

## NOTICE OF DECISION

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**Case File:** T2-2020-13541

**Permit:** Significant Environmental Concern – Scenic Waterway (SEC-sw); Significant Environmental Concern – Wildlife Habitat (SEC-h)

**Applicant:** Tom Orth

**Owner:** Bryan & Sarah Hugulet

**Location:** 3390 SE Hosner Terrace, Gresham  
Tax Lot 1000, Section 10B, Township 1 South, Range 4 East, W.M.  
Tax Account #R994100330 Property ID #R341696

**Base Zone:** Rural Residential

**Overlays:** Significant Environmental Concern – Scenic Waterway (SEC-sw); Significant Environmental Concern – Wildlife Habitat (SEC-h); Geologic Hazards (GH)

**Proposal Summary:** The Applicant is proposing to establish a single-family dwelling within the SEC-sw and SEC-h overlay zones. The proposed development is outside of the GH overlay; therefore, a GH permit is not required.

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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 Thursday, December 24, 2020 at 4:00 pm.**

**Opportunity to Review the Record:** The complete digital 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 no cost. Paper copies of all documents are available at the rate of \$0.35/per page. For further information, contact Chris Liu, Staff Planner via email at [chris.liu@multco.us](mailto:chris.liu@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 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:** Chris Liu, Planner

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

**Date:** Thursday, December 10, 2020

Instrument Number for Recording  
Purposes: #2020-115658



### **Applicable Approval Criteria:**

**Multnomah County Code (MCC):** MCC 39.1515 Code Compliance and Applications; MCC 39.2000 Definitions; MCC 39.3005 Lot of Record – Generally, MCC 39.3090 Lot of Record – Rural Residential (RR); MCC 39.6850 Dark Sky Lighting Standards

**Rural Residential Zone:** MCC 39.4360 Allowed Uses; (A) Single Family Dwelling, MCC 39.4375 Dimensional Requirements and Development Standards;

**Significant Environmental Concern:** MCC 39.5510 Uses; SEC Permit Required; MCC 39.5520 Application for SEC Permit; MCC 39.5560 General Requirements (West of Sandy River); MCC 39.5600 Criteria for Approval of SEC-sw Permit – Scenic Waterway; MCC 39.5860 Criteria for Approval of SEC-h Permit – 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 - Zoning Code**

### **Conditions of Approval**

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parenthesis. 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 via email at [land.use.planning@multco.us](mailto:land.use.planning@multco.us), 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)]
    - 1) 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. Prior to land use sign-off for building plan check, the property owners or their representative shall:
  - a. Record pages 1 through 5 of this Notice of Decision 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 39.1175]
  - b. Obtain approval of the Erosion and Sediment Control permit, T1-2020-14041. [MCC 39.5560]
3. Conditions from the Oregon Parks and Recreation Commission (“OPRC”) found in Exhibit A.13 and copied below are adopted as conditions of approval for this land use decision. [MCC 39.5600(A)]
  - a. Any changes to the project from the Notification of Intent (NOI), site plans, and other materials submitted in June 2020 to the OPRC, must be submitted to OPRC for review.
  - b. All vegetation between the constructed structure (single family dwelling) and the river on the subject property shall be retained and maintained so that the structure is not visible from the river. Only vegetation in the home footprint may be removed. No mature screening vegetation at the top of the bank or elsewhere shall be removed without further consultation and approvals.

- c. No large areas, including roofs, shall be finished in white or bright colors or reflective materials. All structures shall be finished in muted tones as referenced in the submitted NOI (e.g., cedar/earth toned siding, black/brown roof) appropriate to the natural surroundings and in no cases obtruding on the view from the Sandy River Scenic Waterway.
  - d. The completed project shall not exceed the proposed height of 24' from natural grade on the side of the structure facing the river.
  - e. All Multnomah County requirements, as applicable, shall be satisfied.
  - f. **The project shall begin within one year (July 2021).** If, due to unforeseen circumstances, the project cannot be started by this date, you may request a time extension. A time extension may be granted on submittal of a revised schedule for completion.
    - 1) **If an extension is granted by OPRC**, a copy of the extension shall be provided to Land Use Planning within 15 days.
4. At the time of land use sign-off for building plan check, the property owner or their representative shall:
- a. Provide exterior lighting details for all proposed exterior lighting to demonstrate the proposed lighting complies with the Dark Sky Lighting Standards of MCC 39.6580 and MCC 39.5560(B).
    - 1) Proposed exterior lighting must be shown on the elevation drawings and site plan per MCC 39.5560(B).
  - b. Provide paint chips and/or color swatches from the paint manufacturer for all proposed exterior paint colors. Exterior colors shall be limited to those colors shown in rows A – C of the *Building in the Scenic Area – Scenic Resources Implementation Handbook*. [MCC 39.5540(L) & 39.5560(H)]
  - c. Provide a list of the exterior construction materials (i.e. siding, trim, windows) on the building plans. Provide any relevant spec sheets, if necessary. The materials shall comply with Exhibit A.2 and A.16. [MCC 39.5540(L) & 39.5560(H)]
  - d. Provide a landscape plan demonstrating that no nuisance plants are proposed to be planted on the subject property. [MCC 39.5560(C), MCC 39.5860(B)(7)]
5. Exterior paint colors for the dwelling are limited to those colors shown in rows A – C of the *Building in the Scenic Area – Scenic Resources Implementation Handbook*. [MCC 39.5540(L) & 39.5560(H)]
6. As an on-going condition, the property owner shall:
- a. No nuisance plants listed in Table 1 of MCC 39.5580 shall be planted on the subject property. [MCC 39.5560(C)]
  - b. The dwelling's exterior colors shall be maintained as originally constructed unless the property owner obtains a review and approval of new colors from Land Use Planning.
  - c. Exterior lighting shall be limited to the dwelling and shall remain in compliance with MCC 39.5560(B) and Dark Sky Lighting Standards contained in MCC 39.6580.
7. Discovery of Human Remains: The following procedures shall be effected when human remains are discovered during a cultural resource survey or during construction. Human

remains means articulated or disarticulated human skeletal remains, bones, or teeth, with or without attendant burial artifacts.

- (1) Halt Activities – All survey, excavation, and construction activities shall cease. The human remains shall not be disturbed any further.
- (2) Notification – Local law enforcement officials, the Planning Director, and the Indian tribal governments shall be contacted immediately.
- (3) Inspection – The State Medical Examiner shall inspect the remains at the project site and determine if they are prehistoric/historic or modern. Representatives from the Indian tribal governments shall have an opportunity to monitor the inspection.
- (4) Jurisdiction – If the remains are modern, the appropriate law enforcement officials will assume jurisdiction and the cultural resource protection process may conclude.
- (5) Treatment – Prehistoric/historic remains of Native Americans shall generally be treated in accordance with the procedures set forth in Oregon Revised Statutes, Chapter 97.740 to 97.760.

**Note:** Once this decision is final, application for building permits may be made with the City of Troutdale. 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, 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 Chris Liu, Planner, via email at [chris.liu@multco.us](mailto:chris.liu@multco.us), **for 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 Troutdale. 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*.

### **1.0 PROJECT DESCRIPTION:**

**Staff:** Applicant proposes to construct a new approximately 2,580 square foot single-story single family dwelling with a three car attached garage on the subject property. An approximately 12 ft. x 18 ft. covered elevated deck is attached at the rear of the dwelling. The overall square footage of the building is approximately 4,045 sq. ft. Additional ground disturbance is necessary to site the driveway for the proposed dwelling and a single tree will require removal. No other structures are included in the proposal. The proposal requires a SEC-sw and SEC-h permit, as the development is within those overlays. Although the subject property contains a GH overlay, the proposed development is outside of the GH overlay and in an area with slopes under 25%. Therefore, a GH permit is not required for the proposed project.

### **2.0 PROPERTY DESCRIPTION:**

**Staff:** The subject property is located in rural East Multnomah County, approximately 2.42 acres in size, and is zoned Rural Residential. As the Sandy River is immediately east of the subject property, the subject property contains a Significant Environmental Concern – Scenic Waterway (SEC-sw) overlay. Significant Environmental Concern – Wildlife Habitat (SEC-h) overlay is also present. Due to areas containing slopes exceeding 25%, portions of the subject property are designated with the Geologic Hazards (GH) overlay. The subject property is outside of the Metro Urban Growth Boundary.

### **3.0 PUBLIC COMMENT:**

**Staff:** Staff mailed a notice of application and invitation to comment for the proposed application to the required parties per MCC 39.1105 (Exhibit C.2.). Staff did not receive any public comments during the 14-day comment period.

### **4.0 CODE COMPLIANCE AND APPLICATIONS CRITERIA:**

#### **4.1 § 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.**

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

**Staff:** This standard provides that the County shall not make a land use decision approving development for a property that is not in full compliance with County Code or previously issued County approvals, except in the following instances: approval will result in the property coming into full compliance, approval is necessary to protect public safety, or the approval is for work related to or within a valid easement.

This standard was originally codified in the Zoning Code chapter related to land use application procedures and, by its terms, expressly applies to the application review process. Although now codified in the enforcement Part of the Zoning Code as a result of the more recent code consolidation project, the language and intent was not changed during that project and remains applicable to the application review process and not to the post-permit-approval enforcement process.

Importantly, a finding of satisfaction of this standard does not mean that a property is in full compliance with the Zoning Code and all prior permit approvals (and, accordingly, does not preclude future enforcement actions relating to uses and structures existing at the time the finding is made). Instead, a finding of satisfaction of this standard simply means that there is not substantial evidence in the record affirmatively establishing one or more specific instances of noncompliance. As such, an applicant has no initial burden to establish that all elements of the subject property are in full compliance with the Zoning Code and all previously approved permits; instead, in the event of evidence indicating or establishing one or more specific instances of noncompliance on the subject property, the applicant bears the burden to either rebut that evidence or demonstrate satisfaction of one of the exceptions in MCC 39.1515.

For purposes of the current application, staff is not aware of any open compliance cases on the subject property, and there is no evidence in the record of any specific instances of noncompliance on the subject property. *Criterion met.*

## **5.0 GENERAL PROVISIONS:**

### **5.1 MCC 39.3005 Lot of Record – Generally**

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

**(B) A Lot of Record is a parcel, lot, or a group thereof that, when created or reconfigured, either satisfied all applicable zoning laws and satisfied all applicable land division laws, or complies with the criteria for the creation of new lots or parcels described in MCC**

**39.9700. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.**

**(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:**

**\* \* \***

**Staff:** In Land Use Case no. T2-2012-2521, the County found that the subject property was a Lot of Record. As evidenced by the tax lot map and current deed on record with the County Recorder, the subject property remains in the same configuration as described in T2-2012-2521. Therefore, the subject property remains a Lot of Record in its current configuration.  
*Criteria met.*

**5.2 MCC 39.3090 Lot of Record – Rural Residential (RR)**

**(A) In addition to the standards in MCC 39.3005, for the purposes of the RR 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;**

**\* \* \***

**(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.**

**(C) Except as otherwise provided by MCC 39.4380, 39.4385, 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:** In Land Use Case no. T2-2012-2521, the County found that the subject property was a Lot of Record. As evidenced by the tax lot map and current deed on record with the County Recorder, the subject property remains in the same configuration as described in T2-2012-2521. Therefore, the subject property remains a Lot of Record in its current configuration.  
*Criteria met.*



### 5.3 MCC 39.6850 Dark Sky Lighting Standards

**(A) The purpose of the Dark Sky Lighting Standards in this Section is to protect and promote public health, safety and welfare by preserving the use of exterior lighting for security and the nighttime use and enjoyment of property while minimizing the obtrusive aspects of exterior lighting uses that degrade the nighttime visual environment and negatively impact wildlife and human health.**

\* \* \*

**(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 (Condition #4) requires the Applicant to provide the exterior lighting details at the time of building plan review. During plan review, Staff will verify that the proposed lighting complies with the Dark Sky Lighting Standards. *As conditioned, the above criteria are met.*

## 6.0 RURAL RESIDENTIAL ZONE CRITERIA:

### 6.1 MCC 39.4360 Allowed Uses

**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 Applicant proposes to construct a single family dwelling on the approximately 2.42 acre Lot of Record, as noted in sections 5.1 – 5.2 of this decision. *Criterion met.*

### 6.2 MCC 39.4375 Dimensional Requirements and Development Standards

\* \* \*

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

<b>Front</b>	<b>Side</b>	<b>Street Side</b>	<b>Rear</b>
<b>30</b>	<b>10</b>	<b>30</b>	<b>30</b>

**Maximum Structure Height – 35 feet**

\* \* \*

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

**Staff:** Per the Applicant’s proposed site plan (Exhibit A.5), the proposed single family dwelling will be located approximately 75 ft. from the front lot line, 40 ft. from the west side property line, 122 ft. from the east side property line, and over 380 ft. from the rear property line. Per the proposed building plans and elevation drawings (Exhibit A.6), the proposed dwelling is approximately 24 ft. in height. The County Road Official did not indicate that additional yard requirements are necessary per the Transportation planning review included as Exhibit A.12.  
*Criteria met.*

**6.3 (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:** A septic review certification completed by the County Sanitarian and included as Exhibit A.19 indicates the proposed single family dwelling will be served by an on-site septic system. A storm water drainage report and system details completed by Ray Moore, P.E. is included as Exhibit A.8 and indicates that the proposed dwelling will be served by a storm water drainage control system that is adequate to handle the runoff from a 10 year, 24 hour storm event.  
*Criteria met.*

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

\* \* \*

**Staff:** The land adjacent to the subject property does not contain any existing farm uses. Therefore, the requirements of subsection (G) are not necessary for the subject proposal.  
*Criterion met.*

**6.5 (H) All exterior lighting shall comply with MCC 39.6850.**

**Staff:** As noted in section 5.3 of this decision, a condition of approval (Condition #4) requires all exterior lighting comply with the Dark Sky Lighting Standards of MCC 39.6850. *As conditioned, this criterion is met.*

## **7.0 SIGNIFICANT ENVIRONMENTAL CONCERN CRITERIA:**

### **7.1 MCC 39.5510 Uses; SEC Permit Required**

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

**(B) Any excavation or any removal of materials of archaeological, historical, prehistorical or anthropological nature shall be conducted under the conditions of an SEC permit, regardless of the zoning designation of the site**

**Staff:** The proposed single family dwelling requires a SEC-sw, and SEC-h permit. The Applicant requested the required permits as part of this review. Staff addresses the relevant approval criteria in sections 7.3 – 9.8 below. No activities related to excavation of archaeological, historical, prehistorical or anthropological materials are proposed as part of the project (Exhibits A.1 – A.19). *Criteria met.*

### **7.2 MCC 39.5520 Application for SEC Permit**

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

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

\* \* \*

**Staff:** The Applicant provided the required information as Exhibits A.1 – A.19. Staff address the relevant approval criteria of MCC 39.5540 – 39.5860 in sections 7.3 – 9.8 below.

### **7.3 MCC 39.5560 General Requirements for Approval in the West of Sandy River**

**The requirements in this section shall be satisfied for development in the SEC-wr and SEC-h areas located in the West of Sandy River Planning Area in addition to the provisions of MCC 39.5800 or 39.5860 as applicable.**

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

**Staff:** The Applicant submitted an Erosion & Sediment Control (ESC) permit application [Land Use Case #T1-2020-14041] as required. ESC permit application reviews evaluate proposed ground disturbance and ensure best management practices. The Applicant is unable

to submit building plans and commence construction activities until the ESC permit is issued as required by Condition #2. *As conditioned, the above criterion is met.*

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

**Staff:** The proposed site plan does not identify any exterior lighting near the undeveloped [wildlife] habitat area (Exhibit A.5). The purpose of MCC 39.5560(B) is to restrict lighting to the developed area of the lot so animals can use the cover of darkness to utilize the property and so that light does not disrupt their nocturnal habits. A condition of approval (condition #4) requires the Applicant to provide all exterior lighting details at the time of the building plan review. At the time of building plan review, Staff will verify that the proposed exterior lighting meets the Dark Sky Lighting Standards and MCC 39.5560(B). *As conditioned, the above criterion is met.*

- 7.5 (C) The nuisance plants in MCC 39.5580 Table 1, in addition to the nuisance plants defined in MCC 39.2000, shall not be used as landscape plantings within the SEC-wr and SEC-h Overlay Zone.**

**Staff:** No nuisance plants are proposed as part of the project (Exhibits A.2 & A.18). A condition of approval (condition #6) is included in this decision to ensure compliance with the above criterion. *As conditioned, the above criterion is met.*

## **8.0 SIGNIFICANT ENVIRONMENTAL CONCERN – SCENIC WATERWAY PERMIT CRITERIA:**

### **8.1 MCC 39.5600 Criteria for Approval of SEC-SW Permit – Scenic Waterway**

**Except as otherwise provided in this Subpart, all development within the SEC-sw shall be subject to the following:**

**(A) The application for the SEC-sw permit shall include a letter from the Oregon Parks and Recreation Department indicating that the proposed development has been reviewed and is, or can be, consistent with the provisions of the Oregon Scenic Waterways Management Plan.**

**Staff:** A letter from the Oregon Parks and Recreation Commission (“OPRC”) is included as Exhibit A.13. The letter addresses the proposed single family dwelling and outlines conditions that must be satisfied. OPRC’s conditions are included as conditions of approval in this decision (condition #3). *Criterion met.*

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

**Staff:** The Sandy River is east of the rear property line (southeast property line).. The proposed single family dwelling location is approximately 480 ft. from the edge of the Sandy River. Due to the layout of the subject property, the Applicant proposes to locate the development on the most western portion of the property in order to be located as far from the river as feasible (Exhibits A.4 & A.5). In addition, only one tree will be removed for the construction of the dwelling and its related improvements. All existing vegetation between the dwelling and the southeast property line will be maintained and may not be removed pursuant to Condition #6. This will provide a heavily treed area between the dwelling and the River under the owner's control. See Graphic #1 below showing the area of vegetation to be maintained.

**Graphic #1**



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

**Staff:** Per County tax records, the subject property is currently vacant and is not in farm or forest deferral. No development on adjacent lands designated for agricultural or forest uses is proposed as part of this application. *Criterion met.*

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

**Staff:** As noted in section 8.2 above, the Sandy River is east of the most eastern edge of the subject property. With this in mind, the Applicant proposes to locate the development in the most western section of the property, approximately 55 ft. from an existing paved road

providing access for adjacent properties (Exhibit A.18). Therefore, the Applicant's proposed location ensures the development is located as far as possible from the River. The selected location also ensures minimal tree / vegetation removal will be necessary to accommodate the development. Only a single tree is proposed to be removed to site the single family dwelling (Exhibits A.2 and A.18). *Criterion met.*

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

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

**Staff:** The subject property does not front onto the Sandy River. There are no known streams or wetlands on the subject site. A single mature tree is proposed for removal on the subject property, while the remaining mature tree canopy is proposed to remain undisturbed (Exhibits A.2 & A.18). There are no known archaeological areas on the subject property; however, a condition of approval (Condition #7) requires the property owner to follow relevant procedures for the discovery of remains. *Criteria met.*

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

**Staff:** The Applicant submitted an Erosion & Sediment Control (ESC) permit application [Land Use Case #T1-2020-14041] as required. ESC permit application reviews evaluate proposed ground disturbance and ensure best management practices. The Applicant is unable to submit building plans and commence construction activities until the ESC permit is issued as required by Condition #2. *As conditioned, the above criterion is met.*

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

**Staff:** Per the proposed building plans and elevations (Exhibit A.6), the proposed single family dwelling and attached garage is approximately 4,045 square feet and one-story. A 12 ft. by 18 ft. covered elevated deck attached to the rear of the dwelling is also proposed. The height of the building is approximately 24 ft. Per the Applicant's narrative (Exhibit A.2), the proposed siding for the building consists of plywood siding with battens applied to create a "board and batten" appearance. The front of the building includes elements of faux stone accents along the sides as well as above the attached garage. On the front elevation, the roofing will be a mixture of architectural composition shingles and standing seam metal roofing. On the rear of the building, the roofing will be only the architectural composition shingles. Windows will be procured from Milgard Windows and will include SunCoat Low-E on the outer pane with a reflectivity of 11% as per the letter included as Exhibit A.7.

The Applicant indicated that they will select a earthtone color from the *Building in the Scenic Area – Scenic Resources Implementation Handbook*. A condition of approval (condition #4)

requiring the Applicant to provide a color swatch for the proposed exterior paint colors at the time of building plan review is included in this decision.

OPRC added additional conditions (Exhibit A.13) including limiting the height of the building to 24 ft.; requiring the owner to retain and maintain vegetation; prohibiting the use of reflective materials in large areas and requiring muted paint colors. Staff included OPRC's conditions as conditions of approval (condition #3) for this decision. *As conditioned, this criterion is met.*

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

**Staff:** The subject property is not generally recognized as fragile or endangered plant habitat. Due to the SEC-sw, and SEC-h, the Applicant is required to retain the natural vegetation / [wildlife] habitat on the site to the maximum extent possible. As noted in previous sections above, the proposal will only require the removal of a single mature tree. The application has been conditioned to maintain all existing vegetation as shown in Graphic #1 above (Condition #6). *As conditioned, this criterion is met.*

**9.0 SIGNIFICANT ENVIRONMENTAL CONCERN – WILDLIFE HABITAT PERMIT CRITERIA:**

**9.1 MCC 39.5860 Criteria for Approval of SEC-H Permit – Wildlife Habitat**

**(A) In addition to the information required by MCC 39.5520 (A), an application for development in an area designated SEC-h shall include an area map showing all properties which are adjacent to or entirely or partially within 200 feet of the proposed development, with the following information, when such information can be gathered without trespass:**

\* \* \*

**Staff:** The Applicant provided the required information in Exhibits A.1 – A.19. *Criterion met.*

**9.2 (B) Development standards:**

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

**Staff:** The proposed development area within the SEC-h overlay is considered a non-forested "cleared" area and no additional areas will need to be cleared to accommodate the proposal (Exhibits A.2 & A.5). The proposal does require the removal of a single mature tree to provide better access to the development site. *Criterion met.*

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

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

**Staff:** Per the proposed site plan (Exhibit A.18), the proposed development is located approximately 55 ft. from the Hosner Terrace right-of-way. The proposed connection to the existing access leading from the right-of-way to the face of the garage is approximately 55 ft. long. *Criteria met.*

**9.4 (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 proposed connection to the existing access (driveway) is located approximately 29 ft. from the common side property line with tax lot 1100, as per the area map included as Exhibit A.4. *Criteria met.*

**9.5 (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:** Tax lot 1100 is the adjacent property to the west of the subject property. Per the area map included as Exhibit A.4, the proposed development will be located approximately 40 ft. from the common side property line. *Criterion met.*

**9.6 (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.**

\* \* \*



**Staff:** As per the Applicant’s narrative and proposed site plan, no fencing is included as part of the proposed development (Exhibits A.2 & A.5). *Criterion met.*

- 9.7 (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:** As described in the Applicant’s narrative, no nuisance plants are proposed as part of the project (Exhibit A.2). A condition of approval (Condition #5) is included in this decision to ensure compliance with the above criterion. *As conditioned, this criterion is met.*

- 9.8 (C) Wildlife Conservation Plan. An applicant shall propose a wildlife conservation plan if one of two situations exist.**

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

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

**Staff:** The applicant demonstrated the proposal meets the development standards of subsection (B), as described in 9.1 – 9.8 above. Further, the portion of the driveway connection to the existing access that is within the SEC-h overlay is less than 400 sq. ft., which qualifies as an exception under MCC 39.5515. Therefore, a wildlife conservation plan is not required for the proposed project. *Criteria met.*

## **10.0 CONCLUSION:**

Based on the findings and other information provided above, the applicant has carried the burden necessary for the SEC-sw and SEC-h permits to establish a single-family dwelling in the RR zone. This approval is subject to the conditions of approval established in this report.

## **11.0 EXHIBITS:**

- ‘A’ Applicant’s Exhibits
- ‘B’ Staff Exhibits
- ‘C’ Procedural Exhibits

Exhibits with a “\*” after the exhibit # have been included as part of the mailed decision. Those exhibits have been reduced to a size of 8.5” x 11” for mailing purposes. All other exhibits are available for review in Case File T2-2020-13541 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	General Application Form	07.16.2020
A.2	22	Applicant Narrative	07.16.2020
A.3	7	SEC Type-1 Worksheet	07.16.2020
A.4	1	Cover Sheet and Area Map	07.16.2020
A.5	1	Proposed Site Plan	07.16.2020
A.6	10	Building Plans and Elevation Drawings	07.16.2020
A.7	1	Letter from Milgard Windows	07.16.2020
A.8	21	Storm Drainage Design and Calculations, completed by Ray Moore P.E.	07.16.2020
A.9	4	Septic Permit Application	07.16.2020
A.10	2	Water Service Certification	07.16.2020
A.11	3	Fire Service Agency Review	07.16.2020
A.12	4	Transportation Planning Review	07.16.2020
A.13	1	Letter from Oregon Parks and Recreation	07.16.2020
A.14	1	Copy of Notice of Assignment of Address	07.16.2020
A.15	8	Site Photos	07.16.2020
A.16*	10	Revised Building Plans and Elevation Drawings	07.16.2020
A.17	1	Revised Cover Sheet and Area Map	07.22.2020
A.18*	1	Revised Proposed Site Plan	07.22.2020
A.19	6	Septic Review Certification	12.01.2020
<b>'B'</b>	<b>#</b>	<b>Staff Exhibits</b>	<b>Date</b>
B.1	2	Division of Assessment, Recording, and Taxation (DART): Property Information for <State ID> (Alt Acct#)	07.16.2020
B.2	1	Letter of Authorization from New Property Owner	12.03.2020
<b>'C'</b>	<b>#</b>	<b>Administration &amp; Procedures</b>	<b>Date</b>
C.1	1	Complete letter (day 1)	08.14.2020
C.2	8	Opportunity to Comment	10.26.2020
C.3	1	Decision Clock Toll Request	11.23.2020
C.4	18	Administrative Decision	12.10.2020