

NOTICE OF DECISION

Case File: T2-2021-14294

Permits: Significant Environmental Concern – Wildlife Habitat Review, Geologic Hazard , and Accessory Use Determination

Applicants: Linden Brown Architecture

Owners: Ted & Katherine Gidlow

Location: **Address:** 12485 NW Germantown Rd., Portland

Map, Tax lot: 1N1W10B-01901

Tax Account #: R649823330

Property ID #: R530672

Base Zone: Rural Residential (RR)

Overlays: Significant Environmental Concern – Wildlife Habitat (SEC-h), Significant Environmental Concern – Streams (SEC-s), Geologic Hazard (GH)

Proposal Summary: The applicant is proposing to construct a new single-family dwelling and detached accessory structure in the Significant Environmental Concern – Wildlife Habitat and Geologic Hazard overlay zones. The detached accessory structure requires the approval of an Accessory Use Determination. The proposed development remains outside of the boundaries of the Significant Environmental Concern overlay for Streams.

Decision: **Approved with Conditions**

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is November 15, 2021 at 4:00 pm.

Opportunity to Review the Record: The complete case file, including the Planning Director Decision containing Findings, Conclusions, Conditions of Approval, and all evidence associated with this application is available for review by contacting Izze Liu, Staff Planner via email at isabella.liu@multco.us. Copies of all documents are available at the rate of \$0.40/per page.

Opportunity to Appeal: An appeal requires a \$250.00 fee and must state the specific legal grounds on which it is based. To obtain appeal forms or information on the procedure, contact the Land Use Planning office at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision is not appealable to the Land Use Board of Appeals until all local appeals are exhausted.

Issued by:

By: Izze Liu, Planner

For: Carol Johnson, AICP
Planning Director

Date: Monday, November 1, 2021



Applicable Approval Criteria:

For this application to be approved, the proposal will need to meet applicable approval criteria below:

Multnomah County Code (MCC): General Provisions: MCC 39.1515 Code Compliance and Applications, MCC 39.6850 Dark Sky Lighting Standards, MCC 39.2000 Definitions, MCC 39.3005 Lot of Record – Generally, and MCC 39.3090 Lot of Record – RR

Rural Residential: MCC 39.4360 Allowed Use, (A) Single-Family Dwelling, MCC 39.4365 Review Use, (I) Accessory Structure, MCC 39.4375 Dimensional Requirements and Development Standards

Significant Environmental Concern: MCC 39.5520 Application for SEC Permit, MCC 39.5850 SEC-h Clear & Objective Standards

Geologic Hazards: MCC 39.5085 Geologic Hazards Permit Application Information Required, MCC 39.5090 Geologic Hazards Permit Standards, MCC 39.6235 Stormwater Drainage Control

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. 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.

- ii. For purposes of Condition 1.a.i, notification of commencement of construction shall be given to staff planner, Izze Liu at LUP-submittals@multco.us a minimum of seven (7) days prior to date of commencement. Work may commence once notice is completed. The notification shall also include this case #T2-2021-14294. 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 *LUP-submittals@multco.us* and must reference the case #. [MCC 39.1185]

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

- 2. Prior to land use sign-off for building 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 Izze Liu at *isabella.liu@multco.us* [MCC 39.1170(A) & (B)]
 - b. The property owner shall record a covenant with County Records that states that the owner understands and agrees that the accessory structure cannot be occupied as a dwelling or for any other form of permanent or temporary residential use. [MCC 39.8860]
 - c. The property owner shall record a covenant that states they recognize and accept that farm activities including tilling, spraying, harvesting, and farm management activities during irregular times, occur on adjacent property and in the general area. [MCC 39.4375(G)(2)]
 - d. Provide a landscape plan showing the location of the plantings and provide details on the types of vegetation. The nuisance plants listed in MCC 39.5580 Table 1 shall not be used as landscape plantings within the SEC-h Overlay Zone.
 - e. Revise the floor plan for the art studio so that it does not include a toilet. [MCC 39.4365(I)(6)]
 - f. Demonstrate that Multnomah County Transportation has agreed to accept the outflow of stormwater from the subject property to the County right-of-way as noted on Exhibit A.23, Sheet Note 3. If County Transportation will not accept the stormwater directed to the public right-of-way, the stormwater system and Geologic Hazard permit will need to be revised. [MCC 39.5090(M) & (P) and MCC 39.6235(C)]

- 3. On-going conditions:

- a. The art studio area (Exhibit B.4) shall not be used, whether temporarily or permanently, as a primary dwelling, accessory dwelling unit, apartment, guesthouse, housing rental unit, or any other residential unit. [MCC 39.4365(I)(1)]
- b. The accessory structure shall not contain facilities such as a range, stove, oven hotplate, microwave, or similar facilities, but not including a facility designed primarily for room heating, such as a wood or pellet stove. [MCC 39.4365(I)(4)]
- c. The accessory structure shall not contain a mattress, bed, Murphy bed, cot, or any other similar item designed to aid in sleep as a primary purpose, unless such item is disassembled for storage. [MCC 39.4365(I)(5)]
- d. All proposed exterior lighting shall comply with MCC 39.6850. [MCC 39.4375(H)]
- e. 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. [MCC 39.5850(A) & (C)]
- f. Temporary vegetation and/or mulching shall be used to protect exposed critical areas during development. The disturbed areas shall be reseeded within 5 days of each phase of ground disturbance. [MCC 39.5090(J)]
- g. Where drainage swales are used to divert surface waters, they shall be vegetated or protected as required to minimize potential erosion. [MCC 39.5090(Q)]
- h. Fill shall be composed of earth materials only. [MCC 39.5090(B)]
- i. The proposed ground disturbing work within the Geologic Hazard overlay shall follow the guidelines and recommendations of the Geotechnical Engineering Report prepared by GeoPacific Engineering, Inc., including any additional guidelines or recommendations made by GeoPacific Engineering, Inc. based on site specific conditions (Exhibit A.6).

These include:

- i. A minimum 20-foot horizontal footing-to-slope setback shall be maintained.
 - ii. A 40-foot horizontal setback shall be maintained along NW Germantown Road.
 - iii. Excess material from cuts shall not be placed at the top of slopes greater than 30 percent grade and 10 feet in height.
 - iv. GeoPacific shall observe the foundation excavation prior to pouring the footings.
- j. Such non-erosion pollution associated with construction such as pesticides, fertilizers, petrochemicals, solid wastes, construction chemicals, or wastewaters shall be prevented from leaving the construction site through proper handling, disposal, continuous site monitoring and clean-up activities. [MCC 39.5090(T)]
- k. Fill trucks shall be constructed, loaded, covered, or otherwise managed to prevent any of their load from dropping, sifting, leaking, or otherwise escaping from the vehicle. No fill shall be tracked or discharged in any manner onto any public right-of-way. [MCC 39.5090(X)]
- l. No compensation, monetary or otherwise, shall be received by the property owner for the receipt or placement of fill. [MCC 39.5090(Y)]

Note: Once this decision is final, application for building permits may be made with the City of Portland. 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 sign-off for building plan check...” Be ready to demonstrate compliance with the conditions.
2. Contact Right-of-Way Permits at row.permits@multco.us, or schedule an appointment at <https://multco.us/transportation-planning/webform/right-way-appointment-request/>, or call 503-988-3582 for an appointment to review your plans, obtain your access permit, and satisfy any other requirements. Failure to make an appointment with County Right-of-Way will result in delaying your building plan review and obtaining building permits.
3. Contact the City of Portland, Bureau of Development Services, On-site Sanitation via e-mail septic@portlandoregon.gov or by phone at 503-823-6892 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.
4. Building plans and related condition of approval documents shall be sent digitally to LUP-submittals along with the Request for Building Permit Plan Check form. If paper plans will be used, please contact Izze Liu, Planner, at isabella.liu@multco.us, for an appointment to drop off the building plans and for review of the conditions of approval. Please ensure that any items required under, “Prior to land use sign-off for building plan check...” are ready for land use planning review. Land Use Planning must sign off on the plans before you can go to the Sanitation Division.

The above must be completed before the applicant can obtain building permits from the City of Portland. If paper plans will be used, three (3) sets each of the site plan and building plans are needed for building permit sign off. At the time of building permit review, a fee may be collected and an erosion control inspection fee may be required.

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 Review for Wildlife Habitat (SEC-h) permit, Accessory Use Determination, and a Geologic Hazard permit to construct a new single-family dwelling and detached accessory structure for a personal use art studio.

2.0 Property Description & History:

Staff: The subject property is located in unincorporated west Multnomah County in the area known as West Hills Rural Plan Area. The property is zoned Rural Residential and is located outside of Metro’s Urban Growth Boundary (UGB). The subject property was lawfully created as Lot 1 of Partition Plat 2002-84 and is currently vacant.

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 as Exhibited in C.3. Staff received one public comment during the 14-day comment period.

3.1 Kenn Fine, 8561 NW Skyline Blvd., provided a comment via E-Mail on August 26th and 27th (Exhibit D.1)

Staff: Mr. Fine reached out to staff to expressing concerns regarding the proposed development potentially encroaching into a view easement. The enforcement of easements is a civil matter between the two parties.

4.0 Code Compliance and Applications Criteria:

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.

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. *This criterion is met.*

5.0 Rural Residential Criteria:

5.1 MCC 39.4360 Allowed Uses

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

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

Staff: The applicant is proposing to construct a new single-family dwelling on a lot of record. The SEC-h and Geologic Hazard standards are addressed below. The proposed use is allowed.

5.2 MCC 39.4365 Review Uses

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

* * *

(I) Structures or uses customarily accessory or incidental to any use permitted or approved in this base zone, which do not meet the “accessory structures” standard in MCC 39.4360 Allowed Uses, but which meet the following provisions:

Staff: The applicant is proposing to construct a detached accessory structure for a personal use art studio. The proposed art studio does not meet the “accessory structures” standards in MCC 39.4360 because the applicant is proposing a toilet and two sinks.

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

Staff: *As conditioned, this criterion is met.*

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

Staff: The proposed accessory structure does not contain a bathing tub (Exhibit A.33). *This criterion is met.*

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

Staff: The proposed accessory structure will not contain a toilet or bathing facilities. *This criterion is not applicable.*

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

Staff: The Multnomah County Code defines “cooking facilities” as facilities such as a range, stove, oven hotplate, microwave, or similar facilities, but not including a facility designed primarily for room heating, such as a wood or pellet stove. *As conditioned, this criterion is met.*

(5) The Accessory Structure shall not contain a mattress, bed, Murphy bed, cot, or any other similar item designed to aid in sleep as a primary purpose, unless such item is disassembled for storage.

Staff: The applicant states that the accessory structure will not contain a mattress, bed, Murphy bed, cot, or any other similar item designed to aid in sleep as a primary purpose (Exhibit A.38). *As conditioned, this criterion is met.*

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

Staff: The applicant is proposing to construct a detached accessory structure which exceeds the Allowed Use provisions because the structure will contain two sinks, and a closet. The accessory structure is approximately six feet from the dwelling. The most direct entrance to the dwelling is into a mud room with a bathroom attached. Initially, the applicant had proposed placing a toilet in the accessory structure. After discussing the toilet with planning staff, the applicant removed the toilet from the request (Exhibit A.39) but is still requesting a second sink. The proposed toilet was located approximately 20 feet from the mud room and house toilet with individuals protected from inclement weather by a roof structure (Exhibit A.34). The applicant could not demonstrate that the need for the toilet was the minimum possible departure from the Allowed Use standards to accommodate the art studio use. The applicant states that the art studio is intended to be used as a space for creating and experimenting in a variety of ways such as filmmaking, painting, and floriculture (Exhibit A.32). The applicant has requested the closet so art materials can be stored safely away. Staff finds a closet, a handwashing sink and a work sink is reasonable for the art studio use and is the minimum possible departure from the Allowed Use standards to accommodate the use. *As conditioned, this criterion is met.*

(7) Compliance with MCC 39.8860 is required.

Staff: *As conditioned, this criterion is met.*

5.3 MCC 39.4375 Dimensional Requirements and Development Standards

(C) Minimum Yard Dimensions – Feet

Front	Side	Street Side	Rear
30	10	30	30

Staff: The subject property is irregular in shape. Based on the County's definitions of lot line (front)¹, lot line (rear)², and lot line (side)³ in Chapter 39 of the Multnomah County Code, the western property boundary abutting NW Germantown Road is the front lot line, the northeastern property boundary is the rear lot line, and all other property boundaries are considered the side lot lines.

Based on the submitted site plan, the proposed dwelling will be located approximately 40 feet from the eastern side lot line, approximately 110 feet from the western front lot line, and a significant distance from all other property boundaries exceeding the minimum yard requirements (Exhibit A.32).

The proposed accessory structure will be located approximately 90 feet from the eastern side lot line and a significant distance from all other property boundaries exceeding the minimum yard requirements (Exhibit A.32). *These criterion is met.*

Maximum Structure Height – 35 feet

Staff: The proposed dwelling is approximately 25 feet in height and the proposed detached accessory structure is approximately 16 feet in height (Exhibit A.35). *This criterion is met.*

(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.

Staff: The applicant is proposing to construct a retaining wall adjacent to the driveway. The retaining wall is approximately 100 feet in length and does not encroach into any of the yards (Exhibit A.32). *This criterion is not applicable.*

(2) An Accessory Structure may encroach up to 40 percent into any required Yard subject to the following:

(a) The Yard being modified is not contiguous to a road.

(b) The Accessory Structure does not exceed five feet in height or exceed a footprint of ten square feet, and

(c) The applicant demonstrates the proposal complies with the fire code as administered by the applicable fire service agency.

(3) A Variance is required for any Accessory Structure that encroaches more than 40 percent into any required Yard.

¹ Lot Line (Front) – In the case of an interior lot, a line separating the lot from the street or accessway; in the case of a corner lot, a line separating the narrowest frontage of the lot from a street or accessway; and in the case of a flag lot, the lot line closest to and most nearly parallel with the street which serves the lot. A minimum front lot line length is a dimensional requirement to assure that a parcel or lot has sufficient street frontage and lot width near the street to accommodate a safe access driveway and reasonable building area after considering the required side yards. [MCC 39.2000]

² Lot Line (Rear) – The line dividing one lot from another and on the opposite side of the lot from the front lot line; and in the case of an irregular or triangular shaped lot, a line ten feet in length within the lot, parallel to and at the maximum distance from the front lot line.

³ Lot Line (Side) – Any lot line not a front or rear lot line.

Staff: The proposed accessory structure will not encroach in the required yard (Exhibit A.32). *These criteria are not applicable.*

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

Staff: As required in Table 2 of MCC 29.571, the rural standard for local streets is a 50-foot right-of-way width. According to the road survey (RD1281), the width of NW Germantown Road is 60 feet. The existing right-of-way is sufficient to serve the area. No increase to the Minimum Front Yard standard is required. *This criterion is not applicable.*

(E) Structures such as barns, silos, windmills, antennae, chimneys, or similar structures may exceed the height requirement if located at least 30 feet from any property line.

Staff: The proposed dwelling and detached accessory structure will not exceed the height requirement (Exhibit A.35).

(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.

Staff: The proposed dwelling and detached accessory structure will require an on-site sewage disposal system. The applicant provided a Septic Review Certification approved by the sanitarian demonstrating that a standard septic tank can be installed on the subject property (Exhibit A.31). *This criterion is met.*

(1) Sewage and stormwater disposal systems for existing development may be off-site in easement areas reserved for that purpose.

(2) Stormwater/drainage control systems are required for new impervious surfaces. The system shall be adequate to ensure that the rate of runoff from the lot for the 10 year 24-hour storm event is no greater than that before the development.

Staff: The applicant provided a Stormwater Drainage Control Certificate stamped by Cole Lathrop, a registered professional engineer with WCL Engineering, LLC (Exhibit A.25). The proposed development, which includes the building site and the driveway, has a total of 9,594 square feet of impervious surfaces. The proposed stormwater drainage control system includes a stormwater planter, gravel swale for the driveway, and a detention storage tank with flow control. *This criterion is met.*

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

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

(2) Where the farm use does not occur on land in the EFU base zone, the owner shall record a covenant that states they recognize and accept that farm activities including tilling, spraying, harvesting, and farm management activities during irregular times, occur on adjacent property and in the general area.

Staff: *As conditioned, this criterion is met.*

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

Staff: *As conditioned, this criterion is met.*

6.0 Significant Environmental Concern – Wildlife Habitat Criteria:

6.1 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.

Staff: The applicant has provided the required materials in Exhibits A.1 through A.38. The findings for MCC 39.5860(B) are in Section 6.2 below. The proposed development has met all of the basic development standards in (B). *Criterion met.*

(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.

Staff: The proposed development is a minimum of 200 feet from the centerline of the protected SEC-s stream. The application includes a Geologic Hazard permit that covers the ground disturbing activity associated with the development (see Section 7 below). The Geologic Hazard regulations meet and exceed the requirements listed in MCC 39.6200 through MCC 39.6225. The applicant has addressed the Stormwater Drainage Control regulations as a document under Section 7 below (Exhibit A.25).

(C) The nuisance plants listed in MCC 39.5580 Table 1 shall not be used as landscape plantings within the SEC-h Overlay Zone.

Staff: A condition of approval has been included to remind the applicant and property owner that nuisance species are not to be used as landscaping plants.

(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: The applicant's proposal has met all of the standards listed in MCC 39.5850 except for demonstrating compliance with (C) above. A condition of approval has been included requiring a landscape plan be submitted prior to zoning review approval for building plan check so that the plantings can be reviewed against the nuisance plant list. A separate Type 2 SEC-h permit is not required. *As conditioned, this criterion is met.*

6.2 MCC 39.5860 Criteria for Approval of SEC-h Permit – Wildlife Habitat

(B) Development standards:

(1) Where a parcel contains any non-forested "cleared" areas, development shall only occur in these areas, except as necessary to provide access and to meet minimum clearance standards for fire safety.

Staff: The proposed building site is located in an existing non-forested cleared area on the subject property (Exhibit A.32). *This criterion is met.*

(2) Development shall occur within 200 feet of a public road capable of providing reasonable practical access to the developable portion of the site.

Staff: As shown on the submitted site plan, 51% of the proposed development occurs within 200 feet of NW Germantown Road (Exhibit A.32). *This criterion is met.*

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

Staff: As shown on the submitted site plan, the proposed driveway is 358 feet in length (Exhibit A.32). *This criterion is met.*

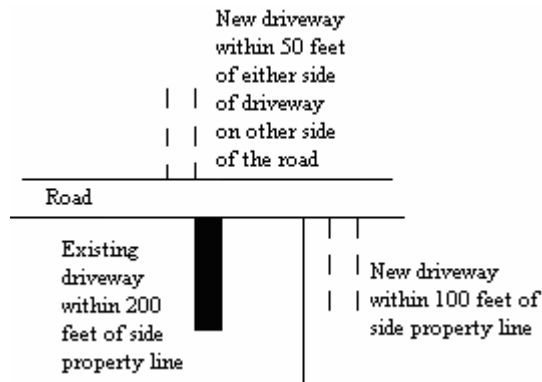
(4) For the purpose of clustering access road/driveway approaches near one another, one of the following two standards shall be met:

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

Staff: According to the County's GIS data, the adjacent properties do not have an existing access or driveway approach within 200 feet of the shared side property boundary (Exhibit B.2). *This criterion does not apply.*

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

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



For illustrative purposes only.

Staff: According to the County's GIS data and measuring tool, the property located on the opposite side of NW Germantown Road has an existing driveway. The proposed driveway on the subject property will be located within 50 feet of the west side of the existing driveway (Exhibit B.3). *This criterion is met.*

(d) The standards in this subsection (4) may be modified upon a determination by the County Road Official that the new access road/driveway approach would result in an unsafe traffic situation using the standards in the Multnomah County "Design and Construction Manual," adopted June 20, 2000, (or all updated versions of the manual). Standards to be used by the Road Official from the County manual include Table 2.3.2, Table 2.4.1, and additional referenced sight distance and minimum access spacing standards in the publication A Policy on Geometric Design of Highways and Streets by the American Association of State Highway and Transportation Officials (AASHTO) and the Traffic Engineering Handbook by the Institute of Transportation Engineers (ITE).

1. The modification shall be the minimum necessary to allow safe access onto the public road.

2. The County Road Official shall provide written findings supporting the modification.

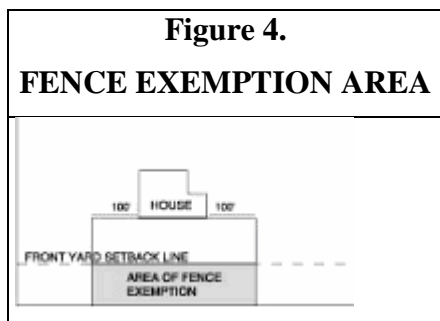
Staff: The applicant is not proposing a modification to these standards. *These criteria are not applicable.*

(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: According to the County's GIS data, the adjacent property to the east contains a structure within 200 feet of the common side property line. The entirety of the proposed development will be located no more than 170 feet from this shared side property line (Exhibit A.33). *This criterion is met.*

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

- (a) Fences shall have a maximum height of 42 inches and a minimum 17 inch gap between the ground and the bottom of the fence.**
- (b) Wood and wire fences are permitted. The bottom strand of a wire fence shall be barbless. Fences may be electrified, except as prohibited by County Code.**
- (c) Cyclone, woven wire, and chain link fences are prohibited.**
- (d) Fences with a ratio of solids to voids greater than 2:1 are prohibited.**
- (e) Fencing standards do not apply in an area on the property bounded by a line along the public road serving the development, two lines each drawn perpendicular to the principal structure from a point 100 feet from the end of the structure on a line perpendicular to and meeting with the public road serving the development, and the front yard setback line parallel to the public road serving the development. (See Figure 4 below.)**



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

Staff: The applicant is not proposing fencing as part of this development and there is no fencing. *These criteria are not applicable.*

(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: *As conditioned, these criteria are met.*

7.0 Geologic Hazard Criteria:

7.1 MCC 39.5090 Geologic Hazards Permit Standards

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

Staff: The proposed ground disturbing activity will be located in hazard areas as identified on the Geologic Hazards Overlay map. The standards of the Geologic Hazards permits are applicable and addressed below.

(A) The total cumulative deposit of fill on the site for the 20-year period preceding the date of the application for the GH permit, and including the fill proposed in the GH permit application, shall not exceed 5,000 cubic yards. For purposes of this provision, the term “site” shall mean either a single lot of record or contiguous lots of record under same ownership, whichever results in the largest land area.

Staff: The applicant is proposing a maximum of 214 cubic yards of fill which will be a mixture of on-site and imported fill (Exhibit A.27). *This criterion is met.*

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

Staff: The applicant states that the proposed fill will partially consist of on-site materials from the proposed cuts (Exhibit A.26). *As conditioned, this criterion is met.*

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

Staff: The applicant provided a Geotechnical Engineering Report prepared by GeoPacific Engineering, Inc. (Exhibit A.6). The report states that the subject property is situated on a moderately sloping west facing ridge with grades up to 20 percent. The northern portion of the site where the creek is present has steeper slopes up to approximately 50 percent grade. Along the frontage of NW Germantown Road, there are steeper slopes up to 100 percent. The applicant is proposing cuts up to 8.5 feet (1,290 cubic yards) and fills up to 3 feet (214 cubic yards), and a retaining wall up to 8.5 feet along the driveway alignment. The report states that the proposed homesite is suitable from a geologic standpoint and the potential for slope instability to result in damage to the proposed dwelling is low, provided adverse drainage conditions are not allowed to develop on the surrounding slopes. The report provides the following recommendations:

1. A minimum 20-foot horizontal footing-to-slope setback should be maintained.
2. A 40-foot horizontal setback should be maintained along NW Germantown Road.
3. Excess material from cuts should not be placed at the top of slopes greater than 30 percent grade and 10 feet in height.
4. Maintenance of proper drainage conditions is considered vital to maintaining slope stability.
5. GeoPacific should observe the foundation excavation prior to pouring the footings.
6. GeoPacific recommends that the property owner maintain this property in a manner appropriate to hillside development as outlined in the “Maintenance of Hillside Homesites” (Exhibit A.12).

As conditioned, these criteria are met.

(D) Unsupported finished cuts and fills greater than 1 foot in height and less than or equal to 4 feet in height at any point shall meet a setback from any property line of a distance at least twice the height of the cut or fill, unless a Certified Engineering Geologist or Geotechnical Engineer certifies in writing that the cuts or fills will not endanger or disturb adjoining property. All unsupported finished cuts and fills greater than 4 feet in height at any point shall require a Certified Engineering Geologist or

Geotechnical Engineer to certify in writing that the cuts or fills will not endanger or disturb adjoining property.

Staff: The applicant provided a Geotechnical Engineering Report prepared by GeoPacific Engineering, Inc. (Exhibit A.6). The report states that the subject property is situated on a moderately sloping west facing ridge with grades up to 20 percent. The northern portion of the site where the creek is present has steeper slopes up to approximately 50 percent grade. Along the frontage of NW Germantown Road, there are steeper slopes up to 100 percent. The applicant is proposing cuts up to 8.5 feet (1,290 cubic yards) and fills up to 3 feet (214 cubic yards), and a retaining wall up to 8.5 feet along the driveway alignment. The report states that the proposed cuts and fills will not endanger or disturb adjoining property as long as the work is completed under the recommendations and guidelines of the report. *As conditioned, this criterion is met.*

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

Staff: The applicant states that the proposed fill will not encroach on any body of water (Exhibit A.27). The entirety of the development is 200 feet or more from the protected stream (Exhibit A.33). *This criterion is met.*

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

Staff: The applicant states that fills generated by dredging are not proposed (Exhibit A.27). *This criterion is not applicable.*

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

Staff: The subject property is located within the Tualatin River drainage basin. The entirety of the proposed development will be located a minimum of 200 feet or more from the stream located on site. There are no known wetlands on the property. The stormwater drainage control measures will not direct stormwater to the riparian area but away from it (Exhibit A.25 & A.23). As proposed, stormwater will be detained and then directed to the public right of way ditch. A condition of approval has been included requiring that Multnomah County Transportation grant acceptance of this water before zoning review approval for building plan check. *As conditioned, this criterion will be met.*

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

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

Staff: The applicant provided an erosion control plan, stamped by a registered professional engineer, that outlines the methods to minimize erosion and stabilizing slopes during grading activities as well as the scheduling requirements to minimize grading activities during the rainy season (Exhibit A.37). The applicant also states that the proposed development minimizes the cuts and fill operation by conforming the building site to the hillside using stepped building pads. The proposed development also includes a retaining wall at the driveway entrance to minimize the required cut for the entrance (Exhibit A.27). *These criteria are met.*

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

Staff: The submitted erosion control plan includes the use of temporary vegetation and/or mulch to protect exposed soils (Exhibit A.37). As a condition of approval, the disturbed areas shall be reseeded with the temporary vegetation within 5 days. *As conditioned, this criterion is met.*

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

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

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

Staff: The subject property contains a creek on the northern portion of the property. The submitted site plan shows that the proposed development is located more than 200 feet from the centerline of the creek and a 100-foot undisturbed buffer will be retained from the ordinary high watermark (Exhibit A.32). *This criterion is met.*

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

Staff: The submitted erosion control plan shows that the mass grading, stormwater drainage system, and driveway construction is part of phase 1 of construction which will be performed between April 30th and October 31st (Exhibit A.37). *This criterion is met.*

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

Staff: The applicant states that the proposed stormwater drainage control system will be installed early in the project's schedule and temporary best management practices will be placed to control sediment as outlined in the erosion control plan (Exhibit A.27 and A.37). *This criterion is met.*

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

Staff: The applicant is proposing to install silt traps and wattles until the disturbed area is stabilized (Exhibit A.27 and A.37). *This criterion is met.*

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

Staff: The proposed stormwater drainage control system will capture stormwater at the building site and convey it to a detention tank at the lowest level on the property. The proposed system also includes gravel swales with check dams along the driveway to convey runoff to the same detention tank (Exhibit A.27 and A.37). This criterion is met.

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

Staff: The applicant states that the drainage improvements shown on the submitted site plan have been designed to carry existing and potential surface runoff to the ditch in the right-of-way along Germantown Road (Exhibit A.27). A condition of approval has been included requiring the applicant to demonstrate County Transportation will accept this stormwater into the public right-of-way. *As conditioned, this criterion is met.*

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

Staff: *As conditioned, this criterion is met.*

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

- (1) Energy absorbing devices to reduce runoff water velocity;**
- (2) Sedimentation controls such as sediment or debris basins. Any trapped materials shall be removed to an approved disposal site on an approved schedule;**
- (3) Dispersal of water runoff from developed areas over large undisturbed areas.**

Staff: As stated in a previous finding, the applicant provided an erosion control plan that ensures that no erosion or sediment will exit the site, enter the public right-of-way, or be deposited into the creek or stormwater drainage control system (Exhibit A.37). *This criterion is met.*

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

Staff: The applicant states that the spoil material or topsoil will be removed as it is excavated and will not be stored on-site. *This criterion is met.*

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

Staff: The applicant states that the construction materials containing non-erosion pollution will be properly stored in accordance with the manufacturers requirements and will be stored in the construction lay-down area identified in the erosion control plan (A.27 and A.37). *As conditioned, this criterion is met.*

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

Staff: The subject property is not within the Balch Creek drainage basin. *This criterion is not applicable.*

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

Staff: The applicant is not proposing any ground disturbing activities within a water body. This criterion is not applicable.

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

Staff: The applicant is proposing 214 cubic yards of fill which will partially consist of on-site materials from the proposed cuts. According to the submitted erosion control plan, the ground disturbing activities will occur during the dry season between April 30th and October 31st. The applicant states that the excavation company will have no more than five truck trips per day on-site. A transportation impact is defined in Multnomah County Road Rules 3.000 as any new construction or alteration which increases the number of trips generated by a site by more than 20 percent, by more than 100 trips per day or by more than 10 trips in the peak hour. A minimum increase of 10 new trips per day is required to find a transportation impact. *This criterion is met.*

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

Staff: The applicant states that the contractor will ensure that the trucks are not over filled and will periodically inspect the roadway to ensure the fill is tracked. *As conditioned, this criterion is met.*

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

Staff: The applicant has confirmed that no compensation will be received by the property owner for the receipt or placement of fill. *As conditioned, this criterion is met.*

8.0 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Significant Environmental Concern Review, Accessory Use Determination, and a Geologic Hazard permit to establish a single-family dwelling and detached accessory structure in the Rural Residential zone. This approval is subject to the conditions of approval established in this report.

9.0 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 T2-2021-14294 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	Application Form	01.29.2021
A.2	6	Narrative	01.29.2021
A.3	3	Deed	01.29.2021
A.4	1	Site Location and Context Plan	01.29.2021
A.5	1	Existing Conditions Survey	01.29.2021
A.6	15	Geotechnical Engineering Report	01.29.2021
A.7	1	Vicinity Map	01.29.2021
A.8	1	Lidar Map with Mapped Landslides	01.29.2021
A.9	1	Site Plan	01.29.2021
A.10	1	Fill Slope Detail	01.29.2021
A.11	3	Test Pit Log	01.29.2021
A.12	1	Maintenance of Hillside Homesites	01.29.2021
A.13	33	Wetlands Report	01.29.2021
A.14	1	Water Availability Letter	01.29.2021
A.15	2	Site Context Plan	01.29.2021
A.16	2	Site Plan	01.29.2021
A.17	2	Level 1 Floor Plan	01.29.2021
A.18	2	Level 2 Floor Plan	01.29.2021
A.19	2	Roof Plan	01.29.2021
A.20	2	South and West Elevations	01.29.2021
A.21	2	North and East Elevations	01.29.2021
A.22	2	Courtyard Elevations	01.29.2021
A.23	2	Grading and Drainage Control Plan	01.29.2021
A.24	2	Erosion Control Plan	01.29.2021

A.25	15	Stormwater Drainage Control Certificate	01.29.2021
A.26	8	Geologic Hazards Permit Form	01.29.2021
A.27	7	Geologic Hazards Worksheet	01.29.2021
A.28	16	Fire Service Agency Review	01.29.2021
A.29	1	Revised Application Form	01.29.2021
A.30	1	Transportation Planning Review	01.29.2021
A.31	4	Septic Review Certification	01.29.2021
A.32	6	Accessory Use Determination Narrative	04.20.2021
A.33	2	Revised Site Plan	06.25.2021
A.34	2	Revised Floor Plan	06.25.2021
A.35	1	Revised Roof Plan	06.25.2021
A.36	3	Revised Elevation Drawings	06.25.2021
A.37	1	Revised Grading and Drainage Plan	06.25.2021
A.38	1	Revised Erosion Control Plan	06.25.2021
A.39	1	Applicant Correspondence Re: Toilet	10.21.2021
‘B’	#	Staff Exhibits	Date
B.1	2	Division of Assessment, Recording, and Taxation (DART): Property Information for 1N1W10B-01901 (R649823330)	01.29.2021
B.2	1	GIS Aerial – Adjacent Properties	01.29.2021
B.3	1	GIS Aerial – Property Across from NW Germantown Rd	01.29.2021
B.4	1	Floor Plan – Art Studio	01.29.2021
‘C’	#	Administration & Procedures	Date
C.1	3	Incomplete letter	02.26.2021
C.2	1	Applicant’s acceptance of 180 day clock	03.03.2021
C.3	1	Complete letter (day 1)	06.25.2021
C.4	9	Opportunity to Comment and mailing list	08.12.2021
C.5	19	Administrative Decision and mailing list	11.01.2021
‘D’	#	Comments	Date
D.1	32	K. Fine Comment	08.25.2021