





**Applicable Approval Criteria:**

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

**Multnomah County Code (MCC):** General Provisions: MCC 39.1515 Code Compliance and Applications, MCC 39.6850 Dark Sky Lighting Standards

Lot of Record: MCC 39.3005 Lot of Record – Generally, MCC 39.3090 Lot of Record – Rural Residential Zone

Rural Residential (RR) Zone: MCC 39.4360(F) Allowed Uses, MCC 39.4375 Dimensional Requirements and Development Standards, (C), (D), (F) & (H)

Significant Environmental Concern: MCC 39.5520 Application for SEC Permit, MCC 39.5860 Criteria for Approval of SEC-h Permit

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 [MCC 39.1185(B)]:

- a. When the construction has not commenced within two (2) year of the date of the final decision. Commencement of construction shall mean actual construction of the foundation or frame of the approved structure.
  - i. For purposes of Condition 1.a, notification of commencement of construction will be given to Multnomah County Land Use Planning Division at [land.use.planning@multco.us](mailto:land.use.planning@multco.us) a minimum of seven (7) days prior to date of commencement. Work may commence once notice is completed. Commencement of construction shall mean actual construction of the foundation or frame of the approved structure.
- b. When the structure has not been completed within (4) years of the date of commencement of construction. Completion of the structure shall mean completion of the exterior surfaces(s) of the structure and compliance with all conditions of approval in the land use approval.

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

2. Prior to land use sign-off for building plan check, the property owners or their representative shall:
  - a. Record pages 1 through 5 and Exhibit A.3 and A.5 of this Notice of Decision with the County Recorder. The Notice of Decision shall run with the land. Proof of recording shall be made prior to the issuance of any permits and shall be filed with the Land Use Planning Division. Recording shall be at the applicant's expense. [MCC 39.1175]
  - b. 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. Demonstrate compliance with the County's Ground Disturbing Activity and Stormwater regulations of MCC 39.6200 through 39.6235.
  - d. Provide a Planting Plan showing the location of the trees to be removed and the location of the seven (7) trees to be planted and the area where blackberry and ivy is to be removed and shrubs planted pursuant to the Wildlife Conservation Plan (Exhibit A.5). The Planting Plan shall state that the "All Nuisance Plants are to be removed by hand," as stated in (Exhibit A.13).
  - e. The property owners shall acknowledge in writing that they have read and understand the conditions of approval and intend to comply with them. A separate document containing the conditions of approval has been provided to assist in this acknowledgement. The signed document shall be returned to Marisol Cervantes at [marisol.cervantes@multco.us](mailto:marisol.cervantes@multco.us). [MCC 39.1170(B)]
  - f. Revise the building permit plans to provide lighting details that demonstrate that all exterior lighting complies with MCC 39.6850. The location of the lighting shall be shown on the site plan and on the building elevations. 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 39.6850]
3. As an on-going condition, the property owner shall comply with the following:
  - a. The 2,400 sq. ft. 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. No plumbing, cooking facilities, a bed or a closet shall be installed in the accessory structure without first obtaining approval through Land Use Planning. [MCC 39.4360(F)(2)]
  - b. 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 and the mitigation planting areas on the subject property. [MCC 39.5860(B)(7) and (C)(5)].
  - c. No new interior fencing shall be constructed on the subject property without first obtaining a new SEC-h permit to modify the Wildlife Conservation Plan submitted as part of this application.
4. Within two (2) years of this land use decision becoming final, the property owner or their representative shall:
  - a. Remove all existing fencing within the forested areas except the fencing within the 30-ft front yard setback.
  - b. Remove all nuisance plants throughout the property.
  - c. Remove all Himalayan blackberry and English Ivy within the riparian zone as shown on (Exhibit A.5)
  - d. Plant a total of 75 one-gallon shrubs consisting of a mixture of beaked hazelnut, red huckleberry, and snowberry within the riparian area where the blackberry and English Ivy plants were removed (Exhibit A.5).
  - e. Plant seven 6-ft tall native trees in the open area as shown on (Exhibit A.5), two trees each of red cedar, big leaf maple and Douglas –fir shall be planted.
5. Upon completion of the nuisance plant removal and plantings, the property owner shall contact [land.use.planning@multco.us](mailto:land.use.planning@multco.us) and request an inspection.
6. The property owner shall monitor the mitigation plantings and shall replace any trees or shrubs that die. Trees or shrubs that die or become diseased shall be replaced in the next planting season with the same or similar native species to the plant(s) lost. The required vegetation shall remain on the subject property in a living state unless permission is given by Land Use Planning to cease their replacement. [MCC 39.5860(C)(5)]

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

1. Read your land use decision, the conditions of approval and modify your plans, if necessary, to meet any condition that states, “Prior to land use sign-off for building plan check...” Be ready to demonstrate compliance with the conditions.
2. Contact Right-of-Way Permits at [row.permits@multco.us](mailto:row.permits@multco.us) to review your plans, obtain your access permit, and satisfy any other requirements. You may schedule an appointment at <https://multco.us/transportation-planning/webform/right-way-appointment-request/> or leave a message at 503-988-3582. Failure to make an appointment with County Right-of-Way will result in delaying your building plan review and obtaining building permits.
3. Contact Marisol Cervantes, Planner, at 503-988-9452 or [Marisol.Cervantes@multco.us](mailto:Marisol.Cervantes@multco.us), **for an appointment** for review of the conditions of approval and to sign the building permit plans. Please ensure that any items required under, “At the time of land use sign-off for building plan check...” are ready for land use planning review. Land Use Planning must sign off on the plans and authorize the building permit before you can go to the Building Department.

The above must be completed before the applicant can obtain building permits from the City of Gresham. Please check with the Gresham Building Department whether you must submit digital plans. If Gresham allows paper plans, you will need three (3) sets each of the site plan and building plans are needed for building permit sign off. At the time of building permit review, Land Use Planning may collect additional fees, including an erosion control inspection fee, if applicable.

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

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

## **Findings of Fact**

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

### **1.0 PROJECT & PROPERTY DESCRIPTION:**

**Staff:** The applicant requests a Significant Environmental Concern permit for a new 2,400 square foot accessory building and a Lot of Record Verification. The subject property is located about two miles from the Urban Growth Boundary on Division Dr. The subject property has a 1978 stick built home and is surrounded by residential, and farm properties.

Through the Lot of Record Verification process, the County reviews the creation or reconfiguration of each parcel, lot, or unit of land involved in the request. The County then verifies that the creation or reconfiguration of the parcel, lot, or unit of land satisfied all applicable zoning laws and all applicable land division laws in effect on the date of its creation or reconfiguration. If the parcel, lot, or unit of land met all applicable zoning laws, and applicable land division laws, it may be determined to be a Lot of Record.

### **2.0 GENERAL PROVISIONS:**

#### **2.1 § 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:**

**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.

#### **2.2**

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.

The subject property does not have any active compliance cases with the Code Compliance office. Staff is not aware of any compliance issues on the subject property at this time.

### **MCC 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.**

**Staff:** A condition of approval is included in this decision requiring the applicant to demonstrate compliance with the Dark Sky Lighting Standards prior to building plan review. *As conditioned, these criteria are met.*

## **3.0 LOT OF RECORD:**

### **3.1 MCC 39.3005 Lot of Record - Generally**

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

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

**(a) “Satisfied all applicable zoning laws” shall mean: the parcel, lot, or group thereof was created and, if applicable, reconfigured in full compliance with all zoning minimum lot size, dimensional standards, and access requirements.**

**(b) “Satisfied all applicable land division laws” shall mean the parcel or lot was created:**

- 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**

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**Staff:** To qualify as a Lot of Record, the subject property, when created or reconfigured, must meet (B) of this section and meet the Lot of Record standards set forth in the Rural Residential (RR) zoning district. More specifically, section (B) above requires demonstration that subject property (a) satisfied all applicable zoning laws and (b) satisfied all applicable land divisions’ laws.

The applicant provided a warranty deed recorded in 1972 (Exhibit A.11) that contains a legal description that matches the current legal description for the subject property (Exhibit B.2). The subject property was zoned ‘F-2’ in 1972 per the historic County Zoning Maps (Exhibit B.3). In 1972, the F-2 zone had a minimum lot size requirement of 2 acres (Exhibit B.4). The subject property in 1972 was 2 acres and remains in the same configuration as described in the current Warranty Deed recorded in 2003 (Exhibit B.2) and remains 2 acres in size. Based on the above, the subject property satisfied the applicable zoning laws of the F-2 zone in 1972.

In 1972, the process to divide a property required a deed or sales contract dated and signed by the parties to the transaction. The document needed to be in recordable form or recorded with the County Recorder prior to October 19, 1978. As evidenced by the warranty deed recorded in 1972 (Exhibit A.11) the applicable land division laws were satisfied. *The subject property satisfied all applicable land division laws in 1969.*

### **3.2 MCC 39.3090 Lot of Record – 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.**

**(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:** Subsection (C) are for information purposes. The subject property is a Lot of Record and is subject to (B) above. The subject property met all applicable zoning and land division laws at the time of its creation. It may be occupied by any allowed, review or conditional use when in compliance with the other requirements of this district provided it remains a Lot of Record. The subject property is in the same configuration as described in the 1972 warranty deed (Exhibit A.11).

**(D) The following shall not be deemed to be a lot of record:**

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

**Staff:** The subject property is not an area of land described as a tax lot solely for assessment and taxation purposes, an area of land created by the foreclosure of a security interest, or an area of land created by court decree. *Criteria met.*

*Based on the findings in 3.1 & 3.2, the subject property is a single Lot of Record.*

## **4.0 RURAL RESIDENTIAL (RR) ZONE:**

### **4.1 MCC 39.4360 Allowed Uses**

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**(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 2,400 square foot accessory building that will be used for personal storage of tractor, tools to maintain the property and lawn mower (Exhibit A.2 & Exhibit A.3). The use is customarily accessory to the existing residential use on the subject property and will be located at the northeast corner of the subject property. *This criterion is met.*

**(2) The Accessory Structure shall not be designed or used, whether temporarily or permanently, as a primary dwelling, accessory dwelling unit, apartment, guesthouse, housing rental unit, sleeping quarters or any other residential use.**

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

**(4) The Accessory Structure shall not contain:**

- (a) More than one story;**
- (b) Cooking Facilities;**

- (c) A toilet;
- (d) Bathing facilities such as a shower or bathing tub;
- (e) A mattress, bed, Murphy bed, cot, or any other similar item designed to aid in sleep as a primary purpose, unless such item is disassembled for storage; or
- (f) A closet built into a wall.

**Staff:** The proposed accessory building does not contain plumbing, cooking facilities, a bed nor a closet. The floor plan does not show the above improvements see (Exhibit A.6). A condition of approval will be included to ensure ongoing compliance. *As conditioned, these criteria are met.*

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

**Staff:** 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.*

**4.2 MCC 39.4375 Dimensional Requirements and Development Standards**

**(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.**

**Staff:** The proposed shop will be approximately 16 feet in height from the ground to the roof ridge (Exhibit A.6, Pages 4 & 5). The accessory structure is set back 30 feet from the rear property line, 10 feet from the Eastern side property line, 350 feet from the front property line, and 147 feet from the Western property line (Exhibit A.3, Page 2). The proposed accessory structure meets the minimum yard dimensions, criteria (2) and (3) do not apply. *Criteria met.*

**(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:** Transportation Planning has indicated that no additional right-of-way is needed for SE Division Drive at this location (Exhibit A.10). *Criteria 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.**

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

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

**Staff:** The applicant provided a Septic Certification form showing the septic system and drain-field on the subject property (Exhibit A.7). The applicant also provided a Storm Water Certificate (Exhibit A.9 & Exhibit A.10). Scott Bowman a Registered Professional Engineer signed the Storm Water Certificate (Exhibit A.9). The Storm Water Report was reviewed and signed by David R. Gorman a Registered Professional Engineer (Exhibit A.10). The Storm Water report proposes a storm water infiltration system of a 48-inch diameter 5-foot deep drywell to accept the storm water runoff from the new shop (Exhibit A.3 & A.10). The proposed shop will create 2,400 square feet of new impervious surface. *Criteria met.*

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

**Staff:** A condition of approval is included in this decision requiring the applicant to demonstrate compliance with the Dark Sky Lighting Standards prior to building plan review. *As conditioned, these criteria are met.*

**5.0 SIGNIFICANT ENVIRONMENTAL CONCERN (SEC-H):**

## 5.1 MCC 39.5520 Application for SEC Permit

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

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

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**Staff:** The applicant provided the required information (Exhibit A.1 – A.10). *Criterion met.*

## 5.2 MCC 39.5860 Criteria for approval of SEC-H Permit – Wildlife Habitat

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

**(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 provided the required information as noted above (Exhibit A.1 - A.10). *Criterion met.*

**(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:** The proposed shop development is located in a non-forested area in the northeast corner of the subject property (Exhibit A.3 & A.5). No additional areas will be cleared as part of this development. *Criterion 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 proposed development is located 350 +/- feet from SE Division Drive, a public road providing access to the site (Exhibit A.3). *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 applicant states that the driveway is 350 feet in length from the public road (Exhibit A.3). As measured from the Aerial Map the driveway to the proposed development measures approximately 420 feet in length. There is only one driveway accessing the subject property as shown in the site plan. *This criterion is 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.**

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**Staff:** The access road serving the development off of SE Division Dr. is located within 100 feet of the western? Or eastern? Or both side property lines. The property to west has an existing driveway within 36 +/- feet of the subject property access. Additionally, as measured on the Aerial Map and shown on the Wildlife Conservation Plan (Exhibit A.5, Page 2) the access road to this property is approximately 44 feet from the adjacent property to the south. *This criterion is met.*

**(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 west has structures and development areas within 200 feet of the common side property line. As measured on the site plan (Exhibit A.3, Page 2) the proposed development is 147 feet from the common property line. The adjacent property to the west has a structure approximately 45 feet from the common property line. *This criterion is met.*

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

**(a) Fences shall have a maximum height of 42 inches and a minimum 17 inch gap between the ground and the bottom of the fence.**

**(b) Wood and wire fences are permitted. The bottom strand of a wire fence shall be barbless. Fences may be electrified, except as prohibited by County Code.**

**(c) Cyclone, woven wire, and chain link fences are prohibited.**

**(d) Fences with a ratio of solids to voids greater than 2:1 are prohibited.**

**(e) Fencing standards do not apply in an area on the property bounded by a line along the public road serving the development, two lines each drawn perpendicular to the principal structure from a point 100 feet from the end of the structure on a line perpendicular to and meeting with the public road serving the development, and the front yard setback line parallel to the public road serving the development.**

**(f) Fencing standards do not apply where needed for security of utility facilities.**

**Staff:** The applicant is not proposing any new fencing as part of this development. *These criteria are not applicable at this time.*

**(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:** The Wildlife Conservation Plan (Exhibit A.5, Page 6) suggest removing all nuisance plants throughout the subject property and proposes 75 shrubs to be planted within the riparian area where the nuisance plant removal will occur. Additionally 6' tall native trees are to be planted within the non-forested area as well. A condition will be required that nuisance plants in MCC 39.5580 Table 1 shall not be planted in addition to being kept removed. *As conditioned, this criterion is met.*

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

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

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

**Staff:** The applicant has not met one of the basic development standard of (B). They have chosen not to construct the new accessory building within 200 feet of the road so that no trees need to be removed within the first 200 feet of the property. Where the proposed development will occur on the property is in a non-forested area at the rear of the property. No additional trees will need to be removed for the proposed development. The development will occur within 100 feet of the existing home. The environmental consultants finds the front of the property provides significant wildlife habitat near an unmapped riparian area.

They find intrusion into this front treed area would create a higher detrimental impact to the wildlife habitat. As the subject property is physically able to meet the basic requirements, the applicant will need to demonstrate the proposed Wildlife Conservation Plan will have less detrimental impact on the forested wildlife habitat than complying with the development standards of (B) and provide mitigation for the deviation.

**(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 has elected to provide a wildlife conservation plan (Exhibit A.5) that demonstrates satisfaction with the criteria in MCC 39.5860(C)(3) instead of complying with the basic development standards in (B). Their environmental consultants have stated that the proposed placement of the development in the non-forested area in the northeastern area of the subject project will have less detrimental impact on wildlife habitat than if the development standards were followed. In addition, the Wildlife Conservation Plan prepared by Daphne Day from Turnstone Environmental Consultants recommends that in the forested area towards the front of the property all nuisance plants should be removed and native shrubs be planted. Daphne suggests 75 shrubs to be planted of beaked hazelnut, red huckleberry, and snowberry in order to enhance the riparian area.

Daphne Day recommends planting of 6-ft tall native trees at a one-to-one ratio in the open area for the previous diseased trees removed. The applicant has indicated in their narrative (Exhibit A.5) that no trees will be removed as part of this development.

Mitigation will occur to enhance the riparian wildlife area approximately 0.73 acres. Fencing around the perimeters of the subject property in the forested area will be removed, no proposed fencing will occur.

The removal of the fencing and planting of native trees and plants will enhance wildlife habitat functions and passage through the property. Through the implementation of the Wildlife Conservation Plan from Turnstone Environmental, the wildlife habitat at the front of

the property will be enhanced. A condition of approval will be required to ensure that the suggested measures are undertaken. *As conditioned, these criteria are met.*

## 6.0 PUBLIC COMMENT:

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

As staff did not receive any public comments, this decision has satisfied the requirements of MCC 39.1105.

## 7.0 CONCLUSION:

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Significant Environmental Concern Wildlife habitat and Lot of Record Verification to establish a 40-ft x 60-ft accessory building to be used as a workshop in the Rural Residential zone. This approval is subject to the conditions of approval established in this report.

## 8.0 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 T2-2021-14321 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	General Application Form	02.09.2021
A.1a	1	Property Owners Consent	02.09.2021
A.2	2	Applicant's Narrative	02.09.2020
A.3*	1	Site Plan	02.09.2021
A.4	9	Significant Environmental Concern for Wildlife Habitat (SEC-h) worksheet	02.09.2021
A.5	6	Wildlife Conservation Plan	02.09.2021

A.6	13	Pole Barn Plans and Elevations	02.09.2021
A.7	8	Septic Review Certification	02.09.2021
A.8	4	Fire Service Agency Review Form	02.09.2021
A.9	2	Stormwater Certificate	02.09.2021
A.10	5	Transportation Review Form	02.09.2021
A.11	3	Warranty Deed recorded on August 14, 1972 in Book 875, Page 875	02.09.2021
A.12	1	Subject Property Aerial photo	02.09.2021
A.13	2	Applicant email regarding Nuisance Plant removal conducted by hand	07.02.2021
<b>'B'</b>	<b>#</b>	<b>Staff Exhibits</b>	<b>Date</b>
B.1	3	Division of Assessment, Recording, and Taxation (DART): Property Information for R341624 (Alt Acct#R994080350)	02.09.2021
B.2	2	Statutory Warranty Deed #2003-022123 recorded on January 30, 2003	06.01.2021
B.3	1	Historical Zoning Map for zoning of 1S4E08BD	06.01.2021
B.4	1	F-2 Zoning Regulations from Zoning Ordinance 100 as amended May 21, 1968 (Districts)	06.01.2021
<b>'C'</b>	<b>#</b>	<b>Administration &amp; Procedures</b>	<b>Date</b>
C.1	1	Complete Letter	03.09.2021
C.2	9	Opportunity to Comment	04.02.2021
C.3	18	Administrative Decision	07.06.2021

