

NOTICE OF DECISION

Case File: T2-2021-15360

Permits: Significant Environmental Concern Reviews for Wildlife Habitat & Streams

Applicants: Bradlee Hersey

Owners: Kevin Spence & Amena Syed

Location: **Address:** 14180 NW Germantown Road, Portland

Map, Tax lot: 1N1W09B-01700

Tax Account #: R649703400

Property ID #: R236843

Base Zone: Rural Residential (RR)

Overlays: Significant Environmental Concern – Wildlife Habitat (SEC-h) and Significant Environmental Concern – Streams (SEC-s)

Proposal Summary: The applicant is proposing to construct a new single-family dwelling, modify the existing driveway, and replace the existing septic system within the Significant Environmental Concern – Wildlife Habitat and Significant Environmental Concern – Streams overlay zones.

Decision: **Approved with Conditions**

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Monday, June 27, 2022 at 4:00 pm.

Opportunity to Review the Record: The complete case file, including the Planning Director Decision containing Findings, Conclusions, Conditions of Approval, and all evidence associated with this application is available for review by contacting Izze Liu, Staff Planner via email at isabella.liu@multco.us. Copies of all documents are available at the rate of \$0.40/page.

Opportunity to Appeal: An appeal requires a \$250.00 fee and must state the specific legal grounds on which it is based. To obtain appeal forms or information on the procedure, contact the Land Use Planning office at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision is not appealable to the Land Use Board of Appeals until all local appeals are exhausted.

Issued by:

By: _____
Izze Liu, Planner

For: Carol Johnson, AICP
Planning Director

Date: Monday, June 13, 2022



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 39.6850 Dark Sky Lighting Standards, MCC 39.2000 Definitions, MCC 39.3005 Lot of Record – Generally, and MCC 39.3090 Lot of Record – RR

Rural Residential: MCC 39.4360 Allowed Use, (A) Single-Family Dwelling, MCC 39.4375 Dimensional Requirements and Development Standards

Significant Environmental Concern: MCC 39.5520 Application for SEC Permit, MCC 39.5850 SEC-h Clear & Objective Standards, MCC 39.5750 Criteria for Approval of SEC-s Permit - Streams

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)]
 - i. For the purposes of 1.a, commencement of construction shall mean actual construction of the foundation or frame of the approved structure.
 - ii. For purposes of Condition 1.a.i, notification of commencement of construction shall be given to staff planner, Izze Liu at LUP-submittals@multco.us a minimum

of seven (7) days prior to date of commencement. Work may commence once notice is completed. The notification shall also include this case #T2-2021-14294. Commencement of construction shall mean actual construction of the foundation or frame of the approved structure.

- b. Within four (4) years of the date of commencement of construction when the structure has not been completed. [MCC 39.1185(B)]
 - i. For the purposes of 1.b. completion of the structure shall mean completion of the exterior surface(s) of the structure and compliance with all conditions of approval in the land use approval.
 - 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 *LUP-submittals@multco.us* and must reference the case #. [MCC 39.1185]

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 Izze Liu at *isabella.liu@multco.us* [MCC 39.1170(A) & (B)]
 - b. The property owner shall record a covenant that states they recognize and accept that farm activities including tilling, spraying, harvesting, and farm management activities during irregular times, occur on adjacent property and in the general area. [MCC 39.4375(G)(2)]
 - c. The applicant must apply for a Minimal Impact Project or Erosion and Sediment Control permit for mechanized ground disturbing work associated with the proposed development.
- 3. On-going conditions:
 - a. All proposed exterior lighting shall comply with MCC 39.6850. [MCC 39.4375(H)]
 - b. Soil disturbing activities within a Stream Conservation Area shall be limited to the period between June 15 and September 15. Revegetation/soil stabilization must be accomplished no later than October 15. Best Management Practices related to erosion control shall be required within a Stream Conservation Area. [MCC 39.5750(E)(6)]
 - c. The applicant must adhere to the mitigation plan provided in the biologist report written by Environmental Science & Assessment, LLC (Exhibit A.4).
 - d. Outside storage of hazardous materials as determined by DEQ is prohibited, unless such storage began before the effective date of the applicable SEC ordinance; or, unless such storage is contained and approved during development review. [MCC 39.5750(F)(3)]

4. The nuisance plants listed in MCC 39.5580 Table 1 shall not be used as landscape plantings on the subject property. Any nuisance plants listed in MCC 39.5580 Table 1 shall be removed within the mitigation area prior to planting.

Note: Once this decision is final, application for building permits may be made with the City of Portland. 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 Right-of-Way Permits at row.permits@multco.us, or schedule an appointment at <https://multco.us/transportation-planning/webform/right-way-appointment-request/>, or call 503-988-3582 for an appointment to review your plans, obtain your access permit, and satisfy any other requirements. Failure to make an appointment with County Right-of-Way will result in delaying your building plan review and obtaining building permits.
3. Contact the City of Portland, Bureau of Development Services, On-site Sanitation via e-mail septic@portlandoregon.gov or by phone at 503-823-6892 for information on how to complete the Septic Evaluation or Permit process for the proposed development. All existing and/or proposed septic system components (including septic tank and drainfield) must be accurately shown on the site plan.
4. Building plans and related condition of approval documents shall be sent digitally to LUP-submittals along with the Request for Building Permit Plan Check form. If paper plans will be used, please contact Izze Liu, Planner, at isabella.liu@multco.us, for an appointment to drop off the building plans and for review of the conditions of approval. Please ensure that any items required under, “Prior to land use sign-off for building plan check...” are ready for land use planning review. Land Use Planning must sign off on the plans before you can go to the Sanitation Division.

The above must be completed before the applicant can obtain building permits from the City of Portland. If paper plans will be used, three (3) sets each of the site plan and building plans are needed for building permit sign off. At the time of building permit review, a fee may be collected and an erosion control inspection fee may be required.

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

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

Findings of Fact

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

1.0 Project Description:

Staff: The applicant requests a Significant Environmental Concern Review for Wildlife Habitat (SEC-h) and Streams (SEC-s) to construct a single-family dwelling with an attached garage, expand the existing driveway, and replace the existing septic system.

2.0 Property Description & History:

Staff: The subject property is located in unincorporated west Multnomah County in the area known as West Hills Rural Plan Area. The property is zoned Rural Residential and is located outside of Metro’s Urban Growth Boundary (UGB). The subject property was lawfully created as Parcel 2 of Partition Plat No. 1990-57 and is currently vacant.

3.0 Public Comment:

Staff: Staff mailed a notice of application and invitation to comment on the proposed application to the required parties per MCC 39.1105 as Exhibited in C.3. Staff received one public comment during the 14-day comment period.

3.1 Carol Chesarek, community member, provided a comment via E-Mail on May 9, 2022 (Exhibit D.1)

Staff: No specific concerns were raised but the comment provides suggestions and alternatives to the applicant’s proposed vegetation in the landscape plan.

4.0 Code Compliance and Applications Criteria:

4.1 MCC 39.1515 Code Compliance and Applications

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

(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.

For purposes of the current application, staff is not aware of any open compliance cases on the subject property, and there is no evidence in the record of any specific instances of noncompliance on the subject property. *This criterion is met.*

5.0 Rural Residential Criteria:

5.1 MCC 39.4360 Allowed Uses

The following uses and their accessory uses are allowed, subject to all applicable supplementary regulations contained in MCC Chapter 39.

(A) Residential use consisting of a single family dwelling on a Lot of Record.

Staff: The applicant is proposing to construct a new single-family dwelling on a lot of record. The applicable SEC-h and SEC-s standards are addressed below. The proposed use is allowed. *This criterion is met.*

5.2 MCC 39.4375 Dimensional Requirements and Development Standards

(C) Minimum Yard Dimensions – Feet

Front	Side	Street Side	Rear
30	10	30	30

Staff: The subject property is irregular in shape. Based on the County's definitions of front, rear and side lots lines in Chapter 39 of the Multnomah County Code, the northern lot line abutting NW Germantown Road is the front, the southern lot line is the rear, and all other lot lines are considered the sides.

Based on the submitted site plan, the proposed dwelling will be located approximately 88 feet from the northern lot line, approximately 44 feet from the eastern lot line, approximately 105 feet from the southern lot line and more than 400 feet from the western lot line (Exhibit A.7). *This criterion is met.*

Maximum Structure Height – 35 feet

Staff: The proposed dwelling has an average height of approximately 30 feet (A.19). *This criterion is met.*

* * *

(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: As required in Table 2 of MCC 29.571, the rural standard for local streets is a 50-foot right-of-way width. According to the road survey (RD1281), the width of NW Germantown Road is 60 feet. The existing right-of-way is sufficient to serve the area. No increase to the Minimum Front Yard standard is required. *This criterion is not applicable.*

(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 proposed dwelling will not exceed the height requirement (Exhibit A.19).

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

Staff: The proposed dwelling will require an on-site sewage disposal system. The applicant provided a Septic Review Certification approved by the sanitarian demonstrating that the proposed development will not impact the existing septic system (Exhibit A.13). The applicant also provided a Stormwater Drainage Control Certificate, stamped by a licensed engineer, which confirms that a stormwater drainage control system will be established on-site (Exhibit A.9). *This criterion is met.*

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

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

Staff: The applicant provided a Stormwater Drainage Control Certificate stamped by Allen Schmidt, a registered professional engineer with Humber Design Group (Exhibit A.9). The proposed development has a total of 5,161 square feet of impervious surfaces. According to the engineer’s memo, the roof gutter system on the dwelling will collect stormwater runoff and convey the runoff by storm pipe to the flow control and storage system. The flow control system is composed of an area drain with an orifice and a 36-inch pipe which will serve as the detention storage. The area drain connects to a perforated storm pipe which will be imbedded in a new riprap where the stormwater will disperse and infiltrate into the native soil. *This criterion is met.*

(G) 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 base zone; or

(2) Where the farm use does not occur on land in the EFU base zone, the owner shall record a covenant that states they recognize and accept that farm activities including tilling, spraying, harvesting, and farm management activities during irregular times, occur on adjacent property and in the general area.

Staff: *As conditioned, this criterion is met.*

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

Staff: *As conditioned, this criterion is met.*

6.0 Significant Environmental Concern – Stream Criteria:

6.1 MCC 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.

(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: The applicant is requesting an SEC permit to establish a new single-family dwelling within the SEC-h overlay. The proposal also includes an expansion and modification of the existing driveway which is partially located within the SEC-s overlay (Exhibit A.2). The existing septic system is also located within the SEC-s overlay. The proposal does not involve the excavation or removal of materials of archaeological, historical, prehistorical, or anthropological nature. *These criteria are met.*

6.2 MCC 39.5750 Criteria for Approval for SEC-s Permit – Streams

(A) For purposes of this Section, the following terms and their derivations shall have the meanings provided below:

* * *

(B) Except for the exempt uses listed in MCC 39.5515, no development shall be allowed within a Stream Conservation Area unless approved by the Approval Authority pursuant to the provisions of MCC 39.5750 (C) through (F).

Staff: Subsection (A) is for information purposes. The applicant is not proposing any uses that are listed in MCC 39.5515, that are considered as exempt from the requirements of the SEC overlays. The proposed development must be reviewed to ensure it complies with the provisions of MCC 39.5760(C) through (F).

(C) In addition to other SEC Permit submittal requirements, any application to develop in a Stream Conservation Area shall also include:

(1) A site plan drawn to scale showing the Stream Conservation Area boundary, the location of all existing and proposed structures, roads, watercourses, drainageways, stormwater facilities, utility installations, and topography of the site at a contour interval equivalent to the best available U.S. Geological Survey 7.5' or 15' topographic information;

(2) A detailed description and map of the Stream Conservation Area including that portion to be affected by the proposed activity. This documentation must also include a map of the entire Stream Conservation Area, an assessment of the Stream Conservation Area's functional characteristics and water sources, and a description of the vegetation types and fish and wildlife habitat;

- (3) A description and map of soil types in the proposed development area and the locations and specifications for all proposed draining, filling, grading, dredging, and vegetation removal, including the amounts and methods;**
- (4) A study of any flood hazard, erosion hazard, and/or other natural hazards in the proposed development area and any proposed protective measures to reduce such hazards as required by subsection (E) (5) below;**
- (5) A detailed Mitigation Plan as described in subsection (D), if required; and**
- (6) A description of how the proposal meets the approval criteria listed in subsection (D) below.**

Staff: The applicant provided an SEC-s report written by Environmental Science & Assessment, LLC. The report contains a site plan, map of the Stream Conservation Area, detailed description of the stream functional characteristics, proposed mitigation measures and a description of how the proposal meets the approval criteria of section (D) below (Exhibit A.4). The applicant also provided a Geotechnical Investigation Report written by Earth Engineers, Inc., which contains soil details and identifies potential natural hazards and the protective measures to reduce those hazards (Exhibit A.6). *These criteria are met.*

(D) For the protected stream resources, the applicant shall demonstrate that the proposal:

(1) Will enhance the fish and wildlife resources, shoreline anchoring, flood storage, water quality and visual amenities characteristic of the stream in its pre-development state, as documented in a Mitigation Plan. A Mitigation Plan and monitoring program may be approved upon submission of the following:

- (a) A site plan and written documentation which contains the applicable information for the Stream Conservation Area as required by subsection (C) above;**
- (b) A description of the applicant's coordination efforts to date with the requirements of other local, State, and Federal agencies;**
- (c) A Mitigation Plan which demonstrates retention and enhancement of the resource values addressed in subsection (D) (1) above;**
- (d) An annual monitoring plan for a period of five years which ensures an 80 percent annual survival rate of any required plantings.**

Staff: As stated in a prior finding, the existing driveway and septic system are located within the SEC-s overlay. The applicant is proposing to remodel the existing septic field and locate a new replacement drainfield near the existing drainfield (Exhibit A.2 and A.13). The portion of the driveway located within the SEC-s overlay will not be widened but the applicant is proposing to pave over the existing footprint of the gravel driveway. The applicant provided a report that includes a narrative, site plan showing the stream conservation area, and the proposed mitigation measures (Exhibit A.4). The report was written by Environmental Science & Assessment, LLC (ES&A). The staff at ES&A conducted a site assessment using the methodology provided in the Army Corps of Engineers *Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region* (U.S. Army Corps of Engineers, 2010). During the site assessment, ES&A staff evaluated the potential wetlands within the study area and collected vegetative cover data at eleven SCA plots to document the existing conditions. A riparian habitat function assessment was conducted using the Wildlife Habitat Assessment (WHA) rating system. The WHA rating system was developed by staff from the Audubon Society, the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service, the Oregon Department of Fish and Wildlife, and the Wetland Conservancy.

The proposed mitigation focuses on restoring degraded or temporarily impacted areas at the outer edges of the SCA that currently lack mature canopy cover. According to the report, the total restoration will include 11,393 square feet of area located at the outer eastern edge of the SCA. The 2,267-square-foot area east of the driveway will include planting at a density of 1,600 stems per acre with a ratio of one tree to five shrubs. Restoration within the 9,126-square-foot area for the septic system will consist of native herbaceous plug plantings and/or a native seed mix. Trees and shrubs were not recommended in this specific area. All upgrades to the septic system within the SEC-s area are proposed to occur between June 15 and September 15 with either recommended revegetation or other stabilization measures in place no later than October 15 of the same year. The total enhancement area will include 18,421 square feet in the areas considered marginal due to the presence of dense Himalayan blackberries. Invasive plants will be removed at an approximate density of 400 stems per acre to increase overall diversity and replace stem density where invasive plants have been removed. The report also states that the enhancement areas will be monitored annually for a period of five years to ensure 80 percent planting survival. *These criteria are met.*

(E) Design Specifications: The following design specifications shall be incorporated, as appropriate, into any developments within a Stream Conservation Area:

(1) A bridge or arched culvert which does not disturb the bed or banks of the stream and are of the minimum width necessary to allow passage of peak winter flows shall be utilized for any crossing of a protected streams.

Staff: The proposed site plan does not include any stream crossings including a bridge or arched culvert. *This criterion is not applicable.*

(2) All storm water generated by a development shall be collected and disposed of on-site into dry wells or by other best management practice methods which emphasize groundwater recharge and reduce peak stream flows.

Staff: The applicant provided a Stormwater Drainage Control Certificate stamped by Allen Schmidt, a registered professional engineer with Humber Design Group (Exhibit A.9). The proposed development has a total of 5,161 square feet of impervious surfaces. According to the engineer's memo, the roof gutter system on the dwelling will collect stormwater runoff and convey the runoff by storm pipe to the flow control and storage system. The flow control system is composed of an area drain with an orifice and a 36-inch pipe which will serve as the detention storage. The area drain connects to a perforated storm pipe which will be imbedded in a new riprap where the stormwater will disperse and infiltrate into the native soil. *This criterion is met.*

(3) Any exterior lighting associated with a proposed development shall be placed, shaded or screened to avoid shining directly into a Stream Conservation Area.

Staff: Conditions of approval require the exterior lighting to comply with the above restrictions and the Dark Sky Lighting Standards. *As conditioned, this criterion is met.*

(4) Any trees over 6" in caliper that are removed as a result of any development shall be replaced by any combination of native species whose combined caliper is equivalent to that of the trees removed.

Staff: The applicant is not proposing to remove any trees as part of the development.

(5) Satisfaction of the erosion control standards of MCC 39.5090.

Staff: A condition of approval requires the applicant obtain an Erosion Sediment Control (ESC) permit prior to building plan review. *As conditioned, this criterion is met.*

(6) Soil disturbing activities within a Stream Conservation Area shall be limited to the period between June 15 and September 15. Revegetation/soil stabilization must be accomplished no later than October 15. Best Management Practices related to erosion control shall be required within a Stream Conservation Area.

Staff: *As conditioned, this criterion is met.*

(7) Demonstration of compliance with all applicable state and federal permit requirements.

Staff: The applicant did not identify any applicable state or federal permit requirements. County staff is not aware of any additional state or federal permit requirements for the project. *This criterion is met.*

(F) For those Stream Conservation Areas located within Metro's jurisdictional boundaries, the following requirements apply in addition to subsections (C) through (E) above:

(1) The planting of any invasive non-native or noxious vegetation as listed in subsection (A)(4) above is prohibited. In addition, the species listed in MCC 39.5580 Table 1 shall not be planted.

Staff: The Mitigation Plan does not recommend the proposed replanting and existing planting of any of the above referenced nuisance, invasive non-native or noxious plants listed (Exhibit A.4.). *This criterion is met.*

(2) The revegetation of disturbed areas shall primarily use native plants. A list of native plants can be found in the latest edition of the Metro Native Plant List.

Staff: The proposed mitigation plantings consist of native plants (Exhibit A.4). A condition of approval requires the implementation of the mitigation plan. *As conditioned, this criterion is met.*

(3) Outside storage of hazardous materials as determined by DEQ is prohibited, unless such storage began before the effective date of the applicable SEC ordinance; or, unless such storage is contained and approved during development review.

Staff: *As conditioned, this criterion is met.*

(G) For Protected Aggregate and Mineral (PAM) resources within a PAM Overlay, the Mitigation Plan must comply only with measures identified in the Goal 5 protection program that has been designated for the site.

Staff: The project is not located within the mapped Protected Aggregate and Mineral overlay. *This criterion is not applicable.*

7.0 Significant Environmental Concern – Wildlife Habitat Criteria:

7.1 MCC 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: The subject property is zoned RR. The applicant is proposing to construct a new single-family dwelling and expand the existing driveway within the SEC-h overlay zone. The proposed development is subject to the SEC permit requirements.

* * *

7.2 MCC 39.5860 Criteria for Approval of SEC-h Permit – Wildlife Habitat

* * *

(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: The proposed dwelling and driveway expansion is located in an existing non-forested cleared area on the subject property (Exhibit A.3 and A.7). *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: According to the County's GIS data and the submitted site plan, the proposed dwelling and driveway expansion will be located within 200 feet of NW Germantown Road. *This criterion is met.*

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

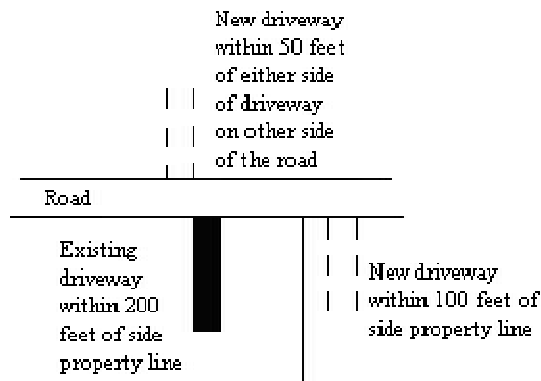
Staff: The total length of the driveway is 355 feet (A.3). *This criterion is met.*

(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.

(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).

- 1. The modification shall be the minimum necessary to allow safe access onto the public road.**
- 2. The County Road Official shall provide written findings supporting the modification.**

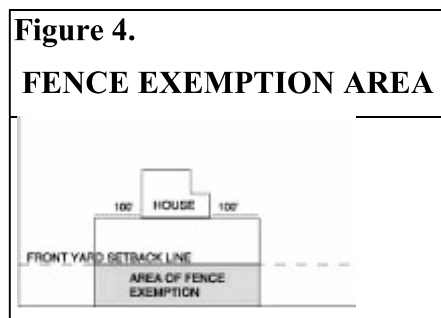
Staff: There are no driveways or access points within 200 feet on the same side of the road. The property to the north across NW Germantown Road has a driveway approach located more than 50 feet from the proposed driveway approach on the subject property. *This criterion is not met.*

- (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: The adjacent property to the west is developed with a structure within 200 feet of the common side property line. The proposed development on the subject property will be located more than 300 feet from the common side property line. *This criterion is not 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: No existing fencing exists within the 30-foot setback from NW Germantown Road. The applicant is not proposing fencing as part of this development. *These criteria are 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: *As conditioned, these criteria are 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

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

Staff: The basic development standards of (B)(2) can be met but doing so would increase the impacts to the Stream Conservation Area within the SEC-s overlay zone. Also, the proposed location for the single-family dwelling and driveway expansion is located within a cleared area pursuant to MCC 39.5860(B)(1). Staff finds that the proposed location for the development will have a less detrimental impact on forested wildlife habitat.

* * *

(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.

Staff: The applicant provided an Arborist Report and Tree Protection Plan prepared by Ruth Williams, an International Society of Arboriculture Board Certified Master Arborist. The arborist performed a visual assessment of the trees within the development area greater than 8 inches diameter at breast height (DBH). The arborist evaluated the current condition, health, and size of each tree and photo documented the site. According to the report, one hundred twenty size trees were documented within the development area. Native tree species include Douglas fir (68 trees), bigleaf maple (25), Oregon ash (15), Western red cedar (7), and others. The arborist noted that there are 24 trees in good condition, 87 trees in fair condition, 7 trees in poor condition, and 8 dead trees. All trees within the forested area will be retained. The arborist is recommending that sixteen trees within the development area are removed. Three of these trees are located within the existing septic field, eight are dead trees, and two trees are invasive species. After construction is complete, the arborist recommends screening and mitigation trees and shrubs should be planted and irrigated for 3 years establishment time from May to October (Exhibit A.5). *This criterion is met.*

(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.

Staff: The proposed development will be located within an existing cleared area (Exhibit A.5 and A.7). *This criterion is not applicable.*

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

Staff: The applicant is not proposing any permanent fencing as part of this proposal. *This criterion is not applicable.*

(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.

Staff: As stated in a previous finding, the proposed development will be located within an existing cleared area so newly cleared areas will not be created. As recommended by the arborist, sixteen trees will be removed and sixteen trees will be planted within the development area (Exhibit A.5).

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

Staff: The proposed development within the SEC-h will not disturb stream riparian areas. *This criterion is not applicable.*

8.0 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Significant Environmental Concern Review a single-family dwelling and driveway expansion in the Rural Residential zone. This approval is subject to the conditions of approval established in this report.

9.0 Exhibits

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

‘C’ Procedural Exhibits

‘D’ Comments Received

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 T2-2021-15360 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	Application Form	12.22.2021
A.2	5	Narrative	12.22.2021
A.3	9	SEC-h Worksheet	12.22.2021
A.4	42	SEC-s Biologist Report	12.22.2021
A.5	19	Arborist Report and Tree Protection Plan	12.22.2021
A.6	42	Geotechnical Investigation Report	12.22.2021
A.7	1	Site Plan	12.22.2021
A.8	2	Grading Plan	12.22.2021
A.9	9	Stormwater Drainage Control Certificate	12.22.2021
A.10	13	Transportation Planning Review	12.22.2021
A.11	6	Road Rules Variance Notice of Decision	12.22.2021

A.12	6	Sight Distance Report	12.22.2021
A.13	4	Septic Review Certification	12.22.2021
A.14	5	Fire Service Agency Review	12.22.2021
A.15	1	Certification of Water Service	12.22.2021
A.16	1	Well Drinking Water Report	12.22.2021
A.17	1	Well Flow Test	12.22.2021
A.18	2	Deed	12.22.2021
A.19	4	Elevation Drawings	12.22.2021
A.20	4	Floor Plan	12.22.2021
‘B’	#	Staff Exhibits	Date
B.1	2	Division of Assessment, Recording, and Taxation (DART): Property Information for 1N1W09B-01700 (R649703400)	12.22.2021
‘C’	#	Administration & Procedures	Date
C.1	1	Complete Letter	01.21.2022
C.2	12	Opportunity to Comment and mailing list	04.25.2022
C.3	16	Administrative Decision and mailing list	06.13.2022
‘D’	#	Comments	Date
D.1	2	Chesarek Comment	05.09.2022