
NOTICE OF DECISION

Case File: T2-2019-11631

Permit: Significant Environmental Concern, Exception to Secondary Fire Safety zone

Applicant(s): David and Shawn Looney **Owner(s):** David and Shawn Looney

Location: 12937 NW Newberry Road, Portland, OR 97231
Tax Lot 303 and 304, Section 33A, Township 2 North, Range 1 West, W.M.
Alternate Account #R649910370 and R649910380
Property ID #R697445 and R697446

Zoning: Commercial Use Forest 2 (CFU2)

Overlays: Significant Environmental Concern for Wildlife Habitat (SEC-h), Significant Environmental Concern for Scenic Views (SEC-v), Geologic Hazard (GH)

Proposal Summary: The applicant desires to permit two carports, a sauna, a gazebo, a greenhouse, a chicken coop, and two open-sided storage sheds. The applicant is also requesting the reduction of the secondary fire safety zone for the Gazebo.

Decision: Approved with Conditions

This decision is final and effective at the close of the appeal period, unless appealed. The deadline for filing an appeal is May 15, 2019, at 4:00 pm.

Opportunity to Review the Record: The complete case file, including the Planning Director Decision containing Findings, Conclusions, Conditions of Approval, and all evidence associated with this application is available for review at the Land Use Planning office. Copies of all documents are available at the rate of \$0.30/per page. For further information, contact Michael Cerbone, Staff Planner at 503-988-0218 or at michael.cerbone@multco.us.

Opportunity to Appeal: An appeal requires a \$250.00 fee and must state the specific legal grounds on which it is based. To obtain appeal forms or information on the procedure, contact the Land Use Planning office at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision is not appealable to the Land Use Board of Appeals until all local appeals are exhausted.

Issued By:



By: Michael Cerbone, AICP
Planning Director

Date: May 1, 2019

Instrument Number for Recording
Purposes: #2019-018382

Vicinity Map

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

Applicable Approval Criteria: Multnomah County Code (MCC): MCC 39.1515, MCC 39.4070, MCC 39.4105, MCC 39.4110, MCC 39.4115, MCC 39.4155, MCC 39.5520, MCC 39.5525, MCC 39.5530, MCC 39.5540, MCC 39.5650, and MCC 39.5860.

Copies of the referenced Multnomah County Code sections are available by contacting our office at (503) 988-304 or by visiting our website at <https://multco.us/landuse/zoning-codes/> under the link *Chapter 39: Zoning Code*.

Conditions of Approval

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parenthesis. Failure to comply with a condition of approval does not void the decision, if one of the conditions of approval is not satisfied the applicant will need to rectify the situation as soon as possible or be subject the County's compliance program and/or revocation of this decision.

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 4 years from the date the decision is final pursuant to MCC 39.1185(C) as applicable.

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

3. Prior to Land Use Planning review and sign-off for a building permit, the property owners or their representative shall:
 - a) Record pages 1 through 4 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 39.1175]
4. The applicant shall obtain building permit approval for the proposed carport (230 square feet in size) and shall obtain all necessary permits for the Sauna (the Sauna does not require a structural permit, but it does require an electrical permit and may require a plumbing permit if there is plumbing within the structure).
5. The applicant shall ensure that the Gazebo is constructed in accordance with the International Fire Code Institute Urban-Wildland Interface Code Section 504 Class 1 Ignition Resistant Construction as adopted August, 1996, or as later amended. Should the County adopt new standards for Accessory Structures in the CFU zone in the future that differ from this requirement, the applicant can comply with the new standards in lieu of meeting this requirement.
6. At the time of land use review for the new carport, the applicant shall provide photographs of any lighting on the sauna and demonstrate that the fixtures are dark sky compliant. The applicant shall ensure that the lighting that currently exists on the Sauna meets the requirements of the [MCC 39.6850]. Any future lighting added to the approved accessory structures shall comply with the Dark Sky Lighting Standards [MCC39.6850].
7. The applicant shall construct the proposed carport using matte finish materials as proposed and submitted as Exhibit A.7. Any changes to the design or color scheme for this structure will require County approval prior to issuance of building permit.
8. The applicant shall not plan any nuisance plants as identified in MCC 39.5580 on the subject property. If any of these plants [MCC 39.5580] are present within the cleared areas of the subject property the applicant shall remove them.

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 by land use planning, the applicant shall complete the following steps:

1. Read your land use decision, the conditions of approval and modify your plans, if necessary, to meet any condition that states, "Prior to land use sign-off for building plan check..." Be ready to demonstrate compliance with the conditions.
2. Contact Adam Barber, Interim Land Use Planning Director, at 503-988-0168 or adam.t.barber@multco.us, for an appointment for review of the conditions of approval and to sign the building permit plans. Land Use Planning must sign off on the plans and authorize the building permit before you can go to the Building Department. At the time of this review, Land Use Planning will collect additional fees.

The above must be completed before the applicant can obtain building permits from 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.

Findings of Fact

FINDINGS: Written findings are contained herein. The Multnomah County Code (MCC) criteria and Comprehensive Plan Policies are in **bold** font. Staff analysis and comments are identified as ‘**Staff:**’ and address the applicable criteria. Staff comments may include a conclusionary statement in *italic*.

1.0 Project Description:

Staff: The applicant is seeking approval for eight (8) accessory structures in the CFU 2 zone within the SEC-h and SEC-v overlays. The applicant desires to permit a gazebo, a greenhouse, two carports, two storage sheds, a chicken coop, and a sauna. The applicant is also seeking the reduction of the secondary fire safety zone for the gazebo.

2.0 Property Description & History:

Staff: The following provides a summary of the history of the property.

Failed Land Division

On November 5, 1985, Fred Bernet, the then-owner of Tax Lot 15, purported to sell 2.5 acres of that property to the Looneys (creating Tax Lot 33), along with the sale of a 1.31 acre parcel (Tax Lots 17 and 62). On March 30, 1989, Fred Bernet purported to sell Brian and Christine Lightcap the 31.57 remainder of Tax Lot 15. Bernet made the sales purporting to divide Tax Lot 15 without County approval of a land division. The zoning at the time was MUF-19 but since the Looney’s unit of land did not meet the zoning requirements, Multnomah County Planning determined that the Lightcap parcel had issues, too because it was created from an unlawful land division. Additional information can be found in the Decision on land use cases LE 14-92 and LD 49-92.

In 1989, for the purpose of legalizing the sales to the Looneys and the Lightcaps, Mr. Bernet submitted an application request for a “Land Division and Lot of Exception approval to create a 3.82 acre parcel and a 31.57 acre parcel out of this 35.39 [sic] acre Lot of Record.” That application was approved, but, due to a failure to submit a final partition map, that approval expired and the Land Division and Lot of Exception were not perfected.

1992 Application

In 1992, Mr. Looney submitted an application request for a Lot of Exception (Case LE 14-92) and a Land Division (Case LD 49-92) for the purpose of legalizing the sales from Mr. Bernet to the Looneys and the Lightcaps and to add to the proposed Looney parcel, with 0.05 acres from the Lightcaps and 0.05 acres from the Wagners.

As the Hearings Officer explained, the 1992 application was necessary because “there was no prior approval of a land division, so whatever Bernet sold to the Looneys (and Lightcaps) it was not the ownership of separate parcels.” (Exhibit B.11, page 8). The Hearings Officer went on to suggest that “the Looneys and Lightcaps may own an unequal, but undivided, interest in the original, 34.07 acre parcel, former Tax Lot 15.”

As a result, the 1992 applications sought first to transfer the additional 0.05 acres from the Wagner Lot of Record to the Lightcap/Looney Lot of Record (processed as a Lot of Exception, as explained below) before creating the Looney Lot of Exception, the creation of which also required a land division:

“Applicants request approval of a 9.92-acre Lot of Exception through a property line adjustment to transfer .05 acre from a 9.97-acre Lot of Record [Wagner] to an adjoining 35.39-acre Lot of Record [Lightcap/Looney]. From the resulting 35.44-acre tract [Lightcap/Looney], applicants request approval of a 3.92-acre Lot of Exception [Looney]. Due to the request for the 3.92-acre Lot of Exception, applicants also seeks approval of a Type I land division.”

The Decision (June 21, 1993)

Through the Decision, the Hearings Officer approved a Lot of Exception to allow the transfer of 0.05 acres of land from the 9.97 acre Wagner Lot of Record to the Lightcap/Looney Lot of Record. The Lot of Exception process was the County’s methodology for approving a “property line adjustment” because the zoning code did not include a provision for property line adjustments at that time and the adjustment of the Wagner parcel, which was below the minimum lot size of 19 acres, required an exception.

The Hearings Officer also approved the proposed Looney Lot of Exception to create a new Looney parcel, concluding that it met the requirements of both the Lot of Exception and Land Division provisions. The Looney Lot of Exception included Tax Lots 62, 17, and 33, as well as the additional 0.05 acres from the Lightcaps.

The Looney Lot of Exception approval, LE 14-92, contained the following condition (“Consolidation Condition”):

“[T]he lot of exception is approved subject to the condition that the Looney’s apply for and receive approval for a lot line adjustment under MCC 11.15.2061 to consolidate Tax Lots 62 (in Section 28) 17, 33 (and the 0.05 acre parcel split off from the Wagner parcel) no later than the end of this calendar year [December 31, 1993] or the date at which they receive approval for a replacement dwelling, whichever comes first. Failure to consolidate the parcels by the deadline will render this approval void.”

On November 5, 1993, three property line adjustment legal descriptions – for the Looneys, Lightcaps, and Wagners – were approved by the County.

Replacement Dwelling

A replacement dwelling was authorized for the Looney property by the approval of SEC 26-96/PRE 16-96 (a Significant Environmental Concern and Use Under Prescribed Conditions consolidated application) on January 13, 1997.

Director’s Interpretation

A Director’s Interpretation was requested on March 13, 2018, requesting the Planning Director find that LE 14-92 and LD 49-92 be found to be void. Multnomah County issued a

Director's Interpretation finding that LE and LD were not void. On October 22, 2018, the Multnomah County Hearing's Officer issued a decision finding the LE and LD are void because the Looneys failed to consolidate tax lots 33, 17, and 62 prior to December 31, 1993.

T1-2018-11141

On January 7, 2019, the County approved T1-2018-11141, a request to approve a Lot Legalization to create one parcel from Tax Lots 300 and 302 of Multnomah County Assessor's Map T2N, R1W, Section 33A. On February 21, 2019, the Partition Plat 2019-10 (Document Number 2019-018382) was recorded to complete the lot legalization of the property that is subject to this application.

3.0 Public Comment:

3.1 Comments from Andrew Lightcap received via email on March 29, 2019.

Staff: Andrew Lightcap sent the following email on March 29, 2019 with the subject of "Case File T2-2019-11631, Looney's permits application":

Hi Michael,

I received the mailed notice for case file T2-2019-11631, the Looney's application to permit a number of items. I do not have any issue with the premise of the permits themselves. I do have a couple of questions:

1) Can permits be issued to a property that is currently an illegally created parcel like the ones Looney's have?

2) Given that the 1993 attempt to do a lot line adjustment is null and void, until this lot line adjustment can occur again the legal boundary descriptions need to not include the small portion of my property the voided lot line adjustment attempted to give to the Looney's property i.e. the 1985 description is the current description and not the 1993 description. As is normal, the notice does not provide the description being used so I wanted to ask about it.

Please acknowledge receipt of my questions and I look forward to your getting thoughts. Either a call or email me is okay for me.

*Thanks,
Andy*

Michael Cerbone responded back via email on April 1, 2019, informing Mr. Lightcap that the subject property's illegal land division was corrected and completed by the recordation of a plat that addressed the concerns in his email.

3.2 Comments from Anonymous Neighbor received via mail on April 4, 2019.

Staff: An anonymous neighbor sent the following comment on April 4, 2019:

"Yes, these structures should be built. They are complements to the house & use of the property. With the extremely high taxes, the property should be used to its fullest extent. Give them the necessary permits."

4.0 Code Compliance and Application Criteria:

4.1 39.1515 CODE COMPLIANCE AND APPLICATIONS

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

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

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

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

Staff: The approval of T1-2018-11141 and the subsequent recording of the partition plat (Partition Plat 2019-10, Document Number 2019-018382) on February 21, 2019, corrected the illegal land division that occurred. This application seeks to resolve the remaining known compliance issues on the property, while at the same time permitting the applicant to proceed with additional development. This request, if approved, would result in the property coming into full compliance with all applicable provisions of the Multnomah County Zoning Code. *This criterion is met.*

5.0 Commercial Forest Use 2 – CFU2 Criteria

5.1 § 39.4070 ALLOWED USES. The following uses and their accessory uses are allowed, subject to all applicable supplementary regulations contained in MCC Chapter 39.

(T) Accessory Structures subject to the following:

- (1) The accessory structure is customarily accessory or incidental to any use permitted or approved in this base zone, is located within 100 feet of the dwelling 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 unites, heat pumps and electrical boxes; and
 - (n) Similar structures.
- (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 39.8860 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 Building exceeding any of the Allowed Use provisions above shall be considered through the Review Use provisions.
- (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 applicant seeks approval of the structures identified within the table (except for the Shop that was previously permitted):

Structure:	Size:	Height:	Notes:
Carport 1	10' x 20' or 200 sq ft	9'3"	Existing
Carport 2	10' x 23' or 230 sq ft	13'0"	Proposed
Greenhouse	6' x 8' or 48 sq ft	9'0"	Existing
Gazebo	10' x 12' or 120 sq ft	10'0"	Existing
Sauna	6' x 8' or 48 sq ft	9'0"	Existing

Chicken Coop and Run	12' x 3.5' or 42 sq ft	6'5"	Existing
Storage Shed 1 (open sided)	16' x 4' or 64 sq ft	7'0"	Existing, holds firewood
Storage Shed 2 (open sided)	8' x 5.5' or 44 sq ft	6'-0"	Existing, holds firewood
Shop	22' x 32' or 704 sq ft	Existing & permitted	Converted from Old House
Total:	1,500 sq ft		Less than 2,500 sq ft, does not require a determination

All of the structures proposed to be permitted through this application are customary to the residential use of the property. The total square footage of the structures is approximately 1,000 square feet less than the 2,500 square foot threshold that would require an accessory use determination. Compliance with MCC 39.8860 has already been assured, as the applicant recorded a covenant that meets this requirement on July 1, 1998 (Exhibit B.4). *As conditioned, these criteria are met.*

5.2 § 39.4105 BUILDING HEIGHT REQUIREMENTS.

(A) Maximum structure height – 35 feet.

(B) Structures such as barns, silos, windmills, antennae, chimneys, or similar structures may exceed the height requirements.

Staff: All structures proposed to be permitted via this application are no more than 13 feet in height (see table in Finding 5.1 above), which is less than the 35 foot height limit permitted within the zone. *This criterion is met.*

5.3 § 39.4110 FOREST PRACTICES SETBACKS AND FIRE SAFETY ZONES.

The Forest Practice Setbacks and applicability of the Fire Safety Zones is based upon existing conditions, deviations are allowed through the exception process and the nature and location of the proposed use. The following requirements apply to all structures as specified:

(1) Primary Fire Safety Zone.

(a) A primary fire safety zone is a fire break extending a minimum of 30 feet in all directions around a dwelling or structure. Trees within this safety zone shall be spaced with greater than 15 feet between the crowns. The trees shall also be pruned to remove low branches within 8 feet of the ground as the maturity of the tree and accepted silviculture practices may allow. All other vegetation should be kept less than 2 feet in height.

(b) On lands with 10 percent or greater slope the primary fire safety zone shall be extended farther down the slope from a dwelling or structure as follows:

(c) The building site must have a slope less than 40 percent.
Percent Slope Distance In Feet Less than 10 No additional required Less than 20 50 additional Less than 25 75 additional Less than 40 percent.

(2) Secondary Fire Safety Zone.

A secondary fire safety zone is a fire break extending a minimum of 100 feet in all directions around the primary safety zone. The goal of this safety zone is to reduce fuels so that the overall intensity of any wildfire is lessened. Vegetation should be pruned and spaced so that fire will not spread between crowns of trees. Small trees and brush growing underneath larger trees should be removed to prevent the spread of fire up into the crowns of the larger trees. Assistance with planning forestry practices which meet these objectives may be obtained from the State of Oregon Department of Forestry or the local Rural Fire Protection District. The secondary fire safety zone required for any dwelling or structure may be reduced under the provisions of MCC 39.4155.

(3) No requirement in (1) or (2) above may restrict or contradict a forest management plan approved by the State of Oregon Department of Forestry pursuant to the State Forest Practice Rules; and

(4) Required Primary and Secondary Fire Safety Zones shall be established within the subject tract as required by Table 1 above.

(5) Required Primary and Secondary Fire Safety Zones shall be maintained by the property owner in compliance with the above criteria listed under (1) and (2).

Staff: The following table identifies the proposed structures and requirements for the primary and secondary fire safety zones and setbacks, see Exhibit A.5 for more detail on the location:

Structure:	Primary Required:	Secondary Required:	Setbacks:
Carport 1	Yes, located more than 30' from all property lines	No, located within 100' of the dwelling	Located outside of 30' setback from all property lines
Carport 2	Yes, located more than 30' from all property lines	No, located within 100' of the dwelling	Located outside of 30' setback from all property lines
Greenhouse	Yes, located more than 30' from all property lines	No, located within 100' of the dwelling	Located outside of 30' setback from all property lines
Gazebo	Yes, located more than 30' from all property lines	Yes, requires approval a reduction via MCC 39.4155	Closest property line is approximately 32 feet.
Sauna	Yes, located more than 30' from all property lines	No, located within 100' of the dwelling	Located outside of 30' setback from all property lines
Chicken Coop and Run	Yes, located more than 30' from all property lines	No, located within 100' of the dwelling	Located outside of 30' setback from all property lines
Storage Shed 1 (open sided)	Yes, located more than 30' from all property lines	No, located within 100' of the dwelling	Located outside of 30' setback from all property lines

Storage Shed 2 (open sided)	Yes, located more than 30' from all property lines	No, located within 100' of the dwelling	Located outside of 30' setback from all property lines
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5.3 § 39.4115 DEVELOPMENT STANDARDS FOR DWELLINGS AND STRUCTURES.

All dwellings and structures shall comply with the approval criteria in (B) through (D) below except as provided in (A). All exterior lighting shall comply with MCC 39.6850:

(A) For the uses listed in this subsection, the applicable development standards are limited as follows:

(3) Accessory buildings.

(a) Accessory buildings within 100 feet of the existing dwelling:

Shall meet the development standards of MCC 39.4115(C);

(b) Accessory buildings located farther than 100 feet from the existing dwelling: Shall meet the development standards of MCC 39.4115(B) and (C);

Staff: With the exception of the Gazebo, all of the structures that are the subject of this review are accessory buildings that are located within 100 feet of the existing dwelling (Exhibit A.5). Therefore the structures are only subject to the requirements of MCC 39.4115(C).

(B) New dwellings shall meet the following standards in (1) and (3) or (2) and (3); restored or replacement dwellings greater than 100-feet from an existing dwelling, and accessory buildings (or similar structures) greater than 100-feet from the existing dwelling shall meet the following standards in (1) and (3) or (2) and (3):

Staff: Only the Gazebo needs to meet the requirements of this section.

(2) The structure shall satisfy the following requirements:

(a) It has the least impact on nearby or adjoining forest or agricultural lands and satisfies the standards in MCC 39.4110;

(b) Adverse impacts on forest operations and accepted farming practices on the tract will be minimized;

(c) The amount of forest land used to site the dwelling or other structure, access road, and service corridor is minimized;

(d) Any access road or service corridor in excess of 500 feet in length is demonstrated by the applicant to be necessary due to physical limitations unique to the property and is the minimum length required; and

Staff: The gazebo is proposed to be located approximately 32 feet from the St Helens Highway immediately adjacent to an unimproved right-of-way, it is therefore sited in an area that has the least impact on adjacent forest lands (there are no adjoining or nearby agricultural lands). The location of the structure is unlikely to result in adverse impacts to adjacent forest operations, it is sited more than 150 feet from the closest CFU zoned property. The gazebo was constructed in an area that was cleared and therefore has minimal impact to the forest operations on the subject property. No service road is proposed to be constructed or extended as part of this application. *The criteria are met.*

(3) The risks associated with wildfire are minimized. Provisions for reducing such risk shall include:

(a) Access roadways shall be approved, developed and maintained in accordance with the requirements of the structural fire service provider that serves the property. Where no structural fire service provider provides fire protection service, the access roadway shall meet the Oregon Fire Code requirements for fire apparatus access;

(b) Access for a pumping fire truck to within 15 feet of any perennial water source of 4,000 gallons or more within 100 feet of the driveway or road on the lot. The access shall meet the fire apparatus access standards of the Oregon Fire Code with permanent signs posted along the access route to indicate the location of the emergency water source;

Staff: The City of Portland is the Structural Fire Service Provider, they reviewed the proposal and found in Exhibit A.14 that “The proposed development is in compliance with the fire apparatus access standards of the Oregon Fire Code standards as implemented by our agency.” *The criteria are met.*

(C) The dwelling or structure shall:

(1) Comply with the standards of the applicable building code or as prescribed in ORS 446.003 through 446.200 relating to mobile homes;

(2) If a mobile home, have a minimum floor area of 600 square feet and be attached to a foundation for which a building permit has been obtained;

(3) Have a fire retardant roof; and (4) Have a spark arrester on each chimney.

Staff: None of the existing or proposed structures are Mobile Homes. None of the existing or proposed structures has or is proposed to have a chimney. The roofs of the structures have been found to be fire retardant (Exhibits A.2 and A.11). *The criteria are met.*

(D) The applicant shall provide evidence that the domestic water supply is from a source authorized in accordance with the Department of Water Resources Oregon Administrative Rules for the appropriation of ground water (OAR 690, Division 10) or surface water (OAR 690, Division 20) and not from a Class 1 stream as defined in the Forest Practices Rules.

(1) If the water supply is unavailable from public sources, or sources located entirely on the property, the applicant shall provide evidence that a legal easement has been obtained permitting domestic water lines to cross the properties of affected owners.

(2) Evidence of a domestic water supply means:

(a) Verification from a water purveyor that the use described in the application will be served by the purveyor under the purveyor's rights to appropriate water; or

**(b) A water use permit issued by the Water Resources Department for the use described in the application; or
(c) Verification from the Water Resources Department that a water use permit is not required for the use described in the application. If the proposed water supply is from a well and is exempt from permitting requirements under ORS 537.545, the applicant shall submit the well constructor's report to the county upon completion of the well.**

Staff: The subject property is served with water. This criterion is met.

5.4 § 39.4155 EXCEPTIONS TO SECONDARY FIRE SAFETY ZONES.

(A) The secondary fire safety zone for dwellings and structures may be reduced pursuant to the provisions of MCC 39.4155 (B) when:

- (1) The tract on which the dwelling or structure is proposed has an average lot width or depth of 330 feet or less, or**
- (2) The dwelling or structure will be located within 130 feet of the centerline of a public or private road serving two or more properties including the subject site; or**
- (3) The proposed dwelling or structure will be clustered with a legally existing dwelling or structure.**

Staff: The secondary fire safety zone would only apply to the Gazebo because it is located more than 100 feet from the dwelling. The remainder of the structures that are the subject of this application are located within 100 feet of the dwelling and do not require the application of a secondary fire safety zone. Due to the size and orientation of the subject property and the fact that the Gazebo is not inhabited living space, the applicant is requesting the secondary fire safety zone be reduced to Zero (0) feet. At its widest location, the subject property is less than 350 feet deep (Exhibit A.5). The requested exception is for an accessory structure that is located approximately 150 feet from the centerline of St. Helens Highway. The subject property, and more specifically, the Gazebo are eligible for approval of an exception to the secondary fire safety zone. *These criteria are met.*

(B) Exceptions to secondary fire safety zones shall only be granted upon satisfaction of the following standards:

- (1) If the proposed secondary fire safety zone is between 50 and 100 feet, the dwelling or structure shall be constructed in accordance with the International Fire Code Institute Urban Wildland Interface Code Section 505 Class 2 Ignition Resistant Construction as adopted August, 1996, or as later amended, or**

Staff: The secondary fire safety zone for the Gazebo would be located within 50 feet of the dwelling. Therefore Subsection (2) applies to this land use review.

- (2) If the proposed secondary fire safety zone is less than fifty feet, the dwelling or structure shall be constructed in accordance with the International Fire Code Institute Urban-Wildland Interface Code Section 504 Class 1 Ignition Resistant Construction as adopted August, 1996, or as later amended, and**

Staff: The secondary fire safety zone for the Gazebo would be located within 50 feet of the dwelling. The applicant will be required through a condition of approval to ensure the Gazebo is constructed to meet this standard. *The criterion is met through a condition of approval.*

(3) There shall be no combustible fences within 12 feet of the exterior surface of the dwelling or structure; and

Staff: There are no existing or proposed fences within 12 feet of the dwelling or Gazebo (Exhibit A.5). *This criterion is met.*

(4) A dwelling shall have a central station monitored alarm system if the secondary fire safety zone equivalents of subsection (B) (1) above are utilized, or

Staff: The subject application is for approval of an exception for an accessory structure. Therefore this requirement is not applicable to this review. *This criterion not applicable to this review.*

(5) A dwelling shall have a central station monitored 13D sprinkler system if the secondary fire safety zone equivalents of subsection (B) (2) above are utilized.

Staff: The subject application is for approval of an exception for an accessory structure. Therefore this requirement is not applicable to this review. *This criterion is not applicable to this review.*

6.0 Significant Environmental Concern (SEC)

6.1 § 39.5540 CRITERIA FOR APPROVAL OF SEC PERMIT.

The SEC designation shall apply to those significant natural resources, natural areas, wilderness areas, cultural areas, and wild and scenic waterways that are designated SEC on Multnomah County sectional zoning maps. Any proposed activity or use requiring an SEC permit shall be subject to the following:

(A) The maximum possible landscaped area, scenic and aesthetic enhancement, open space or vegetation shall be provided between any use and a river, stream, lake, or floodwater storage area.

Staff: The proposed and existing structures that are the subject of this application are located in areas that were already cleared. The closest waterbody is the Multnomah Channel and it is located northwest of the subject property on the other side of Highway 30 approximately 670 feet away. Based on the site plan provided (Exhibit A.5) and the photographs provided (Exhibit A.11) the maximum amount of landscaped area with vegetation is provided. *The criterion is met.*

(B) Agricultural land and forest land shall be preserved and maintained for farm and forest use.

Staff: The subject property is zoned Commercial Forest Use 2. The subject property is committed to residential development. The applicant is not proposing to replace existing forested areas with structures (Exhibit A.5). Rather, the applicant is requesting the ability to construct and retroactively approve structures in cleared areas. If approved the forested areas of the property will still be available to support forest activity on the property, the placement of the accessory structures that are the subject of this application would not inhibit the ability to manage the property for forest use. *The criterion is met.*

(C) A building, structure, or use shall be located on a lot in a manner which will balance functional considerations and costs with the need to preserve and protect areas of environmental significance.

Staff: The majority of the subject property is forested (Exhibit A.5). The entire subject property is located within the Wildlife Habitat Significant Environmental Concern (SEC-h) overlay. The subject property is also located within the Viewshed Significant Environmental Concern (SEC-v) overlay. There are no other environmental overlays or resources mapped on or adjacent the subject property. Findings demonstrating conformance with the standards for the SEC-h and SEC-v are detailed below. The applicant has located or is proposing to locate the structures in areas that have already been cleared and is not proposing to clear any vegetation. The structures are proposed to be clustered next to or near existing permitted development on the subject property allowing the forested areas to remain. *The criterion is met.*

(D) Recreational needs shall be satisfied by public and private means in a manner consistent with the carrying capacity of the land and with minimum conflict with areas of environmental significance.

Staff: The application that is the subject of this review does not proposed to establish or impact recreational uses. There are no recreation uses on the subject property or neighboring properties. Conformance with the standards within the SEC-v will assure that development is visually subordinate and does detract from people who recreate on the Multnomah Channel or other Key Viewing Areas in the vicinity. *The criterion is met.*

(E) The protection of the public safety and of public and private property, especially from vandalism and trespass, shall be provided to the maximum extent practicable.

Staff: The applicant is proposing to cluster the structures in close proximity to existing approved structures on the site. The proposed location of the structures will assist the homeowner in safeguarding their belongings from vandalism and theft and will dissuade the public from trespassing onto the property. The provisions of the SEC-v overlay will ensure that development is visually subordinate and will not attract attention which might entice trespass or vandalism. Some of the proposed structures (carports, storage sheds, and green house) are necessary for the homeowner to safeguard their private property. *The criterion is met.*

(F) Significant fish and wildlife habitats shall be protected.

Staff: The entire subject property is located within the SEC-h overlay. The applicant is proposing development clustered closely to existing permitted structures. No areas are

proposed to be cleared to accommodate development of any of the structures (Exhibit A.5). Conformance with the standards that permit development within the SEC-h overlay will ensure that the proposed development minimizes any harm to wildlife habitat areas. There are no mapped riparian areas or associated buffers located on the subject property. *The criterion is met.*

(G) The natural vegetation along rivers, lakes, wetlands and streams shall be protected and enhanced to the maximum extent practicable to assure scenic quality and protection from erosion, and continuous riparian corridors.

Staff: The subject property does not contain any rivers, lakes, wetlands, or streams, nor does the subject property have any zoning overlays that are associated with these types of features. *This criterion is not applicable to this review.*

(H) Archaeological areas shall be preserved for their historic, scientific, and cultural value and protected from vandalism or unauthorized entry.

Staff: There are no known archeological areas located within or adjacent the subject property. There are no Goal 5 designated resources on the property except for the resources that coincide with the SEC-v and SEC-h overlays. *The criterion is met.*

(I) Areas of annual flooding, floodplains, water areas, and wetlands shall be retained in their natural state to the maximum possible extent to preserve water quality and protect water retention, overflow, and natural functions.

Staff: There are no mapped wetlands or floodplains on the subject property. None of the area that is proposed to be occupied by accessory structures are located in mapped wetlands, floodplains, or areas know to flood. Therefore there are not impacts to areas subject annual flooding, water areas, and wetlands that would result from the requested approval. *The criterion is met.*

(J) Areas of erosion or potential erosion shall be protected from loss by appropriate means. Appropriate means shall be based on current Best Management Practices and may include restriction on timing of soil disturbing activities.

Staff: There are no known areas of erosion or potential erosion on the subject property. All development within the County needs to adhere to the Erosion and Sediment Control (ESC) provisions of the Multnomah County Zoning Code (MCC Chapter 39). If triggered the applicant will be required to obtain a permit prior to engaging in any earth engaging work. The construction of the second carport will not require the applicant obtain an ESC permit, as the carport is proposed to be constructed over an existing concrete pad. *The criterion is met.*

(K) The quality of the air, water, and land resources and ambient noise levels in areas classified SEC shall be preserved in the development and use of such areas.

Staff: The applicant is not proposing to develop any uses that would affect the air quality or increase ambient noise levels. The structures are proposed to be located in close proximity to existing permitted development on the subject property thereby preserving the others areas of the property that are forested to be managed as areas where nature prevails. These forested

areas will assist with the preservation of the air quality through the photosynthesis process that occurs within trees and other understory vegetation. *The criterion is met.*

(L) The design, bulk, construction materials, color and lighting of buildings, structures and signs shall be compatible with the character and visual quality of areas of significant environmental concern.

Staff: The applicant is proposing to permit eight (8) accessory structures that range in size and materials. The applicant is not proposing to light any of the accessory structures except the sauna, it will be required through a condition of approval that the lighting for the Sauna meet the Dark Sky standards of the Multnomah County Code. The Sauna and chicken coop are designed to be similar in design to the primary dwelling using the same type of siding, paint colors, and roofing materials. The two carports will use a dark evergreen roof with a pewter gray trim with a matte finish that has low reflectability. The two storage sheds are constructed of dimensional lumber with dark grey composite shingle roofs. The gazebo is constructed of dimension lumber that is stained and has a dark grey composite roof. The greenhouse is opaque as it is designed to keep warmth in and allow light to penetrate the exterior. The greenhouse is sited so that it is not visible from any of the Key Viewing Areas, it is screened by vegetation on the subject property. All of the proposed structures are sited and designed to meet the standards of the SEC-v. *The criterion is met.*

(M) An area generally recognized as fragile or endangered plant habitat or which is valued for specific vegetative features, or which has an identified need for protection of the natural vegetation, shall be retained in a natural state to the maximum extent possible.

Staff: There are no known or recognized fragile or endangered plant habitat areas located on the subject property. No fragile or endangered habitat areas were identified during the notice period for this application. Therefore the proposal meets this standard. *The criterion is met.*

(N) The applicable policies of the Comprehensive Plan shall be satisfied.

Staff: The Multnomah County Comprehensive Plan is implemented via the Multnomah County Zoning Code. Demonstrating compliance with the Multnomah County Zoning Code satisfies the policies of the Comprehensive Plan. The following policy is appropriate for discussion as part of the decision:

4.16 Require clustering of dwellings and accessory structures in CFU zones to establish a clear relationship between the residential use and accessory use and to minimize the amount of tree removal and clearing between buildings.

Policy 4.16 requires dwellings and accessory structures to be clustered in CFU zones. The subject property has clustered all of the accessory structures around the existing dwelling and the original dwelling which was converted to a shop. The applicant is proposing to site the accessory structures in already cleared areas thereby eliminating the need to remove trees and clear areas consistent with the intent of this policy. 4.16 Require clustering of dwellings and accessory structures in CFU zones to establish a clear relationship between the residential use and accessory use and to minimize the amount of tree removal and clearing between buildings. *The criterion is met.*

6.2 § 39.5650 CRITERIA FOR APPROVAL OF SEC-V PERMIT - SIGNIFICANT SCENIC VIEWS.

(C) Any portion of a proposed development (including access roads, cleared areas and structures) that will be visible from an identified viewing area shall be visually subordinate. Guidelines which may be used to attain visual subordination, and which shall be considered in making the determination of visual subordination include:

(1) Siting on portions of the property where topography and existing vegetation will screen the development from the view of identified viewing areas.

(2) Use of nonreflective or low reflective building materials and dark natural or earthtone colors.

(3) No exterior lighting, or lighting that is directed downward and sited, hooded and shielded so that it is not highly visible from identified viewing areas. Shielding and hooding materials should be composed of nonreflective, opaque materials.

(4) Use of screening vegetation or earth berms to block and/or disrupt views of the development. Priority should be given to retaining existing vegetation over other screening methods. Trees planted for screening purposes should be coniferous to provide winter screening. The applicant is responsible for the proper maintenance and survival of any vegetation used for screening.

(5) Proposed developments or land use shall be aligned, designed and sited to fit the natural topography and to take advantage of vegetation and land form screening, and to minimize visible grading or other modifications of landforms, vegetation cover, and natural characteristics.

(6) Limiting structure height to remain below the surrounding forest canopy level.

(7) Siting and/or design so that the silhouette of buildings and other structures remains below the skyline of bluffs or ridges as seen from identified viewing areas. This may require modifying the building or structure height and design as well as location on the property, except:

(a) New communications facilities (transmission lines, antennae, dishes, etc.), may protrude above a skyline visible from an identified viewing area upon demonstration that:

- 1. The new facility could not be located in an existing transmission corridor or built upon an existing facility;**
- 2. The facility is necessary for public service; and**
- 3. The break in the skyline is the minimum necessary to provide the service.**

Staff: The applicant is proposing to permit eight (8) accessory structures as part of this application. Several of these structures already exist on the property and the applicant seeks to retroactively permit them through this application. The following structures already exist on the property; the gazebo, a carport, a chicken coop and run, two storage sheds, a greenhouse, and a sauna. All of these structures and the proposed carport are shown on Exhibit A.5. Exhibits A.11 includes photos of the existing structures as well as photos taken from Key Viewing Areas. Exhibit A.11 effectively demonstrates that topography, existing

vegetation, design and construction, as well as placement of the existing structures effectively ensure that those seven (7) structures are visually subordinate.

In addition to the seven structures discussed above, the applicant is proposing to site a second carport immediately northwest of the shop. The proposed carport is proposed to be sited so it is screened by existing vegetation that include salmonberry, snowberry, oaks, maples and coniferous trees (Exhibit A.6). The proposed carport will be screened by the existing shop to the south, which was lawfully established. The applicant is proposing to construct the carport out of matte finish materials using an evergreen color for the roof and a pewter gray color for the trim (exhibit A.7). The existing roofline of the shop is barely visible in Exhibit A.11, the proposed carport will have a roofline that is lower than the shop, and the proposed color will ensure that the structure, if visible, is visually subordinate. *As conditioned the criterion met.*

§ 39.5860 CRITERIA FOR APPROVAL OF SEC-H PERMIT -WILDLIFE HABITAT.

6.3 (B) Development standards:

(1) Where a parcel contains any nonforested "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 is proposing to site the accessory structures in existing cleared areas close to the existing dwelling and shop which were both lawfully established. *The 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 proposed structures are all clustered around the existing dwelling and previous dwelling that was lawfully converted to a shop (Exhibit A.5). All of the proposed structures are located within 200 feet of either Newberry Road or St Helens Highway. *The criterion is met.*

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

Staff: The driveway that provides access to the development is less than 500 feet in length (Exhibit A.5). It was permitted under a previous land use application and is not proposed to be extended or relocated as part of this application. *The 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 subject application does not propose to create or relocate the existing driveway access to the subject property. The current driveway access to the property was previously permitted. *These criteria are not applicable to this review.*

(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: All of the proposed structures are located within 300 feet of a side property line (Exhibit A.5). *The 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. (See Figure 4 below.) Figure 4.**

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

Staff: The applicant is not proposing to construct any fencing within the required setback from the public road (See Exhibit A.5). *These criteria are not applicable to this review.*

(7) The nuisance plants in MCC 39.5580 Table 1 shall not be planted on the subject property and shall be removed and kept removed from cleared areas of the subject property.

Staff: The applicant is not proposing to plant any plants as a part of the proposed development. An ongoing condition of approval will ensure that any nuisance plants are removed should they appear within the cleared areas of the property. *As conditioned this criterion is met.*

7.0 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the approval of Significant Environmental Concern for Wildlife Habitat (SEC-h), Significant Environmental Concern for Scenic Views (SEC-v), and Forest Development Standards and Exception to Secondary Fire Safety Zone to establish eight (8) accessory buildings in the CFU-2 zone. This approval is subject to the conditions of approval established in this report.

8.0 Exhibits

- 'A' Applicant's Exhibits
- 'B' Staff Exhibits
- 'C' Procedural Exhibits
- 'D' Comments Received

Exhibits with a “*” after the exhibit # have been included as part of the mailed decision. All other exhibits are available for review in Case File T2-2019-11631 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	2	Application Form	2-22-19
A.2	8	Narrative	2-22-19
A.3	4	Voluntary Compliance Agreement (UR-2018-11252)	2-22-19
A.4	1	Vicinity Map	2-22-19
A.5	1	Site Plan 1 (1" = 100')	2-22-19
A.6	1	Site Plan 2 (1" = 30')	2-22-19
A.7	1	Color Finish Info (Carports)	2-22-19
A.8	11	Carport Schematics	2-22-19
A.9	3	Carport Elevations (Hand Drawn)	2-22-19

A.10	1	Carport Photo	2-22-19
A.11	11	Photos	2-22-19
A.12	3	Septic Certification Form (BDS)	2-22-19
A.13	10	Mult. Co Transportation Review	2-22-19
A.14	8	Fire Agency Review Form	2-22-19
A.15	3	Completeness Response	3-22-19
‘B’	#	Staff Exhibits	Date
B.1	4	A&T Property Information	2-22-19
B.2	2	MultCo Partition Plat 2019-10	3-28-19
B.3	4	Prefile Notes (PF-2018-10822)	3-28-19
B.4	1	Covenant – Notice of Zoning Compliance – Accessory Structure	4-30-19
‘C’	#	Administration & Procedures	Date
C.1	3	Incomplete Letter	3-21-19
C.2	1	Completeness Letter	3-25-19
C.3	2	Opportunity to Comment	3-26-19
C.4	XX	Administrative Decision	
‘D’	#	Comments Received (if needed)	Date
D.1	1	Comments from Andrew Lightcap	3-29-19
D.2	2	Comments from Anonymous Neighbor	4-4-19