

NOTICE OF DECISION



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Application for an Accessory Use Determination and a Significant Environmental Concern for Wetlands (SEC-w) Permit

Case File: T2-2024-0022

Applicant: Marn Heggen

Proposal: Request to retroactively permit three (3) accessory structures and review grading that was completed within the Significant Environmental Concern for Wetlands (SEC-w) overlay without county review. An Accessory Use determination is required to review the “Gym,” which is labeled with a ‘6’ on the attached site plan and shown in the attached floor plan. The applicant also proposes mitigation for development in the SEC-w.

Location: 18611 NW Sauvie Island Road

Property ID # R324976

Map, Tax lot: 2N1W17 -00500

Alt. Acct. # R971170130

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

Overlays: Significant Environmental Concern for Wetlands (SEC-w), Flood Hazard (FH)

Decision: **Approved with Conditions**

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is March 20, 2025 at 4:00 pm.

Opportunity to Review the Record: The complete case file and all evidence associated with this application is available for review by contacting LUP-comments@multco.us. Paper copies of all documents are available at the rate of \$0.46/page.

Opportunity to Appeal: The appeal form is available at www.multco.us/landuse/application-materials-and-forms. Email the completed appeal form to LUP-submittals@multco.us. An appeal requires a \$250.00 fee and must state the specific legal grounds on which it is based. This decision is not appealable to the Land Use Board of Appeals until all local appeals are exhausted

Issued by:

Anna Shank-Root, Planner

For: Megan Gibb,
Planning Director

Date: March 6, 2025

Instrument Number for Recording
Purposes: # 2021-131523

Vicinity Map

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Applicable Approval Criteria:

Multnomah County Code (MCC):

General Provisions: MCC 39.1250 Code Compliance and Applications, MCC 39.2000 Definitions, MCC 39.3005 Lot of Record – Generally, MCC 39.3080 Lot of Record – Multiple Use Agriculture – 20 (MUA-20), MCC 39.6235 Stormwater Drainage Control, MCC 39.6850 Dark Sky Lighting Standards

Multiple Use Agriculture – 20 (MUA-20)/Accessory Use Determination: MCC 39.4315(H) Review Uses: Structures...which do not meet the “accessory structures” standard in MCC 39.4310 Allowed Uses, but which meet the ... provisions [of (H)(1)-(7)], MCC 39.4325 Dimensional Standards and Development Requirements (C) Minimum Yard Dimensions, (G) On-site sewage disposal, storm water/drainage control, [and]water systems, (J) Exterior Lighting

Significant Environmental Concern for Wetlands (SEC-w) Permit: 39.5510 Uses; SEC Permit Required, 39.5520 Application for SEC Permit, 39.5525 Applicable Approval Criteria, 39.5700-Criteria for Approval of SEC-w Permit

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

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.

1. **Permit Expiration** – This land use permit shall expire as follows:
 - a. Within one (1) year of the date of the final decision when implementation of the mitigation plan in compliance with Exhibit A.20 has not commenced. [MCC 39.1170(A), MCC 39.1185(B), and MCC 39.1185(E)]
 - i. For the purposes of 1.a, commencement of implementation of the mitigation plan shall mean actual planting of trees and other vegetation.
 - ii. For purposes of 1.a, notification of commencement of construction shall be given to Multnomah County Land Use Planning Division a minimum of seven (7) days prior to the date of implementation. Notification shall be sent via email to LUP-submittals@multco.us with the case no. T2-2024-0022 referenced in the subject line.
 - i. Within one (1) years of the date of implementation of the mitigation plan when conditions under 5.c has not been completed. [MCC 39.1170(A), MCC 39.1185(B), and MCC 39.1185(E)]
 - ii. For purposes of 1.a, the property owner shall provide building permit status in support of completion of Condition #5.b and demonstrate compliance with all conditions of approval. The written notification and documentation of compliance with the conditions shall be sent to LUP-submittals@multco.us with the case no. T2-2024-0022 referenced in the subject line. [MCC 39.1185]
- 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. 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. [MCC 39.1170(B)]
 3. This permit authorizes the following development that occurred without review by the County:
 - a. The construction of three (3) accessory structures labeled as barn, gym, and shed on Exhibit A.3.
 - b. Development that occurred in the Significant Environmental Concern for Wetlands (SEC-w) overlay without review by the County.
 4. **Prior to submitting Building Plans for Zoning Review**, the property owner(s) or their representatives shall:
 - a. Record pages 1 through 5 and Exhibit A.20 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. Acknowledge in writing that they have read and understand the conditions of approval and intend to comply with them. A Letter of Acknowledgement has been provided to assist you. The signed document shall be submitted at the time of Zoning Plan Review [MCC 39.1170(A) & (B)]
 - c. 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. [MCC 39.4310(F)(5), MCC 39.4315(H)(7), MCC 39.8860]
 - d. Demonstrate compliance with the County's Flood Hazard regulations by obtaining a Flood Development Permit. [MCC 39.1250 and MCC 39.5015]
 - e. Provide a post-mitigation report to LUP-submittals@multco.us with the case no. T2-2024-0022 referenced in the subject line that mitigation is complete. The report shall be prepared and signed by Turnstone Environmental, or someone of similar educational and vocational training. The post-mitigation report shall confirm the mitigation has been completed in compliance with approved designs. Any variation from approved designs or conditions of approval shall be clearly indicated. Justification must be provided detailing why the deviation is needed and that the quantity of trees/shrubs will result in enhancement of the resource values of the wetland area. 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 planting.
 - ii. A narrative that describes any deviation from the approved plans. [MCC 39.5700(D)]
5. **When submitting Building Plans for Zoning Review**, the property owner(s) or their representatives shall:
- a. Provide the Letter of Acknowledgement, recorded Notice of Decision, and Recorded Covenant meeting MCC 39.8860 as required in Condition 3.a through 3.c. and 3.e. [MCC 39.1170(A) & (B)]
 - b. Provide photographic evidence and documentation that the following design changes shown in the plans and materials for this application have been completed [MCC 39.4315(H)]
 - i. Stairs removed the from the gym structure.
 - ii. All kitchen appliances removed from the gym.
 - iii. Gas line connections, and any 220V outlets from the area that previously served as a kitchen area capped and/or removed and inspected by City of Portland.
 - c. Provide elevation drawings for the gym showing the height of the structure. [MCC 39.4325(C)]
 - d. Submit a Stormwater Certificate meeting the requirements of MCC 39.6235. [MCC 39.4325(E)]
 - e. Provide a lighting plan showing the locations of all exterior lights and indicating that the fixture specifications will meet the requirements of MCC 39.6850. [MCC 39.4325(F)]
6. **Prior to issuance of the Certification of Occupancy**, the property owner(s) or their representatives shall:

- a. Request an inspection of the gym by the Multnomah Land Use Planning inspector to confirm that all design changes required by this decision have been completed. [MCC 39.4315(H)]
7. **As an on-going condition**, the property owner(s) shall:
- a. Not use the accessory buildings whether temporarily or permanently, as a primary dwelling, accessory dwelling unit, apartment, guesthouse, housing rental unit, sleeping quarters, or any other residential use. [MCC 39.4310(F)(2) and MCC 39.4315(H)(1)]
 - b. Not install or construct the following features in the gym: Cooking Facilities without first obtaining a Land Use Planning approval. [MCC 39.4310(F)(4) and MCC 39.4315(H)(4)]
 - c. Not install or construct the following features in the accessory buildings labeled as barn and shed: Cooking Facilities; toilet(s); Bathing facilities such as a shower or bathing tub, or closet(s) built into a wall without first obtaining a Land Use Planning approval. [MCC 39.4310(F)(4) and MCC 39.4315(H)(4)]
 - d. Not have 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 [MCC 39.4310(F)(4) and MCC 39.4315(H)(5)]

Note: Land Use Planning must sign off on the building plans before you can go to the Building Department. When ready to submit Building Plans for Zoning Review, 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 submitting Building Plans for Zoning Review...” Be ready to demonstrate compliance with the conditions.
2. You will need to provide a copy of your Transportation Planning Review (TPR) sign-off with your building plans. If you have not yet received sign-off, visit the following webpage for instructions on how to request a review of your plans: <https://www.multco.us/planreview>. Failure to obtain TPR sign-off of your plans will result in delaying your zoning review.
3. Visit <https://www.multco.us/landuse/submitting-building-plan> for instructions regarding the submission of your building plans for zoning review and review of conditions of approval. Please ensure that any items required under, “When submitting Building Plans for Zoning Review...” are ready for review. Land Use Planning collects additional fees at the time of zoning review.

Once you have obtained an approved zoning review, application for building permits may be made with the City of Portland.

<p>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.</p>

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: Request to retroactively permit three (3) accessory structures and review grading that was completed within the Significant Environmental Concern for Wetlands (SEC-w) overlay without county review. An Accessory Use determination is required to review the “Gym,” which is labeled with a ‘6’ on the attached site plan and shown in the attached floor plan.

2.0 Property Description & History:

Staff: This application is for 18611 NW Sauvie Island Road (“subject property”). The subject property is located adjacent to NW Sauvie Island Road and the Multnomah Channel in unincorporated west Multnomah County in the area known as the Sauvie Island rural area. The subject property is zoned for Multiple Use Agriculture - 20 (MUA-20). The 15.56-acre property contains a 1956 single-family dwelling with an attached garage, an accessory structure that is proposed to be used as a gym by this application but that was previously an unpermitted residential structure, a pergola, a barn, and a shed. There is also a play structure identified on the site plan that is proposed to be removed. There are areas of Significant Environmental Concern for Wetlands (SEC-w) and Flood Hazard (FH) on the subject property.

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 (Exhibit C.4). Staff received five (5) public comments via email during the 14-day comment period. Each comment is summarized below.

3.1 **Lora Creswick, property owner located at 15203 NW Burlington Ct, provided comments via email on October 1, 2024 (Exhibit D.1)**

Staff: Lora Creswick expressed concerns about the structure being approved without permits or inspection, and a potential for the space to be used as a residential rental or venue space. Staff wrote a follow-up email to commenters providing clarification on the scope of the project, and the multi-step permitting process that would result in the property coming into full compliance. Lora indicated after that email that she did not have further concerns.

3.2 **Mark Greenfield, property owner located at 14745 NW Gillihan Road provided comments via email on October 3, 2024 (Exhibit D.2)**

Staff: Mark Greenfield expressed concerns about the sufficiency of the documentation that was provided with the Opportunity to Comment notice, as well as the accessory structure features exceeding the allowed use provisions. Staff wrote a follow-up email to commenters providing clarification on the scope of the project, and the multi-step permitting process that would result in the property coming into full compliance. No response to this email was received from Mark. The features exceeding the allowed use provisions are analyzed by the Accessory Use Determination in section 7.0 of this report.

3.3 Susan Bachhuber, resident of 18600 NW Sauvie Island Road, provided comments via email on October 3, 2024 (Exhibit D.3)

Staff: Susan Bachhuber expressed support for the approval of the gym structure.

3.4 Kristin Ford, former owner of 18611 NW Sauvie Island Road, provided comments via email on October 3, 2024 (Exhibit D.4)

Staff: Kristin Ford expressed support for the approval of the gym structure.

3.5 Janet Eakin, who indicated that they are a neighbor, provided comments via email on October 7, 2024 (Exhibit D.5)

Staff: Janet Eakin expressed support for the approval of the gym structure.

4.0 Code Compliance and Applications Criteria:

4.1 § 39.1250 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 or zoning review approval of development or any other approvals authorized by this code 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**

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.

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.

There is an open compliance case, UR-2020-13063, that verified allegations that multiple accessory structures had been placed without permits, including one that was being used as a second dwelling, and that unpermitted grading had occurred within a wetland. In the notes for PF-2022-15490 (Exhibit B.5), staff identified that the first step to address the violations were a Type II Accessory Use Determination for the accessory structure that was previously used as a second dwelling and is proposed in this application to remain on site for use as a gym, and a Type II SEC-w permit to retroactively review the grading that occurred within the SEC-w overlay. Conditions of approval will be established to require that all structures that will remain on the property receive appropriate Zoning and Building Permit reviews. This application, a Type II application, is the first part of a sequencing of permits needed to resolve the code compliance issues relating to non-

permitted development. In completing the required Conditions of Approval, the applicant will return the subject property into full compliance with Multnomah County Code.

This sequencing of permits and the conditions of approval established by this permit will result in the property coming into full compliance with all applicable provisions of the Multnomah County Zoning Code. *This criterion is met.*

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.

* * *

MCC 39.3080 Lot of Record – Multiple Use Agriculture 20 (MUA-20)

(A) In addition to the standards in MCC 39.3005, for the purposes of the MUA-20 district the significant dates and ordinances for verifying zoning compliance may include, but are not limited to, the following:

* * *

Staff: A Lot of Record decision was made in LE 12-89 (Exhibit B.4). The applicant has provided the current deed for the subject property as Exhibit A.7, which demonstrates that the property remains in its lawful configuration. *Criteria met.*

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

6.1 MCC 39.4310 ALLOWED USES

The following uses and their accessory uses are allowed, subject to all applicable supplementary regulations contained in MCC Chapter 39.

(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:**
 - (i) Swimming pools, pool houses, hot tubs, saunas, and associated changing rooms;**
 - (j) Sport courts;**
 - (n) Similar structures.**

Staff: The applicant proposes that the existing structure that has been previously used as an accessory dwelling unit be retained for use as a personal gym. (F)(1) allows for uses such as sports

courts and swimming pool, which can be used for recreational and exercise uses, and also contains an allowance for structures that are similar to the listed uses. An accessory gym/physical fitness space is similar to a sport court or swimming pool use, as it will allow for similar opportunities for recreational and exercise as would a sport court or swimming pool. *Criterion met.*

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

Staff: Since the structure was initially constructed without permits to be a secondary residential structure, certain design changes have been required, such as removing the stairs to prevent regular access to the lofted storage area, and decommissioning all kitchen appliances, gas line connections, and 220V outlets from the area that previously served as a kitchen area. These design changes will be made conditions of approval, and a Land Use Planning inspection will be required prior to the Certificate of Occupancy to ensure that all conditioned changes have been made. A covenant, as described in MCC 39.8860 preventing the occupation of the structure as a dwelling also serves to prevent unauthorized use of the structure. *As conditioned, this criterion is met.*

- (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 structure will contain two sinks, two stories, a toilet, a shower, and two closets built into walls (Exhibits A.16 and A.17). Per MCC 39.4310(F)(7), the Review Use provisions have been reviewed in Section 7.0 of this report.

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

39.8860- CONDITION OF APPROVAL -ACCESSORY BUILDINGS. Prior to issuance of any development permit involving an Accessory Building, the property owner shall record a covenant with County Records that states that the owner understands and agrees that the structure cannot be occupied as a dwelling or for any other form of permanent or temporary residential use.

Staff: Recording the covenant as required by MCC 39.8860 is a condition of approval. *As conditioned, this criterion is met.*

- (6) **The combined footprints of all buildings accessory to an accessory dwelling unit (ADU) shall not exceed combined footprints of 400 square feet and the combined footprints of all Accessory Buildings on a Lot of Record, including buildings accessory to an ADU, shall not exceed 2,500 square feet.**

Staff: The applicant proposed to retain an accessory barn structure, the gym, and a shed, and will be proposing a new pavilion. There is an existing play structure on the property that is proposed to be removed. According to the Applicant's Site Plan (Exhibit A.3), the total square footage of the

accessory structures proposed to remain on the subject property is approximately 2,403 square feet. *Criterion 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 structure will contain two sinks, two stories, a toilet, and a shower (Exhibits A.16 and A.17). As such, it is subject to the Review Use provisions of MCC 39.4075(L), which have been reviewed in Section 7.0 of this report.

- (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 structure is proposed as an accessory structure subject to the review use criteria of MCC 39.4315(H) and therefore is not subject to (8) above.

6.2 MCC 39.4325 DIMENSIONAL REQUIREMENTS AND DEVELOPMENT STANDARDS

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

(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.

* * *

Staff: Per the applicant’s site plan (Exhibit A.3), and historic Land Use Planning Records, the only structures that have not previously been approved by Land Use Planning are the Gym and the pavilion. The gym is located approximately 111 feet from the northwest (side) property line, approximately 147 feet from the southeast (side) property line, approximately 150 feet from the front property line along NW Sauvie Island Road, and more than 1,350 feet from the rear property line along the Multnomah Channel, according to the Applicant’s Site Plan (Exhibit A.3). The site plan (Exhibit A.3) indicates that the pavilion is approximately 56 feet from the northwest (side) property line, approximately 222 feet from the southeast (side) property line, approximately 127 feet from the front property line along NW Sauvie Island Road, and over 1,400 feet from the rear property line along the Multnomah Channel. Providing elevation drawings identifying the height of the gym is a condition of approval. *As conditioned, this criterion is 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: Despite any insufficiencies in the right-of-way width adjacent to the subject property, the two structures subject to this application, the gym and the pergola, are both located more than 100 feet from the property line adjacent to the right-of-way (Exhibit A.3). As such, no additional yard area is required. *Criterion met.*

(G) On-site sewage disposal, storm water/drainage control, water systems unless these services are provided by public or community source, required parking, and yard areas shall be provided on the lot.

- (1) Sewage and stormwater disposal systems for existing development may be off-site in easement areas reserved for that purpose.**
- (2) Stormwater/drainage control systems are required for new impervious surfaces. The system shall be adequate to ensure that the rate of runoff from the lot for the 10 year 24-hour storm event is no greater than that before the development.**

Staff: The applicant has provided an approved Septic Review Certification (Exhibit A.11) indicating that the second septic system on the property will be decommissioned and that there is not a concern with connecting the gym to the septic system for the residence. Adherence to the plans submitted with this application is a condition of approval. Submitting a Stormwater Certificate at the time of Zoning Plan Review is also a condition of approval. *As conditioned, this criterion is met.*

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

Staff: Providing a lighting plan showing the locations of all exterior lights and providing fixture details at the time of Zoning Plan Review is a condition of approval. *As conditioned, this criterion is met.*

7.0 Accessory Use Determination Criteria:

7.1 MCC 39.4315 REVIEW USES.

The following uses may be permitted when found by the approval authority to satisfy the applicable standards of this Chapter.

(H) Structures or uses customarily accessory or incidental to any use permitted or approved in this base zone, which do not meet the “accessory structures” standard in MCC 39.4310 Allowed Uses, but which meet the following provisions:

- (1) 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 unit.**

Staff: Since the structure was initially constructed without permits to be a secondary residential structure, certain design changes have been required, such as removing the stairs to prevent regular access to the lofted storage area, and decommissioning all kitchen appliances, gas line connections, and 220V outlets from the area that previously served as a kitchen area. These design changes will be made conditions of approval, and a Land Use Planning inspection will be required prior to the Certificate of Occupancy to ensure that all conditioned changes have been made. A covenant, as described in MCC 39.8860 preventing the occupation of the structure as a dwelling also serves to prevent unauthorized use of the structure. *As conditioned, this criterion is met.*

- (2) The Accessory Structure shall not contain a bathing tub.**

Staff: According to the floor plans for the gym (Exhibit A.14), the structure contains a shower but not a bathing tub. *Criterion met.*

- (3) **Any toilet or bathing facilities, such as a shower, shall be located on the ground floor of any multi-story building.**

Staff: According to the floor plans of the gym (Exhibit A.14), the toilet and shower are located on the ground floor. *Criterion met.*

- (4) **An Accessory Structure containing a toilet or bathing facilities shall not contain Cooking Facilities.**

Staff: While Cooking Facilities have previously existed in the structure, the applicant has agreed in their narratives (Exhibits A.2, A.13 and A.16) to decommission all kitchen appliances, gas line connections, and 220V outlets from the area that previously served as a kitchen area. These design changes will be made conditions of approval, and a Land Use Planning inspection will be required prior to the Certificate of Occupancy to ensure that all conditioned changes have been made. *As conditioned, this criterion is met.*

- (5) **The Accessory Structure shall not contain 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.**

Staff: The applicant has provided photographs of the interior of the gym in their narratives (Exhibits A.2, A.13 and A.16), and there are no sleeping aids currently in the structure. Compliance with this standard in perpetuity is a condition of approval. *As conditioned, this criterion is met.*

- (6) **The applicant must show that building features or combined building footprints exceeding the Allowed Use provisions are the minimum possible departure from the Allowed Use standards to accommodate the use.**

Staff: The structure will contain two sinks, two stories, a toilet, a shower, and two closets built into walls (Exhibits A.16 and A.17). The structure is proposed as a gym use on the main floor, and for storage in the existing second story loft, which is where the two closets are located. The second story and closets are the only location in the structure that can accommodate the need for storage. The two sinks, shower and toilet are all associated with the proposed use of the structure as a gym. The applicant states in their narrative (Exhibit A.19) that the bathroom sink, toilet, and shower are the minimum possible departure from the allowed standards to accommodate the accessory workout space as an insular use. The toilet will be used in the event of extended or intense workout sessions, and the shower will be used after workouts to reduce the need to travel back to the house after a workout. Based on the uses proposed in the accessory structure, the inclusion of a toilet, shower, and two sinks constitute the minimum possible departure from the Allowed Use standards to accommodate the structure's purpose. *Criterion met.*

- (7) **Compliance with MCC 39.8860 is required.**

Staff: Recording the covenant as required by MCC 39.8860 is a condition of approval. *As conditioned, this criterion is met.*

8.0 Significant Environmental Concern for Wetlands (SEC-w) Land Use Permit Criteria:

8.1 § 39.5700- CRITERIA FOR APPROVAL OF SEC-W PERMIT - SIGNIFICANT WETLANDS

Significant wetlands consist of those areas designated as Significant on aerial photographs of a scale of 1 inch = 200 feet made a part of the supporting documentation of the Comprehensive Plan. Any proposed activity or use requiring an SEC permit which would impact those wetlands shall be subject to the following:

- (A) In addition to other SEC Permit submittal requirements, the application shall also include:**
- (1) A site plan drawn to scale showing the wetland boundary as determined by a documented field survey, the location of all existing and proposed watercourses, drainageways, stormwater facilities, utility installations, and topography of the site at a contour interval of no greater than five feet;**
 - (2) A description and map of the wetland area that will be affected by the proposed activity. This documentation must also include a map of the entire wetland, an assessment of the wetland'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, or other natural hazards in the proposed development area and any proposed protective measures to reduce such hazards;**
 - (5) Detailed Mitigation Plans as described in subsection (D), if required;**
 - (6) Description of how the proposal meets the approval criteria listed in subsection (B) below.**

Staff: The applicant has provided the information required by (A) as Exhibits A.4 and A.20. *Criterion met.*

- (B) The applicant shall demonstrate that the proposal:**
- (1) Is water-dependent or requires access to the wetland as a central element of its basic design function, or is not water dependent but has no practicable alternative as described in subsection (C) below;**

Staff: This permit reviews the excavation of a pond within the delineated wetlands, and the resulting placement of approximately 67 cubic yards of fill within delineated wetland areas that will be mitigated by this permit request (Exhibits A.4 and A.20). The excavation of the pond is water dependent, and the fill that was previously placed within wetland areas is proposed to be moved into upland areas to mitigate the impacts of the development that occurred. *Criterion met.*

- (2) Will have as few adverse impacts as is practical to the wetland's functional characteristics and its existing contour, vegetation, fish and wildlife resources, shoreline anchoring, flood storage, general hydrological conditions, and visual amenities. This impact determination shall also consider specific site information contained in the adopted wetlands inventory and the economic, social, environmental, and energy (ESEE) analysis made part of the supporting documentation of the comprehensive plan;**

Staff: The applicant provided a Wetland Delineation Report (Exhibit A.4) that investigated the impacts of the pond excavation and fill placement on the functional characteristics of the wetland. This report concludes that no inundation or groundwater saturation is occurring on the site, despite the placement of fill within the wetlands. Additionally, the mitigation plan proposes to remove the

fill that was placed within the wetland areas and relocate it to upland areas on the subject property, which will further minimize any adverse impacts. *Criterion met.*

- (3) **Will not cause significant degradation of groundwater or surface-water quality;**

Staff: The applicant's wetland delineation and mitigation plan (Exhibits A.4 and A.20) analyses the excavation of the pond and placement of fill outside of the wetland areas and determines that no inundation or groundwater saturation is occurring on the site as a result of the development. *Criterion met.*

- (4) **Will provide a buffer area of not less than 50 feet between the wetland boundary and upland activities for those portions of regulated activities that need not be conducted in the wetland;**

Staff: The proposed upland area for fill placement is located 50 feet from the delineated wetlands per the Mitigation Plan (Exhibit A.20). *Criterion met.*

- (5) **Will provide offsetting replacement wetlands for any loss of existing wetland areas. This Mitigation Plan shall meet the standards of subsection (D).**

Staff: The applicant's mitigation plan proposed to plant 750 native trees and shrubs and install 2 pounds of grass seed in the area where approximately 67 cubic yards of fill was placed without permit review (Exhibit A.20). This will constitute a greater than 1:1 mitigation of the same resource that was disturbed, on the site of the disturbance. *Criterion met.*

- (C) **A finding of no practicable alternative is to be made only after demonstration by the applicant that:**

- (1) **The basic purpose of the project cannot reasonably be accomplished using one or more other practicable alternative sites in Multnomah County that would avoid or result in less adverse impact on a wetland. An alternative site is to be considered practicable if it is available for purchase and the proposed activity can be conducted on that site after taking into consideration costs, existing technology, infrastructure, and logistics in achieving the overall project purposes;**
- (2) **The basic purpose of the project cannot be accomplished by a reduction in the size, scope, configuration, or density of the project as proposed, or by changing the design of the project in a way that would avoid or result in fewer adverse effects on the wetland; and**
- (3) **In cases where the applicant has rejected alternatives to the project as proposed due to constraints, a reasonable attempt has been made to remove or accommodate such constraints.**
- (4) **This section is only applicable for wetland resources designated "3-C"**

* * *

Staff: This SEC-w permit retroactively addresses work that was completed to excavate a pond, and the resulting fill that was placed within the SEC-w overlay. As the impact has already occurred, there is no practical alternative that can occur, however, these findings evaluate the mitigation that is proposed to ensure that the impacts are mitigated in order to come into compliance with the SEC-w standards. *Criteria met.*

- (D) **A Mitigation Plan and monitoring program may be approved upon submission of the following:**

- (1) **A site plan and written documentation which contains the applicable information for the replacement wetland as required by MCC 39.5700 (A);**
- (2) **A description of the applicant’s coordination efforts to date with the requirements of other local, State, and Federal agencies;**
- (3) **A Mitigation Plan which demonstrates retention of the resource values addressed in MCC 39.5700 (B) (2);**
- (4) **Documentation that replacement wetlands were considered and rejected according to the following order of locational preferences:**
 - (a) **On the site of the impacted wetland, with the same kind of resource;**
 - (b) **Off-site, with the same kind of resource;**
 - (c) **On-site, with a different kind of resource;**
 - (d) **Off-site, with a different kind of resource.**

Staff: The application has submitted a mitigation plan meeting the requirements of (D) above as Exhibit A.20. Confirmation that the mitigation efforts have been completed on the timeline specified by the mitigation plan is a condition of approval. *As conditioned, these criteria are met.*

9.0 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Accessory Use Determination and Significant Environment Concern for Wetlands (SEC-w) to bring the property into full compliance with Multnomah County Code in the Multiple Use Agriculture – 20 (MUA-20) 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
- ‘D’ Comments Received

Exhibits with an ‘*’ have been reduced in size and included with the mailed decision. All exhibits are available for digital review by sending a request to LUP-comments@multco.us.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	Application Form	02.25.2024
A.2	16	Initial Code Narrative	02.25.2024
A.3*	1	Initial Site Plan	02.25.2024
A.4	74	Wetland Delineation Report	02.25.2024
A.5	6	Approved DSL Wetland Delineation	02.25.2024
A.6	4	Historic Grade Changes	02.25.2024

A.7	13	2021 Contract Deed - Rec. No. 2021-131523	02.25.2024
A.8	2	Pavilion Elevations and Floor Plans	02.25.2024
A.9	1	PGE Service Meter Verification	02.25.2024
A.10	3	Letter Regarding Accessory Structure – Gym	02.25.2024
A.11	5	Septic Review Certification	07.30.2024
A.12	3	Fire Service Agency Review Form	07.30.2024
A.13	11	07.30.24 Revised Code Narrative and Gym Photographs	07.30.2024
A.14	1	Gym Floor Plans	07.30.2024
A.15	1	1989 Lot Line Adjustment Map	07.30.2024
A.16	13	08.30.2024 Revised Code Narrative	08.30.2024
A.17	1	08.30.2024 Revised Gym Floor Plans	08.30.2024
A.18	1	Summary of Code Narrative and Floor Plan Revisions for 08.30.2024 Submission	08.30.2024
A.19	13	Final Code Narrative Addendum	09.04.2024
A.20*	10	Wetlands Restoration and Mitigation Plan	02.18.2025
‘B’	#	Staff Exhibits	Date
B.1	4	Assessment and Taxation Property Information for 2N1W17 - 00500 (R971170130 / R324976)	02.27.2024
B.2	1	Current Tax Map for 2N1W17	01.15.2025
B.3	15	Multnomah County Land Use Planning Case LE11-83	04.10.2024
B.4	17	Multnomah County Land Use Planning Case LE12-89	04.10.2024
B.5	15	PF-2022-15490 Notes	04.10.2024
B.6	1	Staff Email to Commenters Subj: T2-2024-0022 Case Clarifications and Request for Revised Comments	10.18.2024
‘C’	#	Administration & Procedures	Date
C.1	3	Incomplete letter	04.10.2024
C.2	1	Applicant’s acceptance of 180-day clock	05.07.2024
C.3	2	Secondary Incomplete letter	08.28.2024
C.3	1	Complete letter (day 1)	09.05.2024
C.4	4	Opportunity to Comment	09.19.2024
C.5	17	Decision	03.06.2025
‘D’	#	Comments	Date
D.1	2	Lora Creswick Comment	10.01.2024

D.2	2	Mark Greenfield Comment	10.03.2024
D.3	1	Susan Bachhuber Comment	10.03.2024
D.4	1	Kristin Ford Comment	10.03.2024
D.5	1	Janet Eakin Comment	10.08.2024

Wetland Restoration Plan, 18611 Northwest Sauvie Island Road

PREPARED FOR: Marn Heggen, Heggen Architecture

PREPARED BY: Joe Bettis, Turnstone Environmental Consultants, Inc. (Turnstone)

COPIES: None

DATE: February 7, 2025

Introduction

This memorandum has been prepared in support of a wetland restoration project on Sauvie Island, Multnomah County, Oregon. The project is located on a portion of Multnomah County tax lot 500 (map 2N1W17) and is accessible from the private parcel at 18611 Northwest Sauvie Island Road.

The restoration project is intended to address unpermitted impacts to wetland areas resulting from the placement of fill that generated by the excavation of a small pond at the western edge of the property. While most of the spoils from the pond excavation were placed in uplands, a small wetland area in the western corner parcel was partially filled. Impacts to wetland areas were determined by a wetland delineation completed by Turnstone¹. The approved wetland delineation map is attached in Appendix A. The delineation determined that 0.04 ac. (1,876 sq. ft.) of freshwater, non-tidal wetlands were filled with pond spoils. The volume of fill placed in the wetland was estimated to be 67 cubic yards. Consultation with Oregon Department of State Lands² (DSL), the agency tasked with managing Oregon's Removal Fill Law, resulted in an agreement to remove the fill and restore native vegetation within the impacted wetland area. Completion of the restoration effort would satisfy compliance with DSL's wetland regulations and no state Removal Fill permitting would be required.

¹ WD # 2023-0130 approved by Oregon Department of State Lands (DSL) April 26, 2023.

² Melinda Butterfield, DSL Natural Resource Coordinator. February 15, 2023.



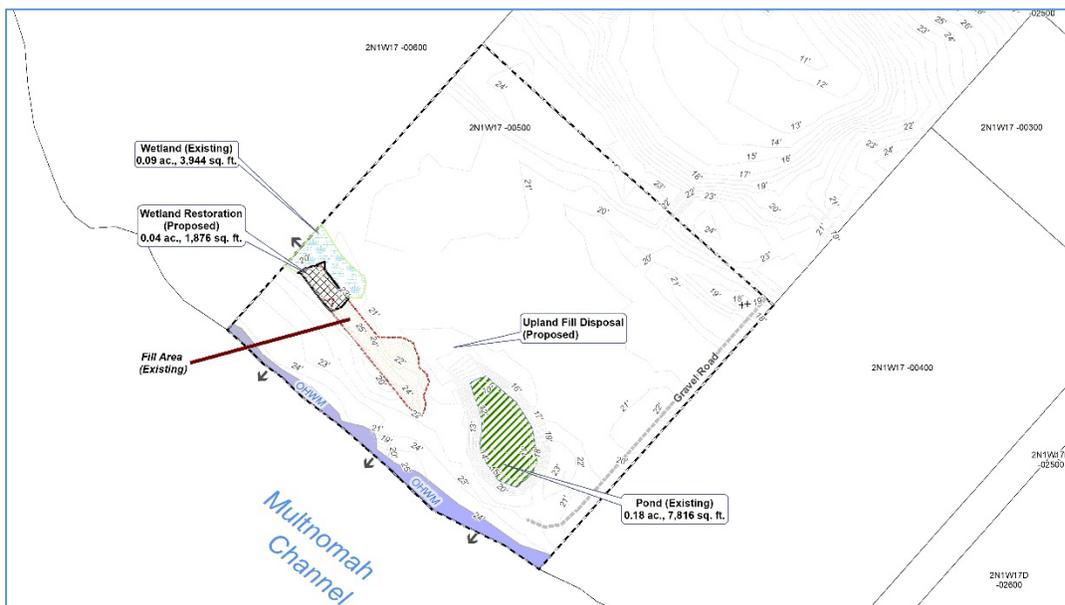
Exhibit 1-Edge of fill removal area looking northwest with undisturbed wetland areas on upper left (September 2023).



Restoration Plan

The restoration plan consists of two main tasks: fill removal and native plant installation. Fill removal will be completed using a small excavator and materials will be placed onsite in an upland location. The fill removal actions, and equipment staging will be conducted from uplands adjacent to the existing wetland area (Exhibit 2). No temporary impacts to wetlands are expected. It is estimated that the fill removal will be conducted in spring or summer of 2024 when soil is dry enough to minimize damage to from equipment travel.

Exhibit 2-Restoration Areas Relative to Wetland



Native plant installation will follow the fill removal from the wetland area. Plants selected for the restoration effort are those found in the surrounding area and capable of competing with non-native vegetation found in the community. Planting will include native bare root trees, shrubs and herbs as well as an application of native grass seed. The planting plan effort will install 750 bare root plants and apply 2-pounds of native grass seed (Exhibit 3).

Exhibit 3-Restoration Planting Plan

Planting Details for Wetland Restoration (~2000 sq. ft.)				
Species	Type	Spacing	Material Class	Quantity
Oregon ash (<i>Fraxinus latifolia</i>)	Tree	15'	Bare root	50
Clustered rose (<i>Rosa pisocarpa</i>)	Shrub	4'	Bare root	50
Douglas spiraea (<i>Spiraea douglasii</i>)	Shrub	4'	Bare root	50
Slough sedge (<i>Carex obnupta</i>)	Herb	3' (4 plant cluster)	Bare root	300
Soft rush (<i>Juncus effusus pacificus</i>)	Herb	3' (4 plant cluster)	Bare root	100
Spreading rush (<i>Juncus patens</i>)	Herb	3' (4 plant cluster)	Bare root	100
Fireweed (<i>Chamerion angustifolium</i>)	Herb	3' (4 plant cluster)	Bare root	100
Native grass seed mix*	Seed	Broadcast	n/a	2 pounds

*50/50 *Agrostis exarata* & *Hordeum brachyantherum*.

Restoration Progress to Date

As of February 2025, restoration activities include planting plan development and fill removal.

Turnstone flagged the fill removal area within the wetlands September of 2023. Fill was removed from the wetland area February and March of 2024. Fill removed from the wetland via a small excavator and was placed in an upland disposal area southeast of the restoration area.

Planting of the restoration area is slated for March 2025. Plants were secured from Scholls Valley Nursery in February of 2025.

Attachments

Appendix A: WD # 2023-0130 Wetland Delineation Map



Appendix A: WD # 2023-0130 Wetland Delineation Map





Oregon

Tina Kotek, Governor

Department of State Lands

775 Summer Street NE, Suite 100

Salem, OR 97301-1279

(503) 986-5200

FAX (503) 378-4844

www.oregon.gov/dsl

April 26, 2023

State Land Board

MWS Holdings
Attn: Morgan Smith
22824 NW Gillihan Road
Portland, OR 97231

Tina Kotek
Governor

Shemia Fagan
Secretary of State

Re: WD # 2023-0130 **Approved**
Wetland Delineation Report for Portion of Lot 500
Multnomah County; T2N R1W S17 TL500 (Portion); ENF # 8408
Multnomah County Reference # UR-2020-13063, UR-2021-14968

Tobias Read
State Treasurer

Dear Morgan Smith:

The Department of State Lands has reviewed the wetland delineation report prepared by Turnstone Environmental Consultants Inc. for the site referenced above. Please note that the study area includes only a portion of the tax lot described above (see the attached map). Based upon the information presented in the report, and a site visit on September 22, 2021, we concur with the wetland and waterway boundaries as mapped in Figure 6 of the report. Please replace all copies of the preliminary wetland maps with these final Department-approved maps.

Within the study areas, one wetland (totaling approximately 0.13 acres), the Multnomah Channel, and an excavated pond were identified. The wetland and channel are subject to the permit requirements of the state Removal-Fill Law. Normally, a state permit is required for cumulative fill or annual excavation of 50 cubic yards or more in wetlands or below the ordinary high-water line (OHWL) of the waterway (or the 2-year recurrence interval flood elevation if OHWL cannot be determined). However, the Multnomah Channel is an essential salmonid stream; therefore, fill or removal of any amount of material below its OHWL may require a state permit. Additionally, the excavated pond is exempt per OAR 141-085-0515(7); therefore, it is not subject to these permit requirements.

This concurrence is for purposes of the state Removal-Fill Law only. We recommend that you attach a copy of this concurrence letter to any subsequent state permit application to speed application review. Federal, other state agencies or local permit requirements may apply as well. The U.S. Army Corps of Engineers will determine jurisdiction under the Clean Water Act, which may require submittal of a complete Wetland Delineation Report.

Please be advised that state law establishes a preference for avoidance of wetland impacts. Because measures to avoid and minimize wetland impacts may include reconfiguring parcel layout and size or development design, we recommend that you work with Department staff on appropriate site design before completing the city or county land use approval process.

This concurrence is based on information provided to the agency. The jurisdictional determination is valid for five years from the date of this letter unless new information necessitates a revision. Circumstances under which the Department may change a determination are found in OAR 141-090-0045 (available on our web site or upon request). In addition, laws enacted by the legislature and/or rules adopted by the Department may result in a change in jurisdiction; individuals and applicants are subject to the regulations that are in effect at the time of the removal-fill activity or complete permit application. The applicant, landowner, or agent may submit a request for reconsideration of this determination in writing within six months of the date of this letter.

Thank you for having the site evaluated. If you have any questions, please contact Chris Stevenson, PWS, the Jurisdiction Coordinator for Multnomah County at (503) 986-5246.

Sincerely,

A handwritten signature in black ink, appearing to read "Peter Ryan", with a stylized flourish at the end.

Peter Ryan, SPWS
Aquatic Resource Specialist

Enclosures

ec: Joe Bettis, Turnstone Environmental Consulting, Inc.
Multnomah County Planning Department
Rithy Khut, Multnomah County Department of Community Services
Melody White, Corps of Engineers
Melinda Butterfield, PWS, DSL

Figure 1:
Overview
Map

Portion of Tax Lot 2N1W17-00500

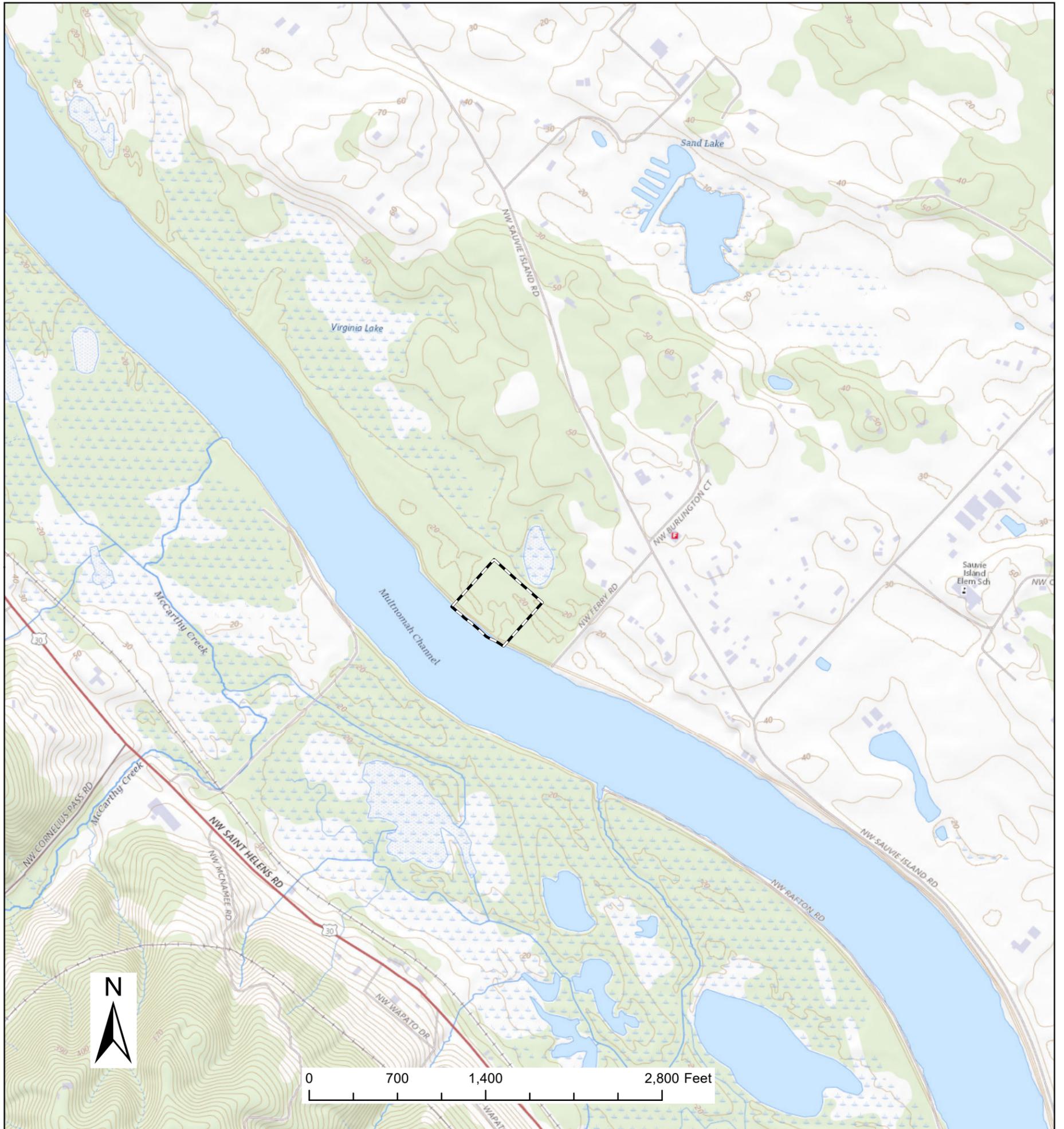
Heggen Architecture Wetland Delineation

18611 NW Sauvie Island Road
Multnomah County, Oregon



2/28/2023

1:10,000



Notes:

Legend

 Study Area

1. Topographic basemap courtesy USGS, The National Map, 2023.

2. Native size of map layout is 11"x17".

Figure 2:
Tax Lot
Map

Portion of Tax Lot 2N1W17-00500

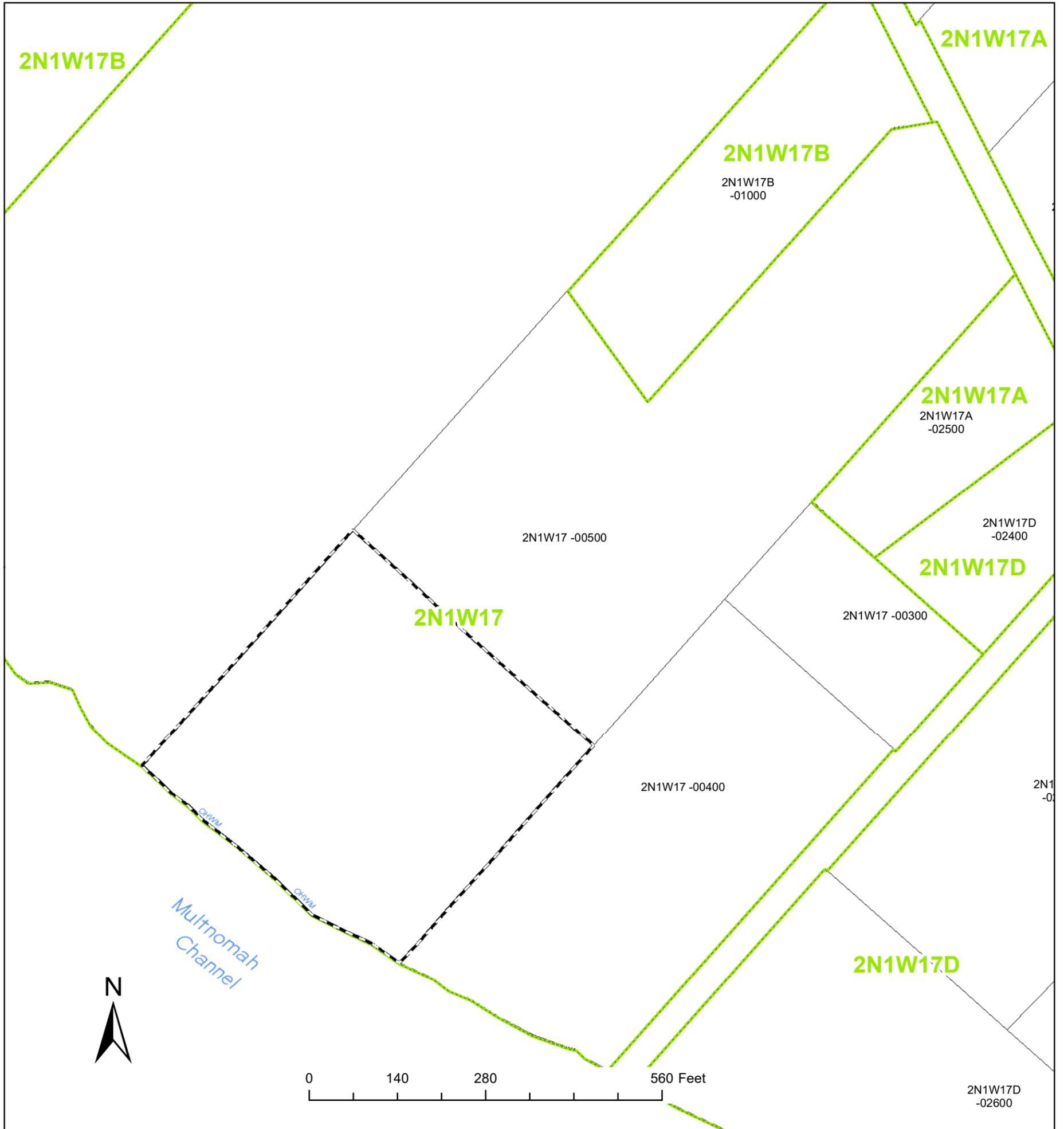
Heggen Architecture Wetland Delineation

18611 NW Sauvie Island Road
Multnomah County, Oregon



2/28/2023

1:2,000



Legend

- Study Area
- Tax Map
- Tax Lot

Notes:

1. Tax Lot boundaries provided by Multnomah County, assumed accurate to within 1-meter.
2. Native size of map layout is 11"x17".

**Figure 6:
Wetland
Delineation
Map
(Aerial)**

Portion of Tax Lot 2N1W17-00500

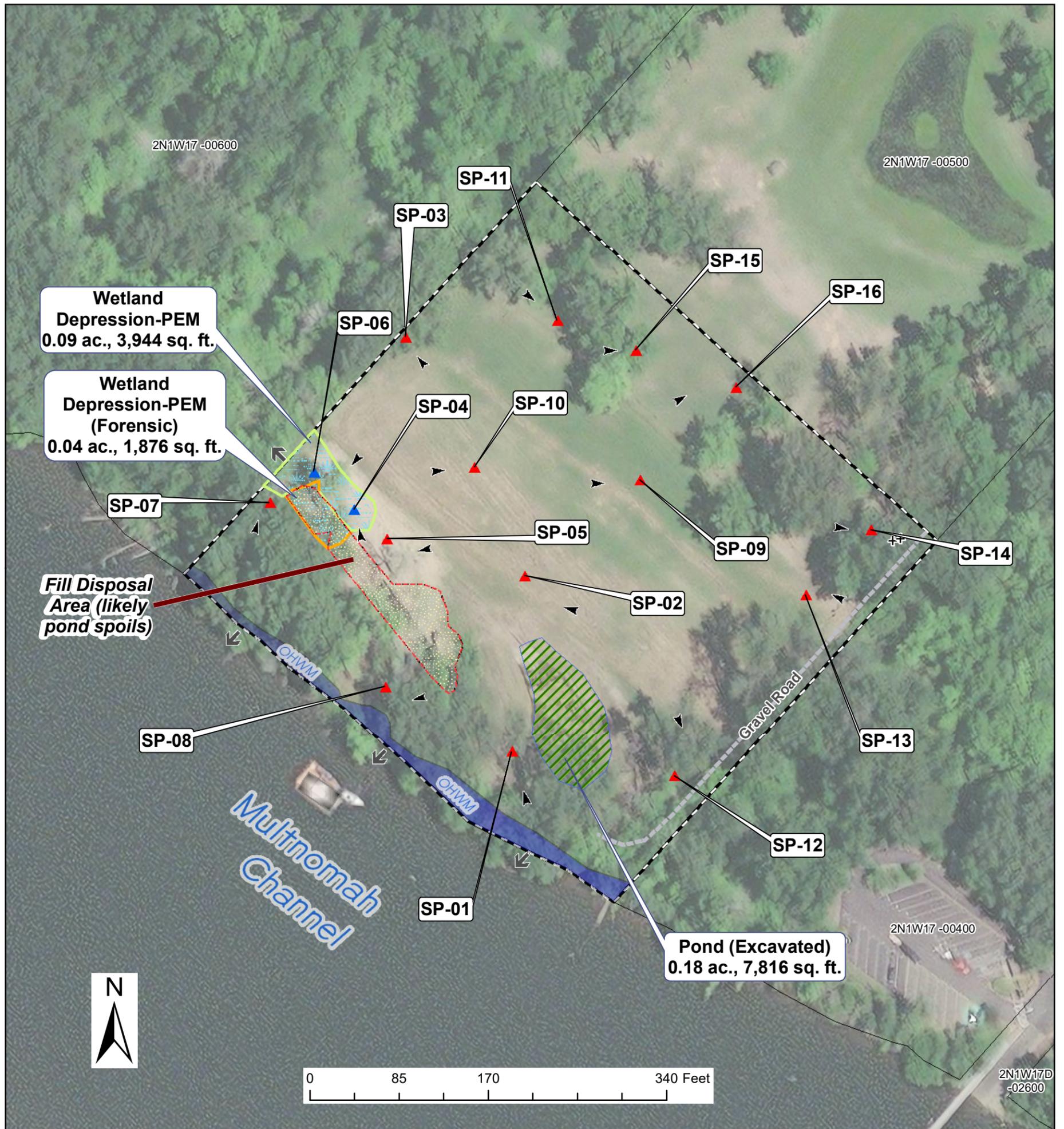
**Heggen Architecture
Wetland Delineation**

18611 NW Sauvie Island Road
Multnomah County, Oregon



2/27/2023

1:1,200



DSL WD # 2023-0130
Approval Issued 4/26/2023
Approval Expires 4/26/2028

Legend

Study Area	Wetland
Tax Lots	Wetland (Forensic)
Road (Approximate)	Sample Plot
Culvert	Upland
Parcel Structure	Wetland
Fill Disposal Area (likely pond spoils)	Photo Points
Pond (Excavated)	Water Extends
Multnomah Channel (Study Area) OHWL 24 ft NAVD88	

Notes:

1. All wetland points and boundary features were collected with a resource grade GPS and have a horizontal accuracy of 0.5 meter or less.
2. Tax Lot boundaries provided by Multnomah County, assumed accurate to within 1-meter.
3. Native size of map layout is 11"x17".
4. Aerial imagery courtesy ESRI/Maxar, 2021 (flight date 6/4/2021).