

## NOTICE OF DECISION and notice of Potential Appeal

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

**Case File:** T2-2017-7480

**Permit:** Accessory Use Determination, Hillside Development and Erosion Control, and Significant Environmental Concern Permits

**Location:** 15245 NW Cornelius Pass Road  
Tax Lot 400, Section 30BB, Township 2 North, Range 1 West, W.M.  
Tax Account #R971300200 Property ID #R325325

**Applicants:** Mark Tesauro and Raymond Friedman

**Owners:** Mark Tesauro and Raymond Friedman

**Base Zone:** Rural Residential (RR)

**Overlays:** Significant Environmental Concern for Wildlife Habitat (SEC-h)  
Significant Environmental Concern for Streams (SEC-s)  
Hillside Development and Erosion Control (HD)


**Summary:** The applicant is requesting approval of an Accessory Use Determination, Hillside Development and Erosion Control, and Significant Environmental Concern Permits to retroactively approve accessory and agricultural structures in the Rural Residential (RR) zoning district.

**Decision:** Approved with Conditions

Unless appealed, this decision is effective Friday, October 27, 2017, at 4:00 PM.

Issued by:

By:

  
Rithy Khut, Planner

For: Michael Cerbone, AICP  
Planning Director

Date: Friday, October 13, 2017

Instrument Number for Recording Purposes: # 2004069736



**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 Friday, October 27, 2017 at 4:00 pm.**

## **NOTICE OF POTENTIAL APPEAL HEARING**

**If an appeal of this decision is filed, a public hearing will be held on Friday, November 17, 2017. The hearing will begin at 1:00 PM or soon thereafter.**

**The hearing will take place in Room 103 (Columbia Room) at the Land Use Planning and Transportation Program office located at 1600 SE 190th Avenue, Portland, OR 97233. If no appeal is filed, a notice canceling this hearing will be posted on the outside of the Yeon Annex Building doors. You can also call the receptionist at 503-988-3043 option '0' to inquire on the status of the hearing after Friday, November 17, 2017.**

The Hearing would be regarding an Accessory Use Determination, Hillside Development and Erosion Control, and Significant Environmental Concern Permits to retroactively approve accessory and agricultural structures in the Rural Residential (RR) zoning district.

Any issue that is intended to provide a basis for an appeal to the Land Use Board of Appeals (LUBA) must be raised prior the close of the public record. Issues must be raised and accompanied by statements or evidence sufficient to afford the County and all parties an opportunity to respond to the issue.

**A public hearing to consider any appeal will be conducted before one of the County Hearings Officer's.**

**Applicable Approval Criteria:** Multnomah County Code (MCC): MCC 37.0560 Code Compliance and Applications, MCC 33.0005 Definitions, MCC 33.0565 Condition of Approval – Accessory Structures, MCC 33.0570 Dark Sky Lighting Standards

**Rural Residential – RR:** MCC 33.3120 Allowed Uses, MCC 33.3125 Review Uses, MCC 33.3155 Dimensional Requirements and Development Standards, MCC 33.3170 Lot of Record, MCC 33.3185 Access

**Significant Environmental Concern:** MCC 33.4570 Criteria for Approval of SEC-h Permit – Wildlife Habitat, MCC 33.4575 Criteria for Approval of SEC-s Permit, Streams

**Hillside Development and Erosion Control:** MCC 33.5515 Application Information Required, MCC 33.5520 Grading and Erosion Control Standards

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. 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.
2. This land use permit expires two (2) years of the date of the final decision, when construction has not commenced or four (4) years of the date of the final decision, when commencement of construction has not been completed pursuant to MCC 37.0690(B) as applicable.
  - Commencement of construction shall mean actual construction of the foundation or frame of the approved structure. For utilities and developments without a frame or foundation, commencement of construction shall mean actual construction of support structures for an approved above ground utility or development or actual excavation of trenches for an approved underground utility or development. For roads, commencement of construction shall mean actual grading of the roadway.
  - 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. [MCC 37.0690(B)]

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. [MCC 37.0695]

3. The property owners or their representative shall obtain the required permits from the City of Portland, which were not obtained when the accessory structure was constructed. Once the applicant has obtained all required building permits for the accessory structure from the City of

Portland, copies of all permits shall be submitted to Multnomah County Land Use Planning Division within 30 days of receipt. [MCC 33.3120(F), MCC 33.3125(J) and MCC 29.003]

- At the time of submittal of receipt of all permits to the County, the property owners or their representative shall schedule a site visit to confirm that all requirements of UR-2015-4972 are met and completed. [MCC 37.0560 and MCC 37.0660]
4. Prior to Land Use Planning sign-off for a building permit, the property owners or their representative shall:
- Record pages 1 through 6 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]
  - Record a covenant with County Records that states that the owner understands and agrees that the structure cannot be occupied as a dwelling or for any other form of permanent or temporary residential use. [MCC 33.0565 and MCC 33.3120(F)]
5. At the time of building permit sign-off, the property owner or their representative shall:
- Provide evidence and photographs demonstrating that the bathroom tub has been converted into a stand-up shower or removed and the bed has been disassembled or removed. [MCC 33.3120(F)]
  - Provide an updated site plan showing:
    - i. The compost bin and water tanks within the side property lines are relocated a minimum of 10-feet from the side property lines. [MCC 33.3155(C)]
    - ii. The proposed storm water systems as proposed by Waterways Consulting, Inc.
  - Submit a building plan and provide cut/specification sheets showing all exterior lighting supporting the subject property. The exterior lighting shall be fully shielded with opaque materials and directed downwards.
    - i. "Fully shielded" means no light is emitted above the horizontal plane located at the lowest point of the fixture's shielding.
    - ii. Shielding must be permanently attached.
    - iii. The exterior lighting shall be contained within the boundaries of the Lot of Record on which it is located. [MCC 33.0570 and MCC 33.3155(F)]
6. As an on-going condition, the property owner shall:
- Not raise any type of fowl, or process the by-product thereof, for sale at wholesale or retail without the review and approval of the appropriate permit. This does not prohibit the sale of eggs. [MCC 33.3120(A) and MCC 33.3130(C)]
  - Not raise four (4) or more swine more than four (4) months of age without the review and approval of the appropriate permit. [MCC 33.3120(A) and MCC 33.3130(C)]
  - Not plant following nuisance plants on the subject property and if found on the property shall be removed and kept removed from cleared areas of the subject property.

Scientific Name	Common Name	Scientific Name	Common Name
<i>Chelidonium majus</i>	Lesser celandine	<i>Loentodon autumnalis</i>	Fall Dandelion

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

- Monitor the mitigation sites and provide an annual monitoring plan for a period of five (5) years, which ensures an 80% annual survival rate of the plants described in SEC-s and SEC-h narrative. The described plantings include:
  - i. Oct. 2009 - Western Redcedar augmentation. 5 x 5 gallon, 3 foot tall trees planted. 100% survival with trees now -12 foot tall.
  - ii. Feb. 2017 - Augmentation of thinned hardwood area with:
    - 1. Douglas Fir (45 x 2 yr, bareroot),
    - 2. Pacific Madrone (2 x 2 yr, bare-root),
    - 3. Western Crabapple (5 x 2 yr, bare-root),
    - 4. Mock Orange (2 x 2 yr, bare-root).
  - iii. March 2017 - Western Hemlock augmentation (27 x 2 yr, bare-root trees)
  - iv. 2012 - 2017 native plantings:
    - 1. 2 Western Redcedar Plugs (2012, now established, 2.5 foot tall),
    - 2. Sitka Spruce plug (2011, now established, 5 foot tall),
    - 3. Sitka Willow (10 in 2016, 7 survived),
    - 4. Douglas Spirea (2014, 1 gallon pot, established),
    - 5. Manzanita (2014, 2 x 5 gallon pots, established),
    - 6. Western Redcedar (2014, 1 x 5 gallon pot, now established).

Plants that die shall be replaced in kind so that a minimum of 80% of the trees and shrubs planted, as described in the SEC-s and SEC-h narrative, shall remain alive on the fifth anniversary of the date that the mitigation planting is completed.

**Note:** There is no right of way access permit for Tax Lot 400, Section 30BB, Township 2 North, Range 1 West, W.M. for the site's access onto NW Cornelius Pass Road. Please contact the Right of Way office at row.permits@multco.us or (503) 988-3582 regarding this requirement to obtain a permit. [MCRR 4.000, MCRR 5.000, MCRR 6.000, MCRR 11.000, and MCRR 18.250]

**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, for an appointment for review and approval of the conditions and to sign the building permit plans. Please note, Multnomah County Land Use Planning Division and Multnomah County Transportation Division 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.

**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*.

### **1.00 Project Description:**

**Staff:** The applicant is requesting a Hillside Development and Erosion Control permit, a Significant Environmental Concern Permit, and Accessory Use Determination to retroactively approve the accessory structures and agricultural structures that were not previously reviewed in the Rural Residential (RR) zoning district.

### **2.00 Property Description & History:**

**Staff:** The subject property is 4.70 acres and is located along NW Cornelius Pass Road. The property is zoned Rural Residential (RR) and has multiple overlays over the property. The Significant Environmental Concern for Wildlife Habitat (SEC-h) overlay covers the entire property. The Significant Environmental Concern for Streams (SEC-s) overlay and the Hillside Development and Erosion Control (HD) overlay cover the eastern portions of the property along Cornelius Pass Road.

Originally owned by Jeffrey Owens, the property was eventually purchased by the current owners, Mark Tesauro and Raymond Friedman in 2004. According to the Department of Assessment, Records, and Taxation (DART), the property currently contains these improvements:

- Single-Family Dwelling
- Farm Building
- Detached Room

The single-family dwelling was established in 1950. DART has also listed a Farm Building and Detached Room on the property. The Detached Room is located within the Farm Building. Aerial photographs would also indicate that there is structure on the western portion of the property, and a greenhouse and two other structures on the northwestern portion of the property.

The structures identified in the aerial photos located on the western and northwestern portions of the property were placed on the property at some point between 2010 and 2012. Based on the information provided by the applicant and records from the County, no building permits or County review was done to authorize the construction the additional structures. Further, the farm building that was established in 1970 was improved to include an “apartment-like” room, which no building permits or County review can be found that authorized the improvements.

Then in 2016, a compliance case, UR-2015-10 was opened relating to, “Non-permitted establishment of a second dwelling on the property, specifically the non-permitted conversion of an accessory structure into a dwelling. No land use approval was issued for the conversion of the building into a dwelling and no sanitation permits were issued for the dwelling. The dwelling was advertised for rent on “airbnb” as private guest quarters. The County has no record of any permits issued for the construction of the accessory structures or greenhouse located on the property.”

The applicant has submitted this permit for retroactive approval of these structures. The intent of this permit is to move the property towards full compliance.

### **3.00 Code Compliance and Applications 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:** The subject property has an open compliance case, UR-2015-4610. The compliance case relates to non-permitted establishment of a second dwelling on the property, specifically the non-permitted conversion of an accessory structure into a dwelling. The County also has no record of any permits issued for the construction of the accessory structures or greenhouse located on the property. The applicant is attempting to resolve this code compliance issues through the submittal of this application. As a component of the Request for Voluntary Compliance, the applicant has initiated the permit process to bring the property into full compliance (Exhibit B.3). If approved, conditions of approval will be required for the remaining components to be executed to ensure full compliance for the properties.

*This code provision is satisfied with a submittal of this permit and the Conditions of Approval will result in the property coming into full compliance.*

### **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:** The applicant has provided multiple deeds for the subject property. The oldest deed provided was recorded on June 23, 1945 in Book 943, Page 288 that described the property as combined with the adjacent parcel to the west (Exhibit A.11). At that time, tax lot 400 and 500 were one parcel that was 15.42 acres. Subsequently, in 1949, a warranty deed was recorded on August 23, 1949 in Book 1355, Page 197 that created what is now known as tax lot 400, the subject property for this application (Exhibit A.13). At the time that this property was created there was no zoning applied to this property. The first Interim Zoning Ordinance became effective on May 26, 1953. Therefore, there were no zoning laws and land division laws in effect at that time. The current deed, recorded as Document #2004-069736 on April 23, 2004 (Exhibit A23). The deed description matches the warranty deed from 1949. *This criterion is met.*

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

### **5.01 § 33.3120 ALLOWED USES**

(A) Farm use, as defined in ORS 215.203 (2) (a) for the following purposes only:

(1) Raising and harvesting of crops;

(2) Raising of livestock and honeybees; or

(3) Any other agricultural or horticultural purpose or animal husbandry purpose or combination thereof, except as provided in MCC 33.3130 (B).

**Staff:** The applicant discusses in the narrative that the property is has active farm uses on the property. The farm uses include, “an orchard, honey bee apiary, vegetable garden with adjacent greenhouse, and housing/pasture/runs for raising poultry, pigs and goats”. The applicant also

states that the, "operation currently supplies most of our family's food and wine, with excess produce either sold (off-site) or donated to the nearby Linnton food bank. Surplus eggs, honey, goats (meat) and hogs (pork) are sold for profit." The orchard, honey bee, vegetable garden and raising of poultry, pigs and goats are all Farm Uses as defined in ORS 215.203(2)(a). However, MCC 33.3130 Conditional Uses specifically states that the raising of any type of fowl, or processing the by-products thereof, for sale at wholesale or retail and the raising of four or more swine more than four months of age requires a Conditional Use permit. Because the applicant has not applied for a Conditional Use, a condition prohibiting the raising of four or more swine more than four months of age and the wholesale or retail sales of fowl. However, the harvesting and sale of eggs will not be prohibited. *As conditioned, this criteria are met.*

**(F) Accessory Structures subject to the following:**

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

- (a) Garages or carports;**
- (b) Pump houses;**
- (c) Garden sheds;**
- (d) Workshops;**
- (e) Storage sheds, including shipping containers used for storage only;**
- (f) Greenhouses;**
- (g) Woodsheds;**
- (h) Shelter for pets, horses or livestock and associated buildings such as: manure storage, feed storage, tack storage, and indoor exercise area;**
- (i) Swimming pools, pool houses, hot tubs, saunas, and associated changing rooms;**
- (j) Sport courts;**
- (k) Gazebos, pergolas, and detached decks;**
- (l) Fences, gates, or gate support structures; and**
- (m) Mechanical equipment such as air conditioning units, heat pumps and electrical boxes; and**
- (n) Similar structures.**

**Staff:** The applicant is requesting retroactive approval of the alteration of an Accessory Structure and the placement of various farm structures. Accessory Structures may only be permitted based on the provisions above, in addition to demonstration that the accessory structures meet Dimensional Requirements and Development Standards (MCC 33.3155). Below provides an analysis of the standard above that is needed to make a determination that the County can entertain this application.

The applicant has submitted a site plan that shows various buildings and structures on the property. The site plan indicates that there is a single-family dwelling with patio, shop with attached firewood storage area and duck pen, greenhouse, barn, shipping container, pig shed, water tank, bee structure, and compost bin (Exhibit A.7). The subject property is currently enrolled in both Farm and Forest Deferral, which demonstrates that the property is currently being employed for a farm use. Those structures greenhouse, barn, and shipping container

qualify as exempt farm or forest structures, however the shop with attached firewood storage area and duck pen is not eligible to qualify as an exempt farm structure due to the shop containing improvements that are accessory and incidental to the single-family dwelling. Additionally, because the firewood storage area and duck pen is attached to the shop, they are also considered accessory structures because they are attachments built upon the accessory structures.

Since no land use review or building permits can be found for the shop, a review must be done based on the criteria below.

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

**(3) The Accessory Structure may contain one sink.**

**(4) The Accessory Structure shall not contain:**

**(a) More than one story;**

**(b) Cooking Facilities;**

**(c) A toilet;**

**(d) Bathing facilities such as a shower or bathing tub;**

**(e) A mattress, bed, Murphy bed, cot, or any other similar item designed to aid in sleep as a primary purpose, unless such item is disassembled for storage; or**

**(f) A closet built into a wall.**

**(5) Compliance with MCC 33.0565 is required.**

**(6) The combined footprints of all Accessory Buildings on a Lot of Record shall not exceed 2,500 square feet.**

**(7) An Accessory Structure exceeding any of the Allowed Use provisions above shall be considered through the Review Use provisions.**

**Staff:** As discussed above, the shop must be reviewed to ensure it complies with the standards of MCC 33.3120(F)(2) through (4) and to see if the combined footprints of all Accessory Buildings on the property exceed 2,500 square feet. If an accessory structure exceeds any of the Allowed Use provisions listed in MCC 33.3120(F)(2) through (4) or the combined footprints of all Accessory Buildings on the property exceed 2,500 square feet then the structure must be reviewed as a Review Use. The shop, woodshed, and pen are approximately 1,977 square feet. The building plan for the shop shows that it contains a bathroom (Exhibit A.25). Photos taken during a site visit after a Request for Inspection was requested on October 27, 2015 show that the bathroom contains a sink, a toilet, bathing facilities, a bed and a closet built into a wall (Exhibit B.4). Since those items exist within the accessory structure, the accessory structure must go through a Review Use as an Accessory Determination. Staff discusses those items below in Section 5.02.

**(8) Buildings in conjunction with farm uses as defined in ORS 215.203 are not subject to these provisions. Such buildings shall be used for their allowed farm purposes only and, unless so authorized, shall not be used, whether temporarily or permanently, as a primary dwelling, accessory dwelling unit, apartment, guesthouse, housing rental unit, sleeping quarters or any other residential use.**

**Staff:** The site plan and narrative identifies three structures a green house, a barn, and a shipping container as building in conjunction with farm uses (Exhibit A.4 and A.7). The applicant has also provided photographs demonstrating the greenhouse is being used for the growing of plants and vegetables, the barn is being used to store hay and house goats and the storage containers are being used for storage of farm supplies and materials for raising honeybees (Exhibit A.26). However, since no land use review or building permits can be found for these structures, they must be retroactively registered as Exempt Farm Structures. *As conditioned, this criterion is met.*

## 5.02 § 33.3125 Review Uses

**(J) Structures or uses customarily accessory or incidental to any use permitted or approved in this district, which do not meet the “accessory structures” standard in MCC 33.3120 Allowed Uses, but which meet the following provisions:**

- (1) The Accessory Structure shall not be designed or used, whether temporarily or permanently, as a primary dwelling, accessory dwelling unit, apartment, guesthouse, housing rental unit, sleeping quarters or any other residential use.**
- (2) The Accessory Structure shall not contain a bathing tub.**
- (3) Any toilet or bathing facilities, such as a shower, shall be located on the ground floor of any multi-story building.**
- (4) An Accessory Structure containing a toilet or bathing facilities shall not contain Cooking Facilities.**
- (5) The Accessory Structure shall not contain a mattress, bed, Murphy bed, cot, or any other similar item designed to aid in sleep as a primary purpose, unless such item is disassembled for storage**
- (6) The applicant must show that building features or combined building footprints exceeding the Allowed Use provisions are the minimum possible departure from the Allowed Use standards to accommodate the use.**
- (7) Compliance with MCC 33.0565 is required.**

**Staff:** As discussed above, the building plan for the shop shows that it contains a bathroom (Exhibit A.25). Additionally, photos taken during a site visit show that shop has a bathroom that contains a sink, a toilet, and bathing facilities; additionally, the shop contains bed and a closet built into a wall (Exhibit B.4). Since those items exist within the accessory structure, the accessory structure must go through a Review Use as an Accessory Determination.

Based on the narrative and review of the structures on the property, the applicant described the uses that occur in the accessory structure. The accessory structure is currently,

“Being used as a home office and as a study area for the owner’s teenage daughter. The existing wet bar is now being used for filling honey containers and for purposes related to the hobby of home wine and cider making (non-commercial). An adjacent room is being used as an exercise room, and the immediately adjacent shower / bath used for sanitary hand washing and showering after exercise. Existing exercise equipment was relocated from the non-climate controlled portion of the shop building to the climate controlled improved area. The closet present in the improved area is being used for

climate controlled storage of personal items as well as some containers related to honey storage and dispensing / filling” (Exhibit A.4).

As described, most of uses proposed for the building are typically found to be accessory and incidental to a single-family dwelling, however, due to the requirements of MCC 33.3125 some of the elements are not allowed by Multnomah County Code. As evident from the photographs from the site visit, the accessory building does contain a bathing tub (Exhibit B.4). Because a bathing tub is prohibited, a condition will be required that it be removed or replaced with only a shower. Additionally, because the photos contain a bed, the bed must be removed or disassembled. The space next to the sink will also have to be modified to ensure that no cooking facilities are in use. The applicant will also be required to comply with MCC 33.0565, which required that the prior to issuance of any development permit involving an Accessory Building, the property owner shall record a covenant with County Records that states that the owner understands and agrees that the structure cannot be occupied as a dwelling or for any other form of permanent or temporary residential use. *As conditioned, these criteria are met.*

**5.03 § 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.**

- (1) Notwithstanding the Minimum Yard Dimensions, but subject to all other applicable Code provisions, a fence or retaining wall may be located in a Yard, provided that a fence or retaining wall over six feet in height shall be setback from all Lot Lines a distance at least equal to the height of such fence or retaining wall.**
- (2) An Accessory Structure may encroach up to 40 percent into any required Yard subject to the following:**

- (a) The Yard being modified is not contiguous to a road,**
- (b) The Accessory Structure does not exceed five feet in height or exceed a footprint of ten square feet, and**
- (c) The applicant demonstrates the proposal complies with the fire code as administered by the applicable fire service agency.**

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

**Staff:** The site plan indicates that the structures on the property include a single-family dwelling with patio, shop with attached firewood storage area and duck pen, greenhouse, barn, shipping container, pig shed, water tank, bee structure, and compost bin (Exhibit A.7). The front yard is adjacent to Cornelius Pass Road and is a distance of 30 feet however based on comments from Multnomah County Transportation Division below, the yard shall be increased to 35 feet. The side yards are 10 feet and the rear yard is the 30 feet from a ten-foot line parallel to the front lot line. Based on measurements to the site plan, the water tanks and the compost

bin encroach into the Yard. Because the applicant has not applied for an adjustment, a condition will be required to ensure compliance with these criteria. The compost bin and water tanks shall be relocated a distance of 10 feet from the side property lines. *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:** Multnomah County Transportation Division has reviewed the project and determined there is insufficient right-of-way width. The County Standard right of way for a Rural Arterial facility is 70 feet. Therefore, the yard that abuts the street is 35 feet. *This criterion is met.*

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

**Staff:** The applicant is not proposing to construct barns, silos, windmills, antennae, chimneys, or similar structures; therefore, this requirement does not apply. *This criterion is met.*

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

**Staff:** Since no land use review or building permits can be found for these the accessory structure or farm exempt structures, a condition of approval will be required that all exterior lighting comply with MCC 33.0570. *As conditioned, this criterion is met.*

#### **5.04 § 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 parcel is a Lot of Record as discussed in Section 4.00 and abuts NW Cornelius Pass 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:** The applicant indicates that the development area was located in areas that are defined as non-forested “cleared” areas. The farm structures including the greenhouse, barn, shipping container, pig shed, water tank, bee structure, and compost bin are all considered Farm Uses, which are exceptions pursuant to MCC 33.4515. Additionally, as discussed previously, the shop, which is being permitted today, is located has been located in a cleared area since the 1970s. *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 (i.e., the shop) is located approximately 100 feet from Cornelius Pass Road (Exhibit A.7). Additionally a majority of the shop’s footprint is within 200 feet of Cornelius Pass Road. *This criterion is met.*

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

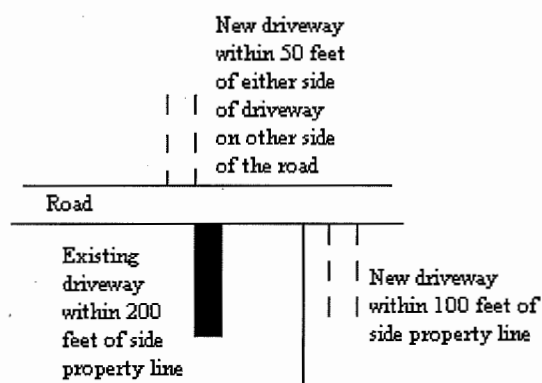
**Staff:** The site plan indicates that the access road is approximately 150 feet in length, which is less than 500 feet in length (Exhibit A.7). *This criterion is met.*

**(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:** The narrative indicates that there is an access road/driveway approach onto the public road, Cornelius Pass on the opposite side of the road. Therefore, the access way into the subject property shall be located within 50 feet of either side of that existing access road/driveway. Therefore, the applicant will be required to submit a Wildlife Conservation Plan as described in MCC 33.4570(C). *These criteria are not met.*

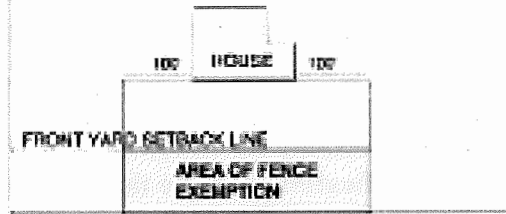
- (5) The development shall be within 300 feet of a side property line if adjacent property has structures and developed areas within 200 feet of that common side property line.**

**Staff:** Aerial photos indicate that are development within 300 feet of the side property lines. Therefore, the shop would not be required to be located within 200 feet of the 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.**

**FIGURE 33.4570A FENCE EXEMPTION AREA**



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

**Staff:** The site plan indicates that there is barbed wire fence surrounding the property and within the setback from the public road (Exhibit A.7). The narrative from the Significant Environmental Concern for Wildlife Habitat (SEC-h) narrative and wildlife conservation plan indicates that the barbed wire fence is woven wire fencing used to exclude predator species from livestock (Exhibit A.30). The woven wire fencing is considered part of the Farm Uses located on the property; therefore, the fencing is excepted pursuant to MCC 33.4515. *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	Scientific Name	Common Name
<i>Chelidonium majus</i>	Lesser celandine	<i>Loentodon autumnalis</i>	Fall Dandelion
<i>Cirsium arvense</i>	Canada Thistle	<i>Lythrum salicaria</i>	Purple Loosestrife
<i>Cirsium vulgare</i>	Common Thistle	<i>Myriophyllum spicatum</i>	Eurasian Watermilfoil
<i>Clematis ligusticifolia</i>	Western Clematis	<i>Phalaris arundinacea</i>	Reed Canary grass
<i>Clematis vitalba</i>	Traveler's Joy	<i>Poa annua</i>	Annual Bluegrass
<i>Conium maculatum</i>	Poison hemlock	<i>Polygonum coccineum</i>	Swamp Smartweed
<i>Convolvulus arvensis</i>	Field Morning-glory	<i>Polygonum convolvulus</i>	Climbing Binaweed
<i>Convolvulus nyctagineus</i>	Night-blooming Morning-glory	<i>Polygonum sachalinense</i>	Giant Knotweed
<i>Convolvulus sepium</i>	Lady's nightcap	<i>Prunus laurocerasus</i>	English, Portuguese Laurel
<i>Cortaderia selloana</i>	Pampas grass	<i>Rhus diversiloba</i>	Poison Oak
<i>Crataegus sp. except C. douglasii</i>	hawthorn, except native species	<i>Rubus discolor</i>	Himalayan Blackberry
<i>Cytisus scoparius</i>	Scotch broom	<i>Rubus laciniatus</i>	Evergreen Blackberry

Scientific Name	Common Name	Scientific Name	Common Name
<i>Daucus carota</i>	Queen Ann's Lace	<i>Senecio jacobaea</i>	Tansy Ragwort
<i>Elodea densa</i>	South American Water-weed	<i>Solanum dulcamara</i>	Blue Bindweed
<i>Equisetum arvense</i>	Common Horsetail	<i>Solanum nigrum</i>	Garden Nightshade
<i>Equisetum telemateia</i>	Giant Horsetail	<i>Solanum sarrachoides</i>	Hairy Nightshade
<i>Erodium cicutarium</i>	Crane's Bill	<i>Taraxacum officinale</i>	Common Dandelion
<i>Geranium robertianum</i>	Robert Geranium	<i>Utricularia vulgaris</i>	Common Bladderwort
<i>Hedera helix</i>	English Ivy	<i>Urtica dioica</i>	Stinging Nettle
<i>Hypericum perforatum</i>	St. John's Wort	<i>Vinca major</i>	Periwinkle (large leaf)
<i>Ilex aquifolium</i>	English Holly	<i>Vinca minor</i>	Periwinkle (small leaf)
<i>Laburnum watereri</i>	Golden Chain Tree	<i>Xanthium spinosum</i>	Spiny Cocklebur
<i>Lemna minor</i>	Duckweed, Water Lentil	<i>various genera</i>	Bamboo sp.

**Staff:** The narrative states that the listed plants will not be planted and are being kept removed on clear areas of the property. However to ensure that this requirement is met, a condition will be required. *As conditioned, this criterion is met.*

**(C) Wildlife Conservation Plan. An applicant shall propose a wildlife conservation plan if one of two situations exist.**

**(1) The applicant cannot meet the development standards of Section (B) because of physical characteristics unique to the property. The applicant must show that the wildlife conservation plan results in the minimum departure from the standards required in order to allow the use; or**

**Staff:** The applicant cannot meet the development standards as described above due to the location of the driveway. The driveway has been in existence since 1996, as shown on easily accessible aerial maps (Exhibit B.6). More than likely, the driveway has been in existence since the single-family house was established in 1950. Due to the topography of the site, it would be difficult to relocate the access to meet access road/driveway approach. Therefore, the applicant has submitted a wildlife conservation plan, which is discussed below.

**(3) Unless the wildlife conservation plan demonstrates satisfaction of the criteria in subsection (C)(5), the wildlife conservation plan must demonstrate the following:**

**(a) That measures are included in order to reduce impacts to forested areas to the minimum necessary to serve the proposed development by restricting**

**the amount of clearance and length/width of cleared areas and disturbing the least amount of forest canopy cover.**

**Staff:** As described above, the applicant indicates that the development area was located in areas that are defined as non-forested “cleared” areas. By locating the Shop in a non-forested “cleared” area the will reduce the impact to forested areas on the subject property. *This criterion is met.*

**(b) That any newly cleared area associated with the development is not greater than one acre, excluding from this total the area of the minimum necessary accessway required for fire safety purposes.**

**Staff:** As measured on the site plan, the shop, woodshed, and pen are approximately 1,977 square feet, which is less than one acre (Exhibit A.7). *This criterion is met.*

**(c) That no fencing will be built and existing fencing will be removed outside of areas cleared for the site development except for existing cleared areas used for agricultural purposes.**

**Staff:** The site plan indicates that there is barbed wire fence surrounding the property and within the setback from the public road (Exhibit A.7). The narrative from the Significant Environmental Concern for Wildlife Habitat (SEC-h) narrative and wildlife conservation plan indicates that the barbed wire fence is woven wire fencing used to exclude predator species from livestock (Exhibit A.30). The woven wire fencing is considered part of the Farm Uses located on the property; therefore, the fencing is excepted pursuant to MCC 33.4515. *This criterion is met.*

**(d) That revegetation of existing cleared areas on the property at a 2:1 ratio with newly cleared areas occurs if such cleared areas exist on the property.**

**Staff:** The development area was located in areas that are defined as non-forested “cleared” areas. Therefore, revegetation of existing cleared areas is not applicable. *This criterion is met.*

**(e) That revegetation and enhancement of disturbed stream riparian areas occurs along drainages and streams located on the property.**

**Staff:** The applicant has also sought review of a Significant Environmental Concern for Streams (SEC-s) permit. As part of that review, the applicant has proposed various planting on the subject property along the Protected Stream Areas (Exhibit A.29 and A.30). The planting include:

- Feb. 2017 Augmentation of thinned hardwood area with:
  - Douglas Fir (45 x 2 yr, bareroot),
  - Pacific Madrone (2 x 2 yr, bare-root),
  - Western Crabapple (5 x 2 yr, bare-root),
  - Mock Orange (2 x 2 yr, bare-root).
- Oct. 2009 Western Redcedar augmentation. 5 x 5 gallon, 3 foot tall trees planted. 100% survival with trees now -12 foot tall.
- March 2017 Western Hemlock augmentation (27 x 2 yr, bare-root trees)

- 2012 - 2017 native plantings:
  - 2 Western Redcedar Plugs (2012, now established, 2.5 foot tall),
  - Sitka Spruce plug (2011, now established, 5 foot tall),
  - Sitka Willow (10 in 2016, 7 survived),
  - Douglas Spirea (2014, 1 gallon pot, established),
  - Manzanita (2014, 2 x 5 gallon pots, established),
  - Western Redcedar (2014, 1 x 5 gallon pot, now established).

As listed, many of the plantings have already been planted, however to ensure that revegetation and enhancement occurs, a condition will be required that this planting plan be implemented and monitored for success. *As conditioned, this criterion is met.*

**(4) For a property meeting (C)(1) above, the applicant may utilize the following mitigation measures for additions instead of providing a separate wildlife conservation plan:**

**(a) Each tree removed to construct the proposed development shall be replaced on a one to one ration with a six foot tall native tree.**

**Staff:** The development area was located in areas that are defined as non-forested "cleared" areas. Therefore, revegetation of existing cleared areas is not applicable. *This criterion is met.*

**(b) For each 100 square feet of new building area, the property owner shall plant, one, 3-4 foot tall native tree or three native tree seedlings. The trees shall be planted to improve wildlife habitat first within non-forested cleared areas contiguous to forested areas, second within any degraded stream riparian areas before being placed in forested areas or adjacent to landscaped yards.**

**Applicant:** The new building area added by the "Shop" additions is 852 sq feet, consisting of the lean-to addition (672 sq feet) plus the duck pen (180 sq feet) addition. This requires a planting of 25.6 native tree seedlings ( $852/100 \times 3$ ). If the entire area of the "Shop" is included (1,152) then an additional 34.5 seedlings are required. These requirements have been substantially exceeded by the above enumerated 103 plantings detailed in 33.4570(C)(3)(e). Additionally 20 Western Crabapple (providing nectar / wildlife food) and 20 Mock Orange seedlings (pollinator nectar source) were planted with tree-tube protection along the forest edge area fronting the vineyard in February 2017 outside the protected stream area (PSA).

**Staff:** Based on the above, the building area is described as 1,152 square feet. The site plan indicates that the shop, woodshed, and pen is approximately 1,977 square feet. Based on the requirement above, there would need to be 19 3-4 foot tall native trees or 59 native tree seedlings. The planting plan indicates that 103 plantings will be planted in four areas. *This criterion is met.*

**(c) Existing fencing located in the front yard adjacent to a public road shall be consistent with MCC 33.4570(B)(6).**

**Staff:** As described above, the site plan indicates that there is barbed wire fence surrounding the property and within the setback from the public road (Exhibit A.7). The narrative indicates that the barbed wire fence is woven wire fencing used to exclude predator species from

livestock (Exhibit A29 and A.30). The woven wire fencing is considered part of the Farm Uses located on the property, therefore the fencing is excepted pursuant to MCC 33.4515. *This criterion is met.*

**(d) For non-forested “cleared” areas that require nuisance plant removal pursuant to MCC 33.4570(B)(7), the property owner shall set a specific date for the work to be completed and the area replanted with native vegetation. The time frame must be within two years from the date of the permit.**

**Staff:** The narrative states that the listed plans will not be planted and are being kept removed on clear areas of the property. The applicant indicates that there are no nuisance plants within the non-forested “cleared” areas. *This criterion is met.*

## **6.02 § 33.4575 CRITERIA FOR APPROVAL OF SEC-S PERMIT –STREAMS**

**(D) For the protected stream resources, the applicant shall demonstrate that the proposal:**

**(1) Will enhance the fish and wildlife resources, shoreline anchoring, flood storage, water quality and visual amenities characteristic of the stream in its pre-development state, as documented in a Mitigation Plan. A Mitigation Plan and monitoring program may be approved upon submission of the following:**

**(a) A site plan and written documentation which contains the applicable information for the Stream Conservation Area as required by MCC 33.4575 (C);**

**(b) A description of the applicant’s coordination efforts to date with the requirements of other local, State, and Federal agencies;**

**(c) A Mitigation Plan which demonstrates retention and enhancement of the resource values addressed in MCC 33.4575 (D) (1);**

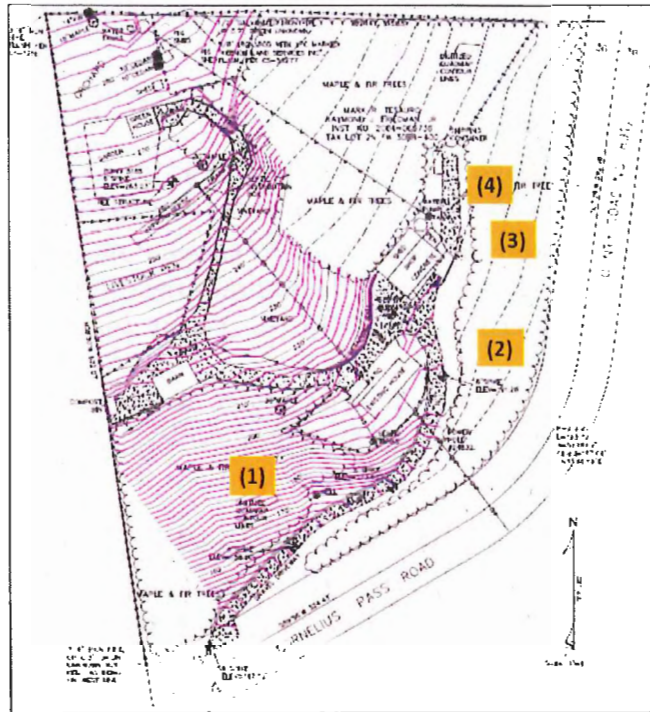
**(d) An annual monitoring plan for a period of five years which ensures an 80 percent annual survival rate of any required plantings.**

**Applicant:** Storm water management for the subject property has been substantially improved by construction of the lean-to addition to the shop structure through incorporation of a retaining wall drainage system and rainwater catchment / storm surge management system. The development done has been mitigated by greatly reducing the sediment in runoff previously caused by bare soil hillside cuts and a drainage ditch, helping to address the principal issue facing the McCarthy Creek watershed - sediment.

Additionally, the property owners have conducted long term efforts to remove invasive species and augment native species within the PSA as part of both an ongoing forest management plan and environmentally/ habitat friendly farming practices. These efforts are recorded below in photographs together with a map showing the locations of the improvements within the PSA on the subject property.

The extensive (for small acreage) plantings included will enhance the visual appearance of the stream area pursuant to MCC 33.4575 (D). In addition, the planting of additional conifers within areas of the PSA that do not have mature conifers present will help to enhance shading of the creek from western sun during summer afternoons - helping to keep water temperatures low.

The property owners have also removed very extensive litter, tires, bottles, cans and decomposing railroad ties present within the PSA after they purchased the property. (It was surmised that previous owners used the blackberry infested down-slope area below the house / shop as a general garbage disposal area) These were disposed of properly by the labor of the owners and their family members at the owners' own expense - improving habitat and visual amenities of the stream pursuant to MCC 33.4575(D)(1)



Map (above) showing the below noted four areas of PSA enhancement plantings:

- (1) Feb. 2017 augmentation of thinned hardwood area with Douglas Fir (45 x 2 yr, bare-root), Pacific Madrone (2 x 2 yr, bare-root), Western Crabapple (5 x 2 yr, bare-root), Mock Orange (2 x 2 yr, bare-root).
- (2) Oct. 2009 Western Redcedar augmentation. 5 x 5 gallon, 3 foot tall trees planted. 100% survival with trees now 12 foot tall.
- (3) March 2017 Western Hemlock augmentation (27 x 2 yr, bare-root trees)
- (4) 2012 - 2017 native plantings: 2 Western Redcedar Plugs (2012, now established, 2.5 foot tall), Sitka Spruce plug (2011, now established, 5 foot tall), Sitka Willow (10 in 2016, 7 survived), Douglas Spirea (2014, 1 gallon pot, established), Manzanita (2014, 2 x 5 gallon pots, established), Western Redcedar (2014, 1 x 5 gallon pot, now established)

**Staff:** As discussed above, the applicant has provided a list of measures that aim to enhance the fish and wildlife resources, flood storage, water quality and visual amenities characteristic of the stream in its pre-development state. The subject property is located adjacent to McCarthy Creek; however, the creek is located across the road on the western side of Cornelius Pass Road. Due to the location of creek, the applicant has a lesser ability to meet the requirements of the Mitigation Plan. The applicant does discuss storm water management and long-term efforts to remove invasive species and replant those areas with native species. The applicant is proposing to plant 103 plantings, most of which have been planted, which will improve water

quality and visual amenities (Exhibit A.29). Additionally, the applicant has proposed the installation of various storm water systems on the property. Based on a Technical Memorandum conducted by Waterways Consulting, Inc. on March 4, 2016, Waterways Consulting, Inc. recommends installation of a soakage trench to the west of the barn. This will ensure that storm water will be managed to return the property to a pre-development state (Exhibit A.31).

Therefore to ensure that this criteria are met, a condition will be required that both the planting plan and storm water plan be implemented as described in Exhibit A.29, Exhibit A.30 and A.31. *As conditioned, these criteria are met.*

**(E) Design Specifications**

**The following design specifications shall be incorporated, as appropriate, into any developments within a Stream Conservation Area:**

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

**Staff:** The site plan does not indicate that a bridge or arched culvert will be installed as part of this project. The stream is located on the opposite side of Cornelius Pass Road. *This criterion is met.*

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

**Staff:** The applicant has provided a Storm Water Certificate and a Technical Memorandum conducted by Waterways Consulting, Inc. on March 4, 2016. (Exhibit A.31). The Technical Memorandum discusses current conditions and recommended improvements that need to be constructed on the property to ensure that storm water is collected and disposed of using methods, which emphasize ground water recharge and reduce peak stream flows. Waterways Consulting, Inc. recommends installation of a soakage trench to the west of the barn. This will ensure that storm water will be managed to return the property to a pre-development state. Therefore to ensure that this criterion is met, a condition will be required that the storm water plan be implemented as described in Exhibit A.31. *As conditioned, this criterion is met.*

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

**Staff:** As discussed in MCC 33.3155(F), the applicant will be required to meet Dark Sky Lighting requirements. Since no land use review or building permits can be found for these the accessory structure or farm exempt structures, a condition of approval will be required that all exterior lighting comply with MCC 33.0570, which includes areas shining directly into a Stream Conservation Area. *As conditioned, this criterion is met.*

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

**Staff:** The site plan and narrative do not indicate that any trees over 6" in caliper will be removed. Therefore, this condition is not applicable. *This criterion is met.*

**(5) Satisfaction of the erosion control standards of MCC 33.5520.**

**Staff:** The applicant has submitted information for a Hillside Development and Erosion Control permit, which is discussed in Section 7.00.

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

**Staff:** To ensure compliance with this requirement, a condition will be required that soil disturbing activities shall be limited to a period between June 15 and September 15. *As conditioned, this criterion is met.*

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

**Staff:** There are no State or Federal permits required for this development, therefore this requirement is not applicable. *This criterion is met.*

## **7.00 Hillside Development and Erosion Control – HD Criteria**

### **7.01 § 33.5515 APPLICATION INFORMATION REQUIRED**

**An application for development subject to the requirements of this subdistrict shall include the following:**

**(E) A Hillside Development permit may be approved by the Director only after the applicant provides:**

**(2) A geological report prepared by a Certified Engineering Geologist or Geotechnical Engineer certifying that the site is suitable for the proposed development; or,**

**(3) An HDP Form– 1 completed, signed and certified by a Certified Engineering Geologist or Geotechnical Engineer with his/her stamp and signature affixed indicating that the site is suitable for the proposed development.**

**(a) If the HDP Form– 1 indicates a need for further investigation, or if the Director requires further study based upon information contained in the HDP Form– 1, a geotechnical report as specified by the Director shall be prepared and submitted.**

**Staff:** The applicant has submitted a Hillside Development Application: Geotechnical Reconnaissance and Stability Preliminary Study (HDP Form – 1). The report was done on August, 31, 2016 by Charles M. Clough, Engineering Geologist (Exhibit A.32). The report was signed and certified indicating that the site is suitable for the proposed development. The applicant has also submitted a Hillside Development Permit Worksheet (Exhibit A.33). *These criteria are met.*

**(G) Development plans shall be subject to and consistent with the Design Standards For Grading and Erosion Control in MCC 33.5520 (A) through (D). Conditions of approval may be imposed to assure the design meets those standards.**

**Staff:** The Design Standards for Grading and Erosion Control are discussed below.

## **7.02 § 33.5520 GRADING AND EROSION CONTROL STANDARDS**

**Approval of development plans on sites subject to a Hillside Development Permit shall be based on findings that the proposal adequately addresses the following standards. Conditions of approval may be imposed to assure the design meets the standards:**

### **(A) Design Standards For Grading and Erosion Control**

#### **(1) Grading Standards**

- (a) Fill materials, compaction methods and density specifications shall be indicated. Fill areas intended to support structures shall be identified on the plan. The Director or delegate may require additional studies or information or work regarding fill materials and compaction;**
- (b) Cut and fill slopes shall not be steeper than 3:1 unless a geological and/or engineering analysis certifies that steep slopes are safe and erosion control measures are specified;**
- (c) Cuts and fills shall not endanger or disturb adjoining property;**
- (d) The proposed drainage system shall have adequate capacity to bypass through the development the existing upstream flow from a storm of 10-year design frequency;**
- (e) Fills shall not encroach on natural watercourses or constructed channels unless measures are approved which will adequately handle the displaced streamflow for a storm of 10-year design frequency;**

**Staff:** The applicant has submitted a Hillside Development Application: Geotechnical Reconnaissance and Stability Preliminary Study (HDP Form – 1) and a Hillside Development Permit Worksheet. The HDP Form – 1 was done on August 31, 2016 by Charles M. Clough, Engineering Geologist (Exhibit A.32). The applicant indicates that the fill material is soil from the site and various types of rocks that are used for drainage. The HDP Form – 1 indicates that cut and fills slopes are certified by Charles M. Clough, Engineering Geologist that the cuts and fill will not endanger or disturb adjoining property. The applicant has also provided a Storm Water Certificate and a Technical Memorandum conducted by Waterways Consulting, Inc. on March 4, 2016 (Exhibit A.31). The Technical Memorandum discusses current conditions and recommended improvements that need to be constructed on the property to ensure that storm

water is collected and disposed of using methods, which emphasize ground water recharge and reduce peak stream flows. *These criteria are met.*

## **(2) Erosion Control Standards**

**(a) On sites within the Tualatin River Drainage Basin, erosion and stormwater control plans shall satisfy the requirements of OAR 340. Erosion and stormwater control plans shall be designed to perform as prescribed by the currently adopted edition of the "Erosion Prevention & Sediment Control Plans Technical Guidance Handbook (1994)" and the "City of Portland Stormwater Quality Facilities, A Design Guidance Manual (1995)". Land-disturbing activities within the Tualatin Basin shall provide a 100-foot undisturbed buffer from the top of the bank of a stream, or the ordinary high watermark (line of vegetation) of a water body, or within 100-feet of a wetland; unless a mitigation plan consistent with OAR 340 is approved for alterations within the buffer area.**

**Staff:** The subject property is not located within the Tualatin River Drainage Basin; therefore, this requirement does not apply. *This criterion is met.*

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

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

**(d) Temporary vegetation and/or mulching shall be used to protect exposed critical areas during development;**

**Applicant:** Block and rock retaining walls placed along pre-existing bare hillside cuts with drainage systems certified by professional engineer has reduced soil erosion compared to previous condition. All soil disturbance was done during summer dry season with mulch and/or plantings done immediately afterward. Lean-to area was infested with Himalayan Blackberry thickets and is now graveled soil "floor" under a roof with rainwater catchment and drainage system approved by certified professional engineer. Duck pen lean-to was constructed over bare gravel poultry range area previously in agricultural use without vegetation and has shed roof with drainage approved by certified professional engineer (see stormwater certification report by licensed professional engineer for details regarding stormwater control).

The block retaining wall enveloped an existing slope cut, preventing further erosion and silt runoff. Cut made for earth-sheltered shipping container (passive climate control) was the minimum required to envelope 2 sides and was made into a previously existing hillside slope to minimize soil disturbance. No cut or fill was used in construction of lean-to or duck pen. These were located on previously level ground.

Only pre-existing loose soil was removed to install retaining wall. No soil was exposed during construction of lean-to or duck pen improvements. Exposed soil for container cut/fill is not in a critical area but was mulched with gravel, wood chips.

**Staff:** As described above, the stripping of vegetation, grading and other soil disturbance was done in a manner that minimized soil erosion. The retaining wall reduced the erosion potential as bare slopes were stabilized and reduced erosion potential. *These criteria are met.*

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

- 1. A 100-foot undisturbed buffer of natural vegetation shall be retained from the top of the bank of a stream, or from the ordinary high watermark (line of vegetation) of a water body, or within 100-feet of a wetland;**
- 2. The buffer required in 1. may only be disturbed upon the approval of a mitigation plan which utilizes erosion and stormwater control features designed to perform as effectively as those prescribed in the currently adopted edition of the "Erosion Prevention & Sediment Control Plans Technical Guidance Handbook (1994)" and the "City of Portland Stormwater Quality Facilities, A Design Guidance Manual (1995)" and which is consistent with attaining equivalent surface water quality standards as those established for the Tualatin River Drainage Basin in OAR 340;**

**Applicant:** Disturbed area from container relocation has been mulched and revegetated with trees, shrubs and native grasses/wildflower mix. Earth roof of container is planted with sedums and native wildflowers. Areas affected by road access, lean-to and duck pen were previously devoid of vegetation or had Himalayan blackberry thickets present (now removed).

**Staff:** As described above, the natural vegetation was supplemented with mulch and revegetated with tree, shrub, and naïve grasses. The site plan also indicates that there is a buffer of natural vegetation between the stream resource and the disturbance area (Exhibit A.7). *These criteria are met.*

- (f) Permanent plantings and any required structural erosion control and drainage measures shall be installed as soon as practical;**
- (g) Provisions shall be made to effectively accommodate increased runoff caused by altered soil and surface conditions during and after development. The rate of surface water runoff shall be structurally retarded where necessary;**
- (h) Sediment in the runoff water shall be trapped by use of debris basins, silt traps, or other measures until the disturbed area is stabilized;**
- (i) Provisions shall be made to prevent surface water from damaging the cut face of excavations or the sloping surface of fills by installation of temporary or permanent drainage across or above such areas, or by other suitable stabilization measures such as mulching or seeding;**
- (j) All drainage provisions shall be designed to adequately carry existing and potential surface runoff to suitable drainageways such as storm drains, natural watercourses, drainage swales, or an approved drywell system;**

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

**Staff:** The applicant has provided a planting plan, a Hillside Development Application: Geotechnical Reconnaissance and Stability Preliminary Study (HDP Form – 1), a Hillside Development Permit Worksheet, and a Storm Water Certificate with an attached Technical Memorandum conducted by Waterways Consulting, Inc. (Exhibit A.31 through Exhibit A.33). The documents describe permanent plantings, provisions to accommodate increased runoff and installation of erosion control structures. These measures will ensure that sediment, erosion, and drainage will be managed on the site and will be minimized. *These criteria are met.*

**(l) Erosion and sediment control devices shall be required where necessary to prevent polluting discharges from occurring. Control devices and measures which may be required include, but are not limited to:**

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

**Staff:** The applicant has provided a Storm Water Certificate and site plan that illustrates various erosion and sediment control devices on the property. The installation of these systems will ensure that pollution discharges will be prevented. *These criteria are met.*

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

**Staff:** A condition will be required that disposed spoil material or stockpiled topsoil shall be prevented from eroding into streams or drainageways by applying mulch or other protective covering; or by location at a sufficient distance from streams or drainageways; or by other sediment reduction measures. *As conditioned, this criterion is met.*

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

**Staff:** A condition will be required that non-erosion pollution associated with construction such as pesticides, fertilizers, petrochemicals, solid wastes, construction chemicals, or wastewaters shall be prevented from leaving the construction site through proper handling, disposal, continuous site monitoring and clean-up activities. *As conditioned, this criterion is met.*

**(o) On sites within the Balch Creek Drainage Basin, erosion and stormwater control features shall be designed to perform as effectively as**

those prescribed in the "Erosion Prevention & Sediment Control Plans Technical Guidance Handbook (1994)". All land disturbing activities within the basin shall be confined to the period between May first and October first of any year. All permanent vegetation or a winter cover crop shall be seeded or planted by October first the same year the development was begun; all soil not covered by buildings or other impervious surfaces must be completely vegetated by December first the same year the development was begun.

**Staff:** The subject property is not located within the Tualatin River Drainage Basin; therefore, this requirement does not apply. *This criterion is met.*

#### **(B) Responsibility**

- (1) Whenever sedimentation is caused by stripping vegetation, regrading or other development, it shall be the responsibility of the person, corporation or other entity causing such sedimentation to remove it from all adjoining surfaces and drainage systems prior to issuance of occupancy or final approvals for the project;**
- (2) It is the responsibility of any person, corporation or other entity doing any act on or across a communal stream watercourse or swale, or upon the floodplain or right-of-way thereof, to maintain as nearly as possible in its present state the stream, watercourse, swale, floodplain, or right-of-way during such activity, and to return it to its original or equal condition.**

**Staff:** A condition will be required that whenever sedimentation is caused by stripping vegetation, regrading or other development, it shall be the responsibility of the person, corporation or other entity causing such sedimentation to remove it from all adjoining surfaces and drainage systems prior to issuance of occupancy or final approvals for the project. *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 the an Accessory Use Determination, Significant Environmental Concern for Wildlife Habitat (SEC-h), Significant Environmental Concern for Streams (SEC-s) and Hillside Development and Erosion Control (HD) permits to establish an accessory building (shop) and various agriculture related structures 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 T2-2017-7480 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	General Application Form	04/12/2017
A.2	9	Pre-Filing Conference Summary Notes	04/12/2017
A.3	3	Incomplete Letter from T2-2016-6040	04/12/2017
A.4	5	Application Narrative	04/12/2017
A.5	1	Application Narrative: Appendix A	04/12/2017
A.6	1	Application Narrative: Appendix B	04/12/2017
A.7	1	Site Plan (17" x 24")	04/12/2017
A.8	1	Site Plan (11" x 17")	04/12/2017
A.9*	1	Site Plan (8.5" x 11")	04/12/2017
A.10	1	Lot of Record Cover Sheet	04/12/2017
A.11	1	Warranty Deed from Book 943, Page 288 recorded on June 23, 1945	04/12/2017
A.12	1	Boundary of Survey: Register Number 1276 filed on November 29, 1948	04/12/2017
A.13	1	Warranty Deed from Book 1355, Page 197 recorded on August 29, 1949	04/12/2017
A.14	1	Warranty Deed from Book 1410, Page 102 recorded on June 9, 1950	04/12/2017
A.15	2	Warranty Deed from Book 2012, Page 202-203 recorded as 19948 on June 3, 1960	04/12/2017
A.16	2	Warranty Deed from Book 798, Page 1474-1475 recorded on July 8, 1971	04/12/2017
A.17	2	Special Warranty Deed from Book 860, Page 1520-1521 recorded on June 2, 1972	04/12/2017
A.18	1	Warranty Deed from Book 1022, Page 319 recorded on December 31, 1974	04/12/2017

A.19	2	Warranty Deed from Book 1052, Page 856-857 recorded on July 22, 1975	04/12/2017
A.20	1	Warranty Deed from Book 1236, Page 048 recorded on January 20, 1978	04/12/2017
A.21	2	Warranty Deed from Book 2120, Page 2627-2628 recorded on July 18, 1988	04/12/2017
A.22	1	Bargain and Sale Deed recorded as Document #2000-172515 on December 19, 2000	04/12/2017
A.23	3	Warranty Deed recorded as Document #2004-069736 on April 23, 2004	04/12/2017
A.24	1	Department of Assessment, Records and Taxation (DART): Map with for 2N1W30BB -00400 (R971300200)	04/12/2017
A.25	1	Floor Plan of Workshop	04/12/2017
A.26	9	Photos of Greenhouse, Barn, Shipping Container and Workshop	04/12/2017
A.27	10	Septic Review Certification	04/12/2017
A.28	2	Fire Service Agency Review	04/12/2017
A.29	10	Significant Environmental Concern for Streams (SEC-s) narrative and mitigation plan	04/12/2017
A.30	9	Significant Environmental Concern for Wildlife Habitat (SEC-h) narrative and wildlife conservation plan	04/12/2017
A.31	42	Storm Water Certificate including Technical Memorandum, Site Plan and Calculations	04/12/2017
A.32	5	Hillside Development Permit (HDP) Application: Geotechnical Reconnaissance and Stability Preliminary Study	04/12/2017
A.33	6	Hillside Development Permit (HDP) Worksheet	04/12/2017
<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 2N1W30BB -00400 (R971300200)	04/12/2017
B.2	1	Department of Assessment, Records and Taxation (DART): Map with for 2N1W30BB -00400 (R971300200)	04/12/2017
B.3	2	Request for Voluntary Compliance	08/25/2017
B.4	9	Photos from Site Visit for UR	08/25/2017
B.5	1	Aerial Photo from 1996	09/25/2017

'C'	#	Administration & Procedures	Date
C.1	1	Complete letter (day 1)	05/12/2017
C.2	5	Opportunity to comment & mailing list	08/24/2017
C.3	1	Extension of 150-Day Deadline	08/31/2017
C.4	1	Extension of 150-Day Deadline	10/06/2017
C.5		Administrative decision & mailing list	