

**MULTNOMAH COUNTY****LAND USE AND TRANSPORTATION PROGRAM**1600 SE 190<sup>TH</sup> Avenue Portland, OR 97233

PH: 503-988-3043 FAX: 503-988-3389

[http://www.co.multnomah.or.us/dbcs/LUT/land\\_use](http://www.co.multnomah.or.us/dbcs/LUT/land_use)

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# NOTICE OF DECISION

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This notice concerns a Planning Director Decision on the land use case(s) cited and described below.

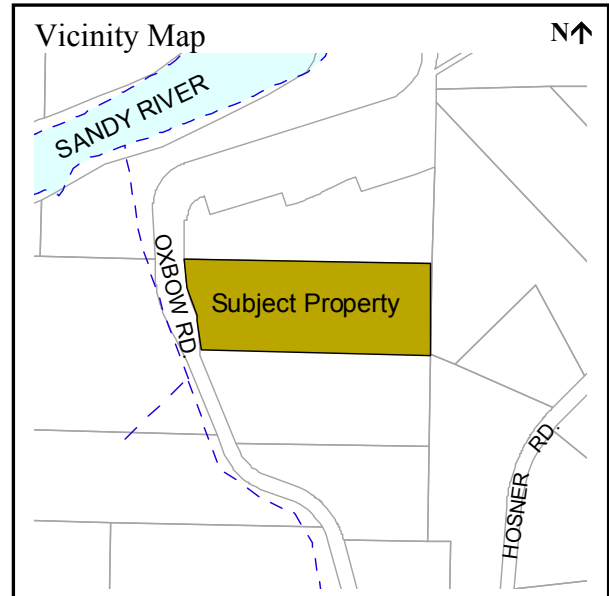
Case File: T2-05-031

Permit: Significant Environmental Concern for Scenic Waterway (SEC-sw) and Habitat (SEC-h) Permit and Commercial Forest Use Development Standards

**Location:** 3524 SE Oxbow Road  
TL 100 & 200, Sec 09D, T1S, R4E,  
Willamette Meridian  
Tax Account #R994090350 &  
R994090410

**Applicant** Jason McKague  
KIM Construction  
PO Box 268  
Sandy, OR 97055

**Owner:** Carla Sosanya  
3524 SE Oxbow Road  
Gresham, OR 97080



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**Summary:** Significant Environmental Concern for Scenic Waterway (SEC-sw) and Habitat (SEC-h) Permit to build an accessory structure for agricultural uses accessory to the residential use on the property in Commercial Forest Use District.

**Decision:** Approved with Conditions

Unless appealed, this decision is effective July 6, 2005 at 4:30 PM.

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Issued by:

By: \_\_\_\_\_  
George A. Plummer, Planner

For: Karen Schilling- Planning Director

Date: Wednesday, June 22, 2005

**Opportunity to Review the Record:** A copy of the Planning Director Decision, and all evidence submitted associated with this application, is available for inspection, at no cost, at the Land Use Planning office during normal business hours. Copies of all documents may be purchased at the rate of 30-cents per page. The Planning Director's Decision contains the findings and conclusions upon which the decision is based, along with any conditions of approval. For further information on this case, contact George A. Plummer, Staff Planner at 503-988-3043.

**Opportunity to Appeal:** This decision may be appealed within 14 days of the date it was rendered, pursuant to the provisions of MCC 37.0640. 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 offices at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision cannot be appealed to the Land Use Board of Appeals (LUBA) until all local appeals are exhausted.

**This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is July 6, 2005 at 4:30 PM**

**Applicable Approval Criteria:** Multnomah County Code (MCC): Chapter 37: Administration and Procedures; MCC 36.2000 et al: Commercial Forest Use and MCC 36.4500- 4550: Significant Environmental Concern for Scenic Waterway and Habitat.

Copies of the referenced Multnomah County Code sections can be obtained by contacting our office at 503-988-3043 or by visiting our website at [http://www.co.multnomah.or.us/dbcs/LUT/land\\_use](http://www.co.multnomah.or.us/dbcs/LUT/land_use).

### **Scope of Approval**

1. Approval of this land use permit is based on the submitted written narrative(s) plan(s) and other exhibits attached to this decision. No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.
2. **Pursuant to MCC 37.0690, this land use permit expires two years from the date the decision is final if; (a) development action has not been initiated; (b) building permits have not been issued; or (c) final survey, plat, or other documents have not been recorded, as required. The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 37.0690 and 37.0700. Such a request must be made prior to the expiration date of the permit.**

### **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. To meet the minimum yard requirement the proposed building shall not exceed 40 feet in width and shall be located an minimum of 130 feet from the southern and northern property lines [MCC 36.2060(C)].
2. Primary and secondary fire safety zones shall be maintained as described under MCC 36.2105(A)(5)(c).

3. The roofing material shall be fire retardant [MCC 36.2105(B)(3)].
4. The applicant or owner shall obtain a letter from the Oregon Parks and Recreation Department approving the red paint color for the siding or an alternative color clearly stated in a letter from the Department [MCC: 36.4545(A)].
5. The building shall be built with wooden siding and the roof material shall be asphaltic shingles which are dark brown as shown in Exhibit 1.8 or the siding and roof can be metal if the applicant or owner obtains a letter from Oregon Parks and Recreation Department that states that the design of the building with metal siding and roofing meets their requirement that, “No large areas, including roofs, shall be finished with ... reflective materials” [MCC: 36.4545(A)].
6. The windows shall have a reflectivity rating of 13 percent or less or the applicant or owner obtains a letter from Oregon Parks and Recreation Department that states that the design of the building with standard windows meets their requirement that, “No large areas, including roofs, shall be finished with ... reflective materials” [MCC: 36.4545(A)].
7. If outdoor lighting is installed it shall placed in a location so that it does not shine directly into the undeveloped area of the property to the south, east or north of the building. The fixture shall be a hooded fixture type with a recessed bulb [MCC 36.4550(B)].
8. To provide screening of the proposed building the property owner shall maintain the existing trees on the property to the north of the building site and shall maintain the mature forest area on the property to the west of the dwelling [MCC36.4545(A)].
9. The property shall not plant any nuisance plants listed in MCC 36.4550(C).

**Note:** Once this decision is final, application for building permits may be made with the City of Gresham. When ready to have building permits signed off, the applicant shall call the staff planner, George Plummer, at (503) 988-3043, for an appointment for review and approval of the conditions and to sign the building permit plans. Please note, Multnomah County must review and sign off the building permits before the applicant submits building plans to the City of Gresham. Three (3) sets each of the site plan and building area are needed for building permit sign off.

**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 AND CONCLUSIONS**

This decision is based on the findings and conclusions in the following section.

**Staff Report Formatting Note:** To address Multnomah County Code requirements staff provides findings as necessary, referenced in the following section. Headings for each category of finding are underlined. Multnomah County Code language is referenced using a **bold** font. The Applicant's narrative, when provided, follows in *italic font*. Planning staff analysis and findings follow the **Staff** label. Staff conclusions follow the findings and are labeled **Conclusion**. At the end of the report, Exhibits are described. The applicant's submittal is included and made part of this decision as exhibits labeled 1.x.

### **1. DESCRIPTION OF THE PROPOSAL:**

**Staff:** The applicant is proposing a 60 by 42 foot, 2520 square foot pole barn that is 23 feet tall accessory to the residential use on the property.

### **2. SITE AND VICINITY CHARACTERISTICS**

**Staff:** The property is located within an oxbow area of the Sandy River (Exhibit 2.4). The driveway for the property gains in elevation going up a draw to a sharp bend in the driveway where the slope becomes relatively shallow. The site for the proposed structure is an area about 50 feet east of this bend in the driveway.

The topography in this area rises up steeply from the Sandy River forming a bluff with a bench on top (Exhibit 2.4). The property is located on this relatively flat bench area with steep slopes dropping off to the river to the north and west. To north of the property the topography drops at a significant slope to the river. To the west of the property the topography drops to a ravine in which the road is located. To the east of the property the topography rises before it drops. To the south the topography rises at a more shallow rate than the slopes in the other directions.

The subject property is located on the relatively flat bench with a slight rise on the north half of the property north of the proposed building site. There is a small grove of deciduous trees adjacent to the north of the proposed structure. The downward sloping areas west of the dwelling and along the driveway are heavily wooded. The property line to the south has trees along it. The building site is a cleared area with most of the property to the east of the building site cleared pasture land. The surrounding vicinity includes predominately forested residential properties with small pasturelands interspersed amount the forested area.

### **3. OWNERSHIP**

**MCC 37.0550: Except as provided in MCC 37.0760, Type I - IV applications may only be initiated by written consent of the owner of record or contract purchaser.**

**Staff:** County Assessment records show the property owner as Carla Sosanya. Ms. Sosanya signed as the owner.

#### 4. **TYPE II CASE PROCEDURES**

**Staff:** The application was submitted March 22, 2005 and was deemed incomplete September 9, 2004 and again January 6, 2005. The application was deemed complete as of April 28, 2005. An Opportunity to Comment notice was mailed May 12, 2005. The notice was mailed to all owners of properties within 750 feet of the subject property; and interested government agencies. Those that received the notice were provided a 14-day period to submit comments on the application (MCC 37.0530). No comments were received.

#### 5. **COMMERCIAL FOREST USE ZONE ALLOWED USES**

**MCC 36.2020(T):** Other structures or uses determined by the Planning Director to be customarily accessory or incidental to any use permitted or approved in this district.

**Staff:** The applicant is proposing a 60 by 42 foot, 2520 square foot pole barn as a structure accessory to a residential use. The barn is proposed to be 23 feet tall. The following table lists three properties within a half mile of the subject properties which have structures accessory to a residential use of a similar size or larger to the proposed structure.

	Address	County Assessment Alt. Tax Account #	Size of property in Acres	In Farm Deferral?	Size of Building in Sq. Ft.
1	4050 SE Hosner Ter	R427200050	2.08	No	9216
2	33855 SE Frances St	R994090170	5.0	No	2400
3	4567 SE Oxbow Pky.	R994160640	20.90	No	2400

Given that within a half mile there are three buildings accessory to residential uses that are a similar size or larger, the proposed building size is customary in this vicinity.

#### 6. **COMMERCIAL FOREST USE ZONE DIMENSIONAL REQUIREMENTS**

##### 6.1. **MCC 36.2060(C) Minimum Forest Practices Setback Dimensions From Tract Boundary –**

**Feet:**

Road Frontage	Other Front	Side	Rear
60 from centerline of road from which access is gained	130	130	130

**Maximum Structure Height - 35 feet**

**Forest practices setback dimensions shall not be applied to the extent they would have the effect of prohibiting a use permitted outright. Exceptions to forest practices setback dimensions shall be pursuant to MCC 36.2110, as applicable, but in no case shall they be reduced below the minimum primary fire safety zone required by MCC 36.2105 (A) (5) (c) 2.**

**Applicant:** The structure will be 23 feet tall.

**Staff:** The property is 300 feet wide. The two side yard setbacks would total 260 feet. Meeting the 130 foot forest practices setbacks, without and exception to the forest setbacks, the buildable area width would need to be a maximum 40 feet wide. The proposed location is in the area that meets the front and rear minimum required setbacks. The proposed building is 23 feet tall meeting the maximum height requirement. A condition of approval can limit the width of the proposed building to 40 feet wide to meet the minimum yard requirements.

- 6.2. MC 36.2060 (D) The minimum forest practices setback requirement shall be increased where the yard abuts a street having insufficient right-of-way width to serve the area. The Planning Commission shall determine the necessary right-of-way widths and additional yard requirements not otherwise established by ordinance.**

**Staff:** The proposed structure will be in excess of 400 feet from the right-of-way. Additional setback is not necessary for this project. An email dated May 19, 2005 from Alison Winter, County Transportation Planning Specialist states that County Transportation does not have any issues related to the development.

\* \* \*

- 6.3. MC 36.2060 (H) 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.**
- (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:** No restroom or other plumbing, other than a hose bib, is included for the proposed structure thus sewage disposal is unnecessary (Exhibit 1.9). The proposed development has been reviewed by Timothy R. Turner, Registered Professional Engineer. Mr. Turner has designed a grassy swale for the stormwater runoff from the newly created impervious surface. Mr. Turner has provided a signed and stamped Storm Water Certificate (Exhibit 1.12). He checked the second box stating that after the installation of the drainage control system, the rate of storm water runoff attributed to the development (during the 10 year/24 hour storm) will be no greater than that which existed prior to development as measured from the property line or point of discharge in watercourse. This standard has been met for the development by the proposed stormwater system.

- 6.4. MC 36.2060(I) Grading and erosion control measures sufficient to ensure that visible or measurable erosion does not leave the site shall be maintained during development. A grading and erosion control permit shall be obtained for development that is subject to MCC Chapter 29.**

**Staff:** This project does not meet the threshold that requires a grading and erosion control permit under MCC 29.356, due the size, shallow slope and distance to a stream. The project site is nearly flat with substantial area a grassy field around it. This grassy area should be sufficient to prevent any visible or measurable erosion from leaving the site. This standard is met.

**7. COMMERCIAL FOREST USE ZONE LOT OF RECORD.**

**MCC 36.2075(A)** In addition to the Lot of Record definition standards in MCC 36.0005, for the purposes of this 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
  - (2)** A group of contiguous parcels or lots:
    - (a)** Which were held under the same ownership on February 20, 1990; and
    - (b)** Which, individually or when considered in combination, shall be aggregated to comply with a minimum lot size of 19 acres, without creating any new lot line.
      - 1.** Each Lot of Record proposed to be segregated from the contiguous group of parcels or lots shall be a minimum of 19 acres in area using existing legally created lot lines and shall not result in any remainder individual parcel or lot, or remainder of contiguous combination of parcels or lots, with less than 19 acres in area.
      - 2.** There shall be an exception to the 19 acre minimum lot size requirement when the entire same ownership grouping of parcels or lots was less than 19 acres in area on February 20, 1990, and then the entire grouping shall be one Lot of Record.
- \* \* \*
- 4.** The requirement to aggregate contiguous parcels or lots shall not apply to lots or parcels within exception or urban zones (e.g. MUA-20, RR, RC, R-10), but shall apply to contiguous parcels and lots within all farm and forest resource zones (i.e. EFU and CFU), or

**MCC 36.0005(L)(13)** Lot of Record - Subject to additional provisions within each Zoning District, a Lot of Record is a parcel, lot, or a group thereof which when created and when reconfigured (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.

- (a)** "Satisfied all applicable zoning laws" shall mean: the parcel, lot, or group thereof was created and, if applicable, reconfigured in full compliance with all zoning minimum lot size, dimensional standards, and access requirements.
- (b)** "Satisfied all applicable land division laws" shall mean the parcel or lot was created:
  - 1.** By a subdivision plat under the applicable subdivision requirements in effect at the time; or
  - 2.** By a deed, or a sales contract dated and signed by the parties to the transaction, that was recorded with the Recording Section of the public office responsible for public records prior to October 19, 1978; or
  - 3.** By a deed, or a sales contract dated and signed by the parties to the transaction, that was in recordable form prior to October 19, 1978; or
  - 4.** By partitioning land under the applicable land partitioning requirements in effect on or after October 19, 1978; and
  - 5.** "Satisfied all applicable land division laws" shall also mean that any subsequent boundary reconfiguration completed on or after December 28, 1993 was approved under the property line adjustment provisions of the land division code. (See Date of Creation and Existence for the effect of property line adjustments on qualifying a Lot of Record for the siting of a dwelling in the EFU and CFU districts.)

**Staff:** The proposed development is on a tract made up of two properties. The parent property which was 5.48 acres, designated as Tax Lot 35, was created August 4, 1957 by contract filed in Book 574 on Page 867 (Exhibit 2.6). The eastern parcel, Tax Lot 100 (old Tax Lot 35) was created by contract filed January 25, 1973 in Book 906 on Page 1033 (Exhibit 2.6 and 2.7) which excepted 2.74 acres out of the parent property also creating Tax Lot 200 (old Tax Lot 41). In a document filed on August 14, 1973 in Book 943 on Page 489 Tax Lot 100 was adjusted reducing it to 2.5 acres with 0.24 acres going to Tax Lot 200 increasing its size to 2.98 acres (Exhibit 2.6). This is the current configuration and size of the existing properties. The property was in the Agricultural (F-2) Zone District between 1958 and 1977 with a minimum acreage requirement of two acres until December 9, 1975. Since both properties were created in 1973 they met the minimum acreage requirement. The F-2 District in 1973 allowed parcels to be created that did not abut a street. No land division review was required in 1973 to create a parcel. The properties satisfied all applicable zoning laws and there were no applicable land division laws thus the properties met the requirements of MCC 36.0005(L)(13) for Lot of Record status.

County Assessment records show that the subject properties are contiguous parcels which were held under the same ownership, Willotta Asbjornsen, on February 20, 1990. The entire same ownership grouping was less than 19 acres in area on February 20, 1990 and consisted of these two properties. Thus the two properties are considered as one aggregated Lot of Record under provision MCC 36.2075(A)(2)(b)(2).

## **8. COMMERCIAL FOREST USE ZONE DEVELOPMENT STANDARDS FOR STRUCTURES.**

**MCC 36.2105:** Except as provided for the alteration, replacement or restoration of dwellings under MCC 36.2020 (D) and 36.2025 (B), all dwellings and structures located in the CFU district after January 7, 1993 shall comply with the requirements of this section. Application of these requirements shall be processed pursuant to the provisions for Type II or Type III decisions as applicable.

**Staff:** Below are findings for compliance with this section. The decision was processed as a Type II case.

### **8.1. MCC 36.2105(A) The dwelling or structure shall be located such that:**

#### **8.1.1. MCC 36.2105(A)(1) It has the least impact on nearby or adjoining forest or agricultural lands and satisfies the minimum yard and setback requirements of 36.2060 (C) through (G);**

**Applicant:** *Setbacks are satisfied. The pole barn is located in a meadow area, and no trees of any kind will be felled to accommodate the building. The trees are not near the building area.*

**Staff:** The proposed structure will be located to meet the forest setback requirements and to meet the firebreak requirements to protect the surrounding forest land from a fire. The proposed use of the structure is for agricultural purposes, livestock, horses and agriculture equipment storage, a compatible use for adjoining forest lands or agricultural lands. There should be no impact on adjoining lands given the setback distance.

#### **8.1.2. MCC 36.2105(A)(2) Adverse impacts on forest operations and accepted farming practices on the tract will be minimized;**



**Applicant:** *There are no forest operations on the site. The only practices for caring for the field will be organic approaches.*

**Staff:** The proposed pole barn site is located near the existing driveway; however the driveway will need to be extended a minor amount, about 50 feet. There are no trees in the area of the proposed building. Due to proposed location the barn site will minimize impacts to forest operations and accepted farm practices on the tract. The standard is met.

**8.1.3. MCC 36.2105(A)(3) The amount of forest land used to site the dwelling or other structure, access road, and service corridor is minimized;**

**Applicant:** *There is no forest land used to site the structure.*

**Staff:** The proposed building is located in a cleared area of the property which is surrounded by a pastureland with a couple nearby trees. The standard is met.

**8.1.4. MCC 36.2105(A)(4) Any access road or service corridor in excess of 500 feet in length is demonstrated by the applicant to be necessary due to physical limitations unique to the property and is the minimum length required; and**

**Applicant:** *No access road will be built. Existing driveway will be used to access the pole building.*

**Staff:** Further discussion with the applicant and the revised site plan (Exhibit 1.) indicate that a short driveway extension of about 50 feet off from the main existing driveway will serve the proposed structure. The length of the proposed driveway extension and the existing driveway to the road is slightly less than 500 feet in length. This standard is met.

**8.1.5. MCC 36.2105(A)(5) The risks associated with wildfire are minimized. Provisions for reducing such risk shall include:**

- (a) The proposed dwelling will be located upon a tract within a fire protection district or the dwelling shall be provided with residential fire protection by contract;**
- (b) Access for a pumping fire truck to within 15 feet of any perennial water source on the lot. The access shall meet the driveway standards of MCC 36.2105 (D) with permanent signs posted along the access route to indicate the location of the emergency water source;**
- (c) Maintenance of a primary and a secondary fire safety zone on the subject tract.**
  - 1. 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. On lands with 10 percent or greater slope the primary fire safety zone shall be extended down the slope from a dwelling or structure as follows:**

Percent Slope	Distance In Feet
Less than 10	Not required
Less than 20	50

Percent Slope	Distance In Feet
Less than 25	75
Less than 40	100

3. A secondary fire safety zone is required around all dwellings and other structures except for other structures located within a public park. The secondary fire break extends a minimum of 100 feet in all directions around the primary safety zone. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Assistance with planning forestry practices which meet these objectives may be obtained from the State of Oregon Department of Forestry or the local Rural Fire Protection District. The secondary fire safety zone required for any dwelling or structure may be reduced under the provisions of MCC 36.2060 (F) and 36.2110.
  4. No requirement in 1., 2., or 3. 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
  5. Maintenance of a primary and a secondary fire safety zone is required only on land surrounding the dwelling that is owned or controlled by the home owner.
- (d) The building site must have a slope less than 40 percent.

**Applicant:** *The field will be mowed regularly. Underbrush of invasive species, most especially blackberries and stinging nettles will be maintained at manageable levels or removed. The area is serviced by the Gresham Fire Department. There is a break of trees surrounding the field in which the building will be located. Dead trees and undergrowth have been minimized. There are at least 30 feet in all directions of fire break. Trees are spaced more than 15 feet apart from the crowns, and the branches have been trimmed up from the ground to 8 feet. Less than 10 (slope). The area has, been cleared out to prevent fire spreading within 100 feet on all sides of the proposed building.*

**Staff:** The applicant has demonstrated that these standards are met or can be met for the proposed development. The narrative refers to a 100 foot area for the fire safety area, however the combined distance of the primary and secondary fire safety zones are 130 foot in length from the building. Conditions of approval can require that fire safety zones be maintained for the proposed building.

**8.2. MCC 36.2105(B) The dwelling or structure shall:**

- (1) Comply with the standards of the applicable building code or as prescribed in ORS 446.002 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:** There will be no chimney for the proposed structure. A condition of approval can require a fire retardant roof.

- 8.3. **MCC 36.2105(C)** The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of ground water (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a Class 11 stream as defined in the Forest Practices Rules.
- (1) If the water supply is unavailable from public sources, or sources located entirely on the property, the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners.
  - (2) Evidence of a domestic water supply means:
    - (a) Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water; or
    - (b) A water use permit issued by the Water Resources Department for the use described in the application; or
    - (c) Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report to the county upon completion of the well.

**Applicant:** *There will be no water supply to the pole barn.*

**Staff:** The domestic water supply was previously established when the dwelling was in built 1975. The standard is met.

## 9. **SIGNIFICANT ENVIRONMENTAL CONCERN PERMIT REVIEW**

The purposes of the Significant Environmental Concern Overlay Zone subdistrict are to protect, conserve, enhance, restore, and maintain significant natural features which are of public value, including among other things, river and stream corridors, streams, lakes and islands, flood water storage areas, natural shorelines and unique vegetation, wetlands, wildlife and fish habitats, significant geological features, archaeological features and sites, and scenic views and vistas, and to establish criteria, standards, and procedures for the development, change of use, or alteration of such features or of the lands adjacent thereto.

### 9.1. **Criteria for Approval of SEC-sw Permit - Scenic Waterway.**

The SEC-sw designation shall apply to those wild and scenic waterways that are designated SEC on Multnomah County sectional zoning maps. An application shall not be approved unless it contains the information in 36.4540(A) and (B). Any proposed activity or use requiring an SEC-sw permit shall be subject to the following:

**Applicant:** *The pole barn is out of site of the Sandy River and of the road leading to the river. It is out of site of everyone except the homeowner and through the trees to the neighbor on one side only. The two neighbors who can see any part of the property at all each have outbuildings and barns. The structure is in line with the existing outbuildings in the adjoining properties. There is no river, stream, lake, island, shoreline, unique vegetation, wetland, fish habitat, geological, archeological feature, vista or view. There is a field or meadow with field grass. There are no chemicals in use, and the homeowner uses organic approaches to the maintenance of the property. There will be no alteration of any natural feature or land or adjacent land.*

**9.1.1. MCC36.4545(A) Submittal of a letter from the Oregon Parks and Recreation Department which indicates that the proposed development has been reviewed and is, or can be, consistent with the provisions of the Oregon Scenic Waterways Management Plan.**

**Applicant:** *Submittal of a letter from the Oregon Parks and Recreation Department which indicates that the proposed development has been reviewed and is, or can be, consistent with the provisions of the Oregon Scenic Waterways Management Plan.*

**Staff:** Oregon Parks and Recreation Department sent a letter dated March 25, 2005 (Exhibit 1.3) to the applicant including the following criteria from Oregon Administrative Rule 736-040-0035(7):

- “(a) Be of such design and be constructed of such materials as to be unobtrusive and compatible with the scenic qualities of the area. For example, the following shall apply:
- (A) All structures shall be finished in muted tones appropriate to their natural surroundings;
  - (B) No large areas, including roofs, shall be finished with white or bright colors or reflective materials;
  - (C) No structures shall exceed 30 feet in height from natural grade on a side facing the river;
  - (D) All structures shall be so designed and constructed that little or no soil is left exposed when construction is completed.
- (b) Be located in such a way that topography and natural vegetation make them inconspicuous as reasonably practicable, and in no case obtruding on the view from the river.”

The property is located within an oxbow area of the Sandy River (Exhibit 2.4). The property is partially screened from the Sandy River by both topography and by some trees on the property. Due to a rise in topography to the east and southeast the property is totally screened from the river in those directions. The proposed structure is nearly completely screened by topography from river to the north. The topography in this area rises up steeply forming a bluff with a bench on top. The subject property is located on the relatively flat bench with a slight rise on the north half of the property. Because the proposed building is sited at about 200 feet from the bluff's edge it is nearly completely screened by topography with only a small portion of the roof potentially visible from the river to the north. There is a small grove of deciduous trees adjacent to the north of the proposed structure which would provide some additional screening. A topographic analysis has demonstrated that if the proposed structure is not totally screened from the river to the north only a small portion of the roof would be visible. The river to the west has a long expanse of over a mile in length from which the proposed structure is potentially visible. A topographic analysis indicates if there were no trees screening the view from the river; the proposed structure would be visible from this stretch of the river. However there is a substantial growth of both coniferous and deciduous trees on the property that effectively screens the proposed structure from river in this direction. A condition of approval can require the property maintain this area in mature forest.

Oregon Parks and Recreation Department rules for a new building require it, “Be of such design and be constructed of such materials as to be unobtrusive and compatible with the scenic qualities of the area.” Oregon Parks and Recreation Department rules included muted colors, non-reflective building materials, height limits, grading and locational requirements that appear to apply even if the proposed structure were fully screened.

The applicant has submitted a color chart showing the proposed colors for the roof as brown and the walls as a red (Exhibit 1.8). The brown is a muted color that will blend with the natural surrounding and appear as a shadowed area at a distance. However the red color may not be a muted color according to Oregon Parks and Recreation Department. As a condition of approval

the applicant will need to get a letter from the Oregon Parks and Recreation Department approving the red color or an alternative color clearly stated in the letter from the Department.

The roof and walls are proposed to be sheet metal painted as stated earlier. The proposed structure design includes a series of two by four foot windows on the north facing side of the proposed building. Metal siding and roofs can be reflective. A condition of approval can require wooden siding for the building and asphaltic shingle roofing with an option to allow metal siding and roofing if the Oregon Parks and Recreation Department states in a letter that they consider the specified building materials (metal siding and roofing) for the proposed building as meeting their requirements. Likewise windows are often reflective. A condition of approval can require low reflectivity windows or confirmation from the Oregon Parks and Recreation Department that the proposed window design meets their requirement that “No large areas, including roofs, shall be finished with ... reflective materials.”

The proposed structure will be a maximum of 23 feet tall meeting the Oregon Parks and Recreation Department maximum height requirement. The proposed structure will require minimum earth work due to the shallow slope and building design and will not leave any soil exposed when the project is completed. The proposed structure’s location as described earlier in this finding meets the Oregon Parks and Recreation Department rule requiring the building, “Be located in such a way that topography and natural vegetation make them inconspicuous as reasonably practicable, and in no case obtruding on the view from the river” given the existing topography and the tree providing screening to the north and west. A condition of approval can require the property owner maintain the existing trees on the property to the north of the building site and maintain the area west of the dwelling in mature forest to provide screening from the river to the west.

This criterion can be met through conditions of approval.

**9.1.2. MCC36.4545(B) The maximum possible landscaped area, scenic and aesthetic enhancement, open space or vegetation shall be provided between any use and a river, stream, lake, or floodwater storage area.**

**Applicant:** *There is a required forest fire break area maintained around the structure. The area is currently an open space and will be maintained as such.*

**Staff:** The proposed building will be located along the existing driveway adjacent to the pasture. The proposed building site will not affect the landscaping for the property and continue to provide significant open space on the property. This criterion is met.

**9.1.3. MCC36.4545 (C) Agricultural land and forest land shall be preserved and maintained for farm and forest use.**

**Applicant:** *The field/meadow will remain a field/meadow.*

**Staff:** The proposed building site is a previously disturbed site near the existing driveway. The existing pastureland and forestland on the property will not be affected by the proposed use. This criterion is met.

- 9.1.4. MCC36.4545(D) A building, structure, or use shall be located on a lot in a manner which will balance functional considerations and costs with the need to preserve and protect areas of environmental significance.**

**Applicant:** *The building will be located in the area least impactful to the wildlife and view of all concerned. The function and costs are minimized to maximize existing driveway and functions already in place.*

**Staff:** The proposed building site is in a relatively flat area previously disturbed with no known environmental significance. The proposal meets the criterion.

- 9.1.5. MCC36.4545 (E) The natural vegetation along rivers, lakes, wetlands and streams shall be protected and enhanced to the maximum extent practicable to assure scenic quality and protection from erosion**

**Applicant:** *Invasive species are already removed and targeted for ongoing removal and control, so that natural species can thrive, and natural species have been added to protect from erosion.*

**Staff:** The proposed building will not be located near any rivers, lakes, wetlands and streams. The nearest stream is well over 300 feet from the site. The criterion is met.

- 9.1.6. MCC36.4545 (F) Archaeological areas shall be preserved for their historic, scientific, and cultural value and protected from vandalism or unauthorized entry.**

**Applicant:** *This is not an archeological area.*

**Staff:** There are no known archaeological areas near the site. The criterion is met.

- 9.1.7. MCC36.4545 (G) Areas of erosion or potential erosion shall be protected from loss by appropriate means. Appropriate means shall be based on current Best Management Practices and may include restriction on timing of soil disturbing activities.**

**Applicant:** *There are no erosion problems at the site.*

**Staff:** Due to the very shallow slope of the proposed building site there are no erosion concerns related to this project. The criterion is met.

- 9.1.8. MCC36.4545 (H) The design, bulk, construction materials, color and lighting of buildings, structures and signs shall be compatible with the character and visual quality of areas of significant environmental concern.**

**Applicant:** *The pole barn is way below suggested height dimensions. Building materials and color will be earth tone colors, and materials will be non combustible and pressure treated lumber -those requiring low maintenance over time.*

**Staff:** The building design is for a two tiered roof type pole barn, a fairly common design. The size is common in the West of the Sandy River Plan Area. It is proposed to be 23 feet maximum height. The building is proposed to have metal siding and roofing. The proposed colors are brown for the roof and a brownish-red for the siding. No lighting is proposed but can be required through a condition of approval to be hooded. That proposed building is substantially screened by

topography and where the topography does not screen the proposed building, trees on the site provide substantial screening if not total screening. Given this screening we find that the proposed structure meets this criteria.

- 9.1.9. MCC36.4545 (I) An area generally recognized as fragile or endangered plant habitat or which is valued for specific vegetative features, or which has an identified need for protection of the natural vegetation, shall be retained in a natural state to the maximum extent possible.**

**Applicant:** *There are no fragile or endangered plant habitat existing in the site area.*

**Staff:** The building is not in an area which is recognized as fragile or endangered plant habitat or which is valued for specific vegetative features, or which has an identified need for protection of the natural vegetation. This criterion is met.

## **9.2 General Requirements for SEC-h Overlay**

- 9.2.1. MCC 36.4550(A) Areas of erosion or potential erosion shall be protected from loss by appropriate means. Appropriate means shall be based on current Best Management Practices and may include restriction on timing of soil disturbing activities.**

**Staff:** Due to the very shallow slope of the proposed building site there are no erosion concerns related to this project. The criterion is met.

- 9.2.2. MCC 36.4550(B) Outdoor lighting shall be of a fixture type and shall be placed in a location so that it does not shine directly into undeveloped water resource or habitat areas. Where illumination of a water resource or habitat area is unavoidable, it shall be minimized through use of a hooded fixture type and location. The location and illumination area of lighting needed for security of utility facilities shall not be limited by this provision.**

**Staff:** A condition of approval will require the outdoor lighting to meet this standard.

- 9.2.3. MCC 36.4550(C) The following nuisance plants, in addition to the nuisance plants defined in 36.4510, shall not be used as landscape plantings within the SEC-wr and SEC-h Overlay Zone:**

**Applicant:** *Invasive species are already removed and targeted for ongoing removal and control, so that natural species can thrive, and natural species have been added to protect from erosion.*

**Staff:** The applicant is aware of this nuisance plant list. The applicant is not proposing any landscaping. The criterion can be included as a condition of approval.

## **9.3. Criteria for SEC-h Wildlife Habitat Permit**

- 9.3.1. MCC 36.4560(A) (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.**

**Applicant:** The area of construction is in an already non-forested area.

**Staff:** The proposed development is in the SEC-h area, the accessory building, is in a cleared area and will not require the removal of any trees. This standard is met.

**9.3.2. MCC 36.4560(A)(2) Development shall occur within 200 feet of a public road capable of providing reasonable practical access to the developable portion of the site.**

**Applicant:** *This site is not meant to be developed beyond the pole barn and existing house.*

**Staff:** The proposed building site will be just shy of 500 feet from the road. Due to the topography near the road and location of the pastureland to which this building is related for agricultural purposes, the proposed location is the most practicable. This standard is not met.

**9.3.3. MCC 36.4560(A) (3) The access road/driveway and service corridor serving the development shall not exceed 500 feet in length.**

**Applicant:** *The pole barn will be constructed along the driveway about 350 feet.*

**Staff:** The driveway for this property already exists serving a dwelling on the tract. There will be a short extension of about 50 feet to this driveway making the portion the serves the proposed development just shy of 500 feet. This standard is met.

**9.3.4. MCC 36.4560(A) (4) 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.**
- (f) Fencing standards do not apply where needed for security of utility facilities.**

**Applicant:** *Utility fencing will be added for animal pasture area in the future.*

**Staff:** No fencing is proposed for the setback area form the road. This standard is met.

**9.3.5. MCC 36.4560(A) (5) The nuisance plants listed in Table 1 shall not be planted as landscaping and shall be controlled within cleared areas of the subject property.**

**Applicant:** *Nuisance plants will not be planted, and existing stinging nettles and blackberries, the existing nuisance plants are being controlled.*

**Staff:** The standard is met.



**9.3.6. MCC 36.4560((B) 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 Section (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 Section (B), but demonstrates that the alternative conservation measures exceed the standards of Section (B) and will result in the proposed development having a less detrimental impact on forested wildlife habitat than the standards in Section (B).**

**Staff:** The applicant can not meet all the standards for the proposed development because the location of the pasture, topography of the property require the building to be more than 200 feet from the road.

**9.3.7. MCC 36.4560((B) (3) The wildlife conservation plan must demonstrate the following:**

**9.3.7.1. MCC 36.4560((B) (3) (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.**

**Applicant:** *There is no impact to any forested area.*

**Staff:** The proposed development, the barn and driveway extension area which is cleared with no trees removed. This standard is met.

**9.3.7.2. MCC 36.4560((B) (3) (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.**

**Applicant:** *The building site is already cleared.*

**Staff:** The proposed development the accessory building and driveway will be in an existing cleared area. This standard is met.

**9.3.7.3. MCC 36.4560((B) (3) (c) That no fencing will be built outside of areas cleared for the site development except for existing cleared areas used for agricultural purposes.**

**Applicant:** *No fencing is being built for the site development.*

**Staff:** No fence is proposed as part of the development. An agricultural fence may be established later around the pasture area to control livestock. This standard is met.

**9.3.7.4. MCC 36.4560((B) (3) (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.**

**Applicant:** *There are no revegetation plans for the area because no new clearing will happen. There have already been measures taken to prune existing vegetation and to plant native species, as well as trees.*

**Staff:** There are no newly cleared areas on the property. No revegetation is required. This standard is met.

**9.3.7.5. MCC 36.4560((B) (3) (e) That revegetation and enhancement of disturbed stream riparian areas occurs along drainages and streams located on the property.**

**Applicant:** *There are no stream riparian areas.*

**Staff:** There are no streams within 300 feet of the proposed development. There is a seasonal stream in the lower draw which emerges a short distance from the road on the property (about 50 feet) in an area that is heavily vegetated with full forest canopy and understory native vegetation. No revegetation or enhancement is necessary for this short stretch of stream. This standard is in not applicable.

**10. CONCLUSION**

**Staff:** Based on the findings, narrative, and other information provided herein, this application, as conditioned, satisfies the applicable approval criteria required for a Significant Environmental Concern for Scenic Waterway and Significant Environmental Concern for Habitat Permit with the conditions of approval. This permit application request is approved with conditions.

**11 EXHIBITS**

**11.1 Exhibits Submitted by the Applicant:**

- Exhibit 1.1: Application form submitted 3/22/05(1 page);
- Exhibit 1.2: Applicant's narrative submitted 4/20/05 (2 pages);
- Exhibit 1.3: Oregon Parks and Recreation Department letter to the applicant dated March 25, 2005 submitted 4/20/05 (1 page);
- Exhibit 1.4: Revised narrative submitted 4/28/05 (18 pages);
- Exhibit 1.5: Revised site plan submitted 4/28/05(1 page);
- Exhibit 1.6: Site map showing slope submitted 4/28/05 (1 page);
- Exhibit 1.7: Elevation drawing for the proposed structure submitted 4/28/05 (8 pages);
- Exhibit 1.8: Color chart showing proposed colors for the proposed structure 4/28/05 (1 page);
- Exhibit 1.9: Certificate of On-Site Sewage Disposal review (1 page);
- Exhibit 1.10: Fire District Review Fire Flow Requirements form (1 page);
- Exhibit 1.11: Fire District Access Review form (1 page);
- Exhibit 1.12: Storm Water Certificate signed by Timothy R. Turner, PE with attachments submitted 5/27/05 (4 pages).

**8.2. Exhibits Provided by the County**

- Exhibit 2.1: County Assessment Record for the subject properties (2page);
- Exhibit 2.2: County Assessment Map of the subject property (1 page);
- Exhibit 2.3: County Zoning Map for the subject properties (1 Page);
- Exhibit 2.4: County 2002 Aerial for the subject property and vicinity showing 10 foot topographic contours (1 page);
- Exhibit 2.5: County Assessment Records for accessory structure determination (8 pages);

- Exhibit 2.6: County Assessment Parcel Record Card showing legal description for contract recorded on Book 574 on Page 867 (2 pages)
- Exhibit 2.7: County Assessment Parcel Record Card showing Book 906 on Page 1033 (2 pages);
- Exhibit 2.8: 1962 County Zoning Map (1 page);
- Exhibit 2.9: Email from Alison Winter, County Transportation Planning Specialist (1 pages).