess of 400 square feet. With respect to expansion, this exception does not apply on a project-by project basis, but rather applies on a cumulative basis to all expansions after the issuance of the original permit for the construction of the structure.*
>
> *(9) Routine repair and maintenance of structures, roadways, driveways, utility facilities, and landscaped areas that are lawfully established[.]"*

Additionally, under MCC 39.5515(B), farm use is exempt from obtaining an SEC-s Overlay Permit in some areas:

> *(B) Farm use, as defined in ORS 215.203(2)(a), including buildings and structures accessory to a farm use do not require an SEC permit except in the following situations:*
>
> *(1) Within the West of Sandy River Planning Area, an SEC-wr and/or SEC-sw permit is required for agricultural buildings, structures and development associated with farm practices and agricultural uses, except that agricultural fences shall not require an SEC-wr and/or SEC sw permit.*
>
> *(2) Within Metro's 2009 jurisdictional boundary, an SEC-s permit is required for agricultural buildings, structures and development associated with farm practices and agricultural uses, except that agricultural fences shall not require an SEC-s permit.*

Accordingly, even if a property owner is engaged in development activity, the development activity is exempt from obtaining an SEC-s Overlay Permit if the activity in question constitutes the change, alternation, or expansion of a lawfully established use or structure less than 400 square feet, if the activity is the routine repair and maintenance of structures, roadways, driveways, utility facilities, and landscaped areas that are lawfully established, or maintenance and repair of drain tile or irrigation infrastructure.

The County alleges that Respondents engaged in the "development" of private driveways A, B, D, E and F, loading area G, and ground preparation for Corral Area H within the SEC-s overlay without necessary permits. Additionally, the County asserts that the deposition of non-earth materials in lieu of earth fill materials is not a permissible use under Multnomah County's code and that Respondents deposited concrete in certain areas. Additionally, the County asserts that

because the Property falls within Metro's 2009 jurisdictional boundary, the farm use activities are not exempt under MCC 39.5515(B) from requiring SEC-s permits.

a. Alleged Violation: Driveway A was excavated in August 2020 (Ex. B.8, page 8); soil, rock, concrete debris and chipped asphalt were deposited in May 2021 (Ex. B.8, page. 7); and additional concrete was deposited in May 2023 (Ex. B.8, page 5). That development increased the surface area of driveway A within the SEC-s overlay from approximately 7,760 square feet in 1998 (the first land use map available when the SEC-s overlay can be applied for measurement) to 18,373 square feet in 2025; a difference of 10,613 square feet (Ex. B.25, page 1 2). […] Assuming an average depth of 1 inch of excavation and/or deposit of material across the developed area of driveway A, the total volume of material moved is 33 cubic yards (Ex. B.25, page 1).

Response: Respondents dispute this allegation. To meet its evidentiary burden, the County must prove each element of all violations alleged by a preponderance of the evidence. Accordingly, to prevail here, the County must prove that Respondents developed (made changes by filling or excavation) Driveway A in amounts greater than ten (10) cubic yards. Additionally, the County must prove that any alleged development was not one of several exempted activities. For the reasons explained below, the County cannot prove that Respondents conducted unlawful "development" of Driveway A beyond exempted activity within the SEC-s Overlay.

i. The County's evidence is insufficient to prove unlawful "development" of Driveway A occurred because there is no evidence to prove that Respondents excavated or filled more than ten (10) cubic yards of material on any of the alleged dates:

The County has failed to put forth any evidence quantifying the volume of material filled or excavated on the date alleged in August 2020 (Ex. B.8, page 8), May 2021 (Ex. B.8, page. 7), or in May 2023 (Ex. B.8, page 5). This is because the County acknowledges that is has never conducted an engineering review to prove that Respondents engaged in development significant enough to trigger an SEC-s Overlay permit. Staff Report at 10.

Instead, the County overlays a 1998 aerial image onto a 2025 aerial image taken from unidentified sources. Using what appears to be desktop GIS polygon tracing, County staff manually drew boundaries over the aerial imagery to delineate the bounds of Driveway A. Comparing the two, the County concludes that the road has been "expanded" by 10,613 square feet. Id. The County then acknowledges that it has never conducted a site visit or done any actual measuring of the development, so it assumes a "an average depth of 1 inch of excavation and/or deposit of material across the developed area" to determine that the alleged development has moved 33 cubic yards. Id. Based on this information, the County concludes that Respondents have developed Driveway A greater than ten (10) cubic yards without an SEC-s Overlay permit. This approach creates critical issues in analyzing whether any jurisdictional "development" of Driveway A occurred on any of the alleged dates.

First, The County relies almost exclusively on zoomed-out historic aerial photos taken from Google Earth to allege that unlawful development occurred. Google Earth images alone cannot

establish unlawful activity because the platform's own governing terms explicitly disclaim the factual accuracy, completeness, and real-world reliability of its content:

> *"Actual Conditions; Assumption of Risk. When you use Google Maps map data, traffic, directions, and other content, you may find that actual conditions differ from the map results and content, so exercise your independent judgment and use Google Maps at your own risk. You're responsible at all times for your conduct and its consequences."*

See *Legal Notices for Google Maps/Google Earth & Google Maps/Google Earth APIs, Google (last modified Feb. 1, 2021), https://www.google.com/help/legalnotices_maps/.*

Second, the County's "evidence" does not prove requisite elements of "development" under the MCC 39.5520. More specifically, the photos do not show the boundary of the SEC-S Overlay and whether any alleged activity even occurred within the regulated zone; Driveway A runs perpendicular through multiple lots (Resp. Ex. A.) and there are multiple excavations potentially occurring within each photo – without an explanation from the County on what exactly is at issue here, it is unclear how the County measures the alleged "development" on each lot or excavation as required by its code; who conducted the development or whether it occurred prior to Respondents control of the property; what materials were actually deposited (claims that the photos depict soil, rock, concrete debris, and chipped asphalt is complete speculation – the County merely introduced scaled-back aerial photos and makes conclusory allegations that unlawful activity occurred. This impermissibly shifts the burden of proof onto Respondents to disprove all the elements of the County's claims and all possible instances of unlawful activity.

The County's evidence shows no motorized activity, and the County has provided no other evidence to support that claim. Based on MCC 39.5520, "development" is "any human-made change defined as […], filling, or grading in amounts greater than ten (10) cubic yards on any lot or excavation." MCC 39.5520. The County's code is unambiguous: work conducted by hand is not considered "filling" or "excavation". MCC 39.2000. Accordingly, work done by hand is not "development" that triggers an SEC-s Overlay permit. The County cannot rely on these images to prove that motorized development occurred on any of the alleged dates, and this cannot prove by a preponderance of the evidence that unlawful "development" occurred.

Third and most critically, the County's methodology for determining the disturbed surface area of Driveway A and the depth of any development is severely flawed. To establish the baseline surface area necessary to claim jurisdictional "development", the County was obligated to perform an on-the-ground physical survey or use other established engineering methods to accurately quantify the alleged development to ensure it was in excess of ten (10) cubic yards on the date in which the development occurred. The County failed to do so and does not dispute this fact. Staff Report at 10. Instead, the County uses manual desktop GIS tracing to guess the historic boundary of Driveway A and then overlays Google Earth Images to compare the size of the boundary to infer whether any change or expansion occurred. See Record Exhibit B.25. This methodology is improper for three reasons:

(1) County's Method For Measuring Surface Area Is Unreliable – Record Exhibit B.25 lacks a clarifying legend to distinguish whether the reported square footage applies to the narrow driveway corridor or the larger shaded polygon; it provides no graphic scale bar, ratio scale, or spatial metadata to prove that the disparate 1998 and 2025 images share an identical scale; and dense tree canopy and heavy shadows obscure the entire southern edge

of the corridor in both views. As such, the physical boundaries of Driveway A or any "expansion" of Driveway A cannot be verified through satellite imagery alone.

(2) The County Wrongfully Aggregates The Surface Area Of The Alleged Development Of Driveway A – The County's 10,613 square feet calculation is based on an aggregation of development that occurred over a 27-year period (from 1998 to 2025). Staff Report at 10. A plain reading of MCC 39.5510 shows that the ten-cubic-yard threshold evaluates individual, discrete instances of earth movement, not an aggregate sum accumulated over multiple decades. Under the County's code, the cumulative standard applies strictly to the 400-square-foot expansion safe harbor, not to the baseline definition of development itself. Thus, the County bears the burden of proving that each instance of development resulted in a change greater than 10-cubic-yards. This would require the County to measure the surface area and depth of the individual developments. The County has put forth no evidence quantifying the volume of material filled or excavated in August 2020 (Ex. B.8, page 8), May 2021 (Ex. B.8, page. 7), or in May 2023 (Ex. B.8, page 5).

(3) County's Assumption Of Depth Is Arbitrary – The County acknowledges it has never measured any depth of the alleged development. Id. Instead, the County assumes a 1-inch depth. Id. The County's reliance on this 1-inch assumption is arbitrary and unduly prejudices the rights of the Respondents. If the true average depth across the disturbed area was under a third of an inch rather than the assumed one inch, the total volume would immediately fall below the ten-cubic-yard threshold, divesting the County of jurisdiction to bring these violations. The County is obligated to accurately quantify whether each instance of development resulted in change greater than ten (10) cubic yards on any lot or excavation. It has failed to do so.

ii. The County's evidence fails to prove that unlawful development of Driveway A occurred within the SEC-s overlay beyond exempt activity

Even if the County can prove that jurisdictional development of Driveway A has occurred, the County fails to establish that the alleged development was not a change, alteration, or expansion of a lawfully established driveway less than 400 square feet, or the routine repair and maintenance of existing farm and timber roads, which are exempt from obtaining an SEC-s Overlay permits under MCC 39.5515(A).

Among other activities, the following are exempt from obtaining an SEC-S Overlay permit under MCC 39.5515(A):

> *"(4) Change, alteration, or expansion of a lawfully established use or structure provided that: […] (b) Within the […] SEC-s, there is no change to, or alteration or expansion of, the structure's or a driveway's ground coverage in excess of 400 square feet. With respect to expansion, this exception does not apply on a project-by project basis, but rather applies on a cumulative basis to all expansions after the issuance of the original permit for the construction of the structure.*
>
> *(9) Routine repair and maintenance of structures, roadways, driveways, utility facilities, and landscaped areas that are lawfully established[.]"*

Again, the County alleges that Driveway A was excavated on August 2020 (Ex. B.8, page 8), soil, rock, concrete debris and chipped asphalt were deposited in May 2021 (Ex. B.8, page. 7), and additional concrete was deposited in May 2023 (Ex. B.8, page 5). Staff Report at 10. According to the Staff Report that development increased the surface area of driveway A within the SEC-s overlay from approximately 7,760 square feet in 1998 (the first land use map available when the SEC-s overlay can be applied for measurement) to 18,373 square feet in 2025; a difference of 10,613 square feet (Ex. B.25, page 1 2). Id. According to the County, this alleged development is not exempt from SEC permit requirements under MCC 39.5515(A) because it resulted in increased ground coverage of each driveway in excess of 400 square feet and altered the size, scope and configuration of Private Driveway A. Id at 11.

As explained below, the County's methodology creates critical issues for determining whether any expansion occurred greater than 400 square feet, and that the activity depicted in the aerial photos is not the routine maintenance and repair of existing roads:

(1) The 1998 Baseline is Arbitrary and Inconsistent with County's Code – The County acknowledges that Driveway A has been in existence since at least 1936. Staff Report at 10; see also Record Ex. D.2-D.3 and D.4-D.5. Driveway A was clearly in existence in 1963. Resp. Ex. M. The County also acknowledges that the road was in existence in 1994, when the SEC-s permits were required. Staff Report at 10. Under the County's code, 1936 is the year in which the road would have been considered lawfully established, and thus the point at which the County begins measuring any expansion. However, the County seeks to use a 1998 baseline for determining whether there has been an expansion of more than 400 square feet because (according to the County) that is the earliest date that an SEC-s overlay map is available. As explained below, 1998 was not the earliest date in which the SEC-S Overlay map is available. Regardless, that would not be the proper date to determine whether a pre-existing road was expanded; it would be from the date the road was established. Thus, the 1998 baseline is arbitrary and inconsistent with the County's code.

(2) Any Activity Occurring Before January 7, 2010 Cannot Be Counted in Determining Any Purported Increase in Surface Area of Driveway A, as the SEC-s Overlay Was Not Applied to the Property Until That Date - The County attempts to calculate a change in the expansion of surface area of Driveway A by using a 1998 baseline, theorizing that 1998 was the first date that an SEC-s overlay map was available. Respondents do not know whether this is accurate or not, but it is entirely irrelevant, as Respondents' Property was not included in the SEC-s overlay zone until January 7, 2010, when the County adopted Ordinance 1152. Resp. Ex. N. Attached as an exhibit to Ordinance 1152 was a map entitled "West Hills New Significant Environmental Concern for Streams (SEC-s) Overlays". Id. New SEC-s overlays appeared in pink on the map. As shown in Resp. Ex. N, Respondents property contained a pink area that appears to correspond exactly to the same location that exists today, meaning that prior to January 7, 2010, any SEC-s permit requirements were simply inapplicable to Respondents property. Attempting to base an expansion on increased surface area created prior to January 7, 2010, when Respondents predecessors in interest to the property were free to expand surface area to their hearts content without

need for an SEC-s permit is wrong, and any expansion cannot be counted in Respondents back of the napkin calculations.

(3) The 400 Square Foot Limitation on Driveway Expansion Was Not Enacted Until August 18, 2022 – On August 18, 2022 the County enacted Ordinance 1309. Resp. Ex. O. That ordinance amended the exemption for changes, alterations or expansions of lawfully established uses (MCC 39.5515(4)(b)) by adding "driveways" along with "structures" to the 400 square foot limits for expansions in an SEC-s overlay. Prior to that time, there was no limit on the increase in expansion of a lawfully established driveway in the SEC-s overlay zone. Any change, alteration, or expansion of a "driveway" could be done without the need for a SEC-s permit. The County's assertion that Respondents have violated the 400 square foot limit in MCC 39.5515(4)(b) is flawed, as it is based upon alleged activities that occurred prior to August 18, 2022 when there was no limit on the size of the expansion. If the County wishes to enforce its 400 square foot limitation, it must rely solely on activity that occurred after August 18, 2022.

(4) The County's Methodology For Measuring Any Expansion Of Driveway A Is Unreliable – Again, there is no dispute that Driveway A is a lawfully established use. However, as explained *supra*, the County's methodology for measuring expansion appears to rely on unverified GIS polygon tracing, where staff manually drew boundaries over aerial imagery rather than conducting an on-the-ground survey. For the same reasons, Exhibit B.25 cannot be relied upon to measure any expansion of Driveway A: Ex. B.25 lacks a clarifying legend to distinguish whether the reported square footage applies to the narrow driveway corridor or the larger shaded polygon; it provides no graphic scale bar, ratio scale, or spatial metadata to prove that the disparate 1998 and 2025 images share an identical scale; and dense tree canopy and heavy shadows obscure the entire southern edge of the corridor in both views, thus preventing the physical boundaries Driveway A from being verified from the air. Consequently, the County lacks any reliable, physical measurements establishing the true boundaries of the road in 1998 or in 2025, preventing it from proving that any development expanded Driveway A by greater than 400 square feet.

(5) The County's Methodology Seeks To Penalize Respondents For Expansions Done By Prior Owners – The County also fails to acknowledge that Respondents did not purchase the property until 2014; several decades after the road was originally established and more than fifteen years after the County's 1998 baseline. Because the County has offered zero photographic, testimonial, or historical records establishing the physical dimensions of the roadway when Respondents acquired the property in 2014 versus its condition in 1998, it is impossible to determine what portion (if any) of the alleged expansion occurred during Respondents' tenure. Holding current owners accountable for development performed by predecessors in interest is fundamentally unfair as it impermissibly shifts that evidentiary obligation onto the Respondents to prove that they were not responsible for development that occurred decades before they owned the property.

(6) The County Has Failed To Prove Alleged Development Was Not Routine Repair And Maintenance – Under MCC 39.5515(A)(9), the routine repair and maintenance of lawfully established structures, roadways, and driveways are exempt from SEC-s Overlay permit requirements. For the reasons articulated *supra*, the County's evidence is wholly insufficient to prove that Respondents' conduct was anything other than this exempt maintenance. Driveway A is a lawfully established road existing since at least 1936, along which Respondents have periodically placed gravel and surface rock to maintain their farm roads, which includes Driveway A. Resp. Ex. C. at 3 ¶ 19. Because the County possesses no baseline measurements establishing the historical dimensions or cross-section of the road, it cannot meet its affirmative burden to prove that the alleged development is not routine maintenance and repair of Driveway A.

To meet its evidentiary burden, the County must prove each element of all violations alleged by a preponderance of the evidence. Because the County has failed to establish a true and accurate baseline, it cannot prove that the alleged development exceeded the 400-square-foot threshold. For the same reasons, the County cannot prove that the alleged development is not the routine maintenance of existing roads. Thus, the County cannot prove by a preponderance of the evidence that Respondents were ever required to obtain an SEC-s Overlay permit for any of the alleged instances of development.

b. Alleged Violation: "Driveway B was excavated between August 2020 (Ex. B.9, page 10) and June 2022 with deposits of soil on the latter date (Ex. B.9, page 8), as well as deposits of soil and concrete in May 2023 (Ex. B.9, page 7), soil in August 2023 (Ex. B.9, page 4), and soil, concrete and asphalt in April 2024 (Ex. B.9, page 3) and November 2024 (Ex. B.9, page 2). That development increased the surface area of driveway B within the SEC-s overlay from approximately 28,932 in 1998 to 36,346 in 2025; a difference of 7,414 square feet (Ex. B.25, pages 1-2). Assuming an average depth of 1 inch of excavation and/or deposit of material across the developed area of driveway B, the total volume of material moved was 23 cubic yards (Ex. B.25, page 1)."

Response: Respondents dispute this allegation. To meet its evidentiary burden, the County must prove each element of all violations alleged by a preponderance of the evidence. Accordingly, to prevail here, the County must prove that Respondents developed (made changes by filling or excavation) Driveway B in amounts greater than ten (10) cubic yards. Additionally, the County must prove that any alleged development was not one of several exempted activities. For the reasons explained below, the County cannot prove that Respondents conducted unlawful "development" of Driveway B beyond exempted activity within the SEC-s Overlay.

i. The County's evidence is insufficient to prove unlawful "development" of Driveway B occurred because there is no evidence to prove that Respondents excavated or filled more than ten (10) cubic yards of material on any of the alleged dates:

The County utilizes the same flawed methodology for proving unlawful "development" of Driveway B. Specifically, the County simply lists several months between 2020 and 2024 and alleges that excavation or fill occurred. It then measures the gross change in Driveway B's general

footprint between a 1998 aerial image and a 2025 aerial image to arrive at a 7,414-square-foot developed surface area. Acknowledging then applies a theoretical "one-inch average depth" across that 27-year span to manufacture its 23-cubic-yard total depth. For similar reasons as articulated in regard to Driveway A, this creates critical issues in analyzing whether any jurisdictional "development" of Driveway B occurred on any of the alleged dates. Again, the County relies almost exclusively on zoomed-out historic aerial photos taken from Google Earth to allege that unlawful development occurred. As explained above, without actual ground-truthing, Google Earth images cannot establish unlawful activity because the platform's own governing terms explicitly disclaim the factual accuracy of its content. The images also fail to establish the essential elements required under County code: the boundary of the SEC-S Overlay; whether any alleged activity even occurred within the regulated zone; Driveway B also runs perpendicular through multiple lots (Resp. Ex. A.) and there are multiple excavations potentially occurring within each photo – without an explanation from the County on what exactly is at issue here, it is unclear how the County measures the alleged "development" on each lot or excavation as required by its code; who conducted the development or whether it occurred prior to Respondents control of the property; what materials were actually deposited; and proof that the alleged excavation or fill was performed using motorized equipment. The images show no motorized activity, and the County has provided no other evidence to support that claim. Similarly, the County was obligated to perform an on-the-ground physical survey or use other established engineering methods to accurately quantify the alleged development to ensure it was in excess of ten (10) cubic yards on the date in which the development occurred. The County failed to do so and does not dispute this fact. Staff Report at 10. Instead, the County uses manual desktop GIS tracing to guess the historic boundary of Driveway B and then overlays Google Earth Images to compare the size of the boundary to infer whether any change or expansion occurred. See Exhibit B.25. This methodology is improper for several reasons:

(1) County's Method For Measuring Surface Area Is Unreliable – Exhibit B.25 lacks a clarifying legend to distinguish whether the reported square footage applies to the narrow driveway corridor or the larger shaded polygon; it provides no graphic scale bar, ratio scale, or spatial metadata to prove that the disparate 1998 and 2025 images share an identical scale; and dense tree canopy and heavy shadows obscure the entire northern edge of the corridor in both views. As such, the physical boundaries of Driveway B or any "expansion" of Driveway B cannot be verified through satellite imagery alone.

(2) The County Wrongfully Aggregates The Surface Area Of The Alleged Development Of Driveway B – The County's 7,414 square foot calculation is based on an aggregation of development that occurred over a 27-year period (from 1998 to 2025). Staff Report at 10. A plain reading of MCC 39.5510 confirms that the ten-cubic-yard threshold evaluates individual, discrete instances of earth movement, not an aggregate sum accumulated over multiple decades. Under the County's code, the cumulative standard applies strictly to the 400-square-foot expansion safe harbor, not to the baseline definition of development itself. Thus, the County bears the burden of proving that each instance of development resulted in a change greater than 10-cubic-yards. This would require the County to measure the surface area and depth of the individual developments. The County has put forth no evidence quantifying the volume of material filled or excavated on any of the alleged dates.

(3) County's Assumption Of Depth Is Arbitrary – The County acknowledges it has never measured any depth of the alleged development. Staff Report at 10. Instead, the County assumes a 1-inch depth. Id. The County's reliance on this 1-inch assumption is arbitrary and unduly prejudices the rights of the Respondents. The County is obligated to accurately quantify whether each instance of development resulted in change greater than ten (10) cubic yards on any lot or excavation. The County has put forth no evidence quantifying the volume of material filled or excavated on any date in August 2020 (Ex. B.9, page 10), June 2022 (Ex. B.9, page 8), May 2023 (Ex. B.9, page 7), August 2023 (Ex. B.9, page 4), April 2024 (Ex. B.9, page 3), or November 2024 (Ex. B.9, page 2).

To meet its evidentiary burden, the County must prove each element of all violations alleged by a preponderance of the evidence. The County has failed to put forth any evidence quantifying the volume of material filled or excavated on the dates alleged. Thus, the County cannot prove by a preponderance of the evidence that the alleged activity is "development" of Driveway B as defined in MC 39.2000.

ii. The County's evidence fails to prove that unlawful development of Driveway B occurred within the SEC-s overlay beyond exempt activity.

For similar reasons as articulated above, even if the County can prove that jurisdictional development of Driveway B has occurred, the County fails to establish that the alleged development was not a change, alteration, or expansion of a lawfully established driveway less than 400 square feet, or the routine repair and maintenance of existing farm and timber roads, which are exempt from obtaining an SEC-s Overlay permits under MCC 39.5515(A).

The County alleges that Driveway B was excavated and filled on August 2020 (Ex. B.9, page 10), June 2022 (Ex. B.9, page 8), May 2023 (Ex. B.9, page 7), August 2023 (Ex. B.9, page 4), April 2024 (Ex. B.9, page 3), and November 2024 (Ex. B.9, page 2). According to the Staff Report, that development increased the surface area of Driveway B within the SEC-s overlay from approximately 28,932 in 1998 to 36,346 in 2025; a difference of 7,414 square feet (Ex. B.25, pages 1-2). Staff Report at 10. Assuming an average depth of 1 inch of excavation and/or deposit of material across the developed area of driveway B, the total volume of material moved was 23 cubic yards (Ex. B.25, page 1). Id.

As explained below, the County's methodology creates critical issues for determining whether any expansion occurred greater than 400 square feet, and that the activity depicted in the aerial photos is not the routine maintenance and repair of existing roads:

(1) The 1998 Baseline is Arbitrary and Inconsistent with County's Code – The County acknowledges that Driveway B has been in existence since at least 1936. Staff Report at 10; see also Ex. D.2-D.3 and D.4-D.5. The County also acknowledges that the road was in existence in 1994, when the SEC-s permits were required. Id. Under the County's code, 1936 is the year in which the road would have been considered lawfully established, and thus the point at which the County begins measuring any expansion. However, the County seeks to use a 1998 baseline for determining whether there has been an expansion of more than 400 square feet because (according to the County) that is the earliest date that an SEC-s overlay map is available. As explained above, 1998 was not the earliest date in which the

SEC-s Overlay map is available. Regardless, that would not be the proper date to determine whether a pre-existing road was expanded; it would be from the date the road was established. Thus, the 1998 baseline is arbitrary and inconsistent with the County's code.

(2) Any Activity Occurring Before January 7, 2010 Cannot Be Counted in Determining Any Purported Increase in Surface Area of Driveway B, as the SEC-s Overlay Was Not Applied to the Property Until That Date – The County attempts to calculate a change in the expansion of surface area of Driveway B by using a 1998 baseline, theorizing that 1998 was the first date that an SEC-s overlay map was available. Respondents do not know whether this is accurate or not, but it is entirely irrelevant, as Respondents property was not included in the SEC-s overlay zone until January 7, 2010, when the County adopted Ordinance 1152. Resp. Ex. N. Attached as an exhibit to Ordinance 1152 was a map entitled "West Hills New Significant Environmental Concern for Streams (SEC-s) Overlays". Id. New SEC-s overlays appeared in pink on the map. As shown in the map attached to Resp. Ex. N , Respondents property contained a pink area that appears to correspond exactly to the same location that exists today, meaning that prior to January 7, 2010, any SEC-s permit requirements were simply inapplicable to Respondents property. Attempting to base an expansion on increased surface area created prior to January 7, 2010, when Respondents predecessors in interest to the property were free to expand surface area to their hearts content without need for an SEC-s permit is wrong, and any expansion cannot be counted in Respondents back of the napkin calculations.

(3) The 400 Square Foot Limitation on Driveway Expansion Was Not Enacted Until August 18, 2022 – On August 18, 2022 the County enacted Ordinance 1309. Resp. Ex. O. That ordinance amended the exemption for changes, alterations or expansions of lawfully established uses (MCC 39.5515(4)(b)) by adding "driveways" along with "structures" to the 400 square foot limits for expansions in an SEC-s overlay. Prior to that time, there was no limit on the increase in expansion of a lawfully established driveway in the SEC-s overlay zone. Any increase could be made without the need for a SEC-s permit. The County's assertion that Respondents have violated the 400 square foot limit in MCC 39.5515(4)(b) is flawed, as it is based upon alleged activities that occurred prior to August 18, 2022 when there was no limit on the size of the expansion. If the County wishes to enforce its 400 square foot limitation, it must rely solely on activity that occurred after August 18, 2022.

(4) The County's Methodology For Measuring Any Expansion Of Driveway B Is Unreliable – Again, there is no dispute that Driveway B is a lawfully established use/structure. However, as explained *supra*, the County's methodology for measuring expansion of Driveway B cannot be relied upon: Ex. B.25 lacks a clarifying legend to distinguish whether the reported square footage applies to the narrow driveway corridor or the larger shaded polygon; it provides no graphic scale bar, ratio scale, or spatial metadata to prove that the disparate 1998 and 2025 images share an identical scale; and dense tree canopy and heavy shadows obscure the entire northern edge of the corridor in both views, thus preventing the physical boundaries Driveway B from being verified from the air. Consequently, the County lacks any reliable, physical measurements establishing the true

boundaries of the road in 1998, 2025, or anytime in between, preventing it from proving that any development expanded Driveway B by greater than 400 square feet.

(5) The County's Methodology Seeks To Penalize Respondents For Expansions Done By Prior Owners – The County also fails to acknowledge that Respondents did not purchase the property until 2014; several decades after the road was originally established and more than fifteen years after the County's 1998 baseline. Because the County has offered zero photographic, testimonial, or historical records establishing the physical dimensions of the roadway when Respondents acquired the property in 2014 versus its condition in 1998, it is impossible to determine what portion (if any) of the alleged expansion occurred during Respondents' tenure. Holding current owners accountable for development performed by predecessors in interest is fundamentally unfair as it impermissibly shifts that evidentiary obligation onto the Respondents to prove that they were not responsible for development that occurred decades before they owned the property.

(6) The County Has Failed To Prove Alleged Development Of Driveway B Was Not Routine Repair And Maintenance – Under MCC 39.5515(A)(9), the routine repair and maintenance of lawfully established structures, roadways, and driveways are exempt from SEC-s Overlay permit requirements. For the reasons articulated *supra*, the County's evidence is wholly insufficient to prove that Respondents' conduct was anything other than this exempt maintenance. Driveway B is a lawfully established road existing since at least 1936, along which Respondents have periodically placed gravel and surface rock to maintain their farm roads. Staff Report at 10. Because the County possesses no baseline measurements establishing the historical dimensions or cross-section of the road, it cannot meet its affirmative burden to prove that the alleged development is not routine maintenance and repair of Driveway B.

To meet its evidentiary burden, the County must prove each element of all violations alleged by a preponderance of the evidence. Because the County has failed to establish a true and accurate baseline, it cannot prove that the alleged development exceeded the 400-square-foot threshold. For the same reasons, the County cannot prove that the alleged development is not the routine maintenance of existing roads. Thus, the County cannot prove by a preponderance of the evidence that Respondents were ever required to obtain an SEC-s Overlay permit for any of the alleged instances of development.

c. Alleged Violation: "There is no evidence that private driveway[y] D […] existed prior to the adoption of SEC permit requirements in 1994. Driveway D is first apparent in aerial photos from 2022 showing development through deposits of dirt and crushed asphalt and excavation (Ex. B.11, page 5). As of 2025, the disturbed area of driveway D was 12,319 square feet. Assuming an average depth of 1 inch of excavation and/or deposit of material across the developed area of driveway B, the total volume of material moved was 38 cubic yards (Ex. B.25, page 1)."

Response: Respondents dispute this allegation. The County cannot prove that Respondents conducted unlawful "development" of Driveway A beyond exempted activity within the SEC-s Overlay. To meet its evidentiary burden, the County must prove each element of all violations

alleged by a preponderance of the evidence. Accordingly, to prevail here, the County must prove that Respondents developed (made changes by filling or excavation) Driveway D in amounts greater than ten (10) cubic yards. Additionally, the County must prove that any alleged development was not one of several exempted activities. For the reasons explained below, the County cannot prove that Respondents conducted unlawful "development" of Driveway D beyond exempted activity within the SEC-s Overlay.

i. The County's evidence is insufficient to prove unlawful "development" of Driveway D occurred because there is no evidence to prove that Respondents excavated or filled more than ten (10) cubic yards of material on any of the alleged dates:

Again, the County relies upon the same failed approach. The County acknowledges that is has never conducted an engineering review to prove that Respondents engaged in development of Driveway D significant enough to trigger an SEC-s Overlay permit. Staff Report at 11. Instead, the County overlays a 1998 aerial image onto a 2025 aerial image taken from unidentified sources. Using what appears to be desktop GIS polygon tracing, County staff manually drew boundaries over the aerial imagery to delineate the bounds of Driveway D.

Comparing the two, the County concludes that Driveway D has been "expanded" by 12,319 square feet (more than 400 square feet). Id. The County then acknowledges that it has never conducted a site visit or done any actual measuring of the development, so it assumes a "an average depth of 1 inch of excavation and/or deposit of material across the developed area" to determine that the alleged development has moved 38 cubic yards. Id. For similar reasons as articulated above, this creates critical issues in analyzing whether any jurisdictional "development" of Driveway D occurred on any of the alleged dates.

Again, the County's reliance on Google Earth Images to prove that Respondents unlawfully developed Driveway D is improper. As explained above, without actual ground-truthing, Google Earth images cannot establish unlawful activity because the platform's own governing terms explicitly disclaim the factual accuracy, completeness, and real-world reliability of its content.

Second, the Google Earth images fail to establish the essential elements required under County code: the photos do not show the boundary of the SEC-s Overlay and whether any alleged activity even occurred within the regulated zone; Driveway D also runs perpendicular through multiple lots (See Resp. Ex. A.) and there are multiple excavations potentially occurring within each photo – without an explanation from the County on what exactly is at issue here, it is unclear how the County measures the alleged "development" on each lot or excavation as required by its code; who conducted the development or whether it occurred prior to Respondents control of the property; what materials were actually deposited; and proof that the alleged excavation or fill was performed using motorized equipment. The images show no motorized activity, and the County has provided no other evidence to support that claim.

Similarly, the County was obligated to perform an on-the-ground physical survey or use other established engineering methods to accurately quantify the alleged development to ensure it was in excess of ten (10) cubic yards on the date in which the development occurred. The County failed to do so and does not dispute this fact. Staff Report at 11. Instead, the County uses manual desktop GIS tracing to guess the historic boundary of Driveway D and then overlays Google Earth Images

to compare the size of the boundary to infer whether any change or expansion occurred. See Exhibit B.25. This methodology is improper for several reasons:

(1) **County's Method For Measuring Surface Area Is Unreliable –** Exhibit B.25 lacks a clarifying legend to distinguish whether the reported square footage applies to the narrow driveway corridor or the larger shaded polygon; it provides no graphic scale bar, ratio scale, or spatial metadata to prove that the disparate 1998 and 2025 images share an identical scale; and vegetation and shadows obscure edges of the road. As such, the physical boundaries of Driveway D or any "expansion" of Driveway D cannot be verified through satellite imagery alone.

(2) **The County Wrongfully Aggregates The Surface Area Of The Alleged Development Of Driveway D –** The County's 12,319 square foot calculation is based on an aggregation of development that occurred over a 27-year period (from 1998 to 2025). Staff Report at 11. A plain reading of MCC confirms that the ten-cubic-yard threshold evaluates individual, discrete instances of earth movement, not an aggregate sum accumulated over multiple decades. Under the County's code, the cumulative standard applies strictly to the 400-square-foot expansion safe harbor, not to the baseline definition of development itself. Thus, the County bears the burden of proving that each instance of development resulted in a change greater than 10-cubic-yards. This would require the County to measure the surface area and depth of the individual developments. The County has put forth no evidence quantifying the volume of material filled or excavated on any of the alleged dates.

(3) **County's Assumption Of Depth Is Arbitrary –** The County acknowledges it has never measured any depth of the alleged development. Id. Instead, the County assumes a 1-inch depth. Id. The County's reliance on this 1-inch assumption is arbitrary and unduly prejudices the rights of the Respondents. The County is obligated to accurately quantify whether each instance of development resulted in change greater than ten (10) cubic yards on any lot or excavation. The County has put forth no evidence quantifying the volume of material filled or excavated on any of the alleged dates.

To meet its evidentiary burden, the County must prove each element of all violations alleged by a preponderance of the evidence. The County has failed to put forth any evidence quantifying the volume of material filled or excavated on the dates alleged. Thus, the County cannot prove by a preponderance of the evidence that the alleged activity is "development" of Driveway D as defined in MC 39.2000.

ii. The County's evidence fails to prove that unlawful development of Driveway D occurred within the SEC-s overlay beyond exempt activity.

Even if the County can prove that jurisdictional development has occurred, the County fails to establish that the alleged development was not a change, alteration, or expansion of a lawfully established driveway less than 400 square feet, or the routine repair and maintenance of existing farm and timber roads, which are exempt from obtaining an SEC-s Overlay permits under MCC 39.5515(A).

The County alleges that Driveway D was established in 2022. According to the Staff Report, as of 2025, "the disturbed area of driveway D" was 12,319 square feet. Assuming an average depth of

1 inch of excavation and/or deposit of material across the developed area of driveway B, the total volume of material moved was 38 cubic yards (Ex. B.25, page 1)."For similar reasons, the County's methodology creates critical issues for determining whether any expansion occurred greater than 400 square feet or that the activity depicted is not the routine maintenance and repair of existing roads:

(1) Driveway D Predates the Application of the SEC-s Overlay on Respondents Property – The parties dispute when Driveway D was established. Respondents have provided evidence that Driveway D was established as early as 1958 (Record Ex. D.5), but there is evidence of the road being in existence in 1990, 2004, and 2011. Resp. Ex. L1.-L.3. Driveway D has been in the same location, running east-west along the south property line as a natural extension of Driveway B and access point to Loading Area G, and most critically, since before the SEC-s Overlay permits were required on January 7, 2010 with the adoption by the County of Ordinance 1152. Resp. Ex. N. Respondents acknowledge that the aerial photographs alone appear to show that Driveway D was used intermittently since established, but farm use is allowed outright in the EFU zone and farm roads are outrighted permitted uses as a "farm use". See *Wetherell v. Douglas County*, 56 Or. LUBA 120, 137, 56 Or. LUBA 120 (2007). Therefore, provided Driveway D was established prior to January 7, 2010, it is a lawfully established use that could be "changed, altered, or expanded" without need for a SEC permit pursuant to MCC 39.5515(A)(4) prior to 2022.

(2) Driveway D in its Current State Existed Prior to the Amendment to MCC 39.5515(A)(4)(b) Imposing the 400 Square Foot Maximum Expansion of a Lawfully Established Use, and Limiting the Exemption From the SEC-s Permitting Requirements in MCC 39.5510 To Driveway Expansions Smaller Than 400 Square Feet – As noted above, prior to the enactment of Ordinance 1309 on August 18, 2022, there was no limit to the square footage "change, alteration, or expansion" of a driveway in MCC 39.5515(A)(4)(b). Resp. Ex. O. That means that a property owner subject to an SEC-s overlay could expand a lawfully established driveway without the need to obtain a SEC-s permit under MCC 39.5510, even if the expansion exceeded 400 square feet. By the County's own photographs, (see Record Ex. B.11, pg. 5), Driveway D was expanded prior to June 30, 2022, prior to the enactment of Ordinance 1309, and prior to the 400 square foot limitation. Consequently, Respondents did not need a SEC-s permit to expand Driveway D, and the County has not asserted that Driveway D has expanded since that date.

(3) The County's Methodology For Measuring Any Expansion Of Driveway D Is Unreliable – Aerial photographs demonstrate that Driveway D was established prior to the application of the SEC-s overlay on Respondents property. Thus, Driveway D is a lawfully established use and Respondents have lawfully used this road for farm use since purchasing the property in 2014. See Resp. Ex. C. at 2-3 ¶ 16-17. As explained *supra*, the County's methodology for measuring any expansion of Driveway D cannot be relied upon: Ex. B.25 lacks a clarifying legend to distinguish whether the reported square footage applies to the narrow driveway corridor or the larger shaded polygon; it provides no graphic scale bar, ratio scale, or spatial metadata to prove that the disparate 1998 and 2025 images share an identical scale; and the physical boundaries Driveway D cannot from being verified from the air. Consequently, the County lacks any reliable, physical measurements establishing

the true boundaries of Driveway D when it was lawfully established, preventing it from proving that any development expanded Driveway D by greater than 400 square feet, even if the 400 square foot limitations applied.

(4) The County's Methodology Seeks To Penalize Respondents For Expansions Done By Prior Owners – The County also fails to acknowledge that Respondents did not purchase the property until 2014; several decades after the road was originally established and more than fifteen years after the County's 1998 baseline. Because the County has offered zero photographic, testimonial, or historical records establishing the physical dimensions of the roadway when Respondents acquired the property in 2014 versus its condition in 1998, it is impossible to determine what portion (if any) of the alleged expansion occurred during Respondents' tenure.

(5) The County Has Failed To Prove Alleged Development Of Driveway D Was Not Routine Repair And Maintenance – Under MCC 39.5515(A)(9), the routine repair and maintenance of lawfully established structures, roadways, and driveways are exempt from SEC-s Overlay permit requirements. For the reasons articulated *supra*, the County's evidence is wholly insufficient to prove that Respondents' conduct was anything other than this exempt maintenance. Driveway D is a lawfully established farm road. Respondents have periodically placed gravel and surface rock to maintain their farm roads. Resp. Ex. C at 3 ¶ 17, 19. Because the County possesses no baseline measurements establishing the historical dimensions or cross-section of the road, it cannot meet its affirmative burden to prove that the alleged development is not routine maintenance and repair of Driveway D.

To meet its evidentiary burden, the County must prove each element of all violations alleged by a preponderance of the evidence. Because the County has failed to establish a true and accurate baseline, it cannot prove that the alleged development exceeded the 400-square-foot threshold. For the same reasons, the County cannot prove that the alleged development is not the routine maintenance of existing roads. Thus, the County cannot prove by a preponderance of the evidence that Respondents were ever required to obtain an SEC-s Overlay permit for any of the alleged instances of development.

d. Alleged Violation: "There is no evidence that private driveway[y] […] E [e]existed prior to the adoption of SEC permit requirements in 1994. A dirt track is first visible in a 2006 aerial photo within the general vicinity of private driveway E[.] (Ex. B.21, page 6). Following excavation in 2025, the disturbed area of driveway E was 9,655 square feet [.] (Ex. B.25, pages 1-2). Assuming an average depth of 1 inch of excavation across the developed area of driveway E, the total volume of material moved was 30 cubic yards (Ex. B.25, page 1)."

Response: Respondents dispute this allegation. The County cannot prove that Respondents conducted unlawful "development" of Driveway E beyond exempted activity within the SEC-s Overlay. To meet its evidentiary burden, the County must prove each element of all violations alleged by a preponderance of the evidence. Accordingly, to prevail here, the County must prove that Respondents developed (made changes by filling or excavation) Driveway E in amounts greater than ten (10) cubic yards. Additionally, the County must prove that any alleged

development was not one of several exempted activities. For the reasons explained below, the County cannot prove that Respondents conducted unlawful "development" of Driveway E beyond exempted activity within the SEC-s Overlay.

i. The County's evidence is insufficient to prove unlawful "development" of Driveway E occurred because there is no evidence to prove that Respondents excavated or filled more than ten (10) cubic yards of material on any of the alleged dates:

At the outset, it is unclear how the County can allege that Respondents need an SEC-s development permit here, when the County has not alleged that excavation of Driveway E is not "ground disturbing activity". Regardless, the evidence that County relies upon to support its claim that Respondents unlawfully developed Driveway E is woefully insufficient – particularly because the County has almost no evidence for its claims related to Driveway E at all. Unlike the aerial Google Earth images the County relies upon for the other Driveways, the County only has one exhibit to rely upon here – the flawed Exhibit B.25.

Again, the County acknowledges that is has never conducted an engineering review to prove that Respondents engaged in development significant enough to trigger an SEC-S Overlay permit. Staff Report at 11-12. Instead, the County overlays a 1998 aerial image onto a 2025 aerial image taken from unidentified sources. Using what appears to be desktop GIS polygon tracing, County staff manually drew boundaries over the aerial imagery to delineate the bounds of Driveway E. Comparing the two, the County concludes that the road has been "disturbed" by 9,655 square feet. Id. The County then assumes an average depth of 1 inch of excavation and/or deposit of material across the developed area to determine that the alleged development has moved 30 cubic yards. Id. For similar reasons, this approach creates critical issues in analyzing whether any jurisdictional "development" of Driveway E occurred on any of the alleged dates:

Here, the County has produced virtually no evidence of "development" regarding Driveway E. Specifically, the County offers no Google Earth imagery showing any alleged "excavation" in 2025. In fact, the County doesn't even offer a photo or diagram showing an accurate formation of Driveway E as it exists today. Instead, the Staff Report merely observes that a "dirt track is first visible in a 2006 aerial photo within the general vicinity of private driveway E" (Ex. B.21, p. 6) and compares that image to a 2025 photo using unverified GIS tracing (Ex. B.25). Staff Report at 11. From this visual comparison alone, the County assumes that Respondents excavated Driveway E from scratch in 2025. Respondents dispute this assumption.

This evidence fails as a matter of law to establish the essential elements of the code violation. The images in Exhibit B.25 fail to show that any "excavation" pursuant to the County's code occurred, identify when or by whom the work was performed, establish that the activity took place during Respondents' ownership or control of the Property, prove that motorized equipment was used, or provide any ground-level verification of Driveway E's actual physical condition. In fact, the images in Exhibit B.25 do not clearly show any "private driveway" at all, as the aerial is obscured by trees. The only image that is clear is the 2006 image from Exhibit B.21, page 6; Resp. Ex. I.1.-I.2. That image is clear because the property was logged just before the picture was taken (providing further evidence that the property (and Driveway E) is used for timber operations) but also proving how Google Earth imagery cannot be relied upon to show the bounds of Driveway E, because of heavy

vegetation. Because the County provides no other evidence, its claim rests entirely on unproven assumptions.

Again, the County was obligated to perform an on-the-ground physical survey or use other established engineering methods to accurately quantify the alleged development to ensure it was in excess of ten (10) cubic yards on the date in which the development occurred. The County failed to do so and does not dispute this fact. Staff Report at 11. Instead, the County uses manual desktop GIS tracing to guess the historic boundary of Driveway E and then overlays Google Earth Images to compare the size of the boundary to infer whether any change or expansion occurred. See Exhibit B.25. As explained earlier, this methodology is improper for three primary reasons:

(1) **County's Method For Measuring Surface Area Is Unreliable –** Exhibit B.25 lacks a clarifying legend to distinguish whether the reported square footage applies to the narrow driveway corridor or the larger shaded polygon; it provides no graphic scale bar, ratio scale, or spatial metadata to prove that the disparate 1998 and 2025 images share an identical scale. Most notably, dense tree canopy and heavy shadows obscure the entire roadway in both views. As such, the physical boundaries of Driveway E or any "excavation" of the road cannot be established or verified through satellite imagery alone.

(2) **The County Wrongfully Aggregates The Surface Area Of The Alleged Development Of Driveway E –** The County's 9,655 square foot calculation is based on an aggregation of development that occurred over a 27-year period (from 1998 to 2025). Staff Report at 11. A plain reading of the Code confirms that the ten-cubic-yard threshold evaluates individual, discrete instances of earth movement, not an aggregate sum accumulated over multiple decades. Under the County's code, the cumulative standard applies strictly to the 400-square-foot expansion safe harbor, not to the baseline definition of development itself. Thus, the County bears the burden of proving that each instance of development resulted in a change greater than 10-cubic-yards. This would require the County to measure the surface area and depth of the individual developments. The County has put forth no evidence quantifying the volume of material filled or excavated on any of the alleged dates.

(3) **County's Assumption Of Depth Is Arbitrary –** The County acknowledges it has never measured any depth of the alleged development. Id. Instead, the County assumes a 1-inch depth. Id. The County's reliance on this 1-inch assumption is arbitrary and unduly prejudices the rights of the Respondents. The County is obligated to accurately quantify whether each instance of development resulted in change greater than ten (10) cubic yards on any lot or excavation. The County has put forth no evidence quantifying the volume of material filled or excavated on any of the alleged dates.

To meet its evidentiary burden, the County must prove each element of all violations alleged by a preponderance of the evidence. The County has failed to put forth any evidence quantifying the volume of material filled or excavated on the dates alleged. Thus, the County cannot prove by a preponderance of the evidence that the alleged activity is "development" of Driveway E as defined in MC 39.2000.

ii. The County's evidence fails to prove that development of Driveway E is not exempt activity for which a SEC-s permit is not required.

Even if the County can prove that jurisdictional development has occurred, the County fails to establish that the alleged development was not a change, alteration, or expansion of a lawfully established driveway less than 400 square feet, or the routine repair and maintenance of farm and timber roads, which are exempt from obtaining an SEC-s Overlay permits under MCC 39.5515(A)(4), (9).

The County alleges that a "dirt track" (logging road) was established in 2006 (see Exhibit B.21, page 6), but was "excavated" in 2025. County Staff Report at 11. According to the Staff Report, as of 2025, "the disturbed area of driveway E" was 9,655 square feet. Id. Assuming an average depth of 1 inch of excavation and/or deposit of material across the developed area of driveway B, the total volume of material moved was 30 cubic yards (Ex. B.25, page 1). Id. The County's methodology fails to demonstrate that any expansion occurred greater than 400 square feet or that the activity depicted is not the routine maintenance and repair of existing roads:

(1) Driveway E was lawfully established in 2006 –.–Under MCC 39.4220 (C), the "propagation and harvesting of forest products" is an allowed use in this zone. Multnomah County's code does not define what "propagation and harvest" means. However, the Property is also zoned for Commercial Forest Use. Resp. Ex. B. Pursuant to MCC 39.4070(A) "forest operations" includes "road construction and maintenance" and are allowed on CFU land. Additionally, as discussed *supra*, the definition of "forest practice" in MCC 39.2000 and ORS 30.930(4)(f) also includes "road construction and maintenance." Thus, it logically follows that road construction and maintenance necessary for the propagation and harvesting of forest products is an allowed use in the Exclusive Farm Use zone. Driveway E has been used for the propagation and harvest of forest products since at least 2006 – if not longer. Resp. Ex. I.1.-I.2. The photograph in the County's own exhibits (Exhibit B.21, page 6) shows exactly what the road was and is – a logging road used for logging that portion of the property. When constructed in 2006, the SEC-s overlay was not applicable to Respondents property. That did not occur until 2010, when the County enacted Ordinance 1152. Accordingly, Driveway E has been a lawfully established timber road since at least 2006.

(2) The County's Methodology for Proving any Expansion is Unreliable –As explained *supra*, the County's methodology for measuring any expansion of Driveway E cannot be relied upon: Ex. B.25 lacks a clarifying legend to distinguish whether the reported square footage applies to the narrow driveway corridor or the larger shaded polygon; it provides no graphic scale bar, ratio scale, or spatial metadata to prove that the disparate 1998 and 2025 images share an identical scale; and the physical boundaries Driveway E cannot from being verified from the air because of heavy vegetation (it is a timber road in the middle of a Doug Fir stand). Consequently, the County lacks any reliable, physical measurements establishing the true boundaries of Driveway E when it was lawfully established, preventing it from proving that any development expanded Driveway E by greater than 400 square feet.

(3) The 1998 baseline is arbitrary and inconsistent with the County's Code – Again, the parties dispute when Driveway E was established. Respondents have provided evidence that Driveway E was lawfully established in at least 2006. However, the County seeks to use a 1998 baseline for determining whether there has been an expansion of more than 400 square feet because (according to the County) that is the earliest date that an SEC-s overlay

map is available. That is wrong for two reasons. First, as noted above, the SEC-s overlay was not applied to Respondents property until 2010. Resp. Ex. N. The establishment of Driveway E by the County's own admission occurred prior to the effective date of the SEC-s permit, meaning Respondents predecessors in interest to the property were not required to obtain a SEC-s permit at the time Driveway E was constructed. Second, the 400 square foot limits in MCC 39.5515(A)(4)(b) were not applicable to "driveways" until August, 2022, when the County enacted Ordinance 1309 and added "driveways" to the list of uses which could not be "changed, altered, or expanded" any greater than 400 square feet to remain eligible for an exemption under that subsection. Resp. Ex. O. In other words, prior to 2022, Respondents or their predecessors in interest could have "changed, altered, or expanded" Driveway E in excess of 400 square feet without the need to obtain a SEC-s permit. Thus, the 1998 baseline is arbitrary and inconsistent with the County's code. Last, based upon the plain reading of the code, 1998 would not be the date in which Driveway E was lawfully established, so that is not the date the County should measure any expansion.

(4) County Seeks to Penalize Respondents for Expansions Done by Prior Owners – The County also fails to acknowledge that Respondents did not purchase the property until 2014 – several decades after the road was originally established and more than fifteen years after the County's 1998 baseline. Because the County has offered zero photographic, testimonial, or historical records establishing the physical dimensions of the roadway when Respondents acquired the property in 2014 versus its condition in 1998 or when it was established as a timber road in 2006, it is impossible to determine what portion (if any) of the alleged expansion occurred during Respondents' tenure. This is especially true, since the County has no evidence that the Respondents excavated the road in 2025.

(5) Routine Repair And Maintenance Of Roads – Under MCC 39.5515(A)(9), the routine repair and maintenance of lawfully established structures, roadways, and driveways are exempt from SEC-s Overlay permit requirements. As explained above, the County has put forth no evidence to prove that Driveway E is not a lawfully established timber road. Neither has the County put forth evidence proving that the alleged development does not constitute the repair and maintenance of lawfully established roadways pursuant to MCC 39.5515(A)(9).

To meet its evidentiary burden, the County must prove each element of all violations alleged by a preponderance of the evidence. Because the County has failed to establish a true and accurate baseline, it cannot prove that the alleged development exceeded the 400-square-foot threshold. For the same reasons, the County cannot prove that the alleged development is not the routine maintenance of existing roads. Thus, the County cannot prove by a preponderance of the evidence that Respondents were ever required to obtain an SEC-s Overlay permit for any of the alleged instances of development.

e. There is no evidence that private driveway[y] […] F existed prior to the adoption of SEC permit requirements in 1994. A dirt track is first visible in a 2006 aerial photo[…] within a portion of driveway F (Ex. B.21, page 6). Following excavation in 2025, […] the disturbed area of driveway F was 17,953 square feet (Ex. B.25, pages 1-2). Assuming an average depth of 1 inch of excavation across the developed area […] the volume of

material moved for development of driveway F was 55 cubic yards (Ex. B.25, page 1).

Response: Respondents dispute this allegation. The County cannot prove that Respondents conducted unlawful "development" of Driveway F beyond exempted activity within the SEC-s Overlay. To meet its evidentiary burden, the County must prove each element of all violations alleged by a preponderance of the evidence. Accordingly, to prevail here, the County must prove that Respondents developed (made changes by filling or excavation) Driveway F in amounts greater than ten (10) cubic yards. Additionally, the County must prove that any alleged development was not one of several exempted activities. For the reasons explained below, the County cannot prove that Respondents conducted unlawful "development" of Driveway F beyond exempted activity within the SEC-s Overlay.

i. The County's evidence is insufficient to prove unlawful "development" of Driveway F occurred because there is no evidence to prove that Respondents excavated or filled more than ten (10) cubic yards of material on any of the alleged dates:

At the outset, it is unclear how the County can allege that Respondents need an SEC-s development permit here, when the County has not alleged that excavation of Driveway F is not "ground disturbing activity". Regardless, for the same reasons as articulated in response to Driveway E, the evidence that County relies upon to support its claim that Respondents unlawfully developed Driveway F is woefully insufficient.

Again, the County acknowledges that is has never conducted an engineering review to prove that Respondents engaged in development significant enough to trigger an SEC-S Overlay permit. Staff Report at 11. Instead, the County overlays a 1998 aerial image onto a 2025 aerial image taken from unidentified sources. Using what appears to be desktop GIS polygon tracing, County staff manually drew boundaries over the aerial imagery to delineate what they assumed to be the bounds of Driveway F. Comparing the two, the County concludes that the road has been "disturbed" by 17,953 square feet. Id. The County then assumes an average depth of 1 inch of excavation and/or deposit of material across the developed area to determine that the alleged development has moved 55 cubic yards. Id. The County's methodology fails to demonstrate that any expansion occurred greater than 400 square feet or that the activity depicted is not the routine maintenance and repair of existing roads.

Again, the County has also produced virtually no evidence of "development" regarding Driveway F. Instead, the Staff Report merely observes that a "dirt track is first visible in a 2006 aerial photo" within the general vicinity and including a "portion" of private driveway F (Ex. B.21, p. 6) and compares that image to a 2025 photo using unverified GIS tracing (Ex. B.25). Id. From this visual comparison alone, the County assumes that Respondents excavated Driveway F from scratch in 2025.

This evidence fails as a matter of law to establish the essential elements of the code violation. The images in Exhibit B.25 fail to show that any "excavation" pursuant to the County's code occurred, identify when or by whom the work was performed, establish that the activity took place during Respondents' ownership or control of the Property, prove that motorized equipment was used, or provide any ground-level verification of Driveway F's actual physical condition. In fact, the images

in Exhibit B.25 do not clearly show any "private driveway" at all, as the aerial is obscured by trees. The only image that is clear is the 2006 image from Exhibit B.21, page 6. That image is clear because it is obvious that the property was logged just before the picture was taken, providing further evidence that the property (and Driveway E) is used for timber operations. Because the County provides no other evidence, its claim rests entirely on unproven assumptions.

Again, the County was obligated to perform an on-the-ground physical survey or use other established engineering methods to accurately quantify the alleged development to ensure it was in excess of ten (10) cubic yards on the date in which the development occurred. The County failed to do so and does not dispute this fact. Staff Report at 11. Instead, the County uses manual desktop GIS tracing to guess the historic boundary of Driveway F and then overlays Google Earth Images to compare the size of the boundary to infer whether any change or expansion occurred. See Exhibit B.25. As explained earlier, this methodology is improper for three primary reasons:

(1) **County's method for measuring surface area is unreliable –** Exhibit B.25 lacks a clarifying legend to distinguish whether the reported square footage applies to the narrow driveway corridor or the larger shaded polygon; it provides no graphic scale bar, ratio scale, or spatial metadata to prove that the disparate 1998 and 2025 images share an identical scale. Most notably, dense tree canopy and heavy shadows obscure the entire roadway in both views. Again, Driveway F is a timber road that exists within a commercial timber stand. As such, the physical boundaries of Driveway F or any "excavation" of the road cannot be established or verified through satellite imagery alone.

(2) **The County wrongfully aggregates the surface area of the alleged development of Driveway F –** The County's 17,953 square foot calculation is based on an aggregation of development that occurred over a 27-year period (from 1998 to 2025). Id. A plain reading of MCC confirms that the ten-cubic-yard threshold evaluates individual, discrete instances of earth movement, not an aggregate sum accumulated over multiple decades. Under the County's code, the cumulative standard applies strictly to the 400-square-foot expansion safe harbor, not to the baseline definition of development itself. Thus, the County bears the burden of proving that each instance of development resulted in a change greater than 10-cubic-yards. This would require the County to measure the surface area and depth of the individual developments. The County has put forth no evidence quantifying the volume of material filled or excavated on any of the alleged dates.

(3) **County's assumption of depth is arbitrary –** The County acknowledges it has never measured any depth of the alleged development. Id. Instead, the County assumes a 1-inch depth. Id. The County's reliance on this 1-inch assumption is arbitrary and unduly prejudices the rights of the Respondents. The County is obligated to accurately quantify whether each instance of development resulted in change greater than ten (10) cubic yards on any lot or excavation. The County has put forth no evidence quantifying the volume of material filled or excavated on any of the alleged dates.

To meet its evidentiary burden, the County must prove each element of all violations alleged by a preponderance of the evidence. The County has failed to put forth any evidence quantifying the

volume of material filled or excavated on the dates alleged. Thus, the County cannot prove by a preponderance of the evidence that the alleged activity is "development" of Driveway F as defined in MC 39.2000.

ii. The County's evidence fails to prove that any development of Driveway F occurred within the SEC-s that was not exempt under MCC 39.5515.

Even if the County can prove that jurisdictional development has occurred, the County fails to establish that the alleged development was not a change, alteration, or expansion of a lawfully established driveway less than 400 square feet, or the routine repair and maintenance of farm and timber roads, which are exempt from obtaining an SEC-s Overlay permits under MCC 39.5515.

The County alleges that a "dirt track" that was "within a portion" of Driveway F was established in 2006, but was "excavated" in 2025. County Staff Report, pg. 11. According to the Staff Report, as of 2025, "the disturbed area of driveway F" was 17,953 square feet. Assuming an average depth of 1 inch of excavation and/or deposit of material across the developed area of driveway B, the total volume of material moved was 55 cubic yards (Ex. B.25, page 1). The County's methodology fails to demonstrate that any expansion occurred greater than 400 square feet or that the activity depicted is not the routine maintenance and repair of existing roads:

(1) Driveway F was lawfully established in 2006 –.– The area in which Driveway F exists is zoned EFU. Resp. Ex. B. Under MCC 39.4220 (C), the "propagation and harvesting of forest products" is an allowed use in this zone. Multnomah County's code does not define what "propagation and harvest" means. However, the Property is also zoned for Commercial Forest Use. Resp. Ex. B. Pursuant to MCC 39.4070(A) "forest operations" includes "road construction and maintenance" and are allowed on CFU land. Additionally, as discussed *supra*, the definition of "forest practice" in MCC 39.2000 and ORS 30.930(4)(f) also includes "road construction and maintenance." Thus, it logically follows that road construction and maintenance necessary for the propagation and harvesting of forest products is an allowed use in the Exclusive Farm Use zone. Driveway E has been used for the propagation and harvest of forest products since at least 2006 – if not longer. Resp. Ex. I.1.-I.2. The photograph in the County's own exhibits (Exhibit B.21, page 6) shows exactly what the road was and is – a logging road used for logging that portion of the property. When constructed in 2006, the SEC-s overlay was not applicable to Respondents property. That did not occur until 2010, when the County enacted Ordinance 1152. Accordingly, Driveway F has been a lawfully established timber road since at least 2006.

(2) The County's Methodology for Proving any Expansion is Unreliable –As explained *supra*, the County's methodology for measuring any expansion of Driveway F cannot be relied upon: Ex. B.25 lacks a clarifying legend to distinguish whether the reported square footage applies to the narrow driveway corridor or the larger shaded polygon; it provides no graphic scale bar, ratio scale, or spatial metadata to prove that the disparate 1998 and 2025 images share an identical scale; and the physical boundaries Driveway F cannot from being verified from the air because of heavy vegetation (it is a timber road in the middle of a Doug Fir stand). Consequently, the County lacks any reliable, physical measurements establishing the true boundaries of Driveway F when it was lawfully established,

preventing it from proving that any development expanded Driveway E by greater than 400 square feet.

(3) The 1998 baseline is arbitrary and inconsistent with the County's Code – Again, the parties dispute when Driveway F was established. Respondents have provided evidence that Driveway E was lawfully established in at least 2006. However, the County seeks to use a 1998 baseline for determining whether there has been an expansion of more than 400 square feet because (according to the County) that is the earliest date that an SEC-s overlay map is available. As previously stated, that is wrong for two reasons. First, as noted above, the SEC-s overlay was not applied to Respondents property until 2010. Resp. Ex. N. The establishment of Driveway F by the County's own admission occurred prior to the effective date of the SEC-s permit, meaning Respondents predecessors in interest to the property were not required to obtain a SEC-s permit at the time Driveway F was constructed. Second, the 400 square foot limits in MCC 39.5515(A)(4)(b) were not applicable to "driveways" until August, 2022, when the County enacted Ordinance 1309 and added "driveways" to the list of uses which could not be "changed, altered, or expanded" any greater than 400 square feet to remain eligible for an exemption under that subsection. Resp. Ex. O. In other words, prior to 2022, Respondents or their predecessors in interest could have "changed, altered, or expanded" Driveway F in excess of 400 square feet without the need to obtain a SEC-s permit. Thus, the 1998 baseline is arbitrary and inconsistent with the County's code. Last, based upon the plain reading of the code, 1998 would not be the date in which Driveway F was lawfully established, so that is not the date the County should measure any expansion.

(4) County Seeks to Penalize Respondents for Expansions Done by Prior Owners – The County also fails to acknowledge that Respondents did not purchase the property until 2014 – several decades after the road was originally established and more than fifteen years after the County's 1998 baseline. Because the County has offered zero photographic, testimonial, or historical records establishing the physical dimensions of the roadway when Respondents acquired the property in 2014 versus its condition in 1998 or when it was established as a timber road in 2006, it is impossible to determine what portion (if any) of the alleged expansion occurred during Respondents' tenure. This is especially true, since the County has no evidence that the Respondents excavated Driveway F in 2025.

(5) Routine Repair And Maintenance Of Roads – Under MCC 39.5515(A)(9), the routine repair and maintenance of lawfully established structures, roadways, and driveways are exempt from SEC-s Overlay permit requirements. As explained above, the County has put forth no evidence to prove that Driveway F is not a lawfully established timber road. Neither has the County put forth evidence proving that the alleged development does not constitute the repair and maintenance of lawfully established roadways pursuant to MCC 39.5515(A)(9).

To meet its evidentiary burden, the County must prove each element of all violations alleged by a preponderance of the evidence. Because the County has failed to establish a true and accurate baseline, it cannot prove that the alleged development exceeded the 400-square-foot threshold. For the same reasons, the County cannot prove that the alleged development is not the routine maintenance of existing roads. Thus, the County cannot prove by a preponderance of the evidence

that Respondents were ever required to obtain an SEC-s Overlay permit for any of the alleged instances of development.

f. Alleged Violation: "[L]oading area G was developed through excavation, filling with earth materials, and depositing of non-earth materials including concrete, wood and chipped asphalt from approximately June 2022 (Ex. B.12, page 6) to September 2025 (Ex. B.24, photo 0074). In 2025, the disturbed area of loading area G was 26,430 square feet (Ex. B.25, pages 1 and 3). Assuming an average depth of 1 inch of excavation and/or deposit of material across the developed area of loading area G, the total volume of material moved was 82 cubic yards (Ex. B.25, page 1)."

Response: Respondents dispute this allegation. The County cannot prove that Respondents conducted unlawful "development" of Loading Area G beyond exempted activity within the SEC-s Overlay. To meet its evidentiary burden, the County must prove each element of all violations alleged by a preponderance of the evidence. Accordingly, to prevail here, the County must prove that Respondents developed (made changes by filling or excavation) Loading Area G in amounts greater than ten (10) cubic yards. Additionally, the County must prove that any alleged development was not one of several exempted activities. For the reasons explained below, the County cannot prove that Respondents conducted unlawful "development" of Loading Area G beyond exempted activity within the SEC-s Overlay.

i. The County's evidence is insufficient to prove unlawful "development" of Loading Area G occurred because there is no evidence to prove that Respondents excavated or filled more than ten (10) cubic yards of material on any of the alleged dates:

Again, the County relies upon its same flawed methodology and evidence. Here, the County acknowledges that is has never conducted an engineering review to prove that Respondents engaged in development significant enough to trigger an SEC-s Overlay permit. Staff Report at 12. Instead, the County overlays a 1998 aerial image onto a 2025 aerial image taken from unidentified sources. Using what appears to be desktop GIS polygon tracing, County staff manually drew boundaries over the aerial imagery to delineate the bounds of Loading Area G. Comparing the two, the County concludes that the area has been "developed" by 26,430 square feet (more than 400 square feet). Id. The County then acknowledges that it has never conducted a site visit or done any actual measuring of the development, so it assumes a "an average depth of 1 inch of excavation and/or deposit of material across the developed area" to determine that the alleged development has moved 82 cubic yards. Id. This methodology creates critical issues in analyzing whether any jurisdictional "development" of Loading Area G occurred on any of the alleged dates.

Again, the County relies almost exclusively on zoomed-out historic aerial photos taken from Google Earth to allege that unlawful development occurred. As explained above, without actual ground-truthing, Google Earth images cannot establish unlawful activity because the platform's own governing terms explicitly disclaim the factual accuracy, completeness, and real-world reliability of its content.

Second, the Google Earth images fail to establish the essential elements required under County code: The photos do not show the boundary of the SEC-s Overlay and whether any alleged activity even occurred within the regulated zone; who conducted the development or whether it occurred prior to Respondents control of the property; what materials were actually deposited; and proof that the alleged excavation or fill was performed using motorized equipment. The cited images show no motorized activity, and the County has provided no other evidence to support that claim. Additionally, the County's claims that the photos depict concrete debris or chipped asphalt is speculation. Respondents assert that the materials depicted in the photos are wood and slash from their timber stand, goat feed, gravel, and farm and irrigation implements. Resp. Ex. C at 3 ¶ 20. Respondents' assertion is actually supported by the County's limited inspection photos. See Record Ex. B.24, photo 0074. As explained above, all of those materials can be used and stored on Respondent's property without obtaining a permit under the County's code as those are forest practices..

Again, the County was obligated to perform an on-the-ground physical survey or use other established engineering methods to accurately quantify the alleged development to ensure it was in excess of ten (10) cubic yards on the date in which the development occurred. The County failed to do so and does not dispute this fact. Staff Report at 11. Instead, the County uses manual desktop GIS tracing to guess the historic boundary of Loading Area G and then overlays Google Earth Images to compare the size of the boundary to infer whether any change or expansion occurred. See Exhibit B.25. As explained earlier, this methodology is improper for three primary reasons:

(1) **County's Method For Measuring Surface Area Is Unreliable –** Exhibit B.25 lacks a clarifying legend to distinguish whether the reported square footage applies to the loading area or the larger shaded polygon; it provides no graphic scale bar, ratio scale, or spatial metadata to prove that the disparate 1998 and 2025 images share an identical scale. As such, the physical boundaries of Loading Area G or any "expansion" of Loading Area G cannot be verified through these satellite images.

(2) **The County Wrongfully Aggregates The Surface Area Of The Alleged Development Of Driveway D –** The County's 26,430 square foot calculation is based on an aggregation of development that occurred over a 27-year period (from 1998 to 2025). Staff Report at 12. A plain reading of MCC 39.5510 confirms that the ten-cubic-yard threshold evaluates individual, discrete instances of earth movement, not an aggregate sum accumulated over multiple decades. Under the County's code, the cumulative standard applies strictly to the 400-square-foot expansion safe harbor in MCC 39.5515(A)(4)(b), not to the baseline definition of development itself. Thus, the County bears the burden of proving that each instance of development resulted in a change greater than 10-cubic-yards. This would require the County to measure the surface area and depth of the individual developments. The County has put forth no evidence quantifying the volume of material filled or excavated on any of the alleged dates.

(3) **County's Assumption Of Depth Is Arbitrary –** The County acknowledges it has never measured any depth of the alleged development. Id. Instead, the County assumes a 1-inch depth. Id. The County's reliance on this 1-inch assumption is arbitrary and unduly prejudices the rights of the Respondents. The County is obligated to accurately

quantify whether each instance of development resulted in change greater than ten (10) cubic yards on any lot or excavation. The County has put forth no evidence quantifying the volume of material filled or excavated on any of the alleged dates.

To meet its evidentiary burden, the County must prove each element of all violations alleged by a preponderance of the evidence. The County has failed to put forth any evidence quantifying the volume of material filled or excavated on the dates alleged. Thus, the County cannot prove by a preponderance of the evidence that the alleged activity is "development" of Loading Area G as defined in MC 39.2000.

ii. The County's evidence fails to prove that any development of Loading Area G occurred within the SEC-s overlay that was not exempt under MCC 39.5515.

Even if the County can prove that jurisdictional development has occurred, the County fails to establish that the alleged development depicted in the aerial images is not one of several activities exempted under MCC 39.5515(A), which include the following:

(2)(c) Customary dredging and channel maintenance and the removal or filling, or both, for the maintenance or reconstruction of structures such as dikes, levees, groins, riprap, drainage ditch, irrigation ditches and tile drain systems as allowed by ORS 196.906.

[…]

"(4) Change, alteration, or expansion of a lawfully established use or structure provided that: […] (b) Within the […] SEC-s, there is no change to, or alteration or expansion of, the structure's or a driveway's ground coverage in excess of 400 square feet. With respect to expansion, this exception does not apply on a project-by project basis, but rather applies on a cumulative basis to all expansions after the issuance of the original permit for the construction of the structure.

[…]

(9) Routine repair and maintenance of structures, roadways, driveways, utility facilities, and landscaped areas that are lawfully established[.]"

The County alleges that Loading Area G was developed through excavation, filling with earth materials, and depositing of non-earth materials including concrete, wood and chipped asphalt from approximately June 2022 (Ex. B.12, page 6) to September 2025 (Ex. B.24, photo 0074). Staff Report at 12. In 2025, the disturbed area of loading area G was 26,430 square feet (Ex. B.25, pages 1 and 3). Id. Assuming an average depth of 1 inch of excavation and/or deposit of material across the developed area of loading area G, the total volume of material moved was 82 cubic yards (Ex. B.25, page 1). Id. For similar reasons, the County's methodology creates critical issues for determining whether any of the alleged development constitutes any of the exempt activities listed below.

(1) Replacement Of Tile Drain System And Irrigation Infrastructure Was Occurring At This Time – Starting around 2022, a multi-year project began to locate, maintain, and replace failed drain tiles that existed in both Loading Area G and Corral Area H. Resp. Ex. C. at 3 ¶ 21. This work included both the excavation and filling of earth materials. Evidence

of this project can be seen in Rec. Ex. B.12, Pg. 6 with the first channel running north-south on the southwest portion of Loading Area G. In this photo, Respondents assert that excavation, done by hand, is occurring to locate old drain tiles. Id. Additionally, as a part of this project, drainage and irrigation ditches were excavated and maintained. Resp. Ex. P. These activities are exempt from obtaining an SEC-s Overlay permit pursuant to MCC 39.5515(A)(2)(c). Accordingly, the County's reliance on aerial images instead of a conducting a site visit at any time is to their detriment, as the County cannot delineate what development in the photos is unpermitted development and what activity is exempt activity.

(2) Loading Area G Is A Lawfully Established Farm And Forest Use – The portion of the Property in which Loading Area G is located is zoned Exclusive Farm Use. Under MCC 39.4220(A), "Farm use, as defined in ORS 215.203" is an allowed use in this zone. Among other things, "farm use" includes "the current employment of land for the primary purpose of obtaining a profit in money" by raising crops, livestock, and poultry, and "the on-site construction and maintenance of equipment and facilities" used for those activities. See ORS 215.203(2)(a). As such, access roads or driveways for farm use are outright permitted uses in the EFU zone. See *Wetherell v. Douglas County*, 56 Or. LUBA 120, 137, 56 Or. LUBA 120 (2007). Additionally, areas used for the storage of equipment, feed, and other materials are integral to successful farming operations and should be considered "facilities" needed for those farm uses. "Farm use" has been outright allowed on EFU zoned land in Oregon since 1963. Loading Area G has been used for "farm use" for decades, specifically hay production. Resp. Ex. Q. Thus, Loading Area G is a lawfully established use that has been in existence long before the SEC-s overlay permits were required. Respondents have continued to use Loading Area G for farm use: storage of feed, farm implements, and irrigation equipment, as well as a turnaround area of trucks and other vehicles on the property Resp. Ex. C. at 3 ¶ 20 . Additionally, Under MCC 39.4220 (C), the "propagation and harvesting of forest products" is also an allowed use in this zone. Multnomah County's code does not define what "propagation and harvest" means. However, the Property is also zoned for Commercial Forest Use. Resp. Ex. B. Pursuant to MCC 39.4070(A) "forest operations" includes "road construction and maintenance" and are allowed on CFU land. Additionally, as discussed *supra*, the definition of "forest practice" in MCC 39.2000 and ORS 30.930(4)(f) includes, but is not limited to, site preparation, timber harvest, slash disposal, and road construction and maintenance, among other things. As explained below, ORS 527.722 also includes these activities as forest practices. Respondents have been using Loading Area G for forest uses since 2023. Thus, Loading Area G is a lawfully established use.

(3) The County's Methodology For Proving Any Expansion Is Unreliable –As explained *supra*, the County's methodology for measuring any expansion of Loading Area G cannot be relied upon: Ex. B.25 lacks a clarifying legend to distinguish whether the reported square footage applies to the loading area or the larger shaded polygon; it provides no graphic scale bar, ratio scale, or spatial metadata to prove that the disparate 1998 and 2025 images share an identical scale; and the physical boundaries Loading Area G cannot from being verified from the air because of heavy vegetation and the fact that Respondents' forest and farm use are covering most of the area in the photos. Consequently, the County lacks any reliable, physical measurements establishing the true boundaries of Loading Area

G when it was lawfully established, preventing it from proving that any development "expanding" Loading Area G by greater than 400 square feet.

(4) The 1998 Baseline Is Arbitrary And Inconsistent With The County's Code – Again, the parties dispute when Loading Area G was established. However, the County seeks to use a 1998 baseline for determining whether there has been an expansion of more than 400 square feet because (according to the County) that is the earliest date that an SEC-s overlay map is available. As explained above, 1998 was not the earliest date in which the SEC-S Overlay map is available. Regardless, that would not be the proper date to determine whether Loading Area G was expanded; it would be from the date Loading Area G was established. Thus, the 1998 baseline is arbitrary and inconsistent with the County's code.

(5) County Seeks To Penalize Respondents For Expansions Done By Prior Owners – The County also fails to acknowledge that Respondents did not purchase the property until 2014 – several decades after the road was originally established and more than fifteen years after the County's 1998 baseline. Because the County has offered zero photographic, testimonial, or historical records establishing the physical dimensions of Loading Area G when Respondents acquired the property in 2014 versus its condition in 1998, it is impossible to determine what portion (if any) of the alleged expansion occurred during Respondents' tenure.

(6) Routine Repair And Maintenance Of Roads – Under MCC 39.5515(A)(9), the routine repair and maintenance of lawfully established structures, roadways, and driveways are exempt from SEC-s Overlay permit requirements. As explained above, the County has put forth no evidence to prove that Loading Area G is not a lawfully road or structure. Neither has the County put forth evidence proving that the alleged development does not constitute the repair and maintenance of lawfully established roadways pursuant to MCC 39.5515(A)(9).

To meet its evidentiary burden, the County must prove each element of all violations alleged by a preponderance of the evidence. Because the County has failed to establish a true and accurate baseline, it cannot prove that the alleged development exceeded the 400-square-foot threshold. For the same reasons, the County cannot prove that the alleged development is not the routine maintenance of existing roads. Thus, the County cannot prove by a preponderance of the evidence that Respondents were ever required to obtain an SEC-s Overlay permit for any of the alleged instances of development.

g. Alleged Violation: "[R]espondents also engaged in filling in order to prepare the ground for corral placement in August 2023 (Ex. B.12, page 4), July 2024 (Ex. B. 12, page 3), November 2024 (Ex. B.12, page 2), and June 2025 (Ex. B.14, photos 9296-9299). In 2025, the disturbed area of fill area H was 13,183 square feet (Ex. B.25, page 1 and 3). Assuming an average depth of 1 inch of deposit of material across the developed area of fill area H, the total volume of material moved was 41 cubic yards (Ex. B.25, page 1)."

Response: Respondents dispute this allegation. The County cannot prove that Respondents conducted unlawful "development" of the Corral Area H beyond exempted activity within the

SEC-s Overlay. To meet its evidentiary burden, the County must prove each element of all violations alleged by a preponderance of the evidence. Accordingly, to prevail here, the County must prove that Respondents developed (made changes by filling or excavation) Corral Area H in amounts greater than ten (10) cubic yards. Additionally, the County must prove that any alleged development was not one of several exempted activities. For the reasons explained below, the County cannot prove that Respondents conducted unlawful "development" of Corral Area H beyond exempted activity within the SEC-s Overlay.

i. The County's evidence is insufficient to prove unlawful "development" of Corral Area H occurred because there is no evidence to prove that Respondents excavated or filled more than ten (10) cubic yards of material on any of the alleged dates:

For similar reasons, the evidence that County relies upon to support its claim that Respondents unlawfully developed Corral Area H is insufficient. Again, the County acknowledges that is has never conducted an engineering review to prove that Respondents engaged in development significant enough to trigger an SEC-s Overlay permit.Staff Report at 12-13. Instead, the County overlays a 1998 aerial image onto a 2025 aerial image taken from unidentified sources. Using what appears to be desktop GIS polygon tracing, County staff manually drew boundaries over the aerial imagery to delineate the bounds of Corral Area H. Id. Comparing the two, the County concludes that Corral Area H has been "disturbed" by 13,183 square feet. Id. The County then acknowledges that it has never conducted a site visit or done any actual measuring of the development, so it assumes a "an average depth of 1 inch of excavation and/or deposit of material across the developed area" to determine that the alleged development has moved 41 cubic yards. Id. The County's analysis is insufficient to determine whether any jurisdictional "development" of Corral Area H occurred on any of the alleged dates:

Again, the County relies almost exclusively on zoomed-out historic aerial photos taken from Google Earth to allege that unlawful development occurred. As explained above, without actual ground-truthing, Google Earth images cannot establish unlawful activity because the platform's own governing terms explicitly disclaim the factual accuracy, completeness, and real-world reliability of its content.

Second, the Google Earth images fail to establish the essential elements required under County code: The photos do not show the boundary of the SEC-s Overlay and whether any alleged activity even occurred within the regulated zone; who conducted the development or whether it occurred prior to Respondents control of the property; and what materials were actually deposited While the photos in Ex. B.14, photos 9296-9299 clearly show soil and the use of motorized equipment, they do not delineate between unlawful development or lawful exempt activities. As explained in greater detail below, at the time these photos were taken, a multi-year project was underway to replace failed drain tiles and irrigation that existed in both Loading Area G and Corral Area H. Resp. Ex. C. at 3 ¶ 21, 24. Additionally, as a part of this project, drainage and irrigation ditches were excavated and maintained. As discussed in more detail below, on the date in which these photos were taken, KEN Construction was onsite doing this work. Resp. Ex. P. This work included both the excavation and filling of earth materials. As previously discussed, these activities are exempt from obtaining an SEC-s Overlay permit pursuant to MCC 39.5515(A)(2)(c). Accordingly, the County's reliance on aerial images instead of a conducting a proper site visit at any time is to

their detriment, as the County cannot delineate what development in the photos is unpermitted development and what activity is exempt activity.

Again, the County was obligated to perform an on-the-ground physical survey or use other established engineering methods to accurately quantify the alleged development to ensure it was in excess of ten (10) cubic yards on the date in which the development occurred. The County failed to do so and does not dispute this fact. Staff Report at 12. Instead, the County uses manual desktop GIS tracing to guess the historic boundary of Corral Area H and then overlays Google Earth Images to compare the size of the boundary to infer whether any change or expansion occurred. See Exhibit B.25. As explained earlier, this methodology is improper for three primary reasons:

(1) County's Method For Measuring Surface Area Is Unreliable – Exhibit B.25 lacks a clarifying legend to distinguish whether the reported square footage applies to the loading area or the larger shaded polygon; it provides no graphic scale bar, ratio scale, or spatial metadata to prove that the disparate 1998 and 2025 images share an identical scale. As such, the physical boundaries of Corral Area H or any "development" of Corral Area H cannot be verified through these satellite images.

(2) The County Wrongfully Aggregates The Surface Area Of The Alleged Development Of Corral Area H – The County's 13,183 square foot calculation is based on an aggregation of development that occurred over a 27-year period (from 1998 to 2025). Staff Report at 12. A plain reading of the County's code confirms that the ten-cubic-yard threshold evaluates individual, discrete instances of earth movement, not an aggregate sum accumulated over multiple decades. Under the County's code, the cumulative standard applies strictly to the 400-square-foot expansion safe harbor exemption in MCC 39.5515(A)(4)(b), not to the baseline definition of development itself. Thus, the County bears the burden of proving that each instance of development resulted in a change greater than 10-cubic-yards. This would require the County to measure the surface area and depth of the individual developments. The County has put forth no evidence quantifying the volume of material filled or excavated on any of the alleged dates.

(3) County's Assumption Of Depth Is Arbitrary – The County acknowledges it has never measured any depth of the alleged development. Id. Instead, the County assumes a 1-inch depth. Id. The County's reliance on this 1-inch assumption is arbitrary and unduly prejudices the rights of the Respondents. The County is obligated to accurately quantify whether each instance of development resulted in change greater than ten (10) cubic yards on any lot or excavation. The County has put forth no evidence quantifying the volume of material filled or excavated on any of the alleged dates.

To meet its evidentiary burden, the County must prove each element of all violations alleged by a preponderance of the evidence. The County has failed to put forth any evidence quantifying the volume of material filled or excavated on the dates alleged. Thus, the County cannot prove by a preponderance of the evidence that the alleged activity is "development" of Corral Area H as defined in MC 39.2000.

ii. The County's evidence fails to prove that unlawful development of Corral Area H occurred within the SEC-s overlay beyond exempt activity.

Even if the County can prove that jurisdictional development has occurred, the County fails to establish that the alleged development depicted in the aerial images and from the right of way is not one of several activities exempted under MCC 39.5515(A), which include the following:

> *(2)(c) Customary dredging and channel maintenance and the removal or filling, or both, for the maintenance or reconstruction of structures such as dikes, levees, groins, riprap, drainage ditch, irrigation ditches and tile drain systems as allowed by ORS 196.906.*
>
> *[…]*
>
> *"(4) Change, alteration, or expansion of a lawfully established use or structure provided that: […] (b) Within the […] SEC-s, there is no change to, or alteration or expansion of, the structure's or a driveway's ground coverage in excess of 400 square feet. With respect to expansion, this exception does not apply on a project-by project basis, but rather applies on a cumulative basis to all expansions after the issuance of the original permit for the construction of the structure.*
>
> *(9) Routine repair and maintenance of structures, roadways, driveways, utility facilities, and landscaped areas that are lawfully established[.]"*

The County alleges that Respondents engaged in "filling" in order to "prepare the ground for corral placement in August 2023 (Ex. B.12, page 4), July 2024 (Ex. B. 12, page 3), November 2024 (Ex. B.12, page 2), and June 2025 (Ex. B.14, photos 9296-9299)". Staff Report at 12. In 2025, the disturbed area of fill area H was 13,183 square feet (Ex. B.25, page 1 and 3). Id. Assuming an average depth of 1 inch of deposit of material across the developed area of fill area H, the total volume of material moved was 41 cubic yards (Ex. B.25, page 1). Id.

For similar reasons, the County's methodology creates critical issues for determining whether any of the alleged filling constitutes one or more of the exempt activities mentioned above:

(1) Replacement Of Tile Drain System, And Irrigation Infrastructure Was Occurring In Corral Area H During Alleged Violations – Starting around 2022, a multi-year project began to locate, maintain, and replace failed drain tiles that existed in both Loading Area G and Corral H. Resp. Ex. C. at 3 ¶ 21, 24.; Resp. Ex. P. This work included both the excavation and filling of earth materials. As explained in the attached letter from KEN Construction:

> *The site work included replacing old rusted metal culverts, broken clay drain tiles, and overgrown drainage ditches. These improvements were necessary to restore and maintain proper drainage in an area that has historically been used for corralling livestock and farm-related work areas. The existing drainage infrastructure and gravel pad had deteriorated over time, and the drainage ditches had become overgrown and ineffective.*
>
> *As part of the project, we also performed related excavation and fill work necessary to remove and replace the deteriorated agricultural drainage infrastructure and create a ground grade level that would allow proper drainage of the affected areas. The work was undertaken to maintain and improve the existing agricultural use of*

this area of the farm which is the lowest elevation on the property and tends to need the most intense water management to remain usable during the wet season.

The project also included installing new water lines, planting trees in the lower woodyard and building a new goat corral in the old corral area as part of the overall improvement and restoration of the property.

Resp. Ex. P. Respondents assert that Record Exhibit B. 12., Pg, 3, 2, and 1, as well as Ex. B.14, photos 9296-9299 show the progression of much of this work in the Corral H area. These activities are exempt from obtaining an SEC-s Overlay permit pursuant to MCC 39.5515(A)(2)(c). Accordingly, the County's reliance on aerial images instead of a conducting a site visit at any time is to their detriment, as the County cannot delineate what development in the photos is unpermitted development and what activity is exempt activity.

(2) Corral Area H Is A Lawfully Established Use & County's Methodology For Determining Any Change, Alteration, Or Expansion Of That Use Is Unreliable – The portion of the Property in which Corral Area H is located in zoned Exclusive Farm Use. Under MCC 39.4220(A), "Farm use, as defined in ORS 215.203" is an allowed use in this zone. Among other things, "farm use" includes "the current employment of land for the primary purpose of obtaining a profit in money" by raising crops, livestock, and poultry, and "the on-site construction and maintenance of equipment and facilities" used for those activities. See ORS 215.203(2)(a). A corral and a livestock loading area is "equipment and facilities" used for the raising and sale of livestock. Thus, the construction and maintenance of those facilities is considered "farm use." "Farm use" has been outright allowed on EFU zoned land in Oregon since 1963. Corral Area H has been used as a corral and the area in which Respondents sell their goats since 2014. Resp. Ex. C. at 3 ¶ 23; Thus, the corral structure and Corral Area H is a lawfully established use and structure. Respondents do not dispute that they have filled, leveled the ground, and placed gravel in the Corral area between 2024 and 2026. However, for all the reasons previously mentioned with the other allegations – the County's GIS tracing is unreliable, the 1998 baseline is arbitrary and the "1998 SEC-s Overlap map" is unverifiable/incorrect, the 27-year aggregation of surface area potentially penalizes respondents for expansions done by prior owners, the county lacks any reliable or verifiable baseline – the County cannot prove that this expansion increased the surface area of the corral area by more than 400 square feet. Pursuant to MCC 39.5515(A)(4), the change, alteration, or expansion of a lawfully established use or structure less than 400 square feet is exempt from obtaining an SEC-s Overly permit.

(3) The County Has Failed To Prove Alleged Development Was Not Routine Repair And Maintenance – Under MCC 39.5515(A)(9), the routine repair and maintenance of lawfully established structures, roadways, and driveways are exempt from SEC-s Overlay permit requirements. For the reasons articulated *supra*, the County's evidence is wholly insufficient to prove that Respondents' conduct was anything other than exempt repair and maintenance. As explained above, the Corral is a lawfully established structure and the parking and turnaround area for the trucks can be considered a roadway. The Corral area is frequented by heavy trucks and trailers. Resp. Ex. C. at 4 ¶ 23- 24. The letter from KEN Construction makes clear that the existing corral gravel pad had deteriorated over time, and that corral fencing and pad was replaced to restore the use of the corral and corral area.

Resp. Ex. P. Accordingly, the evidence in the record shows that the activities documented by the County in relation to Corral Area H are more likely than not the routine repair and maintenance of lawfully established structures and roadways.

To meet its evidentiary burden, the County must prove each element of all violations alleged by a preponderance of the evidence. Because the County has failed to establish a true and accurate baseline, it cannot prove that the alleged development exceeded the 400-square-foot threshold. For the same reasons, the County cannot prove that the alleged development is not one of several exempt activities. Thus, the County cannot prove by a preponderance of the evidence that Respondents were ever required to obtain an SEC-s Overlay permit for any of the alleged instances of development.

V. CONCLUSION

This memorandum is long. Respondents apologize to the Hearings Officer for its length. But the County's entire theory of their case, not to mention the NOV, is deeply flawed in so many ways that a short, simple memorandum is impossible. The undisputed truth in this case is that Respondents "offense" is running a commercial farm and forest business in Multnomah County. Their neighbors do not like the reality of living next to a working farm. Oregon law more than shields Respondents from these types of complaints, but Multnomah County's Code is inconsistent with these protections. Moreover, the County has failed to collect the evidence necessary to meet its burden of proof. This has impermissibly shifted the burden onto Respondents and forced them to expend significant time defending themselves against unreasonable regulations – something Oregon's planning system is supposed to protect them from.

Dated this 10th day of September, 2026. OPOA LEGAL CENTER

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