

NOTICE OF DECISION



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Application for Lot of Record Verification, Geologic Hazard Permit, Significant Environmental Concern for Streams Permit and Significant Environmental Concern for Wildlife Habitat (Type II) Permit

Case File: T2-2024-0057

Applicant: JPR Consulting, Jon Reimann

Proposal: Request for the above listed permits in order to construct a new single-family dwelling, related improvements and a pool.

Location: 12505 NW Germantown Rd, Portland

Property ID # R324037

Map, Tax lot: 1N1W10B-02400

Alt. Acct. # R961100120

Base Zone: Rural Residential (RR)

Overlays: Geologic Hazard (GH), Significant Environmental Concern for streams (SEC-s), Significant Environmental Concern for wildlife habitat (SEC-h)

Decision: **Approved with Conditions**

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Monday, January 6, 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:

Lisa Estrin

Lisa Estrin, Senior Planner

For: Megan Gibb,
Planning Director

Date: Monday, December 23, 2024

Instrument Number for Recording
Purposes: #2023019238



Applicable Approval Criteria:

Multnomah County Code (MCC): General Provisions: MCC 39.1250 Code Compliance and Applications, MCC 39.2000 Definitions

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

Rural Residential (RR): MCC 39.4360(A) Allowed Uses, Single Family Dwelling, MCC 39.4360(F) Accessory Structures, MCC 39.4325 (C), (D), (G), (H), (I) & (J) Dimensional Requirements and Development Standards

Geologic Hazard: MCC 39.5075 Permits Required, MCC 39.5085 Geologic Hazards Permit Application Information Required, MCC 39.5090 Geologic Hazards Permit Standards

Significant Environmental Concern Permits: MCC 39.5510 Uses, SEC Permit Required, MCC 39.5520 Application for SEC Permit, MCC 39.5580 Nuisance Plan List

***SEC-s Permit*:** MCC 39.5750 Criteria for Approval of SEC-s Permit – Streams

***SEC-h Permit (Type II)*:** MCC 39.5860 Criteria for Approval of SEC-H Permit – Wildlife Habitat

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 two (2) years of the date of the final decision when construction has not commenced. [MCC 39.1185(B)]
 - i. For the purposes of 1.a, commencement of construction shall mean actual construction of the foundation of the approved single-family dwelling.
 - 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 commencement. Notification shall be sent via email to LUP-submittals@multco.us with the case no. T2-2024-0057 referenced in the subject line.
 - b. Within four (4) years of the date of commencement of construction when the structure has not been completed. [MCC 39.1185(B)]
 - i. For the purposes of 1.b, completion of the structure shall mean completion of the exterior surface(s) of the single-family dwelling and compliance with all conditions of approval in the land use approval.
 - ii. For purposes of 1.b, the property owner shall provide building permit status in support of completion of exterior surfaces of the structure 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. T2-2024-0057 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 a minimum of 30 days 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. **Prior to submitting Building Plans for Zoning Review**, the property owner(s) or their representatives shall:
 - a. Record pages 1 through 7 and Exhibit A.15, Appendix C of this Notice of Decision and the SEC-h Mitigation Plan to be crafted and submitted per the conditions of approval 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. The property owners shall 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 and uploaded when submitting building plans for Zoning Review and Review of Conditions of Approval. [MCC 39.1170(A) & (B)]
 - c. The property owner shall record the covenant regarding farm activities (Exhibit B.5). [MCC 39.4375(G)]
 - d. Amend and submit an Erosion and Sediment Control (ESC) plan to show:

- i. The location for any stockpiled soils/earth materials and show any areas of proposed fill. The placement of stockpiled soils shall be placed to prevent erosion on neighboring properties or into a stream. [MCC 39.5090(S)]
- ii. Erosion, sediment, and stormwater control measures designed to perform as effectively as those prescribed in the most recent edition of the City of Portland Erosion and Sediment Control Manual and the City of Portland Stormwater Management Manual and which is consistent with attaining equivalent surface water quality standards as those established for the Tualatin River drainage basin in OAR 340-041-0345(4). [MCC 39.5090(G), (K)(1) & (K)(2)]
- iii. The ESC plan and the Site Plan shall have the following **Notes** added to them:
 - (1) Prior to development, all work areas shall be flagged, fenced, or otherwise marked to reduce potential damage to habitat outside of the work area. The work area shall remain marked through all phases of development.
 - (2) Trees shall not be used as anchors for stabilizing construction equipment.
 - (3) Native soils disturbed during development shall be conserved on the property
 - (4) Non-erosion pollution associated with construction such as pesticides, fertilizers, petrochemicals, solid wastes, construction chemicals, or wastewaters shall be prevented from leaving the construction site through proper handling, disposal, continuous site monitoring and clean-up activities. [MCC 39.5090(T), MCC 39.5090(S) & MCC 39.5860(C)]
- e. A Mitigation Plan for the SEC-h permit shall be developed and submitted to Land Use Planning at LUP-submittals@multco.us and reference the case #T2-2024-0057. The mitigation plan shall:
 - i. Include the planting of 501 trees and 2,429 shrubs. At least 50 percent of the trees need to be native evergreen to support the forest canopy during fall, winter, and early spring.
 - (1) All vegetation shall be planted within the mitigation area located on the same Lot of Record. The mitigation area shall first be located within any existing non-forested cleared areas contiguous to forested areas, second within any degraded stream riparian areas and last in forested areas or adjacent to landscaped yards.
 - (2) Plant size. Replacement trees shall be at least one-half inch in caliper, measured at 6 inches above the ground level for field grown trees or above the soil line for container grown trees (the one-half inch minimum size may be an average caliper measure, recognizing that trees are not uniformly round), unless they are oak or madrone which may be one gallon size. Shrubs shall be in at least a 1-gallon container or the equivalent in ball and burlap and shall be at least 12 inches in height.
 - (3) Plant spacing. Trees shall be planted between 8 and 12 feet on-center and shrubs shall be planted between 4 and 5 feet on-center, or clustered in single species groups of no more than four (4) plants, with each cluster planted between 8 and 10 feet on-center. When planting near existing trees, the drip line of the existing tree shall be the starting point for plant spacing measurements.

- (4) Plant diversity. Shrubs shall consist of at least two (2) different species. If 10 trees or more are planted, then no more than 50% of the trees may be of the same genus.
- (5) Nuisance plants. Any nuisance plants listed in MCC 39.5580 Table 1 shall be removed within the mitigation area prior to planting.
- (6) Planting schedule. The planting date shall occur within one year following the approval of the application.
- (7) Monitoring and reporting. Monitoring of the mitigation site is the ongoing responsibility of the property owner. Plants that die shall be replaced in kind so that a minimum of 80% of the trees and shrubs planted shall remain alive on the fifth anniversary of the date that the mitigation planting is completed. [MCC 39.5860(C)(5)]
- (8) The Mitigation Plan shall include maps showing each area where the trees and shrubs are to be planted, their species, any special planting instructions for their installation and on-going survival.

4. **When submitting Building Plans for Zoning Review**, the property owner(s) or their representatives shall:

- a. Fire Sprinkler Plans shall be included as part of the construction drawings submitted as part of the Zoning Plan Review application as required by TVFR (Exhibit A.9) [MCC 29.004]
- b. Provide the calculations required for the Stormwater Drainage Control Certificate. [MCC 39.4375(F) and MCC 39.6235]
- c. Have the Portland Water Bureau sign the County's Water Service Certification indicating that the water will be provided by them. [MCC 39.4375(F)]
- d. Demonstrate that the proposed entry gate and its pillars are 6-ft or under or the gate shall be moved to comply with MCC 39.4375(C)(1). [MCC 39.4375(C)]
- e. Move the location of the proposed concrete washout area to above the proposed residence within the driveway area. [MCC 39.5090(G), MCC 39.5090(K), MCC 39.5090(S), MCC 39.5090(T), and MCC 39.5750(D)]
- f. Shall provide a Lighting Plan showing the location of all proposed lighting and lighting details that comply with the County's Dark Sky Lighting Standards of MCC 39.6850. The Lighting Plan and lighting details shall be part of the plan set for the building department. [MCC 39.4325(H) and MCC 39.6850]
- g. Any outflow to the public right-of way from the rain garden must be approved by Transportation to accept the water. If the outflow will be directed towards either protected stream, the flow of the water leaving the pipe must be retarded by rip rap and may not be closer than 75 ft from top of bank. [MCC 39.5750(D)]
 - i. No water shall be directed to an adjacent property if the amount exceeds the original amount that the property received. Documentation by a licensed engineer shall be provided to support the amount to flow towards the adjacent property complies with amount restriction or an easement is obtained to allow the amount of water onto the property. will be built towards the front of the property near NW Germantown Road. Any outflow to the public right-of-way or stream channel will need to be reviewed before it can be authorized.

5. **Prior to and during construction**, the property owner(s) or their representatives shall:
- a. Install erosion control measures consistent with the approved erosion control plan required by Condition 3.d. Flag, fence, or otherwise mark the project area as described in amended Erosion Control Plan. These measures shall remain in place and in good working order to reduce potential damage to wildlife habitat outside of the work area. The work area shall remain marked through all phases of development until construction is complete. [MCC 39.5085(A); MCC 39.5090(G), (H), (K), (L) through (O), and (R); and MCC 39.5860(C)(3)]
 - b. Schedule an Erosion and Sediment Control (ESC) inspection. A link to self-schedule an ESC inspection will be sent to you via email following the completion of your Zoning Plan Review. The County's inspector will visit the project site to verify that Best Management Practices are occurring. [MCC 39.6210(F)(2) and MCC 39.6225(B)]
 - c. Post the Erosion Control Permit Notice Card. The permit notice card shall be posted at the driveway entrance in a clearly visible location and remain posted until the ground disturbing activity is complete. If the notice card is lost, destroyed, or otherwise removed prior to completion of the grading work, the applicant shall immediately contact LUP-submittals@multco.us to obtain a replacement immediately. [MCC 39.6210(F)(2) and MCC 39.6225(B)]
 - d. Bore the proposed water pipe starting from 1N1W10B-02401 and not daylight the bore until it is within the footprint of the disturbance area for the single-family dwelling. No ground disturbance is authorized outside of the silt fence except the entrance hole needed to bore the water line. [MCC 39.5090(V)]
 - e. CGS shall observe excavation subgrade prior to placing structural fill, forms, or reinforcing bar for foundations to evaluate subgrade support conditions are as expected, and shall perform construction observation and testing to evaluate placement and compaction of engineered structural fill as warranted by CGS. [MCC 39.5085(C)]
 - i. The future performance and integrity of the structural elements will depend largely on proper site preparation, drainage, fill placement, and construction procedures, construction monitoring and testing (geotechnical construction observation) by experienced geotechnical personnel shall be an integral part of the design and construction process.
 - f. Retain CGS to provide the following post-investigation services:
 - i. Review construction plans and specifications to verify that our design criteria presented in this report have been properly integrated into the design.
 - ii. Attend pre-construction meetings and conferences with the design team and contractor to discuss geotechnical related construction issues.
 - iii. Observe fill areas and footing subgrade both before fill material or base rock is placed and before footings are constructed to verify the soil conditions.
 - iv. Prepare a post-construction letter-of-compliance summarizing our field observations, inspections, and test results [MCC 39.5085(C)].
 - g. No more than 5 trucks (10 trips / 5 round trips) may visit the site in a day. Trucks carrying earth materials, to or from the site, shall be constructed, loaded, covered, or otherwise managed to prevent any of their load from dropping, sifting, leaking, or otherwise escaping from the vehicle. No fill shall be tracked or discharged in any manner onto any public right-of-way. [MCC 39.5090(W) & (X)]

- h. Erosion and sediment control measures shall be utilized such that no visible or measurable erosion or sediment shall exit the site, enter the public right-of-way or be deposited into any water body or storm drainage system. Best Management Practices shall be utilized. [MCC 39.5090(R)]
6. **Prior to issuance of the Certification of Occupancy**, the property owner(s) or their representatives shall:
- a. A Certified Engineering Geologist or Geotechnical Engineer shall certify in writing that the cuts or fills will not endanger or disturb adjoining property. All unsupported finished cuts and fills greater than 4 feet in height at any point shall require a Certified Engineering Geologist or Geotechnical Engineer to certify in writing that the cuts or fills will not endanger or disturb adjoining property. Permanent cut and fill slopes should not exceed a grade of 2H:1V (50 percent grade) unless certified by the Engineering Geologist or Geotechnical Engineer.
 - b. Plant all permanent vegetation and the stormwater drain control system (rain garden) shall be installed. [MCC 39.5090(L)]
7. **As an on-going condition**, the property owner(s) shall:
- a. No more than 17,905 sq. ft. of ground area shall be disturbed. [MCC 39.5085(C) and MCC 39.5090(A)]
 - b. No more than 1,050 cubic yards is to be disturbed, stored, disposed of, or used as fill. [MCC 39.5085(C) and MCC 39.5090(A)]
 - c. Any earth materials that are hauled off the site, if disposed of within unincorporated Multnomah County, the fill site shall comply with the County's Ground Disturbing Activity regulations of MCC 39.6200 – 39.6225. [MCC 39.5090(T) and MCC 39.5090(W)-(Y)]
 - i. If the earth materials are to be disposed of in unincorporated Multnomah County, the property owners or their representative shall send an email to LUP-submittals@multco.us that states the address of the disposal site and the name of the property owners receiving the earth materials.
 - d. Utilize fill materials that are composed of earth materials only. **MCC 39.2000 Definitions** defines “**Earth Materials**” as **Any rock, natural soil or any combination thereof. Earth materials do not include non-earth or processed materials including, but not limited to, construction debris (e.g., concrete, asphalt, wood), organic waste (e.g., cull fruit, food waste) and industrial byproducts (e.g., slag, wood waste).** [MCC 39.5090(B)]
 - e. Cut and fill slopes shall not exceed 3:1 unless certified by a license geotechnical engineer. The property owner or their representative shall submit the documentation of the slope's stability to LUP-submittals@multco.us and reference case #T2-2024-0057 in the email. [MCC 39.5090(C)]
 - f. Provide an annual monitoring report for a period of five years shall be submitted to LUP-submittals@multco.us and include the case # T2-2024-0057 each December, which ensures an 80 percent annual survival rate of the required plantings. If the trees and shrubs die or become diseased, they shall be replaced in the next planting season. At the end of 5 years, if the plantings have not survived above the 80% mark, the annual reporting shall be extended until the plantings remain above 80% for three continuous years. [MCC 39.5750(D)(1)]

- g. Not store hazardous materials outside as determined by DEQ is prohibited, unless such storage began before the effective date of the applicable SEC ordinance; or, unless such storage is contained and approved during development review. [MCC 39.5750(F)(3)]
- h. Not construct fencing other than the gate across the driveway. [MCC 39.5860(C)]
- i. Eighty (80) percent of the mitigation plantings shall be maintained on-site by the property owners unless their removal area authorized by a modification of this permit. [MCC 39.5750(D) and MCC 39.5860(C)(3)]
- j. At the conclusion of ground disturbing activities, the property owner(s) or their representative shall gravel, seed with native grasses, or install permanent vegetation for all disturbed with exposed ground areas within five (5) days of the date the conclusion construction. The private driveway shall be graveled within five (5) days of its construction. [MCC 39.5085(C) and MCC 39.5090(H), (J), (L)-(O), and (R)]
 - i. Upon completion of the installation of permanent vegetation, seeding with native grasses, and/or gravel, photographs sent to LUP-submittals@multco.us to demonstrate that ground disturbing activities have been completed and the site is being revegetated. In your email, reference the case no. #T2-2024-0016 in the subject line. [MCC 39.5090 and MCC 39.6210(F)(2)]

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. Contact the City of Portland, Bureau of Development Services, On-site Sanitation at 503-823-6892 or e-mail septic@portlandoregon.gov for information on completing the Septic Permit or Evaluation process for the proposed development. All existing and/or proposed septic system components (including septic tank and drainfield) must be accurately shown on the site plan.
4. 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.

Notice to Mortgagee, Lien Holder, Vendor, or Seller:
 ORS Chapter 215 requires that if you receive this notice it must be promptly forwarded to the purchaser.

Findings of Fact

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

1.0 Project Description:

Staff: The applicant is requesting approval of various land use permits in order to construct a new single-family dwelling and related improvements on the subject property. In addition, a lap pool is proposed. The lap pool would be an accessory structure.

2.0 Property Description & History:

Staff: The subject property is in unincorporated west Multnomah County in the area known as the West Hills rural area. The property is zoned Rural Residential and is located outside of Metro’s Urban Growth Boundary (UGB). According to Assessment and Taxation records, the subject property is vacant.

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.3). Staff received public comments during the 14-day comment period.

3.1 Carol Chesarek, Vice Chair of the Forest Park Neighborhood Association provided written comments via email on the choices of proposed vegetation and trees and their suitability in the West Hills due to fire concerns and changes to climate (Exhibit D.1 & D.2).

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:

* * *

Staff: For purposes of the current application, there are no known open compliance cases associated with the subject property, and there is no evidence in the record of any specific instances of noncompliance on the subject property. *Criterion met.*

5.0 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.

(1) “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.

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

(a) By a subdivision plat under the applicable subdivision requirements in effect at the time; or

(b) 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

(c) 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

* * *

Staff: To qualify as a Lot of Record, the subject property, when created or reconfigured, must meet MCC 39.3005(B) of this section and meet the Lot of Record standards set forth in the Rural Residential zoning district. More specifically, section (B) above requires demonstration that the subject property (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws.

The applicant provided six deed(s) to support the Lot of Record request (Exhibit A.16). The earliest deed that describes the subject property in its current configuration was recorded in 1942 and contains a legal description matching the current configuration of the subject property (Exhibit A.16.b & B.2). In 1942, the County had not commenced zoning in the area. The County implemented zoning in 1955.

The subject property is 5.34+/- acres (including ½ of the public right-of-way), abuts Germantown Road (a public road), and has a front lot line length of 89.83 feet (Exhibit B.2 & B.3). Planning staff added a 2023 deed (Exhibit B.5) to the record for the subject property that contains a legal description describing the unit of land contained in the 1942 recorded legal description (Exhibit A.16.b).

The subject property complied with all applicable zoning laws at the time of its creation or reconfiguration.

In 1942, the process to create or divide a parcel 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 1942 deed, the applicable land division laws were satisfied (Exhibit A.16.b).

The subject property complied with the applicable land division laws at the time of its creation or reconfiguration.

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

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

* * *

Staff: Section (A) is for information purposes.

(B) A Lot of Record which has less than the minimum lot size for new parcels or lots, less than the front lot line minimums required, or which does not meet the access requirement of MCC 39.4395, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

Staff: The subject property meets the minimum lot size, minimum front lot line length and fronts onto a public road. *(B) is not applicable to the subject property.*

(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) is for informational purposes. The property owner is not proposing to convey any portion of the lot at this time. *Criterion met.*

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

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

Staff: As discussed above under section 5.1, the subject property is not an area of land described as a tax lot solely for assessment and taxation purposes. The subject property is not an area of land created by the foreclosure of a security interest or created by court decree. *Criterion met.*

Based on the findings in 5.1 & 5.2 above, the subject property is a single Lot of Record.

6.0 Rural Residential Criteria:

6.1 § 39.4360 ALLOWED USES.

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

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

Staff: The applicant is requesting to construct a single-family dwelling on the subject property. The subject property was found to be a Lot of Record in Section 5.0 above. *Criterion met.*

6.2 (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;

* * *

Staff: In addition to the single-family dwelling, the applicant is proposing to construct a swimming pool adjacent to the dwelling.

6.3 § 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.

* * *

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

Staff: The property fronts onto NW Germantown Road. Transportation Planning has designated NW Germantown as a Rural Collector. No additional right-of-way has been requested. As such, the Yard requirements above under (C) are applicable. The proposed buildings will a minimum of 61 feet from all property lines (Exhibit A.3).

6.4 (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 Sanitarian has reviewed the proposed floor plans and site and finds that it can be served by an on-site sewage disposal system (Exhibit A.8). A Stormwater Drainage Control Certificate has been submitted signed by registered engineer Kathleen Freeman. No calculations have been included as part of the application package. A condition of approval has been included requiring the calculations be provided. The dwelling and site will be served by stormwater system that includes a rain garden. The applicant has provided an email thread between them and the Portland Water Bureau. A condition of approval has been included that a Water Service Certificate be provided before sign off for the building permit. *As conditioned, the criteria will be met.*

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

(1) Recording a covenant that implements the provisions of the Oregon Right to Farm Law in ORS 30.936 where the farm use is on land in the EFU base zone; or

(2) Where the farm use does not occur on land in the EFU base zone, the owner shall record a covenant that states they recognize and accept that farm activities including

tilling, spraying, harvesting, and farm management activities during irregular times, occur on adjacent property and in the general area.

Staff: A condition of approval has been included requiring the recording of a covenant (Exhibit B.5) before Zoning Plan Review. *As conditioned, this criterion met.*

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

Staff: The applicant has indicated that they will meet these requirements as part of Zoning Plan Review. *As conditioned, this criterion will be met.*

7.0 Geologic Hazards Criteria:

7.1 § 39.5075 PERMIT REQUIRED.

Unless exempt under this code or authorized pursuant to a Large Fill permit, no development, or ground disturbing activity shall occur: (1) on land located in hazard areas as identified on the Geologic Hazards Overlay map, or (2) where the disturbed area or the land on which the development will occur has average slopes of 25 percent or more, except pursuant to a Geological Hazards permit (GH).

Staff: The entire property is overlaid with the Geologic Hazards overlay. A Geologic Hazard Permit is required.

7.2 § 39.5085 GEOLOGIC HAZARDS PERMIT APPLICATION INFORMATION REQUIRED.

An application for a Geologic Hazards Permit shall include two copies of each of the following:

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

- (1) Property lines;**
- (2) Building structures, driveways, roads and right of way boundaries;**
- (3) Location of wells, utility lines, site drainage measures, stormwater disposal system, sanitary tanks and drainfields (primary and reserve);**
- (4) Trees and vegetation proposed for removal and planting and an outline of wooded areas;**
- (5) Water bodies;**
- (6) Boundaries of ground disturbing activities;**
- (7) Location and height of unsupported finished slopes;**
- (8) Location for wash out and cleanup of concrete equipment;**
- (9) Storage location and proposed handling and disposal methods for potential sources of non-erosion pollution including pesticides, fertilizers, petrochemicals, solid waste, construction chemicals, and wastewaters;**
- (10) Soil types;**
- (11) Ground topography contours (contour intervals no greater than 10-feet); and**
- (12) Erosion and sediment control measures.**

Staff: The applicant has provided an Erosion Control Plan (Exhibit A.10).

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

Staff: The applicant has provided this information in Exhibit A.20

(C) Written findings, together with any supplemental plans, maps, reports or other information necessary to demonstrate compliance of the proposal with all applicable provisions of the Geologic Hazards standards in MCC 39.5090. Necessary reports, certifications, or plans may pertain to: engineering, soil characteristics, stormwater drainage control, stream protection, erosion and sediment control, and replanting. The written findings and supplemental information shall include:

(1) With respect to fill:

(a) Description of fill materials, compaction methods, and density specifications (with calculations). The planning director may require additional studies or information or work regarding fill materials and compaction.

(b) Statement of the total daily number of fill haul truck trips, travel timing, loaded haul truck weight, and haul truck travel route(s) to be used from any fill source(s) to the fill deposit site.

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

Staff: Information is provided in Exhibits A.3, A.10, A.13, and A.20.

(3) One of the following:

(a) Additional topographic information showing the proposed development to be on land with average slopes less than 25 percent, and located more than 200 feet from a landslide, and that no cuts or fills in excess of 6 feet in depth are planned. High groundwater conditions shall be assumed unless documentation is available, demonstrating otherwise; or

(b) A geological report prepared by a Certified Engineering Geologist or Geotechnical Engineer certifying that the site is suitable for the proposed development; or,

(c) A GHP Form– 1 completed, signed and certified by a Certified Engineering Geologist or Geotechnical Engineer with their stamp and signature affixed indicating that the site is suitable for the proposed development.

(i) If the GHP Form– 1 indicates a need for further investigation, or if the director requires further study based upon information contained in the GHP Form– 1, a geotechnical report as specified by the director shall be prepared and submitted.

[a] A geotechnical investigation in preparation of a geotechnical report shall be conducted at the applicant’s expense by a Certified Engineering Geologist or Geotechnical Engineer. The report shall include specific investigations required by the director and recommendations for any further work or changes in proposed work which may be necessary to ensure reasonable safety from landslide hazards.

[b] Any development related manipulation of the site prior to issuance of a permit shall be subject to corrections as recommended by the geotechnical report to ensure safety of the proposed development.

[c] Observation of work required by an approved geotechnical report shall be conducted by a Certified Engineering Geologist or Geotechnical Engineer at the applicant's expense; the geologist's or engineer's name shall be submitted to the director prior to issuance of the permit.

[d] The director, at the applicant's expense, may require an evaluation of GHP Form- 1 or the geotechnical report by another Certified Engineering Geologist or Geotechnical Engineer.

Staff: Applicant has provided a Geologic Hazard Permit Form 1 and Geotechnical Report (Exhibit A.13).

(4) Documentation of approval by each governing agency having authority over the matter of any new stormwater discharges into public right-of-way.

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

Staff: The Sanitarian reviewed the proposal (Exhibit A.8).

7.3 § 39.5090 GEOLOGIC HAZARDS PERMIT STANDARDS.

A Geologic Hazards (GH) permit shall not be issued unless the application for such permit establishes compliance with MCC 39.6210 and satisfaction of the following standards:

(A) The total cumulative deposit of fill on the site for the 20-year period preceding the date of the application for the GH permit, and including the fill proposed in the GH permit application, shall not exceed 5,000 cubic yards. Fill physically supporting and/or protecting a structure or access road for essential and public facilities subject to earthquake or tsunami building code requirements of the Oregon Structural Specialty Code is not included in this 5,000 cubic yard calculation. For purposes of this provision, the term "site" shall mean either a single lot of record or contiguous lots of record under same ownership, whichever results in the largest land area.

Staff: The amount of fill that has been deposited in the past and proposed will not exceed 5,000 cubic yards (Exhibit A.13 and A.20). *Criterion met.*

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

Staff: The applicant indicates that the fill materials will only be composed of earth materials (Exhibit A.20). *A condition of approval has been included to support this finding.*

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

Staff: The Geotechnical Report indicates that permanent cut and fill slopes should not exceed a grade of 2H : 1V (50% grade) (Exhibit A.13) and finished slope faces need to be planted with appropriate vegetation to provide protection against erosion. *Criterion met.*

(D) Unsupported finished cuts and fills greater than 1 foot in height and less than or equal to 4 feet in height at any point shall meet a setback from any property line of a distance at least twice the height of the cut or fill, unless a Certified Engineering Geologist or Geotechnical

Engineer certifies in writing that the cuts or fills will not endanger or disturb adjoining property. All unsupported finished cuts and fills greater than 4 feet in height at any point shall require a Certified Engineering Geologist or Geotechnical Engineer to certify in writing that the cuts or fills will not endanger or disturb adjoining property.

Staff: The applicant indicates that all unsupported fill will be reviewed and approved by the geotechnical engineer. *As a condition of approval has been included.*

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

Staff: The applicant indicates that no fills will encroach on any water body (Exhibit A.3, A.10 and A.20). *Criterion met.*

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

Staff: No dredge materials will be used. *Criterion not applicable.*

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

Staff: The site is located in the Tualatin River drainage basin. A condition of approval has been included to require a better erosion control plan. *As condition, criterion met.*

(H) Stripping of vegetation, ground disturbing activities, or other soil disturbance shall be done in a manner which will minimize soil erosion, stabilize the soil as quickly as practicable, and expose the smallest practical area at any one time during construction.

Staff: An erosion control plan has been submitted (Exhibit A.10). *Criterion met.*

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

Staff: The proposed development was designed to minimize cut and fill operations to construct the proposed development. *Criterion met.*

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

Staff: A condition of approval has been included to require the use of temporary vegetation and/or mulching as part of the erosion control plan.

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

(1) A 100-foot undisturbed buffer of natural vegetation shall be retained from the top of the bank of a stream, or from the ordinary high watermark (line of vegetation) of a water body, or within 100-feet of a wetland;

(2) The buffer required in subsection (K)(1) may only be disturbed upon the approval of a mitigation plan which utilizes erosion, sediment, and stormwater control measures designed to perform as effectively as those prescribed in the most recent edition of the City of Portland Erosion and Sediment Control Manual and the City of Portland Stormwater Management Manual and which is consistent with attaining equivalent surface water quality standards as those established for the Tualatin River drainage basin in OAR 340-041-0345(4).

Staff: The proposed development will have ground disturbance within 100 ft of the stream on the subject property and the stream on tax lot 1N1W10C-01901.

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

Staff: A condition of approval has been included requiring the permanent plantings to be installed and the stormwater system be completed before occupancy of the dwelling.

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

Staff: A condition of approval has been included to require improvements to the erosion and sediment control plan. *As conditioned, this criterion will be met.*

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

Staff: Silt fencing will be installed to trap sediment during construction. *Criterion met.*

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

Staff: A condition of approval has been included to require improvements to the erosion and sediment control plan. *As conditioned, this criterion will be met.*

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

Staff: A rain garden will be built towards the front of the property near NW Germantown Road. Any outflow to the public right-of-way or stream channel will need to be reviewed before it can be authorized.

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

Staff: The stormwater detail shows the use of vegetation in the rain garden (Exhibit A.11). *Criterion met.*

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

(1) Energy absorbing devices to reduce runoff water velocity;

(2) Sedimentation controls such as sediment or debris basins. Any trapped materials shall be removed to an approved disposal site on an approved schedule;

(3) Dispersal of water runoff from developed areas over large undisturbed areas.

Staff: A condition of approval has been included to require improvements to the erosion and sediment control plan. *As conditioned, this criterion will be met.*

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

Staff: A condition of approval requires the applicant to modify the erosion and sediment control plan to show a stockpiled area for stored soils and to show any areas of proposed fill.

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

Staff: A condition of approval has been included to ensure compliance with this criterion.

(U) On sites within the Balch Creek drainage basin, erosion, sediment, and stormwater control measures shall be designed to perform as effectively as those prescribed in the most recent edition of the City of Portland Erosion and Sediment Control Manual and the City of Portland Stormwater Management Manual. All ground disturbing activity within the basin shall be confined to the period between May first and October first of any year. All permanent vegetation or a winter cover crop shall be seeded or planted by October first the same year the development was begun; all soil not covered by buildings or other impervious surfaces must be completely vegetated by December first the same year the development was begun.

Staff: The subject property is located within the Tualatin River drainage basin. *Criterion not applicable.*

(V) Ground disturbing activities within a water body shall use instream best management practices designed to perform as prescribed in the City of Portland Erosion and Sediment Control Manual and the City of Portland Stormwater Management Manual.

Staff: No ground disturbing activities have been authorized by this permit. The water pipe which crosses the stream channel is required to be bored so the stream is not disturbed. *As conditioned, this criterion met.*

(W) The total daily number of fill haul truck trips shall not cause a transportation impact (as defined in the Multnomah County Road Rules) to the transportation system or fill haul truck travel routes, unless mitigated as approved by the County Transportation Division.

Staff: The applicant did not provide enough information to determine if an impact will be created (Exhibit A.20). A condition of approval has been included that no more than 5 trucks may visit the site in a day. *As conditioned, criterion will be met.*

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

Staff: A condition of approval has been included to ensure that the contractor is aware of this standard. *As conditioned, criterion met.*

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

Staff: Applicant states that no compensation will be received and that the site is close to a balanced cut and fill. *Criterion met.*

8.0 Significant Environmental Concern for Streams Criteria:

8.1 § 39.5750- CRITERIA FOR APPROVAL OF SEC-S PERMIT –STREAMS.

* * *

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

Staff: The subject property is overlain with the Stream Conservation Area. A SEC-s permit is required to allow the physical improvements.

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

(1) A site plan drawn to scale showing the Stream Conservation Area boundary, the location of all existing and proposed structures, roads, watercourses, drainageways, stormwater facilities, utility installations, and topography of the site at a contour interval equivalent to the best available U.S. Geological Survey 7.5' or 15' topographic information;

(2) A detailed description and map of the Stream Conservation Area including that portion to be affected by the proposed activity. This documentation must also include a map of the entire Stream Conservation Area, an assessment of the Stream Conservation Area's functional characteristics and water sources, and a description of the vegetation types and fish and wildlife habitat;

(3) A description and map of soil types in the proposed development area and the locations and specifications for all proposed draining, filling, grading, dredging, and vegetation removal, including the amounts and methods;

(4) A study of any flood hazard, erosion hazard, and/or other natural hazards in the proposed development area and any proposed protective measures to reduce such hazards as required by subsection (E) (5) below;

(5) A detailed Mitigation Plan as described in subsection (D), if required; and

(6) A description of how the proposal meets the approval criteria listed in subsection (D) below.

Staff: The information is provided in Exhibits A.2, A.3, A.10, & A.11.

8.3 (D) For the protected stream resources, the applicant shall demonstrate that the proposal:

(1) Will enhance the fish and wildlife resources, shoreline anchoring, flood storage, water quality and visual amenities characteristic of the stream in its pre-development state, as documented in a Mitigation Plan. A Mitigation Plan and monitoring program may be approved upon submission of the following:

(a) A site plan and written documentation which contains the applicable information for the Stream Conservation Area as required by subsection (C) above;

- (b) A description of the applicant's coordination efforts to date with the requirements of other local, State, and Federal agencies;**
- (c) A Mitigation Plan which demonstrates retention and enhancement of the resource values addressed in subsection (D) (1) above;**
- (d) An annual monitoring plan for a period of five years which ensures an 80 percent annual survival rate of any required plantings.**

Staff: The applicant has submitted a mitigation plan (Exhibit A.15). *Criterion met.*

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

- (1) A bridge or arched culvert which does not disturb the bed or banks of the stream and are of the minimum width necessary to allow passage of peak winter flows shall be utilized for any crossing of a protected streams.**
- (2) All storm water generated by a development shall be collected and disposed of on-site into dry wells or by other best management practice methods which emphasize groundwater recharge and reduce peak stream flows.**
- (3) Any exterior lighting associated with a proposed development shall be placed, shaded or screened to avoid shining directly into a Stream Conservation Area.**
- (4) Any trees over 6" in caliper that are removed as a result of any development shall be replaced by any combination of native species whose combined caliper is equivalent to that of the trees removed.**
- (5) Satisfaction of the erosion control standards of MCC 39.5090.**
- (6) Soil disturbing activities within a Stream Conservation Area shall be limited to the period between June 15 and September 15. Revegetation/soil stabilization must be accomplished no later than October 15. Best Management Practices related to erosion control shall be required within a Stream Conservation Area.**
- (7) Demonstration of compliance with all applicable state and federal permit requirements.**

Staff: (1) The dwelling, physical improvements and driveway do not cross over the stream located on the site so a bridge or culvert is not needed (Exhibit A.3).

(2) A rain garden will be constructed towards the southeast portion of the property. A Stormwater Drainage Control Certificate to support the proposal. A condition of approval is included that the calculations be submitted to support the sizing of the garden to ensure it will meet the criterion. *As condition of approval will ensure compliance with the criterion.*

(3) Lighting designs have been included as Exhibit A.7. Placement of the different light fixtures need to be added to the plans. A condition of approval has been included. *Through a condition, criterion met.*

(4) The Natural Resource Report states that 8 trees with a total diameter of 214 inches will be removed. The Mitigation Plan is proposing to replace the 214 inches of trees removed with 24 trees and 142 shrubs (Exhibit A.15, page 34). *Criterion met.*

(5) The applicant has submitted an Erosion and Sediment Control plan (Exhibit A.10). There are modifications necessary for it to meet all the requirements of MCC 39.5090. *As conditioned, this criterion will be met.*

(6) The applicant has indicated acceptance of the above timelines. A condition of approval has been included to ensure compliance. *Through a condition, criterion met.*

(7) DEQ permits will be obtained for the septic system. No federal permits are needed. *Criterion met.*

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

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

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

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

Staff: The applicant will not be planting any invasive species and will be removing them over a 2.3-acre area. The property owner will be revegetating the disturbed areas with native plants (Exhibit A.15). A condition of approval has been included to remind the property owners of their responsibility to handle hazardous materials carefully.

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

Staff: The subject property is not located within a PAM overlay. *Criterion not applicable.*

9.0 Significant Environmental Concern for Wildlife Habitat Criteria:

9.1 § 39.5510 USES; SEC PERMIT REQUIRED.

(A) All uses allowed in the base zone are allowed in the SEC when found to satisfy the applicable approval criteria given in such zone; provided however, that the location and design of any use, or change or alteration of a use, except as provided in MCC 39.5515, subject to approval of an SEC permit pursuant to this Subpart.

Staff: The applicant is proposing a single-family dwelling in the Rural Residential zone. Single-family dwellings are an Allowed Use in the zone. The applicant has applied for a SEC-s and SEC-h permit to authorize the dwelling in the overlays. *Criterion met.*

9.2 § 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:

(1) A written description of the proposed development and how it complies with the applicable approval criteria of MCC 39.5540 through 39.5860.

(2) A map of the property showing:

(a) Boundaries, dimensions, and size of the subject parcel;

- (b) Location and size of existing and proposed structures;
- (c) Contour lines and topographic features such as ravines or ridges;
- (d) Proposed fill, grading, site contouring or other landform changes;
- (e) Location and predominant species of existing vegetation on the parcel, areas where vegetation will be removed, and location and species of vegetation to be planted, including landscaped areas;
- (f) Location and width of existing and proposed roads, driveways, and service corridors.
- (g) In the SEC-wr overlay, the location of natural drainageways, springs, seeps, and wetlands on the site.

(3) The Planning Director may also require the applicant to provide the following:

* * *

- (b) A scaled drawing of the building design and elevations that show the relationship between the building and existing and finished grades and existing or proposed vegetation.

Staff: The applicant has provided a site plan, erosion control plan and a natural resource assessment (Exhibit A.3, A.10 and A.15). The property is not located in the SEC-wr zone. The plans do show the location of the SEC-s streams. *Criterion met.*

9.3 § 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 has provided the above information in Exhibits A.3, A.10 and A.15. *Criterion met.*

9.4 (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 site has been cleared in the past for a homesite, driveway and related improvements. These improvements will be located in the "cleared" areas of the property.
Standard 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 entirety of the development area is 568+/- ft from the public right-of-way (row). The dwelling is a minimum of 400+ feet from the row. *Standard not met.*

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

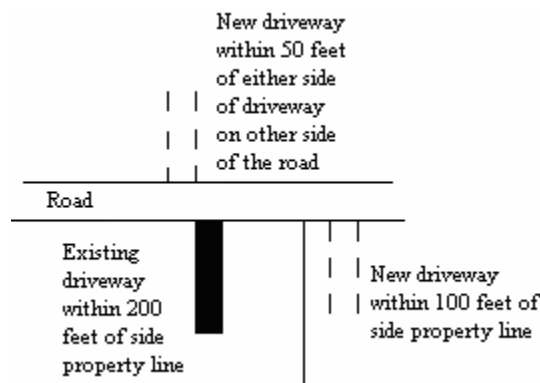
Staff: The existing access onto the property was initially built as a Forest Practice Road (FPR) in 2001. Review of aerial photos allowed staff to measure its original length at 499 ft. A FPR needs to be revegetated once the access is no longer needed per OR Department of Forestry rules. The conversion of the access to a driveway is a change from a forest use to a residential use. The driveway length from the front property line to the entrance of the garage is 696+/- ft. *Standard not met.*

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

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

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

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



For illustrative purposes only.

* * *

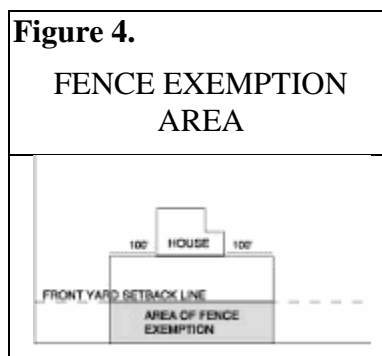
Staff: The property to the west has its driveway within 30 feet of the proposed driveway location. *Standard met.*

(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 The existing dwelling on 12525 NW Germantown is located approximately 144 ft of the shared side property line. The dwelling on 8821 NW Skyline is approximately 87 ft to the shared side property line. The edge of the proposed dwelling is within 279 ft from the property line shared with 8821 NW Germantown. *Standard 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. (See Figure 4 below.)**



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

Staff: The applicant’s narrative (Exhibit A.15) indicates that no new fencing will be installed. The Oxford Dictionary defines a “Fence” as “A barrier, railing or other upright structure, typically of wood or wire, ...to mark a boundary, control access or prevent escape.” A gate across a driveway controls access and is a type of fence. A gate will be installed across the driveway approximately 9 ft from edge of right-of-way, but its proposed location is within the Fence Exemption Area. *Standard met.*

(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 application narrative (Exhibit A.15) states that no nuisance plants will be planted and that any nuisance plants will be removed and kept removed from the developed area of the property. *Standard met.*

9.5 (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 proposed development does not meet (B)(2) and (B)(3). The dwelling is 400+ ft from NW Germantown Rd and the driveway/service corridor is over 600 ft long. The property fronts onto NW Germantown Road. The applicant states that the developable portion of the site is in the north-eastern portion of the property with steeper slopes towards the middle. There are areas near the front of the property in front of the road that are 20% or less and the geotechnical report does not indicate that this area is not capable of being built on. The applicant has proposed to place the septic drainfield and rain garden in this location. The best views on the property are where the home is proposed. The property is capable of meeting the Development Standards of (B) above, but the property owners have chosen to place the home where the view is. The mitigation plan will need to comply with (C)(2) above. Alternative Conservation Measures and mitigation is required by (C)(2).

(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 is proposing to use (C)(3), the code says that the Wildlife Conservation Plan must first try to meet (C)(5) before (C)(3) is utilized to allow deviations.

(3)(a): The applicant has avoided the largest forested area on the property. *Criterion met.*

(3)(b): The development utilizes approximately 52,266 sq. ft. (1.19-acres) of existing cleared area (roadway removed). A total of 7-8 trees will be removed and are being removed for fire safety reasons (Exhibit A.15, page 6). *Criterion met.*

(3)(c) The application includes the construction of a gate across the driveway. As discussed in finding (B)(6) above, a gate is fencing as it is a barrier to control access. No other fencing is proposed. *Criterion not met.*

(3)(d) No new cleared areas are proposed.

(3)(e) The applicant indicates no stream riparian areas will be disturbed as a result of the proposed development (Exhibit A.15). The SEC-s overlay covers the entire property. The house, driveway, water line, on-site sewage disposal system, and stormwater system are located within this protected riparian area. A Mitigation Plan has been proposed for the SEC-s overlay area.

No mitigation has been proposed to mitigate for the SEC-h development standards the project does not meet. The mitigation proposed was utilized to comply with the SEC-s overlay intrusion.

The proposed development does not comply with (C)(3) criteria. Through conditions of approval, the requirements of (C)(5) will be met.

(4) For a property meeting subsection (C)(1) above, the applicant may utilize the following mitigation measures for additions instead of providing a separate wildlife conservation plan:

* * *

Staff: The subject property is currently vacant. As such, (C)(4) is not applicable because the proposed development is not an addition. *Criteria not applicable.*

(5) Unless the wildlife conservation plan demonstrates satisfaction of the criteria in subsection (C)(3) of this section, 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.

Staff: The proposed development is restricted to the cleared area of the property. *Criterion met.*

(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.

Staff: No clearing is proposed.

(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. Existing fencing located in the front yard adjacent to a public road shall be consistent with subsection (B)(6).

Staff: The plans show a gate will be constructed across the roadway. The gate is within the Fence Exemption Area under (B)(6). No other fencing is proposed. A condition of approval has been included restricting the construction of fencing. *As conditioned, this requirement met.*

(d) For mitigation areas, all trees, shrubs and ground cover shall be native plants selected from the Metro Native Plant List. An applicant shall meet Mitigation Option 1 or 2, whichever results in more tree plantings; except that where the total developed area (including buildings, pavement, roads, and land designated as a Development Impact Area) on a Lot of Record will be one acre or more, the applicant shall comply with Mitigation Option 2:

Staff: The development area is approximately 52,266 sq. ft. (1.19-acres). The applicant has proposed native species for the SEC-s mitigation plan, so the use of natives should not be a problem. As the developed area is more than one acre, Mitigation Option 2 must be used.

1. Mitigation Option 1. In this option, the mitigation requirement is calculated based on the number and size of trees that are removed from the development site.

Trees that are removed from the development site shall be replaced as shown in the table below. Conifers shall be replaced with conifers. Bare ground shall be planted or seeded with native grasses or herbs. Non-native sterile wheat grass may also be planted or seeded, in equal or lesser proportion to the native grasses or herbs.

Tree Replacement Table:

Size of tree to be removed (inches in diameter)	Number of trees and shrubs to be planted
6 to 12	2 trees and 3 shrubs
13 to 18	3 trees and 6 shrubs
19 to 24	5 trees and 12 shrubs
25 to 30	7 trees and 18 shrubs
over 30	10 trees and 30 shrubs

Staff: Mitigation Option 2 must be used. Option 1 is not applicable.

2. Mitigation Option 2. In this option, the mitigation requirement is calculated based on the size of the disturbance area associated with the development. Native trees and shrubs are required to be planted at a rate of five (5) trees and twenty-five (25) shrubs per every 500 square feet of disturbance area (calculated by dividing the number of square feet of disturbance area by 500, and then multiplying that result times five trees and 25 shrubs, and rounding all fractions to the nearest whole number of trees and shrubs; for example, if there will be 330 square feet of disturbance area, then 330 divided by 500 equals .66, and .66 times five equals 3.3, so three trees must be planted, and .66 times 25 equals 16.5, so 17 shrubs must be planted). Bare ground shall be planted or seeded with native grasses or herbs. Non-native sterile wheat grass may also be planted or seeded, in equal or lesser proportion to the native grasses or herbs.

Staff: The disturbance area is approximately 52,266 sq. ft. (1.19-acres). Dividing the 52,266 sq. ft by 500 equals 104.5. Multiplying 105 by 5 trees and 25 shrubs equals 525 trees and 2,625 shrubs. The mitigation plantings for the SEC-s overlay intrusion are 24 trees and 196 shrubs. The additional trees needing to be planted are 501 trees and 2,429 shrubs. At least 50 percent of the trees need to be native evergreen to support the forest canopy during fall, winter, and early spring.

(e) Location of mitigation area. All vegetation shall be planted within the mitigation area located on the same Lot of Record as the development and shall be located within the SEC-h overlay or in an area contiguous to the SEC-h overlay; provided, however, that if the vegetation is planted outside of the SEC-h overlay then the applicant shall preserve the contiguous area by executing a deed restriction, such as a restrictive covenant. (Note: an off-site mitigation option is provided in a streamlined discretionary review process). The mitigation area shall first be located within any

existing non-forested cleared areas contiguous to forested areas, second within any degraded stream riparian areas and last in forested areas or adjacent to landscaped yards.

Staff: A condition of approval will be included requiring the submittal of a second mitigation plan for the SEC-h permit. The condition will outline what the plan shall entail.

(f) Prior to development, all work areas shall be flagged, fenced, or otherwise marked to reduce potential damage to habitat outside of the work area. The work area shall remain marked through all phases of development.

(g) Trees shall not be used as anchors for stabilizing construction equipment.

(h) Native soils disturbed during development shall be conserved on the property.

(i) An erosion and sediment control plan shall be prepared in compliance with the ground disturbing activity standards set forth in MCC 39.6200 through MCC 39.6235.

(j) Plant size. Replacement trees shall be at least one-half inch in caliper, measured at 6 inches above the ground level for field grown trees or above the soil line for container grown trees (the one-half inch minimum size may be an average caliper measure, recognizing that trees are not uniformly round), unless they are oak or madrone which may be one gallon size. Shrubs shall be in at least a 1-gallon container or the equivalent in ball and burlap and shall be at least 12 inches in height.

(k) Plant spacing. Trees shall be planted between 8 and 12 feet on-center and shrubs shall be planted between 4 and 5 feet on-center, or clustered in single species groups of no more than four (4) plants, with each cluster planted between 8 and 10 feet on-center. When planting near existing trees, the drip line of the existing tree shall be the starting point for plant spacing measurements.

(l) Plant diversity. Shrubs shall consist of at least two (2) different species. If 10 trees or more are planted, then no more than 50% of the trees may be of the same genus.

(m) Nuisance plants. Any nuisance plants listed in MCC 39.5580 Table 1 shall be removed within the mitigation area prior to planting.

(n) Planting schedule. The planting date shall occur within one year following the approval of the application.

(o) Monitoring and reporting. Monitoring of the mitigation site is the ongoing responsibility of the property owner. Plants that die shall be replaced in kind so that a minimum of 80% of the trees and shrubs planted shall remain alive on the fifth anniversary of the date that the mitigation planting is completed.

Staff: For criteria (f) through (o), conditions of approval have been included so this information is included on plans and in the SEC-h Mitigation Plan. *As conditioned, criteria met. The (C)(5) requirements will be met through conditions.*

10.0 Conclusion

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

11.0 Exhibits

- 'A' Applicant's Exhibits
- 'B' Staff Exhibits
- 'C' Procedural Exhibits
- 'D' Comments Received

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	2	Application Form	6/11/2024
A.2	8	Narrative	6/11/2024
A.3	3	Site Plans	6/11/2024
A.4	2	Floor Plans	6/11/2024
A.5	2	Ceiling and Roof Plan	6/11/2024
A.6	2	Elevation Drawings	6/11/2024
A.7	1	Exterior Lighting	6/11/2024
A.8	5	Septic Review Certification	6/11/2024
A.9	2	Fire Service Provider Review	6/11/2024
A.10	5	Erosion Control Plan	6/11/2024
A.11	2	Stormwater Drainage Control Certificate	6/11/2024
A.12	16	Email Correspondences	6/11/2024
A.13	42	Geotechnical Reconnaissance and Stability Preliminary Study – 4 pages a. Report of Geotechnical Investigation and Landslide Hazard Study – 38 pages	6/11/2024
A.14	4	Title Plant Records Report	6/11/2024
A.15	34	Natural Resources Assessment	6/11/2024
A.16	13	Deeds a. Warranty Deed signed December 2, 1940 B570 P40-41 b. Warranty Deed recorded January 27, 1942 B660, P183 – 184 [Describes TL 2400 – Deed of Creation] c. Warranty Deed recorded April 20, 1943, B743, P459 – 460 [Describes TL 2400] d. Warranty Deed recorded November 3, 1948, B1301, P560 [Describes TL 2400] e. Warranty Deed recorded July 26, 1961, B2073, P206 [Describes TL 2400] f. Warranty Deed recorded March 16, 2970, B724, P309 [Parcel I N/A, Parcel II N/A]	6/11/2024

A.17	1	Email re T2-2024-0057 – Questions on Application	10/21/2024
A.18	3	Applicant’s Response to Comments	10/23/2024
A.19	1	GH Earth Materials Amounts	11/5/2024
A.20	4	Geologic Hazard Narrative	11.07.2024
‘B’	#	Staff Exhibits	Date
B.1	2	Assessment and Taxation Property Information for 1N1W10B-02400 (Alt Acct# R961100120/ Property ID#R324037)	6/11/2024
B.2	1	Current Tax Map for 1N1W10B	10/16/2024
B.3	1	Survey 52240	10/16/2024
B.4	3	Parcel Record Card for R961100120	10/18/2024
B.5	3	Warranty Deed recorded April 3, 2023 Instrument # 2023-019238	10/18/2024
‘C’	#	Administration & Procedures	Date
C.1	2	Incomplete Letter	7/11/2024
C.2	1	Complete letter (day 1)	7/18/2024
C.3	10	Opportunity to Comment	8/5/2024
C.4	1	Time Extension	11/6/2024
C.5	30	Decision	12/23/2024
‘D’	#	Comments	Date
D.1	3	Carol Chesarek Comments	8/19/2024
D.2	6	Carol Chesarek Comments	10/04/2024
D.3	3	Applicant’s Response to Comments	10/23/2024