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## **Notice of Hearings Officer Decision**

Attached please find notice of the Hearings Officer's decision in the matter of **T3-2020-13788** mailed 07/23/2021. This notice is being mailed to those persons entitled to receive notice under MCC 39.1170(D).

The Hearings Officer's Decision is the County's final decision and may be appealed to the State of Oregon Land Use Board of Appeals (LUBA) by any person or organization that appeared and testified at the hearing, or by those who submitted written testimony into the record.

Appeal instructions and forms are available from:

Land Use Board of Appeals  
775 Summer Street NE, Suite 330  
Salem, Oregon 97301

503-373-1265  
[www.oregon.gov/LUBA](http://www.oregon.gov/LUBA)

For further information call the Multnomah County Land Use Planning Division at: 503-988-3043.

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

In the Matter of a Type III application for Conditional Use, Design Review, SEC-h and SEC-v Permits and a Geologic Hazard Permit exemption for a multi-phase cemetery and parking lot on approximately 9.3 acres zoned Commercial Forest Use 2 (CFU-2) in unincorporated Multnomah County, Oregon

**FINAL ORDER**

**Cool Islam Cemetery**

**T3-2020-13788**

**I. Summary:**

This Order is the decision of the Multnomah County Land Use Hearings Officer approving with conditions this application for Conditional Use, Design Review, SEC-h and SEC-v Permits and an exemption from a Geologic Hazard Permit for a cemetery and gravel parking lot on ~9.3 acres zoned Commercial Forest Use 2 (CFU-2).

**II. Introduction to the Property and Application:**

**Applicant**..... Razib Shishir  
14285 NW Old Germantown Road  
Portland, OR 97231

**Owners** ..... Zane & Sonja Holmes  
19333 NW St. Helens Road  
Portland, OR 97231

**Property** ..... Legal Description: Tax Lot 700 in Section 18D, Township 2 North, Range 1 West of the Willamette Meridian, Alternative tax acct: R971180290, Property ID: R325035, Street Address: 17865 NW St. Helens Road.

**Applicable Laws** ..... Multnomah County Code (MCC) 39.1515 (Code Compliance and Applications), MCC 39.3005 (Lot of Record – Generally), MCC 39.3030 (Lot of Record-CFU-2 zoning), MCC 39.6850 (Dark Sky Lighting Standards), MCC 39.4080 to 39.4145 (Commercial Forest Use Zone), MCC 39.7505 to 39.7525 (Community Service, Cemetery), 39.8010 to 39.8045 (Design Review), 39.6505 to 39.6600 (Parking, Loading, Circulation and Access), 39.6705 to 39.6820 (Signs), 39.5510 to 39.5860 (Significant Environmental concern), 39.5075 & 39.5080 (Geologic Hazards).

The subject site is a single ~9.3-acre legal lot (TL 700) zoned CFU-2 with 2 non-dwelling buildings that will be removed. The property is also encumbered with a SEC Overlay for wildlife habitat (SEC-h), scenic views (SEC-v), streams (SEC-s) and geologic hazards (GH). The proposal is relatively simple: a cemetery to accommodate 7,000+ burial plots over 40+ years, along with an associated 30-space gravel parking lot and two signs. The application proposes no buildings or other structures, other than the 2

signs; although, the graded gravel parking lot qualifies as a “structure” as defined in MCC 39.2000.<sup>1</sup> The application also does not propose or include any outside lighting, fencing, or noise-generating uses. The cemetery is planned in four sequential phases with burial space to last 40+ years. Cemeteries are conditionally allowed as Community Service Uses in the CFU-2 Zone, subject to site plan review and any other required permitting through a Type III hearing process, such as this. The property was the subject of a previous lot of record determination (T2-03-082) issued on June 30, 2004 that determined the subject property was a legal lot of record (Ex. B.4).

The initial application, design plans and supporting documentation were submitted September 22, 2020 (Exs. A.1 to A.4), supplemented with new/revised documentation on February 18, 2021 (Exs. A.5 to A.19), and supplemented again with a revised narrative (Exs. A.20 & A.21). The County followed a Type III process to review the application, and deemed the application complete on March 12, 2021 (Ex. C.3). The County issued notice of the application and a July 8, 2021 public hearing to property owners within the 750-foot notice range as required by MCC 39.1105(C) (Ex. C.4).

### **III. The Public Hearing Process:**

The County’s June 17, 2021 notice of the public hearing (Ex. C.4) indicated it would be held remotely via a Zoom internet platform, in which everyone participating via video or telephone audio could hear everything that everyone said. At the commencement of the hearing, the Hearings Officer made the disclosures and announcements required by ORS 197.763(5) and (6) and 197.796 and disclaimed any *ex parte* contacts, conflict of interest or bias. No one raised any procedural objections or challenged the Hearings Officer’s ability to decide the matter impartially, or otherwise challenged the Officer’s jurisdiction.

At the July 8<sup>th</sup> public hearing, Chris Liu, Land Use Planner for the County, provided a verbal summary of the application and the basis for staff’s report, which recommended conditional approval (Ex. C.5). The applicant was represented by Razib Shishir, and the applicant’s architect Stewart Straus, who explained the proposal and expressed the applicant’s acceptance of and agreement with staff’s favorable recommendation and conditions of approval. Mr. Shishir requested clarification on staff’s recommended 2-year expiration on the permit in Condition 1, based upon MCC 39.1185. The following members of the Muslim community and applicant group spoke in support of the proposal: Shahriar Ahmed, Neehaz Sohail, Irfan Aziz and Safa Sohail. No one else requested an opportunity to testify, and no written comments were received into the record. No one asked that the hearing be continued or that the record be left open. The Hearings Officer closed the record at the conclusion of the July 8<sup>th</sup> hearing.

### **IV. Findings:**

Only issues and approval criteria raised in the course of the application, during the hearing or before the close of the record are discussed in this section. All approval criteria and issues not raised by staff, the applicant or a party to the proceeding have been waived as contested issues, and no argument with regard to these issues can be raised in any subsequent appeal. The Hearings Officer finds those criteria to be met,

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<sup>1</sup> “Structure” means “That which is built or constructed. An edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner.”

even though they are not specifically addressed in these findings, and the Hearings Officer adopts and incorporates herein by this reference the staff report (Ex. C.5) to augment the following findings:

**General Provisions:**

1. MCC 39.1515 Code Compliance and Applications. There apparently are two non-permitted buildings/structures on the subject property; although, it is not clear from the record whether any particular County permits were required for these structures. Therefore, it is not possible to make a determination from this record that the presence of these structures mean that the property 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.” Nonetheless, this application proposes to remove all of these structures as part of the project (Exs. A.6 & A.7), which resolves the question and confirms compliance with this requirement. A condition of approval is warranted to ensure that the structures, in fact, are removed. See Condition 3b.
2. MCC 39.3005 Lot of Record – Generally. This property was the subject of a legal lot verification request in 2004 (Ex. B.4), which concluded that this ~9.3-acre parcel is a legal lot of record. The configuration of the parcel has not changed since that decision. The Hearings Officer is disinclined to reevaluate this uncontested issue and instead relies upon the unappealed 2004 decision (T2-03-082) as conclusive and binding on the County.

**Commercial Forest Use (CFU-2) Zone:**

1. MCC 39.4080(A)(2) Conditional Uses – Cemetery. Cemeteries are listed as community service uses that are conditionally allowed in the CFU-2 zone. MCC 39.7520(B)(3). This proceeding and compliance with the approval criteria discussed below satisfy this requirement.
2. MCC 39.4100(A) Use Compatibility Standards. Implementing ORS 215.296(1), MCC 39.4100(A)(1) requires all conditional use proponents to demonstrate compliance with the two primary conditional use criteria, *i.e.*, demonstrate that the use will:
  - (a) *Not force a significant change in, or significantly increase the cost of, accepted forestry or farming practices on surrounding forest or agricultural lands, and*
  - (b) *Not significantly increase fire hazard, or significantly increase fire suppression costs, or significantly increase risks to fire suppression personnel; and*

Adjacent lands are zoned forest, residential, agricultural, and mixed agricultural. As the activity associated with the cemetery is limited in scope and intensity and is intermittent in nature, any potential impact, *i.e.*, increased traffic to the site, would be similarly limited and temporary. Other than temporary and intermittent increased traffic to the site, this cemetery will not generate the types of impacts associated with potentially significant increased costs to forestry or farming

practices. In the absence of any argument or evidence to the contrary, the Hearings Officer concludes that proposed cemetery will not force a significant change in, or significantly increase the cost of accepted forestry or farming practices on surrounding forest/agricultural lands. These requirements are satisfied.

Development associated with this cemetery is limited to the installation of the parking lot, hand digging of graves, and the installation of two entry signs (Ex. A.7 – A.8). No buildings are proposed, and a majority of the site resembles an open field. Tualatin Valley Fire & Rescue reports (Ex. A.17) that its existing resources are adequate to serve this use. In the absence of any argument or evidence to the contrary, the Hearings Officer concludes that the use as proposed will not significantly increase fire hazard or the risk or costs associated with fire suppression. This requirement is satisfied.

MCC 39.4100(A)(2) requires the applicant to record a statement in the County deed records acknowledging the rights of nearby property owners to conduct forest operations consistent with the Forest Practices Act and rules and to conduct accepted farming practices. The Applicant indicated it will record such a statement, and a condition is warranted reflecting this requirement. See Condition 3c.

3. MCC 39.4145 Off-Street Parking and Loading. The relevant parking and loading requirements for this use in this zone are in MCC 39.6505 to 39.6600, which are addressed below.

#### **Community Service Conditional Uses:**

1. MCC 39.7505 to 39.7525 – Community Service Conditional Use Criteria. The proposed religious cemetery qualifies as a “Community Service Use,” which is conditionally allowed in the CFU-2 Zone. Approval of a Community Service Use requires compliance with the criteria in MCC 39.7515(A) through (H), for which the Hearings Officer adopts the following findings:
  - (A) Is consistent with the character of the area: This application proposes no construction or buildings of any kind, only a gravel parking area, 2 signs and burial plots for 7,000+ graves. The site will be visited only occasionally for burial ceremonies and people visiting graves. The activities proposed and approved in this permit are not anticipated to be significant vehicle trip generators.
  - (B) Will not adversely affect natural resources: The proposed cemetery location is in a rural area in unincorporated west Multnomah County, along NW St. Helens Road (Highway 30). Most of the property resembles a cleared field, with trees and other taller vegetation concentrated in the property’s periphery (Ex. A.7). Adjacent lands are zoned forest, residential, agricultural, and mixed agricultural. The subject property will generally maintain a similar appearance with the use of flat headstones to mark burial sites and new landscape plantings (Exs. B.9 & A.9). As proposed, the cemetery is consistent with the generally undeveloped, rural character of the surrounding area. No burial plots will be located within the Significant Environmental

Concern - streams (SEC-s) overlay (Ex. A.8). No vegetation removal or alterations to the stream conservation area in the SEC-s overlay are proposed. A wetland area near the southeast corner of the property will be preserved as shown on the preliminary plans (Exs. A.7 & A.9). The applicant provided a planting plan showing the trees that will be preserved and areas where new landscaping and mitigation plantings will occur (Ex. A.9). Mitigation plantings will enhance the area surrounding the existing wetland and are part of a wildlife conservation plan discussed below. The proposal does not include a wireless communication facility or a regional sanitary landfill. The Hearings Officer concludes this criterion is met.

(C) The use will not:

- (a) *Force a significant change in, or significantly increase the cost of, accepted forestry or farming practices on surrounding forest or agricultural lands, and*
- (b) *Significantly increase fire hazard, or significantly increase fire suppression costs, or significantly increase risks to fire suppression personnel;*

These criteria are the same as for conditional uses in the CFU-2 zone discussed above in response to MCC 39.4100(A) (Use Compatibility Standards). The Hearings Officer incorporates herein by this reference the findings already adopted in response to MCC 39.4100(A). These criteria are met.

- (D) The use will not require public services other than those existing or programmed for the area. The application does not indicate that sanitary sewer or water are required for this proposed cemetery. Transportation access already exists and is adequate to serve the intended use. Emergency fire/life/safety coverage already exists in the area and is provided by Tualatin Valley Fire & Rescue. Current service levels are adequate to serve this use, and the Hearings Officer concludes this criterion is met.

- (E) The use will be located outside a big game winter habitat area. County mapping indicates this property is outside any identified big game winter habitat area as defined by ODF&W. This criterion is met.

- (F) The use will not create hazardous conditions. The scope of activities proposed are extremely modest and non-impactful. Traffic and parking are provided for in the plans, and the graves will not create any identifiable hazardous conditions. This criterion is met.

- (G) The use will satisfy applicable Comprehensive Plan policies. The County's farm, forest and natural resource protection policies are reflected in the underlying CFU-2 zoning and various SEC and geologic hazard overlays. Given the limited scope of the proposal, the Hearings Officer finds that compliance with these land use regulations is sufficient to demonstrate compliance with any applicable Comprehensive Plan goals and policies. In the absence of any countervailing argument, the criterion is met.

- (H) The use will satisfy such other applicable approval criteria in this section. Given the limited scope of uses proposed and the foregoing findings, there are few other relevant or applicable approval criteria. These, however, include the Design Review criteria and Off-Street Parking and Loading criteria, which are addressed in other sections and found to be satisfied. On this basis, the Hearings Officer concludes this criterion is met.
2. MCC 39.7520 Uses allowed as Community Service Uses in a CFU Zone. Cemeteries are specifically listed as Community Service Uses and are allowed in the County's CFU zones with a conditional use permit. This public decision making process and permit satisfy these requirements.
3. MCC 39.7525 Restrictions. This code section provides a variety of development regulations and dimensional standards applicable to physical, 3-dimensional structures. The application does not propose any such structures; therefore, none of these regulations and restrictions are applicable to this proposal.

#### **Design Review:**

1. MCC 39.8010 Design Review Plan Approval Required. This section prohibits any building, grading, parking, land use, sign or other such development without design review approval. Several elements of the proposal in this application qualify, and Design Review is therefore required.
2. MCC 39.8040 Design Review Criteria. Approval of a final design review plan shall be based on a demonstration of compliance with the following criteria:
- (I) Relation of Design Review Plan Elements to Environment.
- (a) *The elements of the design review plan shall relate harmoniously to the natural environment and existing buildings and structures having a visual relationship with the site.*
- (b) *The elements of the design review plan should promote energy conservation and provide protection from adverse climatic conditions, noise, and air pollution.*
- (c) *Each element of the design review plan shall effectively, efficiently, and attractively serve its function. The elements shall be on a human scale, inter related, and shall provide spatial variety and order.*

There are no structures that will remain on the property, and this application proposes no new structures other than a graded parking area and buried graves with flat headstones. As such, these design criteria are met, to the extent they apply at all.

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

- (3) Special Needs of Handicapped - Where appropriate, the design review plan shall provide for the special needs of handicapped persons, such as ramps for wheelchairs and braille signs.
- (4) Preservation of Natural Landscape - The landscape and existing grade shall be preserved to the maximum practical degree, considering development constraints and suitability of the landscape or grade to serve their functions. Preserved trees and shrubs shall be protected during construction.

Again, due to the extremely innocuous nature of this proposal, the proposed cemetery will meet or otherwise achieve all of these design review requirements when complete. The property is privately owned, and access is limited to those attending graveside burial services. As the cemetery fills up over time, occasional visits by friends and relatives are likely. Two parking spots are designated for handicap stalls, which ensures ample space for handicapped visitors to disembark and load (Ex. A.10). Golf carts are proposed to provide movement assistance for those that need assistance from the parking lot to other areas of the cemetery (Ex. A.20). The applicant did not provide further details on how or when it would bring golf carts to the site when needed, but it is a future plan to be implemented, if at all, as the need arises. A buffer area and proposed mitigation plantings around the existing wetland will help ensure the preservation of the wetland and wildlife areas (Ex. A.9). Existing grade in parts of the property will be modified by ~2 feet to level the existing slope to better serve the needs of the cemetery (Ex. A.7). The only area with a significant change to the landscape is the parking lot; however, the parking lot will be located in a relatively flat corner of the property and will be graveled to minimize ground disturbance (Ex. A.7). The proposal includes landscape plantings around the perimeter of the parking lot (Exs. A.9 & A.10). In the absence of any countervailing evidence or argument, the Hearings Officer concludes these criteria are met.

- (5) Pedestrian and Vehicular Circulation and Parking – The location and number of points of access to the site, the interior circulation patterns, the separations between pedestrians and moving and parked vehicles, and the arrangement of parking areas in relation to buildings and structures, shall be designed to maximize safety and convenience and shall be harmonious with proposed and neighboring buildings and structures.
- (6) Drainage – Surface drainage and stormwater systems shall be designed to adversely affect neighboring properties or streets. Post-development rates of runoff from the site shall not exceed pre-development rates of surface water runoff. The parking area will be graded and graveled, and therefore no new impervious surfaces are proposed.

A single access serves the site via a shared easement driveway that connects to NW St. Helens Road. The parking lot is located in the northwest corner of the property, which limits traffic on the property to that specific area. This design effectively separates foot traffic from vehicular traffic, so that pedestrians can safely follow the marked paths around the area burial plots will be located (Ex.



A.7). No buildings are proposed. The Applicant submitted a Stormwater Report and Stormwater Drainage Control Certificate signed and stamped by Edmund Tawiah, PE (Exs. A.18 & A.19), which states that the surface runoff volume after development will be no greater than before the development. The report further states that the runoff from the gravel parking lot and walkway will dissipate through the gravel by infiltration (Ex. A.19, p.3). On this basis, the Hearings Officer concludes that the relatively low-intensity of the proposed use ensures that these requirements will be met.

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

(8) *Utilities – This criterion requires that all above ground utility installations be located to minimize adverse impacts on the site and neighboring properties.*

Based on the site plan (Ex. A.7) and the lack of new proposed utilities, the Hearings Officer concludes that the relatively low-intensity of the proposed use ensures that these requirements will be met, to the extent they apply at all.

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

The application proposes 2 entry signs (Exs. A.7 & B.9), one of which will be placed at the entrance to the parking lot and the other placed at the driveway entrance from NW St. Helens Road. The preliminary design shows the entry sign from NW St. Helens Road to be 4 feet x 3 feet, and the parking lot entry sign is 6 feet x 2 feet (Ex. B.9). A condition of approval is warranted that requires the selection of wooden materials for the final design plan in order to align with the significant environmental concern – scenic view overlay. See Condition 4e. The Hearings Officer concludes that, as conditioned, this criterion can be met.

3. MCC 39.8045 Required Minimum Standards. Most of the requirements of this site plan review section do not apply to this proposal due to its limited scope. However, the Hearings Officer finds that the following minimum standards do apply:

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

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

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

The applicant's Landscape Plan (Ex. A.9) shows that the existing trees will remain on the property. The perimeter around the new parking lot will be landscaped with trees/shrubs as depicted in Exhibit A.10. As proposed, a minimum of 15% of the development area will be landscaped. A mitigation planting area for the SEC-h overlay of ~41,927 sf will surround the existing wetland area on the property (Ex. A.9). From this, the Hearings Officer concludes this criterion is met.

*(3) The following landscape requirements shall apply to parking and loading areas:*

*(a) A parking or loading area providing ten or more spaces shall be improved with defined landscaped areas totaling no less than 25 square feet per parking space.*

*(b) A parking or loading area shall be separated from any lot line adjacent to a street by a landscaped strip at least 10 feet in width, and any other lot line by a landscaped strip at least 5 feet in width.*

*(c) A landscaped strip separating a parking or loading area from a street shall contain:*

- 1. Street trees spaces as appropriate to the species, not to exceed 50 feet apart, on the average;*
- 2. Low shrubs, not to reach a height greater than 3'0", spaced no more than 5 feet apart, on the average; and*
- 3. Vegetative ground cover.*

*(d) Landscaping in a parking or loading area shall be located in defined landscaped areas which are uniformly distributed throughout the parking or loading area.*

*(e) A parking landscape area shall have a width of not less than 5 feet.*

The parking lot is not adjacent to a street. The application's enlarged landscape plan (Ex. A.10) shows that the perimeter of the parking lot will be landscaped with trees/shrubs. This plan shows landscape areas have a minimum width of 5 feet and a minimum defined landscape area of 675 sf (Ex. A.10). On this basis, the Hearings Officer concludes this criterion is met.

*(4) Provision shall be made for watering planting areas where such care is required.*

*(5) Required landscaping shall be continuously maintained.*

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

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

Compliance with these landscaping requirements is feasible and a condition is warranted to require that all designated landscape areas be maintained for the

life of the cemetery use. See Condition 4c. No planting is proposed under overhead utility lines (Ex. A.9). On this basis and as conditioned, the Hearings Officer concludes these criteria can be met.

**Parking, Loading, Circulation and Access:**

1. MCC 39.6505 to 39.6600 - Parking, Loading, Circulation and Access Criteria. The proposed cemetery is a new use that will cause an intensification of use in the form of visitors to the property; therefore, the proposal requires off-street parking. The diverse set of criteria in these sections apply to the parking area, access and circulation aspects of the proposal. The applicant shall maintain the required off-street parking and loading facilities shown in the site plans (Exs. A.7 & A.10) without charge to users. A condition is warranted to this effect. See Condition 4d. Based on these plans and the following findings, as conditioned, the Hearings Officer concludes these criteria are met.
2. MCC 39.6530 Improvements Required. This section requires that the parking and loading areas be improved and ready for use before occupancy under MCC 29.014, or that a Performance Bond in favor of Multnomah County equal to the estimated cost of completing these improvements be filed with the Planning Director. Any such bond shall include the condition that, if the improvement has not been completed within one year after issuance of the Certificate of Occupancy, the bond shall be forfeited. Any bond filed hereunder shall be subject to review and approval by the Planning Director and County Attorney. A condition to this effect is warranted. See Condition 3d. On this basis, this criterion is met.
3. MCC 39.6535 Change of Use. The use approved in this permit is the one specifically applied for and described in the application materials. Any changes or additions will require the applicant to repeat the Community Service Conditional Use Review process. See MCC 39.1170(E).
4. MCC 39.6540 Joint Parking or Loading Facilities. Not applicable.
5. MCC 39.6545 Existing Spaces. Not applicable.
6. MCC 39.6560 Access. A private driveway connecting to NW St. Helens Road provides two-way traffic access to the parking lot (Ex. A.7). The applicant did not request any deviation from MCC 39.6560(A), and staff did not recommend any deviation. There are no parking or loading spaces proposed in a public street or private street. The Hearings Officer concludes this criterion is met.
7. MCC 39.6565 Dimensional Standards. This section provides numerous dimensional standards for parking spaces. The applicant's enlarged details plan (Ex. A.10) shows the parking lot is designed to have spaces with minimum dimensions of 18 feet x 9 feet and a minimum 25-foot wide aisle (north and south alignment) on the lot. No vertical clearance issues are anticipated, given the open-air nature of the parking lot. No loading spaces are required, and none are proposed. As shown, the applicant's plans demonstrate compliance with the applicable parking dimensional standards, and this set of standards is met.

8. MCC 39.6570 Improvements. The parking lot is proposed as a graveled parking area. A stormwater drainage control certificate completed by Edmund Tawiah, PE states that pervious gravel is adequate to handle the disposal of surface water on the subject property (Exs. A.18 & A.19). No covered walkways are proposed. The Tualatin Valley Fire & Rescue provided a fire service review (Ex. A.17) stating that the proposed surface is adequate for access purposes. The County's Transportation Planning Review (Ex. A.16) indicated there were no issues with the use of gravel for the parking lot. The parking lot is not adjacent to a public road and is separated from adjacent properties (Ex. A.7). Eight inch railroad ties will be used as wheel-stops (Ex. A.10). On this basis, these requirements are met.
9. MCC 39.6575 Signs. The proposed signs are addressed under MCC 39.6780 below, which the applicant demonstrates it meets, and those findings are incorporated herein by this reference.
10. MCC 39.6580 Design Standards: Setbacks. Not applicable.
11. MCC 39.6585 Landscape and Screening Requirements. The applicable landscape requirements are discussed above under MCC 39.8045, which the Hearings Officer concludes are met. The Hearings Officer adopts and incorporates those findings here in response to these requirements.
12. MCC 39.6590 Minimum Required Off-Street Parking Spaces. The Code does not prescribe a particular number of required off-street parking spaces. Based on the scope and intermittent nature of this proposed cemetery, the 27 spaces proposed in the application are acceptable. This criterion is met.
13. MCC 39.6595 Minimum Required Off-Street Loading Spaces. No specifically identified loading spaces are proposed, and a cemetery use is not one of the listed uses in the off-street loading spaces table. Based on the limited scope and intermittent nature of this use, the lack of loading spaces is acceptable. The cemetery owner will have access to all of the spaces in the parking lot for loading and unloading. This criterion is met.
14. MCC 39.6600 Exceptions from Required Off-Street Parking Spaces. No exceptions are requested, and none are needed.

#### **Signs:**

1. MCC 39.6705 to 39.6815 Sign Regulations. The application proposes two freestanding signs: one at the driveway entrance on NW St. Helens Road and the other at the cemetery parking lot. Neither sign is exempt or prohibited under MCC 39.6720 and 39.6725, respectively.
2. MCC 39.6745 Signs Generally. This section describes numerous required and prohibited sign elements. Under these standards, the two proposed signs are considered freestanding signs; both signs have 12 sf of sign face area, and both signs are under the 16-foot height limit (Ex. B.9). The maximum number of signs allowed along the road frontage is one. The site plan shows a single sign at the entrance from NW St. Helens Rd. (Ex. A.7), and neither of these signs is

proposed to have electronic messages, lighting, flashing features, rotating features, or moving parts (Ex. B.9). Based on these representations, the Hearings Officer concludes that these requirements are met or are not applicable.

3. MCC 39.6780 Sign Placement. This section provides numerous requirements for the placement and location of signs so as to avoid impacts to traffic safety or pedestrian obstructions. The site plan (Ex. A.7) shows where the signs will be placed within the site. No buildings or building signs proposed. No signs are proposed within the vision clearance area, vehicle clearance areas, or within a pedestrian clearance area (Ex. A.7). The signs will be placed within the required yard areas as allowed by this section, and no accessory signs are proposed. On this basis, the Hearings Officer finds these criteria are met.

### **Significant Environmental Concern (SEC) Permits:**

1. MCC 39.5510 Uses Allowed and Permits Required. The site is mapped for wildlife (SEC-h), scenic views (SEC-v), streams (SEC-s), and geologic hazards (GH). The site plan (Ex. A.7), however, shows no proposed development within the SEC-s overlay. Consequently, no SEC-s permit is needed. Development is proposed for areas within the SEC-h and SEC-v overlays; therefore, permits for these resource overlays are required (Exs. A.7-A.10 & A.13). No excavation or removal of materials of archaeological, historical, prehistorical or anthropological nature is proposed.
2. MCC 39.5650 Criteria for Approval of SEC-v Permit. The following findings address only those SEC-v criteria and requirements that are applicable to this proposal:

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

The structures associated with the proposed cemetery include flat stone grave markers, railroad tie parking bumps, and two signs (Exs. B.9 & A.10). Based on the application, proposed materials, and the location (flat, at ground level), these structures will be visually subordinate. A condition is warranted to ensure verification of the sign materials at plan check for the final design review plan. See Condition 3e. No other conditions are recommended or required. On this basis and as conditioned, the applicable requirements of MCC 39.5650 are satisfied, and the SEC-v permit is approved as proposed and conditioned in this decision.

3. MCC 39.5860 Criteria for Approval of SEC-h Permit. The following findings address only those SEC-h criteria and requirements that are applicable to this proposal:

*(B) Development standards:*

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

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

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

*(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. ...*

*(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.*

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

The site plan (Ex. A.7) shows that the application cannot meet all of the Subsection (B) development standards. In particular, the property's configuration does not allow development within 200 feet of NW St. Helens Road. The shared driveway provides access to a number of adjacent properties located further from the road than the subject property; hence, the access cannot be limited to a length of 500 feet. Therefore, a wildlife conservation plan under Subsection (C) is required.

*(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.*

The Applicant does not propose to plant any of the listed nuisance plants on the property, but a condition is warranted requiring compliance with this requirement. See Condition 4a.

*(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 ...*

Based on the site's size, shape, location, and topography, the applicant must demonstrate that the Wildlife Conservation Plan results in the minimum departure from the development standards in Subsection (B).

*(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.*

*(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.*

The majority of the site consists of existing cleared areas, with vegetation concentrated along the property borders. No additional clearing of areas classified as "forested areas" is proposed. According to the site plan (Ex. A.7), no fencing is proposed. On this basis, these requirements are met.

*(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.*

The property is within a stream conservation area and contains a wetland, but the stream riparian area is located offsite. No development is proposed within the stream conservation area or the wetland (Ex. A.7). The application includes a mitigation plan (Ex. A.13, p.6), which proposes a mitigation planting area around and adjacent to the wetland. Mitigation plantings would cover ~41,927 sf and would employ native plants (Ex. A.9). A condition of approval is warranted to require that the owner ensure the survival of the mitigation plantings and replace any mitigation plants that die. See Condition 4b. On this basis and as conditioned, the Hearings Officer finds the requirement is satisfied. The proposal's wildlife conservation plan satisfies the requirements of MCC 39.5860(C)(3), and the SEC-h permit is approved as proposed and conditioned in this decision.

#### **Geologic Hazard (GH) Overlay Requirements:**

1. MCC 39.5075 Permits Required. Portions of the property are mapped with a GH overlay, in which this section prohibits any “development or ground disturbing activity,” where the disturbed area or the land on which the development will occur has average slopes of 25% or more, except pursuant to a Geological Hazards permit. Based on the applicant’s topographical information provided by GeoDesign Inc. (Exs. A.3, A.4 & A.12) and the description of the proposed ground-disturbing activities (Exs. A.7-A.10), the project qualifies for a Geologic Hazards Permit exemption as discussed below under MCC 39.5080. With this, the Hearings Officer finds that the Geologic Hazard Overlay requirements can be met.
2. MCC 39.5080 Exemptions. This section recognizes the following exemptions from the GH Overlay permit otherwise required by MCC 39.5075:

*(A) An excavation below finished grade for basements and footings of a building, retaining wall, or other structure authorized by a valid building permit. This shall not exempt any fill made with the material from such excavation, nor exempt any excavation having an unsupported finished depth greater than four feet.*

*(B) Cemetery graves, but not cemetery soil disposal sites.*

\* \* \*

*(N) Uses not identified in subsections (A) through (M) that meet all of the following requirements:*

- (1) Natural and finished slopes will be less than 25 percent; and,*
- (2) The disturbed or filled area is 20,000 square feet or less; and,*
- (3) The volume of soil or earth materials to be stored is 50 cubic yards or less; and,*
- (4) Rainwater runoff is diverted, either during or after construction, from an area smaller than 10,000 square feet; and,*
- (5) Impervious surfaces, if any, of less than 10,000 square feet are to be created; and,*
- (6) No drainageway is to be blocked or have its stormwater carrying capacities or characteristics modified; and,*
- (7) The use will occur outside the Tualatin River and Balch Creek drainage basins.*

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

The digging of cemetery graves is the primary ground disturbing activity proposed in this application (Ex. A.8) and is expressly exempt from a GH Overlay permit under MCC 39.5080(B). Ground disturbance in the area where the parking lot will be located is outside of the mapped Geologic Hazards overlay, and it contains slopes of less than 25%, according to the topographical information provided by S&F Land Surveying (Ex. A.12). Therefore, the ground disturbance related to the parking lot is also exempt under MCC 39.5080(N) and does not require a Geologic Hazards permit. The areas proposed to be recontoured will have finished slopes of approximately 15%. Disturbed areas will



be less than 20,000 sf; no soil will be stored; no rainwater will be diverted; no impervious surfaces will be created, and no drainage-ways will be blocked (Exs. A.7-A.10). The subject property is within the Columbia drainage basin; therefore, the re-contouring activity satisfies the exemption requirements in Subsection (N) above. For these reasons, the GH Overlay criteria are satisfied.

**V. Decision and Conditions:**

Based on the foregoing Findings, the Hearings Officer approves the applicant's request to establish and operate a cemetery of approximately 7,000 grave sites in 4 phases over an approximately 40-year period as described in the application materials, subject to the following conditions. These conditions are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion is included. Approval of this land use permit is based on the applicant's submitted narrative, plans and other representations made to the County. No work shall occur under this permit other than what is described in these documents and approved in this permit. The property owners are responsible for compliance with these requirements and adhering to the limitations of approval described herein.

1. Permit Expiration – Consistent with MCC 39.1185(B), the land use authorized by this permit shall commence within 2 years of the date of this permit. The structures authorized by this permit – construction of the gravel parking area and erection of the requested signs – shall be complete within 4 years of the date of this permit. The use allowed by this permit – creation and use of burial graves – must be commenced within 4 years of the date of this permit; after which, graves may be opened and established as proposed into the future. If these aspects of the proposal are not established within 4 years after the date of this permit a new application will be required.

To confirm compliance with the foregoing requirements, the property owner shall provide notification of the establishment of the use or development and demonstrate compliance with all conditions of approval. The written notification and documentation of compliance with the conditions shall be sent to: [land.use.planning@multco.us](mailto:land.use.planning@multco.us). See MCC 39.1185.

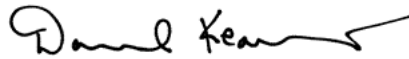
2. Acknowledgement. The property owners shall acknowledge in writing that they have read, understand and agree to comply with the conditions of approval. The signed document shall be sent to [chris.liu@multco.us](mailto:chris.liu@multco.us). See MCC 39.1170(A) & (B)
3. Final Design Review Plan Check. Prior to final design review plan check, the property owner shall complete the following:
  - a. Obtain a Minimal Impact Project sign-off or Erosion & Sediment Control permit for the installation of the parking lot. See MCC 39.6220 to 39.6225.
  - b. Schedule a site inspection with the code compliance office to verify the removal of the two non-permitted buildings/structures from the subject property. See MCC 39.1515.

- c. Record a statement with the County Dept. of Assessment, Records & Taxation (DART) that the owner and the successors in interest acknowledge the rights of owners of nearby property to conduct forest operations consistent with the Forest Practices Act and Rules, and to conduct accepted farming practices. The Applicant shall provide a copy of the document recorded with DART to the Land Use Planning office. See MCC 39.4100(A)(2).
  - d. The Applicant shall file a Performance bond with the Planning Director in favor of Multnomah County equivalent to the cost of completing the required parking improvements. The bond shall include the condition that if the improvement has not been completed within one year, the bond shall be forfeited. See MCC 39.6530.
  - e. The signs shall be constructed of wood or materials designed to resemble wood. If metal support poles are used, they shall be finished in a dark brown color with a flat-finish to resemble wood. The materials shall be clearly noted on the sign details included in the final design review plan. See MCC 39.8040(A)(9) & MCC 39.5650(C).
4. On-Going Compliance Required. As an on-going condition, the property owner shall comply with the following:
- a. Nuisance plants listed in MCC 39.5580 shall not be planted on the subject property. Any nuisance plants shall be removed from the property. See MCC 39.5860.
  - b. Ensure the survival of the mitigation plantings shown in the mitigation planting area in Exhibit A.9. Any mitigation plants that die shall be replaced with the same plant type or similar native non-nuisance plant within the next planting season. See MCC 39.6850(C).
  - c. All landscaped areas identified in Exhibit A.9 shall be maintained for as long as the cemetery use continues on the property. Maintenance includes regular watering of the plants. See MCC 39.8045(C).
  - d. The property owner shall maintain the parking lot area for as long as the cemetery use is active. The following additional requirements from MCC 39.6510 to 39.6520 shall also be maintained:
    - i. Required parking spaces shall be available for the parking of vehicles of customers, occupants, and employees without charge or other consideration.
    - ii. No parking of trucks, equipment, materials, structures or signs or the conducting of any business activity shall be permitted on any required parking space.

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**Date of Decision:** July 23, 2021.



By: \_\_\_\_\_  
Daniel Kearns,  
Land Use Hearings Officer

### **Notice of Appeal Rights**

This is the County's final decision on this application and appeal. Anyone with standing may appeal any aspect of the Hearings Officer's decision, to the Oregon Land Use Board of Appeals within 21 days of the date of this decision pursuant to ORS Chapter 197.

### **Exhibit List for T3-2020-13788**

<b>Exhibit No.</b>	<b># of Pages</b>	<b>Description of Exhibit</b>	<b>Date</b>
A.1	154	Initial Proposal Documents	09.22.2020
A.2	1	Authorizing Representative Letter	09.22.2020
A.3	38	Geotechnical Report completed by GeoDesign Inc.	09.22.2020
A.4	4	Geologic Hazards Permit (GHP) Form 1 completed by GeoDesign Inc.	09.22.2020
A.5	41	Selected Pages from the Schott & Associates Natural Resources Assessment Report	02.18.2021
A.6	1	Revised Existing Site Plan – Sheet A101	02.18.2021
A.7	1	Revised Proposed Site Plan – Sheet A102	02.18.2021
A.8	1	Revised Burial Plot Site Plan – Sheet A103	02.18.2021
A.9	1	Revised Landscape Planting Plan – Sheet A201	02.18.2021
A.10	1	Revised Enlarged Site Details – Sheet A202	02.18.2021
A.11	7	Chain of Title	02.18.2021
A.12	1	Topographic Survey completed by S&F Land Services	02.18.2021
A.13	6	Wildlife Conservation Plan completed by Schott & Associates	02.18.2021
A.14	9	Easement Details from instrument #2012-091957	02.18.2021
A.15	4	Applicant responses to incomplete letter	02.18.2021
A.16	1	ODOT Response to proposal	02.18.2021

A.17	3	Fire Service Agency Review	02.18.2021
A.18	1	Stormwater Certificate completed by Edmund Tawiah, PE	02.18.2021
A.19	7	Stormwater Report completed by Edmund Tawiah, PE	02.18.2021
A.20	8	Revised Applicant Narrative	03.02.2021
A.21	1	Revised General Application Form	03.02.2021
<b>B</b>	<b>pages</b>	<b>Staff Exhibits</b>	<b>Date</b>
B.1	2	Division of Assessment, Recording, and Taxation (DART): Property Information for 2N1W18D -00700 (Alt Acct#R971180290)	09.22.2020
B.2	1	Division of Assessment, Recording, and Taxation (DART): Map for 2N1W18D	09.22.2020
B.3	4	Parcel Record Card for 2N1W18D -00700	03.02.2021
B.4	9	Copy of Decision for land use case #T2-03-082	03.02.2021
B.5	1	Deed recorded 03.11.1993 in Book 2659, Page 887	03.02.2021
B.6	3	Warranty Deed recorded 11.18.2004 as instrument no. 2004-209326	03.02.2021
B.7	2	Special Warranty Deed recorded 08.08.2011 as instrument no. 2011-87612	03.02.2021
B.8	11	Indenture of Access recorded 07.30.2012 as instrument no. 2012-91978	03.02.2021
B.9	1	Sign and Grave-Marker Details (for illustrative purposes only)	03.02.2021
<b>C</b>	<b>pages</b>	<b>Administration &amp; Procedures</b>	<b>Date</b>
C.1	7	Incomplete Letter	10.21.2020
C.2	1	Applicant's Acceptance of 180 Day Clock	10.29.2020
C.3	1	Complete Letter (Day 1)	03.12.2021
C.4	8	Hearing Notice	06.17.2021
C.5	39	Staff Report	06.29.2021