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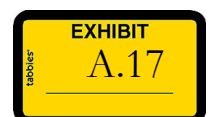
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**GENERAL INFORMATION**

Property Owner and Applicant: **Wiley Farm Enterprises LLC**  
13801 NW Charlton Road  
Portland, Oregon 97231  
Contact: Robert Wiley  
Phone: (503) 422-3350  
Email: wileyr2440@gmail.com

Applicant's Representative: **3J Consulting, Inc.**  
9600 SW Nimbus Avenue, Suite 100  
Beaverton, OR 97008  
Contact: Mercedes Serra  
Phone: (503) 946-9365 x211  
Email: mercedes.serra@3j-consulting.com

**SITE INFORMATION**

Alternate Account Number: R971160060  
Address: 13801 NW Charlton Road  
Map and Taxlot Number 2N1W16 -00900  
Total Area: 103.04 Acres  
Zoning Designation: EFU

## **INTRODUCTION**

### **APPLICANT'S REQUEST**

The applicant is requesting a three-lot partition of the subject site in accordance with a Measure 49 Final Order and Home Site Authorization (Appendix "D").

### **SITE DESCRIPTION/SURROUNDING LAND USE**

The subject site is located within the EFU zone in unincorporated Multnomah County in an area with a predominantly rural pattern of development. The property's only access is along NW Charlton Road. At 103.04 acres, the site is enveloped by farmland zoned EFU on all sides with the exception of its northwest corner – across the way from NW Charlton Road exists a pocket of properties zoned Multiple-Use Agriculture (MUA-20). The site contains three dwellings as well as miscellaneous farm buildings such as barns and sheds.

### **PROPOSAL**

The Applicant is requesting an Administrative Decision by the Planning Director, a Category 1 Land Division, two Variances and an Adjustment Review to implement a Measure 49 Final Order that would allow the establishment of a single-family dwelling on each parcel. As part of this process, the Applicant intends to decommission or relocate one of the existing dwellings currently located on Parcel 1 such that one dwelling would be on each proposed parcel in accordance with the Measure 49 Order and applicable provisions of the MCC. A key element of this proposal concerns access for the three parcels. Given the significantly limited frontage on NW Charlton Road for the subject property, the Applicant is requesting a Variance to reduce the front lot line requirement of 50 feet to 0 feet for Parcels 2 and 3, and an Adjustment to reduce the front lot line requirement of 50 feet to 46 feet for Parcel 1 – the Applicant intends to utilize the existing driveway as access to the three parcels by way of a shared driveway easement.

## **APPLICABLE CRITERIA**

The following sections of the Oregon Administrative Rules and Multnomah County Zoning Code have been extracted as they have been deemed to be applicable to the proposal. Following each **bold** applicable criteria or design standard, the Applicant has provided a series of draft findings. The intent of providing code and detailed responses and findings is to document, with absolute certainty, that the proposed development has satisfied the approval criteria for a Measure 49 Partition.

## **OREGON ADMINISTRATIVE RULES**

### **Oregon Administrative Rules (OAR) 660-041-0000 through 660-041-0530**

**Applicant's  
Finding:**

The Claimant filed an Election seeking relief under Section 6 of Measure 49. As described in the Measure 49 (M49) Order and under Section 6 of Measure 49, the number of home site approvals authorized by the Department cannot exceed the lesser of the following: the number stated in the election materials (which in this case is 3), the number described in the Measure 37 waiver issued by the state, or if no waiver was issued, the number of home sites described in the Measure 37 claim filed with the state. Thus, the number of homesites the Claimant qualifies for is a maximum of three under Section 6 of M49.

The Applicant has provided the County with a Final Order and Home Site Authorization, with a State Election Number of E129631, as Appendix "D". The Claimant for the M49 claim is Elinor Wiley, who was the owner of the fee title to the property prior to her passing.

The Measure 49 Order under Section IV states the following:

*"A home site approval will not expire, except that if a claimant who received this home site authorization later conveys the property to a party other than the claimant's spouse or the trustee of a revocable trust in which the claimant is the settlor, the subsequent owner of the property must established the authorized lots, parcels and dwellings within 10 years of the conveyance."*

Since Elinor is no longer the claimant and the property was conveyed to another party that was not the claimant's spouse or the trustee of a revocable trust, the lots, parcels and dwellings authorized by this order has 10 years from the conveyance to utilize the Measure 49 Order. The deadline is August 15<sup>th</sup>, 2028, given that the property was transferred from the Revocable Living Trust into the current LLC-owner.

The Applicant is the son of Elinor Wiley and Managing Member of Wiley Farm Enterprises, LLC, the current owner on record for the subject property.

**MULTNOMAH COUNTY ZONING CODE**  
**MCC 39.1515 CODE COMPLIANCE AND APPLICATIONS**

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

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

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

**Applicant's Finding:** The subject property is in full compliance with all applicable provisions of the Multnomah County Zoning Code and/or any permit approvals previously issued by the County. There are currently no open compliance cases on the subject property nor are there outstanding conditions from previous land use decisions. The land use proposal for which this application concerns will be evaluated by County staff and a determination will be made to ensure the continued compliance of the subject site through anticipated conditions of approval.

**MCC 39.3005-3007 LOT OF RECORD**

**MC39.3005**

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

(B) A Lot of Record is a parcel, lot, or a group thereof that, when created or reconfigured, either satisfied all applicable zoning laws and satisfied all applicable land division laws, or complies

with the criteria for the creation of new lots or parcels described in MCC 39.9700. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.

- (a) "Satisfied all applicable zoning laws" shall mean: the parcel, lot, or group thereof was created and, if applicable, reconfigured in full compliance with all zoning minimum lot size, dimensional standards, and access requirements.
- (b) "Satisfied all applicable land division laws" shall mean the parcel or lot was created:
  - 1. By a subdivision plat under the applicable subdivision requirements in effect at the time; or
  - 2. By a deed, or a sales contract dated and signed by the parties to the transaction, that was recorded with the Recording Section of the public office responsible for public records prior to October 19, 1978; or
  - 3. By a deed, or a sales contract dated and signed by the parties to the transaction, that was in recordable form prior to October 19, 1978; or
  - 4. By partitioning land under the applicable land partitioning requirements in effect on or after October 19, 1978; and
  - 5. "Satisfied all applicable land division laws" shall also mean that any subsequent boundary reconfiguration completed on or after December 28, 1993 was approved under the property line adjustment provisions of the land division code. (See Date of Creation and Existence for the effect of property line adjustments on qualifying a Lot of Record for the siting of a dwelling in the EFU and CFU districts.)
- (c) Separate Lots of Record shall be recognized and may be partitioned congruent with an "acknowledged unincorporated community" boundary which intersects a Lot of Record.
  - 1. Partitioning of the Lot of Record along the boundary shall require review and approval under the provisions of the land division part of this Chapter, but not be subject to the minimum area and access requirements of this district.
  - 2. An "acknowledged unincorporated community boundary" is one that has been established pursuant to OAR Chapter 660, Division 22.

#### MC39.3070

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

- (1) A parcel or lot which was not contiguous to any other parcel or lot under the same ownership on February 20, 1990, or
- (2) A group of contiguous parcels or lots:
  - (a) Which were held under the same ownership on February 20, 1990; and
  - (b) Which, individually or when considered in combination, shall be aggregated to comply with a minimum lot size of 19 acres, without creating any new lot line.
    - 1. Each Lot of Record proposed to be segregated from the contiguous group of parcels or lots shall be a minimum of 19 acres in area using existing legally created lot lines and shall not result in any remainder individual parcel or lot, or

remainder of contiguous combination of parcels or lots, with less than 19 acres in area. See Examples 1 and 2 in this subsection

2. There shall be an exception to the 19 acre minimum lot size requirement when the entire same ownership grouping of parcels or lots was less than 19 acres in area on February 20, 1990, and then the entire grouping shall be one Lot of Record. See Example 3 in this subsection.
  3. Three examples of how parcels and lots shall be aggregated are shown in Figure 1 below with the solid thick line outlining individual Lots of Record:
  4. The requirement to aggregate contiguous parcels or lots shall not apply to lots or parcels within exception or urban zones (e.g., MUA-20, RR, RC, SRC, BRC, R-10), but shall apply to contiguous parcels and lots within all farm and forest resource zones (i.e. EFU and CFU), or
- (3) A parcel or lot lawfully created by a partition or a subdivision plat after February 20, 1990.
- (4) Exception to the standards of (A)(2) above:
- (a) Where approval for a "Lot of Exception" or a parcel smaller than 19 acres under the "Lot size for Conditional Uses" provisions has been given by the Hearing Authority and the parcel was subsequently lawfully created, then the parcel shall be a Lot of Record that remains separately transferable, even if the parcel was contiguous to another parcel held in the same ownership on February 20, 1990.

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

- (1) July 10, 1958, F-2 zone applied;
- (2) December 9, 1975, RL-C zone applied, F-2 minimum lot size increased, Ord. 115 & 116;
- (3) October 6, 1977, MUA-20 and EFU38 zones applied, Ord. 148 & 149;
- (4) August 14, 1980, zone change from MUA-20 to EFU-38 for some properties, zone change from EFU-38 to EFU-76 for some properties. Ord. 236 & 238;
- (5) February 20, 1990, lot of record definition amended, Ord. 643;
- (6) April 5, 1997, EFU zone repealed and replaced with language in compliance with 1993 Oregon Revised Statutes and 1994 Statewide Planning Goal 3 Oregon Administrative Rules for farmland, Ord. 876;
- (7) May 16, 2002, Lot of Record section amended, Ord. 982, reenacted by Ord. 997;

(C) A Lot of Record which has less than the minimum lot size for new parcels, less than the front lot line minimums required, or which does not meet the access requirements of MCC 39.4260 may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

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

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

**Applicant's Finding:**

The pre-app notes for the subject proposal, titled PA-2020-13605 and supplied as Appendix "B", indicate that a current deed for the property will suffice for County staff to make Lot of Record findings as required for Type 3 Reviews. At the time of the Measure 49 Order (Appendix "F"), the subject property was found to be a Lot of Record. A copy of the current deed for the property has been provided as Appendix "E", which provides a description of the property that matches the Measure 49 Order (Appendix "F"). This standard is met.

**MCC 39.4245 DIMENSIONAL REQUIREMENTS AND DEVELOPMENT STANDARDS**

**(C) Minimum Yard Dimensions**

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

**Maximum Structure Height - 35 feet**

**Applicant's Finding:**

The minimum yard dimensions above are met by the configuration of the parcels shown in the provided tentative plan, provided in Appendix "D". All existing structures are appropriately setback from new property lines in conformance with the yard requirements of this section. Future structures shall abide by the maximum structure height and yard requirement of this section and will be verified at the time of building permit submittal.

On Parcel 1, the existing modular home to the south is setback 38 feet from its rear property line, whereas 30 feet is required. The west setback is approximately 138 feet and east setback is over 3,000 feet away. The front setback is over 200 feet from the modular home; thus, all other setbacks are well over the requirements of this section.

On Parcel 1, the existing modular home to the north is not applicable, as the Applicant will be decommissioning or relocating this home during the partition process.

On Parcel 2, the existing home is setback 37.3 from the front property line, whereas 30 feet is required. At its nearest points to the new property lines, the home is set back approximately 73 feet to the west and 93 feet to the east. The rear setback for Parcel 2 is over 200 feet similar to Parcel 1's front setback.



Parcel 3 contains no existing structures. Compliance with this section for a future home will be reviewed at the building permit stage of development for this parcel, contingent upon conditions of approval associated with this request being met.

Compliance with setback requirements for accessory structures is discussed below

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

**Applicant's Finding:** Two Variances and an Adjustment Review are being requested for this requirement and are discussed elsewhere in this narrative.

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

**Applicant's Finding:** Any fences or walls that encroach into the yard of any property lines resulting from this partition request shall be removed through anticipated conditions of approval.

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

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

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

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

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

**Applicant's Finding:** The Applicant understands that a variance must be obtained if future accessory structures were to encroach up to 40 percent into a Yard pursuant to the above provisions.

For existing accessory structures:

Parcel 1: There are two barns and three sheds on this future parcel. Of these accessory structures, only one shed encroaches into the required Yard

(setback). This shed is 3.7 feet from the rear property line as measured on the Applicant's provided tentative plan. The rear setback for this zone is 30 feet; however, the property line in question is existing and will not be changed as a result of this partition request and is therefore not applicable.

There are no accessory structures on Parcels 2 and 3.

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

**Applicant's Finding:** None of the required yards abut a street; instead, they abut a shared driveway easement. This standard is not applicable.

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

**Applicant's Finding:** No new structures of the above-mentioned kind are being proposed with this proposal, nor are any structures of the above kind that are existing to be modified in height or location. This standard is not applicable.

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

**(1) Sewage and stormwater disposal systems for existing development may be off-site in easement areas reserved for that purpose.**

**(2) Stormwater/drainage control systems are required for new impervious surfaces. The system shall be adequate to ensure that the rate of runoff from the lot for the 10 year 24-hour storm event is no greater than that before the development.**

**Applicant's Finding:** ZTec Engineers, Inc. provided a Storm Water Drainage Control Certificate for Land Divisions and Property Line Adjustments determining that the construction of an on-site storm water drainage control system is not required. This memo is included in Appendix "E". The Applicant was informed via a Memorandum from the County on January 24, 2020 (provided in Appendix "C") that prior to building permit submittal for construction of the replacement dwelling, the Applicant will need to submit a County Stormwater Certificate, completed by a qualified professional. The Applicant has provided Stormwater Certificates for each parcel in Appendix "E".

A Certification of Water Service and two associated well water reports have also been provided in Appendix "E", describing a supply of water available at 75 GPM.

The land division request was also reviewed by the Multnomah County Sanitarian, and a completed Septic Review Certification has been provided within Appendix "E" that indicates that the land division will not impact the existing system. The Sanitarian's comments state that Parcels 1 and 2 have full repair areas and existing systems that meet required setbacks to the proposed property lines, and that Parcel 3 is approved for septic under SER #26-19.

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

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

**Applicant's Finding:** The Applicant does not intend to make use of these provisions – this standard is not applicable.

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

**Applicant's Finding:** No new lighting is being proposed as a result of this land division. When building permits are requested for the development on Parcel 3, MCC 39.6850 shall apply.

#### **MCC 39.9035 CATEGORY 1 LAND DIVISIONS**

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

**Applicant's Finding:** Per Section 11(3) of the Measure 49 Order provided and due to the parcel's classification as "high value farmland" as defined in Section 2(10) of Measure 49, the two new parcels created from this land division request must be no larger than two acres. Thus, the remaining parcel will be 98.9 acres. As a result of these Measure 49 Order requirements and because this partition

application will require a public hearing, a Category 1 Land Division is being requested pursuant to subsection D. above. A demonstration of how this application meets the applicable variance and adjustment criteria can be found in the appropriate sections of this narrative.

### **39.9400 CRITERIA FOR APPROVAL, CATEGORY 1 AND CATEGORY 2 TENTATIVE PLAN AND FUTURE STREET PLAN**

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

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

**Applicant's Finding:** The Multnomah County Comprehensive Plan has been found to be in compliance with Statewide Goals and the Regional Plan by the State Land Conservation and Development Commission. Therefore, findings with regard to the Statewide Planning Goals and the Regional Plan are not required.

The following elements from the Comprehensive Plan are applicable to the tentative plan for this partition request:

*3.1 Prohibit creation of new lots or parcels, except as authorized by code, which detracts from agricultural practices and from protection of open space and rural community values.*

*3.3 Require lot and parcel aggregation standards to reduce parcelization, maintain larger lot and parcel sizes in farm and forest zones, and help minimize impacts of non-farm and forest uses on surrounding farm and forest production. In order to minimize confusion over the development potential of a property, a condition of approval for land use and development permits shall require deed restrictions be recorded that identify the properties that constitute a lot of record along with the development restrictions that go with the lot of record.*

*3.7 Restrict the use of exclusive farm use lands to agriculture and other uses, consistent with state law, recognizing that the intent is to preserve the best agricultural lands from inappropriate and incompatible development*

*3.8 Maximize retention of the agricultural land base by maintaining Exclusive Farm Use designated areas as farm lands with agriculture as the primary allowed use.*

*3.10 Allow non-agricultural uses, such as residences, on Exclusive Farm Use Lands as permitted by Oregon Statutes and Administrative Rules, with additional development standards and lot aggregation requirements to ensure protection of*

*agricultural lands and natural and environmental resources. Limit new non-agricultural uses, and expansion of existing non-agricultural uses. This will result in a farm protection program for the County that is more restrictive than what state statutes and rules require.*

**Finding:** The above-mentioned policies from the Multnomah County Comprehensive Plan all generally pertain to the protection and preservation of agricultural land through various measures implemented through the Comprehensive Plan and Multnomah County Code (MCC). The proposed land division in the EFU zone is to permit residences – pursuant to Policy 3.10, non-agricultural uses are permitted provided that it is in accordance with ORS and OARs and complies with all the additional development standards and lot aggregation requirements for the EFU zone, compliance of which is evaluated in MCC 39.4245 of this report.

Measure 49 and Measure 37 were enacted to strike a compromise between ensuring that Oregon law provides just compensation for unfair burdens and retaining Oregon’s protections for farm and forest uses and the state’s water resources. The provisions of Measure 49 were constructed in a manner that meets the policy intent of preserving agricultural lands for primarily agricultural uses while still permitting small portions of that land to be used as homesites. The Applicant’s proposal is consistent with the requirements of the Measure 49 claim provided in Appendix “D”, which itself was enacted through OAR Chapter 660 Division 41. Provided that the Applicant’s proposal is consistent with the allowances of the Measure 49 Order (evaluated in the OAR section of this report that precedes the MCC section), this Category I Land Division request meets the above-mentioned policies. These policies are met.

*3.12 Ensure that proposed new dwellings in the Exclusive Farm Use designated areas receive appropriate public review by providing notice and review opportunity prior to any land use decision.*

**Finding:** The Applicant is requesting the following review types:

- An Administrative Review for the M49 Order (Type II)
- A Category 1 Land Division (Type III)
- Two Variances (Type III)
- One Adjustment (Type II)

The review process for the above-mentioned land use permit types are delineated within MCC Chapter 39 Part 1.B – Procedures and are therefore

receiving the appropriate and procedural public review level in accordance with Policy 3.12 of the Comprehensive Plan. This policy is met.

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

**Applicant's Finding:** The approval of this M49 land division request will permit development of the remainder of the property under the same ownership in accordance with this and other applicable ordinances. This standard is met.

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

**Applicant's Finding:** The tentative plan complies with the applicable provisions as described elsewhere in this narrative. The purpose of this ordinance is found in MCC 39.9005, and states the following:

*This Ordinance is adopted for the purposes of protecting property values, furthering the health, safety and general welfare of the people of Multnomah County, implementing the Statewide Planning Goals and the Comprehensive Plan adopted under Oregon Revised Statutes, Chapters 197 and 215, and providing classifications and uniform standards for the division of land and the installation of related improvements in the unincorporated area of Multnomah County.*

The proposed partition application is part of a Measure 49 request. Measure 49 requests are made with the purpose of protecting property values when a state or local government enacts a land use regulation that restricts a residential use, or a farm or forest practice, and reduces the fair market value of a property.

Compliance with the MCC and Comprehensive Plan, as demonstrated in this narrative and accompanying submittal documents, ensure that the healthy, safety and general welfare of the people of Multnomah County are not adversely affected by this land division request.

This standard is met.

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

**Applicant's Finding:** The tentative plan complies with all applicable provisions of Multnomah County's Zoning Code. Where there is deviation from non-discretionary criteria (namely through variance requests), compliance with the applicable variance criteria is discussed elsewhere in this narrative and will be evaluated by Staff and through a subsequent public hearing following the procedures set forth in the MCC. This standard is met.

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

**Applicant's Finding:** This land use application requests approval of a partition, not a subdivision; therefore, this criterion is not applicable.

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

**Applicant's Finding:** No new streets are being laid out or designed as part of this partition request. An existing driveway will be utilized to serve the three parcels by way of a shared accessway easement – this shared accessway easement does not constitute a public or private road. This criterion is not applicable.

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

**Applicant's Finding:** As mentioned in the previous standard, no new streets, private or public, are being laid out or designed; therefore, this criterion is not applicable. The existing parcel contains frontage on NW Charlton Road, and the three parcels to be created from this partition will share a driveway, containing frontage along this road, via a shared accessway easement.

**(H) Approval will permit development to be safe from known flooding and flood hazards. Public utilities and water supply systems shall be designed and located so as to minimize or prevent**

**infiltration of flood waters into the systems. Sanitary sewer systems shall be designed and located to minimize or prevent:**

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

**Applicant's Finding:** ZTec Engineers, Inc. provided a Storm Water Drainage Control Certificate for Land Divisions and Property Line Adjustments determining that the construction of an on-site storm water drainage control system is not required. This memo is included in Appendix "E". The Applicant was informed via a Memorandum from the County on January 24, 2020 (provided in Appendix "C") that prior to building permit submittal for construction of the replacement dwelling, the Applicant will need to submit a County Stormwater Certificate, completed by a qualified professional. The Applicant has provided Stormwater Certificates for each parcel in Appendix "E".

A Certification of Water Service and two associated well water reports have also been provided in Appendix "E", describing a supply of water available at 75 GPM.

The land division request was also reviewed by the Multnomah County Sanitarian, and a completed Septic Review Certification has been provided within Appendix "E" that indicates that the land division will not impact the existing system. The Sanitarian's comments state that Parcels 1 and 2 have full repair areas and existing systems that meet required setbacks to the proposed property lines, and that Parcel 3 is approved for septic under SER #26-19.

### **39.9505 LAND SUITABILITY**

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

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

**Applicant's Finding:** Most of the subject property is between 0-10% slope. The only areas of the site that are above 0-10% are along a drainage and irrigation canal by Sauvies



Island Drainage Company and the far west corner, both of which are considerable distances from the proposed property lines (over 1,000 feet) and are located on the larger remnant parcel. The site is considered to be high value farmland with soil classifications that are primarily 45, with a few small pockets of 40 and 28 on the larger remnant parcel and 6B on the east side of the property in the area of focus. None of the above-mentioned characteristics preclude the ability to divide the subject property commensurate with this request. The anticipated development of a single additional dwelling is set to occur in an area (on Parcel 3) without any of the above characteristics that might render the parcel unsuitable and incapable of development. Contours are shown on sheets C200 and C210 of the provided plans in Appendix "F".

### **39.9510 LOTS AND PARCELS**

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

**(A) The size, shape, width, orientation and access shall be appropriate:**

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

**Applicant's Finding:** The tentative plan demonstrates compliance with the above-mentioned criteria for both the access and three proposed lots. Additionally, compliance with the applicable dimensional and lot size requirements of MCC 39.4245 ensures compliance with most of the provisions above. The location of future primary dwellings to be located on each property shall comply with all applicable criteria as well.

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

**Applicant's Finding:** The side lot lines of all three parcels are perpendicular to their respective front lot lines to the extent that is practicable given access constraints and the unique dimensions of the subject property.

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

**Applicant's Finding:** None of the proposed lots contain double frontages or can be considered reverse frontage lots; therefore, this criterion is not applicable.

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

- (1) When a flag lot does not adjoin another flag lot, as shown in MCC 39.9510 Figure 1, the pole portion of the flag lot shall be at least 16 feet wide.**
- (2) Where two flag lots are placed back to back as shown in MCC 39.9510 Figure 2, the pole portion of each flag lot shall be at least 12 feet wide**

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

**Applicant's Finding:** The Applicant is proposing to utilize a shared driveway easement for the parcels to be created from this partition request. Pursuant to Subsection E., flag lots cannot be stacked one behind the other as shown in Figure 3. of the MCC within this Section; however, given the property's minimal frontage along NW Charlton Road, no other flag lot orientation is possible. For this reason, a shared driveway easement a shared driveway easement is being proposed in accordance with the applicable criteria of the MCC and per the allowances in the accompanying Measure 49 Order.

### **39.9520 STREET LAYOUT**

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

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

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

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

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

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

#### **39.9525 STREET DESIGN**

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

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

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

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

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

**Applicant's  
Finding:**

The Applicant is proposing to utilize a private easement. This shared driveway easement will be used to provide access to the three properties and does not constitute a road. The existing driveway connects directly to NW Charlton Road – this access is permitted through File #82042 as described in the County Memo dated January 24<sup>th</sup>, 2020 found within Appendix “C”.

MCC 49.4260 requires that “All lots and parcels in this [EFU] base zone shall abut a public street or shall have other access determined by the approval authority to be safe and convenient for pedestrians and for passenger and emergency vehicles.”

The Applicant would like for this requirement to be met by way of the latter option, demonstrating that the access is safe and convenient for pedestrians and for passenger and emergency vehicles. The existing access has been deemed adequate to serve the land division through a Structural Fire Service Agency Review, which has been provided within Appendix “E”. The existing

access is permitted through File #82042 as described in the County Memo dated January 24<sup>th</sup>, 2020 found within Appendix "C".

### **39.9545 REQUIRED IMPROVEMENTS**

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

**Applicant's Finding:** No improvements are required with this partition request, as access will be taken via a shared driveway easement. The existing access has been deemed adequate to serve the land division through a Structural Fire Service Agency Review, which has been provided within Appendix "E". The existing access is permitted through File #82042 as described in the County Memo dated January 24<sup>th</sup>, 2020 found within Appendix "C".

### **39.9555 EASEMENTS**

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

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

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

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

**Applicant's Finding:** All required easements have been provided at the benefit of all three parcels as shown on the tentative plan in Appendix "F".

### **39.9570 WATER SYSTEM**

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

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

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

**Applicant's Finding:** The Applicant obtained a Structural Fire Service Agency Review indicating that the subject property is located within their service boundaries or is under

contract and that the proposed development is in compliance with the fire apparatus access standards of the Oregon Fire Code standards.

A Certification of Water Service and two associated well water reports have also been provided in Appendix "E", describing a supply of water available at 75 GPM.

### **39.9575 SEWAGE DISPOSAL**

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

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

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

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

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

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

**Applicant's  
Finding:**

The land division request was reviewed by the Multnomah County Sanitarian, and a completed Septic Review Certification has been provided within Appendix "E" that indicates that the land division will not impact the existing system. The Sanitarian's comments state that Parcels 1 and 2 have full repair areas and existing systems that meet required setbacks to the proposed property lines, and that Parcel 3 is approved for septic under SER #26-19.

### **39.9580 SURFACE DRAINAGE AND STORM WATER SYSTEMS**

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

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

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

- (1) In a public street, in accordance with the Multnomah County Road Rules and Design and Construction Manual; and**
- (2) In a private street and on lots or parcels, in accordance with the plans prepared by an Oregon licensed and registered professional engineer and approved by the approval authority.**

**Applicant's Finding:** ZTec Engineers, Inc. provided a Storm Water Drainage Control Certificate for Land Divisions and Property Line Adjustments determining that the construction of an on-site storm water drainage control system is not required. This memo is included in Appendix "E". The Applicant was informed via a Memorandum from the County on January 24, 2020 (provided in Appendix "C") that prior to building permit submittal for construction of the replacement dwelling, the Applicant will need to submit a County Stormwater Certificate, completed by a qualified professional. The Applicant has provided Stormwater Certificates for each parcel in Appendix "E".

### **39.9585 ELECTRICAL AND OTHER WIRES**

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

- (A) Is impracticable due to topography, soil or subsurface conditions;**
- (B) Would result in only minor aesthetic advantages, given the existence of above-ground facilities nearby; or**
- (C) Would be unnecessarily expensive in consideration of the need for low-cost housing proposed on the lots or parcels to be served.**

**Applicant's Response:**

**Applicant's Finding:** The Applicant intends to decommission or relocate one of the existing dwellings currently located on Parcel 1 such that one dwelling would be on each proposed parcel in accordance with the Measure 49 Order and applicable provisions of the MCC. For this reason, there is no increase in the impact to the existing electrical power or other similar wire equipment that would necessitate the undergrounding of existing infrastructure. The Applicant believes that requiring this would therefore represent a disproportional cost burden when considering the existing conditions and small scale of the land division proposed.

## **MCC 39.4260 ACCESS**

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

**Applicant's Finding:** The Applicant intends to utilize a shared driveway easement as a means of alternative access to all three parcels, as shown on the provided tentative plan. Compliance with the applicable criteria in MCC 39.4260 and MCC 39.9525 as it relates to access are discussed in those respective sections of this narrative.

## **MCC 39.8210 ADJUSTMENT APPROVAL CRITERIA**

**The Approval Authority may permit and authorize a modification of no more than 40 percent of the dimensional standards given in MCC 39.8205 upon finding that all the following standards in (A) through (E) are met:**

**(A) Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and**

**Applicant's Finding:** The Applicant is requesting an Adjustment Review for Parcel 1's front lot line length along NW Charlton Road. While all three parcels will share the existing driveway through a shared driveway easement, Parcel 1 already contains 46' of frontage along Charlton Road. That said, the relevant front lot line length requirement for Parcel 1 is 50'; therefore, an Adjustment Review is requested for Parcel 1 for an 8% reduction to the frontage length standard of this Parcel.

The adjustment request is for a 4' or 8% reduction to the parcel's front lot line requirement along NW Charlton Road, which is severely constrained. The frontage for the parcel to-be-divided cannot be increased without a lot line adjustment between the subject parcel and adjacent properties under separate and unrelated ownership. Since the driveway is already being used by Parcel 1 (and the access was previously approved by Multnomah County), the adjustment request is only to meet the County's current front lot line requirement and will result in effectively no difference between Parcel 1's current front lot line length and its front lot line length after the land division.

Per the definition of "Front lot line" in MCC 39.2000, A minimum front lot line length is "a dimensional requirement to assure that a parcel or lot has sufficient street frontage and lot width near the street to accommodate a safe access driveway and reasonable building area after considering the required side yards." The building area and lot width are adequate to locate single-

family dwellings in accordance with the MCC and M49 Order. The street frontage for Parcel 1, which is the Parcel with which this Adjustment Review concerns, is already in existence at 46'. This access has already been approved by MCC and was deemed a safe access driveway as demonstrated in the access documents provided in Exhibit "E".

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

**Applicant's Finding:** The Applicant will abide by any reasonable mitigation efforts suggested to offset the impacts of this Adjustment Review request, although no impacts are anticipated.

**(C) If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the base zone; and**

**Applicant's Finding:** Only a single adjustment is being requested; therefore, this criterion is not applicable.

**(D) If the properties are zoned farm (EFU) or forest (CFU), the proposal will not force a significant change in, or significantly increase the cost of, accepted forestry or farming practices on the subject property and adjoining lands; and**

**Applicant's Finding:** The property is zoned EFU. The basis for the land division is rooted in the intent of the state-level Ballot Measure 49, which was primarily to ensure that Oregon law provides just compensation for unfair burdens while retaining Oregon's protections for farm and forest uses and the state's water resources. The adjustment is for a minor and ancillary aspect of the M49 request; that is, to permit an 8% reduction in the 50' front lot line length requirement. This adjustment will not force a significant change in, or significantly increase the cost of, accepted forestry or farming practices on the subject property and adjoining lands. The existing and permitted access has been providing the subject property with 46' of frontage length for a number of years, and this adjustment review will not result in any physical changes to the existing conditions.

**(E) If in the Rural Residential (RR), Rural Center (RC), Burlington Rural Center (BRC), Orient Residential (OR), Orient Commercial-Industrial, Pleasant Hill Rural Center, or Springdale Rural**



**Center base zone, the proposal will not significantly detract from the livability or appearance of the residential area.**

**Applicant's Finding:** The property is not in any of the zoning designations mentioned in Subsection E. of 39.8210; therefore, this criterion is not applicable.

### **MCC 39.8215 VARIANCE APPROVAL CRITERIA**

**The Approval Authority may permit and authorize a variance from the dimensional standards given in MCC 39.8205 upon finding that all the following standards in (A) through (G) are met: (A) A circumstance or condition applies to the property or to the intended use that does not apply generally to other property in the same vicinity or base zone. The circumstance or condition may relate to:**

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

**Applicant's Finding:** The Measure 49 Order provided allows the creation of two new parcels and a remnant parcel, with a home on each parcel. MCC 39.9510(D) and (E), does not permit a stacked flag lot configuration, which would be required to serve the number of parcels authorized by the Measure 49 Order. Instead, MCC 39.9510(E) states that a "private accessway" should be utilized (in lieu of the stacked flag lot configuration that is explicitly prohibited by MCC 39.9510).

The front lot line length requirement for parcels in the EFU zone is 50 feet, as indicated in MCC 39.4245(C). Variances are required to reduce the minimum front lot line length to 0' for Parcels 2 and 3. All parcels will take access from a shared access driveway; however, Parcel 1 requires an adjustment review and not a variance because its existing front lot line length is 46 feet, just 4 feet under the 50-foot front lot line length requirement and therefore under the Adjustment Review threshold of 40%.

Section IV under Subsection 1. of the M49 Order states the following:

*"Each dwelling must be on a separate lot or parcel and must be contained within the property on which the claimant is eligible for a Measure 49 relief. The*

*establishment of a land division or dwelling based on this home site authorization must comply with all applicable standards governing the siting or development of the land division or dwelling. However, those standards must not be applied in a manner that prohibits the establishment of the land division or dwelling, unless the standards are reasonably necessary to avoid or abate a nuisance, to protect public health or safety, or to carry out federal law.”*

Given issues of access as described above, the method to achieve land use approval for this Measure 49 authorized partition, which was recommended by County Staff, is to request a variance to the front lot line length requirements.

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

**Applicant's Finding:** The circumstances delineated above clearly do not stem from the Applicant’s personal or financial circumstances – the basis for the land division is rooted in the intent of the state-level Ballot Measure 49, which was primarily to ensure that Oregon law provides just compensation for unfair burdens while retaining Oregon’s protections for farm and forest uses and the state’s water resources.

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

**Applicant's Finding:** The Applicant intends to utilize a shared driveway easement to abide by the MCC and provide access to the three future parcels; however, this would effectively reduce the front lot line length for Parcels 2 and 3 to 0’, requiring variances. The Applicant sees no other way to remedy these issues of access in order to achieve the Measure 49-authorized land division request and intends to follow the regulatory path recommended by County Staff.

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

**Applicant's Finding:** There are already three dwellings on the subject property (one of which will be decommissioned or relocated), and the access for these dwellings is already in existence via a driveway that connects to NW Charlton Road. Variance requests

to reduce the front lot line length to 0' for Parcels 2 and 3 will not result in adverse effects to adjoining properties in any foreseeable manner.

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

**Applicant's Finding:** Given that Parcels 2 and 3 will take access from the shared driveway easement and will not individually retain the required 50 feet of frontage per parcel, the minimum variation to alleviate the difficulty is being requested.

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

**Applicant's Finding:** The Applicant will abide by any reasonable mitigation efforts suggested to offset the impacts of this variance request, although no impacts are anticipated.

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

**Applicant's Response:**

**Applicant's Finding:** The variance is being requested in conjunction with a lawful Measure 49 Order to establish three parcels on EFU-zoned land.

**SUMMARY AND CONCLUSION**

Based on the above findings and the submitted plans and documentation, the Applicant has demonstrated compliance with the requirements of the relevant sections of the Oregon Administrative Rules and Multnomah County Zoning Code. Therefore, the Applicant requests approval of this application of an Administrative Decision by the Planning Director, a Category 1 Land Division, two Variances and an Adjustment Review.