
NOTICE OF DECISION

Case File: T2-2022-15588

Permit: Significant Environmental Concern for Water Resources (SEC-wr)

Applicants: David Gorman, PE **Owners:** Valery Glukhov

Location: **16985 SE Foster Road, Gresham** **Map, Tax lot:** 1S3E19CA -00300
Tax Account #: R993190200 **Property ID #:** R340589

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 for ground disturbing activities that were not reviewed by the County that included the removal of vegetation, placement of fill, and creation of a private driveway within and outside of the SEC-wr overlay. The applicant also requests a permit to remove the fill earth materials, the contouring of the land, and implementation of a mitigation plan by planting vegetation in the SEC-wr 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, October 12, 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. Paper 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, September 28, 2022

Instrument Number for Recording
Purposes: #2019-042632



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) Residential use consisting of a single-family dwelling...

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.

1. Permit Expiration – This land use permit shall expire as follows:
 - a. The property owner shall commence implementation of the Mitigation Plan contained in the applicant's narrative and shown in the mitigation site plan (Exhibit A.6. and A.7) within one (1) year of the date of the final decision. [MCC 39.1170(A) and 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.6 and A.7, 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 implementation of the Mitigation Plan contained in the applicant's narrative and shown in the mitigation site plan (Exhibit A.6. and A.7), 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 6 of this Notice of Decision and Exhibits A.6 through A.7 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 filed with the Land Use Planning Division. Recording shall be at the applicant's expense. Evidence of recording shall be sent to LUP-submittals@multco.us and reference the case number, T2-2022-15588. [MCC 39.1175]
 - c. Obtain an Erosion and Sediment Control (ESC) Permit [MCC 39.1515 and MCC 39.5800(E)(6)]
 - d. Obtain a Flood Development (FD) permit [MCC 39.1515]
4. At the time that the mitigation work (ground preparation, nuisance plant removal, and plant installation) as described in Exhibit A.6 and A.7 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.a above to do the work.
 - i. The Post-Mitigation Report shall be prepared and signed by David Gorman, PE, Ecological Engineering, LLC, or someone 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 described in the Narrative and Mitigation Site Plan. The photos should clearly show the site conditions before and after construction.
 2. Certification that the mitigation work has/will improves 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)]

5. 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 (BMPs) for erosion control. The BMPs shall include the seeding and mulching of all disturbed soils to prevent erosion and sedimentation in the channel. The seeding shall be done using native grasses within five (5) days of the date ground disturbing activities are concluded. [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)]
6. The mitigation work (ground preparation, nuisance plant removal, and plant installation) as described in Exhibit A.6 and A.7 shall:
 - a. Ground-disturbing activity within the SEC-wr is prohibited between November 1 and April 30. [MCC 39.5800(F)(2)]
 - b. Apply permanent or temporary soil stabilization to denuded development site areas by November 1. Permanent revegetation through the seeding of native grasses shall be established by December 1. [MCC 39.5800(E)(6)]
7. At the completion of mitigation work (ground preparation, nuisance plant removal, and plant installation) as described in Exhibit A.6 and A.7 , the property owner(s) or their representatives shall:
 - a. Monitor the Mitigation Area 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: "T2-2022-15588." [MCC 39.1170 and MCC 39.5800(F)(3)]
 - iii. 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)]

- iv. 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)]
 - v. 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, and/or enforcement action. [MCC 39.1170 and MCC 39.5800(F)(3)]
 - vi. The annual monitoring report shall include the following information:
 1. The permit number, monitoring date, report year, and a determination of whether the site is meeting performance standard of Condition #4.a.ii.2 and 6.a.i. above.
 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)]
8. As an on-going condition, the property owner(s) shall:
- a. 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]
 - b. 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 Kelley Creek, unless required by the building code. [MCC 39.5575(B)]
 - c. Not place any new above ground structures, buildings, additions to structures or fill, temporary or permanent, within the 100-year floodplain of Kelley Creek unless first obtaining a Flood Development Permit. [MCC 39.5015 and MCC 39.1515]
 - d. 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	<i>Scientific Name</i>	Common Name	<i>Scientific Name</i>
Lesser celandine	<i>Chelidonium majus</i>	Fall Dandelion	<i>Leontodon autumnalis</i>

Common Name	Scientific Name
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>

Common Name	Scientific Name
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, 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 implementation of the Mitigation Plan..." Be ready to demonstrate compliance with the conditions.
2. Contact Rithy Khut, Planner, at 503-988-0176 or rithy.khut@multco.us, **for an appointment** for review of the conditions of approval. Please ensure that any items required under, "Prior to implementation of the Mitigation Plan..." 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 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 and ground disturbing activities that were not reviewed by the County.

The unpermitted work included:

1. Ground disturbing activities that included the removal of vegetation and placement of fill in the SEC-wr overlay; and
2. Ground disturbing activities related to the creation of a private driveway within and outside of the SEC-wr overlay.

As part of this application, the applicant seeks review of these activities. Additionally, the applicant is also requesting the following development that has yet to occur:

1. Removal of fill earth materials placed within the SEC-wr overlay and contouring of the land within that area (Exhibit A.6 and A.7); and
2. Implementation of a mitigation plan by planting vegetation in the SEC-wr overlay (Exhibit A.6 and A.7).

2.0 Property Description & History:

Staff: This application is for 16985 SE Foster Road (“subject property”). The subject property is located at the intersection of SE Foster Road and SE Dahlquist 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), is approximately 2.24 acres in size, and is located inside of Metro’s Urban Growth Boundary (UGB) boundary. 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 and FH overlays cover the southern portions of the property that contain Kelley Creek. Aerial photo review from 2020 shows the presence of four (4) buildings or structures on the subject property (Exhibit B.3).

According to the Division of Assessment, Recording, and Taxation, the single-family dwelling on the subject property was first assessed in 1913. Additionally, there have been previous land use/building permit associated with the subject property:

Land Use / Building Permit #	Date Approved	Decision	Description
13562	April 7, 1958	Approved	Detached Garage

Land Use / Building Permit #	Date Approved	Decision	Description
13563	April 7, 1958	Approved	Addition to Single-Family Dwelling
30070	May 16, 1963	Approved	14'6" x 18' Addition to Single-Family Dwelling
52649	December 7, 1970	Approved	Detached Garage

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.4. Staff did receive public comments during the 14-day comment period.

3.1 Thomas Owen Marlow, property owner located at 16916 SE Foster Road provided a letter on Monday, September 19, 2022 (Exhibit D.1)

Comment: Thomas provided concerns about rising the water level of the placement of the fill and that no fill be placed below the floodplain line.

Staff: As discussed in the Decision, the applicant is removing fill from the subject property and not placing fill below the floodplain boundary.

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 the subject properties. The case, ZV-06-001 was originally opened under UR-99-099 after a complaint was lodged on November 24, 2000. The complaint related to an issue regarding ground disturbance near Kelley Creek that was not reviewed by the County (Exhibit B.4 and B.5). As the property owner did not resolve the issue through voluntary compliance, UR-99-099 was closed and the County issued a Notice of Violation, ZV-00-019 on December 15, 2000. Subsequently, ZV-00-019 was closed. After compliance was not reached, the Notice of Violation was reopened under ZV-06-001 on July 25, 2006 and sent Hearings Officer. The Hearings Officer then issued a decision on October 11, 2006 concluding:

“...by a preponderance of the evidence in the record that the facts stated in the [No. ZV-06-001 Finding of Fact, Conclusion of Law, Decision, and Order of Civil Penalty] as findings are true, that a code violation alleged in the Staff Report and stated in the July 25, 2006 Notice of Violation has occurred on the property...” (Exhibit B.5).

However, due to staff retirements at the County, the decision was not issued to Respondents. The County informed the Hearings Officer of this error on October 20, 2020 and reissued the Decision on October 28, 2020.

Subsequently after the Hearings Officer Decision was issued, the property was sold to the current owner, Valery Glukhov. A pre-file meeting was held on August 1, 2019 where Staff notified the owner of the open Notice of Violation and methods to resolve the code compliance issue (Exhibit B.6).

Additionally, during the Completeness Review period as provided by MCC 39.1135 additional compliance issues were found. Those issues included ground-disturbing activities to create a new private driveway within the SEC-wr overlay that occurred at some point prior to 2005 (Exhibit C.1).

The Applicant and Property Owner have responded with submittal of this application. The proposal includes:

1. Authorization of previous ground disturbance that was not previously reviewed by the County. The unpermitted work includes extensive ground disturbance including unpermitted fill, vegetation removal, and the construction of a new private driveway within the SEC-wr overlay.

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 development related to the residential use consisting of a single-family dwelling 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 1 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, T2-2022-15601 (Exhibit B.7). 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.

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

Staff: As discussed in Section 2.0 and 4.0, the subject property currently contains a lawfully established single-family dwelling that was first assessed in 1915. Subsequent permits were approved and issued in 1958 and 1963 authorizing the alteration of the single-family dwelling. The applicant is proposing review of ground disturbing activities that are associated with the residential use on the subject property that were not reviewed by the County. The ground disturbance included excavation and placement of fill, vegetation removal, and the construction of a new private driveway (Exhibit A.6).

Additionally, the applicant is now proposing to remove the fill, contour the area of ground disturbance, and implement a Mitigation and Planting Plan (Exhibit A.6 and A.7). *This criterion is met.*

7.0 Significant Environmental Concern for Water Resources (SEC-wr) 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:

1. Authorization of development subject to ZV-06-001 that was not reviewed by the County
 - a. Ground disturbance including excavation, placement of fill, and vegetation removal within the SEC-wr overlay
2. Authorization of development to construct a new private driveway that was not reviewed by the County
3. New development to excavate and remove fill placed in the SEC-wr and then contour the development area
4. To implement a Mitigation Plan through the planting of vegetation

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 unpermitted development that was 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 include restriction on timing of soil disturbing activities in addition to the seeding with native grasses and mulching of all disturbed soils to prevent erosion and sedimentation into Kelley Creek. 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: The applicant is not proposing any new buildings or structures that require outdoor lighting or alterations of any of the buildings or structures that require outdoor lighting. However, if the property owner does alter the outdoor lighting of any of the buildings or structures within the SEC-wr overlay, a condition will be required that the illumination from that fixture shall be minimized through use of a hooded fixture type and be compliant with Dark Sky Lighting Standards. *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 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>

Common Name	Scientific Name
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: The planting species contained within the mitigation plan are not plant types or varieties on the list above (Exhibit A.6). Additionally, 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

- 7.4.1 (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 ground disturbance related to the residential use on the subject property for a constructed private driveway, in addition to reviewing development that was not previously reviewed by the County. None of the development that has occurred or the development that is proposed is 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 includes the site analysis information in the Narrative. The Narrative was prepared by the applicant, David Gorman, PE, Ecological Engineering, LLC in March 2022 and revised in April 2022 (Exhibit A.2 and A.6). The Narrative 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.*

7.4.2 (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 location of the proposed development to correct the ground disturbance that previously occurred on the 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 SEC-wr 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 Narrative that was prepared by the applicant, David Gorman, PE, Ecological Engineering, LLC in March 2022 and revised in April 2022 (Exhibit A.2 and A.6). The applicant also prepared a site plan that shows the area of mitigation (Exhibit A.7). *This criterion is met.*

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

Staff: The proposed development and mitigation area is entirely within the Water Resource Area and is required to correct development and ground disturbance that occurred without review from the County. To undertake the corrective action, there are no practicable alternatives that exist that will not disturb the Water Resource area. The development that occurred closest to the Kelley Creek, the Protected Water Feature, included the excavation of soil, the placement of fill earth material, and the construction of a private driveway in the Water Resource Area (Exhibit A.6 and A.7). *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's narrative and proposed site plan indicates that all ground disturbing activities including the fill to be removed and the area impacted will be contoured and mitigated (Exhibit A.6 and Exhibit A.7). At the completion of this project, the 100-year floodplain for Kelley Creek will be restored and replanted and the only use related to the residential use of the site will be the private driveway serving the property. The rest of the project area will be returned to a natural area supporting the functionality of the Water Resource. *This criterion is met.*

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

Staff: The development will be located as far as practically possible from the stream. The removal of fill and the implementation of the mitigation plan will be adjacent to the stream as there is no practicable alternative. At the conclusion of the project, the only development that will be permanent and already constructed will be a private driveway, leading from SE Foster Road to SE Dahlquist Road. *This criterion is met.*

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

Staff: As discussed previously, the project area is located entirely within the Water Resource Area. As such, a portion of the Water Resource Area where the private driveway is located 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 have mitigation plantings installed. *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 Section 7.4.4 addressing 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, 25,000 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 private driveway associated with the residential use. As such, a total 25,000 sq. ft. of mitigation is required on-site at a 1:1 ratio. The applicant is proposing 26,000 sq. ft. of mitigation to ensure that the net loss of resource area is mitigated. The mitigation area will restore the disturbed area to “good condition.” Conditions will be required to ensure that any net loss on the property of resource area, function, and/or value can be mitigated. Those conditions are discussed in Section 7.4.4. *As conditioned, this criterion is met.*

7.4.3 (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 narrative and site plan indicate no trails, rest points, viewpoints, or other facilities for the enjoyment of the resource will be proposed (Exhibit A.6 and A.7). 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, 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 as part of the proposed development that will occur to restore the area (Exhibit A.6, A.7, B.3, and B.5). *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 Narrative indicated that there are limited areas of standing trees, shrubs, and natural vegetation along the natural drainage course. The applicant is proposing mitigation plantings to ensure that there is a more robust transition between the proposed development and the natural resource. Further as required by MCC 39.5800(C)(5) and MCC 39.5800(F), a condition of approval will be required to plant mitigation plantings to ensure that this criterion is met. The 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 Narrative by the applicant, David Gorman, PE, Ecological Engineering, LLC included a mitigation plan and site plan that will ensure that the Water Resource Area will be restored to "good condition." The proposed mitigation from the Narrative, which is exhibited as A.6 mimics the requirements of subsection (F) and Table 2 of this section. Therefore, a condition will be required that the mitigation plan be implemented so the Water Resource Area is restored to "good condition." The Narrative 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.*

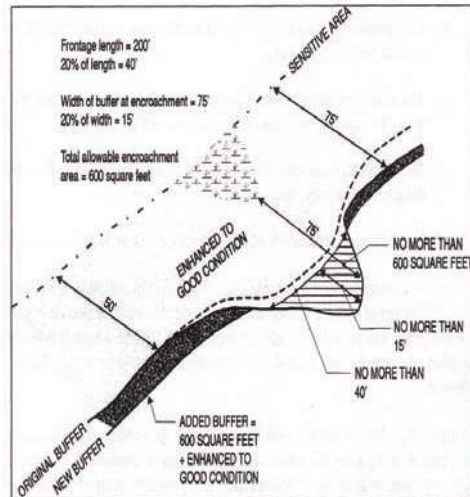
(5) To the extent practicable, existing vegetation shall be protected and left in place. Work areas shall be carefully located and marked to reduce potential damage to the Water Resource Area. Trees in the Water Resource Area shall not be used as anchors for stabilizing construction equipment.

Staff: As discussed previously, conditions of approval have been included that requires 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. Additionally, the revegetation shall be completed by November 1 and established by December 1. *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 Narrative by the applicant, David Gorman, PE, Ecological Engineering, LLC included a mitigation plan and site plan. Once that mitigation plan is implemented, it will ensure that stormwater quantity and quality is managed from the existing buildings on the property. Additionally, the establishment of the private driveway will be of sufficient distance

to allow for any stormwater impacts from the driveway to be managed as it sheet flows through a vegetated area between the driveway and Kelley Creek. The proposed mitigation from the Narrative, which is exhibited as A.6 mimics the requirements of subsection (F) and Table 2 of this section. Therefore, a condition will be required that the mitigation plan be implemented so the Water Resource Area is restored to "good condition" to ensure that stormwater is managed appropriately. *As conditioned, this criterion is met.*

7.4.4 (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 previous owner 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 previous actions of the previous property owner on the subject property. As the development occurred entirely in the SEC-wr overlay, the proposal is unable to avoid the impact altogether and must compensate for

the impact by repairing, rehabilitating, or restoring the affected environment and replacing, enhancing, or providing substitute resources or environments on-site. *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 previous property owner. Work was completed without review. In addition, remediation work 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 David Gorman, PE, Ecological Engineering, LLC to identify the existing conditions on the subject property. Site visits were made as shown in Photos #1 and #2 in the applicant's narrative (Exhibit A.2 and A.6). The existing conditions characterize the riparian/vegetated corridors as:

“The riparian/vegetated corridor condition on the Applicant's property was in a degraded condition based on two of the criteria for a degraded corridor (Photo 1). The tree canopy was less than 25% and greater than 10% of the area was covered by invasive, non-native species such as Himalayan blackberry (*Rubus armeniacus*) and Reed Canary Grass (*Phalaris [arundinacea]*).” (Exhibit A.6).

Site photos #1 and #2 confirm that this area is vegetated and contains very few native trees. Within this degraded area, there was placement of fill, which resulted in the enforcement action. As discussed in the Narrative, this fill is calculated at approximately 207 cubic yards in an area of 2,800 sq. ft. (Exhibit A.6). The Narrative calculates a total area of 25,000 square feet of development requiring mitigation. In order to meet the 1:1 ratio, the applicant is proposing 26,000 square feet of mitigation in areas closest to the stream and that are degraded or

marginal. Those areas will 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 Narrative. The Narrative recommended the following to be planted to ensure that these areas be restored to better condition.

Common Name	Scientific Name	Size	Quantity
Western red cedar	<i>Thuja plicata</i>	1- to 4-foot tall	32 @ 10 feet on center
Oregon ash	<i>Fraxinus latifolia</i>	1- to 4-foot tall	32 @ 10 feet on center
Red Osier Dogwood	<i>Cornus sericea</i>	1- to 4-foot tall	96 @ 10 feet on center
Willow species	<i>Salix sitchensis (or similar)</i>	1- to 4-foot tall	96 @ 10 feet on center
Exhibit A.6			

Additionally, as part of the Narrative, the applicant’s site plan delineates the location of the 26,000 sq. ft. of proposed mitigation, provides specifications for the type of plantings to be completed in this area, and specific requirements for the monitoring of the plantings (Exhibit A.6 and A.7). As such, a condition of approval will be required that those requirements be met to ensure that the area is mitigated. Additionally, to ensure that the proposed ground disturbing activity does not negatively impact the water resource ground disturbing activities will be prohibited between November 1 and April 30. *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 Narrative by the applicant, the compensation will be completed based on a schedule. As stated in the Narrative:

“If permit issuance is provided in early spring of 2022, planting may be made in this year, dependent on plant availability. If permit issuance is delayed beyond early spring, planting may need to occur in the winter of 2023 to provide increased survivability of the plants. The ideal time to plant woody vegetation is during the winter months when plants are dormant” (Exhibit A.6).

A condition of approval has been included that requires all mitigation work and plantings to be completed within one (1) year of this Decision 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 and mitigation site plan (Exhibit A.6 and A.7). The revised mitigation plan and mitigation site plan shall be recorded 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
Good Corridor Combination of native trees, shrubs, and groundcover covering greater than 80% of the area and Greater than 50% tree canopy exists (aerial measure)	Provide certification, pursuant to the procedures provided by the Planning Director, by a professional ecologist/biologist that the riparian/ vegetated corridor meets condition criteria. Remove any invasive non-native or nuisance species and debris and noxious materials within the corridor by hand. 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. Revegetate impacted area per approved plan to re-establish “good” corridor conditions

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) 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 contained in the applicant’s narrative (Exhibit A.6). The Narrative was written by the applicant, David Gorman, PE, Ecological Engineering, LLC. The narrative discusses the adverse impacts within the Narrative Response to MCC 39.5800 (Exhibit A.6, Page 3). An explanation of how adverse impacts to resource areas will be avoided, minimized, and/or mitigated are also contained within that section of the Narrative. Lastly, the narrative provides a mitigation strategy and implementation schedule to ensure that the “degraded” corridor is returned to a “good” corridor condition. *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 in the area adjacent to Kelley Creek that were associated with that ground disturbance;
2. Authorize the private driveway and related ground disturbing activities to establish the private driveway that was not reviewed by the County;
3. Authorize new ground disturbing activities, subject to an Erosion and Sediment Control permit and a Flood Development permit, to remove fill earth materials placed in the area adjacent to Kelley Creek that were associated with the ground disturbance that occurred in Item #1 above; and
4. Implement a mitigation plan and plant trees, shrubs and other vegetation 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
‘D’ Comments Received

Exhibits with a “*” after the exhibit # have been included as part of the mailed decision. Those exhibits have been reduced to a size of 8.5” x 11” for mailing purposes. All other exhibits are available for review in Case File T2-2022-15588 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	General Application Form	03/09/2022
A.2	9	Narrative	03/09/2022
A.3	2	Site Plan - Cover Page - Site Plan (11” x 17”)	03/09/2022
A.4	3	Resume of David Gorman, Registered Professional Engineer	03/09/2022
A.5	1	E-mail from applicant, David Gorman, providing additional information	05/02/2022
A.6	8	Revised Narrative	05/02/2022

A.7*	2	Revised Site Plan - Cover Page - Site Plan (11" x 17")	05/02/2022
'B'	#	Staff Exhibits	Date
B.1	2	Division of Assessment, Recording, and Taxation (DART): Property Information for 1S3E19CA -00300 (Alt Acct #R993190200)	03/09/2022
B.2	1	Division of Assessment, Recording, and Taxation (DART): Map with 1S3E19CA -00300 (Alt Acct #R993190200) highlighted	03/09/2022
B.3	1	Aerial Photo taken in the Summer of 2021	04/01/2022
B.4	6	ZV-00-019 – Site Inspection Photographs from 2000 and 2001	04/01/2022
B.5	18	Hearings Officer Decision for ZV-00-019 signed on October 11, 2006	04/01/2022
B.6	5	Pre-file Meeting Notes PF-2019-12161	04/01/2022
B.7	11	Land Use Case T2-2022-15601	09/10/2022
'C'	#	Administration & Procedures	Date
C.1	7	Incomplete letter	04/07/2022
C.2	1	Applicant's acceptance of 180 day clock	04/21/2022
C.3	2	Complete letter (day 1)	05/25/2022
C.4	7	Opportunity to Comment and mailing list	09/09/2022
C.5	1	Extension to the 120-day Timeline	09/15/2022
C.6	10	Administrative "Short" Decision and mailing list	09/28/2022
C.7	29	Administrative Decision and mailing list	09/28/2022
'D'	#	Comments	Date
D.1	7	Comment from Thomas Owen Marlow, property owner located at 16916 SE Foster Road	09/19/2022

ATTACHMENT A

WATER RESOURCE AREA MITIGATION SITE PLAN



FIELDWORK DATE:	JAN 2022
DESIGN:	DG
DRAWN:	DG
CHECKED:	DG
PROJECT NUMBER	
REVISION	DATE
0	4/28/22
SHEET NUMBER	
SHT	1 OF 1

