
NOTICE OF NSA DECISION

Case File: T2-2020-13143

Permit: Geologic Hazards (GH)

Applicant(s): Timothy Radmacher

Owner(s): Property 1: Timothy Radmacher and Tammy Radmacher
Property 2: United States Department of Agriculture: Forest Service

Location: Property 1: 2847 NE Brower Road
Tax Lot 500, Section 26, Township 1 North, Range 5 East, W.M.
Tax Account #R945260050 Property ID #R322963
- and -
Property 2: No Situs Address
Tax Lot 101, Section 26, Township 1 North, Range 5 East, W.M.
Tax Account #R945260080 Property ID #R322966

Zoning: Gorge Special Forest (GSF-40) and Gorge Special Open Space (GSO)

Overlays: Geologic Hazards (GH)

Key Viewing Areas: Cape Horn, Columbia River, Highway I-84, Washington State Route 14

Landscape Setting: Coniferous Woodlands / Gorge Walls, Canyonlands, and Wildlands

Recreation Intensity: Recreation Class 1

Proposal Summary: The applicant is requesting review of pervious development activities that were not reviewed by the County to repair and replace a waterline within the Geologic Hazards (GH) overlay.

Decision: **Approved with Conditions**

This decision is final and effective at the close of the appeal period, unless appealed. The deadline for filing an appeal is **Friday, November 27, 2020, at 4:00 pm.**

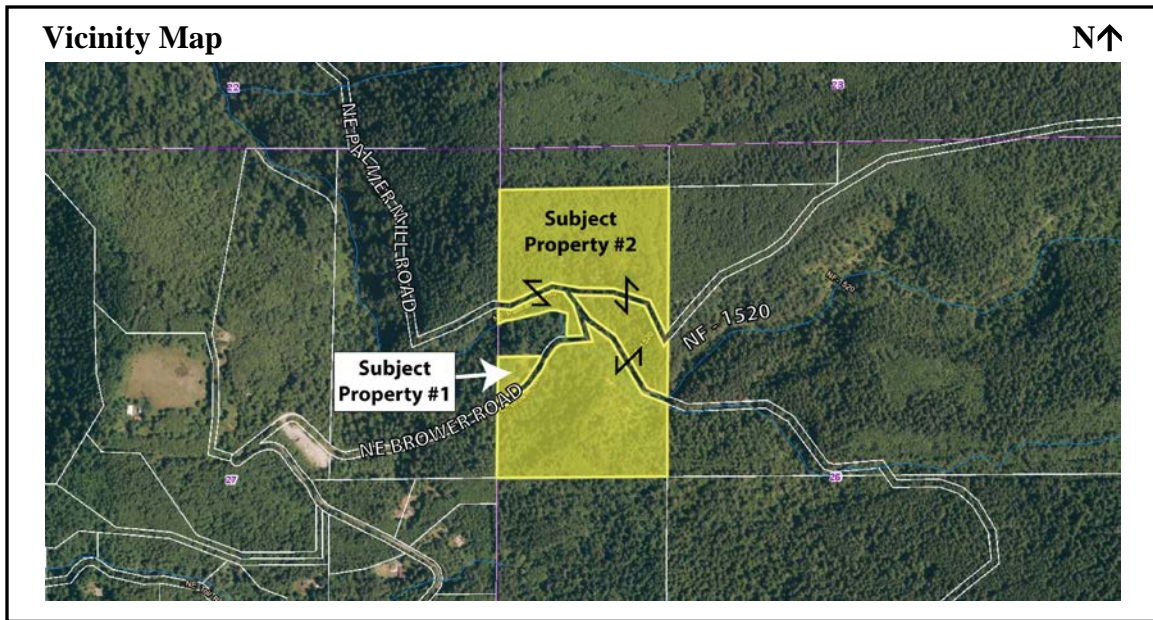
Issued By: _____
Rithy Khut, Planner

For: Carol Johnson, AICP
Planning Director

Date: Friday, November 13, 2020

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 Staff Planner. Copies of all documents are available at the rate of \$0.35/per page. For further information, contact Rithy Khut, Staff Planner at 503-988-0176 or rithy.khut@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 Columbia River Gorge Commission until all local appeals are exhausted.



Applicable Approval Criteria:

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

Multnomah County Code (MCC): General Provisions: MCC 38.0015 Definitions, MCC 38.0560 Code Compliance and Applications

Allowed Uses: MCC 38.1005(B)(1) Repair and Maintenance of existing structures; and (14) Replace existing underground utility facilities

Gorge Special Forestry District (GSF): MCC 38.2020 Allowed Uses, MCC 38.2060 Dimensional Requirements, MCC 38.2090 Access

Geologic Hazards: MCC 38.5505 Permits Required, MCC 38.5515 Geologic Hazards Permits Application Information Required, MCC 38.5520 Geologic Hazards Permit Standards

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 38: Columbia River Gorge National Scenic Area

Conditions of Approval

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. 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 brackets.

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

- a. Within 180 days of the date of issue of your building permit from the City of Gresham. Once you have begun work, this permit expires if work is suspended or abandoned for 180 days or more. This permit expiration may be extended, if you receive permission from the City of Gresham to extend your building permit from the City of Gresham. If an extension is granted by the City of Gresham, you shall notify Staff Planner, Rithy Khut at rithy.khut@multco.us of the extension, which will extend this permit to match the extension authorized by the City of Gresham. This permit will automatically expire if the building permit from the City of Gresham expires.

Note: Expiration of the permit is automatic. Failure to give notice of expiration shall not affect the expiration of this approval. [MCC 38.0700]

2. As an on-going condition, the property owner shall:

- a. Routinely inspect to ensure that adequate drainage along waterline access route is maintained. If needed, use of suitable measures (e.g. outsloping or strategically placed water bars) can be constructed by hand or through the use of hand tools, to ensure that water is intercepted, collected, and removed from the access route surface to prevent concentrated flow in ditches and over fill slopes. [MCC 38.5520(N), MCC 38.5520(I), Condition #1 from United States Department of Agriculture: Forest Service Letter (Exhibit D.3)]

Note: Once this decision is final, building permits may be finalized with the City of Gresham. The applicant shall also complete the following steps:

1. Read your land use decision, the conditions of approval.
2. Contact Right-of-Way Permits at row.permits@multco.us, schedule an appointment at <https://multco.us/transportation-planning/webform/right-way-appointment-request/>, or call 503-988-3582 for an appointment to review your plans, obtain your access permit, and satisfy any other requirements. Failure to make an appointment with County Right-of-Way will result in delaying your building plan review and obtaining building permits.
3. Contact Staff Planner, Planner, at 503-988-0176 or rithy.khut@multco.us, for an appointment for review of the conditions of approval and schedule next steps.

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

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

Findings of Fact

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

1.0 Project Description:

Staff: The applicant is requesting review of pervious development activities that were not reviewed by the County to repair and replace a waterline within the Geologic Hazards (GH) overlay. All work has been completed and no additional development activity will be accomplished under this permit except obtain the final for the building/plumbing permit.

2.0 Property Description & History:

Staff: The subject application is for tax lot 500, Section 26, Township 1 North, Range 5 East (2847 NE Brower Road, Corbett) and tax lot 101, Section 26, Township 1 North, Range 5 East. The subject properties are located adjacent to Brower Road within the Gorge Special Forest (GSF-40) and Gorge Special Open Space (GSO) zoning districts in the Columbia River Gorge National Scenic Area (NSA). The subject properties also contain land identified on the Geologic Hazards Overlay map or potentially contain areas where the average slope is 25 percent or more.

Multnomah County Division of Assessment, Recording, and Taxation (DART) data indicates that tax lot 500 is owned by the Timothy and Tammy Radmacher. DART records indicate that tax lot 500 contains a single-family dwelling, two decks, and an accessory building (Exhibit B.1). The single-family dwelling was first assessed in 1980 and the accessory building was first assessed in 2011. Aerial photo review from summer of 2018 confirms the presence of the single-family dwelling and accessory building and one deck; however, the second deck is not seen (Exhibit B.7).

The property has had an extensive permit history; below are the land use and building permits that are on record:

Permit Number	Date	Description
790402	03/15/1979 (Issued) 02/09/1982 (Final)	New single-family residence (SFR)
NSA 13-99	03/30/2001 (Void)	National Scenic Area permit for an addition to an existing dwelling
T2-09-030	01/14/2010	Application for a National Scenic Area Site Review to replace an existing accessory structure with a new 1440 square feet accessory structure on property zoned Gorge Special Forest-40 (GSF-40)
BP-2010-817	07/13/2010	Building permit associated with T2-09-030 for a new accessory structure

In reviewing the past compliance history of the subject property, the property has one code compliance issue that is currently active. Below is the code compliance case that is on record:

Code Compliance Case #	Date	Description
UR-2018-10447	05/17/2018	Stop Work Order posted for significant non-permitted ground disturbance and excavation work, specifically the construction of a trench and placement of pipes within the trench with the apparent purpose of diverting water from Bridal Veil Creek to the subject property. The work was done on the subject private property, the adjacent Forest Service property (R945260080) and within the NE Brower Road public right-of-way.

Multnomah County Division of Assessment, Recording, and Taxation (DART) data indicates that tax lot 500 Tax lot 101 is owned by United States Department of Agriculture (Exhibit B.2). DART records indicate that tax lot 101 is vacant.

3.0 Public Comment:

Staff: A mailed notice of application and invitation to comment on the proposed application was sent to the required parties as required by MCC 38.0530(B). The Opportunity to Comment is exhibited as C.5. Staff received the following public comment during the 14-day comment period.

3.1 Chris Donnermeyer, Heritage Resources Program Manager, Columbia River Gorge National Scenic Area provided an e-mail on May 14, 2020 and a letter on June 23, 2020 (Exhibit D.1 and D.2)

Comment: On behalf of the United States Department of Agriculture: Forest Service (“USFS”), Chris Donnermeyer submitted an e-mail stating that a site visit was to be conducted for the Survey Determination Form. A subsequent letter, a Cultural Resource Survey Determination was submitted that stated, “A Cultural Resource Survey is: Not Required” and “A Historic Survey is: Not Required”.

3.2 Mike D. Montgomery, Acting Lands Staff Officer, United States Department of Agriculture: Forest Service provided a letter on October 14, 2020 (Exhibit D.3)

Comment: On behalf of the United States Department of Agriculture: Forest Service, Mike Montgomery submitted a letter of consent between the USFS and the applicant for the work already completed on National Forest System lands. The letter outlined certain rehabilitation activities that will need to occur to ensure the protection of NFS lands and resources within the easement.

3.2 Steven D. McCoy, Staff Attorney, Friends of the Columbia Gorge provided a Letter on October 14, 2020 (Exhibit D.4)

Comment: On behalf of the Friends of the Columbia Gorge, Steven McCoy submitted a letter discussing the applicable approval criteria for this application and proposed one Condition of

Approval. The requested Condition of Approval was that, “All conditions of approval must be entered into the deeds of the affected parcels and registered with the county.”

4.0 Administrative Procedures Criteria:

4.1 § 38.0560 CODE COMPLIANCE AND APPLICATIONS.

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

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

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

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

Staff: This standard provides that the County shall not make a land use decision approving development for a property that is not in full compliance with County Land Use Code or previously issued County approvals, except in the following instances: approval will result in the property coming into full compliance, approval is necessary to protect public safety, or the approval is for work related to or within a valid easement.

This standard expressly applies to the application review process and not to the post-permit-approval enforcement process. A finding of satisfaction of this standard does not mean that a property is in full compliance with the Land Use Code and all prior permit approvals (and, accordingly, does not preclude future enforcement actions relating to uses and structures existing at the time the finding is made). Instead, a finding of satisfaction of this standard simply means that there is not substantial evidence in the record affirmatively establishing one or more specific instances of noncompliance. As such, an applicant has no initial burden to establish that all elements of the subject property are in full compliance with the Land Use Code and all previously approved permits; instead, in the event of evidence indicating or establishing one or more specific instances of noncompliance on the subject property, the applicant bears the burden to either rebut that evidence or demonstrate satisfaction of one of the exceptions in MCC 38.0560.

An open compliance case was identified on the subject properties. Code Compliance case #UR-2018-10447 was opened on May 17, 2018 and a Stop Work Order was posted for significant ground disturbance and excavation work, specifically the construction of a trench and placement of pipes within the trench with the apparent purpose of diverting water from Bridal

Veil Creek to the subject property. The work was done on the 2847 NE Brower Road property, the adjacent Forest Service property (tax lot 101), and within the NE Brower Road public right-of-way. A site visit was conducted and photographs showed extensive ground disturbance (Exhibit B.4). A Request for Voluntary Compliance was sent to the property owner on October 3, 2018 (Exhibit B.5).

The Applicant responded with evidence as part of this land use case to bring the subject properties back into full compliance with all applicable provisions of the Multnomah County Land Use Code for the ground disturbing activities. As discussed below portions of the ground disturbance are allowed under MCC 38.1005(B)(1) and MCC 38.1005(B)(14); however as areas of the project are located on land identified on the Geologic Hazards Overlay map or in areas that potentially contain an average slope of 25 percent or more, a Geologic Hazards permit is required. Upon approval of this permit and completion of the Conditions of Approval, those actions will result in the properties coming into full compliance with all applicable provisions of the Multnomah County Code.

This criterion is met.

5.0 Forest Districts – GGF and GSF Criteria:

5.1 § 38.2020 ALLOWED USES

The uses listed in MCC 38.1005 are allowed on land designated GGF and GSF without review.

Staff: As discussed in Section 4.0, the applicant replaced a structure, a water line, which was located underground within an easement. The water line consisted of approximately 1,230 lineal foot pipe that traversed the applicant's property from the single-family dwelling to a spring, which is on an adjacent property owned by the United States Department of Agriculture: Forest Service ("USFS"). The water right to the creek and waterline easement from Bridal Veil Creek to 2847 NE Brower Road has existed since as early as 1914 as it is described in Book 1, Page 2, which was recorded on September 11, 1914 in the Water Rights Record. Eventually, in 2008, the property, 2847 NW Brower Road was conveyed to the current property owners and applicants, Timothy Radmacher and Tammy Radmacher (Exhibit B.14). The property that contains the creek and a majority of the waterline was owned by Frank Lumber Co., however it was conveyed to the United States Department of Agriculture Forest Service on November 2, 1990 as shown in Book 2358, Page 2138 (Exhibit B.13).

As listed in MCC 38.1005(B) below, the repair of existing structures and the replacement of existing underground utility facilities located inside an easement that have been disturbed in the past are permitted without review in all zone districts. The applicant states that the water line was installed in 1942. A quitclaim deed recorded on March 31, 1942 in Book 672, Page 251-252 describes the waterline as a "water pipe line for a distance as now constructed from Grantee's house for a distance of 1200 ft., more or less, to a small spring located on the SW ¼ of NW1/2 of Section 26 Tp. 1N. R. 5 E" (Exhibit B.11).

§ 38.1005 ALLOWED USES

(B) The following uses may be allowed without review in all zone districts:

(1) Repair, maintenance and operation of existing structures, including, but not limited to, dwellings, agricultural structures, trails, roads, railroads, and utility facilities.

(14) Replace or modify existing underground utility facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past or co-locate new underground utility facilities with existing underground facilities located inside road, utility or railroad rights-of-way or easements that have been disturbed in the past, provided no excavation would extend beyond the depth and extent of the original excavation.

Although the repair and replacement of the waterline is an allowed use, because the waterline is located on land identified on the Geologic Hazards Overlay map or in areas that potentially contain an average slope of 25 percent or more, a Geologic Hazards permit is required. Those requirements are discussed in Section 6.0.

5.2 § 38.2060 DIMENSIONAL REQUIREMENTS

(A) Except as provided in subsections MCC 38.2030 (A) (3) and (4), the minimum lot size shall be according to the short-title zone district designation on the Zoning Map, as follows:

GGF-20	20 acres
GGF-40	40 acres
GGF-80	80 acres
GSF-40	Not Applicable

(B) That portion of a street which would accrue to an adjacent lot if the street were vacated shall be included in calculating the area of such lot.

Staff: This application does not propose the creation of a lot; therefore, these requirements are not applicable. *These criteria are not applicable.*

(C) Minimum Yard Dimensions - Feet

Front	Side	Street Side	Rear
30	10	30	30

Maximum Structure Height – 35 feet

Minimum Front Lot Line Length – 50 feet.

(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 Planning Commission shall determine the necessary right-of-way widths and additional yard requirements not otherwise established by ordinance.

Staff: The applicant is proposing to repair and replace a waterline. As the waterline is underground, the minimum yard dimensions are not applicable as the purpose of a yard is to provide space, light, air circulation, and safety from fire hazards between buildings and property lines. *These criteria are met.*

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

Staff: The applicant is not proposing any structures such as barns, silos, windmills, antennae, chimneys, or similar structures; therefore this criterion is not applicable. *This criterion is not applicable.*

5.3 § 38.2090 ACCESS

Any lot in this district shall abut a street or shall have other access determined by the approval authority to be safe and convenient for pedestrians and passenger and emergency vehicles.

Staff: The subject properties abut NE Brower Road, which is a street. *This criterion is met.*

6.0 Geologic Hazards Criteria

6.1 § 38.5505 PERMITS REQUIRED

Unless exempt under this code; 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 Geologic Hazards permit (GH).

Staff: As discussed in Section 5.0, the applicant replaced a structure, a water line, which is located underground within an easement. The water line consists of an approximately 1,230 lineal foot pipe that traverses the applicant's property from the single-family dwelling to a spring, which is on an adjacent property owned by the United States Department of Agriculture: Forest Service. To install the waterline, the applicant dug a 1,230 foot long by 6-foot wide trench to a depth of 3 feet. This ground disturbing activity occurred on lands located in hazard areas as identified on the Geologic Hazards overlay map. As such, a Geologic Hazards (GH) permit is required.

6.2 § 38.5515 GEOLOGIC HAZARDS PERMIT APPLICATION INFORMATION REQUIRED

An application for a Geologic Hazards permit shall include two copies of each of the following:

(A) A scaled site plan showing the following, both existing and proposed;

- (1) Property lines;**
- (2) Buildings, structures, driveways, roads and right-of-way boundaries;**
- (3) Location of wells, utility lines, site drainage provisions, stormwater disposal system, sanitary tanks and drainfields (primary and reserve);**
- (4) Trees and vegetation proposed for removal and planting and an outline of wooded areas;**
- (5) Water bodies;**
- (6) Boundaries of ground disturbing activities;**
- (7) Location and height of unsupported finished slopes;**
- (8) Location for washout and cleanup of concrete equipment;**

- (9) Storage location and proposed handling and disposal methods for potential sources of non-erosion pollution including pesticides, fertilizers, petrochemicals, solid waste, construction chemicals, and wastewaters;
 - (10) Soil types;
 - (11) Ground topography contours (contour intervals no greater than 10-feet); and
 - (12) Erosion and sediment control measures.
- (B) Calculations of the total area of proposed ground disturbance (square feet), volume of proposed cut and fill (cubic yards), and existing and proposed slopes in areas to be disturbed (percent slope);
- (C) Written findings, together with any supplemental plans, maps, reports, or other information necessary to demonstrate compliance of the proposal with all applicable provisions of the Geologic Hazards standards in MCC 38.5520 (A). Necessary reports, certifications, or plans may pertain to: engineering, soil characteristics, stormwater drainage control, stream protection, erosion and sediment control, and replanting. The written findings and supplemental information shall include:
 - (1) With respect to fill:
 - (a) Description of fill materials, compaction methods, and density specifications (with calculations). The planning director may require additional studies or information or work regarding fill materials and compaction.
 - (b) Statement of the total daily number of fill haul truck trips, travel timing, loaded haul truck weight, and haul truck travel route(s) to be used from any fill source(s) to the fill deposit site.
 - (2) A description of the use that the ground disturbing activity will support or help facilitate.
 - (3) One of the following:
 - (a) Additional topographic information showing that the proposed development to be on land with average slopes less than 25 percent, and located more than 200 feet from a known landslide, and that no cuts or fills in excess of 6 feet in depth are planned. High groundwater conditions shall be assumed unless documentation is available, demonstrating otherwise; or
 - (b) A geological report prepared by a Certified Engineering Geologist or Geotechnical Engineer certifying that the site is suitable for the proposed development; or,
 - (c) An GHP Form– 1 completed, signed and certified by a Certified Engineering Geologist or Geotechnical Engineer with their stamp and signature affixed indicating that the site is suitable for the proposed development.
 - (i) If the GHP Form– 1 indicates a need for further investigation, or if the Director requires further study based upon information contained in the GHP Form– 1, a geotechnical report as specified by the director shall be prepared and submitted.
 - [a] A geotechnical investigation in preparation of a geotechnical report shall be conducted at the applicant's expense by a Certified Engineering Geologist or Geotechnical Engineer. The report shall include specific investigations required by the director and recommendations for any further work or changes in proposed work which may be necessary to ensure reasonable safety from landslide hazards.
 - [b] Any development related manipulation of the site prior to issuance of a permit shall be subject to corrections as

recommended by the geotechnical report to ensure safety of the proposed development.

[c] Observation of work required by an approved geotechnical report shall be conducted by a Certified Engineering Geologist or Geotechnical Engineer at the applicant's expense; the geologist's or engineer's name shall be submitted to the director prior to issuance of the permit.

[d] The director, at the applicant's expense, may require an evaluation of GHP Form- 1 or the geotechnical report by another Certified Engineering Geologist or Geotechnical Engineer.

(4) Documentation of approval by each governing agency having authority over the matter of any new stormwater discharges into public right-of-way.

(5) Documentation of approval by the City of Portland Sanitarian and any other agency having authority over the matter of any new stormwater surcharges to sanitary drainfields.

Staff: As required, the applicant has provided all the applicable application information materials listed above. The applicant's site plan is found in Exhibit A.10. Calculations of the total area of proposed ground disturbance (square feet), volume of proposed cut and fill (cubic yards), and existing and proposed slopes in areas to be disturbed (percent slope) is found in Exhibit A.9. A geological report and GHP Form-1 ("HDP Form-1") was prepared Paul A. Crenna, Certified Engineering Geologist certifying that the site is suitable for the proposed development (Exhibit A.9). The report and HDP Form-1 also contain written findings that demonstrate compliance of the proposal with all applicable provisions of the Geologic Hazards standards. Lastly, the applicant also included a contour map with additional topographic information (Exhibit A.9). *These criteria are met.*

6.3 § 38.5520 GEOLOGIC HAZARDS PERMIT STANDARDS

(A) A Geologic Hazards (GH) permit shall not be issued unless the application for such permit establishes compliance with MCC 39.6210 and satisfaction of the following standards:

Staff: As required a GH permit shall not be issued unless the application for such permit establishes compliance with MCC 39.6210. The standards in MCC 39.6210 state:

§ 39.6210 PERMITS REQUIRED.

(A) Unless exempt under this Code, whether under MCC 39.6215, 39.5080, 38.5510 or otherwise, no ground disturbing activity shall occur except pursuant to one of the following permits: a Minimal Impact Project (MIP) permit, an Erosion and Sediment Control permit (ESC), an Agricultural Fill permit (AF), a Geologic Hazards permit (GH), or a Large Fill permit (LF).

(B) The permits referenced in subsection (A) are required in addition to and not in lieu of any other local, state or federal permit, including but not limited to permits required for ground disturbing activities within a water body regulated by the Oregon Department of State Lands, the U.S. Army Corps of Engineers or the Oregon Department of Fish and Wildlife.

(C) No ground disturbing activity shall occur except in support of a lawfully established use or in support of the lawful establishment of a use.

(D) No permit identified in subsection (A) shall be issued in any case where the planning director or a building official determines that the proposed ground disturbing activity will be hazardous by reason of flood, geological hazard, seismic hazard, or unstable soils; or is liable to endanger any other adjacent property; or result in the deposition of debris on any public right of-way or property or water body; or otherwise create a nuisance.

(E) Responsibility. For any ground disturbing activity authorized under a permit listed in subsection (A):

(1) Whenever sedimentation is caused by ground disturbing activity, the person, corporation or other entity shall be responsible to remove that sedimentation from all adjoining surfaces and drainage systems prior to issuance of occupancy or final approvals for the project.

(2) It is the responsibility of any person, corporation or other entity doing ground disturbing activity on, in, under or around a water body, or the floodplain or right-of-way, to maintain as nearly as possible in its present state the water body, floodplain, or right-of-way during such activity, and to return the same to a functional condition equal to or better than the condition existing immediately prior to the ground disturbing activity.

As discussed in Section 5.0, the applicant replaced a structure, a water line, which is located underground within an easement. To replace the water line, the applicant conducted ground disturbing activities that consisted of digging a 1,230 foot long by 6-foot wide by 3-foot deep trench. This ground disturbing activity occurred on lands located in hazard areas as identified on the Geologic Hazards overlay map. As such, a Geologic Hazards (GH) permit is required. Additionally as discussed in Section 3.2, Mike Montgomery, working on behalf of United States Department of Agriculture: Forest Service ("USFS"), indicated that additional requirements would be needed as determined by the USFS (Exhibit D.3).

The ground disturbing activities are not exempt under MCC 39.6215, 39.5080, 38.5510, or otherwise; therefore the applicant is required to obtain a Geologic Hazards permit.

As required by subsection (C), the water line connects to the single-family dwelling on the applicant's property. As discussed previously, the water line was established as early as 1914 and the replacement is reviewed as an Allowed Use under MCC 39.1005(B)(1) and (14). Therefore, the water line is in support of a lawfully established use.

This criterion is met.

As required by subsection (D), the applicant has provided a Geotechnical Report reviewing the ground disturbing activities. The report, written by Paul A. Crenna, Certified Engineering Geologist did not find the ground disturbing activity to be hazardous by reason of flood, geological hazard, seismic hazard or unstable soils (Exhibit A.9)

This criterion is met.

As required by subsection (E), for any ground disturbing activity authorized under this permit, the person, corporation or other entity shall be responsible to remove that sedimentation from all adjoining surfaces and drainage systems prior to issuance of occupancy or final approvals for the project. The person, corporation or other entity is also responsible to maintain as nearly as possible in its present state the water body, floodplain, or right-of-way during such activity, and to return the same to a functional condition equal to or better than the condition existing

immediately prior to the ground disturbing activity, if activities occurred in those areas. Based on the information provided by the United States Department of Agriculture: Forest Service and photos provided by the applicant, all sedimentation have been removed from adjoining surfaces and drainage systems (Exhibit D.2 and Exhibit A.11).

These criteria are met.

(B) Fill shall be composed of earth materials only.

Staff: The applicant has indicated that the fill materials are composed of earth materials only. As discussed in the Geotechnical Report, Paul A. Crenna, Certified Engineering Geologist conducted a Reconnaissance Observation of the site. The observation found, "The pipeline is constructed in an approximate 6-foot-wide access trail that was recently cleared of vegetation with a tracked excavator...the pipe was installed in an approximate 3-foot-deep trench that was excavated into the trail and was backfilled with the trench spoils." (Exhibit A.9). As the trench was backfilled with trench spoils, the fill are only composed of earth materials. *This criterion is met.*

(C) Cut and fill slopes shall not exceed 33 percent grade (3 Horizontal: 1 Vertical), unless a Certified Engineering Geologist or Geotechnical Engineer certifies in writing that a grade in writing that a grade in excess of 33 percent is safe (including, but not limited to, not endangering or disturbing adjoining property) and suitable for the proposed development.

Staff: As discussed in the Geotechnical Report, Paul A. Crenna, Certified Engineering Geologist conducted a Reconnaissance Observation of the site. The observation found that the talus slope along the pipeline had an average inclination of about 3H:1V to 4H:1V. However Geotechnical Report concluded that the, "construction of the replacement pipeline will not adversely effect the existing slope stability conditions." (Exhibit A.9). As such, the report indicates that the grade is suitable for the proposed development. *This criterion is met.*

(D) Unsupported finished cuts and fills greater than 1 foot in height and less than or equal to 4 feet in height at any point shall meet a setback from any property boundary of a distance at least twice the height of the cut or fill, unless a Certified Engineering Geologist or Geotechnical Engineer certifies in writing that the cuts or fills will not endanger or disturb adjoining property. All unsupported finished cuts and fills greater than 4 feet in height at any point shall require a Certified Engineering Geologist or Geotechnical Engineer to certify in writing that the cuts or fills will not endanger or disturb adjoining property.

Staff: The waterline traverses from the applicant's property onto the adjacent USFS property. Along the path of the water line, the areas where cuts and fills that are greater than 1 foot in height and less than or equal to 4 feet in height as all located within the easement on the USFS property (Exhibit A.9). In those areas, Hillside Development Permit (HDP) Worksheet shows that the location of the water line is more than 300 feet from the eastern property line, 600 feet from the southern property line and 1,500 feet from the northern property line (Exhibit B.6). Additionally, as discussed in the GHP Form-1, Paul A. Crenna, Certified Engineering Geologist indicated that the proposed development would not create potential stability problems from the subject property and/or adjacent properties (Exhibit A.9). *This criterion is met.*

(E) Fills shall not encroach on any water body unless an Oregon licensed Professional Engineer certifies that the altered portion of the water body will continue to provide equal or greater flood carrying capacity for a storm of 10-year design frequency.

Staff: The ground disturbing activities were related to the repair and replacement of an existing deteriorated pipe that traversed from the applicant's single-family dwelling to a holding tank and spring box located within the waterbody. The ground disturbance occurred within the easement up to the holding tank and spring box (Exhibit A.9 and D.3). As the spring box was not altered, no fill material encroached into the waterbody. Therefore, this criterion is not applicable. *This criterion is not applicable.*

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

Staff: As discussed in the Geotechnical Report, Paul A. Crenna, Certified Engineering Geologist found that an approximate 6-foot-wide access trail that was cleared of vegetation with a tracked excavator. The stripping of vegetation, ground disturbance, and soil disturbance was done in a manner to expose the smallest practice area as the pipe was unearthed, replaced and then the excavation was backfilled with the trench spoils. Based on the site photos provided by applicant, hay was spread over disturbed areas and reseedling has been completed (Exhibit A.11). *This criterion is met.*

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

Staff: As the application is a result of a Stop Work order, the development activities have already occurred. The site visit photos by Multnomah County Land Use Planning Code Compliance program found a trench that extended from the single-family dwelling across NE Brower Road and up the hill on the adjacent property to the east (Exhibit B.4). A follow up Geotechnical Report written by Paul A. Crenna, Certified Engineering Geologist confirmed that an approximate 6-foot-wide access trail that was cleared of vegetation and a trench was dug from the single-family dwelling to the spring (Exhibit A.9). The trench followed an already established pipe easement. In replacing an already existing water pipe, the ground disturbance was located in an area that already conformed to the topography. *This criterion is met.*

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

Staff: The applicant has indicated that slopes were rough-graded and hay was spread over the disturbed area to protect exposed areas during and after the installation of the waterline (Exhibit B.6). *This criterion is met.*

(I) Whenever feasible, natural vegetation shall be retained, protected, and supplemented;
(1) A 100-foot undisturbed buffer of natural vegetation shall be retained from the top of the bank of a stream, or from the ordinary high watermark (line of vegetation) of a water body, or within 100-feet of a wetland;
(2) The buffer required in (I)(1) may only be disturbed upon the approval of a mitigation plan which utilizes erosion, sediment and stormwater control measures designed to perform as effectively as those prescribed in the most recent edition of

the City of Portland Erosion and Sediment Control Manual and the City of Portland Stormwater Management Manual and which is consistent with attaining equivalent surface water quality standards as those established for the Tualatin River Drainage Basin in OAR 340-041-0345(4).

Staff: The applicant replaced a structure, a water line, which is located underground within an easement. The water line consists of an approximately 1,230 lineal foot pipe that traverses the applicant's property from the single-family dwelling to spring, which is on an adjacent property owned by the United States Department of Agriculture: Forest Service. To install the waterline, the applicant dug a 1,230 foot long by 6-foot wide trench to a depth of 3 feet. The spring is located approximately 107 feet away to the south of Bridal Veil Creek (Exhibit A.10). No ground disturbance occurred within the 100 feet from the bank of a stream, Bridal Veil Creek, so an undisturbed buffer of natural vegetation was retained between the creek and the ground disturbance. *This criterion is met.*

(J) Permanent plantings and any required structural erosion control and drainage measures shall be installed as soon as practical.

Staff: The applicant included site photos as part of the application. The site photos indicate that hay was originally placed in the areas where ground disturbance occurred (Exhibit A.11). Subsequently, the area of ground disturbance has been revegetated with seed and other natural vegetation that is native to the area. *This criterion is met.*

(K) Provisions shall be made to effectively accommodate increased runoff caused by altered soil and surface conditions during and after development. The rate of surface water runoff shall be structurally retarded where necessary.

Staff: The applicant had originally placed hay along the disturbed areas to accommodate potential increased runoff caused by altered soil and surface conditions (Exhibit B.6). Subsequently, the area of ground disturbance has been revegetated with seed and other natural vegetation that is native to the area (Exhibit A.11). As such, the applicant has made the necessary provisions to effectively accommodate increased runoff caused by altered soil and surface conditions. *This criterion is met.*

(L) Sediment in the runoff water shall be trapped by use of debris basins, silt traps, or other measures until the disturbed area is stabilized.

Staff: The applicant has indicated that slopes were rough-graded and hay was spread over the disturbed area to protect those areas until they are stabilized (Exhibit B.6). Subsequently, the area of ground disturbance has been revegetated with seed and other natural vegetation that is native to the area (Exhibit A.11). As such, the disturbed area has been stabilized to ensure that no sediment is in the runoff water. *This criterion is met.*

(M) Provisions shall be made to prevent surface water from damaging the cut face of excavations or the sloping surface of fills by installation of temporary or permanent drainage across or above such areas, or by other suitable stabilization measures such as mulching or seeding.

Staff: As the application is a result of a Stop Work order, the cut face of excavations has already been restored with spoils from the trenching that occurred. After the trench was filled,

the applicant rough-graded the slope and spread hay along the length of the disturbed area. This action was undertaken as the slopes re-stabilized. *This criterion is met.*

(N) All drainage measures shall be designed to avoid erosion and adequately carry existing and potential surface runoff to suitable drainageways such as storm drains, natural water bodies, drainage swales, or an approved drywell system.

Staff: As discussed in the letter by the USFS, the applicant is required to provide for adequate drainage along the waterline access route and inspect routinely to ensure proper drainage is maintained (Exhibit D.3). Therefore, a condition will be required to match this requirement to ensure conformity with the USFS. These conditions will sure that drainage measures will avoid erosion and adequately carry existing and potential surface runoff to suitable drainageways. As *conditioned, this criterion is met.*

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

Staff: The applicant does not indicate that drainage swales were used as part of the ground disturbance (Exhibit B.6). *This criterion is not applicable.*

(P) Erosion and sediment control measures must be utilized such that no visible or measurable erosion shall occur on-site and no visible or measurable sediment shall exit the site, enter the public right-of-way or be deposited into any water body or storm drainage system. Control measures which may be required include, but are not limited to:

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

Staff: As discussed previously, the ground disturbing activities have already occurred and the excavation that occurred has been filled with trench spoils. The applicant placed hay on all disturbed soil areas. Subsequently, the area of ground disturbance has been revegetated with seed and other natural vegetation that is native to the area (Exhibit A.11). These measures ensured that no erosion shall occur on-site and no visible or measure sediment shall exit the site. *This criterion is met.*

(Q) Disposed spoil material or stockpiled topsoil shall be prevented from eroding into water bodies by applying mulch or other protective covering; or by location at a sufficient distance from water bodies; or by other sediment reduction measures.

Staff: As discussed previously, the ground disturbing activities have already occurred and the excavation that occurred has been filled with trench spoils. After the stockpiled topsoil was returned into the trench, the applicant placed hay on all disturbed soil areas. Subsequently, the area of ground disturbance has been revegetated with seed and other natural vegetation that is native to the area (Exhibit A.11). These actions ensured that no material or soil would have eroded into a water body. *This criterion is met.*

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

Staff: No non-erosion pollution such as pesticides, fertilizers, petrochemicals, solid wastes, construction chemicals, or wastewaters were used or generated as part of this proposal. *This criterion is met.*

(S) Ground disturbing activities within a water body shall use instream best management practices designed to perform as prescribed in the City of Portland Erosion and Sediment Control Manual. To the extent that there is a conflict between the Manual and the requirements of the National Scenic Area (NSA) Permit, the requirements in the NSA will apply; and

Staff: No ground disturbing activities occurred within a water body as the water pipe and spring box were already established in the spring. *This criterion is met.*

(T) The total daily number of fill haul truck trips shall not cause a transportation impact (as defined in the Multnomah County Road Rules) to the transportation system or fill haul truck travel routes, unless mitigated as approved by the County Transportation Division.

Staff: No fill was brought to the site. All fill was a product of the excavation of soil along the water line. As no fill was brought to the site, this criterion is not applicable as there were no fill haul truck trips. *This criterion is not applicable.*

(U) Fill trucks shall be constructed, loaded, covered, or otherwise managed to prevent any of their load from dropping, sifting, leaking, or otherwise escaping from the vehicle. No fill shall be tracked or discharged in any manner onto any public right-of-way.

Staff: No fill was brought to the site. As such, this criterion is not applicable as no fill trucks were used as part of this project. *This criterion is not applicable.*

(V) No compensation, monetary or otherwise, shall be received by the property owner for the receipt or placement of fill.

Staff: No fill was brought to the site. As such, this criterion is not applicable. *This criterion is not applicable.*

7.0 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Geologic Hazards permit to repair and replace a water line in the Gorge Special Forest (GSF-40) and Gorge Special Open Space (GSO) zones. This approval is subject to the conditions of approval established in this report.

8.0 Exhibits

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

Exhibits with a “*” after the exhibit # have been included as part of the mailed decision. Those exhibits have been reduced to a size of 8.5” x 11” for mailing purposes. All other exhibits are available for review in Case File T2-2020-13143 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	General Application Form	03/31/2020
A.2	3	Cover Letter	03/31/2020
A.3	4	Preliminary Geotechnical Evaluation completed by Stephen Eagar, Registered Professional Engineer and Paul A. Crenna, Certified Engineering Geologist	03/31/2020
A.4	4	Hillside Development Permit Application: Geotechnical Reconnaissance and Stability Preliminary Study	03/31/2020
A.5	1	Site Plan showing contours	03/31/2020
A.6	1	General Application Form	05/26/2020
A.7	3	Updated Cover Letter	05/26/2020
A.8	1	Response from Applicant to Incomplete Items	05/26/2020
A.9	9	Updated Preliminary Geotechnical Evaluation completed by Stephen Eagar, Registered Professional Engineer and Paul A. Crenna, Certified Engineering Geologist	05/26/2020
A.10*	1	Revised Site Plan	05/26/2020
A.11	24	Site Photos	11/02/2020
‘B’	#	Staff Exhibits	Date
B.1	2	Department of Assessment, Records, and Taxation (DART) Property Information for 1N5E26-00500 (#R945260050)	03/31/2020
B.2	2	Department of Assessment, Records, and Taxation (DART) Property Information for 1N5E26-00101 (#R945260080)	03/31/2020
B.3	1	Department of Assessment, Records, and Taxation (DART) Property Information Map with 1N5E26-00500 and 00101 (#R945260050 and R945260080) highlighted	03/31/2020
B.4	7	UR-2018-10447 Site Photos	03/31/2020
B.5	2	UR-2018-10447 Request for Voluntary Compliance	03/31/2020
B.6	6	Hillside Development Worksheet	03/31/2020
B.7	1	Aerial Photo from Summer 2018	03/31/2020
B.8	6	Preliminary Title Report	03/31/2020

B.9	1	Photo of Brower Road	07/25/2020
B.10	1	Project Diagram	07/25/2020
‘C’	#	Administration & Procedures	Date
C.1	5	Email and Incomplete Letter	04/30/2020
C.2	14	Agency Review	05/07/2020
C.3	1	Applicant’s Acceptance of 180 Day Clock	05/26/2020
C.4	1	Complete Letter (Day 1)	06/23/2020
C.5	5	Opportunity to Comment and mailing list	10/01/2020
C.6	21	Administrative Decision and mailing list	
‘D’	#	Comments Received	Date
D.1	1	Email from Chris Donnermeyer, Heritage Resources Program Manager, United States Department of Agriculture: Forest Service - Columbia River Gorge National Scenic Area	05/14/2020
D.2	2	United States Department of Agriculture: Forest Service – Cultural Resources Survey Determination submitted by Chris Donnermeyer, Heritage Resources Program Manager, United States Department of Agriculture: Forest Service - Columbia River Gorge National Scenic Area	06/02/2020
D.3	5	Email and Letter from Mike D. Montgomery, Acting Lands Staff Officer, United States Department of Agriculture: Forest Service	10/14/2020
D.4	3	Email and Letter from Steven D. McCoy, Staff Attorney, Friends of the Columbia Gorge	10/15/2020