

Date: Friday, September 24, 2021



Applicable Approval Criteria

Multnomah County Code (MCC):

General Provisions: MCC 39.1515 Code Compliance and Applications; MCC 39.6235 Stormwater Drainage Control; MCC 39.6850 Dark Sky Lighting Standards

CFU-4 Zone: MCC 39.4070 Allowed Uses – (D) Replacement Dwelling within 100-feet of an existing dwelling; MCC 39.4105 Building Height Requirements; MCC 39.4110 Forest Practices Setbacks and Fire Safety Zones; MCC 39.4115 Development Standards for Dwellings and Structures

Lot of Record: MCC 39.3005 Lot of Record – Generally; MCC 39.3050 Lot of Record – CFU-4

Geologic Hazards: MCC 39.5075 Permits Required; MCC 39.5080 Exemptions

Significant Environmental Concern: MCC 39.5510 Uses; SEC Permit Required; MCC 39.5520 Application for SEC Permit; MCC 39.5540 Criteria for Approval of SEC Permit.

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

Chapter 39 - Zoning Code

Conditions of Approval

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

1. Permit Expiration – This land use permit shall **expire** as follows:

- a. On **October 13, 2021** if construction has not commenced. Commencement of construction shall mean actual construction of the foundation or frame of the approved structure. No extension to the above deadline is allowed. [MCC 39.1185 & MCC 39.4070(D)]
- b. Within four (4) years from October 13, 2021 [the required date for commencement of construction] when the structure has not been completed.
 - i. For the purposes of Condition 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]

Note: The property owner may request to extend the timeframe under 1.b. within which this permit is valid, as provided under MCC 39.1195, as applicable. The request for a permit extension must be submitted prior to the expiration of the approval period.

2. **Prior to land use plan check**, the property owners or their representative shall:

- a. The property owners shall acknowledge in writing that they have read and understand the conditions of approval and intend to comply with them. A Letter of Acknowledgement has been provided to assist you. The signed document shall be sent to Chris Liu at chris.liu@multco.us. [MCC 39.1170(A) & (B)]

3. **At the time of land use plan check**, the property owner or their representative shall:

- a. Demonstrate any proposed exterior lighting complies with the Dark Sky Lighting Standards of MCC 39.6850. This shall include identifying the location of proposed exterior lighting on the site plan, showing proposed exterior lighting on the elevation drawings, and providing exterior lighting details (i.e. model #s & spec. sheets).
- b. Obtain a Minimal Impact Project permit sign-off for the proposed ground disturbance associated with the replacement dwelling. [MCC 39.6220]
- c. Provide a list of the authorized building materials and colors with/on the building plans. The building materials shall be consistent with the following [MCC 39.5540(L)]:

Feature	Proposed Material	Color
Siding / Trim	Board and Batten siding. Cedar trim.	Rustic Brown and Mountain Cedar Armstrong Oil based wood stain
Roof	Option 1: Metallion Industries Flat Matte Finish	Matte Black
	Option 2: Owens Corning Duration Shingle	Brownwood
Windows	Milgard with Low-E glass; SunCoat Low E2 glass	Tan

Doors	Codel Smooth Fiberglass 3-Panel Shaker Smooth	Espresso
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4. **During construction**, the applicant(s), property owner(s), or their representative(s) shall adhere to the following procedures.
- a. Best Management Practices (BMP) shall be used to protect the site from erosion. BMP shall adhere to the Minimal Impact Project requirements of MCC 39.6220.
 - b. These procedures shall be in effect if any Cultural Resources and/or Archaeological Resources are located or discovered on the tax lots or within the project area, including finding any evidence of historic campsites, old burial grounds, implements, or artifacts:
 - i. Halt Construction – All construction activities within 100 feet of the discovered cultural resource shall cease. The cultural resources shall remain as found; further disturbance is prohibited.
 - ii. Notification – The project applicant shall notify the County Planning Director and the State Historic Preservation Office (SHPO) within 24 hours of the discovery. If the cultural resources are prehistoric or otherwise associated with Native Americans, the project applicant shall also notify the Indian tribal governments within 24 hours.
 - iii. Survey and Evaluation – The applicant shall follow any and all procedures outlines by SHPO and if necessary obtain the appropriate permits (see ORS 273.705 and ORS 358.905 to 358.955).
 - iv. All survey and evaluation reports and mitigation plans shall be submitted to the Planning Director and SHPO. Indian tribal governments also shall receive a copy of all reports and plans if the cultural resources are prehistoric or otherwise associated with Native Americans.
 - v. Construction activities may recommence when SHPO requirements are satisfied. [MCC 39.5510(B), MCC 39.5540(H), and Comprehensive Plan Policy 6.4]
 - c. The following procedures shall be in effect if human remains are discovered during excavation or construction (human remains means articulated or disarticulated human skeletal remains, bones, or teeth, with or without attendant burial artifacts):
 - i. Halt Activities – All survey, excavation, and construction activities shall cease. The human remains shall not be disturbed any further.
 - ii. Notification – Local law enforcement officials, the Multnomah County Planning Director, State Historic Preservation Office and the Indian tribal governments shall be contacted immediately.
 - iii. Inspection – The State Medical Examiner shall inspect the remains at the project site and determine if they are prehistoric/historic or modern. Representatives from the Indian tribal governments shall have an opportunity to monitor the inspection.
 - iv. Jurisdiction – If the remains are modern, the appropriate law enforcement officials will assume jurisdiction and this protection process may conclude.
 - v. Treatment – Prehistoric/historic remains of Native Americans shall generally be treated in accordance with the procedures set forth in Oregon Revised Statutes,

5. **As an on-going condition**, the property owner shall:
 - a. Establish the required primary and secondary fire safety zone around the replacement dwelling and within the subject property as outlined in MCC 39.4110(D). The fire safety zones shall be established prior to occupancy of the dwelling. [MCC 39.4110(D)(4)]
 - i. Maintain the required primary and secondary fire safety zones for the life of the structure. [MCC 39.4110(D)(5)]
6. Prior to occupancy of the dwelling, the stormwater drainage control system shall be installed. [MCC 39.6235]
7. The damaged dwelling shall be removed or demolished completely from the property within 90 days of occupancy of the replacement dwelling. If necessary, the property owner or their representative shall obtain a demolition permit for its removal/demolition from the City of Gresham. The old septic tank shall be decommissioned in compliance with DEQ rules.
8. By January 1, 2022, the property owner shall demonstrate that the two existing outbuildings shown on the revised site plans were lawfully established or contact Code Compliance at 503.988.5508 to arrange a site visit to inspect the outbuildings for use, apply for a Pre-filing meeting to obtain permits for the buildings or have them removed. If removing them, Code Compliance shall be contacted so that they can verify their removal. [MCC 39.1515]

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

1. Read your land use decision, the conditions of approval and modify your plans, if necessary, to meet any condition that states, “Prior to land use plan check...” Be ready to demonstrate compliance with the conditions.
2. Contact the City of Portland, Bureau of Development Services, On-site Sanitation at 503-823-6892 or e-mail septic@portlandoregon.gov for information on how to complete the Septic Evaluation or Permit process for the proposed development. All existing and/or proposed septic system components (including septic tank and drainfield) must be accurately shown on the site plan.
3. Contact Chris Liu at chris.liu@multco.us, **for an appointment** for review of the conditions of approval and plan check. Please ensure that any items required under, “At the time of land use plan check...” are ready for land use planning review. Land Use Planning must sign off on the plans and authorize the building permit.

The above must be completed before the applicant can obtain building permits from the City of Gresham. At the time of plan check, Land Use Planning may collect additional fees, including an erosion control inspection fee, if applicable.

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

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

Findings of Fact

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

1.0 Project Description:

Staff: The Applicant requests a Significant Environmental Concern (SEC) permit for a replacement dwelling within 100 ft. of the dwelling destroyed by fire. Per MCC 39.4070(D), restoration or replacement due to fire, other casualty or natural disaster shall commence within one year from the occurrence of the fire, casualty or natural disaster. The fire occurred on October 13, 2020 (Exhibit A.19). In addition, the Applicant is requesting a Lot of Record Verification for the subject property.

Through the Lot of Record Verification process, the County reviews the creation or reconfiguration of each parcel, lot, or unit of land involved in the request. The County then verifies that the creation or reconfiguration of the parcel, lot, or unit of land satisfied all applicable zoning laws and all applicable land division laws in effect on the date of its creation or reconfiguration. In the EFU/CFU zone, the County also considers adjacent ownership on February 20, 1990 in determining whether a parcel, lot, or unit of land is a Lot of Record on its own. If the parcel, lot, or unit of land met all applicable zoning laws, applicable land division laws and meets the aggregation requirements, it may be determined to be a Lot of Record.

2.0 Property Description:

Staff: The subject property is located in unincorporated east Multnomah County in the area known as Corbett. The property is zoned CFU-4 and is located outside of Metro’s Urban Growth Boundary (UGB). At the southern end of the property, there are steep slopes in the heavily wooded area leading to the Sandy River. An existing single-family dwelling approved in 1985 for the subject property was destroyed by fire on October 13, 2020. The site contains two outbuildings.

3.0 Public Comment:

Staff: Staff mailed a notice of application and invitation to comment on the proposed application to the required parties per MCC 39.1105 (Exhibit C.2). Staff received the following public comments during the 14-day comment period.

3.1 Letter from Kimberley O’Connell. Adjacent property owner at 32202 SE Stevens Road provided comments on Friday, September 17, 2021 (Exhibit D.1)

O’Connell noted that the site plan included with the Opportunity to Comment (OTC) notice shows the incorrect driveway location. O’Connell also noted that the existing driveway for the subject property utilizes an easement via the O’Connell property. O’Connell discussed their hardship with the easement over the years and provided examples of tense situations. Due to the noted hardship, O’Connell wished to end the easement.

Staff: After issuance of the OTC, the Applicant provided a revised site plan showing the correct location of the existing driveway (Exhibit A.12). Staff notes O’Connell’s comments regarding the easement. As easements are civil arrangements, Land Use Planning does not have a role in the initiation or termination of easements.

4.0 General Provisions:

4.1 MCC 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.

There are two outbuildings on the subject site, which need to be addressed. A condition of approval has been included requiring that the property owner show they are legal or bring the site into compliance. The 1985 site plan (Exhibit A.3) for the placement of the existing manufactured dwelling did not show these buildings on it. *Through a condition, criterion met.*

4.2 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.

* * *

(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:

* * *

(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: The proposed replacement dwelling exceeds 500 sq. ft. per the proposed floor plans included as Exhibit A.4. A stormwater and drainage control certificate completed by Firwood Design Group is included as Exhibit A.13. Per the certificate and supplemental documents (Exhibit A.10 & A.13), the proposed replacement dwelling requires the construction of an on-site storm water drainage control system. Design details for a soakage trench are included in Exhibit A.10 and the proposed soakage trench is shown on the site plan reviewed by Firwood Design Group (Exhibit A.13). A condition of approval requires that it be installed prior to occupancy of the dwelling. *As conditioned, criteria met.*

4.3 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: The submitted building plans do not show any proposed exterior lighting. A condition of approval requires that any new exterior lighting shall meet the Dark Sky Lighting Standards of MCC 39.6850. *As conditioned, the above criteria are 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.

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

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

- 1. By a subdivision plat under the applicable subdivision requirements in effect at the time; or**
- 2. By a deed, or a sales contract dated and signed by the parties to the transaction, that was recorded with the Recording Section of the public office responsible for public records prior to October 19, 1978; or**
- 3. By a deed, or a sales contract dated and signed by the parties to the transaction, that was in recordable form prior to October 19, 1978; or**

* * *

Staff: To qualify as a Lot of Record, the subject property, when created or reconfigured, must meet MCC 39.3005(B) of this section and meet the Lot of Record standards set forth in the CFU-4 zoning district. More specifically, section (B) above requires demonstration that the subject property (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws. The Lot of Record standards set forth in the CFU-4 district establish additional requirements unique to the district, which are evaluated in Sections 5.2 – 5.3 of this decision. The findings below analyze whether the Lot of Record provisions in section (B) have been met.

The applicant provided two deeds (Exhibit A.5 & A.6) to support the Lot of Record request. The earliest deed provided was recorded in 1966 and contains a legal description matching the current configuration of the subject property (Exhibit A.6). In 1966, the subject property was zoned 'F-2' per historical County zoning maps (Exhibit B.4).

The F-2 zone had a minimum lot size of 2.0 acres. There was no requirement for road frontage or minimum front lot line length or lot width (Exhibit B.5).

Based on the above, the subject property complied with all applicable zoning laws at the time of its creation or reconfiguration.

In 1966, the process to divide a property required a deed or sales contract dated and signed by the parties to the transaction. The document needed to be in recordable form or recorded with the County Recorder prior to October 19, 1978. As evidenced by the 1966 deed (Exhibit A.6), the applicable land division laws were satisfied.

Based upon the above, the subject property satisfied all applicable zoning and land division laws when it was created or reconfigured in 1966.

5.2 MCC 39.3050 Lot of Record – Commercial Forest Use-4 (CFU-4)

(A) In addition to the standards in MCC 39.3005, for the purposes of the CFU-4 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.

* * *

(4) Exceptions to the standards of (A)(2) above:

(a) Where two contiguous parcels or lots are each developed with a lawfully established habitable dwelling, the parcels or lots shall be Lots of Record that remain separately transferable, even if they were held in the same ownership on February 20, 1990.

(b) Where approval for a "Lot of Exception" or a parcel smaller than 19 acres under the "Lot Size for Conditional Uses" provisions has been given by the Hearing Authority and the parcel was subsequently lawfully created, then the parcel shall be a Lot of Record that remains separately transferable, even if the parcel was contiguous to another parcel held in the same ownership on February 20, 1990.

(c) Disaggregation of a Lot of Record for consideration of a new template or heritage tract dwelling may be allowed subject to the standards in (E) below.

Staff: According to county tax records, Lydia Kerslake owned the subject property on February 20, 1990. Lydia Kerslake was not a listed property owner of any contiguous properties at that time. Therefore, the subject property was not subject to aggregation requirements and is a single lot of record. *Criteria met.*

5.3 (B) In this district, significant dates and ordinances applicable for verifying zoning compliance may include, but are not limited to, the following:

- (1) July 10, 1958, F-2 zone applied;**
- (2) December 9, 1975, F-2 minimum lot size increased, Ord. 115 & 116;**
- (3) October 6, 1977, MUF-20 and CFU-38 zones applied, Ord. 148 & 149;**

* * *

(C) A Lot of Record which has less than the minimum lot size for new parcels, less than the front lot line minimums required, or which does not meet the access requirements of MCC 39.4135, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

(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: Subsection (B) is for information purposes. The subject property is a Lot of Record and is subject to subsection (C) above. The subject property is not an area of land described as a tax lot solely for assessment and taxation purposes, created by the foreclosure of a security interest, or created by court decree (Exhibit A.5). The subject property is not a mortgage lot. *Criteria met.*

6.0 Commercial Forest Use – 4 (CFU-4) Criteria:

6.1 MCC 39.4070 Allowed Uses

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

* * *

(D) Alteration, maintenance, replacement or restoration of an existing lawfully established habitable dwelling as defined in MCC 39.2000 and located within 100-feet from an existing dwelling.

(1) In the case of a replacement dwelling, the existing dwelling shall be removed, demolished or converted to an allowable nonresidential use within three months of the completion or occupancy of the replacement dwelling.

(2) Restoration or replacement due to fire, other casualty or natural disaster shall commence within one year from the occurrence of the fire, casualty or natural disaster.

* * *

Staff: As evidenced by the 1985 building permit (Exhibit A.5), the existing single-family dwelling was lawfully established. The Applicant provided a copy of the PGE electrical service record from October 2020, a water service certification, and on-site septic certification (Exhibit A.9, A.17 and A.18). These records help demonstrate the necessary utilities served the existing dwelling. On October 13, 2020, a fire destroyed the existing dwelling, as shown in the fire incident report from Corbett Fire (Exhibit A.19). The proposed replacement dwelling is within 100-feet from the existing dwelling's location (Exhibit A.12). Conditions of approval require compliance with (D)(1) and (D)(2) above. *As conditioned, the above criteria are met.*

6.2 MCC 39.4105 Building Height Requirements

(A) Maximum structure height – 35 feet.

(B) Structures such as barns, silos, windmills, antennae, chimneys, or similar structures may exceed the height requirements.

Staff: As per the proposed building plans (Exhibit A.4), the replacement dwelling height is under 35 feet. The proposed replacement dwelling is not one of the types of structures listed in subsection (B). *Criteria met.*

6.3 MCC 39.4110 Forest Practices Setbacks and Fire Safety Zones

The Forest Practice Setbacks and applicability of the Fire Safety Zones is based upon existing conditions, deviations are allowed through the exception process and the nature and location of the proposed use. The following requirements apply to all structures as specified:

Use	Forest Practice Setbacks			Fire Safety Zones
Description of use and location	Nonconforming Setbacks	Front Property Line Adjacent to County Maintained Road (feet)	All Other Setbacks (feet)	Fire Safety Zone Requirements (FSZ)
At least a portion of the replaced or restored dwelling is within 100 ft. of existing dwelling	N/A	30	30	Primary required, Maintenance of vegetation in the Secondary is required to the extent possible

(A) Reductions to a Forest Practices Setback dimension shall only be allowed pursuant to approval of an adjustment or variance.

(B) Exception to the Secondary Fire Safety Zone shall be pursuant to MCC 39.4155 only. No reduction is permitted for a required Primary Fire Safety Zone through a nonconforming, adjustment or variance process.

(C) The minimum forest practices setback requirement shall be increased where the setback 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 setback requirements in consultation with the Road Official.

Staff: Per the revised site plan submitted as Exhibit A.12, the proposed replacement dwelling location is within 100 ft. of the dwelling. The proposed dwelling location is 550 feet from the front property line. 275 feet from the closest side property line to the west. The dwelling will be approximately 600+ feet from the eastern side property line and over 500 feet from the rear property line to the south. County Transportation has not indicated insufficient right-of-way requiring additional setbacks (Exhibit A.15). *Criteria met.*

6.4 (D) Fire Safety Zones on the Subject Tract.

(1) Primary Fire Safety Zone.

(a) A primary fire safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure. Trees within this safety zone shall be spaced with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches within 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height.

(b) On lands with 10 percent or greater slope the primary fire safety zone shall be extended farther down the slope from a dwelling or structure as follows:

Percent Slope	Distance In Feet
Less than 10	No additional required
Less than 20	50 additional
Less than 25	75 additional
Less than 40	100 additional

(c) The building site must have a slope less than 40 percent.

(2) Secondary Fire Safety Zone.

A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Assistance with planning forestry

practices which meet these objectives may be obtained from the State of Oregon Department of Forestry or the local Rural Fire Protection District. The secondary fire safety zone required for any dwelling or structure may be reduced under the provisions of MCC 39.4155.

(3) No requirement in (1) or (2) above may restrict or contradict a forest management plan approved by the State of Oregon Department of Forestry pursuant to the State Forest Practice Rules; and

(4) Required Primary and Secondary Fire Safety Zones shall be established within the subject tract as required by Table 1 above.

(5) Required Primary and Secondary Fire Safety Zones shall be maintained by the property owner in compliance with the above criteria listed under (1) and (2).

Staff: A primary and secondary fire safety zone is required. Maintenance of vegetation within the secondary fire safety zone is required to the extent possible per Table 1 above. A primary fire safety zone of 30 feet is required around the replacement dwelling as the slopes in the area of the dwelling are less than 10%. The applicant did not request a reduction to the Forest Practices Setback or an Exception to the Secondary Fire Safety Zone. Conditions of approval are included to ensure that the primary and secondary fire safety zones are established and that they are maintained. *As conditioned, the above criteria are met.*

6.5 MCC 39.4115 Development Standards for Dwellings and Structures

All dwellings and structures shall comply with the approval criteria in (B) through (D) below except as provided in (A). All exterior lighting shall comply with MCC 39.6850:

(A) For the uses listed in this subsection, the applicable development standards are limited as follows:

* * *

(2) Replacement or restoration of a dwelling.

* * *

(c) Replacement or restoration of a dwelling that is not located within the footprint of the original dwelling but it is located where at least a portion of the replacement dwelling is within 100 feet of the original dwelling: Shall meet the development standards of MCC 39.4115(C).

* * *

(C) The dwelling or structure shall:

(1) Comply with the standards of the applicable building code or as prescribed in ORS 446.003 through 446.200 relating to mobile homes;

(2) If a mobile home, have a minimum floor area of 600 square feet and be attached to a foundation for which a building permit has been obtained;

(3) Have a fire retardant roof; and

(4) Have a spark arrester on each chimney.

Staff: A condition of approval requires compliance with the Dark Sky Lighting Standards of MCC 39.6850. The proposed replacement dwelling is not a mobile home; hence, (C)(2) above is not applicable. The new dwelling will obtain a building permit prior to its construction from the City of Gresham and meet applicable building codes. Per the proposed building materials (Exhibit A.16), the replacement dwelling will have a fire retardant roof of either architectural shingles or metal roofing. No chimneys are shown on the building elevations. *As conditioned, the above criteria are met.*

7.0 Significant Environmental Concern Criteria:

7.1 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 proposal is subject to an SEC permit for protection of the Scenic and Wild Sandy River. The applicable approval criteria for the SEC permit are covered in Section 7.2 – 7.13. No excavation or removal of materials of archaeological, historical, prehistorical or anthropological nature are included in the proposal. *Criteria met.*

7.2 MCC 39.5520 Application for SEC Permit

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

(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:

*** * ***

Staff: The Applicant provided the requisite information in Exhibits A.2 – A.20.

7.3 MCC 39.5540 Criteria for Approval of SEC Permit.

The SEC designation shall apply to those significant natural resources, natural areas, wilderness areas, cultural areas, and wild and scenic waterways that are designated SEC on Multnomah County sectional zoning maps. Any proposed activity or use requiring an SEC permit shall be subject to the following:

(A) The maximum possible landscaped area, scenic and aesthetic enhancement, open space or vegetation shall be provided between any use and a river, stream, lake, or floodwater storage area.

(B) Agricultural land and forest land shall be preserved and maintained for farm and forest use.

(C) A building, structure, or use shall be located on a lot in a manner which will balance functional considerations and costs with the need to preserve and protect areas of environmental significance.

Staff: Image #1 below provides a visual depiction of the scale of the proposed development area (highlighted in orange) relative to the preserved existing wooded area (highlighted in yellow) and the Sandy River (highlighted in blue). As shown in the image, the selected development area provides the maximum possible vegetation [existing wooded area] buffer between the development area and the Sandy River. Further, as the existing wooded area is preserved, the proposal maintains the wooded area for future forest uses.

As the development area is an existing cleared area, additional clearing of trees/vegetation are not necessary to site the dwelling. The selected development area contains relatively flat slopes. As per the submitted erosion control information (Exhibit A.20), ground disturbance is limited to only that which is necessary to site the proposed development. The Applicant's proposal therefore ensures the maximum protection for the existing wooded area and the Sandy River. *Criteria met.*



Image #1

7.4 (D) Recreational needs shall be satisfied by public and private means in a manner consistent with the carrying capacity of the land and with minimum conflict with areas of environmental significance.

Staff: Private recreational needs can be accommodated in the existing cleared areas on the upland portion of the subject property. The proposal does not include the establishment of additional areas for recreational purposes (Exhibit A.12). Access to the subject property is private. The public is able to take access to the Sandy River through various established public access points provided by the Oregon State Parks Dept. *Criterion met.*

7.5 (E) The protection of the public safety and of public and private property, especially from vandalism and trespass, shall be provided to the maximum extent practicable.

Staff: Access to the subject property is private and limited to the property owners, as well as their guests. The subject property is adjacent to a public road, but the dwelling will be accessed via an existing easement through a neighboring property. Given the topography of the existing wooded area leading to the Sandy River, access to the property from south is impractical. The topography provides a natural barrier to discourage access from the downslope area along the Sandy River. *Criterion met.*

7.6 (F) Significant fish and wildlife habitats shall be protected.

(G) The natural vegetation along rivers, lakes, wetlands and streams shall be protected and enhanced to the maximum extent practicable to assure scenic quality and protection from erosion, and continuous riparian corridors.

Staff: The proposal ensures the protection of significant fish and wildlife habitats, as well as natural vegetation along the Sandy River through avoidance of such areas. The proposed development area is over 1,110 feet upland from the bank of the Sandy River. Similar areas of environmental concern often contain minimum buffer areas of 100 – 300 ft. Therefore, the vegetative buffer [existing wooded area] in excess of 1,110 feet ensure the maximum protection of sensitive habitat / resource areas. *Criteria met.*

7.7 (H) Archaeological areas shall be preserved for their historic, scientific, and cultural value and protected from vandalism or unauthorized entry.

Staff: There are no known archaeological areas on the subject property. A condition of approval requires the applicant and/or property owner to stop work and protect the discovery area(s) if any artifacts are discovered during construction. The applicants, property owners or their agents will be required to contact the Oregon State Historic Preservation Office (SHPO) and follow any subsequent requirements as directed by SHPO. *As conditioned, this criterion is met.*

7.8 (I) Areas of annual flooding, floodplains, water areas, and wetlands shall be retained in their natural state to the maximum possible extent to preserve water quality and protect water retention, overflow, and natural functions.

Staff: The proposed development area is over 1,110 feet upland from the bank of the Sandy River. Similar areas of environmental concern often contain minimum buffer areas of 100 –

300 ft. Therefore, the vegetative buffer [existing wooded area] in excess of 1,110 feet ensure the maximum protection of sensitive habitat / resource areas.

- 7.9 (J) Areas of erosion or potential erosion shall be protected from loss by appropriate means. Appropriate means shall be based on current Best Management Practices and may include restriction on timing of soil disturbing activities.**

Staff: The proposed erosion control plan (Exhibit A.20) outlines the measures that will be utilized [including best management practices] to protect against potential erosion from construction activity. *Criterion met.*

- 7.10 (K) The quality of the air, water, and land resources and ambient noise levels in areas classified SEC shall be preserved in the development and use of such areas.**

Staff: As shown in Image #1 of Section 7.3 above, the scale of the proposed replacement dwelling in comparison to the surrounding environment is quite small. The subject property is 61.67 +/- acres. The proposed replacement dwelling has a footprint of approximately 893 sq. ft. and other related physical improvements (driveway, drainfield, etc.) utilize a total of approximately 5,000 square feet in area. No removal of tree / vegetation is proposed to establish the replacement dwelling and related physical improvements. The natural vegetation and river bank along the Sandy River will remain intact and there is a buffer in excess of 1,100 feet between the development area and the Sandy River. The proposal replaces the previous existing dwelling destroyed by fire; hence, there are no anticipated changes to the ambient noise levels. The area where the old dwelling was located will be returned to vegetation so there will be no net loss of land resources by moving the dwelling. *Criterion met.*

- 7.11 (L) The design, bulk, construction materials, color and lighting of buildings, structures and signs shall be compatible with the character and visual quality of areas of significant environmental concern.**

Staff: The Applicant provided information on the proposed building materials as Exhibit A.16. The table below summarizes the proposed materials for the replacement dwelling.

Feature	Proposed Material	Color
Siding / Trim	Board and Batten siding. Cedar trim.	Rustic Brown and Mountain Cedar Armstrong Oil based wood stain
Roof	Option 1: Metallion Industries Flat Matte Finish	Matte Black
	Option 2: Owens Corning Duration Shingle	Brownwood
Windows	Milgard with Low-E glass; SunCoat Low E2 glass	Tan
Doors	Codel Smooth Fiberglass 3-Panel Shaker Smooth	Espresso

As shown in the table above, the Applicant selected primarily natural building materials finished in dark and/or earthtone colors. The material and color selection ensures that the

replacement dwelling better blends with the surrounding environment. As shown in the preliminary building plans (Exhibit A.4), the proposed replacement dwelling ground coverage is 893 +/- sq. ft. The proposed dwelling footprint therefore is smaller than most other homes in the area. A condition of approval requires the Applicant to list the authorized building materials and colors with/on the building plans. *As conditioned, the above criterion is met.*

- 7.12 (M) An area generally recognized as fragile or endangered plant habitat or which is valued for specific vegetative features, or which has an identified need for protection of the natural vegetation, shall be retained in a natural state to the maximum extent possible.**

Staff: There are no known fragile or endangered plant habitat on the subject property. A large existing wooded area (shown in Image #1 in Section 7.3) will remain intact per the proposed plan. The replacement dwelling will be located in an existing cleared area, which ensures the existing natural vegetation on the subject property remains undisturbed. *Criterion met.*

- 7.13 (N) The applicable policies of the Comprehensive Plan shall be satisfied.**

Staff: Section 9.1 – 9.3 below discusses the applicable policies of the Comprehensive Plan.

8.0 Geologic Hazards Criteria:

8.1 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).

MCC 39.5080 Exemptions

Ground disturbing activity occurring in association with the following uses is exempt from GH permit requirements:

(A) An excavation below finished grade for basements and footings of a building, retaining wall, or other structure authorized by a valid building permit. This shall not exempt any fill made with the material from such excavation, nor exempt any excavation having an unsupported finished depth greater than four feet.

* * *

Staff: The subject property contains areas within the mapped Geologic Hazards (GH) overlay. Based on the location designated in the submitted plans, the proposed replacement dwelling is outside of the mapped GH overlay. Based on the submitted plans, the slopes in the area where the proposed ground disturbance will occur are under 25%. Therefore, a GH permit is not required. *Criteria met.*

9.0 Comprehensive Plan Policies:

9.1 Chapter 5 – Natural Resources

5.14. Stormwater drainage for new development and redevelopment shall prioritize water quality and natural stream hydrology in order to manage stormwater runoff in accordance with the following:

1. The run-off from the site shall not adversely affect the water quality in adjacent streams, ponds, or lakes, or alter the drainage on adjoining lands, or cause damage to adjacent property or wildlife habitat.

* * *

Staff: The Applicant provided a storm water certificate completed by Firwood Design Group, discussing the storm water drainage for the replacement dwelling proposed for the subject property. The certificate indicated that the construction of an on-site storm water drainage system would be required. A soakage trench will collect the storm water generated by the new development (Exhibit A.10 & A.13). The engineer who completed the stormwater review has certified the post-development runoff rates and volumes will not exceed pre-development conditions. *Policy is met.*

9.2 5.43. Require outdoor lighting to be low intensity and designed in a manner that minimizes the amount of light pollution.

Staff: No exterior lighting is proposed on the preliminary building plans (Exhibit A.4) though lighting will be required for all entry doors per building code. A condition of approval requires any exterior lighting to meet the Dark Sky Lighting Standards of MCC 39.6850. *As conditioned, this policy is met.*

9.3 Chapter 6 – Historical and Cultural Resources

6.4. Require reporting of the discovery of Native American artifacts and other cultural resources to SHPO and the Native American tribes.

Staff: There are no known historic or cultural resources on the subject property. However, a condition of approval requires the immediate protection of any discovered artifacts and prompt coordination with SHPO. *As conditioned, this policy is met.*

10.0 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Significant Environmental Concern permit to establish a replacement dwelling in the CFU-4 zone. The subject property has been found to be a Lot of Record. This approval is subject to the conditions of approval established in this report.

11.0 Exhibits

‘A’ Applicant’s Exhibits
‘B’ Staff Exhibits
‘C’ Procedural Exhibits

‘D’ Comments Received

Exhibits with a “*” after the exhibit # have been included as part of the mailed decision. Those exhibits have been reduced to a size of 8.5” x 11” for mailing purposes. All other exhibits are available for review in Case File T2-2021-15031.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	General Application Form	09.03.2021
A.2	3	Applicant Narrative	09.03.2021
A.3	1	Initial Site Plan	09.03.2021
A.4	4	Building Plans	09.03.2021
A.5	6	Copy of 1985 building permit and 1966 legal description	09.03.2021
A.6	3	Copy of 2007 Deed	09.03.2021
A.7	8	Copy of 1987 Deed (for adjacent property)	09.03.2021
A.8	1	Letter from Oregon Parks and Recreation Department	09.03.2021
A.9	1	Water Certification Form	09.03.2021
A.10	12	Stormwater Certificate and Report	09.08.2021
A.11	1	Additional Information Cover Sheet	09.14.2021
A.12	1	Revised Site Plan	09.14.2021
A.13	3	Revised Stormwater Certificate	09.14.2021
A.14	6	Fire Service Agency Review	09.14.2021
A.15	14	Transportation Planning Review	09.14.2021
A.16	15	Building Materials Information	09.14.2021
A.17	4	Septic Review Certification	09.15.2021
A.18	2	Copy of PGE service record from Oct 2020	09.16.2021
A.19	4	Coy of fire incident report from Corbett Fire	09.16.2021
A.20	2	Erosion Control Site Plan	09.21.2020
‘B’	#	Staff Exhibits	Date
B.1	2	Division of Assessment, Recording, and Taxation (DART): Property Information for Alt Acct# 994090040	09.03.2021
B.2	1	Division of Assessment, Recording, and Taxation (DART): Map for 1S4E09B	09.03.2021
B.3	5	Parcel Record Card for Alt Acct# R994090040	09.08.2021

B.4	1	1966 Historic Zoning Map	09.08.2021
B.5	7	1964 Zoning Regulations F-2 zone	09.08.2021
B.6	1	*CONFIDENTIAL* Copy of Death Certificate for Robert Becker	09.23.2021
'C'	#	Administration & Procedures	Date
C.1	1	Complete letter (day 1)	09.08.2021
C.2	8	Opportunity to Comment	09.09.2021
C.3	22	Administrative Decision	09.24.2021
'D'	#	Comments	Date
D.1	2	Comments from K. O'Connell	09.17.2021