
NOTICE OF DECISION

Case File: T2-2022-15468

Permit: Lot of Record Verification and Decision by the Planning Director

Applicant: Jennifer Herrick

Owners: Jennifer & Michael Herrick

Location: 13835 NW Charlton Road, Portland
Tax Account #R971160310

Map, Tax Lot: 2N1W16B -01600
Property ID #R324955

Base Zone: Exclusive Farm Use (EFU)

Overlays: N/A

Proposal Summary: The applicant requests a Lot of Record Verification and a Decision by the Planning Director to implement a Measure 49 dwelling approval. A Lot of Record Verification determines if a property was lawfully established in compliance with zoning, land division, and aggregation laws at the time of its creation or reconfiguration.

Decision: 1) The subject property (2N1W16B -01600) is a Lot of Record in its current configuration.

2) The subject property qualifies for a single home site under Final Order no. E118629.

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Tuesday, January 3, 2022 at 4:00 pm.

Opportunity to Review the Record: The complete case file, including the Planning Director Decision containing Findings, Conclusions, Conditions of Approval, and all evidence associated with this application is available by contacting the case planner. Paper copies of all documents are available at the rate of \$0.40/per page. For further information, contact Izze Liu at 503-988-0213 or isabella.liu@multco.us

Opportunity to Appeal: An appeal requires a \$250.00 fee and must state the specific legal grounds on which it is based. To obtain appeal forms or information on the procedure, contact the Land Use Planning office at (503) 988-3043. This decision is not appealable to the Land Use Board of Appeals until all local appeals are exhausted.

Issued by:

By: Izze Liu, Planner

For: Adam Barber,
Interim Planning Director

Date: Tuesday, December 20, 2022



Applicable Approval Criteria:

Multnomah County Code (MCC):

General Provisions: MCC 39.1515 Code Compliance and Applications, MCC 39.2000 Definitions, MCC 39.4240 Single Family Dwellings Condition of Approval, MCC 39.4245 Dimensional Requirements and Development Standards – (F)

Lot of Record: MCC 39.3005 Lot of Record – Generally, MCC 39.3070 Lot of Record – Exclusive Farm Use (EFU)

Decision by the Planning Director: MCC 39.1225 Interpretations and Requests for Lot of Record Verification

Copies of the referenced Multnomah County Code sections are available by contacting our office at (503) 988-3043 or by visiting our website at <https://multco.us/landuse/zoning-codes/> under the link:

Chapter 39 - Zoning Code

Conditions of Approval

The conditions listed 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 follows in parenthesis.

1. Permit Expiration – The authorized home site must be established on the subject property by July 9, 2025, subject to all conditions of Measure 49 Final Order E118629.
 - a. For purposes of Condition 1, 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 *LUP-submittals@multco.us*. [MCC 39.1185]
2. 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. [MCC 39.1170(B)]

3. Prior to zoning plan review for the new dwelling, the property owners or their representative shall:
 - a. Record pages 1 through 4 of this Notice of Decision with the County Recorder. The Notice of Decision shall run with the land. Proof of recording shall be made prior to the issuance of any permits and shall be filed with the Land Use Planning Division. Recording shall be at the applicant's expense. [MCC 39.1175]
 - b. 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 Izze Liu at *isabella.liu@multco.us*. [MCC 39.1170(A) & (B)]
 - c. Record a covenant with the County Recorder 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. A copy of the covenant form and recording instructions is included with this decision. [MCC 39.4240]
 - d. Obtain the necessary ground disturbance permits for the proposed development. The scope of work for the proposed development may require an Erosion & Sediment Control permit under MCC 39.6225 or a Minimal Impact Project permit under MCC 39.6220.
4. At the time of zoning plan review for the new dwelling, the property owners or their representative shall:
 - a. Provide a septic review certification, completed by the County sanitarian, demonstrating that the new dwelling will have an authorized on-site sewage disposal system. [MCC 39.4245(F)]
 - b. Provide a stormwater drainage control certificate, completed by an Oregon licensed professional engineer, demonstrating that the new dwelling (and associated new impervious surfaces) will have appropriate stormwater drainage control to meet Multnomah County Code. [MCC 39.4245(F)]
5. Prior to construction of the new dwelling, the property owners or their representative shall remove the expired temporary health hardship dwelling from the subject property. [MCC 39.1515]

Note: Once this decision is final, application for building permits may be made with the City of Portland. When ready to have building plans reviewed by land use planning, the applicant shall compete the following steps:

1. Read your land use decision, the conditions of approval and modify your plans, if necessary, to meet any condition that states, "Prior to zoning plan review..." Be ready to demonstrate compliance with the conditions.
2. Contact Right-of-Way Permits at *row.permits@multco.us* to review your plans, obtain your access permit, and satisfy any other requirements. You may schedule an appointment at <https://multco.us/transportation-planning/webform/right-way-appointment-request/> or leave a message at 503-988-3582. Failure to make an appointment with County Right-of-Way will result in delaying your building plan review and obtaining building permits.

3. Contact the City of Portland, Bureau of Development Services, On-site Sanitation at 503-823-6892 or e-mail septic@portlandoregon.gov for information on how to complete the Septic Evaluation or Permit process. All existing and/or proposed septic system components (including septic tank and drainfield) must be accurately shown on the site plan.
4. Visit <https://www.multco.us/landuse/submitting-building-plan> for instructions on how to submit your building plans for review and conditions of approval verification. Please ensure that any items required under, “At the time of zoning plan review...” are ready for land use planning review. Land Use Planning must sign off on the plans and authorize the building permit before you can go to the Building Department.

The above must be completed before the applicant can obtain building permits from the City of Portland. At the time of zoning plan review, Land Use Planning may collect additional fees, if applicable.

Notice to Mortgagee, Lien Holder, Vendor, or Seller:

ORS Chapter 215 requires that if you receive this notice it must be promptly forwarded to the purchaser.

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 a Lot of Record Verification and a Decision by Planning Director for the implementation of a Measure 49 (“M49”) approval for the property identified as 13835 NW Charlton Road, Portland (“subject property”).

Through the Lot of Record Determination process, the County reviews the creation or reconfiguration of each parcel, lot, or unit of land involved in the request. The County then verifies that the creation or reconfiguration of the parcel, lot, or unit of land satisfied all applicable zoning laws and all applicable land division laws in effect on the date of its creation or reconfiguration. In the EFU zone, the County also considers adjacent ownership on February 20, 1990 in determining whether a parcel, lot, or unit of land is a Lot of Record on its own. If the parcel, lot, or unit of land met all applicable zoning and land division laws, it may be determined to be a Lot of Record.

2.0 Property Description:

Staff: The subject property is located in unincorporated west Multnomah County in the area known as Sauvie Island. The property is zoned Exclusive Farm Use (EFU) and is located outside of Metro’s Urban Growth Boundary (UGB). The subject property is currently vacant.

3.0 Public Comment:

Staff: Staff mailed a notice of application and invitation to comment on the proposed application to the required parties per MCC 39.1105 (Exhibited C.5). Staff did not receive any public comments during the 14-day comment period.

4.0 General Provisions:

4.1 MCC 39.1515 CODE COMPLIANCE AND APPLICATIONS.

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

* * *

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.

For purposes of the current application, there are no open compliance cases on the subject property. The subject property contains an expired temporary health hardship dwelling, which will be demolished to accommodate the new dwelling (Exhibit A.6). A condition of approval requires the removal of the expired temporary health hardship dwelling from the subject property. Through the completion of the condition of approval, the identified compliance issue will be resolved. *This criterion is met.*

4.2 MCC 39.4240 Single Family Dwelling 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 condition of approval requires the applicant to record the covenant referenced above prior to the County's review of the building plans for the new dwelling. *As conditioned, the above criterion can be met.*

4.3 MCC 39.4245 Dimensional Requirements and Development Standards

* * *

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

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

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

Staff: A condition of approval requires the applicant to provide a septic review certification, completed by the County sanitarian, demonstrating that the new dwelling will have an authorized on-site sewage disposal system. A condition of approval also requires the applicant to provide a stormwater drainage control certificate, completed by an Oregon licensed professional engineer, demonstrating that the new dwelling will have stormwater drainage control that complies with Multnomah County Code. *As conditioned, the above criteria can be met.*

5.0 Lot of Record Criteria:

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**

* * *

Staff: To qualify as a Lot of Record, the subject property, when created or reconfigured, must meet (B) of this section and meet the Lot of Record standards set forth in the EFU zoning district. More specifically, section (B) above requires demonstration that the subject property (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws. The Lot of Record standards set forth in the EFU district establish additional requirements unique to the district, which are evaluated in Section 6.1 of this decision. The findings below analyze whether the Lot of Record provisions in section (B) have been met.

The applicant provided a Bargain and Sale deed to support the Lot of Record request. The Bargain and Sale Deed was recorded in 1969 (Exhibit A.3) and contains a legal description matching the current configuration of the subject property (Exhibit A.5). In 1969, the subject property was zoned ‘F-2’ per historical County zoning maps (Exhibit B.2). The F-2 zone had a minimum lot size of 2 acres. There was no requirement for road frontage or minimum front lot line length or lot width. The subject property is 10.48 acres and abuts NW Charlton Road which is a public road. The applicant provided a current deed for the subject property (Exhibit A.5) that contains a legal description that matches the recorded 1969 legal description.

The subject property complied with all applicable zoning laws at the time of its creation or reconfiguration in 1969.

In 1969, the process to divide a property required a deed or sales contract dated and signed by the parties to the transaction. The document needed to be in recordable form or recorded with the County Recorder prior to October 19, 1978. As evidenced by the 1969 deed (Exhibit A.3), the applicable land division laws were satisfied.

Based upon the above, the subject property satisfied all applicable zoning and land division laws when it was created or reconfigured in 1969.

6.0 Lot of Record – Exclusive Farm Use (EFU) Criteria:

6.1 MCC 39.3070 Lot of Record – Exclusive Farm Use (EFU)

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

(1) A parcel or lot which was not contiguous to any other parcel or lot under the same ownership on February 20, 1990, or

(2) A group of contiguous parcels or lots:

(a) Which were held under the same ownership on February 20, 1990; and

(b) Which, individually or when considered in combination, shall be aggregated to comply with a minimum lot size of 19 acres, without creating any new lot line.

* * *

Staff: According to the County's historic tax records, the properties identified as R971160310 (yellow), R971160300 (blue), R971160360 (green), and R971160400 (purple) were owned by Jean O'Mara on February 20, 1990. See Figure 1 below.

Figure 1



The applicant applied for a Lot of Record Determination for the subject property. Pursuant to MCC 39.1115 Initiation of Action, the County cannot verify the Lot of Record status for the properties identified as R971160300, R971160400, and R971160360 as the County has not received written consent from the owner of record for those properties (Exhibit B.4, B.5, & B.6).

MCC 39.3070(A)(2)(b)(1) requires that each Lot of Record proposed to be segregated from the contiguous group of parcels shall be a minimum of 19 acres in area using existing legally created lot lines and shall not result in any remainder individual parcels with less than 19 acres in area. Individually, these properties do not meet the minimum parcel size of 19 acres. While tax lots R971160360 and R971160400 together are over 19 acres, the subject property and tax lot R971160300 both would be under 19 acres in size and cannot stand alone as a separate Lot of Record. There is no configuration of the four tax lots that would equal two groupings of 19 acres or more in size.

However, on June 17, 2005, Jean O'Mara filed a Measure 37 claim with the state under claim number M118629. On August 23, 2005, Jean O'Mara submitted the Measure 37 claim to Multnomah County.

The Measure 37 claim was processed under land use case number T1-05-056, which was approved by the Board of County Commissioners under Board Order No. 06-122. The Measure 37 claim and subsequent Board Order waived several EFU requirements including the EFU Lot of Record aggregation requirements (Exhibits B.7 & B.8). *Therefore, these criteria are not applicable.*

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

(1) July 10, 1958, F-2 zone applied;

(2) December 9, 1975, RL-C zone applied, F-2 minimum lot size increased, Ord. 115 & 116;

* * *

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

Staff: Section (B) is for information purposes. As the subject property is a Lot of Record that is less than the minimum lot size for new parcels, Section (C) above is applicable.

(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: The subject property is a lawfully created legal unit of land as found in Section 5.1. It is not an area of land described solely for assessment and taxation purposes, created by the foreclosure of a security interest, a mortgage lot, or an area of land created by court decree. *Based on the findings above, the subject property is a Lot of Record.*

7.0 Decision by the Planning Director Criteria:

7.1 MCC 39.1225 Interpretations and Requests for Lot of Record Verification

(A) The Planning Director has the authority to decide all questions of interpretation or applicability to specific properties of any provision of the comprehensive plan, or other land use code. Any interpretation of a provision of the comprehensive plan, or other land use code shall consider applicable provisions of the comprehensive plan and the purpose and intent of the ordinance adopting the particular code section in question.

* * *

Staff: The applicant requested a Decision by the Planning Director to implement a Measure 49 (“M49”) Final Order (E118629) that authorized a single home site for the subject property.

As mentioned above, Jean O’Mara filed a Measure 37 claim with the state and the county for the properties located at 13831 and 13835 NW Charlton Road. The Measure 37 claim was processed locally under land use case number T1-05-056, which was approved by the Board of County Commissioners under Board Order No. 06-122. The Board Order waived specific requirements in the EFU zone that would have prohibited the qualification for a dwelling (Exhibit B.7).

Following the Board Order, the Oregon Department of Land Conservation and Development granted a M49 Final Order on the subject property after the claimant elected supplemental review of their Measure 37 claim. The M49 Final Order was granted with the following conditions:

- 1. Each dwelling must be on a separate lot or parcel, and must be contained within the property on which the claimant is 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: Based on the findings in Section 5.1 above, the subject property satisfied all applicable zoning and land division laws when it was created or reconfigured in 1969. In 2006, Board Order No. 06-122 waived the EFU lot of record aggregation requirements for the subject property based on the Measure 37 claim (Exhibit B.7). Therefore, the subject property is a separate legal parcel from 13831 NW Charlton Road which has already been developed with a single-family dwelling under Measure 37. The subject property contains an expired temporary health hardship dwelling which the applicant has proposed to demolish (Exhibit A.2).

- 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).**
- 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 claimant has developed the limit of twenty home sites under Measure 49, the claimant is no longer eligible for the home site approvals that are the subject of this order.**

Staff: Two home sites were granted under the Measure 49 Final Order. The home site authorization does not authorize dwellings in violation of the referenced land use regulations.

- 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, parcels 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 dwellings currently existing on the Measure 37 claim property and contiguous property are not a determination on the current legal status of those lots, parcels or dwellings.**

Staff: The property located at 13831 NW Charlton Road was developed with a single-family dwelling under the Measure 37 claim. The subsequent M49 Final Order (Exhibit B.8) granted two home sites total, which included the existing home site on the property located at 13831 NW Charlton Road. Therefore, the subject property is eligible for a single home site.

- 5. Temporary dwellings are not considered in determining the number of existing dwellings currently on the property. The claimant may choose to convert any temporary dwelling**

currently located on the property on which the claimant is 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 was approved, and is subject to removal at the end of the term for which it is allowed.

Staff: The subject property does not contain a valid temporary dwelling at this time. The existing temporary health hardship dwelling was not considered in determining the number of existing dwellings.

- 6. A home site approval only authorizes the establishment of a new lot, parcel or dwelling on the property on which the claimant is 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 claimant is 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: The applicants are proposing to establish a primary single-family dwelling on the subject property which is consistent with the M49 Final Order.

- 7. The claimant may use a home site approval to convert a lot, parcel or dwelling currently located on the property on which the claimant is 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 claimant is eligible for Measure 49 relief exceeds the number of home site approvals the claimant qualifies for under a home site authorization, the claimant 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 contains an expired temporary health hardship dwelling which the applicants have proposed to demolish and replace with a primary single-family dwelling. As the proposal would establish the single remaining authorized home site, the proposal aligns with the M49 Final Order.

- 8. The claimant 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 wavier 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.**
- 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 claimant 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 does not contain a primary single-family dwelling. An expired temporary health hardship dwelling exists on the subject property, but the applicants have proposed to demolish and replace with a primary dwelling. As the proposal would establish the single remaining authorized home site, the proposal aligns with the M49 Final Order.

- 10. Because the property is located in an exclusive farm use 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 authorization of the two home sites does not require a partition. The subject property is 10.48 acres in size, and was conveyed in its current size and configuration in 1969.

- 11. Because the property is located in an exclusive farm use 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 the other Measure 37 claim properties.**

Staff: The home site located at 13831 NW Charlton has already been developed with a single-family dwelling under the Measure 37 claim. The subject property is a separate parcel that was granted a home site under the M49 Final Order. As there is only one potential home site remaining on the subject property, the clustering requirements are not applicable.

- 12. If the claimant transferred her 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 dwellings 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 Trustees of the Jean Charlton O'Mara Trust owned the subject property until the sale of the property in 2015. A copy of the 2004 Statutory Warranty Deed and the most recent Warranty Deed from 2015 (Exhibits A.4 & A.5) show the ownership history of the subject property. The 2004 deed granted the property from A. Jean Davis, also known as Jean Charlton O'Mara and Jean A. O'Mara, to Jean Charlton O'Mara, Trustee of the Jean Charlton O'Mara Trust. On March 9, 2006, the trust agreement was amended to establish Kyle S. Hoyt as the Trustee of the Jean Charlton O'Mara Trust (Exhibit A.9). Following Jean O'Mara's death on January 25, 2010, Kyle S. Hoyt became the acting Trustee of the Jean Charlton O'Mara Trust and the trust became irrevocable (Exhibits A.10 & A.12).

The deed conveyance to the current owners was executed on July 9, 2015. Since the subject property remained under the ownership of the Jean Charlton O'Mara Trust until the sale in 2015, the current

owners must establish the authorized home site on the subject property by July 9, 2025 to comply with the 10-year limitation outlined in the M49 Final Order.

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 claimant first obtains 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: County code requires the applicant to obtain a building permit to construct a single-family dwelling. The applicant will need to obtain zoning review and approval of their building plans prior to applying for a building permit.

8.0 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 T2-2022-15468 by contacting Izze Liu via email at isabella.liu@multco.us.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	Application Form	01.24.2022
A.2	4	Narrative	01.24.2022
A.3	1	Bargain & Sale Deed (1969)	01.24.2022
A.4	3	Warranty Deed (2004)	01.24.2022
A.5	3	Warranty Deed (2015)	01.24.2022
A.6	2	Site Plan	01.24.2022
A.7	2	Elevation Drawings	01.24.2022
A.8	5	Supplemental Narrative	11.17.2022
A.9	4	Third Amendment to Trust Agreement	11.17.2022
A.10	5	Settlement Agreement (2011)	11.17.2022
A.11	2	2011 Special Warranty Deed	11.17.2022
A.12	1	Certification of Trust (2010)	11.17.2022
‘B’	#	Staff Exhibits	Date
B.1	3	Assessment and Taxation Property Information for 2N1W16B -01600 (R971160310)	01.24.2022
B.2	1	Historic Zoning Map	01.24.2022

B.3	2	F-2 Zoning Regulations from Zoning Ordinance 100 as amended May 21, 1968 (Districts)	01.24.2022
B.4	3	Assessment and Taxation Property Information for 2N1W16B-01700 (R971160300)	01.24.2022
B.5	3	Assessment and Taxation Property Information for 2N1W16-00600 (R971160360)	01.24.2022
B.6	3	Assessment and Taxation Property Information for 2N1W16-00700 (R971160400)	01.24.2022
B.7	7	Copy of Board Order No. 06-122	01.24.2022
B.8	9	Copy of Measure 49 Final Order no. E118629	01.24.2022
'C'	#	Administration & Procedures	Date
C.1	3	Incomplete Letter	02.23.2022
C.2	1	Applicant Response to Incomplete Letter	03.04.2022
C.3	1	Request to Deem Complete	07.19.2022
C.4	1	Complete Letter	07.19.2022
C.5	3	Opportunity to Comment	10.28.2022
C.6	14	Decision	12.20.2022



CONDITIONS AND RESTRICTIONS

KNOW ALL MEN BY THESE PRESENTS THAT I _____
the Owner of the following described real property located in Multnomah County, Oregon to wit;

Recorded in (Book and Page or Instrument) _____, on
_____ in the Multnomah County Book of Records, does hereby acknowledge on
behalf of himself, his/her heirs, legal representatives, assigns and lessees by the placement of this
covenant or the acceptance and recording of this instrument that the property herein described is situated
in or adjacent to an agricultural/forest zone in Multnomah County, Oregon and as such may be subjected
to common and accepted farming practices (as defined by ORS 215.203) or accepted forest practices (as
defined by ORS 527.610 to 527.730) such as pesticide and herbicide spraying, weed cutting, slash
burning, irrigating, field plowing, harvesting, and any other accepted farming or forest practice. Said
practices above enumerated ordinarily and necessarily produce noise, dust, spray residue, smoke, vapor,
and other types of visual, odor, or noise pollution, which grantee accepts as a normal and necessary
farming or forest practice and as part of the risk of purchasing a residential dwelling in a farm or forest
area.

Signature

Dated this _____ day of _____, 20____

State of OREGON

County of _____

This instrument was acknowledged before me on _____, 20_____ by

Notary Public – State of Oregon

Letter of Acknowledgement

For Case T2-2022-15468

I have read and understand the conditions of approval for my land use case, T2-2022-15468. I intend to comply with the conditions of approval and the land use decision. I understand that if I fail to comply with the conditions of approval within the time allotted by the permit, the County can institute code enforcement proceedings or take other actions as allowed under Multnomah County Code. [MCC 39.1170(B) & (C), MCC 39.1185]

PROPERTY OWNER

Signature Date

(Print Name)

(Print Mailing/Contact Address)

(Phone Number)

PROPERTY OWNER

Signature Date

(Print Name)

(Print Mailing/Contact Address)

(Phone Number)