
NOTICE OF DECISION

Case File: T2-2021-15101

Permit: Significant Environmental Concern for Streams (SEC-s)

Applicants: Wallace Leake, ES&A, LLC **Owners:** Usman Mughal and Zahara Baloch

Location: 11065 NW Laidlaw Road, Portland **Map, Tax lot:** 1N1W22DC -00200
Tax Account #: R090603090 **Property ID #:** R118544

Base Zone: Rural Residential (RR)

Overlays: Significant Environmental Concern for Streams (SEC-s)
Geologic Hazards (GH)

Proposal Summary: Requests for a Significant Environmental Concern for Streams (SEC-s) permit to resolve code compliance case, ZV-2015-4455 in order authorize development activities that were not previously reviewed by the County. The development activities were in deviation from the approval of a previous land use permit #T2-2013-2989. No development occurred within the Geologic Hazards (GH) overlay.

Decision: Approved with Conditions

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Wednesday, April 6, 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: Wednesday, March 23, 2022

Instrument Number for Recording
Purposes: #2012-130605

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Applicable Approval Criteria:

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

Multnomah County Code (MCC): General Provisions: MCC 39.1515 Code Compliance and Applications, MCC 39.2000 Definitions, MCC 39.3005 Lot of Record – Generally, MCC 39.3090 Lot of Record – Rural Residential (RR)

Rural Residential (RR): MCC 39.4360(A) Allowed Uses - Residential use consisting of a single-family dwelling on a Lot of Record

Significant Environmental Concern: MCC 39.5510 Uses; SEC Permit Required, MCC 39.5750 Criteria for Approval of SEC-s Permit –Streams

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).

1. Permit Expiration – This land use permit shall expire as follows:
 - a. Within one (1) year of the date of the final decision, unless the property owner has completed the initial mitigation work (ground preparation, nuisance plant removal, and plant installation) and requirements of the Environmental Site Assessment (“Mitigation Plan”) and Planting Plan as exhibited in Exhibit A.3 and A.4. [MCC 39.1170(A) and MCC 39.1185(E)]

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

2. 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.2 through A.4, 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. Within six (6) months of the date of the final decision, the property owners 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 7 of this Notice of Decision and Exhibits A.3 and A.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. Obtain a Flood Development (FD) permit for the culvert installed within a watercourse as shown in Exhibit A.2 and submitted as land use case# T1-2021-15102. [MCC 39.1515]
4. The property owner(s), or their representative shall comply with the following limitations on the development project:
 - a. Any new ground disturbing activities (i.e., excavating, filling, or combination thereof) within the Stream Conservation Area is prohibited. Only the mitigation work (ground preparation, nuisance plant removal, and plant installation) as described in Exhibit A.3 and shown in Exhibit A.4 is permitted and must be completed by hand without the use of motorized equipment. Any work causing ground disturbance must be accomplished between June 15, 2022 and September 15, 2022. Revegetation of the disturbed ground

with the ground cover shall be completed by October 15, 2022 [MCC 39.5750(E)(5) and MCC 39.5750(E)(6)]

5. The property owner(s) or their representative shall:

- a. Commence mitigation by implementing the Mitigation Plan. The mitigation plan, as discussed in Planting Table 1 and Table 2 of MCC 39.5750(D) outlines the minimum restoration requirements, which includes a total of 8,313 sq. ft. of mitigation work. The mitigation includes the planting of 75 native trees (Red Alder, Western red cedar, Shore pine, Douglas-fir, Big-leaf maple) and 186 shrubs (Osoberry, Red/blue elderberry, Snowberry, Oceanspray, Serviceberry, Cascara, Vine maple, Sword fern). The trees and shrubs are shall be planted on 10- to 12-foot centers and the shrubs planted on 6- to 8-foot centers. [MCC 39.5750(D)(1)]

- i. The applicant shall send an email to Staff Planner, Rithy Khut at rithy.khut@multco.us once the mitigation work and plantings are complete.

6. At the time that the initial mitigation work (ground preparation, nuisance plant removal, and plant installation) is completed, the property owner(s) or their representative shall:

a. Provide a Post-Mitigation Report.

- i. The Post-Mitigation Report shall be prepared and signed by Environmental Science & Assessment, LCC or by a party of similar educational and vocational training. The post-mitigation report shall confirm the mitigation has been completed in compliance with approved designs.

ii. The Post-Mitigation Report shall include:

1. Dated pre- and post-construction photos taken of the Mitigation Planting Area. The photos should clearly show the site conditions before and after construction.
 2. Certification that the mitigation work has/will improve the stream area as required by the Mitigation Plan. [MCC 39.5750(D)(1)]

b. Monitor the Mitigation Area and provide annual monitoring reports as described in Exhibit A.3 and shown in Planting Plan in Exhibit A.4 to determine whether each type of tree and shrub planted continues to live, thrive, and grow.

- i. The monitoring shall be for a minimum period of five (5) growing seasons after completion of all the initial plantings. [MCC 39.1170 and MCC 39.5750(D)(1)(d)]

1. 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 39.5750(D)(1)(d)]

- ii. The annual reports shall be for a minimum period of five (5) growing seasons after completion of all the initial plantings. [MCC 39.1170 and MCC 39.5750(D)(1)(d)]

1. The annual monitoring report shall include the following information:

- a. The permit number, monitoring date, report year, and a determination or whether the site is meeting performance standard of Condition #6.a.i, and Condition #6.b.i.3 through #6.b.i.5 below.

- b. Current photographs of the Mitigation Area taken within the last 30 day prior to the report date.
 - c. 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.
 - d. 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. The replacements may be of a one-to-one replacement of a similar type and variety of native tree or native shrub that is more resilient to climate change, if justification is provided by Environmental Science & Assessment, LCC or by a party of similar educational and vocational training.
 - e. Any other information necessary or required to document compliance with the performance standard listed in Condition #5 and #6. [MCC 39.1170 and MCC 39.5750(D)(1)]
- 2. 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: "T2-2021-15101." [MCC 39.1170 and MCC 39.5750(D)(1)(d)]
- 3. 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 39.5750(D)(1)(d)]
- 4. Release of Monitoring Obligation: Monitoring is required until Land Use Planning has officially released the site from further monitoring. [MCC 39.1170 and MCC 39.5750(D)(1)(d)]
- 5. 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 39.5750(D)(1)(d)]
- 7. As an on-going condition, the property owner shall:
 - a. Not store any hazardous materials as determined by DEQ within the Stream Conservation Area. [MCC 39.5750(F)(3)]
 - b. Ensure that nuisance plants in MCC 39.5580 Table 1 below, any plants listed in the latest edition of the Metro Nuisance Plant List and the Prohibited Plant List, and any plants listed in the latest edition of the State of Oregon Noxious Weed List not be planted or allowed to grow freely. None of these plants shall be used as landscape plantings on the subject property. All nuisance plants shall be kept removed from developed areas of the property. [MCC 39.5750(A)(1), 39.5750(F)(1), and MCC 39.5750(F)(2)]

Table 1 - Nuisance Plant List:

Common Name	<i>Scientific Name</i>
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>
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>

Common Name	<i>Scientific Name</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 Zoning Review may be made with Staff Planner, Rithy Khut. When ready for Zoning Review to be signed off by land use planning, the property owner(s) or their representatives 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/> or leave a message at 503-988-3582. 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 plans. Please ensure that any items required under, “Prior to starting the project as described...” are ready for land use planning review.

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

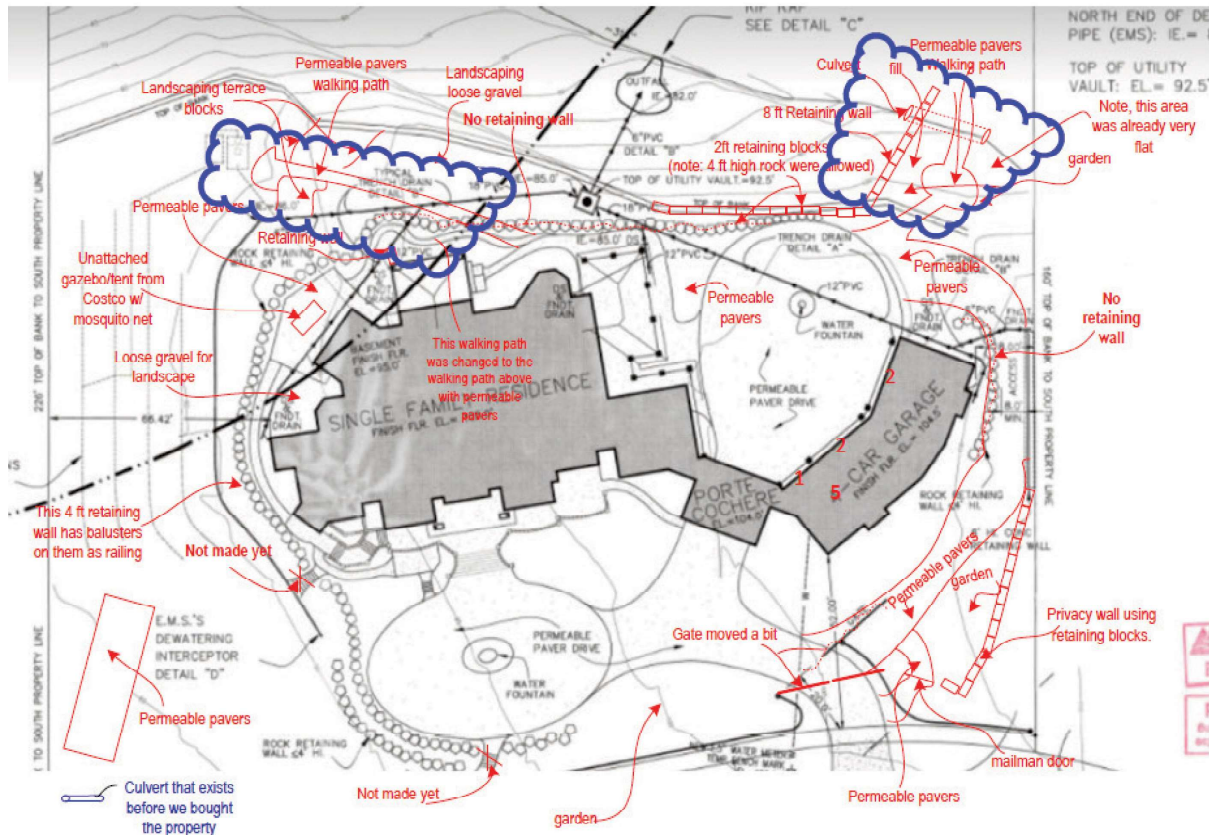
ORS Chapter 215 requires that if you receive this notice it must be promptly forwarded to the purchaser.

FINDINGS: 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 Streams (SEC-s) permit to resolve code compliance case, ZV-2015-4455 in order authorize development activities that were not previously reviewed by the County. The development activities were in deviation from the approval of a previous land use permit #T2-2013-2989.

Figure 1 – Redline Site Plan with Staff Highlights



As shown in Figure 1, the two highlighted areas (**blue cloud**) require review by the County. The highlighted area directly north of the single-family dwelling shows development that has been completed within the Significant Environmental Concern for Streams (SEC-s), which includes:

1. Permeable paver walking path
2. Landscaping terrace blocks

Additionally, the applicant was not able to implement the Mitigation Plan as required by T2-2013-2989. They are proposing a new plan to address the total impacts of the development of the dwelling and landscaping within the SEC-s. No development occurred in the Geologic Hazards (GH) overlay.

The second highlighted area, north of the garage, is not subject to the SEC-s. However, it will require a separate Flood Development permit. The Flood Development permit has been submitted under land use permit case# T1-2021-15102.

2.0 Property Description & History:

Staff: This application is for 11065 NW Laidlaw Road, Portland (“subject property”). The subject property is located along NW Laidlaw Road between NW North Road and NW Marcotte Road in unincorporated west Multnomah County in the area known as the West Hills Rural Area. The subject property is zoned Rural Residential (RR) and is approximately 4.79 acres in size. The property has multiple overlays on the property including Significant Environmental Concern for Streams (SEC-s) and Geologic Hazards (GH). The SEC-s covers the northern portion of the property and the GH covers portions in the middle of the property. Aerial photo review from 2021 shows the presence one large building on the subject property (Exhibit B.4).

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

Land Use / Building Permit #	Date Approved	Decision	Description
N/A	January 26, 2004	Approved	Demolition of all structures on the property
T1-05-029	March 8, 2006	Approved	Replace an existing single-family dwelling with a new single-family dwelling
T2-2013-2989	February 28, 2014	Approved	Significant Environmental Concern for Streams (SEC-s) and Hillside Development (HD) permits to construct a new single-family dwelling
BP-2014-3519	June 10, 2014	Approved	New single-family dwelling associated with T2-2013-2989
BP-2014-3737	October 23, 2014	Approved	Plan revision for new single-family dwelling associated with T2-2013-2989 and BP-2014-3519
BP-2015-3875	January 21, 2015	Approved	Plan revision for new single-family dwelling associated with T2-2013-2989, BP-2014-3519, and BP-2014-3737
BP-2016-4984	May 6, 2016	Approved	New photovoltaic accessory alternative energy system located on single-family dwelling

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-2015-4077	May 21, 2015	Non-permitted grading, ground disturbance, fill placement, construction and development activity in areas of the

Code Compliance Case #	Case Open Date	Description
	(Closed)	property that were not approved for development or that exceeds the level of development that was approved by permit T2-2013-2989
ZV-2015-4455	August 30, 2015 (Active)	Notice of Violation issued for the failure to obey a posted Stop Work Order and failure to start the permitting process to correct confirmed violations on the property. Stop Work Order posted for significant non-permitted grading and excavation work, non-permitted work within a streambed and work that exceeded the scope of approval of a land use permit issued for the property.

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.3. 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 (ZV-2015-4455) associated with this property. In the Pre-filing meeting (PF-2021-14608), a list of compliance issues were agreed upon and corrective action was suggested. The compliance issues relate to development that occurred within the SEC-s overlay that exceeded what was originally proposed in T2-2013-2989, the inability to implement the Mitigation Plan, and ground disturbance activities relating to the installation of a culvert within a waterbody, which requires a Flood Development permit.

The property owner entered into a Voluntary Compliance Agreement with the County on August 7, 2021 to allow for the sequencing of permits (Exhibit B.10). This SEC-s application is the first part of a sequencing of permits needed to resolve the code compliance issues related to development activities in the SEC-s overlay and within a waterbody. The second part of the sequence would be obtaining a Type 1 Flood Development permit for the development that occurred in the waterbody.

As discussed in this decision, when the applicant meets all of the conditions of this Decision including the obtaining of the Type 1 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:

* * *

§ 39.3090 LOT OF RECORD – RURAL RESIDENTIAL (RR).

* * *

Staff: The subject property was found to satisfied all applicable zoning laws and all applicable land division laws in Land Use Case #T2-2013-2989 (Exhibit B.4). The subject property has not changed configuration since that decision was issued; therefore, it remains a Lot of Record. *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.

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

Staff: The applicant previously requested a permit authorizing the construction of a new single-family dwelling. In land use case #T2-2013-2989, a residential use consisting of a single-family dwelling on a Lot of Record was approved with conditions. The single-family dwelling and a majority of the associated development has been constructed; however, the applicant failed to perfect the permit as development occurred outside of the permit parameters and certain conditions of approval were not met in a timely manner. Therefore, applicant is requesting review of the development associated with the residential use that occurred that was not previously reviewed by the County and the inability to implement the Mitigation Plan from land use case #T2-2013-2989.

7.0 Significant Environmental Concern (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: The applicant is requesting a permit to resolve code compliance case, ZV-2015-4455 in order authorize development activities that were not previously reviewed by the County that occurred in the Significant Environmental Concern for Streams (SEC-s) overlay. The development activities were in deviation from the approval of a previous land use permit #T2-

2013-2989. The development activities include the installation of a permeable-paver walking path and landscaping terrace blocks are located within the SEC-s overlay, they are subject to the SEC permit requirements. Additionally, the property owner was unable to implement the Mitigation Plan from land use case #T2-2013-2989, so they are requesting development associated with the implementation of a new plan. They have met the approval criteria as described in this decision; however, 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 § 39.5750- CRITERIA FOR APPROVAL OF SEC-S PERMIT –STREAMS.

* * *

7.2.1 (B) Except for the exempt uses listed in MCC 39.5515, no development shall be allowed within a Stream Conservation Area unless approved by the Approval Authority pursuant to the provisions of MCC 39.5750 (C) through (F).

Staff: The applicant is requesting a permit to authorize the development activities that were not previously reviewed by the County and development related to the implementation of a new Mitigation Plan. The development is associated with residential use, as discussed in Section 6.1. The use is not an exempt use listed in MCC 39.5515. Therefore, the development is subject to the SEC-s permit requirements, which are discussed below.

7.2.2 (C) In addition to other SEC Permit submittal requirements, any application to develop in a Stream Conservation Area shall also include:

- (1) A site plan drawn to scale showing the Stream Conservation Area boundary, the location of all existing and proposed structures, roads, watercourses, drainageways, stormwater facilities, utility installations, and topography of the site at a contour interval equivalent to the best available U.S. Geological Survey 7.5' or 15' topographic information;**
- (2) A detailed description and map of the Stream Conservation Area including that portion to be affected by the proposed activity. This documentation must also include a map of the entire Stream Conservation Area, an assessment of the Stream Conservation Area's functional characteristics and water sources, and a description of the vegetation types and fish and wildlife habitat;**
- (3) A description and map of soil types in the proposed development area and the locations and specifications for all proposed draining, filling, grading, dredging, and vegetation removal, including the amounts and methods;**
- (4) A study of any flood hazard, erosion hazard, and/or other natural hazards in the proposed development area and any proposed protective measures to reduce such hazards as required by subsection (E) (5) below;**
- (5) A detailed Mitigation Plan as described in subsection (D), if required; and**
- (6) A description of how the proposal meets the approval criteria listed in subsection (D) below.**

Staff: The applicant has included the required submittal requirements above.

- (1) The site plan is labeled as Exhibit A.2
- (2) A detailed description and map are labeled as Exhibit A.2 and A.3
- (3) A description and map of soil types are labeled as Exhibit A.3

- (4) A study of flood hazard, erosion hazard, and/or other natural hazards is labeled as Exhibit A.3
- (5) A Mitigation Plan is labeled as Exhibit A.3 and A.4.
- (6) A description of how the proposal meets the approval criteria listed in subsection (D) below is labeled as Exhibit A.2, A.3, and A.4.

These submittal requirements are met.

- 7.2.3 (D) For the protected stream resources, the applicant shall demonstrate that the proposal:**
- (1) Will enhance the fish and wildlife resources, shoreline anchoring, flood storage, water quality and visual amenities characteristic of the stream in its pre-development state, as documented in a Mitigation Plan. A Mitigation Plan and monitoring program may be approved upon submission of the following:**
 - (a) A site plan and written documentation which contains the applicable information for the Stream Conservation Area as required by subsection (C) above;**
 - (b) A description of the applicant's coordination efforts to date with the requirements of other local, State, and Federal agencies;**
 - (c) A Mitigation Plan which demonstrates retention and enhancement of the resource values addressed in subsection (D) (1) above;**
 - (d) An annual monitoring plan for a period of five years which ensures an 80 percent annual survival rate of any required plantings.**

Staff: The applicant has provided a narrative, site plan, and a report that discusses how the proposal will enhance the fish and wildlife resources, shoreline anchoring, flood storage, water quality, and visual amenities characteristic of the stream in its pre-development state. The Environmental Site Assessment ("Mitigation Plan") was written by Environmental Science & Assessment, LCC (Exhibit A.3). The Mitigation Plan includes a site plan and other written documentation that addresses the approval criteria above.

Based on available information, the consultant assessed the existing conditions, delineated water resources on the site, and provided mitigation strategies to offset the development impacts. The stream resource is an intermittent tributary of Ward Creek. The Protected Stream and Stream Conservation Area contains developed areas that were authorized under land use case T2-2013-2989, and zoning approvals BP-2014-3519, BP-2014-3737, and BP-2015-3875. The area also contains developed areas that exceeded those reviews and riparian non-forested areas. The developed areas that exceeded review include the placement of gravel, a walkway constructed of pavers, and landscaping terracing blocks. The remaining riparian non-forested areas were supposed to be an area for mitigate measures related to the construction of the single-family dwelling. That area contains exotic invasive and noxious weeds.

In land use case T2-2013-2989, the impacts to the SEC-s were calculated at 6,828 sq. ft. The impacts were from new impervious surfaces, landscaping, the construction of a drainfield, and a portion of the single-family dwelling. The applicant proposed 18,734 sq. ft. of invasive species removal and 6,828 sq. ft. of mitigation planting. The additional impacts of the placement of gravel, a walkway constructed of pavers, and landscaping terracing blocks totals 1,485 sq. ft. The applicant is proposing a 1:1 mitigation strategy to offset the permanent impacts of the added development.

In order to mitigate the impacts of the development activities and account of the mitigation that did not occur the applicant is proposing multiple measures. The Mitigation Report recommends an addition of 1,485 sq. ft. of mitigation for a total mitigation of 8,313 sq. ft. The mitigation will be located north of the single-family dwelling and the septic system in an area adjacent to the intermittent creek. The mitigation plan includes the removal of invasive species and the planting of the following:

Planting Table 1 – Mitigation Planting Plan from Revised Keystone Environmental Report 2013

Common Name	Scientific Name	Location
Red Alder	<i>Alnus rubra</i>	Moist
Western red cedar	<i>Thuja plicata</i>	Moist
Shore pine	<i>Pinus contorta</i>	Moist to dry
Douglas-fir	<i>Pseudotsuga menziesii</i>	Dry
Big-leaf maple	<i>Acer macrophyllum</i>	Dry
Total		60 Trees
Osoberry	<i>Oemleria cerasiformis</i>	Moist to dry
Red/blue elderberry	<i>Sambucus racemosa / cerulea</i>	Moist to dry
Snowberry	<i>Symphoricarpos albus</i>	Dry
Oceanspray	<i>Holodiscus discolor</i>	Dry
Serviceberry	<i>Amelanchier alnifolia</i>	Dry
Cascara	<i>Rhamnus purshiana</i>	Moist to dry
Vine maple	<i>Acer circinatum</i>	Moist
Sword fern	<i>Polystichum munitum</i>	Moist to dry
Total		136 Shrubs
Hobbs and Hopkins	<i>Upland Seed Mix</i>	Clean Water Dry Area
Exhibit A.3, Page 28		

Planting Table 2 – Mitigation Planting Plan from Environmental Site Assessment 2021

Common Name	Scientific Name	Quantity
Red Alder	<i>Alnus rubra</i>	10
Western red cedar	<i>Thuja plicata</i>	5
Total		15
Serviceberry	<i>Amelanchier alnifolia</i>	8
Snowberry	<i>Symphoricarpos albus</i>	16
Oceanspray	<i>Holodiscus discolor</i>	8
Cascara	<i>Rhamnus purshiana</i>	8
Vine maple	<i>Acer circinatum</i>	10
Total		50
Exhibit A.3, Page 5		

When the two Mitigation Planting Plans are completed, the property owner will have planted 75 trees and 186 native shrubs in the 8,313 sq. ft. of mitigation area. The trees shall be planted on 10 to 12-foot centers and the shrubs planted on 6 to 8-foot centers. Lastly, it was recommended that the plantings be installed after the rain begins in late October/November 2022. Soil disturbing activities (soil preparation, digging, planting, etc.) are only allowed

between June 15th and September 15th in the SEC-s overlay zone. A condition of approval has been included requiring the planting to occur within this work window.

The planting of native trees, shrubs, and placement of the seed mix ground cover will enhance water quality, promote flood storage, improve water quality, and enhance the visual amenities that are characteristic of the intermittent creek. The native plantings and ground cover will promote natural infiltration of stormwater into the ground allowing for additional flood storage. Lastly, by planting native trees and shrubs will enhance the visual amenities characteristic of the stream.

The measures above demonstrate retention and enhancement of the resource values addressed in subsection (D)(1) above; however to ensure that these measures are carried out and the plantings thrive, a condition of approval will be required that an annual monitoring plan for a period of five years, which ensures an 80 percent annual survival rate is required. *As conditioned, these criteria are met.*

7.2.4 (E) Design Specifications: The following design specifications shall be incorporated, as appropriate, into any developments within a Stream Conservation Area:

(1) A bridge or arched culvert which does not disturb the bed or banks of the stream and are of the minimum width necessary to allow passage of peak winter flows shall be utilized for any crossing of a protected streams.

Staff: A culvert was installed outside of the SEC-s overlay in an intermittent watercourse. The applicant is not proposing a bridge or arched culvert within the SEC-s protected stream overlay zone; therefore, this criterion is not applicable. *This criterion is applicable.*

(2) All storm water generated by a development shall be collected and disposed of on-site into dry wells or by other best management practice methods which emphasize groundwater recharge and reduce peak stream flows.

Staff: As part of the previous land use permit #T2-2013-2989, the storm water generated by the development utilized best management practice methods was reviewed and approved. In that land use case, the proposed storm water drainage system was comprised a series of PVC piping that conveyed stormwater to a concrete utility vault. The vault would hold the storm water to allow for a slowed release over time into a riprap outfall. The system has been built. *This criterion is met.*

(3) Any exterior lighting associated with a proposed development shall be placed, shaded or screened to avoid shining directly into a Stream Conservation Area.

Staff: All previously installed exterior lighting was authorized by land use permit #T2-2013-2989 and zoning review, BP-2014-3519, BP-2014-3737, and BP-2015-3875. No new exterior lighting associated with the development not reviewed by the County was installed; therefore, this criterion is not applicable at this time. *This criterion is not applicable.*

(4) Any trees over 6" in caliper that are removed as a result of any development shall be replaced by any combination of native species whose combined caliper is equivalent to that of the trees removed.

Staff: No trees were removed as part of the development that occurred without review by the County; therefore, this criterion is not applicable. *This criterion is not applicable.*

(5) Satisfaction of the erosion control standards of MCC 39.5090.

Staff: The erosion control standards of MCC 39.5090 have been met or are conditioned to be met as authorized in land use permit #T2-2013-2989 and zoning review, BP-2014-3519, BP-2014-3737, and BP-2015-3875. The only work still yet to be completed is the mitigation as required by MCC 39.5750(D). A condition will be required that the mitigation work be completed by hand without the use of motorized equipment. *As conditioned, this criterion is met.*

(6) Soil disturbing activities within a Stream Conservation Area shall be limited to the period between June 15 and September 15. Revegetation/soil stabilization must be accomplished no later than October 15. Best Management Practices related to erosion control shall be required within a Stream Conservation Area.

Staff: A condition that the remaining mitigation associated the Environmental Site Assessment (“Mitigation Plan”) is conducted between June 15 and September 15, 2022 (Exhibit A.3). At all times of soil disturbance, Best Management Practices related to erosion control shall be required within a Stream Conservation Area. *As conditioned, this criterion is met.*

(7) Demonstration of compliance with all applicable state and federal permit requirements.

Staff: In correspondence between the Department of State Lands (DSL) and the County, it does not appear that additional state or federal permits are required. *This criterion is met.*

7.2.5 (F) For those Stream Conservation Areas located within Metro’s jurisdictional boundaries, the following requirements apply in addition to subsections (C) through (E) above:

Staff: The proposal is located within Metro’s jurisdictional boundary; therefore, the following requirements are applicable as discussed below.

(1) The planting of any invasive non-native or noxious vegetation as listed in subsection (A)(4) above is prohibited. In addition, the species listed in MCC 39.5580 Table 1 shall not be planted.

Staff: Due to a scrivener's error, subsection (A)(4) in MCC 39.5750 does not exist. In a previous iteration prior to the adoption of Chapter 39, Chapter 33 contained MCC 33.4575(A)(4). This previous code section was renumbered to MCC 39.5750(A)(1) and the above criterion was not renumbered to reflect the change. As required, the invasive non-native or noxious vegetation are those plants listed in the latest edition of the Metro Nuisance Plant List and the Prohibited Plant List, and include those plants listed in the latest edition of the State of Oregon Noxious Weed List. The Mitigation Plan does not recommend the planting of any of those plants listed (Exhibit A.3). *This criterion is met.*

(2) The revegetation of disturbed areas shall primarily use native plants. A list of native plants can be found in the latest edition of the Metro Native Plant List.

Staff: The applicant is proposing mitigation areas using native plants. *This criterion is met.*

(3) Outside storage of hazardous materials as determined by DEQ is prohibited, unless such storage began before the effective date of the applicable SEC ordinance; or, unless such storage is contained and approved during development review.

Staff: The applicant is not proposing any outside storage of hazardous materials, however as an ongoing condition of approval, it will be required that no outside storage of hazardous materials as determined by DEQ will be permitted in the SEC. *As conditioned, this criterion is met.*

* * *

8.0 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Significant Environmental Concern for Streams (SEC-s) permit to resolve code compliance case, ZV-2015-4455 in order authorize development activities that were not previously reviewed by the County associated with the residential use in the Rural Residential (RR) zone. The development activities were in deviation from the approval of a previous land use permit #T2-2013-2989. 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 T2-2021-15101 by contacting Rithy Khut, Staff Planner at 503-988-0176 or at rithy.khut@multco.us.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	General Application Form	09/27/2021
A.2*	1	Site Plan	09/27/2021
A.3	47	Environmental Site Assessment (“Mitigation Plan”)	09/27/2021
A.4*	2	Planting Plan	09/27/2021
‘B’	#	Staff Exhibits	Date

B.1	2	Division of Assessment, Recording, and Taxation (DART): Property Information for 1N1W22DC -00200 (Alt Acct # R090603090)	09/27/2021
B.2	1	Division of Assessment, Recording, and Taxation (DART): Map with 1N1W22DC -00200 (Alt Acct # R090603090) highlighted	09/27/2021
B.3	1	Bonny Slope Subdivision Map recorded in Book 921, Page 9 on March 15, 1923	09/27/2021
B.4	18	Land use case #T2-2013-2989	10/20/2021
B.5	15	Zoning Review BP-2014-3519 reviewed on June 10, 2014	10/20/2021
B.6	7	Zoning Review BP-2014-3737 reviewed on October 23, 2014 for revisions to BP-2014-3519	10/20/2021
B.7	6	Zoning Review BP-2015-3875 reviewed on January 21, 2015 for revisions to BP-2014-3519 and BP-2014-3737	10/20/2021
B.8	6	Stop Work Order, UR-2015-4077 posted on May 20, 2015	10/20/2021
B.9	8	Pre-file meeting notes, PF-2021-14608 held on June 29, 2021	10/20/2021
B.10	4	Voluntary Compliance Agreement, ZV-20215-4455	10/20/2021
B.11	40	City of Portland: Bureau of Development Services - Certificate of Satisfactory Completion (13-162441-SP)	10/22/2021
'C'	#	Administration & Procedures	Date
C.1	1	Complete letter (day 1)	10/22/2021
C.2	1	Extension of 150-Day Deadline	02/10/2022
C.3	9	Opportunity to Comment and mailing list	02/16/2022
C.4	12	"Short" Administrative Decision and mailing list	03/23/2022
C.5	24	Administrative Decision and mailing list	03/23/2022

11065 NW LAIDLAW ROAD
TAX MAP T1N R1W 22DC
PORTLAND, OREGON

SITE PLAN



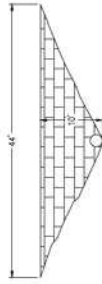
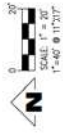
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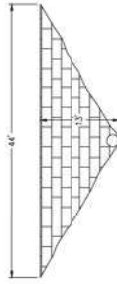
SHEET 1 OF 1

EXHIBIT
A.2



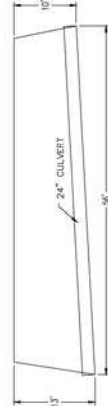
UPSTREAM HEADWALL

NTS



DOWNSTREAM HEADWALL

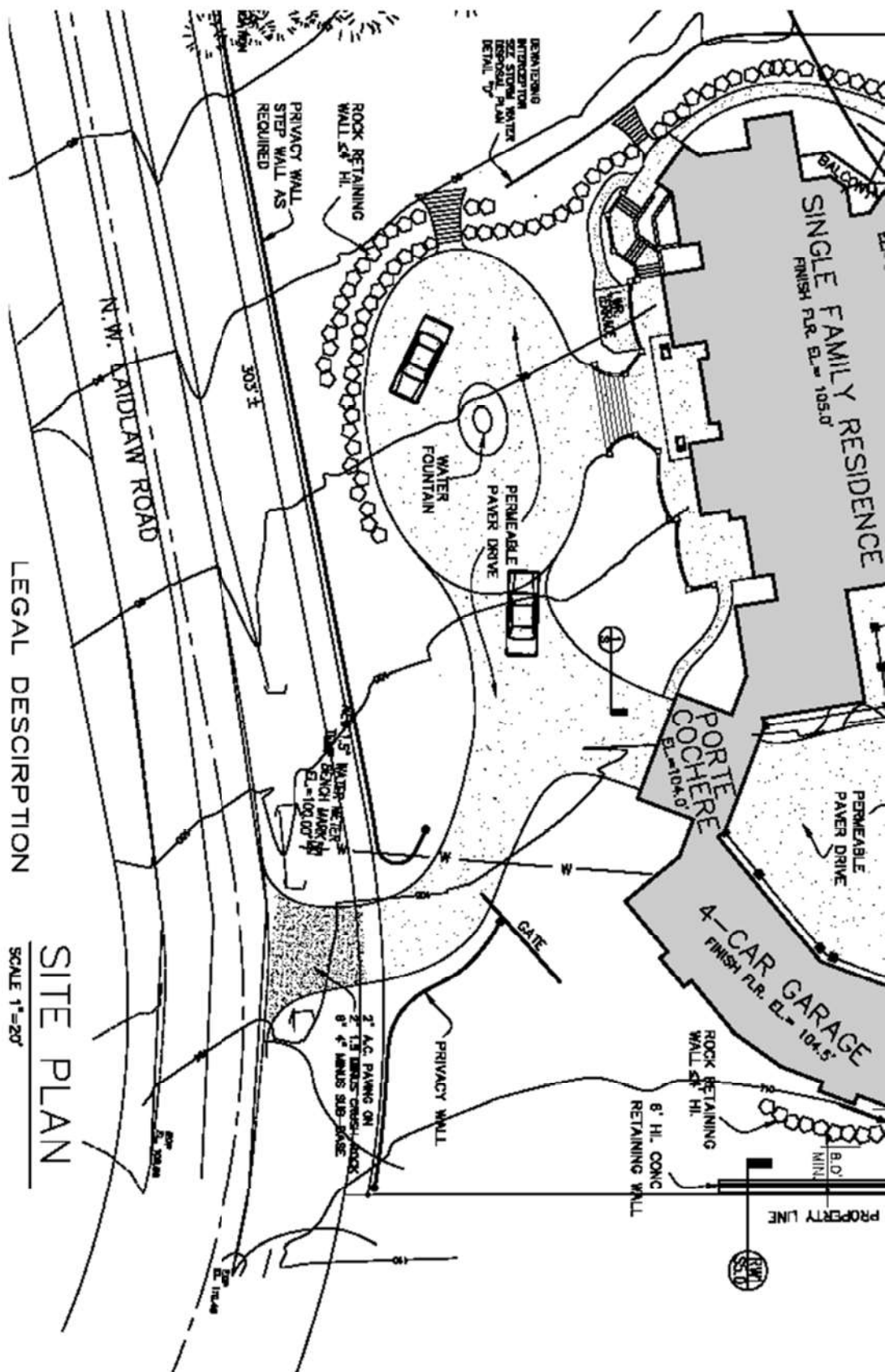
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CULVERT CROSS SECTION

NTS





LEGAL DESCRIPTION

SITE PLAN

SCALE 1"=20'

