

## NOTICE OF DECISION

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

**Case File:** T2-2017-7420

**Permit:** Significant Environmental Concern  
Permit - Water Resources (SEC-wr)

**Location:** SE Telford Rd and 272<sup>nd</sup> Road (east of  
McNutt Rd)  
Tax Lot, 4600, Section 23D,  
Township 1S, Range 3E, W.M.  
R993230380

**Applicant:** Katie Songer, Johnson Creek Watershed  
Council

**Owners:** Portland Parks and Recreation

**Base Zone:** West of Sandy River Rural Plan Area,  
Multiple Use Agriculture – 20 (MUA-  
20)

**Overlays:** Significant Environmental Concern for Water Resources (SEC-wr)  
Flood Hazard (FD)

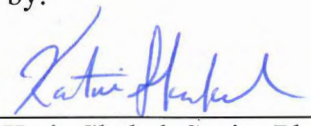


**Summary:** Replacement of Culvert on the North Fork of Johnson Creek at the Springwater Trail in order to provide fish passage for salmonids to enter the North Fork. A 36' round HDPE culvert will be placed with a 12' diameter pipe arch culvert. This is part of a multi-agency effort to open the entire North Fork to fish passage by 2018.

**Decision:** Approved with Conditions

Unless appealed, this decision is effective August 1, 2017 at 4:00 PM.

Issued by:

By:   
Katie Skakel, Senior Planner

For: Michael Cerbone, Planning  
Director

Date: July 18, 2017

**Opportunity to Review the Record:** A copy of the Planning Director Decision, and all evidence submitted associated with this application, is available for inspection, at no cost, at the Land Use Planning office during normal business hours. Copies of all documents may be purchased at the rate of 30-cents per page. The Planning Director Decision contains the findings and conclusions upon which the decision is based, along with any conditions of approval. For further information on this case, contact Katie Skakel, Staff Planner at 503-988-0213.

**Opportunity to Appeal:** This decision may be appealed within 14 days of the date it was rendered, pursuant to the provisions of MCC 37.0640. An appeal requires a \$250.00 fee and must state the specific legal grounds on which it is based. To obtain appeal forms or information on the procedure, contact the Land Use Planning offices at 1600 SE 190th Avenue (Phone: 503-988-3043). This decision cannot be appealed to the Land Use Board of Appeals until all local appeals are exhausted.

**This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Tuesday, August 1, 2017 at 4:00 pm.**

**Applicable Approval Criteria:** Multnomah County Code (MCC): MCC 36.2820 Allowed Uses in MUA-20, 37.0560 Code Compliance, MCC 36.0005 Lot of Record, 36.2870 Lot of Record, 36.4550 General Requirements, 36.4555 Water Resources Approval Criteria, and 36.0570 Dark Sky Lighting Standards.

Copies of the referenced Multnomah County Code (MCC) and Multnomah County Road Rules (MCRR) sections can be obtained by contacting our office at 503-988-3043 or by visiting our website at <http://www.co.multnomah.or.us/landuse> or <http://web.multco.us/transportation-planning>.

### **Scope of Approval**

1. Approval of this land use permit is based on the submitted written narrative(s) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.
2. This land use permit expires two years from the date the decision is final pursuant to MCC 37.0690(A) as applicable. The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 37.0695, as applicable. The request for a permit extension must be submitted prior to the expiration of the approval period.

### **Conditions of Approval**

The conditions listed are necessary to ensure that approval criteria for this land use permit are satisfied. Where a condition relates to a specific approval criterion, the code citation for that criterion follows in parenthesis.

1. Prior to work commencing, and through the duration of the project, equipment access areas shall be clearly flagged to prevent equipment from encroaching into the water resource areas other than what is necessary to replace the pipe with the arch culvert [MCC 36.4550(A) and MCC 36.4555(D)(5) and (7)].

2. Staging of equipment or vehicles shall occur no closer than 150-feet from the stream or water body [MCC 36.4555(A)].
3. Any equipment or vehicle working in stream shall be inspected daily prior to entering the water body to ensure there are no leaks or hazardous materials present [MCC 36.4555(A)].
4. Prior to daily work commencing any equipment or vehicle working in stream shall be cleaned. [MCC 36.4555(A)]
5. Nuisance plants listed in MCC 36.4550(C) shall be removed from the development area and are prohibited from being planted. [MCC 36.4550(C)]
6. Vegetation planted as part of the habitat restoration and enhancement shall be native plants as proposed in the narrative [MCC 36.4555(D)(6)].

**Note:** Once this decision is final, application for building permits, if applicable, may be made with the City of Gresham. When ready to have building permits signed off, the applicant shall call the Staff Planner, Katie Skakel, at (503) 988-0213, for an appointment for review and approval of the conditions and to sign the building permit plans. Please note, Multnomah County must review and sign off the building permits before the applicant submits building plans to the City of Gresham. Three (3) sets each of the site plan and building plans are needed for building permit sign off. At the time of building permit review, a fee of \$93.00 may be collected. In addition, an erosion control inspection fee of \$82.00 may be required.

<p><b>Notice to Mortgagee, Lien Holder, Vendor, or Seller:</b> ORS Chapter 215 requires that if you receive this notice it must be promptly forwarded to the purchaser.</p>
---

## **Findings of Fact**

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

### **1.00 Project Description:**

**Applicant:** The purpose of this project is to replace an undersized culvert with an appropriately sized culvert, in order to restore fish passage and reduce flooding at the project location. The existing 36” diameter, round HDPE culvert is causing channel constriction and increased velocities inside the culvert, as well as flooding and an overall decreased connectivity of the river system. This culvert was identified as a high priority barrier by the Johnson Creek Watershed Council in 2015, based on a comprehensive assessment of 273 culverts and dams in the watershed from 2012-15. The assessment found the culvert’s current passability for salmonids to be 33%; the replacement culvert will have 100% passability.

This culvert replacement is one of several taking place from 2016—18, in a multi-agency effort to open the entire North Fork of Johnson Creek to fish migration. Participating agencies include Multnomah County, East Multnomah Soil & Water Conservation District, Oregon Department of Transportation, and Portland Parks & Recreation. In 2014, a temperature survey by Multnomah County found the North Fork to have among the coolest temperatures in the watershed, which is significant since the entire watershed is listed by DEQ as temperature impaired. In addition, coho spawning activity has been documented in the mainstem of Johnson Creek just downstream of the project location in recent years. We believe that, if opened to fish passage, the North Fork could provide valuable refugia to salmonids.

#### **Project Design**

The existing 36” round culvert will be removed and replaced with a 150” span, 96” rise pipe arch culvert, which will be countersunk to a depth of 36”. The existing culvert is 35 feet in length; the proposed culvert will be 40 feet in length.

#### **Construction Details**

The following activities will take place during construction:

- Fish and wildlife salvage: Biologists from ODFW will remove fish prior to construction; efforts will also be made to salvage wildlife prior to and during construction.
- Conservation measures: The work area will be isolated by diverting stream flows with a pump around system and approximately 200 sandbags. Silt fences will be used and equipment will be washed prior to entering the project site.
- 40 lineal feet of asphalt along the Springwater Corridor will be removed directly above the culvert, to be replaced at the end of the project.
- Springwater Trail pedestrian and bicycle traffic will be temporarily diverted along SE Telford Rd (see below).
- Vegetation (mainly Himalayan blackberry) will be removed on the streambanks surrounding the culverts as well as in the staging area (see below). The cleared area will be replanted by volunteers under the supervision of the Johnson Creek Watershed Council after construction is finished.

- Revegetation will involve native plants, mainly upland shrubs, and will mitigate erosion.
- Approximately 1250 square feet of streambed disturbance is expected, and 340 cubic yards of fill removal, in order to remove existing culverts and countersink the new culvert.
- Approximately 260 cubic yards of fill replacement is expected after the new culvert is installed; in channel fill will be a gravel and cobble mix that mimics the stream's natural substrate.

### **Detour & Safety**

Please see attached drawings, p. 4, for the traffic control plan. Additional details include:

- Pedestrian and bicycle traffic from the Trail will be detoured onto the shoulder of Telford Rd during construction, a period of approximately 2 weeks.
- Trail users will be notified of this detour via an email to pertinent list serves and group leaders, beginning one month prior to construction and continuing weekly until the detour is no longer needed. Signage will also provide notice.
- Safety will be emphasized in the email, with users encouraged to exercise caution and to walk bicycles along the detour, especially when traveling against the flow of vehicle traffic.

### **Staging of Equipment & Materials**

Staging will include the following:

- Equipment and materials will be staged on the Springwater Trail, with some materials also being staged between the Trail and Telford Rd. (See attached drawings, p. 4.)
- Two tracked excavators will be used for removal of the existing culvert, excavation, replacement with the new culvert, and fill. The excavators will be restricted to areas that are not sensitive to compaction.

**Staff:** The culvert is located where the North Fork of Johnson Creek flows under the Springwater Trail, in unincorporated Multnomah County, near SE Telford Rd and SE 262<sup>nd</sup> Ave. As the owner of the Springwater Trail, Portland Parks and Recreation (PP&R) is the landowner even though the project is located outside of the Portland City Limits. While construction will take place only on PP&R property, the adjacent Metro property may be used for parking contractors' personal vehicles, via a Metro Special Use Permit.

The applicant is seeking approval to replace the culvert on the North Fork of Johnson Creek at the Springwater Trail in order to provide fish passage for salmonids to enter cool water of the North Fork. A 3-foot diameter culvert will be replaced with a 12' diameter pipe arch culvert. This is part of a multi-agency effort to open the entire North Fork to fish passage by 2018. The project will occur in the Multiple Use Agriculture-20 (MUA-20) zone and within the Significant Environmental Concern for Water Resources (SEC-wr) overlay. The project site is located adjacent to the Springwater Corridor Trail approximately 700 ft NW of Telford and 262<sup>nd</sup> Street. The subject property is 4.7 acres. Pedestrian and bicycle traffic on the Trail will be detoured to the shoulder of SE Telford during construction. Construction will last approximately two weeks and will take place in the summer of 2017, during the in-water window between July 15 and August 31.

## **2.00 Code Compliance**

**MCC 37.0560 CODE COMPLIANCE AND APPLICATIONS.**

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

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

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

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

**Staff:** There are no known code compliance issues associated with the one parcel involved and as such the County has the authority to issue this land use decision. *Criteria met.*

**MCC 36.2870 LOT OF RECORD.**

**(A) In addition to the Lot of Record definition standards in MCC 36.0005, for the purposes of this district the significant dates and ordinances for verifying zoning compliance may include, but are not limited to, the following:**

- (1) July 10, 1958, SR zone applied;**
- (2) July 10, 1958, F-2 zone applied;**
- (3) December 9, 1975, F-2 minimum lot size increased, Ord. 115 & 116;**
- (4) October 6, 1977, MUA-20 zone applied, Ord. 148 & 149;**
- (5) October 13, 1983, zone change from EFU to MUA-20 for some properties, Ord. 395;**

(6) May 16, 2002, Lot of Record section amended, Ord. 982.

(B) A Lot of Record which has less than the minimum lot size for new parcels or lots, less than the front lot line minimums required, or which does not meet the access requirement of MCC 36.2885, may be occupied by any allowed use, review use or conditional use when in compliance with the other requirements of this district.

(C) Except as otherwise provided by MCC 36.2860, 36.2875, and 36.4300 through 36.4360, no sale or conveyance of any portion of a lot, other than for a public purpose, shall leave a structure on the remainder of the lot with less than minimum lot or yard requirements or result in a lot with less than the area or width requirements of this district.

(D) The following shall not be deemed to be a lot of record:

(1) An area of land described as a tax lot solely for assessment and taxation purposes;

(2) An area of land created by the foreclosure of a security interest.

(3) An area of land created by court decree.

**Staff:** Tax Lot 4600 is a Lot of Record (LOR) based on Findings in Permit CS-0-1, which approved a Community Service permit for construction of a 1.2-mile extension of existing Springwater Corridor Trail. The LOR was confirmed in the CS-0-1 Decision. *Criteria met. Parcel is a Lot of Record.*

#### 4.00 Multiple Agricultural Use-20:

##### 4.01 MCC 36.2820 ALLOWED USES

(D) Public and private conservation areas and structures for the protection of water, soil, open space, forest and wildlife resources.

**Staff:** The culvert replacement for proposed habitat and flood plain restoration and enhancement is an allowed use. *Criterion met.*

##### 4.02 MCC 36.2855 DIMENSIONAL STANDARDS AND DEVELOPMENT REQUIREMENTS.

All development proposed in this district shall comply with the applicable provisions of this section.

(A) Except as provided in MCC 36.2860, 36.2870, 36.2875, and 36.4300 through 36.4360, the minimum lot size shall be 20 acres.

**Staff:** The proposal does not include any land divisions so minimum lot size is not applicable. *Criterion met.*



**(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:** A land division is not proposed therefore lot area is not applicable. *Criterion met.*

**(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.**

**Staff:** No buildings are proposed. Therefore, setbacks and building height are not applicable. *Criterion met.*

**(D) The minimum yard requirement shall be increased where the yard abuts a street having insufficient right-of-way width to serve the area. The county Road Official shall determine the necessary right-of-way widths based upon the county “Design and Construction Manual” and the Planning Director shall determine any additional yard requirements in consultation with the Road Official.**

**Staff:** No buildings are proposed. Therefore yard requirements are not triggered. *Criterion 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:** No buildings are proposed. Therefore height limitations are not applicable. *Criterion met.*

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

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

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

**Staff:** No impervious surface is proposed nor are any restrooms. As such, septic and stormwater are not reviewed. *Criterion met.*



**(G) Grading and erosion control measures sufficient to ensure that visible or measurable erosion does not leave the site shall be maintained during development. A grading and erosion control permit shall be obtained for development that is subject to MCC Chapter 29.**

**Staff:** The applicant has submitted a grading and erosion control permit to ensure appropriate erosion control measures are in place. That permit satisfies this requirement. *Criterion met.*

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

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

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

**Staff:** A dwelling is not included with the application request. *Criterion met.*

**(I) Agricultural structures and equine facilities such as barns, stables, silos, farm equipment sheds, greenhouses or similar structures that do not exceed the maximum height requirement may have a reduced minimum rear yard of less than 30 feet, to minimum of 10 feet, if:**

**(1) The structure is located at least 60 feet from any existing dwelling, other than the dwelling(s) on the same tract, where the rear property line is also the rear property line of the adjacent tract, or**

**(2) The structure is located at least 40 feet from any existing dwelling, other than the dwelling(s) on the same tract, where the rear property line is also the side property line of the adjacent tract.**

**(3) Placement of an agricultural related structure under these provisions in (I) do not change the minimum yard requirements for future dwellings on adjacent property.**

**Staff:** No agricultural structures or buildings are proposed as part of the application. *Criterion met.*

## **5.00 Significant Environmental Concern Permit:**

### **5.01 MCC 36.4550 GENERAL REQUIREMENTS FOR APPROVAL IN AREAS DESIGNATED AS SEC-WR OR SEC-H.**

**The requirements in this section shall be satisfied for development in the SEC-wr and SEC-h areas in addition to the provisions of 36.4555 or 36.4560 as applicable.**

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

**Staff:** The applicant’s narrative discusses the Best Management Practices that will be implemented through the project (Exhibit A.2). Those practices include:

- Performing work only during ODFW’s in water work window of July 15 through August 31, coinciding with Johnson Creek’s low summer flow.
- Revegetate stream bank and disturbed areas immediately following construction of the woody debris structures.
- Use of straw wattles.
- Staging and cleaning of equipment over 150-feet from a water body.
- Daily inspection of fluid leaks on equipment.
- Regular cleaning of equipment used in-stream.

The listed practices will help prevent erosion and protect the stream during the project. *With condition, criterion met.*

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

**Staff:** No lighting is proposed as part of the project. *Criterion met.*

**(C) The following nuisance plants, in addition to the nuisance plants defined in 36.4510 shall not be used as landscape plantings within the SEC-wr and SEC-h Overlay Zone:**

Scientific Name	Common Name
<i>Chelidonium majus</i>	Lesser celandine
<i>Cirsium arvense</i>	Canada Thistle
<i>Cirsium vulgare</i>	Common Thistle
<i>Clematis ligusticifolia</i>	Western Clematis
<i>Clematis vitalba</i>	Traveler’s Joy
<i>Conium maculatum</i>	Poison hemlock
<i>Convolvulus arvensis</i>	Field Morning-glory
<i>Convolvulus nyctagineus</i>	Night-blooming Morning-glory
<i>Convolvulus sepium</i>	Lady’s nightcap
<i>Cortaderia selloana</i>	Pampas grass
<i>Crataegus sp. except C. douglasii</i>	hawthorn, except native species
<i>Cytisus scoparius</i>	Scotch broom
<i>Daucus carota</i>	Queen Ann’s Lace
<i>Elodea densa</i>	South American Water-weed
<i>Equisetum arvense</i>	Common Horsetail
<i>Equisetum telemateia</i>	Giant Horsetail
<i>Erodium cicutarium</i>	Crane’s Bill
<i>Geranium robertianum</i>	Robert Geranium
<i>Hedera helix</i>	English Ivy
<i>Hypericum perforatum</i>	St. John’s Wort
<i>Ilex aquafolium</i>	English Holly
<i>Laburnum watereri</i>	Golden Chain Tree
<i>Lemna minor</i>	Duckweed, Water Lentil

Scientific Name	Common Name
<i>Loentodon autumnalis</i>	Fall Dandelion
<i>Lythrum salicaria</i>	Purple Loosestrife
<i>Myriophyllum spicatum</i>	Eurasian Watermilfoil
<i>Phalaris arundinacea</i>	Reed Canary grass
<i>Poa annua</i>	Annual Bluegrass
<i>Polygonum coccineum</i>	Swamp Smartweed
<i>Polygonum convolvulus</i>	Climbing Binaweed
<i>Polygonum sachalinense</i>	Giant Knotweed
<i>Prunus laurocerasus</i>	English, Portugese Laurel
<i>Rhus diversiloba</i>	Poison Oak
<i>Rubus discolor</i>	Himalayan Blackberry
<i>Rubus laciniatus</i>	Evergreen Blackberry
<i>Senecio jacobaea</i>	Tansy Ragwort
<i>Solanum dulcamara</i>	Blue Bindweed
<i>Solanum nigrum</i>	Garden Nightshade
<i>Solanum sarrachoides</i>	Hairy Nightshade
<i>Taraxacum officinale</i>	Common Dandelion
<i>Utricularia vulgaris</i>	Common Bladderwort
<i>Urtica dioica</i>	Stinging Nettle
<i>Vinca major</i>	Periwinkle (large leaf)
<i>Vinca minor</i>	Periwinkle (small leaf)
<i>Xanthium spinosum</i>	Spiny Cocklebur
<i>various genera</i>	Bamboo sp.

**Staff:** Nuisance plant removal and a prohibition of planting nuisance plants in the development area shall be a condition of approval. *With condition, criterion met.*

**5.02 MCC 36.4555 CRITERIA FOR APPROVAL OF SEC-WR PERMIT –WATER RESOURCE**

**Except for the exempt uses listed in MCC 36.4520 and the existing uses pursuant to 36.4525, no development shall be allowed within a Water Resource Area unless the provisions of section (A) or (B) or (C) below are satisfied. An application shall not be approved unless it contains the site analysis information required in 36.4540(A) and (C), and meets the general requirements in 36.4550.**

**(B) Alternatives Analysis - Development proposed within a Water Resource Area may be allowed if there is no alternative, when the other requirements of this district including the Development Standards of (D) and the provisions for Mitigation in (E) are met. The applicant shall prepare an alternatives analysis which demonstrates that:**

**(1) No practicable alternatives to the requested development exist that will not disturb the Water Resource Area; and**

**Response:** A few alternatives were considered for the project design. Criteria for restoring fish passage at this location included:

- 1) A culvert size large enough to meet current state and federal specifications (and thus to be adequate for flood conveyance and maintenance needs);
- 2) A design that would not require fill removal below an approximately 3-foot depth, in case of difficulty excavating or dewatering;
- 3) A substrate similar to the natural stream bottom that would prevent scouring.

We considered a round culvert, but the necessity of a 12-ft diameter (based on active channel width) would require a prohibitive amount of fill removal and create the possibility of encountering bedrock. We next considered a bridge, which would require far less fill removal and would allow for a natural stream substrate. However, the property owner, Portland Parks & Recreation, prefers culverts to bridges due to the lower cost of maintenance. We ultimately chose a pipe arch culvert with a 150” span and 96” rise. This shape allows for the necessary height and width requirements without the need to remove as much fill. This project should meet the requirements in County Code 36.4555(B): no practicable alternative exists, development will be limited to the culvert area and will restore that area to a better condition, and there will be a benefit to the property of resource area.

**Staff:** Because the project includes restoration of segments of Johnson Creek, the project is dependant on the water resource that is protected under the SEC-wr. As such, there is no alternative to the location of the proposed project. The project helps meet the intent and purpose of the SEC-wr by enhancing the environmental characteristics of the mapped resource. *Criterion met.*

**(2) Development in the Water Resource Area has been limited to the area necessary to allow for the proposed use;**

**Response:** The limits of disturbance will be minimized to the extent possible. Equipment and materials will be staged mainly on the Springwater Trail to limit the area staged on undeveloped soil. Those equipment and materials that do need to be staged on undeveloped soil (between SE Telford Rd and the Springwater Trail) will be mitigated with best management practices such as silt fencing if necessary; see response to 29.365(A)(2)(f) through (k). The site will be isolated and dewatered via a pump-around system prior to construction. The non-trail staging area will be revegetated with native plants after construction.

**Staff:** The applicant has submitted site plans and a narrative that shows the extent of the restoration work (Exhibit A.2 and A.4). The development in the area is clearly defined to areas where necessary development will occur. *Criterion met.*

**(3) Development shall occur as far as practically possible from the stream; and**

**Response:** The West of Sandy River Wildlife Habitat and Stream Corridor ESEE Report includes a summary sheet for the wildlife habitat and the riparian corridor for this tributary to Johnson Creek, and includes the following information: “A mixed deciduous/coniferous forest is present along much of this tributary. The forest is narrow and somewhat sparse in the lower portion but widens considerable upstream of Highway 26. Wildlife habitat is reduced where Himalayan blackberry is dominant along the stream and where the stream is bordered by mowed grass. A transitional wet forest is present at the headwaters of this tributary, just north of the West Orient School.” The Riparian corridor summary sheet states the following: “The perennial tributary varies in width from 2 to 6 feet wide and is channelized in portions. A mixed deciduous/coniferous forest is present along much of the tributary. The forest is narrow and somewhat sparse in the lower portion but widens considerably upstream of Highway 26. Below 262nd Avenue, the riparian corridor is disturbed in areas where Himalayan blackberry is dominant. Above 262nd Avenue, the riparian tree and shrub cover is absent in a few areas where mowed grass is present up to the edge of the stream. Several nursery fields are present adjacent to the upstream portion of this unit. The stream originates in a transitional wet forest just north of the West Orient School. This unit receives roadside runoff. The major dominant trees are listed as red alder and Douglas fir. The comments/recommendations are as follows: “Plant native trees and shrubs to enhance riparian corridor in areas where stream is currently bordered by mowed grass. Control Himalayan blackberry and English holly adjacent to stream.” See the ESEE for more information.

**Staff:** The project meets the intent and purpose of the SEC code by enhancing the environmental characteristics of the mapped resource. Because of the nature of the project, the development cannot be done outside the stream. As such, it is as far as practically possible from the stream. *Criterion met.*

**(4) The Water Resource Area can be restored to an equal or better condition; or**

**Response:** The limits of disturbance will be minimized, and all impacts in the Water Resource Area will be construction-related. The disturbed area will be restored to an equal or better condition: an undersized culvert will be replaced with an appropriately sized one that allows fish passage; invasive vegetation will be replaced with native plants; and the removed Springwater Trail section will be repaved.

**Staff:** The project meets the intent and purpose of SEC code by enhancing the environmental characteristics of the mapped resource. Because of the nature of the project, the development cannot be done outside the stream. As such, the type of culvert replacement, mitigation, and habitat restoration creates a better condition. *Criterion met.*

**(5) Any net loss on the property of resource area, function and/or value can be mitigated.**

**Response:** There will be no net loss of resource area, function, and/or value. The project is providing fish passage where there is none now, so the site will be left in better condition than it is now. As such, there will be a benefit to the property of resource area.

**Staff:** The project meets the intent and purpose of SEC code by enhancing the environmental characteristics of the mapped resource. Because of the nature of the project, the development cannot be done outside the stream. As such, the type of culvert replacement, mitigation, and habitat restoration as shown on Exhibit A.2 and A.4 creates a better condition that will result in a net gain to the resource area. *Criterion met*

**(C) Buffer Averaging - Development may be allowed to encroach into the 200' SEC-wr overlay zone or "buffer" when the provisions of (1) through (6) below are satisfied. These provisions are intended to allow development to extend a specific amount into the edges of the overlay zone without an alternatives analysis in exchange for increasing the area of vegetated corridor on the property that is in good condition.**

- (1) Site assessment information pursuant to 36.4540(A) and (C) has been submitted.**
- (2) The riparian/vegetated corridor is certified to be in a marginal or degraded condition pursuant to Table 2. Buffer averaging is not allowed to encroach in areas certified to be in good condition.**
- (3) The maximum encroachment does not exceed 20% of the frontage length of the vegetated corridor by 20% of the required width.**
- (4) The entire remaining vegetated corridor on the project site or the first 50 feet closest to the stream (whichever is less) will be enhanced to "good" condition pursuant to Table 2.**
- (5) The area of encroachment will be replaced with added buffer area at a 1:1 ratio.**
- (6) The replacement area will be incorporated into the remaining vegetated corridor on the project site and meet the "good" condition pursuant to Table 2, regardless of its distance from the resource area.**

**Response:** Buffer Averaging does not apply to this project because the entire project is occurring within the SEC-wr overlay zone.

**Staff:** Because the project includes restoration of this segment of Johnson Creel, the project is dependent on the water resource that is protected under the SEC-wr. As such, there is no alternative to the location of the proposed project and buffering averaging does not apply here. The project helps meet the intent and purpose of the SEC-wr by enhancing the environmental characteristic of the mapped resource. *Criterion met*

**(D) Development Standards - Development within the Water Resource Area shall comply with the following standards:**

**(1) Development of trails, rest points, viewpoints, and other facilities for the enjoyment of the resource must be done in such a manner so as to minimize impacts on the natural resource while allowing for the enjoyment of the natural resource.**

**Response:** This project involves no new development of the above features. No new wetland inventory has been indicated for this project; no wetland mitigation will be required. A site visit took place on December 13, 2016 and included Dave Stewart and Susan Barnes, Regional Biologists with Oregon Department of Fish & Wildlife. The site was also visited by Mart Hughes, Natural Resource Ecologist with Portland Parks & Recreation, in winter 2016-17. Plans for fish and wildlife salvage, staging area location and BMPs, and construction have taken all of these professionals' recommendations into account.

**Staff:** No facilities such as those mentioned in the criterion are proposed for the project.  
*Criterion met.*

**(2) Development in areas of dense standing trees shall be designed to minimize the numbers of trees to be cut. No more than 50 percent of mature standing trees (of 6-inch DBH greater) shall be removed without a one-for-one replacement with comparable species. The site plan for the proposed activity shall identify all mature standing trees by type, size, and location, which are proposed for removal, and the location and type of replacement trees.**

**Response:** Numbers of cut trees will be minimized, and no mature standing trees shall be removed.

**Staff:** The applicant is not proposing to remove any trees as part of the project. The 'development' is installing large woody debris structures in the creek and along the banks to provide improved fish habitat. Logs for the structures are to be imported in to the site, constructed and installed. Since no trees will be removed, no replacement is required.  
*Criterion met.*

**(3) Areas of standing trees, shrubs, and natural vegetation will remain connected or contiguous, particularly along natural drainage courses, so as to provide a transition between the proposed development and the natural resource, to provide food, water, and cover for wildlife, and to protect the visual amenity values of the natural resource.**

**Response:** The purpose of this project is to restore in-stream connectivity for fish and other wildlife. In addition, the Springwater Corridor is designed to have contiguous vegetated areas along much of its length; vegetation removed for this project will be replaced with native vegetation that will provide better habitat for native wildlife than the previous vegetation.

**Staff:** The applicant is not proposing to remove any trees as part of this project. The “development” of installing a culvert is to improve fish habitat. Since no trees will be removed, no replacement is required. *Criterion met.*

**(4) The Water Resource Area shall be restored to "good condition" and maintained in accordance with the mitigation plan pursuant to (E) below and the specifications in Table 2.**

**Response:** The Water Resource Area will be restored to a good condition that improves upon its current state: restored stream substrate will mimic natural conditions, and revegetation will be composed of native plants.

**Response and Staff:** The very nature of the project is to enhance habitat and flood capacity and requires work in the water resource in order to be effective. Restoration and enhancement projects are allowed in the underlying zone. Because the project is for the enhancement of the habitat and floodplain, the development is limited to those areas that need to be improved from a habitat and floodplain perspective. The assessment performed by Inter-Fluve found that the general area of the project is in “good” condition as defined in the code (Exhibit A.4). Over the years there has been a coalition of groups (including the Johnson Creek Watershed Council, Oregon Department of Fish and Wildlife, City of Gresham Etc) working on improving the water resource and enhancing the riparian corridors. The proposed work within the stream and along the corridor will improve the fish habitat (which is as important as upland habitat) as well as flood capacity. As such, the proposed development is limited to the area necessary for the fish habitat improvement and enhancement.

**Staff:** There is no net loss to the resource area. All areas will remain in “good” condition and the project will enhance habitat and resources and improve the flood capacity of the creek. *Criterion met.*

**(5) To the extent practicable, existing vegetation shall be protected and left in place. Work areas shall be carefully located and marked to reduce potential damage to the Water Resource Area. Trees in the Water Resource Area shall not be used as anchors for stabilizing construction equipment.**

**Response:** Vegetation disturbance will be minimized, with equipment and materials mainly staged along the Springwater Trail and only a small area between the Trail and SE Telford Rd used for some staging. Lath and flagging can be marked along the limits of disturbance to protect the surrounding area. Trees will not be used as anchors for stabilizing equipment.

**Staff:** The applicant is not proposing to remove any trees as part of this project. The “development” of installing a culvert is to improve fish habitat. Since no trees will be removed, no replacement is required. Further, the work areas shall be carefully located and marked to reduce potential damage to the Water Resource Area. *With condition, criterion met.*

**(6) Where existing vegetation has been removed, or the original land contours disturbed, the site shall be revegetated, and the vegetation shall be established as soon as practicable. Nuisance plants, as identified in Table 1, may be removed at any time. Interim erosion control measures such as mulching shall be used to avoid erosion on bare areas. Nuisance plants shall be replaced with non-nuisance plants**



**by the next growing season. Figure 1 Chapter 36 – West of Sandy River Plan Area 5-25 (S-2 - LU 2012)**

**Response:** Where existing vegetation has been removed, the site will be revegetated in the winter following construction, planted with native bareroot plants. Mulch will be used as necessary to protect soil from erosion and/or to amend the soil.

**Staff:** Any invasive vegetation is proposed to be removed. The applicant has stated that there will be new vegetation planted throughout the project site as well, Native vegetation is proposed for the project and is a condition of approval. *With Condition, criterion met.*

**(7) Prior to construction, the Water Resource Area shall be flagged, fenced or otherwise marked and shall remain undisturbed except as otherwise allowed by this district. Such markings shall be maintained until construction is complete.**

**Response:** Lath and flagging can be marked along the limits of disturbance to protect the surrounding area.

**Staff:** As a condition of approval, lath and flagging can be marked along the limits of disturbance to protect the surrounding area. *With Condition, criterion met.*

**(8) Stormwater quantity control and quality control facilities:**

- (a) Stormwater management shall be conducted in a manner that does not increase the flow of stormwater to the stream above pre-development levels.**
- (b) The stormwater quantity control and quality control facility may only encroach a maximum of 25 feet into the outside boundary of the Water Resource Area of a primary water feature; and**
- (c) The area of encroachment must be replaced by adding an area equal in size and with similar functions and values to the Water Resource Area on the subject property**

**Response:** No stormwater runoff will be attributed to the development, as no new impervious surface is being created.

**Staff:** No impervious surface is proposed; as such stormwater runoff is not reviewed. *Criterion met.*

**(E) Mitigation – Mitigation shall be required to offset the impacts of development within the SEC-wr. This section establishes how mitigation can occur.**

**(1) Mitigation Sequence. Mitigation includes avoiding, minimizing or compensating for adverse impacts to regulated natural resource areas.**

- (a) When a proposed use or development activity could cause adverse impacts to a natural resource area, the preferred sequence of mitigation as defined in 1. Through 5. Below shall be followed unless the applicant demonstrates that an overriding public benefit would warrant an exception to this preferred sequence.**

1. **Avoiding the impact altogether by not taking a certain action or parts of actions on that portion of the site which contains the regulated natural resource area;**
2. **Minimizing impacts by limiting the degree or magnitude of the action and its implementation;**
3. **Compensating for the impact by repairing, rehabilitating, or restoring the affected environment;**
4. **Compensating for the impact by replacing, enhancing or providing substitute resources or environments onsite.**
5. **Compensating for the impact by replacing, enhancing or providing substitute resources or environments offsite.**

**(b) When evaluating potential impacts to the natural resource, the County may consider whether there is an overriding public benefit, given:**

1. **The extent of the public need for the proposed development ;**
2. **The functional values of the Water Resource Area that may be affected by the proposed development;**
3. **The extent and permanence of the adverse effects of the development on the Water Resource Area, either directly or indirectly;**
4. **The cumulative adverse effects of past activities on the Water Resource Area, either directly or indirectly; and**
5. **The uniqueness or scarcity of the Water Resource Area that may be affected.**

**Response:** No mitigation should be required for this project, since there will be no new development. The size of the replacement culvert will be larger than that of the existing culvert, but meets Department of State Lands No Permit standards due to the modest size increase: the culvert's length (the DSL standard) will increase from 30 ft to 35 ft, which is less than the DSL's 20% standard.

**Staff:** As described in previous findings, the proposed project is to take place in an area that has been determined to be in "good" condition (Exhibit A.2). The project does not remove trees or other vegetation from the development other than nuisance species. The project enhances fish habitat and flood carrying capacity by replacing pipe with a larger open style culvert. As such, no mitigation is required to off-set the project because the project will not result in the loss or degradation of a regulated natural resource area. *Criterion met.*

## 5.00 Public Comments:

**Staff:** Public comment has been from one neighbor during the Opportunity to Comment Period (Exhibit B.3). Planning staff received comments from neighbor on Tuesday June 20, 2017 that her son lives west of subject property and is concerned about drainage in the general area.

## 6.00 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for the Significant Environmental Concern Permit for Water Resources to construct and enhance habitat in Johnson Creek and improve flood capacity in the Multiple Use Agriculture-20 zone. This approval is subject to the conditions of approval established in this report.

## 7.00 Exhibits

'A' Applicant's Exhibits

'B' Staff Exhibits

Exhibits with a "\*" after the exhibit # have been included as part of the mailed decision. All other exhibits are available for review in Case File T2-2017-7420 at the Land Use Planning office.

Exhibit #	# of Pages	Applicant Exhibits
A.1	1	General Application Form
A.2	1-12	Details of Application
A.3	2	Signature Approval for Johnson Creek Watershed Council to conduct work
A.4	1-6	Design Plan by Inter-Fluve
'B'	#	Staff Exhibits
B.1	1	Assessment and Taxation Property Information
B.2	2	Tax Lot Map
B.3	3	Comment from neighboring property owner Shirley Rea at 7246 SE Telford that she is concerned about drainage in the area.