

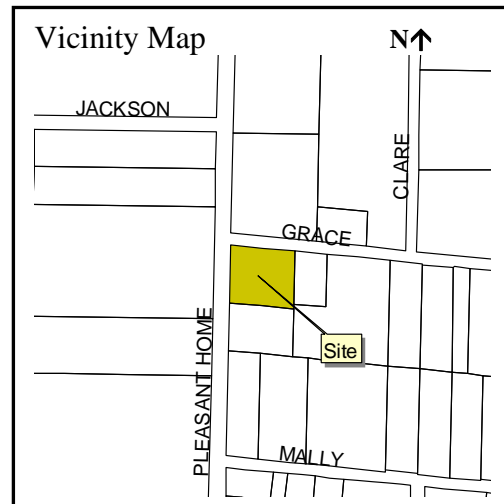


MULTNOMAH COUNTY
LAND USE AND TRANSPORTATION PROGRAM
1600 SE 190TH Avenue Portland, OR 97233
PH: 503-988-3043 FAX: 503-988-3389
<http://www.co.multnomah.or.us/landuse>

NOTICE OF DECISION

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

Case File: T2-07-078
Permit: Significant Environmental Concern Permit & Adjustment
Location: 6918 SE Pleasant Home Road
TL 1500, Sec 20, T 1S, R 4E, W.M.
Tax Account #R67780-1420
Applicant: David & Dawn Boyer
Owner: David & Dawn Boyer
Base Zone: Multiple Use Agriculture – 20 (MUA-20)
Overlay Zones: Significant Environmental Concern for Water Resources (SEC-wr)



Summary: Applicants are requesting to construct a replacement dwelling and accessory building on the property known as 6918 SE Pleasant Home Road in the Multiple Use Agriculture – 20 zone. Based on the submitted materials, the applicants have failed to demonstrate compliance with the following:

1. The proposed development has not been limited to the area necessary to allow the proposed use [MCC 36.4555(B)(2)];
2. The proposed dwelling has not been placed as far as practically possible from the stream [MCC 36.4555(B)(3)];
3. A portion of the Water Resource Area has not been restored to “Good Condition” [MCC 36.4555(D)(4)]; and
4. The proposed mitigation plan does not offset the impacts to the Water Resource area resulting from the non-permitted stream armoring and proposed development [MCC 36.4555(E)(1), (E)(2)(a), (b), (d), & (E)(3)(a), (b)].

Decision: Significant Environmental Concern Permit – Denied.
Adjustment – Approved for Dwelling; Denied for Accessory Structure

Unless appealed, this decision is effective Friday, February 1, 2008, at 4:30 PM.

Issued by:

By: _____
Lisa Estrin, Planner

For: Karen Schilling- Planning Director

Date: Friday, January 18, 2008

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 Lisa Estrin, Planner at 503-988-3043 ext.22597.

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 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 Friday, February 1, 2008 at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC):

Multiple Use Agriculture – 20 - MCC 36.2820 Allowed Uses, MCC 36.2855 Dimensional Standards and Development Requirements, MCC 36.2870 Lot of Record, MCC 36.2880 Off-Street Parking and Loading, MCC 36.2885 Access.

Significant Environmental Concern - MCC 36.4515 Uses - SEC Permit Required, MCC 36.4540 Application for SEC Permit, MCC 36.4550 General Requirements for Approval in Areas Designated as SEC-wr or SEC-h, MCC 36.4555 Criteria for Approval of SEC-wr Permit -Water Resource.

Adjustments - MCC 36.7606 Scope, MCC 36.7611 Adjustment Approval Criteria.

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/landuse>.

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 criteria and Comprehensive Plan Policies are in **bold** font. The applicants statements are identified below as ‘**Applicant:**’. Staff comments and analysis are identified as ‘**Staff:**’ and address the applicable criteria. Staff comments may include a conclusionary statement in *italic*.

Project Description:

Staff: The property owners are proposing to replace the existing, 1,412 sq. ft. one-story single family dwelling with a new, 6,568 sq ft, two-story single family dwelling with attached garage and wrap around porch on three sides. The ground floor coverage for the proposed dwelling is 4,264 sq ft. In addition, they are proposing to construct a 36 ft wide by 48 ft (1,728 sq. ft) shop. The property owners have agreed to reduce the size of the accessory building so that a variance is not necessary. The accessory structures new size is 35 ft by 44 sq. ft (1,540 sq. ft.). A portion of the existing dwelling will be removed to construct the new dwelling and it will be completely demolished after occupancy of the new house.

The existing property is 1.03 acres in size and is nearly square. The terrain is fairly flat with an approximate 5% slope going from the northwest corner of the property to the southwest corner. The existing dwelling is slightly higher than the existing top of bank. The property is a corner lot with frontage on Pleasant Home Road and Grace Road. Both streets are classified as *Local* roads in the County’s Functional Classification Plan. The right of way for Pleasant Home Road is at 60 ft, which is the County’s standard for a *Local* classified roadway. The current dwelling is served by a driveway which loops from Pleasant Home Road to Grace Road. Only the segment leading from Pleasant Home to the existing dwelling is lawful. Grace Road only has a 40 ft right of way. Transportation Planning has indicated that a five foot dedication of right-of-way may be necessary in the future, but are not requesting dedication at this time.

The protected watercourse enters the property towards the middle of the south property line and traverses the site in a diagonal line leaves the site along the western property boundary. The property has one large Douglas Fir in the southeast quadrant and is vegetated with lawn. A rough 26 ft by 26 ft accessory structure is located 2 ft from the west property line adjacent to Pleasant Home Road. The on-site sewage disposal system is located within the southeast quadrant of the property.

In February 2005, the County received a complaint about ground disturbing activities within the stream on the subject site. The property owners have indicated that they replaced a 15 inch culvert with a new 30 inch culvert to relieve a bottleneck of stream flow. The property owners have indicated that this work was completed after the stream threatened to flood their existing dwelling which is approximately 15 ft to the northeast of the channel. The property owners indicate that the floodwaters had reached an existing barn to the west of the channel. In addition to the culvert replacement, the property owners began to cement in the stream channel by installing marine plywood, stones, rebar and cement. The stated purpose of the lining of the stream was to raise the stream channel so it contained floodwaters. In addition to the above described work, the property owners constructed a driveway access onto Grace Road. The Transportation Right-of-Way section has indicated that no permits were obtained for this second access. All of this ground disturbance work required review and approval of a Significant Environmental Concern permit for water resources or other land use permits at the time of their construction. While this work may have modified the flooding situation on the subject property, its effects can have ramifications downstream. This application will need to reflect this work as part of the requested development.

1.00 ***Administration and Procedures***

1.01 **Type II Case Procedures**

MCC 37.0530(B): ...Upon receipt of a complete application, notice of application and an invitation to comment is mailed to the applicant, recognized neighborhood associations and property owners within 750 feet of the subject tract. The Planning Director accepts comments for 14 days after the notice of application is mailed and renders a decision...

Staff: The application was submitted July 26, 2007 and was deemed complete as of October 27, 2007. An "Opportunity to Comment" notice was mailed on November 30, 2007 to all properties within 750 feet of the subject properties in compliance with MCC 37.0530. No written comments were received.

1.02 **Proof of Ownership**

MCC 37.0550 Initiation of Action

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. PC (legislative) actions may only be initiated by the Board of Commissioners, Planning Commission, or Planning Director.

Staff: The proposed project is located on Tax Lot 1500, Section 20AA, Township: 1 South, Range: 4 East. Assessment & Taxation records show that the land is owned by David & Dawn Boyer. Both property owners have been designated the applicant in this case and have signed the General Application Form (Exhibit A.1). *This criterion has been met.*

1.03 **MCC 37.0560 Code Compliance And Applications.**

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

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

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

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

Staff: In February 2005, Multnomah County received a complaint regarding the alteration of a Beaver Creek on the subject property. The property owners had replaced an existing 15 inch culvert with a 30 inch culvert and had paved the banks of the stream with concrete. A Grading and Erosion Control Permit and Flood Development Permit have been applied for, in addition

to this permit, to correct this unpermitted work.

In addition to the above, the property owners have installed a small (approx. 10 ft by 16 ft) shed without land use approval within the SEC-wr overlay zone. The small structure is located within the rear and street side yards and will probably be removed when the new accessory structure is constructed near by. The property owners have not indicated that they are seeking approval for this structure as part of this permit. At some point in the future, this issue will need to be resolved.

2.00 ***Multiple Use Agriculture – 20 Criteria***

2.01 **MCC 36.2820 Allowed Uses.**

(A) A single-family detached dwelling on a Lot of Record, including a home built on or off- site. A home that has been constructed off-site shall meet the following requirements:

(1) Construction shall comply with the standards of the Uniform Building Code or as prescribed in ORS 446.002 through 445.200 relating to mobile homes;

(2) The dwelling shall be attached to a foundation for which a building permit has been obtained;

(3) The dwelling shall have a minimum floor area of 600 square feet.

Staff: The property owners have proposed to construct a new stick-built single family dwelling to replace an existing dwelling. *This criterion has been met.*

2.02 **(F) Other structures or uses customarily accessory or incidental to any use permitted or approved in this district.**

Staff: The property owners are proposing to construct a 36 ft by 48 ft (1,728 sq. ft) accessory structure. In order to meet the threshold for an Adjustment to the yard requirement, the property owners have agreed to reduce the size of the structure to 35 ft by 44 ft (1540 sq ft). The accessory structure will be used for the personal storage of vehicles and equipment to be used in the maintenance of the property. No commercial equipment used to operate a business will be stored within the building. A condition of approval has been included clarifying that the operation of any commercial business from the new structures will require, at minimum, a conditional use permit for a Type B Home Occupation. *As conditioned, the 35 ft by 44 ft accessory structure is customarily accessory to the dwelling.*

The second accessory structure/use proposed is armoring of the on-site watercourse and the upsizing of an existing culvert from 15 inches to 30 inches in size. The property owners' consultant has submitted evidence that the armoring of the subject stream has occurred on other properties in the area. Evidence of armoring higher in the drainage was submitted. Staff reviewed the permit record for the other property and staff did not find that this armoring was permitted or lawful. The concreting of a stream bed alters the flood zone, increases flow speed of the water in the stream and reduces the capacity of the stream to absorb water into its riverbed. Staff reviewed the Flood Development permits for the last two years and found no permits had been issued to concrete or armor a watercourse. The property owners have not shown that the armoring of the stream is customary in the zone. The upsizing of the culvert is a replacement of an existing use pursuant to MCC 36.7200. Based upon the review of County permits, staff finds that the armoring of the tributary of Beaver Creek is not a customary accessory use or an incidental use to a permitted use in the zone.

2.03 **MCC 36.2855 Dimensional Standards and Development Requirements.**

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

(A) Except as provided in MCC 36.2860, 36.2870, 36.2875, and 36.4300 through 36.4360, the minimum lot size shall be 20 acres.

(B) That portion of a street which would accrue to an adjacent lot if the street were vacated shall be included in calculating the area of such lot.

Staff: The subject property is 1.03 acres in size. Pursuant to the findings in section 2.08, the property is a Lot of Record and is exempt from the 20 acre minimum lot size. *This criterion has been met.*

2.04 **(C) Minimum Yard Dimensions – Feet**

Front	Side	Street Side	Rear
30	10	30	30

Maximum Structure Height - 35 feet

(D) The minimum yard requirement shall be increased where the yard abuts a street having insufficient right-of-way width to serve the area. The county Road Official shall determine the necessary right-of-way widths based upon the county “Design and Construction Manual” and the Planning Director shall determine any additional yard requirements in consultation with the Road Official.

Staff: The subject property is a corner lot and fronts onto Pleasant Home Road and Grace Road. The property line adjacent to Pleasant Home is the narrowest frontage of the lot and is considered the front property line pursuant to MCC 36.0005 Lot Line, (Front). The property line adjacent to Grace Road is a side property line. Both Pleasant Home and Grace right-of-ways are designated as a *Local* Road in the County’s Functional Classification system. The County’s standard right-of-way width for a *Local* Road is 50 feet. Pleasant Home Road right-of-way width is currently 60 ft adjacent to the subject property. The Grace Road right-of-way width is currently 40 ft adjacent to the subject property and is an insufficient right-of-way. Since the property line adjacent to Grace Road is a side property line, the minimum yard requirement must be increased 5 ft to 35 ft total to allow adequate setback for future right-of-way width.

The property owners are proposing to construct the new single family dwelling approximately 74 ft from the front property line adjacent to Pleasant Home, 95 ft from the east property line (rear), approximately 92 ft from the south property line (side) and 28 to 30 ft from the north property line (street side). The construction of the dwelling within the 35 ft setback from the street side property line will require an *Adjustment* be granted from the above Dimensional Requirements in order for the dwelling to meet these criteria. The findings for the *Adjustment* can be found in section 4.00 et al. *The Adjustment for the Dwelling has been approved.*

The proposed accessory structure is 166 ft from the west property line (front), 135 ft from the south property line (side), 17 ft from the east property line (east) and 17 ft from the north property line (street side). In order for the structure to be located at its proposed location a variance from the rear and street side yard requirement is necessary. The property owners have indicated to staff that they would reduce the size of the accessory building to meet the threshold criteria for an Adjustment. To qualify for an adjustment, the building would need to be reduced to 35 ft by 44 ft so that the street side yard would be increased to a minimum of 21 ft and the rear yard would be increased to a minimum of 18 ft. With these changes an Adjustment would

still need to be approved for the accessory building to meet the above yard requirements. The findings for the Adjustment are listed below under section 4.00 et al. *The Adjustment for the Accessory Structure has been denied. The accessory structure will need to meet the setbacks for the zone.*

The height of the proposed dwelling is approximately 28 ft to top of ridgeline. The height of the proposed accessory structure has not been submitted at this time. *The height requirement has been met for the dwelling, but has yet to be determined for the accessory structure.*

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

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

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

Staff: The existing on-site sewage disposal system will be utilized for the replacement dwelling. No modifications are proposed other than hooking the system up to the new dwelling. This system was replaced in 2006 under a permit issued in 2005. The property owners have submitted a Stormwater Certificate signed by a licensed engineer which specifies that a detention tank will be needed to handle the 10 year, 24 hour storm event. Staff believes that the outflow from this tank will be to the stream, but the location of the tank or outflow has not been identified on the plans. The stormwater system will need to be shown on the building permit plans. The stormwater system design will need to be resolved in the future as part of the building permit process.

Off-street parking will be provided within an attached garage or on the proposed driveway and meets the requirements under section 2.09 below. The yard requirements are addressed under section 2.04 above. *This criterion has been met.*

- 2.06 **(G) 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: The property owners have submitted a Grading and Erosion Control permit for the proposed project. *This criterion will be met via a condition of approval.*

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

(1) Recording a covenant that implements the provisions of the Oregon Right to Farm Law in ORS 30.936 where the farm use is on land in the EFU zone; or

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

Staff: The proposed use is for a replacement dwelling. Farming activities are occurring on adjacent lands. A condition of approval can be included requiring the recordation of a covenant

prior to building permit approval. *As conditioned, this criterion will be met.*

2.08 MCC 36.2870 Lot of Record.

(A) In addition to the Lot of Record definition standards in MCC 36.0005, for the purposes of this district the significant dates and ordinances for verifying zoning compliance may include, but are not limited to, the following:

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

Staff: In 1912, the Proctor Subdivision was recorded creating Lots 1 & 2, Block 6 Proctor. These lots were re-divided on January 23, 1963 into a metes and bounds description involving the northern portions of these two lots. The description indicates that the property consists of “All that portion of Lots 1 and 2, in Block 6, Proctor, except that part lying southerly of a line drawn parallel with and 166 feet northerly from the southerly lines of said lots, in the County of Multnomah and State of Oregon.” The created parcel was 1.03 acres in size. In 1963, the subject property was zoned R-10 with a minimum lot size of 10,000 sq. ft, minimum average lot width of 70 ft and a minimum average lot depth of 100 ft. The existing parcel width is 204 ft and the existing lot depth is 224 ft. The only issue is that because the metes and bounds description includes the use of Lot 1 and Lot 2 to describe the property, a lot line divides the property and runs through a portion of the dwelling affecting the setbacks for the building. To correct this situation, the property owners will need to re-describe the subject site through the County’s Lot Consolidation process so that the dwelling will meet the above yard requirements as described above. A condition of approval can be included requiring a lot consolidation application be submitted and the property to be re-described to remove the lot line. *As conditioned, this criterion has been met.*

2.09 MCC 36.2880 Off-Street Parking and Loading.

Off-street parking and loading shall be provided as required by MCC 36.4100 through 36.4215.

Staff: MCC 36.4205 specifies that a single family dwelling shall have two parking spaces. These spaces may be in a garage or on the subject property. The proposed single family dwelling will have at least two parking spaces in the attached garage. The driveway leading to the garage may also be utilized for parking. *This criterion has been met.*

2.10 MCC 36.2885 Access.

All lots and parcels in this district shall abut a street or shall have other access determined by the approval authority to be safe and convenient for pedestrians and for passenger and emergency vehicles, except as provided for Lots of Record at MCC 36.2870(B).

Staff: Grace and Pleasant Home Roads are County roads each with a Rural Local functional classification. Grace Road has a substandard right-of-way width and a dedication along the side property line may be necessary. At present, Transportation Planning has not requested this dedication as the proposed development does not generate the necessary trip increase to justify the dedication. Currently, the site has a loop driveway connecting to Pleasant Home and Grace Road. The connection to Grace Road was constructed without right-of-way permits and is unlawful. The Transportation Planning Program has reviewed the proposed project for

compliance with County Road Rules and has specified that a single driveway entrance will be allowed for the subject property (Exhibit B.5). One of the driveways will need to be closed. The property owners have indicated that the Grace Road driveway will be closed and the Pleasant Home driveway will remain. The Transportation Planner has indicated that the first 20 ft of the driveway apron will need to be paved. A driveway permit will be required for all work occurring in the county right-of-way. If there will be modifications to the existing driveway or a new driveway access constructed, a driveway permit will be required prior to its connection to the county road right-of-way. *This criterion has been met.*

3.00 ***Significant Environmental Concern Criteria***

3.01 **MCC 36.4515 Uses - SEC Permit Required.**

(A) All uses permitted under the provisions of the underlying district are permitted on lands designated SEC; provided, however, that development, including but not limited to, the location and design of any use, or change, replacement or alteration of a use, except as provided in MCC 36.4520, shall be subject to an SEC permit.

Staff: The proposed replacement dwelling and accessory structure are *Allowed Uses* within the Multiple Use- Agriculture – 20 district. The property owners have applied for a SEC-wr permit. *This criterion has been met.*

3.02 **MCC 36.4535 Scope of Conditions.**

(A) Conditions of approval of an SEC permit, if any, shall be designed to bring the application into conformance with the applicable criteria of MCC 36.4545 through 36.4560 and any other requirements specified in the Goal 5 protection program for the affected resource. Conditions may relate to the locations, design, and maintenance of existing and proposed improvements, including but not limited to buildings, structures and use areas, parking, pedestrian and vehicular circulation and access, natural vegetation and landscaped areas, fencing, screening and buffering, excavations, cuts and fills, signs, graphics, and lighting, timing of construction and related activities, and mitigation.

(B) Approval of an SEC permit shall be deemed to authorize associated public utilities, including energy and communication facilities.

(C) The approval criteria for an SEC permit shall be used to determine the most appropriate location, size and scope of the proposed development in order to ensure that it meets the purposes of this subdistrict, but shall not be used to deny economically viable use or be used to require removal or relocation of existing physical improvements to the property.

Staff: Staff considered conditions of approval to modify the application to meet the SEC-wr criteria. While it is feasible to reduce the size of the dwelling, move its location, change the driveway location through conditions, staff determined that due to the degraded nature of the site and the inadequate mitigation plan submitted by the property owner's consultant, staff has no recourse than to deny the application because the County does not have a biologist on staff to modify the mitigation plan sufficiently to bring the stream and its adjacent corridor to Good condition.

3.03 **MCC 36.4525 Existing Uses.**

Uses that legally existed on January 1, 2003, that are not included as Exceptions in section 36.4520, may utilize the provisions of this section. This section is intended to define the circumstances under which existing development can be improved or replaced under

limited requirements in recognition of the pre-existing status. The SEC provisions are also not intended to make existing uses non-conforming. However, approval of proposals for alteration of uses that were non-conforming prior to the SEC ordinance, must obtain an SEC permit in addition to demonstrating compliance with the non-conforming use provisions of this Chapter.

***...

(C) Within the SEC-wr, lawfully established structures that do not meet the casualty loss provisions of (B) above may be replaced within the same foundation lines or area of ground coverage when the entire remaining vegetated corridor on the project site, or the first 50 feet closest to the stream, or an area equal to the ground coverage of the building and attached structures and paved areas, whichever is less, is enhanced to "good" condition pursuant to Table 2. Replacement shall be processed as a Type II review.

***.

Staff: The subject property is completely within the SEC-wr overlay for Beaver Creek. The property owners are proposing to replace the existing dwelling with a new dwelling. While the new dwelling overlaps a portion of the existing dwelling, the replacement dwelling is not within the same foundation lines or area of ground coverage. The replacement dwelling will need to meet the criteria listed under MCC 36.4550 & 36.4555 below.

The property owners replaced an existing culvert in 2005. The upsizing of the existing culvert from 15 inches to 30 inches is considered development pursuant to MCC 36.4510(A). They have submitted photographs of the old culvert after it had been removed from the ground. While the culvert materials are older, this evidence does not show that it was placed lawfully within the stream corridor. Based on the evidence in the record, staff is unable to find that the prior culvert was a lawfully established structure. In addition, the proposed mitigation plan does not bring the first 50 feet closest to the stream or area equal to the ground coverage of the structures to a "Good" condition as specified by their consultant below. *This criterion has not been met for the replaced culvert.*

3.04 MCC 36.4540 Application for SEC Permit.

A decision on an application for an SEC permit shall be based upon findings of consistency with the purposes of the SEC district and with the applicable criteria for approval specified in MCC 36.4545 through 36.4560. An application for a use on a property containing more than one protected resource shall address the approval criteria for all of the designated resources on the property. In the case of conflicting criteria, approval shall be based on the ability of the proposed development to comply as nearly as possible with the criteria for all designated resources that would be affected.

(A) General SEC: All applications for SEC permits shall include the information listed in this section in sufficient detail for County staff to evaluate the impacts of the proposal. The applicant is responsible for providing all of the required information. In addition to the information listed in this section, the application shall contain the supplemental information that is listed for the resource area in which the development is proposed.

(1) A written description of the proposed development and how it complies with the requirements applicable to the resource area in which development is proposed as listed in SECsw, SECwr, SECh.

- (2) A map of the property drawn to scale showing;**
 - (a) Boundaries, dimensions, and size of the subject parcel;**
 - (b) Location and size of existing and proposed structures;**
 - (c) Contour lines and topographic features such as ravines or ridges;**
 - (d) Location of natural drainageways, springs, seeps, and wetlands on the site. The Planning Director may require the applicant to provide the location of the SEC-wr boundary, topography, or the location of development as determined by a registered professional surveyor or engineer;**
 - (e) Proposed fill, grading, site contouring or other landform changes;**
 - (f) Location and predominant species of existing vegetation on the parcel, areas where vegetation will be removed, and location and species of vegetation to be planted, including landscaped areas;**
 - (g) Location and width of existing and proposed roads, driveways, parking and maneuvering areas, and service corridors and utilities.**
- (3) A scaled drawing of the building design and elevations that show the relationship between the building and existing and finished grades and existing or proposed vegetation.**
- (4) Application for a flood hazard permit, erosion control permit, and/or other required natural hazards permit for the proposed development;**

Staff: The property owners have provided the above but are missing some detailed information (Exhibit A.1 through A.18) as required. The information provided for the proposed grading, filling, site contouring and landform changes have not been provided in sufficient detail to determine its scope. Staff, also, did not find the species of grasses used for the lawn within the information. A flood hazard and grading and erosion control permit have been submitted.

- 3.05 **(C) SEC-Water Resource: In addition to the information requirements listed in MCC 36.4540(A) above, the following information shall be submitted for applications within the SEC-wr overlay.**

- (1) A topographic map of the development area and adjacent areas of the site at contour intervals of five feet or less showing a delineation of the Water Area or Habitat Area as determined by a documented field survey, the location of all existing and proposed watercourses, drainageways, stormwater facilities, and utility installations;**
- (2) The location of wetlands;**
- (3) Information for the site from the adopted West of Sandy River Wildlife Habitat and Stream Corridor ESEE Report, the County Goal 5 Inventory;**
- (4) Preparation of plans and surveys - Inventories, assessment of existing conditions, and mitigation or restoration plans shall be prepared by a qualified professional such as a fish or wildlife biologist at the discretion of the Planning Director. Wetlands shall be identified and delineated by a qualified wetland specialist as set forth in the 1987 Corps of Engineers Wetland Delineation Manual;**
- (5) The applicant shall provide evidence that when federal or state requirements apply, that the agency has been contacted, and shall provide an assessment of**

whether the project can meet the requirements based on the agency response;

(6) An assessment of the existing condition of the Water Resource Area in accordance with Table 2 Riparian/Vegetated Corridor Standards;

(7) An inventory of vegetation, including percentage ground and canopy coverage, and location of nuisance plants listed in Table 1;

(8) A detailed Mitigation Plan as described in 36. 4555(E), if required;

(9) The location of all existing trees of a caliper greater than six (6) inches in diameter at breast height (DBH);

(10) A description and map of soil types in the proposed development area and the locations and specifications for all proposed draining, filling, grading, dredging, and vegetation removal, including the amounts and methods.

Staff: The information from the WSR ESEE report was added to the record as Exhibit B.6. No evidence has been provided, other than a conclusionary statement, that the stream concreting and culvert replacement is exempt from the Corps of Engineers and the Department of State Lands permitting requirements. Staff contacted DSL and the Corps to attempt to gain a determination, but because of the stream modifications and the need for additional information, neither Agency was able to determine that the work was exempt without additional information. If the stream is only one stream order above fishing bearing it can be jurisdictional. All other information has been provided.

3.06 MCC 36.4550 General Requirements for Approval in Areas Designated as SEC-WR OR SEC-H.

The requirements in this section shall be satisfied for development in the SEC-wr and SEC-h areas in addition to the provisions of 36.4555 or 36.4560 as applicable.

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

Applicant: Erosion will be controlled by current BMPs.

Staff: The property owners have included erosion control measures on their site plan and have made an application for a Grading and Erosion Control permit. A condition of approval can be included that no ground disturbing activities occur on the project until such time as a Grading and Erosion Control permit is issued. *As conditioned, this criterion has been met.*

3.07 (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.

Applicant: Outdoor lighting will not directly illuminate the undeveloped water resource. The type of lighting is displayed as Attachment C. All of the samples have frosted glass. A covered porch surrounds most of the new residence. Recessed lights in the ceiling will illuminate the porch only.

Additional Narrative: All exterior lights will be on all sides of the proposed dwelling and on the West side of the shop. There will be a wrap-around porch on the West, South and East sides of the house and we will install can lights in the ceiling of the porch approximately every 10-12 feet apart. There will be exterior lights on either side of the garage and will be as

Richard Wheeler described in great detail in the mitigation plan submitted to you. None of the lights will shine directly on the Beaver Creek waterway.

Staff: All areas not developed are “Habitat Areas” on this site. The inclusion of can-lights within the porch can be a type of hooded fixture provided the finishing cover is not a directional fixture. The light fixtures shown on Exhibit A.11 allow light to shine outward through their sides. If the sides and top of these fixtures were constructed of opaque materials, these fixtures would be acceptable. A condition of approval can be included requiring the use of appropriate light fixtures to meet the above criteria. *As conditioned, this criterion has been met.*

- 3.08 **(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: Nuisance plants shown in Attachment B, Table 1, will not be used as landscape plantings.

Staff: The trees and shrubs listed in the mitigation plan are native species. The mitigation plan does not identify the species of grass to be used as ground cover. Some species of grass are considered nuisance species and as such, staff is not able to find that no nuisance plants will be used in the landscaping. *This criterion has not been met.*

- 3.09 **MCC 36.4555 Criteria for Approval of SEC-WR Permit – Water Resource**

Except for the exempt uses listed in MCC 36.4520 and the existing uses pursuant to 36.4525, no development shall be allowed within a Water Resource Area unless the provisions of section (A) or (B) or (C) below are satisfied. An application shall not be approved unless it contains the site analysis information required in 36.4540(A) and (C), and meets the general requirements in 36.4550.

Staff: The proposed project is not exempt from the requirement of an SEC-wr permit (see section 3.03 for additional findings). The proposed development must meet the Alternatives Analysis requirements of (B) as development activities occur within the low impact area and the whole property is already within the SEC-wr buffer, so buffer averaging is not an option. The property owners failed to demonstrate that the Alternative Analysis criteria have all been met. In addition, information is missing to demonstrate compliance with MCC 36.4540 (see sections 3.04 & 3.05 above) & 36.4550 (see section 3.08 above). *This criterion has not been met.*

- 3.10 **(B) Alternatives Analysis - Development proposed within a Water Resource Area may be allowed if there is no alternative, when the other requirements of this district including the Development Standards of (D) and the provisions for Mitigation in (E) are met. The applicant shall prepare an alternatives analysis which demonstrates that:**

(1) No practicable alternatives to the requested development exist that will not disturb the Water Resource Area; and

Applicant: There is no practicable alternative.

Amended Narrative: Moving the proposed dwelling north will bring it closer to Grace Rd., not the shop. Moving it either north towards Grace St. (Planned position is 20 ft., m/l from the road including a five (5) ft. offset) or east toward the shop will move it further away from the septic tank.

Moving it east toward the shop will place the residence even closer to Grace and to the

drainfield.

Rotating the shop 90° will place it closer to the residence and not improve use of the property.

The current residence is substandard for a family of five. The proposed residence improves the living conditions for this family and is not extravagant. The garage will be attached to the house making the residence two-story with a covered porch.

By most definitions of a stream, this one fits none. It has no channel. A channel exists several hundred feet upstream and downstream from Pleasant Home Road. The culvert under Pleasant Home Road has established a base level for the stream above the culvert. The headwater area is dominated by one or more commercial ornamental nurseries. During the rainy season, sediment from these flush downstream with some deposited along the stream length above Pleasant Home Road. This has created what is essentially a grassed waterway across the above Pleasant Home Road. This has created what is essentially a grassed waterway across the Boyer property as the channel has aggraded and continues to aggrade to its current condition.

Figures 6 and 7 of Water Resource Area Certification Report illustrate streamflow conditions during the rainy season in Jan., 2006. In Figure 6 the fenceline designates the south property line with the Boyer residence in the background.

When the Boyers moved into this home, the culvert running between barn and the house to the ditch along Pleasant Home Road, was only 18 in. dia. With the rainy season this CMP frequently exceeded its capacity and flow backed up above this undersized culvert threatening to flood the residence and did flood the barn. In order to reduce the flood threat to the residence, Mr. Boyer replaced the old undersized culvert with a 30 in. dia. Corrugated tongue and groove (CT&G) along the same alignment and length. Since replacement, the flood threat to the residence has substantially declined.

The culvert under Pleasant Home Road is in very poor condition. This 24" CMP carries runoff not only from the stream but also ditch flow from lands along Pleasant Home Road from the north and from the south and from Helen St. It has been crushed substantially reducing its capacity to pass rainy season storm flows, so that passing a 2-year storm runoff event is questionable without flood flow over the road surface and backing up onto the Boyer property. Armoring the stream is not uncommon along this stream. For example, Figure 1. Figure 2 is at the Boyer residence. No residence is threatened by a flooding SF in Figure 1, where the residence is well removed from the stream.

Armoring the stream on the Boyer property was intended to protect both the barn and the house from flood damage by raising the ground level. This involved armoring and backfilling to raise the ground elevation. This effort has successfully lowered the flood risk. This lowered risk is combined with the increased culvert size, from 18" to 30" dia. Before raising the ground level, flood waters seeped under the house, threatening its foundation.

The distance between the barn and the residence is about 20 ft. Both the old 18" and the new 30" culverts run between the barn and the house along the same alignment to the culvert under Pleasant Home Rd.

The SF Beaver Cr. In this neighborhood is intermittent. Although Beaver Cr. Is potentially an anadromous stream near where it flows into the Sandy Riv., the SF this far upstream little affects Beaver Cr. Less than a half mile downstream from this property, an irrigation supply reservoir collects runoff for use during the growing season for the commercial ornamental nursery on the property. This facilities renders the SF at least upstream a non-fishery stream.

Nor is this attractive to wildlife. Forest patches are widely scattered. Connectivity has not

existed since conversion from forests to agricultural use beginning in the early 1900s.

Staff: Planning staff is not in concurrence with all of the property owners' reasoning for legalizing their non-permitted stream work and stated facts. But, since the property owners indicated that the County's culvert was damaged, planning staff contacted the Transportation right-of-way inspector to review its condition. The Transportation inspector found that the County's culvert in the right-of-way was undamaged and not blocked by debris. Resolution of these off-site concerns about the alleged inadequate size of the county's culvert is not necessary for the County to make a decision on the SEC –wr permit.

The tributary of Beaver Creek enters the property towards the center of the south property line and crosses the property to the northwest at approximately the middle of the west property line. The SEC overlay covers the watercourse and 200 ft from the top of bank on both sides of the stream channel. The overlay covers the entire property. As such, it is not possible to not disturb the Water Resource Area. *This criterion has been met.*

3.11 **(2) Development in the Water Resource Area has been limited to the area necessary to allow for the proposed use;**

Applicant: Development will be limited to the area necessary.

Amended Narrative: The proposed residence will lay farther from the intermittent stream than the current residence, all of which is within the inner WRA zone. The only buildable area on this property for a new residence is the location planned. And it will pose less impact on the stream than the existing residence.

Staff: The proposed uses include a two-story dwelling with an attached garage and covered porch, a 35 ft by 44 ft accessory structure, and the unpermitted driveway to Grace Road (property owners have verbally indicated that they will abandon this driveway). The property owners are proposing to maintain the existing driveway off of Pleasant Home Road. Since only one driveway access is allowed from a public right-of-way, the side yard adjacent to Grace Road will be used to access the accessory structure. The area between the dwelling and the accessory structure is the service corridor to gain access by vehicles to the accessory structure. This additional on-site circulation and service corridor adds to the area of development. The relocation or even the flipping of the dwelling and the relocation of the driveway to between it and the accessory structure would reduce the amount of service corridor needed to access the structures. Staff has discussed this option with the applicants and they have rejected this redesign or even attaching the two structures.

The second part of the development is the armoring of the stream with concrete, rebar and rocks and the upsizing of a 15/18 inch culvert (size varies in submittal) to 30 inch culvert within the stream channel to transport the stream flow around an existing 26 ft by 26 ft existing barn. The armoring of the stream is not an accessory use allowed in the zone. See section 2.02 for additional findings on accessory uses allowed on the property. The armoring of the stream is not necessary in order to construct the proposed dwelling or accessory building, nor has the property owners demonstrated that the culvert within the stream channel is needed to replace the dwelling and construct an accessory structure. No evidence has been provided that the dwelling or accessory structure would not be feasible without this work.

The property owners have not demonstrated that the proposed development in the Water Resource Area has been limited to the area necessary to allow for the proposed use. This criterion has not been met.

3.12 **(3) Development shall occur as far as practically possible from the stream; and**

Applicant: Development will be as far as possible from the stream.

Amended Narrative: Given the constraints this property provides its owners, the proposed location for the new residence is the most reasonable. It will lie farther from the stream than the current residence and provide less risk to it.

Staff: The term *Practical* is defined in the Significant Environmental Concern ordinance as the following: “MCC 36.4510(C) *Practicable, Practical: As in No Practicable Alternative. Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.*” The property owners have applied for an Adjustment to the Street Side Yard and Rear Yard to shift the dwelling and the accessory structure into the setback areas and increasing the distance between the buildings and the stream, but the property owners’ application has not demonstrated that the proposed location of the dwelling is as far as practically possible from the stream. It is physically possible to relocate the proposed dwelling to the east and turn it so that the longest side faces Grace Road (Exhibit B.7). This would increase the distance between the stream and the proposed dwelling. In addition, the driveway could be relocated so that it served both structures without the need for additional driveway length into the street side yard. And if the accessory structure was turned so that the long side faced Grace Road, the dwelling could be attached with limited alteration in size and removal of the porch on the one end (Exhibit B.7). The dwelling would then be at least 50 ft from the edge of the watercourse. An Adjustment would still be necessary so that the house size can remain similar to the proposed footprint, but the placement of the front porch into the side yard would better reflect the purpose of this yard. A covered porch serves the purpose of a covered open space.

The proposed location of the dwelling is approximately 28 ft from the edge of the existing waterway. The septic tank is also approximately 28 ft from the edge. The driveway leading to the new dwelling exists, but is immediately adjacent to the culverted stream and prevents the area from being utilized for mitigation purposes. The design of the proposed project spreads development out significantly and does not really consider the stream and the need for a riparian buffer. *As designed, the development is not as far as practically possible from the stream.*

3.13 **(4) The Water Resource Area can be restored to an equal or better condition; or**

Applicant: The WRA can be restored to an equal or better condition.

Consultant’s Narrative: The present condition of ground cover is GOOD. With the exception of the driveway, lawn and meadow grasses densely cover the property. It proves nothing to attempt to improve the groundcover.

The property has lacked an understory since before it supported a small sawmill which closed more than three decades ago and the present residence and barn were built. Planting shrubs can alleviate this condition, especially along the stream. It may improve to MARGINAL.

For the most part it lacks an overstory. Only remnants remain since the land in this area was converted from forest to agriculture more than 70 years ago. Only limited opportunities exist to increase overstory coverage in either the inner or outer WRA zones. Only one tree remains on the property, a 51 in. dbh Douglas-fir near the drainfield. Map 2 – Mitigation shows the most promising location for “new” tree plantings. This property will go from one tree to 21, a substantial increase.

These plantings will restore the property “to an equal or better condition” than currently exists.

Additional Consultant’s Narrative: No mitigation is planned within the stream, more appropriately a waterway, which covers about 2660 ft.². Therefore, assigning square footage to

such work is inappropriate. Mitigation work is planned for the top of the bank on either side of the waterway in the overlay zones by planting shrubs, arborescent shrubs and trees, all natives.

The overlay zones extend from outward from the top of the bank for 200 ft, divided into an inner and an outer zone, each 100 ft wide. They do not extend outward from the active stream (waterway) channel.

Mitigation takes place within the overlay zones, most within the inner zone. To plan mitigation within the waterway will compromise passage of elevated streamflows during the rainy season and drown new plantings. Placement of low structures across the waterway will raise the elevation of the channel bottom and increase the risk of flooding. Small groins from the banks may change the alignment of the thalweg, increasing erosive power along the banks.

Whatever one does on this property should neither increase the flood threat nor increase potential for erosion along the banks. That is the logic for doing no mitigation within the waterway.

The culvert that runs between the house and the barn has been in place for many years. And its undersize threatened not only the house but the barn, hence its replacement with a larger one. The combined length of the old and the new remains unchanged at about 65 ft. New culvert occupies no more surface area than the old. Figure 3 shows the approximate culvert location. One thing which will not change regardless of what is done on this property is the partially crushed condition under SE Pleasant Home Rd. This substantially reduces the volume of storm flow which it will pass. Resolution of this problem will occur only when the county replaces the culvert.

Staff: MCC 36.4505(C)(1)(d) & MCC 36.4505(C)(2) specifies that the protected water features include the stream designated as significant in the Goal 5 inventory and the riparian/vegetated corridors for 200 ft adjacent to the top of bank. The consultant's statement above regarding mitigation work to the stream misses the point that the stream is the protected feature. The fact that the property owners took a stream and converted its natural state (no matter how degraded) to a cemented stormwater channel needs to be mitigated for by either repairing the stream channel to a natural state or some other improvement to return the stream to an *Equal or Better* condition. The lining of stream walls with cement, marine plywood and stones creates an impervious surface that is a degradation to the Goal 5 resource and does not return this resource to an equal or better condition. *.This criterion has not been met.*

3.14 **(5) Any net loss on the property of resource area, function and/or value can be mitigated.**

Applicant: Any net loss on the property of resource area, function and/or value will be mitigated.

Amended Narrative: Do the shrub and tree plantings raise the condition from DEGRADED to GOOD? No. The best expected improvement is MARGINAL.

Staff: The concreting of the stream is a loss of function to the natural stream bed and floodplain under MCC 36.4555(E)(2)(a). No mitigation has been proposed. The project requires the improvement of 12,516 sq. ft. of resource area from degraded to good in addition to the restoration of the watercourse to a natural state. The property owners consultant has indicated that no resource area will be improved to Good quality as part of this proposal, as such, the net loss of resource area for the dwelling, accessory structure and its related improvements have not been mitigated. *This criterion has not been met.*

3.15 **(D) Development Standards- Development within the Water Resource Area shall**

comply with the following standards:

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

Applicant: There will be no trails, rest points, viewpoints, or other facilities for the enjoyment of the resource.

Staff: Staff concurs. *This criterion has been met.*

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

Applicant: There are no trees to be cut.

Staff: Only one mature tree exists on the subject site at this time. It will not be removed by the property owner in order to construct the improvements. *This criterion has been met.*

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

Applicant: There are not patches (refugia) of dense standing trees, shrubs and ground cover along the stream to serve as connectors to other patches. A patch occurs on the property across SE Pleasant Home Rd. along the South Fork but it is isolated both upstream and downstream. It may serve as a refuge for small birds, small mammals, and small amphibians, the latter two which have limited mobility beyond their immediate habitat.

Staff: The stream prior to the non-permitted armoring did not have any standing trees or shrubs adjacent to it. The only vegetation is lawn. *This criterion is not applicable to this site at this time.*

- 3.18 **(4) The Water Resource Area shall be restored to "good condition" and maintained in accordance with the mitigation plan pursuant to (E) below and the specifications in Table 2.**

Consultant's Narrative: The WRA, which covers the entire property, is currently in POOR condition. There is no effective overstory or understory in either the Inner nor the Outer Overlay Zone. Emphasis in restoration will be on the south side of the South Fork, all of which is within the inner Overlay Zone.

Overlay Zone Characteristics

The Overlay Zones extend outward from the RB and from the LB of the South Fork for 200 feet with each divided into an Inner Zone and an Outer Zone, each 100 feet wide. It represents neither a hydrological or a geomorphic surface nor defines an environmental/ecological community or habitat. Table 1 defines areal characteristics of the Boyer property inside and outside the overlay zones. The waterway is outside overlay zones. All new development will occur north of the South Fork. Along SE Grace Rd., the Boyers will apply for an adjustment to

allow building within the offset.

Development includes a new residence and a shop in the northeast corner. All of the shop will lie within the outer Overlay. Zone Map 1 at the end of the report shows the position of all developments. Table 2 (page 10) shows the area of each development, existing and planned, and its proportion within the overlay zones.

Table 1. Areal data for the property (m/l). Property area is 1.03 ac. The dividing line between north and south Overlay Zones is the waterway and the buried 30 in. culvert.		
	Area	
	Square Feet	Percent of Total Area
Waterway	2660	5.9
Overlay Zone (North)		
Outside	18	22.1
Outer Zone	9891	
Inner Zone	25783	57.6
Overlay Zone (South) ^{1/}	6449	14.4
Total	44801	100
^{1/} All in Inner Overlay Zone		

New development totals 4634 ft². (residence and shop). A portion of the new residence will overlies a portion of the old one, all within the inner corridor. The common area equals 225 ft.² Remaining until the new residence becomes habitable, the current residence will be demolished and the ground regraded to its natural slope and revegetated. This will restore 1043 ft.² to this corridor. The driveway will remain. No new development in the south inner zone, which covers this entire portion of the property, is planned. The existing barn will remain and covers <10% of that zone.

Significant Environmental Concern Overlay Zone

The Zone extends outward from the Top of Left (LB) and the Top of Right Bank (RB). Right and Left bank are determined by looking upstream each having a fixed Zone width of 200 feet, divided into an inner and an outer sub-Zone, each 100 feet wide. Only the Zone north of the creek is flagged from the LB outward toward the north property boundary but do not include the active stream channel. The Zone south of the creek and RB is not flagged as the Inner Zone extends beyond the southwest property corner.

Figure 4 provides an orthophoto of the approximate location of the Overlay Zone on this property. They include the stream channel and parallel the approximate alignment of the creek. It does not distinguish between the inner and the outer sub-Zones. Only a field examination accomplishes this.

Initial field examination revealed the water resource portion of the Zone covers all but the extreme northeast corner of the property.

Proposed Development

Proposed development including a two-story residence with an attached two-car garage will have an overall dimension of 72'0" long by 42'0" wide plus a covered deck on much of three

sides, located at the north side of the development area. The proposed residence footprint area is 2906 sq. ft., m/l. Map 1 shows the proposed and existing development of this property. Boyers will apply for an adjustment along SE Grace St. Map 1 shows placement of the new residence and the shop reflects this adjustment.

Any grading, excavating, or fill will be confined to the residence with attached garage all within the probable development area and will not alter any final land slope either within the Outer Overlay Zone or the area outside this zone.

A future sand filter constituting the replacement drainfield will overlie the current drainfield. It, therefore, adds no additional area to the proposed development.

Demolition of the existing residence will be in stages. It will be abandoned as soon as the new residence is habitable. Its site will be regraded to the natural slope and re-vegetated to lawn/pasture grasses.

The Boyers wish to build a 36'x48' (1728 ft²) shop in the northeast corner of the property. It will lie in the Outer Overlay Zone.

Table 2 describes the area of the present and the proposed developments. There is now new development south of the stream.

Field Examination

Initial examination occurred on January 3, 2005, during which time it rained steadily. Temperatures hovered around the mid-40°F. February 10 was an additional day when the Inner and Outer Overlay Zones were flagged.

This effort involved walking the site, taking numerous photographs, identifying the only tree on the site, a large Douglas-fir. No shrubs (understory) were identified. Groundcover consisted of a groomed mixture of lawn and meadow grasses.

Research and Findings

Research

Much of the research involved on-line research. The Multnomah County plat can be found at <http://gis.co.multnomah.or.us/>, aerial photos and topographic maps at <http://terraserver-usa.com>, a service of the US Geological Survey, soils data from USDA-Natural Resources Conservation Service at <http://ice.or.nrcs.usda.gov>, and weather data from www.wrh.noaa.gov/climate/index, a service of the National Weather Service. Metro, the area's regional government, also provided data expressed as maps, <http://www.metro-region.org>. Native plants may be found at www.portlandonline.com/planning under Portland Plant List.

Table 2. Existing facilities and proposed development. All data m/l					
Description	Total Area (ft ²)	Overlay Zone			
		Inner		Outer	
		ft ²	%	ft ²	%
Drainfield ^{1/}	4100	3040	74.1	1060	25.9
Residence (New)	2906	2731	94.0	175	6.0
Covered Deck (New)	1260	1260	100.0		
Residence (Current) ^{2/}	1268	1268	100.0		
Shop (New)	1728			1728	100.0

Barn	676	676	100.0		
Driveway	1872	1872	100.0		
^{1/} Replacement sand filter drainfield overlies the existing drainfield. ^{2/} Area of current residence which lies within the footprint of the new residence: 225 ft ²					

Pre Alteration. This upper reach of the South Fork has sustained alteration for past eight to ten decades as land use changed from predominantly forest to agriculture (berries and row/truck crops) to advancing sub-urbanization and commercial ornamental nurseries. Under a forest cover, the South Fork probably had a well developed channel and was accessible to anadromous salmonids. The stream was well-shaded to keep water temperatures cool during the warmest months. Sedimentation was minimal. Wildlife habitat for large and small mammals, amphibians, birds was extensive.

Following the development of roads and drastically changed land use, fish passage was blocked for the upper three to four miles and only scattered refugia for wildlife remain with no connectivity corridors between them. Sedimentation has aggraded the channel with each road crossing/culvert acting as a dam allowing the collection of sediment upstream.

This process of sedimentation was further “enhanced” because a small sawmill and log pond, with its log decks and lumber stacks for air drying the fresh sawn lumber, occupied this site for a number of years. The dam for the log pond was located at the present location of the inlet to the replacement 30” culvert. The tailout for this pond extended well upstream from the dam and extended onto many of today’s residential properties possibly to near SE 322nd St.

With closure and dismantling of the mill and log pond, the channel became a grassed waterway from east of the south property line to the inlet of the 18 in. concrete tongue and groove (CT&G). This CT&G carried flows underground around the barn to the 24 in. CMP under SE Pleasant Home Road. Once flow ceased for the year, soils remained moist to wet for the time that flow ceased making grooming maintenance difficult as well as creating conditions which created water quality problems (sedimentation) downstream once flow resumed during the rainy season.

About 80 ft of the channel is a buried 15 in. CT&G, a diameter incapable of adequately handling many rainy season storm flows.

During the rainy season a flood threat to the current residence and the barn, as well as to the upstream neighbor, existed as storm flows backed up behind the undersized CT&G which often became clogged by debris from upstream. Flooding nearly reached the foundation of the residence. This threat steadily increased as upstream land use changed from dominantly agricultural to an increasing proportion of residential single-family homes with their accompanying impervious surfaces in roofs, patios, and driveways and wider paved roads.

Post Alteration. Alteration involved replacing the 15 in. CT&G with a 30 in. culvert. This resolved the flooding problem but does not correct the problem created by the seriously undersized and damaged 24 in. CMP under SE Pleasant Home Rd. Its inadequacy during major rainy season storms still poses a threat to the road. In addition to its undersize, its inlet has been mis-shapedened by a history of road maintenance such that its capacity has been reduced and it is more easily plugged during high discharges.

About 50 ft. of the grassed waterway just upstream of the “new” culvert inlet was altered to a well-defined channel with banks of grouted river cobbles and small boulders strengthened by re-bar and marine plywood. This effort raised the height of and steepened and armored the channel banks to funnel storm flows into the “new” culvert. It also reduced the amount of

floodplain on either side of the stream. It also reduced much of the flood threat to the residence and barn.

The “new” culvert might exacerbate the problem with the road CMP by its capacity to pass greater flood flows that previously flooded upstream with more regulated flows delivered to the road CMP.

Stream The SF Beaver Ck. Flows northwest through several properties before passing under SE Pleasant Home Rd and away from the site. During the winter and spring, the stream has flowing water. It is subject to rapid increases and declines in flow in response to rainy season storms. A USGS stream gauge on Beaver Cr. Immediately downstream from Stark St., Gresham, provides an excellent example of the flashiness of this tributary of Beaver Cr.

This portion of the South Fork has a gentle meandering character and a fall of about 1.8%. Figures 6 and 7 illustrate the character of this stream through the property. These photos were taken during a steady rain. Streamflow is turbid, or cloudy, and its discharge ~5 cfs (estimate). During storm periods it could increase to ≥ 20 to 25 cfs. The stream channel has been altered and is poorly defined. Its current character in which the landowner laid down an impermeable, weather resistant film to control seepage and created poured concrete/boulder re-bar reinforced banks to facilitate ground’s maintenance. Prior to this activity, this channel was essentially a grassed waterway. Boyer also removed a buried 15” CT&G and replaced it with a buried 30” culvert to control flooding. ...

There are two vegetation zones within this property: streamside/riparian and upland. The former constitutes a narrow bank of varying width ≤ 25 feet either side of the creek, except where stream alteration has occurred and is non-existent. However, on the Boyer property there is essentially no distinction. In both areas the dominant vegetation is a mix of meadow and lawn grasses and some forbs. There is no overstory tree canopy; only one tree grown on the property, a 50.7 in. dbh, Douglas-fir in the southeast corner of the property. No understory exists. However, invasion by Himalayan Blackberry (*Rubus discolor*), a non-native nuisance plant, is a constant threat. Mechanical control will limit its growth on the property.

Reed Canarygrass (*Phalaris arundinacea*) is gaining a foothold along the banks of the stream. It has already growing along the ditch of SE Pleasant Home Rd. An occasional blackberry also persists there. The only control for Reed Canarygrass is an herbicide. Mechanical control, such as mowing, will not work because the grass spreads by underground roots.

Along the east property line are ornamental arborvitae planted at two (2) foot intervals beginning about 65 feet from the southeast corner. They continue to the northeast corner. At present they are between six and seven feet tall. Eventually they will reach 20 to 25 feet tall and provide a sound barrier between the Boyer property and the neighbor to the east.

Given these characteristics of the overstory, understory and groundcover vegetation, determination of percent canopy cover and ground cover appears unnecessary. Ground cover is virtually complete, even along the waterway which is the South Fork up to the ± 50 ft. leading to the culvert inlet.

Additional Narrative: The mitigation plan needs no revision. No non-native plants have been recommended for use on this property. The arborvitae along the east property line are not part of the plan. They already exist. The Douglas-fir/Western Red Cedar plantings along this line are all within the outer overlay zone but beyond the arborvitae (closer to the road). Both species (DF and WRC) are suitable mitigation species for a project such as this.

As the SECwr report and the mitigation map (a part of that report) show, only one tree exists on the property. Shrubbery is almost non-existent. Groundcover essentially blanks the property

not including the residence, barn, driveway and parking area, and the small shed in the northeast corner.

Native shrubs are recommended for planting as close to the waterway as possible but not in it. None of the shrubs would fall into the ornamental category. They come from the native plant. They are suited to site conditions. No trees have been recommended between the house and the stream because they might interfere with the septic tank and the pressure line from that tank to the drainfield. No trees or shrubs should be planted over the drainfield. Meadow and lawn grasses are adequate. No groundcover has been recommended. Native and lawn grasses cover the growing site.

This small lot with only a few options for a residence and other facilities. The mitigation plan recommends planting 20 trees on a property on which only one now grows. It recommends planting 50 shrubs, all natives. None were recommended for their ornamental. They are native plants suitable for mitigation. All fall within the overlay zones and about half will be planted along the waterway banks.

This is a home with children. They need a place at home to play outside. Mitigation attempt to keep play areas open while providing native plants to improve site quality and meet mitigation requirements. More plants mean less play area.

The objective of mitigation is to substantially improve the aquatic and vegetative habitat as much as possible within the constraints presented by the property. There is no aquatic habitat to improve. The best that can be expected in the waterway is to control erosion and limit flooding. That condition currently exists. What remains is improved vegetative cover. This mitigation plan does just that. Fourteen of twenty trees are within the inner overlay zone. Forty eight of the 54 shrubs are also within the inner overlay zone. None are replacements for existing shrubs, if any.

On this property attainment of a GOOD rating is an unreasonable expectation. MARGINAL is reasonable.

Staff: MCC 36.4505(C)(1)(d) & MCC 36.4505(C)(2) specifies that the protected water features includes the stream designated as significant in the Goal 5 inventory and the riparian/vegetated corridors for 200 ft adjacent to the top of bank. The SEC-wr overlay's purposes are to protect, conserve, enhance, restore, and maintain significant natural features which are of public value. The natural feature to be protected in this case is the Tributary to Beaver Creek. It is not possible to convert the protected resource to a concrete lined stormwater drainage and then restore it to "Good" condition. The mitigation sequencing in MCC 36.4555(E)(1)(a)(1) – (5), specifies that without an over-riding public benefit, projects must first avoid impacts altogether, then minimize the impacts and only after the failing to avoid or minimize, compensation is warranted.

The first step in any proposed mitigation plan on this property should be the removal of the armoring along the watercourse pursuant to an approved plan, restoration of the stream channel and then the replanting along the banks of this watercourse to restore an area to *Good* condition. The property owner's consultant has indicated it is not possible to restore any portion of the stream to a Good condition, hence by their consultant's own statement, this criterion has not been met.

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

Applicant: Only one tree, a 50.7 in., dbh, Douglas-fir (map at end of report), stands on the property. Grass covers the balance of the site exclusive of the existing residence, the barn, and the driveway which has access to both Grace St. (on the north) and SE Pleasant Home Rd. (on the west). Along the east property line grow a number of ornamental arborvitae which serve as both a sound and visual barrier. Trees planted on about two (2) foot centers.

Staff: There is no native vegetation within the Water Resource Area other than lawn and one large Douglas fir to protect. A condition of approval can be included indicating that the one tree shall not be used as an anchor. The mitigation plan does not propose to remove the lawn from the Water Resource Area. *As conditioned, this criterion has been met.*

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

Applicant: The current residence will be demolished as soon as the new one is habitable. Its footprint will be restored to groundcover vegetation.

Staff: Along protected watercourse, the vegetation was disturbed to armor the stream and install the upsized culvert. The area is not vegetated with lawn. Staff is uncertain as to the variety of grass used and as such we are unable to determine if a nuisance species was used. To construct the proposed development, ground disturbance will occur. The mitigation plan has indicated that lawn will be installed, but has not specified a grass type. *This criterion has not been met.*

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

Applicant: The water resource area will be flagged and remain so until construction is complete.

Staff: The Water Resource Area constitutes the entire property. The flagging of this area does not make sense as all the work will occur within the flagged area. Fencing around the Douglas fir's root zone to prevent the compaction of the soil would provide a beneficial use of construction fencing material.

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

Applicant: A stormwater control plan, its implementation and monitoring will be provided by G2 Associates, Inc., 300 NE Multnomah St., Portland, OR 97232 (PO Box 220, Gresham, OR 97030), (503) 292-7939.

Staff: While a stormwater certificate has been provided by the property owners, it is for the armoring of the watercourse. No stormwater control facility has been shown on the plan, nor any area size or calculations been provided at this time. At present it is not feasible to determine if the Stormwater control facilities could be installed on the subject site and meet the above requirements, as such staff is not able to condition the application for compliance. *This criterion has not been met.*

3.23

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

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

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

- 1. Avoiding the impact altogether by not taking a certain action or parts of actions on that portion of the site which contains the regulated natural resource area;**
- 2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation;**
- 3. Compensating for the impact by repairing, rehabilitating, or restoring the affected environment;**
- 4. Compensating for the impact by replacing, enhancing or providing substitute resources or environments on-site.**
- 5. Compensating for the impact by replacing, enhancing or providing substitute resources or environments off-site.**

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

- 1. The extent of the public need for the proposed development ;**
- 2. The functional values of the Water Resource Area that may be affected by the proposed development;**
- 3. The extent and permanence of the adverse effects of the development on the Water Resource Area, either directly or indirectly;**
- 4. The cumulative adverse effects of past activities on the Water Resource Area, either directly or indirectly; and**
- 5. The uniqueness or scarcity of the Water Resource Area that may be affected.**

Staff: Neither the property owners or their consultant has provided evidence to demonstrate why the sequencing should not apply. While in some instances the sequence could be altered, the applicant has not met his burden to show with substantial evidence, that the mitigation sequence warrants an exception. *This criterion has not been met.*

3.24

(2) Compensatory Mitigation: General Requirements. As a condition of any permit or other approval allowing development which results in the loss or

degradation of regulated natural resource areas, or as an enforcement action, compensatory mitigation shall be required to offset impacts resulting from the actions of the applicant or violator.

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

Consultant's Narrative: Proposed development includes constructing the new residence and the new shop, both within the overlay zone, and demolition of the old residence, reconfiguring its footprint to the natural contour. The total altered area is 5677 ft², or 0.13 ac.

Staff: The proposed application includes development and activities associated with an enforcement action, UR 05-018. The resource area lost includes the following:

Impact Areas	Sq. Footage
Stream Channel Disturbance & Armoring	21 ft w. x 115 = 2415 3 ft w. x 35 ft = 105 3 ft x 30 ft = <u>90</u>
Ground Disturbance for Culvert Replacement	2,610 sq ft
Existing, Non-Permitted Driveway to Grace Road	13 ft x 55 ft = 715 sq. ft
New Dwelling	4,264
Accessory Structure	1,540
Regrading After Removal of Existing Dwelling for Yard Area	1,187
Vehicle Movement Area between Shop & Dwelling	2200
Total Area Requiring Mitigation	12,516 sq. ft.

3.25

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

Creation (off-site) 2:1

Restoration (off-site) 1.5:1

Creation (on-site) 1.5:1

Restoration (on-site) 1:1

Consultant's Narrative: Restoration on-site: 1:1. Mitigation will occur predominantly in a band along both sides of the creek and along the property lines on SE Grace St. and SE Pleasant Home Rd. to an equivalent ≥ 0.13 ac. or 5677 ft². About 65 ornamental arborvitae line the fence line along the east property boundary. They provide about 130 ft.² canopy coverage (Table 4).

Attaining the desirable canopy coverage to attain a GOOD classification in any of the overlay zones is impractical. To attain that goal would substantially reduce the livability of this relatively small lot for many years as the trees grow toward maturity by removing a substantial

area for family recreation and relaxation. A reasonable compromise would be to attain the highest possible condition given the property's limited available mitigation area while retaining livability. The highest attainable condition is MARGINAL.

Staff: The amount of restoration needed for the proposed development is 12,516 sq. ft of resource area. In addition, the removal of the armor along the stream cannot be considered as part of the restoration of the natural resource as this work was unlawful. The stream channel must be returned to a natural state plus the restoration of the banks adjacent to the stream need to be brought into Good condition. The removal of the 26 ft by 26 ft barn and the restoration of the stream in the area of the culvert could count towards the required mitigation, but plans showing the mitigation plantings and repair work would need to be submitted and found to bring the area into a Good condition. As proposed, the mitigation plantings do not cover the required area necessary. *This criterion has not been met.*

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

Consultant's Narrative The entire property is classified as DEGRADED (Table 4). Only 42.7% of the property is available potentially for mitigation (Table 5). Mitigation has improved all overlay zones but not sufficiently to raise condition to GOOD. There is not enough available area to attain GOOD. Attainment of mitigation to MARGINAL in both inner zones and

Staff: There is adequate area that is degraded for the mitigation plan and the work will occur within these areas. *This criterion has been met.*

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

Consultant's Narrative: The highest priority areas for restoration lie within the DEGRADED corridors closest to the natural drainage, the South Fork. Within the past half century or more on this property, that to the south, and that to the east, a forest/shrub cover was nonexistent. Trees have been widely scattered. The most common descriptor of this property and those surrounding it "meadow."

Shrub and tree plantings will be located along secondary priority sites along the north, west and south property lines and shrubs along the creek. Map 2 (Appendix A) shows the recommended plantings of trees and shrubs. All of the recommended plants are native and may be found in the Portland Plant List.

Spacing of trees will be based on a 20 ft. spread; arborescent shrubs and shrubs, an 8 ft. spread. They are somewhat randomly located. No trees will be planted in the outer overlay zone since most of it is occupied by the drainfield, the workshop, a portion of the new residence, and the defensible zone (Map 2).

Species planted will rely on availability. Substitutions are acceptable. All locations are approximate and may be adjusted according to the individual planting site. Appendix B provides plant lists and illustrations and seed mixes.

A list of nurseries providing native planting stock may be found in the Appendix B.

Tables 5 and 6 provide data on the availability of land for mitigation and the condition following mitigation. Proposed development plus the existing drainfield and its replacement

sand filter complicate attaining a GOOD condition on any overlay zone and leave play area for children and for family rest and relaxation. Nevertheless, the plantings substantially improve the quality of the property over the current.

An important factor in mitigation is the area available for mitigation (Table 5), not total property area less the waterway area.

Table 6 shows the resulting canopy cover and the basal area for overstory, understory, and groundcover vegetation. Based on the disturbed area of 5677 ft.² and a 1:1 required mitigation ratio, the resulting mitigation planting comes to 5052 ft.² Combining mitigation plants with existing vegetation, the overstory and understory vegetation basal area totals 8482 ft.²

Trees of choice are Bitter Cherry (*Prunus emarginata*), Cascara (*Rhamnus purshiana*), Western Dogwood (*Cornus nuttalli*), Bigleaf Maple (*Acer macrophyllum*), Oregon Ash (*Fraxinus latifolia*). These will be systematically planted along the noted property lines.

Arborescent shrubs resemble trees in growth, structure and appearance but are smaller.

Recommended in this group are: Western Crabapple (*Malus fusca*) and Common Chokecherry (*Prunus virginiana*). These may not be substituted for trees. There are included under the category of shrubs.

Shrubs constitute the understory component of vegetative cover. They include: Western Wahoo (*Euonymus occidentalis*), Black Twinberry (*Lonicera involucrate*), Red Current (*Ribes sanguineum*), Salmonberry (*Rubus spectabilis*), Snowberry (*Symphoricarpos albus*), Dull Oregon Grape (*Berberis nervosa*), Red Osier Dogwood (*Cornus sericea ssp. sericea (f. stolonifera)*), Baldhip (*Rosa gymnocarpa*) and Nootka (*R. nutkana var. nutknana*) Rose.

Table 4. Summary of the current (present) WRAs north and south of SF Beaver Creek for the Boyer property based on Table 2, "Riparian/Vegetated Corridor Standards" (MCC 36.4555(E)).

Corridor (Overlay Zone)	Overstory Canopy Cover		Understory (% Cover)	Groundcover (% Cover)	Existing Riparian/ Vegetated Conditions
	Basal Area	(%)			
Inner North	300	2.4	0	95	DEGRADED
Outer North	130	18.7	0	95	DEGRADED
South	0	0	0	95	DEGRADED

Table 5. Summary of plant cover following mitigation. See Map 2 (Mitigation). All data m/l.

Corridor (Overlay Zone)	Area Available for Mitigation		Overstory			Understory ^{1/}			Groundcover
	Total Area	Available Area ^{2/}	# Trees	Canopy Cover ^{3/}		# Shrubs	Canopy Cover ^{4/}		% Cover
				Ft. ²	%		Ft. ²	%	
Inner (North)	25783	16878	9	2700	16.0	31	1178	8.5	95
Outer (North)	9909	6946	6	1800	25.9	6	228	3.3	95
Inner (South)	6449	5773	5	1500	26.0	17	646	11.2	95
Waterway	2660								
Total/Avg	44801	29597	21	6000	20.3	54	2052	6.9	95

^{1/} Includes arborescent shrubs
^{2/} Includes only that area remaining following development that is available for mitigation. Excludes new residence, new shop, existing drainfield and replacement sand filter, driveway, and barn, but includes area of current residence. Excludes waterway.
^{3/} Assumes canopy spread of each shrub has 20 ft.; each tree has 300 ft. ² canopy area
^{4/} Assumes canopy spread of 8 ft.; each shrub has 38 ft. ² canopy area

Table 6. Summary of the current plus mitigated WRAs north and south of SF Beaver Creek for the Boyer property based on Table 2, “Riparian/Vegetated Corridor Standards” (MCC 36.4555(E)). Reference Table 5. All data m/l.										
Overlay Zone	Current (Basal Area) ^{1/}		Mitigation (Basal Area)		Mitigation Future					Mitigation Condition
	Overstory	Understory	Overstory	Understory	Overstory		Understory		Groundcover	
					BA ^{1/}	% ^{2/}	BA	%	%	
North										
Inner	300	0	2700	1178	3000	17.8	1178	8.5	95	MARGINAL
Outer	130	0	1800	228	1930	27.8	228	3.3	95	POOR
South										
Inner	0	0	1500	646	1500	24.4	646	24.4	95	MARGINAL
Total	430	0	6000	2052	6430	10.6	2052	6.9	95	MARGINAL
^{1/} Basal Area or BA expressed in ft. ² of canopy area										
^{2/} % is basal area expressed as a percent of the available area in the overlay zone. See Table 5.										

Staff: The proposed mitigation plan does not prioritize the corridors on the east and west bank of the stream for the mitigation work. A large amount of vegetation is being installed along the perimeter of the property leaving the degraded areas adjacent to the stream with a small band of shrubs and small trees. The mitigation plan proposes to maintain the lawn as the groundcover for the stream. The species of grasses have not been specified, but the consultant has indicated they will maintain the existing species which looks like lawn-type grasses. It appears that the mitigation plan will serve more as landscaping for the dwelling than for restoring the stream corridor to a "Good" condition. There are no bands of contiguous trees, shrubs or other natural vegetation on the site to utilize for mitigation. *This criterion has not been met.*

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

Applicant: There is no off-site mitigation.

Staff: Staff concurs. No off-site mitigation has been proposed.

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

Applicant: Completed where possible.

Staff: The mitigation plan specifies a one-year period after the completion of the planned improvements to plant the shrubs and trees within the mitigation area. It is certainly possible to complete the some of the mitigation work on the west side of the stream prior to the construction of the improvements, if desired. *This criterion has not been met.*

- 3.30 (g) In order to ensure that on-site mitigation areas are established and maintained, the property owner shall record the mitigation plan approval in

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

Applicant: Responsibility of the landowner

Staff: A condition of approval can ensure compliance with the above requirement.

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

(a) A description of adverse impacts that could be caused as a result of development.

Applicant: These will be minimal. The property has been in rural residential use, though zoned as MUA-20, for several decades. Wildlife and aquatic habitat was compromised decades ago. With mitigation restoration of some habitat is possible for small mammals and birds; however, it will be limited. Restoration of aquatic habitat suitable for the return of anadromous salmonids is unrealistic in this headwater area.

Overall the proposed development will maintain or slightly improve upon the status quo.

Staff: The proposal to complete the armoring of the watercourse causes the conversion of a Goal 5 stream to a stormwater system. This conversion is in direct conflict with the goal of preserving and restoring the waterway for aquatic habitat.

3.32 **(b) An explanation of how adverse impacts to resource areas will be avoided, minimized, and/or mitigated.**

Applicant:

1. Current residence will be demolished and its footprint regraded to natural contour. It will be revegetated with a mixture of lawn and native shrubs.
2. Complete the streambank armoring that has been discontinued during this assessment period. Failure to complete this work will threaten much of the mitigation work adjacent to the creek. No further alteration of the stream will follow this work.
3. Plantings of native shrubs and trees will restore some structural diversity. Map 2 shows the approximate location of plantings.
4. No replacement tree or shrub planting. There is only one tree on the site, a large Douglas-fir in the southeast corner, and it will remain undisturbed.

Staff: The property owners have failed to avoid impacts to the water resource by the continued proposal to armor the stream. The mitigation plan has failed to meet the standards for restoration and improvement to the condition of the stream will only reach the marginal level per the property owners' consultant. *This criterion has not been met.*

3.33 **(c) A list of all responsible parties including, but not limited to, the owner, applicant, contractor or other persons responsible for work on the development site.**

Applicant: The landowner will provide names and addresses.

Staff: A condition of approval can be included to meet the above requirement.

3.34 **(d) A map drawn to scale, showing where the specific mitigation activities**

will occur.

Applicant: Maps 1 and 2 (Appendix A) show property with existing and proposed development and mitigation. Scale: 1 in. = 40 ft.

Staff: The map can be found in Exhibit A.10. *This criterion has been met.*

- 3.35 **(e) An implementation schedule, including timeline for construction, mitigation, mitigation maintenance, monitoring, reporting and a contingency plan. All in-stream work in fish-bearing streams must be done in accordance with the Oregon Department of Fish and Wildlife in-stream timing schedule.**

Applicant: There will be an immediate implementation coincident with construction of the new residence and demolition of the old one. Involves grading disturbed sites and re-seeding, locating source of preferred (native) planting material, etc. Planting non-native ornamentals around the house and shop is expected.

A short-term period calls for maintenance and replacement (first five (5) years) of those which have succumbed. Trees and shrubs will be maintained until they are “free to grown” on their own. Long-term also implies controlling the invasion of nuisance plants (a list is provided in the Attachments).

Staff: Information has been provided above. *This criterion has been met.*

4.00 ***Adjustment Criteria***

4.01 **MCC 36.7606 Scope**

(A) Dimensional standards that may be modified under an Adjustment review (modified no more than 40 percent) are yards, setbacks, forest practices setbacks, buffers, minimum front lot line length, flag lot pole width, cul-de-sac length, cul-de-sac turnaround radius, and dimensions of a private street, except the following:...

Staff: The property owners’ adjustment request is to reduce the street side and rear yards in the Multiple Use Agriculture – 20 district. The proposal is to reduce the street side yard for the new dwelling from 35 ft down to 28 ft (20% reduction) and the street side yard for accessory structure down to 21 ft (40% reduction as modified by staff). The street side yard has been increased from 30 ft to 35 ft due to an inadequate right-of-way width on Grace Rd (see section 2.04 above). In addition to the street side yard adjustment, the property owners are requesting to reduce the rear yard from 30 ft to 18 ft (40% reduction) in order to place the accessory structure closer to the east property line.

4.02 **M 36.7611 Adjustment Approval Criteria**

The Approval Authority may permit and authorize a modification of no more than 40 percent of the dimensional standards given in MCC 36.7606 upon finding that all the following standards in (A) through (E) are met:

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

Staff: The purpose of the street side yard and rear yard requirements is to provide space, light, air circulation, and safety from fire hazards. As shown on Exhibit A.2, there is adequate physical separation between the structures and the street. For the accessory structure and the rear yard, 18 ft will still remain between the structure and the neighbors’ side property line. The casting of shadows from the building in the late afternoon hours is not relevant as the property line is occupied by vegetation. This distance is adequate to meet the purpose of the yard requirement. As discussed above, a tributary of Beaver Creek crosses the property

diagonally. The SEC-wr criteria aims to project the stream from encroachment and limits the applicant's ability to reconfigure the development to meet the setbacks. While the stream buffer purpose is not the same as the yard requirements purpose, it does provide light, air circulation and open space just on a different area of the property.

The reduction of the dwelling's side yard from 35 ft to 28 ft leaves significant open space between the dwelling and the northern property line. Even after a 5 ft dedication or condemnation, the dwelling would still be 23ft from the property line. This would provide sufficient adequate open space, air circulation, light and safety from fire hazard. *Staff finds that the granting of the adjustment will equal the purposed of the yard requirement.*

- 4.03 **(B) Any impacts resulting from the adjustment are mitigated to the extent practical. That mitigation may include, but is not limited to, such considerations as provision for adequate light and privacy to adjoining properties, adequate access, and a design that addresses the site topography, significant vegetation, and drainage; and**

Staff: The distance between the dwelling and the north property line after the adjustment will be 28 ft down from 35 ft. After the adjustment significant open space will still exist between the dwelling and the property line. In addition, Grace Road is 40 ft wide and adds to the distance for light and privacy for nearby properties.

The accessory structure's proposed two reductions could affect the privacy for the property to the east of the subject site. This can be mitigated by restricting the installation of windows in the future on the east side of the accessory structure and requiring that vegetation be maintained along the east property line to create a visual screen between the two properties. *This criterion has been met.*

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

Staff: The property owners are requesting the reduction of one yard for the dwelling and two yards for the accessory structure. After the dwelling is constructed, it will have a similar appearance of the standard 30 ft setback from the property line. For the accessory structure, the reduction of street side yard and rear yard allows the property owner to increase the size of the building and the distance between dwelling and the accessory structure benefiting the property owner, but staff is uncertain that it is consistent with the overall purposed of the Multiple Use Agriculture – 20 district.

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

Staff: The subject property is zoned Multiple Use Agriculture – 20 (MUA-20). *This criterion is not applicable.*

- 4.06 **(E) If in a Rural Residential (RR) or Rural Center (RC) zone, the proposal will not significantly detract from the livability or appearance of the residential area.**

Staff: The subject property is zoned Multiple Use Agriculture – 20 (MUA-20). *This criterion is not applicable.*

5.00 **Conclusion**

Based on the findings and other information provided above, the property owners have not carried the burden necessary for approval of the SEC – wr permit and the Adjustment for the Accessory Structure. The property owners have met the burden for granting the Adjustment for

the Single Family Dwelling. The overall application is denied.

6.00 ***Exhibits***

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

‘C’ Procedural Exhibits

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	General Application Form	7/26/07
A.2	1	Site Plan	7/26/07
A.3	6	Fire District Review Fire Flow Requirements	7/26/07
A.4	1	Certification of Water Service	7/26/07
A.5	2	Certification of On-Site Sewage Disposal	7/26/07
A.6	2	Letter from G2 Associates Inc. to David and Dawn Boyer dated 5/16/05	7/26/07
A.7	2	Property Owner Consent of Variance Request	7/26/07
A.8	4	Fire District Access Review	7/26/07
A.9	2	Replacement Dwelling Agreement	7/26/07
A.10	43	Water Resource Area Certification Report	7/26/07
A.11	2	Appendix C Light Fixtures	7/26/07
A.12	18	Deed Information	7/26/07
A.13	11	Drainage Certificate & Related Information for Armoring of Stream	7/26/07
A.14	1	Site Plan for Doug O’Grady	9/27/07
A.15	2	Response to Incomplete Letter from Applicant	9/27/07
A.16	7	Update from Richard H. Wheeler, Forest Hydrologist	9/27/07
A.17	1	Certificate of Satisfactory Completion for Subsurface or Alternative Sewage System Dated 2/1/06	9/27/07
A.18	2	Water Resource Area Certification Form	9/27/07
A.19	7	Elevations for Proposed Dwelling	9/27/07
‘B’		Staff Exhibits	Date of Document
B.1	2	A&T Property Information 1S4E20AA - 01500	7/26/07
B.2	1	A&T Map 1S4E20AA	7/26/07

B.3	1	1998 Air Photo	8/23/07
B.4	1	2004 Air Photo	8/23/07
B.5	2	Transportation Memo	9/4/07
B.6	2	ESEE Information for Beaver Creek Tributary 3	12/21/07
B.7	2	Possible Redesigns Showing Additional Distance between Stream and Buildings	12/21/07
'C'		Administration & Procedures	Date
C.1	3	Incomplete Letter Dated 8/24/07	8/24/07
C.2	1	Complete Letter – Day 1 (October 27, 2007)	11/27/07
C.3	3	Opportunity to Comment	11/30/07
C.4	34	Administrative Decision	1/18/08