

1600 SE 190<sup>th</sup> Ave, Portland OR 97233-5910 • PH. (503) 988-3043 • Fax (503) 988-3389

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## NOTICE OF DECISION

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This notice concerns a Planning Director Decision on the land use case(s) cited and described below.

**Case File:** T2-2016-6339

**Permit:** Significant Environmental Concern for Wildlife Habitat

**Location:** 14180 NW Germantown Road  
Tax Lot 1700, Section 09B  
Township 1 North, Range 1 West, W.M.  
Tax Account #R649703400

**Applicants:** Gary and Penny Lytle

**Owners:** Gary and Penny Lytle

**Base Zone:** Rural Residential

**Overlays:** Significant Environmental Concern for Wildlife Habitat (SEC-h)  
Significant Environmental Concern for Streams (SEC-s)

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**Summary:** The applicant is requesting a Significant Environmental Concern for Wildlife Habitat (SEC-h) permit to construct a new single-family dwelling and detached garage.

**Decision:** Approved with Conditions

Unless appealed, this decision is effective Tuesday, August 8, 2017, at 4:00 PM.

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Issued by:

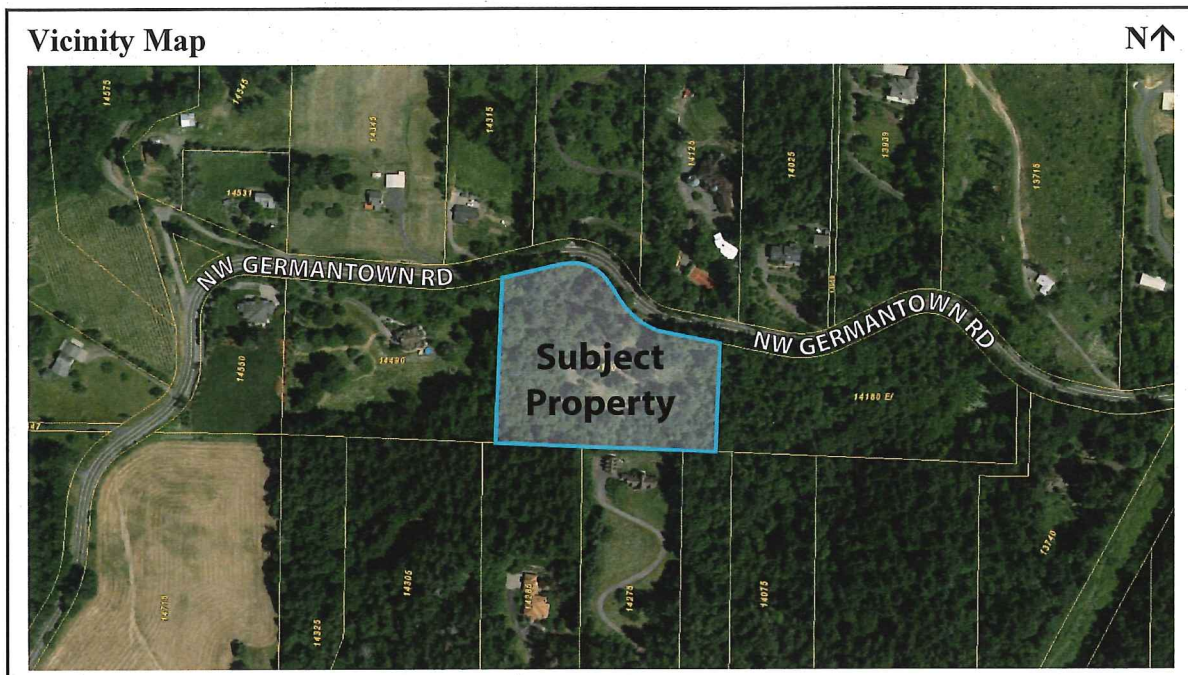
By:

  
Rithy Khut, Planner

For: Michael Cerbone, AICP  
Planning Director

Date: Tuesday, July 25, 2017

Instrument Number for Recording Purposes: #2014050875



**Opportunity to Review the Record:** A copy of the Planning Director Decision, and all evidence submitted associated with this application, is available for inspection, at no cost, at the Land Use Planning office during normal business hours. Copies of all documents may be purchased at the rate of 30-cents per page. The Planning Director Decision contains the findings and conclusions upon which the decision is based, along with any conditions of approval. For further information on this case, contact Rithy Khut, Staff Planner at 503-988-0176.

**Opportunity to Appeal:** This decision may be appealed within 14 days of the date it was rendered, pursuant to the provisions of MCC 37.0640. 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 offices at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision cannot be appealed to the Land Use Board of Appeals until all local appeals are exhausted.

**This decision is final at the close of the appeal period, unless appealed.  
The deadline for filing an appeal is Tuesday, August 8, 2017 at 4:00 pm.**

**Applicable Approval Criteria:** Multnomah County Code (MCC) and Multnomah County Road Rules (MCRR):

Multnomah County Code (MCC): MCC 37.0560 Code Compliance and Applications, MCC 34.0005 Definitions

*Rural Residential – RR:* MCC 33.3120 Allowed Uses, MCC 33.3155 Dimensional Requirements and Development Standards, MCC 33.3170 Lot of Record, MCC 33.3185 Access

*Significant Environment Concern:* MCC 33.4570 Criteria for Approval of SEC-h Permit –Wildlife Habitat

Multnomah County Road Rules (MCRR): MCRR 4.000 Access to County Roads, MCRR 5.000 Transportation Impact, MCRR 6.000 Improvement Requirements, MCRR 9.000 Compliance Method, MCRR 18.00 Right of Way Use Permits

Copies of the referenced Multnomah County Code (MCC) can be obtained by visiting our website at <https://www.multco.us/landuse/>. Copies of the referenced Multnomah County Road Rules (MCRR) sections can be obtained by visiting our website at <https://multco.us/transportation-planning/> or by contacting our office at (503) 988-3043.

## **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. Pursuant to MCC 37.0690(B) and MCC 37.0560, this Type II land use approval to permit and obtain building permits for the construction for a single-family dwelling and accessory structure shall expire as follows:
  - a. When construction has not commenced within two (2) years of the date of the final decision. Commencement of construction shall mean actual construction of the foundation or frame of the approved structure; or
  - b. When the structure has not been completed within four (4) years of the date of commencement of construction. Completion of the structure shall mean completion of the exterior surface(s) of the structure and compliance with all conditions of approval in the land use approval.

The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 37.0695, 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 these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein. [MCC 37.0660]
3. Prior to Land Use Planning sign-off for a building permit, the owners or their representative shall:
  - a. Record pages 1 through 5, Exhibit A.5, and Exhibit A.7 of this Notice of Decision with the County Recorder. 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 37.0670]
  - b. Submit application materials and fees for a Grading and Erosion Control Permit. The site plan shall clearly show area of disturbance, ground topography (contours), roads and driveways, existing structures, trees with eight-inch or greater caliper or an outline of wooded areas, watercourses and include erosion control measures and trees proposed for removal.
  - c. Obtain an access permit NW Germantown Road. Please contact Right of way permits at (503) 988-3582 or at [row.permits@multco.us](mailto:row.permits@multco.us) regarding this requirement. [MCRR 6.100, MCRR 18.250]
4. At the time of building permit sign-off, the owner or their representative shall:

- a. Submit elevation plans that clearly show the height of the structure as defined in “Building Height” and the calculations of the height [MCC 33.0005 and MCC 33.3155]
  - b. Submit building plans and either catalog cut sheets or show drawings that demonstrate compliance with MCC 33.0570, Dark Sky Lightning Standards. [MCC 33.3155(F) and MCC 33.0570]
5. Prior to issuance of the Certification of Occupancy, the owners or their representative shall:
- a. Provide a 20-foot paved approach to NW Germantown Road. The paved approach will be measured from the edge of pavement of NW Germantown Road. It must not create any drainage problems along the County Road. This paved approach will help to protect the County Road from debris from the new driveway, and will improve the safety of this access. Please contact Right of way permits at (503) 988-3582 or at [row.permits@multco.us](mailto:row.permits@multco.us) regarding this requirement. [MCRR 6.100, MCRR 18.250]
6. As an on-going condition, the property owner shall:
- a. Maintain and trim vegetation and tree foliage along the property line in the curved area immediately west of the site’s access as described in EP case, EP-2014-3324 and the October 9, 2014 Sight Distance Certification. [Conditional of Approval from EP-2014-3324 and [MCC 33.34570(B)(4)]
  - b. Not planted on the subject property and shall removed and kept removed from cleared areas the following nuisance plants listed in the following table [MCC 33.4570(B)(7)]

Scientific Name	Common Name
<i>Chelidonium majus</i>	Lesser celandine
<i>Cirsium arvense</i>	Canada Thistle
<i>Cirsium vulgare</i>	Common Thistle
<i>Clematis ligusticifolia</i>	Western Clematis
<i>Clematis vitalba</i>	Traveler’s Joy
<i>Conium maculatum</i>	Poison hemlock
<i>Convolvulus arvensis</i>	Field Morning-glory
<i>Convolvulus nyctagineus</i>	Night-blooming Morning-glory
<i>Convolvulus seppium</i>	Lady’s nightcap
<i>Cortaderia selloana</i>	Pampas grass
<i>Crataegus sp. except C. douglasii</i>	hawthorn, except native species
<i>Cytisus scoparius</i>	Scotch broom
<i>Daucus carota</i>	Queen Ann’s Lace
<i>Elodea densa</i>	South American Water-weed
<i>Equisetum arvense</i>	Common Horsetail
<i>Equisetum telemateia</i>	Giant Horsetail
<i>Erodium cicutarium</i>	Crane’s Bill
<i>Geranium roberianum</i>	Robert Geranium
<i>Hedera helix</i>	English Ivy

Scientific Name	Common Name
<i>Loentodon autumnalis</i>	Fall Dandelion
<i>Lythrum salicaria</i>	Purple Loosestrife
<i>Myriophyllum spicatum</i>	Eurasian Watermilfoil
<i>Phalaris arundinacea</i>	Reed Canary grass
<i>Poa annua</i>	Annual Bluegrass
<i>Polygonum coccineum</i>	Swamp Smartweed
<i>Polygonum convolvulus</i>	Climbing Binaweed
<i>Polygonum sachalinense</i>	Giant Knotweed
<i>Prunus laurocerasus</i>	English, Portuguese Laurel
<i>Rhus diversiloba</i>	Poison Oak
<i>Rubus discolor</i>	Himalayan Blackberry
<i>Rubus laciniatus</i>	Evergreen Blackberry
<i>Senecio jacobaea</i>	Tansy Ragwort
<i>Solanum dulcamara</i>	Blue Bindweed
<i>Solanum nigrum</i>	Garden Nightshade
<i>Solanum sarrachoides</i>	Hairy Nightshade
<i>Taraxacum officinale</i>	Common Dandelion
<i>Utricularia vulgaris</i>	Common Bladderwort
<i>Urtica dioica</i>	Stinging Nettle



Scientific Name	Common Name
<i>Hypericum perforatum</i>	St. John's Wort
<i>Ilex aquafolium</i>	English Holly
<i>Laburnum watereri</i>	Golden Chain Tree
<i>Lemna minor</i>	Duckweed, Water Lentil

Scientific Name	Common Name
<i>Vinca major</i>	Periwinkle (large leaf)
<i>Vinca minor</i>	Periwinkle (small leaf)
<i>Xanthium spinosum</i>	Spiny Cocklebur
<i>various genera</i>	Bamboo sp.

**Note:** Once this decision is final, application for building permits may be made with the City of Portland. When ready to have building permits signed off, the applicant shall call the Staff Planner, Rithy Khut, at (503) 988-0176 or email, at [rithy.khut@multco.us](mailto:rithy.khut@multco.us), for an appointment for review and approval of the conditions and to sign the building permit plans. Please note, Multnomah County must review and sign off the building permits before the applicant submits building plans to the City of Portland. Five (5) sets each of the site plan and building plans are needed for building permit sign off. At the time of building permit review, a fee will be collected. In addition, an erosion control inspection fee may be required.

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

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

## A 2D coordinate system with a horizontal and a vertical axis. Both axes have arrows at both ends. The horizontal axis is labeled with a blue 'z' at its right end. The vertical axis is labeled with a blue 'z' at its bottom end. A small white arrow points from the origin towards the bottom-left quadrant.

1 inch = 50 feet

408 feet

Prepared by Penny Lytle  
11/14/2016



16 NOV 23 PM 1:13



1600 SE 190<sup>th</sup> Avenue, Portland Oregon 97233-5910 • PH. (503) 988-3043 • Fax (503) 988-3389

## NOTICE OF DECISION

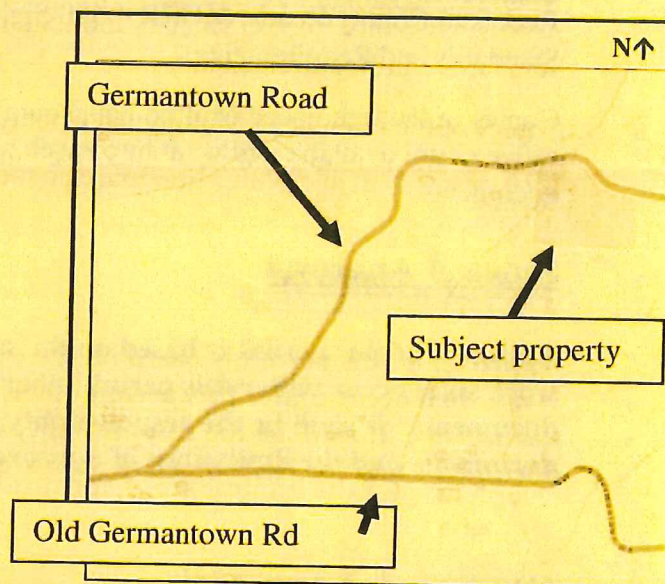
This notice concerns a Decision by the County Engineer on the case cited and described below.

### Application for Multnomah County Road Rules Variance

**Case File:** EP-2014-3324

**Location:** 14150 NW Germantown Road  
Tax Lot 01700, Section 09B,  
Township 1N, Range 1W, W.M.  
R649703400

**Owner/  
Applicant:** Penny and Gary Lytle



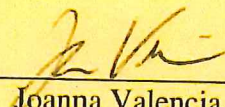
**Summary:** Application for a road rules variance to allow for an access point to serve the site on Germantown Road. The proposed access point doesn't meet site distances requirements.

**Decision:** Approved with Conditions

Unless appealed, this decision is effective October 29, 2015, at 4:00 PM.

Issued by:

By:

  
Joanna Valencia, AICP, Planning  
and Development Manager

For: Ian Cannon, County Engineer

Date: Friday, October 16, 2015

**Opportunity to Review the Record:** A copy of the County Engineer's Decision, and all evidence submitted associated with this application, is available for inspection, at no cost, at the





Land Use and Transportation Planning office during normal business hours. Copies of all documents may be purchased at the rate of 30-cents per page. The County Engineer's Decision contains the findings and conclusions upon which the decision is based, along with any conditions of approval. For further information on this case, contact Joanna Valencia, at 503-988-0219 or via email at joanna.valencia@multco.us .

**Opportunity to Appeal:** This decision may be appealed within 14 days of the date it was rendered, pursuant to the provisions of MCRR 16.310(E)(1)(b). To obtain appeal forms or information on the procedure, contact the Land Use and Transportation Planning offices at 1600 SE 190th Avenue (Phone: 503-988-5050).

**This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is October 29, 2015 at 4:30 PM.**

**Applicable Approval Criteria:** Multnomah County Road Rules (MCRR): MCRR 4.000-Access to County Roads, MCRR 4.500 Sight Distance, MCRR 16.000 Variance from County Standards and Requirements.

Copies of the referenced Multnomah County Code sections can be obtained by contacting our office or are available online at <http://web.multco.us/transportation-planning/planning-documents>.

### **Scope of Approval**

Approval of this permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.

### **Conditions of Approval**

The conditions listed are necessary to ensure that approval criteria for this permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parenthesis.

1. The applicant shall acquire a driveway permit from Multnomah County.
2. The applicant shall maintain vegetation to ensure that the sight distance is maintained from the access point.

#### **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. Variance Request Procedure**

**For the County Engineer to consider a variance request, it must be submitted in writing with the appropriate fee to the County prior to the issuance of any development permit. The written variance request shall be signed by a person with the authority to bind the applicant and shall include the following information as applicable:**

#### **A. Applicant name, telephone/fax number(s), email address, mailing address,**

Penny and Gary Lytle  
503-887-0079  
[pllytle@gmail.com](mailto:pllytle@gmail.com)  
6018 SW 33<sup>rd</sup> Place  
Portland, OR 97239

#### **B. Property location and zoning;**

State ID: 1N1W09B 1700  
R#236843  
Alt Account R649703400  
Zoned RR: Rural Residential

#### **C. Current or intended use of the property;**

Build a single family home.

#### **D. The nature and a full description of the requested variance;**

There is no location on the property that meets the standard sight distance requirements, so we are seeking a variance to allow us to use the existing driveway. The attached Site Distance Certification confirms the existing driveway is in the best location to meet the stopping sight distance standard in both directions.

#### **E. Site plan, sight distance, pedestrian traffic, intersection alignment, traffic generation, vehicle mix, traffic circulation including impact on through traffic, and other similar traffic safety considerations;**

See attached Sight Distance Certification report.

#### **F. Existing right-of-way or improvement limitations, and utility considerations;**

See attached Sight Distance Certification report.

#### **G. Adjacent land uses, their types, access requirements, and impact of traffic on them;**

Neighboring properties are single family homes on large (several acres each) rural lots.

#### **H. Topography, grade, side hill conditions, and soil characteristics;**



The property is on the downhill side of the road, with steep, but erodible banks.

**I. Drainage characteristics and problems;**

Stormwater drainage is provided by a ditch on the opposite side of the road, and is not affected by the proposed driveway.

**J. Fire Department access requirements within a public right-of-way and their written approval of the proposed modification;**

See attached TVF&R Fire Service Agency Review.

**K. Natural and historic features including but not limited to trees, shrubs or other significant vegetation, water courses, wetlands, rock outcroppings, development limitation, areas of significant environmental concern, etc;**

The west side of the property has a creek with steep banks that make it unsuitable for development. There are a variety of trees and shrubs lining the road banks, which have been trimmed to satisfy the recommendations in the attached Sight Distance Certification report.

**L. Multnomah County Comprehensive Plan policies applicable to the particular parcel or location.**

Policy 8: Rural Residential Land Area

Policy 33a: Transportation System

**2. Project Description**

**Staff:** The applicant is requesting a variance from the Multnomah County Road Rule 4.500 that requires all new access points to roads under the County's jurisdiction have a minimum site distance equal to the standards in the Design and Construction Manual and AASHTO's A Policy on Geometric Design of Highways and Streets. The applicant is requesting an access with less than the allowable site distance.

**3. Site Characteristics**

**Staff:** The site is located on Germantown Road. The site has frontage along Germantown Road and is west of a curve. The applicant is requesting a variance to the County Road Rules for an access from Germantown Road that does not meet the site distance requirement. The site is located in rural Multnomah County and is currently vacant. The property is zoned Rural Residential and is subject to a Land Use review with Multnomah County.

**4. Public Comment**

**MCCR 16.310 Completeness, Timelines, Public Notice, Decision:**

**E: Public notice of an application for a variance to these Road Rules shall be as follows:**

**1. For variance applications not in conjunction with a proposed development requiring a land use decision:**

- a. Notice of the application and invitation to comment shall be mailed to the applicant, the applicable recognized neighborhood association, and all property owners within 100 feet within the urban growth boundary



or within 750 feet outside of the urban growth boundary. The County Engineer will accept comments for 14 days after the notice of application is mailed.

**Staff:** This application was submitted on July 13, 2015 . The application was deemed complete on August 11, 2015 and a 14-Day Opportunity to Comment was mailed to neighboring property owners on August 13, 2015 with the comment period ending on August 27, 2015 . No comments were received.

This decision was drafted and will be mailed in accordance with MCRR 16.310.  
*Procedures met.*

**5.1 The Applicant's Proposal Meets the General Variance Criteria**

**16.200 General Variance Criteria:** In order to be granted a variance, the applicant must demonstrate that:

**A. Special circumstances or conditions apply to the property or intended use that do not apply to other property in the same area. The circumstances or conditions may relate to the size, shape, natural features and topography of the property or the location or size of physical improvements on the site or the nature of the use compared to surrounding uses;**

***Applicant:***

The property is along a curved section of Germantown road and there is another curve along the neighboring property to the east.

**Staff:** As indicated by the applicant, the property is adjacent to a curve to the west. To the east of the property is an undeveloped parcel which is adjacent to that property's eastern lot line. Other properties near the parcel have been developed. The location of the property is between two curves such that adjusting the proposed driveway in either direction from the proposed location will not eliminate the need for a Road Rules Variance. This criterion is met.

**5.2 B. The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant and extraordinary hardship would result from strict compliance with the standards;**

***Applicant:*** The variance is necessary because there is no location along the property where placement of a driveway would meet the sight distance requirements.

**Staff:** The variance is necessary for the preservation and enjoyment of a substantial property right of the applicant and extraordinary hardship would result from strict compliance with the standards. The proposed use is allowable based on the zoning, however there is no location on the property where a Road Rules Variance would not be necessary. Without a variance, the property would not be able to be accessed and be able to be developed to the allowable use.



Staff finds, as supported by the findings above, that the variance request is necessary for the preservation and enjoyment of a substantial property right of the applicant and extraordinary hardship would potentially result from strict compliance with the standards. *As conditioned, this criterion has been met.*

**5.3 C. The authorization of the variance will not be materially detrimental to the public welfare or injurious to other property in the vicinity, or adversely affect the appropriate development of adjoining properties;**

**Applicant:** Most adjacent properties are already developed with driveways in place. The property directly to the east is not developed but would not be affected by the proposed location of the driveway.

**Staff:** The authorization of the variance will not be material detrimental to the public welfare or injurious to other property in the vicinity, or adversely affect the appropriate development of adjoining properties. Surrounding uses include residential use. An opportunity to comment was issued to neighboring property owners, and no significant comments were received raising concerns for the variance. Adverse impacts to adjoining properties are not anticipated with this variance request. *This criterion is met.*

**5.4 D. The circumstances of any hardship are not of the applicant's making.**

**Applicant:** The variance is necessary because NW Germantown Road was built to follow the curves of the hillside.

**Staff:** As indicated by the applicant, the circumstances of any hardship are not of the applicant's making. *This criterion is met.*

**6. Conclusion**

Based on the findings, narrative, and other information provided herein, this application, as conditioned, satisfies all applicable approval criteria required for a variance to allow for an access point from Germantown Road onto the property.

Copies of submittals can be found in the permanent case file, EP-2014-3324, available for review at the County Transportation Office.



## **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*.

### **1.00 Project Description:**

**Staff:** The applicant is requesting a Significant Environmental Concern for Wildlife Habitat (SEC-h) permit to construct a new single-family dwelling and detached garage.

### **2.00 Property Description & History (if needed):**

**Staff:** The proposed single-family dwelling will be located on NW Germantown Road within the Rural Residential zoning district in the West Hills Rural Area. The property has a Significant Environmental Concern for Streams (SEC-s) on the western portion of the property along a tributary of Rock Creek and a Significant Environmental Concern for Wildlife Habitat (SEC-h) overlay over the entirety of the property. The subject property is middle portion of larger partition plat, Partition Plat 1990-57 and is 4.58 acres.

The property was previously owned by Frank Singer and GeorgeAnn Skandis. In 2014, the subject property was acquired by the current property owners, Gary and Penny Lytle. Currently the property is forested with a small clearing in the middle of the property and there are no buildings or structures.

### **3.00 Code Compliance Criteria:**

#### **3.01 § 37.0560 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 Land Use 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 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:** There are no active code compliance issues associated with the property; therefore, the County has the authority to issue this land use decision. *These criteria are met.*

#### **4.00 Lot of Record Criteria**

##### **4.01 § 33.0005 DEFINITIONS**

**Lot of Record** – Subject to additional provisions within each Zoning District, a Lot of Record is a parcel, lot, or a group thereof that, when created or reconfigured, (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws, or (c) complies with the criteria for the creation of new lots or parcels described in MCC 33.7785. 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.)

(c) Separate Lots of Record shall be recognized and may be partitioned congruent with an “acknowledged unincorporated community” boundary which intersects a Lot of Record.

1. Partitioning of the Lot of Record along the boundary shall require review and approval under the provisions of the land division part of this Chapter, but not be subject to the minimum area and access requirements of this district.
2. An “acknowledged unincorporated community boundary” is one that has been established pursuant to OAR Chapter 660, Division 22.

##### **§ 33.3170 LOT OF RECORD**



(A) In addition to the Lot of Record definition standards in MCC 33.0005, for the purposes of this district the significant dates and ordinances for verifying zoning compliance may include, but are not limited to, the following:

- (1) July 10, 1958, SR zone applied;
- (2) July 10, 1958, F-2 zone applied;
- (3) December 9, 1975, F-2 minimum lot size increased, Ord. 115 & 116;
- (4) October 6, 1977, RR zone applied, Ord. 148 & 149;
- (5) October 13, 1983, zone change from MUF-19 to RR for some properties, Ord. 395;
- (6) October 4, 2000, Oregon Administrative Rules Chapter 660 Division 004, 20 acre minimum lot size for properties within one mile of Urban Growth Boundary;
- (7) May 16, 2002, Lot of Record section amended, Ord. 982, reenacted by Ord. 997.

(B) A Lot of Record which has less than the minimum lot size for new parcels or lots, less than the front lot line minimums required, or which does not meet the access requirement of MCC 33.3185, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

(C) Except as otherwise provided by MCC 33.3160, 33.3175, and 33.4300 through 33.4360, no sale or conveyance of any portion of a lot other than for a public purpose shall leave a structure on the remainder of the lot with less than minimum lot or yard requirements or result in a lot with less than the area or width requirements of this district.

(D) The following shall not be deemed to be a lot of record:

- (1) An area of land described as a tax lot solely for assessment and taxation purposes;
- (2) An area of land created by the foreclosure of a security interest.
- (3) An area of land created by court decree.

**Staff:** In 1990, the County reviewed and approved a partition plan, Partition Plat 1990-057 on May 31, 1990 as part of an exempt minor partition (EMP). The configuration of the lots, as shown on the survey maps associated with the approved EMP reflects the last configuration of the subject properties, which satisfied all applicable zoning laws, satisfied all applicable land division laws, and complied with the applicable criteria for the creation of new parcels (Exhibit B.3). The properties created by this EMP currently are in the same configuration as was proposed in 1990 (Exhibit B.2). *These criteria are met.*

## **5.00 Rural Residential – RR Criteria**

### **5.01 § 33.3120 ALLOWED USES**

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

**Staff:** The applicant(s)/property owner(s) have provided information to establish a residential use consisting of a single-family dwelling. The proposed single-family dwelling has met most of the approval criteria as described below. A few criteria will require additional action by the

applicant(s)/property owner(s) to demonstrate compliance with all of the applicable approval criteria.

**(F) Accessory Structures:**

**(1) Structures or uses listed below when customarily accessory or incidental to any use permitted or approved in this district:**

**(a) Garages or carports;**

**(d) Workshops;**

**(e) Storage sheds;**

**Staff:** The applicant(s)/property owner(s) have provided information to establish an Accessory Structure. The proposed accessory structure, a garage and workshop/storage shed, has met most of the approval criteria as described below. A few criteria will require additional action by the applicant(s)/property owner(s) to demonstrate compliance with all of the applicable approval criteria.

**5.02 § 33.3155 DIMENSIONAL REQUIREMENTS AND DEVELOPMENT STANDARDS**

**(C) Minimum Yard Dimensions – Feet**

Front	Side	Street Side	Rear
30	10	30	30

**Maximum Structure Height – 35 feet**

**Minimum Front Lot Line Length – 50 feet.**

**Staff:** The site plan indicated that the proposed single-family dwelling is approximately 140 feet from the front property line, approximately 100 feet from the western side and approximately 65 feet from the rear property line. The detached accessory building is approximately 75 feet from the front property line, approximately 50 feet from the western side and approximately 130 feet from the rear property line. The front lot line length is over 600 feet (Exhibit A.5). The height of the proposed single-family structure is two stories, which is typically less than 35 feet (Exhibit A.10). However to ensure compliance with these requirement, a condition will be required that at the time of building permit review, a building plan be submitted demonstrating compliance with this requirement. *As conditioned, these criteria are met.*

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

**Staff:** The proposed single-family dwelling has been reviewed by the Transportation Planning and Development Division (see Section 7.00) and it has been determined that there is sufficient right-of-way width, therefore an increased setback is not needed. *This criterion is met.*

**(F) All exterior lighting shall comply with MCC 33.0570.**



**Staff:** To ensure compliance with this requirement, a condition will be required that at the time of building permit review, a building plan be submitted demonstrating compliance with this requirement. *As conditioned, this criterion is met.*

**5.03 § 33.3185 ACCESS**

**All lots and parcels in this district shall abut a public street or shall have other access determined by the approval authority to be safe and convenient for pedestrians and passenger and emergency vehicles. This access requirement does not apply to a pre-existing lot and parcel that constitutes a Lot of Record described in MCC 33.3170(B).**

**Staff:** The lot abuts the NW Germantown Road, which is a public street. *This criterion is met.*

**6.00 Significant Environmental Concern Criteria**

**6.01 § 33.4570 CRITERIA FOR APPROVAL OF SEC-H PERMIT -WILDLIFE HABITAT**

**(B) Development standards:**

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

**Staff:** Multnomah County Code 33.4570 defines a forest area as, "an area that has at least 75 percent crown closure, or 80 square feet of basal area per acre." The applicants conducted a tree survey of the development area to see if it meets the requirements of a non-forested "cleared area. Based on the survey, the applicants found that there were 18 trees that had a DBH of 11 inches or greater. (Exhibit A.18). The total basal area per acre was 27.085, which does not meet the definition of forested area therefore the development is occurring in the non-forested "cleared areas. *This criterion is met.*

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

**Staff:** The site plan indicates that the development will occur within 200 feet of a public road. *This criterion is met.*

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

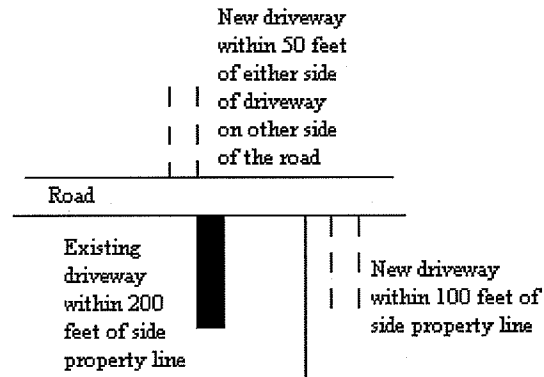
**Staff:** The site plan and narrative indicate that the access road/driveway will be approximately 385 feet in length (Exhibit A.4 and A.5). *This criterion is met.*

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

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

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

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



For illustrative purposes only.

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

1. The modification shall be the minimum necessary to allow safe access onto the public road.
2. The County Road Official shall provide written findings supporting the modification.

**Staff:** Aerial photos indicate that there is one adjacent driveway on the same side of the road and three driveways on the opposite side of the road. The adjacent driveway on the same side of the road is over 500 feet from the shared property line (Exhibit B.4). The proposed driveway for the single-family dwelling is over 200 feet away from the two closest driveways on the opposite side of the road (Exhibit B.5). Although MCC 33.4570(B)(4) requires that the proposed driveway be within 50 feet of the existing driveways, the applicant has requested that the standard be modified based on the determination by the County Road official. The applicant has applied for and obtained a Road Rules Variance, EP-2014-3324 for the driveway approach. The Decision found that, "the authorization of the variance will not be materially detrimental to the public welfare or injurious to other property in the in the vicinity" (Exhibit A.7 and A.8). Because of the topography of the site and NW Germantown Road, the modification is the minimum necessary to allow for safe access onto the public road. However, to ensure that the recommendations and approval criteria from EP-2014-3324 are met, conditions will be required to ensure compliance. *As conditioned, these criteria are met.*



(5) The development shall be within 300 feet of a side property line if adjacent property has structures and developed areas within 200 feet of that common side property line.

**Staff:** Aerial photos indicate that there is one property with structures and development areas adjacent to this property. The structures and development area are over 200 feet away from common side property line. *This criterion is met.*

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

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

**Staff:** No fencing is being proposed and no fencing appears of the site plan provided by the applicant. *These criteria are met.*

(7) The following nuisance plants shall not be planted on the subject property and shall be removed and kept removed from cleared areas of the subject property:

Scientific Name	Common Name
<i>Chelidonium majus</i>	Lesser celandine
<i>Cirsium arvense</i>	Canada Thistle
<i>Cirsium vulgare</i>	Common Thistle
<i>Clematis ligusticifolia</i>	Western Clematis
<i>Clematis vitalba</i>	Traveler's Joy
<i>Conium maculatum</i>	Poison hemlock
<i>Convolvulus arvensis</i>	Field Morning-glory
<i>Convolvulus nyctagineus</i>	Night-blooming Morning-glory
<i>Convolvulus sepium</i>	Lady's nightcap

Scientific Name	Common Name
<i>Loentodon autumnalis</i>	Fall Dandelion
<i>Lythrum salicaria</i>	Purple Loosestrife
<i>Myriophyllum spicatum</i>	Eurasian Watermilfoil
<i>Phalaris arundinacea</i>	Reed Canary grass
<i>Poa annua</i>	Annual Bluegrass
<i>Polygonum coccineum</i>	Swamp Smartweed
<i>Polygonum convolvulus</i>	Climbing Binaweed
<i>Polygonum sachalinense</i>	Giant Knotweed
<i>Prunus laurocerasus</i>	English, Portuguese Laurel

Scientific Name	Common Name
<i>Cortaderia selloana</i>	Pampas grass
<i>Crataegus</i> sp. except <i>C. douglasii</i>	hawthorn, except native species
<i>Cytisus scoparius</i>	Scotch broom
<i>Daucus carota</i>	Queen Ann's Lace
<i>Elodea densa</i>	South American Water-weed
<i>Equisetum arvense</i>	Common Horsetail
<i>Equisetum telemateia</i>	Giant Horsetail
<i>Erodium cicutarium</i>	Crane's Bill
<i>Geranium roberianum</i>	Robert Geranium
<i>Hedera helix</i>	English Ivy
<i>Hypericum perforatum</i>	St. John's Wort
<i>Ilex aquafolium</i>	English Holly
<i>Laburnum watereri</i>	Golden Chain Tree
<i>Lemna minor</i>	Duckweed, Water Lentil

Scientific Name	Common Name
<i>Rhus diversiloba</i>	Poison Oak
<i>Rubus discolor</i>	Himalayan Blackberry
<i>Rubus laciniatus</i>	Evergreen Blackberry
<i>Senecio jacobaea</i>	Tansy Ragwort
<i>Solanum dulcamara</i>	Blue Bindweed
<i>Solanum nigrum</i>	Garden Nightshade
<i>Solanum sarrachoides</i>	Hairy Nightshade
<i>Taraxacum officinale</i>	Common Dandelion
<i>Utricularia vuigaris</i>	Common Bladderwort
<i>Urtica dioica</i>	Stinging Nettle
<i>Vinca major</i>	Periwinkle (large leaf)
<i>Vinca minor</i>	Periwinkle (small leaf)
<i>Xanthium spinoseum</i>	Spiny Cocklebur
<i>various genera</i>	Bamboo sp.

**Staff:** Nuisance plant removal in the development area shall be required and if replanting occurs, no nuisance plants shall be planted. To ensure that these requirements are met, a condition of approval shall be required. *As conditioned, these criteria are met.*

## 7.00 Transportation Standards

### 7.01 MCRR 4.000 ACCESS TO COUNTY ROADS

**4.100 Required Information:** Applicants for a new or reconfigured access onto a road under County Jurisdiction may be required to provide all of the following:

- A. Site Plan;
- B. Traffic Study-completed by a registered traffic engineer;
- C. Access Analysis-completed by a registered traffic engineer;
- D. Sight Distance Certification from a registered traffic engineer; and
- E. Other site-specific information requested by the County Engineer.

**Staff:** The applicant has proposed to construct a new access onto NW Germantown Road under County Jurisdiction. The road is classified as a Rural Collector facility. The new access is shown on the applicant's site plan (Exhibit A.5). All required information has been submitted.



**4.200 Number:** Reducing the number of existing and proposed access points on Arterials and Collectors and improving traffic flow and safety on all County roads will be the primary consideration when reviewing access proposals for approval. One driveway access per property will be the standard for approval. Double frontage lots will be limited to access from the lower classification street. Shared access may be required in situations where spacing standards cannot be met or where there is a benefit to the transportation system.

**Staff:** The subject property is served by one (1) driveway. *This criterion is met.*

**4.300 Location:** All new access points shall be located so as to meet the access spacing standards laid out in the Design and Construction Manual.

**Staff:** For a road classified as a Rural Collector facility, the spacing standard is 98 feet (DCM Table 1.2.5). The minimum distance is applied to both driveways on the same side of the street as well as driveways opposite to the site. *The criterion is met.*

**4.400 Width:** Driveway and Accessway widths shall conform to the dimensions laid out in the Design and Construction Manual.

**Staff:** For a single-family residential use, a new or reconfigured driveway must be 12 to 25 feet wide. To ensure compliance with this criterion, the new driveway width shall fall within the standard range. *As conditioned, this criterion is met.*

**4.500 Sight Distance:** All new access points to roads under the County's jurisdiction must have a minimum sight distance equal to the standards in the Design and Construction Manual and AASHTO's A Policy on Geometric Design of Highways and Streets.

**Staff:** Multnomah County Road Rules Section 4.500 states that access points to roads under the County's jurisdiction must have a minimum sight distance equal to the standards in the County Design and Construction Manual or AASHTO's, *A Policy on Geometric Design of Highway and Streets*. The applicant has submitted for the review of the County Transportation Division a sight distance certification from a registered traffic engineer, which provides an assessment of sight distance at the intersection in question consistent with AASHTO standards.

Sight distance is limited at the site's proposed NW Germantown driveway access. The applicant was granted a Road Rules variance from minimum sight distance standards. The applicant provided a sight distance certification along with the Road Rules variance request. The County concurred with the findings of the sight distance certification, which stated that the proposed driveway location is the best possible location on the subject site for sight distance. The County conditioned approval of the variance upon the property owner's maintenance and trimming of vegetation and tree foliage along the property line in the curved area immediately west of the site's access as described in EP case, EP-2014-3324 and the October 9, 2014 Sight Distance Certification.

Given the increase in traffic that this proposal will generate at the driveway location, it is vital to the safety of the traveling public to insure that adequate sight distance is available. Providing this sight distance will help to prevent traffic crashes in the future. *As conditioned, this criterion is met.*

## **7.02 MCRR 5.000 TRANSPORTATION IMPACT**

**5.100 To determine if a Transportation Impact is caused by a proposed development, the County Engineer will determine the number of new trips generated by a site by one of the following methods:**

**A. Calculations from the most recent edition of the Institute of Transportation Engineers' Trip Generation (ITE); or**

**B. A site development transportation impact study conducted by a professional engineer registered in the State of Oregon and accepted by the County.**

**5.200 The County Engineer will use the information obtained pursuant to sub-section 5.100 and/or the frontage length of the subject property to determine the pro-rata share of the requirements set forth in Section 6.000.**

**5.300 Except where special circumstances require the County Engineer to make an alternate determination, any new construction or alteration which will increase the number of trips generated by a site by more than 20 percent, by more than 100 trips per day or by more than 10 trips in the peak hour shall be found to have a Transportation Impact. A minimum increase of 10 new trips per day is required to find a transportation impact.**

**Staff:** The Multnomah County Road Rules defines a Transportation Impact as the affect of any new construction or alteration, which will increase the number of trips generated by a site by more than 20 percent, by more than 100 trips per day or by more than 10 trips in the peak hour [MCRR 3.000]. A minimum increase of 10 new trips per day is required to find a transportation impact.

According to the ITE Manual, 8th Edition, a single-family dwelling generates 10 trips per day. The property is currently vacant. Therefore, the subject proposal results in a transportation impact.

## **7.03 MCRR 6.000 IMPROVEMENT REQUIREMENTS**

**6.100 Site Development: The owner of the site or the applicant for a proposed development, which is found to cause a Transportation Impact will be responsible for improvements to the right-of-way as follows:**

**A. Dedication Requirement\*\*\***

**Staff:** The County standard right of way width for a Rural Collector facility is 60 feet. The applicant is not required to dedicate right of way in order to achieve a proportional share of this standard. *This criterion is met.*

**B. Frontage Improvement Requirements\*\*\***

**Staff:** The driveway serving the site must have a 20-ft wide paved approach to NW Germantown Road, a county road. This paved approach will be measured from the edge of pavement of NW Germantown Road. It must not create any drainage problems along the County Road. This paved approach will help to protect the County Road from debris from the new driveway, and will improve the safety of this access. A deposit will be required for the paved approach along with the access permit application. Please contact Right of Way at



row.permits@multco.us or (503) 988-3582 regarding this requirement. *As conditioned, this criterion is met.*

## 7.04 9.000 COMPLIANCE METHOD

### 9.400 Non-Remonstrance Agreement:

**Staff:** The property owner is required to record deed restrictions with County Records, committing the property owner to participate in future right of way improvements costs. A non-remonstrance agreement, or deed restriction, will require that the property owner to participate in standard Rural Collector road improvements along the site's frontage that are not completed as a part of the site's required interim improvements. Contact Pat Hinds at (503) 988-3712 or patrick.j.hinds@multco.us to complete the deed restrictions.

## I. DOLAN FINDINGS

### Overview

The subject site is located at 14180 NW Germantown Road. The applicant proposes to build a single-family residence on the property.

#### 1) Nexus/Public Problem

NW Germantown Road does not meet the County's standard for a Rural Collector facility. The County's cross section standard for Rural Collector road is 60 feet, which includes two 12-foot wide paved travel lanes, six-foot shoulders, and drainage on each side. As future development occurs and road improvements are necessary, Multnomah County will require the property owners to contribute their proportional share of the cost of corridor road improvements, which their property will contribute to the need for and directly benefit from.

#### 2) Nexus/Development will Exacerbate Problem

According to the Institute of Transportation Engineers, the proposed project will create 10 trips on a daily basis. These additional auto trips will increase the travel demand on the County's transportation system, including this roadway.

#### 3) Nexus/Rough Proportionality

The applicant is required to furnish deed restrictions committing the property owner to participate in future right-of-way improvements.

#### 4) Rough Proportionality – Impacts in Average Daily Trips Proportional to Dedication Requirements

Estimates based on existing uses indicate that NW Germantown Road accommodates a daily volume of approximately 6,410 average daily trips (ADT) (2,629 ADT westbound and 3,781 ADT eastbound). The proposal will add new trips along the NW Germantown Road corridor, which extends approximately 10,760 feet from NW Old Germantown Road (west of the site) to NW Skyline Boulevard (east of the site). The site has approximately 613 feet of frontage on NW Germantown Road. The total half-street improvements required for NW Germantown Road include approximately 21,520 feet of improvements (10,760 feet multiplied by two). The proposed project will generate 10 daily trips with the project, 0.16% of total ADT for the corridor. The

applicant will be required to not remonstrate against improving 613 feet of the roadway frontage, which equates to 2.85% of the required half-street improvements for the corridor. This right-of-way improvement requirement is roughly proportional to the traffic impact generated by the proposed development.

#### Conclusion

The right-of-way improvement requirement is roughly proportional to the traffic impacts of the proposed development. The applicant will be required to furnish deed restrictions committing the property owner to participate in future right-of-way improvements on NW Germantown Road.

### **7.05 18.000 RIGHT OF WAY USE PERMITS**

#### **18.250 Access/Encroachment Permit:**

**A. An Access/ Encroachment Permit (A/E Permit) may be required for the following activities within the right of way:**

- 1. New or altered access to roads under County jurisdiction. An access is considered altered when a change in the development that it serves has a Transportation Impact as defined in section 6.000 of these rules;**

**Staff:** As noted in MCRR 4.000, the applicant proposes a new access onto NW Germantown Road, a Multnomah County road. The applicant must to obtain access permit. *As conditioned, this criterion is met.*

### **8.00 Conclusion**

Based on the findings and other information provided above, the applicant has carried the burden necessary for a Significant Environmental Concern Permit to establish a single-family dwelling and accessory building in the Rural Residential zone. This approval is subject to the conditions of approval established in this report.

### **9.00 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. All other exhibits are available for review in Case File T2-2016-6339 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	General Application Form	11/23/2016
A.2	1	Withdrawal Letter of T1-2015-4645	11/23/2016
A.3	1	Contents of Submittal Package	11/23/2016
A.4	7	Narrative	11/23/2016
A.5*	1	Site Plan	11/23/2016
A.6	1	Aerial View	11/23/2016



A.7*	6	Notice of Decision for EP-2014-3324	11/23/2016
A.8	6	Sight Distance Certification prepared by Charbonneau Engineering, LLC	11/23/2016
A.9	1	Property Map with Driveways	11/23/2016
A.10	4	Floor Plans of Dwelling and Accessory Building	11/23/2016
A.11	5	Elevation Plans	11/23/2016
A.12	1	Septic Review Certification	11/23/2016
A.13	4	Fire Service Agency Review	11/23/2016
A.14	2	Storm Water Certificate	11/23/2016
A.15	2	Response to Incomplete Letter sent on 12/22/2016	02/27/2017
A.16	1	Statement from Gary Kirsch Construction for gravel road	02/27/2017
A.17	1	Site Plan showing contours	02/27/2017
A.18	1	Inventory of trees inside development area	07/18/2017
<b>'B'</b>	<b>#</b>	<b>Staff Exhibits</b>	<b>Date</b>
B.1	2	Department of Assessment, Records and Taxation (DART): Property Information for 1N1W09B – 01700 (R649703400)	11/23/2016
B.2	1	Department of Assessment, Records and Taxation (DART): Map with for 1N1W09B – 01700 (R649703400)	11/23/2016
B.3	1	Partition Plat No. 1990-57	11/23/2016
B.4	1	Aerial photo showing distance between proposed driveway and driveway adjacent to and on the same side of the subject property	06/01/2017
<b>'C'</b>	<b>#</b>	<b>Administration &amp; Procedures</b>	<b>Date</b>
C.1	2	Incomplete letter	12/22/2016
C.2	1	Applicant's acceptance of 180 day clock	01/06/2017
C.3	1	Complete letter (day 1)	03/29/2017
C.4	3	Opportunity to comment & mailing list	05/16/2017
C.5		Administrative decision & mailing list	