

NOTICE OF DECISION

Case File: T2-2022-15921

Permit: Significant Environmental Concern of Wildlife Habitat (SEC-h) and Erosion Sediment Control

Applicant: Robin Schuckmann **Owners:** Matthew & Robin Schuckmann

Location: **Address:** 18139 NW Skyline Blvd. Portland **Map, Tax lot:** 2N2W14C-00600
 Tax Account #: R972140140 **Property ID #:** R325715

Base Zone: Commercial Forest Use – 2 (CFU-2)

Overlays: Significant Environmental Concern for Wildlife Habitat (SEC-h), streams (SEC-s) and Scenic Views (SEC-v); Geologic Hazard (GH)

Proposal Summary: Applicant proposes to construct a replacement dwelling for the existing dwelling destroyed by a fire in February 2022. A significant environmental concern for wildlife habitat permit and an Erosion & Sediment Control permit are included in the request. The proposed development is located outside of the SEC-s, SEC-v and GH overlays; hence, these permits are not required for the proposed project.

Decision: **Approved with Conditions**

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Thursday, November 03, 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 Marisol Cervantes, Staff Planner at 503-988-9452 or at Marisol.Cervantes@multco.us. Copies of all documents are available at the rate of \$0.40/per 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 (503) 988-3043. This decision is not appealable to the Land Use Board of Appeals until all local appeals are exhausted.

Issued by: _____

By: Marisol Cervantes, Planner

For: Carol Johnson, AICP
Planning Director

Date: Thursday, October 20, 2022

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Applicable Approval Criteria [Multnomah County Code (MCC)]:

MCC 39.1515 Code Compliance and Applications, MCC 39.2000 Definitions, MCC 39.3005 Lot of Record – Generally, MCC 39.3030 Lot of Record – CFU-2, MCC 39.4070(D) Replacement of existing lawfully established dwelling, MCC 39.4105 Building Height Requirements, MCC 39.4110 Forest Practice Setbacks and Fire Safety Zones, MCC 39.4115 Development Standards for Dwelling and Structures, MCC 39.6850 Dark Sky Lighting Standards.

Significant Environmental Concern for Wildlife Habitat: MCC 39.5510 Uses, Permit Required, MCC 39.5520 Application for SEC Permit, and MCC 39.5860 Criteria for Approval of SEC-h permit.

Ground Disturbance: MCC 39.6210 Permits Required, MCC 39.6225 Erosion and Sediment Control Permit, MCC 39.6235 Stormwater Drainage Control.

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.

1. Permit Expiration – This land use permit shall **expire** as follows:
 - a. **Within four (4) years** of the date of the final decision for residential development on land zoned for Commercial Forest Use when construction has not commenced.
 - i. For the purposes of 1.a, commencement of construction shall mean actual construction of the foundation or frame of the approved structure. The property owner shall send notification to Multnomah County Land Use Planning Division a minimum of seven (7) days prior to the date of commencement of construction. The notification shall be sent to land.use.planning@multco.us and reference the case number, T2-2022-15921.
 - b. **Within four (4) years** of the date of commencement of construction when the structure has not been completed.
 - i. For the purposes of Condition 1.b, completion of the structure shall mean completion of the exterior surface(s) of the structure and compliance with all conditions of approval in the land use approval.

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. 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.
3. Prior to land use sign-off for building plan check, the property owner shall:
 - a. 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 Marisol.Cervantes@multco.us. [MCC 39.1170(A) & (B)]
4. Prior to any ground disturbing activities:
 - a. When ground-disturbing activities authorized by this permit are ready to commence email staff planner, Marisol Cervantes at Marisol.Cervantes@multco.us. Work may commence after written notice is completed, the Erosion and Sediment Control notice card is posted and the erosion control measures have been installed. The County's inspector will be visiting the project site to ensure Best Management Practices are occurring. [MCC 39.6210(F)(2) and MCC 39.6225(B)]
 - b. The Erosion and Sediment Control Permit notice card included with this permit shall:
 - i. Be posted at the driveway entrance in a clearly visible location.
 - ii. This notice is to remain posted until such time as the ground disturbing work is completed. In the event the notice is lost, destroyed, or otherwise removed prior to completion of the ground disturbance work, the applicant shall immediately contact the Land Use Planning office at land.use.planning@multco.us to obtain a replacement. [MCC 39.6210(F)(2) and MCC 39.6225(B)]
 - iii. The property owners or their representative shall install erosion control measures consistent with the approved erosion control plan (Exhibit A.10). Flag,

fence, or otherwise mark the project area as described in the plan. [MCC 39.6225(B)(13), (14) & (18)]

5. During construction, the property owners or their representative shall:
 - a. Maintain the erosion control measures consistent with the approved erosion control plan (Exhibit A.10). These measures shall remain in place and in good working order. The measures shall be maintained until construction is complete and all ground disturbance is revegetated. [MCC 39.6225(B)(12) through (15) and MCC 39.6225(B)(18)]
 - b. Maintain all construction and ground disturbance activities within the flagged, fenced or otherwise marked area 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)]
 - i. Trees shall not be used as anchors for stabilizing construction equipment.
 - ii. Native soils disturbed during development shall be conserved on the property.
 - c. Use temporary vegetation and/or mulching to protect exposed critical areas during development. [MCC 39.6225(B)(10)]
 - d. Trap any sediment in runoff water by the use of debris basins, silt traps, or other measures until the disturbed area is stabilized. [MCC 39.6225(B)(14)]
 - e. Remove any sedimentation caused by development activities from all neighboring surfaces and/or drainage systems. If any feature within adjacent right-of-way are disturbed, the property owners shall be responsible for returning such features to their original condition or a condition of equal quality. [MCC 39.6210(E)(1) & (2), MCC 39.6225(B)]
 - f. Maintain stockpiled topsoil covered with plastic, mulch or other sediment reduction measures. Disposal of excess materials shall be within the boundaries of the disturbed areas or the materials shall be taken off site. [MCC 39.6225(B)(18) & (19)]
 - g. Not allow non-erosion pollution associated with construction such as pesticides, fertilizers, petrochemicals, solid wastes, construction chemicals, or wastewaters to leave the site through improper handling, disposal or clean-up activities. [MCC 39.6225(B)(20)]
6. The property owners, their agents, or their representatives shall be limited to the following ground disturbing activities:
 - a. Total area of ground disturbance shall not exceed 8,650 square feet as shown on Exhibit A.10.
 - b. Total Volume of Earth Materials to be Cut: 640+/- Cubic Yards
 - c. Total Volume of Earth Materials to be Filled: 640+/- Cubic Yards
 - d. No Earth Materials may be imported to the site except for those required by the Building Department (Exhibit A.3).
7. Within one year of this decision becoming final, the property owners or their representatives shall implement the Wildlife Conservation Plan by removing the nuisance plant species and planting the native trees and shrubs outlined in the Wildlife Conservation Plan (Exhibit A.17). The Planning Director may extend the timeline for the implementation of the mitigation plan. [MCC 39.5860(C)]

- a. Mitigation Plantings. All trees, shrubs and ground cover shall be native plants selected from the Metro Native Plant List. Shrubs shall consist of at least two (2) different species. No more than 50% of the trees may be of the same genus.
 - i. Trees shall be at least 3-feet tall and 0.5-inch basal diameter; shrubs shall be at least 12 inches tall and at least 1-gallon container.
 - ii. Trees shall be planted between 8 and 12 feet on-center and shrubs shall be planted between 4 and 5 feet on-center. When planting near existing trees, the drip line of the existing tree shall be the starting point for plant spacing measurements.
 - iii. The planting date shall occur within one year following the approval of the application.
 - b. Any request for extension shall be made a minimum of 15 days before the deadline. The property owner must provide documentation as to why they are requesting an extension and what portion of the plantings, they are requesting an extension on.
 - c. Within 5 days of completion of any portion of the mitigation plantings, the property owners shall send an email to land.use.planning@multco.us informing the division that the area has been planted. The email shall reference the case number, T2-2022-15921.
8. Prior to occupancy of the dwelling, the property owners, or their representatives shall:
- a. Install the Stormwater Detention Pond in compliance with the drainage plans contained in Exhibit A.10 and the Stormwater Drainage Control Certificate (Exhibit A.11).
 - b. Seed with native grasses or gravel (as appropriate to the plan) all disturbed areas within 5 days of the date ground disturbing activities are concluded.
 - c. Upon completion of ground disturbing activities, the property owners or their representatives shall send an email to Land.Use.Planning@multco.us and request a site inspection to verify the revegetation of the site. The email shall reference case number, T2-2022-15921.
9. Monitoring & Reporting. Monitoring of the mitigation site is the ongoing responsibility of the property owner. Plants that die shall be replaced in kind so that a minimum of 80% of the trees and shrubs planted shall remain alive on the fifth anniversary of the date that the mitigation planting is completed.
- a. The property owner(s) shall provide yearly monitoring reports for a period of five (5) years beginning on the anniversary date of this decision becoming final. Each year, the monitoring report shall be sent to land.use.planning@multco.us on the anniversary date of this decision becoming final.
 - b. 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. 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.
10. As an on-going condition, the property owners shall:
- a. The nuisance plants in MCC 39.5580 Table 1 shall not be planted on the subject property and shall be removed and kept removed from cleared areas of the subject property. [MCC 39.5860]

- b. Required primary and secondary fire safety zones shall be established within the subject tract. The property owner and all future property owners shall maintain the required primary and secondary fire safety zones for the life of the replacement dwelling. [MCC 39.4110(D)]
- c. Install and maintain the proposed stormwater drainage control system designed by Paul Tibbot, PE per the plans included in the case record as Exhibit A.10. [MCC 39.6235]
- d. Maintain the mitigation plantings (Exhibit A.17) in a healthy state and replant, immediately in the next planting season, if any have declined or died. Mitigation plantings shall not be removed without replanting. [MCC 39.5860(C)]

Note: Once this decision is final and when ready to have building plans 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 to review your plans, obtain your access permit, and satisfy any other requirements. You may schedule an appointment at <https://multco.us/transportation-planning/webform/right-way-appointment-request/> or leave a message at 503-988-3582. 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 at 503-823-6892 or e-mail septic@portlandoregon.gov 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. Visit <https://www.multco.us/landuse/how-apply> for current instructions regarding the submission of your building plans for zoning review. 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.

The above must be completed before the applicant can obtain building permits from the City of Portland. At the time of zoning plan review, Land Use Planning may collect additional fees, 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: Applicant proposes to construct a replacement dwelling for the existing dwelling destroyed by a fire that occurred on February 15, 2022. The proposal includes a significant environmental concern for wildlife habitat permit, as well as an Erosion & Sediment Control permit for ground disturbance associated with the construction of the replacement dwelling. The proposed development is located outside of the SEC-s, SEC-v and GH overlays; hence, these permits are not required for the proposed project.

2.0 Property Description & History:

Staff: The subject property is located in unincorporated west Multnomah County in the area known as the West Hills Rural Planning Area. The property is zoned Commercial Forest Use – 2 (CFU-2) and contained a dwelling (prior to the fire that destroyed the dwelling) and accessory building that remains intact.

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 (Exhibit C.4). Staff did not receive any public comments during the 14-day comment period.

4.0 General Provisions:

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.

* * *

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.

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. *Criterion met.*

4.2 MCC 39.3005- LOT OF RECORD – GENERALLY

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

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

* * *

MCC 39.3030 LOT OF RECORD – COMMERCIAL FOREST USE-2 (CFU-2)

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

(1) A parcel or lot which was not contiguous to any other parcel or lot under the same ownership on February 20, 1990, or

* * *

Staff: Land Use case no. T3-2011-1907 found that the 8.85 subject property was a single Lot of Record. The current configuration of the subject property (Exhibit A.4) matches the configuration described in case no. T3-2011-1907. Therefore, the subject property remains a single Lot of Record. *Criteria met.*

4.3 MCC 39.4070 ALLOWED USES

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

* * *

(D) Alteration, maintenance, replacement or restoration of an existing lawfully established habitable dwelling as defined in MCC 39.2000 and located within 100-feet from an existing dwelling.

(1) In the case of a replacement dwelling, the existing dwelling shall be removed, demolished or converted to an allowable nonresidential use within three months of the completion or occupancy of the replacement dwelling.

(2) Restoration or replacement due to fire, other casualty or natural disaster shall commence within one year from the occurrence of the fire, casualty or natural disaster.

Staff: The submitted application includes a request for approval of a replacement dwelling for the existing dwelling destroyed by fire (Exhibit A.1). According to the applicant's narrative, the fire occurred on February 15, 2022. The subject application was submitted on March 3, 2022. The submittal of this application commenced the replacement of the dwelling. *Criteria met.*

4.4 MCC 39.4105 BUILDING HEIGHT REQUIREMENTS

(A) Maximum structure height – 35 feet.

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

Staff: According to the proposed building plans (Exhibit A.6), the height of the proposed replacement dwelling will be 19' - 4". Therefore, the proposed height meets the 35 ft. maximum structure height requirement. *Criteria met.*

4.5 MCC 39.4110 FOREST PRACTICE SETBACKS & FIRE SAFETY ZONES

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

Use	Forest Practice Setbacks			Fire Safety Zones
Description of use and location	Nonconforming Setbacks	Front Property Line Adjacent to County Maintained Road (feet)	All Other Setbacks (feet)	Fire Safety Zone Requirements (FSZ)
At least a portion of the replaced or restored dwelling is within 100 ft. of existing dwelling	N/A	30	30	Primary required; Maintenance of vegetation in the Secondary is required to the extent possible

Staff: The applicant proposes to site the replacement dwelling so that it is within the same general location as the destroyed dwelling was located. The proposed replacement dwelling will be over 750 ft. from the west property line, over 180 ft. from the south property line, 44.8 ft. from the north property line, and over 200 ft. from the eastern property line (Exhibit A.5).

Therefore, the proposed replacement dwelling exceeds the minimum required setback distances.
Criteria met.

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

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

Staff: The applicant does not propose any reductions to the Forest Practices Setbacks or an exception to the Secondary Fire Safety Zone. *Criteria met.*

(C) The minimum forest practices setback requirement shall be increased where the setback abuts a street having insufficient right-of-way width to serve the area.

Staff: The Transportation Planning Review completed by the County Right-of-way office does not indicate the need for increased setbacks due to insufficient right-of-way (Exhibit A.12).
Criterion met.

(D) Fire Safety Zones on the Subject Tract.

(1) Primary Fire Safety Zone.

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

* * *

(2) Secondary Fire Safety Zone.

* * *

(3) No requirement in (1) or (2) above may restrict or contradict a forest management plan approved by the State of Oregon Department of Forestry pursuant to the State Forest Practice Rules; and

(4) Required Primary and Secondary Fire Safety Zones shall be established within the subject tract as required by Table 1 above.

(5) Required Primary and Secondary Fire Safety Zones shall be maintained by the property owner in compliance with the above criteria listed under (1) and (2).

Staff: According to the fire safety zone site plan (Exhibit A.7), the proposed replacement dwelling will have the required 30 ft. Primary Fire Safety Zone in all directions. The plan shows a 100 ft. secondary fire safety zone to the west, south, and east of the replacement

dwelling. There is not enough space to establish a full secondary fire safety zone to the north of the replacement dwelling within the subject tract; hence, a secondary fire safety zone will be established up to the northern property line. Conditions of approval require the establishment and maintenance of the primary and secondary fire safety zones. *As conditioned, these criteria are met.*

4.6 MCC 39.4115 DEVELOPMENT STANDARDS FOR DWELLINGS & STRUCTURES

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

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(C) The dwelling or structure shall:

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

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

(3) Have a fire retardant roof; and

(4) Have a spark arrester on each chimney.

Staff: The proposed replacement dwelling is not a mobile home; the replacement dwelling will be stick built and subject to building permits for applicable building codes. According to the preliminary building plans (Exhibit A.6, p. 3), the replacement dwelling will have a spark arrester on the chimney and a standing seam, metal roof. *Criteria met.*

4.7 MCC 39.6850 DARK SKY LIGHTING STANDARDS

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(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.

Staff: The applicant provided proposed exterior lighting details (Exhibit A.6, p. 4) to demonstrate the exterior lighting complies with the Dark Sky Lighting Standards. *Standards met.*

5.0 Significant Environmental Concern Criteria:

5.1 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 included a Significant Environmental Concern for wildlife habitat permit in their application request, in accordance with (A) above. According to the applicant's narrative and preliminary plans, no excavation / removal of materials of archaeological, historical, prehistorical or anthropological nature are proposed. *Criteria met.*

5.2 MCC 39.5520 APPLICATION FOR SEC PERMIT

An application for an SEC permit for a use or for the change or alteration of an existing use on land designated SEC, shall address the applicable criteria for approval, under MCC 39.5540 through 39.5860.

(A) An application for an SEC permit shall include the following:

* * *

Staff: The applicant provided the materials to address the above requirements as Exhibits A.1 – A.3, A.5 – A.10, and A.15 - A.17.

5.3 MCC 39.5860 CRITERIA FOR APPROVAL OF SEC-H PERMIT

(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:

* * *

Staff: The applicant provided a topographical map of the subject property as Exhibit A.5.

(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 development site is in the same general vicinity of the destroyed dwelling location (Exhibit A.5). No new clearing is proposed; however, some light activity (small tree removal and brush clearing) will be necessary to meet requirements for the fire safety zones.

(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 topographical survey / site plan (Exhibit A.5), the proposed replacement dwelling will be located more than 200 ft. from NW Skyline Blvd. NW Skyline Blvd. is a public road serving the subject property. *Standard not met.*

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

Staff: The existing driveway / service corridor is approximately 500 feet in length (Exhibit A.5). *Standard 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.

* * *

Staff: NW Skyline Blvd. provides access to the subject property via an existing driveway access. A contiguous property to the south of the subject property has an existing driveway within 200 ft. of the common side property line; however, the existing driveway for the subject property is not within 100 ft. of that common side property line. The existing driveway for the subject property is also not within 50 ft. of the existing access for a property on the opposite side of NW Skyline Blvd. *Standard 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: A contiguous property to the south of the subject property contains structures within 200 ft. of the shared common side property line. According to the topographic survey / site plan (Exhibit A.5), the proposed replacement dwelling is within 200 ft. of the shared common side property line on the southern portion of the subject property. *Standard 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.

* * *

Staff: No new fencing is proposed as part of this development. (Exhibit A.5). *Standard met.*

(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: The applicant does not propose to plant any nuisance plants listed in MCC 39.5580 (Exhibit A.15). A condition of approval is included requiring compliance with this standard. *As conditioned, the above standard is met.*

5.4 (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;

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

Staff: The applicant can meet the development standards in subsection (B), but the applicant submitted a proposed Wildlife Conservation Plan (“WCP”) to demonstrate the proposed development has a less detrimental impact on forested wildlife habitat (Exhibit A.17). Staff discusses the proposed WCP and addresses the associated review criteria of MCC 39.5860(C)(5) below. *Criteria met.*

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

* * *

Staff: The applicant chose to address the criteria in subsection (C)(5), as described below. *Criterion met.*

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

(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. Existing fencing located in the front yard adjacent to a public road shall be consistent with subsection (B)(6).

(d) For mitigation areas, all trees, shrubs and ground cover shall be native plants selected from the Metro Native Plant List. An applicant shall meet Mitigation Option 1 or 2, whichever results in more tree plantings; except that where the total developed area (including buildings, pavement, roads, and land designated as a Development Impact Area) on a Lot of Record will be one acre or more, the applicant shall comply with Mitigation Option 2:

*** * ***

2. Mitigation Option 2. In this option, the mitigation requirement is calculated based on the size of the disturbance area associated with the development. Native trees and shrubs are required to be planted at a rate of five (5) trees and twenty-five (25) shrubs per every 500 square feet of disturbance area...Bare ground shall be planted or seeded with native grasses or herbs. Non-native sterile wheat grass may also be planted or seeded, in equal or lesser proportion to the native grasses or herbs.

(e) Location of mitigation area. All vegetation shall be planted within the mitigation area located on the same Lot of Record as the development and shall be located within the SEC-h overlay or in an area contiguous to the SEC-h overlay;...

(f) Prior to development, all work areas shall be flagged, fenced, or otherwise marked to reduce potential damage to habitat outside of the work area. The work area shall remain marked through all phases of development.

(g) Trees shall not be used as anchors for stabilizing construction equipment.

(h) Native soils disturbed during development shall be conserved on the property.

(i) An erosion and sediment control plan shall be prepared in compliance with the ground disturbing activity standards set forth in MCC 39.6200 through MCC 39.6235.

(j) 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.

(k) 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.

(l) 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.

(m) Nuisance plants. Any nuisance plants listed in MCC 39.5580 Table 1 shall be removed within the mitigation area prior to planting.

(n) Planting schedule. The planting date shall occur within one year following the approval of the application.

(o) Monitoring and reporting. Monitoring of the mitigation site is the ongoing responsibility of the property owner. Plants that die shall be replaced in kind so that a minimum of 80% of the trees and shrubs planted shall remain alive on the fifth anniversary of the date that the mitigation planting is completed.

Staff: The proposed replacement dwelling will be approximately 3,090 sq. ft. No newly cleared areas or fencing is included in the proposed development. To mitigate the approximately 1,950 sq. ft. increase in footprint area from the original sq. ft. for the destroyed dwelling, the applicant's consultant recommended creating an approximately 3,686 sq. ft. mitigation area in the southeastern portion of the property (Exhibit A.17). The entire proposed mitigation area on the subject property is within the SEC-h overlay and is approximately 25% covered in Himalayan Blackberry (nuisance plants), which the property owners would remove as part of the WCP.

Following the removal of the nuisance plants within the mitigation area, the WCP proposes planting 100 shrubs of at least two native species and 20 native trees. No more than 50% of the trees will be of the same genus (Exhibit A.17, p. 7). Trees will be at least 3-ft. tall and have a 0.5-in. basal diameter; shrubs will be at least 12 in. tall and at least 1-gallon container. Recommended trees in the WCP are western red cedar, grand fir, and Douglas fir; planted with 8 – 12 ft. spacing on center. Recommended shrubs in the WCP are beaked hazelnut, blue / red elderberry, snowberry, twinberry, and red flowering currant; planted with 4 – 5 ft. spacing on center.

The proposed Erosion and Sediment Control Plan is included as Exhibit A.10 and discussed in section 6.2 below.

Conditions of approval required the property owner(s) to implement and maintain the proposed mitigation measures (Exhibit A.17), as well as monitor / replace mitigation plantings for a period of 60 months after planting. *As conditioned, these criteria are met.*

6.0 Ground Disturbance Criteria:

6.1 MCC 39.6210 PERMITS REQUIRED

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

* * *

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

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

* * *

Staff: The applicant requested an Erosion & Sediment Control (ESC) permit for the ground disturbance associated with the proposed replacement dwelling (Exhibit A.1). The replacement dwelling will require building permits to construct. Upon the County's authorization of the requested ESC permit, the property owner(s) become responsible for compliance with the requirements of MCC 39.6210(E). *Criteria met.*

6.2 MCC 39.6225 EROSION AND SEDIMENT CONTROL PERMIT

(A) An application for an Erosion and Sediment Control permit shall include two copies of each of the following:

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

* * *

(8) Approval of any new stormwater discharges into public right-of-ways by each governing agency having authority over the matter.

Staff: The applicant provided the required application materials for the Erosion and Sediment Control (ESC) permit as Exhibits A.2 – A.3, A.5, A.9 – A.13, and A.16.

(B) An Erosion and Sediment Control (ESC) permit shall not be issued unless the application for such permit establishes compliance with MCC 39.6210 and satisfaction of the following standards:

(1) The total cumulative deposit of fill, excluding agricultural fill pursuant to an Agricultural Fill permit, on the site for the 20-year period preceding the date of the ESC permit application, and including the fill proposed in the ESC permit application, shall not exceed 5,000 cubic yards. Fill physically supporting and/or protecting a structure or access road for essential and public facilities subject to

earthquake or tsunami building code requirements of the Oregon Structural Specialty Code is not included in this 5,000 cubic yard calculation. For purposes of this section, the term “site” shall mean either a single lot of record or contiguous lots of record under same ownership, whichever results in the largest land area.

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

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

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

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

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

Staff: According to the applicant’s ESC narrative (Exhibit A.3), all fill is composed of native soils from the subject property. The engineer states that the cut slopes will meet these requirements. No importation of fill will be necessary. According to the submitted plans (Exhibit A.10), no fill will be placed near a waterbody, generated by dredging, or create slopes in excess of 33%. *Standards met.*

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

Staff: The subject property is located within the Tualatin River drainage basin. According to the applicant's narrative, the project's professional engineer designed the ESC plans (Exhibit A.10) to satisfy the requirements of OAR 340-041-0345(4). The ESC plans provide required details pertaining to the proposed erosion, sediment, and stormwater drainage control measures. *Standard met.*

(8) Ground disturbing activity shall be done in a manner which will minimize soil erosion, stabilize the soil as quickly as practicable, and expose the smallest practical area at any one time during construction.

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

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

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

* * *

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

Staff: According to the ESC plans (Exhibit A.10), the work area is over 600 ft. from the nearest waterbody. The ESC plans outline the proposed erosion, sediment, and stormwater drainage control measures relative to the proposed development. These plans include temporary protection measures. As noted above, the proposal sites the replacement dwelling within the same vicinity as the destroyed dwelling to minimize disturbance. *Standards met.*

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

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

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

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

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

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

* * *

Staff: The applicant's professional engineer certified (Exhibit A.9 – A.10) that the proposed erosion, sediment, and stormwater drainage control measures satisfy the above requirements. No drainage swales are proposed; the proposal calls for a stormwater detention pond. *Standards met.*

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

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

* * *

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

Staff: Plastic sheeting and installation details for the stockpile area are shown on the ESC plans (Exhibit A.10). A concrete washout and washout details are also shown on the ESC plans. No work will occur within a water body. The proposal does not require the importation of fill or the use of fill haul trucks. *Standards met.*

6.3 MCC 39.6235 STORMWATER DRAINAGE CONTROL

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

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

* * *

Staff: The applicant provided a stormwater drainage control certificate completed by an Oregon licensed professional engineer certifying that through the construction of an on-site

storm water drainage control system, the rate of stormwater runoff attributed to a 10-year/24-hour storm event will be no greater than that which existed prior to any development (Exhibit A.9). The details for the proposed on-site storm water drainage control system (detention pond) are included in Exhibit A.10. A condition of approval requires the installation and maintenance of the proposed on-site storm water drainage control system. *As conditioned, these criteria can be met.*

7.0 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Significant Environmental Concern for wildlife habitat (SEC-h) and Erosion & Sediment Control (ESC) permits to establish a replacement dwelling in the CFU-2 zone. This approval is subject to the conditions of approval established in this report.

8.0 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 T2-2022-15921 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	General Application Form	06.27.2022
A.2	10	Applicant Narrative	06.27.2022
A.3	7	ESC Permit Narrative	06.27.2022
A.4	3	Copy of Instrument no. 2012-168691	06.27.2022
A.5	2	Scaled Site Plan	06.27.2022
A.6	4	Floor Plans and Elevations	06.27.2022
A.7	1	Fire Safety Zone site plan	06.27.2022
A.8	1	Aerial Photo of subject property	06.27.2022
A.9	2	Stormwater Drainage Control Certificate (Signed)	06.27.2022
A.10	11	Stormwater Drainage and Erosion Control Plans	06.27.2022
A.11	6	Septic Review Certification	06.27.2022
A.12	18	Transportation Planning Review	06.27.2022
A.13	2	Fire Service Agency Review	06.27.2022
A.14	3	Fire Service Agency Review Plans	06.27.2022

A.15	5	Wildlife Conservation Plan	06.27.2022
A.16	10	Revised Applicant Narrative	08.19.2022
A.17	8	Revised Wildlife Conservation Plan	08.19.2022
‘B’	#	Staff Exhibits	Date
B.1	3	Division of Assessment, Recording, and Taxation (DART): Property Information for 2N2W14C-00600 (Alt Acct# R972140140)	06.27.2022
B.2	1	Division of Assessment, Recording, and Taxation (DART): Map with 2N2W14C (Alt Acct# R972140140)	06.27.2022
B.3	20	Copy of the decision for case no. T3-2011-1907	09.01.2022
‘C’	#	Administration & Procedures	Date
C.1	3	Incomplete letter	07.26.2022
C.2	1	Applicant’s acceptance of 180 day clock	07.27.2022
C.3	1	Complete letter (day 1)	08.19.2022
C.4	4	Opportunity to Comment	09.01.2022
C.5	22	Administrative Decision	10.20.2022