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DECISION OF THE HEARINGS OFFICER

Case File: T3-2021-14303

Hearing Date, Time, & Place:

Friday, August 20, 2021 at 10:30 am. The hearing was conducted online.

Permits: Conditional Use, Design Review, Significant Environmental Concern – wildlife habitat (SEC-h) permit, and Geologic Hazards Exemption.

Location: 11736 NW Skyline Boulevard, Portland (Tentative Address)
Tax Lot 2500, Section 31C, Township 2 North, Range 1 West, W.M.
Tax Account # R661101910 Property ID # R244442

Applicant: Michael Schweizer, Oregon Department of Transportation

Owner: State of Oregon

Summary: The Oregon Department of Transportation (ODOT) requests a Conditional Use Permit, Design Review, Significant Environmental Concern – wildlife habitat (SEC-h) permit, and Geological Hazards Exemption for a road maintenance facility on the subject property. The proposed facility includes a stockpile site and deicer/loader storage building. ODOT identified a need for the site to serve as storage/staging for materials used to combat adverse winter weather conditions on ODOT managed roads in the area.

Base Zone: Exclusive Farm Use (EFU)

Overlay: Significant Environmental Concern – wildlife habitat (SEC-h); Geologic Hazards (GH)

Site Size: 2.39 acres



Applicable Approval Criteria:

Multnomah County Code (MCC):

General Provisions:

MCC 39.1515 Code Compliance and Applications;

MCC 39.3005 Lot of Record – Generally;

MCC 39.3070 Lot of Record – (EFU)

EFU Zone Criteria:

MCC 39.4245 Dimensional Requirements and Development Standards;

MCC 39.6850 Dark Sky Lighting Standards;

MCC 39.6235 Stormwater Drainage Control

Conditional Use Permit Criteria:

MCC 39.4230 Conditional Uses – (R) Transportation Facilities;

MCC 39.7005 General Provisions;

MCC 39.7010 Conditions and Restrictions;

MCC 39.7015 Conditional Use Approval Criteria;

MCC 39.7020 Additional Approval Criteria for Certain Transportation Uses in the EFU zoning district;

MCC 39.7025 Design Review

MCC 39.7035 Conditional Use Permit

Design Review:

MCC 39.8005 Elements of Design Review Plan;

MCC 39.8010 Design Review Plan Approval Required;

MCC 39.8020 Application of Regulations;
MCC 39.8025 Design Review Plan Contents;
MCC 39.8030 Final Design Review Plan;
MCC 39.8040 Design Review Criteria

Significant Environmental Concern – wildlife habitat (SEC-h) Criteria:

MCC 39.5520 Application for SEC Permit;
MCC 39.5850 SEC-h Clear and Objective Standards
MCC 39.5860 Criteria for Approval of SEC-h Permit

Geologic Hazards Criteria:

MCC 39.5075 Permits Required;
MCC 39.5080 Exemptions

Comprehensive Plan Policies:

Goal 3.4

DECISION: The requests for Conditional Use, Design Review, and Significant Environmental Concern – wildlife habitat (SEC-h) permit are approved subject to the conditions of approval included in this Final Order. Based on the applicants revised plans (Exhibits H.1 and H.2) a Geologic Hazards Exemption is no longer necessary. Therefore, the hearings officer denies the application for a Geologic Hazards Exemption.

Conditions of Approval:

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

1. Permit Expiration – This land use permit shall **expire** as follows:
 - a. Within **two (2) years** of the date of the final decision when construction has not commenced. [MCC 39.1185(B)]
 - i. For the purposes of 1.a, commencement of construction shall mean actual construction of the foundation or frame of the approved structure. For utilities and developments without a frame or foundation, commencement of construction shall mean actual construction of support structures for an approved above ground utility or development or actual excavation of trenches for an approved underground utility or development. For roads,

commencement of construction shall mean actual grading of the roadway.

- ii. For purposes of Condition 1.a, notification of commencement of construction will be given to Multnomah County Land Use Planning Division via email at land.use.planning@multco.us a minimum of seven (7) days prior to date of commencement. Work may commence once notice is completed. Commencement of construction shall mean actual construction of the foundation or frame of the approved structure.

- b. Within **four (4) years** of the date of commencement of construction when the structure has not been completed. [MCC 39.1185(B)]

- i. For the purposes of 1.b. completion of the structure shall mean completion of the exterior surface(s) of the structure and compliance with all conditions of approval in the land use approval.
- ii. For purposes of Condition 1.b.i, 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 land.use.planning@multco.us. [MCC 39.1185]

- 2. **Prior to land use sign-off for building plan check**, the property owners or their representative shall:

- a. Record pages 1 through 4 and Exhibit A.26 of this Notice of Decision with the County Recorder. The Notice of Decision shall run with the land. Proof of recording shall be made prior to the issuance of any permits and shall be filed with the Land Use Planning Division. Recording shall be at the applicant's expense. [MCC 39.1175]
- b. The property owners shall acknowledge in writing that they have read and understand the conditions of approval and intend to comply with them. A draft Letter of Acknowledgement can be provided to assist you. The signed document shall be sent to Chris Liu at chris.liu@multco.us [MCC 39.1170(A) & (B)]
- c. The Applicant shall obtain an Erosion and Sediment Control permit for all ground disturbing activities associated with the proposed project. No ground disturbance shall commence before obtaining an Erosion and Sediment Control permit. [MCC 39.6225]
- d. Submit a Wildlife Conservation Plan that complies with the requirements of MCC 39.5860(C) as noted in Section 8.9 – 8.13 of the staff report. [MCC 39.5860(C)]

3. **At the time of land use sign-off for building plan check**, the property owner or their representative shall:
 - a. Provide exterior lighting details to demonstrate all proposed exterior lighting complies with the Dark Sky Lighting Standards of MCC 39.6850. The locations of the proposed exterior lighting shall be shown on the site plan and building elevations. [MCC 39.4245(H), MCC 39.6850]
 - b. If any stormwater is planned to be directed to the NW Skyline Boulevard right-of-way, ODOT shall obtain permission from Multnomah County Transportation Planning. [MCC 39.4245(F), MCC 39.6235(C)]
 - c. Submit a final design review plan including site development and landscape plans; architectural drawings; floor plans; and building elevations. The applicant shall revise the plans to show compliance with the land use approvals granted, all conditions of approval and required modifications. [MCC 39.8010 & 39.8030]
4. **Prior to and during construction**, the property owner or their representative shall ensure that:
 - a. Any trees and/or shrubs designated for preservation shall be protected during the duration of construction activities. [MCC 39.8040(A)(4)]
5. **As an ongoing condition**, the property owner or their representative shall ensure that:
 - a. The nuisance plants in MCC 39.5580 Table 1 shall not be planted on the subject property and adjoining right-of-way that is part of the subject development (adjoining right-of-way) and shall be removed and kept removed from cleared areas of the subject property and adjoining right of way (Exhibit A.26). [MCC 39.5860(B)(7)]
 - b. Any future restroom facilities provided on the site shall have an on-site sewage disposal system located within the development area. If the restroom facilities will be located separate from the storage building, the property owner must demonstrate compliance with the Significant Environmental Concern regulations. [MCC 39.4245(F), MCC 39.5510]
 - c. The Transportation Maintenance Facility shall be used for the stockpiling and storage of winter road maintenance materials and equipment. Vehicles and equipment shall be stored inside the building. Stockpiling shall only occur in the area(s) designated for such use on the final design review plan. [MCC 39.7010]

Dated this 10th day of September 2021

A handwritten signature in black ink, appearing to read 'Joe Turner', with a long horizontal flourish extending to the right.

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.

A. HEARING AND RECORD HIGHLIGHTS

1. Multnomah County Land Use Hearings Officer Joe Turner received testimony at the duly noticed online public hearing about this application on August 20, 2021. 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 Planning Program regarding the application. 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 Chris Liu summarized the Staff Report and the applicable approval criteria. The applicant is proposing to construct and operate a road maintenance facility on the site. The use will include material stockpiles and a storage shed for materials and equipment. The applicant extended the 150-day clock until September 10, 2021.
 - a. The county planner recommended the hearings officer approve the applications, with the exception of the Geological Hazards Exemption. The applicant submitted revised site plans (Exhibits H1 and H2), which should demonstrate compliance with the applicable criteria for this application. If the hearings officer approves Geological Hazards Exemption or finds that a Geologic Hazard Permit is not required, condition 2.c should be modified to delete the requirement for a Geologic Hazard Permit. The portion of condition 2.c requiring an Erosion and Sediment Control permit for all ground disturbing activities associated with the site should be retained. Conditions 3.b and 3.c should be deleted, if the revised plans show compliance with the setback requirements and retaining wall height standards.
 - b. The existing site is primarily an open field. Therefore, no specific wildlife habitat mitigation is required. However, a wildlife conservation plan is required. The applicant could elect to plant one, three- to four-foot tall native tree for each 100 square feet of the new building area. If the resulting 39 trees were planted in a grouping, it could create a tree canopy animals could use to move between forests in the area. The planting of trees would improve wildlife habitat on the subject property.
 - c. The applicant considered two alternative locations for the proposed facility. The site is the best location for the proposed facility and will have the least impact on farm and forest operations.
3. ODOT facilities architect Mike Schweizer and consulting engineer Breezy Rinehart-Young appeared on behalf of the applicant, the Oregon Department of Transportation (ODOT).

- a. Mr. Schweizer testified that ODOT recently assumed ownership of NW Cornelius Pass Road between U.S. Highway 30 and U.S Highway 26. The proposed maintenance facility is needed to store sand, deicer, and other materials and equipment needed to maintain the road during the winter months. He waived the applicant’s right to submit a final written argument.
- b. Ms. Rinehart-Young summarized the applicant’s revised plans, Exhibits H.1 and H.2.
 - i. The revised site plan locates the proposed structure entirely outside of the geologic hazard zone. All development will occur in areas with less than 25-percent slope. No cuts or fill in excess of six feet are proposed. Therefore, condition 2.c can be deleted.
 - ii. The applicant has submitted a Wildlife Conservation Plan to the County as required by condition 2.d.
 - iii. The revised plans shift the building to the northeast, providing a 32-foot street side setback, as required by condition 3.b.
 - iv. The revised plans reduced the height of the retaining walls to six feet or less. The retaining walls will be setback two feet or more from the property boundaries.
 - v. Stormwater runoff from a small portion of the site will continue to sheet flow into the ditch along NW Skyline Boulevard. The existing ditch has adequate capacity to accommodate this runoff.
- 4. The hearings officer closed the record at the end of the hearing and announced his intention to approve the application, subject to the conditions in the Staff Report, as modified based on the applicant’s revised site plans, Exhibits H.1 and H.2.

B. FINDINGS OF FACT

FINDINGS: Written 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 conclusory statement in *italic*. The hearings officer accepted Staff findings except where noted otherwise. Additional findings written by the hearings officer are preceded by the words “**Hearings Officer:**”

1.0 PROJECT DESCRIPTION:

Staff: The Oregon Department of Transportation (ODOT) requests a Conditional Use Permit, Design Review, Significant Environmental Concern – wildlife habitat

(SEC-h) permit, and Geological Hazards Exemption for a road maintenance facility on the subject property. The proposed facility includes a stockpile site and deicer/loader storage building. ODOT identified a need for the site to serve as storage/staging for materials used to combat adverse winter weather conditions. This need arose because of a pending jurisdiction transfer of NW Cornelius Pass Road from Multnomah County to ODOT. During winter operations, trucks will enter the site to be loaded with materials, and then head back out to the roadways. Loading operations mainly would occur during daylight hours.

2.0 PROPERTY DESCRIPTION:

Staff: The subject property is located in west Unincorporated Multnomah County within the EFU zone. The development area is bordered on the west by NW Cornelius Pass Road and NW Skyline Boulevard to the north. The development area includes tax lot 2N1W31C -02500 and a portion of the public right-of-way near NW Cornelius Pass Road and NW Skyline Boulevard (the subject property). The subject property is vacant and a majority of the site contains cleared areas with no trees or other vegetation. A row of trees exist along NW Skyline Blvd near the project's driveway entrance. There are a few areas on the property with steep slopes, mainly to the south of the proposed building site. The Significant Environmental Concern – wildlife habitat overlay covers the entire project site.

3.0 PUBLIC COMMENT:

Staff: Staff mailed a notice of the application and Hearings Officer hearing on the proposed application to the required parties per MCC 39.1105 (Exhibited C.4). Staff has not received any public comments before the report was issued seven days prior to the Hearing.

Hearings Officer: No oral or written public testimony was submitted prior to the close of the record in this case.

4.0 GENERAL PROVISIONS:

4.1 § 39.1515 CODE COMPLIANCE AND APPLICATIONS.

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

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

- (1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Zoning Code.**

This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or

(2) It is necessary to protect public safety; or

(3) It is for work related to and within a valid easement over, on or under an affected property.

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

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

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

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

For purposes of the current application, staff is not aware of any open compliance cases on the subject property, and there is no evidence in the record of any specific instances of noncompliance on the subject property. *Criterion met.*

4.2 MCC 39.3005 Lot of Record – Generally

- (A) An area of land is a “Lot of Record” if it meets the standards in Subsection (B) of this Section and meets the standards set forth in this Part for the Zoning District in which the area of land is located.**
- (B) A Lot of Record is a parcel, lot, or a group thereof that, when created or reconfigured, either satisfied all applicable zoning laws and satisfied all applicable land division laws, or complies with the criteria for the creation of new lots or parcels described in MCC 39.9700. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.**
 - (a) “Satisfied all applicable zoning laws” shall mean: the parcel, lot, or group thereof was created and, if applicable, reconfigured in full compliance with all zoning minimum lot size, dimensional standards, and access requirements.**
 - (b) “Satisfied all applicable land division laws” shall mean the parcel or lot was created:**

* * *

MCC 39.3070 Lot of Record – EFU

- (A) In addition to the standards in MCC 39.3005, for the purposes of the EFU district a Lot of Record is either:**
 - (1) A parcel or lot which was not contiguous to any other parcel or lot under the same ownership on February 20, 1990, or**
 - (2) A group of contiguous parcels or lots:**
 - (a) Which were held under the same ownership on February 20, 1990; and**
 - (b) Which, individually or when considered in combination, shall be aggregated to comply with a minimum lot size of 19 acres, without creating any new lot line.**

* * *

(D) The following shall not be deemed 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) A Mortgage Lot.

(4) An area of land created by court decree.

Staff: Land use case no. T2-2020-13485 found that the current configuration of the subject property was a Lot of a Record. As the current configuration of the subject property has not changed (Exhibit B.3), the subject property remains a Lot of Record. *Criteria met*

5.0 EFU ZONE CRITERIA:

5.1 MCC 39.4245 Dimensional Requirements and Development Standards

* * *

(C) Minimum Yard Dimensions – Feet

| Front | Side | Street Side | Rear |
|--------------|-------------|--------------------|-------------|
| 30 | 10 | 30 | 30 |

Maximum Structure Height – 35 feet

Minimum Front Lot Line Length – 50 feet.

(1) Notwithstanding the Minimum Yard Dimensions, but subject to all other applicable Code provisions, a fence or retaining wall may be located in a Yard, provided that a fence or retaining wall over six feet in height shall be setback from all Lot Lines a distance at least equal to the height of such fence or retaining wall

* * *

(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.

* * *

Hearings Officer: Based on the Applicant’s revised plans (Exhibits H.1 and H.2), the proposed building will be approximately 200+ feet from the front lot line (north property line), 32 feet from the street side lot line (western property line), 60+ feet from the interior side lot line (eastern property line) and 37 feet from the

rear lot line (southern property line). Based on the revised plans, the proposed building location meets all required minimum yard dimension listed above and is outside of the Geologic Hazard overlay zone.

The Applicant's revised plans (Exhibits H.1 and H.2) show height information for the proposed retaining walls. No retaining walls over six feet in height are proposed.

As per the Applicant's preliminary building plans (Exhibit A.4), the proposed building will be approximately 26.5 feet tall which is under the 35 feet maximum height limit. The County Road Official did not provide any comments indicating insufficient right-of-way width for either NW Skyline Blvd or NW Cornelius Pass Road.

As conditioned, the above criteria can be met.

5.2 (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 of Record.

(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 site is vacant and does not contain any existing on-site sewage disposal system. No restroom is included in the proposed building floorplan (Exhibit A.4). Therefore, an on-site septic review is not required. If restroom facilities will be provided in the future, the restroom shall have an on-site sewage disposal system located within the development area.

A storm water drainage control certificate, drainage control drawings, and storm water report completed by Brent Nielsen, PE are included as Exhibits A.12 – A.14. Per the certificate, construction of an on-site storm water drainage control system is required. The engineer provided system details for an on-site planter designed as a "Basin with underdrain" with eventual outflow to a stormwater system connection point for NW Cornelius Pass Road.

Hearings Officer: According to Ms. Rinehart-Young's testimony, stormwater generated north of the ditch inlet on the access road/driveway will sheet flow onto NW Skyline Boulevard, but the existing ditch has adequate capacity to accommodate this runoff. A condition of approval has been included requiring that ODOT obtain permission from Multnomah County Transportation Planning to discharge runoff to the NW Skyline Boulevard right-of-way prior to construction of the facility. *As conditioned, the above criteria can be met.*

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

Staff: A recommended condition of approval (condition no. 3) requires the Applicant to provide exterior lighting details and locations at building plan check. During building plan check, Staff will verify that all proposed exterior lighting complies with the Dark Sky Lighting Standards. *As conditioned, the above criterion can be met.*

5.4 MCC 39.6850 Dark Sky Lighting Standards

* * *

(C) The following standards apply to all new exterior lighting supporting a new, modified, altered, expanded, or replaced use approved through a development permit and to all existing exterior lighting on property that is the subject of a development permit approval for enlargement of a building by more than 400 square feet of ground coverage.

- (1) The light source (bulbs, lamps, etc.) must be fully shielded with opaque materials and directed downwards. “Fully shielded” means no light is emitted above the horizontal plane located at the lowest point of the fixture’s shielding. Shielding must be permanently attached.**
- (2) The lighting must be contained within the boundaries of the Lot of Record on which it is located. To satisfy this standard, shielding in addition to the shielding required in paragraph (C)(1) of this section may be required.**

Staff: A recommended condition of approval (condition no. 3) requires the Applicant to provide lighting details at the time of building plan check. During building plan check, Staff will verify that all proposed exterior lighting complies with the Dark Sky Lighting Standards above. *As conditioned, the above criteria can be met.*

5.5 MCC 39.6235 Stormwater Drainage Control

- (A) Persons creating new or replacing existing impervious surfaces exceeding 500 square feet shall install a stormwater drainage system as provided in this section. This subsection (A) does not apply to shingle or roof replacement on lawful structures.**
- (B) The provisions of this section are in addition to and not in lieu of any other provision of the code regulating stormwater or its drainage and other impacts and effects, including but not limited to regulation thereof in the SEC overlay.**

- (C) The provisions of this section are in addition to and not in lieu of stormwater and drainage requirements in the Multnomah County Road Rules and Design and Construction Manual, including those requirements relating to impervious surfaces and proposals to discharge stormwater onto a county right-of-way.
- (D) The stormwater drainage system required in subsection (A) shall be designed to ensure that the rate of runoff for the 10-year 24-hour storm event is no greater than that which existed prior to development at the property line or point of discharge into a water body.
- (E) At a minimum, to establish satisfaction of the standards in this section and all other applicable stormwater-related regulations in this code, the following information must be provided to the planning director:
- (1) A site plan drawn to scale, showing the property line locations, ground topography (contours), boundaries of all ground disturbing activities, roads and driveways, existing and proposed structures and buildings, existing and proposed sanitary tank and drainfields (primary and reserve), location of stormwater disposal, trees and vegetation proposed for both removal and planting and an outline of wooded areas, water bodies and existing drywells;
 - (2) Documentation establishing approval of any new stormwater surcharges to a sanitary drainfield by the City of Portland Sanitarian and/or any other agency authorized to review waste disposal systems;
 - (3) Certified statement, and supporting information and documentation, by an Oregon licensed Professional Engineer that the proposed or existing stormwater drainage system satisfies all standards set forth in this section and all other stormwater drainage system standards in this code; and
 - (4) Any other report, information, plan, certification or documentation necessary to establish satisfaction of all standards set forth in this section and all other applicable stormwater-related regulations in this code, such as, but not limited to, analyses and explanations of soil characteristics, engineering solutions, and proposed stream and upland environmental protection measures.

Staff: A storm water drainage control certificate, drainage control drawings, and storm water report completed by Brent Nielsen, PE is included as Exhibit A.12 – A.14. Per the certificate (Exhibit A.12), construction of an on-site storm water drainage control system is required. Nielsen provided system details for an on-site planter designed as a “Basin with underdrain” (Exhibit A.13). Nielsen’s report (Exhibit A.14) attests that the proposed system design satisfies the County’s requirements outlined above. A condition of approval has been included to ensure any stormwater entering the public right-of-way is authorized. *Criteria met.*

5.6 MCC 39.4230 Conditional Uses

The following uses may be permitted when found by the approval authority to satisfy the applicable provisions in MCC 39.7000 to 39.7035 and the criteria listed for the use:

* * *

(R) Transportation facilities, services and improvements that serve local travel needs, and which:

- (1) Are not otherwise listed as a use in this EFU base zone or in OAR 660-012-0065 “Transportation Improvements on Rural Lands;” and**
- (2) Satisfy the approval criteria in MCC 39.7015 and MCC 39.7020:**

Staff: The proposal is for an ODOT Transportation Maintenance Facility that would serve local travel needs for NW Cornelius Pass Road. The proposed Transportation Maintenance Facility is not otherwise listed as a use in the EFU base zone or in OAR 660-012-0065. Section 6.3 – 6.13 addresses the approval criteria for MCC 39.7015 and 39.7020. *Criteria met.*

6.0 CONDITIONAL USE PERMIT CRITERIA

6.1 MCC 39.7005 General Provisions

- (A) Application for approval of a Conditional Use shall be subject to the provisions for Type III decisions in MCC 39.1105 through 39.1240.**
- (B) A Conditional Use permit shall be issued only for the specific use or uses, together with the limitations or conditions as determined by the Approval Authority.**
- (C) The findings and conclusions made by the approval authority and the conditions, modifications or restrictions of approval, if any, shall specifically address the relationships between the proposal and the approval criteria listed in MCC 39.7015 and in the base zone or use provisions.**

Staff: The proposed Transportation Maintenance Facility is subject to a Type III review per the provisions in MCC 39.1105 – 39.1240. Staff followed the outlined procedures leading-up to the hearing (Exhibit C.1 – C.3).

Hearings Officer: Conditions of approval are included in this Final Order.
Criteria met.

6.2 MCC 39.7010 Conditions and Restrictions

The approval authority may attach conditions and restrictions to any conditional use approved. Conditions and restrictions may include a definite time limit, a specific limitation of use, landscaping requirements, parking, loading, circulation, access, performance standards, performance bonds, and any other reasonable conditions, restrictions or safeguards that would uphold the purpose and intent of this Chapter and mitigate any adverse effect upon the adjoining properties which may result by reason of the conditional use allowed.

Hearings Officer: Conditions of approval are included in this Final Order.
Criterion met.

6.3 MCC 39.7015 Conditional Use Approval Criteria

(A) A Conditional Use shall be governed by the approval criteria listed in the base zone under which the conditional use is allowed. If no such criteria are provided, the approval criteria listed in this section shall apply. In approving a Conditional Use listed in this section, the approval authority shall find that the proposal:

(1) Is consistent with the character of the area;

Staff: The surrounding area is rural in character with a mix of residential and agricultural primary uses. ODOT proposed a building design with metal materials that blend in with other buildings (i.e. barns) found in the area. The proposed building design also utilizes materials matching the TVFR Fire Station located on NW Skyline Boulevard northeast of the subject property. ODOT's proposed building and yard will aid in providing direct services to maintain and protect NW Cornelius Pass Road and other rights-of-way during inclement weather events. Therefore, the proposed use and building design are consistent with the character of the area. *Criterion met.*

6.4 (2) Will not adversely affect natural resources;

Staff: The Comprehensive Plan identifies the natural resources that the County chooses to protect. They are: rivers, streams, wetlands, wildlife habitat and other natural resources. The Significant Environmental Concern for wildlife habitat (SEC-h) overlay has been adopted for the subject property and the surrounding area within Multnomah County. The proposed project must comply with the County's SEC-h code. Planning staff in Section 8.1 – 8.13 finds the proposed development can comply with the SEC-h standards. At present, a majority of the subject property exists with minimal amount of vegetation. The proposed landscape plan (Exhibit A.23 – A.25) will enhance the subject property with native vegetation which includes ground cover, shrubs and trees. A small unprotected stream exists approximately 65 feet southeast of the subject property (Exhibit A.26). A condition of approval (condition no. 2) has been included that

the applicant obtain an Erosion and Sediment Control (ESC) permit prior to commencement of the project. By demonstrating compliance with the County's SEC-h requirements and obtaining an ESC permit, the proposed project should not create any adverse effects on natural resources. *As conditioned, the above criterion can be met.*

6.5 (3) The use will not:

(a) Force a significant change in accepted farm or forest practices on surrounding lands devoted to farm or forest use; nor

(b) Significantly increase the cost of accepted farm or forest practices on surrounding lands devoted to farm or forest use.

Staff: The proposed facility will be located near the intersection of NW Cornelius Pass Road and NW Skyline Boulevard. A benefit of the selected location is that ODOT traffic to the site does not need to traverse through the neighboring areas of NW Skyline Boulevard that contain farm/forest uses to serve NW Cornelius Pass Road. The graphic below shows the surrounding land uses.



Farm uses in the area chiefly involve the production of hay or straw. No intensive agricultural uses exist within 1,000 feet of the subject property. Lands directly to the north and south are chiefly rural residential used lands (Rural Residential and Multiple Use Agriculture-20 zoning) with a mixture of dwellings, forested areas and landscape areas. Use of the proposed facility by ODOT will be infrequent, with the highest levels of activity occurring during inclement weather when farming or forest activities will be at a minimum. Given the intermittent nature of the use (Exhibit A.22), planning staff has not identified any impacts or increase in costs to the farm uses or forest uses in the area. *Criterion met.*

6.6 (4) Will not require public services other than those existing or programmed for the area;

Staff: Electrical service is necessary for the site and electrical service is available in the area through the local power company. No additional services will be necessary to support the proposed facility. *Criterion met.*

6.7 (5) Will be located outside a big game winter habitat area as defined by the Oregon Department of Fish and Wildlife or that agency has certified that the impacts will be acceptable;

Staff: A big game analysis letter from the Oregon Department of Fish and Wildlife (ODFW) states that the subject property is located outside a big game winter habitat area (Exhibit A.11). *Criterion met.*

6.8 (6) Will not create hazardous conditions; and

Staff: The one estimated impact of the proposal would be a slight increase in traffic in the area as winter operations begin. Outside of winter operations, there will be minimal activity on the subject property. All equipment will be stored inside of the proposed building and a security fence will discourage unauthorized entry to the site (Exhibit A.26). Planning staff has not identified any hazardous conditions due to the construction of the project or use of the maintenance facility. *Criterion met.*

6.9 (7) Will satisfy the applicable policies of the Comprehensive Plan.

Staff: Section 10.1 below addresses relevant policies of the Comprehensive Plan. *Criterion met.*

6.10 (8) The use is limited in type and scale to primarily serve the needs of the rural area.

Staff: The proposed facility functions as a staging area for materials that support the removal of ice and snow from the rural highways that ODOT maintains (NW Cornelius Pass Road and Highway 30). Most activities occur during inclement and adverse weather conditions. Limited intermittent activity, such as restocking supplies, would occur during the period outside of winter operations. ODOT designed the proposed building and stockpile area based on the necessary materials and equipment to serve the area (Exhibit A.22). Therefore, the proposal is limited in type and scale to primarily serve the needs of the rural area. *Criterion met.*

6.11 (B) Except for off-site stockpiling, Subsection (A) of this Section shall not apply to applications for mineral extraction and processing activities. Proposals for mineral extraction and processing shall satisfy the criteria of MCC 39.7315.

Staff: The proposal does not include an application for mineral extraction and/or processing activities. Therefore, the above criterion is not applicable.

6.12 MCC 39.7020 Additional Approval Criteria for Certain Transportation Uses in the EFU zoning district

For the transportation uses listed in MCC 39.4230(P), (Q), and (R), the Hearing Authority shall find that Multnomah County has:

(A) Identified reasonable build alternatives, such as alternative alignments, that are safe and can be constructed at a reasonable cost, not considering raw land costs, with available technology. The County need not consider alternatives that are inconsistent with applicable standards or not approved by a registered professional engineer.

Staff: Per the Applicant's revised narrative (Exhibit A.22), ODOT investigated two additional sites under their ownership prior to selecting the proposed site. "Krueger Quarry" is located on Rock Creek Road approximately one mile east of NW Cornelius Pass Road and is zoned Commercial Forest Use -2.

The second additional site is located near the junction of Hwy 30 and NW Cornelius Pass Road (immediately west of 17622 NW St. Helens Road) and is zoned Multiple Use Agriculture - 20. This site currently provides storage of winter operations materials, but would effectively be too small in land area to support additional facilities/stockpiles needed following the jurisdiction transfer of NW Cornelius Pass Road from Multnomah County to ODOT. This site is also outside the service area for the assigned maintenance crew.

Criterion met.

6.13 (B) Assessed the effects of the identified alternatives on farm and forest practices, considering impacts to farm and forest lands, structures and facilities, considering the effects of traffic on the movement of farm and forest vehicles and equipment and considering the effects of access to parcels created on farm and forest lands.

Staff: Utilizing the Krueger Quarry site presents opportunities for impacts to the movement of farm and forest vehicles. Increased heavy vehicle traffic on Rock Creek Road could damage the road surface, causing access issues for parcels located along the road that are engaged in farm/forest practices. The Krueger Quarry site also contains steeper slopes and a railroad crossing that would require improvement. Increased development to the site to attempt to accommodate a new facility would require extensive clearing and ground disturbance, which would damage the forest canopy. *Criterion met.*

6.14 (C) Selected from the identified alternatives, the one, or combination of identified alternatives that has the least impact on lands in the immediate vicinity devoted to farm or forest use.

Staff: The proposed site is the optimum location for winter maintenance operations based on geographic location. The site is at the intersection of NW

Skyline Boulevard and NW Cornelius Pass Road. Crews can easily access the site without having to traverse through interior sections of NW Skyline Boulevard that contain lands devoted to farm/forest uses. This separation ensures the lowest potential for impact to existing farm/forest uses. *Criterion met.*

6.15 MCC 39.7025 Design Review

Uses authorized under MCC 39.7000 through 39.7035 shall be subject to design review approval under MCC 39.8000 through 39.8050.

Staff: The proposal is subject to design review approval per the requirements of MCC 39.8000 – 39.8050. Section 7.1 – 7.8 addresses the relevant design review criteria. *Criterion met.*

6.16 MCC 39.7035 Conditional Use Permit

A conditional use permit shall be obtained for each conditional use approved, before development of the use. The permit shall specify any conditions and restrictions imposed by the approval authority or Board of County Commissioners, in addition to those specifically set forth in this Chapter.

Staff: The Applicant applied for a Conditional Use Permit for the proposed Transportation Facility. Staff provided a list of recommended conditions of approval on pp. 3 - 5 of the staff report. *Criterion met.*

7.0 DESIGN REVIEW CRITERIA

7.1 MCC 39.8005 Elements of Design Review Plan

The elements of a Design Review Plan are: The layout and design of all existing and proposed improvements, including but not limited to, buildings, structures, parking and circulation areas, outdoor storage areas, landscape areas, service and delivery areas, outdoor recreation areas, retaining walls, signs and graphics, cut and fill actions, accessways, pedestrian walkways, buffering and screening measures.

MCC 39.8010 Design Review Plan Approval Required

No building, grading, parking, land use, sign or other required permit shall be issued for a use subject to this section, nor shall such a use be commenced, enlarged, altered or changed until a final design review plan is approved by the Planning Director, under this Code.

Staff: Section 7.2 – 7.8 below addresses the relevant approval criteria for design review. A recommended condition of approval (condition no. 3) requires the submission of a final design review plan during building plan check. As *conditioned, the above criteria can be met.*

7.2 MCC 39.8020 Application of Regulations

(A) Except those exempted by MCC 39.8015, the provisions of MCC 39.8000 through 39.8050 shall apply to all conditional and community service uses, and to specified uses, in any base zone.

(B) Uses subject to Design Review that require the creation of fewer than four new parking spaces pursuant to MCC 39.6590 shall only be subject to the following Design Review approval criteria: MCC 39.8040(A)(1)(a) and (1)(c), (4) and (7), except when located in the RC, BRC, OR, OCI, PH-RC or SRC zone base zones.

(C) All other uses are subject to all of the Design Review Approval Criteria listed in MCC 39.8040 and 39.8045.

*** * ***

Staff: As the proposed transportation maintenance facility requires less than four new parking spaces, only Design Review approval criteria of MCC 39.8040(A)(1)(a) and (1)(c), (4), and (7) are applicable. Section 7.5 – 7.8 discusses the aforementioned design review criteria applicable to this proposal. *Criteria met.*

7.3 MCC 39.8025 Design Review Plan Contents

(A) The design review application shall be filed on forms provided by the Planning Director and shall be accompanied by a site plan, floor plan, architectural elevations and landscape plan, as appropriate, showing the proposed development.

(B) Plans shall include the following, drawn to scale:

(1) Access to site from adjacent rights-of-way, streets, and arterials;

(2) Parking and circulation areas;

(3) Location, design, materials and colors of buildings and signs;

*** * ***

(14) The size, species, and approximate locations of plant materials to be retained or placed on the site; and

(15) Proposed ground-disturbance, grading, filling and site contouring.

Staff: The Applicant provided the required information in Exhibits A.4 and A.12 – A.27. *Criteria met.*

7.4 MCC 39.8030 Final Design Review Plan

Prior to land use approval for building permit review or commencement of physical development where no additional permits are necessary, the applicant shall revise the plans to show compliance with the land use approvals granted, all conditions of approval and required modifications. Final design review plan shall contain the following, drawn to scale:

- (A) Site Development and Landscape Plans drawn to scale, indicating the locations and specifications of the items described in MCC 39.8025, as appropriate;**
- (B) Architectural drawings, indicating floor plans, sections, and elevations; and**
- (C) Approved minor exceptions from yard, parking, and sign requirements.**

Staff: A recommended condition of approval (condition no. 3) requires the Applicant to provide a final design review plan prior to building plan check. *As conditioned, the above criteria can be met.*

7.5 MCC 39.8040 Design Review Criteria

- (A) Approval of a final design review plan shall be based on the following criteria:**

- (I) Relation of Design Review Plan Elements to Environment.**

- (a) The elements of the design review plan shall relate harmoniously to the natural environment and existing buildings and structures having a visual relationship with the site.**

* * *

Staff: ODOT selected materials and architectural forms for the proposed building that match nearby buildings (Exhibit A.4 & A.22). Specifically, the Tualatin Valley Fire Station located across NW Skyline Boulevard served as inspiration. Using metal roofing and siding ensures that the proposed building is compatible with farm buildings located in the area. Minimal grading is proposed as the site is relatively flat and to ensure that ground disturbance is limited to that which is necessary for vehicle access, building placement, and stockpile placement (Exhibit A.26). A significant amount of native vegetation will be added to the site that will help blend the building and improvements into the rural area (Exhibit A.23 – A.25). *Criterion met.*

- 7.6 (c) Each element of the design review plan shall effectively, efficiently, and attractively serve its function. The elements**

shall be on a human scale, inter related, and shall provide spatial variety and order.

Staff: A single building providing storage for equipment essential to winter maintenance operations will serve the site (Exhibit A.26). ODOT designed the building with materials intended to match other buildings in the area (i.e. “Barns”) and the local fire station located east of the subject property on NW Skyline Blvd (Exhibit A.4). The proposed landscape plan provides vegetative screening for the building and stockpile area and significantly increases the number of trees for the site (Exhibit A.23 – A.25), which contributes to the site’s spatial variety. *Criterion met.*

- 7.7 (4) Preservation of Natural Landscape - The landscape and existing grade shall be preserved to the maximum practical degree, considering development constraints and suitability of the landscape or grade to serve their functions. Preserved trees and shrubs shall be protected during construction.**

Staff: Six trees abutting NW Skyline Boulevard will need to be removed to install the access road (Exhibit A.23 – A.26). The remaining trees abutting the road will be undisturbed. Per the Applicant’s landscape plan (Exhibit A.23 – A.25), a number of newly planted native trees will screen the proposed building. The proposed landscape plan increases the overall number of trees and native vegetation located on the subject property. The proposed development is located in a relatively flat area. Grading is limited to that which is necessary to install the vehicle access, building placement, and placement of the stockpile (Exhibit A.26). A condition of approval (condition no. 4) requires the protection of preserved trees during construction. *As conditioned, the above criterion can be met.*

- 7.8 (7) Buffering and Screening - Areas, structures and facilities for storage, machinery and equipment, services (mail, refuse, utility wires, and the like), loading and parking, and similar accessory areas and structures shall be designed, located, buffered or screened to minimize adverse impacts on the site and neighboring properties.**

Staff: Per the proposed landscape plan (Exhibit A.23 – A.25), new native plantings will provide a vegetative screen for the building. The proposed landscape plan increases the overall number of trees located on the subject property. All equipment will be housed inside of the building and will not be visible, except when in active use. Therefore, the proposal minimizes adverse impacts on the site and neighboring properties. *Criterion met.*

8.0 SEC-H PERMIT CRITERIA

8.1 MCC 39.5510 Uses; SEC Permit Required

- (A) All uses allowed in the base zone are allowed in the SEC when found to satisfy the applicable approval criteria given in such zone and, except as provided in MCC 39.5515, subject to approval of an SEC permit pursuant to this Subpart.**
- (B) Any excavation or any removal of materials of archaeological, historical, prehistorical or anthropological nature shall be conducted under the conditions of an SEC permit, regardless of the zoning designation of the site.**

Staff: The proposed development is entirely within the SEC-h overlay. The proposed development does not meet any of the exceptions listed in MCC 39.5515. Therefore, an SEC permit is required. Section 8.2 – 8.13 below discusses the relevant approval criteria for a SEC-h permit. *Criteria met.*

8.2 MCC 39.5520 Application Information Required

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;**

* * *

Staff: The Applicant provided the required information in Exhibit A.4 and A.12 – A.27. *Criteria met.*

8.3 MCC 39.5850 SEC-H Clear and Objective Standards

(A) At the time of submittal, the applicant shall provide the application materials listed in MCC 39.5520(A) and 39.5860(A). The application shall be reviewed through the Type I procedure and may not be authorized unless the standards in MCC 39.5860(B)(1) through (4)(a)-(c) and (B)(5) through (7) are met. For development that fails to meet all of the criteria listed above, a separate land use application pursuant to MCC 39.5860 may be submitted.

- (B) The proposed development shall meet the applicable stormwater and ground disturbing activity requirements of MCC 39.6200 through 39.6235. Ground disturbing activity within 100 feet of a water body as defined by MCC 39.2000 shall be limited to the period between May 1st and September 15th. Revegetation and soil stabilization must be accomplished no later than October 15th.**
- (C) The nuisance plants listed in MCC 39.5580 Table 1 shall not be used as landscape plantings within the SEC-h Overlay Zone.**
- (D) For development that fails to meet all of the standards listed in this section, a separate land use application pursuant to MCC 39.5860 may be submitted.**

Staff: (A) & (D) The Applicant submitted the required information in Exhibit A.4 and A.12 – A.27. The Applicant has chosen to consolidate all requested applications together as authorized by MCC 39.1105(F). Staff addresses the development standards of MCC 39.5860 in Section 8.5 – 8.8 below. MCC 39.5860(B)(2) & (B)(3) have not been met. The proposed development must be comply with the provisions for a Type II SEC-h permit.

(B) A storm water certificate and report aligning with the requirements of MCC 39.6235 are included as Exhibit A.12 – A.14. Ground disturbing activity is limited to the installation of the driveway access, parking lot, and installing footings for the storage building (Exhibit A.26). All ground disturbing activity will occur a minimum of 120 +/- feet from the centerline of the stream.

(C) Planning staff reviewed the proposed landscape plantings with the County's Nuisance Plant List. The list of plant species can be found in Exhibit A.8 & A.23. No nuisance plants listed in MCC 39.5580 are included in the proposed landscape plan for the site (Exhibit A.23 – A.25). *Criteria met.*

8.4 MCC 39.5860 Criteria For Approval of SEC-H Permit – Wildlife Habitat

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

* * *

Staff: The Applicant submitted the required information in Exhibits A.4 and A.12 – A.27. Staff added an area map showing adjacent properties within 200 feet of the proposed development as Exhibit B.4. *Criteria met.*

8.5 (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.**
- (2) Development shall occur within 200 feet of a public road capable of providing reasonable practical access to the developable portion of the site.**
- (3) The access road/driveway and service corridor serving the development shall not exceed 500 feet in length.**
- (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.**

* * *

Staff: (1) The entire proposed development is within a non-forested "cleared" area per available aerial photos (Exhibit B.4). *Criterion met.*

(2) The subject property is at the intersection of NW Skyline Boulevard and NW Cornelius Pass Road. Access to the site is from NW Skyline Boulevard. In the Applicant's Transportation Analysis (Exhibit A.20) they state "Moving the access to the NW Cornelius Pass Road is not considered a viable option due to the fact that it is a higher classification roadway with a significantly higher volume of traffic and would be located on the inside of a horizontal curve." Based upon the above, NW Cornelius Pass Road is not a public road capable of providing reasonable practical access to the developable portion of the site. The accessway/driveway (driveway) leading to the Maintenance Storage Yard is approximately 300 feet long. The developed portion of the Maintenance Facility is over 200 feet from the public road providing access (Exhibit A.26). As designed the driveway and service corridor exceeds 500 feet in length. *Criterion not met.*

(3) The proposed driveway and service corridor from NW Skyline Blvd to the storage building is approximately 541 feet in length (Exhibit A.26). *Criterion not met.*

(4) The property to the west of the driveway does not have a constructed driveway as it is vacant (Exhibit B.4). The property on the north side of NW Skyline Blvd has an existing driveway, but it is between 53 to 58 feet west of the Applicant's driveway depending on whether you measure to the access flare or the actual driveway. The Applicant's driveway is located immediately adjacent to the parcel to the west and its location is clustered with the northern property to the maximum extent possible though it is not required. *Criteria met.*

8.6 (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 subject property is immediately adjacent to NW Cornelius Pass Road on the west. To the east of the subject property, the parcel does not have any development within 300 feet of the side property line. Its existing farm building is located approximately 500 feet to the east. The proposed building will be built approximately 61 feet from the eastern property line and the entire building is within 161 feet from that line (Exhibit A.26). Since no structures exist within 200 feet of the common side property line located on the eastern portion of the subject property, the above criterion is not applicable. *Criterion not applicable.*

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

* * *

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

Staff: The proposed Transportation facility is a utility facility. Therefore, the proposed security fence along the property line adjacent to NW Cornelius Pass Road is exempt from the development standards of (B)(6). The remaining portions of the security fence are not within a required setback from a public road. *Criteria met.*

8.8 (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: No nuisance plants in MCC 39.5580 are included in the proposed landscape plan for the subject property (Exhibit A.23 – A.25). A recommended condition of approval (condition no. 4) requires that the property owner and all future property owners comply with the above requirement. *As conditioned, the above criterion can be met.*

8.9 (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 portion of NW Cornelius Pass Road that runs along the subject property does not provide viable access options due to physical characteristics noted in the Applicant's Transportation Analysis (Exhibit A.20). Due to these physical characteristics, the Applicant cannot comply with (B)(2) and (B)(3). The proposed building is approximately 3,900 square feet (Exhibit A.26). For mitigation purposes, the Applicant could elect to plant one, three foot to four foot tall native tree for each 100 square feet of the new building area. If the resulting 39 trees were consistent with the adjacent forested habitat, such mitigation would improve wildlife habitat on the subject property. A condition of approval (condition no. 2) requires the Applicant to submit a wildlife conservation plan demonstrating satisfaction of the requirements of this section prior to building plan review. *As conditioned, the above criterion can be met.*

8.10

(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: (3)(d) No newly cleared areas are included in the proposal (Exhibit A.26). Therefore, this criterion is not applicable. *Criterion is not applicable.*

(3)(e) The proposal does not include disturbance of stream riparian areas (Exhibit A.26). Therefore, this criterion is not applicable. *Criterion is not applicable.*

(3)(a), (3)(b), and (3)(c): The entire proposed development is within a non-forested “cleared” area per available aerial photos (Exhibit B.4). There is no existing fencing on the subject property and no fencing is proposed outside of cleared areas (Exhibit A.26).

In addition to (3)(a) through (e), the Wildlife Conservation Plan needs to include mitigation for failing to comply with the Development Standards listed in (B)(2) and (B)(3). The proposed building is approximately 3,900 square feet (Exhibit A.26). For mitigation purposes, the Applicant could elect to plant one, three foot - four foot tall native tree for each 100 square feet of the new building area. If the resulting 39 trees were planted in a grouping, it could create a tree canopy animals could use to move between forests in the area. The planting of trees would improve wildlife habitat on the subject property.

8.11 (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 proposal does not include a proposed addition. Therefore, the above criterion is not applicable. *Criterion is not applicable.*

8.12 (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:

* * *

Staff: As noted above, the Applicant can provide a wildlife conservation plan demonstrating satisfaction of the criteria in subsection (C)(3). A condition of approval (condition no. 2) requires the applicant to provide a wildlife conservation plan demonstrating satisfaction of the criteria in subsection (C)(3). *As conditioned, the above criteria can be met.*

8.13 (6) For Protected Aggregate and Mineral (PAM) resources within a PAM Overlay, the applicant shall submit a Wildlife Conservation Plan which must comply only with measures identified in the Goal

5 protection program that has been adopted by Multnomah County for the site as part of the program to achieve the goal.

Staff: The proposal does not include any Protected Aggregate and Mineral (PAM) resources within a PAM Overlay. *Criterion not applicable.*

9.0 GEOLOGIC HAZARDS CRITERIA

9.1 MCC 39.5075 Permits 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).

Hearings Officer: Based on the applicant's revised grading plan (Sheet C1.20 of Exhibit H.1) the proposed building, parking/loading/maneuvering area, open storage area and all grading activities are located outside of the areas of the property mapped with the Geologic Hazards Overlay (Overlay). Therefore, a Geologic Hazard permit (GH permit) is not required.

10.0 COMPREHENSIVE PLAN POLICIES

10.1 Policy 3.4 – Ensure that transportation policies and policies related to the regulation of activities and events in agricultural zones minimize the difficulties conflicting uses impose on farming practices.

Staff: The proposed facility will be located at the intersection of NW Cornelius Pass Road and NW Skyline Boulevard. A benefit of the selected location is that traffic to the site does not need to traverse through the neighboring areas of NW Skyline Boulevard that contain farm/forest uses. Use of the proposed facility by ODOT will be infrequent, with the highest levels of activity occurring during inclement weather. Given the intermittent nature of the use and limited scope, there are no anticipated changes of significance or increases in cost to farm/forest uses. Public notice was given to all properties within 750 feet of the subject development. No comments from nearby farmers had been received by the time the staff report was issued.

Per the Applicant's revised narrative (Exhibit A.22), ODOT investigated two additional sites prior to selecting the proposed site. "Krueger Quarry" is located on Rock Creek Road approximately one mile east of NW Cornelius Pass Road. The second additional site is located near the junction of Hwy 30 and NW Cornelius Pass Road. This site currently provides storage of winter operations materials, but is too small in land area to support additional facilities/stockpiles needed following the jurisdiction transfer of NW Cornelius Pass Road from

Multnomah County to ODOT. This site is also outside the service area for the assigned maintenance crew.

Based on the above, the Applicant demonstrated that the proposed facility location is the optimum site to limit impacts to farm/forest uses.

Policy met.

11.0 EXHIBITS

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

‘C’ Procedural Exhibits

Exhibits with a “*” after the exhibit # have been included as part of the mailed hearing notice. Those exhibits have been reduced to a size of 8.5” x 11” for mailing purposes. All other exhibits are available for digital review in Case File T3-2021-14303.

| Exhibit # | # of Pages | Description of Exhibit | Date Received/Submitted |
|------------------|-------------------|--|--------------------------------|
| A.1 | 1 | General Application Form | 02.05.2021 |
| A.2 | 2 | Applicant Cover Letter | 02.05.2021 |
| A.3 | 7 | Applicant Narrative (Revised; See Exhibit A.22)6 | 02.05.2021 |
| A.4* | 1 | Building Elevation Drawing | 02.05.2021 |
| A.5 | 1 | Overall Site Plan – Plant Schedule/Notes (Revised; see Exhibit A.23) | 02.05.2021 |
| A.6 | 1 | Landscape Plan – Page L1.10 (Revised; see Exhibit A.24) | 02.05.2021 |
| A.7 | 1 | Landscape Plan – Page L1.11 (Revised; see Exhibit A.25) | 02.05.2021 |
| A.8 | 1 | Landscape Plants Table | 02.05.2021 |
| A.9 | 1 | Site Plan with Slope Information (Revised; see Exhibit A.26) | 02.05.2021 |
| A.10 | 1 | Copy of cover page of the decision for Land Use Case #T2-2020-13845 | 02.05.2021 |
| A.11 | 2 | Oregon Dept. of Fish and Wildlife – Big Game Analysis Letter | 02.05.2021 |

| | | | |
|------------|----------|--|-------------|
| A.12 | 2 | Stormwater Certificate completed by Brent Nielsen, PE | 02.05.2021 |
| A.13 | 2 | Stormwater Details Plan completed by Brent Nielsen, PE | 02.05.2021 |
| A.14 | 91 | Stormwater Report completed by Brent Nielsen, PE | 02.05.2021 |
| A.15 | 10 | Natural Resources Assessment completed by Christie Galen, Pacific Habitat Services | 02.05.2021 |
| A.16 | 4 | Geotechnical Preliminary Study completed by Ryan Hoeser, CGE | 02.05.2021 |
| A.17 | 59 | Geotechnical Investigation Report completed by Carlson Geotechnical | 02.05.2021 |
| A.18 | 3 | Fire Service Agency Review | 02.05.2021 |
| A.19 | 2 | Transportation Planning Review (Unsigned) | 02.05.2021 |
| A.20 | 44 | Transportation Analysis completed by Mackenzie | 02.05.2021 |
| A.21 | 7 | Transportation Planning Review (Signed) | 03.02.2021 |
| A.22 | 8 | Revised Applicant Narrative | 03.11.2021 |
| A.23 | 1 | Revised Overall Site Plan – Plant Schedule/Notes | 03.11.2021 |
| A.24* | 1 | Revised Landscape Plan – Page L1.10 | 03.11.2021 |
| A.25* | 1 | Revised Landscape Plan – Page L1.11 | 03.11.2021 |
| A.26* | 1 | Revised Site Plan with Slope Information | 03.11.2021 |
| A.27 | 1 | Composite Survey, Building Footprint and Geologic Hazard Overlay Site Plan | 03.11.2021 |
| | | | |
| ‘B’ | # | Staff Exhibits | Date |
| B.1 | 2 | Division of Assessment, Recording, and Taxation (DART): Property Information for 2N1W31C -02500 (Alt Acct# R661101910) | 02.05.2021 |
| B.2 | 1 | Division of Assessment, Recording, and Taxation (DART): Map for 2N1W31C | 02.05.2021 |

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| B.3 | 1 | Survey #67433 | 02.05.2021 |
| B.4 | 1 | Drainage Basin Boundaries | 07.27.2021 |
| | | | |
| ‘C’ | # | Administration & Procedures | Date |
| C.1 | 3 | Incomplete Letter | 03.04.2021 |
| C.2 | 1 | Complete Letter (Day 1) | 03.23.2021 |
| C.3 | 7 | Hearing Notice | 07.22.2021 |
| C.4 | 27 | Staff Report | 08.03.2021 |
| ‘H’ | # | Hearing Exhibits | Date |
| H.1 | 3 | Revised Site Plan | 08.17.2021 |
| H.2 | 2 | Revised Plans | 08.17.2021 |