

NOTICE OF DECISION

Case File: T2-2019-12301
Permit: Significant Environment Concern for Streams and Wildlife Habitat Permits
Applicant(s): Dan Williams **Owner(s):** Jeffery and Ashleigh Perrin
Location: NW Beck Road adjacent and north of 22504 NW Beck Rd.
Tax Lot 1000, Section 22A and Tax Lot 200 Section 22D, of
Township 2 North, Range 2 West, Willamette Meridian
Tax Account R972220200 & R972220230 Property ID #R325786 & R325789
Zoning: Rural Residential (RR)
Overlays: Significant Environment Concern for Streams and Wildlife Habitat and Geologic Hazards
Proposal Summary: Request to build a single family dwelling within the Significant Environment Concern for Streams and Wildlife Habitat Overlay Zones

Decision: Approved with Conditions

This decision is final and effective at the close of the appeal period, unless appealed. The deadline for filing an appeal is Thursday, March 26, 2020 at 4:00 pm.

Opportunity to Review the Record: The complete case file, including the Planning Director Decision containing Findings, Conclusions, Conditions of Approval, and all evidence associated with this application is available for review at the Land Use Planning office. Copies of all documents are available at the rate of \$0.30/per page. For further information, contact George Plummer via email at george.a.plummer@multco.us or phone (503) 988-0202.

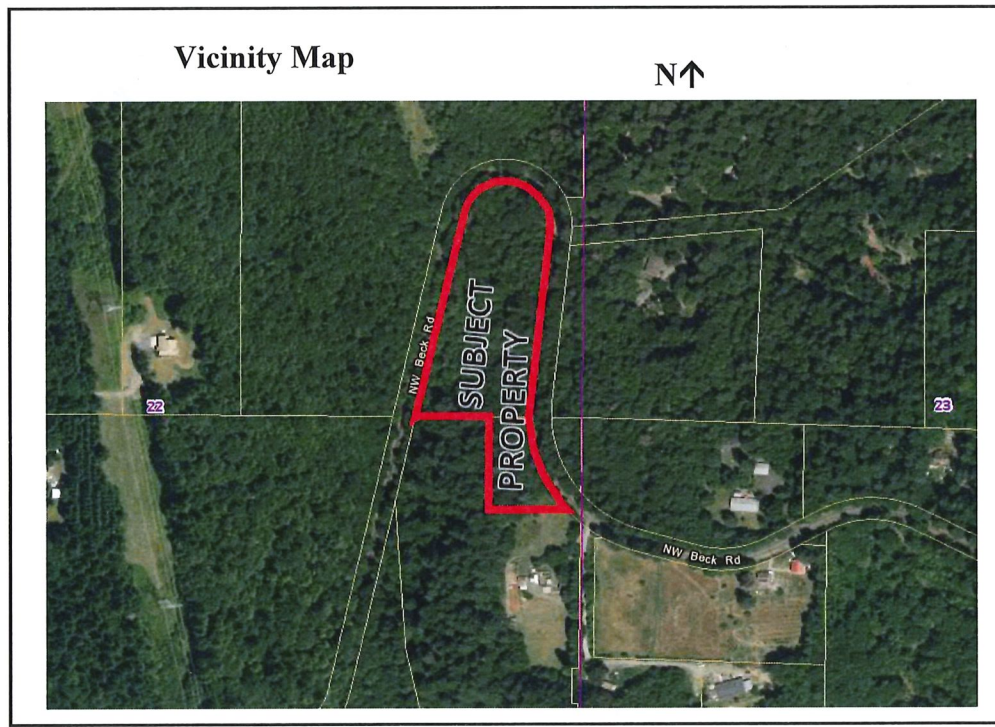
Opportunity to Appeal: An appeal requires a \$250.00 fee and must state the specific legal grounds on which it is based. To obtain appeal forms or information on the procedure, contact the Land Use Planning office at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision is not appealable to the Land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

Issued By: 
George A. Plummer, Planner

For: Carol Johnson, AICP
Planning Director

Date: Thursday, March 12, 2020

Instrument Number for Recording Purposes:
#2018076963



For this application to be approved, the proposal will need to meet the applicable approval criteria below:

Applicable Approval Criteria: Multnomah County Code (MCC): MCC 39.2000: Definitions, MCC 39.1515 Code Compliance and Applications, MCC 39.3005 Lot of Record – Generally, MCC 39.3090: Lot of Record Rural Residential, MCC 39.5500 - 39.5545:, MCC 39.5850 – 39.5535: SEC General Provisions, MCC 39.5750: SEC-Streams, and MCC 39.5860: SEC-Wildlife Habitat

Copies of the referenced Multnomah County Code sections are available by contacting our office at (503) 988-3043 or by visiting our website at <https://multco.us/landuse/zoning-codes/> under the link *Chapter 39*

Copies of the referenced Multnomah County Road Rules (MCRR) sections can be obtained by contacting our office at (503) 988-3043 or by visiting our website at <https://multco.us/transportation-planning/>.

Conditions of Approval

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parenthesis.

1. Approval of this land use permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.
2. This land use permit **expires two years from the date the decision** is final pursuant to MCC 39.1185(B) as described in 1 or 2 below:

- (1) When construction has not commenced within two years of the date of the final decision. Commencement of construction shall mean actual construction of the foundation or frame of the approved structure.
- (2) When the structure has not been completed within four years of the date of commencement of construction. Completion of the structure shall mean completion of the exterior surface(s) of the structure and compliance with all conditions of approval in the land use approval.

Note: The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 39.1195, as applicable. The request for a permit extension must be submitted prior to the expiration of the approval period.

3. Prior to Land Use Planning review and sign-off for a building permit, the property owners or their representative shall record with the County Recorder pages 1 through 4 of this Notice of Decision. Recording shall be at the Property Owners' expense. The Notice of Decision shall run with the land. Proof of recording shall be submitted County Land Use Planning Division prior to the issuance of any permits. [MCC 39.1175]
4. The property owners shall ensure that each tree removed for the proposed single family dwelling development shall be replaced on a one to two ratio with native trees. The mitigation plan shows planting of 60 trees According to the application 41 trees were removed in the development area thus 82 native tree shall be planted. The 490 trees planted as part of the forestry operation reforestation do not count for the mitigation of the proposed development. The trees shall be planted to improve wildlife habitat first within non-forested cleared areas contiguous to forested areas, second within any degraded stream riparian areas before being placed in forested areas or adjacent to landscaped yards. The trees shall be planted within two years from the date of this permit. [MCC 39.5860(C)(3)(d) and MCC 39.5750(E)(4)]
5. The property owners shall ensure that the "Stream Mitigation Plan" as detailed in Section 5.0 of the plan be implemented. Any work in the stream will require a Flood Plain Development Permit. Soil disturbing activities within a Stream Conservation Area shall be limited to the period between June 15 and September 15. Revegetation/soil stabilization must be accomplished no later than October 15. Best Management Practices related to erosion control shall be required within a Stream Conservation Area. [MCC 39.5750(D)(1)) and (E)(6)]
6. The property owners shall implement an annual monitoring plan for a period of five years which ensures an 80 percent annual survival rate of any required plantings including the trees and shrubs. [MCC 39.5750(D)(1)(d)]
7. The property shall ensure that the proposed storm water system is installed. [MCC 39.5750(E)(2)]
8. The property shall ensure that all exterior lighting meet the standards in MCC 39.6850(C) as follows [MCC 39.5750(E)(3)]:
 - (1) The light source (bulbs, lamps, etc.) must be fully shielded with opaque materials and directed downwards. "Fully shielded" means no light is emitted above the horizontal plane located at the lowest point of the fixture's shielding. Shielding must be permanently attached.
 - (2) The lighting must be contained within the boundaries of the Lot of Record on which it is located. To satisfy this standard, shielding in addition to the shielding required in paragraph (C)(1) of this section may be required.

9. The nuisance plants in MCC 39.5580 Table 1 shall not be planted on the subject property and shall be removed and kept removed from cleared areas of the subject property. MCC 39.5750(B)(7)

Table 1

Scientific Name	Common Name
<i>Chelidonium majus</i>	Lesser celandine
<i>Cirsium arvense</i>	Canada Thistle
<i>Cirsium vulgare</i>	Common Thistle
<i>Clematis ligusticifolia</i>	Western Clematis
<i>Clematis vitalba</i>	Traveler's Joy
<i>Conium maculatum</i>	Poison hemlock
<i>Convolvulus arvensis</i>	Field Morning-glory
<i>Convolvulus nyctagineus</i>	Night-blooming Morning-glory
<i>Convolvulus seppium</i>	Lady's nightcap
<i>Cortaderia selloana</i>	Pampas grass
<i>Crataegus sp. except C. douglasii</i>	hawthorn, except native species
<i>Cytisus scoparius</i>	Scotch broom
<i>Daucus carota</i>	Queen Ann's Lace
<i>Elodea densa</i>	South American Water-weed
<i>Equisetum arvense</i>	Common Horsetail
<i>Equisetum telemateia</i>	Giant Horsetail

Scientific Name	Common Name
<i>Erodium cicutarium</i>	Crane's Bill
<i>Geranium robertianum</i>	Robert Geranium
<i>Hedera helix</i>	English Ivy
<i>Hypericum perforatum</i>	St. John's Wort
<i>Ilex aquafolium</i>	English Holly
<i>Laburnum watereri</i>	Golden Chain Tree
<i>Lemna minor</i>	Duckweed, Water Lentil
<i>Loentodon autumnalis</i>	Fall Dandelion
<i>Lythrum salicaria</i>	Purple Loosestrife
<i>Myriophyllum spicatum</i>	Eurasian Watermilfoil
<i>Phalaris arundinacea</i>	Reed Canary grass
<i>Poa annua</i>	Annual Bluegrass
<i>Polygonum coccineum</i>	Swamp Smartweed
<i>Polygonum convolvulus</i>	Climbing Binaweed
<i>Polygonum sachalinense</i>	Giant Knotweed
<i>Prunus laurocerasus</i>	English, Portugese Laurel

Scientific Name	Common Name
<i>Rhus diversiloba</i>	Poison Oak
<i>Rubus discolor</i>	Himalayan Blackberry
<i>Rubus laciniatus</i>	Evergreen Blackberry
<i>Senecio jacobaea</i>	Tansy Ragwort
<i>Solanum dulcamara</i>	Blue Bindweed
<i>Solanum nigrum</i>	Garden Nightshade
<i>Solanum sarrachoides</i>	Hairy Nightshade
<i>Taraxacum officinale</i>	Common Dandelion
<i>Utricularia vulgaris</i>	Common Bladderwort
<i>Urtica dioica</i>	Stinging Nettle
<i>Vinca major</i>	Periwinkle (large leaf)
<i>Vinca minor</i>	Periwinkle (small leaf)
<i>Xanthium spinosum</i>	Spiny Cocklebur
<i>various genera</i>	Bamboo sp.

10. Prior to zoning signoff on building plans for Building Permit the property owners or their representative shall submit a corrected Fire Service Agency Review, including a site plan and dwelling floor plan all signed by a Fire District official .

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.

Note: Once this decision is final, application for building permits may be made with the City of Portland after Multnomah County Land Use Planning Division stamps and signs the plans. In preparation for building permit sign off by the Land Use Planning Division, the applicant shall complete the following steps:

1. Read your land use decision, the conditions of approval and modify your plans, if necessary, to meet any condition that states, "Prior to land use sign-off for building plan check..." Be ready to demonstrate compliance with the conditions.
2. Contact Right-of-Way Permits at row.permits@multco.us, or schedule an appointment at <https://multco.us/transportation-planning/webform/right-way-appointment-request/>, or at 503-988-3582 to review your plans, obtain your access permit, and satisfy any other requirements. Failure to make an appointment with County Right-of-Way will result in delaying your building plan review and obtaining building permits.
3. Contact the City of Portland, Bureau of Development Services, On-Site Sanitation at 503-823-6892 or e-mail septic@portlandoregon.gov for information on how to complete the Septic Evaluation or Permit process for the proposed development. All existing and/or proposed septic system components (including septic tank and drainfield) must be accurately shown on the site plan.
4. Contact George Plummer via email at george.a.plummer@multco.us or phone (503) 988-0202 for an appointment for review of the conditions of approval and to sign the building permit plans. Land Use Planning must sign off on the plans and authorize the building permit before you can go to the Building Department. At the time of this review, Land Use Planning will collect additional fees.
5. The above must be completed before the applicant can obtain building permits from the City of Portland. Five sets of building plans with a site plan stapled to the front of each set of are needed for building permit sign off. At the time of building permit review, a fee will be collected. In addition, an erosion control inspection fee may be required.

Findings of Fact

FINDINGS: Written findings are contained herein. The Multnomah County Code (MCC) criteria and Comprehensive Plan Policies are in **bold** font. Staff analysis and comments are identified as '**Staff:**' and address the applicable criteria. Staff comments may include a conclusionary statement in *italics*. Staff may include quotes in italic and quotation marks. When * * * appears it indicates that a code section(s) was not included because it was not applicable.

1. PROJECT DESCRIPTION

Staff: Request to build a single family dwelling within the Significant Environment Concern for Streams and Wildlife Habitat Overlay Zones

2. PROPERTY DESCRIPTION & HISTORY

Staff: The subject property consists of two County Assessment tax lots, while it is one parcel as stated in the metes and bounds description Exhibit A of Special Warranty Deed Instrument Number 2002-146343 recorded by County Records on August 18, 2002 (Exhibit A.3). The

application submittal also includes the current Statutory Warranty Deed Instrument Number 2018-076963 recorded by County Records on July 7, 2018 including the same metes and bounds legal description as the 2002 deed.

In 2000, County Land Use Case PLA-0-6 for a Property Line Adjustment was approved recognizing the subject property as one parcel (Exhibit B.3 and B.4). Case PLA-0-6 Property Line Adjustment approved the subject property in its current metes and bounds description.

The property is entirely within the Significant Environmental Concern for Streams (SEC-s) and Wildlife Habitat (SEC-h) Overlay Zones. Rock Creek runs from north to south along the property's western property line about 30 to 60 feet into the property. The property is primarily dense forest, except for a few areas on the eastern side which is proposed for development and an area along the southern property line.

On the eastern side of the property a forest thinning project was conducted in December of 2018. While that area continues to be predominately forested there are some small openings which are not large enough to constitute a clearing, except for the area where the dwelling is proposed. Staff has viewed a current photo showing the property after the thinning operation on Google Maps.

The property has relatively steeply slopes, more so along the creek and the further northern area. The slopes generally range from 15 to 22 percent with steeper slopes in some areas, especially closer to the creek and in the northern part of the property. Along the south-eastern side of the property near the road there are some areas of lesser average slopes of four to 16 percent where the development is proposed.

While there is a portion of the property that is within the Geologic Hazards Overlay Zone, the proposed development will not be located in the overlay and the slopes are not 25 percent or more. Thus a Geologic Hazards permit is not required.

3. CODE COMPLIANCE / LOT OF RECORD

3.1. Code Compliance and Applications

MCC 39.1515: Except as provided in subsection (A), the County shall not make a land use decision approving development, including land divisions and property line adjustments, or issue a building permit for any property that is not in full compliance with all applicable provisions of the Multnomah County Zoning Code and/or any permit approvals previously issued by the County.

Staff: There are no known compliance issues for the subject property. *This standard is met.*

3.2. Lot of Record – Generally

3.2.1. MCC 39.3005(A) An area of land is a “Lot of Record” if it meets the standards in Subsection (B) of this Section and meets the standards set forth in this Part for the Zoning District in which the area of land is located.

Staff: The subject property meets the standards of Subsection (B) as detailed in the findings for that Subsection (following).

3.2.2. MCC 39.3005 (B) A Lot of Record is a parcel, lot, or a group thereof that, when created or reconfigured, either satisfied all applicable zoning laws and satisfied all applicable land division laws, or complies with the criteria for the creation of new lots or parcels described in MCC 39.9700. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.

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

* * *

Staff: The subject property consists of two County Assessment tax lots while it is one parcel as stated in the metes and bounds description Exhibit A of Special Warranty Deed Instrument Number 2002-146343 recorded by County Records on August 18, 2002 (Exhibit A.3). Exhibit A.3 also includes the current Statutory Warranty Deed Instrument Number 2018-076963 recorded by County Records on July 7, 2018 including the same metes and bounds legal description as the 2002 deed.

In 2000, County Land Use Case PLA-0-6 for a Property Line Adjustment (PLA) Permit found that the subject property was a Lot of Record (Exhibit B.3). Case PLA 0-6 approved reconfiguring the subject property to its current configuration, the area described by the current metes and bounds description (Exhibit A.3). Case PLA 0-6 Condition of Approval 5 required submittal of a survey map within one year from September 25, 2000. Exhibit B.4 shows the PLA survey was stamped and signed by the County Land Use Planning Division on February 6, 2001. Condition of Approval 4 required proof of recording the survey and legal descriptions within four weeks of recording. Exhibit B.5 provides that proof of recording and of submitting that proof within four week of recording. The recording of the 2002 deed metes and bounds description within two years of the approval verifies when the property was sold. The property metes and bounds legal description met the PLA approval. The subject property is a Lot of Record. *These standards are met.*

3.3. Lot of Record – Rural Residential

* * *

MCC 39.3090(B) A Lot of Record which has less than the minimum lot size for new parcels or lots, less than the front lot line minimums required, or which does not meet the

access requirement of MCC 39.4395, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

* * *

Staff: The property was found to be a Lot of Record in Case PLA 0-6 at 0.08 acres. The current area of the property is shown as 4.66 acres after adjustment on the PLA survey (Exhibit B.4). The property is less than the five acres minimum. This subsection of the Zoning Code allows that while the property does not meet the minimum lot area of five acres, because it is a Lot of Record it may be occupied by any allowed use such as the proposed dwelling. The property meets front lot line minimums and access requirement of MCC 39.4395. *This standard is met.*

4. RURAL RESIDENTIAL ZONE

4.1. Allowed Uses

MCC 39.4360: The following uses and their accessory uses are allowed, subject to all applicable supplementary regulations contained in MCC Chapter 39.

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

Staff: The subject property is within the Rural Residential Zone. The propose dwelling with an attached garage is an allowed use. This review is to confirm that the proposed development meets the Significant Environmental Concern Overlay standards. *This standard is met.*

4.2. Dimensional Requirements and Development Standards

* * *

4.2.1 MCC39.4375(C): Minimum Yard Dimensions – Feet

Front	Side	Street Side	Rear
30 feet	10 feet	30 feet	30 feet

Maximum Structure Height – 35 feet

Staff: The proposed dwelling meets the minimum front yard with a setback of 39 feet from the right of way line at the closest point on the southern side and 40 feet at closest point on the northern side. The south side minimum yard is met by closest point of the dwelling, the attached garage, located 71 feet from the south property line. The attached deck on the back of the dwelling meets the minimum rear yard with a setback of 38 feet from the rear property line. The dwelling meets the minimum north street side yard as it is located more than 400 feet from the Beck Road right of way. The proposed highest point of the dwelling is 33.75 feet from the ground meeting the maximum height standard. *These standards are met.*

4.2.2. MCC39.4375(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 meets the preferred standard of 60 feet of right of way. This standard is met without increasing the minimum yard standard. *This standard is met.*

* * *

4.2.3. MCC39.4375(F): On-site sewage disposal, storm water/drainage control, water systems unless these services are provided by public or community source, shall be provided on the lot.

(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 proposal includes an on-site septic system. The application includes Storm Water Certificate and Drainage Report certifying a stormwater/drainage control system is required for the new impervious surfaces and the system will 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. (Exhibit A.4). *This standard is met by the proposal.*

4.2.4. MCC39.4375(H): All exterior lighting shall comply with MCC 39.6850.

Staff: Findings for exterior lighting compliance with MCC 39.6850 are in Section 7 of this decision. This standard is met through implementation of the condition of approval.

4.3. Off-Street Parking and Loading

MCC 39.4390: Off-street parking and loading shall be provided as required by MCC 39.6500 through 39.6600.

Staff: The proposal include the required two parking spaces for a dwelling. *This standard is met.*

5. SIGNIFICANT ENVIRONMENTAL CONCERN FOR WILDLIFE HABITAT

5.1. Application for SEC Permit

MCC 39.5520: An application for an SEC permit for a use or for the change or alteration of an existing use on land designated SEC, shall address the applicable criteria for approval, under MCC 39.5540 through 39.5860.

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

(1) A written description of the proposed development and how it complies with the applicable approval criteria of MCC 39.5540 through 39.5860.

(2) A map of the property 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) Proposed fill, grading, site contouring or other landform changes;

(e) 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;

(f) Location and width of existing and proposed roads, driveways, and service corridors.

Staff: The criteria for the SEC-h Type II Review are applicable because the non-discretionary standards under MCC 39.5860(B) are not all met. Thus a Wildlife Conservation Plan per MCC 39.5860(C) is required. *This standard is not met.*

5.2. SEC-h Development Standards MCC 39.5860(B)

Following are findings confirming non-discretionary standards under MCC 39.5860(B) are not all met thus a Wildlife Conservation Plan is required

5.2.1. (1) Where a parcel contains any non-forested "cleared" areas, development shall only occur in these areas, except as necessary to provide access and to meet minimum clearance standards for fire safety.

Staff: There is a cleared area on the property remaining from a recent forest thinning operation reviewed by Oregon Department of Forestry. We do not consider newly cleared areas as a clearing because the Forest Practices Act requires cleared area be replanted unless a change of use, in this case residential, is approved by the County Land Use Planning Division. In our review to approve the change of use, we treat that area as forested area that has been newly cleared for the proposed residential development. The application proposes mitigation plan to mitigate for the trees removed in the proposed development area by planting trees in other locations on the property. There are no other cleared areas on the property except a small area near the southern property line not suitable for the dwelling due to setbacks and steep slopes. *This standard is met.*

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

Staff: The proposed dwelling is proposed to be entirely within 200 feet of the NW Beck Road right of way. *This standard is met.*

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

Staff: The driveway is 50 feet long, less than 500 feet in length. *This standard is met.*

5.2.4. (4) For the purpose of clustering access road/driveway approaches near one another, one of the following two standards shall be met:

- (a) The access road/driveway approach onto a public road shall be located within 100 feet of a side property line if adjacent property on the same side of the road has an existing access road or driveway approach within 200 feet of that side property line; or**
- (b) The access road/driveway approach onto a public road shall be located within 50 feet of either side of an existing access road/driveway on the opposite side of the road.**

Staff: The adjacent property has a driveway within 200 feet of the side property line. The subject property access approach is about 130 feet from the side property line, not meeting subsection (a). *This standard is not met, thus a wildlife conservation plan is required.*

5.2.5. (5) The development shall be within 300 feet of a side property line if adjacent property has structures and developed areas within 200 feet of that common side property line.

Staff: The adjacent property has development within 71 feet of the side property line. The proposed development will entirely be within 300 feet of the side property line. *This standard is met.*

- 5.2.6. (6) Fencing within a required setback from a public road shall meet the following criteria:**
- (a) Fences shall have a maximum height of 42 inches and a minimum 17 inch gap between the ground and the bottom of the fence.**
 - (b) Wood and wire fences are permitted. The bottom strand of a wire fence shall be barbless. Fences may be electrified, except as prohibited by County Code.**
 - (c) Cyclone, woven wire, and chain link fences are prohibited.**
 - (d) Fences with a ratio of solids to voids greater than 2:1 are prohibited.**
 - (e) Fencing standards do not apply in an area on the property bounded by a line along the public road serving the development, two lines each drawn perpendicular to the principal structure from a point 100 feet from the end of the structure on a line perpendicular to and meeting with the public road serving the development, and the front yard setback line parallel to the public road serving the development. (See Figure 4 below.)**
 - (f) Fencing standards do not apply where needed for security of utility facilities.**

Staff: No new fencing is proposed. If they choose to build a fence in the future, it will need to meet these standards. A condition of approval has been included to address this circumstance. *This standard is met through implementation of the condition of approval.*

- 5.2.7. (7) The nuisance plants in MCC 39.5580 Table 1 shall not be planted on the subject property and shall be removed and kept removed from cleared areas of the subject property.**

Staff: A condition will require that the nuisance plants in MCC 39.5580 Table 1 shall not be planted on the subject property and shall be removed and kept removed from cleared areas of the subject property. *This standard is met through implementation of the condition of approval.*

5.3. Wildlife Conservation Plan

MCC 39.5860(C): Wildlife Conservation Plan. An applicant shall propose a wildlife conservation plan if one of two situations exist.

- 5.3.1. (1) The applicant cannot meet the development standards of subsection (B) because of physical characteristics unique to the property. The applicant must show that the wildlife conservation plan results in the minimum departure from the standards required in order to allow the use;**

Staff: The proposed departure does not meet one of the standards in subsection (B), standard (B)(4), clustering access road/driveway. The standard is not met due to the driveway not being within 100 feet of the side yard. In that 100-foot area, the slope has a twenty per cent drop from the edge of the road for the first twenty feet of the property, as shown on the site plan (Exhibit A.11). That makes access to the proposed building site unfeasible without significant cost and more impacts to the overlay areas. By locating the driveway 30 feet further north in a less steeply sloped area, with the minimum length required to access the proposed dwelling, the proposed driveway results in less impact in the SEC-h and SEC-s overlays. *The minimum departure standard is met.*

* * *

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

- (a) That measures are included in order to reduce impacts to forested areas to the minimum necessary to serve the proposed development by restricting the amount of clearance and length/width of cleared areas and disturbing the least amount of forest canopy cover.**

Staff: According to the application, in December 2018 a forest thinning operation occurred on the property mostly within the proposed development area. The thinned area was replanted with 490 trees as reviewed by Oregon Department of Forestry. Land Use Planning does not consider the newly cleared areas as clearings because the Forest Practices Act requires cleared areas be replanted. Only after a change of use, such as residential use, is approved by Land Use Planning would this replanting requirement be waived. In our review to approve this change of use, we treat the development area as if it were forested and proposed to be cleared for the development, and not as an existing cleared area.

Staff was able to view the areas cleared for the development on the current Google Maps aerial photo. It is evident from the aerial that the proposed project took measures to reduce impacts to forested areas by limiting the amount of tree removal to the minimum necessary to establish the development. The proposal is for a modest 2,362 square foot two story dwelling with attached garage. *This standard is met.*

- (b) That any newly cleared area associated with the development is not greater than one acre, excluding from this total the area of the minimum necessary accessway required for fire safety purposes.**

Staff: The proposed development is less than an acre. *This standard is met.*

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

Staff: There is no existing fencing in the front yard, nor is any proposed. *This standard is met.*

- (d) That revegetation of existing cleared areas on the property at a 2:1 ratio with newly cleared areas occurs if such cleared areas exist on the property.**

Staff: There is a small cleared area near the southern property line and another newly cleared area north of the dwelling. The development proposal resulted in the removal of 41 trees in the development areas. The application included a mitigation plan and wildlife conservation plan that proposes planting 60 trees (Exhibit A.5, A6, and A.12). The 490 trees planted as part of the forestry operation reforestation do not count for the mitigation of the proposed development. A condition of approval will require the 82 native trees planted to meet to meet this standard.

The planted trees need to be maintained in living condition. If less than 80 percent do not survive, the ones that have not survived must be replaced with new plantings. A condition of approval will require the planting of 41 trees and maintaining them in a living condition. *This standard is met through implementing the condition of approval.*

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

Staff: The proposal includes revegetation along a tributary stream on the property. *This standard is met.*

5.4. SEC-h Conclusion

Staff: The application has demonstrated the standards of the Significant Environmental Concern for Wildlife Habitat (SEC-h) Permit have been met or can be met through implementing the conditions of approval.

6. SIGNIFICANT ENVIRONMENTAL CONCERN FOR STREAMS

6.1. General Standards SEC-s Permit

6.1.1 MCC 39.5750(A): For purposes of this Section, the following terms and their derivations shall have the meanings provided below:

- (1) **Nuisance and invasive non-native plants** – Those plants listed in the latest edition of the Metro Nuisance Plant List and the Prohibited Plant List, and include those plants listed in the latest edition of the State of Oregon Noxious Weed List.
- (2) **Protected Streams** -- Those streams which have been evaluated through a Goal 5 ESEE analysis and protected by Ordinance and those streams and wetlands mapped by Metro's Title 13 as Habitat Conservation Areas as modified through the planning process are designated SEC-s on the Multnomah County Zoning Maps.
- (3) **Stream Conservation Area** – For the protected streams originally designated by Ordinance, the Stream Conservation Area designated on the zoning maps as SEC-s is an area extending upslope from and perpendicular to the centerline on both sides of a protected stream. The width of the Stream Conservation Area varies and shall be as depicted on the Multnomah County Zoning Maps and is from the centerline on both sides of the protected stream for the width of the mapped overlay. Any development proposed within a Stream Conservation Area shall be required to demonstrate that the development satisfies the standards of MCC 39.5750 (B) through (E).

Staff: These definitions were used in the review for the following findings.

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

6.2.3. MCC 39.5750(C): In addition to other SEC Permit submittal requirements, any application to develop in a Stream Conservation Area shall also include:

- (1) A site plan drawn to scale showing the Stream Conservation Area boundary, the location of all existing and proposed structures, roads, watercourses, drainageways, stormwater facilities, utility installations, and topography of the site at a contour interval equivalent to the best available U.S. Geological Survey 7.5' or 15' topographic information;
- (2) A detailed description and map of the Stream Conservation Area including that portion to be affected by the proposed activity. This documentation must also include a map of the entire Stream Conservation Area, an assessment of the Stream

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

Staff: The application includes a detailed mitigation plan and a mitigation site plan addressing the Stream Conservation Area's functional characteristics and water sources, and a description of the vegetation types and fish and wildlife habitat (Exhibits A.5 and A.12). The plan includes areas of soil disturbance, vegetation removal and mitigation areas. The application includes a Storm Water Certificate Drainage Report that includes soil data and map (Exhibit A.4). Erosion and Sediment Permit, Case T1-2019-12302, will address impacts from the project and require erosion control measures to be in place prior to soil disturbance for the development. The development is significantly higher than the potential un-mapped floodplain for Rock Creek. The creek is approximately 780 feet in elevation, while the septic system is at 820 to 850 foot elevation and the dwelling will be at about 866 feet elevation (Exhibit A.12). No Floodplain Development permit is needed. No other natural hazard is known. The application includes sufficient information to process this permit. *This standard is met.*

6.3. SEC-s Standards

MCC 39.5750(D): For the protected stream resources, the applicant shall demonstrate that the proposal:

- (1) Will enhance the fish and wildlife resources, shoreline anchoring, flood storage, water quality and visual amenities characteristic of the stream in its pre-development state, as documented in a Mitigation Plan. A Mitigation Plan and monitoring program may be approved upon submission of the following:
 - (a) A site plan and written documentation which contains the applicable information for the Stream Conservation Area as required by subsection (C) above;
 - (b) A description of the applicant's coordination efforts to date with the requirements of other local, State, and Federal agencies;
 - (c) A Mitigation Plan which demonstrates retention and enhancement of the resource values addressed in subsection (D) (1) above;
 - (d) An annual monitoring plan for a period of five years which ensures an 80 percent annual survival rate of any required plantings.

Staff: The proposed development minimizes impact on Rock Creek by locating the dwelling in an area on the property the furthest from the stream. While the septic system is closer the stream it is more than 100 feet from the stream.

According to the application, in December 2018 a forest thinning operation occurred on the property mostly within the proposed development area. The thin area was replanted with 490 trees as reviewed by Oregon Department of Forestry.

The proposed mitigation plan was prepared by Cafferate Consulting, LLC a natural resource consultant based in Hillsboro, Oregon with expertise in biological consulting (Exhibits A.5 and A12). The plan includes replacing 41 removed trees with 60 newly planted native trees (one-third more than required), and the planting of native shrubs and other riparian plants along the tributary. The plan includes a 25 foot wide by 180 foot long area along a tributary stream within the SEC-s Overlay which will be planted with native shrubs and other riparian plants. The proposed mitigation plan with removal of invasive species replacement of removed trees will enhance the fish and wildlife resources, shoreline anchoring, flood storage, water quality and visual amenities characteristic of the stream in its pre-development state, as documented in the mitigation plan. The plan demonstrates retention and enhancement of the resource.

A condition of approval requires an annual monitoring plan for a period of five years which ensures an 80 percent annual survival rate of any required plantings. *This standard has been met with implementation of the condition.*

6.4. Design Specifications

MCC 39.5750(E): The following design specifications shall be incorporated, as appropriate, into any developments within a Stream Conservation Area:

* * *

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

Staff: The application includes a Storm Water Certification (Exhibit A.4) stamped and signed by Mia C. Mahedy-Sexton, P.E requiring a stormwater detention system shown on a map included with Exhibit A.18. A condition of approval will require installation of the storm water system. *This standard is met through implementation of the condition of approval.*

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

Staff: A condition of approval requires that installation of any exterior lighting associated with a proposed development shall be placed, shaded or screened to avoid shining directly into a Stream Conservation Area. *This standard is met through implementation of the condition of approval.*

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

Staff: The application includes the removal of 41 trees and proposed planting of 60 trees. A condition of approval can require the planting of the proposed 60 trees. *This standard is met through implementation of the condition of approval.*

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

Staff: Erosion and Sediment Permit, Case T1-2019-12302 will evaluate impacts of the proposed development and require erosion control measures to be in place prior to soil disturbance for the development. *This standard will be met through the Erosion and Sediment Permit.*

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

Staff: A condition of approval will require that soil disturbing activities within a Stream Conservation Area shall be limited to the period between June 15 and September 15. Revegetation/soil stabilization must be accomplished no later than October 15. Best Management Practices related to erosion control shall be required within a Stream Conservation Area. *This standard is met through implementation of the condition of approval.*

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

Staff: Since the proposal is setback from the stream, staff does not know of any applicable state and federal permit requirements. *This standard is met.*

MCC 39.5750(F): For those Stream Conservation Areas located within Metro's jurisdictional boundaries, the following requirements apply in addition to subsections (C) through (E) above:

* * *

Staff: The subject property is located outside Metro's jurisdictional boundaries. *This section is not applicable.*

6.5. SEC-s Conclusion

Staff: The application has demonstrated the standards of the Significant Environmental Concern for Stream (SEC-s) Permit have been met or can be met through implementing the conditions of approval.

7. Exterior Lighting

Dark Sky Lighting Standards

* * *

MCC 39.6850(C): The following standards apply to all new exterior lighting supporting a new, modified, altered, expanded, or replaced use approved through a development permit and to all existing exterior lighting on property that is the subject of a development permit approval for enlargement of a building by more than 400 square feet of ground coverage.

- (1) The light source (bulbs, lamps, etc.) must be fully shielded with opaque materials and directed downwards. "Fully shielded" means no light is emitted above the horizontal plane located at the lowest point of the fixture's shielding. Shielding must be permanently attached.**
- (2) The lighting must be contained within the boundaries of the Lot of Record on which it is located. To satisfy this standard, shielding in addition to the shielding required in paragraph (C)(1) of this section may be required.**

Staff: A condition of approval will require that all exterior light sources shall be fully shielded with opaque materials and directed downwards, with shielding to be permanently attached. *This standard is met through implementation of the condition of approval.*

8. CONCLUSION

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Significant Environmental Concern for Streams and Wildlife Habitat Permit to establish a single family dwelling in the Rural

Residential zone and Significant Environmental Concern for Streams and Wildlife Habitat Overlay Zones. This approval is subject to the conditions of approval established in this report.

8. Exhibits

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

All exhibits are available for review in Case File T2-2019-12301 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	2	Application Form and applicant authorization signed by property owners	7/30/19
A.2	7	Narrative	7/30/19
A.3	26	Title documents from American Title	7/30/19
A.4	65	Storm Water Certificate stamped and signed by Mia C Mahedy-Sexton, P.E with calculations attached	7/30/19
A.5	14	Stream Mitigation Plan	7/30/19
A.6	74	Wildlife Habitat Mitigation Plan	7/30/19
A.7	1	School District Review form signed by Portland Public Schools official	7/30/19
A.8	2	Fire Service Agency Review signed by the Fire Marshal with note of incorrect dwelling area size.	7/30/19
A.9	9	City of Portland, Bureau of Development Services, Site Evaluation	7/30/19
A.10	1	Property Line Adjustment Recorded with Multnomah County Survey on April 13, 2001 Resister Number 57590	7/30/19
A.11	1	Site Plan	7/30/19
A.12	1	Plant Mitigation Areas Based on the Stream and Wildlife Management Plan and Planting List Map	7/30/19
A.13	2	Elevation Drawings and Exterior Lighting Plans	7/30/19
A.14	1	Floor Plans	7/30/19
A.15	20	Geotechnical Investigation by Mia C Mahedy-Sexton, P.E	7/30/19

A.16	3	Septic Review Certification signed by Multnomah County Sanitarian with attached signed site plan and floor plan	12/19/2019
A.17	1	Certificate of Water Service	12/19/2019
A.18	5	Memorandum from Natalie Warner, Multnomah County Transportation driveway access to Beck Road Right of Way	12/19/2019
A.19	1	Map from showing the Property Line Adjustment	12/19/2019
'B'	#	Staff Exhibits	Date
B.1	4	County Assessment information	7/30/19
B.2	2	County Assessment Maps, Township 2 North, Range 2 West Willamette Meridian, Section 22A (Tax Lot 1000) & Township 2 North, Range 2 West Willamette Meridian, Section 22D, (Tax Lot 200) with the subject property labeled	2/14/20
B.3	8	Property Line Adjustment Case PLA 0-6 Decision approval issued September 25, 2000	NA
B.4	1	Survey submitted for PLA 0-6 stamped and signed by on 2/6/01 by County Land Use Planning staff.	NA
B.5	1	Receipt record of recording of the PLA deed and PLA survey with County Records on 02/06/01	NA