

POST-HEARING MEMORANDUM

To: Record in Hearing of T3-2021-14603
From: County Staff
Date: December 17, 2021
RE: Response to New Information Submitted by the Applicant into the Hearing Record

Following the November 19, 2021 Hearing, the Applicant requested the Hearing’s Officer (“HO”) hold the record open to allow for the submission of additional information addressing specific sections of the County’s Staff Report (“Report”). The County reviewed the Applicant’s new information [Exhibits I.1 – I.5] submitted in support of the requested Significant Environmental Concern for Wildlife Habitat (“SEC-h”) and Geologic Hazards (“GH”) permits. There are multiple Multnomah County Code (“MCC” or “Code”) considerations for the HO to account for in their analysis of the new information.

CONSIDERATIONS

- 1. SEC-h permit Criteria: In section 8.10 – 8.15 of the Report, County Staff identified the need for additional information to address portions of the Code relative to a Wildlife Conservation Plan.**

‘Staff’ amends and replaces their comment(s) in the Report for the following sections:

Section 8.10: “The applicant cannot meet all of the development standards of subsection (B) due to the shape of the existing parcel. As a result, the service corridor extends an additional 245 +/- feet to the dwelling site (Exhibit I.4). The parcel configuration, when combined with site topography, limits the areas where development can safely occur. Therefore, the applicant proposes an approximately 44,000 sq. ft. mitigation area containing native trees, shrubs, and ground cover (Exhibit I.1 and I.4 p.9).

The proposed Wildlife Conservation Plan (Exhibit I.4, pp. 4 - 10) is a “hybrid” plan that utilizes elements of subsection (C)(3) and (C)(5), described below, which should improve and provide wildlife

habitat on the subject property. As no fencing is included in the proposal, the wildlife are free to roam through the on-site habitat. Conditions of approval ensure the implementation and maintenance of the proposed Wildlife Conservation Plan.

The proposed Wildlife Conservation Plan can be considered the minimum departure from the standards required in order to allow the [requested] use. *As conditioned, the above criteria are met.*”

Section 8.11: “No new clearing is proposed as part of this application request (Exhibit I.4). In order to mitigate the 50,000 +/- sq. ft. disturbed area due to the installation of the service corridor and development associated with the proposed dwelling, the applicant proposes a mitigation area of approximately 44,000 sq. ft. (Exhibit I.3, pp. 4 - 10). The proposed mitigation area includes 42 native trees, 200 blueberries, 100 additional shrubs, and groundcover [including wildflowers and cloves] (Exhibit I.1 and I.4 p.9).

The proposed mitigation area should improve and provide wildlife habitat on the subject property, which is the required objective of the Wildlife Conservation Plan. Conditions of approval ensure the County reviews and approves the final landscaping plan prior to building plan review, and that the property owner provides proof of the implementation of the plantings prior to issuance of the Certificate of Occupancy. *As conditioned, the above criteria are met.*”

Section 8.12: “The applicant removed the proposed deer fencing and gates from their plans. As per the revised plan sets (Exhibit I.1 and Exhibit I.4) and property owner letter (Exhibit I.5), no fencing is included as part of the proposal. A condition of approval prohibits fencing on the property without approval from County Land Use Planning. *As conditioned, the above criteria are met.*”

Section 8.13: “There are no new cleared areas proposed (Exhibit I.4). The applicant proposes an approximately 44,000 sq. ft. mitigation area with native trees, shrubs, and groundcover (Exhibit I.1 and I.4 p.9). The proposal does not include stream riparian area disturbance or stream riparian area revegetation. *Criteria met.*”

Section 8.14: “The proposal does not involve an addition to an existing structure (Exhibit I.4).

Therefore, the above criterion is not applicable.”

Section 8.15: “The applicant created a “hybrid” proposal that combines elements of subsection (C)(3) and (C)(5), resulting in a mitigation area of approximately 44,000 sq. ft. (Exhibit I.3, pp. 4 -10). Staff addresses specific aspects of subsection (C)(5) below.

(e): The proposed mitigation area is within the boundaries of the subject property, a single lot of record (Exhibit I.4). The entire subject property is within the SEC-h overlay.

(f): A condition of approval requires that all work areas be flagged and/or fenced [with silt fencing] to reduce potential damage to habitat outside of the work area. The work area shall remain marked through all phases of development.

(h): A condition of approval requires that native soils disturbed during development be conserved on the property.

(i): The applicant proposed that plantings meet the sizing requirements noted in this section. A condition of approval requires the plantings meet the sizing requirements noted in this section.

(k) – (l): The applicant proposed that plantings meet the requirements in these sections. A condition of approval requires the plantings meet the requirements in these sections.

(n): A condition of approval requires that the planting date shall occur within one year following the approval of the application.

(o): A condition of approval requires monitoring and reporting of the mitigation site for a minimum of 5 years as outlined in this section.

As conditioned, the above criteria are met.”

Modification(s) to Recommended Condition(s) of Approval (“RCOA”) are as follows:

RCOA 4.k: Add RCOA no. 4.k, stating the following: “Provide a final landscaping plan identifying all native trees, shrubs, groundcover, and other vegetation that will serve as mitigation plantings

associated with the Wildlife Conservation Plan. County Land Use Planning shall review and approve this plan. Upon approval, the approved plan shall serve as the reference plan to demonstrate satisfaction of condition of approval 8.f. [MCC 39.5860(C)]

- i. The proposed 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. Trees that are oak or madrone may be one gallon size. Shrubs shall be 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)(i)]
- ii. The proposed trees shall be native and planted between 8 and 12 feet on-center. No more than 50% of the trees may be of the same genus. The proposed 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. Shrubs shall consist of at least two (2) different species. [MCC 39.5860(C)(5)(k) – (l)]”

RCOA 5.m.: Add RCOA 5.m., stating the following: “All work areas shall be flagged and/or fenced [with silt fencing] to reduce potential damage to habitat outside of the work area. The work area shall remain marked through all phases of development. [MCC 39.5860(C)(5)(f)]”

RCOA 5.n.: Add RCOA 5.n., stating the following: “Native soils disturbed during development shall be conserved on the property. [MCC 39.5860(C)(5)(h)]”

RCOA 8.f.: Replace the existing text with the following: “Demonstrate that the proposed mitigation plantings associated with the SEC-h permit have been planted on the subject property in the designated area shown in the Preliminary Landscaping Plans (Exhibit I.1 and Exhibit I.4 p.9). Plantings shall be completed within one year following approval of the application. [MCC 39.5860]”

RCOA 9.d.: Add RCOA 9.d, stating the following: “The property owner and all future property owners shall ensure the survival of the mitigation plantings for the life of the proposed dwelling. Any plantings that die shall be replaced in-kind, within the following planting season of a given year.

- i. **Monitoring and Reporting:** The property owner(s) shall monitor the mitigation site and provide annual reports to the County for a minimum of 5 years. Plants / Trees that die shall be replaced in kind so that a minimum of 80% of the trees and shrubs planted remain alive on the fifth anniversary of the date the mitigation plantings are completed.
 - a. The County may extend the above monitoring and reporting period if the property owner(s) fails to provide the annual reports and/or keep 80% of the trees and shrubs alive. The County shall provide written release from monitoring and reporting upon determining that the property owner(s) satisfied these requirements. [MCC 39.5860(C)(5)(o)]”

2. GH permit Standards: In sections 9.6 – 9.9, County Staff identified the need for additional information to address portions of the Code relative to the Geologic Hazards Permit Standards.

‘Staff’ amends their comment(s) in the Report for the following sections:

Section 9.6: “The applicant provided a memorandum from GeoPacific Engineering (Exhibit I.2); an addendum revising their narrative (Exhibit I.3); and revised plans (Exhibit I.4). The addendum addresses the relevant standards of MCC 39.5090(H) – (L) on pp. 16 – 17. The HO will need to determine the submitted materials meet the applicable approval criteria.”

Section 9.7: “The applicant provided a memorandum from GeoPacific Engineering (Exhibit I.2); an addendum revising their narrative (Exhibit I.3); and revised plans (Exhibit I.4). The addendum addresses the relevant standards of MCC 39.5090(M) – (R) on pp. 17 – 19. The HO will need to determine the submitted materials meet the applicable approval criteria.”

Section 9.8: “The applicant provided a memorandum from GeoPacific Engineering (Exhibit I.2); an addendum revising their narrative (Exhibit I.3); and revised plans (Exhibit I.4). The addendum addresses the relevant standards of MCC 39.5090(S) – (V) on p. 19. The HO will need to determine the submitted materials meet the applicable approval criteria.”

Section 9.9: “The applicant provided a memorandum from GeoPacific Engineering (Exhibit I.2); an addendum revising their narrative (Exhibit I.3); and revised plans (Exhibit I.4). The addendum addresses the relevant standards of MCC 39.5090(W) – (Y) on p. 20. The HO will need to determine the submitted materials meet the applicable approval criteria.”

If the HO elects to approve the Geologic Hazards permit, a number of Recommended Condition(s) of Approval (“RCOA”) would ensure compliance with the Geologic Hazards Permit Standards. The specific RCOA include RCOA numbers: 4.d, 4.e, 4.i, 5.a – 5.l, 6, 7, 8.b, and 8.c. Modifications to certain RCOA are below.

Modifications to RCOA are as follows:

RCOA 7: “The property owner shall implement the erosion and sediment control measures as shown on the preliminary Grading and Erosion Control Plan (Exhibit I.4 p.5) unless amended by the Hearings Officer. If while observing the development, the Certified Engineering Geologist or Geotechnical Engineer determines additional changes are needed, they shall contact the case planner and discuss the proposed erosion control changes. Once approved by County Land Use Planning, the altered erosion control measures shall be utilized immediately. [MCC 39.5090]”

RCOA 8.b: “Submit to County Land Use Planning a report from the observing Certified Engineering Geologist or Geotechnical Engineer. The report shall confirm that proper measures were implemented to meet the recommendations of the Geotechnical Report(s) (Exhibits A.3 – A.4, A.18, and I.2), as well as any other recommendations of the Certified Engineering Geologist or Geotechnical Engineer. The Certified Engineering Geologist or Geotechnical Engineer shall sign the report with their seal (stamp)

affixed to the report. The Certified Engineering Geologist or Geotechnical Engineer shall certify in writing that the proposed development is in compliance with the approved Geologic Hazards Permit and the required observations were made.”

CONCLUSION

Based on the new information (Exhibits I.1 and Exhibits I.3 – I.5) submitted by the applicant during the open record period, staff now recommends the approval, subject to conditions, of the requested SEC-h permit. The new information contained in Exhibits I.2 – I.4 must be reviewed by the HO to determine satisfaction of relevant Geologic Hazards Permit Standards in MCC 39.5090. Staff has drafted conditions in case the HO finds these materials meet these criteria.