

NOTICE OF DECISION

Case File: T2-2020-13504

Permit(s): Significant Environmental Concern (SEC) and Erosion and Sediment Control (ESC)

Applicant(s): Jeremy Karp

Owner(s): Jeremy Karp

Location: 14325 NW Old Germantown Road, Portland
Tax Lot 1001, Section 09C, Township 1 North, Range 1 West, W.M.
Tax Account #R649795610 Property ID #R488180

Base Zone: Rural Residential (RR)

Overlays: Significant Environmental Concern for Wildlife Habitat (SEC-h)
Significant Environmental Concern for Streams (SEC-s)

Proposal Summary: The applicant requests a Significant Environmental Concern for Wildlife Habitat (SEC-h), a Significant Environmental Concern for Streams (SEC-s), and an Erosion and Sediment Control (ESC) permits to construct a solar panel array (photovoltaic accessory alternative energy system) and greenhouse. The applicant also requests review of previous development activities, which included the construction of fencing and ground disturbance associated with UR-2020-12961.

Decision: **Approved with Conditions**

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Monday, January 4, 2021 at 4:00 pm.

Issued by: _____

By: Rithy Khut, Planner

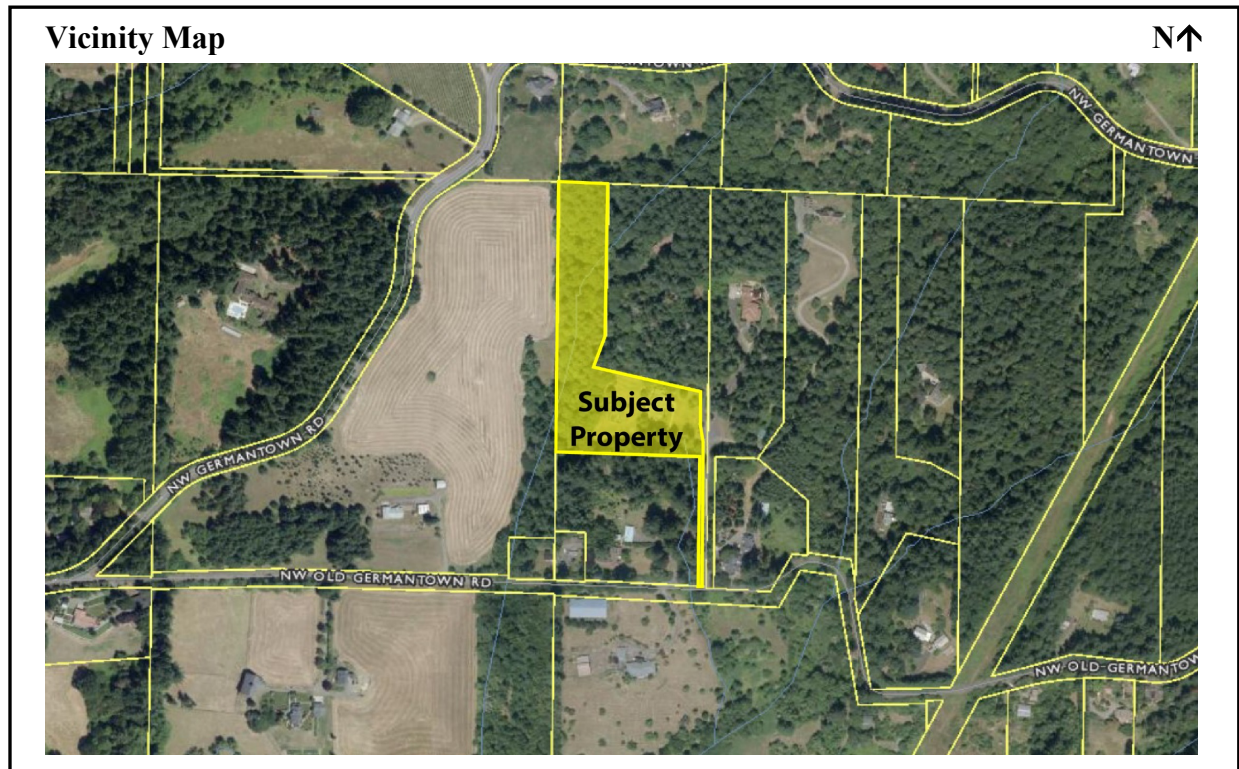
For: Carol Johnson, AICP
Planning Director

Date: Monday, December 21, 2020

Instrument Number for Recording Purposes: #2013-43436

Opportunity to Review the Record: The complete case file, including the Planning Director Decision containing Findings, Conclusions, Conditions of Approval, and all evidence associated with this application is available for review by contacting the staff planner. Paper copies of all documents are available at the rate of \$0.35/per page. For further information, contact Rithy Khut, Staff Planner at 503-988-0176 or at rithy.khut@multco.us

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



Applicable Approval Criteria:

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

Multnomah County Code (MCC): Violations, Enforcement and Fines: MCC 39.1515 Code Compliance and Applications

Definitions: MCC 39.2000 Definitions

Lot of Record: MCC 39.3005 Lot of Record – Generally, MCC 39.3090 Lot of Record – Rural Residential (RR)

Rural Residential (RR): MCC 39.4360(F) and (K) Allowed Uses – Accessory Structures and Photovoltaic Accessory Alternative Energy Production Facilities, MCC 39.4375 Dimensional Requirements and Development Standards

Significant Environmental Concern: MCC 39.5510 Uses; SEC Permit Required, MCC 39.5580 Nuisance Plant List, MCC 39.5750 Criteria for Approval of SEC-s Permit – Streams, MCC 39.5850 SEC-h Clear and Objective Standards, MCC 39.5860 Criteria for Approval of SEC-h Permit – Wildlife Habitat

Ground Disturbing Activity and Stormwater: MCC 39.6210 Permits Required, MCC 39.6225 Erosion and Sediment Control Permit, MCC 39.6235 Stormwater Drainage Control

Exterior Lighting: MCC 39.6850 Dark Sky Lighting Standards

Accessory Structures – Condition of Approval: MCC 39.8860 Conditions of Approval – Accessory Structures

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

Conditions of Approval

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parenthesis. Approval of this land use permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.

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

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

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

2. Prior to land use sign-off for building plan check, the property owners or their representative shall:
 - a. Record pages 1 through 10 and Exhibit A.2, A.3, A.11, A.12, A.15 of this Notice of Decision with the County Recorder. The documents shall be reduced to 8.5" x 11" ("Letter size") for recording purposes. The Notice of Decision shall run with the land. Proof of recording shall be made prior to the issuance of any permits and shall be filed with the Land Use Planning Division. Recording shall be at the applicant's expense. [MCC 39.1175]
 - b. Record a covenant with Division of Assessment, Recording, and Taxation ("County Records") that states that the owner understands and agrees that the accessory structure cannot be occupied as a dwelling or for any other form of permanent or temporary residential use. [MCC 39.4360(F)(2) and MCC 39.8860]
 - c. Commence mitigation planting as discussed in Exhibit A.2 SEC Environmental Review Report ("Mitigation Report"), Exhibit A.3 Appendix A – Figures, and Exhibit A.15. The start date for this mitigation work is June 15, 2021 and must be completed by September 15, 2021 with all disturbed areas reseeded as necessary with native grasses. [MCC 39.5750(D)(1) and MCC 39.5860(C)(3)]
3. At the time of land use sign-off for building plan check, the property owner or their representative shall:
 - a. Provide an initial post-mitigation report. The report shall be prepared and signed by Sarah Hartung, Senior Ecologist at Environmental Science Associates (ESA) or someone of similar educational and vocational training. The report shall be provided to Multnomah County Land Use Planning within 90 days of the start of the restoration work as required in Condition of Approval 2.c and outlined in Exhibit A.2 SEC Environmental Review Report ("Mitigation Report"), Exhibit A.3 Appendix A – Figures, and Exhibit A.15.

The initial post-mitigation report shall confirm the mitigation has been in completed in compliance with approved designs. Any variation from approved designs or conditions of approval shall be clearly indicated. The post-mitigation report shall include:

 - i. Dated pre- and post-mitigation 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 39.5750(D)(1) and MCC 39.5860(C)(3)]
 - b. Submit a building plan including cut sheets and specifications showing all exterior lighting on the proposed structures. The exterior lighting shall be placed in a location so that it does not shine directly into undeveloped water resource or habitat areas to the west, south, and north of the development. No outdoor lighting fixtures shall be directed towards the intermittent tributary creek that drains into Abbey 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 39.4375(H), MCC 39.5750(E)(3), and MCC 39.6850]
- 4. After land use sign-off for building plan check is complete and a building permit by the City of Portland has been issued, e-mail Staff Planner, Rithy Khut at rithy.khut@multco.us to be authorized for begin ground-disturbing activities.
 - a. Work will be limited to the period between June 15 and September 15 to conduct soil-disturbing activities (i.e., trenching, excavating, filling, or combination thereof) within the Stream Conservation Area. The revegetation/soil stabilization must be accomplished no later than October 15. Best Management Practices related to erosion control shall be required within a Stream Conservation Area. The County’s inspector may visit the project site to ensure that Best Management Practices are occurring. [MCC 39.5750(E)(6), MCC 39.5850(B), MCC 39.6210(F)(2) and MCC 39.6225(B)]
 - b. Prior to any earth disturbing activity, the property owner(s), their agent(s), or their representative(s) shall install erosion control measures consistent with the approved erosion control plan. Flag, fence, or otherwise mark the project area as described in the Figure 2.1 Site Plan and ESC Plan (Exhibit A.3 – Appendix A - Figures) and Exhibit A.14. These measures shall remain in place and in good working order. Such flagging, fencing, and/or markings shall be maintained until construction is complete. [MCC 39.6225(B)(7), MCC 39.6225(B)(11), MCC 39.6225(B)(13), MCC 39.6225(B)(14), and MCC 39.6225(B)(18)]
- 5. The property owner or their representative shall:
 - a. Be limited to 3,409 square feet of ground disturbance, which includes 54 cubic yards of cut and 44 cubic yards of fill. Cut soil is authorized to be stockpiled as described in the Figure 2.1 Site Plan and ESC Plan (Exhibit A.3 – Appendix A - Figures) and Exhibit A.14. Any excess soil from cuts shall be removed from the subject property at the conclusion of construction activities and disposed of properly in compliance with the rules in the jurisdiction that disposal will occur. [MCC 39.6210 and MCC 39.6225(B)(1)]
 - b. The fill trucks shall be loaded, covered, and otherwise managed to prevent any of their load from dropping, sifting, leaking, or otherwise escaping from the vehicle. The total daily number of fill haul truck trips shall not cause a transportation impact (as defined in the Multnomah County Road Rules). No fill shall be tracked or discharged in any manner onto any public right-of-way and no compensation, monetary or otherwise, shall be received by the property owner for the receipt or placement of fill. [MCC 39.5030(A)(2) and MCC 39.6225(B)(22) through (24)]
- 6. Prior to and during construction, the property owner or their representative shall ensure that:
 - a. Exhibit A.2 SEC Environmental Review Report (“Mitigation Report”), Exhibit A.3 Appendix A – Figures, and Exhibit A.15 prepared by Sarah Hartung, Senior Ecologist at Environmental Science Associates (ESA) is implemented. The Mitigation Plan outlines the minimum restoration requirements and schedule. The schedule timelines shall be met. [MCC 39.5750(D)(1) and MCC 39.5860(C)(3)]

- b. The permit notice card is posted at the driveway entrance in a clearly visible location.
 - i. This notice is to remain posted until such time as the ground disturbing work is completed. In the event the notice is lost, destroyed, or otherwise removed prior to completion of the grading work, the applicant shall immediately contact the Land Use Planning office to obtain a replacement. [MCC 39.6210(F)(2) and MCC 39.6225(B)]
- c. Best erosion control practices are maintained through all phases of development. Erosion control measures are to include the installation of sediment fences/barriers at the toe of all disturbed areas and post construction re-establishment of ground cover as described in the Figure 2.1 Site Plan and ESC Plan (Exhibit A.3 – Appendix A - Figures) and Exhibit A.14. Straw mulch, erosion blankets, or 6-mil plastic sheeting shall be used as a wet weather measure to provide erosion protection for exposed soils. All erosion control measures are to be implemented as prescribed in the current edition of the City of Portland's Erosion Control Manual, copies of which are available through the City of Portland. [MCC 39.6225(B)(7), MCC 39.6225(B)(11) through (15), and MCC 39.6225(B)(18)]
 - i. The County may supplement described erosion control techniques if turbidity or other down slope erosion impacts results from on-site grading work. The Portland Building Bureau (Special Inspections Section), the local Soil and Water Conservation District, or the U.S. Soil Conservation Service can also advise or recommend measures to respond to unanticipated erosion effects. [MCC 39.6210(F)(2)]
- d. Any sedimentation caused by development activities are removed from all neighboring surfaces and/or drainage systems. If any features within adjacent public right-of-way are disturbed, the property owner shall be responsible for returning such features to their original condition or a condition of equal quality. [MCC 39.6210(E)(1) and (2)]
- e. All disturbed soils are seeded and mulched to prevent erosion and sedimentation in the channel. Monitor daily to ensure vegetation is sprouting and that no erosion or sedimentation is occurring. Monitoring may cease when vegetation on the disturbed soils have stabilized the disturbed soils. [MCC 39.6225(B)(10) and MCC 39.6225(B)(12)]
- f. Any spoil materials be removed off-site shall be taken to a location approved for the disposal of such material by applicable Federal, State and local authorities. On-site disposal of construction debris is not authorized under this permit. This permit also does not authorize dumping or disposal of hazardous or toxic materials, synthetics (i.e. tires), petroleum-based materials, or other solid wastes which may cause adverse leachates or other off-site water quality effects. [MCC 39.6225(B)(20)]
- g. These procedures shall be in effect if any Cultural Resources and/or Archaeological Resources are located or discovered on the tax lots or within the project area, including finding any evidence of historic campsites, old burial grounds, implements, or artifacts:
 - i. Halt Construction – All construction activities within 100 feet of the discovered cultural resource shall cease. The cultural resources shall remain as found; further disturbance is prohibited.
 - ii. Notification – The project applicant shall notify the County Planning Director and the State Historic Preservation Office (SHPO) within 24 hours of the

discovery. If the cultural resources are prehistoric or otherwise associated with Native Americans, the project applicant shall also notify the Indian tribal governments within 24 hours.

- iii. Survey and Evaluation – The applicant shall follow any and all procedures outlines by SHPO and if necessary obtain the appropriate permits (see ORS 273.705 and ORS 358.905 to 358.955).
 - iv. All survey and evaluation reports and mitigation plans shall be submitted to the Planning Director and SHPO. Indian tribal governments also shall receive a copy of all reports and plans if the cultural resources are prehistoric or otherwise associated with Native Americans.
 - v. Construction activities may recommence when SHPO requirements are satisfied. [MCC 39.5510(B)]
- h. The following procedures shall be in effect if human remains are discovered during excavation or construction (human remains means articulated or disarticulated human skeletal remains, bones, or teeth, with or without attendant burial artifacts):
- i. Halt Activities – All survey, excavation, and construction activities shall cease. The human remains shall not be disturbed any further.
 - ii. Notification – Local law enforcement officials, the Multnomah County Planning Director, State Historic Preservation Office and the Indian tribal governments shall be contacted immediately.
 - iii. Inspection – The State Medical Examiner shall inspect the remains at the project site and determine if they are prehistoric/historic or modern. Representatives from the Indian tribal governments shall have an opportunity to monitor the inspection.
 - iv. Jurisdiction – If the remains are modern, the appropriate law enforcement officials will assume jurisdiction and this protection process may conclude.
 - v. Treatment – Prehistoric/historic remains of Native Americans shall generally be treated in accordance with the procedures set forth in Oregon Revised Statutes, Chapter 97.740 to 97.760. [MCC 39.5510(B)]

7. As an on-going condition, the property owner shall:

- a. 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. All nuisance plants shall be kept removed from developed areas of the property. [39.5580, 39.5750(F)(1), MCC 39.5750(F)(2), MCC 39.5850(C), MCC 39.5860]

Table 1 - Nuisance Plant List:

Common Name	<i>Scientific Name</i>
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>

Common Name	Scientific Name
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>
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>

- b. Be prohibited from the storage of hazardous materials outside as determined by DEQ within the Stream Conservation Area [MCC 39.5750(F)(3)].
8. At the completion of the proposed development and construction activities, the applicant, owner, or their representatives shall:

- a. Monitor all project sites as described in Exhibit A.2 SEC Environmental Review Report, Exhibit A.3 Appendix A – Figures, and Exhibit A.15 to determine whether each type of vegetation (trees, shrubs, ground cover) planted continues to live, thrive, and grow for a minimum period of five (5) growing seasons after completion of all the initial plantings. Annual monitoring reports are required. [MCC 39.1170 and MCC 39.5750(D)(1)(d)]
 - i. For any replanted area that falls below the 80% threshold, the property owner shall be replant the area during the next planting season. [MCC 39.1170 and MCC 39.5750(D)(1)(d)]
 - ii. Annual Monitoring Report Due Date: Annual monitoring reports are due by November 30th of each year and shall be sent to LUP-submittal@multco.us. [MCC 39.1170 and MCC 39.5750(D)(1)(d)]
 1. Extension of the Monitoring Period: The monitoring period may be extended, at the discretion of Land Use Planning for failure to provide monitoring reports, failure of the site to meet performance standards for two consecutive years (without irrigation or replanting), or when needed to evaluate replanting or other corrective or remedial actions. [MCC 39.1170 and MCC 39.5750(D)(1)(d)]
 2. Release of Monitoring Obligation: Monitoring is required until Land Use Planning has officially released the site from further monitoring. [MCC 39.1170 and MCC 39.5750(D)(1)(d)]
 3. Failure to Submit Monitoring Reports: Failure to submit the required monitoring report by the due date may result in an extension of the monitoring period, forfeiture of the financial security and/or enforcement action. [MCC 39.1170 and MCC 39.5750(D)(1)(d)]
 - iii. The annual monitoring report shall include the following information:
 1. The permit number, monitoring date, report year, and a determination or whether the site is meeting performance standard of Condition No. 8.
 2. Post construction photographs of each monitoring area taken within the last 30 day prior to the report date.
 3. A brief narrative that describes maintenance activities and recommendations to meet performance standard. This includes when irrigation occurred and when the above ground portion of the irrigation system was or will be removed from the site.
 4. Any other information necessary or required to document compliance with the performance standard listed in Condition No. 8. [MCC 39.1170 and MCC 39.5750(D)(1)(d)]

Note: Once this decision is final, application for building permits may be made with the City of Portland. 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 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 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, **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 Portland. Five (5) sets each of the site plan and building plans are needed for building permit sign off. At the time of building permit review, Land Use Planning may collect additional fees, including an erosion control inspection fee, if applicable.

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

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

Findings of Fact

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

1.0 Project Description:

Staff: The applicant is requesting a Significant Environmental Concern for Wildlife Habitat (SEC-h) permit and a Significant Environmental Concern for Streams (SEC-s) permit to authorize the construction of a solar panel array (photovoltaic accessory alternative energy system or PV system) and greenhouse. The proposed permits will also address development not previously reviewed by the County, which includes the construction fence and garden area and the removal of an unpermitted greenhouse that is associated with UR-2020-12961.

2.0 Property Description & History:

Staff: The subject application is for 14325 NW Old Germantown Road, Portland (“subject property”) also known as tax lot 1001, Section 09C, Township 1 North, Range 1 West, W.M. The subject property is located on the north side of NW Old Germantown Road within the Rural Residential (RR) zoning district in the West Hills rural area. There are two environmental overlays, a Significant Environmental Concern for Wildlife Habitat (SEC-h) and Significant Environmental Concern for Streams (SEC-s) on the subject property.

Multnomah County Division of Assessment, Recording, and Taxation (DART) data indicates that the subject property is approximately 5.04 acres and is owned by Jeremy F. Karp (Exhibit B.1). DART records also indicate that the subject property contains a single-family dwelling with an attached garage and covered patio in addition to an unauthorized greenhouse. The single-family dwelling was first assessed in 2001. Aerial photo review from 2019 confirms the presence of the single-family dwelling with attach garage and unpermitted greenhouse (Exhibit B.3). Lastly, a portion of the subject property is enrolled in the Special Assessment Programs for Forestland (“forest deferral”).

Reviewing past permit history, the subject property has had an extensive permit history. Below are the land use and building permits that are on record:

Permit Number	Date	Description
LD 5-99	07/07/1999	Land Division - Two Lot Partition
SEC 0-3	03/13/2000	New single-family dwelling and driveway
Building Permit	03/30/2000	Planning and Zoning Review associated with SEC 0-3
T1-03-001	08/27/2003	Grading and Erosion Control Permit for retroactive approval of approximately 3000 cubic yards of fill
BP-2017-6603	01/05/2017	Remodel of kitchen within existing 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-02-035	08/27/2003 (Closed)	Dumping of at least 30 dump truck loads of material next to a stream
UR-02-037	08/18/2006 (Closed)	Hauling of 500 truckloads of dirt
UR-2020-12961	(Active)	Owner request for a Voluntary Compliance Agreement to resolve the compliance issues related to the non-permitted placement of a greenhouse and fence on the property and within an SEC overlay area.

3.0 Public Comment:

Staff: Staff mailed a notice of application and invitation to comment on the proposed application to the required parties pursuant to MCC 39.1105 as exhibited in Exhibit C.2. Staff did not receive any public comments during the 14-day comment period.

4.0 Code Compliance and Applications Criteria:

4.1 § 39.1515 CODE COMPLIANCE AND APPLICATIONS.

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

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

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

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

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

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

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

Staff identified buildings and structures that were not or have not been reviewed by the County. These buildings and structures were identified by comparing previously approved site plans from 2000 and 2017 to aerial photos from 2003 up to 2019. The site plan shows from 2000 shows the single-family dwelling and no other buildings and structures to the west of the single-family dwelling (Exhibit B.10). Similarly, in 2017 the site plan does not indicate that buildings or structures were located west of the single-family dwelling (Exhibit B.11). Aerial photos reviewed identify a greenhouse, which appears between 2004 and 2006 and a garden area surrounded by fencing, which appears between 2006 and 2008 (Exhibit B.4 through B.8). The construction and placement of those structures on the subject property and the associated development activities would have been subject to the Significant Environmental Concern for Wildlife Habitat (SEC-h) requirements as Ordinance 801 was adopted in 1994. The Significant Environmental Concern for Streams (SEC-s) overlay was applied on January 7, 2010 under Ordinance 1152. Staff described these issues to applicant during a pre-filing meeting, PF-2019-12167 on August 1, 2019 (Exhibit B.3).

The property owner then entered into a Voluntary Compliance Agreement (VCA). The code compliance case, UR-2020-12961 was opened to bring the subject property back into Full Compliance with Multnomah County Zoning Code by use of a VCA to outline obligations and sequencing of permits (Exhibit B.9). This application, a Type 2 application is the first part of a sequencing of permits needed to resolve the code compliance issues related to buildings and structures that were not reviewed by the County. If the applicant fulfills the requirements of the decision and complies with the Type 1 Erosion and Sediment Control permit the property will be brought into compliance.

As discussed in this decision, when the applicant meets all of the conditions in this decision, including the Type 1 Erosion and Sediment Control 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.

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.

(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: To authorize the construction of a PV system, greenhouse, and review of previous development not reviewed previously by the County in the Significant Environmental Concern overlays, the subject property must be a Lot of Record. To be considered a Lot of Record, the subject property must have satisfied all applicable zoning laws (i.e., be in full compliance with all zoning minimum lot size, dimensional standards, and access requirements) when it was created or last reconfigured and satisfied all applicable land division laws when the subject property was created.

In order to satisfy the first requirement the subject property had to have satisfied all applicable zoning laws when it was created or last reconfigured. The applicant provided a copy of the partition plat demonstrating that when the property was created, the property met all zoning laws. The partition plat shows that the Partition Plat No. 1999-141 was recorded in October 22, 1999 (Exhibit B.12). The partition plat was approved in 1999, under land use case LD 5-99 granting a Land Division. As a parcel that was created by the review and approval of the County’s Land Division process and the recording of a partition plat signed by Land Use Planning, the parcel met all applicable zoning laws in effect at the time in 1999.

The second requirement is that the lot or parcel satisfied all applicable land division laws. The subject property was created through a partition plat (Exhibit B.12). In recording the plat in 1999 as Partition Plat No. 1999-141, the lot satisfied all applicable land division laws as the lot was created through the use of the applicable land partitioning requirements in effect on or after October 19, 1978.

The subject property came into the possession of the applicant in 2013. A statutory warranty deed was recorded under Instrument #2013-43436 on March 29, 2013 described the subject property as Parcel 1, Partition Plat No. 1999-141 (Exhibit B.13). The description on the statutory warranty deed matches the description of the partition plat; therefore, this property is considered as a legal lot and is Lot of Record. *This criterion is met.*

(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 lot contained in tax lot 1001 and is subject to this land use application is not congruent with an “acknowledged unincorporated community” boundary, which intersects a Lot of Record. The applicant is also not requesting a partitioning of the Lot of Record, therefore this criterion is not applicable. *This criterion is not applicable.*

5.2 § 39.3090 LOT OF RECORD – RURAL RESIDENTIAL (RR).

(A) In addition to the standards in MCC 39.3005, for the purposes of the RR district the significant dates and ordinances for verifying zoning compliance may include, but are not limited to, the following:

- (1) July 10, 1958, SR zone applied;**
- (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, RR zone applied, Ord. 148 & 149;**
- (5) October 13, 1983, zone change from MUF-19 to RR for some properties, Ord. 395;**
- (6) October 4, 2000, Oregon Administrative Rules Chapter 660 Division 004, 20 acre minimum lot size for properties within one mile of Urban Growth Boundary;**
- (7) May 16, 2002, Lot of Record section amended, Ord. 982, reenacted by Ord. 997.**

Staff: Criterion (A) states important dates pertinent to zoning changes in Multnomah County. The dates are for informational purposes and not approval criteria. *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 39.4395, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

Staff: The subject property is less than the minimum lot size for new parcels or lots and has a front lot line less than the minimum required. It is currently occupied with a single-family dwelling use but is subject to an open code compliance issue. The proposed development is required to come into compliance with the requirements of the Rural Residential (RR) zoning district. The applicant is seeking a Type 2 permit to authorize the proposed accessory uses. A Type 2 application is the first part of a sequencing of permits needed to resolve the code compliance issues related to buildings and structures that were not reviewed by the County. If the applicant fulfills the requirements of the decision those actions will result in the property coming into compliance. *This criterion is met.*

(C) Except as otherwise provided by MCC 39.4380, 39.4385, and 39.5300 through 39.5350, no sale or conveyance of any portion of a lot other than for a public purpose shall leave a structure on the remainder of the lot with less than minimum lot or yard requirements or result in a lot with less than the area or width requirements of this district.

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 parcel is a Lot of Record. Additionally, as described by the Department of Assessment, Records, and Taxation, the entirety of the parcel is contained within tax lot 1001. Tax lot 1001 is not an area of land described solely for assessment and taxation purposes. Tax lot 1001 is also not an area of land created by the foreclosure of a security interest or an area of land created by court decree. The lot known as tax lot 1001 was created under land use case LD 5-99 granting a Land Division and through the recording of a partition plat, PN1999-141 on October 22, 1999 (Exhibit B.12). *These criteria are met.*

6.0 Rural Residential (RR) Criteria:

6.1 § 39.4360 ALLOWED USES.

6.1.1 (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: The applicant is proposing a greenhouse (“accessory structure”) to replace the unauthorized greenhouse that is currently on the property. The greenhouse currently on the property was constructed at some point between 2004 and 2006 without review from the County (Exhibit B.5 through B.7). The greenhouse that was not reviewed by the County will be removed from the property and a replacement greenhouse will be placed slightly north of the old greenhouse (Exhibit A.12). Greenhouses are listed as an accessory structure in the list above and can be permitted, if they meet the approval criteria below and in Section 7.0, as it is located within an area of Significant Environmental Concern.

The subject property also has extensive fencing around a garden and to the south in the forested area. The applicant has indicated that the fences in the forested area, which were not previously reviewed by the County, will be removed (Exhibit A.2). The fencing around the garden, which was not previously reviewed by the County, is to remain. Fences are also listed as an accessory structure in the list above. In order to permit fencing accessory structures, the applicant will need to demonstrate that the structures meet the Significant Environmental Concern requirements as discussed in Section 7.0.

(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 included architectural drawings of the greenhouse. The floor plan shows a building that is composed of two rooms; one large open room and a smaller back room (Exhibit A.6). The back room will contain a heating system, a potting bench, and storage. As proposed, the greenhouse is not designed temporarily or permanently, as a primary dwelling, accessory dwelling unit, apartment, guesthouse, housing rental unit, sleeping quarters or any other residential use. The property owner will be required to record covenant regarding use of the structure as any type of dwelling or sleeping area as required by MCC 39.8860. *As conditioned, this criterion is met.*

(3) The Accessory Structure may contain one sink.

Staff: The applicant included architectural drawings of the greenhouse. The floor plan does not show a sink in the accessory structure. (Exhibit A.6). As no sink is proposed, this criterion is not applicable. *This criterion is not applicable.*

(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 applicant included architectural drawings of the greenhouse. The floor plan shows that the structure will be one story and does not contain cooking facilities, a toilet, bathing facilities, or a closet built into a wall (Exhibit A.6). As the structure will be used as a greenhouse, it is not anticipated that a mattress, bed, Murphy bed, cot, or any other similar item designed to aid in sleep as a primary purpose will be stored inside the structure. *This criterion is met.*

(5) Compliance with MCC 39.8860 is required.

Staff: As required above, compliance with MCC 39.8860 is required. MCC 39.8860 states:

§ 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.

As the applicant is proposing an accessory structure that is a building, the building will be required to comply. Therefore to ensure compliance, 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.*

(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: As required above, the combined footprints of all Accessory Buildings on a Lot of record shall not exceed 2,500 square feet. The site plan indicates only one building is proposed, which is a greenhouse. No other accessory buildings will exist on the property (Exhibit A.11 and

A.12). The greenhouse will be 920 square feet, which is less than the 2,500 square foot threshold. *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: The proposal for the accessory structure does not exceed any of the Allowed Use provisions; therefore, the accessory structure does not need to meet the requirements within the Review Use. *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 proposal for the accessory structure that is a greenhouse. The greenhouse is not a building used in conjunction with a farm use as defined in ORS 215.203. Therefore, it is required to meet the accessory structure provisions. As discussed above, the greenhouse meets the accessory structure provisions as an Allowed Use. *This criterion is met.*

6.1.2 (K) Solar, photovoltaic and wind turbine alternative energy production facilities accessory to uses permitted in the base zone, provided that:

(1) All systems shall meet the following requirements:

(a) The system is an accessory alternative energy system as defined in MCC 39.2000;

Staff: In addition to the proposed accessory structures described in Section 6.1.1, the applicant is proposing a ground mount solar array ("photovoltaic system"). As defined in MCC 39.2000, an Accessory Alternative Energy System is:

Accessory Alternative Energy System – A system accessory to a primary structure or use that converts energy into a usable form such as electricity or heat, and conveys that energy to uses allowed on the premises. An Accessory Alternative Energy System is a solar thermal, photovoltaic or wind turbine structure, or group of structures designed to offset all or part of the annual energy requirements of the property.

The photovoltaic (PV) system meets the definition of accessory alternative energy system as the array is designed to convert energy from the sun into a usable form electricity. The PV system will be connected to the single-family dwelling to offset all or part of the annual energy requirements of the property. As it stands the single-family dwelling uses approximately 50,000kWh of electricity per year. The 25kW PV system will provide roughly 50% of their energy needs at 24,320kWh/yr. The PV system will be located north of the greenhouse and northwest of the single-family dwelling. *This criterion is met.*

(b) The system meets all overlay requirements;

Staff: The PV system is located in two overlays, the Significant Environmental Concern for Wildlife Habitat (SEC-h) and Significant Environmental Concern for Streams (SEC-s). The application will be required to meet the overlay requirements of those overlays. The approval criteria are discussed in Section 7.0.

(c) The system is mounted to a ground mount, to the roof of the dwelling or accessory structure, or to a wind tower;

Staff: As designed the PV system will be a ground mount system that is located on a rack north of the proposed greenhouse. The mount will be constructed of steel pipe and aluminum rails. The structure will be anchored using ground screwed instead of concrete footers. *This criterion is met.*

(2) The overall height of solar energy systems shall not exceed the peak of the roof of the building on which the system is mounted;

Staff: The applicant is proposing a ground mount PV system. As the system is mounted to the ground instead of on the roof of a building, this criterion is not applicable. *This criterion is not applicable.*

(3) Wind Turbine Systems:

(a) Wind turbine systems shall be set back from all property lines a distance equal to or greater than the combined height of the turbine tower and blade length. Height is measured from grade to the top of the wind generator blade when it is at its highest point;

(b) No lighting on wind turbine towers is allowed except as required by the Federal Aviation Administration or other federal or state agency.

(c) The land owner signs and records a covenant stating they are responsible for the removal of the system if it is abandoned. In the case of a sale or transfer of property, the new property owner shall be responsible for the use and/or removal of the system. Systems unused for one consecutive year are considered abandoned.

Staff: The applicant is proposing a ground mount PV system and not a wind turbine system; therefore, these criteria are not applicable. *This criterion is not applicable.*

6.2 § 39.4375 DIMENSIONAL REQUIREMENTS AND DEVELOPMENT STANDARDS.

(A) Except as provided in MCC 39.3090, 39.4380, 39.4385 and 39.5300 through 39.5350, the minimum lot size for new parcels or lots shall be five acres. For properties within one mile of the Urban Growth Boundary, the minimum lot size shall be as currently required in the Oregon Administrative Rules Chapter 660, Division 004 (20 acre minimum as of October 4, 2000).

(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 application is for multiple accessory structures (greenhouse and fencing) and a photovoltaic alternative energy production facility. The applicant 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 yard dimensions are required to ensure that there is sufficient open space between buildings and property lines to provide space, light, air circulation, and safety from fire hazards. 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 right-of-way adjacent to the subject property is NW Old Germantown Road; a rural local road is required to be 50 feet. As indicated in DART assessment maps, the right-of-way adjacent to the property is 55 feet wide, which is sufficient to serve the area. (Exhibit B.2). Therefore, the minimum yard dimensions do not need to be increased.

The applicant has provided a site plan showing the location of the proposed accessory structures and the photovoltaic alternative energy production facility (Exhibit A.11 and A.12). As the subject property is both a flagpole and an irregular shape, the front, rear, and side property lines are as described below.

Table 1: Distance of structures from property lines

	Yard Requirement	Distance of building to Property Line
PV system		
Front (property line parallel and closest to NW Old Germantown Rd. that is not part of the flagpole)	30'	222' ±
Side (west property line)	10'	195' ±
Side (east property line)	10'	197' ±
Side (property line opposite of front property line but closest to single-family dwelling)	10'	10'
Rear (property line opposite of front property line but furthest from single-family dwelling)	30'	631' ±
“Greenhouse” Accessory Structure		
Front (property line parallel and closest to NW Old Germantown Rd. that is not part of the flagpole)	30'	153 ±
Side (west property line)	10'	182' ±
Side (east property line)	10'	236' ±
Side (property line opposite of front property line but closest to single-family dwelling)	10'	86' ±
Rear (property line opposite of front property line but furthest from single-family dwelling)	30'	706' ±
“Garden and Fencing” Accessory Structure		
Front (property line parallel and closest to NW Old Germantown Rd. that is not part of the flagpole)	30'	88' ±
Side (west property line)	10'	174' ±
Side (east property line)	10'	240' ±
Side (property line opposite of front property line but closest to single-family dwelling)	10'	124' ±
Rear (property line opposite of front property line but furthest from single-family dwelling)	30'	742' ±

Exhibit A.11

Based on the measurements, the PV system, greenhouse, and outer extent of the fencing that surrounds the garden all meet the minimum yard requirements. *These criteria are 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) On-site sewage disposal, storm water/drainage control, water systems unless these services are provided by public or community source, shall be provided on the lot.

Staff: The applicant has provided a Septic Review Certification and Storm Water Certificate. A well report was also obtained from the Oregon Department of Water Resources. The Septic Review Certification was reviewed and approved by Lilly Peterson, Registered Environmental Health Specialist on March 09, 2020 (Exhibit A.7). The Septic Review Certification shows the septic system and drainfield on the parcel. The Storm Water Drainage Control Certificate was reviewed and signed by Nate Robinson, Registered Professional Engineer (Exhibit A.8). The Certificate recommends construction of an on-site stormwater drainage system on the parcel. The well report was obtained from the Oregon Department of Water Resources (Exhibit B.13). The well on the property was drilled in 2000 and provides 25 gallons/minute of water. *This criterion is met.*

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

Staff: As discussed in subsection (F), the sewage and stormwater disposal system are located on the subject property; therefore, this criterion is not applicable. *This criterion is not applicable.*

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

Staff: The applicant has provided a Storm Water Drainage Control Certificate. The Storm Water Drainage Control Certificate was reviewed and signed by Nate Robinson, Registered Professional Engineer (Exhibit A.8). The Certificate recommends construction of an on-site stormwater drainage system on the parcel to ensure that the rate of runoff from the property for a 10-year/24-hour storm even is no greater than that before development. The system will utilize dry wells located south of the greenhouse. *This criterion is met.*

(G) 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 base zone; or**
- (2) Where the farm use does not occur on land in the EFU base zone, 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.**

Staff: The applicant is not proposing a new, replacement, or expansion of an existing dwelling; therefore, this criterion is not applicable. *This criterion is not applicable.*

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

Staff: The applicant is proposing an accessory structure that is supporting the residential use on the property. As required above the applicant will need to comply with MCC 39.6850, which states:

§ 39.6850 DARK SKY LIGHTING STANDARDS.

* * *

(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.**

The architectural plans for the greenhouse do not show exterior lighting on the structure. However, the applicant does indicate that exterior lighting will be installed on the structure. As stated, “Exterior lighting will consist of a small downward facing shielded can light, sconce or similar at each end of the two ingress/egress points” (Exhibit A.2). As such, to ensure that the applicant meets the standards above, a condition will be required that all new exterior lighting be from a light source that is fully shielded with opaque materials and directed downwards. Additionally, the lighting must be contained within the boundaries of the Lot of Record on which it is located. *As conditioned, this criterion is met.*

7.0 Significant Environmental Concern 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 structures associated with the residential use that is allowed under MCC 39.4363. The proposed structures are two accessory structures (a greenhouse and fencing) and a photovoltaic alternative energy production facility. Additionally, the property was subject to ground disturbing activities to create a garden space contained within the fencing 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 this SEC permit. A condition of approval will be required to ensure that any excavation or any removal of materials of archaeological, historical, prehistorical, or anthropological nature shall be conducted in compliance with local, state, and federal requirements. *As conditioned, this criterion is met.*

7.2 § 39.5580- NUISANCE PLANT LIST.

**Table 1
Nuisance Plant List:**

Common Name	Scientific Name
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>
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.	various genera

Staff: As required by 39.5750(F)(1), MCC 39.5850(C), and MCC 39.5860, a condition will be required that nuisance plants in MCC 39.5580 Table 1, in addition to the nuisance plants defined in MCC 39.5750(A)(1), shall not be planted or used as landscape plantings on the subject property in addition to being kept removed from developed areas. *As conditioned, this criterion is met.*

7.3 § 39.5750- CRITERIA FOR APPROVAL OF SEC-S PERMIT –STREAMS.

* * *

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

Staff: The applicant is not proposing any uses that are listed in MCC 39.5515 as exempt. Therefore, the proposed development and the development that occurred without review by the County must be reviewed to ensure it complies with the provisions of MCC 39.5750(C) through (F).

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

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

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

Staff: The applicant has provided the submittal information required above:

- (1) The site plans is labeled as Exhibit A.3 and A.15.
- (2) A detailed description and map are labeled as Exhibit A.2, A.3, and A.15.
- (3) A description and map of soil types are labeled as Exhibit A.3.
- (4) A study of flood hazard, erosion hazard, and/or other natural hazards is labeled as Exhibit A.2.
- (5) A Mitigation Plan is labeled as Exhibit A.2, A.3, and A.15.
- (6) A description of how the proposal meets the approval criteria listed in subsection (D) below is labeled as Exhibit A.2.

These submittal requirements are met.

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

Staff: The applicant has provided a SEC Environmental Review Report ("Mitigation Plan") that discusses how the proposal will enhance the fish and wildlife resources, shoreline anchoring, flood storage, water quality, and visual amenities characteristic of the stream in its pre-development state. The Mitigation Plan was written by Sarah Hartung, Senior Ecologist at Environmental Science Associates (ESA) in June 2020 (Exhibit A.2). The Mitigation Plan includes a site plan and other written documentation that addresses the approval criteria above.

Based on available information and a site visit, ESA staff assessed the existing conditions, delineated water resources on the site, and provided mitigation strategies to offset the development impacts. The stream resources are two streams that traverse the property north to south. The stream that will be impacted by the development is an intermittent stream that is a tributary of Abbey Creek. The stream resource and conservation area contains both forested areas and non-forested areas. The non-forested areas have been on the subject property since 2000 when the single-family dwelling was permitted under land use case SEC 0-3. The forested

areas to the west and south of the single-family dwelling have been relatively undisturbed and generally match Figure 2.1 within Appendix 2.1 (Exhibit A.3).

As the existing conditions have been established in the Mitigation Plan, ESA recommended various mitigation strategies to offset the permanent impacts of the new greenhouse and PV system. The greenhouse and PV system would result in 2,220 square feet of permanent impacts. The Mitigation Plan did not include the residential garden and fencing that was constructed without review. If the garden and fencing were included, an additional 2,162 square feet of area would be impacted. A total impact area would total 4,382 square feet of area is permanently impacted by the development conducted by the applicant.

To mitigate the impact to enhance the fish and wildlife resources, shoreline anchoring, flood storage, water quality, and visual amenities characteristic, the applicant proposes approximately 8,850 square feet of mitigation to the south of the single-family dwelling (Exhibit A.15). The measures are as follows:

1. Remove 4-foot high wire mesh fencing along the southern property line;
2. Improve the non-forested cleared area that is contiguous with the forest canopy to the south of the single-family dwelling with native trees/plants;
3. Removal of invasive species throughout the subject property, and;
4. Re-seed disturbed areas with a native grass seed mix.

The removal of the fencing and planting of native trees and plants will enhance water quality and provide wildlife habitat functions. As discussed in the Mitigation Plan the following is required to be planted to increase the forest canopy for wildlife uses:

Table 3 Riparian Enhancement Planting Schedule (Exhibit A.2 and updated in Exhibit A.15)

Area 1: Riparian Enhancement Planting Schedule (Mitigation for 920 sf Greenhouse)

Riparian Enhancement Area		
Botanical Name	Common Name	Density / Size / Notes
Trees*		
<i>Alnus rubra</i>	Red alder	Plant either: 28 seedlings (bare-root material or 1-gal container) or 10 saplings that are 3-4 feet tall Select at least two species; **Short-statured trees that reach 30 to 45 feet in height at maturity and could be planted near/under existing canopy Replace dying or diseased mitigation plants as needed to achieve 80% survival
<i>Crataegus douglasii</i>	Douglas hawthorn**	
<i>Rhamnus purshiana</i>	Cascara	
<i>Fraxinus latifolia</i>	Oregon ash	
<i>Tsuga heterophylla</i>	Western hemlock	
<i>Taxusbrevifolia</i>	Pacific yew**	
Groundcover		
<i>Agrostis exarata</i>	Spike bentgrass	

<i>Deschampsia cespitosa</i>	Tufted hairgrass	PT 465 Native Riparian Mix for Shade (or similar suitable native seed mix)
<i>Deschampsia elongate</i>	Slender hairgrass	
<i>Hordeum brachyantherum</i>	Meadow barley	
Temporarily Disturbed Areas - 500 sf (approx.)		
Pro Time Rough and Ready Eco-turf Mix		200 lbs. per acre

*Substitutions with species from the Metro Native Plant List are acceptable.

Area 2: Forest Planting Schedule (Mitigation for ~2000 sf Greenhouse)

Forest Enhancement Area		
Botanical Name	Common Name	Density / Size / Notes
Understory*		
<i>Acer circinatum</i>	Vine maple	Plant at least two species 7 to 8' on center 1-gal container or bare-root (approx. 62 to 80 plants)
<i>Mahonia nervosa</i>	Dwarf Oregon-grape	
<i>Vaccinium ovatum</i>	Evergreen huckleberry	
<i>Polystichum munitum</i>	Sword fern	Replace dying or diseased mitigation plants as needed to achieve 80% survival

*Substitutions with species from the Metro Native Plant List are acceptable.

The planting of trees will also increase the flood storage of the area, as water is better able to seep into the soil, and further enclose the forest canopy to improve visual amenity characteristics of the site. Through the implementation of these measures, the stream conservation area will be retained and enhanced. A condition of approval will be required however to ensure that the measures are undertaken. *As conditioned, these criteria are met.*

(d) An annual monitoring plan for a period of five years which ensures an 80 percent annual survival rate of any required plantings.

Staff: To ensure that the approval criteria above is met, a condition of approval will be required that an annual monitoring plan be submitted to the County for a period of five years. The property owner will need to maintain and support the new plantings to ensure an 80 percent annual survival rate of the required plantings in the Mitigation Plan discussed in Exhibit A.2. *As conditioned, this criterion is met.*

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

(1) A bridge or arched culvert which does not disturb the bed or banks of the stream and are of the minimum width necessary to allow passage of peak winter flows shall be utilized for any crossing of a protected streams.

Staff: The applicant is not proposing a bridge or arched culvert as part of this application, therefore this criterion is not applicable. *This criterion is not applicable.*

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

Staff: The applicant has provided a Storm Water Drainage Control Certificate. The Storm Water Drainage Control Certificate was reviewed and signed by Nate Robinson, Registered Professional Engineer (Exhibit A.8). The Certificate recommends construction of an on-site stormwater drainage system on the parcel to ensure that the rate of runoff from the property for a 10-year/24-hour storm even is no greater than that before development. The system will utilize dry wells located south of the greenhouse. *This criterion is met.*

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

Staff: The architectural plans for the greenhouse do not show exterior lighting on the structure. However, the applicant does indicate that exterior lighting will be installed on the structure. As stated, "Exterior lighting will consist of a small downward facing shielded can light, sconce or similar at each end of the two ingress/egress points" (Exhibit A.2). As the greenhouse is located within the Stream Conservation Area, a condition will be required that the exterior lighting be placed, shaded, or screened to avoid shining towards the stream resource; instead all exterior lighting shall be placed facing eastward towards the direction of the single-family dwelling or directly downward. *As conditioned, this criterion is met.*

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

Staff: The applicant is not proposing to remove any trees over 6" in caliper; therefore, this criterion is not applicable. *This criterion is not applicable.*

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

Staff: The erosion control standards of MCC 39.5090 are discussed in Section 8.0.

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

Staff: To ensure that the approval criterion above is met, a condition of approval will be required that soil disturbing activities within a Stream Conservation Area shall be limited to the period between June 15 and September 15. Revegetation/soil stabilization must be accomplished no later than October 15. *As conditioned, this criterion is met.*

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

Staff: The applicant's consultant ESA did not identify any state or federal permit requirements that are needed as part of this application; therefore, the applicant complies with the applicable requirements. *This criterion is met.*

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

Staff: The subject property is located within Metro’s jurisdictional boundary; therefore, the following requirements are applicable as discussed below.

(1) The planting of any invasive non-native or noxious vegetation as listed in subsection (A)(4) above is prohibited. In addition, the species listed in MCC 39.5580 Table 1 shall not be planted.

Staff: Due to a scrivener's error subsection (A)(4) in MCC 39.5750 does not exist. In MCC 33.4575(A)(4) was renumbered to MCC 39.5750(A)(1) and the above criterion was not renumbered to reflect the change. As required, the invasive non-native or noxious vegetation are those plants listed in the latest edition of the Metro Nuisance Plant List and the Prohibited Plant List, and include those plants listed in the latest edition of the State of Oregon Noxious Weed List. The Mitigation Plan does not recommend the planting of any of those plants listed (Exhibit A.2). A condition of approval will be required to ensure that the Mitigation Plan is followed. *As conditioned, this criterion is met.*

(2) The revegetation of disturbed areas shall primarily use native plants. A list of native plants can be found in the latest edition of the Metro Native Plant List.

Staff: The Mitigation Plan recommend the planting of disturbed areas with native plants, therefore a condition of approval will be required to ensure that the Mitigation Plan is followed. *As conditioned, this criterion is met.*

(3) Outside storage of hazardous materials as determined by DEQ is prohibited, unless such storage began before the effective date of the applicable SEC ordinance; or, unless such storage is contained and approved during development review.

Staff: A condition of approval will be required that no outside storage of hazardous materials as determined by DEQ will be permitted as part of this project. *As conditioned, this criterion is met.*

(G) For Protected Aggregate and Mineral (PAM) resources within a PAM Overlay, the Mitigation Plan must comply only with measures identified in the Goal 5 protection program that has been designated for the site.

Staff: The project is not located within the Protected Aggregate and Mineral overlay therefore this application is not subject to the requirements of the overlay. *This criterion is not applicable.*

7.4 § 39.5850- SEC-H CLEAR AND OBJECTIVE STANDARDS.

(A) At the time of submittal, the applicant shall provide the application materials listed in MCC 39.5520(A) and 39.5860(A). The application shall be reviewed through the Type I procedure and may not be authorized unless the standards in MCC 39.5860(B)(1)

through (4)(a)-(c) and (B)(5) through (7) are met. For development that fails to meet all of the criteria listed above, a separate land use application pursuant to MCC 39.5860 may be submitted.

Staff: The applicant has submitted the required application materials listed in MCC 39.5520(A) and 39.5860(A). The application materials are found in Exhibit A.2 through A.6, A.11 through A.12, and A.15. After review of the application materials, it appears the development fails to meet all of the criteria listed in 39.5860(B)(1) through (4)(a)-(c) and (B)(5) through (7). Therefore, the proposed development has submitted a separate land use application pursuant to MCC 39.5860 that is discussed below.

7.5 § 39.5860 CRITERIA FOR APPROVAL OF SEC-H PERMIT -WILDLIFE HABITAT.

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

- (1) Location of all existing forested areas (including areas cleared pursuant to an approved forest management plan) and non-forested "cleared" areas;
For the purposes of this section, a forested area is defined as an area that has at least 75 percent crown closure, or 80 square feet of basal area per acre, of trees 11 inches DBH and larger, or an area which is being reforested pursuant to Forest Practice Rules of the Department of Forestry. A non-forested "cleared" area is defined as an area which does not meet the description of a forested area and which is not being reforested pursuant to a forest management plan.**
- (2) Location of existing and proposed structures;**
- (3) Location and width of existing and proposed public roads, private access roads, driveways, and service corridors on the subject parcel and within 200 feet of the subject parcel's boundaries on all adjacent parcels;**
- (4) Existing and proposed type and location of all fencing on the subject property and on adjacent properties and on properties entirely or partially within 200 feet of the subject property.**

Staff: The applicant has submitted a site plan, that shows all properties within 200 feet of the proposed development, the location of all existing forest areas, existing and proposed structures, location, and width of existing and proposed roads/driveways (Exhibit A.2, A.3, A.11, A.12, and A.15). *These criteria are met.*

7.5.2 (B) Development standards:

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

Staff: Adopted in 1994, Ordinance 801 created the Significant Environmental Concern for Wildlife Habitat (SEC-h) overlay. At the time of adoption, areas of wildlife habitat, which include forested areas, were protected as a Statewide Planning Goal 5 resource. As defined above, a forested area is:

“an area that has at least 75 percent crown closure, or 80 square feet of basal area per acre, of trees 11 inches DBH and larger, or an area which is being reforested pursuant to Forest Practice Rules of the Department of Forestry.

Although the subject property has had trees in the location of the proposed development, as part of land use case SEC 0-3, a new single-family dwelling was permitted and a cleared area west of the single-family dwelling was authorized. As permitted by SEC 0-3 that area is now considered a non-forested “cleared” area. As shown on the site plan and Mitigation Plan, the proposed development is located in the “cleared” area adjacent and west of the single-family dwelling. *These criteria are met.*

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

Staff: The development does not occur within 200 feet of a public road. As measured on the Area Map (Exhibit A.11), the outer extent of the fenced area of the garden, which is the structure closest to a public road, is approximately 496 feet from the public road (Exhibit A.11). *This criterion is not met.*

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

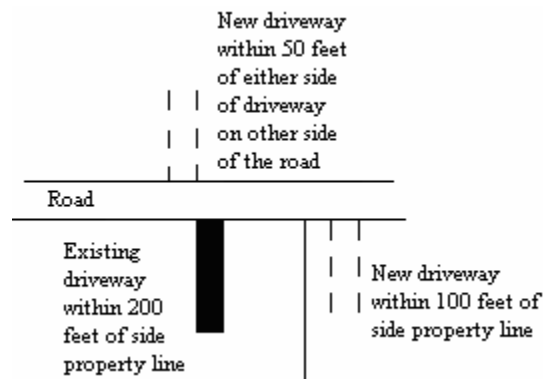
Staff: The access road serving the development exceeds 500 feet in length. As measured on the Area Map, the access road to the public road is approximately 622 feet (Exhibit A.11). *This criterion is not met.*

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

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

(b) The access road/driveway approach onto a public road shall be located within 50 feet of either side of an existing access road/driveway on the opposite side of the road.

(c) Diagram showing the standards in (a) and (b) above.



For illustrative purposes only.

Staff: The access road serving the development is located within 100 feet of a side property line as the subject property shares an access road with the adjacent property to the east. Additionally, as measured on the Area Map, the access road to this property is approximately 92 feet from the adjacent property to the southwest (Exhibit A.11). *This criterion is met.*

(d) The standards in this subsection (4) may be modified upon a determination by the County Road Official that the new access road/driveway approach would result in an unsafe traffic situation using the standards in the Multnomah County “Design and Construction Manual,” adopted June 20, 2000, (or all updated versions of the manual). Standards to be used by the Road Official from the County manual include Table 2.3.2, Table 2.4.1, and additional referenced sight distance and minimum access spacing standards in the publication A Policy on Geometric Design of Highways and Streets by the American Association of State Highway and Transportation Officials (AASHTO) and the Traffic Engineering Handbook by the Institute of Transportation Engineers (ITE).

* * *

Staff: The applicant is not requesting a modification as the access road meets the standard of subsection (4); therefore, this criterion is not applicable. *This criterion is not applicable.*

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

Staff: As proposed, the development will be within 300 feet of a side property line as the adjacent property to the east has structures and development areas within 200 feet of that common side property. As measured on the Area Map, a structure on the adjacent property to the east is approximately 148 feet from the subject property (Exhibit A.11). Along that common property line, the proposed development area is within 174 feet of that property line. *This criterion is met.*

(6) Fencing within a required setback from a public road shall meet the following criteria:

* * *

Staff: The applicant is not proposing any fencing within the required setbacks from a public road. All other fencing outside of the requirement setback is discussed below in Section 7.5.3 below.

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

Staff: A condition will be required that nuisance plants in MCC 39.5580 Table 1 shall not be planted in addition to being kept removed from developed areas. *As conditioned, this criterion is met.*

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

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

Staff: The applicant cannot meet the development standards of subsection (B). As the property is a flag lot, the unique shape of the property results in a flagpole that is more than 400 feet in length and an access road greater than 500 feet. Therefore, the shape of the property precludes development occurring with 200 feet of a public road and an access road less than 500 feet. As the applicant is unable to meet the requirements of MCC 33.4570(B), the applicant will need to propose development that is the minimum departure from the standards required in order to allow the use, which is discussed below.

* * *

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

- (a) That measures are included in order to reduce impacts to forested areas to the minimum necessary to serve the proposed development by restricting the amount of clearance and length/width of cleared areas and disturbing the least amount of forest canopy cover.**
- (b) That any newly cleared area associated with the development is not greater than one acre, excluding from this total the area of the minimum necessary accessway required for fire safety purposes.**
- (c) That no fencing will be built and existing fencing will be removed outside of areas cleared for the site development except for existing cleared areas used for agricultural purposes.**
- (d) That revegetation of existing cleared areas on the property at a 2:1 ratio with newly cleared areas occurs if such cleared areas exist on the property.**
- (e) That revegetation and enhancement of disturbed stream riparian areas occurs along drainages and streams located on the property.**

Staff: The applicant cannot meet the development standards of subsection (B) and has elected to provide a wildlife conservation plan that demonstrates satisfaction with the criteria in MCC 39.5860(C)(3). The wildlife conservation plan (“Mitigation Plan”) discusses how the measures within proposal will reduce impacts to forest areas and how the applicant will revegetate and enhance the disturbed stream riparian areas. The SEC Environmental Review Report (“Mitigation Plan”) was written by Sarah Hartung, Senior Ecologist at Environmental Science Associates (ESA) in June 2020 (Exhibit A.2).

Based on available information and a site visit, ESA staff assessed the existing conditions, delineated water resources on the site, and provided mitigation strategies to offset the development impacts. The stream resources are two streams that traverse the property north to south. The stream that will be impacted by the development is an intermittent stream that provides wildlife habitat as a tributary to Abbey Creek. The stream resource and wildlife area contains both forested areas and non-forested areas. The non-forested areas have been on the subject property since 2000 when the single-family dwelling was permitted under land use case SEC 0-3 (Exhibit B.10).

As the existing conditions have been established in the Mitigation Plan, ESA recommended various mitigation strategies to offset the permanent impacts of the new greenhouse and PV system. The proposed development and the development that was not reviewed by the County previously are not located in a forested area. The development is approximately 4,382 square feet, which is less than the one-acre maximum.

The fencing that surrounds the garden is used for agricultural purposes. As defined in MCC 39.2000, Agriculture is defined as:

The tilling of the soil, the raising of crops, dairying and/or animal husbandry, but not including the keeping or raising of fowl, pigs, or furbearing animals unless such is clearly incidental to the principal use of the property for the raising of crops.

The applicant uses the garden area and the greenhouse to grow and harvest produce for the personal consumption and hot peppers for use in the applicant's chocolate business (Exhibit A.2). The applicant's chocolate business is located offsite at 8329 SW Cirrus Drive, Beaverton, OR 97008. As the raising of crops requires the tilling of soil subsection (c) does permit the use of fencing in cleared areas for agricultural purposes.

To mitigate the impact to wildlife habitat, the applicant proposes approximately 8,850 square feet of mitigation to the south of the single-family dwelling. The measures are as follows:

1. Remove 4-foot high wire mesh fencing along the southern property line;
2. Improve the non-forested cleared area that is contiguous with the forest canopy to the south of the single-family dwelling with native trees/plants;
3. Removal of invasive species throughout the subject property, and;
4. Re-seed disturbed areas with a native grass seed mix.

The removal of the fencing and planting of native trees and plants will enhance wildlife habitat functions and passage through the property. As discussed in the Mitigation Plan the following is required to be planted to increase the forest canopy for wildlife uses:

Table 3 Riparian Enhancement Planting Schedule (Exhibit A.2 and updated in Exhibit A.15)

Area 1: Riparian Enhancement Planting Schedule (Mitigation for 920 sf Greenhouse)

Riparian Enhancement Area		
Botanical Name	Common Name	Density / Size / Notes
Trees*		
<i>Alnus rubra</i>	Red alder	Plant either: 28 seedlings (bare-root material or 1-gal container) or 10 saplings that are 3-4 feet tall Select at least two species;
<i>Crataegus douglasii</i>	Douglas hawthorn**	
<i>Rhamnus purshiana</i>	Cascara	

<i>Fraxinus latifolia</i>	Oregon ash	**Short-statured trees that reach 30 to 45 feet in height at maturity and could be planted near/under existing canopy Replace dying or diseased mitigation plants as needed to achieve 80% survival
<i>Tsuga heterophyllia</i>	Western hemlock	
<i>Taxusbrevifolia</i>	Pacific yew**	
Groundcover		
<i>Agrostis exarata</i>	Spike bentgrass	PT 465 Native Riparian Mix for Shade (or similar suitable native seed mix)
<i>Deschampsia cespitosa</i>	Tufted hairgrass	
<i>Deschampsia elongate</i>	Slender hairgrass	
<i>Hordeum brachyantherum</i>	Meadow barley	
Temporarily Disturbed Areas - 500 sf (approx.)		
Pro Time Rough and Ready Eco-turf Mix		200 lbs. per acre

*Substitutions with species from the Metro Native Plant List are acceptable.

Area 2: Forest Planting Schedule (Mitigation for ~2000 sf Greenhouse)

Forest Enhancement Area		
Botanical Name	Common Name	Density / Size / Notes
Understory*		
<i>Acer circinatum</i>	Vine maple	Plant at least two species 7 to 8' on center 1-gal container or bare-root (approx. 62 to 80 plants) Replace dying or diseased mitigation plants as needed to achieve 80% survival
<i>Mahonia nervosa</i>	Dwarf Oregon-grape	
<i>Vaccinium ovatum</i>	Evergreen huckleberry	
<i>Polystichum munitum</i>	Sword fern	

*Substitutions with species from the Metro Native Plant List are acceptable.

As required, revegetation of existing cleared areas shall occur at a 2:1 ratio with newly cleared areas. Since the development will not create newly cleared areas and will occur in an already cleared area the applicant's proposal exceeds the 2:1 ratio. Through the implementation of these measures, the wildlife habitat area will be enhanced. A condition of approval will be required however to ensure that the measures are undertaken. *As conditioned, these criteria are met.*

8.0 Ground Disturbing Activity and Stormwater Criteria

8.1 § 39.6210 PERMITS REQUIRED.

(A) Unless exempt under this Code, whether under MCC 39.6215, 39.5080, 38.5510 or otherwise, no ground disturbing activity shall occur except pursuant to one of the following permits: a Minimal Impact Project (MIP) permit, an Erosion and Sediment Control permit (ESC), an Agricultural Fill permit (AF), a Geologic Hazards permit (GH), or a Large Fill permit (LF).

Staff: The applicant is proposing to establish multiple accessory structures and a photovoltaic alternative energy production facility. The construction of the structures will require ground disturbance that is not exempt under MCC 39.6215, 39.5080, or 38.5510 as the ground disturbance is a listed action in MCC 39.6215. The subject property is not located within an area of Geologic Hazards and exceeds the standards within Minimal Impact Project requirements. As the ground disturbance is within 200 feet of a waterbody and will involve more than 10 cubic yards of fill. Therefore, the applicant is required to obtain an Erosion and Sediment Control permit, which is discussed below.

(B) The permits referenced in subsection (A) are required in addition to and not in lieu of any other local, state or federal permit, including but not limited to permits required for ground disturbing activities within a water body regulated by the Oregon Department of State Lands, the U.S. Army Corps of Engineers or the Oregon Department of Fish and Wildlife.

Staff: The applicant's consultant ESA did not identify any state or federal permit requirements that are needed as part of this application nor are any of the ground disturbing activities within a water body regulated by the Oregon Department of State Lands, the U.S. Army Corps of Engineers, or the Oregon Department of Fish and Wildlife. Therefore, the applicant complies with the applicable requirements. *This criterion is met.*

(C) No ground disturbing activity shall occur except in support of a lawfully established use or in support of the lawful establishment of a use.

Staff: As discussed in Section 6.0 and 7.0, if the applicant meets the Conditions of Approval, the ground disturbing activities will be in support of a lawfully established use. *This criterion is met.*

(D) No permit identified in subsection (A) shall be issued in any case where the planning director or a building official determines that the proposed ground disturbing activity will be hazardous by reason of flood, geological hazard, seismic hazard, or unstable soils; or is liable to endanger any other adjacent property; or result in the deposition of debris on any public right-of-way or property or water body; or otherwise create a nuisance.

Staff: Based on the findings and other information provided above, the applicant has carried the burden necessary for the Significant Environmental Concern permit and an Erosion and Sediment Control permit. There are no indications that proposed ground disturbing activity will be hazardous by reason of flood, geological hazard, seismic hazard, or unstable soils. The applicant indicated that the ground disturbing activity will be entirely located on the subject property ensuring there is no liability to endanger any other adjacent property or result in the deposition of debris on any public right-of-way or property or water body. Lastly, if the applicant is able to meet the Conditions of Approval, it will ensure that the ground disturbance will not otherwise create a nuisance. *This criterion is met.*

(E) Responsibility. For any ground disturbing activity authorized under a permit listed in subsection (A):

(1) Whenever sedimentation is caused by ground disturbing activity, the person, corporation or other entity shall be responsible to remove that sedimentation from

all adjoining surfaces and drainage systems prior to issuance of occupancy or final approvals for the project.

Staff: To ensure that this criterion is met, a condition will be required that whenever sedimentation is caused by ground disturbing activity, the person, corporation or other entity shall be responsible to remove that sedimentation from all adjoining surfaces and drainage systems prior to issuance of occupancy or final approvals for the project. *As conditioned, this criterion is met.*

(2) It is the responsibility of any person, corporation or other entity doing ground disturbing activity on, in, under or around a water body, or the floodplain or right-of-way, to maintain as nearly as possible in its present state the water body, floodplain, or right-of-way during such activity, and to return the same to a functional condition equal to or better than the condition existing immediately prior to the ground disturbing activity.

Staff: The applicant is not proposing to ground disturbing activity on, in, under, or around a water body, the floodplain, or right-of-way; therefore, this criterion is not applicable. *This criterion is not applicable.*

(F) Implementation.

(1) Performance bond. A performance bond may be required in the amount of the full cost of the establishment and maintenance of all erosion, sedimentation and stormwater control measures for activity authorized through any permit listed in subsection (A). The bond may be used to provide for the installation of the measures if not completed by the contractor. The bond shall be released upon determination the control measures have or can be expected to perform satisfactorily. The bond may be waived if the director determines the scale and duration of the project and the potential problems arising therefrom will be minor.

Staff: Due to the scope and nature of this application, a performance bond will not be required.

(2) Inspection and enforcement. The director may take steps to ensure compliance with the requirements of Part 6, Geologic Hazards permit requirements, and Large Fill permit requirements, including but not limited to, inspections, peer review of engineering analysis (at the applicant's expense), post construction certification of the work, and the posting of a notice providing County contact information in the event that questions arise concerning work occurring on-site. The requirements of this subpart of MCC Chapter 39 shall be enforced by the planning director. If inspection by county staff reveals erosive conditions which exceed those prescribed by the permit, work may be stopped until appropriate correction measures are completed.

Staff: The above standard is not an approval criterion; instead, it outlines the scope of inspection and enforcement that the County has to ensure compliance with the criterion within this Section.

(G) Final approvals. A certificate of occupancy or other final approval shall be granted for development subject to the provisions of this subpart of MCC Chapter 39 only upon satisfactory completion of all applicable requirements.

Staff: To ensure that this criterion is met, a condition will be required that in order for a certificate of occupancy or other final approval to be granted for development subject to the provisions of this subpart of MCC Chapter 39, the applicant will need to demonstrate satisfactory completion of all applicable requirements of this Decision. *As conditioned, this criterion is met.*

8.2 § 39.6225 EROSION AND SEDIMENT CONTROL PERMIT.

(A) An application for an Erosion and Sediment Control permit shall include two copies of each of the following:

(1) A scaled site plan showing the following, both existing and proposed:

- (a) Property lines;**
- (b) Buildings, structures, driveways, roads and right-of-way boundaries;**
- (c) Location of wells, utility lines, site drainage measures, stormwater disposal, sanitary tanks and drainfields (primary and reserve);**
- (d) Trees and vegetation proposed for removal and planting and an outline of wooded areas;**
- (e) Water bodies;**
- (f) Boundaries of ground disturbing activities;**
- (g) Location and height of unsupported finished slopes;**
- (h) Location for wash out and cleanup of concrete equipment;**
- (i) Storage location and proposed handling and disposal methods for potential sources of non-erosion pollution including pesticides, fertilizers, petrochemicals, solid waste, construction chemicals, and wastewaters;**
- (j) Ground topography contours (contour intervals no greater than 10-feet); and**
- (k) Erosion and sediment control measures.**

(2) Calculations of the total area of proposed ground disturbance (square feet), volume of proposed cut (cubic yards) and fill (cubic yards), total volume of fill that has been deposited on the site over the 20-year period preceding the date of application, and existing and proposed slopes in areas to be disturbed (percent slope). For purposes of this subsection, the term “site” shall mean either a single lot of record or contiguous lots of record under same ownership, whichever results in the largest land area;

(3) A written description of the ground disturbing activity and any associated development, including:

- (a) Specific timelines for all phases of work;**
- (b) With respect to fill:**
 - (i) Description of fill materials, compaction methods, and density specifications (with calculations). The planning director may require additional studies or information or work regarding fill materials and compaction.**
 - (ii) Statement of the total daily number of fill haul truck trips, loaded haul truck weight, and haul truck travel route(s) to be used from any fill source(s) to the fill deposit site.**

(c) A description of the use that the ground disturbing activity will support or help facilitate.

Staff: The applicant has included the submittal requirement required above. The Site Plan is found in Exhibit A.3, A.11, A.12, and A.15. Calculations and a written description of ground disturbing activities are found in Exhibit A.14. *These submittal requirements are met.*

(2) Surcharges to sanitary drainfields have been reviewed by the City of Portland Sanitarian or other agencies authorized to review waste disposal systems; and

Staff: The applicant has provided a Septic Review Certification. The Septic Review Certification was reviewed and approved by Lilly Peterson, Registered Environmental Health Specialist on March 09, 2020 (Exhibit A.7). The Septic Review Certification shows the septic system and drainfield on the parcel between the greenhouse and PV system. *This criterion is met.*

(3) Any new discharges into public right-of-ways have complied with the governing agencies discharge review process;

Staff: The applicant has provided a Storm Water Certificate and a Transportation Planning Review form. The Storm Water Drainage Control Certificate was reviewed and signed by Nate Robinson, Registered Professional Engineer (Exhibit A.8). The Certificate recommends construction of an on-site stormwater drainage system on the parcel to ensure that no new discharges will occur into the right-of-way. The Transportation Planning Review form also indicates that the Transportation Division has reviewed the storm water impacts and have no concerns about new discharges into the public right-of-way (Exhibit A.9). *This criterion is met.*

(4) Written findings, together with any supplemental plans, maps, reports, or other information necessary to demonstrate compliance of the proposal with all applicable provisions of the Multnomah County code including Erosion and Sediment Control permit standards in subsection (B). Necessary reports, certifications, or plans may pertain to: engineering, soil characteristics, stormwater drainage control, stream protection, erosion and sediment control, and replanting.

Staff: The applicant has the submitted the required submittal requirements. No additional written findings are required. *This criterion is met.*

(5) Approval of any new stormwater surcharges to sanitary drainfields by the City of Portland Sanitarian and any other agency having authority over the matter; and

Staff: The applicant has provided a Septic Review Certification. The Septic Review Certification was reviewed and approved by Lilly Peterson, Registered Environmental Health Specialist on March 09, 2020 (Exhibit A.7). The Septic Review Certification shows the septic system and drainfield on the parcel between the greenhouse and PV system. *This criterion is met.*

(6) Approval of any new stormwater discharges into public right-of-ways by each governing agency having authority over the matter.

Staff: The applicant has provided a Storm Water Certificate and a Transportation Planning Review form. The Storm Water Drainage Control Certificate was reviewed and signed by Nate Robinson, Registered Professional Engineer (Exhibit A.8). The Certificate recommends construction of an on-site stormwater drainage system on the parcel to ensure that no new discharges will occur into the right-of-way. The Transportation Planning Review form also indicates that the Transportation Division has reviewed the storm water impacts and have no concerns about new discharges into the public right-of-way (Exhibit A.9). *This criterion is met.*

(B) An Erosion and Sediment Control (ESC) permit shall not be issued unless the application for such permit establishes compliance with MCC 39.6210 and satisfaction of the following standards:

(1) The total cumulative deposit of fill, excluding agricultural fill pursuant to an Agricultural Fill permit, on the site for the 20-year period preceding the date of the ESC permit application, and including the fill proposed in the ESC permit application, shall not exceed 5,000 cubic yards. For purposes of this section, the term “site” shall mean either a single lot of record or contiguous lots of record under same ownership, whichever results in the largest land area.

Staff: As part of the ground disturbing activities, the applicant proposes to bring 44 cubic yards of fill to the site (Exhibit A.14). Within the last 20-years, there is no indication that additional fill has been brought to the site therefore the proposed fill being brought to the site is less than the 5,000 cubic yard threshold. *This criterion is met.*

(2) Fill shall be composed of earth materials only.

Staff: As part of the ground disturbing activities, the applicant agrees to use fill that is composed of earth materials only. To ensure compliance with this criterion a condition will be required. *As conditioned, this criterion is met.*

(3) Cut and fill slopes shall not exceed 33 percent grade (3 Horizontal; 1 Vertical) unless a Certified Engineering Geologist or Geotechnical Engineer certifies in writing that a grade in excess of 33 percent is safe (including, but not limited to, not endangering or disturbing adjoining property), and suitable for the proposed development.

Staff: The ground disturbing activities will occur in an area that is generally flat adjacent to the single-family dwelling (Exhibit A.3, A.12, and A.14). At most, the grade of the project area is 2 percent. As such, the ground disturbance will not exceed 33 percent grade. *This criterion is met.*

(4) Unsupported finished cuts and fills greater than 1 foot in height and less than or equal to 4 feet in height at any point shall meet a setback from any property line of a distance at least twice the height of the cut or fill, unless a Certified Engineering Geologist or Geotechnical Engineer certifies in writing that the cuts or fill will not endanger or disturb adjoining property. All unsupported finished cuts and fills greater than 4 feet in height at any point shall require a Certified

Engineering Geologist or Geotechnical Engineer to certify in writing that the cuts and fills will not endanger or disturb adjoining property.

Staff: The ground disturbing activities will not have finished cuts and fills greater than 1 foot in height and all ground disturbance will be a minimum of 10 feet from any property line (Exhibit A.3, A.12, and A.14). *This criterion is met.*

(5) Fills shall not encroach on any water body unless an Oregon licensed Professional Engineer certifies that the altered portion of the water body will continue to provide equal or greater flood carrying capacity for a storm of 10-year design frequency.

Staff: The ground disturbing activities will occur in an area that is generally flat adjacent to the single-family dwelling (Exhibit A.3, A.12, and A.14). As measured, the ground disturbing activities will be over 60 feet away from the nearest waterbody (Exhibit A.3). *This criterion is met.*

(6) Fill generated by dredging may be deposited on Sauvie Island only to assist in flood control or to improve a farm's soils or productivity, except that it may not be deposited in any SEC overlay, WRG overlay, or designated wetland.

Staff: The applicant is not proposing to use fill generated by dredging and the subject property is not located on Sauvie Island; therefore, this criterion is not applicable. *This criterion is not applicable.*

(7) On sites within the Tualatin River drainage basin, erosion, sediment and stormwater drainage control measures shall satisfy the requirements of OAR 340-041-0345(4) and shall be designed to perform as prescribed in the most recent edition of the City of Portland Erosion and Sediment Control Manual and the City of Portland Stormwater Management Manual. Ground-disturbing activities within the Tualatin Basin shall provide a 100-foot undisturbed buffer from the top of the bank of a stream, or the ordinary high watermark (line of vegetation) of a water body, or within 100 feet of a wetland: unless a mitigation plan consistent with OAR 340-041-0345(4) is approved for alterations within the buffer area.

Staff: The subject property is located within the Tualatin River drainage basin as the tributary of Abbey Creek drains into Rock Creek, which drains into the Tualatin River. As such, the ground disturbing activities must meet the requirements of Oregon Administrative Rules (OAR) 340-041-0345(4) and must be designed to meet the most recent edition of the City of Portland Erosion and Sediment Control Manual and the City of Portland Stormwater Management Manual. The applicant is proposing the following to meet those standards:

- No visible and measurable sediment or pollutant will exit the site, enter the public right of way, be deposited into any water body, or storm drainage system.
- No deposition or washing soil into a water body or the storm drainage system will occur.
- Public notification of the City's Erosion Control Complaint Hotline will be provided. Signage will be posted in the right-of-way on Old Germantown Road adjacent to the applicant's driveway.

Additionally, the following measures required per the City's ESCM will be implemented:

- Appropriate perimeter sediment control best management practices (BMPs) will be installed on the downslope side of construction activities prior to the commencement of ground disturbance and may include the following:
 - temporary sediment control (silt) fences
 - filtration bags and socks
 - fiber rolls and wattles
 - Gravel or soil stockpiles will have a containment barrier on all four sides of the perimeter to prevent stormwater run-on and material runoff. Barriers may consist of concrete curbing, silt fencing, or other berming material, depending on the activity, size, and resources available.
 - Bulk materials (i.e. gravel or demolition materials from existing greenhouse) will be placed on tarps to prevent leaching of dissolved materials into the ground or into stormwater runoff.
 - No construction materials will be stored in the right-of-way. This criterion is not applicable. (Exhibit A.14)

To meet the City of Portland Stormwater Management Manual, the applicant provided a Storm Water Drainage Control Certificate. The Storm Water Drainage Control Certificate was reviewed and signed by Nate Robinson, Registered Professional Engineer (Exhibit A.8). The Certificate recommends construction of an on-site stormwater drainage system on the parcel to ensure that the rate of runoff from the property for a 10-year/24-hour storm even is no greater than that before development. The system will utilize dry wells located south of the greenhouse.

A condition of approval will be required that these measures be implemented to ensure that OAR 340-041-0345(4) is met to control the nonpoint source pollution resulting from construction and discharge of sediment in stormwater runoff. *As conditioned, this criterion is met.*

(8) Ground disturbing activity shall be done in a manner which will minimize soil erosion, stabilize the soil as quickly as practicable, and expose the smallest practical area at any one time during construction.

Staff: The applicant is proposing to conduct ground disturbing activities in a manner that will minimize soil erosion. The measures include the installation of groundcover to stabilize soil; however, to ensure that this criterion is met, a condition will be required that if soil is exposed that BMPs will be utilized to stabilize the soil. *As conditioned, this criterion is met.*

(9) Development plans shall minimize cut or fill operations and ensure conformity with topography so as to create the least erosion potential and adequately accommodate the volume and velocity of surface runoff.

Staff: The applicant has included an Erosion and Sediment Control plan that illustrates BMPs that are associated with the ground disturbing activities. The plan shows the area that will be cut is in an area that is relatively flat (Exhibit A.3). This will ensure that the least erosion potential is created. The applicant is also proposing to place silt fencing to the west of the

development to ensure that volume and velocity of surface runoff is accommodated. *This criterion is met.*

(10) Temporary vegetation and/or mulching shall be used to protect exposed critical areas during development.

Staff: To ensure that the criterion above it met, a condition will be required that temporary vegetation and/or mulching shall be used if disturbed areas are left exposed. *As conditioned, this criterion is met.*

(11) Whenever feasible, natural vegetation shall be retained, protected, and supplemented;

- (a) A 100-foot undisturbed buffer of natural vegetation shall be retained from the top of the bank of a stream, or from the ordinary high watermark (line of vegetation) of a water body, or within 100 feet of a wetland;**
- (b) The buffer required in subsection (11)(a) may only be disturbed upon the approval of a mitigation plan which utilizes erosion, sediment and stormwater control measures designed to perform as effectively as those prescribed in the most recent edition of the City of Portland Erosion and Sediment Control Manual and the City of Portland Stormwater Management Manual and which is consistent with attaining equivalent surface water quality standards as those established for the Tualatin River drainage basin in OAR 340-041-0345(4).**

Staff: The applicant proposes ground disturbance will occur within the 100 feet of an intermittent stream. As the applicant is encroaching into the 100-foot buffer, the applicant is electing to meet City of Portland Erosion and Sediment Control Manual and the City of Portland Stormwater Management Manual. As discussed under subsection (B)(7) above, the applicant is proposing various measures to ensure that the surface water quality standards as those established for the Tualatin River drainage basin in OAR 340-041-0345(4) are met. Those measures will be required to be implemented as a condition of approval. *As conditioned, this criterion is met.*

(12) Permanent plantings and any required structural erosion control and drainage measures shall be installed as soon as practical.

Staff: The applicant has provided a SEC Environmental Review Report (“Mitigation Plan”) that discusses The Mitigation Plan was written by Sarah Hartung, Senior Ecologist at Environmental Science Associates (ESA) in June 2020 (Exhibit A.2). The Mitigation Plan shows the erosion control measures, drainage measures and required planting. To ensure that those plantings and other measures are installed as soon as practical, a condition will be required that the erosion control measures be implemented at the onset of the ground disturbance and the plantings at the conclusion of ground disturbing activities. *As conditioned, this criterion is met.*

(13) Provisions shall be made to effectively accommodate increased runoff caused by altered soil and surface conditions during and after development. The rate of surface water runoff shall be structurally retarded where necessary.

Staff: The applicant has included an Erosion and Sediment Control plan that illustrates BMPs that are associated with the ground disturbing activities (Exhibit A.3). The BMPs include sediment fencing to the west of the ground disturbing activities. Additionally, filtration bags, filtration socks, fiber rolls, and wattles will be utilized to accommodate increased runoff and structurally retard runoff. *This criterion is met.*

(14) Sediment in the runoff water shall be trapped by use of debris basins, silt traps, or other measures until the disturbed area is stabilized.

Staff: The applicant has included an Erosion and Sediment Control plan that illustrates BMPs that are associated with the ground disturbing activities (Exhibit A.3). The BMPs include sediment fencing to the west of the ground disturbing activities. The sediment fencing will trap sediment in runoff water. *This criterion is met.*

(15) Provisions shall be made to prevent surface water from damaging the cut face of excavations or the sloping surface of fills by installation of temporary or permanent drainage across or above such areas, or by other suitable stabilization measures such as mulching or seeding.

Staff: The applicant is not proposing any large cuts or excavations. As described in the Erosion and Sediment Control narrative, the excavations will primarily be related to leveling and flattening the project area (Exhibit A.14). *This criterion is met.*

(16) All drainage measures shall be designed to prevent erosion and adequately carry existing and potential surface runoff to suitable drainageways such as storm drains, natural water bodies, drainage swales, or an approved drywell system.

Staff: The applicant has included an Erosion and Sediment Control plan that illustrates BMPs that are associated with the ground disturbing activities (Exhibit A.3). The BMPs include sediment fencing to the west of the ground disturbing activities. The applicant's Erosion and Sediment Control narrative also discusses additional measures that include the use of filtration bags, filtration socks, fiber rolls, and wattles to ensure that surface runoff to suitable drainage way locations (Exhibit A.14). The applicant also proposes the construction a drywell to manage stormwater and surface runoff after the project is complete. *This criterion is met.*

(17) Where drainage swales are used to divert surface waters, they shall be vegetated or protected as required to minimize potential erosion.

Staff: The applicant is not proposing to use drainage swales as the work will likely occur in the dryer late spring to early autumn; therefore, this criterion is not applicable. *This criterion is not applicable.*

(18) Erosion and sediment control measures must be utilized such that no visible or measurable erosion or sediment shall exit the site, enter the public right-of-way or be deposited into any water body or storm drainage system. Control measures which may be required include, but are not limited to:

- (a) Energy absorbing devices to reduce runoff water velocity;**

- (b) Sedimentation controls such as sediment or debris basins. Any trapped materials shall be removed to an approved disposal site on an approved schedule;**
- (c) Dispersal of water runoff from developed areas over large undisturbed areas.**

Staff: The applicant has included an Erosion and Sediment Control plan that illustrates BMPs that are associated with the ground disturbing activities (Exhibit A.3). The BMPs include sediment fencing to the west of the ground disturbing activities. The applicant's Erosion and Sediment Control narrative also discusses additional measures that include the use of filtration bags, filtration socks, fiber rolls, and wattles (Exhibit A.14). As proposed, these measures will be located to the west of the development activities to protect the intermittent stream. These measures will ensure that no visible or measureable erosion will exit the site, enter the public right-of-way or be deposited into any waterbody. *This criterion is met.*

- (19) Disposed spoil material or stockpiled topsoil shall be prevented from eroding into water bodies by applying mulch or other protective covering; or by location at a sufficient distance from water bodies or by other sediment reduction measures.**

Staff: The applicant Erosion and Sediment Control plan that illustrates the location of stockpiled topsoil associated with the ground disturbing activities (Exhibit A.3). The stockpiled soil will be located on a flat area between the development activities and the single-family dwelling. As discussed in the applicant's Erosion and Sediment Control narrative, the stockpiled soil will be covered with a tarp and a containment barrier on all four sides of the perimeter of the soil will be erected to prevent stormwater run-on and material runoff (Exhibit A.14). Barriers may consist of concrete curbing, silt fencing, or other berming material. Additionally a silt fence will be installed between the stockpiled soil and the intermittent stream to ensure that there is sufficient protection from the water body. *This criterion is met.*

- (20) Such non-erosion pollution associated with construction such as pesticides, fertilizers, petrochemicals, solid wastes, construction chemicals, or wastewaters shall be prevented from leaving the construction site through proper handling, disposal, continuous site monitoring and clean-up activities.**

Staff: The applicant Erosion and Sediment Control plan that illustrates the location of construction staging and stockpiling of materials associated with the ground disturbing activities (Exhibit A.3). The construction staging and stockpiling of materials will be located on the driveway. As discussed in the applicant's Erosion and Sediment Control narrative, all concrete washout would take place in a lined basin and then disposed of off-site (Exhibit A.14). To ensure that these measures are carried out, a condition of approval will be required. *As conditioned, this criterion is met.*

- (21) Ground disturbing activities within a water body shall use instream best management practices prescribed in the most recent edition of the City of Portland Erosion and Sediment Control Manual.**

Staff: The applicant is not proposing ground disturbing activities within a water body; therefore, this criterion is not applicable. *This criterion is not applicable.*

(22) The total daily number of fill haul truck trips shall not cause a transportation impact (as defined in the Multnomah County Road Rules) to the transportation system or fill haul truck travel routes.

Staff: The applicant is not proposing daily trips of fill; instead, the fill haul truck trips will be spread out through the duration of the ground disturbing activities. *This criterion is not applicable.*

(23) Fill trucks shall be constructed, loaded, covered, or otherwise managed to prevent any of their load from dropping, sifting, leaking, or otherwise escaping from the vehicle. No fill shall be tracked or discharged in any manner onto any public right-of-way.

Staff: To ensure that fill trucks are constructed, loaded, covered, or otherwise managed to prevent any of their load from dropping, sifting, leaking, or otherwise escaping from the vehicle, a condition of approval will be required. *As conditioned, this criterion is met.*

(24) No compensation, monetary or otherwise, shall be received by the property owner for the receipt or placement of fill.

Staff: To ensure that no compensation, monetary or otherwise, shall be received by the property owner for the receipt or placement of fill, a condition of approval will be required. *As conditioned, this criterion is met.*

8.3 § 39.6235 STORMWATER DRAINAGE CONTROL.

(A) Persons creating new or replacing existing impervious surfaces exceeding 500 square feet shall install a stormwater drainage system as provided in this section. This subsection (A) does not apply to shingle or roof replacement on lawful structures.

(B) The provisions of this section are in addition to and not in lieu of any other provision of the code regulating stormwater or its drainage and other impacts and effects, including but not limited to regulation thereof in the SEC overlay.

(C) The provisions of this section are in addition to and not in lieu of stormwater and drainage requirements in the Multnomah County Road Rules and Design and Construction Manual, including those requirements relating to impervious surfaces and proposals to discharge stormwater onto a county right-of-way.

(D) The stormwater drainage system required in subsection (A) shall be designed to ensure that the rate of runoff for the 10-year 24-hour storm event is no greater than that which existed prior to development at the property line or point of discharge into a water body.

Staff: The applicant is proposing a 1,300 square foot PV system and 920 square foot accessory structure. The total new impervious services will total 2,220 square feet, which exceeds the 500 square foot threshold above. Therefore, the applicant will need to install a stormwater drainage system.

As proposed, the applicant will install a dry well that is located to the south of the accessory structure. The dry well is designed to ensure that the rate of runoff for a 10-year 24-hour storm event is managed so that the discharge from the property is no greater than that which existed

prior to development. This system was reviewed and signed by Nate Robinson, Registered Professional Engineer (Exhibit A.8). The Transportation Division has also reviewed the proposal and has no concerns about new discharges into the public right-of-way (Exhibit A.9). *This criterion is met.*

* * *

9.0 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Significant Environmental Concern permit and an Erosion and Sediment Control permit to establish accessory structures (greenhouse and fencing for a garden area) and photovoltaic alternative energy production facility in the Rural Residential (RR) zone. This approval is subject to the conditions of approval established in this report.

10.0 Exhibits

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

Exhibits with a “*” after the exhibit # have been included as part of the mailed decision. Those exhibits have been reduced to a size of 8.5” x 11” for mailing purposes. All other exhibits are available for review in Case File T2-2020-13504 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	General Application Form	07/08/2020
A.2	30	SEC Environmental Review Report	07/08/2020
A.3	6	Appendix A – Figures	07/08/2020
A.4	6	Appendix B – Site Photos	07/08/2020
A.5	2	Appendix C – Vegetation Plots	07/08/2020
A.6	6	Appendix D – Architectural Drawings and Product Literature	07/08/2020
A.7	1	Septic Review Certification	07/08/2020
A.8	28	Stormwater Drainage Control Certificate	07/08/2020
A.9	31	Transportation Planning Review	07/08/2020
A.10	3	Fire Service Agency Review	07/08/2020
A.11*	1	Area Map	07/08/2020
A.12*	1	Site Plan	07/08/2020
A.13	2	Statutory Warrant Deed recorded as Instrument #2013-43436 on March 29, 2013	07/08/2020

A.14	8	Erosion and Sediment Control Narrative	07/08/2020
A.15*	1	Revised Figure 3 Mitigation and Monitoring Map	12/11/2020
'B'	#	Staff Exhibits	Date
B.1	2	Division of Assessment, Recording, and Taxation (DART): Property Information for 1N1W09C -01001 (#R649795610)	07/08/2020
B.2	1	Division of Assessment, Recording, and Taxation (DART): Map with 1N1W09C -01001 (#R649795610) highlighted	07/08/2020
B.3	7	Pre-filing Meeting Notes – PF-2019-12167	07/08/2020
B.4	1	Aerial Photo 2019 Summer	11/24/2020
B.5	1	Aerial Photo 2003 Summer	11/24/2020
B.6	1	Aerial Photo 2005 Summer	11/24/2020
B.7	1	Aerial Photo 2006 Summer	11/24/2020
B.8	1	Aerial Photo 2007 Summer	11/24/2020
B.9	4	Voluntary Compliance Agreement	11/25/2020
B.10	1	Site Plan from 2000 Zoning Review	11/25/2020
B.11	2	BP-2017-6603 Building Permit Review and Site Plan	11/25/2020
B.12	1	Partition Plat No. 1999-141	11/25/2020
B.13	2	Well Report MULT_60625	11/25/2020
'C'	#	Administration & Procedures	Date
C.1	1	Complete letter (day 1)	08/07/2020
C.2	4	Opportunity to Comment and mailing list	10/05/2020
C.3	55	Administrative Decision (Full Decision) and mailing list	12/18/2020
C.3	15	Administrative Decision (Short Decision) and mailing list	12/18/2020