

DEPARTMENT OF COMMUNITY SERVICES

Land Use Planning Division



www.multco.us/landuse ▪ Email: land.use.planning@multco.us ▪ Phone: (503) 988-3043

Notice of Hearings Officer Decision

This document provides notice of the Hearings Officer's decision in the matter of **T2-2025-0067**. The decision is effective on being mailed, and the mailing date is **August 13, 2026**. This notice is being mailed to those persons entitled to receive notice under MCC 39.1170(D).

This notice includes the signed Hearings Officer's decision which contains the following information: the name of the applicant or owner; the appellant's name; and the street address or location of the subject property along with a brief summary of the decision and the proposed use. For additional information, please visit our Land Use Planning website at <https://multco.us/departments/land-use-planning-division>.

The Planning Director has not appealed the Hearings Officer's decision. Therefore, the Hearings Officer's Decision is the County's final decision and may be appealed to the State of Oregon Land Use Board of Appeals (LUBA) within 21 days of the date the decision is mailed by any person or organization that appeared and testified at the hearing, or by those who submitted written testimony into the record.

Appeal instructions and forms are available from:

Land Use Board of Appeals
201 High St SE, Suite 600
Salem, Oregon 97301-3398

503-373-1265
LUBA.Support@luba.oregon.gov
www.oregon.gov/LUBA

For further information, a copy of the final decision for inspection, or copies call or email the Multnomah County Land Use Planning Division at: 503-988-3043 or LUP-Hearings@multco.us. You can also visit our office at 1600 SE 190th Ave, Portland, OR 97233

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

DECISION OF HEARINGS OFFICER

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

Case File: T2-2025-0067

Permit: Significant Environmental Concern for Water Resources (SEC-wr)
and Lot of Record Verification

Location: 8344 SE Cottrell Road, Boring
Map, 1S4E22CD -00300
Property ID # R342546
Alt. Acct. # R994220180

Applicant: Robert Fraley, Portland Water Bureau

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

Overlays: Significant Water Resource (SEC-wr)

Summary: The applicant requests a Lot of Record Verification and a Significant Water Resources (SEC-wr) permit. The SEC-wr permit is for a restoration project within Johnson Creek, consisting of the removal of an artificial earth dam which has created a pond to reestablish a natural stream channel.

By decision dated April 30, 2026, the County approved the application, subject to conditions (Exhibit C.2). The Cottrell Community Planning Organization/Pleasant Home Community Association ("appellant") appealed the decision on May 14, 2026, (Exhibit E.1). The written appeal argued that:

- a. The applicant failed to assess cumulative impacts of the project, citing MCC 39.5590(C)(3) and MCC 39.5590(D)(2)(b)(iv);

- b. The applicant's stormwater analysis is inadequate to comply with MCC 39.5590(C)(4)(g) and MCC 39.6235;
- c. The applicant's alternatives analysis is conclusory, citing MCC 39.5590(C)(3)(a)-(e); and
- d. The County failed to adequately address public comments, citing MCC 39.1105.

**Testified at
the Hearing:**

Anna Shank-Root, County Planner
Alexandra Howard, County Land Use Planning Deputy Director
Renee France, Applicant's Attorney
Burke Strobel, Portland Water Bureau Senior Fish Biologist
Tami Wensenk, Appellants' Representative

Applicable Approval Criteria:

Multnomah County Code (MCC): General Provisions: MCC 39.1250 Code Compliance and Applications, MCC 39.2000 Definitions, MCC 39.6235 Stormwater Drainage Control

Lot of Record: MCC 39.3005 Lot of Record – Generally, MCC 39.3080 Lot of Record – Multiple Use Agriculture – 20 (MUA-20)

Multiple Use Agriculture – 20 (MUA-20): MCC 39.4310(D) Allowed Uses – Public...conservation areas and structures for the protection of water, soil, open space, forest and wildlife resources, MCC 39.4325(G) Dimensional Standards and Development Requirements

Significant Water Resources (SEC-wr): MCC 39.5510 Permits Required, MCC 39.5590 SEC-wr Permit Criteria (Significant Water Resources)

DECISION: Deny the Appeal, affirm the director's decision, and **Approve** the Application subject to the conditions of approval included in this Final Order.

Permit Expiration

This land use permit shall expire two (2) years after the date of the final decision, unless the use or development was established according to all specifications and conditions of approval in the land use approval. [MCC 39.1185(A)] Expiration of an approval means that a new application is required for uses that are not established during

the approval period. 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.

Conditions of Approval:

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parenthesis.

Approval of this land use permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which complies with this approval and is consistent with supporting 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)]

1. Prior to beginning restoration work, the property owner(s), their agent(s), or their representative(s) shall complete the following actions:

- a. Record pages 1 through 5 and Exhibit A.5 of this Notice of Decision with the County Recorder. The Notice of Decision shall run with the land. Proof of recording shall be made prior to the issuance of any permits and shall be filed with the Land Use Planning Division. Recording shall be at the applicant's expense. Please email the recorded document to anna.shank-root5@multco.us [MCC 39.1175 and MCC 39.5590(D)(3)(f)].
- 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. Please email the signed document to anna.shank-root5@multco.us. [MCC 39.1170(A) & (B)].
- c. Obtain an Erosion and Sediment Control (ESC) permit. [MCC 39.5590(C)(4)(i)]
- d. Obtain a Flood Development Permit for the alteration of a watercourse. [MCC 39.5015(B)]

2. All soil disturbing activities within all Riparian Areas shall be limited to the period between June 15 and September 15. Revegetation/soil stabilization must be accomplished no later than October 15. The Planning Director may extend the timeline of this period. [MCC 39.5590(C)(4)(i)(i)]. Any request for extension shall be made a minimum of 15 days before the deadline. The property owner must provide documentation as to why they are requesting an extension, provide a

timeline for extension of the soil disturbance period, and demonstrate how the soil disturbing activities are in alignment with current Best Management Practices and Oregon Department of Fish and Wildlife in-stream timing schedule. [MCC 39.1170(A)]

3. Prior to and during development/restoration, the property owner(s) or their representatives shall:

- a. Flag, fence, or otherwise mark the boundaries of the Riparian Area. Such markings must be maintained until construction is complete. [MCC 39.5590(C)(4)(f) & (E)(3)]
- b. Not use trees as anchors for stabilizing construction equipment. [MCC 39.5590(E)(4)]

4. Upon completion of the restoration/mitigation actions, the property owner(s), their agent(s), or their representative(s) shall:

- a. Document Restoration Installation - Provide certification by a professional wetland or riparian consultant, fish and wildlife biologist, landscape architect, or other qualified professional as determined by the Planning Director, that the riparian/vegetated corridor was restored according to the mitigation plan and that the vegetated corridor will qualify as “Good Corridor” within 5 years. [MCC 39.5590(C)(3)(d), MCC 39.5590(C)(4)(d), and MCC 39.5590(E)(1)]
- b. Provide Annual Condition Reports for a 5-Year Period – For 5 years following initial planting efforts, provide a yearly report by November 30th, referencing this casefile, via email to LUP-submittals@multco.us outlining the condition of the plantings and if any modifications to the mitigation plan are necessary. Note: Please include thorough and clear information about the plantings and site conditions, including but not limited to a narrative description of conditions, photographs, information on maintenance, and the health of the plants. Any proposed modifications to the mitigation plan require written approval by Multnomah County Land Use Planning. Failure of vegetation to be maintained in a healthy growing state shall require continued monitoring by a professional, and failure to submit monitoring reports may result in enforcement actions. [MCC 39.5590(E)(2)]

5. As an on-going condition, the property owner(s) shall maintain the portions of the Riparian Area addressed by the Restoration Plan (Exhibit A.5) in “Good Condition” [MCC 39.5590(D)]

Dated this 7th day of August 2026

A handwritten signature in black ink, appearing to read 'Joe Turner', with a stylized, flowing script.

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

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

Hearing and Record Highlights

1. Multnomah County Land Use Hearings Officer Joe Turner (the “hearings officer”) received testimony at the duly noticed online *de novo* public hearing about the appeal on May 9, 2026. At the hearing, the hearings officer received into the record and inspected electronic copies of the file maintained by the Department of Community Services Land Use and Transportation Planning Program regarding the application and appeal. The hearings officer made the declarations required by ORS 197.763. The hearings officer disclaimed any *ex parte* contacts and any bias or conflicts of interest.

2. County planner Anna Shank-Root summarized her Hearing Memo dated June 16, 2026, (the “Staff Hearing Memo”), the director’s decision, and the applicable approval criteria and responded to the appeal.

a. She noted that the applicant is requesting confirmation that the site is a Lot of Record and approval of a stream channel restoration project on Johnson Creek, including the removal of an existing earthen dam and the associated inline pond known as “Cottrell Pond.” The project is proposed on a parcel located at 8344 SE Cottrell Road (the “site”). The site is located east of SE Cottrell Road, south of SE Carpenter Lane, and north of SE Bluff Road, just north of the Clackamas County boundary. The site is zoned MUA-20.

b. The Lot of Record review portion of the director’s decision addressed MCC 39.93005, the general lot of record criteria, and 39.3080, the MUA-20 specific lot of record criteria. Staff reviewed the deed records for the site and historic zoning maps and ordinances to determine that the site was lawfully created.

c. The development associated with the stream restoration project is allowed in the MUA-20 zone pursuant to MCC 39.4310(C), which lists public conservation areas and structures for the protection of water, soil, open space, forests, and wildlife resources as an allowed use.

d. The stream restoration project, which includes grading and placement of fill, is located within the mapped Significant Natural Resources overlay, which triggers the requirement for Type II SEC-wr review. The director’s decision reviewed the project for compliance with MCC 39.5590 SEC-wr permit criteria.

i. The SEC-wr criteria require an alternatives analysis to determine whether the project can have less impact on the riparian area if located elsewhere. In this case, removal of the artificial dam and resulting pond and restoration of the natural stream channel cannot occur outside of riparian area, as the project is water dependent.

ii. In addition, the project needs to mitigate impacts to the riparian area that resulted from the prior placement of the dam and resulting pond in the channel of Johnson Creek, which has caused increased stream temperatures and decreased habitability for fish and amphibians.

iii. The SEC-wr criteria also require mitigation to offset impacts within the riparian area. The applicant has provided a habitat assessment and restoration plan (Exhibit A.5) which indicates that the Johnson Creek riparian corridor on the site is currently in “degraded” condition as defined by MCC 39.5590(D)(1) and the mitigation activities proposed with this project will restore the on-site corridor to “Good” condition as defined by MCC 39.5590(D)(1). Restoration will be accomplished primarily by removing existing invasive plants and increasing the contiguous area of standing trees, shrubs, and natural vegetation across 6.36-acres of the site.

iv. The project is also subject to additional Type I reviews: a flood development permit due to alteration of the watercourse, and an erosion and sediment control permit.

e. Appellant raised four issues in their notice of appeal:

- i. Failure to assess cumulative impacts, citing MCC 39.5590(C)(3) and 39. 5590(B)(4);
- ii. Inadequate stormwater analysis, citing MCC 39.5590(C)(4)(g), 39.6235;
- iii. Conclusory alternatives analysis, citing MCC 39.5590(C)(3)(a)-(e); and
- iv. Failure to address public comments, citing MCC 39.1105.

The Staff Hearing Memo responds to the issues raised in the appeal.

3. County Land Use Planning Deputy Director Alexandra Howard noted that the director’s decision, which addresses all of the applicable approval criteria, is attached to the Staff Hearing Memo.

4. Attorney Renee France and Portland Water Bureau senior fish biologist and project manager Burke Strobel appeared on behalf of the applicant, Portland Water Bureau (“PWB”).

a. Ms. France agreed with the findings and conditions in the Staff Report. She noted that the applicant submitted a pre-hearing packet in response to the appeal (Exhibit E.2).

i. She argued that PWB’s Bull Run Filtration Plant (the “Filtration Facility”) located to the east of the site is not relevant to this application for a stream restoration project. The decision approving the Filtration Facility is final and not subject to collateral attack in this proceeding. This project must be reviewed on its own merits, subject only to the SEC-wr criteria of the Code.

ii. Exhibit E.2 includes a supplemental response prepared by the team of experts that designed the project which provides additional details to support the conclusion that the restoration activities are limited to the minimum area necessary. Incursion into the resource area is unavoidable with a stream restoration project. But the applicant made great effort to limit the extent of such intrusion and impacts to the resource.

iii. There is substantial evidence in the record to support the County's findings that all of the applicable approval criteria are met, including detailed species lists and planting schedules for each of the various habitat areas. (Exhibit A.5). The conditions of approval require ongoing monitoring of the plantings for five years to ensure the plants actually survive and achieve the proposed benefits.

iii. Regarding minimization, the applicant submitted a supplemental explanation of the applicant's efforts to minimize the project's impacts and why it is not feasible to further reduce the impacts. (Exhibit E.2 Attachment 4)

iv. Her memo (Exhibit E.2) addresses appellants' cumulative effects argument. Offsite cumulative effects that are unrelated to this site and this project are not relevant. Cumulative effects analysis is limited to the site: the impoundment of the stream by the dam and the resulting pond.

v. The project was analyzed and designed by a multi-disciplinary team of experts including engineers, fish biologists, and experts in planting. Team members have consulted with agencies that will oversee the project and those agencies agree with the scope and direction of the project. All of the analysis is included in the record and provides substantial evidence that all of the applicable approval criteria are met.

vi. She agreed to toll the 150-day clock for two weeks to accommodate the open record period.

b. Mr. Strobel summarized his PowerPoint presentation summarizing the project. (Exhibit E.4). The site is located roughly 1,000 feet downstream from the headwaters of Johnson Creek. A meadow of invasive vegetation has formed in the accumulated sediments at the east end of the pond impounded by the dam.

i. He summarized the conditions on the site that create the need for the project.

(A) The existing riparian corridor is degraded. A riparian corridor with more than 10% invasive species cover is considered degraded. In this case, invasive species cover on the site varies from 15% to 65%, depending on the habitat type. The meadow is dominated by invasive reed canary grass.

(B) The dam creates a barrier to fish passage. Anadromous fish (salmon and steelhead) distribution ends about two miles downstream from the site, but cutthroat trout distribution ends at the downstream end of the dam, based on the Oregon Department of Fish and Wildlife (“ODFW”) database and as confirmed by fish sampling performed by Multnomah County in 2012. The culvert that carries water through the dam has a “jump height” of about seven feet, which is insurmountable by resident fish.

(C) The pond has a large surface area with limited shade, which has a significant impact on downstream water temperatures in Johnson Creek. Monitoring performed by the Johnson Creek Watershed Council (the “JCWC”) in 2018 and by PWB in 2025 show that the pond increases the maximum daily temperature of Johnson Creek by up to 8 degrees Celsius on warm days. Upstream of the pond the water temperature rarely exceeds the 18-degree Celsius threshold set by the Oregon Department of Environmental Quality (“ODEQ”). Downstream of the pond it consistently exceeds that threshold in the summer, surpassing threshold by up to 7 degrees Celsius.

(D) The site also provides ecological functions, opportunities for amphibian breeding and a certain amount of flood storage, which the project is designed to retain. Bullfrogs are the most common animal in the pond. However, red-legged frogs also use the pond, to a limited extent, for breeding.

ii. Local environmental organizations and agencies have recognized the environmental impacts of the Cottrell Pond for many years. The JCWC considers removal of the dam and pond a top priority project to improve water quality, reducing water temperatures, in Johnson Creek. Dam removal is also identified as a priority project in Clackamas Partnership’s Strategic Restoration Action Plan. The City of Gresham and ODEQ determined that Cottrell Pond has more impact on the stream temperature in Johnson Creek than any other remaining pond on Johnson Creek that has been studied.

iii. The objectives of the proposed project include:

(A) Converting a “Degraded Riparian Corridor” to a “Good Riparian Corridor” condition;

(B) Restoring fish passage through the removal of the impounding dam;

(C) Improving the water quality in Johnson Creek through the decrease in water surface area and residence time in order to significantly decrease stream temperatures; and

(D) Retaining ecological functions such as breeding opportunities for native amphibians and retention of flood waters within the floodplain while discouraging bullfrogs.

iv. The existing pond covers an area of about 0.8-acres at a maximum depth of six feet. The dam is about 12 feet high. With this project the applicant will remove the existing dam to re-establish the stream channel, create seasonal ponds and a secondary channel to feed the seasonal ponds, create a floodplain area “to match referenced conditions,” and place large woody debris in the stream channel for grade control and in the floodplain for roughness to help stabilize the floodplain. Proposed stream restoration grading will impact about 51,200 square feet (1.2 acres) of the site.

v. The plans also identify additional disturbance areas on the site in support of restoration grading, including areas for equipment access, staging of equipment and materials, and amending upland soils with pond sediments to provide a medium for restoration plantings. The total disturbance area on the site, including restoration grading, equates to 188,900 square feet (4.3 acres). About three acres of the total disturbance area are located within the SEC overlay. Some of the disturbance areas have already been disturbed, including the gravel driveway that can be used by equipment accessing the site.

vi. The applicant retained as many trees on the site as possible, including islands of existing stands with corridors between the trees for limited equipment access and by limiting dam removal to what is necessary to achieve the restoration objectives. The applicant designed the project to avoid the removal of trees on the property line. The majority of trees to be removed are on the slopes of the dam. About 20 trees must be removed, which equates to 8% of all trees greater than six-inches in diameter on the site.

vii. The applicant will revegetate the riparian and upland areas on the site to provide “Good” riparian corridor conditions. Revegetation on the site will include replacing removed trees with new tree plantings at a ratio of 48:1 and planting 6,280 native herbaceous plants, 6,000 native shrubs, and 966 native trees. The applicant will also reduce invasive plants within the SEC overlay to less than 10%. The applicant will monitor the restoration plantings and submit annual reports to the County documenting the condition of the restoration.

4. Tami Wensenk testified on behalf of appellant and summarized her oral testimony (Exhibit I.3).

a. She argued that the director’s findings are inadequate to support a determination that the application complies with MCC 39.5590, specifically the submittal requirements of MCC 39.5590(B) and the alternatives analysis and development standards of MCC 39.5590(C)(3) and (4).

i. The record does not support the ecological benefits claimed by the applicant. The record does not clearly quantify the existing resource, the conditions being altered, the resources that will be lost, the resources that will be created, or the magnitude of the expected benefits. MCC 39.5590(B)(2)-(4) require a site plan and

biological/wetland survey sufficient to establish baseline conditions. MCC 39.5590(C)(3)(d) requires the applicant to show the Riparian Area “can be restored to an equal or better condition.” There must be a clear comparison of existing and post-project conditions and documentation that the proposed mitigation will actually result in a “Good Corridor” condition required by MCC 39.5590(D)(1).

b. The application materials do not include sufficient detail to determine whether the proposed mitigation is sufficient to offset impacts to the riparian corridor and water resource, as required by MCC 39.5590(D)(3), including the monitoring and timeline requirements of MCC 39.5590(D)(3)(f). The applicant must demonstrate that the mitigation will actually achieve the intended resource protection objectives.

c. The application is insufficient to demonstrate that impacts have been avoided and minimized to the maximum extent practicable as required by MCC 39.5590(C)(3). The County’s findings fail to clearly explain why the 1.22 acre disturbance area is the minimum necessary to accomplish the project's objectives, as required by MCC 39.5590(C)(3)(a) and (b). The applicant’s alternatives analysis is conclusory and does not provide sufficient evidence demonstrating that lesser-impact alternatives were fully evaluated and determined to be infeasible. The applicant must demonstrate that impacts to protected resources have been reduced to the greatest extent practicable.

d. The findings fail to adequately address cumulative effects within the Johnson Creek corridor, including the cumulative adverse effects of past activities on the Riparian Area, as required by MCC 39.5590(D)(2)(b)(iv). The applicant ignores how the project interacts with other substantial alterations occurring within the same watershed and stream corridor, including construction of the Bull Run Filtration Facility. The applicant cannot assert that the project is “self-mitigating” without first demonstrating that the project will actually result in a net improvement rather than a net loss. The net improvement analysis must consider the impacts of ongoing upstream construction.

e. She requested the hearings officer hold the record open to allow appellant to submit additional testimony and evidence.

5. At the conclusion of the public hearing, the hearings officer ordered the record held open for ten days, until July 6, 2026, to allow all parties to submit additional testimony and evidence and to accommodate the July 4th holiday. The hearings officer held the record open for an additional week, until July 13, 2026, to allow all parties an opportunity to respond to whatever was submitted during the first open record period, and for a final week, until July 20, 2026, to allow the applicant an opportunity to submit a final argument. The record in this case closed on July 20, 2026.

a. Exhibits I.1-I.3 were submitted during the first open record period;

b. J.1-J.4 were submitted during the second open record period; and

c. Exhibit K.1, the applicant’s final argument, was submitted during the final week of the open record period.

Findings of Fact

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

In addition, the hearings officer has reviewed and agrees with the applicant’s legal arguments set out in Exhibits E.2, J.1, and K.1. The hearings officer adopts those arguments as his own and incorporates them into this Final Order to address any gaps in the findings and ensure that all of the issues raised are fully addressed in this Final Order.

1.0 Project Description

Staff: The applicant requests a Lot of Record Verification and a Significant Water Resources (SEC-wr) permit. The SEC-wr permit is for a restoration project within Johnson Creek, consisting of the removal of an artificial earth dam which has created a pond in order to reestablish a natural stream channel.

2.0 Property Description & History

Staff: This application is for 8344 SE Cottrell Road, Boring. The subject property is located on the east side of SE Cottrell Road in unincorporated east Multnomah County outside of Metro’s Urban Growth Boundary (UGB). The subject property is zoned Multiple Use Agriculture – 20 (MUA-20), is located within the Significant Water Resources (SEC-wr) overlay, and contains mapped Wetlands.

The accessor lists a single-family dwelling with built-in garage and a farm building, consistent with aerial photographs which show two buildings.

3.0 Public Comment

Hearings Officer: 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.2). Staff received four (4) public comments during the 14-day comment period prior to the director’s decision. Those comments are summarized and addressed in the director’s decision.

Contrary to appellants' assertion, the Code does not require "meaningful engagement" with public comments. The Code only requires that the director provide public notice and accept public comments. The director's decision responded to the comments that were provided. However, as discussed in the director's decision and this Final Order, alleged impacts of the previously approved Filtration Facility are not relevant to this application for an SEC-wr permit to remove an existing dam and resulting inline pond and restore the natural stream channel on the site. The decision approving the Filtration Facility is final and not subject to collateral attack in this proceeding.

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: 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 the 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.

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. *This criterion is met.*

5.0 Lot of Record Criteria

5.1 MCC 39.3005 - LOT OF RECORD – GENERALLY.

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

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

(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) and the Lot of Record standards set forth in the Multiple Use Agriculture – 20 (MUA-20) zoning district. More specifically, section (B) above requires a demonstration that the subject property (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws.

The applicant provided a title plant report indicating that the first deed describing the subject property was recorded in 1963 (Exhibits A.9 and B.5). In 1963, the subject property was zoned F2 per historical County zoning maps (Exhibit B.4). The F2 zone had a minimum lot size of 2 acres. There was no requirement for road frontage or minimum front lot line length or lot width (Exhibit B.6). The subject property is 8.14 acres, exceeding the 2-acre minimum in the F2 zone. The applicant has also provided a current deed for the subject property that contains a legal description that matches the recorded 1963 legal description (Exhibits A.8 and B.5).

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

In 1963, 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 1963 deed, the applicable land division laws were satisfied (Exhibit B.5).

Based upon the above, the subject property satisfied all applicable zoning and land division laws when it was created or reconfigured in 1963.

5.2 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: 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 39.4345, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

Staff: The subject property is less than the minimum lot size for new parcels or lots in the MUA-20 zone and therefore is subject to (B) above. *Criterion met.*

(C) Except as otherwise provided by MCC 39.4330, 39.4335, and 39.5300 through 39.5350, no sale or conveyance of any portion of a lot other than for a public purpose shall leave a structure on the remainder of the lot with less than minimum lot or yard requirements or result in a lot with less than the area or width requirements of this district.

Staff: The property owner is not proposing to convey any portion of the subject property 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 property is not an area of land created by the foreclosure of a security interest or created by court decree. *Criteria met.*

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

6.1 MCC 39.4310 Allowed Uses

* * *

(D) Public and private conservation areas and structures for the protection of water, soil, open space, forest and wildlife resources.

Staff: The applicant has requested approval for the removal of an artificial earth dam within Johnson Creek to restore the natural stream channel. The removal of the dam and restoration of the channel will result in a conservation area that will protect water, soil, open space, forest, and wildlife resources. This allowed use is subject to other requirements of the zone and the Significant Water Resources (SEC-wr) overlay, which are evaluated below.

6.2 MCC 39.4325 Dimensional Standards and Development Requirements

* * *

(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: No buildings, structures, or new impervious surfaces requiring on-site sewage and/or stormwater drainage control are proposed. The applicant has provided a septic review certification verifying that the proposed restoration work will not impact the existing septic system on the site (Exhibit A.11). *Criteria met.*

7.0 Significant Water Resources (SEC-wr) Permit Criteria

7.1 MCC 39.5510 Uses; SEC Permit Required

(A) Except as provided in MCC 39.5515 and 39.5525, an SEC Overlays permit(s) is required for:

(1) All development, including but not limited to the location, design, change, replacement, or alteration of any use or structure.

* * *

Staff: As discussed above, the dam removal project is an allowed use in the MUA-20 zone per MCC 39.4310(D). The proposed development does not meet any of the exceptions outlined in MCC 39.5515, nor is it a replacement structure as classified by MCC 39.5525. Therefore, an SEC-wr permit is required and the applicable criteria are outlined in Sections 7.2-7.4 below. *Criterion met.*

7.2 MCC 39.5590- SEC-wr PERMIT CRITERIA (SIGNIFICANT -WATER RESOURCES).

(A) Decision Review Process.

* * * * *

- (2) Applications that do not meet all of the criteria in MCC 39.5590(A)(1) shall be processed through the Type II review procedure. The applicant shall meet all of the criteria in MCC 39.5590 (B) through (E) below.**

Staff: The project cannot meet the Type I review procedure, so the applicant has submitted this Type II application request addressing the criteria of MCC 39.5590 (B) through (E).

(B) Application Submittal Requirements. All applicants for an SEC-wr or SEC-s permit shall include the following:

- (1) A written description of the proposed development and how it complies with the applicable approval criteria of subsection (C) and (E) below.**

Staff: The applicant has submitted the required materials described in (B(1) as Exhibits A.3. *Criteria met.*

(2) A site plan of the property showing:

- (a) Property lines;**
- (b) Location and size of all existing and proposed buildings and structures;**
- (c) Contour lines and topographic features such as ravines or ridges. In addition, detailed topographic information of the development area, adjacent areas of the site, and a topographic delineation of the SEC- wr and SEC-s riparian area affected by the project. Contour information shall be determined by a field survey by an Oregon licensed surveyor. (Contour intervals shall be no greater than 5 feet);**

- (d) **Boundaries of ground disturbing activities, including proposed fill, excavating, site contouring or other landform changes;**
- (e) **Location and predominant species of existing vegetation on the parcel (wooded areas), 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) **Location of natural drainageways, springs, seeps, water bodies and wetlands on the site;**
- (h) **Location of all existing trees of a caliper greater than six (6) inches in diameter at breast height (DBH);**
- (i) **Location of wells, utility lines, stormwater drainage control systems, sanitary tanks and drainfields (primary and reserve);**
- (j) **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.**

Hearings Officer: The application includes site plans showing all of the required information. (Exhibits A.2, A.2, A.5, J.2 Attachment 4, and J.1 Attachment 6). *Criteria met.*

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

Hearings Officer: As the applicant notes, “The application complied with this requirement by providing a map and table that identify three soil types across the Cottrell Pond property (Exhibit A.3, page 7). (B)(3) does not require an applicant to provide an evaluation of the chemical characteristics, and the CCPO argument provides no text or contextual support for the claim that it does.” (Exhibit J.1 at 18). However, the applicant included a soil assessment for the site (Exhibit J.4 at 2) and correspondence from the Portland Sediment Evaluation Team (PSET) finding that the sediment on the site does not pose any concerns and no further testing is required. (Exhibit J.4 at 89). *Criteria met.*

- (4) **Preparation of a report which includes plans and surveys by a qualified wetland or riparian consultant, fish and wildlife biologist, or other qualified professional at the discretion of the Planning Director. Approval of a other qualified professional must be granted before the report is completed. Wetlands shall be identified and delineated by a qualified wetland specialist. The consultant shall prepare a report which includes:**
- (a) **An assessment of the existing condition of the Riparian Area in accordance with MCC 39.5590 (D);**
 - (b) **An inventory of vegetation, including percentage ground and canopy coverage, and location of nuisance and invasive non-native plants as defined in MCC 39.5520;**
 - (c) **A detailed Mitigation Plan as described in MCC 39.5590 (D).**

Hearings Officer: The application includes all of the required reports, plans, and surveys. (Exhibits A.1-A.12). The reports were prepared by qualified professionals as illustrated by Exhibit A.17. *Criteria met.*

As the applicant notes, the existing conditions assessment required by subsection (4)(a) must be “[i]n accordance with MCC 39.5590 (D),” which limits the assessment to the condition of the vegetated corridor based on native vegetation cover, tree canopy, and invasive vegetation coverage percentages. Nothing in the plain language of this section supports appellants’ assertion that this section requires “a project-specific habitat assessment.” (Exhibit I.1 at 2). However, the applicant did submit an aquatic organisms sampling study prepared by qualified fisheries professionals which established the presence of one fish species and several amphibian species. (Exhibit A.13). The applicant state that they did not rely on community science surveys conducted by JCWC for amphibian species. (Exhibit J.1 at 7). There is no evidence in the record to the contrary.

Appellant argues that “[t]he record does not clearly quantify the existing resource conditions being altered, the resources being lost, the resources being created, or the expected magnitude of the claimed benefits.” (Exhibit I.3 at 1). This assertion ignores the voluminous documentation in the application which was prepared by a team of experts to directly addresses these issues. (Exhibits A.1-A6, A.12-A.14, and A.17). The applicant submitted additional evidence during the open record period. (Exhibits J.2 Attachment 2, J.3 Attachment 8, J.4 Attachments 9 and 10). Appellant failed to identify any specific documents or information that is missing or inadequate.

Appellant assertion that the site “[p]rovides functioning riparian and aquatic habitat occupied by species of concern, including, ... Coastal Cutthroat Trout” (Exhibit I.1 at 1) ignores that fact that there are no trout on the site. The existing dam blocks upstream access for these fish and one of the goals of the project is to restore such access. Appellant is correct that the existing site provides some habitat for Northern Red-legged Frogs. However, the existing pond provides habitat for invasive bullfrogs that prey on native amphibians, including Red-legged Frogs. Removal of the pond will eliminate bullfrog habitat and create seasonal ponds that provide breeding habitat for native amphibians. (Exhibit A.5). The applicant will limit impacts to these species during construction by collecting, protecting, and relocating amphibians and fish found on the site prior to construction pursuant to its ODFW Capture, Holding, Transport, and Relocation (CHTR) permit. (Exhibit J.2 Attachment 3).

Alleged impacts of the Filtration Facility on the riparian area are not relevant to this application. The application requirements are expressly related to the project site and development area, the Cottrell Pond Property. The Filtration Facility is located 700 feet or more from the site. In addition, the County’s determination that the Filtration Facility complies with all applicable approval criteria is final and not subject to collateral attack in this proceeding.

- (5) The applicant shall provide evidence that when federal or state requirements apply, that the agency has been contacted, and shall provide an assessment of whether the project can meet the requirements based on the agency response.**
- (6) The Planning Director may also require the applicant to provide additional information, beyond that listed in this section such as a report prepared by an appropriate subject matter expert, where needed to address relevant approval criteria.**

Hearings Officer: The applicant has submitted the required materials described in (B)(5) and (6) as Exhibits A.1-A.12. *Criteria met.*

(C) SEC-wr and SEC-s Permit Approval Criteria.

- (1) Except for the exempt uses listed in MCC 39.5590 and the existing uses pursuant to MCC 39.5525, no development shall be allowed within a Riparian Area unless the provisions of subsections (2) or (3) and (4) below are satisfied. An application shall not be approved unless it contains the site analysis information required (B) above.**

Staff: As previously discussed, the proposed development is not a listed exempt use listed in MCC 39.5590 nor an existing use pursuant to MCC 39.5525. The development is in the Riparian Area; therefore, the development is subject to the applicable criteria as discussed below.

- (2) **Low Impact Sites - Development on parcels in locations that would have low impacts on Riparian Areas may be exempt from the Alternatives Analysis in subsection (3) below. Development on sites that meet the following criterion may be allowed pursuant to the other applicable requirements of this Overlay including the Development Standards of subsection (4) and the provisions for Mitigation in subsection (D):**
- (a) **The entirety of the development site is at least one hundred (100) feet from top of bank or top of ravine, whichever results in a greater distance from the Protected Water Feature. Top of ravine is the break in the > 25% slope. Slope should be measured in 25foot increments away from the water feature until the slope is less than 25% (top of ravine), up to a maximum distance of 200' from the water feature. Where multiple resources are present (e.g., stream with wetlands along banks), the starting point for measurement should be whichever offers greatest resource protection.**

Staff: The subject site does not qualify as a low impact site and is therefore subject to the Alternatives Analysis in subsections (3) below.

- (3) **Alternatives Analysis Sites - Development proposed within a Riparian Area may be allowed if there is no alternative, when the other requirements of the Overlay including the Development Standards of subsection (4) and the provisions for Mitigation in subsection (D) are met. The applicant shall prepare an alternatives analysis which demonstrates that:**
- (a) **No practicable alternatives to the requested development location exists on the property further than 100 feet from the protected water feature; and**

Hearings Officer: The requested development in this case is a restoration project to remove an artificial dam and resulting inline pond on the site and restore the natural stream channel. The project is water dependent, as the dam and pond are located entirely within the Riparian Area, within the channel of Johnson Creek and on the site. Therefore, the site is the only location on which the project can occur and the project cannot practicably be located outside of the protected water feature. *Criterion met.*

- (b) **Development within the Alternative Analysis Site in the Riparian Area has been limited to the minimum area necessary to allow for the proposed use;**

Hearings Officer: The “proposed use” in this case consists of “1) converting a “Degraded Riparian Corridor” to a “Good Riparian Corridor” condition; 2) restoring fish passage through the removal of the impounding dam; 3) improving

the water quality in Johnson Creek through the decrease in water surface area and residence time to significantly decrease stream temperatures; and 4) retaining ecological functions such as breeding opportunities for native amphibians and floodplain retention of flood waters.” (Exhibit E.2 at 49).

The dam and pond comprise approximately 1.18 acres on the subject site and the proposed grading and earthwork associated with the proposed restoration project is 1.18 acres (Exhibits A.3, A.5, A.12, and E.2 Attachment 4). As explained in detail in Exhibit E.2 Attachment 4, the 1.18-acre disturbance area was determined to be the minimum necessary to achieve the project objectives of removing the existing dam and pond, improving the riparian corridor to Good condition, restoring fish passage, improving water quality in Johnson Creek, and retaining ecological functions such as breeding opportunities for native amphibians and floodplain retention of flood waters while discouraging bullfrogs. Further reductions in the riparian grading area would be inconsistent with these objectives. Therefore, the hearings officer finds that the restoration area is the minimum necessary to achieve the project goals. There is no evidence to the contrary. The restoration design was developed by a team of experts and reviewed by permitting agencies. Appellants’ unsupported assertions are not sufficient to overcome the detailed testimony and analysis from the applicant’s experts and affected agencies.

The applicant provided extensive and detailed analysis of the existing conditions on the site demonstrating that the existing riparian corridor on the site meets the Code definition of “Degraded” condition. (See Exhibits A.3 and A.5 and Strobel testimony). The applicant will replant the site with 966 native trees, 7,244 native shrubs, 6,230 emergent or herbaceous plants, and reseed the site with 143 pounds of native seed. In addition, the applicant designed the grading plan to minimize the removal of existing trees to the extent practicable; the majority of trees to be removed are located on the existing dam or in the upland areas of the site. (Exhibit A.5).

As discussed above, the Filtration Plant is a separate project and not subject to review in this application. Therefore, it is not relevant to the alternatives analysis.

The property owned by the Roberts Family Trust at 34828 SE Carpenter Lane (the “Roberts property”) is also not relevant, as the “proposed use” is limited to restoration of the site. Nothing in the text or context of this section requires offsite analysis.

Criterion met.

(c) Development shall occur as far as practically possible from the protected water feature; and

Staff: The proposed removal of the artificial dam and restoration of the natural channel of Johnson Creek is water dependent. It is integral to the proposed development that it occurs within the protected water feature; therefore, the development cannot practically be located outside of the stream. *Criterion met.*

(d) The Riparian Area can be restored to an equal or better condition; or

Hearings Officer: Per their Restoration Plan, the applicant proposes to complete restoration and mitigation efforts that will upgrade the project area from “Degraded” condition to “Good” condition. (Exhibits A.3, A.5, and A.12). As described in their plan, Portland Water Bureau Staff evaluated the existing conditions of the riparian area, delineated the wetland areas and degraded corridor areas, and provided a vegetation restoration plan to restore the area to an equal or better condition.

As discussed in the applicant’s final argument, the text and context of the Code does not support appellants’ assertion that this subsection requires an analysis of downstream conditions. (Exhibit K.1 at 8). However, even if downstream analysis is required, the applicant’s expert testimony demonstrates that the project will restore the downstream riparian area to equal or better condition. (Exhibit K.1 at 14-17).

Criterion met.

(e) Any net loss on the property of Riparian Area is mitigated.

Staff: Per their Restoration Plan, the property contains 6.36 acres of degraded corridor. The applicant proposes to restore a 6.68-acre area on the subject property resulting in no net loss of resource area function or value (Exhibits A.5, A.12, and J.1). The proposed restoration work will result in the existing “Degraded Corridor” being elevated to “Good Corridor” as a result of the proposed pond removal and stream channel restoration. *Criterion met.*

(4) Development Standards; Development within the Riparian Area shall comply with the following standards:

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

Staff: No trails, rest points, viewpoints or other facilities are proposed. *Criterion met.*

(b) Development in areas of dense standing trees shall be designed to minimize the numbers of trees to be cut. No more than 50 percent of mature standing trees (of 6-inch DBH or greater) shall be removed without a one-for-one replacement with comparable species. Replacement trees shall be placed within the riparian corridor or adjacent to it to provide shade and water retention. Size of the replacement trees shall be 5 gallon

or greater. The site plan for the proposed activity shall identify all mature standing trees by type, size, and location, which are proposed for removal, and the location and type of replacement trees.

Staff: Per the applicant's Code Narrative and Restoration Plan twenty (20) trees are proposed to be removed, which represents 8% of the total trees on the site (Exhibits A.3, A.5 and A.12). The applicant has identified the trees by type, size, and location on pages 19 and 20 of the Restoration Plan (Exhibits A.5 and A.12). The restoration plan indicates that 950 native trees will be planted on the site, well exceeding the one for one replacement requirement. The applicant has indicated that a minimum of twenty (20) trees will be a size of 5 gallon or greater (Exhibit A.12). *Criterion met.*

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

Staff: The applicant proposes to increase the contiguous areas of standing trees, shrubs, and natural vegetation along Johnson Creek by removing an artificial dam and pond and engaging in restoration and planting activities as shown in Exhibits A.5 and A.12. The Tree Removal and Protection Plan shows a cluster of trees near SE Cottrell Road that will be removed. However, many of the trees in that location will be left in place or protected to ensure that the standing trees remain connected and contiguous with the stand of trees along the creek (Exhibit A.5 - Appendix E). *Criterion met.*

- (d) The Riparian Area shall be restored to "Good Corridor condition" as defined in MCC 39.5590 (D)(1), and maintained in accordance with the mitigation plan pursuant MCC 39.5590 (D).**

Hearings Officer: Per the applicant's Code Narrative and Restoration Plan (Exhibits A.3, A.5 and A.12), the applicant proposes to complete restoration and mitigation efforts that will upgrade the area from its existing "Degraded" condition to "Good" condition by increasing native plant ground cover and tree canopy and restoring the natural stream channel of Johnson Creek. Maintaining the area in accordance with the mitigation plan is a condition of approval. *As conditioned, this criterion is met.*

- (e) To the extent practicable, existing vegetation shall be protected and left in place.**

Staff: The applicant is proposing mitigation efforts that prioritize increasing the native vegetation on the site and removing invasive species, and they have

indicated that the project has been designed to retain as much existing native vegetation as possible (Exhibits A.3, A.5 and A.12). To accomplish the removal of the dam, some existing vegetation will need to be removed. The tree removal and protection plan indicate that twenty (20) trees will be removed while twenty-six (26) trees will be protected. *Criterion met.*

- (f) Prior to construction of the development, the boundaries of the Riparian Area shall be flagged, fenced or otherwise marked and shall remain undisturbed except as otherwise allowed by the permit. Such markings shall be maintained until construction is complete.**

Staff: Flagging, fencing or otherwise marking the boundaries of the Water Resource area prior to construction and maintaining the markings for the duration of construction is a condition of approval. *As conditioned, this criterion is met.*

- (g) Stormwater drainage control facilities:**
 - (i) Stormwater management shall be conducted in a manner that does not increase the flow of stormwater to the stream above pre-development levels.**
 - (ii) The stormwater drainage control facility may only encroach a maximum of 25 feet into the outside boundary of the Riparian Area of a primary water feature; and**
 - (iii) The area of encroachment must be replaced by adding an area equal in size and with similar functions and values to the Riparian Area on the subject property.**

Hearings Officer: MCC 39.6235 requires stormwater drainage control facilities for the creation of 500 square feet or more of impervious surfaces. No impervious surfaces are proposed, and therefore MCC 39.6235(4)(g) does not apply to this project. The County previously reviewed the stormwater facilities related to the Filtration Facility and determined that they meet the criteria in MCC 39.6235. That decision is final and not subject to further review in this proceeding. *Criterion does not apply.*

- (h) The nuisance and invasive nonnative plants, as defined in MCC 39.5520, shall not be used as landscape plantings within the Riparian Area.**

Staff: The applicant indicates in their planting lists that no nuisance or invasive nonnative plants will be used as landscape plantings within the Riparian Area (Exhibits A.3, A.5 and A.12). *Criterion met.*

- (i) **Areas of erosion or potential erosion shall be protected from loss by appropriate means. Appropriate means shall be based on current Best Management Practices.**
 - (i) **Soil disturbing activities within a Riparian Area shall be limited to the period between June 15 and September 15. Revegetation/soil stabilization must be accomplished no later than October 15.**

Hearings Officer: The applicant indicates that the Erosion and Sediment Control Plan includes the use of Best Management Practices. The Plan is included as part of the Erosion and Sediment Control permit, which the applicant has submitted as T1-2026-0069. The applicant provided additional erosion control information in Exhibits J.2 Attachment 4, and J.3 Attachment 5. Further, the Pond Restoration Plan discusses stabilization of the banks and limitations on when development will occur. As required above, a condition is imposed limiting soil disturbing activities within the Riparian Area to the period between June 15 and September 15. Additionally, revegetation/soil stabilization must be accomplished no later than October 15. Any request to extend this window must be in writing and outline the reasoning for the expanded window. Contrary to appellants' assertion, this Code section does not require compliance with the ODFW's in-stream timing schedule. MCC 39.5590(D)(4)(e) does include such a requirement and that section is addressed in the findings below.

Appellant provided no support for how their claim that temporary construction effects should be evaluated independently from long-term restoration relate to this criterion. (Exhibit I.1 at 2). This criterion merely requires that the applicant provide erosion control measures consistent with current Best Management Practices, imposes temporal limits on when soil disturbing activities may occur, and establishes a deadline for when revegetation/soil stabilization must be accomplished. Compliance with the conditions of approval will ensure this criterion is met. In addition, as discussed above, the applicant will collect and relocate fish and amphibian species on the site pursuant to an ODFW permit prior to undertaking construction.

As conditioned, criterion met.

- (j) **Outdoor lighting shall be of a fixture type and shall be placed in a location so that it does not shine directly into undeveloped Riparian Areas. Where illumination of a Riparian Area is unavoidable, it shall be minimized through use of a hooded fixture type and location. The location and illumination area of lighting needed for security of public utility facilities shall not be limited by this provision, but should be done in a minimalist manner.**

Staff: No outdoor lighting is proposed on the site (Exhibit A.3). *Criterion met.*

- (k) A bridge or open-bottom culvert, which does not disturb the bed or banks of the stream and is in compliance with the County's Flood Hazard regulations shall be utilized for any crossing of a protected streams.

Staff: No stream crossings are proposed (Exhibits A.2, A.3, A.5 and A.12).
Criterion met.

- (D) **Mitigation:** Mitigation shall be required to offset the impacts of development within the Riparian Area. This subsection establishes how mitigation can occur.
 - (1) **Vegetated Corridor Condition:** For the purposes of the SEC-wr Overlay, vegetated corridor conditions are defined below.
 - (a) **Good Corridor:** A combination of native trees, shrubs, and groundcover covering greater than 80% of the area, and greater than 50% tree canopy exists (aerial measure).
 - (b) **Marginal Corridor:** A combination of native trees, shrubs, and groundcovers covering 50-80% of the area and/or 26-50% tree canopy exists (aerial measure).
 - (c) **Degraded Corridor:** A combination of native trees, shrubs, and groundcovers covering is less than 50% of the area, and/or less than 25% tree canopy exists (aerial measure), and/or greater than 10% of the area is covered by invasive, non-native species.

Hearings Officer: The applicant provided evaluations of the existing conditions of the corridor where the restoration project is proposed. Those reports were prepared by experts in various fields. (Exhibits A.5 and A.12). Based on those reports, 6.36 acres of degraded corridor will be restored to a good corridor standard.

As discussed above, although appellant argues there is inadequate evidence regarding the existing and proposed condition of the corridor, they failed to provide any evidence to support those assertions. The hearings officer finds that the expert testimony from the applicant's team of experts is sufficient to demonstrate compliance. Ongoing monitoring required as a condition of approval will ensure that the proposed enhancement to Good corridor condition will actually occur.

The presence of native fish and amphibian species on and near the site is irrelevant to the determination of the existing corridor condition, as the determination of "Good Corridor" condition is based exclusively on the state of the plant community within the SEC overlay, not amphibian habitat as appellant suggests.

Criterion met.

- (2) Mitigation Sequence: Mitigation includes avoiding, minimizing or compensating for adverse impacts to regulated natural resource areas.**
 - (a) When a proposed development could cause adverse impacts to a natural resource area, the preferred sequence of mitigation as defined in 1 through 5 below shall be followed unless the applicant demonstrates that an overriding public benefit would warrant an exception to this preferred sequence.**
 - (i) Avoiding the impact altogether by not taking a certain action or parts of actions on that portion of the site which contains the regulated natural resource area;**
 - (ii) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.**
 - (iii) Compensating for the impact by repairing, rehabilitating, or restoring the affected environment;**
 - (iv) Compensating for the impact by replacing, enhancing or providing substitute resources or environment on-site;**
 - (v) Compensating for the impact by replacing, enhancing or providing substitute resources or environments off-site.**

Hearings Officer: Any development in a riparian area will result in temporary construction impacts, however nothing in the plain language of the Code requires a separate analysis of such temporary impacts. Per their Restoration Plan (Exhibits A.5 and A.12), the applicant proposes to remove an artificial dam, resulting pond, and non-native species from the natural resource area, restore the natural stream channel of Johnson Creek, and complete additional restoration and mitigation efforts that will upgrade the area surrounding the disturbance from “Degraded” to “Good” condition. The entirety of the project focuses on the mitigation of negative impacts through minimizing additional disturbance to the site through thoughtful project design and prioritizing retention of existing native vegetation, restoring the affected stream channel by reversing previous negative impacts associated with the artificial dam and resulting pond, and enhancing additional vegetative cover and wildlife habitat on the site (Exhibits A.3, A.5 and A.12).

As discussed above, it is impossible to entirely avoid impacts to the riparian area as the proposed project involves removal of the dam and pond and restoration of

the native stream channel, all of which must occur within the riparian area and stream. The applicant's plans and narrative describe how the development will minimize impacts by retaining the majority of the trees on the site and implementing measures to protect the retained trees during construction. The applicant will compensate for the unavoidable impacts and improve the riparian area to Good condition by rehabilitating and restoring the natural resource area on the site: planting 966 native trees (a ratio of 48 new trees to 1 removed tree), 7,244 native shrubs, 6,230 emergent or herbaceous plants, and reseeding the site with 143 pounds of native seed. No offsite mitigation is proposed or required.

The hearings officer adopts and incorporates the applicant's response to the bullet point issues stated in Exhibit I.1 at 2:

Excavation and grading: The areal extent of restoration grading is summarized in Exhibit A.2, page 6, and described in the SEC Narrative at Exhibit A.3 and Hearing Presentation at Exhibit E.4. Approximately 1.2 acres will be graded and recontoured to meet the project objectives. An additional 1.8 acres within the SEC-wr overlay may be disturbed in support of the restoration grading, including areas for equipment access and staging, staging of materials, and amending of soil in upland areas with pond sediments, to provide a planting medium. Additional information on areas and volumes of removed and filled grading material approved through the DSL permit is included with this submittal as Attachment 6.

Heavy equipment access within the riparian corridor: The SEC-wr application requirements at MCC 39.5590(B) do not require submittal of a construction management plan. Nonetheless, equipment access routes are discussed in Exhibit E.2. Further details on hauling routes, heavy equipment staging, and site construction entrance are included in the construction details at Attachment 4. Access routes between the restoration grading area and the upland areas where equipment and materials will be staged have been restricted to three narrow corridors to protect existing stands of riparian trees.

Vegetation removal: Trees that must be removed to meet project objectives are limited to 20 trees greater than 6 inches dbh (including 12 native trees and 8 non-native trees) which equates to 8 percent of existing trees on the site. The trees to be removed and their locations are indicated in Exhibit A.2, page 6. Additionally, grading of the invasive reed canary grass meadow to the east of the pond will involve over-excavation to remove root masses to facilitate the establishment of native riparian vegetation as described in Exhibit E.2.

Temporary channel disturbance: A primary objective of the project is the reestablishment of a free-flowing stream channel. The existing impounded pond and upstream channel which flows through an invasive reed canary grass meadow growing in pond sediments will be permanently replaced with a stream channel and floodplain patterned on reference conditions upstream and downstream of the restoration grading area, depending on the design channel gradient.

Sediment generation and turbidity: The restoration grading area will be dewatered and Johnson Creek flow will bypass the construction area to eliminate the chance of turbidity. Details of the water management plan for this project are included in this submittal as Attachment 4. As depicted, Erosion control BMPs will be implemented, are a part of the ESC permit being sought from Multnomah County, are described in the Construction Management and Erosion Control/Water Management Plan included in State and Federal permitting and have also been included with this submittal as Attachment 3. As depicted on Sheet 6, during construction a temporary diversion dam will be placed at the east end of the stream restoration area and stream water will be diverted to a temporary diversion pipe. The water will be returned to the channel at the west end of the stream restoration area. Federally, the project is permitted under the Nationwide Permit 27 (“NWP 27”) for aquatic habitat restoration projects. The NWP-related DEQ 401 Water Quality Certification approval for the Cottrell Pond Project requires upstream and downstream turbidity monitoring and specifies necessary actions if turbidity thresholds are exceeded, in addition to a number of other BMPs. A copy of the DEQ 401 Water Quality Certification Approval for the Cottrell Pond Site Restoration Project is included with this submittal as Attachment 7.

Bank destabilization: Construction will involve dewatering of the restoration grading area and the establishment of new stream banks. Erosion control BMPs are indicated in the Construction Management and Erosion Control Plan at Attachment 4. Additionally, as indicated in Exhibit A.2, page 1, this project must adhere to the City of Portland’s Standard Construction Specifications, Section 00280 Erosion and Sediment Control. As described in Exhibit E.2, all unsupported banks are designed at a slope of 3 horizontal feet to 1 vertical foot to comply with County code (MCC 39.6225(B)(3)) for stability.

Temporary changes to groundwater and surface water connectivity: During construction, surface flow of Johnson Creek

will be bypassed around the restoration grading area following standard practices. Details of the water bypass are given in the water management plan described above and depicted in Attachment 4.

Temporary habitat fragmentation: The restoration site is fragmented under existing conditions by the presence of an impounding dam, which impedes movement of aquatic organisms such as fish and amphibians. A primary objective of the project is to remove the obstructing dam and restore connectivity. Construction will not cause temporary habitat fragmentation, as connectivity does not currently exist.

Noise and vibration affecting wildlife: Construction activities will necessarily involve some temporary noise and vibration that accompanies grading and movement of fill. There are no federal or State Threatened or Endangered species on site that require special protections from noise production. The timing of grading, after July 15 below OHW, will be after the majority of the migratory bird nesting period has passed (February 1-July 31 in the Portland area).

Appellant again asserts that there is insufficient detail to determine compliance with this criterion (Exhibit I.3) without submitting any evidence to support their assertion, pointing out specific evidence that is missing, or otherwise addressing the testimony and documentation from the applicant's team of experts.

Criterion met.

- (b) When evaluating potential impacts to the natural resource, the County may consider whether there is an overriding public benefit for the public project given:**
 - (i) The extent of the public need for the proposed development;**
 - (ii) The functional values of the Riparian Area that may be affected by the proposed development;**
 - (iii) The extent and permanence of the adverse effects of the development on the Riparian Area, either directly or indirectly;**
 - (iv) The cumulative adverse effects of past activities on the Riparian Area either directly or indirectly; and**
 - (v) The uniqueness or scarcity of the Riparian Area that may be affected.**

Hearings Officer: MCC 39.5590(D)(2) provides “the preferred sequence of mitigation as defined in 1 through 5 below shall be followed *unless* the applicant demonstrates that an overriding public benefit would warrant an exception.” (Italics added). Therefore, MCC 39.5590(D)(2)(b) only applies when an applicant is seeking to avoid compliance with the preferred mitigation sequence set out in MCC 39.5590(D)(2)(a) by demonstrating “[a]n overriding public benefit...” The applicant demonstrated compliance with the preferred mitigation sequence based on the findings above and is not seeking an exception based on “an overriding public benefit.” Therefore, this provision is inapplicable.

However, to the extent MCC 39.5590(D)(2)(b) applies to this application, the requirements of this subsection are met. The proposed restoration process will positively impact the protected water body, Johnson Creek, by restoring fish passage, improving the water quality of Johnson Creek, enhancing ecological functions such as breeding habitat for amphibians, and maintaining adequate flood storage capacity (Exhibits A.3, A.5 and A.12). In consultation with the JCWC, the removal of the dam and pond was identified as a high-priority project of great public benefit for the functional values of the riparian area. (Exhibit A.7).

Contrary to appellants’ assertion (Exhibit I.1 at 1), this section does not require consideration of “[c]umulative adverse effects of past and ongoing activities on the Riparian Area...” MCC 39.5590(D)(2)(b)(iv) only requires consideration of “[c]umulative adverse effects of past activities...” (Underline added). Therefore, the Code does not require that any cumulative impacts analysis consider potential future impacts.

The County previously determined that the Filtration Facility’s will have no impact on the riparian area, as the stormwater system was designed to avoid impacts to water quality and aquatic habitat and improve downstream conditions. (Exhibit J.2 Attachment 1). That determination is final and may not be challenged in this proceeding.

In addition, cumulative adverse impacts is one of just five factors the County may consider and all the remaining factors tip in favor of the public benefit because of the substantial benefits to the Johnson Creek watershed.

There is a public need for the project; JCWC, Clackamas Partnership’s Strategic Restoration Action Plan, the City of Gresham and ODEQ have all determined that removal of the dam and pond on the site will significantly improve downstream temperatures in Johnson Creek. MCC 39.5590(D) (D)(2)(b)(i).

The project will enhance the functional value of the Riparian Area affected by the proposed development: restoring fish passage, improving the riparian corridor to Good condition, improving water quality in Johnson Creek, and discouraging bullfrogs, while retaining ecological functions such as breeding opportunities for native amphibians and retention of flood waters within the floodplain. MCC 39.5590(D) (D)(2)(b)(ii).

The project will restore 6.68 acres of habitat on the site which is required to be permanently protected and maintained. MCC 39.5590(D) (D)(2)(b)(iii).

Criterion met.

- (3) Compensatory Mitigation: General Requirements. As a condition of any permit or other approval allowing development, compensatory mitigation shall be required to offset the encroachment of the development into the area. The mitigation shall meet the following:**

- (a) Any person who alters or proposes to alter a Riparian Area shall restore or create a vegetated corridor equivalent to or larger than the altered corridor in order to compensate for resource losses.**

Staff: Per their Restoration Plan, the applicant proposes to remove an artificial dam, resulting pond, and non-native species from the natural resource area to restore the natural stream channel of Johnson Creek, and to complete additional restoration and mitigation efforts that will upgrade the area surrounding the disturbance from “Degraded” to “Good” condition (Exhibits A.5 and A.12). The artificial dam and pond comprise approximately 1.17 acres of the site, and the applicant proposes to restore 6.68 acres of the site (Exhibits A.3, A.5 and A.12)

Criterion met.

- (b) The following ratios apply to the creation or restoration of the vegetated corridor. The first number specifies the amount of vegetated corridor to be created and the second specifies the amount of Riparian Area to be altered or lost.**

Creation (off-site) 2:1

Restoration (off-site) 1.5:1

Creation (on-site) 5:1

Restoration (on-site) 1:1

Staff: Per their Code Narrative and Restoration Plan the applicant proposes to remove an artificial dam and pond, which comprise about 1.17 acres on the subject site (Exhibits A.3, A.5 and A.12). The applicant is proposing 6.68 acres of mitigation work, which will include both creation and restoration on the subject site. The proposed mitigation well exceeds the 1:1 on-site restoration requirement required by (b). *Criterion met.*

- (c) Only Marginal or Degraded Corridor(s) as defined in MCC 39.5590 (D)(1) may be the subject of a restoration project proposed as part of a Mitigation Plan.**

Staff: Per the applicant's Restoration Plan, the subject site is considered a "degraded" resource area (Exhibit A.5). The Plan indicates that there is 6.36 acres of "degraded" resource that will be subject of restoration. *Criterion met.*

- (d) Highest priority sites for mitigation are Marginal or Degraded Corridor(s) that are closest to a natural drainage on the property, and areas which will increase contiguous areas of standing trees, shrubs, and natural vegetation along drainages.**

Staff: According to the applicant's Code Narrative and Restoration Plan the site where mitigation is proposed is a degraded corridor, and all work is occurring within or adjacent to Johnson Creek, a natural drainage (Exhibits A.3, A.5 and A.12). The applicant's Code Narrative and Restoration Plan (Exhibits A.3, A.5 and A.12) indicate that the proposed mitigation activities will increase the contiguous areas of standing trees, shrubs and natural vegetation along the corridor of Johnson Creek. *Criterion met.*

- (e) The off-site mitigation shall be as close to the development as is practicable above the confluence of the next downstream tributary, or if this is not practicable, within the watershed where the development will take place or as otherwise specified by the County and shall comply with (c) and (d) above.**

Staff: All mitigation activities outlined in the Restoration Plan are proposed on the site (Exhibits A.5 and A.12). As no off-site mitigation is proposed, this criterion is not applicable. *Criterion not applicable.*

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

Staff: To ensure compliance with the criterion, conditions will be required that property owner record the mitigation plan approval in the deed records of Multnomah County. *As conditioned, criterion met.*

- (4) Mitigation Plan Standards: Natural resources mitigation plans shall contain the following:**

- (a) A description of adverse impacts that could be caused as a result of development.**
- (b) An explanation of how adverse impacts to resource areas will be avoided, minimized, and/or mitigated.**
- (c) A list of all responsible parties including, but not limited to, the owner, applicant, contractor or other persons responsible for work on the development site.**
- (d) A map drawn to scale, showing where the specific mitigation activities will occur.**
- (e) An implementation schedule, including timeline for construction, mitigation, mitigation maintenance, monitoring, reporting and a contingency plan. All in-stream work in fish-bearing streams must be done in accordance with the Oregon Department of Fish and Wildlife in-stream timing schedule.**
- (f) Mitigation work shall be completed prior to initiation of development where possible.**
 - (i) Where existing vegetation has been removed, or the original land contours disturbed, the site shall be revegetated, and the vegetation shall be established in the next planting season.**
 - (ii) Nuisance and invasive nonnative plants, as defined in MCC 39.5520, or other debris and noxious materials shall be removed and be kept removed from the Riparian Area by the property owner.**
 - 1. Removal shall be by hand or mechanically with small equipment, as appropriate to minimize damage to existing native vegetation.**
 - 2. Interim erosion control measures such as mulching shall be used to avoid erosion on bare areas.**
 - 3. Nuisance and invasive nonnative plants, as defined in MCC 39.5520, shall be replaced by the next growing season with native plants that are appropriate to the site conditions to restore the vegetated corridor.**

Hearings Officer: The applicant has provided this information as a Restoration Plan (Exhibits A.5 and A.12).

This project will not create offsite impacts requiring mitigation. Alleged impacts to the Roberts property, which is located upstream from the site, are related to the Filtration Plant, which is not part of the current proposal. As discussed in Exhibits J.1 at 23-24 and A.2 Sheet 3, the applicant has designed the project to maintain the existing grade and flow conditions at the upper project boundary in order to ensure the project does not alter the existing upstream channel conditions.

The project is expected to improve downstream habitat conditions by reducing stream temperatures and restoring the natural transport of sediment and large wood debris (Exhibit J.1 and documents cited therein).

The applicant must comply with ODFW regulations regarding the timing of work in fish-bearing streams. ODFW can ensure compliance through its procedures. A condition of approval requiring such compliance is not necessary.

Criteria met.

(E) Required Conditions of Approval for all SEC-wr and SEC-s Permits.

- (1) Provide certification by a professional wetland or riparian consultant, fish and wildlife biologist, landscape architect, or other qualified professional as determined by the Planning Director, that the riparian/vegetated corridor was restored according to the mitigation plan and that the vegetated corridor will qualify as “Good Corridor” within 5 years.**
- (2) The plantings shall be monitored for five years to ensure that the vegetation naturalizes. Failure of vegetation to be maintained in a healthy growing state shall require continued monitoring by a professional.**
 - (a) A yearly report shall be provided to Multnomah County Land Use Planning outlining the condition of the plantings and if any modifications to the mitigation plan are necessary. Any proposed modifications to the mitigation plan require written approval by Multnomah County Land Use Planning.**
- (3) Work areas shall be carefully located and marked to reduce potential damage to the Riparian Area.**

Staff: As previously discussed, the applicant has provided a mitigation plan that has been drafted by qualified professionals that the riparian/vegetated corridor will qualify as a “Good Corridor” within 5 years. As required above items are included as conditions of approval for this decision. *As conditioned, criteria met.*

Exhibits

- 'A' Applicant's Exhibits
- 'B' Staff Exhibits
- 'C' Procedural Exhibits
- 'H' Hearing Exhibits

Exhibits with a “*” after the exhibit # have been included as part of the mailed decision. All other exhibits are available for review in Case File T2-2025-0067 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	2	Application Form	12.16.2026
A.2*	8	Plan Set	04.22.2026
A.3	19	Code Narrative	12.16.2026
A.4	47	Wetland Delineation Report	12.16.2026
A.5	23	Pond Restoration Plan	12.16.2026
A.6	3	Field Survey	12.16.2026
A.7	1	Johnson Creek Watershed Council Letter of Support	12.16.2026
A.8	6	Current Deed - Statutory Warranty Deed No. 2026-068915	12.16.2026
A.9	8	Title Plant Report	12.17.2026
A.10	8	Applicant Response to Public Comments	02.18.2026
A.11	15	Septic Review Certification	03.17.2026
A.12	5	Supplemental Memo Regarding April 22 Plan Set Changes	04.22.2026
A.13	3	Aquatic Sampling Report	09.08.2025
A.14	3	BES Hydraulic Analysis Memo	01.20.2026
A.15	3	Streamlining Committee Meeting Notes (except DEQ)	09.16.2025
A.16	1	Streamlining Committee DEQ Meeting Notes	09.23.2025
A.17	8	Expert Resumes	N/A
'B'	#	Staff Exhibits	Date

B.1	2	Assessment and Taxation Property Information for 1S4E22CD -00300 (Property ID # R342546/Alt. Acct. # R994220180	12.12.2026
B.2	1	Current Tax Map for 1S4E22CD	04.08.2026
B.3	3	Parcel Record Card - R994220180	01.07.2026
B.4	1	Zoning Map showing zoning from November 15, 1962 until October 5, 1977	04.03.2026
B.5	1	Warranty Deed - Book 2152, Page 60 recorded on Jan 24, 1963	04.03.2026
B.6	1	F2 Zoning District Requirements adopted on November 15, 1962	04.03.2026
‘C’	#	Administration & Procedures	Date
C.1	1	Complete letter (day 1)	01.08.2026
C.2	6	Opportunity to Comment	01.21.2026
C.3	19	Decision	04.30.2026
C.4	1	150-Day Clock Extension	06.24.2026
‘D’	#	Comments	Date
D.1	1	Cottrell CPO Email Comments	02.04.2026
D.2	2	Kristy McKenzie Email Comments	02.04.2026
D.3	1	Ron & Mary Roberts Email Comments	02.04.2026
D.4	1	Tami Wensenk Email Comments	02.04.2026
‘E’	#	Comments	Date
E.1	6	Notice of Appeal and Payment Receipt	05.14.2026
E.2	51	Applicant’s Pre-Hearing Statement	06.25.2026
E.3	1	ODFW Comments	06.24.2026
‘I’	#	Comments	Date
I.1	4	Cottrell CPO Submission	07.06.2026
I.2	2	Tami Wensenk Submission	07.06.2026
I.3	2	Tami Wensenk Oral Testimony	07.06.2026
‘J’	#	Comments	Date
J.1	26	Applicant's Open Record Response 07.13	07.13.2026

J.2	70	Attachments 1-4	07.13.2026
J.3	74	Attachments 5-8	07.13.2026
J.4	91	Attachments 9-10	07.13.2026
‘K’	#	Comments	Date
K.1	13	Applicant's Final Legal Argument	07.20.2026