

NOTICE OF DECISION

Case File: T2-2021-14621 **Permit:** Significant Environmental Concern for Water Resources (SEC-wr)

Applicants: Gary Willis **Owners:** Ramiro Salto

Location: 16970 SE Foster Road, Portland **Map, Tax lot:** 1S3E19CA -01400
Tax Account #: R993190380 **Property ID #:** R340604

Base Zone: Rural Residential (RR)

Overlays: Significant Environmental Concern for Water Resources (SEC-wr)
Flood Hazard (FH)

Proposal Summary: The applicant requests a Significant Environmental Concern for Water Resources (SEC-wr) permit to authorize previous development activities and ground disturbance that were not reviewed by the County and conversion of two buildings. The existing single-family dwelling will be converted into an accessory dwelling unit (ADU), the existing accessory building will be converted into a single-family dwelling and expanded, a carport will be removed from an existing garage, connection to sewer, construction of a wall, and removal of fill earth materials.

Decision: **Approved with Conditions**

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Monday, March 21, 2022 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 Rithy Khut, Staff Planner at 503-988-0176 or at rithy.khut@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: _____

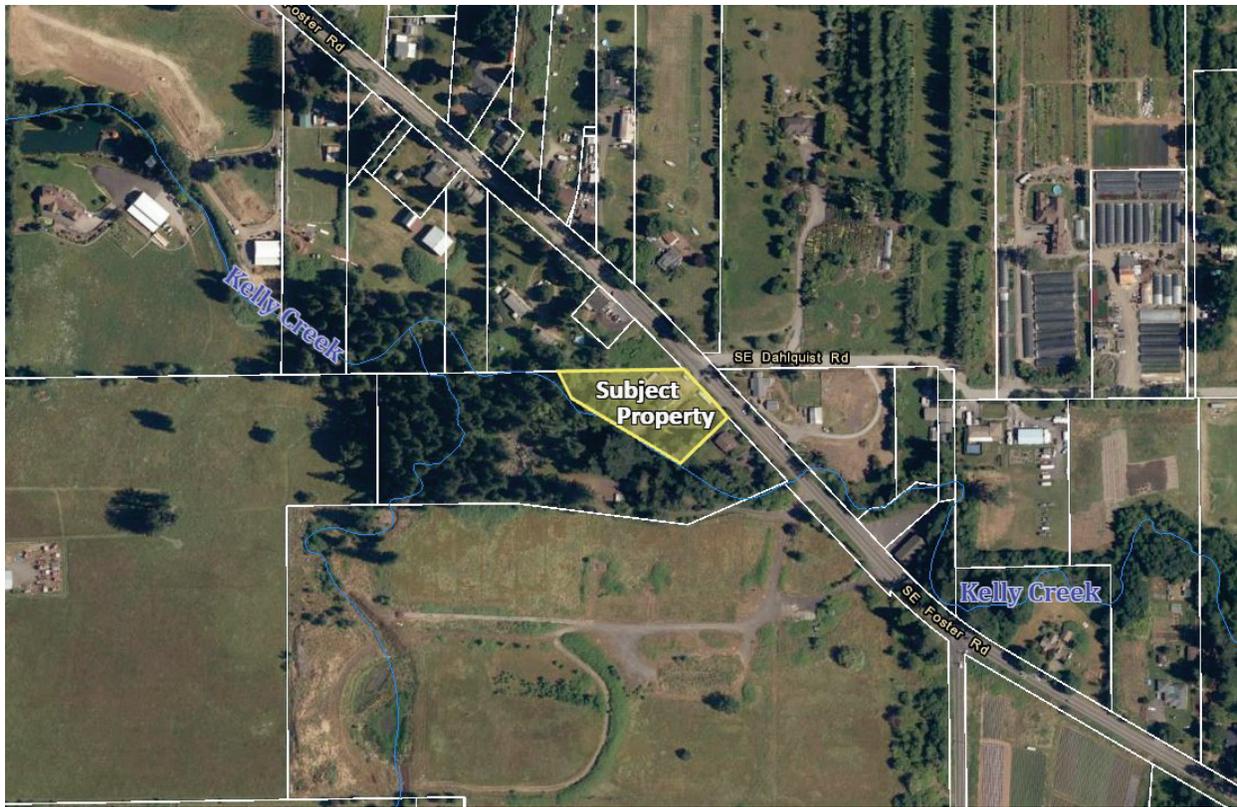
By: Rithy Khut, Planner

For: Carol Johnson, AICP
 Planning Director

Date: Monday, March 7, 2022

Instrument Number for Recording
Purposes: #2018-126362

Vicinity Map



Applicable Approval Criteria:

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

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

Rural Residential (RR): MCC 39.4360(A) Residential use consisting of a single-family dwelling..., MCC 39.4360(F) Accessory Structures..., MCC 39.4360(L) Accessory Dwelling Unit (ADU)..., MCC 39.4375 Dimensional Requirements and Development Standards

Significant Environmental Concern (SEC): MCC 39.5510 Uses; SEC Permit Required, MCC 39.5575 General Requirements for Approval in the Urban Planning Area Designated as SEC-wr or SEC-h, MCC 39.5800 Criteria for Approval of SEC-wr Permit – Water Resources

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. The property owner shall request and obtain a building permit for the conversion of the accessory building to a single-family dwelling (“primary dwelling”) within six (6) months of the date of the final decision. [MCC 39.1170(A) and MCC 39.1185(E)]
 - b. The property owner shall commence and complete the revision to the SEC-wr Mitigation Plan and complete the mitigation work within one (1) year of the date of the final decision. [MCC 39.1170(A) and MCC 39.1185(E)]
 - c. Land Use authorization for the building permit shall expire within two (2) years from the date of the final decision, if the building permit for the conversion of the accessory building to a single-family dwelling (“primary dwelling”) is not final and the Certificate of Occupancy has not been issued. [MCC 39.1170(A) and MCC 39.1185(E)]
 - d. All proposed improvements (see Section 1.0 of the Notice of Decision) shall be completed within three (3) years of the date of the final decision. [MCC 39.1185(E)]

Note: The property owner(s) 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. 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 Exhibits A.3 through A.4, Exhibits A.6 through A.8, Exhibit A.10, and Exhibits A.16 through A.19, except as modified by the conditions of approval. It shall be the responsibility of the property owner(s) to comply with this decision and the conditions of approval. [MCC 39.1125 & MCC 39.1170(B)]
3. Prior to land use sign-off for building plan check, the property owner(s) or their representative shall:
 - a. 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 Rithy Khut at rithy.khut@multco.us. [MCC 39.1170(A) & (B)]
 - b. Record pages 1 through 9 of this Notice of Decision, Exhibit A.10, Exhibits A.17 through A.20, and the revised Mitigation and Restoration Plan (“Report”) as required in Condition of Approval #4 with the County Recorder. The Exhibits shall be reduced to a size of 8.5” by 11” (“Letter” size) for recording. The Notice of Decision shall run with the land. Proof of recording shall be made prior to the issuance of any permits and shall be filed with the Land Use Planning Division. Recording shall be at the applicant’s expense. [MCC 39.1175]

- c. Record a covenant with the County Recorder that states that the owner understands and agrees that the Accessory Dwelling Unit (ADU) cannot be used for short-term rental. [MCC 39.4360(L)(6)]
 - d. Record a covenant with the County Recorder that states that the owner understands and agrees that 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)]
 - e. Obtain an Erosion and Sediment Control (ESC) Permit [MCC 39.1515 and MCC 39.5800(E)(6)]
 - f. Obtain a Flood Development (FD) permit [MCC 39.1515]
4. Within 90 days of the date of the final decision, the property owner(s) or their representative shall submit a revised Mitigation and Restoration Plan (“Report”).
 - a. The Report shall be revised by Jim Barnes, Cascadia Ecological Services, Inc. or someone of similar educational and vocational training.
 - b. The mitigation area proposed as part of the revised Report shall include at least 2,073.50 square feet of mitigation area and plantings.
 - c. The revised Report shall describe the native types of trees, shrubs, forbs, and seeds to be planted in the proposed planting areas and the size of plant materials to be used.
 - d. The mitigation area(s) shall be located in areas that qualify as “degraded” and shall be the closest degraded areas to the stream. If not enough degraded areas exist, “marginal” areas shall then be utilized to provide the required mitigation square footage. Degraded and marginal areas shall be improved to meet the qualifications under Table 2 Riparian/Vegetated Corridor Standards contained in MCC 39.5580(F)(3).
 - e. All areas used for mitigation shall be improved to qualify as being in Good Corridor condition pursuant to Table 2 in MCC 39.5800(F)(3).
 - f. All ground preparation, nuisance plant removal, and plantings shall be completed in the timeline referenced in Condition #1.b above. [MCC 39.5800(C)(5), MCC 39.5800(E)(2), MCC 39.5800(E)(4), MCC 39.5800(F)(2)]
 5. Prior to the issuance of the ESC and FD permits, the property owner(s) or their representative shall submit the revised SEC-wr Mitigation and Restoration Plan (“Report”). The report shall be submitted to the Land Use Planning Division at LUP-submittals@multco.us. The submittal email shall identify the case #T2-2021-14621 and case planner, Rithy Khut. [MCC 39.5800(C)(5), MCC 39.5800(E)(2), MCC 39.5800(E)(4), MCC 39.5800(F)(2)]
 6. Within 90 days of this decision becoming final, the property owner(s) or their representative shall remove the unpermitted carport from the property. No mechanical ground disturbance shall occur unless the Erosion and Sediment Control permit authorizes disturbance in the area. [MCC 39.1515, MCC 39.1185(E)]
 7. Within 180 day of this decision becoming final, the property owner(s) shall construct the two-foot tall wall to close the second driveway access point as shown on the revised site plan (Exhibit A.17 and Exhibit B.14). Upon completion of the wall, they shall contact Transportation Planning and Land Use Planning within seven (7) days to request a site inspection to verify the construction of the wall. [MCC 39.4360(L)(3)]

8. Within one (1) year of this decision becoming final, the property owner(s) or their representative shall contact the Code Compliance section to set up a site visit to see the inside of the 1918 built garage and verify the removal of the carport from the property. [MCC 39.1515, MCC 39.1185(E)]
9. At the time that the mitigation work (ground preparation, nuisance plant removal, and plant installation) is completed, the property owner(s) or their representative shall provide a Post-Mitigation Report.
 - a. The Post-Mitigation Report shall be provided within 45 days of completion of the mitigation work and before the expiration of the one (1) year time limit as referenced in Condition #1.b above to do the work.
 - b. The Post-Mitigation Report shall be prepared and signed by Jim Barnes, Cascadia Ecological Services, Inc. or someone of similar educational and vocational training. The post-mitigation report shall confirm the mitigation has been completed in compliance with approved designs.
 - c. The Post-Mitigation Report shall include:
 - i. Dated pre- and post-construction photos taken of the Mitigation Planting Area. The photos should clearly show the site conditions before and after construction.
 - ii. Certification that the mitigation work has/will improve the stream area to meet the level of “Good Corridor” as described in Table 2 Riparian/Vegetated Corridor Standards in MCC 5800(F)(3). [MCC 39.5800(E)(2), MCC 39.5800(E)(3), MCC 39.5800(E)(6), MCC 39.5800(F)(1), MCC 39.5800(F)(2)]
10. At the time of zoning review for building plan check submittal, the property owner(s) or their representative shall:
 - a. Submit architectural/building plans showing existing and proposed exterior lighting in addition to lighting specifications/cut sheets demonstrating compliance with the Dark Sky Lighting Standards of MCC 39.4325(J), MCC 39.5575(B) and MCC 39.6850. The plans shall show the location of all existing and proposed exterior lighting on the primary dwelling and specification/cut sheets describe all existing and proposed exterior lighting on the primary dwelling.
 - i. The existing shall be relocated, if necessary, to a location so that it does not shine directly into undeveloped water resource or habitat areas. Any proposed exterior lighting shall be located so that it does not shine directly into undeveloped water resource or habitat areas.
 - ii. No existing or proposed outdoor lighting fixtures shall be permitted within 100 feet of Kelly Creek.
 - iii. All proposed exterior lighting shall be a fixture type that is fully shielded with opaque materials and directed downwards. All existing exterior lighting shall be modified or replaced so the fixture is fully shielded with opaque materials and directed downwards.
 1. “Fully shielded” means no light is emitted above the horizontal plane located at the lowest point of the fixture’s shielding.
 2. Shielding must be permanently attached.

- iv. All exterior lighting supporting the primary dwelling shall be contained within the boundaries of the subject property on which it is located. [MCC 39.4325(J), MCC 39.5575(B), and MCC 39.6850]

11. Prior to and during construction, the property owner(s) or their representative shall:

- a. Protect areas of erosion or potential erosion from loss by using Best Management Practices for erosion control. [MCC 39.5575(A)]
- b. The Water Resource Area shall be flagged, fenced or otherwise marked and shall remain undisturbed except as otherwise allowed by the Report and Landscape Plan. Such markings shall be maintained until construction is complete. [MCC 39.5800(E)(7)]
- c. Existing vegetation shall be protected and left in place, except for nuisance species. Trees in the Water Resource Area shall not be used as anchors for stabilizing construction equipment. [MCC 39.5800(E)(5)]

12. At the completion of mitigation work (ground preparation, nuisance plant removal, and plant installation), the property owner(s) or their representatives shall:

- a. Monitor the Mitigation Area as described in Revised & Post Mitigation Report to determine whether each type of tree and shrub planted continues to live, thrive, and grow. The monitoring shall be for a minimum period of five (5) growing seasons after completion of all the initial plantings. Annual monitoring reports are required. [MCC 39.1170 and MCC 39.5800(F)(3)]
 - i. For any replanted area that falls below the 80% threshold, the property owner(s) shall be replant the area during the next planting season. [MCC 39.1170 and MCC 39.5800(F)(3)]
 - ii. Annual Monitoring Report Due Date: Annual monitoring reports are due by November 30th of each year. It shall be sent to LUP-submittal@multco.us and include the subject line: "T2-2021-14621". [MCC 39.1170 and MCC 39.5800(F)(3)]
 - 1. Extension of the Monitoring Period: The monitoring period may be extended, at the discretion of Land Use Planning for failure to provide monitoring reports, failure of the site to meet performance standards for two consecutive years (without irrigation or replanting), or when needed to evaluate replanting or other corrective or remedial actions. [MCC 39.1170 and MCC 39.5800(F)(3)]
 - 2. Release of Monitoring Obligation: Monitoring is required until Land Use Planning has officially released the site from further monitoring. [MCC 39.1170 and MCC 39.5800(F)(3)]
 - 3. Failure to Submit Monitoring Reports: Failure to submit the required monitoring report by the due date may result in an extension of the monitoring period, forfeiture of the financial security and/or enforcement action. [MCC 39.1170 and MCC 39.5800(F)(3)]
 - iii. The annual monitoring report shall include the following information:

1. The permit number, monitoring date, report year, and a determination or whether the site is meeting performance standard of Condition #12.a.iii.3 through #12.a.iii.5 below.
2. Current photographs of the Mitigation Area taken within the last 30 day prior to the report date.
3. A brief narrative that describes maintenance activities and recommendations to meet performance standard. This includes when irrigation occurred and when the above ground portion of the irrigation system was or will be removed from the site.
4. The number and location of any Mitigation Plantings that have been replaced or need to be replaced each year due to death or disease and planting date for their replacements.
5. Any other information necessary or required to document compliance with the performance standard listed in Condition #4 and #9. [MCC 39.1170 and MCC 39.5800(F)(3)]

13. As an on-going condition, the property owner(s) shall:

- a. Not use the ADU for short-term rental. Short-term rental is defined as fee-based occupancy for a period less than 30 consecutive calendar days. [MCC 39.4360(L)(8)]
- b. Use dark sky compliant light fixtures for any new or replaced outdoor lighting. The light source (bulb, lamp, etc.) shall be fully shielded with opaque materials and directed downwards. No light may be emitted above the horizontal plan located at the lowest point of the fixture's shielding. Shielding must be permanently attached. The exterior lighting must be contained within the boundaries of the Lot of Record on which it is located. [MCC 39.6850]
- c. Not place exterior lighting in a location so that it shines directly into undeveloped water resource or habitat areas. No outdoor lighting fixtures shall be permitted within 100 feet of Kelly Creek, unless required by the building code. [MCC 39.5575(B)]
- d. Not place any new above ground structures, buildings, additions to structures or fill, temporary or permanent, within the 100-year floodplain of Kelly Creek. [MCC 39.5015 and MCC 39.1515]
- e. Not use the nuisance plants listed in MCC 39.5580 Table 1 below, in addition to the nuisance plants defined in MCC 39.2000, as landscape plantings on the subject property. In addition, nuisance plants shall be removed from the property and not be allowed to re-grow. [MCC 39.5575(C), MCC 39.5580]

Table 1 - Nuisance Plant List:

Common Name	Scientific Name
Lesser celandine	<i>Chelidonium majus</i>
Canada Thistle	<i>Cirsium arvense</i>
Common Thistle	<i>Cirsium vulgare</i>
Western Clematis	<i>Clematis ligusticifolia</i>
Traveler' s Joy	<i>Clematis vitalba</i>
Poison hemlock	<i>Conium maculatum</i>

Common Name	Scientific Name
Field Morning-glory	<i>Convolvulus arvensis</i>
Night-blooming Morning-glory	<i>Convolvulus nyctagineus</i>
Lady's nightcap	<i>Convolvulus sepium</i>
Pampas grass	<i>Cortaderia selloana</i>
Hawthorn, except native species	<i>Crataegus sp. except C. douglasii</i>
Scotch broom	<i>Cytisus scoparius</i>
Queen Anne's Lace	<i>Daucus carota</i>
South American Waterweed	<i>Elodea densa</i>
Common Horsetail	<i>Equisetum arvense</i>
Giant Horsetail	<i>Equisetum telmateia</i>
Cranesbill	<i>Erodium cicutarium</i>
Roberts Geranium, Herb Robert	<i>Geranium robertianum</i>
English Ivy	<i>Hedera helix</i>
St. John's Wort	<i>Hypericum perforatum</i>
English Holly	<i>Ilex aquafolium</i>
Golden Chain Tree	<i>Laburnum watereri</i>
Duckweed, Water Lentil	<i>Lemna minor</i>
Fall Dandelion	<i>Leontodon autumnalis</i>
Purple Loosestrife	<i>Lythrum salicaria</i>
Eurasian Watermilfoil	<i>Myriophyllum spicatum</i>
Reed Canary grass	<i>Phalaris arundinacea</i>
Annual Bluegrass	<i>Poa annua</i>
Swamp Smartweed	<i>Polygonum coccineum</i>
Climbing Bindweed, Wild buckwheat	<i>Polygonum convolvulus</i>
Giant Knotweed	<i>Polygonum sachalinense</i>
English, Portuguese Laurel	<i>Prunus laurocerasus</i>
Poison Oak	<i>Rhus diversiloba</i>
Himalayan Blackberry	<i>Rubus discolor</i>
Evergreen Blackberry	<i>Rubus laciniatus</i>
Tansy Ragwort	<i>Senecio jacobaea</i>
Blue Bindweed	<i>Solanum dulcamara</i>
Garden Nightshade	<i>Solanum nigrum</i>
Hairy Nightshade	<i>Solanum sarrachoides</i>
Common Dandelion	<i>Taraxacum officinale</i>
Common Bladderwort	<i>Utricularia vulgaris</i>
Stinging Nettle	<i>Urtica dioica</i>
Periwinkle (large leaf)	<i>Vinca major</i>
Periwinkle (small leaf)	<i>Vinca minor</i>
Spiny Cocklebur	<i>Xanthium spinosum</i>
Bamboo sp.	<i>various genera</i>

Note: Once this decision is final, application for building permits may be made with the City of Gresham. When ready to have Zoning Review 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 to review your plans, obtain your access permit, and satisfy any other requirements. You may schedule an appointment at <https://multco.us/transportation-planning/webform/right-way-appointment-request/>. Failure to make an appointment with County Right-of-Way will result in delaying your building plan review and obtaining building permits.
3. Contact Rithy Khut, Planner, at 503-988-0176 or rithy.khut@multco.us, **for an appointment** for review of the conditions of approval and to sign the building permit plans. Please ensure that any items required under, “At the time of land use sign-off for building plan check...” are ready for land use planning review. Land Use Planning must sign off on the plans and authorize the building permit before you can go to the Building Department.

The above must be completed before the applicant can obtain building permits from the City of Gresham. One (1) digital set of the site plan and building plans are needed for building permit sign off. At the time of building permit review, 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 for Water Resources (SEC-wr) permit to authorize previous development activities and ground disturbance that were not reviewed by the County. The unpermitted work included the conversion and expansion of a two-story accessory building into a dwelling unit on the second floor with a garage and storage area on the first floor. The ground disturbance includes the trenching of a sewer line and placement of fill in the Significant Environmental Concern for Water Resources (SEC-wr). The proposed work still to be completed includes:

1. Single-family dwelling (“primary dwelling”)
 - a. Obtaining zoning approval and building permits for the conversion of the accessory building into a single-family dwelling (“primary dwelling”).
 - b. A review of a 21.5-foot by 15-foot addition for a family room and storage room that was not reviewed by the County.
 - c. A new covered 9-foot by 10-foot porch

The total square footage of the primary dwelling will be 1,450 square feet. (Exhibit A.17 and A.18)

2. Accessory Dwelling Unit (ADU)
 - a. Conversion of the existing 1918-year old 660 square foot single-family dwelling to an accessory dwelling unit (Exhibit A.10 and A.17);
3. Demolition of an unpermitted carport that is attached to the existing detached garage (Exhibit A.17 and Exhibit A.20);
4. Trenching of a sewer pipe line for the primary dwelling and ADU, in order to connect to a sewer lateral north of the subject property (Exhibit A.17);
5. Construction of a wall to block off the northern driveway (Exhibit A.17);
6. Removal of fill earth materials placed within the Significant Environmental Concern for Water Resources (SEC-wr) (Exhibit A.16); and
7. The Significant Environmental Concern for Water Resources (SEC-wr) mitigation plan and plantings.

2.0 Property Description & History:

Staff: This application is for 16970 SE Foster Road, Portland (“subject property”). The subject property is located on the west side of SE Foster Road in unincorporated east Multnomah County in the area known as the Pleasant Valley Urban Plan Area. The subject property is zoned Rural Residential (RR) and is located inside of Metro’s Urban Growth Boundary (UGB) boundary. The subject property is approximately 1.16 acres in size. The property has multiple overlays including a Significant Environmental Concern for Water Resources (SEC-wr)

overlay and the Flood Hazard (FH) overlay. The SEC-wr covers the entire property and FH overlay covers Kelly Creek, which covers the western portions of the property. Aerial photo review from 2020 shows the presence of three buildings on the subject property (Exhibit B.7).

There have been previous land use/building permit associated with the subject property:

Land Use / Building Permit #	Date Approved	Decision	Description
870677	December 2, 1987	Approved	Garage
T2-2018-11222	January 14, 2019	Subject Property found to be a Lot of Record	Lot of Record Verification

In reviewing the past compliance history of the subject property, the property has had multiple code compliance issues in the past. Below are the code compliance cases that are on record:

Code Compliance Case #	Case Open Date	Description
UR-2015-3920	02/13/2015 (Closed)	Non-permitted dwelling constructed on the second floor of the shop building, several recreational vehicles are being used as dwelling units, and several tents and other makeshift dwellings are being lived in on the property.
UR-2019-11483	01/24/2019 (Active)	Two homes being remodeled, new sewer going in for both homes within 100 feet of Kelly Creek.

3.0 Public Comment:

Staff: Staff mailed a notice of application and invitation to comment on the proposed application to the required parties pursuant to MCC 39.1105 as Exhibited in C.6. Staff did not receive any public comments during the 14-day comment period.

4.0 Code Compliance and Applications Criteria:

4.1 § 39.1515 CODE COMPLIANCE AND APPLICATIONS.

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

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

- (1) It results in the property coming into full compliance with all applicable provisions of the Multnomah County Zoning Code. This includes sequencing of permits or other approvals as part of a voluntary compliance agreement; or**
- (2) It is necessary to protect public safety; or**
- (3) It is for work related to and within a valid easement over, on or under an affected property.**

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

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

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

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

Staff identified one active code compliance case associated with this property. The case, UR-2019-11483 was opened on January 24, 2019 to resolve an issue regarding the renovation of two structures and development activity to install a sewer line lateral that was not reviewed by the County (Exhibit B.5). Based on aerial photo measurements, it appears that 200 sq. ft. of ground disturbance occurred without review.

Figure 1 – Area of disturbance



This was verified by a site visit was conducted January 18, 2019 and photographs of the development were taken after being invited on to the property by the contractors (Exhibit B.5).

Subsequently after the site visit and stop work order, a pre-file conference meeting was scheduled and held on August 29, 2019 (Exhibit B.3). During that meeting, additional compliance issues were raised. In comparing aerial photo between 1974 and 1996, additional development occurred on the property (Exhibit B.8 and B.11). A carport addition that is approximately 915 sq. ft. was added to the existing garage, which is the most northern building. Lastly, in comparing Permit #870677 and aerial photos from 1996, the two-story garage built in 1987 was expanded to the southwest by approximately 322.50 sq. ft. and a dwelling unit was added to the second story (Exhibit A.14 and B.11).

All of the associated development activities would have been subject to zoning review and would have required a Flood Development permit. The development activities would have also potentially needed to meet the Significant Environmental Concern for Water Resources (SEC-wr) requirements as Ordinance 1001 was adopted in December 12, 2002.

The Applicant has responded with submittal of this application. The proposal includes:

- Authorization for the conversion of what was originally an two story accessory building into a single-family dwelling (middle building),
- Conversion of the existing single-family dwelling (south building) into an Accessory Dwelling Unit (ADU),
- Removal of the carport attached to the garage (north building), and; a
- Application materials and a Mitigation Plan needed to meet the SEC-wr permit requirements to authorize all of the development activities including the trenching of the sewer line lateral and construction of the carport that occurred without review.

This application, a Type II application is the first part of a sequencing of permits needed to resolve the code compliance issues related to development activities in the SEC-wr overlay.

The second part of the sequence would be obtaining a Type I Erosion and Sediment Control (ESC) permit, a Type I Flood Development (FD) permit, and building permits.

Based on the information provided by the applicant, they have demonstrated that information provided meets the requirements within the Rural Residential zone for a residential use consisting of a single-family dwelling, ADU, and the mitigation requirements within the Significant Environmental Concern for Water Resources (SEC-wr) overlay. The application is discussed below.

As discussed in this decision, when the applicant meets all of the conditions of this Decision including the obtaining of the Type I Erosion and Sediment Control permit and a Flood Development permit, it will result in the property coming into compliance with applicable provisions of the Multnomah County Zoning Code. Therefore, the County is able to make a land use decision approving development on the subject property.

5.0 Lot of Record Criteria:

5.1 § 39.3005 - LOT OF RECORD – GENERALLY.

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

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

(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**
- 4. By partitioning land under the applicable land partitioning requirements in effect on or after October 19, 1978; and**
- 5. “Satisfied all applicable land division laws” shall also mean that any subsequent boundary reconfiguration completed on or after December 28, 1993 was approved under the property line adjustment provisions of the land division code. (See Date of Creation and Existence for the effect of property line adjustments on qualifying a Lot of Record for the siting of a dwelling in the EFU and CFU districts.)**

* * *

§ 39.3090 LOT OF RECORD – RURAL RESIDENTIAL (RR)

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

* * *

Staff: The subject property was previously found to be a Lot of Record in land use case, T2-2018-11222 (Exhibit B.4). As the subject property has not been subject to a subsequent boundary reconfiguration since those findings were written, the subject property continues to satisfy all applicable zoning and land division laws. *These criteria are met.*

6.0 Rural Residential (RR) Criteria:

6.1 § 39.4360 ALLOWED USES.

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

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

Staff: As discussed in Section 4.0, the subject property currently contains a lawfully established single-family dwelling (660 sq. ft.) and an unauthorized dwelling that is on the second story of the existing accessory building permitted in 1987. The applicant is proposing to obtain permission to convert the 1987 year built accessory building into a single-family dwelling with attached garage and storage area (“Primary Dwelling”) (Exhibit A.14). The existing 1918 year built dwelling will be converted to an Accessory Dwelling Unit (ADU) subject to MCC 39.4360(L). The ADU conversion is discussed in Section 6.2.

The applicant provided a floor plan showing that the primary dwelling contains a garage and storage area on the first floor and a two bedroom, one bath, kitchen, and family room on the second floor (Exhibit A.18). The 322.50 sq. ft. expansion to create the family room was not originally reviewed by the County. As part of the permit, it will also authorize this expansion as part of the Primary Dwelling.

Lastly, the applicant is proposing to add a covered porch to the Primary Dwelling on the southern side of the building. This improvement has not been constructed yet (Exhibit A.17 and A.18). *This criterion is met.*

6.1.2 (F) Accessory Structures subject to the following:

(1) The Accessory Structure is customarily accessory or incidental to any use permitted or approved in this base zone and is a structure identified in the following list:

- (a) Garages or carports;**
- (b) Pump houses;**
- (c) Garden sheds;**
- (d) Workshops;**
- (e) Storage sheds, including shipping containers used for storage only;**
- (f) Greenhouses;**
- (g) Woodsheds;**

- (h) Shelter for pets, horses or livestock and associated buildings such as: manure storage, feed storage, tack storage, and indoor exercise area;**
- (i) Swimming pools, pool houses, hot tubs, saunas, and associated changing rooms;**
- (j) Sport courts;**
- (k) Gazebos, pergolas, and detached decks;**
- (l) Fences, gates, or gate support structures; and**
- (m) Mechanical equipment such as air conditioning units, heat pumps and electrical boxes; and**
- (n) Similar structures.**

Staff: As part of this application, the applicant is proposing to remove a carport that was added to an existing garage. The garage is the most north building and was potentially built in 1918, when the original single-family dwelling was constructed. It was also shown on a 1974 aerial photo and on a 1987 plot plan in Multnomah County Permit #870677 (Exhibit A.14 and Exhibit B.8). At some point between 1987 and 1996, a carport addition was added to the garage (Exhibit A.14 and Exhibit B.11).

As listed above, a garage is identified as a structure that is customarily accessory or incidental to the residential use. As the carport is proposed to be removed and the addition was not reviewed or permitted by the County, a condition of approval will be required that the garage be returned back to its last approved configuration. *As conditioned, this criterion is met.*

6.1.3 (L) Accessory Dwelling Unit (ADU), subject to the following standards:

- (1) The ADU is sited entirely inside the urban growth boundary.**

Staff: The subject property is located within the within the Urban Growth Boundary. The subject property was added to the UGB in the 1998 (Exhibit B.15). *This criterion is met.*

- (2) The ADU is not accessory to a health hardship dwelling or any other type of temporary dwelling.**

Staff: The applicant is not proposing a health hardship dwelling or any other type of temporary dwelling. *This criterion is met.*

- (3) Transportation Impacts shall be mitigated per Multnomah County Road Rules. The ADU shall use the same lawfully established driveway entrance as the single-family dwelling, although the driveway may be extended to the ADU. No variance, adjustment, deviation or any other modification to this shared driveway provision is allowed.**

Staff: The application was reviewed by the Transportation Division. Transportation Planning case #EP-2021-14231 requires the applicant to construct a 2-foot retaining wall to close one of the driveways. To ensure that this requirement is met, a condition of approval will be required that the one of the two driveways will be closed to ensure that the ADU will use the same driveway entrance as the single-family dwelling. *As conditioned, this criterion is met.*

(4) The floor area of the ADU shall not exceed either 800 square feet, or 75% of the floor area of the single-family dwelling to which the ADU is accessory, whichever is less.

Staff: The floor area in the existing single-family dwelling that will become the ADU is approximately 24 feet by 27.5 feet (616 sq. ft.) (Exhibit A.10 and A.17). As measured in the single-family dwelling plan in Exhibit A.18, the primary dwelling that was converted from an accessory building is approximately 2,810 sq. ft. (1,450 sq. ft. first floor; 1,360 sq. ft. second floor). Using the calculation above, 75% of the floor area of the single-family dwelling is 2,107.50 sq. ft.

Based on the measurements the 616 sq. ft. measurement is the lesser of the two measurements. *This criterion is met.*

(5) The ADU shall either be:

(a) Attached to or located within the interior of a lawfully established single-family dwelling;

(b) Attached to or located within the interior of a lawfully established building that is accessory to a single-family dwelling, provided that the accessory building existed on the effective date of this ordinance;

(c) Attached to or located within the interior of a lawfully established building that is accessory to a single-family dwelling, provided that the accessory building is located at least 7 feet and no more than 20 feet from the single family dwelling, measured at the closest points between exterior walls of both buildings. Chimneys, eaves, building and window trim are not included in the measurement above. No variance, adjustment, deviation or any other modification to any of the distances listed in this provision are allowed; or

(d) Detached, provided that the detached ADU is located at least 7 feet and no more than 20 feet from the single family dwelling, measured at the closest points between exterior walls of both buildings. Chimneys, eaves, building and window trim are not included in the measurement above. No variance, adjustment, deviation or any other modification to any of the distances listed in this provision are allowed.

Staff: The applicant is proposing a detached ADU as provided under (d) above. Therefore, the ADU must be at least 7 feet and no more than 20 feet from the single-family dwelling. As measured on the site plan, the ADU and single-family dwelling is approximately 20 feet (Exhibit A.17). *This criterion is met.*

(6) An attached or interior ADU shall include at least one separate exterior doorway to the outside. Internal entrance(s) to the attached building are allowed.

Staff: The applicant is not proposing an attached or interior ADU; therefore, this criterion is not applicable. *This criterion is not applicable.*

(7) The following designs are not permitted for use as an ADU: Recreational vehicle, park model recreational vehicle, yurt or any other similar design not

intended for permanent human occupancy or any structure unable to meet all applicable construction or installation standards.

Staff: The applicant is not proposing to use a recreational vehicle, park model recreational vehicle, or yurt. *This criterion is met.*

(8) Short-term rental of the ADU is prohibited. For purposes of this subsection, short-term rental is defined as fee-based occupancy for a period less than 30 consecutive calendar days. Month-to-month rental agreements for long-term purposes are not short-term rental.

Staff: As required above, a condition of approval will be required that the short-term rental of the ADU is prohibited. A short-term rental is defined as fee-based occupancy for a period less than 30 consecutive calendar days. *As conditioned, this criterion is met.*

(9) The land owner shall sign and record with the county a covenant stating that the ADU cannot be used for short-term rental, as defined in this section. The covenant shall apply until such time the subject property is annexed into a city and no longer subject to county land use regulations.

Staff: As required above, a condition of approval will be required that the landowner shall sign and record with the county a covenant stating that the ADU cannot be used for short-term rental. *As conditioned, this criterion is met.*

6.2 § 39.4375 DIMENSIONAL REQUIREMENTS AND DEVELOPMENT STANDARDS.

* * *

(C) Minimum Yard Dimensions – Feet

Front	Side	Street Side	Rear
30	10	30	30

Maximum Structure Height – 35 feet

Minimum Front Lot Line Length – 50 feet.

(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.

(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.

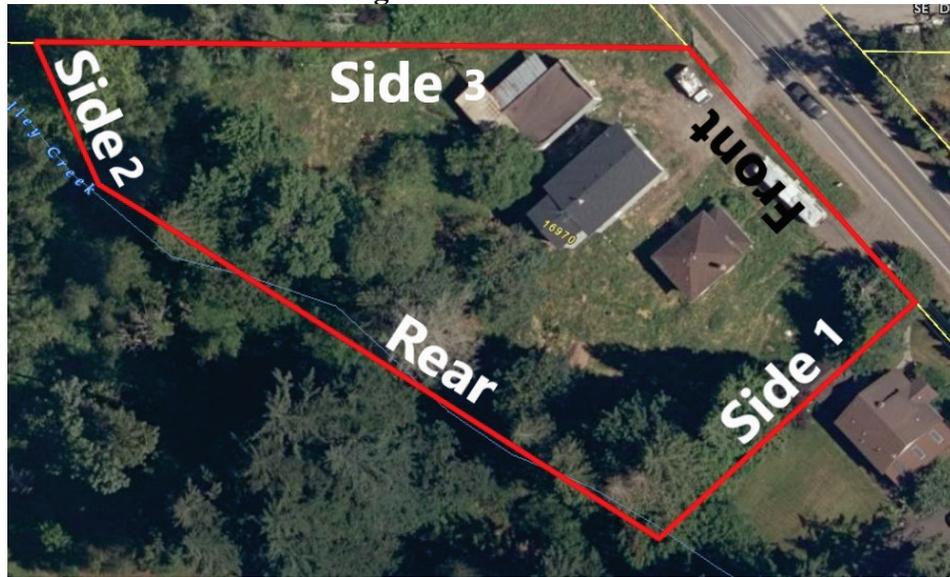
(3) A Variance is required for any Accessory Structure that encroaches more than 40 percent into any required Yard.

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

Staff: The yard dimensions are required to ensure that there is sufficient open space between buildings and property lines to provide space, light, air circulation, and safety from fire hazards. Additionally, as required under criterion (D), minimum yard dimensions are required to be increased where the yard abuts a street having insufficient right-of-way width to serve the area. The right-of-way adjacent to the subject property is SE Foster Road, a rural arterial road. County Road Official has determined the necessary right-of-way width has been met (Exhibit B.14). Therefore, no additional yard requirements will be required.

As required by the Table in MCC 39.4245(C), the minimum yard dimensions need to be met by all buildings and structures on the subject property. The applicant has provided a site plan showing the location of all the existing buildings and structures on the property (Exhibit A.17). The Figure below indicates the front, side, and rear lot lines.

Figure 2 – Lot Lines



The yard requirements and distance from lot lines are shown in the table below:

Table 1: Distance of the Buildings from Property Lines

Lot Line	Yard Requirement	Distance of building to Property Line
ADU (South Building)		
Front (adjacent to SE Foster Rd.)	30'	48'
Side #1 (South Line)	10'	59'
Rear (line opposite of SE Foster Rd.)	30'	99'

Lot Line	Yard Requirement	Distance of building to Property Line
Side #2 (East Line)	10'	±85'
Side #3 (North Line)	10'	±80'
Primary Dwelling (Middle Building)		
Front (adjacent to SE Foster Rd.)	30'	48'
Side #1 (South Line)	10'	±103'
Rear (line opposite of SE Foster Rd.)	30'	86'
Side #2 (East Line)	10'	±214'
Side #3 (North Line)	10'	±42'
Garage (North Building)		
Front (adjacent to SE Foster Rd.)	30'	48'
Side #1 (South Line)	10'	±158'
Rear (line opposite of SE Foster Rd.)	30'	±114'
Side #2 (East Line)	10'	±196'
Side #3 (North Line)	10'	11'

Exhibit A.17

A retaining wall is also proposed to close one of the two private driveways. The wall is approximately two feet in height (Exhibit B.14). As the wall is less than six feet in height, it can be located within the front yard.

All of the buildings and structures meet the minimum yard requirements.

The buildings are existing and none of the buildings are growing in height; therefore, all the buildings continue to meet the height requirements above. *This criterion is met.*

Lastly, the front lot length is approximately 153.05 feet, which exceeds the minimum front lot line length requirement of 50 feet. *This criterion is met.*

(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 applicant is not proposing barns, silos, windmills, antennae, chimneys, or similar structures; therefore, this criterion is not applicable. *This criterion is not applicable.*

(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: As part of this application, the applicant is requesting authorization for development activities that were not reviewed by the County. The development activities included the trenching of ABS piping from both the proposed single-family dwelling and ADU to a lateral located north of the property (Exhibit A.17). The development was not finished when it was conducted in 2019. As part of this application, the applicant is proposing to finish the

development to connect to the sewer lateral. The lateral is part of the City of Gresham sewer system, which will allow for sewage disposal that is provided by a public source.

The applicant also provided a Storm Water Drainage Control Certificate. The Storm Water Drainage Control Certificate was reviewed and signed by Kelli Grover, Registered Professional Engineer (Exhibit A.11 and A.12). The Certificate recommends the use of gutter, downspout, and splash block drainage control system for the subject property. *This criterion is met.*

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

Staff: As discussed in subsection (F), the sewage system is provided by a public source and stormwater disposal system is located on the subject property; therefore, this criterion is not applicable. *This criterion is not applicable.*

(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 also provided a Storm Water Drainage Control Certificate. The Storm Water Drainage Control Certificate was reviewed and signed by Kelli Grover, Registered Professional Engineer (Exhibit A.11 and A.12). The Certificate recommends construction of an on-site stormwater drainage system using gutter and downspouts to drywells allow for natural filtration using. This system will ensure that the rate of runoff from the property for a 10-year/24-hour storm event is no greater than that before development. *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: The applicant is proposing the expansion of an existing dwelling; therefore, in order to minimize impacts to existing farm uses on adjacent land (contiguous or across the street), a condition will be required. As the subject property is in an area zoned RR and the surrounding properties are also zoned RR, a covenant that states the property owner(s) 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 will be required as a condition. *As conditioned, this criterion is met.*

(H) All exterior lighting shall comply with MCC 39.6850

Staff: The applicant is proposing a single-family dwelling, accessory dwelling unit (ADU), and accessory building on the subject property. Only the primary dwelling is required to comply with MCC 39.6850, as the enlargement is more than 400 sq. ft. of ground coverage. The

architectural plans for the primary dwelling do not show exterior lighting on the building. As such, to ensure that the applicant meets the standards above, a condition will be required that a lighting plan be submitted prior to zoning review authorizing building permits. Additionally, technical specifications of the exterior lighting that demonstrates that the exterior lighting on the accessory building be from a light source that is fully shielded with opaque materials and directed downwards. Lastly, the lighting must be contained within the boundaries of the Lot of Record on which it is located. *As conditioned, this criterion is met.*

7.0 Significant Environmental Concern Overlays (SEC) Criteria:

7.1 § 39.5510 USES; SEC PERMIT REQUIRED.

(A) All uses allowed in the base zone are allowed in the SEC when found to satisfy the applicable approval criteria given in such zone and, except as provided in MCC 39.5515, subject to approval of an SEC permit pursuant to this Subpart.

* * *

Staff: As discussed in Section 6.1, the applicant is proposing to:

1. Single-family dwelling (“primary dwelling”):
 - a. Legalize a conversion of a permitted accessory building,
 - b. Legalize an addition to the primary dwelling that was not reviewed by the County, and;
 - c. Add a new covered porch to the building
2. Accessory building (“garage”)
 - a. Proposing to remove an unpermitted carport attached to the 1918 built garage
3. Accessory Dwelling Unit (“ADU”)
 - a. Convert the original 1918 dwelling on the property into an ADU
4. Development subject to UR-2019-11483
 - a. Trenching of ABS piping from both the proposed single-family dwelling and ADU to a lateral located north of the property that was not completed and is now proposed,
 - b. Placement of fill in the SEC-wr overlay that will be removed

The proposals are all allowed use in the underlying zoning district, if they meet certain requirements of Multnomah County Code. The application is subject to the SEC permit requirements for the alteration and expansion of the primary dwelling and the unpermitted additional development previously completed. They have met the approval criteria as described in this decision. A few criteria will require additional action by the applicant using Conditions of Approval to demonstrate compliance with all of the applicable approval criteria.

7.2 § 39.5575 GENERAL REQUIREMENTS FOR APPROVAL IN THE URBAN PLANNING AREA DESIGNATED AS SEC-WR.

The requirements in this section shall be satisfied for development in the SEC-wr areas located in the Urban Planning Area in addition to the provisions of MCC 39.5800 as applicable.

(A) 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 applicant has applied for an Erosion and Sediment Control (ESC) permit. The ESC permit must be issued prior to any additional ground disturbing activities to ensure compliance with this criterion. Additionally, a condition will be required that 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. Additionally, this condition will be carried forward in the applicant's Type 1 Erosion and Sediment Control permit. *As conditioned, this criterion is met.*

(B) Outdoor lighting shall be of a fixture type and shall be placed in a location so that it does not shine directly into undeveloped water resource or habitat areas. Where illumination of a water resource or habitat area is unavoidable, it shall be minimized through use of a hooded fixture type and location. The location and illumination area of lighting needed for security of utility facilities shall not be limited by this provision.

Staff: To ensure compliance with this criterion, a condition will be required that outdoor lighting shall be of a fixture type that does not shine directly into undeveloped water resource or habitat areas. Where outdoor lighting is attached to the single-family dwelling, the ADU or garage accessory building, the illumination shall be minimized through use of a hooded fixture type and be compliant with Dark Sky Lighting Standards and be placed in a location so that it does not shine directly into undeveloped water resource or habitat areas. No outdoor lighting fixtures shall be permitted within 100 feet of Kelly Creek unless those fixtures are attached to the single-family dwelling, ADU, or garage accessory building. *As conditioned, this criterion is met.*

(C) The nuisance plants in MCC 39.5580 Table 1, in addition to the nuisance plants defined in MCC 39.2000, shall not be used as landscape plantings within the SEC-wr and SEC-h Overlay Zone.

Staff: To ensure compliance with this criterion, a condition will be required that nuisance plants in MCC 39.5580 Table 1, in addition to the nuisance plants defined in MCC 39.2000, shall not be used as landscape plantings within the SEC-wr Overlay Zone. *As conditioned, this criterion is met.*

7.3 § 39.5580- NUISANCE PLANT LIST.

**Table 1
Nuisance Plant List:**

Common Name	Scientific Name
Lesser celandine	<i>Chelidonium majus</i>
Canada Thistle	<i>Cirsium arvense</i>

Common Name	Scientific Name
Common Thistle	<i>Cirsium vulgare</i>
Western Clematis	<i>Clematis ligusticifolia</i>
Traveler' s Joy	<i>Clematis vitalba</i>
Poison hemlock	<i>Conium maculatum</i>
Field Morning-glory	<i>Convolvulus arvensis</i>
Night-blooming Morning-glory	<i>Convolvulus nyctagineus</i>
Lady's nightcap	<i>Convolvulus sepium</i>
Pampas grass	<i>Cortaderia selloana</i>
Hawthorn, except native species	<i>Crataegus sp. except C. douglasii</i>
Scotch broom	<i>Cytisus scoparius</i>
Queen Anne's Lace	<i>Daucus carota</i>
South American Waterweed	<i>Elodea densa</i>
Common Horsetail	<i>Equisetum arvense</i>
Giant Horsetail	<i>Equisetum telmateia</i>
Cranesbill	<i>Erodium cicutarium</i>
Roberts Geranium, Herb Robert	<i>Geranium robertianum</i>
English Ivy	<i>Hedera helix</i>
St. John's Wort	<i>Hypericum perforatum</i>
English Holly	<i>Ilex aquafolium</i>
Golden Chain Tree	<i>Laburnum watereri</i>
Duckweed, Water Lentil	<i>Lemna minor</i>
Fall Dandelion	<i>Leontodon autumnalis</i>
Purple Loosestrife	<i>Lythrum salicaria</i>
Eurasian Watermilfoil	<i>Myriophyllum spicatum</i>
Reed Canary grass	<i>Phalaris arundinacea</i>
Annual Bluegrass	<i>Poa annua</i>
Swamp Smartweed	<i>Polygonum coccineum</i>
Climbing Bindweed, Wild buckwheat	<i>Polygonum convolvulus</i>
Giant Knotweed	<i>Polygonum sachalinense</i>
English, Portuguese Laurel	<i>Prunus laurocerasus</i>
Poison Oak	<i>Rhus diversiloba</i>
Himalayan Blackberry	<i>Rubus discolor</i>
Evergreen Blackberry	<i>Rubus laciniatus</i>
Tansy Ragwort	<i>Senecio jacobaea</i>
Blue Bindweed	<i>Solanum dulcamara</i>
Garden Nightshade	<i>Solanum nigrum</i>
Hairy Nightshade	<i>Solanum sarrachoides</i>
Common Dandelion	<i>Taraxacum officinale</i>
Common Bladderwort	<i>Utricularia vulgaris</i>
Stinging Nettle	<i>Urtica dioica</i>
Periwinkle (large leaf)	<i>Vinca major</i>
Periwinkle (small leaf)	<i>Vinca minor</i>
Spiny Cocklebur	<i>Xanthium spinosum</i>
Bamboo sp.	<i>various genera</i>

Staff: As required in MCC 39.5575(C), the nuisance plants in Table 1 above shall not be used as landscape plantings within the SEC-wr Overlay Zone. *As conditioned, this criterion is met.*

7.4 § 39.5800- CRITERIA FOR APPROVAL OF SEC-WR PERMIT -WATER RESOURCE

(A) Except for the exempt uses listed in MCC 39.5515 and the existing uses pursuant to MCC 39.5550, no development shall be allowed within a Water Resource Area unless the provisions of subsections (B) or (C) or (D) below are satisfied. An application shall not be approved unless it contains the site analysis information required in MCC 39.5520(A) and (C), and meets the general requirements in MCC 39.5560.

Staff: The applicant is proposing to alter and expand a single-family dwelling, removal of a carport attached to a garage accessory building, and establishment of an ADU in addition to review of previous development that was not previously reviewed by the County. None of the proposed development or uses are listed as exempt in MCC 39.5515. As such, the application is required to meet the provisions of subsections (B), (C), or (D) below. The applicant will be required to demonstrate compliance with the Alternatives Analysis within subsection (C) as the development is located within one hundred (100) feet from top of bank or top of ravine and therefore does not meet the provisions within subsection (B).

The application has included site analysis information in a Mitigation and Restoration Plan (“Report”) that was prepared by Jim Barnes, Cascadia Ecological Services, Inc. in January 2020 and revised in November 2020 (Exhibit A.3 and A.16). The Report contains the site analysis information as required in MCC 39.5520(A). While MCC 39.5560 is referenced above under (A), the subject property is located in an Urban Area and is governed by MCC 39.5575. As discussed in Section 7.2 the applicant can meet, through conditions of approval, the general requirements in MCC 39.5575. *This criterion is met.*

* * *

(C) Alternatives Analysis - Development proposed within a Water Resource Area may be allowed if there is no alternative, when the other requirements of this Overlay including the Development Standards of subsection (E) and the provisions for Mitigation in subsection (F) are met. The applicant shall prepare an alternatives analysis which demonstrates that:

Staff: The subject property is entirely within the Water Resource Area; therefore, there is no alternative to locating the development outside the area. The applicant is proposing development within the buffer and is electing to utilize the provisions of an alternative analysis provided in MCC 39.5800(C). As such, the development will need to meet the provisions of (1) through (5) below.

The alternatives analysis is contained within the Mitigation and Restoration Plan (“Report”) that was prepared by Jim Barnes, Cascadia Ecological Services, Inc. in January 2020 and revised in November 2020 (Exhibit A.3 and A.16). Within in Report there is a Restoration Map. *This criterion is met.*

(1) No practicable alternatives to the requested development exist that will not disturb the Water Resource Area; and

Staff: The subject property is entirely within the Water Resource Area. There are no practicable alternatives to the proposal that exist, that will not disturb the Water Resource area. The development that occurred closest to the Kelly Creek, the Protected Water Feature included expansion of the single-family dwelling, the construction of a carport on the garage accessory building, the excavation of soil to install a new sewer line lateral, and the placement of fill in the Water Resource Area. Those development activities were not reviewed by the County and are required to be reviewed as if those actions are proposed today. The carport and placement of fill will be mitigated, whereas the sewer line lateral, expansion of the single-family dwelling and construction of a new covered porch are positioned as far from the banks of Kelly Creek as possible, while maintaining property line setbacks (Exhibit A.17). *This criterion is met.*

(2) Development in the Water Resource Area has been limited to the area necessary to allow for the proposed use;

Staff: The applicant proposed site plan and Report indicates that all ground disturbing activities including the placement of fill and non-permitted carport adjacent to Kelly Creek will be removed and the area impacted will be mitigated (Exhibit A.16 and Exhibit A.17). For the other permanent structures, the sewer line lateral, and additions to the primary dwelling are limited to the area necessary, as they are components tied to the establishment of the primary dwelling use.

At the competition of this project, all of the development will be limited to the area necessary to allow for the proposed use, which is the primary dwelling, 1918-year built garage (accessory building) and the conversion of the existing 1918-year single-family dwelling into an ADU. The development will be limited to the areas adjacent to SE Foster Road and the northeastern portions of the subject property, which has already been disturbed. *As conditioned, this criterion is met.*

(3) Development shall occur as far as practically possible from the stream; and

Staff: As discussed in subsection (2) above, the majority of the development will be located as far as practically possible from the stream. The development will be primarily located in adjacent to SE Foster Road and the northeastern portions of the subject property, which has already been disturbed.

Figure 3 – Development within 100 feet of Kelly Creek



The only encroachments within 100-foot setback from Kelly Creek will be the fill that is being removed (the area shown in **red**), the work to establish the sewer line lateral (show as a **dashed red line**), the mitigation (the area shown in **green**), and a small portion of the family room addition to the Primary Dwelling will exist within 100 feet of Kelly Creek. At the competition of this project, all of the development will occur as far as practically possible from the stream to allow for the proposed use. *This criterion is met.*

(4) The Water Resource Area can be restored to an equal or better condition; or

Staff: As discussed previously, the subject property is located entirely within the Water Resource Area. As such, a portion of the Water Resource Area will be impacted resulting in a net loss on the property of resource area, function, and value. Therefore, as discussed below in subsection (5), the Water Resource Area will need to be mitigated. *This criterion is not met; therefore, MCC 39.5800(C)(5) must be met.*

(5) Any net loss on the property of resource area, function and/or value can be mitigated.

Staff: The Mitigation requirements are outlined in MCC 39.5800(F). In that section, the Finding details the extent and nature of the mitigation that will be required to be met as part of this Decision. As was discussed in that section, a total of 2,073.50 sq. ft. of area was altered due to development that was not reviewed by the County, will be altered, or lost due to the development of the single-family dwelling. As such, a total 2,073.50 sq. ft. of mitigation is

required on-site as mitigation is required at a 1:1 ratio. To ensure that the net loss of resource area is mitigated, multiple conditions will be required including updating the Plant List to reflect 2,103.5 sq. ft. of mitigation and the updating the Critical Area Impact and Restoration Areas Mitigation and Restoration Plan ("Mitigation Plan") to indicate the location and type of plantings that will be planted. *As conditioned, this criterion is met.*

* * *

(E) Development Standards- Development within the Water Resource Area shall comply with the following standards:

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

Staff: The applicant's site plan and Mitigation Plan in the Report indicate no trails, rest points, viewpoints, or other facilities for the enjoyment of the resource will be proposed. As such, this criterion is not applicable. *This criterion is not applicable.*

(2) Development in areas of dense standing trees shall be designed to minimize the numbers of trees to be cut. No more than 50 percent of mature standing trees (of 6-inch DBH greater) shall be removed without a one-for-one replacement with comparable species. The site plan for the proposed activity shall identify all mature standing trees by type, size, and location, which are proposed for removal, and the location and type of replacement trees.

Staff: Prior to submittal of this application, the development occurred without review from the County. In reviewing aerial photos and site visit photos, it does not appear trees were cut or removed as part of previous development that occurred or the proposed development that will occur (Exhibit A.16, A.17, B.6, and B.7). *This criterion is met.*

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

Staff: As discussed in MCC 39.5800(F), the Report indicated that there are limited woody shrubs closer to the primary dwelling, ADU, and garage accessory building. The wood shrub area transitions to the creek corridor, which contains mature Douglas-fir and Western red cedar. Further as required by MCC 39.5800(C)(5) and MCC 39.5800(F), a condition of approval will be required to ensure that there is a more robust transition between the proposed development and the natural resource, to provide food, water, and cover for wildlife, and to protect the visual amenity values of the natural resource. To accomplish this goal, additional mitigation will be required to ensure that this criterion is met. The additional mitigation is discussed below in subsection (F). *As conditioned, this criterion is met.*

(4) The Water Resource Area shall be restored to "good condition" and maintained in accordance with the mitigation plan pursuant to subsection (F) below and the specifications in Table 2 of this section.

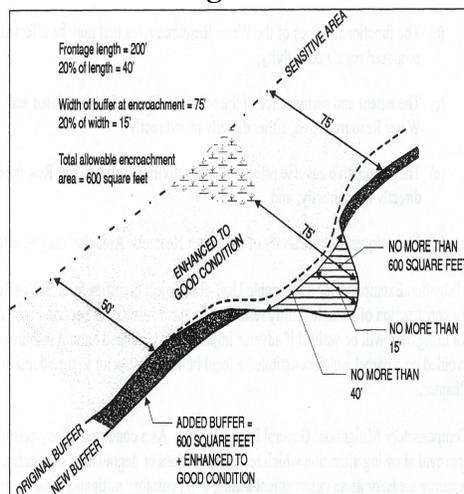
Staff: The Report by Jim Barnes, Cascadia Ecological Services, Inc. provided a mitigation plan that did not ensure that the Water Resource Area will be restored to “good condition.” The proposed mitigation from the Report, which is exhibited as A.16 mimics the requirements of subsection (F) and Table 2 of this section; however, no analysis was provided if the mitigation actions would result in restoring the Water Resource Area into a “good condition.” Therefore a condition will be required that the mitigation plan be updated to demonstrate that the Water Resource Area be restored to "good condition." The report also contained a section discussing the Implementation Schedule and Restoration Procedures. To ensure that the schedule and procedures are followed, another condition will be required that those actions be taken. *As conditioned, this criterion is met.*

(5) To the extent practicable, existing vegetation shall be protected and left in place. Work areas shall be carefully located and marked to reduce potential damage to the Water Resource Area. Trees in the Water Resource Area shall not be used as anchors for stabilizing construction equipment.

Staff: Conditions of approval has been included that requires that the existing vegetation shall be protected and left in place. Work areas shall be carefully located and marked to reduce potential damage to the Water Resource Area. Trees in the Water Resource Area shall not be used as anchors for stabilizing construction equipment. *As conditioned, this criterion is met.*

(6) Where existing vegetation has been removed, or the original land contours disturbed, the site shall be revegetated, and the vegetation shall be established as soon as practicable. Nuisance plants, as identified in MCC 39.5580 Table 1, may be removed at any time. Interim erosion control measures such as mulching shall be used to avoid erosion on bare areas. Nuisance plants shall be replaced with non-nuisance plants by the next growing season.

Figure 3.



Staff: As discussed previously within this Section, existing vegetation has been removed without review from the County. Therefore, to ensure that revegetation occurs as soon as practical, a condition will be required that the Mitigation Plan be implemented upon approval

of the Erosion and Sediment Control (ESC) permit and within 1 year of the decision becoming final. *As conditioned, this criterion is met.*

(7) Prior to construction, the Water Resource Area shall be flagged, fenced or otherwise marked and shall remain undisturbed except as otherwise allowed by this Overlay. Such markings shall be maintained until construction is complete.

Staff: A condition of approval will be required that prior to construction, the Water Resource Area shall be flagged, fenced or otherwise marked and shall remain undisturbed except as otherwise allowed through mitigation outlined in the Report. Such markings shall be maintained until construction is complete. *As conditioned, this criterion is met.*

(8) Stormwater quantity control and quality control facilities:

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

Staff: The applicant has included a Storm Water Drainage Control Certificate reviewing the development and signed by Kelli Grover, Registered Professional Engineer (Exhibit A.11 and A.12). The Certificate recommends the use of gutter, downspout, and splash block drainage control system for the subject property. The system will outfall more than 100 feet from Kelly Creek as it storm water disperses from the splash blocks and sheet flows into vegetated areas that exist or will be restored between the banks of Kelly Creek and the primary dwelling, ADU, and garage. This system should ensure that the stormwater be managed as to not increase the flow to the stream above pre-development levels. *This criterion is met.*

(F) Mitigation - Mitigation shall be required to offset the impacts of development within the SEC-wr. This subsection section establishes how mitigation can occur.

(1) Mitigation Sequence. Mitigation includes avoiding, minimizing or compensating for adverse impacts to regulated natural resource areas.

(a) When a proposed development could cause adverse impacts to a natural resource area, the preferred sequence of mitigation as defined in 1 through 5 below shall be followed unless the applicant demonstrates that an overriding public benefit would warrant an exception to this preferred sequence.

- 1. Avoiding the impact altogether by not taking a certain action or parts of actions on that portion of the site which contains the regulated natural resource area;**
- 2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation;**
- 3. Compensating for the impact by repairing, rehabilitating, or restoring the affected environment;**
- 4. Compensating for the impact by replacing, enhancing or providing substitute resources or environments on-site.**

5. **Compensating for the impact by replacing, enhancing or providing substitute resources or environments off-site.**
- (b) When evaluating potential impacts to the natural resource, the County may consider whether there is an overriding public benefit, given:**
1. **The extent of the public need for the proposed development;**
 2. **The functional values of the Water Resource Area that may be affected by the proposed development;**
 3. **The extent and permanence of the adverse effects of the development on the Water Resource Area, either directly or indirectly;**
 4. **The cumulative adverse effects of past activities on the Water Resource Area, either directly or indirectly; and**
 5. **The uniqueness or scarcity of the Water Resource Area that may be affected.**

Staff: The applicant did not follow the mitigation sequence as required as the development occurred without review by the County. The sequence of avoiding, then minimizing, and lastly compensating did not occur no analysis was conducted and no permits were sought for the development. As part of this application, the applicant is now proposing to begin at compensation. To compensate for the impacts, the applicant is proposing to repair, rehabilitate, and restore the affected environment on site due to the subject property being located entirely within the SEC-wr overlay. As the subject property is entirely in the SEC-wr overlay, the proposal is unable to avoid the impact altogether. *These criteria are met.*

(2) Compensatory Mitigation: General Requirements. As a condition of any permit or other approval allowing development which results in the loss or degradation of regulated natural resource areas, or as an enforcement action, compensatory mitigation shall be required to offset impacts resulting from the actions of the applicant or violator.

(a) Any person who alters or proposes to alter regulated natural resource areas shall restore or create natural resource areas equivalent to or larger than those altered in order to compensate for resource losses.

(b) The following ratios apply to the creation or restoration of natural resource areas. The first number specifies the amount of natural resource area to be created and the second specifies the amount of natural resource area to be altered or lost.

Creation (off-site)	2:1
Restoration (off-site)	1.5:1
Creation (on-site)	1.5:1
(Restoration (on-site)	1:1

(c) Only marginal or degraded water resource areas as described in Table 2 of this section may be the subject of a restoration project proposed as part of a Mitigation Plan.

(d) Highest priority sites for mitigation are marginal or degraded corridors that are closest to a natural drainage, and areas which will increase contiguous areas of standing trees, shrubs, and natural vegetation along drainages.

Staff: The subject application is due to an enforcement action against the property owner. Work was completed without review. In addition, new development will occur within 100 feet of the stream. The applicant is proposing restoration of natural resources areas on the property to offset the impacts. As such, the applicant is restoring (on-site) areas which have been degraded. A site analysis was done by Jim Barnes, Cascadia Ecological Services, Inc. to identify the existing conditions on the subject property. Site visits were made on January 21, 2020. The existing conditions characterize the riparian/vegetated corridors as:

“There is a limited woody shrub layer on the property within the buffer of Kelly Creek. However, there are mature Douglas fir (*Pseudotsuga menziesii*) and Western red cedar (*Thuja plicata*) trees growing along the streambank. Most of the buffer consists of grasses and other herbaceous plants.” (Exhibit A.16).

Although the Report did not identify degraded, marginal, and good corridors, the Report indicates that the area along the streambank has a combination of native trees and is vegetated. Site photos #4 and #5 confirm that this area is vegetated and contains native trees. Areas with only a woody shrub layer and limited to no tree cover would qualify as degraded or marginal depending on the level of existing tree canopy. The report does not identify the amount of missing tree canopy for areas away from the streambank. Within this degraded area, there was placement of fill that likely came from the trenching of the sewer pipe, which resulted in the enforcement action. As discussed in the Report, this fill is calculated at approximately 550 sq. ft. in area. The Report however does not discuss the previous development or proposed development that has and will occur on the subject property.

Table 2 – Total Area of Disturbance within the SEC-wr

Development	Square Feet
Carport	915.00
3” ABS Pipe from ADU	55.00
3” ABS Pipe from SFD	25.00
4” ABS pipe to sewer line lateral	106.00
Porch Addition on SFD	90.00
Addition to SFD	332.50
Fill	550.00
Total Development	2,073.50

In reviewing the site plan and comparing aerial photos, measurements were taken to calculate all of the development requiring mitigation. As calculated in Table #2 above, an additional 1,523.50 sq. ft. of mitigation area is required to meet the 1:1 ratio. Areas closest to the stream and that are degraded or marginal must be improved to a “Good Corridor” condition as defined in Table 2 of MCC 39.5800(F)(3).

A list and quantity of plants is also included in the Report. The report recommended the following to be planted to ensure that these areas be restored to better condition.

Scientific Name	Common Name	Size	Quantity
<i>Thuja plicata</i>	western red cedar	1-gallon	6
<i>Oemleria cerasiformis</i>	indian plum	1-gallon	10
<i>Mahonia aquafolium</i>	Oregon grape	1-gallon	10
<i>Rosa nutkana</i>	Nootka rose	1-gallon	8
Total			34

Exhibit A.16

A list of seed mix was also included in the Report to be planted to ensure that these areas be restored to equal or better condition.

Scientific Name	Common Name	PLS lbs. Needed	Quantity
<i>Elymus glaucus</i>	Blue wild rye	26.1	25%
<i>Hordeum brachyantherum</i>	Meadow barley	13.0	70%
<i>Bromus carinatus</i>	California brome	4.3	5%
Total PLS lbs.		43.4	100%

Exhibit A.16

However, the list is reflective of 550 sq. ft. of disturbance. Additionally, as part of the Report, Figure 4 delineates the location of the 550 sq. ft. of proposed mitigation area (Exhibit A.16, page 13). The Report provides specifications for the type of plantings to be completed in this area. This Mitigation Plan will need to be revised to reflect the additional mitigation not considered. Therefore, a condition will be required that the Report be revised or revised to reflect an additional 1,523.50 sq. ft. of mitigation plantings that will be needed to address a total of 2,073.50 sq. ft. of impact area. *As conditioned, this criterion is met.*

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

Staff: The applicant is not proposing to conduct off-site mitigation; therefore, this criterion is not applicable. *This criterion is not applicable.*

(f) Compensation shall be completed prior to initiation of development where possible.

Staff: As discussed in the Report by Jim Barnes, the compensation will be completed based on a schedule. As stated in the Report, “The restoration and enhancement areas on the property will be planted during the dormant season, which generally extends until March” (Exhibit A.16). A condition of approval has been included that requires all mitigation work and plantings to be completed within one (1) year of this report becoming final. *As conditioned, this criterion is met.*

(g) In order to ensure that on-site mitigation areas are established and maintained, the property owner shall record the mitigation plan approval in the deed records of Multnomah County. In order to ensure that off-site mitigation areas will be protected in perpetuity, the owner shall cause a deed restriction to be placed on the property where the mitigation is

required. The deed restriction shall be irrevocable unless a statement of release is signed by an authorized representative of Multnomah County.

Staff: A condition of approval will be required that the property owner record the revised mitigation plan approval in the deed records of Multnomah County, in order to ensure that on-site mitigation areas are established and maintained. *As conditioned, this criterion is met.*

(3) Mitigation Plan Standards - Natural resource mitigation plans shall contain the following information:

- (a) A description of adverse impacts that could be caused as a result of development.**
- (b) An explanation of how adverse impacts to resource areas will be avoided, minimized, and/or mitigated.**
- (c) A list of all responsible parties including, but not limited to, the owner, applicant, contractor or other persons responsible for work on the development site.**
- (d) A map drawn to scale, showing where the specific mitigation activities will occur.**
- (e) An implementation schedule, including timeline for construction, mitigation, mitigation maintenance, monitoring, reporting and a contingency plan. All in-stream work in fish-bearing streams must be done in accordance with the Oregon Department of Fish and Wildlife in-stream timing schedule.**

**Table 2
Riparian/Vegetated Corridor Standards**

Existing Riparian/Vegetated Corridor Condition	Requirements of Riparian/Vegetated Corridor Protection, Enhancement, and/or Mitigation
<p>Good Corridor</p> <p>Combination of native trees, shrubs, and groundcover covering greater than 80% of the area</p> <p>and</p> <p>Greater than 50% tree canopy exists (aerial measure)</p>	<p>Provide certification, pursuant to the procedures provided by the Planning Director, by a professional ecologist/biologist that the riparian/ vegetated corridor meets condition criteria.</p> <p>Remove any invasive non-native or nuisance species and debris and noxious materials within the corridor by hand.</p> <p>Provide the County with a native plant revegetation plan appropriate to the site conditions developed by an ecologist/biologist or landscape architect to restore condition and mitigate any habitat or water quality impacts related to development. See Planning Director procedures.</p> <p>Revegetate impacted area per approved plan to re-establish “good” corridor conditions</p>

Existing Riparian/Vegetated Corridor Condition	Requirements of Riparian/Vegetated Corridor Protection, Enhancement, and/or Mitigation
<p>Marginal Corridor</p> <p>Combination of native trees, shrubs, and groundcovers covering 50%-80% of the area</p> <p>and/or</p> <p>26-50% tree canopy exists (aerial measure)</p> <p>(Restoration up to “good” corridor required)</p>	<p>Provide certification, pursuant to the procedures provided by the Planning Director, by a professional ecologist/biologist that the riparian/vegetated corridor meets condition criteria.</p> <p>Remove any invasive non-native or nuisance species and debris and noxious materials within the corridor by hand or mechanically with small equipment, as appropriate to minimize damage to existing native vegetation.</p> <p>Provide County with a native plant revegetation plan appropriate to the site conditions developed by an ecologist/biologist or landscape architect to restore to a good corridor condition. See Planning Director procedures.</p> <p>Vegetate corridor to establish “good” corridor conditions</p>
<p>Degraded Corridor</p> <p>Combination of native trees, shrubs, and groundcovers covering is less than 50% of the area</p> <p>and/or</p> <p>Less than 25% tree canopy exists (aerial measure)</p> <p>and/or</p> <p>Greater than 10% of the area is covered by invasive, non-native species</p> <p>(Restoration up to “good” corridor required)</p>	<p>Provide certification, pursuant to the procedures provided by the Planning Director, by a professional ecologist/biologist that the riparian/vegetated corridor meets condition criteria.</p> <p>Remove any invasive non-native or nuisance species and debris and noxious materials within the corridor by hand or mechanically as appropriate.</p> <p>Provide County with a native plant revegetation plan appropriate to the site conditions developed by an ecologist/biologist or landscape architect to restore to a good corridor condition. See Planning Director procedures.</p> <p>Vegetate corridor to establish “good” corridor conditions</p>

Staff: The applicant has included a natural resource mitigation plan. The Mitigation and Restoration Plan (“Report”) was prepared by Jim Barnes, Cascadia Ecological Services, Inc. in January 2020 and revised in November 2020 (Exhibit A.3 and A.16). The adverse impacts are discussed in the Existing Conditions portion of the Report (Exhibit A.16, Page X). An explanation of how adverse impacts to resource areas will be avoided, minimized, and/or mitigated are contained in the Critical Areas Restoration Strategy and Objectives portion of the Report as is the Implementation Schedule. *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 for Water Resources (SEC-wr) permit in the Rural Residential (RR) zone to:

1. Authorize previous ground disturbing activities that were not reviewed by the County and remove fill earth materials placed in the area adjacent to Kelly Creek that were associated with that ground disturbance;
2. Convert an existing two story accessory building into the primary single-family dwelling. Legalize an unpermitted 332.50 sq. ft. expansion to this building that was not reviewed by the County and add a 9' x 10' covered porch to this building;
3. Convert the existing 1918-year single-family dwelling into an accessory dwelling unit (ADU);
4. Demolish and remove a carport attached to an 1918-year accessory "garage" building;
5. Trench a sewer pipe line from the primary dwelling and ADU in order to connect to a sewer lateral north of the subject property;
6. Construct a wall to block off the northern driveway;
7. Implement a mitigation plan and plantings in the Significant Environmental Concern for Water Resources (SEC-wr) overlay.

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

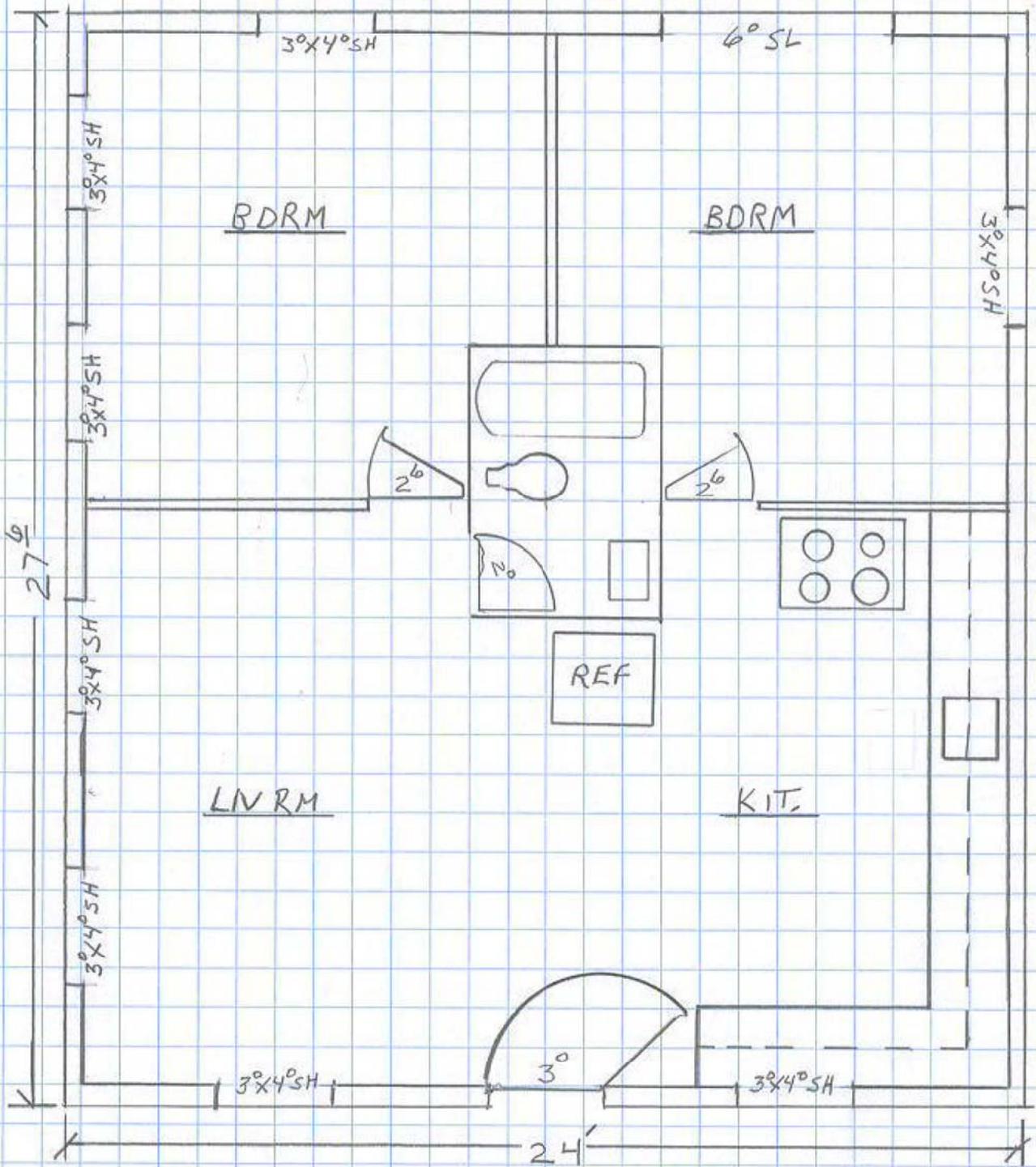
Exhibits with a "*" after the exhibit # have been included as part of the mailed decision. Those exhibits have been reduced to a size of 8.5" x 11" for mailing purposes. All other exhibits are available for review in Case File T2-2021-14621 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	2	General Application Form	05/17/2021
A.2	1	Site Plan (11" x 17")	05/17/2021
A.3	1	Mitigation and Restoration Plan prepared by Jim Barnes, Cascadia Ecological Services, Inc. on January 22, 2020	05/17/2021
A.4	8	Grading and Erosion Control Worksheet	05/17/2021
A.5	4	Pre-Filing Meeting Summary Notes Response	06/24/2021

A.6	2	Building Elevations <ul style="list-style-type: none"> • Sketch A – End Elevation View • Sketch B – Existing Ceiling System 	06/24/2021
A.7	6	Floor Plans (8.5” x 11”) <ul style="list-style-type: none"> • Sketch C – Existing Floor System southern building • Sketch D – Existing Conditions – Plan View • Sketch E – Existing Conditions for 1st Story – Plan View • Sketch F – Brace Panels for Added Room Addition • Lower Floor • Second Story 	06/24/2021
A.8	3	Floor Plans and Elevations of proposed single-family dwelling (8.5” x 11”) <ul style="list-style-type: none"> • Page 1 – Second Floor Plan • Page 2 – Building Elevations • Page 3 – First Floor Plan 	06/24/2021
A.9	38	Building Construction Structural Calculations	06/24/2021
A.10*	1	Floor Plans of proposed Accessory Dwelling Unit (ADU) (8.5” x 11”)	06/24/2021
A.11	18	Storm Water Drainage Control Certificate	06/24/2021
A.12	1	Storm Water Site Plan from Firwood Design (11” x 17”)	06/24/2021
A.13	6	Fire Service Agency Review	06/24/2021
A.14	6	Multnomah County Permit #870677	06/24/2021
A.15	1	Record of Survey #66641	06/24/2021
A.16	16	Mitigation and Restoration Plan prepared by Jim Barnes, Cascadia Ecological Services, Inc. on November 3, 2020	11/17/2021
A.17*	2	Revised Site Plan	12/01/2021
A.18*	2	Revised Floor Plan of proposed single-family dwelling	12/08/2021
A.19*	1	Revised Building Elevations of proposed single-family dwelling	12/08/2021
A.20*	2	Garage Plans	12/08/2021
‘B’	#	Staff Exhibits	Date
B.1	2	Division of Assessment, Recording, and Taxation (DART): Property Information for 1S3E19CA -01400 (Alt Acct #: R993190380)	05/17/2021
B.2	1	Division of Assessment, Recording, and Taxation (DART): Map with 1S3E19CA -01400 (Alt Acct #: R993190380) highlighted	05/17/2021
B.3	6	Pre-file Meeting Notes for PF-2019-12305	06/10/2021

B.4	6	Land use case #T2-2018-11222	06/10/2021
B.5	5	UR-2019-11483 Stop Work Order	06/10/2021
B.6	3	Site Visit Photos taken on January 18, 2019	06/10/2021
B.7	1	Aerial Photo from Summer of 2020	06/10/2021
B.8	1	Aerial Photo from 1974	06/10/2021
B.9	1	Aerial Photo from 1977	06/10/2021
B.10	1	Aerial Photo from 1986	06/10/2021
B.11	1	Aerial Photo from Summer of 1996	06/10/2021
B.12	1	Google Street View Photo from November 2019	06/10/2021
B.13	5	EP-2021-14231	07/15/2021
B.14	41	Revised EP-2021-14231	07/15/2021
B.15	1	Urban Growth Boundary Expansion History Map	10/14/2021
'C'	#	Administration & Procedures	Date
C.1	6	Incomplete letter	06/11/2021
C.2	2	Incomplete letter #2	07/16/2021
C.3	1	Complete letter (day 1 is July 12, 2021)	08/06/2021
C.4	1	Extension of 120-Day Deadline	10/15/2021
C.5	11	Opportunity to Comment and mailing list	10/15/2021
C.6	1	Extension #2 of 120-Day Deadline	11/30/2021
C.7	19	Administrative "Short" Decision and mailing list	03/07/2022
C.8	48	Administrative Decision and mailing list	03/07/2022

ADU UNIT



16970 SE FOSTER RD.
ADU UNIT
660 SQ. FT.
1/4 SCALE

EXHIBIT
A.10

16970 SE FOSTER RD.
GRESHAM OR 97080

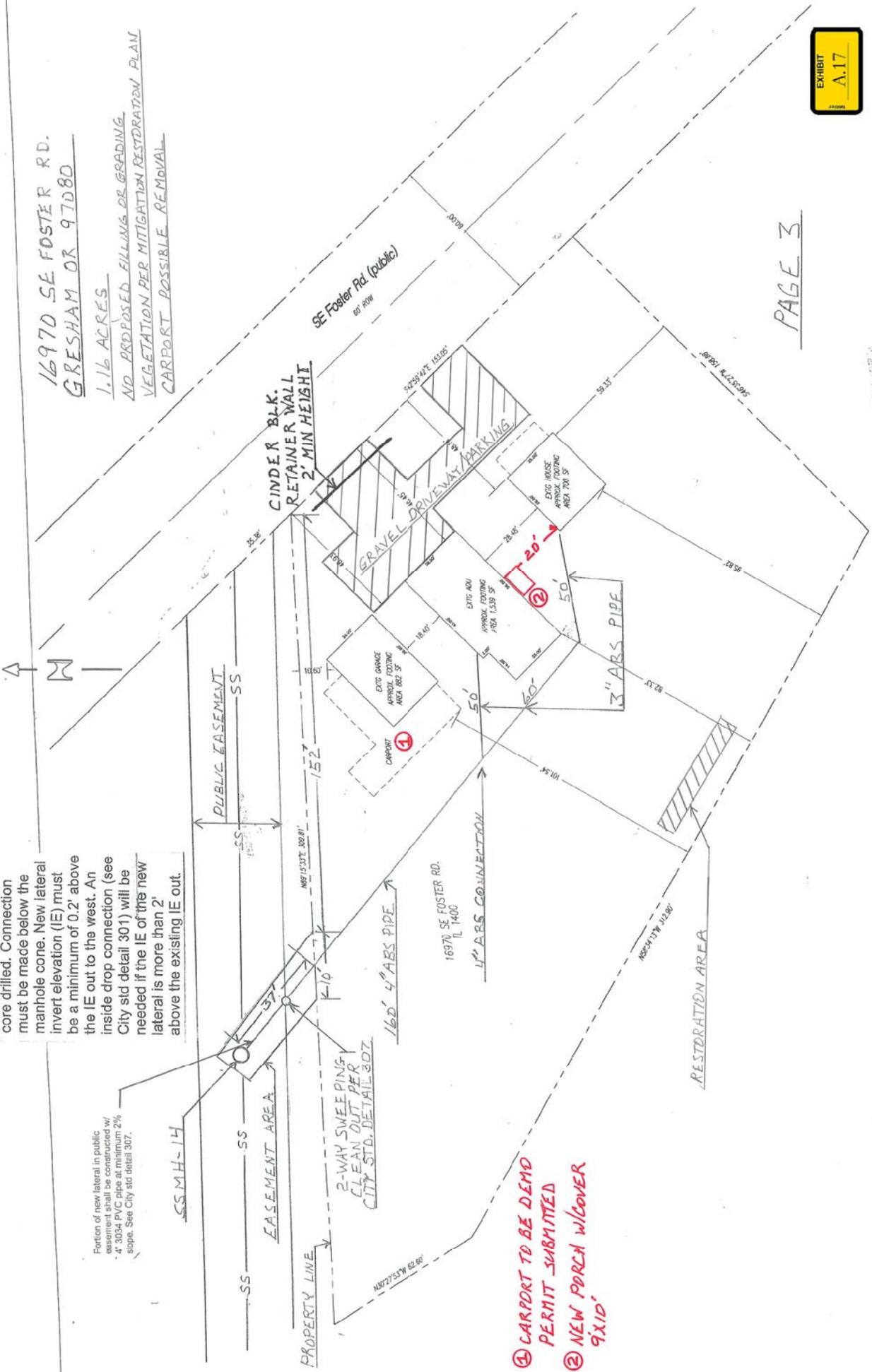
1.16 ACRES

NO PROPOSED FILLING OR GRADING
VEGETATION PER MITIGATION RESTORATION PLAN
CARPORT POSSIBLE REMOVAL

PAGE 3

New lateral connection to existing SSMH-14 shall be core drilled. Connection must be made below the manhole cone. New lateral invert elevation (IE) must be a minimum of 0.2' above the IE out to the west. An inside drop connection (see City std detail 301) will be needed if the IE of the new lateral is more than 2' above the existing IE out.

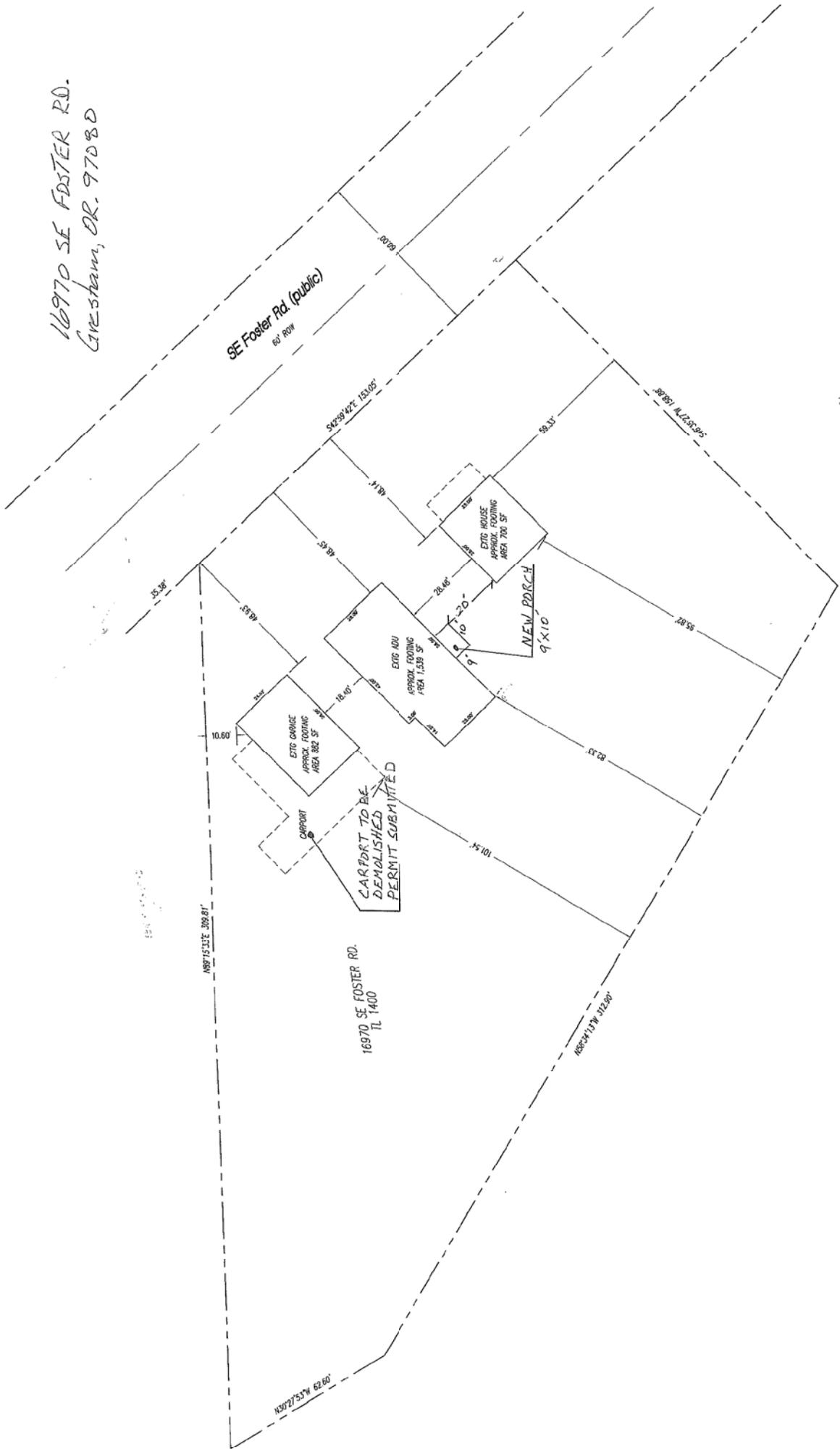
Portion of new lateral in public easement shall be constructed w/ 4" 3034 PVC pipe at minimum 2% slope. See City std detail 307.



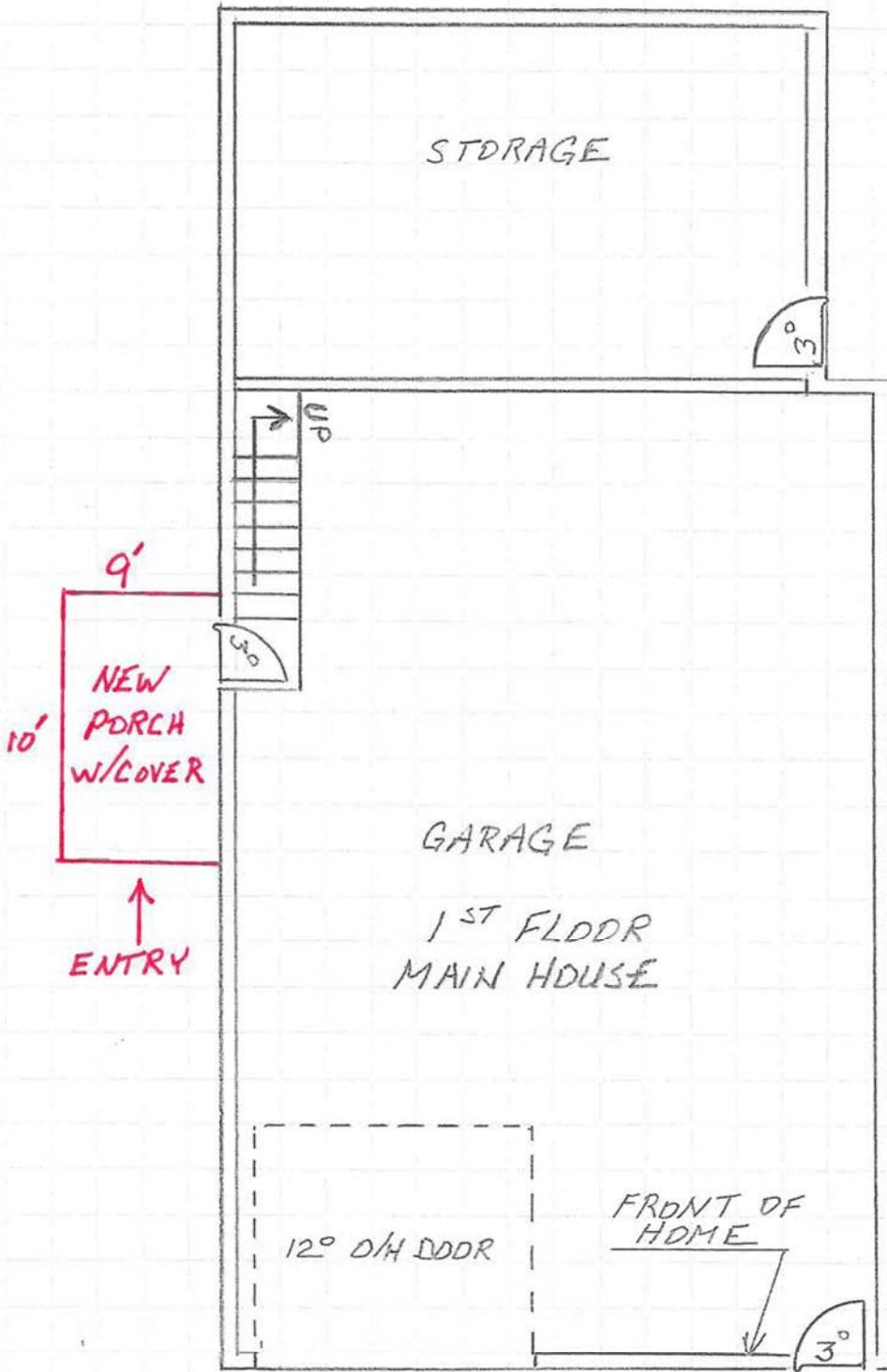
- ① CARPORT TO BE DEMO PERMIT SUBMITTED
- ② NEW PORCH W/COVER 9'x10'

DATE: 05/11/2014

16970 SE FOSTER RD.
Gresham, OR. 97080



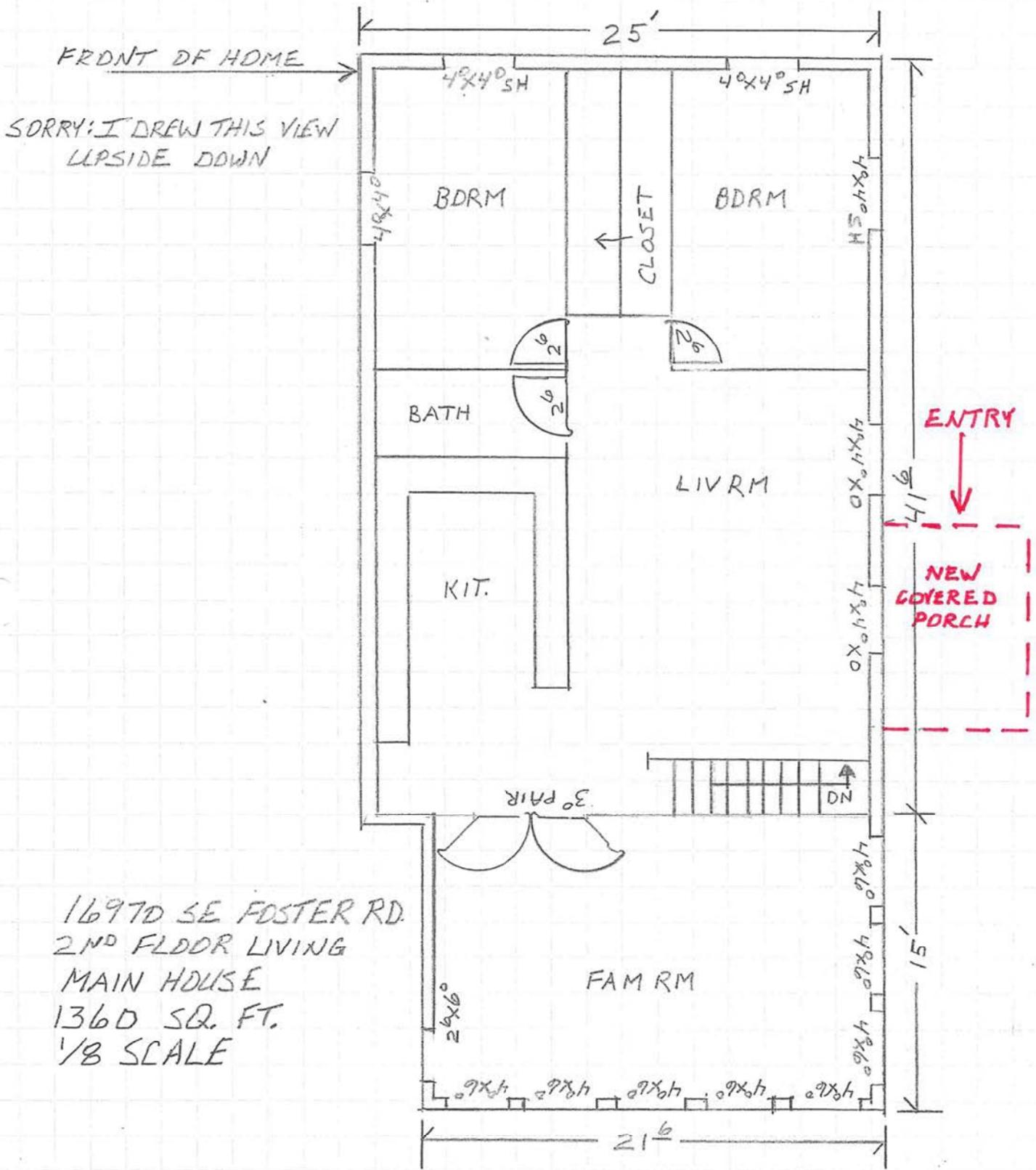
16970 SE FOSTER RD.
GRESHAM, OR. 97080



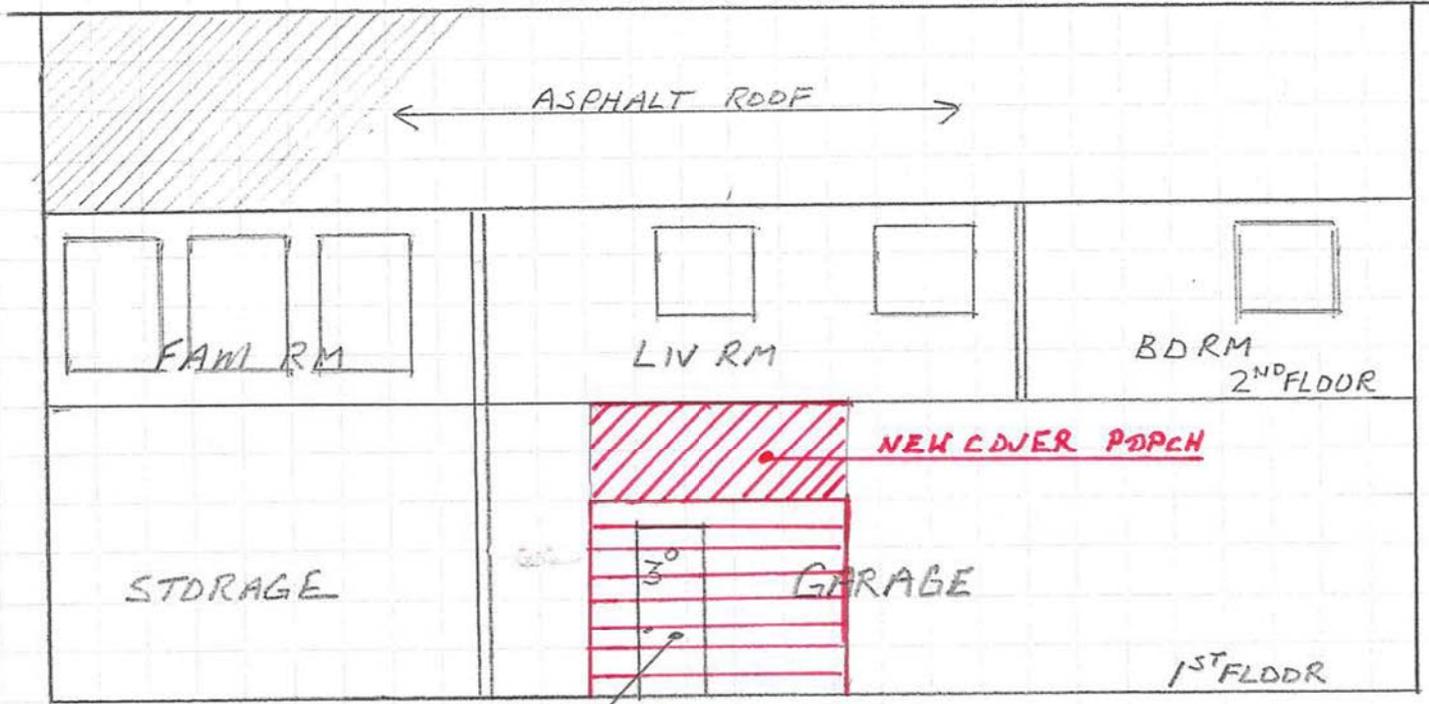
1697D SE FOSTER RD
1/8 SCALE

EXHIBIT
A.18

MAIN HOME



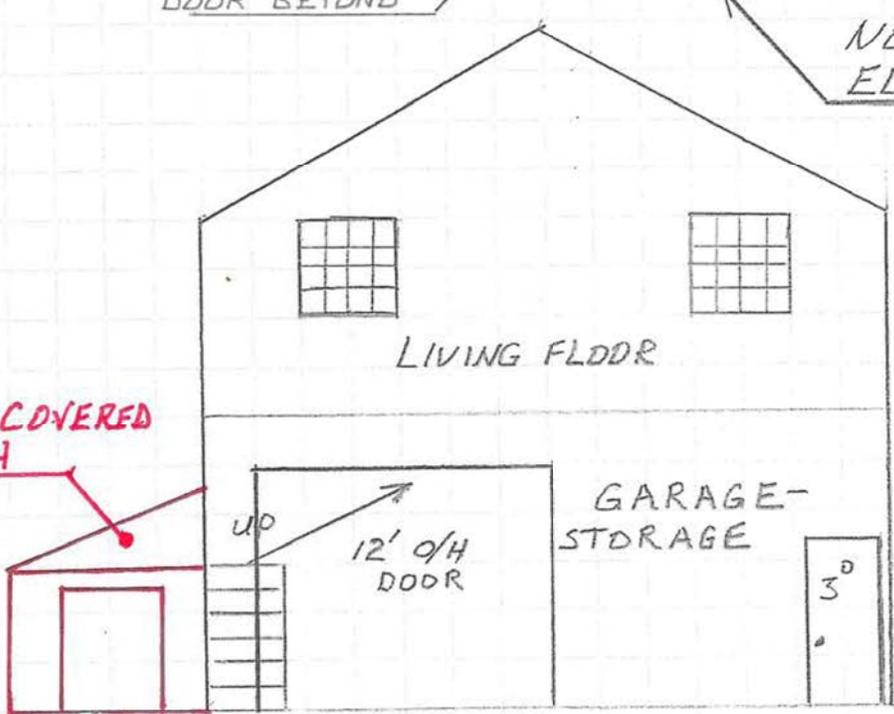
1697D SE FOSTER RD.
2ND FLDR LIVING
MAIN HOUSE
1360 SQ. FT.
1/8 SCALE



DOOR BEYOND

NORTH ELEVATION

NEW COVERED PORCH



EAST ELEVATION

16970 SE FOSTER RD
 MAIN HOUSE
 1360 SQ. FT.
 1/8 SCALE

EXHIBIT
 A.19

