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DECISION OF THE HEARINGS OFFICER

Case File: T3-2019-12724

Hearing Date, Time, & Place:

Friday, July 10, 2020 at 9:00. The hearing was conducted online, due to the Governor's Covid 19 social distancing order.

Permits: Administrative Decision by Planning Director for a M49 Dwelling, Conditional Use Permit to locate the M49 Dwelling in the PAM-IA Overlay, Significant Environmental Concern Permit, Geologic Hazard Permit, Exception to Secondary Fire Safety Zone, and Variance to the Forest Practices Setbacks.

Location: 13195 NW McNamee Road, Portland
Tax Lot 703, Section 32B, Township 2 North, Range 1 West, W.M.
Tax Account #649631870 Property ID # R652211

Applicant: Matt Newman, NW Engineers, LLC.

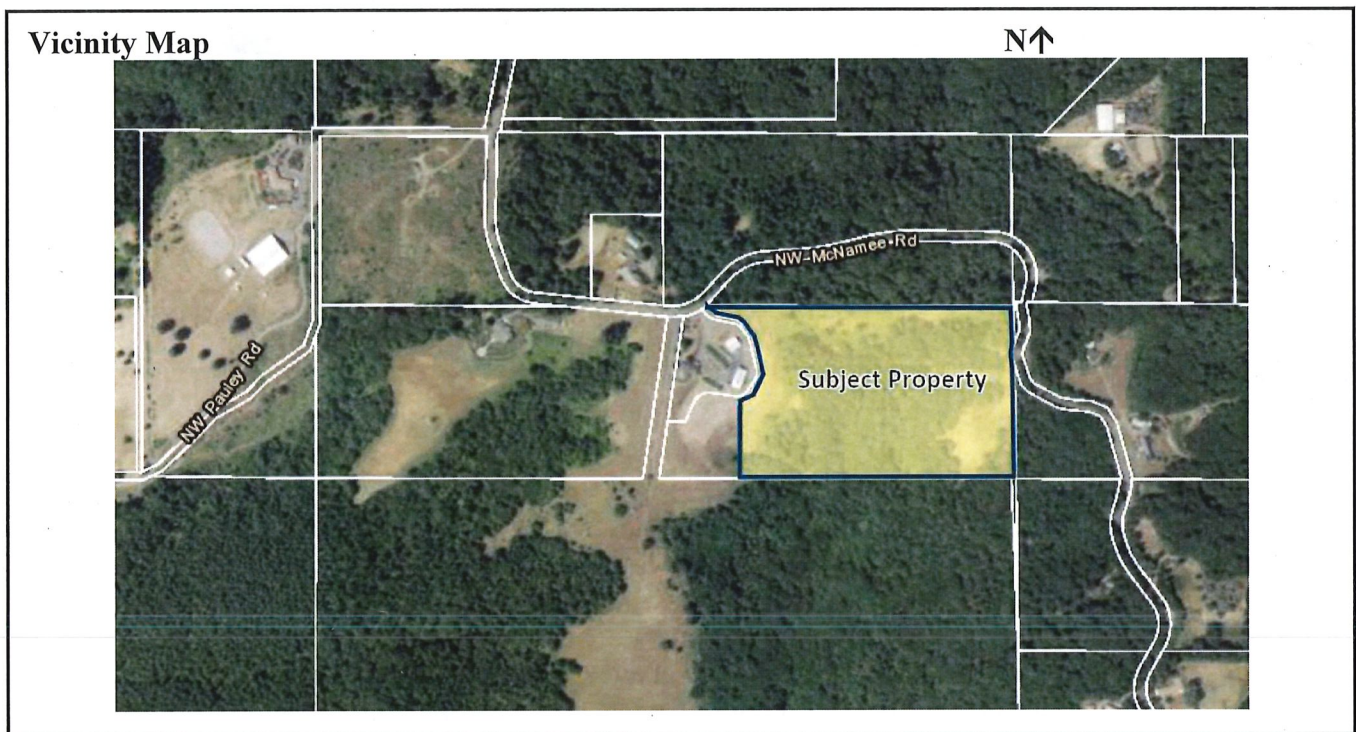
Owner: Dieter Waiblinger

Summary: The applicant requests authorization for the implementation of a Measure 49 approval (State Final Order E118605) to construct a single-family dwelling on the 15.07 +/- acre site located in the Commercial Forest Use – 2 (CFU-2) zone. The request also includes a Conditional Use Permit to locate the home within the Protected Aggregate and Minerals – Impact Area (PAM-IA) overlay, Significant Environmental Concern – wildlife habitat (SEC-h) permit, Geologic Hazards (GH) permit, Exception to the Secondary Fire Safety Zone, and Variance to the Forest Practices Setbacks.

Base Zone: Commercial Forest Use (CFU-2) **Overlay:** None

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

Site Size: 15.07 acres



Applicable Approval Criteria:

Multnomah County Code (MCC):

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

Measure 49: Oregon Administrative Rules (OAR) 660-041-0000 – 660-041-0530

CFU Zone: MCC 39.4105 Building Height Requirements, MCC 39.4110 Forest Practices Setbacks and Fire Safety Zones, MCC 39.4115 Development Standards for Dwellings and Structures, MCC 39.4150 Single Family Dwellings Condition of Approval, MCC 39.4155 Exceptions to Secondary Fire Safety Zones

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

Protected Aggregate and Mineral Sites: MCC 39.5420 PAM Overlay; Generally, MCC 39.5435 Impact Area – Allowed Uses, MCC 39.5440 Use Approval Criteria, and MCC 39.7005 General Provisions & MCC 39.7010 Conditions and Restrictions.

Significant Environmental Concern: MCC 39.5520 Application for SEC Permit, MCC 39.5860 Criteria for Approval of SEC-h Permit

Variance: MCC 39.8205 Scope, MCC 39.8215 Variance Approval Criteria

DECISION: The requests for Administrative Decision by Planning Director for a M49 Dwelling, Conditional Use Permit to locate the M49 Dwelling in the PAM-IA Overlay, Significant Environmental Concern Permit, Geologic Hazard Permit, Exception to Secondary Fire Safety Zone, and Variance to the Forest Practices Setbacks, are approved subject to the conditions of approval included in this Final Order.

Conditions of Approval:

1. Approval of this land use permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.
2. Permit Expiration – This land use permit shall **expire** as follows:
 - a. Within four (4) years of the date of the final decision for residential development on land zoned for Exclusive Farm Use or Commercial Forest Use outside of an urban growth boundary when construction has not commenced.
 - i. For the purposes of 1.a, commencement of construction shall mean actual construction of the foundation or frame of the approved structure.
 - ii. For purposes of Condition 1.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 years of the date of commencement of construction when the structure has not been completed.
 - i. For the purposes of Condition 1.b, completion of the structure shall mean completion of the exterior surface(s) of the structure and compliance with all conditions of approval in the land use approval.
3. The State of Oregon conditions of approval (Final Order E118605 – Exhibit A.31), as interpreted by this decision, are also conditions of approval of this decision [ORS 195.300 to 195.335].
 - a. Additionally, the right to a home site on the site authorized by Final Order no. E118605 **expires on April 11, 2028.**
4. **Prior to land use sign-off for building plan check**, the property owners or their representative shall:
 - a. Record pages 1 through 7 and Exhibits A.8, A.9, and A.28 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. Record a restrictive covenant in favor of the mining operator. The restrictive covenant shall incorporate all approval conditions, and an agreement not to object to the conduct of lawful operations conducted at the nearby surface mine. [MCC 39.5440(B)]
 - c. 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. [MCC 39.4150]

5. **At the time of land use sign-off for building plan check**, the property owner or their representative shall:
 - a. Demonstrate that all proposed exterior lighting complies with the Dark Sky Lighting Standards of MCC 39.6850.
 - b. Demonstrate that the dwelling will have a fire retardant roof and a spark arrester on any chimney. [MCC 39.4115(C)]
6. **Prior to and during construction**, the property owner or their representative shall ensure that:
 - a. Stripping of vegetation, ground disturbing activities, or other soil disturbance shall be done in a manner which will minimize soil erosion, stabilize the soil as quickly as practicable, and expose the smallest practical area at any one time during construction. [MCC 39.5090(H)]
 - b. Temporary vegetation and/or mulching shall be used to protect exposed critical areas during development. [MCC 39.5090(J)]
 - c. Whenever feasible, natural vegetation shall be retained, protected, and supplemented. [MCC 39.5090(K)]
 - i. A 100-foot undisturbed buffer of natural vegetation shall be retained from the top of the bank of a stream, or from the ordinary high watermark (line of vegetation) of a water body, or within 100-feet of a wetland;
 - ii. The buffer required in subsection (K)(1) may only be disturbed upon the approval of a mitigation plan which utilizes erosion, sediment, and stormwater control measures designed to perform as effectively as those prescribed in the most recent edition of the City of Portland Erosion and Sediment Control Manual and the City of Portland Stormwater Management Manual and which is consistent with attaining equivalent surface water quality standards as those established for the Tualatin River drainage basin in OAR 340-041-0345(4).
 - d. Permanent plantings and any required structural erosion control and drainage measures shall be installed as soon as practical. [MCC 39.5090(L)]
 - e. Provisions shall be made to effectively accommodate increased runoff caused by altered soil and surface conditions during and after development. The rate of surface water runoff shall be structurally retarded where necessary. [MCC 39.5090(M)]
 - f. Sediment in the runoff water shall be trapped by use of debris basins, silt traps, or other measures until the disturbed area is stabilized. [MCC 39.5090(N)]
 - g. Provisions shall be made to prevent surface water from damaging the cut face of excavations or the sloping surface of fills by installation of temporary or permanent drainage across or above such areas, or by other suitable stabilization measures such as mulching or seeding. [MCC 39.5090(O)]
 - h. All drainage measures shall be designed to prevent erosion and adequately carry existing and potential surface runoff to suitable drainageways such as storm drains, natural water bodies, drainage swales, or an approved drywell system. [MCC 39.5090(P)]

- i. Erosion and sediment control measures must be utilized such that no visible or measurable erosion or sediment shall exit the site, enter the public right-of-way or be deposited into any water body or storm drainage system. Control measures which may be required include, but are not limited to: [MCC 39.5090(R)]:
 - i. Energy absorbing devices to reduce runoff water velocity;
 - ii. Sedimentation controls such as sediment or debris basins. Any trapped materials shall be removed to an approved disposal site on an approved schedule;
 - iii. Dispersal of water runoff from developed areas over large undisturbed areas.
- j. Disposed spoil material or stockpiled topsoil shall be prevented from eroding into water bodies by applying mulch or other protective covering; or by location at a sufficient distance from water bodies; or by other sediment reduction measures. [MCC 39.5090(S)]
- k. Such non-erosion pollution associated with construction such as pesticides, fertilizers, petrochemicals, solid wastes, construction chemicals, or wastewaters shall be prevented from leaving the construction site through proper handling, disposal, continuous site monitoring and clean-up activities. [MCC 39.5090(T)]
- l. The total daily number of fill haul truck trips shall not cause a transportation impact (as defined in the Multnomah County Road Rules) to the transportation system or fill haul truck travel routes, unless mitigated as approved by the County Transportation Division. [MCC 39.5090(W)]
- m. Fill trucks shall be constructed, loaded, covered, or otherwise managed to prevent any of their load from dropping, sifting, leaking, or otherwise escaping from the vehicle. No fill shall be tracked or discharged in any manner onto any public right-of-way. [MCC 39.5090(X)]
- n. No compensation, monetary or otherwise, shall be received by the property owner for the receipt or placement of fill. [MCC 39.5090(Y)]
- o. Whenever sedimentation is caused by ground disturbing activity, the person, corporation or other entity shall be responsible to remove that sedimentation from all adjoining surfaces and drainage systems prior to issuance of occupancy or final approvals for the project. [MCC 39.6210(E)]
- p. It is the responsibility of any person, corporation or other entity doing ground disturbing activity on, in, under or around a water body, or the floodplain or right-of-way, to maintain as nearly as possible in its present state the water body, floodplain, or right-of-way during such activity, and to return the same to a functional condition equal to or better than the condition existing immediately prior to the ground disturbing activity. [MCC 39.6210(E)]
- q. Performance bond. A performance bond may be required in the amount of the full cost of the establishment and maintenance of all erosion, sedimentation and stormwater control measures for activity authorized through any permit listed in subsection (A). The bond may be used to provide for the installation of the measures if not completed by the contractor. The bond shall be released upon determination the control measures have or can be expected to perform satisfactorily. The bond may be waived if the director determines the scale and duration of the project and the potential problems arising therefrom will be minor. [MCC 39.6210(F)]

- r. Inspection and enforcement. The director may take steps to ensure compliance with the requirements of Part 6, Geologic Hazards permit requirements, and Large Fill permit requirements, including but not limited to, inspections, peer review of engineering analysis (at the applicant's expense), post construction certification of the work, and the posting of a notice providing County contact information in the event that questions arise concerning work occurring on-site. The requirements of this subpart of MCC Chapter 39 shall be enforced by the planning director. If inspection by county staff reveals erosive conditions which exceed those prescribed by the permit, work may be stopped until appropriate correction measures are completed. [MCC 39.6210(F)]
- 7. The property owner shall ensure that the proposed development work is observed by a Certified Engineering Geologist or Geotechnical Engineer. This observation shall be at the owner's expense. The name, address and phone number of the Certified Engineering Geologist or Geotechnical Engineer that will be conducting the observation of the development shall be submitted to the Planning Director prior to zoning review for a building permit. The observation of the development activities by the Certified Engineering Geologist or Geotechnical Engineer shall include but is not limited to foundation work, confirmation on installation and effectiveness of all erosion and sediment control measures, and a final observation prior to the final building permit inspection.
- 8. The property owner shall implement the erosion and sediment control measures as shown on the Grading and Erosion Control Plan (Exhibit A.9) unless amended by the observing Certified Engineering Geologist or Geotechnical Engineer to achieve better site suitability for the development and improve erosion and sediment control.
- 9. **Prior to issuance of the Certification of Occupancy**, the property owners or their representative shall:
 - a. Demonstrate that the required building permits to construct the proposed single-family dwelling have been obtained from the City of Portland Bureau of Development Services.
 - b. Submit to County Land Use Planning a report from the observing Certified Engineering Geologist or Geotechnical Engineer which confirms that proper measures were implemented to meet recommendations of the Geotechnical Hazards Permit Application (Exhibits A.32 – A.35) as well as any other recommendations of the Certified Engineering Geologist or Geotechnical Engineer deemed necessary to achieve site suitability for the development. This report shall be signed by the Certified Engineering Geologist or Geotechnical Engineer with their seal (stamp) affixed to the report.
 - c. Provide documentation that the stormwater drainage control system designed by NW Engineers has been installed according to the specifications outlined by Engineer Steve White (Exhibit A.24), and as shown on the site plan and grading and erosion control plan included as Exhibit A.9
 - d. Demonstrate that the dwelling has been constructed in accordance with the International Fire Code Institute Urban-Wildland Interface Code Section 505 Class 2 Ignition Resistant Construction and contains a central station monitored alarm system. [MCC 39.4155(B)]
 - e. Demonstrate that there are no combustible fences within 12 feet of the exterior surface of the dwelling. [MCC 39.4155(B)]
 - f. Provide a well contractors report demonstrating completion of the proposed well. [MCC 39.4115(D)]

- g. Demonstrate that the mitigation plantings shown in Exhibit A.5 have been planted on the site.
- h. Demonstrate satisfaction of the conditions from Tualatin Valley Fire & Rescue:
 - i. That a NFPA 13D fire sprinkler system meeting Section 903.1.3 of the Oregon Fire Code has been installed in the proposed single-family dwelling.
 - ii. A physical address visible from both approaches of NW McNamee Road is in-place.
 - iii. The installed driveway is an all-weather surface capable of sustaining 60,000 pounds gross vehicle weight and 12,500 pounds wheel loading.
- i. Submit an analysis prepared by an engineer or other qualified person, showing that applicable DEQ noise control standards are met by the nearby mining operation.

10. As an on-going condition:

- a. The property owner shall maintain a primary and secondary fire safety zone within the confines of the lot as outlined below:
 - i. A primary fire safety zone extending a minimum of 30 feet in all directions around the dwelling. Trees within this safety zone shall be spaced with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches within 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height. [MCC 39.4110(D)(1)(a)]
 - ii. A secondary fire safety zone extending a minimum of 55 feet in all directions around the primary fire safety zone. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Assistance with planning forestry practices which meet these objectives may be obtained from the State of Oregon Department of Forestry or the local Rural Fire Protection District. [MCC 39.4110(D)(2)]
- b. No nuisance plants listed in MCC 39.5580 Table 1 shall be planted on the site. [MCC 39.5860(B)(7)]

Dated this 7th day of August 2020



Joe Turner, Esq., AICP
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 Joe Turner received testimony at the duly noticed online public hearing about this application on July 10, 2020. At the hearing, the hearings officer received into the record and inspected electronic copies of the file maintained by the Department of Community Services Land Use and Transportation Planning Program regarding the application. The hearings officer made the declarations required by ORS 197.763. The hearings officer disclaimed any *ex parte* contacts and any bias or conflicts of interest.

2. County planner Chris Liu summarized the Staff Report and the applicable approval criteria. He noted that the applicant is requesting approval of a residence on a parcel created pursuant to a Measure 49 application. A CUP is required because the site is located in the Protected Aggregate and Mineral Resources – Impact Area (PAM-IA) overlay subdistrict. Geologic Hazards (GH) overlay and Significant Environmental Concern permits are also required.

a. He noted that the applicant requested a reduction in the forest practices setback from 130 feet to 85 feet. In order to approve such a variance, the applicant must demonstrate that it is the minimum necessary reduction. The additional ten-foot reduction requested at the hearing would be subject to the same standard. In addition, reducing the forest practices setback would result in a further reduction in the secondary fire safety zone. If the secondary fire safety zone is reduced to less than 50 feet, than the structure would be subject to a higher standard for fire safety.

3. Engineer Matt Newman, architect Clinton Pearson, and David Ivy appeared for the property owner.

a. Mr. Newman noted that the proposed building site, on a knoll near the east boundary of the site, is the only location on the site where a residence may be constructed. As shown in the slope analysis, Exhibit A.7 (applicant's Exhibit 4) steep slopes preclude residential construction on the remainder of the 15-acre site.

i. The applicant is requesting a variance to the forest practices setback from 130 feet to 85 feet on the east side of the residence to allow the structure to be constructed in this location. 85 feet is the minimum reduction necessary to construct a residence on the site. However, the applicant would like to further reduce the setback by an additional five to ten feet, as it would make construction of the residence easier. He requested the hearings officer approve the variance to allow this additional setback.

b. Mr. Pearson noted that steep slopes limit development on the site to less than 7,000 square feet of the 15-acre triangular shaped site. One-third of that area is necessary for the on-site septic system. Therefore, the buildable area on the site is very constrained. An additional five to ten-foot setback "would be very helpful." McNamee Road east of the site is a fire access road, which could mitigate for the proposed reduction in the forest practices and fire safety setbacks.

i. The home will be equipped with a variety of fire suppression systems, including 50-foot exterior landscape fire suppression sprinklers on all four sides of the structure, a 1,000 gallon fire suppression water storage tank at the high point of the driveway, and a 500 gallon fire suppression water storage tank inside the home. This type of landscape fire suppression sprinklers saved several homes from wildfires near Lake Chelan, Washington.

c. Mr. Ivy argued that reducing the forest practices setback by an additional ten feet would move the house away from the steep slopes and facilitate construction on the site. The reduced setback would have no impact on neighboring residents, as McNamee Road curves away from the site and neighboring residences are located east of the road. In addition, there is a deep ravine between the road and the site.

4. No one else testified at the online hearing. At the conclusion of the hearing the hearings officer held the record open for two weeks, subject to the following schedule:

a. For one week, for anyone to submit additional written testimony and evidence in this matter; and

b. For a second week, until July 17, 2020, to allow the applicant to submit a written final argument.

5. The following documents were submitted during the open record period:

a. A Post-Hearing Memorandum from the County dated July 17, 2020; and

b. A letter from the applicant dated July 17, 2020.

B. FINDINGS OF FACT

FINDINGS: Written 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 conclusory statement in *italic*. The hearings officer accepted Staff findings except where noted otherwise. Additional findings written by the hearings officer are preceded by the words “**Hearings Officer:**”

1.0 PROPOSAL:

Staff: The applicant requests authorization for the implementation of a Measure 49 approval (State Final Order E118605) to construct a single-family dwelling on the 15.07 +/- acre site located in the Commercial Forest Use – 2 (CFU-2) zone. The site is primarily wooded, contains areas with steep slopes in excess of 25-percent, and McCarthy Creek runs through the middle portion of the property in a north to south direction.

The majority of the site is located within the Protected Aggregate and Mineral Resources – Impact Area overlay subdistrict (PAM-IA). As the proposed residential development is located within the PAM-IA, a Conditional Use Permit is required to evaluate the potential impacts of the proposed residential development on nearby aggregate resources.

The majority of the site is also located within the Geologic Hazards (GH) overlay and entirely within the Significant Environmental Concern – wildlife habitat (SEC-h) overlay. Therefore, GH and SEC permits are required.

No development is proposed within the Significant Environmental Concern –stream (SEC-s) overlay.

2.0 GENERAL PROVISIONS:

2.1 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: The site is vacant. No active compliance cases are associated with the site. Staff is not aware of any compliance issues at this time. *Criteria met.*

2.2 MCC 39.3005 Lot of Record – Generally

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

(B) A Lot of Record is a parcel, lot, or a group thereof that, when created or reconfigured, either satisfied all applicable zoning laws and satisfied all applicable land division laws, or complies with the criteria for the creation of new lots or parcels described in MCC 39.9700. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.

(a) “Satisfied all applicable zoning laws” shall mean: the parcel, lot, or group thereof was created and, if applicable, reconfigured in full compliance with all zoning minimum lot size, dimensional standards, and access requirements.

(b) “Satisfied all applicable land division laws” shall mean the parcel or lot was created:

1. By a subdivision plat under the applicable subdivision requirements in effect at the time; or
2. By a deed, or a sales contract dated and signed by the parties to the transaction, that was recorded with the Recording Section of the public office responsible for public records prior to October 19, 1978; or
3. By a deed, or a sales contract dated and signed by the parties to the transaction, that was in recordable form prior to October 19, 1978; or
4. By partitioning land under the applicable land partitioning requirements in effect on or after October 19, 1978; and

Staff: The site is Lot 3 of Partition Plat 2012-047. Partition Plat 2012-047 created the site and the plat was approved by the County in 2012 (Exhibit A.14). The current configuration of the site matches the configuration authorized via Partition Plat 2012-047. Therefore, the 15.07 +/- acre site is a Lot of Record in its current configuration. *Criteria met.*

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

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

(3) A parcel or lot lawfully created by a partition or a subdivision plat after February 20, 1990.

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

(C) A Lot of Record which has less than the minimum lot size for new parcels, less than the front lot line minimums required, or which does not meet the access requirements of MCC 39.4135, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

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

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

Staff: As noted in section 2.2 above, the site was created by a Partition Plat (Partition Plat 2012-047) in 2012. The site remains in the same configuration as authorized via Partition Plat 2012-047 (Exhibit A.14). The site is not an area of land described as a tax lot solely for assessment and taxation purposes; an area of land created by the foreclosure of a security interest; an area of land created by court decree; nor a mortgage lot. *Criteria met.*

2.4 MCC 39.6850 Dark Sky Lighting Standards

(C) The following standards apply to all new exterior lighting supporting a new, modified, altered, expanded, or replaced use approved through a development permit and to all

existing exterior lighting on property that is the subject of a development permit approval for enlargement of a building by more than 400 square feet of ground coverage.

(1) The light source (bulbs, lamps, etc.) must be fully shielded with opaque materials and directed downwards. “Fully shielded” means no light is emitted above the horizontal plane located at the lowest point of the fixture’s shielding. Shielding must be permanently attached.

(2) The lighting must be contained within the boundaries of the Lot of Record on which it is located. To satisfy this standard, shielding in addition to the shielding required in paragraph (C)(1) of this section may be required.

Hearings Officer: A condition of approval [Condition no. 4(a)] requiring all exterior lighting comply with the Dark Sky Lighting Standards of MCC 39.6850, is included in the conditions of approval of this Final Order. *As conditioned, the above criteria are met.*

3.0 MEASURE 49 (M49) CRITERIA:

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

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

Staff: Partition Plat 2012-047 created the site, described as Lot 3. The site is the additional parcel authorized by Measure 49 Final Order E118605 referenced above. The applicant is now requesting approval for the construction of one of the two additional dwellings authorized by the M49 Final Order. Following this approval, there will only be one (1) additional single-family dwelling right associated with Final Order No. E118605. *Requirement met.*

3.2 ‘Home Site Authorization’

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

1. Each dwelling must be on a separate lot or parcel and must be contained within the property on which the claimants are eligible for measure 49 relief. The establishment of a land division or dwelling based on this home site authorization must comply with all applicable standards governing the siting or development of the land division or dwelling. However, those standards must not be applied in a manner that prohibits the establishment of the land division or dwelling, unless the standards are reasonably necessary to avoid or abate a nuisance, to protect public health or safety, or to carry out federal law.

Staff: The building site for the proposed single-family dwelling is located entirely on Lot 3 of Partition Plat 2012-047. Due to various overlays on the site that require additional land use review/permits, the applicant has submitted the required applications to request to site the dwelling on the proposed building site. *Requirement met.*

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

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

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

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

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

Hearings Officer: Final Order No. E118605 granted one (1) additional parcel and two (2) additional dwellings. The site is the additional parcel created via Partition Plat 2012-047 and the proposed single-family dwelling would be one of the additional dwellings granted by the order. Therefore, the proposal does not exceed the number of parcels and/or dwellings granted by the State's Final Order. The above requirement is included as a condition of approval in this Final Order [Condition no. 3]. *As conditioned, the above requirement is met.*

- 3.6 5. Temporary dwellings are not considered in determining the number of existing dwellings currently on the property. The claimants may choose to convert any temporary dwelling currently located on the property on which the claimants are eligible for Measure 49 relief to an authorized home site pursuant to a home site approval. Otherwise, any temporary**

dwelling is subject to the terms of the local permit requirements under which it is approved, and is subject to removal at the end of the term for which it is allowed.

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

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

Staff: This application only pertains to a home site approval for the site (Lot 3 of Partition Plat 2012-047) and does not authorize any development on contiguous property. The applicant does not own any contiguous property. Therefore, the proposal does not exceed the number of parcels and/or dwellings granted by the State's Final Order (Exhibit A.31). *Requirement met.*

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

Staff: The site is vacant and eligible for one (1) single-family dwelling per the State's Final Order (A.31). Approval of this application will allow the property owner to establish a home site on the site. *Requirement met.*

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

Hearings Officer: The original claimants sold the site to the current owner. The current owner did not provide any information demonstrating a common law vested right to use a Measure 37 Waiver on the original claimant property. The above requirement is included as a condition of approval in this Final Order [Condition no. 3]. *As conditioned, the above requirement is met.*

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

Hearings Officer: The site is vacant. Approval of the requested home on the site will bring the total number of dwellings on the site to one (1). The adjacent property (Lot 2 of Partition Plat 2012-047) is a separate parcel and a separate land use application would be necessary to authorize the remaining dwelling allowed by the M49 final order. The above requirement is included as a condition of approval in this Final Order [Condition no. 3]. *As conditioned, the above requirement is met.*

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

Hearings Officer: The site is an existing lot created through Partition Plat 2012-047. This application does not propose any changes to the existing lot configuration. ORS 215.293 requires a land owner proposing a new single-family dwelling in a farm or forest zone to sign and record a document prohibiting the landowner and the landowner's successors in interest 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. This requirement is included as a condition of approval in this Final Order [Condition no. 3]. *As conditioned, the above requirement is met.*

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

Hearings Officer: The site is an existing parcel created through Partition Plat 2012-047. Approval of this application will grant only one (1) single-family dwelling on the site. The above requirement is included as a condition of approval in this Final Order [Condition no. 3]. *As conditioned, the above requirement is met.*

- 3.13 **12. If the claimants transferred ownership interest in the Measure 37 claim property prior to the date of this order, this order is rendered invalid and authorizes no home site**

approvals. Provided this order is valid when issued, a home site approval authorized under this order runs with the property and transfers with the property. A home site approval will not expire, except that if a claimant who received this home site authorization later conveys the property to a party other than the claimant's spouse or the trustee of a revocable trust in which the claimant is the settlor, the subsequent owner of the property must establish the authorized lots, parcels and dwelling within 10 years of the conveyance. A lot or parcel lawfully created based on this home site authorization will remain a discrete lot or parcel, unless the lot or parcel lines are vacated or the lot or parcel is further divided, as provided by law. A dwelling lawfully created based on a home site approval is a permitted use.

Hearings Officer: The original claimant transferred ownership on April 11, 2018. The current property owner and any subsequent owner will have until April 11, 2028, to establish a dwelling on the site. A condition of approval [Condition no. 3(a)] is included in the conditions of approval in this Final Order . *As conditioned, the above requirement is met.*

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

Hearings Officer: This land use decision would authorize the placement of the requested single-family dwelling on the site per the underlying base zone and environmental overlay regulations in the Multnomah County Zoning Code. A building permit is required and included as a condition of approval [Condition no. 7] in the conditions of approval in this Final Order. *As conditioned, the above requirement is met.*

4.0 PROTECTED AGGREGATE & MINERALS PERMIT CRITERIA:

4.1 MCC 39.5420 PAM Overlay; Generally

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

(B) The Extraction Area shall be applied to the portion of protected sites where mining and associated processing is to occur. The Extraction Area may consist of one or more parcels or portions of parcels, and may be applied to contiguous properties under different ownership. The Extraction Area boundary may be modified through the Goal 5 process to reduce conflicts with conflicting uses existing when the overlay zone is applied. The Extraction Area shall be shown on the zoning map with the designation PAM-EA.

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

Staff: The site is designated on the County zoning maps as PAM-IA.

4.2 MCC 39.5435 Impact Area (PAM-IA) – Allowed Uses

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

(B) Uses identified through the Goal 5 process to be prohibited within the PAM-IA shall not be permitted;

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

(D) Conflicting uses required by the Goal 5 process to be conditionally approved may be permitted under the procedural provisions of MCC 39.7000 through 39.7035 when found by the Hearing Authority to satisfy the approval criteria of MCC 39.5440 and the approval criteria of the base zone.

Staff: The applicant proposes to construct a single-family dwelling, which is a noise and dust-sensitive use as defined in MCC 39.5415. A single-family dwelling is not a use prohibited within the impact area by the Goal 5 process. The approval criteria of MCC 39.5440 are discussed in section 4.3 – 4.4 below. The approval criteria of the CFU-2 zone (the base zone) are discussed in section 7.0 below. Staff addressed the conditional use procedural provisions [MCC 39.7005 & MCC 39.7010] in section 4.5 – 4.6 below. *Criteria met.*

4.3 MCC 39.5440 Use Approval Criteria

(A) In acting to approve a use subject to this Section, the Hearing Authority shall find that:

(1) The proposed use will not interfere with or cause an adverse impact on lawfully established and lawfully operating mining operations;

(2) The proposed use will not cause or threaten to cause the mining operation to violate any applicable standards of this Chapter, or the terms of a state agency permit. The applicant for a new noise sensitive use shall submit an analysis prepared by an engineer or other qualified person, showing that applicable DEQ noise control standards are met or can be met by a specified date by the nearby mining operation; and

(3) Any setbacks or other requirements imposed through the Goal 5 process have been met, or can be met by a specified date.

Hearings Officer: Known lawfully operating mining operations are greater than 3,000 feet from the site and separated by a ridge. The ridge provides a natural sound buffer between the proposed dwelling and the mining operation. Therefore, the proposed dwelling should not interfere with or cause an adverse impact on the lawfully operating mining operations.

This Code section uses the mandatory term “shall” in subsection (2). The hearing’s officer decision for land use case #T3-2012-2097 (Exhibit no. H.1) did not address this criterion. The Hearings Officer has no authority to waive this mandatory requirement. Therefore, the applicant is required to submit a noise analysis demonstrating that applicable DEQ noise control standards are met or can be met, as the applicant has not provided such an analysis [Condition no. 9.i]. The Hearings Officer has no authority to waive this requirement.

Required setbacks have been met or the applicant has applied for an exception/variance where necessary.

As conditioned, the above requirement is met.

4.4 (B) Approval Conditions.

(1) Compliance with the use approval criteria may be satisfied through the imposition of clear and objective conditions of approval.

(2) Approval of any conflicting use in the extraction area or impact area shall be conditioned upon execution of a restrictive covenant in favor of the mining operator. The restrictive covenant shall incorporate all approval conditions, and an agreement not to object to the conduct of lawful operations conducted at the nearby surface mine.

Hearings Officer: A condition of approval [Condition no. 4] requiring that the above restrictions and conditions of approval for this proposal be recorded with the County Recorder is included in the conditions of approval in this Final Order . *As conditioned, the above criteria are met.*

4.5 MCC 39.7005 General Provisions

(A) Application for approval of a Conditional Use shall be subject to the provisions for Type III decisions in MCC 39.1105 through 39.1240.

(B) A Conditional Use permit shall be issued only for the specific use or uses, together with the limitations or conditions as determined by the Approval Authority.

(C) The findings and conclusions made by the approval authority and the conditions, modifications or restrictions of approval, if any, shall specifically address the relationships between the proposal and the approval criteria listed in MCC 39.7015 and in the base zone or use provisions.

Hearings Officer: This application is being reviewed per the provisions for a Type III decision in MCC 39.1105 through 39.1240. This Final Order includes the approval of a conditional use permit to locate the proposed M49 dwelling within the PAM-IA overlay. Conditions of approval address the relationship between the proposal and the approval criteria for the PAM-IA. *Criteria met.*

4.6 MCC 39.7010 Conditions and Restrictions

The approval authority may attach conditions and restrictions to any conditional use approved. Conditions and restrictions may include a definite time limit, a specific limitation of use, landscaping requirements, parking, loading, circulation, access, performance standards, performance bonds, and any other reasonable conditions, restrictions or safeguards that would uphold the purpose and intent of this Chapter and mitigate any adverse effect upon the adjoining properties which may result by reason of the conditional use allowed.

Hearings Officer: Conditions and restrictions related to the conditional use permit to locate the proposed dwelling within the PAM-IA overlay are included in this Final Order. The aforementioned conditions align with the criteria noted above. *Criterion met.*

5.0 GEOLOGIC HAZARDS PERMIT CRITERIA:

5.1 MCC 39.5075 Permit Required

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

Staff: The site is on land located in hazard areas as identified on the Geologic Hazards overlay map.

5.2 MCC 39.5085 Application Information Required

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

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

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

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

Staff: The applicant provided the required application information as Exhibit A.6 – A.10, A.13, A.24, A.26, A.29, A.30, and A.32 – A.35. *Criteria met.*

5.3 MCC 39.5090 Geologic Hazards Permit Standards

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

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

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

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

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

Staff: The fill volume on the site exceeds 5,000 cubic yards due to a landslide that required repair to protect NW McNamee Road. As noted in the Geotechnical Reports (Exhibit A.32 – A.35), all fill activity is composed of earth materials, the cut and fill slopes are less than 33 percent grade, and there are no unsupported finished cuts and fills requiring additional setback. *Criteria met.*

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

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

Staff: As per the proposed Grading & Erosion control plan (Exhibit A.9) no proposed fills encroach on any water body. The proposal does not contain the deposit of fill generated by dredging nor placement of such fill on Sauvie Island. *Criteria met.*

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

Staff: The subject site is not within the Tualatin River drainage basin. The subject site is within the Columbia Watershed drainage basin.

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

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

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

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

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

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

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

Hearings Officer: The proposed cuts and fills are limited to the area around the house footprint. Erosion and sediment control measures are designed according to best management practices. Conditions of approval [Condition no. 6] requiring compliance with (H), (J), (K), and (L) above are included in the conditions of approval list in this Final Order. *As conditioned, the above criteria are met.*

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

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

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

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

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

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

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

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

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

Hearings Officer: The proposal includes the construction of two storm water dissipaters located down slope from the proposed single-family dwelling (Exhibit A.8). Best management practices for erosion control measures are proposed to address potential sediment in runoff water. Long term, surface water will be treated in flow-thru planters before being conveyed to the stormwater dissipaters located down slope (Exhibit A.8, A.9, A.26, A.32 – A.35). The proposal does not include drainage swales. Conditions of approval [Condition no. 6] requiring compliance with (M), (N), (O), (P), and (R) are included in the conditions of approval in this Final Order. *As conditioned, the above criteria are met.*

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

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

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

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

Hearings Officer: Excavated material will be removed from the site and topsoil will be retained. The proposal does not include large stockpiles. (Exhibit A.8, A.9, A.26, and A.32 – A.35). The site is not within the Balch Creek drainage basin. Ground disturbing activities will not occur within a water body. Conditions of approval [Condition no. 6] requiring compliance with (S) and (T) above are included in the conditions of approval in this Final Order. *As conditioned, the above criteria are met.*

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

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

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

Hearings Officer: Conditions of approval [Condition no. 6] requiring compliance with (W), (X), and (Y) above are included in the conditions of approval in this Final Order. *As conditioned the above criteria are met.*

5.10 MCC 39.6210 Permits Required

(A) Unless exempt under this Code, whether under MCC 39.6215, 39.5080, 38.5510 or otherwise, no ground disturbing activity shall occur except pursuant to one of the following permits: a Minimal Impact Project (MIP) permit, an Erosion and Sediment Control permit (ESC), an Agricultural Fill permit (AF), a Geologic Hazards permit (GH), or a Large Fill permit (LF).

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

State Lands, the U.S. Army Corps of Engineers or the Oregon Department of Fish and Wildlife.

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

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

- 5.11 (D) No permit identified in subsection (A) shall be issued in any case where the planning director or a building official determines that the proposed ground disturbing activity will be hazardous by reason of flood, geological hazard, seismic hazard, or unstable soils; or is liable to endanger any other adjacent property; or result in the deposition of debris on any public right-of-way or property or water body; or otherwise create a nuisance.**

Staff: The proposed ground disturbing activity was designed in accordance with recommendations from GeoPacific Engineering, Inc. (Exhibit A.32 – A.35). Through the use of best management practices and adherence to the recommendations of GeoPacific Engineering, Inc., the ground disturbing activity is unlikely to be hazardous. However, should the building official determine the proposed ground disturbing activity is hazardous, the permit would be subject to revocation. A condition of approval is included in this Final Order to ensure compliance with this criterion. *As conditioned the above criterion is met.*

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

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

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

Hearings Officer: Conditions of approval [Condition no. 6] requiring compliance with (E) above are included in the conditions of approval in this Final Order. *As conditioned, the above criteria are met.*

- 5.13 (F) Implementation.**

(1) Performance bond. A performance bond may be required in the amount of the full cost of the establishment and maintenance of all erosion, sedimentation and stormwater control measures for activity authorized through any permit listed in subsection (A). The bond may be used to provide for the installation of the measures

if not completed by the contractor. The bond shall be released upon determination the control measures have or can be expected to perform satisfactorily. The bond may be waived if the director determines the scale and duration of the project and the potential problems arising therefrom will be minor.

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

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

Hearings Officer: Conditions of approval [Condition no. 6] requiring compliance with (F) and (G) above are included in the recommended conditions of approval in this Final Order, in addition to a condition of approval [Condition no. 7] requiring periodic inspection by the applicant's geotechnical engineer or engineering geologist. *As conditioned, the above criteria are met.*

6.0 SIGNIFICANT ENVIRONMENTAL CONCERN PERMIT CRITERIA:

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

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

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

Staff: The required application materials are included as Exhibit A.6, A.8, A.9, A.26 and A.28 – A.29. *Criteria met.*

6.2 (B) Development standards:

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

Staff: The proposed dwelling location is in an area of the property that was previously cleared and not forested. This application does not propose any additional clearing. A forested area on the site where grading/fill occurred in 2014-16 requires mitigation; hence, the applicant proposes a mitigation via wildlife conservation plan as outlined in Exhibit A.26. *Criterion not met.*

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

Staff: Per the proposed site plan (Exhibit A.8), the single-family dwelling will be approximately 250 feet from the portion of NW McNamee Road capable of providing reasonable practical access to the developable portion of the site. NW McNamee Road is a public road. Therefore, the applicant has not met the above criterion. *Criterion not met.*

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

Staff: The proposed driveway is approximately 250 feet in length (Exhibit A.8). *Criterion met.*

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

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

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

Staff: The proposed driveway is the only feasible driveway location for the property. This location does not meet the criteria above. *Criteria not met.*

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

Staff: There are no structures within 300 feet of a common side property line for the site and adjacent property (Exhibit A.28). *Criterion met.*

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

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

Staff: The applicant did not propose any fencing as part of this application (Exhibit A.8).
Criteria met.

- 6.8 (7) The nuisance plants in MCC 39.5580 Table 1 shall not be planted on the site and shall be removed and kept removed from cleared areas of the site.**

Hearings Officer: A condition of approval prohibiting the planting of nuisance plants identified in MCC 39.5580 is included in this Final Order. *As conditioned, the above criterion is met.*

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

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

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

Staff: The applicant cannot meet the development standards of subsection (B) due to topographic restrictions unique to the site. Therefore, the applicant has proposed a wildlife conservation plan as outlined in section 6.10 – 6.12 below.

- 6.10 (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.

Hearings Officer: No new clearing is proposed as part of this application request. In order to mitigate areas cleared in association with the landslide repair in 2014-2016, the applicant proposes to plant an area of approximately 24,000 square feet on the fill slope with Douglas fir, vine maple and Oregon grape (Exhibit A.5). A condition of approval requiring the property owner to verify the completion of the proposed planting prior to issuance of final occupancy is included in this Final Order (Condition no. 9). *As conditioned, the above criteria are met.*

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

Staff: Per the applicant's submitted materials, no fencing is proposed as part of this application. *Criteria met.*

- 6.12 (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.

Hearings Officer: The landslide repair fill-area included approximately 12,000 square feet of native vegetation. Therefore, the applicant proposes to revegetate the area of the fill slope with 24,000 square feet of native vegetation to meet the 2:1 revegetation ratio. The proposal does not include stream riparian area disturbance or revegetation. A condition of approval requiring the property owner to verify the completion of the proposed tree planting prior to issuance of final occupancy is included in this Final Order (Condition no. 9). *As conditioned, the above criteria are met.*

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

Staff: The applicant elected to address the criteria in (C)(3) above. *Therefore, the above criterion is not applicable.*

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

Staff: The applicant has demonstrated satisfaction of the criteria in subsection (C)(3) as discussed in section 6.10 – 6.12 above. *Criterion met.*

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

Staff: The Wildlife Conservation Plan addressing the criteria found in (C)(3) above aligns with the Goal 5 protection program. *Criterion met.*

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

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

7.0 COMMERCIAL FOREST USE ZONE:

7.1 MCC 39.4105 Building Height Requirements

(A) Maximum structure height – 35 feet.

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

Staff: Per the preliminary building plans submitted as Exhibit A.11, the proposed dwelling building height is less than 35 feet. *Criteria met.*

7.2 MCC 39.4110 Forest Practices Setbacks and Fire Safety Zones

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

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

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

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

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

Staff: The applicant requests a Variance to reduce the required forest practices setbacks to 85 feet. Section 8.0 discusses the Variance approval criteria. The applicant also requests an exception to the Secondary Fire Safety Zone. Section 7.11 – 7.12 discusses the Exception criteria in MCC 39.4155. The County Right-of-way office has not indicated that additional right-of-way width is necessary (Exhibit A.22). *Criteria met.*

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

(1) Primary Fire Safety Zone.

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

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

Percent Slope	Distance In Feet
Less than 10	No additional required
Less than 20	50 additional
Less than 25	75 additional
Less than 40	100 additional

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

Staff: Per the submitted site plan, a 30-foot primary fire safety zone can be maintained in all directions (Exhibit A.8). The proposed building location contains finished slopes that are less than 10-percent as identified in Exhibit A.7. *Criteria met.*

7.4

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

Hearings Officer: The applicant requests an Exception to reduce the required secondary fire safety zone to 55 feet Pursuant to this section, the Exception requested is reviewed under the provisions of MCC 39.4155. Section 7.11 – 7.12 of this Final Order discusses the provisions of MCC 39.4155. *Criterion met.*

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

Hearings Officer: Per the submitted site plan included as Exhibit A.8, the required 30-foot Primary Fire Safety zone is completely within the lot boundaries of the subject tract. A condition of approval [Condition no. 10] requiring the property owner to establish and maintain the required Primary and Secondary Fire safety zones is included in this Final Order. *As conditioned, the above criteria are met.*

7.6 **MCC 39.4115 Development Standards for Dwellings and Structures**

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

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

- (2) The structure shall satisfy the following requirements:
- (a) It has the least impact on nearby or adjoining forest or agricultural lands and satisfies the standards in MCC 39.4110;
 - (b) Adverse impacts on forest operations and accepted farming practices on the tract will be minimized;
 - (c) The amount of forest land used to site the dwelling or other structure, access road, and service corridor is minimized;

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

Staff: The applicant has requested reductions to the forest practices setbacks and an exception to the secondary fire safety zones as outlined in MCC 39.4110 to satisfy requirements that they are unable to meet outright. The nearest farm operation is over 1,000 feet from the site. METRO owns property to the south that is approximately 130 feet lower in elevation than the location of the proposed home site. By utilizing an area that has already been cleared, the amount for forest land used to site the dwelling is minimized. The service corridor does not exceed 500 feet in length. *Criterion (a), (b), and (c) are met. Criterion (d) is not applicable.*

7.7 (3) The risks associated with wildfire are minimized. Provisions for reducing such risk shall include:

(a) Access roadways shall be approved, developed and maintained in accordance with the requirements of the structural fire service provider that serves the property. Where no structural fire service provider provides fire protection service, the access roadway shall meet the Oregon Fire Code requirements for fire apparatus access;

(b) Access for a pumping fire truck to within 15 feet of any perennial water source of 4,000 gallons or more within 100 feet of the driveway or road on the lot. The access shall meet the fire apparatus access standards of the Oregon Fire Code with permanent signs posted along the access route to indicate the location of the emergency water source;

Hearings Officer: The site is within the service district of Tualatin Valley Fire & Rescue (TVFR). A fire service agency review completed by Deputy Fire Marshall Drew DeBois indicates that a NFPA 13D fire sprinkler system will be installed in lieu of a fire apparatus turnaround. TVFR requires the driveway be an all-weather surface capable of sustaining 60,000 pounds gross vehicle weight and 12,500 pounds wheel loading (Exhibit A.19). Should TVFR require an additional water source, the property owner will be required to provide such a water source. A condition of approval [Condition no. 9] requiring compliance with the conditions of the TVFR review is included in this Final Order. *As conditioned, the above criteria are met.*

7.8 (C) The dwelling or structure shall:

(1) Comply with the standards of the applicable building code or as prescribed in ORS 446.003 through 446.200 relating to mobile homes;

(2) If a mobile home, have a minimum floor area of 600 square feet and be attached to a foundation for which a building permit has been obtained;

(3) Have a fire retardant roof; and

(4) Have a spark arrester on each chimney.

Staff: The proposed dwelling is not a mobile home. A condition of approval [Condition no. 5] requires that the applicant demonstrate the proposed dwelling has a fire retardant roof and a spark arrester on any chimney. *As conditioned, the above criteria are met.*

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

Hearings Officer: Per the applicant, the owner will construct a well in compliance with Oregon Department of Water Resources rules. A condition of approval [Condition no. 9] requiring the property owner to submit a well contractor's report upon completion of the well is included in this Final Order. *As conditioned, the above criteria are met.*

7.10 **MCC 39.4150 Single Family Dwellings Condition of Approval**

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

Hearings Officer: A condition of approval [Condition no. 4] requiring compliance with MCC 39.4150 is included in the conditions of approval in this Final Order. *As conditioned the above criterion is met.*

7.11 **MCC 39.4155 Exceptions to Secondary Fire Safety Zones**

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

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

Staff: In the hearing's officer decision for land use case #T3-2012-2097, the hearing's officer stated "The Measure 49 Claim prevents the County from limiting the relief granted by subsections (1) through (3) to dwellings and structures in the above described locations as the locations restrictions are not clearly imposed as a condition for safety reasons." (p. 48 of Exhibit no. H.1). Staff agrees with those findings and agrees that the relief from the requirements of the secondary fire safety zone should be considered under the terms of MCC 39.4155(B), below.

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

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

Hearings Officer: The applicant initially proposed a 55 foot secondary fire safety zone; hence, the dwelling shall be constructed in accordance with the International Fire Code Institute Urban-Wildland Interface Code Section 505 Class 2 Ignition Resistance Construction. Additionally, the dwelling shall have a central station monitored alarm system. A condition of approval [Condition no. 9] will require compliance with (1) and (4) above. The local fire service agency, Tualatin Valley Fire & Rescue (TVFR) determined additional fire safety requirements for the proposed dwelling including a 13D fire sprinkler system as noted in section 7.7 of this Final Order. The requirements of TVFR are included as a condition of approval [Condition no. 9]. Per the proposed site plan provided as Exhibit A.8 there are no proposed fences within 12 feet of the exterior surface of the dwelling. *As conditioned, the above criteria are met.*

At the hearing the applicant proposed to further reduce the secondary fire safety zone by an additional ten feet, reducing the secondary fire safety zone to 45 feet from the east side-property line in order to locate the proposed structure further to the east, farther away from the steep slopes on the west side of the site. The applicant proposed a corresponding reduction in the forest practice setback. However, as discussed below, the applicant failed to bear the burden of proof that the additional forest practice setback reduction complies with the variance approval criteria. Therefore, there is no need to review the request for an additional reduction to the secondary fire safety zone.

7.13 MCC 39.6235 Stormwater Drainage Control

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

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

(C) The provisions of this section are in addition to and not in lieu of stormwater and drainage requirements in the Multnomah County Road Rules and Design and Construction Manual, including those requirements relating to impervious surfaces and proposals to discharge stormwater onto a county right-of-way.

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

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

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

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

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

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

Staff: A submitted storm water certificate completed by Steve White of NW Engineers states that construction of an onsite storm water drainage control system is necessary (Exhibit A.24). Per the associated water quality report, runoff from the roof of the dwelling and the driveway will be treated by two (2) lined storm water planter facilities, which will limit the discharge rate under a 25-year storm event to no more than that which currently occurs from the area (Exhibit A.30). Flow from the driveway areas will be collected in a sumped catch basin to limit the amount of oil and floatables reaching the storm water planter facilities, whereas roof discharge will be directed directly to the storm water planter facilities.

The City of Portland Sanitarian completed a septic review certification which did not indicate any concerns with the proposed storm water drainage control system (Exhibit A.12). *Criteria met.*

8.0 VARIANCE APPROVAL CRITERIA:

8.1 MCC 39.8205 Scope

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

(1) Reduction of resource protection setback requirements within the Significant Environmental Concern (SEC) and Willamette River Greenway (WRG) Overlays; and

(2) Modification of fire safety zone standards given in Commercial Forest Use base zones; and

(3) Increase to any billboard height or any other dimensional sign standard.

Staff: The applicant requests a reduction of the required forest practice setbacks within the Geologic Hazards Overlay. If the Variance is approved, the applicant would be allowed to site the dwelling approximately 85 feet from the east side-property line (Exhibit A.8). Per MCC 39.8205(A)(2), any reduction to dimensional standards within the Geologic Hazards Overlay requires a Variance. The request does not include a reduction of setback requirements within the SEC and/or WRG overlays, a modification of the fire safety zone standards for the CFU zone, or an increase to a billboard/dimensional sign height standard. *Criteria met.*

8.2 MCC 39.8215 Variance Approval Criteria

The Approval Authority may permit and authorize a variance from the dimensional standards given in MCC 39.8205 upon finding that all the following standards in (A) through (G) are met:

(A) A circumstance or condition applies to the property or to the intended use that does not apply generally to other property in the same vicinity or base zone. The circumstance or condition may relate to:

(1) The size, shape, natural features and topography of the property, or

(2) The location or size of existing physical improvements on the site, or

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

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

Staff: The site has unique topography and natural features due to the presence of McCarthy Creek. McCarthy creek essentially bisects the site, which limits the available building sites due to steep slopes. Because of these slopes, the proposed dwelling has to be located almost entirely within the 130-foot setback area (Exhibit A.8). Without the requested reduction, there would not be an alternative buildable area on the site.

The site was identified as the third home site for a land division that occurred as a result of the Measure 49 ("M49") authorization described in section 3.0 above. Following the implementation of the associated partition plat (2012-047), the party holding the original M49 authorization sold the site to the current property owner. Hence, the current property owner inherited the restrictions that led to this Variance request. *Criteria met.*

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

Staff: Without an approved reduction to the required forest practices setbacks, the property owner would not be able to build a dwelling on the property without encroaching into the protected buffer of McCarthy Creek or areas with steep slopes. Encroaching into these areas would add additional costs for the property owner and potentially lead to negative impacts to the protected buffer for McCarthy Creek. Further, the property owner would not be able to construct the dwelling right granted by the State M49 Final order (Exhibit A.31). *Criterion met.*

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

Hearings Officer: Fire safety measures required by the County zoning code as well as the Fire District will aid in protecting against the spread of a potential fire to neighboring properties. A condition of approval [Condition no. 9] ensuring compliance with those requirements is included in the conditions of approval in this Final Order. *Criterion met.*

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

Staff: Due to topography, the requested variance would allow the proposed single-family dwelling to be sited safely on the site within the forest practices setback area (Exhibit A.8). No additional variances are requested as part of this application. As the requested variance is limited in nature and a result of topographical limitations, it can be considered the minimum necessary variation from the required forest practices setbacks of the CFU-2 zone. *Criterion met.*

Hearings Officer: At the hearing the applicant proposed to increase the setback variance by an additional ten feet, reducing the forest practice setback to 75 feet from the east side-property line, arguing that it would facilitate construction of the proposed residence. The applicant further argued that the additional variance “[r]esults in a superior design from the earlier proposal with an 85-ft. east side setback due to reduced grading impacts on the west side of the homesite.” (p. 12 of Exhibit I.2). However, the applicant argued that the original design, with an 85-foot forest practice setback was the minimum necessary. (p. 20 of Exhibit A.26). At the hearing Mr. Newman testified that 85 feet is the minimum reduction necessary to construct a residence on the site. The applicant failed to identify any changed circumstances or new evidence demonstrating that it is not feasible to implement the original design with an 85-foot setback or that a reduced 75-foot setback is the minimum necessary. “Superior design,” reduced grading impacts, and facilitating construction of the structure are not relevant to this approval standard and are insufficient, absent additional evidence, that the additional setback is the “minimum necessary variation from the Code requirement which would alleviate the difficulty.” Therefore, the Hearings Officer denies the applicant’s request to reduce the forest practice setback to 75 feet from the east side-property line.

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

Staff: There is no existing development on the adjacent properties to the north, south, and west of the site. The adjacent property to the east is developed; however, NW McNamee Road and a large wooded area provide a barrier between this property and the site. Therefore, the applicant does not anticipate impacts to light, privacy, access, etc. that would require mitigation. *Criterion met.*

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

Staff: The requested variance will support the lawful establishment of a M49 single-family dwelling on the site. *Criterion met.*

9.0 CONCLUSION:

Based on the findings and other information provided above, the Hearings Officer finds that the applicant has carried the burden necessary for the implementation of the Measure 49 home site authorization for a single-family dwelling, Conditional Use Permit to locate the single-family dwelling

within the PAM-IA overlay, and establish the single-family dwelling in the CFU-2 zone, GH overlay, and SEC-h overlay. This approval is subject to the conditions of approval set out in this Final Order.

10.0 EXHIBITS:

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

‘C’ Procedural Exhibits

All exhibits are available for review in Case File T3-2019-12724 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/Submitted
A.1	1	General Application Form	12.05.2019
A.2	28	Applicant’s Statement and Narrative	12.05.2019
A.3	1	Exhibit List	12.05.2019
A.4	1	Exhibit 1: Cover Sheet	12.05.2019
A.5	1	Exhibit 2: Aerial Photograph	12.05.2019
A.6	1	Exhibit 3: Existing Conditions	12.05.2019
A.7	1	Exhibit 4: Slope Analysis	12.05.2019
A.8	1	Exhibit 5: Preliminary Site Plan	12.05.2019
A.9	1	Exhibit 6: Preliminary Grading & Erosion Control Plan	12.05.2019
A.10	1	Exhibit 7: Flow Dispersal Trench Details	12.05.2019
A.11	9	Exhibit 8: Building Elevations & Floor Plans Sheet A.6 – East Elevation Sheet A.7 – South Elevation Sheet A.8 – North Elevation Sheet A.9 – West Elevation Sheet A.10 – Section “CC” Sheet A1.1 – Basement Plan Sheet A1.2 – Main Floor Plan Sheet A1.3 – Upper Floor Plan Sheet A1.4 – Attic Roof Plan	12.05.2019
A.12	5	Exhibit 9: Septic Review Certification	12.05.2019
A.13	4	Exhibit 10: Pre-Application Meeting Notes	12.05.2019
A.14	1	Exhibit 11: Partition Plat No. 2012-047	12.05.2019
A.15	1	Exhibit 12: Tax Map – 2N 1W 32B	12.05.2019

A.16	20	Exhibit 13: Geotechnical Report prepared by GeoPacific Engineers	12.05.2019
A.17	7	Geotechnical Reconnaissance and Stability Preliminary Study	12.05.2019
A.18	11	Exhibit 14: Copy of Land Use Decision T3-2012-2097	12.05.2019
A.19	6	Exhibit 15: Fire Service Agency Review completed by Tualatin Valley Fire & Rescue	12.05.2019
A.20	3	Exhibit 16: Site Distance Certification completed November 29, 2019	12.05.2019
A.21	4	Exhibit 17: Site Photographs	12.05.2019
A.22	13	Exhibit 19: Right of Way Permit No. 83317	12.05.2019
A.23	1	Certification of Water Service	12.05.2019
A.24	12	Exhibit 18: Storm Water Report	12.12.2019
A.25	4	Applicant Response to Incomplete Letter	01.30.2020
A.26	41	Revised Applicant's Statement & Narrative	01.30.2020
A.27	1	Revised Exhibit List	01.30.2020
A.28	1	Revised Aerial Photograph	01.30.2020
A.29	1	Stream Location based on Lidar Contours Map	01.30.2020
A.30	1	Revised Stormwater Certificate	01.30.2020
A.31	9	Portion of M49 Final Order no. E118605	01.30.2020
A.32	29	Geotechnical Report prepared by GeoPacific Engineers dated March 17, 2010, with Addendum dated October 19, 2010	01.30.2020
A.33	5	Summary Report for Slope Repair associated with land use case no. T2-09-050, prepared by GeoPacific Engineers dated February 8, 2011	01.30.2020
A.34	19	Revised Geotechnical Investigation prepared by GeoPacific Engineers dated January 29, 2019	01.30.2020
A.35	20	Revised Geotechnical Investigation prepared by GeoPacific Engineers dated April 30, 2019	01.30.2020
'B'	#	Staff Exhibits	Date
B.1	2	Department of Assessment, Records and Taxation (DART): Property Information for 2N1W32B -	12.05.2019

		00703 (R649631870)	
B.2	1	Department of Assessment, Records and Taxation (DART): Assessor Map for 2N1W32B	12.05.2019
'C'	#	Administration & Procedures	Date
C.1	4	Incomplete Letter	12.31.2019
C.2	-	Application Complete (Day 1)	01.30.2020
C.3	1	Decision Clock Extension Request	05.27.2020
C.4	3	Notice of Public Hearing	06.19.2020
C.5	38	Staff Report	06.26.2020
'P'	#	Post-Hearing Exhibits	Date
H.1	56	Complete M49 Final Order no. E118605	7.10.2020
'P'	#	Post-Hearing Exhibits	Date
I.1	3	Staff Memo	07.17.2020
I.2	15	Applicant Letter	07.17.2020