
NOTICE OF DECISION

Case File: T2-2021-15381
Permit: Decision by the Planning Director
Applicant: Reilley Keating **Owners:** Reilley and Guy Keating
Location: **Address:** 10011 NW Thompson Road, Portland **Map, Tax lot:** 1N1W26BB -00500
Tax Account #: R961260520 **Property ID #:** R324552
Base Zone: Rural Residential (RR)
Overlays: Significant Environmental Concern for streams (SEC-s); Geologic Hazards (GH)
Proposal Summary: Request for a Decision by the Planning Director to authorize the post emergency /
disaster response activities related to a failing septic system. The emergency response
activities included the replacement of a septic system and drainfield.

Decision: **Approved with Conditions**

This decision is final at the close of the appeal period, unless appealed. The deadline for filing an appeal is Tuesday, June 21, 2022 at 4:00 pm.

Opportunity to Review the Record: The complete case file, including the Planning Director Decision containing Findings, Conclusions, Conditions of Approval, and all evidence associated with this application is available for review by contacting Chris Liu, via email at chris.liu@multco.us. Copies of all documents are available at the rate of \$0.40/per page.

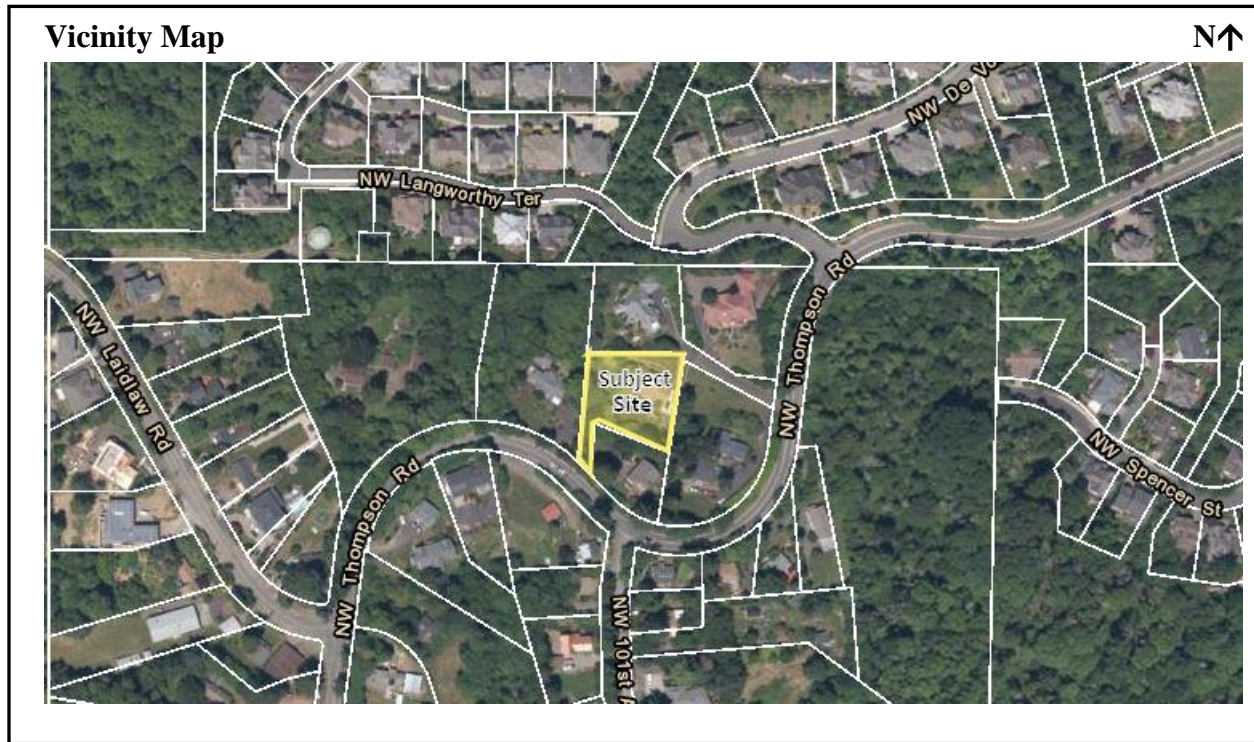
Opportunity to Appeal: An appeal requires a \$250.00 fee and must state the specific legal grounds on which it is based. To obtain appeal forms or information on the procedure, contact the Land Use Planning office via email at land.use.planning@multco.us or via phone at (503) 988-3043. This decision is not appealable to the Land Use Board of Appeals until all local appeals are exhausted.

Issued by:

By: Chris Liu, Planner

For: Carol Johnson, AICP
Planning Director

Date: Tuesday, June 07, 2022



Applicable Approval Criteria [Multnomah County Code (MCC)]:

MCC 39.1515 Code Compliance and Applications; MCC 39.4365 Review Uses – (D) Placement of Structures...; MCC 39.6900 Responses to an Emergency / Disaster Event.

Copies of the referenced Multnomah County Code sections can be obtained by contacting our office or by visiting our website at <http://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.

1. Permit Expiration – This land use permit shall **expire on June 21, 2024** unless the use or development was established according to all specifications and conditions of approval in the land use approval. [MCC 39.1185(A)]
2. This permit specifically authorizes the emergency response activities described herein. 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.
3. The applicant shall provide documentation of the completed revegetation [of the work area] to County Land Use Planning by October 01, 2022. [MCC 39.6900(E)]

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: Decision by the Planning Director for a post emergency / disaster response to replace a failed septic system and drainfield. The County Sanitarian deemed the situation an emergency on September 16, 2021. All work related to the emergency replacement septic system and drainfield finished as of October 2021. No other work is proposed as part of this application.

2.0 Property Description:

Staff: The Rural Residential zoned subject property is located in west unincorporated Multnomah County, outside of the metro urban growth boundary. County Assessment and Taxation property records note the presence of a single-family dwelling with attached garage.

3.0 Public Comment:

Staff: Staff mailed a notice of application and invitation to comment on the proposed application to the required parties per MCC 39.1105 (Exhibit C.2). 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: As the proposal is for emergency response activities reviewed under MCC 39.6900 Responses to an Emergency / Disaster Event, the above criteria are not applicable. *These criteria are not applicable.*

5.0 Rural Residential Zone Criteria:

5.1 MCC 39.4365 Review Use

The following uses may be permitted when found by the approval authority to satisfy the applicable standards of this Chapter:

* * *

(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 emergency response activity involved the installation of a new septic system and drainfield, which replaced a failed septic system and drainfield supporting the existing single-family dwelling located on the subject property (Exhibit A.6). Response activities commenced following the declaration of an emergency by the County Sanitarian (Exhibit B.3). *This criterion is met.*

6.0 Response to Emergency / Disaster Event Criteria:

6.1 MCC 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:

(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: According to the applicant narrative, landscapers recommended waiting to plant grass, seed, or other plants following the response actions. Because the septic installer completed the work in mid-October, landscapers noted that the best practice was to wait until spring to plant grass/seed when planting conditions are ideal. A picture of the work area following the response activity is included as Exhibit A.5. *This criterion is met.*

6.2 (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.

(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 response activity was to install a permanent [replacement] septic system and drainfield. According to the applicant's narrative, the response activity did not include any temporary structures, or the exploration / development / production of mineral resources (Exhibit A.2). *This criterion is met.*

6.3 (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: According to the applicant's narrative, the majority of the materials associated with the removal activities were deposited at a site located outside Multnomah County [where such disposition is allowed]. Remaining spoils were contoured and no spoils were deliberately deposited into a wetland, stream, pond, lake, or riparian area. *This criterion is met.*

6.4 (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:

* * *

(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: The County Sanitarian provided an email notification to County Land Use Planning (“LUP”) declaring the emergency on September 16, 2021 (Exhibit B.3). The applicant provided an email notification to LUP regarding the commencement of the emergency response activities on October 01, 2021 (Exhibit B.4). *These criteria are met.*

- 6.5** **(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.**
- (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: County Land Use Planning did not need to notify any partner agencies, as there were no inventoried natural resource sites and/or their buffers adjacent to the response area. As no additional agencies that oversee natural resource sites and/ or their buffers were involved, the applicant did not need to respond to any additional agencies. *These criteria are met.*

6.6 **(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.**
- (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.

(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).

(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.

* * *

Staff: As noted above, the County Sanitarian declared an emergency on September 16, 2021. On December 29, 2021, the applicant submitted the post-emergency/disaster response application and required application information (Exhibits A.1 – A.5). The submission date of the application aligned with the maximum 90-day submission period, which includes up to two allowable extension requests.

The application covers the response activities to replace the failed septic system and drainfield for the existing single-family dwelling located on the subject property. As noted in the application, the replacement septic system and drainfield are permanent replacement structures (Exhibit A.6). The application also addressed the revegetation of the work area, which included scheduled planting of native seed/grass in spring/summer of 2022. *These criteria are met.*

6.7 (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: Staff processed this application as a Type II decision as required. Approval criteria are listed on p.2 of this decision. The opportunity to comment notice is included as Exhibit C.2. *This criterion is met.*

6.8 (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.

(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: According to the applicant's narrative, no road cuts or permanent landform alteration occurred (Exhibit A.2). The work area contained grass prior to the response activity. The applicant stated the area was scheduled to be restored with native seed/grass [and native plants, as appropriate] in spring/summer of 2022. This schedule falls within the one-year period. A condition of approval requires the applicant to provide documentation of the completed revegetation. *Through a condition, these criteria can be met.*

6.9 (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: According to the applicant's narrative, the majority of the spoil materials associated with were removed from Multnomah County. The remaining spoil materials remained on-site and were contoured to the extent practicable. A photo of the work area following the response activity is included as Exhibit A.5. *These criteria are met.*

6.10 (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: According to the applicant's narrative (Exhibit A.2), no cultural resources were discovered during the response activity. *This criterion is met.*

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

(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.

* * *

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

* * *

Staff: Response activities occurred in a grass area located outside of a buffer zone for a riparian area. The applicant stated that the area was scheduled to be restored with native seed/grass [and

native plants, as appropriate] in spring/summer of 2022 (Exhibit A.2). A rehabilitation plan is not necessary given the applicant addressed the revegetation measures through subsection (C) above. A condition of approval requires the property owner to provide documentation of the completed revegetation. *Through a condition, these criteria can be met.*

7.0 Conclusion

Based on the findings and other information provided above, the applicant has carried the burden necessary for this Decision to complete Emergency Response Activity related to a septic system and drainfield replacement in the RR zone. This approval is subject to the conditions of approval established in this report.

8.0 Exhibits

‘A’ Applicant’s Exhibits

‘B’ Staff Exhibits

‘C’ Procedural Exhibits

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 T2-2021-15381.

Exhibit #	# of Pages	Description of Exhibit	Date Received / Submitted
A.1	1	General Application Form	12.29.2021
A.2	3	Applicant Narrative	12.29.2021
A.3	1	Site Plan	12.29.2021
A.4	2	Email from County Transportation	12.29.2021
A.5	1	Site Photo	12.29.2021
A.6*	1	Revised As-Built Site Plan	03.16.2022
A.7	1	Property Survey Map	03.16.2022
‘B’	#	Staff Exhibits	Date
B.1	2	Division of Assessment, Recording, and Taxation (DART): Property Information for 1N1W26BB -00500 (Alt Acct# R961260520)	12.29.2021
B.2	1	Division of Assessment, Recording, and Taxation (DART): Map for 1N1W26BB	01.25.2022
B.3	1	Copy of 09.16.2021 Email from County Sanitarian RE: Emergency Declaration	01.25.2022

B.4	1	Copy of 10.01.2021 Email from the Applicant RE: Commencement of Emergency Response Activity	01.25.2022
'C'	#	Administration & Procedures	Date
C.1	1	Complete letter (day 1)	01.25.2022
C.2	4	Opportunity to Comment	03.24.2022
C.3	10	Decision	06.07.2022

SITE PLAN

Address: 10011 NW Thompson Rd., Portland, OR 97229 (1N1W26BB 500)

0.54 acres

Public Water

