



Applicable Approval Criteria:

For this application to be approved, the proposal will need to meet applicable approval criteria below:

Multnomah County Code (MCC): General Provisions: MCC 39.1515 Code Compliance and Applications, MCC 39.2000 Definitions

Lot of Record: MCC 39.3005 Lot of Record – Generally, MCC 39.3080 Lot of Record – Multiple Use Agriculture-20 (MUA-20)

Multiple Use Agriculture (MUA-20): MCC 39.4310(F) Review Uses – Accessory Structures, MCC 39.4325 Dimensional Requirements and Development Standards

Significant Environmental Concern (SEC): MCC 39.5510 Uses; SEC Permit Required, MCC 39.5520 Application for SEC Permit, MCC 39.5560 General Requirements for Approval in the West of Sandy River Planning Area Designated as SEC-wr or SEC-h, MCC 39.5800 Criteria for Approval of SEC-wr Permit – Water Resources, MCC 39.5850 SEC-h Clear and Objective Standards, MCC 39.5860 Criteria for Approval of SEC-h Permit – Wildlife Habitat

Ground Disturbing Activity and Stormwater: MCC 39.6235 Stormwater Drainage Control

Exterior Lighting: MCC 39.6850 Dark Sky Lighting Standards

Adjustments: MCC 39.8200 Adjustments and Variances; Generally, MCC 39.8205 Scope, MCC 39.8210 Adjustment Approval Criteria

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

Chapter 39 - Zoning Code

Conditions of Approval

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parenthesis. Approval of this land use permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.

1. Permit Expiration – This land use permit shall expire as follows:
 - a. Within two (2) years of the date of the final decision when construction has not commenced. [MCC 39.1185(B) and (E)]
 - i. For the purposes of 1.a, commencement of construction shall mean the implementation of the Mitigation Plan.
 - 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.
 - b. Within four (4) years of the date of commencement of construction when the structure has not been completed. [MCC 39.1185(B) and (E)]
 - i. For the purposes of 1.b., completion of the structure shall mean completion of the relocation of the accessory structure and compliance with all conditions of approval in the land use approval.
 - ii. For purposes of Condition 1.b.i, the property owner shall provide building permit status in support of completion of exterior surfaces of the structure and demonstrate compliance with all conditions of approval. The written notification and documentation of compliance with the conditions shall be sent to land.use.planning@multco.us.

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

2. Prior to land use sign-off for building plan check, the property owners or their representative shall:
 - a. The property owners shall acknowledge in writing that they have read and understand the conditions of approval and intend to comply with them. A Letter of Acknowledgement has been provided to assist you. The signed document shall be sent to Rithy Khut at rithy.khut@multco.us. [MCC 39.1170(A) & (B)]
 - b. Record a covenant with Division of Assessment, Recording, and Taxation (“County Records”) that states that the owner understands and agrees that the accessory structure cannot be occupied as a dwelling or for any other form of permanent or temporary residential use. [MCC 39.4310(F)(5) and MCC 39.8860]

- c. Submit an updated Wildlife Habitat Improvement Plan (“Report”):
- i. The updated Report shall be revised to account for the additional mitigation that is required. The plant list within the Report shall reflect 713 square feet of plantings within the Significant Environmental Concern for Water Resources (SEC-wr) overlay and 251 square feet within the Significant Environmental Concern for Wildlife Habitat (SEC-h) overlay.
 1. At minimum 7 trees and 35 shrubs shall be planted in the SEC-wr overlay. [MCC 39.5800(E)(2), MCC 39.5800(E)(3), MCC 39.5800(E)(6), MCC 39.5800(F)(1), and MCC 39.5800(F)(2)]
 2. At minimum 2 trees and 12 shrubs shall be planted in the SEC-h overlay. [MCC 39.5860(C)(3) and MCC 39.5860(C)(5)(d)]
 3. The updated Report shall be reviewed by Fran Cafferata Coe or someone of similar educational and vocational training and must:
 - a. Be certified that the mitigation work will improve the Water Resources area to meet the level of “Good Corridor” as described in Table 2 Riparian/Vegetated Corridor Standards. [MCC 39.5800(E)(2), MCC 39.5800(E)(3), MCC 39.5800(E)(6), MCC 39.5800(F)(1), MCC 39.5800(F)(2), and MCC 39.5860(C)(3)]
 - b. Demonstrate that the mitigation outlined within the updated Report will reflect the following standards: [MCC 39.5800(E)(2), MCC 39.5800(E)(3), MCC 39.5800(E)(6), MCC 39.5800(F)(1), MCC 39.5800(F)(2), and MCC 39.5860(C)(3)]
 - i. Plant size. Replacement trees shall be at least one-half inch in caliper, measured at 6 inches above the ground level for field grown trees or above the soil line for container grown trees (the one-half inch minimum size may be an average caliper measure, recognizing that trees are not uniformly round), unless they are oak or madrone which may be one gallon size. Shrubs shall be in at least a 1-gallon container or the equivalent in ball and burlap and shall be at least 12 inches in height. [MCC 39.5860(C)(5)(j)]
 - ii. Plant spacing. Trees shall be planted between 8 and 12 feet on-center and shrubs shall be planted between 4 and 5 feet on-center, or clustered in single species groups of no more than four (4) plants, with each cluster planted between 8 and 10 feet on-center. When planting near existing trees, the drip line of the existing tree shall be the starting point for plant spacing measurements. [MCC 39.5860(C)(5)(k)]
 - iii. Plant diversity. Shrubs shall consist of at least two (2) different species. If 10 trees or more are planted, then no more than 50% of the trees may be of the same genus. [MCC 39.5860(C)(5)(l)]

- d. Record pages 1 through 7 of this Notice of Decision, Exhibit A.14, and an updated Wildlife Habitat Improvement Plan (“Report”) as required in Condition of Approval 2.c, 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 and MCC 39.5800(F)(2)(g)]
3. Upon submittal of an updated Report to the Land Use Planning Division that meets the requirements of Condition of Approval 2.c., the property owner or their representative shall:
 - a. Commence mitigation planting as discussed in updated Report. The initial mitigation work must be completed within one year following the approval of the application unless an alternative timeline is required by the updated Report. [MCC 39.5800(F)(2)(f), MCC 39.5860(C)(3), MCC 39.5860(C)(5)(n)]
4. At the time that the initial mitigation work is completed, land use sign-off for building plan check is allowed to occur. The property owners or their representative shall:
 - a. Provide a post-mitigation report. The report shall be prepared and signed by Fran Cafferata Coe or someone of similar educational and vocational training. The report shall be provided to Multnomah County Land Use Planning within 90 days of completion of the restoration work as outlined in updated Report required under Condition of Approval 2.c. The post-construction report shall confirm the mitigation has been completed in compliance with approved designs. Any variation from approved designs or conditions of approval shall be clearly indicated. The post-construction report shall include:
 - i. Dated pre- and post-construction photos taken of the Mitigation Planting Area. The photos should clearly show the site conditions before and after construction.
 - ii. A narrative that describes any deviation from the approved plans.
 - iii. Certification that the mitigation work has/will improve the stream area to meet the level of “Good Corridor” as described in Table 2 Riparian/Vegetated Corridor Standards. [MCC 39.5800(E)(2), MCC 39.5800(E)(3), MCC 39.5800(E)(6), MCC 39.5800(F)(1), MCC 39.5800(F)(2), and MCC 39.5860(C)(3)]
 - b. Demonstrate compliance with the County’s Ground Disturbance regulations by obtaining an Minimal Impact Project Permit [MCC 39.1515 and MCC 39.5800(E)(6)]
 - c. Submit a lighting plan including cut sheets or photographs and specifications showing all exterior lighting on the subject property. The exterior lighting shall be placed in a location so that it does not shine directly into undeveloped water resource or habitat areas. All exterior lighting shall be a fixture type that is fully shielded with opaque materials and directed downwards.
 - i. “Fully shielded” means no light is emitted above the horizontal plane located at the lowest point of the fixture’s shielding.
 - ii. Shielding must be permanently attached.
 - iii. The exterior lighting shall be contained within the boundaries of the subject property on which it is located. [MCC 39.4325(J), MCC 39.5560(B), and MCC 39.6850]

5. The property owners or their representative shall obtain a building permit for the proposed accessory building prior to the building's modification to meet the Front Yard requirement. The Building Permit shall be finalized as required by the City of Gresham's Building Department.
6. Prior to and during the reconstruction of the accessory building, the property owner or their representative shall ensure that:
 - a. Areas of erosion or potential erosion shall be protected from loss by appropriate means. Appropriate means shall be based on current Best Management Practices. [MCC 39.5560(A)]
 - b. The Significant Wildlife Area and Water Resource Area shall be flagged, fenced or otherwise marked and shall remain undisturbed except as otherwise allowed by the revised Report. Such markings shall be maintained until construction is complete. [MCC 39.5800(E)(7) and MCC 39.5860(C)(3)]
 - c. Existing vegetation shall be protected and left in place except as otherwise allowed by the revised Report. Trees shall not be used as anchors for stabilizing construction equipment. [MCC 39.5800(E)(5) and MCC 39.5860(C)(3)]
7. At the completion of the implementation of the Mitigation Plan, the applicant(s), property owner(s), or their representatives shall:
 - a. Monitor the Mitigation Area as described in updated Report to determine whether each type of tree and shrub planted continues to live, thrive, and grow. The monitoring shall be for a minimum period of five (5) growing seasons after completion of all the initial plantings. Annual monitoring reports are required. [MCC 39.1170, MCC 39.5800(F)(3) and MCC 39.5860(C)(5)(o)]
 - i. For any replanted area that falls below the 80% threshold, the property owner shall be replant the area during the next planting season. [MCC 39.1170, MCC 39.5800(F)(3) and MCC 39.5860(C)(5)(o)]
 - ii. Annual Monitoring Report Due Date: Annual monitoring reports are due by November 30th of each year. It shall be sent to LUP-submittal@multco.us and include the subject line: "T2-2021-14763." [MCC 39.1170, MCC 39.5800(F)(3), MCC 39.5860(C)(5)(n), and MCC 39.5860(C)(5)(o)]
 1. Extension of the Monitoring Period: The monitoring period may be extended, at the discretion of Land Use Planning for failure to provide monitoring reports, failure of the site to meet performance standards for two consecutive years (without irrigation or replanting), or when needed to evaluate replanting or other corrective or remedial actions. [MCC 39.1170, MCC 39.5800(F)(3), MCC 39.5860(C)(5)(n), and MCC 39.5860(C)(5)(o)]
 2. Release of Monitoring Obligation: Monitoring is required until Land Use Planning has officially released the site from further monitoring. [MCC 39.1170, MCC 39.5800(F)(3), MCC 39.5860(C)(5)(n), and MCC 39.5860(C)(5)(o)]
 3. Failure to Submit Monitoring Reports: Failure to submit the required monitoring report by the due date may result in an extension of the monitoring period, forfeiture of the financial security and/or enforcement

action. [MCC 39.1170, MCC 39.5800(F)(3), MCC 39.5860(C)(5)(n), and MCC 39.5860(C)(5)(o)]

iii. The annual monitoring report shall include the following information:

1. The permit number, monitoring date, report year, and a determination or whether the site is meeting performance standard of Condition No. 7.a.iii.3 through No. 7.a.iii.5 below.
2. Current photographs of the Mitigation Area taken within the last 30 day prior to the report date.
3. A brief narrative that describes maintenance activities and recommendations to meet performance standard. This includes when irrigation occurred and when the above ground portion of the irrigation system was or will be removed from the site.
4. The number and location of any Mitigation Plantings that have been replaced or need to be replaced each year due to death or disease and planting date for their replacements.
5. Any other information necessary or required to document compliance with the performance standard listed in Condition No. 2.c. [MCC 39.1170 and MCC 39.5750(D)(1)(d)]

8. As an on-going condition, the property owner shall:

- a. Ensure that the accessory structure, labeled as “shop” on Exhibit A.14, shall not be used, whether temporarily or permanently, as a primary dwelling, accessory dwelling unit, apartment, guesthouse, housing rental unit, sleeping quarters, or any other residential use. [MCC 39.4310(F)(2)]
- b. Ensure that the accessory structure, labeled as “shop” on Exhibit A.14, a mattress, bed, Murphy bed, cot, or any other similar item designed to aid in sleep as a primary purpose is disassembled for storage. [MCC 39.4310(F)(4)]
- c. Ensure that outdoor lighting shall be of a fixture type and shall be placed in a location so that it does not shine directly into undeveloped water resource or habitat areas. All exterior lighting shall be a fixture type that is fully shielded with opaque materials and directed downwards. [MCC 39.5560(B)]
- d. Ensure that nuisance plants in MCC 39.5580 Table 1 below, in addition to the nuisance plants defined in MCC 39.2000, shall not be used as landscape plantings on the subject property. The property owners shall remove the nuisance plants listed in Table 1 from the cleared areas of the property. Once removed, the property owners shall maintain the cleared area free of these nuisance plants [MCC 39.5560(C), MCC 39.5580, MCC 39.5800(E)(6), MCC 39.5860]

Table 1 - Nuisance Plant List:

Common Name	Scientific Name
Lesser celandine	<i>Chelidonium majus</i>
Canada Thistle	<i>Cirsium arvense</i>
Common Thistle	<i>Cirsium vulgare</i>
Western Clematis	<i>Clematis ligusticifolia</i>
Traveler’ s Joy	<i>Clematis vitalba</i>

Common Name	Scientific Name
Poison hemlock	<i>Conium maculatum</i>
Field Morning-glory	<i>Convolvulus arvensis</i>
Night-blooming Morning-glory	<i>Convolvulus nyctagineus</i>
Lady's nightcap	<i>Convolvulus sepium</i>
Pampas grass	<i>Cortaderia selloana</i>
Hawthorn, except native species	<i>Crataegus sp. except C. douglasii</i>
Scotch broom	<i>Cytisus scoparius</i>
Queen Anne's Lace	<i>Daucus carota</i>
South American Waterweed	<i>Elodea densa</i>
Common Horsetail	<i>Equisetum arvense</i>
Giant Horsetail	<i>Equisetum telmateia</i>
Cranesbill	<i>Erodium cicutarium</i>
Roberts Geranium, Herb Robert	<i>Geranium robertianum</i>
English Ivy	<i>Hedera helix</i>
St. John's Wort	<i>Hypericum perforatum</i>
English Holly	<i>Ilex aquafolium</i>
Golden Chain Tree	<i>Laburnum watereri</i>
Duckweed, Water Lentil	<i>Lemna minor</i>
Fall Dandelion	<i>Leontodon autumnalis</i>
Purple Loosestrife	<i>Lythrum salicaria</i>
Eurasian Watermilfoil	<i>Myriophyllum spicatum</i>
Reed Canary grass	<i>Phalaris arundinacea</i>
Annual Bluegrass	<i>Poa annua</i>
Swamp Smartweed	<i>Polygonum coccineum</i>
Climbing Bindweed, Wild buckwheat	<i>Polygonum convolvulus</i>
Giant Knotweed	<i>Polygonum sachalinense</i>
English, Portuguese Laurel	<i>Prunus laurocerasus</i>
Poison Oak	<i>Rhus diversiloba</i>
Himalayan Blackberry	<i>Rubus discolor</i>
Evergreen Blackberry	<i>Rubus laciniatus</i>
Tansy Ragwort	<i>Senecio jacobaea</i>
Blue Bindweed	<i>Solanum dulcamara</i>
Garden Nightshade	<i>Solanum nigrum</i>
Hairy Nightshade	<i>Solanum sarrachoides</i>
Common Dandelion	<i>Taraxacum officinale</i>
Common Bladderwort	<i>Utricularia vulgaris</i>
Stinging Nettle	<i>Urtica dioica</i>
Periwinkle (large leaf)	<i>Vinca major</i>
Periwinkle (small leaf)	<i>Vinca minor</i>
Spiny Cocklebur	<i>Xanthium spinosum</i>
Bamboo sp.	<i>various genera</i>

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

1. Read your land use decision, the conditions of approval and modify your plans, if necessary, to meet any condition that states, “Prior to land use sign-off for building plan check...” Be ready to demonstrate compliance with the conditions.
2. Contact Staff Planner, Rithy Khut, at 503-988-0176 or rithy.khut@multco.us, **for an appointment** for review of the conditions of approval and to sign the building permit plans. Please ensure that any items required under, “At the time of land use sign-off for building plan check...” are ready for land use planning review. Land Use Planning must sign off on the plans and authorize the building permit before you can go to the Building Department.

The above must be completed before the applicant can obtain building permits from the City of Gresham. One (1) digital set each of the site plan and building plans are needed for building permit sign off. At the time of building permit review, Land Use Planning may collect additional fees, including an erosion control inspection fee, if applicable.

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

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

Findings of Fact

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

1.0 Project Description:

Staff: The applicant is requesting an adjustment to reduce the front yard from 30 feet to 18 feet where the building’s eaves will be located. The existing outbuilding will be moved from its present location at 16 feet and 1 inch from the front property line to its new location and be used as an accessory building. In addition to the adjustment, a Significant Environmental Concern for Water Resources (SEC-wr) permit, and a Significant Environmental Concern for Wildlife Habitat (SEC-h) permit is requested to authorize the building at its new location.

2.0 Property Description & History:

Staff: This application is for 7920 SE 252nd Ave., Gresham (“subject property”). The subject property is located on the east side of SE 252nd Avenue in unincorporated east Multnomah County in the area known as the West of Sandy River Rural Area. The subject property is zoned Multiple Use Agriculture – 20 (MUA-20) and is located inside of Metro’s Urban Growth Boundary (UGB) boundary. The subject property is approximately 4.98 acres in size is a part of the Botefuhr Tracts Subdivision. The property is configured as a flag lot and has multiple overlays on the property including: Significant Environmental Concern for Wildlife Habitat (SEC-h), Significant Environmental Concern for Water Resources (SEC-wr), and the Flood Hazard (FH). The SEC-h overlay covers the northeastern portion of the property along with a thin strip that runs from east to west and through the accessory building. The SEC-wr and FH overlays bisect the middle of the property.

There have been previous land use/building permit associated with the subject property:

Land Use / Building Permit #	Date Approved	Decision	Description
780601	March 23, 1978	Approved	New single-family dwelling
T2-2019-12283	November 7, 2019	Subject Property found not be a Lot of Record	Lot of Record Verification
T1-2019-12522	June 12, 2020	Approved	Lot Legalization
T1-2020-13309	July 28, 2020	Approved	Erosion and Sediment Control (ESC) permit and a Floodplain Development (FD) permit for single-family dwelling addition
BP-2020-13942	November 5, 2020	Approved	Addition to a single-family dwelling associated with T1-2021-13309

Aerial photo review from 2020 shows the presence of two buildings on the subject property (Exhibit B.8). One building is used as a single-family dwelling with an attached deck and the other building as a shop. Based on historic aerial photos, the “shop” did not appear on the

property until after 1986. No land use permits were identified for the construction of the “shop.”

3.0 Public Comment:

Staff: Staff mailed a notice of application and invitation to comment on the proposed application to the required parties pursuant to MCC 39.1105 as Exhibited in C.2. Staff did not receive any public comments during the 14-day comment period.

4.0 Code Compliance and Applications Criteria:

4.1 § 39.1515 CODE COMPLIANCE AND APPLICATIONS.

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

(A) A permit or other approval, including building permit applications, may be authorized if:

- (1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Zoning Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or**
- (2) It is necessary to protect public safety; or**
- (3) It is for work related to and within a valid easement over, on or under an affected property.**

(B) For the purposes of this section, Public Safety means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger the life, health, personal property, or safety of the residents or public. Examples of that situation include but are not limited to issuance of permits to replace faulty electrical wiring; repair or install furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel, or power; and actions necessary to stop earth slope failures.

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

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

Importantly, a finding of satisfaction of this standard does not mean that a property is in full compliance with the Zoning Code and all prior permit approvals (and, accordingly, does not

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

Staff identified the existing accessory building and did not find that it had been reviewed by the County. The property owner then entered into a Voluntary Compliance Agreement (VCA). The code compliance case, UR-2019-12059 was opened to bring the subject property back into Full Compliance with Multnomah County Zoning Code by use of a VCA to outline obligations and sequencing of permits (Exhibit B.4). This building was identified by comparing a previously approved permit in 1978 and aerial photos from 1986. The previous permit indicates that a single-family dwelling was authorized to be constructed (Exhibit B.6). No other buildings were listed as part of the permit.

Figure 1 – Aerial Photo Comparison



The construction and placement of an accessory structure on the subject property occurred at some point between 1986 and 1996. The associated development activities would have been subject to zoning review and a variance at the time. Staff described these issues to applicant during a pre-filing meeting, PA-2019-12686 on January 9, 2020 (Exhibit B.5).

This application, a Type 2 application is the last part of a sequencing of permits needed to resolve the code compliance issues related to building that was were not reviewed by the County. If the applicant fulfills the requirements of the decision, the property will be brought into compliance.

As discussed in this decision, when the applicant meets all of the conditions, it will result in the property coming into compliance with applicable provisions of the Multnomah County Zoning Code. Therefore, the County is able to make a land use decision approving development on the subject property.

5.0 Lot of Record Criteria:

5.1 § 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**
- 5. “Satisfied all applicable land division laws” shall also mean that any subsequent boundary reconfiguration completed on or after December 28, 1993 was approved under the property line adjustment provisions of the land division code. (See Date of Creation and Existence for the effect of property line adjustments on qualifying a Lot of Record for the siting of a dwelling in the EFU and CFU districts.)**

Staff: Pursuant to MCC 39.4305, no building, structure or land shall be used and no building or structure shall be hereafter erected, altered or enlarged in the MUA-20 zone except for uses listed in MCC 39.4310 through 39.4320...provided such uses occur on a Lot of Record. The applicant provided a copy of the recorded partition plat 2020-46 (Exhibit B.3). The plat was recorded on June 25, 2020 and authorized by land use case T1-2019-12522. The parcel met the applicable zoning and land division laws as demonstrated by the recorded partition plat.

Therefore, this property is considered as a legal parcel and is Lot of Record. *This criterion is met.*

(c) Separate Lots of Record shall be recognized and may be partitioned congruent with an “acknowledged unincorporated community” boundary which intersects a Lot of Record.

- 1. Partitioning of the Lot of Record along the boundary shall require review and approval under the provisions of the land division part of this Chapter,**

but not be subject to the minimum area and access requirements of this district.

2. An “acknowledged unincorporated community boundary” is one that has been established pursuant to OAR Chapter 660, Division 22.

Staff: The lot contained in tax lot 4201 and is subject to this land use application is not congruent with an “acknowledged unincorporated community” boundary, which intersects a Lot of Record. The applicant is also not requesting a partitioning of the Lot of Record, therefore this criterion is not applicable. *This criterion is not applicable.*

5.2 § 39.3080 LOT OF RECORD – MULTIPLE USE AGRICULTURE-20 (MUA-20).

(A) In addition to the standards in MCC 39.3005, for the purposes of the MUA-20 district the significant dates and ordinances for verifying zoning compliance may include, but are not limited to, the following:

- (1) July 10, 1958, SR zone applied;**
- (2) July 10, 1958, F-2 zone applied;**
- (3) December 9, 1975, F-2 minimum lot size increased, Ord. 115 & 116;**
- (4) October 6, 1977, MUA-20 zone applied, Ord. 148 & 149;**
- (5) October 13, 1983, zone change from EFU to MUA-20 for some properties, Ord. 395;**
- (6) May 16, 2002, Lot of Record section amended, Ord. 982, reenacted by Ord. 997.**

Staff: Criterion (A) states important dates pertinent to zoning changes in Multnomah County. The dates are for informational purposes and not approval criteria. *This criterion is not applicable.*

(B) A Lot of Record which has less than the minimum lot size for new parcels or lots, less than the front lot line minimums required, or which does not meet the access requirement of MCC 39.4345, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

Staff: The subject 4.98-acre property is less than the minimum 20-acre lot size for new parcels or lots. It has a 633.76-ft front lot line which far exceeds the the minimum required. It meets the access requirement as the flagpole portion of the lot abuts SE 252nd Avenue. It is currently occupied with a single-family dwelling use but is subject to an open code compliance issue. The applicant is seeking a Type 2 permit to authorize the proposed accessory uses and close out the code compliance matter. *This criterion is met.*

(C) Except as otherwise provided by MCC 39.4330, 39.4335, and 39.5300 through 39.5350, no sale or conveyance of any portion of a lot other than for a public purpose shall leave a structure on the remainder of the lot with less than minimum lot or yard requirements or result in a lot with less than the area or width requirements of this district.

Staff: The applicant is not proposing the sale or conveyance of any portion of a lot; therefore, Criterion (C) does not affect the determination on this case and is not applicable. *This criterion is not applicable.*

(D) The following shall not be deemed to be 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) An area of land created by court decree.**

Staff: As discussed above, the parcel is a Lot of Record. Additionally, as described by the Department of Assessment, Records, and Taxation, the entirety of the parcel is contained within tax lot 4201. Tax lot 4201 is not an area of land described solely for assessment and taxation purposes. Tax lot 4201 is also not an area of land created by the foreclosure of a security interest or an area of land created by court decree. The lot known as tax lot 4201 was created under land use case T1-2019-12522 granting a Legalization of a Lot that was Unlawfully Divided and through the recording of a partition plat, Partition Plat No. 2020-46 on June 25, 2020 (Exhibit B.3). *These criteria are met.*

6.0 Multiple Use Agriculture – 20 (MUA-20) Criteria:

6.1 § 39.4310 ALLOWED USES.

(F) Accessory Structures subject to the following:

(1) The Accessory Structure is customarily accessory or incidental to any use permitted or approved in this base zone and is a structure identified in the following list:

- (a) Garages or carports;**
- (b) Pump houses;**
- (c) Garden sheds;**
- (d) Workshops;**
- (e) Storage sheds, including shipping containers used for storage only;**
- (f) Greenhouses;**
- (g) Woodsheds;**
- (h) Shelter for pets, horses or livestock and associated buildings such as: manure storage, feed storage, tack storage, and indoor exercise area;**
- (i) Swimming pools, pool houses, hot tubs, saunas, and associated changing rooms;**
- (j) Sport courts;**
- (k) Gazebos, pergolas, and detached decks;**
- (l) Fences, gates, or gate support structures; and**
- (m) Mechanical equipment such as air conditioning units, heat pumps and electrical boxes; and**
- (n) Similar structures.**

Staff: The applicant is requesting zoning approval for an unpermitted existing outbuilding. The existing building will be moved to meet the adjusted Yard requirements and then used as workshop (Exhibit A.2 and A.14). As the accessory building was not previously reviewed by the County, the accessory building must meet current day zoning codes. The applicant's narrative states "We propose to construct an accessory structure on our property..." (Exhibit A.2). The building plans show, the building contains three large garage doors and contains no internal partitions (Exhibit A.14). As provided in the above list, the accessory building could be

categorized as a garage, workshop, or storage shed that is accessory to the single-family dwelling on the subject property.

(2) The Accessory Structure shall not be designed or used, whether temporarily or permanently, as a primary dwelling, accessory dwelling unit, apartment, guesthouse, housing rental unit, sleeping quarters or any other residential use.

Staff: The applicant included architectural drawings of the accessory building. The floor plan shows a building that is composed of one open room (Exhibit A.14). As proposed, the accessory building is not designed temporarily or permanently, as a primary dwelling, accessory dwelling unit, apartment, guesthouse, housing rental unit, sleeping quarters or any other residential use. The property owner will be required to record covenant regarding use of the structure as any type of dwelling or sleeping area as required by MCC 39.8860. *As conditioned, this criterion is met.*

(3) The Accessory Structure may contain one sink.

Staff: The applicant included architectural drawings of the accessory building. The floor plan does not shows a sink in the accessory building (Exhibit A.14). As no sink is proposed, this criterion is not applicable at this time. *This criterion is not applicable.*

(4) The Accessory Structure shall not contain:

- (a) More than one story;**
- (b) Cooking Facilities;**
- (c) A toilet;**
- (d) Bathing facilities such as a shower or bathing tub;**
- (e) A mattress, bed, Murphy bed, cot, or any other similar item designed to aid in sleep as a primary purpose, unless such item is disassembled for storage; or**
- (f) A closet built into a wall.**

Staff: The applicant included architectural drawings of the accessory building. The floor plan shows that the structure is one story and does not contain cooking facilities, a toilet, bathing facilities, or a closet built into a wall (Exhibit A.14). As the structure will be used for storage of vehicles and other items that are accessory to the single-family, a condition will be required that if a mattress, bed, Murphy bed, cot, or any other similar item designed to aid in sleep is stored in the building that it be disassembled for storage. *As conditioned, this criterion is met.*

(5) Compliance with MCC 39.8860 is required.

Staff: Compliance with MCC 39.8860 is required. MCC 39.8860 states:

§ 39.8860- CONDITION OF APPROVAL --ACCESSORY STRUCTURES. Prior to issuance of any development permit involving an Accessory Building, the property owner shall record a covenant with County Records that states that the owner understands and agrees that the structure cannot be occupied as a dwelling or for any other form of permanent or temporary residential use.

As the applicant is proposing an accessory structure that is a building, the property owner will need to record the covenant. A condition of approval has been included requiring the covenant's recordation. *As conditioned, this criterion is met.*

(6) The combined footprints of all buildings accessory to an accessory dwelling unit (ADU) shall not exceed combined footprints of 400 square feet and the combined footprints of all Accessory Buildings on a Lot of Record, including buildings accessory to an ADU, shall not exceed 2,500 square feet.

Staff: The combined footprints of all Accessory Buildings on a Lot of record shall not exceed 2,500 square feet. The site plan indicates only one accessory building is proposed. No other accessory buildings exist on the property (Exhibit A.14). The accessory building will be 30 feet by 60 feet (1,800 square feet), which is less than the 2,500 square foot threshold. *This criterion is met.*

(7) An Accessory Structure exceeding any of the Allowed Use provisions above, except for the combined footprints allowed for all buildings accessory to an ADU, shall be considered through the Review Use provisions.

Staff: The proposal for the accessory structure does not exceed any of the Allowed Use provisions; therefore, the accessory structure does not need to meet the requirements within the Review Use. *This criterion is met.*

(8) Buildings in conjunction with farm uses as defined in ORS 215.203 are not subject to these provisions. Such buildings shall be used for their allowed farm purposes only and, unless so authorized, shall not be used, whether temporarily or permanently, as a primary dwelling, accessory dwelling unit, apartment, guesthouse, housing rental unit, sleeping quarters or any other residential use.

Staff: The proposal for the accessory building that is similar to a garage/workshop/storage shed. The accessory building is not a building used in conjunction with a farm use as defined in ORS 215.203. Therefore, it is required to meet the accessory structure provisions. As discussed above, the accessory building meets the accessory structure provisions as an Allowed Use. *This criterion is not applicable.*

6.2 § 39.4325 DIMENSIONAL REQUIREMENTS AND DEVELOPMENT STANDARDS.

All development proposed in this base zone shall comply with the applicable provisions of this section.

* * *

(C) Minimum Yard Dimensions – Feet

Front	Side	Street Side	Rear
30	10	30	30

Maximum Structure Height – 35 feet
Minimum Front Lot Line Length – 50 feet.

(1) Notwithstanding the Minimum Yard Dimensions, but subject to all other applicable Code provisions, a fence or retaining wall may be located in a Yard, provided that a fence or retaining wall over six feet in height shall be setback from all Lot Lines a distance at least equal to the height of such fence or retaining wall.

(2) An Accessory Structure may encroach up to 40 percent into any required Yard subject to the following:

(a) The Yard being modified is not contiguous to a road.

(b) The Accessory Structure does not exceed five feet in height or exceed a footprint of ten square feet, and

(c) The applicant demonstrates the proposal complies with the fire code as administered by the applicable fire service agency.

(3) A Variance is required for any Accessory Structure that encroaches more than 40 percent into any required Yard.

(D) The minimum yard requirement shall be increased where the yard 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 yard requirements in consultation with the Road Official.

Staff: The yard dimensions are required to ensure that there is sufficient open space between buildings and property lines to provide space, light, air circulation, and safety from fire hazards. Additionally, as required under criterion (D), minimum yard dimensions are required to be increased where the yard abuts a street having insufficient right-of-way width to serve the area. The right-of-way adjacent to the subject property is SE 252nd Ave; a rural local road is required to be 50 feet. As indicated in DART assessment maps, the right-of-way adjacent to the property is 60 feet wide, which is sufficient to serve the area. (Exhibit B.2). Therefore, the minimum yard dimensions do not need to be increased.

The applicant has provided a site plan showing the location of the accessory building. The subject property is flag lot, therefore the lines bounding the private driveway portion of a flag lot are not considered as a lot line; therefore, the front, rear, and side property lines are as described below.

Table 1: Distance of structures from property lines

	Yard Requirement	Distance of building to Property Line	Encroachment
Accessory Building			
Front (property line parallel and closest to SE 252nd Ave. that is not part of the flagpole)	30'	18' eaves 20' front building wall	12'
Side (north property line)	10'	151' ±	0'
Rear (property line opposite of front property line)	30'	266' ±	0'
Side (south property line)	10'	447' ±	0'

(Exhibit A.14)

Based on the measurements, the accessory building does not meet the minimum front yard requirements. As the accessory building is not a fence or retaining wall and exceeds five feet in height and a footprint larger than ten square feet, the applicant is requesting an adjustment as discussed in Section 8.0.

The applicant has also included an elevation plan showing the height of the accessory building. The building plans shows that the building is one story in height. As measured from the highest adjoining ground surface within a 5-foot horizontal distance of the exterior wall of the building to the average height of the highest gable is approximately 16.62 feet. The height of the building is less than the 35 feet maximum.

The applicant must meet the Adjustment approval criteria as discussed in Section 8 and meets the maximum structure height requirement.

(E) Structures such as barns, silos, windmills, antennae, chimneys or similar structures may exceed the height requirement if located at least 30 feet from any property line.

* * *

Staff: The applicant is not proposing structures such as barns, silos, windmills, antennae, chimneys, or similar structures; therefore, this criterion is not applicable. *This criterion is not applicable.*

(G) On-site sewage disposal, storm water/drainage control, water systems unless these services are provided by public or community source, required parking, and yard areas shall be provided on the lot.

Staff: The applicant has provided correspondence with City of Portland Bureau of Development Service On-Site Sanitation and Septic Review Certification, in addition to a Storm Water Certificate. The e-mail correspondence and Septic Review Certification was reviewed and approved by Lindsey Reschke, Senior Multnomah County Septic Sanitarian on May 26, 2021 (Exhibit A.7). The Septic Review Certification shows the septic system and drainfield on the parcel. The Storm Water Drainage Control Certificate was reviewed and signed by Janet Turner, Registered Professional Engineer (Exhibit A.10). The Certificate recommends construction of an on-site stormwater drainage system using gutter and downspouts to allow for natural filtration or the use of drywells. These improvements are also shown on the site plan (Exhibit A.14).

A well report was obtained from the Oregon Department of Water Resources. The well report shows that a well is located on the property. The well was drilled in 1978 and provides 30 gallons/minute of water (Exhibit B.7). *This criterion is met.*

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

Staff: As discussed in subsection (F), the sewage and stormwater disposal system are located on the subject property; therefore, this criterion is not applicable. *This criterion is not applicable.*

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

Staff: The applicant has provided a Storm Water Drainage Control Certificate. The Storm Water Drainage Control Certificate was reviewed and signed by Janet Turner, Registered Professional Engineer (Exhibit A.10). The Certificate recommends construction of an on-site stormwater drainage system using gutter and downspouts to allow for natural filtration or the use of drywells to ensure that the rate of runoff from the property for a 10-year/24-hour storm event is no greater than that before development. *This criterion is met.*

(H) New, replacement, or expansion of existing dwellings shall minimize impacts to existing farm uses on adjacent land (contiguous or across the street) by:

- (1) Recording a covenant that implements the provisions of the Oregon Right to Farm Law in ORS 30.936 where the farm use is on land in the EFU zone; or**
- (2) Where the farm use does not occur on land in the EFU zone, the owner shall record a covenant that states he recognizes and accepts that farm activities including tilling, spraying, harvesting, and farm management activities during irregular times, occur on adjacent property and in the general area.**

Staff: The applicant is not proposing a new, replacement, or expansion of an existing dwelling; therefore, this criterion is not applicable. *This criterion is not applicable.*

(I) Required parking, and yard areas shall be provided on the same Lot of Record as the development being served.

Staff: As required in MCC 39.6590, Minimum Required Off-street Parking Spaces, a single-family dwelling is required to have two spaces for each dwelling unit. As there is only one dwelling unit on the Lot of Record, two spaces are required. As was previously reviewed in BP-2020-13942, the single-family dwelling has a garage that can fit two vehicles. *This criterion is met.*

(J) All exterior lighting shall comply with MCC 39.6850.

Staff: The applicant is proposing an accessory structure that is supporting the residential use on the property. As required above the applicant will need to comply with MCC 39.6850, which states:

§ 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.

The architectural plans for the accessory building do not show exterior lighting on the structure. As such, to ensure that the applicant meets the standards above, a condition will be required that a lighting plan be submitted prior to authorization of building permits. Additionally, technical specifications of the exterior lighting that demonstrates that the exterior lighting on the accessory building be from a light source that is fully shielded with opaque materials and directed downwards. Additionally, the lighting must be contained within the boundaries of the Lot of Record on which it is located. *As conditioned, this criterion is met.*

7.0 Significant Environmental Concern Criteria:

7.1 § 39.5510 USES; SEC PERMIT REQUIRED.

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

Staff: As discussed in Section 6.1, the applicant is proposing an accessory building associated with the residential use that is allowed under MCC 39.4310. The proposal is an allowed use in the underlying zoning district, if they meet certain requirements of Multnomah County Code. The application is subject to the SEC permit requirements for the accessory building, as the building was not previously reviewed by the County. They have met the approval criteria as described in this decision. A few criteria will require additional action by the applicant using Conditions of Approval to demonstrate compliance with all of the applicable approval criteria.

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

Staff: As discussed below, any excavation or any removal of materials of archaeological, historical, prehistorical, or anthropological nature shall be conducted under the conditions of this SEC permit. *This criterion is met.*

7.2 § 39.5560 GENERAL REQUIREMENTS FOR APPROVAL IN THE WEST OF SANDY RIVER PLANNING AREA DESIGNATED AS SEC-WR OR SEC-H.

The requirements in this section shall be satisfied for development in the SEC-wr and SEC-h areas located in the West of Sandy River Planning Area in addition to the provisions of MCC 39.5800 or 39.5860 as applicable.

(A) Areas of erosion or potential erosion shall be protected from loss by appropriate means. Appropriate means shall be based on current Best Management Practices and may include restriction on timing of soil disturbing activities.

Staff: To ensure that areas of erosion or potential erosion shall be protected from loss by appropriate means a condition will be required that any ground disturbance utilize the current Best Management Practices to manage erosion concerns. *As conditioned, this criterion is met.*

(B) Outdoor lighting shall be of a fixture type and shall be placed in a location so that it does not shine directly into undeveloped water resource or habitat areas. Where illumination of a water resource or habitat area is unavoidable, it shall be minimized through use of a hooded fixture type and location. The location and illumination area of lighting needed for security of utility facilities shall not be limited by this provision.

Staff: The architectural plans for the accessory building do not show exterior lighting on the structure. As such, to ensure that the applicant meets the standards above, a condition will be required that a lighting plan be submitted prior to authorization of building permits. Additionally, technical specifications of the exterior lighting that demonstrates that the exterior lighting on the accessory building be from a light source that is fully shielded with opaque materials and directed downwards. Additionally, the lighting must be placed in a location so that it does not shine directly into undeveloped water resource or habitat areas. *As conditioned, this criterion is met.*

(C) The nuisance plants in MCC 39.5580 Table 1, in addition to the nuisance plants defined in MCC 39.2000, shall not be used as landscape plantings within the SEC-wr and SEC-h Overlay Zone.

Staff: To ensure that that this criterion is met, a condition will be required that the nuisance plants in MCC 39.5580 Table 1, in addition to the nuisance plants defined in MCC 39.2000, shall not be used as landscape plantings within the SEC-wr and SEC-h Overlay Zone. *As conditioned, this criterion is met.*

7.3 § 39.5580- NUISANCE PLANT LIST.

**Table 1
Nuisance Plant List:**

Common Name	Scientific Name
Lesser celandine	<i>Chelidonium majus</i>
Canada Thistle	<i>Cirsium arvense</i>
Common Thistle	<i>Cirsium vulgare</i>
Western Clematis	<i>Clematis ligusticifolia</i>
Traveler’ s Joy	<i>Clematis vitalba</i>
Poison hemlock	<i>Conium maculatum</i>
Field Morning-glory	<i>Convolvulus arvensis</i>
Night-blooming Morning-glory	<i>Convolvulus nyctagineus</i>
Lady’s nightcap	<i>Convolvulus sepium</i>
Pampas grass	<i>Cortaderia selloana</i>
Hawthorn, except native species	<i>Crataegus sp. except C. douglasii</i>
Scotch broom	<i>Cytisus scoparius</i>
Queen Anne’s Lace	<i>Daucus carota</i>
South American Waterweed	<i>Elodea densa</i>

Common Horsetail	<i>Equisetum arvense</i>
Giant Horsetail	<i>Equisetum telmateia</i>
Cranesbill	<i>Erodium cicutarium</i>
Roberts Geranium, Herb Robert	<i>Geranium robertianum</i>
English Ivy	<i>Hedera helix</i>
St. John's Wort	<i>Hypericum perforatum</i>
English Holly	<i>Ilex aquafolium</i>
Golden Chain Tree	<i>Laburnum watereri</i>
Duckweed, Water Lentil	<i>Lemna minor</i>
Fall Dandelion	<i>Leontodon autumnalis</i>
Purple Loosestrife	<i>Lythrum salicaria</i>
Eurasian Watermilfoil	<i>Myriophyllum spicatum</i>
Reed Canary grass	<i>Phalaris arundinacea</i>
Annual Bluegrass	<i>Poa annua</i>
Swamp Smartweed	<i>Polygonum coccineum</i>
Climbing Bindweed, Wild buckwheat	<i>Polygonum convolvulus</i>
Giant Knotweed	<i>Polygonum sachalinense</i>
English, Portuguese Laurel	<i>Prunus laurocerasus</i>
Poison Oak	<i>Rhus diversiloba</i>
Himalayan Blackberry	<i>Rubus discolor</i>
Evergreen Blackberry	<i>Rubus laciniatus</i>
Tansy Ragwort	<i>Senecio jacobaea</i>
Blue Bindweed	<i>Solanum dulcamara</i>
Garden Nightshade	<i>Solanum nigrum</i>
Hairy Nightshade	<i>Solanum sarrachoides</i>
Common Dandelion	<i>Taraxacum officinale</i>
Common Bladderwort	<i>Utricularia vulgaris</i>
Stinging Nettle	<i>Urtica dioica</i>
Periwinkle (large leaf)	<i>Vinca major</i>
Periwinkle (small leaf)	<i>Vinca minor</i>
Spiny Cocklebur	<i>Xanthium spinosum</i>
Bamboo sp.	<i>various genera</i>

Staff: As required by 39.5560(C) and MCC 39.5860, a condition will be required that nuisance plants in MCC 39.5580 Table 1 above shall not be planted or used as landscape plantings on the subject property in addition to being kept removed from developed areas. *As conditioned, this criterion is met.*

7.4 § 39.5800- CRITERIA FOR APPROVAL OF SEC-WR PERMIT -WATER RESOURCE

(A) Except for the exempt uses listed in MCC 39.5515 and the existing uses pursuant to MCC 39.5550, no development shall be allowed within a Water Resource Area unless the provisions of subsections (B) or (C) or (D) below are satisfied. An application shall not be approved unless it contains the site analysis information required in MCC 39.5520(A) and (C), and meets the general requirements in MCC 39.5560.

Staff: The applicant is proposing to relocate an existing accessory building that was not previously reviewed by the County. The building's western wall will shift approximately 4 feet in order to qualify the structure for a yard adjustment as discussed in Section 8.0. Accessory buildings are not listed as exempt in MCC 39.5515. As such, the application is required to meet the provisions of subsections (B), (C), or (D) below. The applicant has elected to demonstrate compliance with Subsection (B) for Development on Low Impact Sites. The application has included site analysis information in a Wildlife Habitat Improvement Plan ("Report") that was prepared by Fran Cafferata Coe on May 19 (Exhibit A.11). The Report contains the site analysis information as required in MCC 39.5520(A). Subsection (C) is not currently in Chapter 39. As discussed in Section 7.2 the applicant can meet, through conditions of approval, the general requirements in MCC 39.5560. *This criterion is met.*

(B) Development on Low Impact Sites - Development on parcels in locations that would have low impacts on Water Resource Areas may be exempt from the Alternatives Analysis in subsection (C) below. Development on sites that meet the following criterion may be allowed pursuant to the other applicable requirements of this Overlay including the Development Standards of subsection (E) and the provisions for Mitigation in subsection (F):

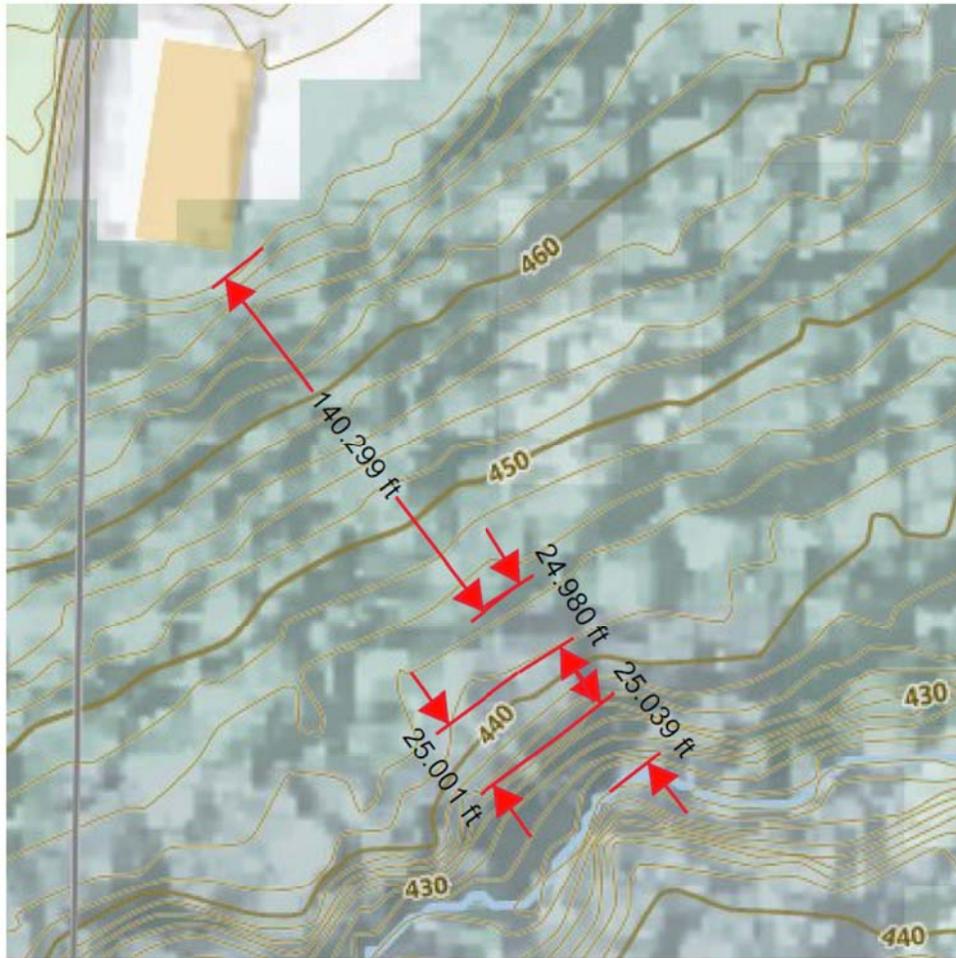
(1) The development site is at least one hundred (100) feet from top of bank or top of ravine, which ever results in a greater distance from the Protected Water Feature.

Top of ravine is the break in the > 25% slope. Slope should be measured in 25-foot increments away from the water feature until the slope is less than 25% (top of ravine), up to a maximum distance of 200' from the water feature. Where multiple resources are present (e.g., stream with wetlands along banks), the starting point for measurement should be whichever offers greatest resource protection.

* * *

Staff: The application has included site analysis information in a Wildlife Habitat Improvement Plan ("Report") that shows that the development site is at least 100 feet from the top of bank or top of ravine (Exhibit A.11). The Report states, "McNutt Creek flows east through the subject property and is located 210 feet from the [accessory building]...The channel is generally 6 to 8 feet wide." In comparison, Staff used the measurement method above to ensure that the accessory building qualifies as Development on Low Impact Sites. The initial measurement of 25 feet from the McNutt creek has a slope of 40%, the second measurement is 32%, and the third measurement is 12%. The ravine is approximately 75 feet, with the remaining distance of 140 feet between the ravine and the accessory building.

Figure 2 – Measurements from Metro Map Contours and using Adobe Acrobat



As the proposal qualifies under the Development of Low Impact Sites criteria, the accessory building will still be required to meet applicable Development Standards of subsection (E) and the provisions for Mitigation in subsection (F), which are discussed below. *This criterion is met.*

(E) Development Standards- Development within the Water Resource Area shall comply with the following standards:

- (1) Development of trails, rest points, viewpoints, and other facilities for the enjoyment of the resource must be done in such a manner so as to minimize impacts on the natural resource while allowing for the enjoyment of the natural resource.**

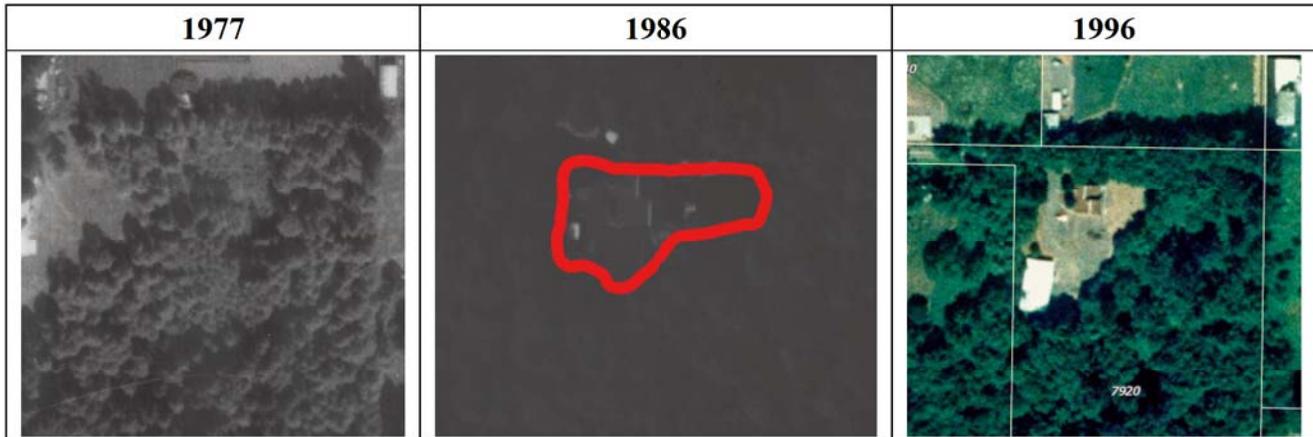
Staff: The applicant’s site plan and Report indicate that no trails, rest points, viewpoints, and other facilities for the enjoyment of the resource will be located in the Water Resources Area. Therefore, this criterion is not applicable. *This criterion is not applicable.*

- (2) Development in areas of dense standing trees shall be designed to minimize the numbers of trees to be cut. No more than 50 percent of mature standing trees (of 6-inch DBH greater) shall be removed without a one-for-one replacement with comparable species. The site plan for the proposed activity shall identify all**

mature standing trees by type, size, and location, which are proposed for removal, and the location and type of replacement trees.

Staff: Prior to submittal of this application, the development occurred without review from the County. In comparing aerial photos between 1986 and 1996, trees were cleared for the construction of the accessory building.

Figure 3 – Aerial Photo Comparison



The existing building will be shifted four feet to the east. As showed in Figure 3, an area of dense standing trees was removed to clear the area where the single-family dwelling is located. In the area where the accessory building is located, it appears that some trees were potentially removed; however, it is not known how many trees were removed. To offset the unknown number of trees that were removed, the Report recommends the planting of red-osier dogwood, salal, Oregon grape, Indian plum, red flowering currant, snowberry, oceanspray, and mock orange in the area adjacent to the accessory building (Exhibit A.11). No additional trees will be removed for the building’s relocation. The replacement to offset the removal of trees is part of the larger mitigation as required by MCC 39.5800(F). As such, a condition will be required that the applicant fulfil the mitigation requirements as discussed in the Report. *As conditioned, this criterion is met.*

(3) Areas of standing trees, shrubs, and natural vegetation will remain connected or contiguous, particularly along natural drainage courses, so as to provide a transition between the proposed development and the natural resource, to provide food, water, and cover for wildlife, and to protect the visual amenity values of the natural resource.

Staff: The Report indicated that large portions of the property contain a riparian forest associated with McNutt Creek (a tributary of Johnson Creek). As stated in the Report, “The riparian forest consists of mature trees with a well developed native understory. The forest also has snags and downed wood, which are important habitat components for wildlife. The forest also provides shade and woody inputs for McNutt Creek within the property boundary. The riparian forest within the property has been meticulously cared for by the property owners for over 40 years. Their efforts have resulted in native forest providing high quality wildlife habitat that also acts a movement corridor to the nearby Johnson Creek and Springwater Corridor” (Exhibit A.11). This finding is supported by aerial photo review showing that the area of

standing trees, shrubs, and natural vegetation are connected and contiguous along natural drainage course of McNutt Creek and provide a transition between the development that has occurred and the waterbody. *This criterion is met.*

(4) The Water Resource Area shall be restored to "good condition" and maintained in accordance with the mitigation plan pursuant to subsection (F) below and the specifications in Table 2 of this section.

Staff: As discussed previously, the Report indicated that large portions of the property contain a riparian forest associated with McNutt Creek (a tributary of Johnson Creek). As stated in the Report, "The riparian forest consists of mature trees with a well-developed native understory. Management of the riparian area] ha[s] resulted in native forest providing high quality wildlife habitat that also acts a movement corridor to the nearby Johnson Creek and Springwater Corridor" (Exhibit A.11). However, the report also outlined that blackberry and English holly can be found in the Water Resource Area (Exhibit A.11, page 6). As such, the Report recommends the following actions to ensure that the Water Resources Area is restored to "good condition." The measures include:

- Remove nuisance plant species and replant with native species (red-osier dogwood, salal, Oregon grape, Indian plum, red flowering currant, snowberry, oceanspray, and mock orange)
- Create habitat piles for wildlife
- Replace naturally dying alder with western red cedar

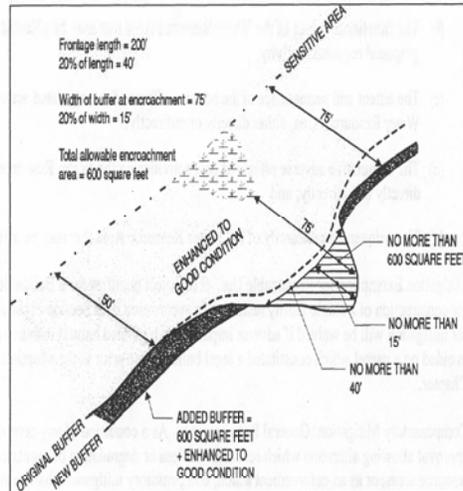
To ensure that the above measures are undertaken a condition of approval will be required, which will result in the Water Resource Areas that are "degraded condition" to be restored to "good condition." *As conditioned, this criterion is met.*

(5) To the extent practicable, existing vegetation shall be protected and left in place. Work areas shall be carefully located and marked to reduce potential damage to the Water Resource Area. Trees in the Water Resource Area shall not be used as anchors for stabilizing construction equipment.

Staff: The building will be shifted four feet to the east. No additional vegetation is proposed to be removed to relocate the building. Using aerial photo comparisons, it appears that the existing vegetation in 1986 was largely protected and left in place to the extent practicable to establish the accessory building as very little encroachment into the Water Resource Area occurred. Lastly, to establish and construct the relocated accessory building, the applicant is not proposing to utilize any trees as anchors for stabilizing construction equipment. *This criterion is met.*

(6) Where existing vegetation has been removed, or the original land contours disturbed, the site shall be revegetated, and the vegetation shall be established as soon as practicable. Nuisance plants, as identified in MCC 39.5580 Table 1, may be removed at any time. Interim erosion control measures such as mulching shall be used to avoid erosion on bare areas. Nuisance plants shall be replaced with non-nuisance plants by the next growing season.

Figure 3.



Staff: As discussed previously, the report outlined measures that the property owner should undertake to mitigate against the establishment of the accessory building. As vegetation was removed, the applicant and property owner will remove nuisance plant species and then revegetate the area. To ensure that those measures are undertaken, a condition of approval will be required that the site is revegetated in accordance with the Report and the vegetation shall be established as soon as practicable. *As conditioned, this criterion is met.*

(7) Prior to construction, the Water Resource Area shall be flagged, fenced or otherwise marked and shall remain undisturbed except as otherwise allowed by this Overlay. Such markings shall be maintained until construction is complete.

Staff: To ensure that his criterion is met, a condition will be required that prior to construction, the Water Resource Area shall be flagged, fenced, or otherwise marked and shall remain undisturbed except as to allow for the establishment on the accessory building in its final location. Those markings shall be maintained until construction is complete. *As conditioned, this criterion is met.*

(8) Stormwater quantity control and quality control facilities:

- (a) Stormwater management shall be conducted in a manner that does not increase the flow of stormwater to the stream above pre-development levels.**
- (b) The stormwater quantity control and quality control facility may only encroach a maximum of 25 feet into the outside boundary of the Water Resource Area of a primary water feature; and**
- (c) The area of encroachment must be replaced by adding an area equal in size and with similar functions and values to the Water Resource Area on the subject property.**

Staff: The applicant has provided a Storm Water Drainage Control Certificate. The Storm Water Drainage Control Certificate was reviewed and signed by Janet Turner, Registered Professional Engineer (Exhibit A.10). The report that accompanied the Certificate highlighted that the distance between the development area is more than 210 feet from the stream, which is a sufficient distance to ensure that stormwater management will not increase the flow of stormwater to the stream above pre-development levels. *This criterion is met.*

(F) Mitigation - Mitigation shall be required to offset the impacts of development within the SEC-wr. This subsection section establishes how mitigation can occur.

(1) Mitigation Sequence. Mitigation includes avoiding, minimizing or compensating for adverse impacts to regulated natural resource areas.

(a) When a proposed development could cause adverse impacts to a natural resource area, the preferred sequence of mitigation as defined in 1 through 5 below shall be followed unless the applicant demonstrates that an overriding public benefit would warrant an exception to this preferred sequence.

1. Avoiding the impact altogether by not taking a certain action or parts of actions on that portion of the site which contains the regulated natural resource area;

2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation;

3. Compensating for the impact by repairing, rehabilitating, or restoring the affected environment;

4. Compensating for the impact by replacing, enhancing or providing substitute resources or environments on-site.

5. Compensating for the impact by replacing, enhancing or providing substitute resources or environments off-site.

(b) When evaluating potential impacts to the natural resource, the County may consider whether there is an overriding public benefit, given:

1. The extent of the public need for the proposed development;

2. The functional values of the Water Resource Area that may be affected by the proposed development;

3. The extent and permanence of the adverse effects of the development on the Water Resource Area, either directly or indirectly;

4. The cumulative adverse effects of past activities on the Water Resource Area, either directly or indirectly; and

5. The uniqueness or scarcity of the Water Resource Area that may be affected.

Staff: As discussed in the Report, the applicant has followed the mitigation sequence as required. The applicant is unable to avoid the impact due to the size and location of the accessory building. Therefore, the applicant is seeking to Mitigate in accordance with (F)(1)(a)2. through 4. A majority of the accessory building is located outside of the SEC-wr, as the applicant is seeking to minimize the impact to the water resource area. Lastly, as discussed in the Report, the applicant will be required to remove nuisance plant species and replant with native species (red-osier dogwood, salal, Oregon grape, Indian plum, red flowering currant, snowberry, oceanspray, and mock orange). Those actions will compensate for the impact by repairing, rehabilitating, and restoring the affected environment and environments on-site. However, a condition will be required to ensure that these mitigation measures are undertaken. *As conditioned, these criteria are met.*

(2) Compensatory Mitigation: General Requirements. As a condition of any permit or other approval allowing development which results in the loss or degradation of regulated natural resource areas, or as an enforcement action, compensatory

mitigation shall be required to offset impacts resulting from the actions of the applicant or violator.

(a) Any person who alters or proposes to alter regulated natural resource areas shall restore or create natural resource areas equivalent to or larger than those altered in order to compensate for resource losses.

(b) The following ratios apply to the creation or restoration of natural resource areas. The first number specifies the amount of natural resource area to be created and the second specifies the amount of natural resource area to be altered or lost.

Creation (off-site) 2:1

Restoration (off-site) 1.5:1

Creation (on-site) 1.5:1

(Restoration (on-site) 1:1

(c) Only marginal or degraded water resource areas as described in Table 2 of this section may be the subject of a restoration project proposed as part of a Mitigation Plan.

(d) Highest priority sites for mitigation are marginal or degraded corridors that are closest to a natural drainage, and areas which will increase contiguous areas of standing trees, shrubs, and natural vegetation along drainages.

Staff: The applicant is proposing development and restoring natural resources areas as part of this application. As such, the applicant is restoring (on-site) areas which have been degraded. A site analysis was completed by Fran Cafferata Coe (Exhibit A.12). A site analysis and site visit was made on May 19, 2021. As discussed previously, the Report indicated that large portions of the property contain a riparian forest associated with McNutt Creek (a tributary of Johnson Creek) that are high quality habitat that met the Good Corridor requirements. Two areas were found to contain nuisance plant species.

The area that will be altered or lost from the natural resource to allow for the development is approximately 713 square feet. As outlined above, the restoration (on-site) will need to be at a 1:1 ratio. Two sites were identified where the applicant will be required to replant with native species. The English holly area is located near the center of the subject property and the blackberry area is located adjacent to the accessory building.

Table 2 – Recommended Plantings

Scientific Name	Common Name	Size	Quantity
Trees and Shrubs (for gaps and English holly removal area)			
<i>Acer circinatum</i>	vine maple	2-gallon	1
<i>Acer macrophyllum</i>	big-leaf maple	2-gallon	1
<i>Pseudotsuga menziesii</i>	Douglas-fir	2-gallon	1
<i>Thuja plicata</i>	Western redcedar	2-gallon	1
Total			4
Shrubs and Herbaceous plants (for gaps and blackberry removal area)			
<i>Cornus stolonifera</i>	Red-osier dogwood	1-gallon	1
<i>Gaultheria shallon</i>	Salal	1-gallon	1
<i>Mahonia aquafolium</i>	Oregon grape	1-gallon	1

Scientific Name	Common Name	Size	Quantity
Trees and Shrubs (for gaps and English holly removal area)			
<i>Oemleria cerasiformis</i>	Indian plum	1-gallon	1
<i>Ribes sanguineum</i>	Red flowering currant	1-gallon	1
<i>Symphoricarpos albus</i>	Snowberry	1-gallon	1
<i>Holodiscus discolor</i>	Oceanspray	1-gallon	1
<i>Philadelphus lewisii</i>	Mock orange	1-gallon	1
Total			8

Exhibit A.11

The report also recommends the creation of 1 to 2 habitat piles using downed wood. This mitigation plan would meet the requirements of the SEC-wr overlay, but additional mitigation is needed for the SEC-h overlay as discussed in Section 7.5 below. The additional mitigation for the SEC-h overlay would require a minimum of 7 trees and 35 shrubs as required to comply with MCC 39.5860(C)(5)2. Therefore, a condition will be required that the planting list is updated to reflect an additional 3 trees and 27 shrubs be planted in the SEC-wr area. *As conditioned, this criterion is met.*

(e) The off-site mitigation shall be as close to the development as is practicable above the confluence of the next downstream tributary, or if this is not practicable, within the watershed where the development will take place or as otherwise specified by the County.

Staff: The applicant is not proposing to conduct off-site mitigation; therefore, this criterion is not applicable. *This criterion is not applicable.*

(f) Compensation shall be completed prior to initiation of development where possible.

Staff: As discussed in the Report by Fran Cafferata Coe, the compensation will be completed based on a schedule. The removal of nuisance plants should be done immediately, with the planting recommended to occur subsequently afterwards. However, the planting is recommended for between Septembers through March to promote root establishment. Further, as the compensation is required to be completed prior to initiation of development; a condition of approval will be required that the plantings and mitigation measures are in place before the applicant is able to submit their plans for building permit authorization. *As conditioned, this criterion is met.*

(g) In order to ensure that on-site mitigation areas are established and maintained, the property owner shall record the mitigation plan approval in the deed records of Multnomah County. In order to ensure that off-site mitigation areas will be protected in perpetuity, the owner shall cause a deed restriction to be placed on the property where the mitigation is required. The deed restriction shall be irrevocable unless a statement of release is signed by an authorized representative of Multnomah County.

Staff: To ensure that is criterion is met, a condition of approval will be required that the property owner shall record the mitigation plan approval in the deed records of Multnomah

County, in order to ensure that on-site mitigation areas are established and maintained. No off-site areas are proposed. *As conditioned, this criterion is met.*

(3) Mitigation Plan Standards - Natural resource mitigation plans shall contain the following information:

- (a) A description of adverse impacts that could be caused as a result of development.**
- (b) An explanation of how adverse impacts to resource areas will be avoided, minimized, and/or mitigated.**
- (c) A list of all responsible parties including, but not limited to, the owner, applicant, contractor or other persons responsible for work on the development site.**
- (d) A map drawn to scale, showing where the specific mitigation activities will occur.**
- (e) An implementation schedule, including timeline for construction, mitigation, mitigation maintenance, monitoring, reporting and a contingency plan. All in-stream work in fish-bearing streams must be done in accordance with the Oregon Department of Fish and Wildlife in-stream timing schedule.**

**Table 2
Riparian/Vegetated Corridor Standards**

Existing Riparian/Vegetated Corridor Condition	Requirements of Riparian/Vegetated Corridor Protection, Enhancement, and/or Mitigation
<p>Good Corridor</p> <p>Combination of native trees, shrubs, and groundcover covering greater than 80% of the area</p> <p>and</p> <p>Greater than 50% tree canopy exists (aerial measure)</p>	<p>Provide certification, pursuant to the procedures provided by the Planning Director, by a professional ecologist/biologist that the riparian/ vegetated corridor meets condition criteria.</p> <p>Remove any invasive non-native or nuisance species and debris and noxious materials within the corridor by hand.</p> <p>Provide the County with a native plant revegetation plan appropriate to the site conditions developed by an ecologist/biologist or landscape architect to restore condition and mitigate any habitat or water quality impacts related to development. See Planning Director procedures.</p> <p>Revegetate impacted area per approved plan to re-establish “good” corridor conditions</p>
<p>Marginal Corridor</p> <p>Combination of native trees, shrubs, and groundcovers covering 50%-80% of the area</p>	<p>Provide certification, pursuant to the procedures provided by the Planning Director, by a professional ecologist/biologist that the riparian/vegetated corridor meets condition criteria.</p>

<p>and/or</p> <p>26-50% tree canopy exists (aerial measure)</p> <p>(Restoration up to “good” corridor required)</p>	<p>Remove any invasive non-native or nuisance species and debris and noxious materials within the corridor by hand or mechanically with small equipment, as appropriate to minimize damage to existing native vegetation.</p> <p>Provide County with a native plant revegetation plan appropriate to the site conditions developed by an ecologist/biologist or landscape architect to restore to a good corridor condition. See Planning Director procedures.</p> <p>Vegetate corridor to establish “good” corridor conditions</p>
<p>Degraded Corridor</p> <p>Combination of native trees, shrubs, and groundcovers covering is less than 50% of the area</p> <p>and/or</p> <p>Less than 25% tree canopy exists (aerial measure)</p> <p>and/or</p> <p>Greater than 10% of the area is covered by invasive, non-native species</p> <p>(Restoration up to “good” corridor required)</p>	<p>Provide certification, pursuant to the procedures provided by the Planning Director, by a professional ecologist/biologist that the riparian/vegetated corridor meets condition criteria.</p> <p>Remove any invasive non-native or nuisance species and debris and noxious materials within the corridor by hand or mechanically as appropriate.</p> <p>Provide County with a native plant revegetation plan appropriate to the site conditions developed by an ecologist/biologist or landscape architect to restore to a good corridor condition. See Planning Director procedures.</p> <p>Vegetate corridor to establish “good” corridor conditions</p>

Staff: The applicant has included a natural resource mitigation plan. The Wildlife Habitat Improvement Plan (“Report”) was prepared by Fran Cafferata Coe (Exhibit A.11). As required above, the Report contains the required information. The adverse impacts that could be caused because of development are discussed in the Existing Conditions and Habitat Assessment portion of the Report. An explanation of how adverse impacts to resource areas will be avoided, minimized, and/or mitigated are contained in the Wildlife Habitat Mitigation/Improvement portion of the Report. The implementation schedule is also discussed in this portion of the Report. *This criterion is met.*

7.5 § 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; For the purposes of this section, a forested area is defined as an area that has at least 75 percent crown closure, or 80 square feet of basal area per acre, of trees 11 inches DBH and larger, or an area which is being reforested pursuant to Forest Practice Rules of the Department of Forestry. A non-forested "cleared" area is defined as an area which does not meet the description of a forested area and which is not being reforested pursuant to a forest management plan.**
- (2) Location of existing and proposed structures;**
- (3) Location and width of existing and proposed public roads, private access roads, driveways, and service corridors on the subject parcel and within 200 feet of the subject parcel's boundaries on all adjacent parcels;**
- (4) Existing and proposed type and location of all fencing on the subject property and on adjacent properties and on properties entirely or partially within 200 feet of the subject property.**

Staff: The applicant has submitted a site plan that shows all properties within 200 feet of the proposed development, the location of all existing forest areas, existing and proposed structures, location, and width of existing and proposed roads/driveways (Exhibit A.2). *These criteria are met.*

(B) Development standards:

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

Staff: Adopted in 1994, Ordinance 801 created the Significant Environmental Concern for Wildlife Habitat (SEC-h) overlay. This SEC-h was extended to this area under Ordinance 1001 in 2002. At the time of adoption, areas of wildlife habitat, which include forested areas, were protected as a Statewide Planning Goal 5 resource. As defined above, a forested area is:

“an area that has at least 75 percent crown closure, or 80 square feet of basal area per acre, of trees 11 inches DBH and larger, or an area which is being reforested pursuant to Forest Practice Rules of the Department of Forestry.

Staff reviewed aerial photos between 1986 and 1996, to determine if trees were potentially cleared for the construction of the accessory building. The placement of the accessory building was on the edge of an area that contains trees between these time periods but had mostly already been cleared before the accessory building was constructed. A majority of the accessory structure is located in a non-forested “cleared” area that is adjacent and southwest of the single-family dwelling. *This criterion is met.*

- (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: The development does not occur within 200 feet of a public road. As measured on the Site Plan, the outer extent of the accessory building is approximately 337 feet from the public road (Exhibit A.14). *This criterion is not met.*

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

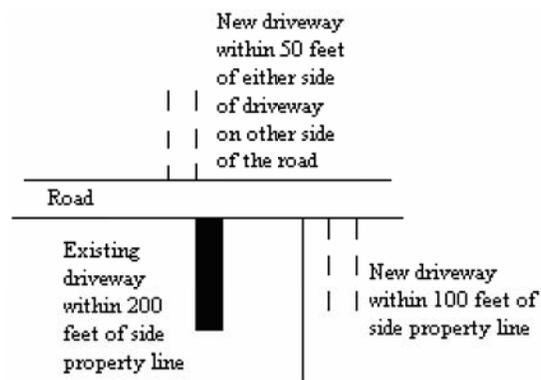
Staff: The access road serving the development exceeds 500 feet in length. As measured on the Site Plan, the access road to the public road is approximately 534 feet in length (Exhibit A.14). *This criterion is not met.*

(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.

(c) Diagram showing the standards in (a) and (b) above.



For illustrative purposes only.

Staff: The access road serving the development is located within 100 feet of a side property line as the subject property is adjacent to a property on the same side of the road. As measured on the Site Plan, the access road for the subject property is located 84 feet from the adjacent property owner's access road (Exhibit A.14). *This criterion is met.*

(d) The standards in this subsection (4) may be modified upon a determination by the County Road Official that the new access road/driveway approach would result in an unsafe traffic situation using the standards in the Multnomah County "Design and Construction Manual," adopted June 20, 2000, (or all updated versions of the manual). Standards to be used by the Road Official from the County manual include Table 2.3.2, Table 2.4.1, and additional referenced sight distance and minimum access spacing standards in the publication A Policy on Geometric Design of Highways and Streets by the American Association of

**State Highway and Transportation Officials (AASHTO) and the Traffic
Engineering Handbook by the Institute of Transportation Engineers (ITE).**

* * *

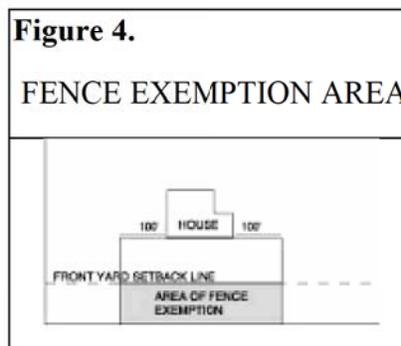
Staff: The applicant is not requesting a modification as the access road meets the standard of subsection (4); therefore, this criterion is not applicable. *This criterion is not applicable.*

(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: As proposed, the development will be within 300 feet of a side property line as the adjacent property to the north has structures and development areas within 200 feet of that common side property. As measured on the Site Plan, a structure on the adjacent property to the north is approximately 61 feet from the subject property (Exhibit A.14). Along that common property line, the proposed development area is within 151 feet of that property line. *This criterion is met.*

(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.**
- (b) Wood and wire fences are permitted. The bottom strand of a wire fence shall be barbless. Fences may be electrified, except as prohibited by County Code.**
- (c) Cyclone, woven wire, and chain link fences are prohibited.**
- (d) Fences with a ratio of solids to voids greater than 2:1 are prohibited.**
- (e) Fencing standards do not apply in an area on the property bounded by a line along the public road serving the development, two lines each drawn perpendicular to the principal structure from a point 100 feet from the end of the structure on a line perpendicular to and meeting with the public road serving the development, and the front yard setback line parallel to the public road serving the development. (See Figure 4 below.)**



(f) Fencing standards do not apply where needed for security of utility facilities.

Staff: As proposed, the development does not propose any fencing. Additionally no fencing is shown on the site plan (Exhibit A.14). *This criterion is not applicable.*

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

Staff: A condition will be required that nuisance plants in MCC 39.5580 Table 1 shall not be planted in addition to being kept removed from developed areas. *As conditioned, this criterion is met.*

(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

* * *

Staff: The applicant cannot meet the development standards of subsection (B). As the property is a flag lot, the unique shape of the property results in a flagpole that is more than 300 feet in length and an access road greater than 500 feet. Therefore, the shape of the property precludes development occurring with 200 feet of a public road and an access road less than 500 feet. As the applicant is unable to meet the requirements of MCC 39.5860(B), the applicant will need to propose development that is the minimum departure from the standards required in order to allow the use, which is discussed below.

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

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

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

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

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

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

* * *

Staff: The applicant cannot meet the development standards of subsection (B) and has elected to provide a wildlife conservation plan that demonstrates satisfaction with the criteria in MCC 39.5860(C)(3). The application included Wildlife Habitat Improvement Plan (“Report”) that was prepared by Fran Cafferata Coe (Exhibit A.11). The Report discusses how the measures within proposal will reduce impacts to forest areas and how the applicant will revegetate and enhance the disturbed stream riparian areas.

Based on available information and a site visit, Fran Cafferata Coe assessed the existing conditions, delineated water resources on the site, and provided mitigation strategies to offset the development impacts. The stream resource is McNutt Creek that traverse the southern portion of the property. The wildlife habitat is the upland habitat associated with the creek. The stream resource and wildlife area contains forested areas. Non-forested areas are located outside of the SEC-h and SEC-wr overlay area in cleared areas that contain a single-family dwelling and private driveway. The single-family dwelling has been on the subject property since 1978 and no fencing was reported on the subject property.

The accessory building was built between 1986 and 1996 based on aerial photo comparison without review from the County. When the building was constructed, it appeared to be at the edge of the forested area with only minor encroachment into the tree canopy cover. Based on the site plan and digital elevation models from Google, the accessory building is located next to a sloped area to the north. The accessory building is located on a flat bench at the toe of the slope (Exhibit B.9). Therefore, moving the accessory building entirely outside of the SEC-h overlay would require extensive excavation and ground disturbance. The development within the SEC-h area is approximately 251 square feet, which is less than the one-acre maximum allowed.

As the existing conditions have been established in the Report, Fran Cafferata Coe recommended various mitigation strategies to reduce the impacts to forested areas and offset the permanent impacts of the accessory building. To mitigate the impact to wildlife habitat, the applicant proposes the equivalent of 400 square feet of mitigation to the south of the accessory building and to the southeast of the single-family dwelling. The measures include:

- Remove nuisance plant species and replant with native species (red-osier dogwood, salal, Oregon grape, Indian plum, red flowering currant, snowberry, oceanspray, and mock orange)
- Create habitat piles for wildlife
- Replace naturally dying alder with western redcedar

The planting of native trees and plants will enhance wildlife habitat functions and passage through the property. As discussed in the Report, the following is required to be planted to increase the forest canopy for wildlife uses.

Table 3 – Recommended Plantings

Scientific Name	Common Name	Size	Quantity
Trees and Shrubs (for gaps and English holly removal area)			
<i>Acer circinatum</i>	Vine maple	2-gallon	1
<i>Acer macrophyllum</i>	Big-leaf maple	2-gallon	1
<i>Pseudotsuga menziesii</i>	Douglas-fir	2-gallon	1
<i>Thuja plicata</i>	Western redcedar	2-gallon	1
Total			4
Shrubs and Herbaceous plants (for gaps and blackberry removal area)			
<i>Cornus stolonifera</i>	Red-osier dogwood	1-gallon	1
<i>Gaultheria shallon</i>	Salal	1-gallon	1
<i>Mahonia aquafolium</i>	Oregon grape	1-gallon	1
<i>Oemleria cerasiformis</i>	Indian plum	1-gallon	1
<i>Ribes sanguineum</i>	Red flowering currant	1-gallon	1
<i>Symphoricarpos albus</i>	Snowberry	1-gallon	1
<i>Holodiscus discolor</i>	Oceanspray	1-gallon	1
<i>Philadelphus lewisii</i>	Mock orange	1-gallon	1
Total			8

Exhibit A.11

The report also recommends the creation of 1 to 2 habitat piles using downed wood.

These mitigation measures however are insufficient as the above recommendation is also being used for as mitigation of the SEC-wr. Based on the calculation provided in MCC 39.5860(C)(5)2., the mitigation recommended should be a minimum of 2 trees and 12 shrubs will be required to be planted in the SEC-h areas. Additionally using best practices outlined in MCC 39.5860(C)(5)2.(j) through (l) and (n) through (o) shall be used regarding plant size, spacing, diversity, schedule, and monitoring. The schedule and monitoring requirements are also supported by the Report. Through the implementation of these measures, the wildlife habitat area will be enhanced. A condition of approval will be required however to ensure that the measures are undertaken. *As conditioned, these criteria are met.*

8.0 Adjustment Criteria:

8.1 § 39.8205 SCOPE.

(A) Dimensional standards that may be modified under an Adjustment review (modified no more than 40 percent) are yards, setbacks, forest practices setbacks, buffers, minimum front lot line length, 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 are prohibited. Additionally, reductions to the fire safety zones in the Commercial Forest Use base zones are not allowed under the Adjustment process; and**
- (2) Reduction of yards and setback requirements within the Geologic Hazards Overlay (GH) shall only be reviewed as a Variance; and**

- (3) Reduction of yards/setback/buffer/re-source protection setback requirements within the Large Fills, Mineral Extraction, and Radio and Television Transmission Towers Code Sections and any increase to the maximum building height shall only be reviewed as Variances; and**
- (4) Minor modification of yards and setbacks in the off-street parking and design review standards are allowed only through the “exception” provisions in each respective Code section.**

* * *

Staff: The applicant is requesting a reduction of the minimum yards requirement within MCC 39.4325(C). As proposed, the accessory building encroaches into the front yard. The required yard dimension is 30 feet, whereas the applicant is requesting that the accessory building be located 18 feet from the front property line (Exhibit A.14). The 12-foot encroachment would result in a 40 percent reduction of the minimum yard requirements. No other Adjustment type is requested. *These criteria are met.*

8.2 § 39.8210 ADJUSTMENT APPROVAL CRITERIA.

The Approval Authority may permit and authorize a modification of no more than 40 percent of the dimensional standards given in MCC 39.8205 upon finding that all the following standards in (A) through (F) are met:

(A) Granting the adjustment will equally or better meet the purpose of the regulation to be modified; and

Staff: The yard dimensions are required to ensure that there is sufficient open space between buildings and property lines to provide space, light, air circulation, and safety from fire hazards. The property is configured as a flag lot and the proposed building is located near the front property line at 18 ft. to the eave line.

Figure 4 – Aerial Photo from Summer 2020



As seen in the aerial photo, the accessory building is located adjacent to the rear property line of the adjacent property to the west. The accessory building and the single-family dwelling on the adjacent property is approximately 200 feet away (Exhibit A.14). The open space ensures there is adequate space, light, and fire protection between the accessory building and single-family dwelling. Additionally, the row of trees located on the subject property will ensure that the accessory building is screened from the neighbors. Lastly, as discussed in Section 3, a mailed notice of application and invitation to comment on the proposed application was sent to the neighboring property owners (Exhibit C.2). No neighbors responded to the notice with any concerns on potential negative impacts to space, light, air circulation, and/or safety from fire hazards. *This criterion is met.*

(B) Any impacts resulting from the adjustment 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; and

Staff: As was discussed above, the configuration and physical environment of the subject property mitigates any impacts from the adjustment. The aerial photo shows that there is adequate light and privacy to the adjoining properties (Exhibit B.8). Additionally, the trees located on the subject property between the accessory building and the neighboring property will ensure that the encroachment is mitigated and there is privacy between neighbors. As shown in the Google rendering, the accessory building is also located on a bench that is lower than the topography of the adjacent property (Exhibit B.9). This will also ensure that the building does not dominate the landscape and impose on the neighboring property. *This criterion is met.*

(C) If more than one adjustment is being requested, the cumulative effect of the adjustments results in a project which is still consistent with the overall purpose of the base zone; and

Staff: The applicant is only requesting one adjustment; therefore, this criterion is not applicable. *This criterion is not applicable.*

(D) If the properties are zoned farm (EFU) or forest (CFU), the proposal will not force a significant change in, or significantly increase the cost of, accepted forestry or farming practices on the subject property and adjoining lands; and

Staff: The subject property is not located on land that is zoned farm (EFU) or forest (CFU); therefore, this criterion is not applicable. *This criterion is not applicable.*

(E) If in the Rural Residential (RR), Rural Center (RC), Burlington Rural Center (BRC), Orient Residential (OR), Orient Commercial-Industrial, Pleasant Hill Rural Center, or Springdale Rural Center base zone, the proposal will not significantly detract from the livability or appearance of the residential area.

Staff: The subject property is not located on land that is zoned Rural Residential (RR), Rural Center (RC), Burlington Rural Center (BRC), Orient Residential (OR), Orient Commercial-Industrial (OCI), Pleasant Hill Rural Center (PH-RC), or Springdale Rural Center (SRC); therefore, this criterion is not applicable. *This criterion is not applicable.*

(F) The adjustment must be in support of a lawfully established use or in support of the lawful establishment of a use.

Staff: The accessory building will support the residential use occurring in the single-family dwelling that was approved by the County in March 23, 1978. *This criterion is met.*

9.0 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for an Adjustment to the front yard, a Significant Environmental Concern for Water Resources (SEC-wr) permit, and a Significant Environmental Concern for Wildlife Habitat (SEC-h) permit to establish an accessory building in the Multiple Use Agriculture – 20 (MUA-20) zone. This approval is subject to the conditions of approval established in this report.

10.0 Exhibits

- ‘A’ Applicant’s Exhibits
- ‘B’ Staff Exhibits
- ‘C’ Procedural Exhibits

Exhibits with a “*” after the exhibit # have been included as part of the mailed decision. Those exhibits have been reduced to a size of 8.5” x 11” for mailing purposes. All other exhibits are available for review in Case File T2-2021-14763 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	General Application Form	06/16/2021
A.2	4	Narrative	06/16/2021
A.3	6	Significant Environmental Concern Narrative	06/16/2021
A.4	3	Site Plan and Building Elevations (reduced to 8.5” x 11”) A0 – Cover/Site Plan A1 – Shop Plan and Elevations S1 – Notes Plan & Footing Details	06/16/2021
A.5	3	Site Plan and Building Elevations (36” x 24”) A0 – Cover/Site Plan A1 – Shop Plan and Elevations S1 – Notes Plan & Footing Details	06/16/2021
A.6	16	Structural Calculations	06/16/2021
A.7	1	E-mail from Sanitarian and Septic Review Certification	06/16/2021
A.8	3	Fire Service Agency Review	06/16/2021
A.9	24	Transportation Planning Review	06/16/2021
A.10	21	Storm Water Drainage Control Certificate	06/16/2021

A.11	34	Wildlife Habitat Improvement Plan	06/16/2021
A.12	3	Fran Cafferata Coe Resume	06/16/2021
A.13	1	Flood Development Permit E-mail	06/16/2021
A.14*	3	Revised Site Plan and Building Elevations A0 – Cover/Site Plan A1 – Shop Plan and Elevations S1 – Notes Plan & Footing Details	10/13/2021
‘B’	#	Staff Exhibits	Date
B.1	2	Division of Assessment, Recording, and Taxation (DART): Property Information for 1S3E23D -04201 (R649921810)	06/16/2021
B.2	1	Division of Assessment, Recording, and Taxation (DART): Map with 1S3E23D -04201 (R649921810) highlighted	06/16/2021
B.3	1	Partition Plat No. 2020-46	06/16/2021
B.4	10	E-mail correspondence between Bill Gotzinger and Jenny Beal (Applicant) and Voluntary Compliance Agreement	06/16/2021
B.5	13	PA-2019-12686 Notes	06/16/2021
B.6	2	Multnomah County Permit 780601	06/16/2021
B.7	1	Water Supply Well Report - MULT 2352	09/28/2021
B.8	1	Aerial Photo taken in the Summer of 2020	09/28/2021
B.9	1	Google 3-D Rendering of the Contours	10/06/2021
‘C’	#	Administration & Procedures	Date
C.1	1	Complete letter (day 1)	07/06/2021
C.2	6	Opportunity to Comment and mailing list	09/22/2021
C.3	1	Request to extend “toll” the 120 day deadline	10/05/2021
C.4	14	“Short” Administrative Decision and mailing list	10/29/2021
C.5	48	Administrative Decision and mailing list	10/29/2021



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BERGERON BARN PERMIT SET - 6/1/21

SHEET INDEX

OWNER
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ARCHITECT
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D@BRAMSKE@GMAIL.COM

CONTRACTOR
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JOHN.BEAL_OWNER@JBEALS.CONSTRUCTION@GMAIL.COM

STRUCTURAL ENGINEER
TM ENGINEERS LLC
3175 EDGE MOUNT DRIVE
LAKE OSWEGO, OR 97035
651-724-8261
TMAURER_628@HOTMAIL.COM

SCOPE
RETROACTIVE PERMITTING OF EXISTING POLE BARN
BUILDING ON EXISTING PROPERTY.
REVISIONS TO EXISTING STRUCTURE TO MEET ALL
CONDITIONS SPACE IN THE SCOPE OF WORK
ALL MECHANICAL, PLUMBING, AND ELECTRICAL WORK TO
BE BY SEPARATE PERMIT

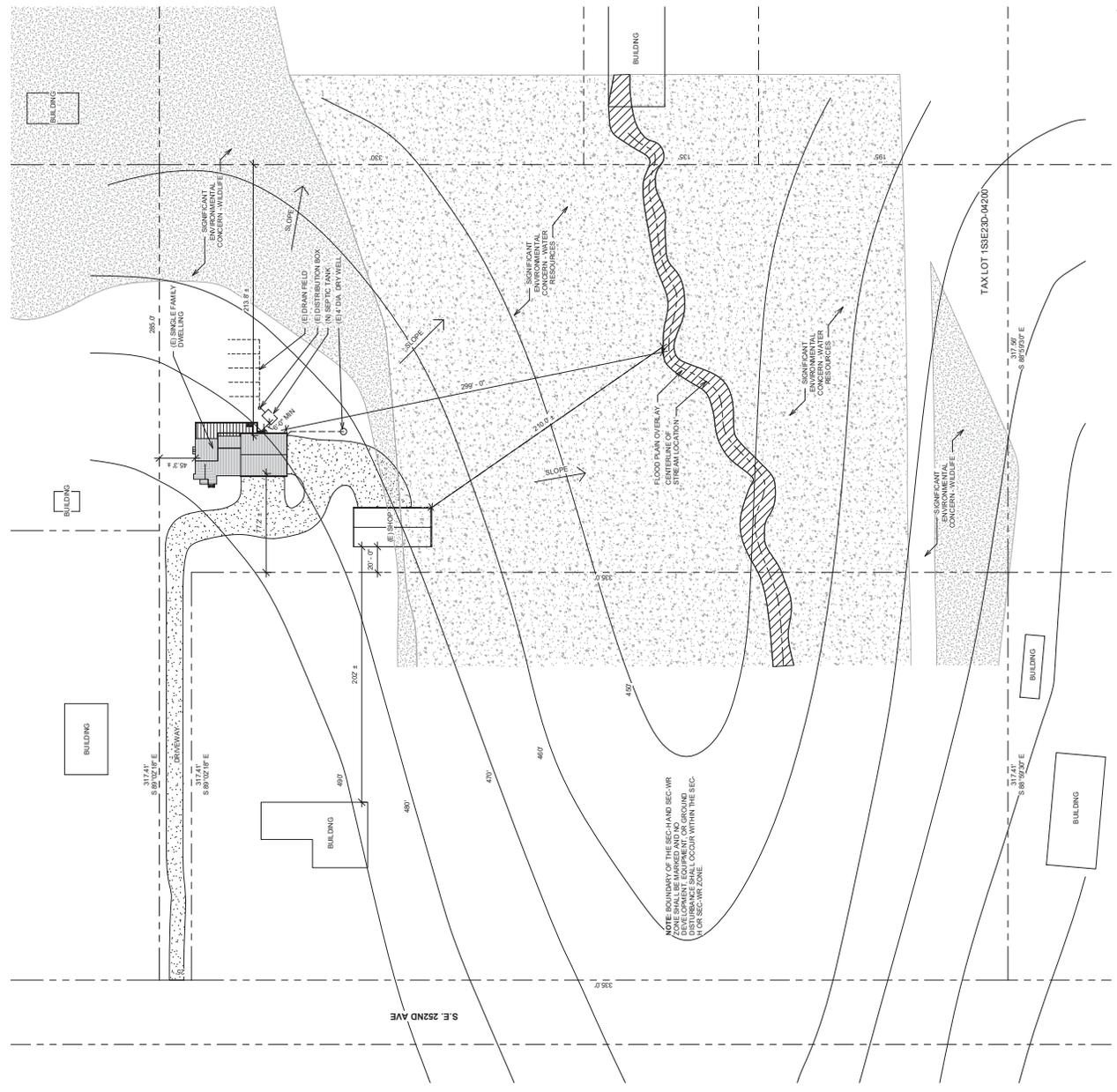
ATTACHMENTS
STRUCTURAL CALCULATIONS

CODE SUMMARY

SITE
ADDRESS: 7820 SE 252ND AVE
GRESHAM, OR 97030
PROPERTY ID: R118987
TAX LOT: 158E23D-04200
ZONING: MUA-20 (MULTIPLE USE AGRICULTURAL, MIN 20 ACRES)
BUILDING SETBACKS: 10 FT SOUTH, 10 FT WEST, 20 FT WEST
SITE AREA: 4.99 ACRES

GENERAL NOTES

- BEFORE CONSTRUCTION TO BEGIN, THE CONTRACTOR IS TO VERIFY THAT ALL REQUIRED APPROVALS & PERMITS HAVE BEEN OBTAINED. THE CONTRACTOR OR FABRICATION OF ANY BUILDING COMPONENT MAY BEGIN ONLY AFTER THE CONTRACTOR CONTRACTOR OR FAILS TO DO SO, THE CONTRACTOR SHALL BE RESPONSIBLE FOR ANY RESULTING MODIFICATION OF WORK REQUIRED BY AN REGULATORY AGENCY.
- IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO VERIFY WITH THE SOCCASSETTS, THEY SHALL BE REPORTED TO THE ARCHITECT & RESOLVED BY THE ARCHITECT PRIOR TO PROCEEDING WITH WORK IN THE AFFECTED AREA.
- IT IS THE RESPONSIBILITY OF THE CONTRACTOR TO VERIFY IN THE FIELD ALL DIMENSIONAL ELEVATIONS, & EXISTING CONDITIONS PRIOR TO PROCEEDING WITH THE WORK. ORDERING OR FABRICATION OF ANY MATERIALS. IF DISCREPANCIES ARE FOUND, THE CONTRACTOR SHALL BE RESPONSIBLE FOR RESOLVING THEM PRIOR TO PROCEEDING WITH WORK IN THE AFFECTED AREA.
- DIMENSIONS ARE TO FACE OF STRUCTURAL OR FRAMING MEMBERS, UNLESS OTHERWISE NOTED.
- WHERE IT IS CLEAR THAT A DRAWING REPRESENTS ONE ITEM OF A NUMBER, OR ONLY A PART OF AN ASSEMBLY, THE OTHER WORK SHALL BE CONSTRUCTED REPEATIVELY.



1 SITE PLAN
1" = 40'-0"

BERGERON RESIDENCE
7920 SE 252ND AVENUE, GRESHAM, OR 97080



PERMIT SET
6/1/21

No.	Date

COVER

A0

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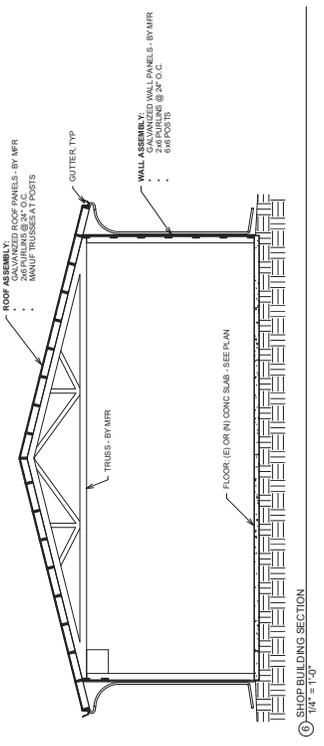
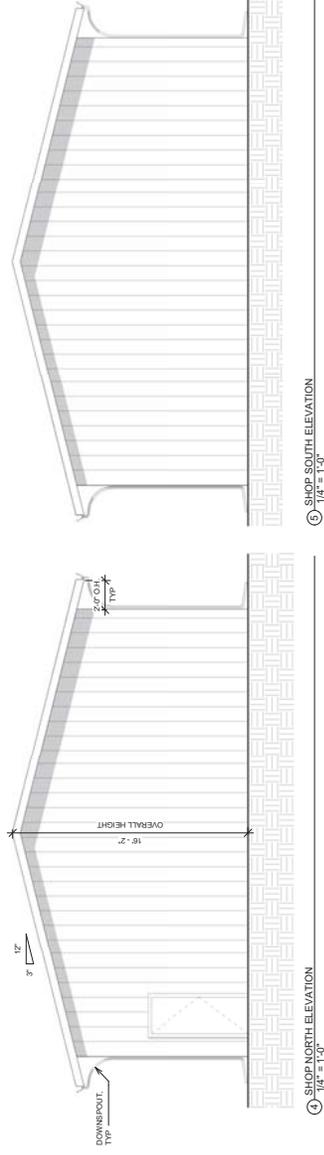
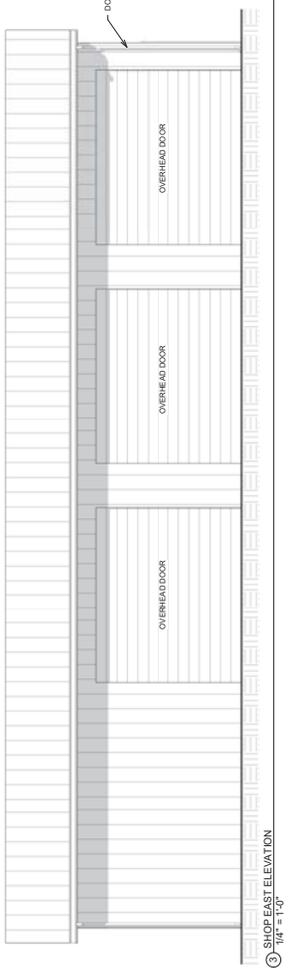
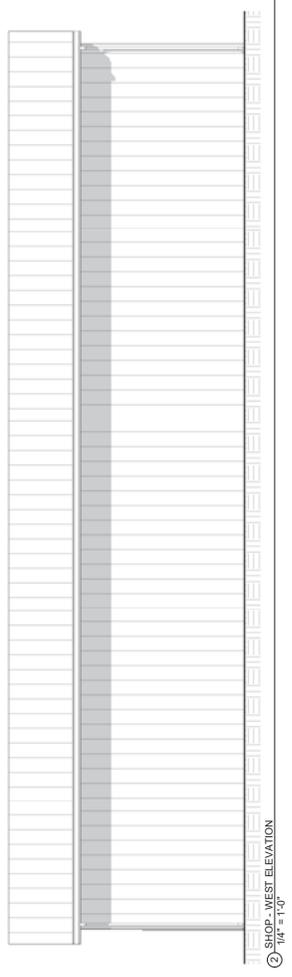
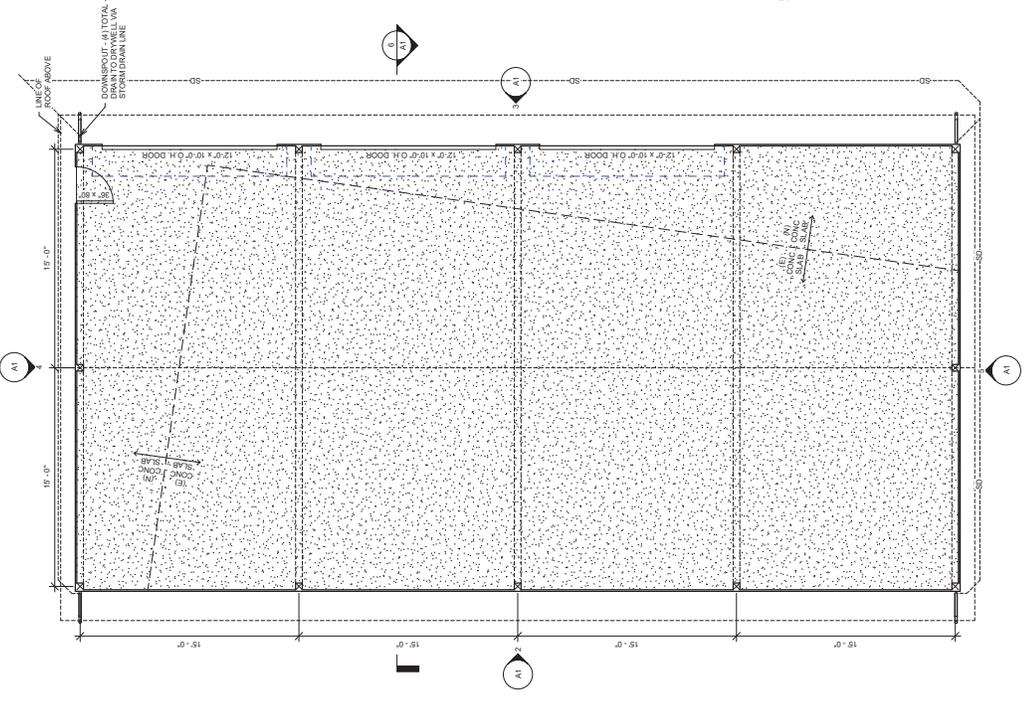
BERGERON RESIDENCE
 7920 SE 252ND AVENUE, GRESHAM, OR 97080

PERMIT SET
 8/1/21

NO.	DATE

SHOP PLANS

A1



1 SHOP FLOOR PLAN
 1/4" = 1'-0"

