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Notice of Hearings Officer Decision

Attached please find notice of the Hearings Officer's decision in the matter of **T2-2021-14981** issued and mailed **8/15/2023**. 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

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

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DECISION OF THE HEARINGS OFFICER

A Remand from LUBA of the Denial of Applications for a Dwelling Customarily Provided in Conjunction with a Farm Use, Significant Environmental Concern for Wildlife Habitat permit, Erosion & Sediment Control permit, and an exemption from the Geologic Hazards permit requirements.

Case File: T2-2021-14981

Applicant: Scott Reed

Property Owner(s): Scott and Nancy Reed

Address: 12424 NW Springville Road, Portland Map, Tax Lot: 1N1W16D -02800, 1N1W16D -03100, 1N1W15C -00600 Alternate Account #: R961160130, R961160590, R961150770 Property ID #: R324300, R324339, R501639

Base Zone: Exclusive Farm Use (EFU)

Overlay: Significant Environmental Concern for wildlife habitat (SEC-h); Significant Environmental Concern for streams (SEC-s); Geologic Hazards (GH)

Site Size: 84.43 acres

Public Hearing: The hearing was opened at 9:00 a.m. on June 23, 2022. The hearing was held virtually. The hearing concluded at 9:39 a.m..

Testified at the Hearing: Scot Siegel, Director of Land Use Planning, David Blankfeld, Counsels office
Scott Reed, applicant
Andrew Stamp, Applicant’s attorney

Post Hearing procedure s: The record was kept open until July 7, 2023 for new evidence and then until July 14, 2023 for response and until July 21, 2023 for applicants final rebuttal. The record was closed on that date.

Summary: The County and the Applicant agreed before the Land Use Board of Appeals to a voluntary remand back to the Hearings Officer to address the farm dwelling criteria. At the remand hearing, the parties also agreed to address Significant Environmental Concern-Habitat (SEC-h) and Geological Hazards (GH).

The remaining issues in my previous opinion, were not appealed and are therefore final.

Site Description



Applicable Approval Criteria:

As stated above, the parties agreed to a voluntary remand and the only criteria are those listed below. I previously found that the applicant had met all other criteria and no appeals were taken as to those issues.

Dwelling Customarily Provided in Conjunction with a Farm Use: MCC 39.4225(C) Review Uses Dwelling Customarily Provided in Conjunction with a Farm Use, MCC 39.4240 Single Family Dwelling Condition of Approval, MCC 39.4245(C), (D), (F), (H) Dimensional Requirements and Development Standards, Former MCC 39.4265(B)(3) (2021), repealed by Ordinance 1304 (2022) Standards for Specified Farm Dwellings Not high-value farmland soils, capable of producing the median level of annual gross sales.

Significant Environmental Concern (SEC-h): MCC 39.5510 Uses; SEC Permit Required, MCC 39.5520 Application for SEC Permit, MCC 39.5580 Nuisance Plant List, MCC 39.5860 Criteria for Approval of SEC-h

Geologic Hazards Exemption: MCC 39.5075 Permits Required, MCC 39.5080 Exemptions

DECISION: The Hearings Officer finds that the Application can be approved with conditions. The primary condition being that no building permit shall be issued until the required farm income is proven. The Applicant meets the requirements for the SEC-h permits. The Applicant qualifies for a Geologic Hazards Exemption but must apply for an Erosion and Sediment Control Permit.

The hearings officer's decision is supported by the following findings.

Dated this 15th day of August 2023

Alan A. Rappleyea

Alan A. Rappleyea
Multnomah County Land Use Hearings Officer

This Decision is final when mailed. Appeals may be filed with the Oregon Land Use Board of Appeals within the time frames allowed by State law.

A. HEARING AND RECORD HIGHLIGHTS

1. Multnomah County Land Use Hearings Officer Alan Rappleyea received testimony at the duly noticed public hearing about the remand of this application on June 23, 2023. I reminded the parties that it was a remand and that the previous declarations still applied. The County, applicant and Hearings Officer agreed to limit the issues on remand to the three issues discussed here. All other findings that were not appealed from the prior decision remain and are readopted here.

2. Scot Siegel, Director of Planning Services summarized the Staff Report and the applicable approval criteria. Mr. Siegel found that the applicants did not meet their burden of proof regarding farm income. Assistant County Counsel David Blankfeld testified that the purpose of the remand hearing was to allow the applicant to submit their Schedule F tax forms to prove income and that they had not done so. He stated the application should be denied.

3. Applicant's attorney, Andrew Stamp testified that under the law, the Applicant does not have to prove farm income as he is certain it is a production capacity test. These are the arguments laid out in his brief. Mr. Stamp also testified as to the egg sales per month. Mr. Reed then testified about his farm activities and all the work he does on the farm. Mr. Stamp stated that the production capability test is mostly a matter of acreage. If a parcel has more acres than the surrounding parcels, it will meet the test.

4. I then responded to the testimony. I reiterated that I had previously found that Mr. Reed was principally engaged in farming and that I would not need to re-decide that here. I expressed concern that there was a lack of best evidence. No other parties testified in favor, against or neutral.

5. I then gave Staff a chance for comments and Mr. Siegel had nothing to add but noted that a letter from Ms. Chesarek was submitted during the hearing.

6. I then gave Mr. Stamp an opportunity to respond to my comments. He summarized his arguments, requested that I look at a pamphlet from the DLCDC on the farm test and requested time to respond to new comments in the record. I left the record open as described above.

B. FINDINGS OF FACT

FINDINGS: 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. Additional findings written by the hearings officer are preceded by the words **"Hearings Officer Finding."** The Hearings Officer adopts all of those findings of fact in the prior decision where I found the criteria is met. I also adopt the "Project Description", "Property Description and History", "Public Comment" (except as described below), "Code Compliance and Application Criteria" of my prior decision

1.00 Public Comment

Staff: Staff mailed a notice of application and invitation to comment on the proposed application to the required **Carol Chesarek,**

Exhibit S.1 June 23, 2023. Ms. Chesarek argues that Applicant needs to show current, existing income and not just potential income.

Exhibit S.9, July 7, 2023. No egg handlers license and no Schedule F submitted. No proof of farm income.

Exhibit T.2, July 14, 2023. No current Schedule F, nothing provided to the CPA to make a firm determination of income. Retail egg prices are not the same as wholesale prices. The Applicant has had ample opportunity to provide this evidence.

Charles Foster:

Exhibit R.8 June 23, 2023. Mr. Foster argues that the draft schedule F is unsupported and “all the usual ways a CPA builds a tax form are not present.” He argues that the old schedule F is from 2014 and from a different farm operator.

2.00 Applicant Evidence

Exhibit R.1 - 230109 Petition for Review final (Amended). Excerpt from LUBA brief.

Exhibit R.2 - Egg production 2022 table.

Exhibit R.3 - Egg production 2022 (by day) table.

Exhibit R.4 - Driveway Photos.

Exhibit R.5 - Geological -soils report.

Exhibit R.9 - Hearing Memo on Remand. T 2-2021-14981; 06-22-23

Exhibit R.10 - APP Set 1 Prior Decision of the Hearings Officer.

Exhibit R.11 - App Set 2 1992 Guide for Prepare Gross Sales.

Exhibit R.12 - Stip Motion for Voluntary Remand. 230217

Exhibit S.2 - Letter to Mr. Rappleyea Final. 07.07.2023

Exhibit S.3 - Letter from CPA with draft 2022 Schedule F. 07.07.2023

Exhibit S.4 - Koin Article, Price of Eggs. 07.07.2023

Exhibit S.5 - Photographs taken at Happy Valley New Seasons, price of eggs. 07.07.2023.

Exhibit S.6 - Price of Eggs in Portland. 07.07.2023

Exhibit S.7 - 2014 Schedule F. 07.07.2023

Exhibit T.4 - Response to Chesarek Letter #3 re: egg handler’s license. 07.14.2023

Exhibit U.1 - Final Argument with attachment. 07.21.2023

**3.00. Customary Farm Dwelling Criteria:
FORMER MCC 39.4265(B)(3) (2021), repealed by Ordinance 1304 (2022)**

Staff amended and replaced their findings in the Decision with the sections below. Again, the Hearings Officer's analysis will only be for those sections where the Staff found that the criteria was not met.

Staff:

“The Appellant did submit farm production data for the remand hearing. It is contained in Exhibits R.2 (Egg Production by Month 2022), R.3 (Egg Production by Day 2022), and R.6 (Letter to County Deputy Attorney Blankfeld including egg sales data). The egg sales data is most relevant to the criteria, though the Appellant has not provided a Schedule F or other CPA certified document. Based on the record and your prior findings, staff does not believe the criteria for a Dwelling Customarily Provided in Conjunction With (an Existing) Farm Use are met.

If you find they are met, staff recommends imposing a condition of approval requiring the Appellant to submit Schedule F or other certified financial documentation of required farm income that is acceptable to staff, prior to submission of building permits for a farm dwelling.”
Staff Memo Pg 2-3, June 13, 2023

Staff then responded to the new evidence put into the record by the Applicant.

“The Applicant's new testimony includes a Schedule F (2014) filed by a previous property owner for a former beef and dairy operation (egg sales account for small portion of that farm's operation), and a Draft Schedule F (2022) accompanied by a letter from a Certified Public Accountant dated July 6, 2023. The CPA letter acknowledges receipt of the Applicant's farm sales data, but the accountant notes that they have not reviewed the data for accuracy, as the Applicant's 2022 tax return is not final. Additionally, the Applicant's attorney submitted a letter, news article on egg sales, and photographs of eggs for sale and medical equipment for goats.

Based on the current information in the record, and considering your prior findings, staff does not believe there is sufficient evidence demonstrating the criteria for a Dwelling Customarily Provided in Conjunction With (an Existing) Farm Use are met.” Staff Memo, Pg 1-2, July 14, 2023.

Applicant:

The Applicant's legal arguments are well laid out in their legal brief on this issue to LUBA and will not be repeated here. Exhibi R.1. The Applicant's factual findings are listed above and will be addressed in my findings.

Hearings Officer Findings:

I find that the Applicant's evidence is not persuasive to prove current employment of the land meeting the farm income minimums in the rule. Again, the statements are primarily from the applicant that he meets these numbers. I was hoping for a definitive statement from an accountant of actual income received. Instead, as staff points out, the accountant's letter equivocates and states that it has not reviewed the data for accuracy. I hoped for accurate data. Also, as to the schedule F filed, I agree with staff that it was for a former farm operation as it was dated nine years ago. It looks like there has been a change of operations since then. I hoped for a current or more recent schedule F.

As to Applicant's legal arguments, I mostly adhere to my opinion in my earlier decision. I disagree with the Applicant's arguments that under the farm test applied here, that the Applicant did not need to show actual production. The part of the rule that supports my position is quoted below:

OAR 660-033-0135(2)

“(B) The subject tract is capable of producing at least the median level of annual gross sales of county indicator crops as the same commercial farm or ranch tracts used to calculate the tract size in paragraph (A) of this subsection;

(C) The subject tract **is currently employed for a farm use**, as defined in ORS 215.203, at a level **capable of producing the annual gross sales** required in paragraph (B) of this subsection;

(F) The dwelling will be occupied by a person or persons who will be principally engaged in the farm use of the subject tract, such as planting, harvesting, marketing or caring for livestock, at a commercial scale; **and**

(G) If no farm use has been established at the time of application, land use approval shall be subject to a condition that no building permit may be issued prior to the establishment of the farm use required by paragraph (C) of this subsection.” [Emphasis added.]

Applicant argues that this test can be met solely by size of farm parcels. Applicant's Final Argument, July 26, 2023, Page 5-6. If the parcel is bigger than average, it meets the test. That ignores subsection (C) entirely. The subject parcel needs to be “currently employed” as a “farm” and that current employment must meet the gross sales. Applicants must provide substantial evidence of current employment that was capable of producing the required gross income. “Capable of producing” is not limited to solely future production but also includes past production. The single best evidence of that is actual sales supported by reliable documentation. Like here, where we have past production, sufficient evidence needs to be produced. I agree with the Applicant that the language is confusing, but this area of the law is highly contentious and sometimes confusing legislation is adopted because it is difficult to reach compromises.

Applicant argues that the legislature would not have added the third test (that requires some proof of income) if the second test also requires some proof of income. I think some legislative harmony can be established to distinguish this test from the third test because of the dollar limit difference in the second and third tests. Under the third test, an applicant has the ability to get a dwelling if they can prove \$40,000 income. OAR 660-03300135(3)(a)(A). This standard is not available in the second test. The third test provides opportunities for farmers with a proven tract record to get a farm dwelling at the lower of the \$40,000 income or gross income midpoint test under section (3)(a)(B). If the midpoint is higher than \$40,000, the low producing but hard-working farmer can still get a dwelling. In the second test, the farmer just needs to meet the midpoint.

Additionally, tests two and three are distinguished by how gross sales are calculated. Test two provides:

“(2)(a)(A) The subject tract is capable of producing at least the median level of annual gross sales of county indicator crops as the same commercial farm or ranch tracts used to calculate the tract size in paragraph (A) of this subsection;”

It then goes on to elaborate how this is determined in section (2)(b). The third test provides:

“(B) Gross annual income of at least the midpoint of the median income range of gross annual sales for farms in the county with gross annual sales of \$10,000 or more according to the 1992 Census of Agriculture, Oregon;”

Thus, the second test provides more flexibility to allow a farm dwelling while the third test provides more certainty to obtain a farm dwelling.

Additionally, the third test does not allow a conditional permit based on proving farm income in subsection (G). Under test two, to get a building permit, evidence of current farming and evidence that gross income will be met needs to be demonstrated. Otherwise, there would be no legislative purpose to having subsection (G). Without subsection (G), under Applicants position, you just need to prove capability to provide income. Subsection (G) is for those times when the land is not currently employed at a level that can produce the income. Thus, Contrary to Appellant’s arguments, this demonstrates a legislative purpose that differentiates tests two and three.

Furthermore, as highlighted above, these criteria are linked with an “and.” The plain language of the rule states that the tract is capable of producing the required gross sale **and** “currently employed for farm use . . . at a level capable of producing the annual gross sales required. . .”. The legislature knows how to use an “or” instead of “and”. The law requires it to be currently employed at an existing level to make the required income. Under this section, how an applicant proves the land that is “currently” farmed and is “capable” of earning the gross sales is best by having some proof of those current sales.

Applicant states that subsection (F), where it refers to dwelling occupied by a person that “will be” a farmer that this means the production is only in the future. I find that the verb tense used in this sentence merely recognizes that the dwelling has not been built yet and when it is built it “will be” occupied by the farmer.

In my prior opinion, I stated regarding subsection (G) above, that:

“The Hearings Officer finds that this section is not applicable. This section is used for an applicant that has not begun a farm operation yet. Here we have an established farm use that should be able to produce definitive evidence through the submittal of its Schedule F.” Hearings Officer Decision Page 12.

After further analysis and based on my reasoning above, I retract this portion of my decision. I believe subsection (G) can be used, like here, where there is farm use on the property, but it has not provided sufficient evidence that it meets the income test. I find that the Application can be approved with a condition as provided in subsection (G). I respect Ms. Chesarek’s concerns that this “pushes the can down the road”. Indeed, it will require another hearing to determine whether the standard is met but it will give the applicant time to produce a finalized schedule (F) and their accountants to review and vet financial information as to farm income.

Ms. Chesarek also raised concerns about the egg handler’s license. This is in relation to the criterion about whether Mr. Reed is “principally engaged” in farming. That issue was resolved in the last decision and will not be readdressed here.

4.00 MCC 39.5860(C)(3). Significant Environmental Concern for Wildlife Habitat (SEC-h)

The June 13, 2023, staff report found:

“In the Post-Hearing Memorandum to the Hearings Officer (September 2, 2022), staff reviewed the applicant’s Wildlife Conservation Plan and concluded that it was adequate to meet MCC 39.5860(C)(3). Staff concurs with the Appellant that for reasons that are not clear from the record, you did not address the SEC-h issue in your final decision. On remand, staff believes you can find that the standards for the SEC-h permit can be met, based on our review of the applicant’s Wildlife Conservation Plan. (Exhibit H.2.k)”

Hearings Officer Finding: I agree with staff that that the Applicant has met his burden of proof for the SEC-h permit and adopt as finding the staff’s Post-Hearing Memorandum dated September 2, 2022, and the Applicant’s Exhibit H.2.K.

5.00 MCC 39.5080. Geologic Hazards Permit (GHP)

The June 13, 2023, staff report found:

“The Appellant previously argued that the application meets the criteria for GHP exemption in MCC 39.5080. In your Final Order, you find that only exemption (O) may apply.¹ Exemption (O) is for: “Placement of gravel or asphalt for the maintenance of existing driveways, roads and other travel surfaces.” Placement of asphalt on top of existing gravel without any other ground disturbance, you found, would qualify for exemption (O). (Exhibit H.3. page 31) You note, “If the application is refiled, and the access permit is reviewed and only asphalt is required over [the] existing driveway, ... Appellant may qualify for an exemption from the GH overlay.”

The Appellant is requesting that you approve the exemption; or, alternatively, review their GHP Form 1 and find that it is feasible to obtain a GHP (Exhibit R.6, page 8). Previously, you found that a limited area of the property is in the GH overlay zone, and part of that area is where the proposed driveway is located. You also noted that the previous driveway permit expired and new criteria has been adopted by the County. (Exhibit H.1, page 5) Further, you noted that although work was done on the drive and it is currently being used, the conditions of the previous permit were not met as the required asphalt was not installed. (Exhibit H.1, page 36.) [fn omitted] As in the prior appeal hearing, an application for GHP is not before the County, so Exhibit R.6 is not relevant.

Options are either to find the application is exempt from the GHP requirement based on evidence, or, impose a condition of approval based on the foregoing analysis (GHP appears feasible) by requiring the applicant to submit a GHP application for review and approval prior to submission of building permits for a farm dwelling. In this scenario, staff believes that you would need to find that subsequent approval of the GHP is feasible and would be nondiscretionary based on evidence already in the record.”

Hearings Officer Finding: I find, consistent with my earlier opinion and as noted during the remand hearing and based on the facts in the record, that exemption (O) as described above applies. See Exhibit R.4. Staff notes that if the GHP exemption applies, an Erosion and Sediment Control Permit is still required. I agree and will impose a condition of approval requiring the applicant to submit an ESC application for review and approval prior to submission of building permits.

6.00 Erosion and Sediment Control Permit

Hearing Officer Finding:

I readopt my findings in the earlier decision that the ESC is for health and safety, similar to grading permits and can be applied to this application. I find that it is feasible for applicant to comply with this standard with conditions for the reasons in the staff reports.

The Hearings Officer finds that the County can impose conditions to require compliance with these criteria.

7.00 Exhibits

All exhibits are available for review in Case File T2-2022-15537

<https://www.multco.us/landuse/22140-nw-reeder-road-hearing>

Or by contacting case planner, Lisa Estrin at 503-988-0167 or via email at lisa.m.estrin@multco.us. The prior exhibits are incorporated by reference herein. The new exhibits for the remand hearing are listed below.

[Exhibit R.7 - Remand T2-2021-14981 Staff Memo \(253.69 KB\)](#)

[Exhibit R.1 - 230109 Petition for Review final \(Amended\) \(11.46 MB\)](#)

[Exhibit R.2 - Egg production 2022 \(17.03 KB\)](#)

[Exhibit R.3 - Egg production 2022 \(by day\) \(251.99 KB\)](#)

[Exhibit R.4 - Driveway Photos \(6.42 MB\)](#)

[Exhibit R.5 - Geological \(596.87 KB\)](#)

[Exhibit R.6 - Blankfeld ltr 230504 \(175.31 KB\)](#)

[Exhibit R.8 - Letter - Christopher Foster 06.22.2023 \(54.72 KB\)](#)

[Exhibit R.9 - Hearing Memo on Remand T2-2021-14981_06-22-23 \(3.78 MB\)](#)

[Exhibit R.10 - APP Set 1 \(7.05 MB\)](#)

[Exhibit R.11 - App Set 2 \(5.18 MB\)](#)

[Exhibit R.12 - Stip Motion for Voluntary Remand 230217 \(95.02 KB\)](#)

[Exhibit R.13 - CLC letter to Mult Co HO re LUBA No 2022-097 remand for T2-2021-14981 12424 NW Springville Road 062323 \(161.56 KB\)](#)

[Exhibit S.1 - Chesarek Letter #2 + Attachment 07.7.2023 \(506.83 KB\)](#)

[Exhibit S.2 - Letter to Mr. Rappleyea Final 07.07.2023 \(107.59 KB\)](#)

[Exhibit S.3 - Letter from CPA with draft 2022 Schedule F 07.07.2023 \(211.84 KB\)](#)

[Exhibit S.4 - Koin Article 07.07.2023 \(195.3 KB\)](#)

[Exhibit S.5 - Photographs taken at Happy Valley New Seasons 07.07.2023. \(1.52 MB\)](#)

[Exhibit S.6 - Price of Eggs in Portland 07.07.2023](#) (67.05 KB)

[Exhibit S.7 - 2014 Schedule F 07.07.2023](#) (454.23 KB)

[Exhibit S.8 - Photo of Medical equipment for Goats 07.07.2023](#) (515.1 KB)

[Exhibit S.9 - Chesarek Letter #3 07.7.2023](#) (546.1 KB)

[Exhibit T.1 - Foster Letter 07.11.2023](#) (58.56 KB)

[Exhibit T.2 - Chesarek Letter #4 07.14.2023](#) (231.94 KB)

[T2-2021-14981 Remand Hearing Notice 06022023](#) (621.77 KB)

[Exhibit T.3 - Remand T2-2021-14981 Staff Memo 2 07.14.2023](#) (232.97 KB)

[Exhibit T.4 - Response to Chesarek Letter #3 07.14.2023](#) (736.14 KB)

[Exhibit U.1 - Final Argument with attachment 07.21.2023](#) (945.78 KB)

C. Conditions of Approval

The conditions listed below 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. 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.

1. Prior to the Planning Director's signoff for any building permit for the dwelling use, the Owner shall submit evidence to the Planning Director demonstrating that the subject tract is currently employed for a farm use, as defined in ORS 215.203, at a level capable of producing the annual gross sales required in by OAR 660-033-00135(2) (B);
 - a. To satisfy section 1., Owner shall submit an IRS Schedule F for the year(s) associated with the sales figures noted in the narrative in order to demonstrate that the farm activity on the property met or exceeded the median level of annual gross farm sales required by OAR 660-033-00135(2) (B). The income required by this condition is set at the time of the filing of this application which was August 18, 2021.

- b. The Planning Director shall provide notice and an opportunity for a hearing to all properties that received the notice for this application before making a decision on whether the submittals satisfy this condition.

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. [MCC 39.1185(B)]

- i. For the purposes of 2.a, commencement of construction shall mean actual construction of the foundation or frame of the approved structure. For utilities and developments without a frame or foundation, commencement of construction shall mean actual construction of support structures for an approved above ground utility or development or actual excavation of trenches for an approved underground utility or development. For roads, commencement of construction shall mean actual grading of the roadway.

- 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. [MCC 39.1185(B)]

- i. For the purposes of 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.

Note: The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 39.1195, as applicable. The request for a permit extension must be submitted prior to the expiration of the approval period.

3. Prior to land use sign-off for building plan check, the property owners or their representative shall:

- a. Record 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]

4. The customary farm dwelling use, including dwelling structures and associated accessory structures (collectively referred to hereinafter as “dwelling use”), approved through this Permit is a “dwelling customarily provided in conjunction with a farm use on not high-value farmland soils, capable of producing the median level of annual gross sales,” Former MCC 39.4265(B)(3). Any dwelling use of the Property pursuant to this Permit must be established and maintained in compliance with the criteria in Former MCC 39.4265(B)(3) and the other terms of approval of this Permit. Unless authorized by a separate permit, a dwelling use that is not established or maintained in compliance with the criteria in Former MCC 39.4265(B)(3) and the other terms of approval of this Permit is not allowed and all dwelling structures and accessory structures supporting such noncompliant dwelling use may be required to be removed from the Property. Upon request by the Planning Director, the Owner shall provide a report on the identity of the occupants of the dwelling approved through this permit and their relation to the farm use of the land as well as the annual gross sales for not more than a five year period prior to such request; the Planning Director shall not make such request without good reason nor make more than one such request within any three-year period. No such request shall be made earlier than one (1) year after final building inspection approval of the dwelling. The County shall provide the Owner a reasonable time to cure any violation. [Former MCC 39.4265(B)(3)]
5. Prior to the Planning Director’s signoff for any building permit for the dwelling use, the Owner shall submit a certified statement and supporting information and documentation by an Oregon licensed Professional Engineer that the proposed Stormwater drainage system satisfies all standards set forth in MCC 39.6235 and all other Stormwater drainage system standards in MCC Chapter 39 [MCC 39.6235(E)(3)].
6. Prior to the Planning Director’s signoff for any building permit for the dwelling use, the Owner shall submit a current (August 12, 2022, or later) Septic Review Certification which reflects the stormwater drainage system in its approved location.
7. Prior to the Planning Director’s signoff for any building permit for the dwelling use, the Owner shall submit revised building plans demonstrating that the height of any segment of the building meets the maximum allowed height of 35 feet as required by MCC 39.4245(C).
8. Prior to the Planning Director’s signoff for any building permit for the dwelling use, the Owner shall submit evidence of compliance with the Requirements set forth in the Transportation Planning Review Memorandum dated August 10, 2022, and authored by Graham Martin, Senior Planner, see Attachment A.
9. Prior to the Planning Director’s signoff off for any building permit for the dwelling use, the Owner shall submit product specification details for all exterior lighting demonstrating compliance with the County Dark Sky Lighting Standards as required by MCC 39.6850.
10. Prior to the Planning Director’s signoff for any building permit for the dwelling use, the Owner shall submit a revised site plan demonstrating that the entire length of the access road/driveway and service corridor serving the development do not exceed 500 feet in length [MCC 39.5860(B)(3), OR submit a Wildlife Conservation Plan that satisfies the requirements of MCC 39.5860(C)].
11. Prior to the Planning Director’s signoff for any building permit for the dwelling use, the Owner shall submit a current (November 15, 2019 or later) Fire Service Agency Review form in order to determine the

extent of ground disturbance needed to design an access road/driveway compliant with current fire code regulations as required by MCC 29.004.

12. Prior to the Planning Director's signoff for any building permit for the dwelling use, the Owner shall submit an approved Erosion and Sediment Control permit per MCC 39.6225.
13. Prior to the Planning Director's signoff for any building permit for the dwelling use, the Owner 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 as required by MCC 39.4240.
14. As an on-going condition, the property owner shall comply with the following:
 - a. 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 and the mitigation planting areas on the subject property. [MCC 39.5860(B)(7) and (C)(5)].