

NOTICE OF DECISION

Case File: T2-2020-14180

Permit: Administrative Decision by the Planning Director for a Post Emergency Response to Emergency/Disaster Event

Applicants: Tony Weller, CESNW, Inc.
Eric George, Tualatin Valley Water District

Owners: Dorothy M. Dunstan Trust
Multnomah County Transportation

Location: Located within the right of way of NW North Road:
Address: The edge of the public Right of Way for NW North Road and the Property to the west across from 4034 NW North Road (R090604060/ R118569)

and the following property:

Map, Tax Lot: 1N1W22D -00300

Alternate Account #: R090604060

Property ID #: R118569

Base Zone: Rural Residential (RR)

Overlays: Significant Environmental Concern for Streams (SEC-s)
Geologic Hazards (GH)

Proposal Summary: Applicant requests an Administrative Decision by the Planning Director for a Post Emergency/Disaster Response Event. The emergency response was to repair a portion of NW North Road that was damaged during a landslide on July 27, 2017, construct a retaining wall to protect a 24-inch water transmission line, and complete hillside revegetation. The project is exempt from Geologic Hazard regulations.

Decision: **Approved with Conditions**

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Friday, June 4, 2021 at 4:00 pm.

Issued by: _____

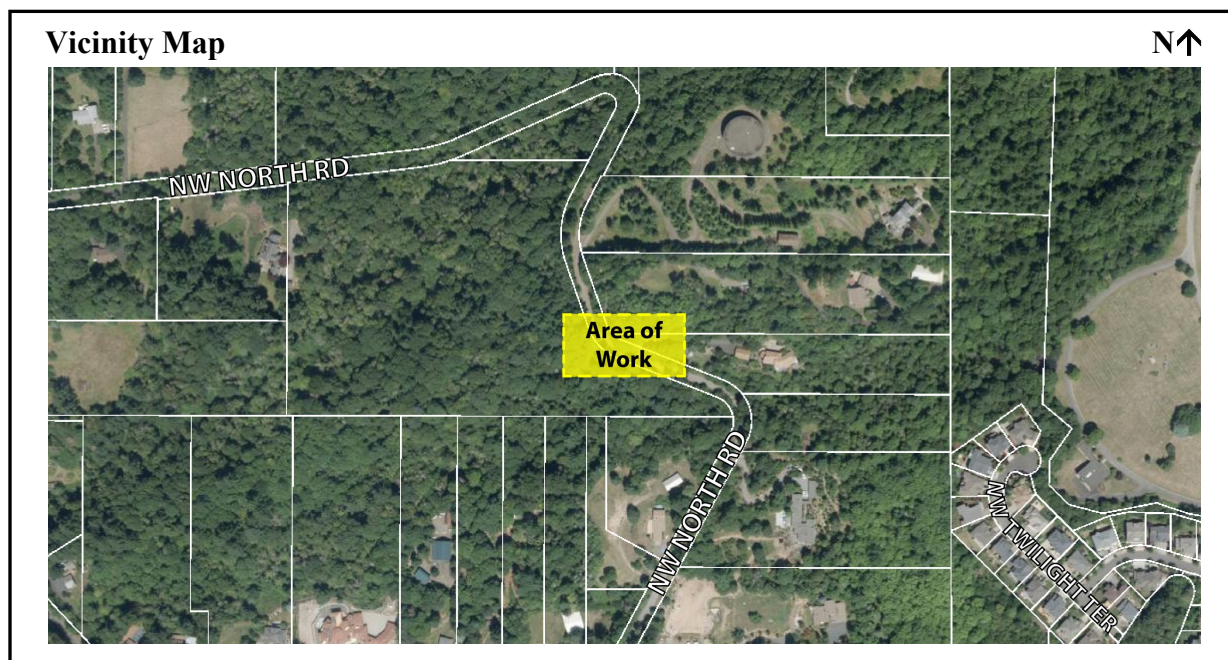
By: Rithy Khut, Planner

For: Carol Johnson, AICP
Planning Director

Date: Friday, May 21, 2021

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 Rithy Khut, Staff Planner at 503-988-0176 or at rithy.khut@multco.us. Copies of all documents are available at the rate of \$0.35/per page.

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): Violations, Enforcement and Fines: MCC 39.1515 Code Compliance and Applications

Rural Residential (RR): MCC 39.4365(D) Review Uses, Placement of Structures Necessary for Continued Public Safety Damaged During an Emergency/Disaster Event

Geologic Hazards: MCC 39.5080(H) Exemptions

Responses to an Emergency/Disaster Event: MCC 39.6900 Responses to an Emergency/Disaster Event

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

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.

- Permit Expiration – This land use permit shall expire as follows:
 - a. In order to implement the Revegetation Plan expiration of this approval shall expire on March 5, 2022, unless the Revegetation Plan is established according to all specifications and conditions of approval in the land use approval. [MCC 39.1185(A), MCC 39.1185(E), and MCC 39.6900(E)(2)]
 - i. For the purposes of 1.a, expiration of an approval means that a new application is required for uses that are not established during the approval period.
 - ii. No extension of the timeframe for replanting and this permit shall be granted.

Note: The property owner may not request to extend the timeframe within which this permit is valid.

- Tualatin Valley Water District, or their representative(s) shall ensure that:
 - a. The Revegetation Plan shown as Exhibit A.9 is implemented. [MCC 39.1170(A), MCC 39.6900(E)(1), (2), and (6)]
 - b. Notification shall be provided to Multnomah County Land Use Planning within 90 days of completion of the project. The post-construction report shall confirm the project has been completed in compliance with approved designs and all conditions of this land use permit. Any variation from approved designs or conditions of approval shall be clearly indicated. The post-construction report shall include:
 - i. Dated post-revegetation photos taken of the areas of disturbance for construction.
 - ii. A narrative that describes any deviation from the approved plans. [MCC 39.1170(A), MCC 39.6900(E)(1), (2), and (6)]
- As an on-going condition, Tualatin Valley Water District or their representative(s) shall:
 - a. Monitor the emergency/disaster response site to ensure that the plantings live, thrive, and survive. 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. Annual photos are required. [MCC 39.1170(A), MCC 39.6900(E)(1), (2), and (6)]
 - i. Plants that die, become diseased or are failing shall be replaced in kind so that a minimum of 80% of the trees and shrubs planted shall remain alive. The plants shall be replanted during the next planting season.
 - b. Submit a yearly report on the condition of the plantings. The report shall be provided to land.use.planning@multco.us and list the land use case #T2-2020-14180 for reference. The report shall provide details on the condition of the plantings, number, and location

of any plantings that have failed and their replanting date along with photographs of the area showing the condition of the revegetation.

- i. Annual Photos & Report Due Date: Annual photos & report are due by November 30th of each year.
- ii. Extension of the Monitoring Period: The monitoring period may be extended, at the discretion of Land Use Planning for failure to provide monitoring reports, failure of the site to meet performance standards for two consecutive years (without irrigation or replanting), or when needed to evaluate replanting or other corrective or remedial actions.
- iii. Release of Monitoring Obligation: Monitoring is required until Land Use Planning has officially released the site from further monitoring.
- iv. Failure to Submit Monitoring Reports: Failure to submit the required monitoring report by the due date may result in an extension of the monitoring period, and/or enforcement action.

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 requests an Administrative Decision by the Planning Director for a Post Emergency/Disaster Response Event. An emergency response to repair a portion of NW North Road that was damaged during a landslide on July 27, 2017 and construction of a retaining wall to protect a 24-inch water transmission line has occurred. The retaining wall was constructed along the edge of the public right-of-way and on tax lot 1N1W22D-02300. Installation of native plant species will occur to help stabilize the soil on the tax lot. The applicant completed the construction of the retaining wall and repaired NW North Road after declaring another emergency in March 2020.

2.0 Property Description & History:

Staff: The subject application is located within the right of way of NW North Road and tax lot 1N1W22D - 02300. The subject property and project area are located within the Rural Residential (RR) zoning districts in the West Hills rural area. The project area is also located within the Geologic Hazards (GH) overlay.

3.0 Public Comment:

Staff: Staff mailed a notice of application and invitation to comment on the proposed application to the required parties pursuant to MCC 39.1105 as exhibited in Exhibit C.4. Staff did not receive any public comments during the 14-day comment period.

4.0 Code Compliance and Applications Criteria:

4.1 § 39.1515 CODE COMPLIANCE AND APPLICATIONS.

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

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

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

(B) For the purposes of this section, Public Safety means the actions authorized by the permit would cause abatement of conditions found to exist on the property that endanger the life, health, personal property, or safety of the residents or public. Examples of that

situation include but are not limited to issuance of permits to replace faulty electrical wiring; repair or install furnace equipment; roof repairs; replace or repair compromised utility infrastructure for water, sewer, fuel, or power; and actions necessary to stop earth slope failures.

Staff: 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 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 was originally codified in the Zoning Code chapter related to land use application procedures and, by its terms, expressly applies to the application review process. Although now codified in the enforcement Part of the Zoning Code as a result of the more recent code consolidation project, the language and intent was not changed during that project and remains applicable to the application review process and not to the post-permit-approval enforcement process.

Importantly, a finding of satisfaction of this standard does not mean that a property is in full compliance with the Zoning 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 Zoning 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 39.1515.

There are no known land use issues on tax lot 1N1W22D-02300. For purposes of the current application, this land use application is necessary to protect public safety. The road, NW North Road is a local roadway that is a critical component within the County's infrastructure inventory. If the roadway was not fixed, the failed road and damage to the waterline owned by Tualatin Valley Water District could endanger life and the safety of public. The proposed work is also located within a valid easement that was granted to Tualatin Valley Water District. Due to these factors, the County has the authority to issue this land use decision for properties not in full compliance or resolving the Lot of Record status of those properties.

5.0 Rural Residential Criteria:

5.1 § 39.4365 REVIEW USES.

(D) Placement of Structures necessary for continued public safety, or the protection of essential public services or protection of private or public existing structures, utility facilities, roadways, driveways, accessory uses and exterior improvements damaged during an emergency/disaster event. This includes replacement of temporary structures erected during such events with permanent structures performing an identical or related function. Land use proposals for such structures shall be submitted within 12 months

following an emergency/disaster event. Applicants are responsible for all other applicable local, state and federal permitting requirements.

Staff: The applicant has applied for an Administrative Decision by the Planning Director to authorize responses to emergency/disaster events. The entirety of the response involves the repair of NW North Road and construction of a retaining wall after a landslide event that occurred in February of 2017. A second emergency notification was given in March 2020 regarding the continued movement of the soils in the area (Exhibit C.1). The retaining wall was constructed in the autumn of 2020 to ensure that the roadway is supported and a 24-inch transmission waterline located within the right-of-way is protected from further earth movement. The repair of the road and construction of the retaining wall is necessary for the continued public safety and protection of essential public services as it allows the Tualatin Valley Water District to access their water reservoir located further along NW North Road and for water to travel to downstream customers.

6.0 Geologic Hazards Criteria:

6.1 § 39.5080 EXEMPTIONS.

Ground disturbing activity occurring in association with the following uses is exempt from GH permit requirements:

(H) Emergency response activities intended to reduce or eliminate an immediate danger to life, property, or flood or fire hazards.

Staff: The subject application is located within the right of way of NW North Road and tax lot 1N1W22D - 02300. The ground disturbing activities associated with the emergency/disaster event response are located within the Geologic Hazards (GH) overlay and on slopes greater than 25%. However, as provided above, the ground disturbing activities are exempt from the Geologic Hazard requirements as the ground disturbance, construction of a retaining wall and revegetation are all emergency response activities intended to reduce or eliminate an immediate danger to life, property, or flood or fire hazards. As such, these criteria are not applicable. *These criteria are not applicable.*

7.0 Responses to an Emergency/Disaster Event Criteria:

7.1 § 39.6900- RESPONSES TO AN EMERGENCY/DISASTER EVENT.

Responses to an emergency/disaster event are allowed in all base zones when in compliance with the following standards:

Staff: The applicant requests an Administrative Decision by the Planning Director for a Post Emergency/Disaster Response Event. As discussed in Section 5.0, the emergency/disaster event response to repair a portion of NW North Road that was damaged during a landslide on July 27, 2017 and construction of a retaining wall to protect a 24-inch water transmission line has occurred. The following standards are discussed below.

7.1.1 (A) General standards for all response activities.

(1) Following emergency/disaster response actions, best management practices (BMPs) to prevent sedimentation and provide erosion control shall be utilized

whenever disaster response actions necessitate vegetation removal, excavation, and/or grading. BMPs may include but are not limited to: use of straw bales, slash windrows, filter fabric fences, sandbags, straw cover, jute netting, etc.

Staff: The applicant utilized Management Practices (BMPs) in their initial response activities. The BMPs employed included the placement of hydroseed and gravel in all areas disturbed by the emergency/disaster response. Photos provided by the applicant that show the hydroseed helped stabilize the landslide area (Exhibit B.5 – Page 5 and Exhibit C.1 – Page 4). *This criterion is met.*

(2) Structures or development installed or erected for a temporary use (e.g. sandbags, check dams, plastic sheeting, chain link fences, debris walls, etc.) shall be removed within one year following an emergency event. If it can be demonstrated that the continued use of these devices is necessary to protect life, property, public services or the environment, an extension of no more than two years may be granted by the Planning Director.

Staff: The applicant did not indicate that structures were installed or erected for a temporary use. The only development that occurred with the placement of hydroseed and gravel to stabilize the landslide area. *This criterion is met.*

(3) The new exploration, development (extraction or excavation), and production of mineral resources, used for commercial, private or public works projects, shall not be conducted as an emergency/disaster response activity.

Staff: The emergency/disaster response activity did not contain any new exploration, development (extraction or excavation), or production of mineral resources. The response activity is for the repair NW North Road and construction of a retaining wall. After which the applicant will then a rehabilitate all areas disturbed by the emergency/disaster response with trees and vegetation. *This criterion is met.*

(4) No spoils resulting from grading or excavation activities shall be deliberately deposited into a wetland, stream, pond, lake, or riparian area within Multnomah County as a part of an emergency/disaster response action. The only exception to this is for construction of a fire line during a wildfire, where avoiding the aquatic area or its buffer zone has been considered and determined to not be possible without further jeopardizing life or property.

Staff: The applicant indicated that no spoils resulting from grading or exaction activities were deposited into a wetland, stream, pond, lake, or riparian area. The initial response included the placement of hydroseed and gravel in all areas disturbed by the emergency/disaster response. Subsequent actions to construct a retaining wall resulted in some spoil materials that were contoured into the slope with the remainder removed and disposed of by the contractor hired by the applicant (Exhibit A.2). *This criterion is met.*

7.1.2 (B) Notification Requirements.

(1) Actions taken in response to an emergency/disaster event, as defined in MCC 39.2000, are allowed in all land use designations, subject to the following notification requirements.

- (a) Notification of an emergency/disaster response activity shall be submitted either within 48 hours of the commencement of a response action, or by the next business day following the start of such an action, whichever is sooner. Notification shall be submitted by the party conducting an emergency/disaster response activity or their representatives. In the case of multiple responding parties, the first party to respond shall provide the required notification, unless, upon mutual agreement of responding parties, another responder elects to assume this responsibility.**
- (b) Notification shall be submitted by mail, fax, telephone, e-mail or in person. If notification occurs by telephone, a hard copy of the notification shall be submitted by mail or in person within 7 days.**
- (c) At a minimum, the following information shall be required at the time of notification:**
- 1. Nature of emergency/disaster event.**
 - 2. Description of emergency/disaster response activities and magnitude of response actions to be taken, if applicable (such as extent of earth movement, erection of structures, etc.).**
 - 3. Location of emergency/disaster response activities.**
 - 4. Estimated start and duration of emergency/disaster response activities.**
 - 5. Contact person and phone number for the parties conducting emergency/disaster response actions.**
- (d) Repair and maintenance of an existing serviceable structure to its previously authorized and undamaged condition are not subject to the above referenced notification requirements.**

Staff: At some point in February 2017, a landslide occurred along NW North Road that resulted in the erosion of the road. The owner, Tualatin Valley Water District (TVWD) through Andrew Barret, PE and the applicant, Tony Weller, PE notified the County by e-mail on April 5, 2018 that emergency/disaster response activities would occur at a landside site (Exhibit B.5). The notification email and attached pdf contained all of the information required above.

Due to planning issues, TVWD was unable to begin the commencement of a response action. As a result, the owner and applicant re-notified the County by e-mail on March 5, 2020, that emergency/disaster response activities would commence at a landside site (Exhibit C.1). The notification email and attached pdf contained all of the information required above. *This criterion is met.*

(2) Upon notification of an emergency/disaster response action, the Planning Director shall, as soon as possible:

- (a) Review their natural resource inventory data and notify the contact person for the emergency/disaster response actions of all inventoried natural resource sites, and their buffers, that are within or adjacent to the response area or that may be adversely affected by response activities;**
- (b) Notify applicable agencies of all emergency/disaster response activities.**

Staff: Upon receipt of the notification in 2017, Planning Staff reviewed the natural resource inventory data and notified all applicable agencies. The notification was sent by e-mail on April

20, 2018 (Exhibit B.6). However, the applicant did not commence response activities at that time.

Subsequently, upon receipt of the notification in 2020, Planning Staff once again reviewed the natural resource inventory data and notified all applicable agencies. The notification was sent by e-mail on March 5, 2020 (Exhibit C.2). The project is within the Significant Environmental Concern for Streams (SEC-s) overlay and potentially located within the Geological Hazards (GH) overlay. The notification was sent to Tualatin Valley Fire and Rescue, the City of Portland Bureau of Development Services: On Site Sanitation and Multnomah County Transportation Division. No other applicable agencies were notified. *These criteria are met.*

(3) Upon response from applicable agencies, the applicant shall take necessary measures based on the recommendations of the applicable agencies to minimize impacts to resources from emergency/disaster response actions. If the recommendations of the applicable agencies conflict with those of the County or other jurisdictions, the recommendations of the County shall prevail for the purposes of this section.

Staff: No responses were received from the applicable agencies. This criterion is met.

7.1.3 (C) Post-Emergency/Disaster Response Application Requirements.

(1) Within 30 days following notification, a post-emergency/disaster response application shall be submitted by the party conducting the response action to the Planning Director. In the case of an event with multiple responding parties, the agency providing initial notification as required herein shall submit the application. An exception to this may occur if another responding party, by mutual agreement with the other respondents, elects to submit the application. Requests to extend this submittal deadline may be made in writing and shall include the reason why an extension is necessary. Extensions shall not exceed 30 days in duration and no more than two extensions shall be granted.

Staff: The applicant submitted their original post-emergency/disaster response application on December 12, 2019. As the original submittal under land use case T2-2019-12761 was more than 30 days following the notification, the application was withdrawn, as it did not meet the requirement above (Exhibit B.3). Subsequently, the applicant submitted a new notification on March 5, 2020 and submitted a new land use application on March 6, 2020 (Exhibit C.1 and Exhibit B.4). The land use case, T2-2020-13053 was also withdrawn, as the applicant did not understand that the 180-day timeline as provided in MCC 39.1135(B) could not be tolled. Due to the misunderstanding, this application, T2-2020-14180 was submitted as a continuation of T2-2020-13053, as the 180-day timeline could not be tolled (Exhibit A.1). As the applicant submitted an application on March 6, 2020, one day after the Emergency Declaration on March 5, 2020, the applicant has met the 30-day window to submit. *This criterion is met.*

(2) Post-emergency/disaster response applications shall only address development activities conducted during an emergency/disaster response. Applications shall specify if development placed during an emergency/disaster event is permanent or temporary. Applicants shall be responsible for operations under their control and that of other responders, upon mutual agreement. Responders not agreeing to

have another responder address their actions shall be responsible to submit an application for those actions.

Staff: The applicant has submitted a narrative and plans detailing the development activities conducted during the emergency/disaster response (Exhibit A.2 and A.3). The development activities that were completed included laying of hydroseed and gravel and the construction of a retaining wall to support the road. The erosion control measures are temporary, whereas the retaining is permanent. *This criterion is met.*

(3) Emergency/disaster response actions not involving structural development or ground disturbance with mechanized equipment are exempt from these requirements, except for those actions within 500' of a known cultural resource (as determined in the notification process).

Staff: The emergency/disaster response actions did involve structural development and ground disturbance with mechanized equipment, therefore are not exempt from these requirements. The applicant has submitted an application with narrative and site plans to address the requirements.

(4) Applications shall include the following information:

- (a) Applicant's name and address.**
- (b) Location of emergency/disaster response.**
- (c) A written description of the emergency/disaster response, including any structures erected, excavation or other grading activities, or vegetation removal.**
- (d) A map of the project area drawn to scale, at a scale of 1"=200' or a scale providing greater detail. The map shall include:**
 - 1. North arrow and scale.**
 - 2. Boundaries, dimensions and size of subject parcel(s).**
 - 3. Topography at a contour interval sufficient to describe the terrain of the project site.**
 - 4. Bodies of water, watercourses, and significant landforms.**
 - 5. Existing roads and structures.**
 - 6. New structures placed and any vegetation removal, excavation or grading resulting from the response actions.**
- (e) An exception to the scale requirements of subsection (4)(d) may be granted for an event encompassing an area greater than one square mile. In such cases, a clear sketch map of the entire response action area shall be provided. In addition, a map of 1"=200' or a scale providing greater detail shall be provided that shows a section of the response area exemplifying the specific actions taken.**

Staff: The applicant has provided all of the required application materials for the emergency/disaster response. The applicant has submitted a narrative and plans detailing the development activities conducted during the emergency/disaster response and are proposed during the post response (Exhibit A.2, A.3, A.4, and A.9). *These criteria are met.*

7.1.4 (D) Post-Emergency/Disaster Response Site Review.

All applications for post-emergency/disaster response Site Review shall be processed pursuant to the procedural provisions of a Type II decision and in compliance with the approval criteria of this section.

Staff: The application for post-emergency/disaster response is being processed as a Type II decision. *This criterion is met.*

7.1.5 (E) Post-Emergency/Disaster Response Approval Criteria.

Actions taken in all land use designations that are in response to an emergency/disaster event shall be reviewed for compliance with the following standards:

(1) Vegetation shall be used to screen or cover road cuts, structural development, landform alteration, and areas denuded of vegetation, as a result of emergency/disaster response actions.

Staff: The applicant has included a Vegetation Plan to show the location of various plantings used for screening. The initial response included the seeding of the area with an ODOT approved native seed mix (Exhibit A.2). Additional plantings are proposed, which includes the planting of cascara, pacific dogwood, red elderberry, cascade Oregon grape, and snowberry (Exhibit A.9). The mixture of native trees and shrubs will ensure that the structural development that results will be screened. A condition will be required that the Vegetation Plan be planted immediately following the approval of the application. Monitoring of the mitigation site will also be required as an ongoing responsibility of Tualatin Valley Water District. 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. *As conditioned, this criterion is met.*

(2) Areas denuded of vegetation as a result of emergency/disaster response actions shall be revegetated with native plant species to restore the affected areas to its pre-response condition to the greatest extent practicable. Revegetation shall occur as soon as practicable, but no later than one year after the emergency/disaster event. An exception to the one-year requirement may be granted upon demonstration of just cause, with an extension of up to one year.

Staff: The discussed previously, the applicant has included a Vegetation Plan to show the location of various plantings. As shown in site photos and revegetation plan provided by the applicant, the landslide denuded a 70 feet by 31 feet area of vegetation (Exhibit A.7 and A.9). As an immediate response, the applicant hydroseeded the area to stabilize the slope. Secondly, the applicant constructed a new retaining wall and placed gravel at the base of the wall (Exhibit A.8). After approval of this application, the applicant is proposing to revegetate the disturbance area with cascara, dogwood, elderberry, Oregon grape, and snowberry (Exhibit A.9). As the disaster was declared on March 5, 2020, the one-year requirement above was not met. However, an extension of one year will be granted as there was a misunderstanding between timelines. A condition will be required that the Vegetation Plan be planted immediately following the approval of the application and the permit will expire on March 5, 2022. *As conditioned, this criterion is met.*

(3) Spoil materials associated with grading, excavation and slide debris removal activities in relation to an emergency/disaster response action, shall either be:

- (a) Removed from Multnomah County or deposited at a site within the Multnomah County where such deposition is, or can be, allowed, or**
- (b) Contoured, to the greatest extent practicable, to retain the natural topography, or a topography which emulates that of the surrounding landscape.**

Staff: The construction of the retaining wall and associated ground disturbance resulted in spoil materials at the site. The applicant removed and disposed of the material off-site (Exhibit A.2) *These criteria are met.*

- (4) If cultural resources are discovered within the area disturbed by emergency response actions, the project applicant shall immediately cease work and contact the Planning Director and the State Historic Preservation Office (SHPO).**

Staff: The applicant indicated that no cultural resources were discovered within the area disturbed by the emergency response actions. *This criterion is met.*

- (5) To the greatest extent practicable, emergency/disaster response actions shall not adversely affect natural resources.**

Staff: As required, to the greatest extent practicable, the response actions shall not adversely affect natural resources. As discussed previously, the applicant has responded to the emergency/disaster by arresting the earth movement by seeding the slope with native hydroseed (Exhibit C.1). Then the applicant constructed a retaining wall to support the road and protect the water pipeline (Exhibit A.2, A.3, and A.4). After the wall was constructed, the applicant will revegetate the area as shown in the Revegetation Plan (Exhibit A.9). The retaining wall and emergency response remained outside of the Significant Environmental Concern for streams overlays that exist on tax lot 1N1W22D-02300 and on portions of the public right-of-way. The natural resources of the site that were affected by the landslide were the forested area. The Revegetation plantings will return the area to its pre-existing state prior to the emergency (Exhibit A.9). As such, the actions did not adversely affect the natural resources. *This criterion is met.*

- (6) Buffer zones for wetlands, streams, ponds, riparian areas, sensitive wildlife sites or areas, and sites containing rare plants, shall be maintained to the maximum extent practicable.**

- (a) When emergency/disaster response activities occur within wetlands, streams, ponds, lakes, riparian areas, or the buffer zones of these areas, the applicant shall demonstrate the following:**

- 1. All reasonable measures have been applied to ensure that the response actions have resulted in the minimum feasible alteration or destruction of the functions, existing contours, vegetation, fish and wildlife resources, and hydrology of wetlands, streams, ponds, lakes, or riparian areas.**
- 2. Areas disturbed by response activities and associated development will be rehabilitated to the maximum extent practicable.**

Staff: The emergency/disaster response did not occur within the buffer zones for a wetland, stream, pond, riparian area, sensitive wildlife site or in an area with rare plants. The landslide

and its response occurred between two buffer zones for protected Significant Environmental Concern for streams (SEC-s). The applicant took action to prevent additional soil movement into the SEC-s area by hydroseeding the slope and then constructing a retaining wall. Further as the response activities did not occur within wetlands, streams, ponds, lakes, riparian areas or the buffer zones of these areas, the applicant is not required to meet the requirements of subsection (6)(a)1. and (6)(a)2.

Additionally, the applicant is electing to employ reasonable measures to rehabilitate the disturbed areas. The measures include the rehabilitation of the area with plantings as proposed by the Revegetation Plan (Exhibit A.9). To ensure that these measures are implemented, a condition of approval will be required. *As conditioned, these criteria are met.*

(b) Impacts to wetlands, streams, ponds, lakes, and riparian areas, and their buffers will be offset through mitigation and restoration to the greatest extent practicable. Mitigation and restoration efforts shall use native vegetation, and restore natural functions, contours, vegetation patterns, hydrology and fish and wildlife resources to the maximum extent practicable.

Staff: As discussed above, the response activities did not occur within wetlands, streams, ponds, lakes, riparian areas, or the buffer zones of these areas. Therefore the requirements above are not applicable. *This criterion is not applicable.*

(c) If the Planning Director determines that the emergency/disaster response actions had minor effects on the aquatic area or its buffer zone that could be eliminated with simple modifications, a letter shall be sent to the project applicant that describes the effects and measures that need to be taken to eliminate them. If the project applicant accepts these recommendations, the Planning Director shall incorporate them into the Site Review decision.

Staff: Based on the response actions undertaken, no actions occurred within the SEC-s overlay zones. No minor effects occurred. *This criterion is not applicable.*

(d) Unless addressed through (C) above, mitigation and restoration efforts shall be delineated in a Rehabilitation Plan. Rehabilitation Plans shall satisfy the following:

- 1. Plans shall include a plan view and cross-sectional drawing at a scale that adequately depicts site rehabilitation efforts. Plans will illustrate final site topographic contours that emulate the surrounding natural landscape.**
- 2. Planting plans shall be included that specify native plant species to be used, specimen quantities, and plant locations.**
- 3. The project applicant shall be responsible for the successful rehabilitation of all areas disturbed by emergency/disaster response activities.**

Staff: The applicant has included all mitigation and proposed restoration efforts. The site plan illustrates a plan view and cross-sectional drawings (Exhibit A.3 and A.4). The rehabilitation

plan also includes a Revegetation Plan that details the specific native plant species that were planted (Exhibit A.9). As discussed in subsection (C) above, the applicant mitigated the initial emergency/disaster response activities. The activities included the application of hydroseed in the response area to stabilize the slope (Exhibit A.2). To rehabilitate the disturbed areas the applicant is proposing to revegetate the disturbance area with cascara, dogwood, elderberry, Oregon grape, and snowberry (Exhibit A.9). To ensure that these measures are implemented, a condition of approval will be required. *As conditioned, these criteria are met.*

8.0 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for an Administrative Decision by the Planning Director for a Post Emergency/Disaster Response application in the Rural Residential (RR) zone.

9.0 Exhibits

- ‘A’ Applicant’s Exhibits
- ‘B’ Staff Exhibits
- ‘C’ Procedural Exhibits

Exhibits with a “*” after the exhibit # have been included as part of the mailed decision. 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 T2-2020-14180 at the Land Use Planning office.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	7	General Application Form, E-mail, and Receipt	12/23/2020
A.2	4	Narrative	12/23/2020
A.3	1	Site Plan (34’ x 22’)	12/23/2020
A.4*	10	Construction Plans (34.96” x 22.19”) <ul style="list-style-type: none"> • Sheet C1 – Title Sheet • Sheet C2 – Existing Conditions Plan • *Sheet C3 – Site Plan • *Sheet C4 – Grading & Erosion Control Plan • *Sheet C5 – Retaining Wall Plan & Profile • Sheet C6 – Guardrail Details • Sheet C7 – Erosion Control, Fence and Guardrail Details • Sheet S0.01 – Soldier Pile Wall • Sheet S1.01 – Soldier Pile Wall • Sheet S8.01 – Soldier Pile Wall 	12/23/2020
A.5	1	Revegetation Plan (34” x 22’)	12/23/2020
A.6	17	Transportation Division Utility Placement Permit for work in the Right of Way	12/23/2020
A.7	7	Site from Photos taken on May 16, 2017	04/19/2021

A.8	6	Site from Photos taken on October 29, 2020	04/19/2021
A.9*	1	Revised Revegetation Plan (34" x 22")	05/12/2021
‘B’	#	Staff Exhibits	Date
B.1	2	Division of Assessment, Recording, and Taxation (DART): Property Information for 1N1W22D -02300 (Alt Acct #R090604060)	12/23/2020
B.2	1	Division of Assessment, Recording, and Taxation (DART): Map with the right of way of NW North Road and 1N1W22D -02300 (Alt Acct #R090604060) highlighted	12/23/2020
B.3	1	General Application Form submitted as part of T2-2019- 12761 submitted on December 12, 2019	12/23/2020
B.4	1	General Application Form submitted as part of T2-2020- 13053 submitted on March 6, 2020	12/23/2020
B.5	15	Email and Emergency Declaration from Tualatin Valley Water District (TVWD) declared on April 5, 2018	12/23/2020
B.6	8	E-mail Notification from Multnomah County to Agency Partners sent on April 20, 2018	12/23/2020
‘C’	#	Administration & Procedures	Date
C.1	10	Emergency Declaration from Tualatin Valley Water District (TVWD) declared on March 4, 2020	12/23/2020
C.2	1	E-mail Notification from Multnomah County to Agency Partners sent on March 5, 2020	12/23/2020
C.3	1	Complete letter (day 1)	01/20/2021
C.4	6	Opportunity to Comment and mailing list	03/22/2021
C.5	9	Administrative Decision (“Short Decision”) and mailing list	05/24/2021
C.6	21	Administrative Decision (“Full Decision”) and mailing list	05/24/2021