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## NOTICE OF DECISION

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**Case File:** T2-2019-12688

**Permit:** Significant Environmental Concern Permit

**Applicant:** Kevin Nichols

**Owners:** Julie Nichols & Joanne Stubbs

**Location:** 36440 SE Gordon Creek Road  
Corbett OR 97109

Tax Lot 300, Section 10AD, Township 1 South, Range 4 East, W.M.  
Tax Account #R994100160 Property ID #R341686

**Base Zone:** Multiple Use Agriculture – 20 (MUA-20)

**Overlays:** Significant Environmental Concern

**Proposal Summary:** The applicant requests a Significant Environmental Concern Permit for construction of a 24-foot x 60-foot barn for storage.

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**Decision:** **Approved with Conditions**

**This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Friday, April 3, 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 Adam Barber, Staff Planner at 503-988-0168 or at adam.t.barber@multco.us

**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.

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**Issued by:**

**By:** Adam Barber, Deputy Planning Director

**For:** Carol Johnson, AICP  
Planning Director

**Date:** Friday, March 20, 2020

Instrument Number for Recording  
Purposes: # R994100160



### **Applicable Approval Criteria**

**For this application to be approved, the proposal will need to meet applicable approval criteria below (Multnomah County Code (MCC)):**

MUA-20 Allowed Uses: MCC 39.4310

MUA-20 Dimensional Requirements and Development Standards: MCC 39.4325

Significant Environmental Concern: MCC 39.5500 - 39.5545

Lot of Record: General Provisions: MCC 39.3005 Lot of Record - Generally

Lot of Record Requirements (MUA-20 Zone): MCC 39.3080

Violations, Enforcement and Fines: MCC 39.1515 Code Compliance and Applications

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

### **Chapter 39 - Zoning Code**

### **Multnomah County Road Rules (MCRR):**

Copies of any referenced Multnomah County Road Rules (MCRR) sections can be obtained by contacting our office at (503) 988-3043 or by visiting the Transportation website at:

<https://multco.us/transportation-planning/> under the link: **Multnomah County Road Rules**

### **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 brackets. Approval of this land use permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.

1. Permit Expiration – This land use permit shall expire as follows:

- a. Within two (2) years of the date of the final decision when construction has not commenced. [MCC 39.1185(B)]
  - i. For the purposes of 1.a, commencement of construction shall mean actual construction of the foundation or frame of the approved structure. For utilities and developments without a frame or foundation, commencement of construction shall mean actual construction of support structures for an approved above ground utility or development or actual excavation of trenches for an approved underground utility or development. For roads, commencement of construction shall mean actual grading of the roadway.
  - ii. For purposes of Condition 1.a, notification of commencement of construction will be given to Multnomah County Land Use Planning Division a minimum of seven (7) days prior to date of commencement. Work may commence once notice is completed. Commencement of construction shall mean actual construction of the foundation or frame of the approved structure.
- b. Within four (4) years of the date of commencement of construction when the structure has not been completed. [MCC 39.1185(B)]
  - i. For the purposes of 1.b, completion of the structure shall mean completion of the exterior surface(s) of the structure and compliance with all conditions of approval in the land use approval.

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

2. The property owner(s) or their representative(s) shall be responsible for planting and ongoing proper maintenance of the three Leyland Cypress Cedar trees illustrated west of the proposed accessory building as shown on plan sheet Exhibit A.11. If any of these three screening trees shall become diseased, die, or are removed; a replacement tree that is of similar type shall be planted and shall be a minimum height of 3-feet once planted. [MCC 39.5540(L)]
3. The proposed accessory structure cannot be occupied as a dwelling or for any other form of permanent or temporary residential use. [MCC 39.8860]
4. Prior to land use sign-off for building plan check, the property owners or their representative shall:
  - a. Record pages 1 through 4 of this decision, record Exhibit A.11 (planting plan showing proposed screening trees) and record Exhibit A.24 (Covenant to Prohibit Residential Use of Accessory Structure) with the County Recorder. The Notice of Decision shall run with the land. Proof of recording shall be made prior to the issuance of any permits and shall be filed with the Land Use Planning Division. Recording shall be at the applicant's expense. [MCC 39.8860], [MCC 39.1175] The property instrument number for recording purposes is: # R994100160
5. Within 1-year of the date of the final decision, the property owner(s), or their representative(s) shall either: [MCC 39.1515]
  - b. Provide evidence that a retroactive building permit has been obtained for the 11-foot by 15-foot woodshed attached to the garage as shown on the site plan in Exhibit A.11; or
  - c. Provide evidence that a retroactive building permit is not required by the Building Official for this woodshed; or



d. Provide evidence that the woodshed described above has been removed.

**Note:** Once this decision is final, application for building permits may be made with the City of Gresham. When ready to have building permits signed off by land use planning, the applicant shall complete the following steps:

1. Read your land use decision, the conditions of approval and modify your plans, if necessary, to meet any condition that states, “Prior to land use sign-off for building plan check...” Be ready to demonstrate compliance with the conditions.
2. Contact Right-of-Way Permits at [row.permits@multco.us](mailto:row.permits@multco.us) to review your plans, obtain your access permit (if needed), and satisfy any other requirements. You may schedule an appointment at <https://multco.us/transportation-planning/webform/right-way-appointment-request/> or leave a message at 503-988-3582. Failure to make an appointment with County Right-of-Way will result in delaying your building plan review and obtaining building permits.
3. Contact the City of Portland, Bureau of Development Services, On-site Sanitation at 503-823-6892 or e-mail [septic@portlandoregon.gov](mailto: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 Adam Barber, Multnomah County case planner, at 503-988-0168 or [adam.t.barber@multco.us](mailto:adam.t.barber@multco.us), **to schedule an appointment** for review of the conditions of approval and to sign the building permit plans. Please ensure that any items required under, “At the time of land use sign-off for building plan check...” are ready for land use planning review. Land Use Planning must sign off on the plans and authorize the building permit before you can go to the Building Department.

The above must be completed before the applicant can obtain building permits from the City of Gresham. Three (3) sets each of the site plan and building plans are needed for building permit sign off. At the time of building permit review, Land Use Planning may collect additional fees, including an erosion control inspection fee, if applicable.

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

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

## **Findings of Fact**

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

### **LAND USE FINDINGS**

#### **1.0 PROJECT SUMMARY**

**Staff:** The applicant is proposing to construct a 24-foot wide, by 60-foot long (1,440 square feet) one story barn for storage of equipment, supplies and tools necessary to maintain the property at 36440 SE Gordon Creek Road in eastern Multnomah County. The proposed barn will replace an existing 16-foot wide by 34-foot long (544 square feet) barn that is collapsing, is no longer functional, and will be removed from the property as part of this development request. Additionally, the applicant is proposing to remove three other existing structures noted on the site plan in Exhibit A.11 including a chicken coop (10-foot x 15-foot), a shop/shed (10-foot x 34-foot) and an 8-foot x 20-foot shed. Therefore, the proposal includes adding 1,440 square feet of building development while removing a total of 1,194 square feet. This results in a net increase of 246 square feet of building development on the property.

The 2.20 acre subject property contains one dwelling established in 1928 (and modified with a 900 square foot residential addition permit authorized in 1972) and a detached accessory structure permitted in 1971 (Exhibit A.9). The property is accessed from SE Gordon Creek Road to the east and is located between this public road and Sandy River to the west. Existing and proposed development will generally be limited to the eastern half of the property with the western third covered in mature forest canopy appearing from site photos in Exhibit A.18 to consist of a mix of Douglas Fir evergreen trees and deciduous trees (possibly Oregon Maple – a.k.a. Big Leaf Maple).







- (c) Garden sheds;
- (d) Workshops;
- (e) Storage sheds, including shipping containers used for storage only;
- (f) Greenhouses;
- (g) Woodsheds;
- (h) Shelter for pets, horses or livestock and associated buildings such as: manure storage, feed storage, tack storage, and indoor exercise area;
- (i) Swimming pools, pool houses, hot tubs, saunas, and associated changing rooms;
- (j) Sport courts;
- (k) Gazebos, pergolas, and detached decks;
- (l) Fences, gates, or gate support structures; and
- (m) Mechanical equipment such as air conditioning units, heat pumps and electrical boxes; and
- (n) Similar structures.

**Staff:** The applicant refers to the proposed structure as a barn. The property is not associated with commercial farming activities and is currently dedicated to residential use. The proposed use is storage of equipment, supplies and tools necessary to maintain the rural property. The floor plan in Exhibit A.17 shows storage of a backhoe, brush hog, tiller, trailer, tractor, mowers, quad, and work area / storage for materials and supplies. Staff understands that the applicant occasionally uses some of this equipment to help neighbors maintain properties in the vicinity, such as mowing large areas.

Other equipment listed appears accessory to the residential use including the quad vehicle. Such equipment storage is typical in rural areas of the county. Staff finds the use of the proposed 1,440 square foot structure qualifies as an accessory structure through the Allowed Use provisions above because it is similar in nature to a storage shed and workshop. *The criterion has been met.*

- 2.2**
- (2) The Accessory Structure shall not be designed or used, whether temporarily or permanently, as a primary dwelling, accessory dwelling unit, apartment, guesthouse, housing rental unit, sleeping quarters or any other residential use.**
  - (3) The Accessory Structure may contain one sink.**
  - (4) The Accessory Structure shall not contain:**
    - (a) More than one story;**
    - (b) Cooking Facilities;**
    - (c) A toilet;**
    - (d) Bathing facilities such as a shower or bathing tub;**
    - (e) A mattress, bed, Murphy bed, cot, or any other similar item designed to aid in sleep as a primary purpose, unless such item is disassembled for storage; or**
    - (f) A closet built into a wall.**

**Staff:** The proposed accessory structure does not contain a sink, more than one story, cooking facilities, toilet, bathing facilities, sleeping furniture or a closet built into a wall. Staff finds the proposed building is not designed as a primary dwelling, accessory dwelling unit, apartment, guesthouse, rental unit, sleeping quarters or any other residential use. *The criterion has been met through the open floorplan design and lack of internal features customary within a residential use.*

**2.3 (5) Compliance with MCC 39.8860 is required.**

**( \* \* \* )**

**§ 39.8860- CONDITION OF APPROVAL --ACCESSORY STRUCTURES.**

**Prior to issuance of any development permit involving an Accessory Building, the property owner shall record a covenant with County Records that states that the owner understands and agrees that the structure cannot be occupied as a dwelling or for any other form of permanent or temporary residential use.**

**Staff:** A condition of approval has been established requiring recordation of the required covenant. *The criterion can be met with a condition of approval.*

- 2.4 (6) The combined footprints of all buildings accessory to an accessory dwelling unit (ADU) shall not exceed combined footprints of 400 square feet and the combined footprints of all Accessory Buildings on a Lot of Record, including buildings accessory to an ADU, shall not exceed 2,500 square feet.**  
**(7) An Accessory Structure exceeding any of the Allowed Use provisions above, except for the combined footprints allowed for all buildings accessory to an ADU, shall be considered through the Review Use provisions.**

**Staff:** The combined footprint of all accessory structures on the property after construction of the accessory structure will total 2,205 square feet which complies with the maximum 2,500 square foot threshold referenced in (6) above (proposed accessory structure = 1,440 sf, existing garage = 600 square feet, existing woodshed attached to garage = 165 square feet).

Additionally, the accessory structure does not exceed any of the Allowed Use provisions as explained in finding 2.2. Therefore, consideration of the proposal through the Review Use provisions is not required as referenced in sub (7) above. *These standards are met.*

- 2.5 (8) Buildings in conjunction with farm uses as defined in ORS 215.203 are not subject to these provisions. Such buildings shall be used for their allowed farm purposes only and, unless so authorized, shall not be used, whether temporarily or permanently, as a primary dwelling, accessory dwelling unit, apartment, guesthouse, housing rental unit, sleeping quarters or any other residential use.**

**Staff:** The proposed building's use is not in conjunction with a farm use. *This standard does not apply.*

**39.4325 DIMENSIONAL REQUIREMENTS AND DEVELOPMENT STANDARDS.**

**All development proposed in this base zone shall comply with the applicable provisions of this section.**

- 2.6 (C) Minimum Yard Dimensions – Feet**  
**Front - 30 feet**  
**Side - 10 feet**  
**Street Side- 30 feet**  
**Rear - 30 feet**



## **Maximum Structure Height – 35 feet**

**Staff:** The proposed barn will be located 11 feet from the closest (north) side property line according to the applicant's latest narrative statement in Exhibit A.14. The applicant clarified this proposed yard distance after staff noted that site plans show the barn proposed 10-feet from the north property line. The proposed accessory structure will be located in excess of all other minimum yard dimensions outlined above as confirmed on the scaled site plan attached as Exhibit A.11.

The structure height will be 16-feet to top of roof peak, which complies with the district's maximum structure height of 35-feet (Exhibit A.17). *The dimensional requirements of the MUA-20 base zone have been met.*

### **2.7 (G) 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 City of Portland Sanitarian has verified that the proposal will not impact the existing on-site septic system (Exhibit A.2). Johnathan R. Archibald, Oregon Registered Professional Engineer, verified construction of an on-site storm water drainage control system is *not* necessary (Exhibit A.3). *The applicant has demonstrated compliance with the sewage and storm water control provisions.*

### **2.8 (J) All exterior lighting shall comply with MCC 39.6850.**

**Staff:** The applicant is *not* proposing exterior lighting at this time (Exhibit A.7). *The exterior lighting provisions of MCC 39.6850 are not applicable to this request.*

## **3.0 SIGNIFICANT ENVIRONMENTAL CONCERN**

### **§ 39.5510 USES; SEC PERMIT REQUIRED.**

**(A) All uses allowed in the base zone are allowed in the SEC when found to satisfy the applicable approval criteria given in such zone and, except as provided in MCC 39.5515, subject to approval of an SEC permit pursuant to this Subpart.**

### **§ 39.5540 CRITERIA FOR APPROVAL OF SEC PERMIT.**

**The SEC designation shall apply to those significant natural resources, natural areas, wilderness areas, cultural areas, and wild and scenic waterways that are designated SEC on Multnomah County sectional zoning maps. Any proposed activity or use requiring an SEC permit shall be subject to the following:**

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

**Staff:** This standard requires preservation and enhancement of a natural buffer between the use and, in this case, the Sandy River which is the environmental resource justifying zoning protection through application of the Significant Environmental Concern overlay.

The Sandy River is located 650 feet to the east of the western property boundary, which is the closest portion of the property from the protected resource. The applicant has not proposed construction of the new accessory structure near this western side of the property. Instead, the applicant is proposing construction roughly in the same location as the existing damaged barn located on the eastern half of the property line further away from the SEC resource and in a flat location roughly 550-feet back away from (east of) the break in slope dropping off to the Sandy River canyon. The damaged barn (reddish roof) is visible in the aerial photo below, noted with the yellow arrow.



More specifically, the proposed building will be located roughly 1,154 feet east of ( $\sim \frac{1}{4}$  mile from) the Sandy River. This location was selected in an attempt to cluster the new building with existing development, and to avoid the need to remove any trees that currently screen the property from the Sandy River. The building has also been proposed only 11 feet from the north property boundary in an attempt to help the building blend into the forested drainage to the immediate north of the proposed building. Both these trees and the roughly 320-foot wide tree canopy along the western side of the property will help break up views of the structure as viewed from the Sandy River floodplain (Exhibits A.12 & A.18).



Facing West  
toward the Sandy  
River.



The photo above facing west, towards the Sandy River, illustrates how the existing barn location is set back on a flat plateau away from the ravine edge, which obscures views to the river bottom, and provides a sufficient buffer between the use and river eliminating any impacts on the protected resource. The applicant has submitted a letter from the Oregon Parks and Recreation Department concluding the proposed structure will not be visible from the river (Exhibit A.16). Other site photos provided by the applicant are presented as Exhibit A.18. *This standard has been met.*

**3.2 (B) Agricultural land and forest land shall be preserved and maintained for farm and forest use.**

**Staff:** An existing damaged barn will be removed to allow room for the new accessory structure. Neither the development location, nor any part of the subject property, is being used for commercial agricultural or forest practices. The nearest lands used for agricultural purposes are located to the north and east of the subject property.



The proposed building will not cause storm water impacts according to the applicant's engineer (Exhibit A.3), will not generate dust, will not result in congregation of members of the public and will not block sunlight relied on by adjacent agricultural operations given the structures relatively small size and low height. Staff foresees no reason the proposal will have any impact on local farming operations.

It is less clear from review of local aerial photos where local forest operations may be located. The local fire department has reviewed the proposal and confirmed access to the structure meets local structural fire code standards, which will help reduce risk of wildfire impacts to surrounding forest uses. *This standard is met.*

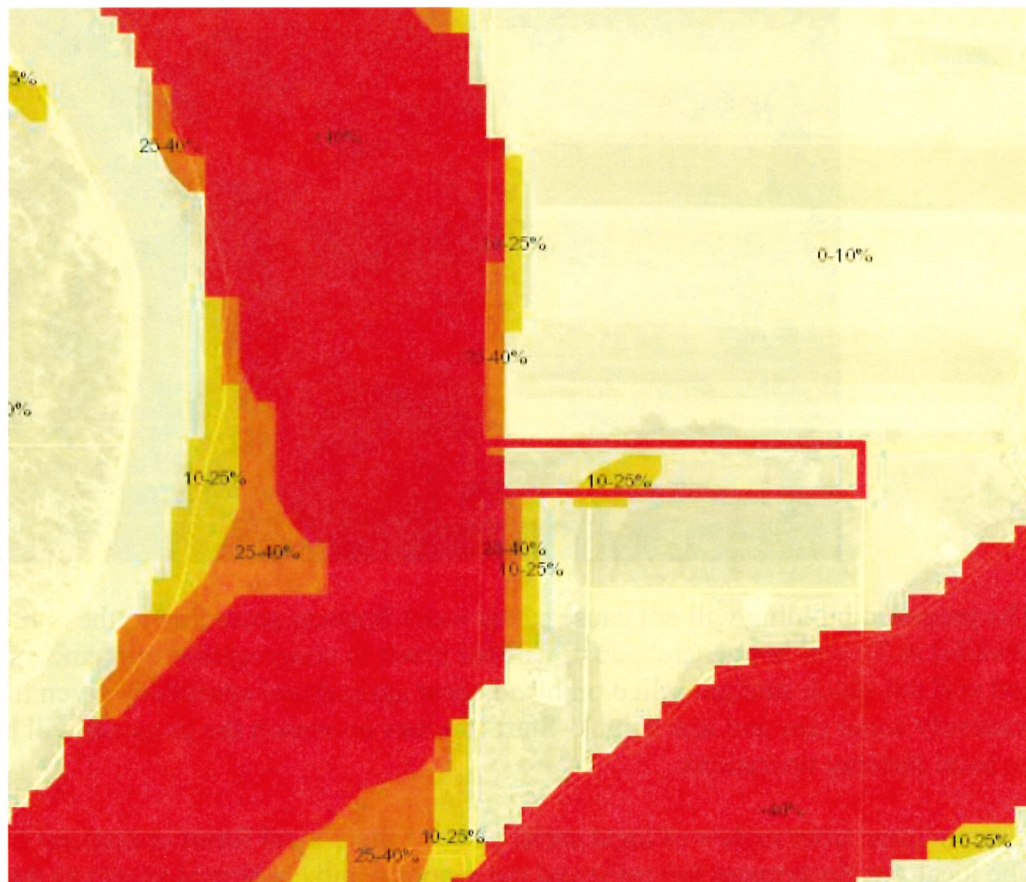


**3.3 (C) A building, structure, or use shall be located on a lot in a manner which will balance functional considerations and costs with the need to preserve and protect areas of environmental significance.**

**Staff:** Functional considerations were the driving factor in the decision to utilize the existing barn location for the new accessory structure. This allowed maximum preservation and protection of the rest of the property that is entirely mapped within the SEC zone. No trees need to be removed to facilitate development. *This standard is met.*

**3.4 (D) Recreational needs shall be satisfied by public and private means in a manner consistent with the carrying capacity of the land and with minimum conflict with areas of environmental significance.**

**Staff:** Public recreation is neither occurring on the subject property nor impacted in any way by the proposal. The property west of the subject property adjacent to the Sandy River is owned by the State of Oregon and is presumably used by the public for recreational purposes. However, those recreational uses are likely concentrated towards the river bottom given slopes between the subject property and the river exceed 40% grade (red areas below), are thickly forested, and not conducive to public recreation.



It is unlikely recreation will occur immediately adjacent to the subject property, or in any reasonable vicinity to the proposed building. *This standard is met.*

**3.5 (E) The protection of the public safety and of public and private property, especially from vandalism and trespass, shall be provided to the maximum extent practicable.**

**Staff:** This private property is not open to the public and the development will not cause harm to the public in the form of public safety risk. *This standard is met.*

**3.6 (F) Significant fish and wildlife habitats shall be protected.**

**Staff:** Although the property is located within the Sandy River SEC riparian buffer, there are no known significant fish or wildlife habitats mapped on the subject property. The applicant's engineer has confirmed stormwater runoff will be appropriately handled and no trees will be removed (Exhibits A.3 and A.7). *This standard is met.*

**3.7 (G) The natural vegetation along rivers, lakes, wetlands and streams shall be protected and enhanced to the maximum extent practicable to assure scenic quality and protection from erosion, and continuous riparian corridors.**

**Staff:** No vegetation is to be removed and three cedar trees will be planted west of the accessory structure. This mitigation equates to protection and enhancement of the riparian corridor. *This standard has been met.*

**3.8 (H) Archaeological areas shall be preserved for their historic, scientific, and cultural value and protected from vandalism or unauthorized entry.**

**Staff:** No known archaeological areas will be impacted. *This standard is met.*

**3.9 (I) Areas of annual flooding, floodplains, water areas, and wetlands shall be retained in their natural state to the maximum possible extent to preserve water quality and protect water retention, overflow, and natural functions.**

**Staff:** No portion of the property is located within a known area of annual flooding, floodplain, wetland or any other water area. *This standard is not applicable.*

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

**Staff:** The applicant has proposed a range of best management practices to help control erosion and sedimentation within Exhibit A.6. First, the applicant is proposing construction on a nearly level portion of the property (estimated 3% slope by the applicant which is consistent with site photos). Roughly 20 cubic yards of ¾-inch rock compacted into 8-inch thick lifts will be used as a structural base pad to help cover disturbed soils. Three cedar trees will be planted roughly 30 feet west of the building which will help reduce soil moisture levels through continual root uptake and evapotranspiration. The applicant has stated that sediment fencing will be installed and in place during all phases of construction. All disturbed areas not covered by rock will be covered with straw. Biobags and straw bales will be utilized if needed. The applicant's erosion and sediment control plan can reasonably be expected to adequately protect the site. *This standard is met.*

**3.11 (K) The quality of the air, water, and land resources and ambient noise levels in areas classified SEC shall be preserved in the development and use of such areas.**

**Staff:** The proposal will have no measurable impact on air quality or noise levels since it is a replacement accessory structure and not a use generating measurable or sustained noise, dust or any other type of environmental pollution. The applicant's stormwater engineer has verified no stormwater impacts are to be anticipated (Exhibit A.3) and the City of Portland Sanitarian has confirmed no impact to the existing septic system which helps protect ground and surface water quality (Exhibit A.2).

Staff finds land resources will not be impacted since trees will not be removed and three additional trees will be planted. Although light pollution is not specifically called out in the standard, it should be noted that the applicant is not proposing any additional exterior lighting, which arguably could impact the quality of the SEC resource if improperly designed (not dark sky compliant). *As proposed, the applicant meets this standard.*

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

**Staff:** The character of the vicinity is a transitional area between low-density residential development to the south, open terrain farmland to the north and east and forested, steep canyon wall and riverine environment to the west. Existing development on the subject property is clustered and low-slung (not more than one story).

The applicant has situated the proposed building so that the narrowest side (24-feet wide) faces the Sandy River to help reduce any potential visual exposure. Mature tree canopy on the property west of the proposed agriculture building will help to screen the development from the river. The 16-foot tall one story structure will be lower than the surrounding tree canopy heights and the colors will blend in to the natural setting (see rendering Exhibit A.17). The applicant is supplementing screening by planting three Leyland cypress cedar trees roughly 30-feet east of the proposed accessory structure which will provide year round screening (Exhibit A.11). A condition of approval will require that these three screening trees be preserved and maintained.

The bulk of the metal exterior (roof, wall bases and most trim) will be painted a natural dark forest green with the remainder of the walls painted a brownish grey not dissimilar to the color of local rock outcroppings. Some window trim and roll up garage doors will be painted white, although the doors will face south away from the resource. No exterior lighting or signs are proposed. The applicant has submitted a letter from the Oregon Parks and Recreation Department concluding the proposed structure will not be visible from the river (Exhibit A.16). Staff finds the development will be compatible with the visual quality of the SEC area. *This criterion has been met.*

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



**Staff:** No such fragile or endangered plant habitat is known to exist in this area. *This standard is met.*

**3.14 (N) The applicable policies of the Comprehensive Plan shall be satisfied.**

**Staff:** Comprehensive Plan Policy 11.17 directs staff to, as appropriate, include school districts, police and fire protection and emergency response providers in the land use process by requiring review of land use applicants. Staff determined that the only applicable service provider for this application was local fire and emergency response. After reviewing the application, the Corbett Fire District confirmed the subject property was within the district's service boundary and that the proposed development was in compliance with the district's apparatus access standards (Exhibit A.4). *Staff finds that all applicable policies of the Comprehensive Plan have been satisfied.*

**4.0 LOT OF RECORD**

**4.1 § 39.3005- LOT OF RECORD – GENERALLY.**

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

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

**(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 Lot of Record provisions of 39.3005 require that either creation or reconfiguration of a property complied with all applicable zoning and land division laws. F-2 was the first interim zoning district applied to this property in 1955. The subject property is shown on the county's first zoning map in its current 2.20-acre configuration and therefore staff finds it was

created prior to the establishment of zoning or land division laws. *Therefore, the subject property meets the Lot of Record provisions of MCC 39.005.*

#### **4.2 § 39.3080 LOT OF RECORD – MULTIPLE USE AGRICULTURE-20 (MUA-20).**

**(A) In addition to the standards in MCC 39.3005, for the purposes of the MUA-20 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, reenacted by Ord. 997.**

**(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 39.4345, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.**

**(C) Except as otherwise provided by MCC 39.4330, 39.4335, and 39.5300 through 39.5350, no sale or conveyance of any portion of a lot other than for a public purpose shall leave a structure on the remainder of the lot with less than minimum lot or yard requirements or result in a lot with less than the area or width requirements of this district.**

**(D) The following shall not be deemed to be a Lot of Record:**

- (1) An area of land described as a tax lot solely for assessment and taxation purposes;**
- (2) An area of land created by the foreclosure of a security interest.**
- (3) An area of land created by court decree.**

**Staff:** The subject property does not meet the current 20-acre minimum lot size requirement of the district, but is eligible for establishment of the accessory building use through the provisions of MCC 39.3080(B). *This standard is met. The subject property is a Lot of Record.*

#### **5.0 CODE COMPLIANCE**

##### **§ 39.1515 CODE COMPLIANCE AND APPLICATIONS.**

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

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

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

**Staff:** The dwelling use was established prior to zoning (in 1928 according to county tax records). The 24-foot x 26-foot detached garage was permitted in 1971 (Exhibit A.9) and is shown with dimensions of 24-foot x 25-feet on the site plan in Exhibit A.1. The survey plan in Exhibit A.11 shows that the garage was constructed 1-foot from the north (side) property line. In 1971, the F-2 zoning code section 3.1533(b) authorized waiver of the 10 foot side yard requirement outlined in section 3.1532(b) when a one story detached accessory structure was located behind the main building (dwelling in this case), or a minimum of 55-feet from the front lot line, whichever is greater, and when the lot line in question does not front a street. The garage location met these conditions and therefore the current location is permissible.

The site plan in Exhibit A.11 also shows an 11-foot x 15-foot (165 square foot) woodshed attached to the garage. Photos of the wood shed are provided in Exhibit A.12. No county permit has been identified authorizing the woodshed. A letter from the current property owner in Exhibit A.15 refers to the owner's memory of the woodshed being constructed at the same time as the garage in 1971. Because the woodshed is part of the garage structure; the location within the side yard setback was permissible under the 1971 F-2 zoning provisions above. However, that waiver provision (3.1533(b)) was only extended to structures in compliance with the Building Code. Therefore, a condition has been established requiring: Within 1-year of the date of the final decision, the property owner(s), or their representative(s) shall either: [MCC 39.1515]

- e. Provide evidence that a retroactive building permit has been obtained for the 11-foot by 15-foot woodshed attached to the garage as shown on the site plan in Exhibit A.11; or
- f. Provide evidence that a retroactive building permit is not required by the Building Official for this woodshed; or
- g. Provide evidence that the woodshed described above has been removed.

The applicant proposes to remove the following structures illustrated in Exhibit A.11:

- 10-foot x 15-foot chicken coop near the north property line,
- 10-foot x 34-foot shop / shed near the north property line,
- 8-foot x 20-foot shed near the south property line.

What appears to be a light colored structure towards the southern property boundary southwest of the existing barn is not located on the site plan in Exhibit A.11 and in fact a light colored tarp laying across a trailer and is not a building.





In conclusion, the only known compliance issue associated with the subject property (the woodshed) can be addressed through a condition of approval. Compliance with the condition of approval will bring the property into full compliance with all applicable provisions of the Multnomah County Zoning Code. *As conditioned, the county has the authority to issue this SEC permit.*

## CONCLUSION

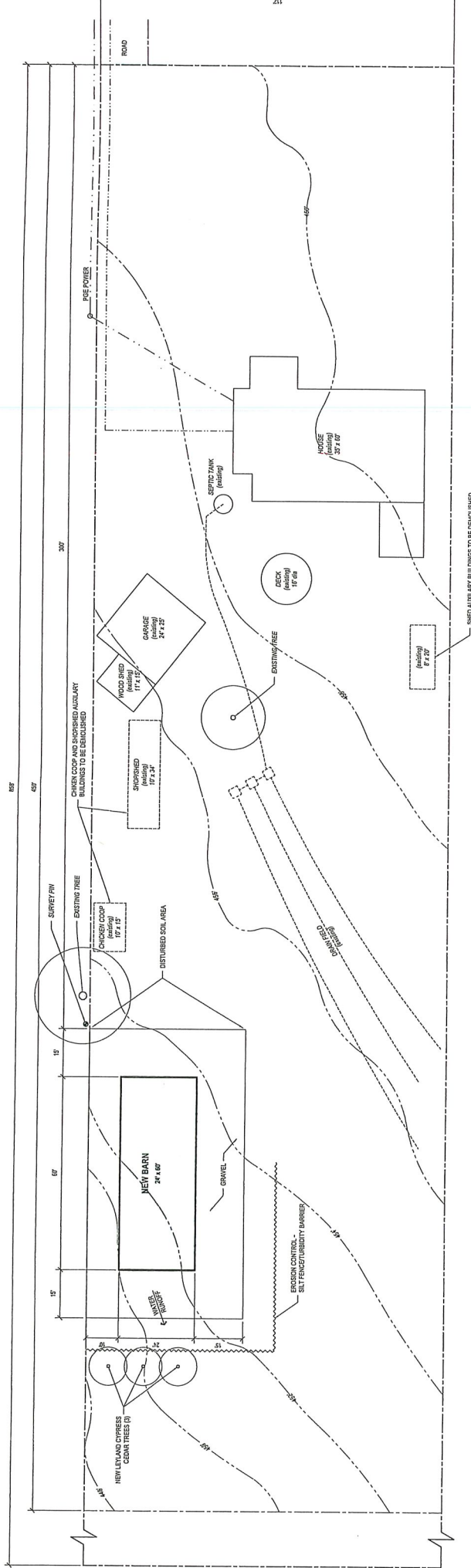
Based on the findings and other information provided above, the applicant has carried the burden necessary for the Significant Environmental Concern Permit to establish a 24-foot by 60-foot one story barn for storage in the Multiple Use Agriculture-20 zone. This approval is subject to the conditions of approval established in this report.

## EXHIBITS

Exhibits with a “\*” after the exhibit # have been included as part of the mailed decision. All other exhibits are available for review in Case File T2-2019-12688 at the Land Use Planning office.

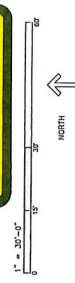
Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	General Application Form	11/22/19
A.2	7	Onsite Sanitation Service Provision Forms	11/22/19
A.3	13	Stormwater Certificate Documentation	11/22/19
A.4	2	Fire Service Agency Review Form	11/22/19
A.5	1	Transportation Planning Review Form	11/22/19
A.6	9	Grading and Erosion Control Worksheet	11/22/19
A.7	5	Applicant Narrative	11/22/19
A.8	3	Property Tax Assessment Summary Sheets	11/22/19

A.9	4	Permit record cards	11/22/19
A.10	3	Property deed documents	11/22/19
A.11*	3	Property survey and development site plans	11/22/19
A.12	3	Aerial photo and property photos	11/22/19
A.13	1	Applicant's response to county incomplete letter	2/11/20
A.14	1	Applicant narrative	2/11/20
A.15	1	Letter from owner of subject property	2/11/20
A.16	1	Letter from Oregon Parks and Recreation Department	2/11/20
A.17*	11	Barn floor plan, elevation (side) views and structural diagrams	2/11/20
A.18	5	Property photos	2/11/20
A.20	3	Barn exterior material specifications and samples	2/11/20
A.21	5	County letter deeming application incomplete (mailed 12.18.19) and subsequent county email sent 12.20.19 requesting letter from OPRD.	12.18.19 & 12.20.19
A.22	1	County letter deeming application complete	2/14/20
A.23	5	Opportunity to comment mailing	2/19/20
A.24	4	Covenant to Prohibit Residential Use of Accessory Structure	2/14/20



NOTE:  
NEW BARN IS REPLACING AN EXISTING 16' X 34' BARN  
CHICKEN COOP (10x15), SHOP/SHED (10x34), AND SHED (8x20) STRUCTURES TO BE DEMOLISHED

**EXHIBIT**  
A.11



**NICHOLS/STUBBS BARN**  
36440 SE GORDON CREEK ROAD

Kevin Nichols  
Corbett

Scale 1"=4'

RECEIVED

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MULTNOMAH COUNTY  
PLANNING SECTION

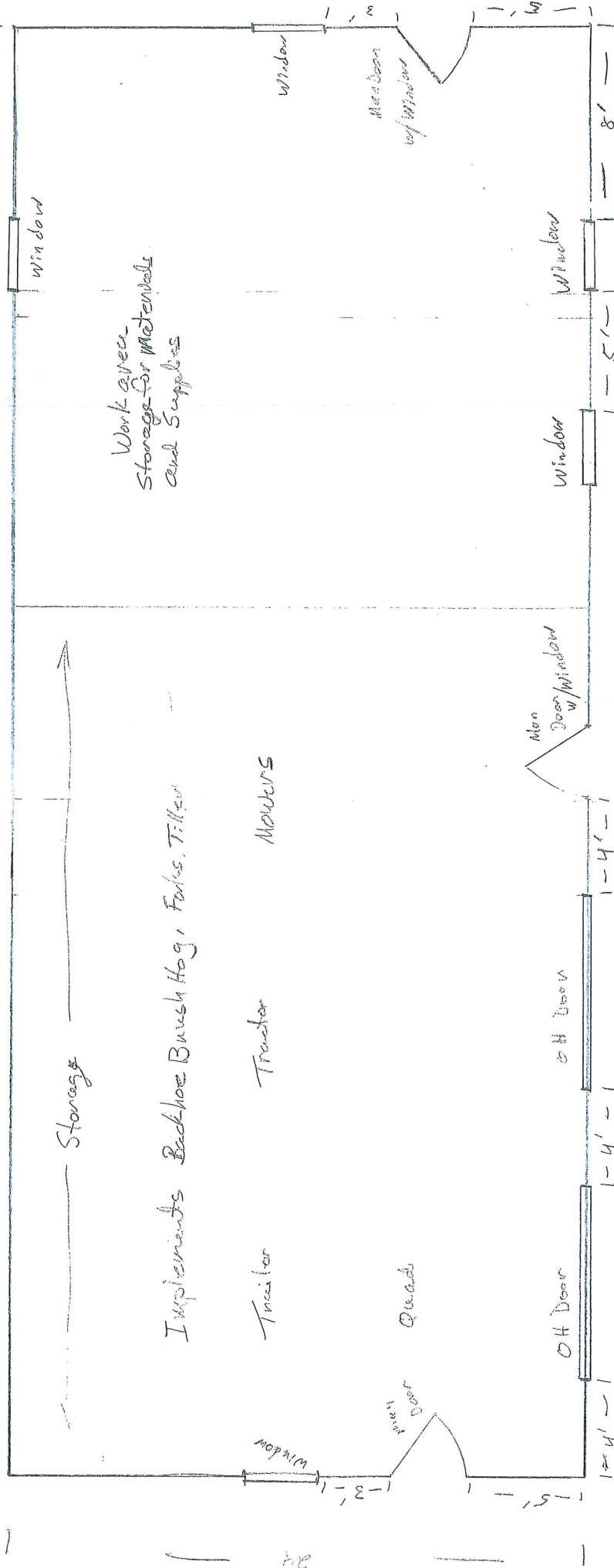


EXHIBIT  
A.17



design and colors



This picture is sample of the style, design colors of the proposed barn. The actual barn will have a slightly different layout as noted in the drawings. The proposed barn will not have a roof cap.

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