

## Notice of Hearings Officer Decision

Attached please find notice of the Hearings Officer's decision in the matter of **T2-2020-13185/EP-2020-13186**, mailed December 14, 2020. This notice is being mailed to those persons entitled to receive notice under MCC 39.1170(D).

The Hearings Officer's Decision is the County's final decision and may be appealed to the State of Oregon Land Use Board of Appeals (LUBA) by any person or organization that appeared and testified at the hearing, or by those who submitted written testimony into the record.

Appeal instructions and forms are available from:

Land Use Board of Appeals  
775 Summer Street NE, Suite 330  
Salem, Oregon 97301

503-373-1265  
[www.oregon.gov/LUBA](http://www.oregon.gov/LUBA)

For further information call the Multnomah County Land Use Planning Division at: 503-988-3043.

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1600 SE 190<sup>th</sup> Avenue, Portland Oregon 97233-5910 • PH. (503) 988-3043 • Fax  
(503) 988-3389

## DECISION OF HEARINGS OFFICER

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This document is a final decision on appeal of the Planning Director's Decision in the land use case cited and described below.

**Case File:** T2-2020-13185/EP-2020-13186

**Permit:** Significant Environmental Concern for Water Resources (SEC-wr),  
Lot of Record Verification, and Road Rules Variance

**Location:** 29619 SE Stone Road, Gresham  
Tax Lot 200, Section 19, Township 1 South, Range 4 East, W.M.  
Tax Account #R994190890  
Property ID #R342188

**Applicant:** Marn Heggen, Heggen Architecture

**Owners:** Marin and Daniyela Palamaryuk

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

**Overlays:** Significant Environmental Concern of Water Resources (SEC-wr)  
Flood Hazard (FH)

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**Summary:** The applicant requests a Lot of Record verification, a Significant Environmental Concern for Water Resources (SEC-wr) permit, and a Road Rules Variance, to authorize the construction of a new single-family dwelling, the conversion of the existing single-family dwelling into an accessory building, creation of a wood chip path and viewpoint near the on-site creek, a variance to allow for multiple driveway accesses on the subject property, and review of previous development activities that were not reviewed by the County.

By decision dated October 6, 2020, the County approved the application, subject to conditions (Exhibit C.4). The applicant appealed the decision on October 19, 2020 (Exhibit H.2). The applicant objected to the following conditions of approval in the Director's Decision:

- a. Condition 3.b.iii, which requires that the applicant/property owners convert the existing home on the site to storage use prior to site inspection. The property owners intend to reside in the existing home during construction of the new home. The applicant requested this condition be modified to require conversion prior to issuance of a Certificate of Occupancy for the proposed new house.
- b. Condition 3.b.i, which requires that the applicant remove the existing bridge over Johnson Creek prior to site inspection. The property owners use the bridge to travel between the existing home and the new home during construction. Johnson Creek bisects the site from east to west. Without the bridge, the property owners and their children would have to use Stone and Short Roads to travel between the existing and new homes. Walking on these public roads would create a safety hazard for the children. The applicant requested this condition be modified to require removal of the bridge prior to issuance of a Certificate of Occupancy for the proposed new house.
- c. Condition 2.g.i(1), which requires removal of the landscaped bark chip paths and the picnic/fire pit area that encroaches within 100 feet of the Water Resource area. The applicant argues that the path is necessary to allow the property owners and their family to enjoy the natural resource area.

**Testified at  
the Hearing:**

**Rithy Khut**, County Planner  
**Lisa Estrin**, Senior County Planner  
**Marn Heggen**, applicant  
**Marin Palamaryuk**, property owner

**Applicable Approval Criteria:**

Multnomah County Code (MCC)	
<i>Violations, Enforcement and Fines:</i>	
MCC 39.1515	Code Compliance and Applications
<i>Lot of Record</i>	

MCC 39.3005	Lot of Record – Generally
MCC 39.3080	Lot of Record – Multiple Use Agriculture-20 (MUA-20)
<i>Multiple Use Agriculture (MUA-20):</i>	
MCC 39.4310(A) and (F)	Allowed Uses
MCC 39.4325	Dimensional Requirements and Development Standards
<i>Significant Environmental Concern (SEC):</i>	
MCC 39.5510	Uses; SEC Permit Required
MCC 39.5560	General Requirements for Approval in the West of Sandy River Planning Area Designated as SEC-wr or SEC-h
MCC 39.5580	Nuisance Plant List, Criteria for Approval of SEC-wr Permit – Water Resource
<i>Exterior Lighting:</i>	
MCC 39.6850	Dark Sky Lighting Standards
<i>Accessory Structures – Condition of Approval:</i>	
MCC 39.8860	Condition of Approval
<b>Multnomah County Road Rules (MCRR)</b>	
<i>MCRR 4.000</i>	<i>Access to County Roads:</i>
MCRR 4.100	Application for New or Reconfigured Access
MCRR 4.200	Number of Accesses Allowed
MCRR 4.300	Location
MCRR 4.400	Width
MCRR 4.500	Sight Distance
<i>MCRR 5.000</i>	<i>Transportation Impact:</i>
MCRR 5.100 - 5.300	
<i>MCRR 6.000</i>	<i>Improvement Requirements</i>
<i>MCRR 6.100</i>	<i>Site Development</i>
<i>MCRR 11.000</i>	<i>Local Access Roads:</i>
MCRR 11.100	Improvement Requirements
<i>MCRR 16.000</i>	<i>Variance from County Standards and Requirements:</i>
MCRR 16.200	General Variance Criteria
MCRR 16.225	Access Variance Standards
MCRR 16.250	Local Access Roads Variance Standards
<i>MCRR 18.000</i>	<i>Right-of-Way Use Permits:</i>
MCRR 18.250	Access/Encroachment Permit

**DECISION:** The request for Lot of Record verification, Significant Environmental Concern for Water Resources (SEC-wr) permit, and Road Rules Variance is **Approved** subject to the conditions of approval included in this Final Order.

**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 Condition 1.a, commencement of construction shall mean actual construction of the foundation or frame of the approved structure.
    - 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 the 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. Prior to land use sign-off for building plan check, the property owners or their representative(s) shall:
  - a. Record pages 1 through 11, Exhibit A.3 (A2.1, A2.2, A3.1, and A3.2) of this Notice of Decision and the following revised exhibits as required by Condition of Approval 2.g (Exhibit A.5, Exhibit A.17 – A1.1, and the Exhibit

I.2 – L101, revised 11/10/2020) with the Division of Assessment, Recording, and Taxation (“County Recorder”). The Exhibits shall be reduced to a size of 8.5” by 11” (“Letter” size) for recording. 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 and MCC 39.5800(F)(2)(g)]

- b. Record a covenant with the Division of Assessment, Recording, and Taxation (“County Recorder”) that states the property owner recognizes and accepts that farm activities including tilling, spraying, harvesting, and farm management activities occur during irregular times on adjacent property and in the general area. [MCC 39.4325(H)]
- c. Record a covenant with Division of Assessment, Recording, and Taxation (“County Records”) that states that the owner understands and agrees that accessory structures cannot be occupied as a dwelling or for any other form of permanent or temporary residential use. [MCC 39.4310(F)(5) and MCC 39.8860]
- d. Obtain a Type 1 Erosion and Sediment Control Permit [MCC 39.1515 and MCC 39.5800(E)(6)]
- e. Obtain a Type 1 Flood Development permit [MCC 39.1515]
- f. Apply for driveway permits for the proposed access/driveway onto SE Short Road and the existing driveway onto SE Stone Road. As part of the driveway permit applications, the applicant shall provide:
  - i. A site plan showing both driveways, location of gates, roadway, and parcel lines, and provide annotation of the plans with the width of the driveways and accesses. [MCRR 18.250]
- g. Submit an updated Site Plan, Mitigation Plan (“Landscaping Plan”), and Natural Resource Assessment Report and Mitigation Plan (“Report and Mitigation Plan”):
  - i. The Site Plan and Landscape Plan shall show:
    - (1) The removal of the picnic/fire pit area that encroaches within 100 feet of the Water Resource area and those sections of wood chip trail leading to the creek, consistent with the landscape plan L101, revised November 10, 2020 (Exhibit I.2). [MCC 39.5800(C)(2), MCC 39.5800(C)(3), and MCC 39.5800(E)(1)]
    - (2) The relocation of the proposed chicken coop to the lawn area adjacent to the single-family dwelling. [MCC 39.5800(C)(2) and MCC 39.5800(C)(3)]

- (3) The removal of the fence labeled as #21 up to the parking area. The portion of the fence that borders the parking area may remain. [MCC 39.1515, MCC 39.4310(F)(2), and MCC 39.4310(F)(3)]
  - (4) The removal of the bridge across Johnson Creek labeled as #25. [MCC 39.1515, MCC 39.4310(F)(2), and MCC 39.4310(F)(3)]
  - i. The Natural Resource Assessment Report and Mitigation Plan (“Report and Mitigation Plan”) shall be revised to account for the additional mitigation that is required. The plant list within the Report and Mitigation Plan shall reflect 32,391 square feet of plantings. [MCC 39.5800(C)(5), MCC 39.5800(E)(2), MCC 39.5800(E)(4), MCC 39.5800(F)(2)]
  - ii. The Landscape Plan shall be updated to describe species and type of trees, shrubs, forbs, and seeds to be planted in the various planting areas. The plant list shall reflect the plantings required in the Report and Mitigation Plan. The Landscape Plan shall be reviewed by Julie Harper, M.S., Fish and Wildlife Biologist, Blue Leaf Environmental or someone of similar educational and vocational training to ensure that the Landscape Plan matches the requirements of the revised Report and Mitigation Plan in Condition of Approval 2.g.ii. [MCC 39.5800(C)(5), MCC 39.5800(E)(2), MCC 39.5800(E)(4), MCC 39.5800(F)(2)]
- 3. At the time of land use sign-off for building plan check, the property owner or their representative shall:
  - a. Provide a post-mitigation report. The report shall be prepared and signed by Julie Harper, M.S., Fish and Wildlife Biologist, Blue Leaf Environmental or someone of similar educational and vocational training. The report shall be provided to Multnomah County Land Use Planning within 90 days of completion of the restoration work as outlined in the updated Report and Mitigation Plan required under Condition of Approval 2.g.ii. The post-construction report shall confirm that the Natural Resource Assessment Report and Mitigation Plan has been completed in compliance with approved designs. Any variation from approved designs or conditions of approval shall be clearly indicated. The post-construction report shall include:
    - i. Dated pre- and post-construction photos taken of the Mitigation Planting Area. The photos should clearly show the site conditions before and after construction.
    - ii. A narrative that describes any deviation from the approved plans. [MCC 39.5800(C)(4), MCC 39.5800(C)(5), MCC 39.5800(E)(2), MCC 39.5800(E)(3), MCC 39.5800(F)(2)(f)]
  - b. Contact Multnomah County Land Use Planning Division - Code Compliance Program and/or Rithy Khut, Land Use Planner to schedule a site inspection. At the time of scheduling, photos shall be provided to the County confirming

that the following items on Exhibit A.17 – A1.1 have been removed or altered:

- i. The bridge across Johnson Creek labeled as #25 has been removed from the subject property. [MCC 39.1515, MCC 39.4310(F)(2), and MCC 39.4310(F)(3)]
  - ii. The chicken coop labeled as #22 has been removed from the subject property. [MCC 39.1515, MCC 39.4310(F)(2), and MCC 39.4310(F)(3)]
  - iii. The fence labeled as #21 up to the parking area has been removed from the subject property. The portion of the fence that borders the parking area may remain. [MCC 39.1515, MCC 39.4310(F)(2), and MCC 39.4310(F)(3)]
  - c. Provide building plans showing the floor plan of the garage labeled as #17 and chicken coop labeled as #32 on Exhibit A.17 – A1.1. [MCC 39.4310(F)(2)]
  - d. Submit a building plan including cut sheets and specifications showing all exterior lighting on the subject property. The exterior lighting shall be placed in a location so that it does not shine directly into undeveloped water resource or habitat areas. No outdoor lighting fixtures shall be permitted within 100 feet of Johnson Creek. All exterior lighting shall be a fixture type that is fully shielded with opaque materials and directed downwards.
    - i. “Fully shielded” means no light is emitted above the horizontal plane located at the lowest point of the fixture’s shielding.
    - ii. Shielding must be permanently attached.
    - iii. The exterior lighting shall be contained within the boundaries of the subject property on which it is located. [MCC 39.4325(J), MCC 39.5560(B), and MCC 39.6850]
4. Prior to and during construction, the property owner or their representative(s) shall ensure that:
- 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. [MCC 39.5560(A)]
  - b. The revised Natural Resources Assessment Report and Mitigation Plan (“Report and Mitigation Plan”) prepared by an Julie Harper, M.S., Fish and Wildlife Biologist, Blue Leaf Environmental and revised Mitigation Plan (“Landscape Plan”) created by Studio Wild is implemented. The revised report outlines the minimum restoration requirements and schedule, which must be met. [MCC 39.5800(C)(4), MCC 39.5800(C)(5), MCC 39.5800(E)(2), MCC 39.5800(E)(3), MCC 39.5800(F)(2)(f)]



- c. The Water Resource Area shall be flagged, fenced or otherwise marked and shall remain undisturbed except as otherwise allowed by the Report and Mitigation Plan and Landscape Plan. Such markings shall be maintained until construction is complete. [MCC 39.5800(E)(7)]
  - d. Existing vegetation shall be protected and left in place. Trees in the Water Resource Area shall not be used as anchors for stabilizing construction equipment. [MCC 39.5800(E)(5)]
  - e. The Douglas Fir to the south of the Short Road driveway access will be removed as per the applicant's submission. [MCRR 4.500]
  - f. The access on SE Stone Road is reduce the width of 20 feet, in accordance with Exhibit A.17 – A1.1, to meet County standards. [MCRR 4.400]
  - g. The access onto SE Short Road will be reconfigured to 22.4 feet, in accordance with Exhibit A.17 – A1.1, to meet County standards. [MCRR 4.400]
5. Prior to final occupancy approval of the new residence, the property owner or their representative shall:
- a. Contact Multnomah County Land Use Planning Division - Code Compliance Program and/or Rithy Khut, Land Use Planner to schedule a site inspection. At the time of scheduling, photos shall be provided to the County confirming that the existing single-family dwelling labeled as #17 has had the following items removed from the building: Cooking facilities, a toilet or toilets, bathing facilities such as a shower or bathing tub, a closet or closets built into a wall. One sink may be allowed to remain [MCC 39.1515, MCC 39.4310(F)(2)]
  - b. Provide building plans showing the floor plan of the existing single-family dwelling to be converted to an accessory structure (labeled as #17 on Exhibit A.17 – A1.1). [MCC 39.4310(F)(2)]
    - i. For the purposes of Condition 5.b, the plans for the existing single-family dwelling labeled as #17 on Exhibit A.17 – A1.1 will show that the accessory building does not contain: (a) More than one story; (b) Cooking Facilities; (c) A toilet or toilets; (d) Bathing facilities such as a shower or bathing tub; or (f) A closet or closets built into a wall. One sink may be shown. [MCC 39.4310(F)(3) and (4)]
6. As on-going condition, the property owner shall:
- a. Ensure that the accessory structures (existing single-family dwelling and garage labeled as #17 and chicken coop labeled as #32 on Exhibit A.17 – A1.1) 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. [MCC 39.4310(F)(2)]

- b. Ensure that the within the existing single-family dwelling labeled as #17 on Exhibit A.17 – A1.1, a mattress, bed, Murphy bed, cot, or any other similar item designed to aid in sleep as a primary purpose is disassembled for storage. [MCC 39.4310(F)(4)]
- c. Ensure that 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. No outdoor lighting fixtures shall be permitted within 100 feet of Johnson Creek. All exterior lighting shall be a fixture type that is fully shielded with opaque materials and directed downwards. [MCC 39.5560(B)]
- d. Ensure that no structures, temporary or permanent, are located in the 100-year floodplain on the north side of Johnson Creek. [MCC 39.5800(E)]
- e. Ensure that nuisance plants in MCC 39.5580 Table 1 below, in addition to the nuisance plants defined in MCC 39.2000, shall not be used as landscape plantings on the subject property. [MCC 39.5560(C), MCC 39.5580]

Table 1 - Nuisance Plant List:

<b>Common Name</b>	<b><i>Scientific Name</i></b>
Lesser celandine	<i>Chelidonium majus</i>
Canada Thistle	<i>Cirsium arvense</i>
Common Thistle	<i>Cirsium vulgare</i>
Western Clematis	<i>Clematis ligusticifolia</i>
Traveler's Joy	<i>Clematis vitalba</i>
Poison hemlock	<i>Conium maculatum</i>
Field Morning-glory	<i>Convolvulus arvensis</i>
Night-blooming Morning-glory	<i>Convolvulus nyctagineus</i>
Lady's nightcap	<i>Convolvulus sepium</i>
Pampas grass	<i>Cortaderia selloana</i>
Hawthorn, except native species	<i>Crataegus sp. except C. douglasii</i>
Scotch broom	<i>Cytisus scoparius</i>
Queen Anne's Lace	<i>Daucus carota</i>
South American Waterweed	<i>Elodea densa</i>
Common Horsetail	<i>Equisetum arvense</i>
Giant Horsetail	<i>Equisetum telmateia</i>
Cranesbill	<i>Erodium cicutarium</i>
Roberts Geranium, Herb Robert	<i>Geranium robertianu.</i>
English Ivy	<i>Hedera helix</i>
St. John's Wort	<i>Hypericum perforatum</i>
English Holly	<i>Ilex aquafolium</i>
Golden Chain Tree	<i>Laburnum watereri</i>
Duckweed, Water Lentil	<i>Lemna minor</i>
Fall Dandelion	<i>Leontodon autumnalis</i>
Purple Loosestrife	<i>Lythrum salicaria</i>

<b>Common Name</b>	<b><i>Scientific Name.</i></b>
Eurasian Watermilfoil	<i>Myriophyllum spicatum</i>
Reed Canary grass	<i>Phalaris arundinacea</i>
Annual Bluegrass	<i>Poa annua</i>
Swamp Smartweed	<i>Polygonum coccineum</i>
Climbing Bindweed, Wild buckwheat	<i>Polygonum convolvulus</i>
Giant Knotweed	<i>Polygonum sachalinense</i>
English, Portuguese Laurel	<i>Prunus laurocerasus</i>
Poison Oak	<i>Rhus diversiloba</i>
Himalayan Blackberry	<i>Rubus discolor</i>
Evergreen Blackberry	<i>Rubus laciniatus</i>
Tansy Ragwort	<i>Senecio jacobaea</i>
Blue Bindweed	<i>Solanum dulcamara</i>
Garden Nightshade	<i>Solanum nigrum</i>
Hairy Nightshade	<i>Solanum sarrachoides</i>
Common Dandelion	<i>Taraxacum officinale.</i>
Common Bladderwort	<i>Utricularia vulgaris</i>
Stinging Nettle	<i>Urtica dioica</i>
Periwinkle (large leaf)	<i>Vinca major.</i>
Periwinkle (small leaf)	<i>Vinca minor</i>
Spiny Cocklebur	<i>Xanthium spinosum</i>
Bamboo sp.	<i>various genera</i>

- f. Maintain the vegetation to minimize impact on sight distance for the proposed driveway on SE Short Road. [MRCC 16.225]
- g. Ensure that the SE Stone Road access/driveway is only to be used on an as-needed basis and will remain gated when not in use. [MCRR 4.500]

**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, 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 Rithy Khut, Planner, at 503-988-0176 or [rithy.khut@multco.us](mailto:rithy.khut@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 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.

**Dated** this 14 day of December 2020

A handwritten signature in black ink, appearing to read 'Joe Turner', with a long horizontal flourish extending to the right.

Joe Turner, Esq., AICP  
Multnomah County Land Use Hearings Officer

This Decision is final when mailed. Appeals may be filed with the Oregon Land Use Board of Appeals within the time frames allowed by State law.

## **Findings of Fact**

**FINDINGS:** Written findings are contained herein. The Multnomah County Code (MCC) criteria and Comprehensive Plan Policies are in **bold** font. Code sections that have been shortened or had non-applicable sections removed will show \* \* \* to identify that modification. Staff analysis and comments are identified as ‘**Staff:**’ and address the applicable criteria. Staff comments may include a conclusory statement in *italic*. Staff findings have been accepted as findings by the Hearings Officer except where noted otherwise. Additional findings written by the Hearings Officer are preceded by the words “**Hearings Officer:**”

### **1.0 Project Description**

**Staff:** The applicant is requesting a Lot of Record verification, a Significant Environmental Concern for Water Resources (SEC-wr) permit, and a Road Rules Variance to authorize the construction of a new single-family dwelling, the conversion of the existing single-family dwelling into an accessory building, additional accessory structures, and a variance to allow for multiple driveway accesses on the subject property. The proposed permits will also address development not previously reviewed by the County, which includes the construction of a fence, bridge, and well house on the property.

### **2.0 Property Description & History:**

**Staff:** The subject application is for 29619 SE Stone Road, Gresham (subject property) also known as tax lot 200, Section 19DC, Township 1 South, Range 4 East, W.M. The subject property is located on the north side of SE Stone Road within the Multiple Use Agriculture – 20 (MUA-20) zoning district in the West of the Sandy River rural area. There are two environmental overlays on the subject property including a Significant Environmental Concern for Water Resources (SEC-wr) and Areas of Special Flood Hazard (FH).

Multnomah County Division of Assessment, Recording, and Taxation (DART) data indicates that the subject property is approximately 2.60 acres and is owned by Marin and Daniyela Palamaryuk (Exhibit B.1). DART records also indicate that the subject property contains a single-family dwelling with detached garage, deck, and shed. The single-family dwelling was first assessed in 1949. Aerial photo review from 2019 confirms the presence of the single-family dwelling and garage; however, the deck and shed are not seen (Exhibit B.3).

In reviewing the past permit history of the subject property; the property has had an extensive permit history. Below are the land use and building permits that are on record:

Permit Number	Date	Description
35021	11/02/1964 (Expired)	New replacement dwelling and removal of existing dwelling
T2-01-068	11/26/2001 (Void)	Lot of Exception and Category 3 Land Division
T2-04-058	01/11/2005 (Denied)	Request for a Planning Director's Determination that the single-family dwelling was lawfully established
T2-05-073	11/22/2005 (Denied)	Request for a Planning Director's Determination of vested right for a single-family dwelling.
BP-2017-7359	03/23/2017	Demolition Permit of replacement single-family dwelling associated with Permit #35021 and decommission of septic System
T2-2019-12604	04/17/2020 (Withdrawn)	Significant Environmental Concern for Water Resources (SEC-wr) for new single-family dwelling

In reviewing the past compliance history of the subject property, the property has had multiple code compliance issues in the past. Below are the code compliance cases that are on record:

Code Compliance Case #	Date	Description
UR-06-012	02/17/2006 (Closed)	2 <sup>nd</sup> dwelling on property (north home) was not legally constructed. Verified in land use decisions T2-05-073 and T2-04-058.
ZV-2012-2245	04/10/2012 (Closed)	Notice of Violation issued for non-permitted structure (unfinished second dwelling) placed on the property without approval and without SEC permits.
UR-2018-10222	03/23/2018	Non-permitted construction of a fence, bridge and well house on the property; placement of the fence, bridge and well house within an SEC overlay area and within the floodplain; and non-permitted construction of an additional (second) access point to SE Stone Road from the property.

### 3.0 Public Comment:

**Staff:** A mailed notice of application and invitation to comment on the proposed application was sent to the required parties per MCC 39.1105 as Exhibited in C.2. Staff did not receive any public comments during the 14-day comment period.

**Hearings Officer:** The County mailed a notice of the appeal hearing on October 22, 2020 (Exhibit C.7). No written comments were received regarding the appeal and no one appeared at the November 13, 2020 hearing, other than County staff, the applicant, and property owner.

#### **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:** There is one active code compliance case associated with this property. The case, UR-2018-10222 was opened on March 23, 2018, to resolve an issue regarding the non-permitted construction of a fence, bridge, well house, and additional access from Stone Road on the property. In comparing aerial photos between 2016 and 2019, there was also ground disturbance and removal of vegetation that occurred as part of the removal of the unpermitted single-family dwelling that was subject to UR-06-012 and the non-permitted construction activities (Exhibit B.3 and B.5). The placement of the structures, fences, a bridge, and a well house in addition to the ground disturbing activities are within the Significant Environmental Concern for Water Resources (SEC-wr) overlay area and within an Area of Special Flood Hazard (FH).

In order to make a land use decision approving development, the applicant will have to bring the property into full compliance. The applicant proposes a new single-family dwelling to replace the existing dwelling and permits to authorize the existing structures. This Type 2 application is the first part of a sequencing of permits needed to resolve the code compliance issues related to encroachment of structures in the SEC-wr overlay. If the applicant fulfills the requirements of the decision, which will require the obtaining a Type 1 Erosion and Sediment Control

permit and a Flood Development permit, it will result in the property coming into compliance.

*As discussed in this decision, when the applicant meets all of the conditions in this decision, including obtaining a Type 1 Erosion and Sediment Control permit and a Flood Development permit, it will result in the property coming into compliance with applicable provisions of the Multnomah County Land Use Code. Therefore, the County is able to make a land use decision approving development on the subject property. A condition will also require that the applicant obtain a Type 1 Erosion and Sediment Control permit and a Flood Development permit to ensure that the proper sequencing of permits is met.*

**Hearings Officer:** On appeal, the applicant proposed to retain the existing bridge over Johnson Creek until final occupancy approval of the proposed new residence on the site. The property owners want to retain the bridge to facilitate access between the existing residence south of the creek and the new home construction site, vehicle parking areas, chickens, garden, and other activity areas on the north side of the creek. Removal of the bridge will require the property owners and their children to use the abutting streets to access the north side of the site.

The hearings officer understands the property owners' desire to retain the bridge during construction. However, the bridge was constructed within the 100-year floodplain without permits and inspections. There is no evidence in the record that the bridge is capable of withstanding stream flows or that it will not obstruct such flows during high water events, up to a 100-year flood. Although the bridge has existed on the site since the property owners purchased the site in May 2016, there is no evidence that any high water events, let alone a 100-year flood, have occurred during that time. If the bridge failed during a high water event debris from the bridge could damage downstream properties and/or create a debris dam that would exacerbate downstream flooding. Even if the bridge were capable of withstanding high water flows, it could obstruct such flows, acting as a dam and increasing the risk of flooding on the site and on upstream properties. Therefore, the hearings officer finds that the bridge must be removed as soon as possible to eliminate these potential hazards. Condition of approval 3.b.i of the Director's Decision should be retained.

## **5.0 Lot of Record Criteria:**

### **5.1 § 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.**

**Staff:** The applicant has provided a deed to demonstrate that the subject property satisfied all applicable zoning laws. The earliest deed provided was a Warranty Deed recorded in Book 1221, Page 134 on November 17, 1947, describing the subject property (Exhibit A.8). At that time in 1947, the County had not yet enacted zoning laws. The first interim zoning ordinance was adopted on May 26, 1953. Therefore, as described in 1947, the subject property satisfied all applicable zoning laws as none existed at that time.

The most recent deed conveyed the subject property to Marin Palamaryuk and Daniyela Palamaryuk from JP Morgan Chase Bank. The Special Warranty Deed recorded as Instrument #2017-038053 on March 29, 2017, matches the description as described in the Warranty Deed located in Book 1221, Page 134 (Exhibit B.4). As the property has not changed configuration since that time, the subject property continues to satisfy applicable zoning laws.

*The subject property satisfied all applicable zoning laws.*

**(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 applicant has provided a deed to demonstrate that the subject property satisfied all land division laws. The earliest deed provided was a Warranty Deed recorded in Book 1221, Page 134 on November 17, 1947, describing the subject property (Exhibit A.8). The deed was dated and signed by the parties to the transaction in addition to being recorded prior to October 19, 1978.

Further, the most recent deed shows the subject property has not had any subsequent boundary reconfigurations. The Special Warranty Deed recorded as Instrument #2017-038053 on March 29, 2017, matches the description as described in the Warranty Deed located in Book 1221, Page 134 (Exhibit B.4). As the property has not undergone any subsequent boundary reconfigurations, the subject property continues to satisfy applicable all applicable land division laws.

*The subject property satisfied all applicable land division laws.*

**(c) Separate Lots of Record shall be recognized and may be partitioned congruent with an “acknowledged unincorporated community” boundary which intersects a Lot of Record.**

**1. Partitioning of the Lot of Record along the boundary shall require review and approval under the provisions of the land division part of this Chapter, but not be subject to the minimum area and access requirements of this district.**

**2. An “acknowledged unincorporated community boundary” is one that has been established pursuant to OAR Chapter 660, Division 22.**

**Staff:** The property subject to this land use application is not congruent with an “acknowledged unincorporated community” boundary, which intersects a Lot of Record. Additionally, the applicant is not requesting a partitioning of the Lot of Record along the boundary therefore this criterion is not applicable. This criterion is not applicable.

**5.2     § 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.**

**Staff:** The code section above does not affect the determination of this case as the significant dates and ordinances are for informational purposes. *This criterion is not applicable.*

**(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.**

**Staff:** The Lot of Record is approximately 2.60 acres. The minimum lot size to create a new parcel in the MUA-20 zone is 20 acres. The MUA-20 zone has a required 50-foot Front Lot Line length for the creation of new parcels or lots. The front lot line of the subject property fronts onto two public rights-of-way known as SE Stone Road and SE Short Road. The frontage length of Stone Road is approximately 435.40 feet and the frontage length of SE Short Road is approximately 350 feet (Exhibit B.2). As the subject property is less than the minimum lot size for new parcels or lots, but was found to be a Lot of Record in findings in Section 5.01, it may be occupied by any allowed, review, or conditional use provided the Lot of Record complies with other requirements of the MUA-20 district. *This criterion is met.*

**(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.**

**Staff:** The applicant is not proposing the sale or conveyance of any portion of a lot; therefore, Criterion (C) does not affect the determination on this case and is not applicable. *This criterion is not applicable.*

**(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:** As discussed above, the subject property is a Lot of Record. As a Lot of Record, the subject property is not an area of land described as a tax lot solely for assessment and taxation purposes, nor is it an area of land created by foreclosure of a security interest, or an area of land created by court decree. *These criteria are met.*

## **6.0 Multiple Use Agriculture – 20 (MUA-20) Criteria:**

### **6.1 § 39.4310 ALLOWED USES.**

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

**Staff:** The applicant is requesting a permit to construction a new single-family dwelling (SFD) on the subject property. As discussed previously in Section 5.0, the subject property is a Lot of Record. As an allowed use, only one single-family dwelling is permitted on the property. The applicant is proposing to convert the existing single-family dwelling located adjacent to SE Stone Road into an accessory building. Additionally, as the new single-family dwelling is located in the Significant Environmental Concern for Water Resources (SEC-wr) overlay, the SFD must meet the applicable approval criteria in MCC 39.5500 through MCC 39.5800, which is discussed in Section 7.0.

**Hearings Officer:** Condition of approval 3.b.iii of the Director's Decision requires that the property owners convert the existing residence to a storage building at the time of land use sign-off for building plan check, before the proposed new residence is completed. The property owners and their family plan to continue to reside in the existing residence until the new residence is completed. The hearings officer finds that the existing residence can be retained on the site while the new residence is constructed. The Code allows one single-family residence on the site. Currently that is the existing residence on the south portion of the site. The new residence on the north portion of the site will not exist as a "residence" until final occupancy approval of that structure. Therefore, allowing the existing residence to remain while the new residence is constructed will not violate the Code by allowing more than one residence on the site. Condition of approval 3.b.iii of the Director's Decision should be modified to require conversion of the existing residence to a storage use prior to final occupancy approval of the new residence.

#### **(F) Accessory Structures subject to the following:**

**(1) The Accessory Structure is customarily accessory or incidental to any use permitted or approved in this base zone and is a structure identified in the following list:**

- (a) Garages or carports;**
- (b) Pump houses;**
- (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:** As part of this application for a new single-family dwelling, the applicant is proposing several accessory structures. The first accessory structure is the conversion of the existing single-family dwelling into an accessory building that will be used for storage. As listed above, storage sheds are identified as structures that are customarily accessory or incidental to the residential use. The existing garage adjacent to the existing single-family dwelling will also be retained. Fencing that was unpermitted is proposed to be permitted as part of this application and lastly, a chicken coop to replace a chicken coop that is being removed from the property.

The subject property also contains a bridge structure that spans across Johnson Creek that was subject to code compliance case UR-2018-10222. The structure was not reviewed or permitted by the County. As such, the applicant is proposing to remove the bridge as part of this application. To ensure that this occurs, a condition of approval will be required. *As conditioned, this criterion is met.*

**(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.**

**Staff:** The applicant is proposing three accessory structures. The first accessory structure is the conversion of the existing single-family dwelling into an accessory building that will be used for storage. As the single-family dwelling contains elements that are designed or can 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; the applicant will be required to remove various components within the building to ensure compliance with the criterion above. The elements that must be removed are discussed below. Additionally, to ensure that the accessory building is not used in the manner above, a condition will be required prohibiting the use of the accessory building as described in this criterion.

This condition will also be required of the existing garage and proposed chicken coop. As they are also accessory structures, the design and use of the garage and chicken coop shall be required to meet the criterion above through the use of a condition of approval. *As conditioned, this criterion is met.*

**(3) The Accessory Structure may contain one sink.**

**Staff:** To ensure compliance with this criterion, a condition will be required that the accessory building that was previously a single-family dwelling only contain one sink. *As conditioned, this criterion is met.*

**(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 existing single-family dwelling contains elements listed above. As described in the screenshot of the Appraisal from 2019, it shows that the existing single-family dwelling is one story in height and contains one full bath and one kitchen. As the applicant has not applied for an Accessory Use Determination as allowed in MCC 39.4310(F)(7), the conversion of the existing single-family dwelling into an accessory building will require that the cooking facilities, toilet(s), bathing facilities and closets built into walls be removed. Additionally, if the building contains a mattress, bed, Murphy bed, cot, or any other similar item designed to aid in sleep as a primary purpose, those items must be disassembled for storage. To ensure compliance with the criteria above, conditions will be required. *As conditioned, these criteria are met.*

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

**Staff:** To ensure compliance with this criterion, a condition will be required that compliance with MCC 39.8860 is required. *As conditioned, this criterion is met.*

**(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.**

**Staff:** The combined footprints of all Accessory Buildings on a Lot of Record shall not exceed 2,500 square feet. As shown on the site plan, the applicant is

proposing to convert the existing single-family dwelling into an accessory building (Exhibit A.17 – A1.1). The applicant is also proposing to retain the garage and construct a chicken coop. The building footprints are measured as follows:

**Table 1 - Accessory Building Footprint Calculations**

<b>Building</b>	<b>Length</b>	<b>Width</b>	<b>Square Feet</b>
Single-Family Dwelling (Left)	28.14	14.31	<b>402.66</b>
Single-Family Dwelling (Middle)	19.17	17.08	<b>327.48</b>
Single-Family Dwelling (Right)	16.37	28.28	<b>462.88</b>
<b>Existing Single-Family Dwelling Total</b>			<b>1,193.02</b>
Chicken Coop	12.00	15.00	<b>180.00</b>
Garage	14.33	20.04	<b>287.04</b>
<b>Total</b>			<b>1,660.07</b>

**Exhibit A.17 – A1.1**

As measured, the total combined footprints of all Accessory Buildings on the Lot of Record are less than 2,500 square feet. *This criterion is met.*

**(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:** As discussed above, the applicant will not exceed any of the Allowed Use provisions above through conditions of approval. Additionally, the combined footprints of all Accessory Buildings is below the 2,500 square foot threshold, therefore the application for accessory buildings will not require consideration through the Review Use provisions. *This criterion is met.*

**(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 applicant is not proposing any buildings in conjunction with farm uses as defined in ORS 215.203; therefore, this criterion is not applicable. *This criterion is not applicable.*

## **6.2     § 39.4325     DIMENSIONAL REQUIREMENTS AND DEVELOPMENT STANDARDS.**

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

**(A) Except as provided in MCC 39.3080, 39.4330, 39.4335 and 39.5300 through 39.5350, the minimum lot size for new parcels or lots shall be 20 acres.**

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

**Staff:** The subject application is for a residential use and multiple accessory structures. The application is not for the creation of a new parcel or lot. As such, the criteria above do not affect the determination of this case and are not applicable. *These criteria are not applicable.*

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

Front	Side	Street Side	Rear
30	10	30	30

**Maximum Structure Height – 35 feet**

**Minimum Front Lot Line Length – 50 feet.**

**(1) Notwithstanding the Minimum Yard Dimensions, but subject to all other applicable Code provisions, a fence or retaining wall may be located in a Yard, provided that a fence or retaining wall over six feet in height shall be setback from all Lot Lines a distance at least equal to the height of such fence or retaining wall.**

**(2) An Accessory Structure may encroach up to 40 percent into any required Yard subject to the following:**

**(a) The Yard being modified is not contiguous to a road.**

**(b) The Accessory Structure does not exceed five feet in height or exceed a footprint of ten square feet, and**

**(c) The applicant demonstrates the proposal complies with the fire code as administered by the applicable fire service agency.**

**(3) A Variance is required for any Accessory Structure that encroaches more than 40 percent into any required Yard.**

**(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 applicant has provided a site plan showing the location of the existing single-family dwelling, the proposed single-family dwelling, and all other accessory structures. As required, the buildings and structures need to meet the



yard dimensions to ensure that there is sufficient open space between buildings and property lines to provide space, light, air circulation, and safety from fire hazards. Two buildings, the existing single-family dwelling (to be converted into an accessory building) and the detached garage were established prior to zoning. The applicant is proposing two new buildings, a single-family dwelling and chicken coop.

Additionally, as required under criterion (D), minimum yard dimensions are required to be increased where the yard abuts a street having insufficient right-of-way width to serve the area. The rights-of-way adjacent to the subject property are Stone Road and Short Road. Both roads are classified as Rural Local roads, which are required to be 50 feet. As indicated in DART assessment maps, rights-of-way adjacent to the property are both 40 feet wide, which is insufficient to serve the area (Exhibit B.2). Therefore, the minimum yard dimensions will need to be increased by five (5) feet.

As shown in the Site Plan, the proposed buildings are as follows:

**Table 2 – Distance of Buildings and Structures to Property Lines**

	<b>Yard Requirement</b>	<b>Distance of building to Property Line (feet)</b>
<b>Proposed Single-Family Dwelling</b>		
<b>Front (adjacent to Short Road)</b>	35'	49.3' ±
<b>Street Side (south property line adjacent to Stone Road)</b>	35'	216.7' ±
<b>Side (north property line)</b>	10'	13.5' ±
<b>Rear (west property line opposite of Short Road)</b>	30'	290.2 ±
<b>Proposed Chicken Coop</b>		
<b>Front (adjacent to Short Road)</b>	35'	327.8' ±
<b>Street Side (south property line adjacent to Stone Road)</b>	35'	216.3' ±
<b>Side (north property line)</b>	10'	41.4' ±
<b>Rear (west property line opposite of Short Road)</b>	30'	73.4' ±
<b>Unpermitted Fencing</b>		
<b>Front (adjacent to Short Road)</b>	35'	99.0' ±
<b>Street Side (south property line adjacent to Stone Road)</b>	35'	0' ±
<b>Side (north property line)</b>	10'	173.2' ±
<b>Rear (west property line opposite of Short Road)</b>	30'	131.9' ±

**Exhibit A.17 – A1.1**

As measured, all of the proposed buildings exceed the minimum yard requirements. The fence as a structure is less than six feet in height and therefore is allowed to encroach into the yard as provided by MCC 39.4325(C)(1).

The applicant has also included building elevations for the proposed single-family dwelling. The elevation plans indicate that the highest roof ridge is 28 feet 8 inches tall, which is less than the maximum height requirement of 35 feet. *This criterion is met.*

**(E) Structures such as barns, silos, windmills, antennae, chimneys or similar structures may exceed the height requirement if located at least 30 feet from any property line.**

**Staff:** The applicant is not proposing structures such as barns, silos, windmills, antennae, chimneys or similar structures; therefore, this criterion is not applicable. *This criterion is not applicable.*

**(F) Agricultural structures and equine facilities such as barns, stables, silos, farm equipment sheds, greenhouses or similar structures that do not exceed the maximum height requirement may have a reduced minimum rear yard of less than 30 feet, to a minimum of 10 feet, if:**

- (1) The structure is located at least 60 feet from any existing dwelling, other than the dwelling(s) on the same tract, where the rear property line is also the rear property line of the adjacent tract, or**
- (2) The structure is located at least 40 feet from any existing dwelling, other than the dwelling(s) on the same tract, where the rear property line is also the side property line of the adjacent tract.**
- (3) Placement of an agricultural related structure under these provisions in (F) does not change the minimum yard requirements for future dwellings on adjacent property.**

**Staff:** The applicant is not proposing Agricultural structures and equine facilities such as barns, stables, silos, farm equipment sheds, greenhouses or similar structures; therefore, these criteria are not applicable. *These criteria are not applicable.*

**(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:** As required 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. The applicant has included a Septic Review Certification, Storm Water Certificate, and Certification of Water Service. The Septic Review Certification was reviewed and approved by Lindsey Reschke, Multnomah County Sanitarian. The Storm Water Certificate indicated that construction of an on-site storm water drainage control system is required to ensure that the rate of runoff from the subject property for the 10-year/24-hour storm event is no greater than that before the development. The Storm Water Certificate was completed by David Popescu, Registered Professional Engineer. The Water Service Certificate indicates that a well is located on the property and provided 85 gallons per minute of flow. *These criteria are met.*

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

- (1) Recording a covenant that implements the provisions of the Oregon Right to Farm Law in ORS 30.936 where the farm use is on land in the EFU zone; or**
- (2) Where the farm use does not occur on land in the EFU zone, the owner shall record a covenant that states he recognizes and accepts that farm activities including tilling, spraying, harvesting, and farm management activities during irregular times, occur on adjacent property and in the general area.**

**Staff:** As the applicant is proposing the replacement of an existing dwelling, a condition will be required to ensure compliance with this criterion. As the subject property and adjacent lands are located in the Multiple Use Agriculture – 20 (MUA-20) zoning district, the farm use does not occur on land in the EFU zone. Therefore, the owner shall record a covenant that states they recognize and accept that farm activities including tilling, spraying, harvesting, and farm management activities during irregular times, occur on adjacent property and in the general area. *As conditioned, this criterion is met.*

**(I) Required parking, and yard areas shall be provided on the same Lot of Record as the development being served.**

**Staff:** As shown on the site plan, exhibited as Exhibit A.17 – A1.1, the required parking and yard areas are provided on the same Lot of Record as the development being served. *This criterion is met.*

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

**Staff:** To ensure compliance with this criterion, a condition will be required that all exterior lighting shall comply with MCC 39.6850. *As conditioned, this criterion is met.*

**6.3 § 39.4340 OFF-STREET PARKING AND LOADING.**

**Off-Street parking and loading shall be provided as required by MCC 39.6500 through 39.6600.**

**Staff:** As required, off-street parking and loading shall be provided as required by MCC 39.6500 through 39.6600. As required by MCC 39.6590(A)(1), a single-family dwelling requires two spaces for each dwelling unit. The floor plan shows that the garage adjacent to the proposed single-family dwelling will contain a space for one vehicle (Exhibit A.3 – A2.1). The existing garage adjacent to the proposed accessory building will also contain a space for one vehicle. *This criterion is met.*

**7.0 Significant Environmental Concern (SEC) Criteria:**

**7.1 § 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.**

**Staff:** As discussed in Section 6.1, the applicant is proposing multiple uses that are allowed under MCC 39.410. The uses include the construction of a new single-family dwelling, the conversion of the existing single-family dwelling located adjacent to SE Stone Road into an accessory building, fencing that was previously not reviewed by the County, and a chicken coop to replace a chicken coop that is being removed from the property. Additionally, the property was subject to ground disturbing activities and vegetation removal that were not previously reviewed by the County. As such, this application is 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:** As discussed below, any excavation or any removal of materials of archaeological, historical, prehistorical, or anthropological nature shall be conducted under the conditions of an SEC permit.

**7.2 § 39.5560 GENERAL REQUIREMENTS FOR APPROVAL IN THE  
WEST OF SANDY RIVER PLANNING AREA  
DESIGNATED AS SEC-WR OR SEC-H.**

**The requirements in this section shall be satisfied for development in the SEC-wr and SEC-h areas 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 has applied for an Erosion and Sediment Control (ESC) permit. The ESC permit must be issued prior to any additional ground disturbing activities to ensure compliance with this criterion. Additionally, a condition will be required that 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. Additionally, this condition will be carried forward in the applicant's Type 1 Erosion and Sediment Control permit. *As conditioned, this criterion is met.*

**(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:** To ensure compliance with this criterion, a condition will be required that outdoor lighting shall be of a fixture type that does not shine directly into undeveloped water resource or habitat areas. The outdoor lighting shall also be placed in a location so that it does not shine directly into undeveloped water resource or habitat areas. No outdoor lighting fixtures shall be permitted within 100 feet of Johnson Creek. Where outdoor lighting is attached to the single-family dwelling, the illumination shall be minimized through use of a hooded fixture type and be compliant with Dark Sky Lighting Standards as discussed in Section 8.0. *As conditioned, this criterion is met.*

**(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:** To ensure compliance with this criterion, a condition will be required that 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 Overlay Zone. *As conditioned, this criterion is met.*

### 7.3 § 39.5580- NUISANCE PLANT LIST.

**Table 1**  
**Nuisance Plant List:**

<b>Common Name</b>	<b><i>Scientific Name</i></b>
Lesser celandine	<i>Chelidonium majus</i>
Canada Thistle	<i>Cirsium arvense</i>
Common Thistle	<i>Cirsium vulgare</i>
Western Clematis	<i>Clematis ligusticifolia</i>
Traveler' s Joy	<i>Clematis vitalba</i>
Poison hemlock	<i>Conium maculatum</i>
Field Morning-glory	<i>Convolvulus arvensis</i>
Night-blooming Morning-glory	<i>Convolvulus nyctagineus</i>
Lady's nightcap	<i>Convolvulus sepium</i>
Pampas grass	<i>Cortaderia selloana</i>
Hawthorn, except native species	<i>Crataegus sp. except C. douglasii</i>
Scotch broom	<i>Cytisus scoparius</i>
Queen Anne's Lace	<i>Daucus carota</i>
South American Waterweed	<i>Elodea densa</i>
Common Horsetail	<i>Equisetum arvense</i>
Giant Horsetail	<i>Equisetum telmateia</i>
Cranesbill	<i>Erodium cicutarium</i>
Roberts Geranium, Herb Robert	<i>Geranium robertianum</i>
English Ivy	<i>Hedera helix</i>
St. John's Wort	<i>Hypericum perforatum</i>
English Holly	<i>Ilex aquafolium</i>
Golden Chain Tree	<i>Laburnum watereri</i>
Duckweed, Water Lentil	<i>Lemna minor</i>
Fall Dandelion	<i>Leontodon autumnalis</i>
Purple Loosestrife	<i>Lythrum salicaria</i>
Eurasian Watermilfoil	<i>Myriophyllum spicatum</i>
Reed Canary grass	<i>Phalaris arundinacea</i>
Annual Bluegrass	<i>Poa annua</i>
Swamp Smartweed	<i>Polygonum coccineum</i>
Climbing Bindweed, Wild buckwheat	<i>Polygonum convolvulus</i>
Giant Knotweed	<i>Polygonum sachalinense</i>
English, Portuguese Laurel	<i>Prunus laurocerasus</i>
Poison Oak	<i>Rhus diversiloba</i>
Himalayan Blackberry	<i>Rubus discolor</i>
Evergreen Blackberry	<i>Rubus laciniatus</i>
Tansy Ragwort	<i>Senecio jacobaea</i>

<b>Common Name</b>	<b><i>Scientific Name</i></b>
<b>Blue Bindweed</b>	<b><i>Solanum dulcamara</i></b>
<b>Garden Nightshade</b>	<b><i>Solanum nigrum</i></b>
<b>Hairy Nightshade</b>	<b><i>Solanum sarrachoides</i></b>
<b>Common Dandelion</b>	<b><i>Taraxacum officinale</i></b>
<b>Common Bladderwort</b>	<b><i>Utricularia vulgaris</i></b>
<b>Stinging Nettle</b>	<b><i>Urtica dioica</i></b>
<b>Periwinkle (large leaf)</b>	<b><i>Vinca major</i></b>
<b>Periwinkle (small leaf)</b>	<b><i>Vinca minor</i></b>
<b>Spiny Cocklebur</b>	<b><i>Xanthium spinosum</i></b>
<b>Bamboo sp.</b>	<b><i>various genera</i></b>

**Staff:** As required in MCC 39.5560(C), the nuisance plants in Table 1 above shall not be used as landscape plantings within the SEC-wr Overlay Zone. *As conditioned, this criterion is met.*

#### **7.4 § 39.5800- CRITERIA FOR APPROVAL OF SEC-WR PERMIT - WATER RESOURCE**

**(A) Except for the exempt uses listed in MCC 39.5515 and the existing uses pursuant to MCC 39.5550, no development shall be allowed within a Water Resource Area unless the provisions of subsections (B) or (C) or (D) below are satisfied. An application shall not be approved unless it contains the site analysis information required in MCC 39.5520(A) and (C), and meets the general requirements in MCC 39.5560.**

**Staff:** The applicant is proposing a new single-family dwelling and accessory uses as their development. These uses are not listed as exempt in MCC 39.5515. As such, the application is required to meet the provisions of subsections (B) or (C) or (D) below. The applicant has elected to demonstrate compliance with the Alternatives Analysis within subsection (C). The application has included site analysis information in a Natural Resources Assessment Report and Mitigation Plan (“Report and Mitigation Plan”) that was prepared by Julie Harper, M.Sc., Fish and Wildlife Biologist in June 2019 (Exhibit A.5). The Report and Mitigation Plan contains the site analysis information as required in MCC 39.5520(A). There is no subsection (C) in MCC 39.5520 as it was removed during the consolidation of Multnomah County Code into Chapter 39 because subsection (C) was duplicative to subsection (A). As discussed in Section 7.2 the applicant can meet, through conditions of approval, the general requirements in MCC 39.5560. *This criterion is met.*

\* \* \*

**(C) Alternatives Analysis - Development proposed within a Water Resource Area may be allowed if there is no alternative, when the other requirements of this Overlay including the Development Standards of subsection (E) and the provisions**

**for Mitigation in subsection (F) are met. The applicant shall prepare an alternatives analysis which demonstrates that:**

**Hearings Officer:** The subject property is entirely within the Water Resource Area; therefore, there is no alternative to locating the development outside the area. The applicant is proposing development within the buffer and is electing to utilize the provisions of an alternative analysis provided in MCC 39.5800(C). As such, the development will need to meet the provisions of (1) through (5) below. The “development” proposed on this site includes construction of a new single-family dwelling north of the creek, the conversion of the existing single-family dwelling into an accessory building, a new chicken coop, and a wood chip path and viewing area within the proposed mitigation planting area on the north side of the stream. Portions of the path are within the 25-foot setback from the creek bank (Exhibit I.2).<sup>1</sup> In comparing aerial photos between 2016 and 2019, there also appears to be ground disturbance and removal of vegetation related to the removal of the unpermitted single-family dwelling that was subject to UR-06-012 (Exhibit B.3 and B.5). Additionally, at some point in 2019, a fence, bridge, and well house were placed on the property without review by the County, all of which constitutes “development” on the site.

As required above, the application includes an alternatives analysis. The alternatives analysis is contained within the Natural Resources Assessment Report and Mitigation Plan (“Report and Mitigation Plan”) that was prepared by Julie Harper, M.Sc., Fish and Wildlife Biologist in June 2019 (Exhibit A.5). The applicant has also included a Mitigation Plan (“Landscaping Plan”) created by Studio Wild on April 1, 2020 (Exhibit A.5 and A.19 – L101). *This criterion is met.*

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

**Hearings Officer:** The subject property is entirely within the Water Resource Area. There are no practicable alternatives to the proposal that will not disturb the Water Resource area. The Report and Mitigation Plan states, “Locating the proposed development within the SEC-wr area is unavoidable because the entire property is within the SEC-wr area. It is positioned as far from the banks of Johnson Creek as possible, while maintaining property line setbacks” (Exhibit A.5).

MCC 39.5800(E)(1) allows trails, rest points, viewpoints, and other facilities for the enjoyment of the resource within the SEC-wr, provided the facilities are located and constructed in such a manner so as to minimize impacts on the natural

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<sup>1</sup> The applicant originally proposed a “picnic/firepit area” just outside of the 25-foot setback from the creek bank as well as two trails extending down to the bank of the creek (Exhibit A.19). The applicant revised the proposal on appeal, changing the “picnic/firepit area” to a woodchip surfaced viewpoint and eliminating the two trails extending down to the bank of the creek (Exhibits I.1. and I.2).



resource while allowing for the enjoyment of the natural resource. The hearings officer finds that there are no “practicable alternatives” to the proposed viewpoint trail. These facilities must be located within the riparian area to fulfill their purposes, providing a view of the stream and riparian area. The trails are also needed to provide access to the viewpoint.

*This criterion is met.*

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

**Hearings Officer:** As noted above, the proposed development includes the construction of a new single-family dwelling, the conversion of the existing single-family dwelling into an accessory building, a new chicken coop, and a wood chip path and viewing area on the north side of the stream. Mitigation of the ground disturbance and vegetation removal related to the removal of the unpermitted single-family dwelling that was subject to UR-06-012 is also proposed as well as removal or modification of the fence, bridge, and well house that were placed on the property without review by the County.

The applicant’s proposed site plan indicates that the chicken coop and pen will be relocated to meet setback requirements, the well house subject to UR-2018-10222 will be relocated into the newly proposed single-family dwelling, and the bridge will be entirely removed from the property (Exhibit A.17 – A1.1). The buildings and structures south of Johnson Creek will remain. The applicant did not appeal the condition of approval requiring relocation of the chicken coop to the mowed lawn area adjacent to the single-family dwelling.

The hearings officer finds that the modified trail and viewpoint area proposed in Exhibit I.2 are “limited to the area necessary to allow for the proposed use.” As noted above, trails and viewpoints for the enjoyment of the resource are permitted in the SEC-wr, provided the facilities are located and constructed in such a manner so as to minimize impacts on the natural resource while allowing for the enjoyment of the natural resource. As modified in Exhibit I.2, these facilities will minimize impacts to the natural resource; the trail and viewpoint will be surfaced with natural wood chips and will provide a defined pathway to access and enjoy the riparian areas on the site. The applicant eliminated the trails to the creek and the firepit/picnic area.

The applicant has not also provided information that the fence can be permitted within the Floodway. As the fence was placed on the property without review, it will be required to be removed up to the parking area adjacent to the existing single-family dwelling that will be converted into an accessory building. By removing the fence up to the graveled parking, the development will be limited to the area necessary to delineate the parking area associated with the accessory building.

At the competition of this project, all of the development will be limited to the area necessary to allow for the proposed use, which is a single-family dwelling, conversion of the existing single-family dwelling into the accessory building, and a trail and viewpoint near the creek. As such, the development will be limited to the northeastern portions of the subject property and an area that has already been disturbed when the original single-family dwelling was constructed in the 1940s. *As conditioned, this criterion is met.*

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

**Staff:** As discussed in subsection (2) above, the majority of the development will be located as far as practically possible from the stream. The development will be primarily located in two zones. One zone will be north of Johnson Creek along the northern property line. The second zone will be located south of Johnson Creek in an area that contains the existing single-family dwelling that was established in the late 1940s. The only encroachments within the 100-foot setback from Johnson Creek are the wood chip paths and viewpoint, the fence, and bridge. As discussed above, a condition will be required that no structures, temporary or permanent be located within the 100 foot setback of Johnson Creek except for the existing single-family dwelling that will become an accessory building, the detached garage and portions of the fence that define the parking area adjacent to the garage. These measures will ensure that the development occurs as far as practically possible from the stream. As discussed above, the trails and viewpoint must be located near the stream in order to serve their intended function, allowing views and enjoyment of the resource. *As conditioned, this criterion is met.*

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

**Staff:** As discussed previously, the subject property is located entirely within the Water Resource Area. As such, a portion of the Water Resource Area will need to be impacted resulting in a net loss on the property of resource area, function and value. Therefore, as discussed below in subsection (5), the Water Resource Area will need to be mitigated. *This criterion is not met; therefore, MCC 39.5800(C)(5) must be met.*

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

**Staff:** The Mitigation requirements are outlined in MCC 39.5800(F). In that section, the Finding details the extent and nature of the mitigation that will be required to be met as part of this Decision. As was discussed in that section, 9,991 square feet (0.23 acres) of area was altered or lost due to the development of the single-family dwelling. Further, an additional 22,400 square feet (0.51 acres) of

additional area was lost due to development that was not reviewed by the County. As such, a total 32,391 square feet (0.74 acres) of mitigation is required to counter the net loss of resource area. To ensure that the net loss of resource area is mitigated, multiple conditions will be required, including updating the Plant List to reflect 32,391 square feet of mitigation, updating the Landscape Plan to indicate the location and type of plantings that will be planted. *As conditioned, this criterion is met.*

**(E) Development Standards- Development within the Water Resource Area shall comply with the following standards:**

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

**Staff:** The applicant's site plan and mitigation plan indicate that trails and a picnic/fire pit area will be located in the Water Resources Area. The trails will be constructed of wood chips and lead to the picnic/fire pit area, which is located adjacent to the proposed single-family dwelling (Exhibit A.19). As discussed in previously in MCC 39.5800(C)(2) and (C)(3), the applicant has not included information as to the how the trails meet the requirement that development be limited to the area necessary to allow for the proposed use. As such, a condition will be required that the trails and picnic/fire pit be removed and the Landscape Plan be resubmitted reflecting the removal of those elements. *As conditioned, this criterion is met.*

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

**Staff:** Prior to submittal of this application, development occurred on the site without review from the County. In comparing aerial photos between 2016 and 2019, trees were cleared.

Figure 1 – Screenshot of Exhibit B.5 and B.3



As showed in Figure 1, the area marked in red contained an area of dense standing trees that were removed. It is not known how many trees were removed. To offset the unknown number of trees that were removed, the applicant has proposed to plant red alder, big-leaf maple, and western red cedar as indicated in the Report and Mitigation Plan (Exhibit A.5). The replacement to offset the removal of trees is part of the larger mitigation as required by MCC 39.5800(C)(5) and MCC 39.5800(F). As such, a condition will be required that the applicant fulfill the mitigation requirements as discussed in the Report and Mitigation Plan. *As conditioned, this criterion is met.*

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

**Staff:** As discussed previously, the Report and Mitigation Plan indicated that large portions of the property had been found to be of marginal quality. Due to that fact, plot areas A3, B1, and D1 were chosen to be restored, as they are a connected and contiguous corridor closest to Johnson Creek. This area is expanded to be the entire creek corridor in the Landscape Plan created by Studio Wild on April 1, 2020 (Exhibit A.19 – L101). Together, the Report and Mitigation Plan by Julie Harper and the Landscape Plan by Studio Wild will be required to be met as a condition of approval to ensure that there is a transition between the proposed development and the natural resource, to provide food, water, and cover for wildlife, and to protect the visual amenity values of the natural resource. Further as required by MCC 39.5800(F) additional mitigation will be required to ensure that this criterion is met. The additional mitigation is discussed below in subsection (F). *As conditioned, this criterion is met.*

**(4) The Water Resource Area shall be restored to “good condition” and maintained in accordance with the mitigation plan pursuant to subsection (F) below and the specifications in Table 2 of this section.**

**Staff:** The Report and Mitigation Plan by Julie Harper provided a mitigation plan that will ensure that the Water Resource Area shall be restored to “good condition.” The proposed mitigation from the Report and Mitigation Plan (Exhibit A.5) mimics the requirements of subsection (F) and Table 2 of this section. The report also contained a section discussing Planting Design and Schedule, in addition to a section for Maintenance and Monitoring. The section on Maintenance and Monitoring states:

“The enhancement site will be irrigated by using a temporary irrigation line, with sprinklers in intervals to ensure that full coverage of the newly planted area. The enhancement site will be watered at a rate of one inch of water per week, in the evening, during the dry season (June 1 through October 15). The intent of this system is not to pamper the plants but to give the adequate water to survive the summer months during the critical first years. Watering will also be temperature dependent. If the weather forecast calls for temperatures above 87 degrees Fahrenheit, the plants must be watered the night before.

Biodegradable plastic mesh tubing will be placed around individual trees and shrubs to discourage wildlife browsing. Removal of invasive/noxious weeds will happen periodically throughout the maintenance/monitoring period (5 years), or until a healthy stand of desirable vegetation is established. Care will be taken not to harm or disturb the new plantings.

A five-year monitoring effort of the mitigation area is proposed. A survivorship of 80% is proposed for the tree and shrub plantings after five years. The monitoring methods will involve a yearly site visit from the monitoring biologist to inspect the sites and do a stem count and species inventory. This should be at the middle of the growing season (near the end of August). If the plants of the mitigation sites appear to be stressed, the monitoring biologist may suggest increased irrigation during the summer months. Percent survivorship of woody species will be estimated by counting the dead of each species, and then subtracting that number from the number planted. This number will be divided by the number planted then multiplied by 100 to obtain the percentage of survivorship. The monitoring biologist will complete a field investigation of the site and submit an annual written report to Multnomah County.

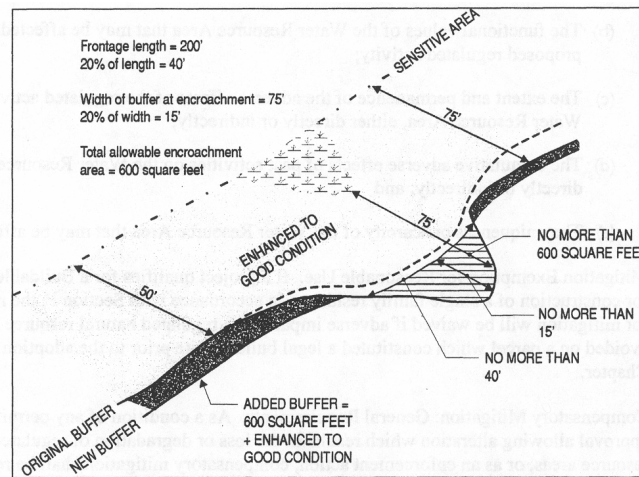
Based on above, a condition will be required that the maintenance procedures above be completed as stated. *As conditioned, this criterion is met.*

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

**Staff:** To ensure that this criterion is met, a condition of approval will be required that existing vegetation shall be protected and left in place. Work areas shall be carefully located and marked to reduce potential damage to the Water Resource Area. Trees in the Water Resource Area shall not be used as anchors for stabilizing construction equipment. *As conditioned, this criterion is met.*

**(6) Where existing vegetation has been removed, or the original land contours disturbed, the site shall be revegetated, and the vegetation shall be established as soon as practicable. Nuisance plants, as identified in MCC 39.5580 Table 1, may be removed at any time. Interim erosion control measures such as mulching shall be used to avoid erosion on bare areas. Nuisance plants shall be replaced with non-nuisance plants by the next growing season.**

**Figure 3.**



**Staff:** As discussed previously within this Section, existing vegetation has been removed without review from the County. Therefore to ensure that revegetation occurs as soon as practical, a condition will be required that the Report and Mitigation Plan and Landscape Plan be implemented upon approval of the Erosion and Sediment Control (ESC) permit. At the issuance of the ESC permit, the applicant will need to provide evidence that the Report and Mitigation Plan and Landscape Plan has been initiated prior to Land Use Planning authorization to obtain building permits at the City of Gresham. *As conditioned, this criterion is met.*

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

**Staff:** To ensure that the criterion above it met, a condition of approval will be required that prior to construction, the Water Resource Area shall be flagged, fenced or otherwise marked and shall remain undisturbed except as otherwise allowed by this Overlay. Such markings shall be maintained until construction is complete. *As conditioned, this criterion is met.*

**(8) Stormwater quantity control and quality control facilities:**

**(a) Stormwater management shall be conducted in a manner that does not increase the flow of stormwater to the stream above pre-development levels.**

**(b) The stormwater quantity control and quality control facility may only encroach a maximum of 25 feet into the outside boundary of the Water Resource Area of a primary water feature; and**

**(c) The area of encroachment must be replaced by adding an area equal in size and with similar functions and values to the Water Resource Area on the subject property.**

**Staff:** The applicant has included a Storm Water Certificate completed by David Popescu, Registered Professional Engineer as part of this application. The Storm Water Certificate indicates that the construction of an on-site storm water drainage control system will be required (Exhibit A.20). The system will involve two flow through planters that will outfall more than 100 feet from Johnson Creek (Exhibit A.23). The outfall will sheet flow into the area that will be revegetated that is between the proposed single-family dwelling and Johnson Creek. This system should ensure that the stormwater be managed as to not increase the flow to the stream above pre-development levels. *This criterion is met.*

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

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

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

**1. Avoiding the impact altogether by not taking a certain action or parts of actions on that portion of the site which contains the regulated natural resource area;**

2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation;
3. Compensating for the impact by repairing, rehabilitating, or restoring the affected environment;
4. Compensating for the impact by replacing, enhancing or providing substitute resources or environments on-site.
5. Compensating for the impact by replacing, enhancing or providing substitute resources or environments off-site.

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

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

**Staff:** As discussed in the Report and Mitigation Plan, the applicant has followed the mitigation sequence as required. As the subject property is located entirely within the SEC-wr, the proposal is unable to avoid the impact altogether nor minimize the impacts. Therefore, the applicant is proposing to compensate for the impact by repairing, rehabilitating, and restoring the affected environment. *These criteria are met.*

**(2) Compensatory Mitigation: General Requirements. As a condition of any permit or other approval allowing development which results in the loss or degradation of regulated natural resource areas, or as an enforcement action, compensatory mitigation shall be required to offset impacts resulting from the actions of the applicant or violator.**

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

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



<b>Creation (off-site)</b>	<b>2:1</b>
<b>Restoration (off-site)</b>	<b>1.5:1</b>
<b>Creation (on-site)</b>	<b>1.5:1</b>
<b>Restoration (on-site)</b>	<b>1:1</b>

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

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

**Staff:** The applicant is proposing development and restoring natural resources areas as part of an enforcement action. As such the applicant is restoring (on-site) areas which have been degraded. A site analysis was done by Julie Harper, M.Sc., Fish and Wildlife Biologist to identify areas of marginal or degraded condition. Site visits were made on February 6, 2019 and February 7, 2019. Sample plots were chosen to characterize the riparian/vegetated corridors. The plots are listed as A1, A2, A3, B1, C1, D1, and E1. Marginal areas were identified in plots A1, A2, A3, B1, D1, and E1. Plot C1 was found to be in good condition (Exhibit A.5).

For the areas that were found to be marginal, the Report and Mitigation Plan provided further guidance on areas to focus. Plot areas A3, B1, and D1 were chosen to be restored to equal or better condition, as they are closest to Johnson Creek. As discussed in the Report and Mitigation Plan, Julie Harper calculated the amount of natural resource area to be altered or lost. The report found,

“The proposed development in the northeast corner of the property, includes a residence (2,046 sq ft), garage (1,000 sq ft), deck (922 sq ft), lawn (740 sq ft), gravel foot path (146 sq ft), gravel parking area (806 sq ft), asphalt driveway (631 sq ft existing and 188 sq ft new), septic area (2,400 sq ft), stormwater retention area (500 sq ft), and a vegetable garden (800 sq ft) to be within the SEC-wr area, but more than 1000 feet from the top of bank of Johnson Creek.”

This area totals 9,991 square feet (0.23 acres) of area altered or lost. The Report and Mitigation Plan does not discuss the previous development that occurred on the subject property. In measuring the site plan and comparing aerial photos from 2016 and 2019 and conducting measurements on the applicant’s site plan to match the area of development, an additional 22,400 square feet (0.51 acres) of additional mitigation is required to meet the 1:1 ratio (Exhibit B.3, B.5, and B.6).

A list and quantity of plants is also included in the Report and Mitigation Plan. The report recommended the following to be planted to ensure that these areas be restored to equal or better condition.

Scientific Name	Common Name	Size	Planting Density (on center)	Quantity
<b>Trees</b>				
<i>Alnus rubra</i>	red alder	1-gallon	8'	23
<i>Acer macrophyllum</i>	big-leaf maple	1-gallon	10'	23
<i>Thuja plicata</i>	western red cedar	1-gallon	16'	23
			<b>Total</b>	<b>69</b>
<b>Shrubs</b>				
<i>Symphoricarpos albus</i>	common snowberry	1-gallon	5'	69
<i>Holodiscus discolor</i>	oceanspray	1-gallon	9'	69
<i>Oemleria cerasiformis</i>	indian plum	1-gallon	5-8'	69
<i>Acer circinatum</i>	vine maple	1-gallon	10'	69
			<b>Total</b>	<b>276</b>
<b>Forbs</b>				
<i>Polystichum munitum</i>	sword fern	3.5" pot	3'	306
<i>Gualtheria shallon</i>	salal	3.5" pot	3'	306
<i>Aster subspicatus</i>	Douglas's aster	3.5" pot	3'	306
			<b>Total</b>	<b>918</b>
<b>Seed Mix</b>				
<i>Elymus glaucus</i>	blue wild rye		40 lbs per acre	20%
<i>Festuca rubra</i> var. <i>rubra</i>	native red fescue		40 lbs per acre	50%
<i>Lupinus polyphyllus</i>	large-leafed lupine		40 lbs per acre	10%
<i>Bromus carinatus</i>	California brome		40 lbs per acre	20%
			<b>Total</b>	<b>9.2 lbs</b>

Exhibit A.5

However, the list is reflective of 9,991 square feet and 32,391 square feet of plantings. Therefore a condition will be required that the planting list be updated to reflect an additional 22,400 square feet of plantings.

The applicant has also provided a Landscape Plan that alters and expands the mitigation areas. This area is expanded to be the entire creek corridor, which adds plot A.1 from the Report and Mitigation Plan to the Landscape Plan created by Studio Wild on April 1, 2020 (Exhibit A.19 – L101). In total approximately 48,000 square feet (1.10 acres) is expected to be restored. The Landscape Plan however does not indicate what type of trees, shrubs, forbs, or grasses will be planted. Therefore a condition will be required that the Landscape Plan be updated to include a planting list that matches the planting list in the Report and Mitigation Plan. With the updating of the Landscape Plan with a planting list that accounts for 32,391 square feet of plantings, it will offset both the development not reviewed by the County that is subject to UR-2018-10222 and the proposed development. *As conditioned, this criterion is met.*

**(e) The off-site mitigation shall be as close to the development as is practicable above the confluence of the next downstream tributary, or if this is not practicable, within the watershed**

**where the development will take place or as otherwise specified by the County.**

**Staff:** The applicant is not proposing to conduct off-site mitigation; therefore, this criterion is not applicable. *This criterion is not applicable.*

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

**Staff:** As discussed in the Report and Mitigation Plan by Julie Harper, the compensation will be completed based on a schedule. As stated in the Report and Mitigation Plan, “Plantings will be installed between February 1 and May 1, or between October 1 and November 15. When plantings must be installed outside these times, additional measures will be taken to assure survival” (Exhibit A.2). Further, as the compensation is required to be completed prior to initiation of development, a condition of approval will be required that the plantings and mitigation measures are in place before the applicant is able to submit their plans for building permit authorization. *As conditioned, this criterion is met.*

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

**Staff:** To ensure that this criterion is met, a condition of approval will be required that the property owner shall record the mitigation plan approval in the deed records of Multnomah County, in order to ensure that on-site mitigation areas are established and maintained. *As conditioned, this criterion is met.*

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

- (a) A description of adverse impacts that could be caused as a result of development.**
- (b) An explanation of how adverse impacts to resource areas will be avoided, minimized, and/or mitigated.**
- (c) A list of all responsible parties including, but not limited to, the owner, applicant, contractor or other persons responsible for work on the development site.**
- (d) A map drawn to scale, showing where the specific mitigation activities will occur.**

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

**Table 2**  
**Riparian/Vegetated Corridor Standards**

<b>Existing Riparian/Vegetated Corridor Condition</b>	<b>Requirements of Riparian/Vegetated Corridor Protection, Enhancement, and/or Mitigation</b>
<p><b>Good Corridor</b></p> <p><b>Combination of native trees, shrubs, and groundcover covering greater than 80% of the area</b></p> <p><b>and</b></p> <p><b>Greater than 50% tree canopy exists (aerial measure)</b></p>	<p><b>Provide certification, pursuant to the procedures provided by the Planning Director, by a professional ecologist/biologist that the riparian/ vegetated corridor meets condition criteria.</b></p> <p><b>Remove any invasive non-native or nuisance species and debris and noxious materials within the corridor by hand.</b></p> <p><b>Provide the County with a native plant revegetation plan appropriate to the site conditions developed by an ecologist/biologist or landscape architect to restore condition and mitigate any habitat or water quality impacts related to development. See Planning Director procedures.</b></p> <p><b>Revegetate impacted area per approved plan to re-establish “good” corridor conditions</b></p>

Existing Riparian/Vegetated Corridor Condition	Requirements of Riparian/Vegetated Corridor Protection, Enhancement, and/or Mitigation
<p><b>Marginal Corridor</b></p> <p>Combination of native trees, shrubs, and groundcovers covering 50%-80% of the area</p> <p>and/or</p> <p>26-50% tree canopy exists (aerial measure) (Restoration up to “good” corridor required)</p>	<p>Provide certification, pursuant to the procedures provided by the Planning Director, by a professional ecologist/biologist that the riparian/vegetated corridor meets condition criteria.</p> <p>Remove any invasive non-native or nuisance species and debris and noxious materials within the corridor by hand or mechanically with small equipment, as appropriate to minimize damage to existing native vegetation.</p> <p>Provide County with a native plant revegetation plan appropriate to the site conditions developed by an ecologist/biologist or landscape architect to restore to a good corridor condition. See Planning Director procedures.</p> <p>Vegetate corridor to establish “good” corridor conditions</p>
<p><b>Degraded Corridor</b></p> <p>Combination of native trees, shrubs, and groundcovers covering is less than 50% of the area</p> <p>and/or</p> <p>Less than 25% tree canopy exists (aerial measure)</p> <p>and/or</p> <p>Greater than 10% of the area is covered by invasive, non-native species (Restoration up to “good” corridor required)</p>	<p>Provide certification, pursuant to the procedures provided by the Planning Director, by a professional ecologist/biologist that the riparian/vegetated corridor meets condition criteria.</p> <p>Remove any invasive non-native or nuisance species and debris and noxious materials within the corridor by hand or mechanically as appropriate.</p> <p>Provide County with a native plant revegetation plan appropriate to the site conditions developed by an ecologist/biologist or landscape architect to restore to a good corridor condition. See Planning Director procedures.</p> <p>Vegetate corridor to establish “good” corridor conditions</p>

**Staff:** The applicant has included natural resource mitigation plan. The Natural Resources Assessment Report and Mitigation Plan (“Report and Mitigation Plan”)

was prepared by Julie Harper, M.Sc., Fish and Wildlife Biologist in June 2019 and a Mitigation Plan (“Landscaping Plan”) created by Studio Wild on April 1, 2020 (Exhibit A.5 and A.19 – L101). Together, the Report and Mitigation Plan and Landscaping Plan contain required information. The adverse impacts that could be caused because of development are discussed in the Existing Conditions portion of the Report and Mitigation Plan. An explanation of how adverse impacts to resource areas will be avoided, minimized, and/or mitigated are contained in the Mitigation Plan – Proposed Development. The implementation schedule is discussed in the Planting Design and Schedule. *This criterion is met.*

## **8.0 Exterior Lighting Criteria:**

### **8.1 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:** The applicant did not provide a floor plan or building elevation plan describing the exterior lighting to support the proposed single-family dwelling, conversion of the existing single-family dwelling into an accessory building, or chicken coop. As such, to ensure that this criterion is met, a condition of approval will be required that all new exterior lighting supporting the new proposed single-family dwelling and chicken coop are required to meet these criteria above. The existing single-family dwelling that will be converted into an accessory building does not meet the threshold of being enlarged by more than 400 feet therefore is not subject to the Dark Sky Lighting Standards. *As conditioned, this criterion is met.*

## **9.0 Accessory Structures – Condition of Approval Criteria:**

### **9.1 § 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:** To ensure that this condition is met, a Condition of Approval will be required that 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. *As conditioned, this criterion is met.*

## **10.0 Road Rules Criteria:**

### **10.1 MCRR 4.000 Access to County Roads**

**MCRR 4.100 Application for New or Reconfigured Access: Applicants for a new, altered or reconfigured access onto a road under County Jurisdiction are required to submit a site plan. Applicants may be required to provide all or some of the following:**

- A. Traffic Study-completed by a registered traffic engineer;**
- B. Access Analysis-completed by a registered traffic engineer;**
- C. Sight Distance Certification from a registered traffic engineer; and**
- D. Other site-specific information requested by the County Engineer including a survey.**

**Staff:** In Multnomah County Land Use Case # T2-2020-13185, the applicant proposes to build a new single family dwelling in the NE of the parcel and remove the plumbing from the existing house to convert it to a storage facility. In relation to the concurrent Land Use proposal, the applicant has submitted a Road Rules Variance application (reference: EP-2020-13186) for the following:

- Proposed second driveway and access onto SE Short Road. This will serve as the main access and driveway to the new single family dwelling;
- Retention of the existing driveway and access onto SE Stone Road. This will serve as an access to the storage unit (existing house). The applicant considers that a single access is not possible due to Johnson Creek, which divides the parcel in two, and its corresponding constraints.

The two accesses are shown on the existing conditions survey and the applicant's site plan (Exhibit A.3 – A1.0 and Exhibit A.17 – A1.1). All required information has been submitted. *This criterion is met.*

**MCRR 4.200 Number of Accesses Allowed: Reducing the number of existing and proposed access points on Arterials and Collectors and improving traffic flow and safety on all County roads will be the primary consideration when reviewing access proposals for approval. One driveway access per property is the standard for approval pursuant to the Multnomah County Code. Double frontage lots will be limited to access from the lower classification street. Shared access may be required in situations where spacing standards cannot be met or where there is a benefit to the transportation system. If more than one access is desired, a land use application must be submitted in compliance with applicable Multnomah County Codes.**

**Staff:** The subject property is currently served by an existing driveway with access onto SE Stone Road for the existing single-family residence. The proposed development seeks to build a new single-family residence in the NE of the parcel, with an additional driveway with access onto SE Short Road (Exhibit A.3 – A1.0 and Exhibit A.17 – A1.1). The existing house will be converted to storage use only, with plumbing removed. The existing access is sought to be retained as part of the Road Rules Variance application. This exceeds the standard for approval per this section.

Multnomah County Road Rules (16.100) provides for a variance from the county standards and requirements when written documentation substantiates that the requested variance is in keeping with the intent and purpose of County Code and adopted rules, and the requested variance will not adversely affect the intended function of the County road system or related facilities. Multnomah County Road Rules Section 16.225 specifically outlines the variance process for multiple accesses. A variance approval may include mitigation measures as condition of approval. The applicant has submitted a Road Rules variance and provided all associated materials. *As conditioned, criterion is met.*

**MCRR 4.300 Location: All new access points shall be located so as to meet the access spacing standards laid out in the Design and Construction Manual.**

**Staff:** For a road classified as a Rural Local Road serving residential uses, there is no minimum spacing standard (MCDCM Table 1.2.5). *This criterion is met.*

**MCRR 4.400 Width: Driveway, Private road and Accessway widths shall conform to the dimensions laid out in the Design and Construction Manual.**



**Staff:** The applicant has provided scaled site plans (Exhibit A.3 – A1.0 and Exhibit A.17 – A1.1) and accompanying sight distance analysis (Attachment A, dated May 20, 2019, updated information June 27, 2020).

The existing driveway/access for the single-family residence onto SE Stone Road is approximately 56 feet (Exhibit A.3 – A1.0 and Exhibit A.17 – A1.1). This driveway does not meet the County standard (3.6-7.5m/11.8 feet to 24.6 feet). As part of the RRV application, the applicant proposes to reduce the driveway access to 20 feet.

The existing driveway/access onto SE Short Road, which is proposed to be the principal access for the new house, is approximately 15 feet (Exhibit A.3 – A1.0 and Exhibit A.17 – A1.1). The driveway meets the County standard (3.6-7.5m/11.8 feet to 24.6 feet). As part of the proposal, the applicant seeks to reconfigure the driveway access to 22.4 feet. The proposed width will also meet County standards. *As conditioned, this criterion is met.*

**MCRR 4.500 Sight Distance: All new or altered access points to roads under the County’s jurisdiction must have a minimum sight distance equal to the standards in the Design and Construction Manual and AASHTO’s A Policy on Geometric Design of Highways and Streets.**

**Staff:** Multnomah County Road Rules Section 4.500 states that access points to roads under the County’s jurisdiction must have a minimum sight distance equal to the standards in the County Design and Construction Manual or AASHTO’s A Policy on Geometric Design of Highway and Streets. The applicant has submitted for the review of the County Transportation Division a sight distance certification from a registered traffic engineer, which provides an assessment of sight distance at the intersection in question consistent with AASHTO standards.

The applicant has provided scaled site plans (Exhibit A.3 – A1.0 and Exhibit A.17 – A1.1) and accompanying sight distance analysis labeled as Attachment A, dated May 20, 2019; further supplemented with revised documentation requested by the County labeled as Attachments A-E, dated June 27, 2020 (Exhibit A.25, A.26 and A.27).

Both SE Stone Road and SE Short Road are classified as Rural Local Roads. There are no regulatory speed limit signs posted on either road. The Oregon ‘Basic Rule’ speed limit of 55mph applies. There is a very sharp (almost 90-degree) bend where Stone Road meets Short Road. Consequently, there are yellow warning signs on both Stone Road (in the eastbound direction) and Sharp Road (in the southbound direction) indicating the sharp bend and a recommended speed of 15mph.

The applicant’s RRV submission labeled as attachment A (dated May 20, 2019) provided sight-distance analysis of the posted recommended speed for both roads

(15mph). The County requested further information from the applicant to reflect the Basic Rule speed of 55mph labeled as Attachments A-E, dated June 27, 2020 (Exhibit A.25, A.26, and A.27). Attachment A, dated June 27, 2020 sets out that the proposed SE Short Road driveway is:

- Approximately 192 feet from the bend in the road to the south of the proposed driveway (aerial photo, pg 5);
- The sight distance available to the north and south from the proposed SE Short Road is 80 feet (photo 3, pg 8) and that the Douglas Fir tree will be removed that will further enhance visibility to the south (photo 5, pg 10).

The AASHTO standards state that a 495' sight-distance is required for the Oregon Basic Rule speed limit of 55mph.

- The sight distance analysis for the proposed access on SE Short Road indicates that:
- Northbound sight-distance should be 495 feet (151m). Applicant shows sight-distance to be 80 feet. Standard is not met.
- Southbound sight-distance should be 495 feet (151m). Applicant shows sight-distance to be 80 feet. Standard cannot be met. This is due to the bend/corner in the road where SE Short Road intersects with SE Stone Road.

The sight distance analysis for the existing access on SE Stone Road indicates that:

- Westbound sight-distance should be 495 feet (151m). Applicant has not provided sight-distance analysis for this driveway. County estimates that the sight distance is approximately 250 feet (76.2m). Standard is not/cannot be met. This is due to an upward slope. The brow of the hill prevents sight-distance being met.
- Eastbound sight-distance should be 495 feet (151m). Applicant has not provided sight-distance analysis for this driveway. County estimates that the sight distance is approximately 146 feet (44.5m). Standard is not/cannot be met. This is due to the bend/corner in the road where SE Stone Road intersects with SE Short Road.

Given the low volume of traffic on SE Short and SE Stone Road, the variance to meeting the sight-distance standard is not considered to adversely impact the integrity of the transportation system/network. The applicant has clearly indicated where the sight-distance of 80 feet can be made in both north and southbound directions from the proposed driveway on SE Short Road and provided a rationale why further sight-distance could not be met. The applicant also noted that a

Douglas fir will be removed on the southern side of the proposed SE Short access to enhance visibility. The County will condition that this is undertaken, and that vegetation is sufficiently maintained, to enhance visibility in both directions from the driveway onto SE Short access as far as possible. *As conditioned, this criterion is met.*

## **10.2 MCRR 5.000 Transportation Impact**

**MCRR 5.100 To determine if a Transportation Impact is caused by a proposed development, the County Engineer will determine the number of new trips generated by a site by one of the following methods:**

- A. Calculations from the most recent edition of the Institute of Transportation Engineers' Trip Generation (ITE); or**
- B. A site development transportation impact study conducted by a professional engineer registered in the State of Oregon and accepted by the County.**

**MCRR 5.200 The County Engineer will use the information obtained pursuant to sub-section 5.100 and/or the frontage length of the subject property to determine the pro-rata share of the requirements set forth in Section 6.000. The County Engineer determination of pro-rata share of improvements will expire twelve months from the date of the County Engineer's determination or after the associated land use permit is granted or closed. If expired, a review process and new determination will be required.**

**MCRR 5.300 Except where special circumstances require the County Engineer to make an alternate determination, any new construction or alteration which will increase the number of trips generated by a site by more than 20 percent, by more than 100 trips per day or by more than 10 trips in the peak hour shall be found to have a Transportation Impact. A minimum increase of 10 new trips per day is required to find a transportation impact.**

**Staff:** The Multnomah County Road Rules defines a Transportation Impact as the effect of any new construction or alteration, which will increase the number of trips generated by a site by more than 20 percent, by more than 100 trips per day or by more than 10 trips in the peak hour [MCRR 3.000]. A minimum increase of 10 new trips per day is required to find a transportation impact. The associated land use proposal (T2-2020-13185) is for a replacement single-family dwelling. As the proposed single-family residence will replace the existing dwelling (and the existing dwelling will become a storage facility), the proposal does not generate a transportation impact. *This criterion is met.*

## **10.3 MCRR 6.000 Improvement Requirements**

**MCRR 6.100 Site Development: All subject parties with respect to any property proposed for development, including but not limited to the owner of**

the site and the applicant (if different than the owner), will be responsible for improvements to the right-of-way for any said development of the property which is found to cause a Transportation Impact, those improvements shall include:

**A. Dedication of Right of Way Requirement:** The subject parties are responsible for a pro-rata share, as determined by the County Engineer, of right-of-way and easement dedications necessary to bring the affected, existing, created or planned public streets and other facilities within and abutting the development to the current County standard. The dedication of the required easements and right-of-way may be conditions of approval of Design Review or any other development permit related to the proposal.

**Staff:** The County standard right of way width for a Rural Local Road is 50 feet. The right-of-way width of SE Short Road appears to be 50 feet (meets standard) and SE Stone Road is 40 feet (does not meet standard). Because the proposal does not involve a transportation impact, the property owner will not be required to dedicate additional right-of-way to achieve a proportional share of this standard. *This criterion is not applicable.*

**B. Frontage Improvement Requirements:** In addition to easement and right-of-way dedication requirements, a prorata share may include half-street improvements along all of the site's County Road frontage(s). Right of Way improvements shall satisfy the standards of the County Design and Construction Manual based upon the functional classification of the road(s). The commitment to improve the affected streets or other facilities to the required standards shall be conditions of approval of Design Review or any other development permit related to the proposal. Half-street improvements can include all of the following:

- a. Street widening/improvement
- b. Utility cut restoration
- c. Curb and sidewalk
- d. Driveway relocation/replacement/removal
- e. Traffic controls
- f. Drainage facilities
- g. Lighting facilities
- h. Bicycle facilities
- i. Signal conduit facilities
- j. Street trees
- k. Other appropriate facility or right of way requirements as required by applicable statutes, codes and regulations.

**Staff:** The proposal does not generate a transportation impact; therefore, no improvements to SE Stone and SE Short Road are required at this time. *This criterion is not applicable.*

**C. Required Submissions by Subject Parties.** Subject parties shall submit to the County Engineer the following: engineered plans, traffic studies, traffic analysis, reports, surveys or similar documents as requested or required by the County Engineer under this Subsection 6.100 or as may additionally be required under Section 18.

**Staff:** The applicant has provided plans (Exhibit A.3 – A1.0 and Exhibit A.17 – A1.1) indicating a general plan layout, showing both access points, gates, and right of way line in order to bring the permits into compliance. The applicant provided sight distance analysis at the time of the RRV application and complied with a request for further information (June 27, 2020). As identified in the response to MCRR 4.500 above, the county is satisfied that the local condition of the road means that there are no transportation system or safety impacts as a result of the proposed development. *As conditioned, criterion is met.*

**D. Transportation Demand Management Options that address strategies to reduce travel demand generated by the proposed development.**

**Staff:** The proposal does not result in a transportation impact. *This section/criterion does not apply.*

#### **10.4 MCRR 11.000 Local Access Roads**

##### **11.100 Improvement Requirements:**

**A. For any proposed development where access is to be through a Local Access Road and the development is found to have a Transportation Impact, the owner, applicant or other party responsible for the development (the “Developer”) shall be required to improve or cause to be improved the Local Access Road to standards as further provided in this Section.**

**B. Right of way and or easement dedications shall be required where the existing right of way is of a substandard width or condition.**

**C. The County Engineer may impose requirements for right of way improvements as necessary to address factors including but not limited to: traffic safety, traffic conditions, bicycle access, pedestrian access and vegetation.**

**D. Developer shall make required improvements at the County Engineer’s request if the transportation impact warrants additional road improvements. Such additional improvements shall not extend beyond the nearest intersection with the publicly maintained road. Improvements will be constructed in a manner consistent with the standards provided in the Design and Construction Manual.**

**E. All costs relating to Local Access Road improvements shall be borne by the Developer including all administrative and other costs**

incurred by the County including but not limited to the oversight, review, inspection, etc., with respect to design, installation, and construction of any improvements on any Local Access Road under County jurisdiction. County shall not begin any work under this Section unless and until an adequate deposit as determined by the County Engineer has been received by the County to cover these costs.

**F. Notwithstanding any required improvements or other installations done in the public right of way of a Local Access Road under this Section 11 of these Rules, the County does not maintain such Local Access Road.**

**Staff:** A Local Access Road is a public road under Multnomah County jurisdiction that is outside a city and is not a county road, state highway, or federal road. According to State law, the County is not responsible to maintain, repair, or improve a Local Access Road. Any proposed development on a property which creates a transportation impact on a local access road must provide a road that conforms to the requirements of the Design and Construction Manual from the frontage of that property to the nearest publicly maintained road.

SE Stone Road and SE Short Road are not Local Access Roads. *This criterion does not apply.*

## **10.5 MCRR 16.000 Variance from County Standards and Requirements**

**16.200 General Variance Criteria:** In order to be granted a variance, the applicant must demonstrate that:

**A. Special circumstances or conditions apply to the property or intended use that do not apply to other property in the same area. The circumstances or conditions may relate to the size, shape, natural features and topography of the property or the location or size of physical improvements on the site or the nature of the use compared to surrounding use;**

**Applicant Response:** The special condition that applies to this property is that Johnson Creek divides the property from east to west on the southern 1/3 of the site. The property is a corner lot so the portion of the property to the north of Johnson Creek is only accessible from a second driveway. The first driveway will be used to access the property to the south of Johnson's Creek where the existing building/home and garage will be converted to storage space upon approval from Multnomah County.

**Staff:** *As conditioned, this criterion is met.*

**B. The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant and extraordinary hardship would result from strict compliance with the standards;**

**Applicant Response:** The applicant/landowner purchased this property in 2017 with the dream of building a new home. There were many land use violations from the previous owner that the new owner (applicant) inherited and has worked hard to rectify with Multnomah County. The new owner has improved the site for the County and is meeting the County requirements to protect the natural water resource on the site, Johnson Creek. The applicant/landowners are committed to this property and being good stewards of the environment. Without access to the north portion of the property there would be no new residence and the applicant/landowner would no longer be interested in this property.

**Revised applicant response (June 2020):** The applicant/landowner purchased this property in 2017 with the dream of building a new home. There were many land use violations from the previous owner that the new owner (applicant) inherited and has worked hard to rectify with Multnomah County. The new owner has improved the site for the County and is meeting the County requirements to protect the natural water resource on the site, Johnson Creek. The applicant/landowners are committed to this property and being good stewards of the environment. Without access to the north portion of the property there would be no new residence and the applicant/landowner would lose their dream of building a new home to meet the needs of their growing family of 6.

**Staff:** The determination of compliance with the zoning and the comprehensive plan will be assessed in the concurrent land use application (T2-2020-13185). County Transportation understands that an extended driveway through the property from the existing driveway/access on SE Stone Road would entail crossing both the creek and the zoning overlays. The proposed access from SE Short Road allows the applicant to access the location of the proposed location for the replacement residence more easily, and minimizing encroachment of the creek and environmental overlays. While the County Standards allow for only one access per property, the applicant has also sought a variance to be able to retain the existing access on SE Stone Road to facilitate access to the existing house, which will become a storage facility. Again, the applicant considers maintenance of the second access reduces the need to involve a driveway through the property. The County is satisfied that gating this access (via condition of approval), and reducing the width of the access, to meet County standards will uphold the County's standards as best as possible. *As conditioned, this criterion is met.*

**C. The authorization of the variance will not be materially detrimental to the public welfare or injurious to other property in the vicinity, or adversely affect the appropriate development of adjoining properties;**

**Applicant Response:** The 2nd driveway is located on a rural road with very little traffic. The posted speed limit is 15 mph. The traffic that does exist is mostly to service the other rural homes in the area. For example, while taking site distances

and documentation for this variance, my team was on the road for approximately 20 minutes on a Friday morning between 9am -10am and not a single vehicle passed on the road.

The zoning in the area is agricultural so there is no growth or new development planned that will change the traffic pattern or density of the area.

**Revised applicant response (June 2020):** The 2nd proposed driveway is located on a rural road with very little traffic. Short Road terminates a short distance past the proposed 2nd driveway where there is a 90 degree turn. Stone Road that borders the south perimeter of the site also terminates at this 90 degree turn. The posted advisory speed limit is 15 mph on Short Road. The traffic that does exist is mostly to service the other rural homes in the area. For example, while taking site distances and documentation for this variance, my team was on the road for approximately 20 minutes on a Friday morning between 9am -10am and not a single vehicle passed on the road.

The zoning in the area is agricultural so there is no growth or new development planned that will change the traffic pattern or density of the area. We do not see any situation where this proposed driveway would be detrimental to the public welfare or injurious to other property in the vicinity. See Attachment E – Zoning Map

**Staff:** The County's review of this criterion is set out in the response to MCRR 4.500 (sight distance) above. *As conditioned, this criterion is met.*

**D. The circumstances of any hardship are not of the applicant's making.**

**Applicant Response:** (updated April 6, 2020) The proposed new single family home that the new driveway will serve is on the north side of Johnson Creek. The SEC-WR County requirement requires 100' buffer from the Creek. The remaining space on the site for a new storage building is very limited. To reuse the existing residence as a storage building reduces building impact on this delicate site. Without the existing driveway serving the storage the only access to the proposed storage building is through the creek. The existing unpermitted bridge over Johnson Creek is included in the Land Use Review application to be removed.

**Staff:** The determination of compliance with the zoning and the comprehensive plan will be assessed in the concurrent land use application (T2-2020-13185). County Transportation understands that an extended driveway through the property from the existing driveway/access on SE Stone Road would entail crossing both the creek and the zoning overlays. The proposed access from SE Short Road allows the applicant to access the location of the proposed location for the replacement residence more easily, and minimizing encroachment of the creek and environmental overlays. The County understands that this will be more cost



effective, both in financial terms for the applicant, as well as mitigating encroachment of environmental overlay zones. The County accepts the applicant's rationale for a Road Rules Variance and that the environmental constraints are not of the applicant's making. The County has set out conditions in order to maintain the general integrity of local road safety and the wider transportation system. *As conditioned, this criterion is met.*

**16.225 Access Variance Standards: Exceptions to access standards may be made by the County Engineer when spacing or other safety considerations make non-standard access acceptable. In addition to the variance requirements of Section 16.200 of these Rules, the applicant will be required to demonstrate that the proposed variance will not negatively impact the safety or capacity of the transportation system for a variance to be granted. The following are examples of variances that may be considered along with specific criteria that must be addressed before such a variance can be granted.**

**A. Multiple Access Points: The County Engineer may allow multiple access points when all spacing standards can be met, or under the exceptions allowed under the criteria identified below so long as the additional access(es) will not negatively impact the safety or functionality of the transportation system and a single access point cannot reasonably serve a site. Movement restrictions, such as right-in, right-out, may be placed on accesses to protect the safety and/or functionality of the transportation system.**

**Applicant Response:** (updated April 6, 2020) The proposed new driveway will not negatively impact the safety or functionality of the transportation system due to Short Road rural location with very low traffic. The driveway is serving a single family residential only. The typical daily traffic from the new residence is from the family's 2 cars. This traffic from the family's cars already exists from this site from their current Stone Road driveway.

**Revised applicant response (June 2020):** (updated April 6, 2020) The proposed new driveway will not negatively impact the safety or functionality of the transportation system. Short Road and Stone Road serve a rural location with very low traffic. The existing and proposed driveways are serving a single family residential only. The typical daily traffic is from the 4-6 residential homes within .25 miles from the proposed resident driveway. The proposed 2nd driveway will not increase residential density. We see no scenario that the proposed 2nd driveway would negatively affect the traffic pattern on Stone Road and Short Road.

**Staff:** The County's response and findings to MCRR 4.500 (sight distance), MCRR 4.200-4.400, set out above are relevant to this criterion. *As conditioned, this criterion is met.*

**The County Engineer may approve and allow a dual access variance if the applicant meets all of the following criteria:**

- 1. The property in question is zoned commercial, industrial, farm or resource lands and the proposed use is in conformance with all applicable laws, planning and zoning codes and regulations.**

**Applicant Response:** (updated April 6, 2020) The property is not zoned commercial, industrial, farm or resource lands. The zoning for this site is: Multi-Use Agricultural, MUA-20

**Staff:** *Criterion is met.*

- 2. The proposed access points are at least 150 feet apart on any same right of way frontage.**

**Applicant Response:** (updated April 6, 2020) Yes the proposed access points are greater than 150 feet apart.

Refer to Attachment A showing 234' between driveways.

**Staff:** For residential uses on Rural Local Roads, there is no minimum access driveway spacing. *Criterion is not applicable.*

- 3. The applicant has submitted adequate traffic studies and other reports and information under Subsection 4.100 that indicate the creation of two access points will not present an unsafe condition or unduly interfere with the movement of traffic, including bicycles and pedestrians.**

**Applicant Response:** (updated April 6, 2020) Yes, please refer to Attachment A document that provides photos, distances, and site views from the rural setting.

**Revised applicant response (June 2020):** (updated April 6, 2020) Yes, please refer to Attachment A – Site Distance Analysis. There is no posted speed limit on Short Road or Stone Road, only the advisory speed limit of 15 mph. Per state requirements, a no posted speed limit defaults to become the State of Oregon's 'basic rule' of 55 mph. Analyzing the surrounding conditions to determine if the advisory speed of 15 mph is a realistic and safe distance for determining site distance we determined the 80 feet stopping site distance was adequate for the following reasons:

1. Driving from the north and traveling south bound towards the proposed driveway on Short Road there is a stop sign at the intersection of SE Orient Dr approximately .3 miles north from the proposed driveway. The inclination to increase your vehicle speed after this full stop to 55 mph

would in our opinion be considered reckless. SE Orient Dr is a main artery and has a speed limit of 45 mph. Another example of how 55 mph is completely inappropriate for this short rural road at this location.

2. Driving south on Short Road toward the proposed driveway there is a view of the 90 degree bend ahead. This gives a good signal that slowing down will be required. The yellow advisory speed limit of 15 mph reinforces what the topography and road is already signaling to you.

3. Driving north bound from Stone Road there is a 90 degree bend where Stone Road and Short Road meet. Travel over 15 mph around this curve would be reckless. Shortly after coming off the curve, by 238 feet, is the proposed driveway. This is too short of distance to increase your speed over 15 mph.

For these reasons we used the advisory speed limit of 15 mph and site distance of 80 feet for our site distance analysis. Refer to Table 3-1. Stopping Site Distance per AASHTO green Book, 2011, 6th ed. Table 3-1, indicating a design distance of 80 feet for 15 mph. If the County deems this site distance to be inadequate, the landowners would be able to remove trees at the property line adjacent to the proposed driveway to increase the site distance.

**Staff:** The County's response and findings to MCRR 4.500 (sight distance), MCRR 4.200-4.400, set out above are relevant to this criterion. *As conditioned, this criterion is met.*

**4. Except has provided in this subsection all other aspects of the applicant's dual access proposal are in compliance with these Rules and the DCM.**

**Applicant Response:** (updated April 6, 2020) Yes all are in compliance.

**Staff:** Applicant response noted. *Criterion is met.*

**5. Applicant must comply with all the requirements of Section 16 of these Rules.**

**Applicant Response:** (updated April 6, 2020) Yes all are in compliance.

**Staff:** Applicant response noted. *Criterion is met.*

**B. Access Spacing: If it is not feasible to access a site and meet the access spacing standards, access may be located so as to provide the best access spacing possible. The County Engineer may require additional measures to mitigate sub-standard access spacing, such as a median or other restrictions.**

**Applicant Response:** (updated April 6, 2020) The proposed driveway meets the access spacing standards.

**Staff:** The County's response and findings to MCRR 4.500 (sight distance) and MCRR 4.200-4.400, set out above, are relevant to this criterion. *As conditioned, this criterion is met.*

**C. Sight Distance: If it is not feasible to provide enough sight distance to meet County/AASHTO standards, the site's access must be located so as to provide the most sight distance possible. The County Engineer may require additional measures to mitigate sub-standard sight distance.**

**Applicant Response:** (updated April 6, 2020) The proposed driveway meets the sight distance requirement.

**Staff:** The County's response and findings to MCRR 4.500 (sight distance) is set out above. *As conditioned, this criterion is met.*

**D. Notwithstanding any other provision in this Section 16, no variance shall be approved in a public right of way under County jurisdiction that would allow for the installation, placement, or construction of any item of any kind in the "clear zone" of the said public right of way. For purposes of these Rules the phrase "clear zone" shall have the same definition as used and applied in the AASHTO standards.**

**Applicant Response:** (updated April 6, 2020) The proposed driveway is not in a public right of way.

**Staff:** Applicant response noted. As noted above, no driveway permits exist on file. The applicant will be required to apply for driveway permits as a condition of approval. *As conditioned, this criterion is met.*

**16.250 Local Access Roads Variance Standards: The County Engineer will consider a variance from the improvement standards for a Local Access Road in the Design and Construction Manual if the topography or other features of the site make compliance with the improvement standards infeasible. Any variance issued under this Section must meet the criteria of section 16.200 of these rules as well as the minimum requirements of the local police, fire and emergency service providers, any applicable Building Code Requirements, any applicable Land Use Code requirements and meet any other applicable environmental requirements.**

**Applicant Response:** (updated April 6, 2020) The proposed driveway will meet these requirements.

**Staff:** Applicant response noted. *Criterion is met.*

**16.300 Variance Request Procedure:** For the County Engineer to consider a variance request, it must be submitted in writing with the appropriate fee to the County prior to the issuance of any development permit. The written variance request shall be signed by a person with the authority to bind the applicant and shall include the following information as applicable:

- A. Applicant name, telephone/fax number(s), email address, mailing address,
- B. Property location and zoning;
- C. Current or intended use of the property;

**Staff:** Applicant name, telephone/fax number(s), email address, mailing address,  
Applicant Response:

Daniyela and Marin Palamaryuk 29619 SE Stone Road  
Gresham, OR 970808 dandmtilepdx@gmail.com Daniyela cell: 503-206-1547  
Marin cell: 503-334-9182

Property location and zoning;

Applicant Response:

29619 SE Stone Road Gresham, OR 970808

Zoning: Multiple Use Agriculture – 20 (MUA-20)

Current or intended use of the property;

Applicant Response:

Single family residential

**D. The nature and a full description of the requested variance;**

**Applicant Response:** The subject property is a corner lot and has two existing driveways, one access is on SE Stone Road and the other access is on SE Short Road. The driveway accessing SE Short Road has not been permitted. The applicant inherited this condition when purchasing the property in 2017.

Johnson Creek crosses east-west through the property on the southern 1/3 of the property. The applicant/landowners are applying for a Land Use permit for a new residence on the north side of the Creek. The existing non-permitted driveway is the only access point to the northern section of the property. The landowners are requesting a variance for access to the proposed new residence. The existing driveway on Stone Road that is serving the existing house the landowners would like to remain to serve the existing home that will serve as a storage area after the new residence is complete and upon approval from the County. The existing driveway on Stone Road will be paved with asphalt and reduced in size to meet County requirements. The driveway on Short Road will meet all County requirements as indicated on Site Plan, attachment B.

**Staff:** Request for variance is noted. The County's review of the request for a RRV is set out in responses to corresponding MCRR/MCDCM criteria above and additional RRV criteria below.

**E. Site plan, sight distance, pedestrian traffic, intersection alignment, traffic generation, vehicle mix, traffic circulation including impact on through traffic, and other similar traffic safety considerations;**

**Applicant Response:** Refer to Attachment A, PAGES 1-10 Refer to Attachment B, Site Plan

**Staff:** The County's review of this criterion is set out in the response to MCRR 4.500 (sight distance) above. *As conditioned, this criterion is met.*

**F. Existing right-of-way or improvement limitations, and utility considerations;**

**Applicant Response:** No existing utility considerations are needed. The utility poles are located in the NE and SE corners of the property. Short Road and Stone Road in this location has very little traffic. The roads are serving agricultural areas and single family residential. There is no other zoning in the area that would increase density or change the use of the roads.

**Staff:** The County's review of this criterion is set out in the response to MCRR 6.000 (Improvements) above. *This criterion is not applicable.*

**G. Adjacent land uses, their types, access requirements, and impact of traffic on them;**

**Applicant Response:** The adjacent land across Short Road is agricultural and single family residential. The adjacent land to the north of the property and to the south is rural single family residential. This proposed subject driveway will not have a traffic impact on the adjacent land uses.

**Staff:** The County's review of this criterion is set out in the response to MCRR 5.000 (Transportation Impact) above. The house is a replacement dwelling; therefore, there is no transportation impact. *This criterion is not applicable.*

**H. Topography, grade, side hill conditions, and soil characteristics;**

**Applicant Response:** There is a slope but not a steep slope from the southern edge of the property north to the Creek and from the north edge of the property south to the Creek.

**Staff:** There are no topographical, hill or soil characteristics, which affect the Road Rules Variance request. *This criterion is not applicable.*

**I. Drainage characteristics and problems;**

**Applicant Response:** The subject driveway has existed for years. The current land owners of subject property and adjacent neighbors have not experienced or witnessed any drainage problems in that area.

**Staff:** A stormwater certificate and report of the proposed site, submitted with land use application T2-2020-13185, was reviewed, and approved, by the Transportation Division's engineer. The Stormwater Certificate and Report will be included with the driveway permit, when submitted and approved. *As conditioned, this criterion is met.*

**J. Fire Department access requirements within a public right-of-way and their written approval of the proposed modification;**

**Applicant Response:** The Gresham Fire Department serves this subject property. The Department has reviewed the proposed site plan and has approved the proposed residential design and driveway access.

**Staff:** The County notes Gresham Fire Department's response and is satisfied County standards are met. *This criterion is met.*

**K. Natural and historic features including but not limited to trees, shrubs or other significant vegetation, water courses, wetlands, rock outcroppings, development limitation, areas of significant environmental concern, etc.;**

**Applicant Response:** The entire subject property has the Multnomah County SEC-wr zoning overlay. This overlay requires all development to be outside of a 100' setback from Johnson Creek. The subject driveway meets this requirement. There is a biologist (Blue Leaf Environmental) involved in the SEC-wr requirement. The biologist has done an extensive assessment and mitigation plan for the subject property as required by the SEC-wr requirements. This assessment and mitigation plan includes the proposed development and proposed driveway in the assessment and is part of the Land Use package submitted to Multnomah County for Land Use review.

There are no historic features on the site.

**Staff:** The determination of compliance with the zoning overlays will be assessed in the concurrent land use application (T2-2020-13185). The County notes that the applicant seeks to trim vegetation to ensure the best possible sight distance

from the new access into SE Short Road. The County is satisfied that this meets the requirements of this criterion. *This criterion is met.*

**L. Multnomah County Comprehensive Plan policies applicable to the particular parcel or location.**

**Applicant Response:** (updated April 6, 2020) The Multnomah County Comprehensive Plan policies applicable are Land Use Review for the proposed single family residential, Erosion and Soil Control permit (Case T1-2019-12685), and the SEC-wr (Case # T2-2019-12604) overlay. These applications are currently getting reviewed by Multnomah County Planning.

**Staff:** The determination of compliance with the zoning and the comprehensive plan will be assessed in the concurrent land use application (T2-2020-13185). This criterion is therefore not within the scope of the Road Rules Variance request as it is being assessed separately. *This criterion is met.*

**10.6 MCRR 18.000 Right-of-Way Use Permits:**

**MCRR 18.250 Access/Encroachment Permit:**

- A. An Access/ Encroachment Permit (A/E Permit) shall be required for the following activities within the right-of-way:**
- 1. New or altered access to roads under County jurisdiction. An access is considered altered when a change in the development that it serves has a Transportation Impact as defined in section 6.000 of these rules;**
  - 2. New or reconstructed driveway approaches, private road approaches, curb cuts, or sidewalks;**
  - 3. Structures in the right-of-way, such as signs, posts, fences, flags, non-standard mailboxes, etc.; or**
  - 4. Any other minor physical alteration of the County right-of-way, including but not limited to any altered landscape design, vegetation planting or placement.**

**Staff:** The driveways the applicant is proposing are not new accesses to SE Stone Road and SE Short Road. Both SE Stone Road and SE Short Road are public roads under Multnomah County's jurisdiction. No driveway permits for the existing accesses onto SE Stone Road or the proposed additional access onto SE Short Road have been recorded. The applicant will need to apply for driveway permits for the new and existing accesses. *As conditioned, this criterion has been met.*



## Exhibits

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

‘C’ Procedural Exhibits

‘H’ Hearing 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 T2-2020-13185/EP-2020-13186 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	General Application Form	04/17/2020
A.2	5	Land Use Review Narrative	04/17/2020
A.3*	7	Site Plan (36” x 24”) <ul style="list-style-type: none"> <li>- A0.0: Title Sheet</li> <li>- A1.0: Site Survey</li> <li>- A1.1: Site Plan</li> <li>- *A2.1: First Floor</li> <li>- *A2.2: Second Floor</li> <li>- *A3.1: Building Elevations</li> <li>- *A3.2: Building Elevations (cont.)</li> </ul>	04/17/2020
A.4	2	Erosion Control Plans (36” x 24”) <ul style="list-style-type: none"> <li>- Sheet 1 of 2: Stormwater and Erosion Control Plan</li> <li>- Sheet 2 of 2: Erosion Control Details</li> </ul>	04/17/2020
A.5	17	Natural Resource Assessment Report and Mitigation Plan prepared by Julie Harper, M.Sc., Fish and Wildlife Biologist, Blue Leaf Environmental in June 2019	04/17/2020
A.6	2	Water Resource Area Certification Form	04/17/2020
A.7	4	City of Portland – Bureau of Development Services: Onsite Sanitation – Septic Review Certification	04/17/2020
A.8	1	Warrant Deed recorded in Book 1221, Page 134 on November 17, 1947	04/17/2020
A.9	2	Parcel Record – Cartographic Unit Card for 1S4E19DC – 00200	04/17/2020

A.10	5	Property Appraisal Card for 1S4E19DC – 00200	04/17/2020
A.11	4	Fire Service Agency Review and Fire Access and Water Supply Plan Review Comments	04/17/2020
A.12	8	Grading and Erosion Control Worksheet	04/17/2020
A.13	1	Certificate of Water Service	04/17/2020
A.14	3	Storm Water Certificate and stormwater calculations prepared and signed by David C. Popescu, Registered Professional Engineer on October 15, 2019	04/17/2020
A.15	18	Geotechnical Investigation prepared by Mia C. Mahedy, Raid Soil Solutions, Inc. on February 12, 2019	04/17/2020
A.16	3	Response to Land Use Review Comments	04/17/2020
A.17	1	Revised Site Plan (36" x 24") - A1.1: Site Plan	04/17/2020
A.18	1	Mitigation Site Plan and Detailed Planting Plan Cover Letter	04/17/2020
A.19	1	Mitigation Site Plan and Detailed Planting Plan (36" x 24") - L101: Mitigation Plan	04/17/2020
A.20	3	Storm Water Certificate and stormwater calculations prepared and signed by David C. Popescu, Registered Professional Engineer on October 15, 2019	04/17/2020
A.21	18	Geotechnical Investigation prepared by Mia C. Mahedy, Rapid Soil Solutions, Inc. on February 12, 2019	04/17/2020
A.2	7	Erosion and Sediment Control Narrative	04/17/2020
A.23	3	Revised Erosion Control Plans (36" x 24") - Sheet 1 of 3: Stormwater Plan - Sheet 2 of 3: Erosion Control Plan - Sheet 2 of 3: Erosion Control Details	04/17/2020
A.24	8	Floodproofing Certificate for Non-Residential Structures	04/17/2020
A.25	17	Road Rules Narrative	04/17/2020
A.26	8	Revised Road Rules Narrative	06/27/2020
A.27	12	Site Distance Analysis	06/27/2020
A.28	2	Vicinity Map	06/27/2020

A.29	2	Zoning Map	06/27/2020
<b>‘B’</b>	<b>#</b>	<b>Staff Exhibits</b>	<b>Date</b>
B.1	2	Department of Assessment, Recording, and Taxation (DART): Property Information for 1S4E19DC – 00200 (R994190890)	04/17/2020
B.2	1	Department of Assessment, Records and Taxation (DART): Map with 1S4E19DC – 00200 (R994190890) highlighted	04/17/2020
B.3	1	Aerial Photo taken in 2019	08/10/2020
B.4	5	Special Warranty Deed recorded as Instrument #2017-038053 on March 29, 2017	08/10/2020
B.5	1	Aerial Photo taken in 2016	08/10/2020
B.6	1	Revised Site Plan (36” x 24”) with additional mitigation measurements - A1.1: Site Plan	08/10/2020
<b>‘C’</b>	<b>#</b>	<b>Administration &amp; Procedures</b>	<b>Date</b>
C.1	2	Complete letter (day 1)	05/15/2020
C.2	10	Opportunity to Comment and mailing list	08/05/2020
C.3	1	Extension of 150 day clock	09/23/2020
C.4	54	Administrative Decision	10/06/2020
<b>‘H’</b>	<b>#</b>	<b>Hearing Exhibits</b>	<b>Date</b>
H.1	1	2 <sup>nd</sup> Extension of 150 day clock	10/16/2020
H.2	5	Notice of Appeal	10/20/2020
<b>‘I’</b>	<b>#</b>	<b>Post-Hearing Exhibits</b>	<b>Date</b>
I.1	3	Applicant’s Final Argument	11/18/2020
I.2	1	Revised Landscape Plan	11/10/2020