

Staff Report

Variance to the Forest Practices Setbacks, Administrative Decision by Planning Director, Geologic Hazards permit, Significant Environmental Concern – wildlife habitat (SEC-h) permit, Forest Development Standards, and Exception to Secondary Fire Safety Zone

Case File: T3-2021-14603

Scheduled Before one of the County Hearings Officers on **Friday, November 19, 2021 at 9:00 a.m.** or soon thereafter, via virtual hearing.

Location: 13221 NW McNamee Road, Portland
Alt. Acct. #R649631860

Map / Tax Lot: 2N1W32B -00702
Property ID #R652210

Applicant(s): Matt Newman, NW
Engineers

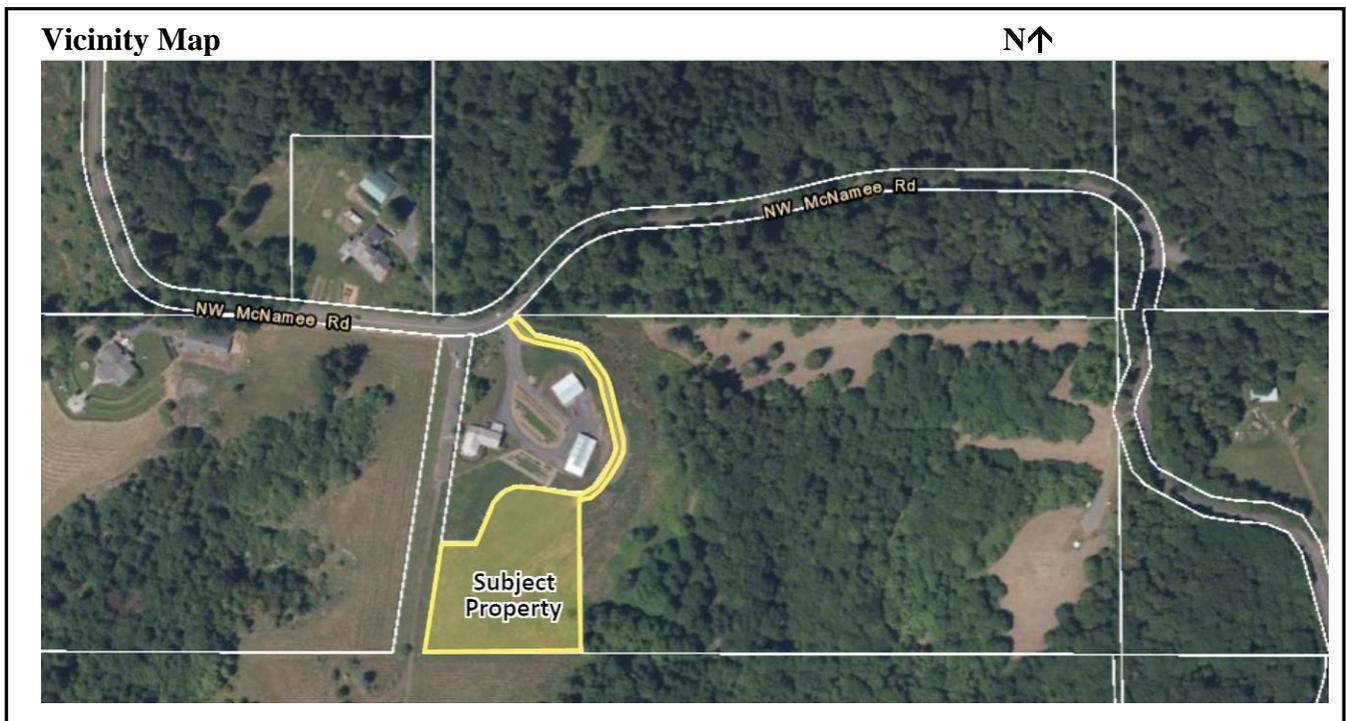
Property Owner(s): Katie Miranda & Ahmed Al Ali

Summary: The Applicant requests an Administrative Decision by the Planning Director to implement a M49 Dwelling, Variance to the forest practices setbacks, Geologic Hazards permit, Significant Environmental Concern for wildlife habitat permit, Forest Development Standards review, and Exception to the Secondary Fire Safety zone. Approval of the requested permits/reviews would authorize the establishment of a single-family dwelling on the subject property.

Base Zone: Commercial Forest Use – 2 (CFU-2)

Overlay: Significant Environmental Concern – wildlife habitat (SEC-h); Geologic Hazards (GH); Protected Aggregate & Minerals – Impact Area (PAM-IA)

Site Size: 2.0 Acres



Applicable Approval Criteria:

Multnomah County Code (MCC):

General Provisions: MCC 39.1515 Code Compliance and Applications, MCC 39.3005 Lot of Record – Generally; MCC 39.3030 Lot of Record – (CFU-2); MCC 39.6850 Dark Sky Lighting Standards; MCC 39.6235 Stormwater Drainage Control;

Administrative Decision by Planning Director – Measure 49 Implementation: M49 Final Order E118605, Oregon Revised Statutes 195.300 to 195.335, Oregon Administrative Rules (OAR) 660-041-0000 – 660-041-0530

Commercial Forest Use Zone: MCC 39.4105 Building Height Requirements; MCC 39.4110 Forest Practices Setbacks and Fire Safety Zone; MCC 39.4115 Development Standards for Dwellings and Structures; MCC 39.4150 Single Family Dwellings Condition of Approval;

Exception to Secondary Fire Safety Zone: MCC 39.4155 Exceptions to Secondary Fire Safety Zone

Significant Environmental Concern – wildlife habitat: MCC 39.5520 Application for SEC Permit; MCC 39.5860 Criteria for Approval of SEC-h Permit

Geologic Hazards: MCC 39.5075 Permits Required; MCC 39.5085 Application Information Required; MCC 39.5090 Geologic Hazards Permit Standards

Variance: MCC 39.8205 Scope; MCC 39.8215 Variance Approval Criteria

Protected Aggregate – Impact Area: MCC 39.5415 Definitions, MCC 39.5420 PAM Overlay; Generally, MCC 39.5435 Impact Area (PAM-IA) Allowed Uses.

Recommended Hearing Officer Decision:

Staff recommends that the Hearings Officer approve the Administrative Decision for the Measure 49 review, Variance, and Exception to the Secondary Fire Safety Zone. Without further information, staff recommends denial of the Geologic Hazard and Significant Environmental Concern permit. We have recommended various conditions of approval for consideration.

If the Hearings Officer finds the proposed application is approvable, staff recommends the following Conditions of Approval:

1. Approval of this land use permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.
2. Permit Expiration – This land use permit shall **expire** as follows:
 - a. Within two (2) years of the date of the final decision when construction has not commenced.
 - i. For the purposes of 2.a, commencement of construction shall mean actual construction of the foundation or frame of the approved structure.
 - ii. For purposes of Condition 2.a, notification of commencement of construction will be given to Multnomah County Land Use Planning Division a minimum of seven (7) days prior to date of commencement. Work may commence once notice is completed. Commencement of construction shall mean actual construction of the foundation or frame of the approved structure.
 - b. Within four (4) years of the date of commencement of construction when the structure has not been completed.
 - i. For the purposes of Condition 2.b, completion of the structure shall mean completion of the exterior surface(s) of the structure and compliance with all conditions of approval in the land use approval.
3. The State of Oregon conditions of approval (Final Order E118605 – Exhibit B.4), as interpreted by this decision, are also conditions of approval of this decision [ORS 195.300 to 195.335].
 - a. Additionally, the right to a home site on the subject property authorized by Final Order no. E118605 **expires on February 2, 2028 or after ten years of the initial conveyance to another party pursuant to condition 12 of the Final Order whichever comes first**, unless a single family dwelling has been lawfully established as authorized by this approval.
4. **Prior to land use sign-off for building plan check**, the property owner or their representative shall:
 - a. The property owners shall acknowledge in writing that they have read and understand the conditions of approval and intend to comply with them. A Letter of Acknowledgement has been provided to assist you. The signed document shall be sent to *chris.liu@multco.us*. [MCC 39.1170(A) & (B)]
 - b. The property owners shall sign and record the following at the County Recording:

- i. A document binding the landowner, and the landowner's successors in interest, prohibiting them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937. [MCC 39.4150]
 - ii. The cover page of the hearings officer final decision and all pages containing conditions of approval; the approved Wildlife Conservation Plan; and the approved site plan with primary and secondary fire safety zones shown. [MCC 39.1175]
 - c. All exterior lighting associated with the single-family dwelling shall be shown on the site plan. Lighting details and model #s for the proposed lighting shall be shown in the building plan set. The proposed light fixtures shall comply with the County's Dark Sky Lighting Standards of MCC 39.6850.
 - d. Provide the name, address and phone number of the Certified Engineering Geologist or Geotechnical Engineer that will be conducting the observation of the development. [MCC 39.5090]
 - e. Provide a revegetation plan for all areas that have been disturbed for the construction of the dwelling and its related physical improvements. The plan shall identify what plant species will be used and the time period for the installation of the temporary and permanent plantings. [MCC 39.5860(C)]
 - f. Provide the plans for the 13D fire sprinklers to be installed in the dwelling. In addition, the property owners shall verify with Tualatin Valley Fire and Rescue that the building envelope meets the Class A standards. [MCC 39.4115(B)(2)]
 - g. Demonstrate that the dwelling will have a fire retardant roof and a spark arrester on any chimney. [MCC 39.4115(C)]
 - h. Demonstrate that the dwelling shall be constructed in accordance with the International Fire Code Institute Urban-Wildland Interfaced Class 1 Ignition Resistance Construction standards. The property owner shall have the designer or architect certify that the building plan drawings meet these standards. [MCC 39.4155(B)(2)]
 - i. Provide proof of review of the final grading and building plans by the project Certified Engineering Geologist or Geotechnical Engineer, as per the Geotechnical Report recommendations. [MCC 39.5090]
 - j. Provide documentation demonstrating that the property owners have a legal easement to place physical improvements such as structures (i.e. fencing), plantings, turnouts, or other development on adjacent properties. [MCC 39.1115]
5. **Prior to and during construction**, the property owner or their representative shall ensure that:
- a. Fill trucks shall be constructed, loaded, covered, or otherwise managed to prevent any of their load from dropping, sifting, leaking, or otherwise escaping from the vehicle. No fill shall be tracked or discharged in any manner onto any public right-of-way. [MCC 39.5090(X)]
 - b. No compensation, monetary or otherwise, shall be received by the property owner for the receipt or placement of fill. [MCC 39.5090(Y)]
 - c. Whenever sedimentation is caused by ground disturbing activity, the person, corporation or other entity shall be responsible to remove that sedimentation from all adjoining surfaces

and drainage systems prior to issuance of occupancy or final approvals for the project. [MCC 39.6210(E)]

- d. It is the responsibility of any person, corporation or other entity doing ground disturbing activity in or adjacent to a right-of-way, to maintain as nearly as possible in its present state during such activity, and to return the same to a functional condition equal to or better than the condition existing immediately prior to the ground disturbing activity. [MCC 39.6210(E)]
- e. A performance bond may be required in the amount of the full cost of the establishment and maintenance of all erosion, sedimentation, revegetation and stormwater control measures for activity authorized by this permit. The bond may be used to provide for the installation of the measures if not completed by the contractor. The bond shall be released upon determination the control measures have or can be expected to perform satisfactorily. [MCC 39.6210(F)]
- f. You must post the Erosion Control Permit notice card (Card) at the driveway entrance in a clearly visible location. The Card has been included with the mailed paper copy of this decision.
 - i. This Card is to remain posted until such time as the project is complete and the ground has been revegetated. In the event the Card is lost, destroyed, or otherwise removed prior to completion of the work, the applicant shall immediately contact the Land Use Planning office to obtain a replacement. [MCC 39.5090]
- g. When ground-disturbing activities authorized by this decision are ready to commence, please e-mail Staff Planner, Chris Liu at chris.liu@multco.us. Work may commence after written notice is completed and erosion control measures have been installed. The County's inspector will be visiting the project site to ensure that Best Management Practices are occurring. [MCC 39.5090]
- h. The property owner(s), their agent(s), or their representative(s) shall install erosion control measures consistent with the final approved grading and erosion control plan. These measures shall remain in place and in good working order until such time as all ground disturbing activities are complete and any disturbed ground is revegetated. [MCC 39.5090]
- i. Maintain best erosion control practices through all phases of development. The erosion control measures shown on the final grading and erosion control plan shall remain in place and in good working order until construction is completed and the disturbed ground is reseeded and mulched. Straw mulch, erosion blankets, or 6-mil plastic sheeting shall be used as a wet weather measure to provide erosion protection for exposed soils. All erosion control measures are to be implemented using Best Management Practices (BMP). [MCC 39.5090]
- j. Remove any sedimentation caused by development activities from all neighboring surfaces and/or drainage systems. If any features within adjacent public right-of-way are disturbed, the property owner shall be responsible for returning such features to their original condition or a condition of equal quality. [MCC 39.5090]
- k. Seed and mulch all disturbed soils to prevent erosion. Monitor daily to ensure vegetation is sprouting and that no erosion or sedimentation is occurring. Monitoring may cease when vegetation on the disturbed soils have stabilized the disturbed soils. [MCC 39.5090]
- l. On-site disposal of construction debris is not authorized under this permit. Any spoil materials removed off-site shall be taken to a location approved for the disposal of such

material by applicable Federal, State and local authorities. This permit also does not authorize dumping or disposal of hazardous or toxic materials, synthetics (i.e. tires), petroleum-based materials, or other solid wastes which may cause adverse leachates or other off-site water quality effects. [MCC 39.5090]

6. The property owner shall ensure that a Certified Engineering Geologist or Geotechnical Engineer observes the proposed development activities. This observation shall be at the owner's expense. The name, address and phone number of the Certified Engineering Geologist or Geotechnical Engineer that will be conducting the observation of the development shall be submitted to Land Use Planning prior to zoning review for a building permit. The observation of the development activities by the Certified Engineering Geologist or Geotechnical Engineer shall include but is not limited to foundation work, confirmation on installation and effectiveness of all erosion and sediment control measures, and a final observation prior to the final building permit inspection. The Certified Engineering Geologist or Geotechnical Engineer shall certify in writing that the proposed development is in compliance with the approved Geologic Hazard permit and the required observations were made. [MCC 39.5090]
7. The property owner shall implement the erosion and sediment control measures as shown on the preliminary Grading and Erosion Control Plan (Exhibit A.22) unless amended by the Hearings Officer or Land Use Planning. If while observing the development, the Certified Engineering Geologist or Geotechnical Engineer determines additional or different measures are needed. The Engineer shall contact the case planner and discuss the erosion control changes proposed. Once approved by Land Use Planning the altered erosion control measures shall be utilized. [MCC 39.5090]
8. **Prior to issuance of the Certification of Occupancy**, the property owners or their representative shall:
 - a. Demonstrate that the required building permits to construct the proposed single-family dwelling have been obtained from the City of Portland Bureau of Development Services.
 - b. Submit to County Land Use Planning a report from the observing Certified Engineering Geologist or Geotechnical Engineer. The report shall confirm that proper measures were implemented to meet recommendations of the Geotechnical Hazards Permit Application (Exhibits A.3 – A.4, and A.18), as well as any other recommendations of the Certified Engineering Geologist or Geotechnical Engineer deemed necessary to achieve site suitability for the development. The Certified Engineering Geologist or Geotechnical Engineer shall sign the report with their seal (stamp) affixed to the report. The Certified Engineering Geologist or Geotechnical Engineer shall certify in writing that the proposed development is in compliance with the approved Geologic Hazard permit and the required observations were made. [MCC 39.5090]
 - c. Provide documentation that the stormwater drainage control system designed by NW Engineers has been installed according to the specifications outlined by Engineer Steve White (Exhibit A.16), and as shown on the site plan and grading and erosion control plan included as Exhibit A.22. Steve White shall certify the documentation demonstrating that the stormwater drainage control system has been installed and is functioning as designed. [MCC 39.6325]
 - d. Demonstrate that the dwelling has been constructed in accordance with the International Fire Code Institute Urban-Wildland Interface Code Section 504 Class 1 Ignition Resistant

Construction and contains a central station monitored 13D sprinkler system. [MCC 39.4155(B)]

- e. Demonstrate that there are no combustible fences within 12 feet of the exterior surface of the dwelling. [MCC 39.4155(B)]
- f. Provide a well contractors report demonstrating completion of the proposed well. [MCC 39.4115(D)]
- g. Demonstrate that the proposed mitigation plantings (Exhibit A.26) associated with the SEC-h permit have been planted on the subject property in the designated area shown in the Wildlife Conservation Site Plan (Exhibit A.24). [MCC 39.5860(C)]

9. **As an on-going condition:**

- a. The property owner shall maintain a primary and secondary fire safety zone within the confines of the lot as outlined below:
 - i. A primary fire safety zone extending a minimum of 30 feet in all directions around the dwelling. Trees within this safety zone shall be spaced with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches within 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height. [MCC 39.4110(D)(1)(a)]
 - ii. A secondary fire safety zone extending a minimum 10 feet [for the area west of the proposed dwelling], 50 feet [for the area south and north], and 100 feet [for the area east] around the primary fire safety zone. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Assistance with planning forestry practices which meet these objectives may be obtained from the State of Oregon Department of Forestry or the local Rural Fire Protection District. [MCC 39.4110(D)(2)]
- b. No nuisance plants listed in MCC 39.5580 Table 1 shall be planted on the subject property. [MCC 39.5860(B)(7)]
- c. The property owners shall not install any fencing on the subject property without first obtaining land use approval for it. Fencing constructed within 12 feet of the dwelling shall be constructed of noncombustible materials. [MCC 39.5860(B)(6), MCC 39.4065, MCC 39.4155(B)(3)]

Findings of Fact

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

1.0 Project Description:

Staff: The applicant requests an Administrative Decision by the Planning Director to implement a M49 Dwelling, Variance to the forest practices setbacks, Geologic Hazards permit, Significant Environmental Concern for wildlife habitat permit, Forest Development Standards review, and Exception to the Secondary Fire Safety zone. Approval of the requested permits/reviews would authorize the establishment of a single-family dwelling on the subject property.

Additional development associated with the establishment of the proposed dwelling includes a driveway/service corridor, septic system, storm water drainage control system, residential garden with fencing, and “star-gazing” mound.

2.0 Property Description & History:

Staff: The subject property is approximately 2.0 acres and was created in 2012 via land use case T3-2012-2097 and partition plat no. 2012-047. The subject property is within the Commercial Forest Use – 2 (CFU-2) zone in west unincorporated Multnomah County outside of the Metro Urban Growth Boundary. A number of overlays are present including the Significant Environmental Concern for wildlife habitat (SEC-h), Significant Environmental Concern for streams (SEC-s), Geologic Hazards (GH), and Protected Aggregate and Minerals – Impact Area (PAM-IA). The proposed single family dwelling is outside of the portion of the subject property within the mapped PAM-IA overlay.

3.0 Public Comment:

Staff: Staff mailed a Notice of Public Hearing regarding the proposed application to the required parties per MCC 39.1105 (Exhibit in C.4) on October 28, 2021.

4.0 Code Compliance and Applications Criteria:

4.1 § 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.

Staff: This standard provides that the County shall not make a land use decision approving development for a property that is not in full compliance with County Code or previously issued County approvals, except in the following instances: approval will result in the property coming into full compliance, approval is necessary to protect public safety, or the approval is for work related to or within a valid easement.

This standard was originally codified in the Zoning Code chapter related to land use application procedures and, by its terms, expressly applies to the application review process. Although now codified in the enforcement Part of the Zoning Code as a result of the more recent code consolidation project, the language and intent was not changed during that project and remains applicable to the application review process and not to the post-permit-approval enforcement process.

Importantly, a finding of satisfaction of this standard does not mean that a property is in full compliance with the Zoning Code and all prior permit approvals (and, accordingly, does not preclude future enforcement actions relating to uses and structures existing at the time the finding is made). Instead, a finding of satisfaction of this standard simply means that there is not substantial evidence in the record affirmatively establishing one or more specific instances of noncompliance. As such, an applicant has no initial burden to establish that all elements of the subject property are in full compliance with the Zoning Code and all previously approved permits; instead, in the event of evidence indicating or establishing one or more specific instances of noncompliance on the subject property, the applicant bears the burden to either rebut that evidence or demonstrate satisfaction of one of the exceptions in MCC 39.1515.

For purposes of the current application, staff is not aware of any open compliance cases on the subject property, and there is no evidence in the record of any specific instances of noncompliance on the subject property. *Criterion met.*

5.0 General Provisions:

5.1 MCC 39.3005 Lot of Record – Generally

(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

* * *

Staff: The subject property is Parcel 2 of Partition Plat 2012-047. Partition Plat 2012-047 created the subject property and the plat was approved by the County in 2012 (Exhibit B.3). The current configuration of the subject property matches the configuration authorized via Partition Plat 2012-047. Therefore, the 2.0 +/- acre subject property is a Lot of Record in its current configuration.
Criteria met.

5.2 MCC 39.3030 Lot of Record – (CFU-2)

(A) In addition to the standards in MCC 39.3005, for the purposes of the CFU-2 district a Lot of Record is either:

* * *

(3) A parcel or lot lawfully created by a partition or a subdivision plat after 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:

* * *

(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

39.4135, 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.**

Staff: As noted in section 5.1 above, Partition Plat (Partition Plat 2012-047) created the subject property in 2012. The subject property remains in the same configuration as authorized via Partition Plat 2012-047 (Exhibit B.3). The subject property is not an area of land described as a tax lot solely for assessment and taxation purposes; an area of land created by the foreclosure of a security interest; an area of land created by court decree; nor a mortgage lot. *Criteria met.*

5.3 MCC 39.6850 Dark Sky Lighting Standards

* * *

(C) The following standards apply to all new exterior lighting supporting a new, modified, altered, expanded, or replaced use approved through a development permit and to all existing exterior lighting on property that is the subject of a development permit approval for enlargement of a building by more than 400 square feet of ground coverage.

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

Staff: A condition of approval requiring all exterior lighting comply with the Dark Sky Lighting Standards of MCC 39.6850, is included in the recommended conditions of approval list of this Staff Report. *As conditioned, the above criteria can be met.*

5.4 MCC 39.6235 Stormwater Drainage Control

(A) Persons creating new or replacing existing impervious surfaces exceeding 500 square feet shall install a stormwater drainage system as provided in this section. This subsection (A) does not apply to shingle or roof replacement on lawful structures.

(B) The provisions of this section are in addition to and not in lieu of any other provision of the code regulating stormwater or its drainage and other impacts and effects, including but not limited to regulation thereof in the SEC overlay.

(C) The provisions of this section are in addition to and not in lieu of stormwater and drainage requirements in the Multnomah County Road Rules and Design and Construction

Manual, including those requirements relating to impervious surfaces and proposals to discharge stormwater onto a county right-of-way.

(D) The stormwater drainage system required in subsection (A) shall be designed to ensure that the rate of runoff for the 10-year 24- hour storm event is no greater than that which existed prior to development at the property line or point of discharge into a water body.

(E) At a minimum, to establish satisfaction of the standards in this section and all other applicable stormwater-related regulations in this code, the following information must be provided to the planning director:

(1) A site plan drawn to scale, showing the property line locations, ground topography (contours), boundaries of all ground disturbing activities, roads and driveways, existing and proposed structures and buildings, existing and proposed sanitary tank and drainfields (primary and reserve), location of stormwater disposal, trees and vegetation proposed for both removal and planting and an outline of wooded areas, water bodies and existing drywells;

(2) Documentation establishing approval of any new stormwater surcharges to a sanitary drainfield by the City of Portland Sanitarian and/or any other agency authorized to review waste disposal systems;

(3) Certified statement, and supporting information and documentation, by an Oregon licensed Professional Engineer that the proposed or existing stormwater drainage system satisfies all standards set forth in this section and all other stormwater drainage system standards in this code; and

(4) Any other report, information, plan, certification or documentation necessary to establish satisfaction of all standards set forth in this section and all other applicable stormwater-related regulations in this code, such as, but not limited to, analyses and explanations of soil characteristics, engineering solutions, and proposed stream and upland environmental protection measures.

Staff: A submitted storm water certificate and drainage report completed by Steve White of NW Engineers states that construction of an onsite storm water drainage control system is necessary (Exhibit A.16). Per the report, all roof and driveway drainage will be piped to a single [lined] storm water flow-thru planter facility on the east side of the proposed residence. The water will be piped to a flow dispersal trench (Exhibit A.22). Per the recommendations from Geo Pacific Engineering (Exhibit A.4 and A.18), the lining should consist of an impermeable barrier and stormwater should not be discharged directly to slopes. Geopacific Engineering considered the location of the flow dispersal trench and found it acceptable, though the location appears to be on steeper slopes (Exhibit A.25).

Flow from the driveway areas will be collected in a sump catch basin to limit the amount of oil and floatables reaching the storm water planter facility, whereas roof discharge will be directed directly to the storm water planter facility. Overflow from the planter facility will be piped to the east [and downslope] and outfall via a flow dispersal trench (Exhibit A.16).

The septic review certification completed by the City of Portland Sanitarian did not indicate any concerns with the proposed storm water drainage control system (Exhibit A.6). As proposed, the facility will limit the discharge rate under a 24-year storm event to no more than that which currently occurs from the area (Exhibit A.16). A condition of approval requires the property owner to install the storm water drainage control system designed by Steve White, PE and according to the recommendations of GeoPacific Engineering. *As conditioned, the above criteria can be met.*

6.0 Measure 49 Implementation Criteria:

6.1 M49 Final Order and Home Site Authorization. State Final Order No. E118605

“...under Section 6 of Measure 49 will authorize the claimants to establish up to one-additional lot or parcel and two additional dwellings on the Measure 37 claim property.”

Staff: Partition Plat 2012-047 created the subject property, described as Parcel 2. The applicant is requesting approval for the construction of one of the two additional dwellings authorized by M49 Final Order E118605. Following this approval, there will be no additional single-family dwelling rights associated with Final Order No. E118605. *Requirement met.*

6.2 ‘Home Site Authorization’

As stated above, based on the analysis of M49 final order E118605, the claimants qualified for one additional lot or parcel and two additional dwellings. The final order set the following terms:

1. Each dwelling must be on a separate lot or parcel and must be contained within the property on which the claimants are eligible for 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.

Staff: The building site for the proposed single-family dwelling is located entirely on Parcel 2 of Partition Plat 2012-047. Due to various overlays on the subject property that require additional land use review / permits, the applicant has submitted the required applications to request to site the dwelling on the proposed building site. *Requirement met.*

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

Staff: This application does not include a land division. The proposed single-family dwelling on the subject property does not appear to be prohibited by land-use regulations defined in ORS 195.305(3) or by any other law that is not a land-use regulation as defined by ORS 195.300(14). The above requirement is also a recommended condition of approval in this staff report [Condition no. 3]. *As conditioned, the above requirement is met.*

- 6.4 3. A claimant is not eligible for more than 20 home site approvals under Sections 5 to 11 of Measure 49 regardless of how many properties a claimant owns or how many claims a claimant filed. If the claimants have developed the limit of twenty home sites under Measure 49, the claimants are no longer eligible for the home site approvals that are subject of this order.**

Staff: Final Order No. E118605 authorized two dwellings on the claimant property. The subject property owner has not developed more than 20 home sites. The above requirement is also a recommended condition of approval in this staff report [Condition no. 3]. *As conditioned, the above requirement is met.*

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

Staff: Final Order No. E118605 granted one (1) additional parcel and two (2) additional dwellings. The proposed single-family dwelling would be the second and final additional dwelling granted by the order. Therefore, the proposal does not exceed the number of parcels and/or dwellings granted by the State's Final Order. The above requirement is included as a recommended condition of approval in this staff report [Condition no. 3]. *As conditioned, the above requirement can be met.*

- 6.6 5. Temporary dwellings are not considered in determining the number of existing dwellings currently on the property. The claimants may choose to convert any temporary dwelling currently located on the property on which the claimants are eligible for Measure 49 relief to an authorized home site pursuant to a home site approval. Otherwise, any temporary dwelling is subject to the terms of the local permit requirements under which it is approved, and is subject to removal at the end of the term for which it is allowed.**

Staff: The proposal does not include a temporary dwelling. The subject property is currently vacant; there are no temporary dwellings on the subject property. *Requirement met.*

- 6.7 6. A home site approval only authorizes the establishment of a new lot, parcel or dwelling on the property on which the claimants are eligible for Measure 49 relief. No additional development is authorized on contiguous property for which no Measure 37 claim was filed or on Measure 37 claim property on which the claimants are not eligible for Measure 49 relief. A lot or parcel established pursuant to a home site approval must either be the site of**

a dwelling that is currently in existence or be the site of a dwelling that may be established pursuant to the home site approval.

Staff: This application only pertains to a home site approval for the subject property (Parcel 2 of Partition Plat 2012-047) and does not authorize any development on contiguous property. The applicant does not own any contiguous property. Therefore, the proposal does not exceed the number of parcels and/or dwellings granted by the State's Final Order (Exhibit B.4). *Requirement met.*

- 6.8 7. The claimants may use a home site approval to convert a lot, parcel or dwelling currently located on the property on which the claimants are eligible for Measure 49 relief to an authorized home site. If the number of lots, parcels or dwellings existing on the property on which the claimants are eligible for Measure 49 relief exceeds the number of home site approvals the claimants qualify for under a home site authorization, the claimants may select which existing lots, parcels or dwellings to convert to authorized home sites; or may reconfigure existing lots, parcels or dwellings so that the number is equivalent to the number of home site approvals.**

Staff: The subject property is vacant and eligible for one (1) single-family dwelling per the State's Final Order (Exhibit B.4). Approval of this application will allow the property owner to establish a home site on the subject property. *Requirement met.*

- 6.9 8. The claimants may not implement the relief described in this Measure 49 Home Site Authorization if a claimant has been determined to have a common law vested right to a use described in a Measure 37 waiver for the property. Therefore, if a claimant has been determined in a final judgment or final order that is not subject to further appeal to have a common law vested right as described in Section 5(3) of Measure 49 to any use on the Measure 37 claim property, then this Measure 49 Home Site Authorization is void. However, so long as no claimant has been determined in such a final judgement or final order to have a common law vested right to a use described in a Measure 37 waiver for the property, a use that has been completed on the property pursuant to a Measure 37 waiver may be converted to an authorized home site.**

Staff: The original claimants sold the subject property to another party, who then sold the subject property to the current owners. The current owners did not provide any information demonstrating a common law vested right to use a Measure 37 Waiver on the original claimant property. The above requirement is included as a recommended condition of approval in this staff report [Condition no. 3]. *As conditioned, the above requirement can be met.*

- 6.10 9. A home site approval does not authorize the establishment of a new dwelling on a lot or parcel that already contains one or more dwellings. The claimants may be required to alter the configuration of the lots or parcels currently in existence on the Measure 37 claim property and contiguous property so that each additional dwelling established on the property on which the claimants are eligible for Measure 49 relief, pursuant to this home site authorization, is sited on a separate lot or parcel.**

Staff: The subject property is vacant. Approval of the requested home site on the subject property will bring the total number of dwellings on the subject property to one (1). The adjacent properties (Parcel 1 and Parcel 3 of Partition Plat 2012-047) each contain a dwelling or were

approved for a dwelling within the boundaries of those properties. The above requirement is included as a recommended condition of approval in this staff report [Condition no. 3]. *As conditioned, the above requirement can be met.*

- 6.11 10. Because the property is located in a forest zone, the home site authorization does not authorize new lots or parcels that exceed five acres. However, existing or remnant lots or parcels may exceed five acres. Before beginning construction, the owner must comply with the requirements of ORS 215.293. Further, the home site authorization will not authorize new lots or parcels that exceed two acres if the new lots or parcels are located on high-value farmland, on high-value forestland or on land within a ground water restricted area. However, existing or remnant lots or parcels may exceed two acres.**

Staff: The subject property is an existing parcel created through Partition Plat 2012-047. This application does not propose any changes to the existing parcel configuration. ORS 215.293 requires a condition of approval for new single-family dwellings in farm or forest zones; the condition of approval requires the land owner to sign and record a document binding the landowner, and the landowner's successors in interest, that prohibits them from pursuing a claim for relief or cause of action alleging injury from farming or forest practices for which no action or claim is allowed under ORS 30.936 or 30.937. The required condition is included as a recommended condition of approval in this staff report. *As conditioned, the above requirement can be met.*

- 6.12 11. Because the property is located in a forest zone, Measure 49 requires new home sites to be clustered so as to maximize suitability of the remnant lot or parcel for farm or forest use. Further, if an owner of the property is authorized by other home site authorizations to subdivide, partition, or establish dwellings on other Measure 37 claim properties, Measure 49 authorizes the owner to cluster some or all of the authorized lots, parcels or dwellings that would otherwise be located on land in an exclusive farm use zone, a forest zone or a mixed farm and forest zone on a single Measure 37 claim property that is zoned residential use or is located in an exclusive farm use zone, a forest zone or a mixed farm and forest zone but is less suitable for farm or forest use than other Measure 37 claim properties.**

Staff: The subject property is an existing parcel created through Partition Plat 2012-047. Approval of this application will grant only one (1) single-family dwelling on the subject property. The above requirement is included as a recommended condition of approval in this staff report [Condition no. 3]. *As conditioned, the above requirement can be met.*

- 6.13 12. If the claimants transferred ownership interest in the Measure 37 claim property prior to the date of this order, this order is rendered invalid and authorizes no home site approvals. Provided this order is valid when issued, a home site approval authorized under this order runs with the property and transfers with the property. A home site approval will not expire, except that if a claimant who received this home site authorization later conveys the property to a party other than the claimant's spouse or the trustee of a revocable trust in which the claimant is the settlor, the subsequent owner of the property must establish the authorized lots, parcels and dwelling within 10 years of the conveyance. A lot or parcel lawfully created based on this home site authorization will remain a discrete lot or parcel, unless the lot or parcel lines are vacated or the lot or parcel is further divided, as provided by law. A dwelling lawfully created based on a home site approval is a permitted use.**

Staff: The original claimant transferred ownership via contract on February 5, 2018. The current property owner and any subsequent owner will have until February 5, 2028 to establish a dwelling on the subject property. A condition of approval [Condition no. 3] is included in the recommended conditions of approval list of this staff report. *As conditioned, the above requirement can be met.*

- 6.14 13. To the extent that any law, order, deed, agreement or other legally enforceable public or private requirement provides that the subject property may not be used without a permit, license or other form of authorization or consent, this home site authorization will not authorize the use of the property unless the claimants first obtain that permit, license or other form of authorization or consent. Such requirements may include, but are not limited to: a building permit, a land use decision, a permit as defined in ORS 215.402 or 227.160, other permits or authorizations from local, state or federal agencies, and restrictions on the use of the subject property imposed by private parties.**

Staff: This land use decision would authorize the placement of the requested single-family dwelling on the subject property per the underlying base zone and environmental overlay regulations in the Multnomah County Zoning Code. A building permit is required and included as a condition of approval in the recommended conditions of approval list of this staff report. *As conditioned, the above requirement can be met.*

7.0 Commercial Forest Use – 2 Zone Criteria:

7.1 MCC 39.4105 Building Height Requirements

(A) Maximum structure height – 35 feet.

(B) Structures such as barns, silos, windmills, antennae, chimneys, or similar structures may exceed the height requirements.

Staff: Per the preliminary plans submitted as Exhibit A.23, the proposed dwelling building height is less than 35 feet. *Criteria met.*

7.2 MCC 39.4110 Forest Practices Setbacks and Fire Safety Zones

The Forest Practice Setbacks and applicability of the Fire Safety Zones is based upon existing conditions, deviations are allowed through the exception process and the nature and location of the proposed use. The following requirements apply to all structures as specified:

Use	Forest Practice Setbacks			Fire Safety Zones
	Description of use and location	Nonconforming Setbacks	Front Property Line Adjacent to County Maintained Road (feet)	
M49 Dwelling	N/A	30	130	Fire Safety Zone Requirements (FSZ) Primary & Secondary required

(A) Reductions to a Forest Practices Setback dimension shall only be allowed pursuant to approval of an adjustment or variance.

(B) Exception to the Secondary Fire Safety Zone shall be pursuant to MCC 39.4155 only. No reduction is permitted for a required Primary Fire Safety Zone through a nonconforming, adjustment or variance process.

(C) The minimum forest practices setback requirement shall be increased where the setback 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 setback requirements in consultation with the Road Official.

Staff: The subject property is a flag lot. The Front Property Line is the Northern property line and it is not adjacent to a County Maintained Road [See MCC 39.2000 Definitions, Lot Line (Front)]. As the front property line is not adjacent to the County Maintained Road, the Forest Practice Setbacks for the property is 130 feet. The applicant requests a Variance to reduce the required 130-ft forest practices setbacks to the following:

Northern Setback to Dwelling	80 ft.
Southern Setback to Dwelling	80 ft.
West Setback to Dwelling	40 ft.

The proposed dwelling will meet the Forest Practice Setbacks to the eastern property line with a 180 +/- ft. setback (Exhibit A.21). Section 10.1 – 10.7 discusses the Variance approval criteria. The applicant also requested an exception to the Secondary Fire Safety Zone. Section 7.11 – 7.12 discusses the Exception criteria in MCC 39.4155. The Forest Practice Setbacks would not be affected by (C) as only the “pole” portion of the flag lot is adjacent to the public right-of-way. The County Right-of-way office has not indicated that additional right-of-way width is necessary (Exhibit B.5). *Criteria met.*

7.3 (D) Fire Safety Zones on the Subject Tract.

(1) Primary Fire Safety Zone.

(a) A primary fire safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure. Trees within this safety zone shall be spaced with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches within 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height.

(b) On lands with 10 percent or greater slope the primary fire safety zone shall be extended farther down the slope from a dwelling or structure as follows:

Percent Slope	Distance In Feet
Less than 10	No additional required
Less than 20	50 additional
Less than 25	75 additional

Less than 40	100 additional
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(c) The building site must have a slope less than 40 percent.

Staff: Per the submitted site plan, a 30 ft. primary fire safety zone can be maintained in all directions (Exhibit A.21). The proposed building location contains finished slopes that are less than 10% as identified in Exhibit A.25. *Criteria met.*

- 7.4 (2) Secondary Fire Safety Zone. A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Assistance with planning forestry practices which meet these objectives may be obtained from the State of Oregon Department of Forestry or the local Rural Fire Protection District. The secondary fire safety zone required for any dwelling or structure may be reduced under the provisions of MCC 39.4155.**

Staff: The applicant requests an Exception to the Secondary Fire Safety Zone (Exception). The proposed secondary fire safety zones are 10 ft. to the west, and 50 ft. to the north and 50 ft. to the south for the proposed dwelling. The entire secondary fire safety zone will be provided to the east of the dwelling. Pursuant to this section, the Exception requested is reviewed under the provisions of MCC 39.4155. Section 7.11 – 7.12 of this staff report discusses the provisions of MCC 39.4155. *Criterion met.*

- 7.5 (3) No requirement in (1) or (2) above may restrict or contradict a forest management plan approved by the State of Oregon Department of Forestry pursuant to the State Forest Practice Rules; and**
- (4) Required Primary and Secondary Fire Safety Zones shall be established within the subject tract as required by Table 1 above.**
- (5) Required Primary and Secondary Fire Safety Zones shall be maintained by the property owner in compliance with the above criteria listed under (1) and (2).**

Staff: No Forest Management Plan has been submitted for the subject parcel. Per the submitted site plan included as Exhibit A.21, the required 30 ft. Primary Fire Safety zone is completely within the lot boundaries of the subject tract. A recommended condition of approval requires the property owner to establish and maintain the required Primary and Secondary Fire safety zones. *As conditioned, the above criteria can be met.*

7.6 MCC 39.4115 Development Standards for Dwellings and Structures

All dwellings and structures shall comply with the approval criteria in (B) through (D) below except as provided in (A). All exterior lighting shall comply with MCC 39.6850:

* * *

(B) New dwellings shall meet the following standards in (1) and (3) or (2) and (3); restored or replacement dwellings greater than 100-feet from an existing dwelling, and accessory buildings (or similar structures) greater than 100-feet from the existing dwelling shall meet the following standards in (1) and (3) or (2) and (3):

* * *

(2) The structure shall satisfy the following requirements:

(a) It has the least impact on nearby or adjoining forest or agricultural lands and satisfies the standards in MCC 39.4110;

(b) Adverse impacts on forest operations and accepted farming practices on the tract will be minimized;

(c) The amount of forest land used to site the dwelling or other structure, access road, and service corridor is minimized;

(d) Any access road or service corridor in excess of 500 feet in length is demonstrated by the applicant to be necessary due to physical limitations unique to the property and is the minimum length required; and

Staff: The applicant has requested reductions to the forest practices setbacks and an exception to the secondary fire safety zones as outlined in MCC 39.4110 for relief from the requirements that they are unable to meet on the subject property. The neighboring properties to the south and west appear to be in a combination of farm and forest use. The proposed dwelling will be located 80 +/- feet from the south property line and 40 ft. from the western property line. Both property owners received notice of this public hearing. As of issuance of this staff report, planning staff has not received any comments from either property owner. The Tualatin Valley Fire & Rescue (TVFR) has required the use of an enhanced 13D fire sprinkler system and a “Class A” building envelope for the dwelling (Exhibit A.7). Construction of the dwelling with a fire sprinkler system and Class A building envelope will minimize the dangers to the surrounding farm and forest uses from fire starting from the proposed dwelling. A conditions of approval has been recommended to ensure that the property owner complies with TVFR requirements.

The subject property is 2 acres. Tax records (Exhibit B.1) show that the property is not enrolled in either the Farm Deferral or Forest Deferral programs. As the subject property is not actively being used for forest practices, the construction of the dwelling and its related improvement is minimized.

The service corridor is approximately 700 ft. in length. The access drive for the subject property contains a significant curve due to the shape of the flag lot’s pole. While the service corridor could be shortened, a larger variance to the Forest Practice Setback to the north would be required. The proposed service corridor is therefore the minimum necessary given the physical limitations of the subject property. The applicant needs to provide documentation of a legal easement for the fire turnout which appears to be located on adjacent property to the east. A recommended condition of approval is included to ensure documentation of a legal easement exists. *As conditioned, the above criteria can be met.*

- 7.7 (3) The risks associated with wildfire are minimized. Provisions for reducing such risk shall include:**
- (a) Access roadways shall be approved, developed and maintained in accordance with the requirements of the structural fire service provider that serves the property. Where no structural fire service provider provides fire protection service, the access roadway shall meet the Oregon Fire Code requirements for fire apparatus access;**
 - (b) Access for a pumping fire truck to within 15 feet of any perennial water source of 4,000 gallons or more within 100 feet of the driveway or road on the lot. The access shall meet the fire apparatus access standards of the Oregon Fire Code with permanent signs posted along the access route to indicate the location of the emergency water source;**

Staff: The subject property is within the service district of Tualatin Valley Fire & Rescue (TVFR). A fire service agency review was completed by Drew Debois, Deputy Fire Marshall. The review indicates that TVFR is able to provide service to the subject property (Exhibit A.7). TVFR indicates that they do not require an additional water source. *Criteria met.*

7.8 (C) The dwelling or structure shall:

- (1) Comply with the standards of the applicable building code or as prescribed in ORS 446.003 through 446.200 relating to mobile homes;**
- (2) If a mobile home, have a minimum floor area of 600 square feet and be attached to a foundation for which a building permit has been obtained;**
- (3) Have a fire retardant roof; and**
- (4) Have a spark arrester on each chimney.**

Staff: The proposed dwelling is not a mobile home. The dwelling will need to obtain a building permit for its construction and meet the applicable building codes. No building elevations have been provided as part of the application. Planning staff recommends a condition of approval to ensure that the proposed dwelling has a fire retardant roof and a spark arrester on any chimney. *As conditioned, the above criteria can be met.*

7.9 (D) The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of ground water (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a Class 1 stream as defined in the Forest Practices Rules.

* * *

Staff: Per the applicant narrative, the owner will construct a well in compliance with Oregon Department of Water Resources rules. A recommended condition of approval requires the property owner to submit a well contractor's report upon completion of the well. *As conditioned, the above criteria can be met.*

7.10 MCC 39.4150 Single Family Dwellings Condition of Approval

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

Staff: A recommended condition of approval requires compliance with MCC 39.4150 through the recording of the above referenced document. *As conditioned, the above criterion can be met.*

7.11 MCC 39.4155 Exceptions to Secondary Fire Safety Zones

(A) The secondary fire safety zone for dwellings and structures may be reduced pursuant to the provisions of MCC 39.4155 (B) when:

- (1) The tract on which the dwelling or structure is proposed has an average lot width or depth of 330 feet or less, or**
- (2) The dwelling or structure will be located within 130 feet of the centerline of a public or private road serving two or more properties including the subject site; or**
- (3) The proposed dwelling or structure will be clustered with a legally existing dwelling or structure.**

Staff: The subject property has an average lot depth of approximately 255+/- feet and a lot width of approximately 301+/- feet (Exhibit A.21). Therefore, the requested secondary fire safety zone exception may be under the terms of MCC 39.4155(B), below. *Criteria met.*

7.12 (B) Exceptions to secondary fire safety zones shall only be granted upon satisfaction of the following standards:

- (1) If the proposed secondary fire safety zone is between 50 and 100 feet, the dwelling or structure shall be constructed in accordance with the International Fire Code Institute Urban-Wildland Interface Code Section 505 Class 2 Ignition Resistant Construction as adopted August, 1996, or as later amended, or**
- (2) If the proposed secondary fire safety zone is less than fifty feet, the dwelling or structure shall be constructed in accordance with the International Fire Code Institute Urban-Wildland Interface Code Section 504 Class 1 Ignition Resistant Construction as adopted August, 1996, or as later amended, and**
- (3) There shall be no combustible fences within 12 feet of the exterior surface of the dwelling or structure; and**
- (4) A dwelling shall have a central station monitored alarm system if the secondary fire safety zone equivalents of subsection (B) (1) above are utilized, or**
- (5) A dwelling shall have a central station monitored 13D sprinkler system if the secondary fire safety zone equivalents of subsection (B) (2) above are utilized.**

Staff: The proposed secondary fire safety zone is 10 feet for the area west of the proposed dwelling and 50 feet for the area south and north. Therefore, the proposed dwelling shall be constructed in accordance with the International Fire Code Institute Urban-Wildland Interface Code Section 504 Class 1 Ignition Resistance Construction. Additionally, the dwelling shall have a central station monitored 13D sprinkler system. Recommended conditions of approval requires compliance with (2), (3) and (5) above. Per the proposed site plan provided as Exhibit A.21 there are no proposed fences within 12 feet of the exterior surface of the dwelling, but this standard is an on-going requirement should a property owner want to build a fence near the dwelling in the future. *As conditioned, the above criteria can be met.*

8.0 Significant Environmental Concern – wildlife habitat Criteria:

8.1 MCC 39.5510 Uses; SEC Permit Required

(A) All uses allowed in the base zone are allowed in the SEC when found to satisfy the applicable approval criteria given in such zone and, except as provided in MCC 39.5515, subject to approval of an SEC permit pursuant to this Subpart.

(B) Any excavation or any removal of materials of archaeological, historical, prehistorical or anthropological nature shall be conducted under the conditions of an SEC permit, regardless of the zoning designation of the site.

Staff: The applicant requested a SEC [SEC-h] permit (Exhibit A.1) as part of the subject application, as required by this code section. No excavation or removal of materials of archaeological, historical, prehistorical or anthropological nature is included in this proposal. *Criteria met.*

8.2 MCC 39.5860 Criteria for Approval of SEC-H Permit – Wildlife Habitat

(A) In addition to the information required by MCC 39.5520 (A), an application for development in an area designated SEC-h shall include an area map showing all properties which are adjacent to or entirely or partially within 200 feet of the proposed development, with the following information, when such information can be gathered without trespass:

(1) Location of all existing forested areas (including areas cleared pursuant to an approved forest management plan) and non-forested "cleared" areas;

* * *

Staff: The required application materials are included as Exhibit A.19 – A.26. *Criteria met.*

8.3 (B) Development standards:

(1) Where a parcel contains any nonforested "cleared" areas, development shall only occur in these areas, except as necessary to provide access and to meet minimum clearance standards for fire safety.

Staff: The proposed dwelling location is in an area of the property that was previously cleared and not forested (Exhibit A.19). This application does not propose any additional clearing (Exhibit A.21 – A.24). *Criterion met.*

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

Staff: Per the aerial photograph of the site (Exhibit A.19), the single-family dwelling will be approximately 500 ft. from the portion of NW McNamee Road capable of providing reasonable practical access to the developable portion of the site. NW McNamee Road is a public road. Therefore, the applicant has not met the above criterion. *Criterion not met.*

8.5 (3) The access road/driveway and service corridor serving the development shall not exceed 500 feet in length.

Staff: The proposed driveway and service corridor is approximately 700 ft. in length (Exhibit A.21). Therefore, the applicant has not met the above criterion. *Criterion not met.*

8.6 (4) For the purpose of clustering access road/driveway approaches near one another, one of the following two standards shall be met:

(a) The access road/driveway approach onto a public road shall be located within 100 feet of a side property line if adjacent property on the same side of the road has an existing access road or driveway approach within 200 feet of that side property line; or

(b) The access road/driveway approach onto a public road shall be located within 50 feet of either side of an existing access road/driveway on the opposite side of the road.

* * *

Staff: The proposed driveway is immediately adjacent to the neighboring property’s access point to the west (Exhibit A.19). The subject parcel is a flag lot. MCC 39.2000 defines “Lot Lines” as “the lines bounding a lot, but not the lines bounding the private driveway portion of a flag lot”. While the private driveway portion of the flag lot is not considered a lot line as defined by MCC 39.2000 Definitions. The proposed location of the driveway immediately adjacent to the driveway to the west meets the intent of the code. In addition, it is the only feasible driveway location for the subject property (Exhibit A.19 – A.21). The proposed driveway location meets the intent of the criteria above. *Criteria met.*

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

Staff: There are no structures within 300 ft. of a common side property line for the subject property and adjacent property (Exhibit A.19 – A.21). *Criterion met.*

8.8 (6) Fencing within a required setback from a public road shall meet the following criteria:

(a) Fences shall have a maximum height of 42 inches and a minimum 17 inch gap between the ground and the bottom of the fence.

* * *

Staff: While the proposed site plan does not show any fencing, the proposed revegetation plan (Exhibit A.26) does include deer fencing around a large portion of the property and around the mitigation plantings. Elevation drawings for the deer fencing and gate(s) are not included; however, typical deer fencing would not meet the requirements of MCC 39.5860(B)(6). As the site plan, revised narrative and the revegetation plan are in conflict, staff cannot find that this criterion will be met. *Criteria not met.*

8.9 (7) The nuisance plants in MCC 39.5580 Table 1 shall not be planted on the subject property and shall be removed and kept removed from cleared areas of the subject property.

Staff: A recommended condition of approval prohibits the planting of nuisance plants identified in MCC 39.5580. A recommended condition of approval requires a final revegetation plan for the site that lists all plant species, so that staff can verify this requirement. *As conditioned, the above criterion can be met.*

8.10 (C) Wildlife Conservation Plan. An applicant shall propose a wildlife conservation plan if one of two situations exist.

(1) The applicant cannot meet the development standards of subsection (B) because of physical characteristics unique to the property. The applicant must show that the wildlife conservation plan results in the minimum departure from the standards required in order to allow the use; or

(2) The applicant can meet the development standards of subsection (B), but demonstrates that the alternative conservation measures exceed the standards of subsection (B) and will result in the proposed development having a less detrimental impact on forested wildlife habitat than the standards in subsection (B).

Staff: The applicant cannot meet all of the development standards of subsection (B) due to the shape of the existing parcel. They also have not proposed the minimum departure from the standards required in order to allow the use. The private driveway is located within a 454 ft. long pole of the flag lot, but extends an additional 245+/- feet to the dwelling. In addition, the proposed deer fencing would occupy a significant portion of the parcel, encroaches onto adjacent property, would significantly encumber the migration movements of wildlife. through the property and adjacent lands and surrounds the proposed mitigation plantings making the area unsuitable for use by wildlife. The animals would need to either enter the public right-of-way to get to adjoining properties or migrate south to reach the adjacent lands.

The proposed Wildlife Conservation plan does not provide sufficient mitigation plantings to off-set the proposed approximately 50,000 sq. ft. development area. The applicant needs to provide a wildlife conservation plan that adequately addresses the requirements of subsection (C). Additional findings are made below in section 8.11 – 8.16 below. *Criteria not met.*

8.11 (3) Unless the wildlife conservation plan demonstrates satisfaction of the criteria in subsection (C)(5), the wildlife conservation plan must demonstrate the following:

(a) That measures are included in order to reduce impacts to forested areas to the minimum necessary to serve the proposed development by restricting the amount of clearance and length/width of cleared areas and disturbing the least amount of forest canopy cover.

(b) That any newly cleared area associated with the development is not greater than one acre, excluding from this total the area of the minimum necessary accessway required for fire safety purposes.

Staff: No new clearing is proposed as part of this application request (Exhibit A.21 – A.24). In order to mitigate areas disturbed due to the installation of the 14,058 +/- square feet gravel road access (service corridor), the applicant proposed to plant an area of approximately 28,000 square feet with native blueberries, huckleberries, and other native plants (Exhibit A.24 & A.26). Upon further review of Exhibit A.26, it appears the applicant is creating a “residential garden” in at least ½ of the ‘Revegetation Area’ shown in Exhibit A.24.

The wildlife conservation plan needs to include an appropriate amount of mitigation plantings for the development area. Staff measurement of the development area without the service corridor is approximately 36,000 sq. ft. With the service corridor, the developed area would be approximately 50,000 sq. ft. (Exhibit B.6). One option would be to use subsection (C)(5), which contains a prescriptive method for calculating the number of plantings via ‘Mitigation Option 2’. Such mitigation measures should improve and provide wildlife habitat on the site, which is the required objective of the Wildlife Conservation Plan. *Criteria not met.*

8.12 (c) That no fencing will be built and existing fencing will be removed outside of areas cleared for the site development except for existing cleared areas used for agricultural purposes.

Staff: Per the applicant’s submitted preliminary site plan (Exhibit A.21), no fencing appeared to be proposed as part of this application. However, the revised preliminary revegetation plan (Exhibit A.26) shows a significant amount of deer fencing and multiple gates. None of the proposed fencing would be built outside of existing cleared areas. *Criteria met.*

8.13 (d) That revegetation of existing cleared areas on the property at a 2:1 ratio with newly cleared areas occurs if such cleared areas exist on the property.

(e) That revegetation and enhancement of disturbed stream riparian areas occurs along drainages and streams located on the property.

Staff: As noted in Section 8.3 above, there are no new cleared areas proposed. The applicant proposed to revegetate a 28,000 square feet area with native vegetation (Exhibit A.24 and A.26). However, at least ½ of the ‘Revegetation Area’ appears to be converted to a “residential garden” with a star gazing mound, bench area, gates, and deer fencing (Exhibit A.26). As noted in Section 8.10 above, an appropriate amount of mitigation plantings is necessary for the footprint of the proposed disturbance area. The proposal does not include stream riparian area disturbance or revegetation. *Criteria met.*

8.14 (4) For a property meeting subsection (C)(1) above, the applicant may utilize the following mitigation measures for additions instead of providing a separate wildlife conservation plan:

* * *

Staff: The proposal does not involve an addition to an existing structure (Exhibit A.21). *Therefore, the above criterion is not applicable.*

8.15 (5) Unless the wildlife conservation plan demonstrates satisfaction of the criteria in subsection (C)(3) of this section, the wildlife conservation plan must demonstrate the following:

* * *

Staff: The applicant addressed the criteria in subsection (C)(3) as discussed in section 8.11 – 8.13 above. However, the applicant did not demonstrate satisfaction of the criteria in subsection (C)(3). The Wildlife Conservation Plan must demonstrate compliance with (C)(5) or a combination of (C)(3) and (C)(5) to mitigate for the extensive development area proposed. *Criterion not met.*

8.16 (6) For Protected Aggregate and Mineral (PAM) resources within a PAM Overlay, the applicant shall submit a Wildlife Conservation Plan which must comply only with measures identified in the Goal 5 protection program that has been adopted by Multnomah County for the site as part of the program to achieve the goal.

Staff: The proposal does not include any protected aggregate and mineral (PAM) resources within a PAM overlay. Therefore, this criterion is not applicable. *Criterion not applicable.*

8.17 (D) Optional Development Impact Area (DIA). For the purpose of clustering home sites together with related development within the SEC-h overlay, an applicant may choose to designate an area around the home site for future related development and site clearing. For the purposes of establishing the appropriate mitigation for development within the DIA, existing vegetation within the DIA is presumed to be ultimately removed or cleared in the course of any future development within the DIA. Establishment of a DIA is subject to all of the applicable provisions in this section and the following:

* * *

Staff: This proposal is for a single home site for a single-family dwelling (Exhibit A.21). The applicant does not propose to cluster home sites. *Criteria met.*

9.0 Geologic Hazards Criteria:

9.1 MCC 39.5075 Permit Required

Unless exempt under this code or authorized pursuant to a Large Fill permit, no development, or ground disturbing activity shall occur: (1) on land located in hazard areas as identified on the Geologic Hazards Overlay map, or (2) where the disturbed area or the land on which the development will occur has average slopes of 25 percent or more, except pursuant to a Geological Hazards permit (GH).

Staff: The subject property is on land located in hazard areas as identified on the County's Geologic Hazards overlay map. Construction of the driveway, garden, foot path and other improvements will occur within the hazard overlay. Therefore, a Geologic Hazards Permit is required.

9.2 MCC 39.5085 Application Information Required

An application for a Geologic Hazards Permit shall include two copies of each of the following:

(A) A scaled site plan showing the following both existing and proposed:

* * *

(B) Calculations of the total area of proposed ground disturbance (square feet), volume of proposed cut (cubic yards) and fill (cubic yards), total volume of fill that has been deposited on the site over the 20-year period preceding the date of application, and existing and proposed slopes in areas to be disturbed (percent slope). For purposes of this subsection, the term "site" shall mean either a single lot of record or contiguous lots of record under same ownership, whichever results in the largest land area.

(C) Written findings, together with any supplemental plans, maps, reports or other information necessary to demonstrate compliance of the proposal with all applicable provisions of the Geologic Hazards standards in MCC 39.5090. Necessary reports, certifications, or plans may pertain to: engineering, soil characteristics, stormwater drainage control, stream protection, erosion and sediment control, and replanting. The written findings and supplemental information shall include:

* * *

Staff: The applicant provided documentation to address the above requirements as Exhibit A.3 – A.4, A.18, A.20 - A.22, and A.25. However, as described below, the applicant did not provide all of the required information to address the criteria of MCC 39.5090. *Criteria not met.*

9.3 MCC 39.5090 Geologic Hazards Permit Standards

A Geologic Hazards (GH) permit shall not be issued unless the application for such permit establishes compliance with MCC 39.6210 and satisfaction of the following standards:

(A) The total cumulative deposit of fill on the site for the 20-year period preceding the date of the application for the GH permit, and including the fill proposed in the GH permit application, shall not exceed 5,000 cubic yards. For purposes of this provision, the term “site” shall mean either a single lot of record or contiguous lots of record under same ownership, whichever results in the largest land area.

(B) Fill shall be composed of earth materials only.

(C) Cut and fill slopes shall not exceed 33 percent grade (3 Horizontal: 1 Vertical) unless a Certified Engineering Geologist or Geotechnical Engineer certifies in writing that a grade in excess of 33 percent is safe (including, but not limited to, not endangering or disturbing adjoining property) and suitable for the proposed development.

(D) Unsupported finished cuts and fills greater than 1 foot in height and less than or equal to 4 feet in height at any point shall meet a setback from any property line of a distance at least twice the height of the cut or fill, unless a Certified Engineering Geologist or Geotechnical Engineer certifies in writing that the cuts or fills will not endanger or disturb adjoining property. All unsupported finished cuts and fills greater than 4 feet in height at any point shall require a Certified Engineering Geologist or Geotechnical Engineer to certify in writing that the cuts or fills will not endanger or disturb adjoining property.

Staff: The fill volume on the site is approximately 118 cubic yards (Exhibit A.3). As noted in the Geotechnical Reports (Exhibit A.4 and A.18), all fill activity is composed of earth materials, the cut and fill slopes are less than 33 percent grade, and there are no unsupported finished cuts and fills requiring additional setback. *Criteria met.*

9.4 (E) Fills shall not encroach on any water body unless an Oregon licensed Professional Engineer certifies in writing that the altered portion of the waterbody will continue to provide equal or greater flood carrying capacity for a storm of 10-year design frequency.

(F) Fill generated by dredging may be deposited on Sauvie Island only to assist in flood control or to improve a farm’s soils or productivity, except that it may not be deposited in any SEC overlay, WRG overlay, or designated wetland.

Staff: As per the proposed Grading & Erosion control plan (Exhibit A.22), there are no proposed fills encroaching on any water body. The proposal does not contain the deposit of fill generated by dredging nor placement of such fill on Sauvie Island (Exhibit A.19). *Criteria met.*

9.5 (G) On sites within the Tualatin River drainage basin, erosion, sediment and stormwater drainage control measures shall satisfy the requirements of OAR 340-041- 0345(4) and shall be designed to perform as prescribed in the most recent edition of the City of Portland Erosion and Sediment Control Manual and the City of Portland Stormwater Management Manual. Ground-disturbing activities within the Tualatin Basin shall provide a 100-foot undisturbed buffer from the top of the bank of a stream, or the ordinary high watermark (line of vegetation) of a water body, or within 100-feet of a wetland; unless a mitigation plan consistent with OAR 340-041-0345(4) is approved for alterations within the buffer area.

Staff: The subject site is within the Columbia Watershed drainage basin. Therefore, this criterion is not applicable. *Criterion not applicable.*

9.6 (H) Stripping of vegetation, ground disturbing activities, or other soil disturbance shall be done in a manner which will minimize soil erosion, stabilize the soil as quickly as practicable, and expose the smallest practical area at any one time during construction.

(I) Development Plans shall minimize cut or fill operations and ensure conformity with topography so as to create the least erosion potential and adequately accommodate the volume and velocity of surface runoff.

(J) Temporary vegetation and/or mulching shall be used to protect exposed critical areas during development.

(K) Whenever feasible, natural vegetation shall be retained, protected, and supplemented;

(1) A 100-foot undisturbed buffer of natural vegetation shall be retained from the top of the bank of a stream, or from the ordinary high watermark (line of vegetation) of a water body, or within 100-feet of a wetland;

(2) The buffer required in subsection (K)(1) may only be disturbed upon the approval of a mitigation plan which utilizes erosion, sediment, and stormwater control measures designed to perform as effectively as those prescribed in the most recent edition of the City of Portland Erosion and Sediment Control Manual and the City of Portland Stormwater Management Manual and which is consistent with attaining equivalent surface water quality standards as those established for the Tualatin River drainage basin in OAR 340-041-0345(4).

(L) Permanent plantings and any required structural erosion control and drainage measures shall be installed as soon as practical.

Staff: (H) The ground disturbing activities includes disturbance for the development of the stargazing mound and garden area south of the driveway, extension of the driveway and construction of the turnaround, development of the stormwater/rain garden basin, trenching to and construction of the flow dispersal trench, installation of the septic system, potentially the stone path leading down the hillside (shown on Exhibit A.26) and the dwelling, garage and patio. The applicant has not addressed this criterion as part of their materials. *Criterion not met.*

(I) The applicant has not provided a narrative explaining how the proposed development complies with (I). This narrative is required as specified in MCC 39.5085(C). *Criterion not met.*

(J) The applicant has not provided information on the use of temporary vegetation or mulch during development. It appears the applicant's erosion control plan is to install sediment fencing around perimeter areas. This application has failed to address this criterion. *Criterion not met.*

(K) There is no ground disturbance proposed to occur within 100 feet of a stream or waterbody. *Criterion met.*

(L) The applicant has not provided a planting plan for temporary or permanent vegetation around the dwelling, driveway or drainfield. *Criterion not met.*

9.7 (M) Provisions shall be made to effectively accommodate increased runoff caused by altered soil and surface conditions during and after development. The rate of surface water runoff shall be structurally retarded where necessary.

(N) Sediment in the runoff water shall be trapped by use of debris basins, silt traps, or other measures until the disturbed area is stabilized.

(O) Provisions shall be made to prevent surface water from damaging the cut face of excavations or the sloping surface of fills by installation of temporary or permanent drainage across or above such areas, or by other suitable stabilization measures such as mulching or seeding.

(P) All drainage measures shall be designed to prevent erosion and adequately carry existing and potential surface runoff to suitable drainageways such as storm drains, natural water bodies, drainage swales, or an approved drywell system.

(Q) Where drainage swales are used to divert surface waters, they shall be vegetated or protected as required to minimize potential erosion.

(R) Erosion and sediment control measures must be utilized such that no visible or measurable erosion or sediment shall exit the site, enter the public right-of-way or be deposited into any water body or storm drainage system. Control measures which may be required include, but are not limited to:

(1) Energy absorbing devices to reduce runoff water velocity;

(2) Sedimentation controls such as sediment or debris basins. Any trapped materials shall be removed to an approved disposal site on an approved schedule;

(3) Dispersal of water runoff from developed areas over large undisturbed areas.

Staff: (M) A stormwater drainage control system has been proposed to handle the water generated from the new impervious surfaces (Exhibit A.16). *Criterion met.*

(N) The geotechnical engineer in the Geotechnical Addendum (Exhibit A.18) states that the design of the flow dispersal trench could create “some minor erosion may occur at the disposal trench following large precipitation events.” This design depositing run-off onto a steep slope [based on contour information on the applicant’s site plan (Exhibit A.22)] needs to consider the potential for erosion to prevent sedimentation from being created from the outflow. The applicant has not addressed the approval criteria. *Criterion not met.*

(O) As discussed in (N) above, the geotechnical engineer has stated that the flow dispersal trench may lead to erosion. The original parent parcel had fill materials placed on it over a portion of the subject property. The graphic below shows the fill location.



The proposed erosion and sediment control plan does not address the potential erosion of this fill due to the flow dispersal trench. *Criterion not met.*

(P) Criterion (P) requires that all drainage measures shall be designed to prevent erosion. The geotechnical engineer has identified that the flow dispersal trench could create erosion after large precipitation events. The applicant has not addressed the approval criterion (P) in narrative form and rectified the potential for erosion from the system. *Criterion not met.*

(R) The applicant's erosion control plan only utilizes perimeter erosion control fencing. No other best management practices are shown. The applicant has not addressed or explained how this criterion will be met. *Criterion not met.*

9.8 (S) Disposed spoil material or stockpiled topsoil shall be prevented from eroding into water bodies by applying mulch or other protective covering; or by location at a sufficient distance from water bodies; or by other sediment reduction measures;

(T) Such non-erosion pollution associated with construction such as pesticides, fertilizers, petrochemicals, solid wastes, construction chemicals, or wastewaters shall be prevented from leaving the construction site through proper handling, disposal, continuous site monitoring and clean-up activities.

(U) On sites within the Balch Creek drainage basin, erosion, sediment, and stormwater control measures shall be designed to perform as effectively as those prescribed in the most recent edition of the City of Portland Erosion and Sediment Control Manual and the City of Portland Stormwater Management Manual. All ground disturbing activity within the basin shall be confined to the period between May first and October first of any year. All permanent vegetation or a winter cover crop shall be seeded or planted by October first the same year the development was begun; all soil not covered by buildings or other impervious surfaces must be completely vegetated by December first the same year the development was begun.

(V) Ground disturbing activities within a water body shall use instream best management practices designed to perform as prescribed in the City of Portland Erosion and Sediment Control Manual and the City of Portland Stormwater Management Manual.

Staff: (S) The applicant has not discussed whether topsoil from the cuts for the dwelling or spoils will be generated and how they will be handled. No narrative has been included as required by MCC 39.5085(C). *Criterion not met.*

(T) The applicant has not discussed how any non-erosion pollution associated with construction will be prevented from leaving the construction site [i.e. through proper handling, disposal, continuous site monitoring and clean-up activities].

(U) The subject property is not located within the Balch Creek drainage basin. *Criterion not applicable.*

(V) The subject site does not contain a stream to staff's knowledge. *Criterion not applicable.*

9.9 (W) The total daily number of fill haul truck trips shall not cause a transportation impact (as defined in the Multnomah County Road Rules) to the transportation system or fill haul truck travel routes, unless mitigated as approved by the County Transportation Division.

(X) Fill trucks shall be constructed, loaded, covered, or otherwise managed to prevent any of their load from dropping, sifting, leaking, or otherwise escaping from the vehicle. No fill shall be tracked or discharged in any manner onto any public right-of-way.

(Y) No compensation, monetary or otherwise, shall be received by the property owner for the receipt or placement of fill.

Staff: The applicant has not addressed criteria (W), (X) or (Y). *Criteria not met.*

The applicant has failed to address a large portion of the Geologic Hazard Permit Standards listed in MCC 39.5090. The Geologic Hazard permit has two parts. Part One is the Geotechnical reports. Part Two is the erosion control criteria. Once the Geologic Hazard permit is issued, no other erosion and sediment control permit will be needed. The Geologic Hazard permit must contain the grading, replanting, stormwater control and other final plans for the development. Planning staff recommends that the applicant address the approval criteria completely for this permit or that the Hearings Officer deny the Geologic Hazard permit.

9.10 MCC 39.6210 Permits Required

(A) Unless exempt under this Code, whether under MCC 39.6215, 39.5080, 38.5510 or otherwise, no ground disturbing activity shall occur except pursuant to one of the following permits: 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).

(B) The permits referenced in subsection (A) are required in addition to and not in lieu of any other local, state or federal permit, including but not limited to permits required for ground disturbing activities within a water body regulated by the Oregon Department of State Lands, the U.S. Army Corps of Engineers or the Oregon Department of Fish and Wildlife.

(C) No ground disturbing activity shall occur except in support of a lawfully established use or in support of the lawful establishment of a use.

Staff: The applicant submitted an application for a GH permit as required by (A) above (Exhibit A.1). No ground disturbing activity is proposed within a water body. The proposed ground disturbing activity associated with the GH permit application is related to the lawful establishment of a new single-family on the subject property (Exhibit A.21 – A.22). *Criteria met.*

9.11 (E) Responsibility. For any ground disturbing activity authorized under a permit listed in subsection (A):

(1) Whenever sedimentation is caused by ground disturbing activity, the person, corporation or other entity shall be responsible to remove that sedimentation from all adjoining surfaces and drainage systems prior to issuance of occupancy or final approvals for the project.

(2) It is the responsibility of any person, corporation or other entity doing ground disturbing activity on, in, under or around a water body, or the floodplain or right-of-way, to maintain as nearly as possible in its present state the water body, floodplain, or right-of-way during such activity, and to return the same to a functional condition equal to or better than the condition existing immediately prior to the ground disturbing activity.

Staff: A recommended condition of approval requires compliance with (E) above. *As conditioned, the above criteria can be met.*

9.12 (F) Implementation.

(1) Performance bond. A performance bond may be required in the amount of the full cost of the establishment and maintenance of all erosion, sedimentation and stormwater control measures for activity authorized through any permit listed in subsection (A). The bond may be used to provide for the installation of the measures if not completed by the contractor. The bond shall be released upon determination the control measures have or can be expected to perform satisfactorily. The bond may be waived if the director determines the scale and duration of the project and the potential problems arising therefrom will be minor.

(2) Inspection and enforcement. The director may take steps to ensure compliance with the requirements of Part 6, Geologic Hazards permit requirements, and Large Fill permit requirements, including but not limited to, inspections, peer review of engineering analysis (at the applicant's expense), post construction certification of the work, and the posting of a notice providing County contact information in the event that questions arise concerning work occurring on-site. The requirements of this subpart of MCC Chapter 39 shall be enforced by the planning director. If inspection by county staff reveals erosive conditions which exceed those prescribed by the permit, work may be stopped until appropriate correction measures are completed.

(G) Final approvals. A certificate of occupancy or other final approval shall be granted for development subject to the provisions of this subpart of MCC Chapter 39 only upon satisfactory completion of all applicable requirements.

Staff: Recommended conditions of approval require compliance with (F) and (G). Staff also recommends a condition of approval requiring periodic inspection by the applicant's Geotechnical Engineer or Certified Engineering Geologist. *As conditioned, the above criteria can be met.*

10.0 Variance Criteria:

10.1 MCC 39.8205 Scope

* * *

(B) Dimensional standards that may be modified under a Variance review are yards, setbacks, forest practices setbacks, buffers, minimum front lot line length, building height, sign height, flag lot pole width, cul-de-sac length, cul-de-sac turnaround radius, and dimensions of a private street, except the following:

- (1) Reduction of resource protection setback requirements within the Significant Environmental Concern (SEC) and Willamette River Greenway (WRG) Overlays; and**
- (2) Modification of fire safety zone standards given in Commercial Forest Use base zones; and**
- (3) Increase to any billboard height or any other dimensional sign standard.**

* * *

Staff: The applicant requests a reduction of the required forest practice setbacks within the Geologic Hazards Overlay. Per MCC 39.8205(A)(2), any reduction to dimensional standards within the Geologic Hazards Overlay requires a Variance. In addition, the applicant is proposing approximately a 70 percent reduction to the Forest Practice Setbacks to the western property line. If the Variance is approved, the applicant would be allowed to site the dwelling approximately 40 feet from the west side-property line and 80 feet from the south side-property line (Exhibit A.21).

The Variance request does not include a reduction of resource protection setbacks within the SEC / WRG overlay, or an increase to a billboard / dimensional sign height standard. A reduction to the secondary fire safety zone is included with the application and evaluated under the provisions of MCC 39.4155; see Section 7.11 – 7.12 of this staff report. *Criteria met.*

10.2 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.

(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

Staff: The subject property has a unique configuration due to the approved M49 final order that led to the creation of a parcel [via partition plat 2012-047 (Exhibit B.3)] that would not otherwise be permissible in the CFU zones. When combined with topographical limitations, the configuration of the subject property limits available areas appropriate to site a dwelling. Because of these limitations, the proposed dwelling has to be located within a significant portion of the 130-ft. Forest Practice Setback area (Exhibit A.21). Without the requested reduction, an alternative buildable area on the subject property would not exist.

The party holding the original M49 authorization sold the subject property to another party, which then sold the subject property to the current property owner. Hence, the current property owner inherited the restrictions that led to this Variance request. *Criteria met.*

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

Staff: Without an approved reduction to the required Forest Practices Setbacks, the property owner would not be able to build a dwelling on the property as authorized via the M49 Final Order (Exhibit B.4). Due to the size and shape of the parcel, a practical difficulty exists. *Criterion met.*

10.4 (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.

Staff: Fire safety measures required by the County zoning code [MCC 39.4155] will aid in protecting against the spread of a potential fire to neighboring properties. These measures include construction of the dwelling in accordance with the International Fire Code Institute Urban-Wildland Interface Section 504 Class 1 Ignition Resistant Construction, a central station monitored 13D sprinkler system, fire sprinklers and a "Class A" envelope per Tualatin Valley Fire & Rescue (Exhibit A.7). A recommended condition of approval ensures compliance with the fire safety measures. *As conditioned, the above criterion can be met.*

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

Staff: Due to the restrictions referenced above, the requested variance would allow the applicant to site the proposed single-family dwelling on the subject property within the forest practices setback area (Exhibit A.21). The applicant did not request any additional variances as part of this application. The requested variance can be considered the minimum necessary variation from the required forest practices setbacks of the CFU-2 zone, as the requested variance is limited in nature and a result of parcel configuration limitations. *Criterion met.*

10.6 (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.

Staff: The adjacent property to the northwest contains existing development and the adjacent property to the east holds an approval for a dwelling. McCarthy Creek and significant areas of vegetation provide a barrier between the subject property and the adjacent property to the east (Exhibit A.19), ensuring adequate privacy. The installation of the various fire safety measures should ensure that the properties to the south and west will not be impacted should the development catch fire. A notice of application and public hearing was mailed to the property owners of the adjacent property to the northwest (Exhibit C.4). To date, those property owners have not provided comments or expressed any concerns with impacts to light, privacy, access, etc. Therefore, the applicant does not anticipate impacts to light, privacy, access, etc. that would require mitigation. *Criterion met.*

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

Staff: The requested variance will support the lawful establishment of a M49 single-family dwelling on the subject property (Exhibit A.21 and B.4). *Criterion met.*

11.0 Protected Aggregate and Minerals – Impact Area

11.1 MCC 39.5405 AREA AFFECTED

This Overlay shall apply to those lands designated PAM on the Multnomah County Zoning Map. On the Zoning Map shall also be a reference to the relevant site-specific Comprehensive Plan documents.

MCC 39.5415 DEFINITIONS

As used in this Overlay and MCC 39.7300 through 39.7330, unless otherwise noted, the following terms and their derivations shall have the following meanings:

Conflicting Use – A use authorized in the underlying zone which, if allowed, could adversely affect operations at a protected aggregate and mineral resource site. As used in this subsection, a conflicting use is also another inventoried significant Goal 5 resource located on or adjacent to a protected aggregate or mineral site if that resource could force a change in mining or processing at the site.

Dust Sensitive Use – A conflicting use which is primarily used for habitation. Residential structures, churches, hospitals, schools, public libraries, and campgrounds are considered dust sensitive uses during their period of use. Forest uses and farm uses are not dust sensitive uses unless determined through the Goal 5 process.

* * *

Impact Area – The area where uses may occur that could adversely affect the resource site or be adversely affected by use of the resource site.

Noise Sensitive Use – A conflicting use which is primarily used for habitation. Residential structures, churches, hospitals, schools, public libraries, and campgrounds are considered noise sensitive uses during their period of use. Forest uses and farm uses are not noise sensitive uses unless determined through the Goal 5 process.

MCC 39.5420 PAM OVERLAY; GENERALLY

(A) The PAM comprises two areas, the Extraction Area (PAM-EA) and the Impact Area (PAM-IA).

* * *

(C) The Impact Area shall be applied to parcels or portions of parcels adjacent to the Extraction Area and within the Impact Area deemed appropriate through the Goal 5 process. The Impact Area shall be shown on the zoning map with the designation PAM-IA.

MCC 39.5435 IMPACT AREA (PAM-IA) – ALLOWED USES

(A) Except as provided in this Section, all uses allowed in the base zone are allowed in the PAM-IA when found to satisfy the applicable approval criteria given in such zone.

* * *

(C) Noise or dust sensitive uses not prohibited in (B) may be permitted under the conditional use procedural provisions of MCC 39.7000 through 39.7035 when found by the Hearing Authority to satisfy the approval criteria of MCC 39.5440 and the approval criteria of the base zone; and

Staff: The graphic below shows the boundary of the PAM-IA overlay on the subject property. The proposed dwelling will be located outside of the boundary of the overlay. As such, the conditional use requirement specified by MCC 39.5435(C) is not required.



12.0 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Administrative Decision for the Implementation of a M49 Dwelling, Variance to the Forest Practices Setbacks, Forest Development Standards, and Exception to the Secondary Fire Safety Zone to establish a single-family dwelling in the CFU-2 zone. At present, planning staff cannot recommend approval of the Geologic Hazard and Significant Environmental Concern for wildlife habitat permit without the applicant providing additional information or amending their application. This approval is subject to the conditions of approval established in this report.

12.0 Exhibits

- 'A' Applicant's Exhibits
- 'B' Staff Exhibits
- 'C' Procedural Exhibits

Exhibits with a “*” after the exhibit # have been included as part of the mailed decision. Those exhibits have been reduced to a size of 8.5” x 11” for mailing purposes. All other exhibits are available for review in Case File T3-2021-14603.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	General Application Form	05.03.2021
A.2	28	Applicant Narrative	05.03.2021
A.3	7	Geotechnical Reconnaissance And Stability Preliminary Study	05.03.2021
A.4	20	Geotechnical Report from GeoPacific Engineering	05.03.2021

A.5	10	Stormwater Drainage Report	05.03.2021
A.6	5	Septic Review Certification	05.03.2021
A.7	7	Fire Service Agency Review	05.03.2021
A.8	1	Aerial Photograph of Site	05.03.2021
A.9	1	Existing Conditions Site Plan	05.03.2021
A.10	1	Preliminary Site Plan	05.03.2021
A.11	1	Preliminary Grading & Erosion Control Plan	05.03.2021
A.12	1	Parcel Profile & Details	05.03.2021
A.13	1	Slope Analysis Site Plan	05.03.2021
A.14	1	Wildlife Conservation Site Plan	05.03.2021
A.15	1	Preliminary Revegetation Plan	05.03.2021
A.16	11	Revised Stormwater Drainage Report	07.01.2021
A.17	29	Revised Applicant Narrative	07.01.2021
A.18	3	Geotechnical Addendum from GeoPacific Engineering	07.01.2021
A.19	1	Revised Aerial Photograph of Site	07.01.2021
A.20	1	Revised Existing Conditions Site Plan	07.01.2021
A.21*	1	Revised Preliminary Site Plan	07.01.2021
A.22*	1	Revised Preliminary Grading & Erosion Control Plan	07.01.2021
A.23	1	Revised Parcel Profile & Details	07.01.2021
A.24*	1	Revised Wildlife Conservation Site Plan	07.01.2021
A.25	1	Revised Slope Analysis Site Plan	07.01.2021
A.26*	1	Revised Preliminary Revegetation Plan	07.01.2021
'B'	#	Staff Exhibits	Date
B.1	2	Division of Assessment, Recording, and Taxation (DART): Property Information for 2N1W32B - 00702 (Alt Acct#R649631860)	05.03.2021
B.2	1	Division of Assessment, Recording, and Taxation (DART): Map for 2N1W32B	05.03.2021
B.3	1	Copy of Partition Plat 2012-047	07.09.2021
B.4	9	Copy of M49 Final Order E118605	07.09.2021

B.5	16	Transportation Planning Review	10.20.2021
B.6	1	Measured Development Area Plan	11.04.2021
‘C’	#	Administration & Procedures	Date
C.1	3	Incomplete Letter	05.28.2021
C.2	1	Applicant’s Acceptance of 180 Day Clock	06.11.2021
C.3	1	Complete Letter (Day 1)	07.09.2021
C.4	6	Hearing Notice	10.28.2021
C.5	41	Staff Report	11.09.2021