

## NOTICE OF DECISION

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**Case File:** T2-2020-13164 & EP-2020-13167

**Permits:** Significant Environmental Concern and Road Rules Variance

**Applicant:** Abigail Freeland **Owners:** Daniel & Abigail Freeland

**Location:** 31330 SE Victory Road, Troutdale  
Tax Lot 600, Section 08DC, Township 1 South, Range 4 East, W.M.  
Alternate Account #R751705100 Property ID #R266609

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

**Overlays:** Significant Environmental Concern – Wildlife Habitat (SEC-h); Water Resources (SEC-wr); Geologic Hazard (GH)

**Proposal Summary:** Applicant requests a Significant Environmental Concern for wildlife habitat (SEC-h) permit to construct a new single family dwelling within the SEC-h overlay. At present, no permits are needed for the SEC-wr (water resource) and the GH (Geologic Hazard) overlay zones. Additionally, two Road Rules Variances have been requested to allow a second access point for fire truck turnaround and to allow the existing roadway width (12.4-ft to 16-ft) on SE Victory Road to be maintained to serve the new dwelling. County roadway standard requires a 20-ft wide travel surface.

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**Decision:** **1. The Significant Environmental Concern for wildlife habitat permit has been approved with conditions.**

**2. The Road Rules Variance for not meeting the Transportation standards has been denied.**

**This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Friday, October 16, 2020 at 4:00 pm.**

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**Issued by:** \_\_\_\_\_

Lisa Estrin,  
Senior Planner

**Issued by:** \_\_\_\_\_

Graham Martin,  
Transportation Planner

**For:** Carol Johnson, AICP  
Planning Director

**For:** Ian B. Cannon, PE  
County Engineer

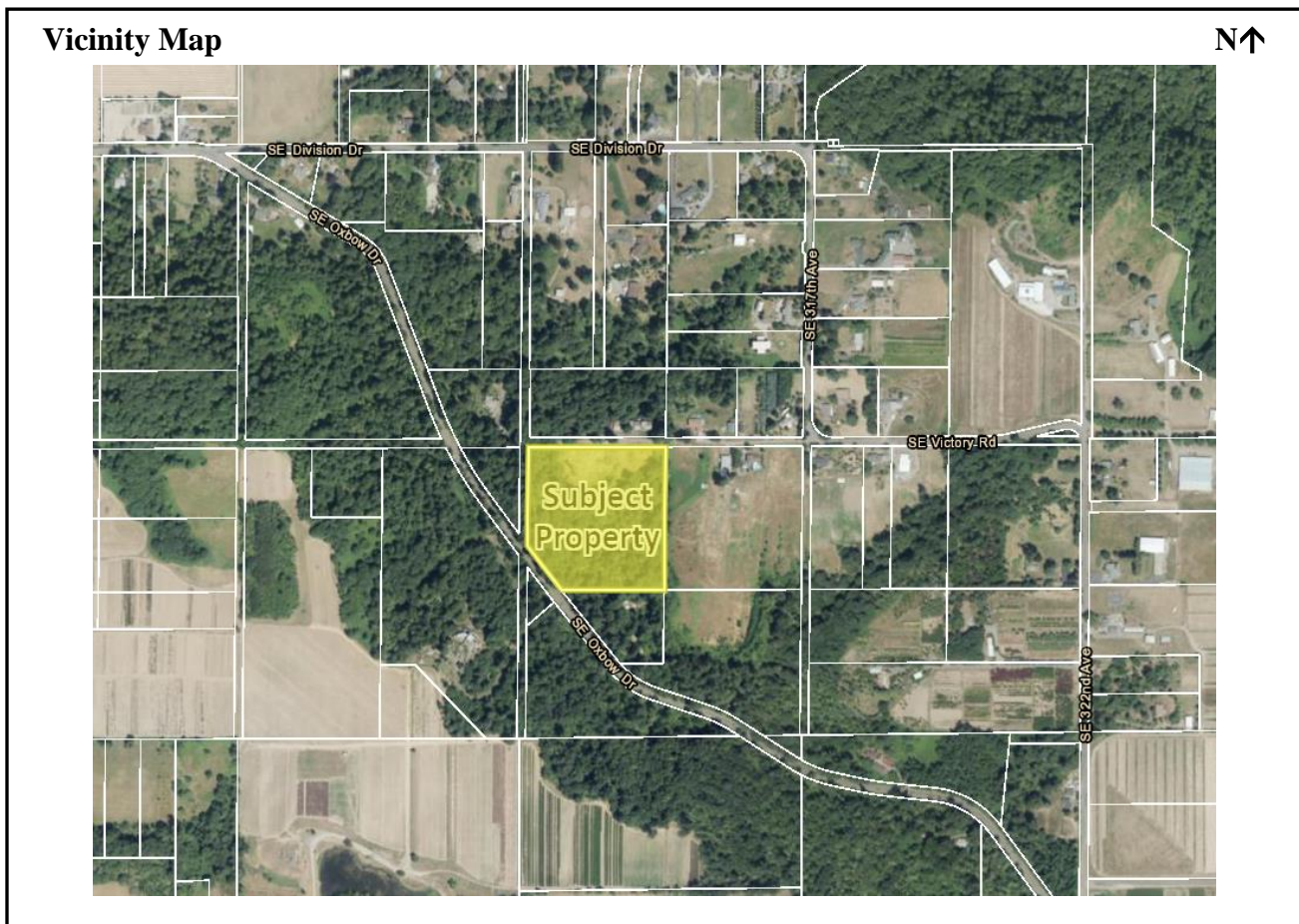
**Date:** Friday, October 2, 2020

**Date:** Friday, October 2, 2020

Instrument Number for Recording Purposes: # 2017118997

**Opportunity to Review the Record:** The complete case file, including the Planning Director Decision containing Findings, Conclusions, Conditions of Approval, and all evidence associated with this application is available for review by contacting the land use planner for the SEC-h permit or the transportation planner for the road rules variance. Copies of all documents are available at the rate of \$0.35/per page. For zoning information, contact Lisa Estrin, Staff Planner at 503-988-0167 or via email at [lisa.m.estrin@multco.us](mailto:lisa.m.estrin@multco.us). For transportation information, contact Graham Martin, Transportation Planner at 503-988-0204 or via email at [graham.martin@multco.us](mailto:graham.martin@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.



**Applicable Approval Criteria:**

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

**Multnomah County Code (MCC):** General Provisions: MCC 39.1515 Code Compliance and Applications, MCC 39.2000 Definitions, MCC 39.6850 Dark Sky Lighting Standards;

Lot of Record: MCC 39.3005 Lot of Record – Generally, MCC 39.3090 Lot of Record - Rural Residential (RR);

Rural Residential (RR) Zone: MCC 39.4360 Allowed Uses, (A)(1) Single Family Dwelling, MCC 39.4275(C), (D), (F), (G) & (H) Dimensional Requirements and Development Standards;

Significant Environmental Concern: MCC 39.5510 Uses; SEC Permit Required, MCC 39.5515 Exceptions, MCC 5560 General Requirements for SEC-h, MCC 39.5860 - Wildlife Habitat (SEC-h);

Geologic Hazard: MCC 39.5075 Permits Required.

and

Multnomah County Road Rules (MCRR): MCRR 4.000-4.500 Access to County Roads; MCRR 5.000 Transportation Impact; MCRR 6.000 Improvement Requirements, MCRR 11.000 Local Access Roads, MCRR 16.000 Variance from County Standards and Requirements, specifically MCRR 16.200 A-D General Variance Criteria, MCRR 16.225 A-C Access Variance Standards, MCRR 16.250 Local Access Roads Variance Standards, and MCRR 18.250 Right-of-Way Use Permits

Copies of the referenced Multnomah County Code sections are available by contacting our office at (503) 988-3043 or by visiting our website at <https://multco.us/landuse/zoning-codes/> under the link: **Chapter 39 - Zoning Code**. Copies of the referenced Multnomah County Road Rules sections can be obtained by contacting Transportation Planning or by visiting their website at <http://multco.us/transportation-planning/plans-and-documents> under the link **Multnomah County Road Rules**.

### **Conditions of Approval**

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parenthesis. Approval of this land use permit is based on the submitted written narrative(s) and plan(s). 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.

**1. Permit Expiration** – This land use permit shall expire as follows:

- a. Within two (2) years of the date of the final decision when construction has not commenced. [MCC 39.1185(B)]
  - i. For the purposes of 1.a, commencement of construction shall mean actual construction of the foundation or frame of the approved single family dwelling. For roads, commencement of construction shall mean actual grading of the roadway under a Construction Permit.
  - ii. For purposes of Condition 1.a, notification of commencement of construction will be given to Multnomah County Land Use Planning Division a minimum of seven (7) days prior to date of commencement. Work may commence once notice is completed. Commencement of construction shall mean actual construction of the foundation or frame of the approved structure.
- b. Within four (4) years of the date of commencement of construction when the structure has not been completed. [MCC 39.1185(B)]
  - i. For the purposes of 1.b, 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.

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

2. Prior to land use sign-off for building plan check, the property owners or their representative shall:
  - a. Replant the area logged under the ODF Forest Practice notification with the number of trees required by the Forest Practice Act or obtain a SEC-wr permit for a change of use. [MCC 39.55159A)(2), MCC 39.1515 and MCC 39.5510(A)]
  - b. Record pages 1 through 6 and Exhibit A.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]
  - c. Record the Oregon Right to Farm Law covenant or its current version (Exhibit B.9). In addition, a covenant shall be recorded to protect the SEC-h mitigation plantings to be located within the SEC-wr overlay zone [MCC 39.4375(G) and MCC 39.5860(C)(3) & (C)(5)(e)]
  - d. Submit a lighting plan identifying the location of all exterior lighting to be installed on the property and lighting details for all styles of light fixtures to be used. The Lighting Plan shall comply with Condition 3. The lighting plan and details shall be included in the plan set to be approved to enter Building Plan Check. [MCC 39.4375(H), MCC 39.5560(B) and MCC 39.6850]
  - e. Apply for and obtain approval of an Erosion and Sediment Control permit for all ground disturbing activities that will occur on and off site for the development (house, roadway improvements, installation of utilities). [MCC 39.5560(A)]
  - f. Revise the site plan to include the 5-ft right-of-way dedication for SE Victory Road and shift the proposed dwelling 5 feet south to meet the 30-ft wide yard requirement of MCC 39.4375(C). Any other physical improvement over 30 inches in height shall meet the Yard Dimensions as specified in MCC 39.4375(C) including any proposed retaining walls within the yard area(s).
    - i. With the shifting of the development five (5) feet to the south, the applicant shall demonstrate that the project area remains outside of the Geologic Hazards overlay and/or will not disturb slopes 25% or more. If the Geologic Hazards overlay is triggered, a Geologic Hazard permit shall be obtained before the project may move forward into Building Plan Check. [MCC 39.5075]
  - g. Submit a Landscaping plan for the area around the dwelling that is not part of the Wildlife Conservation Plan mitigation planting shall be provided. No nuisance plants as defined in MCC 39.5545 and listed in MCC 39.5580 Table 1 shall be used for landscaping.
  - h. Revise the site plan, grading plans and landscaping plans to include the following note: **"Trees shall not be used as anchors for stabilizing construction equipment"**. [MCC 39.5860(C)(3) and (C)(5)]
3. The Wildlife Conservation Plan's mitigation plantings shall be installed between October 1, 2020 and March 31, 2021. This time period may only be modified in case of appeal of the County's Final Decision and shall occur within the next October to March time period.

4. All exterior lighting installed shall be limited to the area north of the dwelling and immediately adjacent to the dwelling to the west, east and south and shall not illuminate further than the Limits of Disturbance shown on Exhibit A.11.b. Illumination from the lighting shall be contained within the boundaries of the Lot of Record on which it is located. [MCC 39.6850 and MCC 39.5560(B)]
5. All nuisance plants listed in MCC 39.5580 Table 1 and MCC 39.5545 shall be kept removed and never be planted on the Lot of Record containing the dwelling. [MCC 39.5560(C) & MCC 39.5860(B)(7)]
6. The property owners shall maintain the mitigation plantings shown in Exhibit A.4 in a healthy state and replant, immediately in the next planting season, any that have declined or died. At the end of five years from date of planting and thereafter, a minimum of 80% of the trees and shrubs shall remain in a healthy state, alive on the fifth anniversary of the date of completion of the mitigation plantings. Mitigation plantings shall not be removed without replanting. [MCC 39.5860(C)(3) and (5)(n) & (o)]
  - a. The applicant shall send an email to [land.use.planning@multco.us](mailto:land.use.planning@multco.us) seven (7) days prior to the commencement of the installation of the mitigation plantings providing the case # T2-2020-13164 and indicate commencement of planting. The applicant shall also send an email when they are completed. The email shall certify that all required trees and shrubs have been planted in a living state.
  - b. A yearly report shall be provided by the property owners or their representatives that identifies the number of trees and shrubs lost due to death or decline and the number of trees and shrubs remaining from the original planting and the number of trees and shrubs replanted.
  - c. If on the fifth anniversary of the installation of the mitigation plantings less than 80% of the trees and shrubs remain. The property owner(s) shall continue to monitor, replant and report for the next three years until 80% of the plantings remain in a living state without needing human care and maintenance. [MCC 39.5860(C)(3) and (C)(5)]
7. The area used for the development (single family dwelling, driveway, turnaround, landscaping, stormwater drainage system, on-site sewage disposal system) shall be no more than the area designated as the Limit of Disturbance shown on Exhibit A.11.b and is 0.51 of an acre.
8. No fencing, other than for a gate for the fire truck turn around, shall be installed on the property without first modifying the Wildlife Conservation Plan approved for the proposed development. [MCC 39.5860(C)(3) and (C)(5)]

**Note:** Once this decision is final and the applicable Conditions of Approval have been met, application for building permits may be made with the City of Gresham's Building Department. When ready to have building plans 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 Right-of-Way Permits at [row.permits@multco.us](mailto:row.permits@multco.us) to review your plans, obtain your access permit, and satisfy any other requirements. You may schedule an appointment at <https://multco.us/transportation-planning/webform/right-way-appointment-request/> or leave a message at 503-988-3582. Failure to make an appointment with County Right-of-Way will result in delaying your building plan review and obtaining building permits.

3. Contact the City of Portland, Bureau of Development Services, On-site Sanitation at 503-823-6892 or e-mail [septic@portlandoregon.gov](mailto:septic@portlandoregon.gov) for information on how to complete the Septic Evaluation or Permit process for the proposed development. All existing and/or proposed septic system components (including septic tank and drainfield) must be accurately shown on the site plan.
4. Contact Lisa Estrin, Senior Planner, at 503-988-0167 or via email at [lisa.m.estrin@multco.us](mailto:lisa.m.estrin@multco.us), **for an appointment** for review of the conditions of approval and to sign the building permit plans. Please ensure that any items required under, “At the time of land use sign-off for building plan check...” are ready for land use planning review. Land Use Planning must sign off on the plans and authorize the building permit before you can go to the Building Department.

The above must be completed before the applicant can obtain building permits from the City of Gresham. At the time of building permit review, Land Use Planning may collect additional fees, including an erosion control inspection fee, if applicable.

## **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 Application Description:**

**Staff:** Applicant requests a Significant Environmental Concern for wildlife habitat (SEC-h) permit to construct a new 2,555 square foot single family dwelling within the SEC-h overlay. Additionally, the applicant has requested two Road Rules Variances. The first variance is to allow a second access point to the property for a fire truck turnaround for SE Victory Road. The SE Victory Road does not currently have through access to another public street or a turnaround area within the right-of-way for fire access (MCRR 4.200). The second variance request is to allow the existing roadway which ranges from 12.4-ft to 16-ft along on SE Victory Road from SE 317<sup>th</sup> to the applicant’s home driveway access point to be maintained at its variable width and also remain as gravel which does not meet the County’s surfacing requirements (MCRR 4.400; MCRR 11.000). SE Victory Road is designated as a Local Access Road. The County’s roadway standard for local access road requires a 20-ft wide paved travel surface.

In addition to the SEC-h permit and Road Rules Variance, a Lot of Record Verification will be completed as part of the decision.

### **2.0 Property Description & History**

**Staff:** The subject property is 8.76 acres of land and fronts onto SE Victory Road, SE Oxbow Drive and an unnamed public right-of-way. The property is located in the West of Sandy River area and is zoned Rural Residential. In addition, the property has overlays of Significant Environmental Concern for wildlife habitat (SEC-h), water resources (SEC-wr) and Geologic Hazards (GH). The property is outside of the Urban Growth Boundary and inside the County’s Rural Reserves. In 2018, the applicant provided notification to the Oregon Department of Forestry and harvested approximately 1-3/4 acres of land.

### **3.0 Public Comments:**

**Staff:** Staff mailed a notice of application and invitation to comment on the proposed application to the required parties per MCC 39.1105 found as Exhibited in C.3. Staff received written comments from two parties during the 14-day comment period.

**3.1 S. Palmer, 31620 SE Victory Road, Troutdale** submitted written comments regarding the proposed application. Concerns involve the Road Rules Variance request to not widen the roadway and additional traffic usage of SE Victory Road (Exhibit D.2).

**D & B Hentges, 31431 SE Victory Rd, Troutdale** submitted written comments, photographs and three videos (Exhibit D.1). Concerns involve potential encroachment of the graveled roadway onto the corner of their property and trespass of vehicles onto their property. The Hentges state that the property is not unique, it is self-made hardship, the applicant has not demonstrated compliance with the applicable variance criteria and granting of the variance would be injurious to their property.

**Staff:** The findings that are related to the comments received are chiefly addressed under Sections 9 and 10 for the Road Rules Variance request.

#### **4.0 Code Compliance:**

##### **4.1 MCC 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.

**Staff:** At present, the County does not have an open compliance case on the subject property.

#### **5.0 Lot of Record Criteria:**

##### **5.1 MCC 39.3005 LOT OF RECORD – GENERALLY.**

(A) An area of land is a “Lot of Record” if it meets the standards in Subsection (B) of this Section and meets the standards set forth in this Part for the Zoning District in which the area of land is located.

(B) A Lot of Record is a parcel, lot, or a group thereof that, when created or reconfigured, either satisfied all applicable zoning laws and satisfied all applicable land division laws, or complies with the criteria for the creation of new lots or parcels described in MCC 39.9700. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.

(a) “Satisfied all applicable zoning laws” shall mean: the parcel, lot, or group thereof was created and, if applicable, reconfigured in full compliance with all zoning minimum lot size, dimensional standards, and access requirements.

(b) “Satisfied all applicable land division laws” shall mean the parcel or lot was created:

1. By a subdivision plat under the applicable subdivision requirements in effect at the time; or
2. By a deed, or a sales contract dated and signed by the parties to the transaction, that was recorded with the Recording Section of the public office responsible for public records prior to October 19, 1978; or
3. By a deed, or a sales contract dated and signed by the parties to the transaction, that was in recordable form prior to October 19, 1978; or

**4. By partitioning land under the applicable land partitioning requirements in effect on or after October 19, 1978; and**

**5. “Satisfied all applicable land division laws” shall also mean that any subsequent boundary reconfiguration completed on or after December 28, 1993 was approved under the property line adjustment provisions of the land division code. (See Date of Creation and Existence for the effect of property line adjustments on qualifying a Lot of Record for the siting of a dwelling in the EFU and CFU districts.)**

**(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.**

**Staff:** To qualify as a Lot of Record, the subject property, when created or reconfigured, must have (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws.

Tax lot 1S4E08DC – 00600 (subject property) consists of Lots 37 & 38, Section Line Road Fruit Tract. The proposed dwelling and its related improvements will occur chiefly on Lot 37. Section Line Road Fruit Tract was recorded on October 13, 1909.

Multnomah County first commenced zoning in May 1953 and adopted Subdivision regulations in April 1955. As the subdivision occur prior to 1910, its recordation satisfied all applicable zoning and land division laws at the time.

The subject property is zoned Rural Residential (RR) in its entirety. They are not intersected by an “acknowledged unincorporated community”, hence MCC 39.3005(B)(c) is not applicable.

*Lots 37 and 38, Section Line Road Fruit Tract remain in their original configuration since October 1909 and as such are both separate Lots of Record.*

## **5.2 MCC 39.3090 LOT OF RECORD – RURAL RESIDENTIAL (RR).**

**(A) In addition to the standards in MCC 39.3005, for the purposes of the RR district the significant dates and ordinances for verifying zoning compliance may include, but are not limited to, the following:**

- (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 39.4395, 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 39.4380, 39.4385, and 39.5300 through 39.5350, 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:** (A) is for informational purposes only.

(B) Lot 37 and Lot 38 are both Lots of Record and subject to (B) above. Lot 37 is 5 acres. Lot 38 is 4.70 acres. The minimum lot size for the RR zone is 5 acres. Both lots meet the minimum front lot line length of 50 feet (Exhibit B.3) and both have road frontage on public rights of way. They may be occupied by an allowed, review or conditional use when in compliance with the other requirements of the zoning code.

(C) The lots are vacant and are in the same configuration as shown in the 1909 Section Line Road Fruit Tract subdivision plat (Exhibit B.2).

(D) Lot 37 and Lot 38 are not an area of land described as a tax lot solely for assessment and taxation purposes, an area of land created by the foreclosure of a security interest, or an area of land created by court decree. They were created by the recording of the Section Line Road Fruit Tract subdivision plat in 1909.

*Criteria met.*

## **6.0 Rural Residential Criteria:**

### **6.1 MCC 39.4360 ALLOWED USES.**

**The following uses and their accessory uses are allowed, subject to all applicable supplementary regulations contained in MCC Chapter 39.**

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

**Staff:** The applicant is requesting to construct a single family dwelling on the subject property. See Section 5 for the Lot of Record findings. *Criterion met.*

### **6.2 MCC 39.4375 DIMENSIONAL REQUIREMENTS AND DEVELOPMENT STANDARDS.**

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

<b>Front</b>	<b>Side</b>	<b>Street Side</b>	<b>Rear</b>
<b>30</b>	<b>10</b>	<b>30</b>	<b>30</b>

### **Maximum Structure Height – 35 feet**

**(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:** SE Victory Road right-of-way is currently 40-ft wide. The County’s standard for a local access road right-of-way is 50-ft wide. At present, County Transportation is requiring a 5-ft dedication of right-of-way from the applicant’s property along SE Victory Road. This dedication will require that the development be shifted out of the public right-of-way. Any physical improvements over 30 inches in height, including building eaves, will need to be shifted southward to meet the 30-ft front yard requirement depending on their location.

The applicant’s narrative states that the proposed dwelling will be located about 32 feet from the front lot line, 246 feet from the western side property line, 310 feet from the eastern side property line and 55 feet from the rear lot line (Exhibit A.2). Lot 37 appears to be 310 feet from the southern edge of the SE Victory Road right-of-way to its southern boundary (Exhibit B.3). This would mean the rear yard distance is approximately 214+/- feet. As proposed, the dwelling will not meet the minimum front yard requirement. A condition of approval has been included requiring that the physical improvements over 30 inches in height must meet the Minimum Yard Dimensions of MCC 39.4375(C). At time of review for building plan check, any proposed retaining wall within the Front Yard area will need to demonstrate compliance with MCC 4375(C)(1) if they are over 6-ft in height.

The applicant’s narrative indicated the front elevation to be 16 feet tall and the rear elevation to be 25 feet in height (Exhibit A.2 & A.6). Based on the applicant’s narrative and building elevations, the dwelling will meet the maximum height requirement of 35 feet.

*Through a condition, MCC 39.4375(C) can be met.*

### **6.3 (F) On-site sewage disposal, storm water/drainage control, water systems unless these services are provided by public or community source, shall be provided on the lot.**

**(1) Sewage and stormwater disposal systems for existing development may be off-site in easement areas reserved for that purpose.**

**(2) Stormwater/drainage control systems are required for new impervious surfaces. The system shall be adequate to ensure that the rate of runoff from the lot for the 10 year 24-hour storm event is no greater than that before the development.**

**Staff:** The applicant’s site plan shows the area for the approved on-site sewage disposal system (Exhibit A.5). The County Sanitarian has reviewed the proposed placement of the septic drainfield, tank and stormwater system and finds that they are acceptable (Exhibit A.12). The applicant has provided a Stormwater Drainage Control Certificate (Exhibit A.14) signed by a licensed professional engineer. The stormwater will be handled via a 2000 gallon storage tank and metered out to a splash pad west of the proposed dwelling and away from the drainfield (Exhibit A.14.a). *Criterion met.*

**6.4 (G) New, replacement, or expansion of existing dwellings shall minimize impacts to existing farm uses on adjacent land (contiguous or across the street) by:**

**(1) Recording a covenant that implements the provisions of the Oregon Right to Farm Law in ORS 30.936 where the farm use is on land in the EFU base zone; or**

**(2) Where the farm use does not occur on land in the EFU base zone, the owner shall record a covenant that states they recognize and accept that farm activities including tilling, spraying, harvesting, and farm management activities during irregular times, occur on adjacent property and in the general area.**

**Staff:** The applicant is proposing to construct a new single family dwelling on the subject property. The property to the east is zoned EFU and is currently in farm deferral. A condition of approval has been included requiring the applicant who is a property owner to record the Oregon Right to Farm Law covenant (Exhibit B.9) prior to gaining access to building plan check. *Through a condition, this criterion will be met.*

**6.5 (H) All exterior lighting shall comply with MCC 39.6850.**

**Staff:** The applicant has indicated that they will comply with the County's Dark Sky Lighting Standards of MCC 39.6850. A condition of approval has been included requiring the submittal of a lighting plan identifying the location of all exterior lighting to be installed on the property and lighting details for all styles of light fixtures to be used. *Through a condition, this criterion will be met.*

## **7.0 Significant Environmental Concern Exemption**

**7.1 MCC 39.5510 USES; SEC PERMIT REQUIRED.**

**(A) All uses allowed in the base zone are allowed in the SEC when found to satisfy the applicable approval criteria given in such zone and, except as provided in MCC 39.5515, subject to approval of an SEC permit pursuant to this Subpart.**

**Staff:** The applicant is requesting to construct a single family dwelling in the RR zone. The use is allowed provided it satisfies all of the SEC-h approval criteria and obtains an SEC-h permit approval.

**7.2 MCC 39.5515 EXCEPTIONS.**

**(A) Except as provided in subsection (B) of this Section, an SEC permit shall not be required for the following:**

**(2) The propagation of timber or the cutting of timber for public safety or personal use or the cutting of timber in accordance with the State Forest Practices Act.**

**Staff:** In 2018, the applicant provided notification (#2018-58-05070) to the Oregon Department of Forestry and harvested approximately 1-3/4 acres of land. Part of the area logged was within the Significant Environmental Concern for water resources (SEC-wr) overlay. The act of cutting timber and the propagation (planting, fertilizing, spraying, etc.) is exempt from obtaining a SEC-wr permit. The State's Forest Practice Act requires all areas that are harvested to be replanted (Exhibit B.7 and B.8).

The applicant indicated in a past email (Exhibit B.6) that they were not planning on reforesting the area within the SEC-wr overlay and wanted to do a change of use so that the area would be available for other uses. The conversion of forested land to a non-forest practice is considered Development and a change in use, and would require the applicant submit a SEC-wr permit application. The applicant has indicated in her narrative that they are required to plant 75 trees within the SEC-wr for reforestation purposes (Exhibit A.2, page 1). The applicant has also indicated that they would easily be exempted from the forest practice act and do not plan on replanting the area as forest (Exhibit B.6 & B.5).

MCC 39.1515 Code Compliance and Applications requires that Land Use Planning not issue a development permit for a site that is not in complete compliance with the County rules. It has been over two years since the logging commenced. The area within the SEC-wr must be replanted or an SEC-wr permit obtained. To be able to move forward with the requested SEC-h permit, a condition of approval has been included requiring the replanting of the SEC-wr overlay zone prior to land use approval for building plan check.

**7.3 MCC 39.5560 GENERAL REQUIREMENTS FOR APPROVAL IN THE WEST OF SANDY RIVER PLANNING AREA DESIGNATED AS SEC-WR OR SEC-H.**

**The requirements in this section shall be satisfied for development in the SEC-wr and SEC-h areas located in the West of Sandy River Planning Area in addition to the provisions of MCC 39.5800 or 39.5860 as applicable.**

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

**Staff:** The proposed development occurs in areas with over 10% slopes. An Erosion and Sediment Control permit is required to be applied for and approved prior to commencement of construction. A condition of approval has been included requiring the permit be issued prior to land use sign off for building plan check. *Through a condition, criterion will be met.*

**7.4 (B) Outdoor lighting shall be of a fixture type and shall be placed in a location so that it does not shine directly into undeveloped water resource or habitat areas. Where illumination of a water resource or habitat area is unavoidable, it shall be minimized through use of a hooded fixture type and location. The location and illumination area of lighting needed for security of utility facilities shall not be limited by this provision.**

**Staff:** The applicant has stated that “Outdoor light fixtures will be limited to those necessary for security purposes in compliance with Dark Sky regulations as addressed in Section 39.6850 below.” At present, no lighting plan has been provided. The Dark Sky Lighting Standards in MCC 39.6850 are different than the above criterion. MCC 39.5560(B) limits lighting to developed areas. The developed areas of this property will be the area north of the dwelling and the area immediately adjacent to the dwelling as shown as the Limits of Disturbance in Exhibit A.11, page 3. Lighting outside of this area is avoidable. The subject use is a single family dwelling, all lighting installed shall be minimized to the developed area and hooded. A condition of approval has been included requiring a lighting plan and that all lighting be limited to the developed area. *Through a condition, this criterion will be met.*

- 7.5 (C) The nuisance plants in MCC 39.5580 Table 1, in addition to the nuisance plants defined in MCC 39.2000, shall not be used as landscape plantings within the SEC-wr and SEC-h Overlay Zone.

**Staff:** A condition of approval has been included requiring a landscape plan to demonstrate the plants to be used are not a nuisance plant species. *Through a condition of approval, this criterion will be met.*

7.6 **MCC 39.5860 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 subject property did not have any cleared areas until a 2018 forest practice logged 1.75+/- acre area to develop the home site. At present, the RR zone does not have fire safety zones required. The logged area in the SEC-wr zone will be replanted by the applicant as required by the Forest Practice Act. The home site is located in the converted forest area. *Criterion met.*

- 7.7 (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:** Exhibit A.11, page 3 shows the boundaries of the limit of disturbance for the proposed development. From the edge of the existing SE Victory Road right-of-way to the southern boundary of development is approximately 150 feet. All home site developed areas will be within 200 feet of SE Victory Road. Access to the site is via SE Victory Road. *Criterion met.*

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

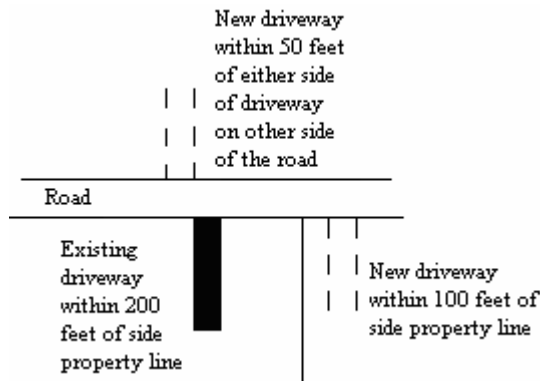
**Staff:** The driveway length from the edge of the public road right of way to the garage is 32+/- feet. *Criterion met.*

- 7.9 (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:** Planning staff reviewed aerial photographs for the developed property to the east and north of the subject property. The closest driveway for the property to the east on the same side of the road is approximately 255 feet from the side property line. The proposed driveway on the Freeland property does not need to be installed within 200 feet of the eastern side property line. The property to the north on the opposite side of the road has a driveway approximately 150 feet (Exhibit A.5) from the eastern property boundary. This is the driveway with which the applicant’s driveway should be offset by no more than 50 feet. The applicant is proposing to place the proposed dwelling’s driveway 215+/- feet from the neighbor’s driveway to the north. The applicant’s proposed plan does not comply with development standard (B)(4)(b). *Criterion not met. A Wildlife Conservation Plan will be required.*

- 7.10** (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:** The property to the east (tax lot 1S4E08DC -00100) does have a building within 200 feet of the shared side property line with the subject property. The proposed development ranges from 276+/- feet to 400+/- feet from the eastern shared property line. The dwelling eastern wall is 309+/- feet from the eastern side property line. The dwelling,

driveway, septic system and stormwater system are all over 300 feet from the side property line. *Criterion not met. A Wildlife Conservation Plan will be required.*

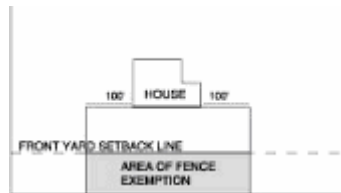
**7.11**

**(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.**

**FENCE EXEMPTION AREA**



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

**Staff:** The applicant has indicated in their narrative that no new fencing is proposed with this application (Exhibit A.2). *Criterion met.*

**7.12**

**(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 has indicated in their narrative that no nuisance plants listed in Table 1 will be planted. The second half of the criterion is that they will be kept removed from the cleared areas of the subject property. A condition of approval has been included requiring the removal of any future nuisance plants that appear within the disturbance area shown on Exhibit A.11. *Through a condition, this criterion can be met.*

**7.13**

**(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 subsection (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**

**(2) The applicant can meet the development standards of subsection (B), but demonstrates that the alternative conservation measures exceed the standards of subsection (B) and will result in the proposed development having a less detrimental impact on forested wildlife habitat than the standards in subsection (B).**

**Staff:** The subject site is capable of meeting the development standards of (B), but has failed to demonstrate compliance with (B)(4) and (B)(5). The proposed application must demonstrate that the alternative conservation measures exceed the standards of subsection (B) and will result in the development having a less detrimental impact on forested wildlife habitat than the standards in (B). Based upon the applicant's submitted Wildlife Conservation Plan (WCP), the proposed development will have a less detrimental impact on the wildlife habitat. To ensure compliance with the WCP, conditions of approval have been included. *Through conditions, these criteria can be met.*

**7.14 (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.**

**(5) Unless the wildlife conservation plan demonstrates satisfaction of the criteria in subsection (C)(3) of this section, 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:** The applicant completed a Forest Practice Act to clear trees in the area of the development. Prior to the tree cutting, the property did not have any cleared areas. After the replanting for the Wildlife Conservation Plan, the remaining area not replanted under the Forest Practice Act or the proposed development will be 0.51 of an acre (22,215.6 sq. ft.) (Exhibit A.2, A.4 and A.11). A condition of approval has been included to ensure that the development area is limited to 0.51 of an acre. *Through a condition, these criteria can be met.*

**7.15 (C)(3)(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.**

**(C)(5)(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:** The applicant has identified that 1.08 acres will be replanted as part of the project. The proposed development area is limited to 0.51 acres (Exhibit A.2, A.4 and A.11). A

condition of approval has been included to ensure that the development area is limited to 0.51 of an acre. *Through a condition, these criteria can be met.*

**7.16 (C)(3)(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.**

**(C)(5)(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. Existing fencing located in the front yard adjacent to a public road shall be consistent with subsection (B)(6).**

**Staff:** The applicant's plans do not identify any fencing on the subject site. The applicant's narrative (Exhibit A.2) has indicated no new fencing will be constructed as part of the development. A condition of approval has been included requiring a modification of the Wildlife Conservation Plan should the applicant decide to install fencing on the property. *Through a condition, these criteria can be met.*

**7.17 (C)(3)(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.**

**(C)(5)(d) For mitigation areas, all trees, shrubs and ground cover shall be native plants selected from the Metro Native Plant List. An applicant shall meet Mitigation Option 1 or 2, whichever results in more tree plantings; except that where the total developed area (including buildings, pavement, roads, and land designated as a Development Impact Area) on a Lot of Record will be one acre or more, the applicant shall comply with Mitigation Option 2:**

**2. Mitigation Option 2. In this option, the mitigation requirement is calculated based on the size of the disturbance area associated with the development. Native trees and shrubs are required to be planted at a rate of five (5) trees and twenty-five (25) shrubs per every 500 square feet of disturbance area (calculated by dividing the number of square feet of disturbance area by 500, and then multiplying that result times five trees and 25 shrubs, and rounding all fractions to the nearest whole number of trees and shrubs; for example, if there will be 330 square feet of disturbance area, then 330 divided by 500 equals .66, and .66 times five equals 3.3, so three trees must be planted, and .66 times 25 equals 16.5, so 17 shrubs must be planted). Bare ground shall be planted or seeded with native grasses or herbs. Non-native sterile wheat grass may also be planted or seeded, in equal or lesser proportion to the native grasses or herbs.**

**Staff:** The applicant is using a combination of (C)(5) and (C)(3) for the proposed Wildlife Conservation Plan. The applicant does not want to plant as many shrubs as required by the Mitigation Option 2 of (C)(5). She is proposing to plant additional trees and fewer shrubs on the property. Instead of planting the required number of shrubs (1,111 shrubs), the applicant is proposing 132 shrubs and substituting 1 tree for every five shrubs that would have otherwise been required. Mitigation Option 2 of (C)(5) requires 222 trees be planted. The applicant will plant an additional 196 trees as shown on the planting plan (Exhibit A.4). Total trees to be added to the site will be 418 trees. After installation of all

required trees and shrubs, an area around the dwelling and other in-ground improvements will be planted with lawn or ground cover (Exhibit A.4). A condition of approval has been included requiring that the mitigation plantings be maintained in a healthy state and replanted if necessary due to decline or death. *Criteria met.*

**7.18 (C)(3)(e) That revegetation and enhancement of disturbed stream riparian areas occurs along drainages and streams located on the property.**

**(C)(5)(e) Location of mitigation area. All vegetation shall be planted within the mitigation area located on the same Lot of Record as the development and shall be located within the SEC-h overlay or in an area contiguous to the SEC-h overlay; provided, however, that if the vegetation is planted outside of the SEC-h overlay then the applicant shall preserve the contiguous area by executing a deed restriction, such as a restrictive covenant. (Note: an off-site mitigation option is provided in a streamlined discretionary review process). The mitigation area shall first be located within any existing non-forested cleared areas contiguous to forested areas, second within any degraded stream riparian areas and last in forested areas or adjacent to landscaped yards.**

**Staff:** The proposed Wildlife Conservation Plan proposes to plant most of the mitigation plantings within the SEC-h overlay zone. The applicant is required under the Forest Practice Act and MCC 39.5515 Exceptions to replant the SEC-wr area, or its conversion to non-forested area would require a SEC-wr permit for a change of use or development. In addition, the applicant is proposing to plant 68 Douglas Fir trees within the SEC-wr area as part of the Wildlife Conservation Plan. For the plantings within the SEC-wr zone, a restrictive covenant will need to be recorded to protect these plantings as part of the SEC-h mitigation plan. A condition of approval has been included regarding the recording of the restrictive covenant for the trees planted in the SEC-wr zone. *Criteria met.*

**7.19 (f) Prior to development, all work areas shall be flagged, fenced, or otherwise marked to reduce potential damage to habitat outside of the work area. The work area shall remain marked through all phases of development.**

**Staff:** The applicant notes this requirement and has shown a tree protection fence on Exhibit A.11. on the west side of the development. It does not appear that boundary fencing has been included for the SEC-wr overlay zone within which no development shall occur. A condition of approval has been included requiring a construction boundary fence be installed just outside of the SEC-wr zone and the installation of a tree protection fence prior to commencement of work. *Through a condition, criterion met.*

**7.20 (g) Trees shall not be used as anchors for stabilizing construction equipment.**

**Staff:** The applicant has acknowledge this requirement. A condition of approval has been included requiring that this requirement be added to the construction drawings. *Through a condition, criterion met.*

**7.21 (h) Native soils disturbed during development shall be conserved on the property.**

**Staff:** The applicant has stated that all ground disturbance will be limited to the areas delineated on Exhibit A.11. All disturbed areas will be reseeded with native groundcover (Exhibit A.2). *Criterion met.*

- 7.22 (i) An erosion and sediment control plan shall be prepared in compliance with the ground disturbing activity standards set forth in MCC 39.6200 through MCC 39.6235.**

**Staff:** An Erosion and Sediment Control permit will be required before any ground disturbance as slopes are over 10% in some areas. The project will comply with MCC 39.6225 and MCC 39.6235. *Criterion will be met through the Erosion and Sediment Control permit and compliance with the County's Stormwater Drainage Control regulations.*

- 7.23 (j) Plant size. Replacement trees shall be at least one-half inch in caliper, measured at 6 inches above the ground level for field grown trees or above the soil line for container grown trees (the one-half inch minimum size may be an average caliper measure, recognizing that trees are not uniformly round), unless they are oak or madrone which may be one gallon size. Shrubs shall be in at least a 1-gallon container or the equivalent in ball and burlap and shall be at least 12 inches in height.**

**Staff:** The applicant has acknowledged the size requirements for the trees and the shrubs. This information has been included on the planting plan. *Criterion met.*

- 7.24 (k) Plant spacing. Trees shall be planted between 8 and 12 feet on-center and shrubs shall be planted between 4 and 5 feet on-center, or clustered in single species groups of no more than four (4) plants, with each cluster planted between 8 and 10 feet on-center. When planting near existing trees, the drip line of the existing tree shall be the starting point for plant spacing measurements.**

**Staff:** The applicant has indicated that the trees will be planted 10-ft on center and outside of existing trees dripline. Shrubs will be planted in clusters of four with 10-ft on center also. *Criterion met.*

- 7.24 (l) Plant diversity. Shrubs shall consist of at least two (2) different species. If 10 trees or more are planted, then no more than 50% of the trees may be of the same genus.**

**Staff:** The applicant will be planting three different tree types: Douglas Fir, Incense Cedar and Western Red Cedar. Shrubs will be a mixture of Kinnikinnick, Salal and Oregon Grape. *Criterion met.*

- 7.25 (m) Nuisance plants. Any nuisance plants listed in MCC 39.5580 Table 1 shall be removed within the mitigation area prior to planting.**

**Staff:** The applicant has acknowledged this requirement (Exhibit A.2). *Criterion met.*

- 7.26 (n) Planting Schedule. The planting date shall occur within one year following the approval of the application.**

**Staff:** The applicant has indicated that the plantings are likely to occur between October 1, 2020 and March 31, 2021. A condition of approval has been included requiring the plantings during this time period. *Through a condition, this criterion will be met.*

- 7.27 (o) Monitoring and reporting. Monitoring of the mitigation site is the ongoing responsibility of the property owner. Plants that die shall be replaced in kind so that a minimum of 80% of the trees and shrubs planted shall remain alive on the fifth anniversary of the date that the mitigation planting is completed.**

**Staff:** The applicant has indicated that they are aware of this requirement. A condition of approval has been included to ensure compliance with this requirement. In addition, a yearly report is needed to ensure that the plantings are being cared for and replaced if needed. *Through a condition, this criterion will be met.*

## **8.0 Geologic Hazard Criteria:**

### **8.1 39.5075 Permits Required.**

**Unless exempt under this code or authorized pursuant to a Large Fill permit, no development, or ground disturbing activity shall occur: (1) on land located in hazard areas as identified on the Geologic Hazards Overlay map, or (2) where the disturbed area or the land on which the development will occur has average slopes of 25 percent or more, except pursuant to a Geological Hazards permit (GH).**

**Staff:** The subject property does have areas of mapped hazard areas. The proposed development area avoids slopes over 25% and the mapped hazard area. *The project as it is presently designed is exempt from obtaining a Geologic Hazard Permit.*

## **9.0 Transportation Standards:**

### **9.1 MCRR 4.000 Access to County Roads**

**MCRR 4.100 Application for New or Reconfigured Access: Applicants for a new, altered or reconfigured access onto a road under County Jurisdiction are required to submit a site plan. Applicants may be required to provide all or some of the following:**

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

**Staff:** The applicant has submitted sufficient documentation for this criterion (see Exhibits A.3, A.4 and A.5). *This criterion is met.*

### **9.2 MCRR 4.200 Number of Accesses Allowed: Reducing the number of existing and proposed access points on Arterials and Collectors and improving traffic flow and safety on all County roads will be the primary consideration when reviewing access proposals for approval. One driveway access per property is the standard for approval pursuant to the Multnomah County Code. Double frontage lots will be limited to access from the lower classification street. Shared access may be required in situations where spacing standards cannot be met or where there is a benefit to the transportation system. If more than one access is desired, a land use application must be submitted in compliance with applicable Multnomah County Codes.**

**Staff:** The proposed development seeks to provide a driveway with access onto SE Victory Rd to serve the proposed single family residence. To accommodate a firetruck turnaround area, a second access is also proposed. This exceeds the standard for approval per this section.

Multnomah County Road Rules (16.100) provides for a variance from the county standards and requirements when written documentation substantiates that the requested

variance is in keeping with the intent and purpose of County Code and adopted rules, and the requested variance will not adversely affect the intended function of the County road system or related facilities. Multnomah County Road Rules Section 16.225 specifically outlines the variance process for multiple accesses. A variance approval may include mitigation measures as condition of approval.

The applicant has submitted a Road Rules variance and provided all associated materials. See responses to MCRR 16.000 below.

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

**Staff:** For a Local Access Road serving residential uses, there is no minimum spacing standard. *This criterion is met.*

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

**Staff:** The applicant submitted a scaled site plan (Exhibit A.5.1). The proposed driveway/access for the single family residence onto SE Victory Rd is 25 feet. This driveway meets the County standard (3.6-7.5m/12 feet to 25 feet).

The second access, which will serve as a firetruck turnaround area, is 46 feet wide at the property line. *Standard is not met for second access point.*

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

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

*The Site Distance Standard has been met.*

**9.6 MCRR 5.000 Transportation Impact**

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

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

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

**MCRR 5.200 The County Engineer will use the information obtained pursuant to subsection 5.100 and/or the frontage length of the subject property to determine the pro-rata share of the requirements set forth in Section 6.000. The County Engineer determination of pro-rata share of improvements will expire twelve months from the date of the County Engineer's determination or after the associated land use permit**

is granted or closed. If expired, a review process and new determination will be required.

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

**Staff:** The Multnomah County Road Rules defines a Transportation Impact as the effect of any new construction or alteration which will increase the number of trips generated by a site by more than 20 percent, by more than 100 trips per day or by more than 10 trips in the peak hour [MCRR 3.000]. A minimum increase of 10 new trips per day is required to find a transportation impact. The proposal for a new single family residence constitutes a transportation impact, as any new dwelling generates 10 trips per day based upon the Institute of Transportation Engineers' Trip Generation Manual.

*The proposal generates a transportation impact.*

## **9.7 MCRR 6.000 Improvement Requirements**

**MCRR 6.100 Site Development:** All subject parties with respect to any property proposed for development, including but not limited to the owner of the site and the applicant (if different than the owner), will be responsible for improvements to the right-of-way for any said development of the property which is found to cause a Transportation Impact, those improvements shall include:

**A. Dedication of Right of Way Requirement:** The subject parties are responsible for a pro-rata share, as determined by the County Engineer, of right-of-way and easement dedications necessary to bring the affected, existing, created or planned public streets and other facilities within and abutting the development to the current County standard. The dedication of the required easements and right-of-way may be conditions of approval of Design Review or any other development permit related to the proposal.

**Staff:** The minimum County standard right of way width for a Rural Local Access Road is 50 feet. The ROW width of SE Victory Rd is 40 feet. The applicant would be required to dedicate 5 feet along the frontage of their parcel in order to achieve a proportional share of this standard.

## **9.8 B. Frontage Improvement Requirements:** In addition to easement and right-of-way dedication requirements, a prorata share may include half-street improvements along all of the site's County Road frontage(s). Right of Way improvements shall satisfy the standards of the County Design and Construction Manual based upon the functional classification of the road(s). The commitment to improve the affected streets or other facilities to the required standards shall be conditions of approval of Design Review or any other development permit related to the proposal. Half-street improvements can include all of the following:

- a. Street widening/improvement
- b. Utility cut restoration

- c. Curb and sidewalk
- d. Driveway relocation/replacement/removal
- e. Traffic controls
- f. Drainage facilities
- g. Lighting facilities
- h. Bicycle facilities
- i. Signal conduit facilities
- j. Street trees
- k. Other appropriate facility or right of way requirements as required by applicable statutes, codes and regulations.

**Staff:** The site's access, SE Victory Rd, is not a County-maintained road, but a public Local Access Road under the County's jurisdiction. Improvements to SE Victory Rd would be necessary to meet minimum requirements for Rural Local roads in Multnomah County Design and Construction Manual (MCDCM) Table 2.2.5. See also MCRR 11.000 below.

- 9.9 C. Required Submissions by Subject Parties.** Subject parties shall submit to the County Engineer the following: engineered plans, traffic studies, traffic analysis, reports, surveys or similar documents as requested or required by the County Engineer under this Subsection 6.100 or as may additionally be required under Section 18.

**Staff:** The applicant has submitted all materials required for a variance to County standards. This is addressed in MCRR Section 16.000 below.

- 9.10 D. Transportation Demand Management Options that address strategies to reduce travel demand generated by the proposed development.**

**Staff:** The proposal, a new single-family dwelling, would generate 10 trips per day. No transportation demand management strategies are necessary.

**9.11 MCRR 11.000 Local Access Roads**

**MCRR 11.100 Improvement Requirements:**

- A. For any proposed development where access is to be through a Local Access Road and the development is found to have a Transportation Impact, the owner, applicant or other party responsible for the development (the "Developer") shall be required to improve or cause to be improved the Local Access Road to standards as further provided in this Section.**
- B. Right of way and or easement dedications shall be required where the existing right of way is of a substandard width or condition.**
- C. The County Engineer may impose requirements for right of way improvements as necessary to address factors including but not limited to: traffic safety, traffic conditions, bicycle access, pedestrian access and vegetation.**
- D. Developer shall make required improvements at the County Engineer's request if the transportation impact warrants additional road improvements. Such additional improvements shall not extend beyond the nearest intersection**

**with the publicly maintained road. Improvements will be constructed in a manner consistent with the standards provided in the Design and Construction Manual.**

**E. All costs relating to Local Access Road improvements shall be borne by the Developer including all administrative and other costs incurred by the County including but not limited to the oversight, review, inspection, etc, with respect to design, installation, and construction of any improvements on any Local Access Road under County jurisdiction. County shall not begin any work under this Section unless and until an adequate deposit as determined by the County Engineer has been received by the County to cover these costs.**

**F. Notwithstanding any required improvements or other installations done in the public right of way of a Local Access Road under this Section 11 of these Rules, the County does not maintain such Local Access Road.**

**Staff:** A Local Access Road is a public road under Multnomah County jurisdiction that is outside a city and is not a county road, state highway, or federal road. According to State law, the County is not responsible to maintain, repair or improve a Local Access Road. Any proposed development on a property which creates a transportation impact on a local access road must provide a road that conforms to the requirements of the Design and Construction Manual from the frontage of that property to the nearest publicly maintained road.

According to the 11.000 criteria A-F above, the proposal:

A. Generates a transportation impact (see MCRR 5.000), and therefore the applicant is required to make improvements to SE Victory Rd.

B. Would leave the public right-of-way width substandard to the County Local Access Road standard. In accordance with the response to MCRR 6.100 A, as this criterion is not met, the applicant would be required to make dedications/deed restrictions.

C. Requires improvements to ensure the integrity of the ROW and make safety improvements, in accordance with criteria A-B above. The submitted Conditions Survey (Exhibit A.3) shows six tree stumps within the ROW along the property frontage. The applicant has not sufficiently demonstrated that the tree stumps will be removed from the ROW, which under this criterion constitute a potential safety hazard and compromise the safe ability for entry and egress on SE Victory Rd (see MCRR 16.200 A-B). *Criterion not met.*

D. The proposed width of the gravel road from the property to the nearest County maintained intersection is below County Standards. *Criterion not met.*

E. Noted requirement for the applicant.

F. Noted requirement for the applicant.

The applicant seeks a variance from meeting County standards and making improvements from the subject property to the nearest County maintained road (317th Ave). See MCRR 16.000 below.

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

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

- 1. New or altered access to roads under County jurisdiction. An access is considered altered when a change in the development that it serves has a Transportation Impact as defined in section 6.000 of these rules;**
- 2. New or reconstructed driveway approaches, private road approaches, curb cuts, or sidewalks;**
- 3. Structures in the right-of-way, such as signs, posts, fences, flags, non-standard mailboxes, etc.; or**
- 4. Any other minor physical alteration of the County right-of-way, including but not limited to any altered landscape design, vegetation planting or placement.**

**Staff:** When the proposed development is approved, the applicant is required to obtain an Access/Encroachment permit(s) for the access points to the right-of-way and any other improvements conducted within the public right-of-way pursuant to MCRR 18.250.

## **10.0 Road Rules Variance Findings:**

**10.1 MCRR 16.3000 Variance Request Procedure: For the County Engineer to consider a variance request, it must be submitted in writing with the appropriate fee to the County prior to the issuance of any development permit. The written variance request shall be signed by a person with the authority to bind the applicant and shall include the following information as applicable:**

- A. Applicant name, telephone/fax number(s), email address, mailing address;**
- B. Property location and zoning;**
- C. Current or intended use of the property;**
- D. The nature and a full description of the requested variance;**
- E. Site plan, sight distance, pedestrian traffic, intersection alignment, traffic generation, vehicle mix, traffic circulation including impact on through traffic, and other similar traffic safety considerations;**
- F. Existing right-of-way or improvement limitations, and utility considerations;**
- G. Adjacent land uses, their types, access requirements, and impact of traffic on them;**
- H. Topography, grade, side hill conditions, and soil characteristics;**
- I. Drainage characteristics and problems;**
- J. Fire Department access requirements within a public right- of-way and their written approval of the proposed modification;**
- K. Natural and historic features including but not limited to trees, shrubs or other significant vegetation, water courses, wetlands, rock outcroppings, development limitation, areas of significant environmental concern, etc;**

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

**Staff:**

A. & B.: The applicant has provided the information required by A. & B. on Exhibit A.28 and A.29 and has signed the request. Both property owners have signed the application.

C.: The applicant states that the subject property is currently vacant. The applicant is proposing to construct a single family residence on the subject property.

D.: The applicant has requested two road rules variances from the Multnomah County Road Rules. The first variance request is to MCRR 4.400. The applicant is seeking a variance so they are not required to widen the travel lanes of SE Victory Road starting from 317<sup>th</sup> Avenue to the subject property from the variable existing 12 to 14-ft width to the required 20 feet wide, two way paved roadway that is required by the Multnomah County Design and Construction Manual (MCDCM Table 2.2.5). The applicant is proposing to complete minor grading and add gravel to the road surface and turn-out area.

The second variance requested is from MCRR 4.200 and is to allow a second access point to the subject property to be used only as a fire/emergency vehicle turn-around. As shown on submitted plans (Exhibit A.31), this secondary access is necessary to provide a designated emergency vehicle hammerhead turn around.

E.: The applicant has provide a site plan (Exhibit A.31) and an existing conditions map (Exhibit A.30). Information from the Gresham Fire Service Agency was also provided (Exhibit A.33 and A.34). No other reports were requested by Transportation Planning. Additional narrative from the applicant can be found in Exhibit A.39 and A.40 regarding the various reports.

F.: The applicant has provided an Existing Conditions Map (Exhibit A.30) and information on existing and proposed utilities. Additional narrative is contained in Exhibit A.40.

G.: The applicant has provided information regarding the adjacent properties along SE Victory Road (Exhibit A.39). They have identified these adjacent uses to include rural residential and farm uses (31325 SE Victory Rd., 31431 SE Victory Rd., 31620 SE Victory Rd., 3939 SE 317th Ave., and 31035 SE Oxbow Rd).

H.: The applicant has provided topographic information and roadway grade on Exhibit A.30 and in their narrative (Exhibit A.39). Soil characteristics were also addressed in their narrative (Exhibit A.39).

I. The applicant has identified that no problems associated with drainage have been identified (Exhibit A.39).

J. The applicant has submitted the Gresham Fire Service Agency's review for the proposed development (Exhibits A.33 and A.34). The Fire Service Agency is requiring a fire apparatus turn-around in compliance with the dimensions set out in the Oregon Fire Code. Gresham Fire found the existing/proposed roadway width acceptable.

K. The applicant's narrative states that the public right-of-way does not contain any natural features, and that a portion of the existing road traverses the SEC-h and SEC-wr overlays on the site (Exhibit A.39). A series of photos showing the current road condition

and alignment of this road are included with the application package (Exhibits A.35 and A.36).

L. The applicant has stated that no policies of the Comprehensive Plan are applicable to this request (Exhibit A.39).

*The applicant provided the required information listed in A. through L.*

**10.2 MCRR 16.310 Completeness, Timelines, Public Notice, Decision:**

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

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

**a. Notice of the application and invitation to comment shall be mailed to the applicant, the applicable recognized neighborhood association, and all property owners within 100 feet within the urban growth boundary or within 750 feet outside of the urban growth boundary. The County Engineer will accept comments for 14 days after the notice of application is mailed.**

**Staff:** A 14-Day Opportunity to Comment was mailed to neighboring property owners in accordance with MCRR 16.310. The County received two written comments regarding the Road Rules variance (Exhibits D.1 and D.2). This decision was drafted and will be mailed in accordance with MCRR 16.310. *Procedures met.*

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

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

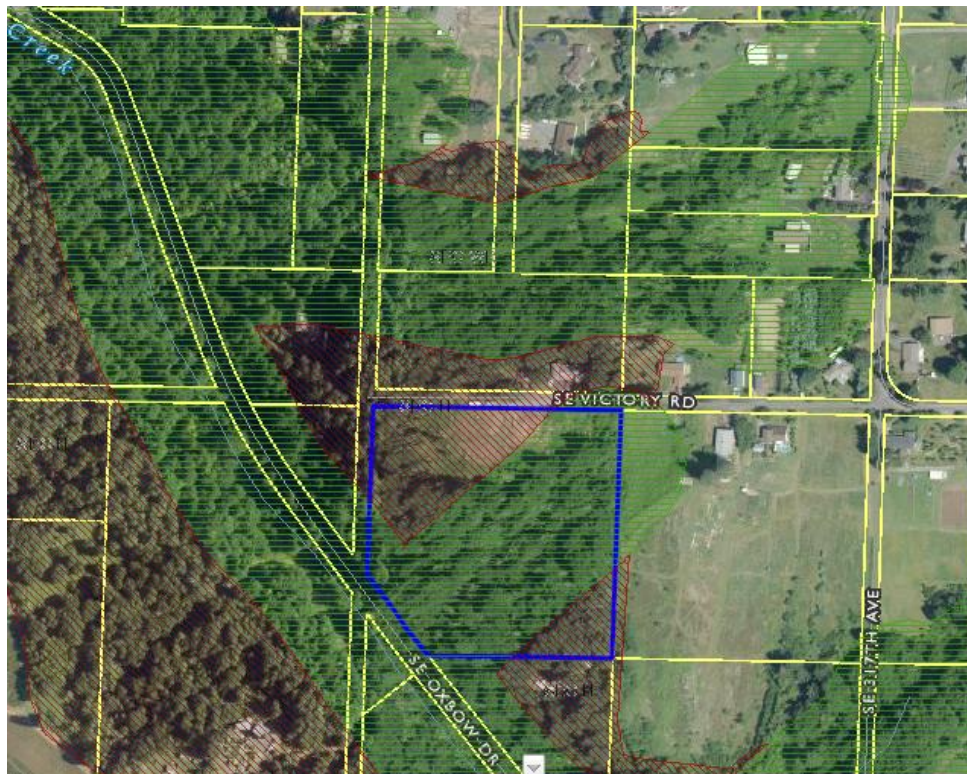
**Applicant:** Due to site conditions and the configuration of the subject property and adjacent properties, the proposed dwelling is likely to be the last residence accessed by this section of SE Victory Road. This portion of SE Victory from SE 317th Avenue is 1,050 feet long and functions more as a private access drive than it does as a public road because of the limited number of homes currently served by this road (three existing residences). The road right-of-way also traverses both SEC-wr and SEC-h overlay areas and while the grade of this road, east to west is gradual, grades to the south of the road on the property and adjacent property to the east increase significantly. Most of the other properties accessed by this road do not contain these same constraints. For these reasons the proposal complies with this criteria.

**Secondary Access for Fire/Emergency Vehicle Turn-Around response:** the special circumstances that apply to this project in relation to the secondary access and fire truck turn around is due to the fact that this development is proposed at the end of a rural dead end road and a fire apparatus turn around is required to be the responsibility of the applicant and their development. We are proposing this secondary access to be in an area where the clearances and accessibility is best utilized. No other location on the entire length of Victory Road is better for this access and turn around than where it is being proposed.

**Staff:** The applicant has requested a variance from:

- a) improving SE Victory Rd to County standards between the property and 317th Ave (nearest County maintained road) and;
- b) the County standard of a single access (driveway) per property (tax-lot), as the fire code requires the accommodation of a firetruck turnaround area.

The applicant's narrative (Exhibit A.39) response states that the SEC overlays are sufficient grounds for not improving SE Victory Rd/ROW to County standards, because the other properties do not have the same overlay constraints. Widening SE Victory Rd to County standards may trigger the need to get an SEC-wr permit should the roadway surface become greater than 400 square feet within the environmental overlay. This is not a special circumstance that only applies to the subject property. All of the properties fronting on this portion of SE Victory Road have the SEC-wr overlay (green hash marks) on them. The two immediate properties to the north also have SEC-h overlay on them (red hash marks) The graphic below shows the SEC-wr & SEC-h overlays on the adjacent properties:



The applicant has also identified topography as a special circumstance for granting a variance from widening the roadway. The conditions survey submitted by the applicant (Exhibit A.30) shows the public right-of-way of SE Victory Road has topography ranging from 0 to 9.4 percent (steeper grades of over 18% are shown to the far west of the subject property but do not form part of the access proposed to the property). The topography does not appear to be an issue with doing roadway improvements from 317<sup>th</sup> to the driveway on the subject site. Construction of a twenty foot wide roadway within a 40

(with 5-ft dedication at subject property, see MCRR 6.100 A above) foot wide right-of-way is feasible without significant slopes or safety concerns.

For the secondary access for the fire truck turnaround, the public right-of-way is not sufficiently wide to construct a typical cul-de-sac situation. In order to meet the Oregon Fire Code, a turnaround is being required. It appears there is a special circumstance for this request.

The environmental overlays are not considered sufficient grounds for seeking a variance from making improvements within the ROW. **MCC 39.5510(A) Uses; SEC Permit Required** specifically states “**All uses allowed in the base zone are allowed in the SEC when found to satisfy the applicable approval criteria given in such zone and, except as provided in MCC 39.5515, subject to approval of an SEC permit pursuant to this Subpart.**” Furthermore, if the overlays were the main reason for not making any improvements, the applicant could have sought to improve the parts of SE Victory Rd which were not covered by the SEC-wr overlay. The SEC-h overlay has been approved as proposed and does not seem to be an impediment. Consequently, the County does not consider the applicant has demonstrated sufficient circumstances that would prevent improvements, in whole, or in part, of SE Victory Rd to meet County standards.

*With respect to the applicant’s request for a variance from improving the road width and surface to County standards, criterion not met.*

*With respect to the applicant’s request for a variance from MCRR 4.200 for a second access to accommodate a firetruck turnaround area, this criterion has been met.*

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

**Applicant: The requested variance to the road width standards** to allow use of SE Victory Road without completing extensive widening or surfacing improvements will also allow the applicant to construct the proposed dwelling. Because of the length of this road (1,050 feet), strict adherence of County rules will be financially burdensome to the applicant and will likely prevent them from developing their Single family dwelling. To be held in strict compliance would require road engineering, another SEC permit as well as significant amount of fill and gravel to be brought in. The applicant has gone out of their way in the planning of this development to plan the least amount of cut and fill for this project. The development is planned to be significantly conservative in the placement of the development and the proposed improvements to the property and right of way. Requiring the applicant to complete these improvements constitute an extraordinary hardship for the applicant.

**Secondary Access for Fire/Emergency Vehicle Turn-Around response:** to be held in strict compliance of the one access standard would prevent the development of an approved fire apparatus turn around the applicant will not be able to move forward with the project at all, this variance is essential to the enjoyment and development of the property as well as being important for the safety of the emergency services. Denying this secondary access variance and the accompanied dimensional standard variances would cause a financial hardship and may make the property unbuildable. This emergency hammerhead turnaround is a very vital requirement to this property and the proposed development. Denial of the listed variances would constitute extreme hardship for the property owner. Additionally, if these variances are not approved the property owner will

be forced to take a significant financial loss and give up on their dream home and their hope of ever living on Victory Road. Not to mention the significant time and finances that have already been poured into this project. The applicant requests approval of these variances as submitted.

**Staff:** This approval criteria looks at the applicant's property rights in relation to the proposed request. The applicant's property is two Lots of Records and is allowed to have a dwelling on each lot. The substantial property right is the ability to build a dwelling. In order to build a dwelling, the applicant must be able to meet various requirements from Multnomah County, Gresham Fire, and DEQ. These requirements are required of all parties seeking to build in Multnomah County. The applicant seeks the maximum deviation from these requirements by their proposal. Of the two variances sought, the only variance that is absolutely necessary is for the second access point onto the property so that a fire truck turnaround may be provided. If the variances for driveway width and roadway improvements are not granted, the property owner would still maintain the ability to meet the requirements and build the proposed dwelling. It is not a substantial property right that currently exists for the property to utilize the roadway in its current condition or to have a wider access point than allowed for all other residential properties in the County without a variance.

*The applicant has not demonstrated that a substantial property right will be lost or an extraordinary hardship will be created if they must meet the requirements of MCRR 11.000 (Local Access Road improvements). The variance request for the second access point is necessary to allow compliance with the Oregon Fire Code.*

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

**Applicant:** Approval of this request will allow the applicant to construct their dream home on property they purchased for this purpose in 2017. As noted above, this section of SE Victory Road has adequately served three existing single-family residences who have used this road for a number of years. The applicant's proposal to construct a new single-family at the end of this road (1,050 feet from SE 317th Avenue) will marginally increase traffic along this road section and is not expected to impact the use of this road enjoyed by these property owners or adversely affect development of these properties. The applicant is not opposed to doing some light grading and adding gravel to this road including enhancing the existing pull-out as necessary.

**Secondary Access for Fire/Emergency Vehicle Turn-Around response:** A secondary access has been proposed for the sole purpose of designating a specific area for the fire truck/emergency vehicle turn around. This variance will not be materially detrimental to the public welfare. In the contrary, approval of the requested variance and construction of this facility will actually increase the safety and usage of victory road for all residents and potential emergency resources.

**Staff:** The applicant's narrative (Exhibit A.39) states that the current condition of SE Victory Rd is sufficient at the existing width ranging from 12 to 13-ft for most of its length and that an additional single family residence will not materially affect public welfare or adversely affect adjoining properties.

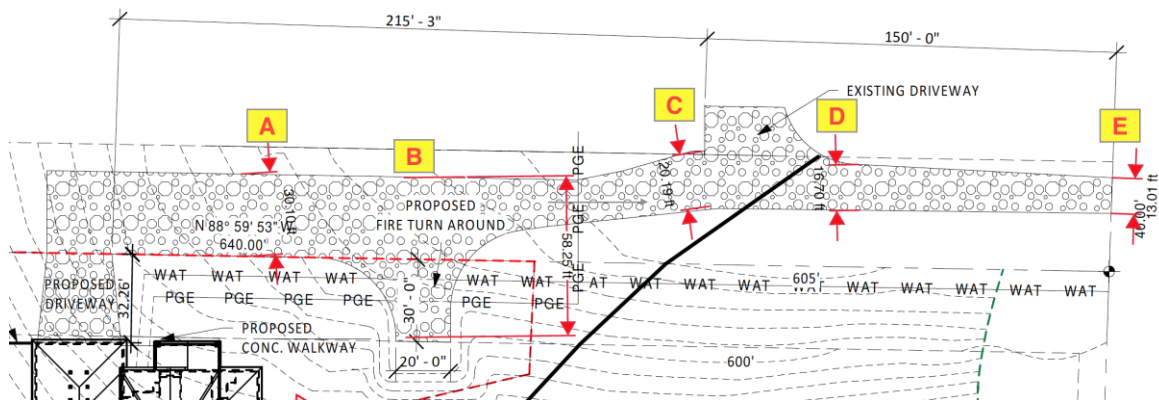
A new single family residence generates a transportation impact (MCRR 5.000). MCRR 11.000 establishes that applicants are liable to improve Local Access Roads to County

standards for developments that generate a transportation impact on Local Access Roads. The applicant has sought a variance to the County standard of a 20 foot paved road surface (MCRR 4.500; DCM Table 2.2.5), and has requested not to make any significant improvements from the subject property to the nearest County maintained road (317th Ave) as required by MCRR 11.000. The County may grant a variance to the roadway standards for a Local Access Road serving one to two dwellings that has a roadway width surface of 15-ft and 8 inches of gravel. For a Local Access Road, serving 3-6 dwellings, the minimum standard the County will accept with a variance is a 20 foot wide roadway with 10 inches of gravel as its roadbed surface (Exhibit B.10). This width is also required by the Oregon Fire Code (OFC 503.2.1) (Exhibit B.11).

SE Victory Road currently serves three houses. Based upon the ITE manual, vehicle trips generated for the current situation is 30 trips per day on this substandard roadway. The applicant proposes to add 25% more trips to this roadway with no additional roadway width and states that gravel will be added to the roadbed. The applicants have not stated how much grading or gravel they will provide.

The County has received comments regarding the adequacy of the existing roadway on SE Victory Road from two neighbors (Exhibit D.1 and D.2). With a 25% increase in the amount of traffic, limited improvement to the roadbed that is not quantified and no additional width, the County cannot find that the project will not be materially detrimental to the public welfare or injurious to other property in the vicinity as proposed.

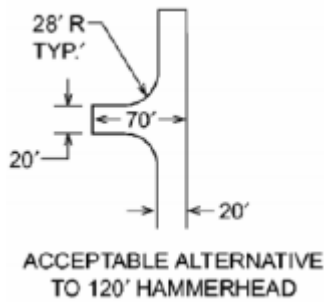
The applicant's proposed layout (Exhibit A.31 and A.32) indicates improvements to the ROW along the frontage of the subject property. See the County staff annotated excerpt of this plan below:



The annotations show that the proposed improvements to the ROW along the frontage of the subject property include:

- A. 30-ft wide gravel surface between proposed driveway to the new residence (western side of SFD) and the proposed firetruck turn-around area;
- B. The proposed firetruck turnaround area is 60 feet long. This does not meet the 70 foot length requirement of the OFC (see illustration below) and the Gresham Fire Service approved layout. Gresham Fire Service approved a proposed turnaround area with a 70 foot depth, in accordance with the approved layout in the OFC (Exhibit A.7).
- C. 20-ft wide gravel surface between the firetruck turnaround and the driveway to 31325 SE Victory Rd to the north (labeled as “existing driveway”).

- D. 15-ft wide gravel surface to the east of the driveway access to 31325 SE Victory Rd; and
- E. 13-ft wide gravel surface at the eastern edge of the subject property.



While Gresham Fire Service allowed for a lower standard for the width of the access road (Exhibit A.33 and A.34), the turnaround area was required to meet the OFC approved dimensions (70 foot depth). As shown above, the applicant's proposed firetruck turnaround area only provides 60-ft depth (see B on map and the description). The site plan (Exhibit A.31 and A.32), and the annotations above, also show that while there are improvements to the ROW at the subject property, the width of SE Victory Rd narrows to 13 feet at the eastern extent of the subject property line and continues with similar widths until 317th Ave (see also Exhibit A.30). Furthermore, the applicants submitted plans (Exhibit A.30 and A.31) show six tree stumps within the right of way that remain from their Forest Practice that removed vegetation within the public right-of-way without authorization. The applicant's submission does not make clear if the tree stumps will remain in the right of way or will be removed. If the tree stumps are not removed they could present a potential hazard to users of the right of way, particularly large vehicles such as delivery trucks or fire trucks.

Not improving the width, surface and integrity of the ROW means that the County's standards cannot be met. The waiver of the Oregon Fire Code does not automatically waive the County's design standards. The applicant must demonstrate compliance with the road rule variance criteria. The County's design standards are designed for the day-to-day use by the traveling public (delivery vehicles, cars, bikes, pedestrians) and must take in consideration the different modes of travel other than just emergency access by a fire truck. The applicant has not demonstrated what special circumstance(s) or condition(s) apply to the property or intended use that do not apply to other property in the same area. In the future, if one of the adjacent properties creates a transportation impact, the same standards would apply to their application.

Further to the staff responses to MCRR 16.200 A and B, the applicant's proposal does not sufficiently explain why a variance from the required width of a local access road will not present a potential safety hazard. Staff response to criterion B also stated that the need for environmental overlay permits is also not an impediment, or sufficient grounds, for not meeting County transportation standards. Provided an SEC-wr application was submitted and met the approval criteria, the SEC-wr permit would be approved.

Neighbors' comments also reflected concerns regarding additional trips on the existing roadway, due to topography and historical maintenance efforts, the alignment of the existing gravel road is not centered within the ROW in certain areas (Exhibits D.1 and D.2). This is evidenced in the applicant's survey plan (Exhibit A.30). The applicant's

rebuttals (Exhibits A.17 and A.18) to neighbor comments primarily reiterated the statements made in their submission narrative (Exhibit A.39 and A.40).

The County takes safety within public right of way seriously. Generally, due to ORS 368.031, local access roads are roads that the public has a right to use, but are not maintained by Multnomah County or any other government agency. The requirements within MCRR 11.000 seek to improve Local Access Roads when development occurs that requires improvements to be made.

*As the proposals do not meet the County's minimum standards allowable with a variance, criterion not met.*

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

**Applicant:** The applicant proposes completing only minimal improvements to the existing SE Victory Road segment to include minor grading and adding gravel at the existing pull-out as needed. As shown on the figure below, this portion of SE Victory Road is encumbered by the County's SEC-h and SEC-wr overlays for approximately one-half of its length. County requirements to widen this road would cause unnecessary impacts within these overlays and to the resources intended to be protected by these overlays. In addition as noted above, the grade of the terrain to the south of the road is relatively steep on the subject property and adjoining property to the east. Because of these conditions, the circumstances necessitating this variance are not of the applicant's making. Circumstances preventing the road widening are not of the applicant's making, and the necessity for a secondary fire/emergency turn around are not of the applicants making.

**Staff:** The existing condition of the roadway is nonconforming to present day standards. The need to widen the roadway is due to the applicant's request to construct a single family dwelling on their property. The proposed dwelling has been found to create a transportation impact. The County's SEC-h overlay zone has no impact on the proposed development as a SEC-h permit has been granted, as discussed above. The SEC-wr permit would also likely be granted provided the applicant make said application and meet the approval criteria. At a minimum, 400 sq. ft. of road widening could have occurred within the SEC-wr overlay without triggering said permit (MCC 39.5515 Exemptions). The maximum deviation with a variance that the County considers is acceptable in this situation is a 20 foot wide roadway, with 10 inch deep gravel for the roadbed. This width is required both by the County and the Oregon Fire Code. The applicant was informed of these standards and requirements during the Transportation Planning Review stage (Exhibit B.10) and subsequent meetings.

The County recognizes that the applicant feels the required improvements are a financial burden. These standards were in place when the applicant purchased the property in 2017 and actually since 2011 for the SEC overlays. With respect to the variances being sought, the Design and Construction Manual standards and the previous iteration of the MCRR have not changed since 1999 and 2004 respectively, which is also before their purchase. If there is a hardship in completing roadway improvements, the applicant chose to purchase the property with these requirements. Based upon the facts, the hardship is of the applicant's choice by choosing to purchase this property with a substandard roadway.

SE Victory Road is an under-developed roadway that does not have a turnaround for fire truck access. The applicant will not be able to construct the dwelling in compliance with the Oregon Fire Code if a second access point is not granted for the property as a

turnaround cannot be accommodated within the public right-of-way. The applicant has demonstrated a hardship for this variance request. As proposed, the applicant's road rules variance does not currently meet the County's standards. If the applicant were to provide sufficient improvements to SE Victory Road to meet the County's standards, and provided a turnaround that complies with the approved layout of the OFC/Gresham Fire approved, a variance for the second access may be granted given the need to accommodate a firetruck turnaround area is a hardship not of the applicant's making.

To reiterate, MCRR 11.000 makes an applicant liable for improvements where a transportation impact is generated (MCRR 5.000), as is the case with the proposed single family residence.

*As the proposals do not meet the County's minimum standards allowable with a variance, criterion not met.*

- 10.7 MCRR 16.225 Access Variance Standards: Exceptions to access standards may be made by the County Engineer when spacing or other safety considerations make non-standard access acceptable. In addition to the variance requirements of Section 16.200 of these Rules, the applicant will be required to demonstrate that the proposed variance will not negatively impact the safety or capacity of the transportation system for a variance to be granted. The following are examples of variances that may be considered along with specific criteria that must be addressed before such a variance can be granted.**

**A. Multiple Access Points: The County Engineer may allow multiple access points when all spacing standards can be met, or under the exceptions allowed under the criteria identified below so long as the additional access(es) will not negatively impact the safety or functionality of the transportation system and a single access point cannot reasonably serve a site. Movement restrictions, such as right-in, right-out, may be placed on accesses to protect the safety and/or functionality of the transportation system.**

**The County Engineer may approve and allow a dual access variance if the applicant meets all of the following criteria:**

- 1. The property in question is zoned commercial, industrial, farm or resource lands and the proposed use is in conformance with all applicable laws, planning and zoning codes and regulations.**
- 2. The proposed access points are at least 150 feet apart on any same right of way frontage.**
- 3. The applicant has submitted adequate traffic studies and other reports and information under Subsection 4.100 that indicate the creation of two access points will not present an unsafe condition or unduly interfere with the movement of traffic, including bicycles and pedestrians.**
- 4. Except has provided in this subsection all other aspects of the applicant's dual access proposal are in compliance with these Rules and the DCM.**
- 5. Applicant must comply with all the requirements of Section 16 of these Rules.**

**B. Access Spacing:** If it is not feasible to access a site and meet the access spacing standards, access may be located so as to provide the best access spacing possible. The County Engineer may require additional measures to mitigate sub-standard access spacing, such as a median or other restrictions.

**C. Sight Distance:** If it is not feasible to provide enough sight distance to meet County/AASHTO standards, the site's access must be located so as to provide the most sight distance possible. The County Engineer may require additional measures to mitigate sub-standard sight distance.

**D. Notwithstanding any other provision in this Section 16, no variance shall be approved in a public right of way under County jurisdiction that would allow for the installation, placement, or construction of any item of any kind in the "clear zone" of the said public right of way. For purposes of these Rules the phrase "clear zone" shall have the same definition as used and applied in the AASHTO standards.**

**Applicant:** no response [added by County staff].

**Staff:** Applicant seeks variance from MCRR 4.200 to enable two access points. As the proposal is on a Local Access Road, criteria B and D are not applicable. With respect to the principle of granting a variance from MCRR 4.200, see responses to MCRR 16.200 A-D.

- 10.8 MCRR 16.250 Local Access Roads Variance Standards:** The County Engineer will consider a variance from the improvement standards for a Local Access Road in the Design and Construction Manual if the topography or other features of the site make compliance with the improvement standards infeasible. Any variance issued under this Section must meet the criteria of section 16.200 of these rules as well as the minimum requirements of the local police, fire and emergency service providers, any applicable Building Code Requirements, any applicable Land Use Code requirements and meet any other applicable environmental requirements.

**Applicant:** no response [added by County staff].

**Staff:** See responses to MCRR 16.200 A-D.

## **11.0 Conclusion**

**Land Use Planning:** Based on the findings and other information provided above, the applicant has carried the burden necessary for the Significant Environmental Concern for wildlife habitat permit to establish a single family dwelling in the Rural Residential zone. This approval is subject to the conditions of approval established in this report.

**Transportation Planning:** Based on the findings, narrative, and other information provided herein, this application does not satisfy all applicable approval criteria required for the Road Rules Variance application to allow the subject property access to SE Victory Road.

## **12.0 Exhibits**

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

To review the exhibits listed for the Land Use Planning Application, please contact Land Use Planner, Lisa Estrin at [lisa.m.estrin@multco.us](mailto:lisa.m.estrin@multco.us) or via phone at 503.988.0167. To review the exhibits listed for the Transportation Planning Application, please contact Transportation Planner, Graham Martin at [graham.martin@multco.us](mailto:graham.martin@multco.us) or via phone at 503.988.0204.

<b>Exhibit #</b>	<b># of Pages</b>	<b>Exhibits Submitted for Land Use Planning Application, T2-2020-13164</b>	<b>Date Received / Submitted</b>
A.1	1	General Application Form	4.08.2020
A.2	25	Narrative	4.08.2020
A.3	1	Personal Representative's Deed	4.08.2020
A.4*	1	Planting Plan	4.08.2020
A.5*	1	Site Plan	4.08.2020
A.6	1	Elevations	4.08.2020
A.7	1	1 <sup>st</sup> Floor Plan	4.08.2020
A.8	6	Various Plans: (a) Roof Plan, (b) Lower Foundation Plan, (c) Framing Plan, (d) General Notes and Detail, (e) Sections, and (f) Shear Wall Bracing	4.08.2020
A.9	1	Conditions Survey	4.08.2020
A.10	1	Roadway Condition	4.08.2020
A.11	6	Driveway and Erosion Control Plan (a) Conditions Survey – Sheet 2/6 (b) Grading and Erosion Control Plan - Sheet 3/6 (c) Details – Sheet 4/6 (d) Erosion Control Notes and Details - Sheet 5/6 (e) Erosion Control Details – Sheet 6/6	4.08.2020
A.12	4	Septic Review Certification	4.08.2020
A.13	1	Certification of Water Service	4.08.2020
A.14	21	Stormwater Drainage Control Certificate	4.08.2020
A.15	8	Significant Environmental Concern for Wildlife Habitat Worksheet	4.08.2020

A.16	4	Fire Service Agency Comments	5.07.2020
A.17	3	Applicant's Response to Palmer's Comments	8.27.2020
A.18	10	Freeland Response to Henteges Comments	8.27.2020
A.19	6	Exhibit #1 Buchler Testimony	8.27.2020
A.20	1	Exhibit #2 Notice of Trespass	8.27.2020
A.21	3	Exhibit #3 Email	8.27.2020
A.22	1	Exhibit #4 SWLS Statement	8.27.2020
A.23	1	Exhibit #5 Statewide Site Plan Copy	8.27.2020
A.24	1	Exhibit #6 Survey Detail	8.27.2020
A.25	19	Exhibit #7 SO on Owner of 31325 by the Henteges	8.27.2020
A.26	2	Exhibit #8 Charley Support for Road Rules Variance	8.27.2020
A.27	4	Exhibit #9 Freeland Testimony	8.27.2020
<b>Exhibit #</b>	<b># of Pages</b>	<b>Exhibits Submitted for Transportation Planning Application, EP-2020-13167</b>	<b>Date Received / Submitted</b>
A.28	1	RRV General Application [Land Use Planning form]	5/22/2020
A.29	2	RRV General Application [Transportation Planning form]	5/22/2020
A.30	1	Statewide Conditions Survey	5/22/2020
A.31	1	Statewide Site Plan	5/22/2020
A.32	10	Freeland Residence - SE Oxbow Dr- Plans	5/22/2020
A.33	1	Gresham Fire service review letter (May 16, 2019)	5/22/2020
A.34	1	Gresham Fire service review letter (March 18, 2020)	5/22/2020
A.35	2	Site Photos key	5/22/2020
A.36	6	Site Photos	5/22/2020
A.37	2	Logging Narrative	5/22/2020
A.38	1	PGE Line Plan	5/22/2020
A.39	5	Road Rules Narrative	5/22/2020
A.40	6	Road Rules Narrative (updated)	6/10/2020
<b>'B'</b>	<b>#</b>	<b>Land Use Planning Staff Exhibits</b>	<b>Date</b>
B.1	2	Assessment & Taxation Property Record for 1S4E08DC – 00600 (Alt Acct#R751705100)	4.08.2020
B.2	1	Section Line Road Fruit Tract Subdivision Plat	8.28.2020

B.3	1	Tax Map 1S4E08DC	8.28.2020
B.4	1	Survey 51586	8.28.2020
B.5	1	ODF Freeland – Land Use Change Reminder Report Letter dated November 6, 2019	8.28.2020
B.6	3	Email from Applicant regarding Change of Use in SEC-wr zone dated November 6, 2019	8.28.2020
B.7	1	Reforestation is the Law Handout	8.28.2020
B.8	8	Forest Practice Notes	8.28.2020
B.9	2	Oregon Right to Farm Covenant	9.23.2020
<b>‘B’</b>	<b>#</b>	<b>Transportation Planning Staff Exhibits</b>	<b>Dated</b>
B.10	3	Transportation Planning Review memo (EP-2017-8085)	7.13.2017
B.11	9	Oregon Fire Code Guide	9.23.2020
<b>‘C’</b>	<b>#</b>	<b>Administration &amp; Procedures</b>	<b>Date</b>
C.1	3	Incomplete letter	5.06.2020
C.2	1	Complete letter (day 1: June 11, 2020)	6.16.2020
C.3	5	Opportunity to Comment	7.28.2020
C.4	39	Administrative decision	10.02.2020
<b>‘D’</b>	<b>#</b>	<b>Comments</b>	<b>Date</b>
D.1	5	Hentges Comments (2 pages) a. Attachments 1, 2 & 5: Photos (3 pages) b. Attachment 3: Video of Car c. Attachment 4: Video of Car d. Attachment 6: Video of Fire	8.04.2020
D.2	1	Palmer Comments	8.11.2020