



MULTNOMAH COUNTY OREGON

LAND USE AND TRANSPORTATION PROGRAM

1600 SE 190TH Avenue Portland, OR 97233

PH: 503-988-3043 FAX: 503-988-3389

http://www.co.multnomah.or.us/dbcs/LUT/land_use

NOTICE OF DECISION

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

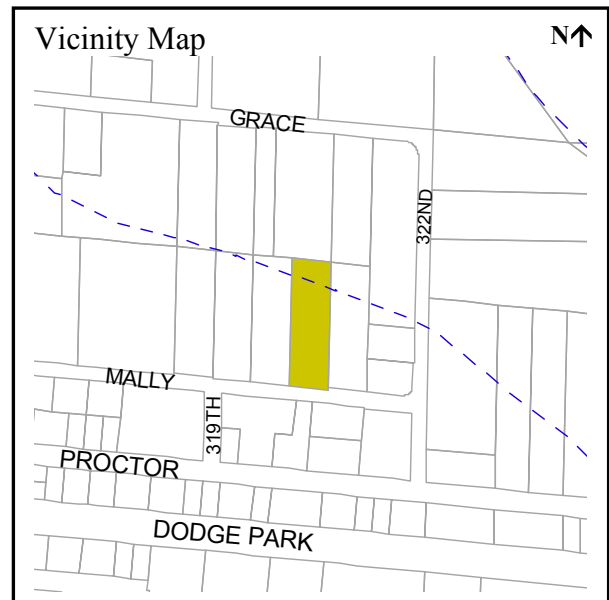
Case File: T2-04-020

Permit: Significant Environmental Concern
for Water Resources Permit

Location: 32037 Mally Road
TL 00500, Sec 20AD, T1S, R4E W.M.
Tax Account #R677802250

Applicant: William F. & Carol J. Lewis
2204 SW Redfern Ave.
Gresham, OR 97080

Owner: William F. & Carol J. Lewis
2204 SW Redfern Ave.
Gresham, OR 97080



Summary: Place new 2500 sq. ft. manufactured home with attached garage, driveway and septic system on property in the Multiple Use Agricultural - 20 Zone District in the West of the Sandy Plan Area with portion of dwelling and deck as well as the septic system and stormwater system within the Significant Environmental Concern for Water Resource (SEC-wr) Overlay Zone District. Approved mitigation plan shown on the next page.

Decision: Approved with Conditions

Unless appealed, this decision is effective June 24, 2004 at 4:30 PM.

Issued by:

By: _____
George A. Plummer, Planner

For: Karen Schilling- Planning Director

Date: Thursday, June 10, 2004

Mitigation map here

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's 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 George A. Plummer, Staff Planner at 503-988-3043.

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 \$108.00 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 (LUBA) 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 June 24, 2004 at 4:30 PM

Applicable Approval Criteria: Multnomah County Code (MCC):): Chapter 37: Administration and Procedures; MCC 33.2800: Multiple Use Agriculture MUA-20 et seq.; and MCC 33.4500 - 4555: Significant Environmental Concern.

Copies of the referenced Multnomah County Code sections can be obtained by contacting our office at 503-988-3043 or by visiting our website at http://www.co.multnomah.or.us/dbcs/LUT/land_use.

Scope of Approval

1. Approval of this land use permit is based on the submitted written narrative(s) plan(s) and other exhibits attached to this decision. 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. **Pursuant to MCC 37.0690, this land use permit expires two years from the date the decision is final if; (a) development action has not been initiated; (b) building permits have not been issued; or (c) final survey, plat, or other documents have not been recorded, as required. The property owner may request to extend the timeframe within which this permit is valid, as provided under MCC 37.0690 and 37.0700. Such a request must be made prior to the expiration date of the permit.**

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. The property owner shall ensure the revised mitigation plan attached as Exhibit 1.12 is implemented. The owner shall contact Multnomah County Land Use Planning and arrange for a site visit to verify completion of the project by February 15, 2004. The owner shall complete all planting by no later than March 15, 2004 if inspection indicates require vegetation has not been planted. The vegetation

including the trees and shrubs planted for mitigation shall be maintained in a living condition. Replacement of any tree or shrub planted for mitigation which does not survive shall take place within a year of its death (MCC 36.4555 (E)(3)).

2. Trees and non-nuisance shrubs that currently exist on the property shall not be cut or remove except for verified hazardous reasons (MCC 36.4555(D)(2)).
3. No nuisance plants listed in MCC 36.4550(C) shall be planted on the property.
4. All outdoor lighting fixtures located on the back side of the dwelling or located within the 200 foot buffer area shall be hooded as shown or similar to those shown in Exhibit 1.13(MCC 36.4550(B)).
6. The property owner shall ensure that silt fencing is installed at the northern end of the soil disturbance area. If there is any indication stormwater is flowing across the western or eastern property lines and depositing silt from the development silt fencing shall be installed to prevent further such episodes (MCC 36.4555(D)(7)).
7. The property owner shall ensure that the area were there is soil disturbance is revegetated as soon as possible after the septic system, stormwater system and other soil disturbing work associated with placing the dwelling, deck, garage, and driveway are completed (MCC 36.4555(D)(8)).
8. The property shall install a stormwater system as described and designed by Craig C. LaVielle P.E. and included as Exhibit 1.11 ((MCC 36.4555(D)(8))).
9. In order to ensure that on-site mitigation areas are established and maintained, the property owner shall record this mitigation plan approval (page 1 through 4 of this decision) including the mitigation plan map (Exhibit 1.12) in the deed records of Multnomah County. (MCC 36.4555 (E)(2)(g)).

Note: Once this decision is final, application for building permits may be made with the City of Gresham. When ready to have building permits signed off, the applicant shall call the Staff Planner, George Plummer, at (503) 988-3043, 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 area are needed for building permits signed off.

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 AND CONCLUSIONS

This decision is based on the findings and conclusions in the following section.

Staff Report Formatting Note: To address Multnomah County Code requirements staff provides findings as necessary, referenced in the following section. Headings for each category of finding are underlined. Multnomah County Code language is referenced using a **bold** font. The Applicant's narrative, when provided, follows in *italic font*. Planning staff analysis and findings follow the **Staff** label. Staff conclusions follow the findings and are labeled **Conclusion**. At the end of the report, Exhibits are described. The applicant's submittal is included and made part of this decision as exhibits labeled 1.x.

1. DESCRIPTION OF THE PROPOSAL:

Applicant: *We are planning to put a new 2500 sq. ft. manufactured home with attached 24'x48'garage on a permanent foundation, and attached 12'x66'deck off the back of home. It appears that only a few feet of the deck will encroach the Water Resource Zone, so there will be a minimal impact occurring. This will be a single family dwelling for just the two of us entering our retirement years.*

Staff: The applicant is proposing to place a dwelling with an attached garage and deck on the property. A small portion of the dwelling (a right angle triangle area about 24 square feet) and about a third of the deck (a right triangle area about 120 square feet) as well as the entire septic system and stormwater disposal system are proposed to be located within the Significant Environmental Concern for Water Resource (SEC-wr) Overlay Zone District (Exhibit 1.12).

2. SITE AND VICINITY CHARACTERISTICS

Applicant: *The lot measures 112' wide East to West, 375 'deep South to North; slope is approximately 4% South to North (low end); Beaver Creek is located at North end of property line amongst evergreen and deciduous trees. Of the 375'length, 300'is totally bare land-see attached photos taken January 2004.*

Staff: The property is Lot 14, Block 6, of the Proctor Subdivision and is 0.95 acres. The vicinity is made up of similar sized lots on the same block and lots about half to a third the size across the Mally Road to the south. These clusters of smaller lots were subdivided early in the last century and are clustered around the Pleasant Home Unincorporated Community.

A tributary of Beaver Creek runs through the northern part of the property. Forest vegetation lines the creek on both sides up to about 70 feet from the creek. The forest is predominately a mature conifer mix of Douglas fir and western cedar with several mature cottonwoods. South of the forested area on the property is a grassy meadow. The southern third of the property was recently used for growing potted nursery stock. This area is compacted, with some pockets of gravel and likely was sprayed with herbicide, thus not much vegetation has been established in this area since the nursery stock has been removed. The property slopes gently at a maximum of six percent down from south to north towards the stream.

3. **OWNERSHIP**

MCC 37.0550: Except as provided in MCC 37.0760, Type I - IV applications may only be initiated by written consent of the owner of record or contract purchaser.

Staff: County Assessment records show the property owners as William F. and Carol J. Lewis. Ms. Lewis signed the application as the owners (Exhibit 1.1).

4. **TYPE II CASE PROCEDURES**

Staff: The application was submitted March 15, 2004 and was deemed incomplete April 14, 2004. Further materials were submitted April 26, 2004. The application was deemed complete as of April 26, 2004. Opportunity to Comment notice was mailed May 11, 2004. The notice was mailed to all owners of properties within 750 feet of the subject property; property owners were provided a 14-days period to submit comments on the application (MCC 37.0530). No comments were received.

5. **MULTIPLE USE AGRICULTURE -20 ZONE DISTRICT**

5.1 **Allowed Uses**

MCC 36.2820(C): (A) A single-family detached dwelling on a Lot of Record, including a home built on or off- site. A home that has been constructed off-site shall meet the following requirements:

- (1) Construction shall comply with the standards of the Uniform Building Code or as prescribed in ORS 446.002 through 445.200 relating to mobile homes;
- (2) The dwelling shall be attached to a foundation for which a building permit has been obtained;
- (3) The dwelling shall have a minimum floor area of 600 square feet.

* * *

(F) Other structures or uses customarily accessory or incidental to any use permitted or approved in this district.

Applicant: We are putting a new 2500 sq. ft. manufactured home and attached garage on a permanent foundation.

Staff: The proposed development, a single dwelling constructed off site and an attached garage are allowed uses on a Lot of Record subject to the code standards listed above. The property has been found to be a Lot of Record under the findings of Section 6 of this decision. The building permit zoning review will determine whether the dwelling meets required standards.

5.2 **Dimensional Requirements**

5.2.1 **MCC 36.2855 (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 subject property meets the dimensional requirements for lot size because it is a Lot of Record pursuant to MCC 36.2870 (see Sections 5.3.2 and 6 of this decision).

5.2.2 MCC 33.2855(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: The applicant has shown on the revised site plan a 30-foot front-yard setback for the garage and a 55-foot front-yard setback for the dwelling (Exhibit 1.12).. The plan also shows a 13-foot west side-yard setback and a 19-foot east side-yard. The rear yard setback distance is not labeled, however the according to the scale it is well in excess of 200 feet. All of the minimum yard setbacks have been met. The setback will be verified during Building Permit Zoning Review. The proposed building will be required to meet the maximum height requirement at building permit review.

5.2.3 MCC 36.2855(D) The minimum yard requirement shall be increased where the yard abuts a street having insufficient right-of-way width to serve the area. The Planning Commission shall determine the necessary right-of-way widths and additional yard requirements not otherwise established by ordinance.

Staff: In a memorandum dated April 5, 2004 (Exhibit 2.6) Alison Winter, Transportation Planning Specialist, Multnomah County Transportation, states that,

“The standard right of way for a Rural Local facility is 50 feet. The applicant is required to dedicate 5 feet in order to achieve a proportional share of this standard. This right of way will be used to improve the roadway to serve growing travel demand, which in part will be generated by this proposed action.”

This right of way dedication will be required for the access permit. The plans show that the applicant has taken this into account and the structures shown to meet the minimum yard setback requirements after the 5 foot dedication.

5.3. Multiple Use Agriculture Lot of Record Requirements

5.3.1 MCC 33.2870 (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;**

(7) May 16, 2002, Lot of Record section amended, Ord. 982, reenacted by Ord. 997.

Staff: See finding for Lot of Record below under Section 6 of this decision.

- 5.3.2 MCC 33.2870 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.**

Staff: The size of the subject property is less than the minimum of 20 acres. MCC 36.2885 requires access. The property has access to Mally Road. The following Section of this decision will address Lot of Record findings for the property.

6 LOT OF RECORD

MCC 36.0005 Definitions: (L)(13) Lot of Record – Subject to additional provisions within each Zoning District, a Lot of Record is a parcel, lot, or a group thereof which when created and when reconfigured (a) satisfied all applicable zoning laws and (b) satisfied all applicable land division laws. Those laws shall include all required zoning and land division review procedures, decisions, and conditions of approval.

- (a) “Satisfied all applicable zoning laws” shall mean: the parcel, lot, or group thereof was created and, if applicable, reconfigured in full compliance with all zoning minimum lot size, dimensional standards, and access requirements.**
- (b) “Satisfied all applicable land division laws” shall mean the parcel or lot was created:**
 - 1. By a subdivision plat under the applicable subdivision requirements in effect at the time; or**
 - 2. By a deed, or a sales contract dated and signed by the parties to the transaction, that was recorded with the Recording Section of the public office responsible for public records prior to October 19, 1978; or**
 - 3. By a deed, or a sales contract dated and signed by the parties to the transaction, that was in *recordable form* prior to October 19, 1978; or**
 - 4. By partitioning land under the applicable land partitioning requirements in effect on or after October 19, 1978; and**
 - 5. “Satisfied all applicable land division laws” shall also mean that any subsequent boundary reconfiguration completed on or after December 28, 1993 was approved under the property line adjustment provisions of the land division code. (See *Date of Creation and Existence* for the effect of property line adjustments on qualifying a Lot of Record for the siting of a dwelling in the EFU and CFU districts.)**

Staff: The subject property is Lot 14, Block 6, of the Proctor Subdivision platted on September 16, 1912. The property was created prior to County Zoning and Land Division Code thus it satisfied all applicable zoning laws and (b) satisfied all applicable land division laws.

7. SIGNIFICANT ENVIRONMENTAL CONCERN PERMIT REVIEW

The purposes of the Significant Environmental Concern Overlay Zone subdistrict are to protect, conserve, enhance, restore, and maintain significant natural features which are of public value, including among other things, river and stream corridors, streams, lakes and

islands, flood water storage areas, natural shorelines and unique vegetation, wetlands, wildlife and fish habitats, significant geological features, archaeological features and sites, and scenic views and vistas, and to establish criteria, standards, and procedures for the development, change of use, or alteration of such features or of the lands adjacent thereto.

7.1 SEC-Water Resource Area

7.1.1 MCC 36.4505(C) SEC-Water Resource Area (SEC-wr) - Protected water features, riparian/vegetated corridors and the adjacent impact areas, that are identified as significant resources in the Goal 5 Inventory, and as established by these definitions, are the areas included within the SEC-wr Overlay Zone Subdistrict.

(1) Protected Water Features shall include:

* * *

(d) Streams designated as significant in the Goal 5 inventory; and

* * *

(2) Riparian/Vegetated Corridors and Impact Area - The standard width of the riparian/vegetated corridor for all Protected Water Features shall be two hundred (200) feet from the top of bank.

Staff: The applicant submitted an analysis titled *Water Resource Area Certification Report* by Richard H. Wheeler, MF, Forest Hydrologist (Exhibit 1.6) in which he states that the “South Fork Beaver Creek, an intermittent stream, traverses the northern quarter of the property.” Portions of the proposed development including portions of the dwelling, deck, and lawn as well as the entire septic drainfield are within the 200 foot of the stream. These aspects of the development are within the SEC-wr Overlay Zone (Exhibit 1.12).

7.1.2 MCC 36.4515 (A) All uses permitted under the provisions of the underlying district are permitted on lands designated SEC; provided, however, that development, including but not limited to, the location and design of any use, or change, replacement or alteration of a use, except as provided in MCC 36.4520, shall be subject to an SEC permit.

Staff: The proposed uses including a portion of the dwelling and a portion of the deck as well as the entire septic system and stormwater system is on land designed within the SEC-wr Overlay. Thus these uses are subject to an SEC-wr Permit (Exhibit 1.12).

7.2 General Requirements for SEC-wr Overlay

7.2.1 MCC 36.4550(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.

Applicant: *Since the area of the planned development will have a minimal amount of excavation for the foundation and the soil removed will be spread over primarily in front of the home, the area of erosion or potential erosion will be minimal. There will be 2 Erosion Control fences to code installed at the North end of property-see attached site map.*

Staff: The applicant has proposed placing silt fencing down slope of the area proposed for the development. This fencing will remain until the vegetative cover has been re-established. Given the shallow slope of the property and the proposed erosion control methods this criteria has been met. The applicant have applied for a Grading and Erosion Control Permit which will require best management practices for controlling erosion on-site related to the proposed development.

- 7.2.2 MCC 36.4550(B) Outdoor lighting shall be of a fixture type and shall be placed in a location so that it does not shine directly into undeveloped water resource or habitat areas. Where illumination of a water resource or habitat area is unavoidable, it shall be minimized through use of a hooded fixture type and location. The location and illumination area of lighting needed for security of utility facilities shall not be limited by this provision.**

Applicant: *Outdoor lighting will be limited to 2 fixture-type lights, located on back of the home and over 200' from the water resource. Lighting in front would be a porch light fixture and low voltage walkway lights.*

Staff: The applicant has submitted a manufacturer's pamphlet showing a hooded style lighting fixture is proposed. This type of fixture meets the requirements of this criterion. A condition of approval will require hooded fixtures for any lighting located on the back side of the dwelling or located within the 200 foot buffer area.

- 7.2.3 MCC 36.4550(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:**

Applicant: No nuisance plants would be anywhere on the property.

Staff: The applicant is aware of this nuisance plant list. This criterion can be met through conditions of approval.

7.3. Criteria for Approval of SEC-wr Permit -Water Resource

- 7.3.1 MCC 36.4555: 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.**

Staff: This decision addresses the criteria in MCC 36.4555(A) Development on Low Impact Sites (see the following findings). The information required under MCC 36.4540(A) includes a written description of the project, a site plan with specific details, a scaled drawing of the building including elevations, grade (existing and finished). The plans are required to show existing and proposed vegetation. Additionally other permits required include a Grading and Erosion Control (GEC) Permit and other Building Permits. The applicant has submitted an application for the GEC Permit and will have to obtain required Building Permits. The applicant has submitted the information required by MCC 36.4540(A), which is attached to this decision under exhibits listed as applicant submittal in category 1.

MCC 36.4540(C) the applicant didn't submit a topographic map, however they submitted an elevational view of the topography. The site has a shallow slope of about six percent. No wetlands were located on the property other than small pockets immediately adjacent to the stream. The West of Sandy River Wildlife Habitat and Stream Corridor ESEE Report, the County Goal 5 Inventory for the site has been included with this decision as Exhibit 2.5. The applicant submitted a *Water Resources Area Certification Report* by Richard H. Wheeler, MF, Forest Hydrologist for the site which includes an inventory, assessment of existing conditions, and mitigation/restoration plans (Exhibit 1.6 and 1.14). This report and its addendum meet the requirements for this type of inventory, assessment and mitigation/restoration plans. The applicant has submitted materials required under MCC 36.4540(C).

7.3.2 MCC 36.4555 (A) Development on Low Impact Sites – Development on parcels in locations that would have low impacts on Water Resource Areas may be exempt from the Alternatives Analysis in (B) below. Development on sites that meet the following criterion may be allowed pursuant to the other applicable requirements of this district including the Development Standards of (D) and the provisions for Mitigation in (E):

(1) The development site is at least one hundred (100) feet from top of bank or top of ravine, whichever results in a greater distance from the Protected Water Feature.

Top of ravine is the break in the > 25% slope. Slope should be measured in 25-foot increments away from the water feature until the slope is less than 25% (top of ravine), up to a maximum distance of 200' from the water feature. Where multiple resources are present (e.g., stream with wetlands along banks), the starting point for measurement should be whichever offers greatest resource protection.

Applicant: *The home development area is 190' on the NE corner of house and 230' at NW corner from the top of the bank. The end of the septic drain field will be 110' on East side graduated up to 150' on West side from top of bank. Please note that Beaver Creek water bed is not perpendicular to the boundary lines and we have used the Southernmost point in determining the high water bank mark.*

Staff: The proposed development is more than a 100 feet from the top of the bank of the stream. Thus the proposed development meets the definition of "Development on Low Impact Sites." Development Standards and provision for Mitigation are addressed in the following section of this decision (Exhibit 1.12).

* * *

7.4. Development within the Water Resource Area

7.4.1. MCC 36.4555(D)(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.

Applicant: *There will be no trails, rest points, viewpoints in WR area.*

Staff: The proposal does not include any of these features. This criterion is not applicable.

- 7.4.2. MCC 36.4555(D)(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.**

Applicant: *No trees will be removed.*

Staff: The proposed development meets this criterion. There are several trees located adjacent to the stream. A condition of approval can require that the trees on the property not be cut. This criterion has been met through the proposal and the condition.

- 7.4.3 MCC 36.4555(D)(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.**

Applicant: *Areas of trees & shrubs will not be disturbed.*

Staff: The proposed development is located in the outside 50+/- feet of the buffer away from the existing trees and shrubs. Thus the areas of standing trees, shrubs, and natural vegetation will remain connected or contiguous along the stream, with the newly planted trees and shrubs plant adjacent to existing trees providing a transition between the development and the natural resource.

- 7.4.4 MCC 36.4555(D)(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.**

Applicant: *The WR area will be restored to "good" condition and maintained.*

Staff: The proposed mitigation plan meets requirements of (E) as addressed in findings in the following sections of this decision (Exhibit 1.12). A condition of approval requires the mitigation plan to implemented and maintained.

- 7.4.5 MCC 36.4555(D)(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.**

Applicant: *The only vegetation that would be affected during development is grass and weeds. There are no existing trees within the work areas.*

Staff: The proposed development is a substantial distance from the existing vegetation other than the grass area. A sediment fence will be installed directly down slope of the proposed

septic system more than 100 feet from the existing trees, thus limiting equipment the development area. Given the distance no additional flagging of vegetation is necessary to protect the vegetation.

- 7.4.6 MCC 36.4555(D)(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.**

Applicant: *The site will be revegetated soon after development completion. Mulching for erosion control will be used on bare areas.*

Staff: The applicant proposes to revegetate disturbed areas. A condition of approval will require revegetation as possible after the soil disturbance work is completed.

- 7.4.7 MCC 36.4555(D)(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.**

Applicant: *The WR area will be flagged prior to construction.*

Staff: As a Condition of Approval, silt fencing will be required at the northern end of the development activity and will act as a fence preventing disturbance of the Water Resource Area that shall remain undisturbed.

- 7.4.8 MCC 36.4555(D)(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.**

Applicant: *Storm water control measures will be handled through the installation and use of Splashblocks.*

Staff: The applicant has submitted a stormwater analysis by Craig C. LaVielle, P.E. including a design for to handle the 10-year storm design frequency. The development does not encroach on a designated primary water feature area.

7.5. Mitigation

MCC 36.4555(E) Mitigation shall be required to offset the impacts of development within the SEC-wr. This section establishes how mitigation can occur.

7.5.1. MCC 36.4555 (E)(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 on-site.**
- 5. Compensating for the impact by replacing, enhancing or providing substitute resources or environments off-site.**

(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.**

***Applicant:** The area to be impacted will be kept at a minimum (500 sq ft apprx), which is currently just bare ground with weeds on it now.*

***Applicant Revised Plan:** Proposed Mitigation Area encompasses 5200' – 4200' is required:*

*50% (2100') Tree Canopy
80% (3360') Combination*

Remaining area will be native grass which will extend all the way to the back of the home & deck

Staff: The applicant is not required to strictly adhere to the mitigation sequence in MCC 36.4555 (E)(1)(a) 1 through 5. This is because there is an overriding public benefit consistent with the standards in MCC 36.4555 (E)(1)(b) 1 through 5. Due the analysis indicating a public benefit the applicant can use number 3 compensating for the impact by repairing, rehabilitating, or restoring the affected environment out of sequence.

The proposed plan provides a public benefit by allowing a property slated for residential development to be developed for that purpose while enhancing the vegetative corridor along the stream thus improving the quality of the water resources buffer over the existing

conditions. The applicant proposes to follow MCC 36.4555 (E)(1)(a)(3.) compensating for the impact by repairing, rehabilitating, or restoring the affected environment.

In considering MCC 36.4555 (E)(1)(b) the County finds that in the past the riparian area has been degraded by reducing the tree canopy to area averaging from about 60 to 80 feet wide on the south side. The applicant proposes enhance the vegetative buffer through the planting of trees, shrub and native grasses. The proposed development is to place a portion of the dwelling and deck as well as the entire septic system and stormwater system in the water resource buffer the applicant's also proposes mitigation plan proposes to mitigate by enhancing the riparian area. The property is zoned for residence development and is a reasonable size for that development. The applicant has proposed the development for the front of the property with only a minor portion of the dwelling and deck within the buffer. The septic system and stormwater disposal system are proposed to be entirely within the buffer. The septic system can be installed and meet Department of Environmental Quality standards for setback to a stream. While the septic system can not be vegetated with trees native grasses can be planted which will provide some variety in the habitat and will benefit water quality through filtering of any potential sediment or other pollutants.

The narrative on the amended plan map proposes planting of three Douglas fir trees, two hazel nut trees, three cedar trees and six Oregon grape shrubs with the rest of the area behind the dwelling planted in native grasses. While the proposed plan will commit about a third of the southern side of the water resources buffer to development, all but a small amount of the development area within the buffer is the septic and stormwater systems upon which native grasses can be planted. The proposed mitigation will increase forest canopy adjacent to the stream by more than doubling area committed to forest.

7.5.2 MCC 36.4555 (E)(2) Compensatory Mitigation: General Requirements. As a condition of any permit or other approval allowing development which results in the loss or degradation of regulated natural resource areas, or as an enforcement action, compensatory mitigation shall be required to offset impacts resulting from the actions of the applicant or violator.

(a) Any person who alters or proposes to alter regulated natural resource areas shall restore or create natural resource areas equivalent to or larger than those altered in order to compensate for resource losses.

(b) The following ratios apply to the creation or restoration of natural resource areas. The first number specifies the amount of natural resource area to be created and the second specifies the amount of natural resource area to be altered or lost.

Creation (off-site) 2:1

Restoration (off-site) 1.5:1

Creation (on-site) 1.5:1

(Restoration (on-site) 1:1

(c) Only marginal or degraded water resource areas as described in Table 2 may be the subject of a restoration project proposed as part of a Mitigation Plan.

(d) Highest priority sites for mitigation are marginal or degraded corridors that are closest to a natural drainage, and areas which will increase contiguous areas of standing trees, shrubs, and natural vegetation along drainages.

(e) The off-site mitigation shall be as close to the development as is practicable above the confluence of the next downstream tributary, or if this is not practicable, within the

watershed where the development will take place or as otherwise specified by the County.

(f) Compensation shall be completed prior to initiation of development where possible.

(g) In order to ensure that on-site mitigation areas are established and maintained, the property owner shall record the mitigation plan approval in the deed records of Multnomah County. In order to ensure that off-site mitigation areas will be protected in perpetuity, the owner shall cause a deed restriction to be placed on the property where the mitigation is required. The deed restriction shall be irrevocable unless a statement of release is signed by an authorized representative of Multnomah County.

Applicant: *Property owner needs to mitigate an area approximately 500 sq. ft. The owner plans on restoring an area of 600 sq. ft, 10'wide and 60' long, abutting up to the south end of the 40' corridor. See Map.*

The chosen plantings are:

- 4 Western Red Cedar -12' spacing*
- 4 Salmonberry Shrubs -5' spacing*
- 1 Hazelnut Tree -6 'to 10'spacing*
- 6 Creeping Oregon Grape -2' to 3' spacing*

The new plantings are planned for October since construction and development will not commence until probably early June. There will be open access, irrigation will be provided at planting time and during dry season. There doesn't appear to be any noxious weeds present at this time and any weeds that might appear later will be removed.

Applicant's Addendum: *The owners, Bill and Carol Lewis, proposes the following plantings for their area of mitigation:*

- 3 Douglas Fir Trees (15' spacing)*
- 2 Hazelnut Trees (10' spacing)*
- 3 Western Red Cedar (18' spacing)*
- 6 Oregon Grape Shrubs (6' spacing)*

Native Grass will be planted in the remaining mitigation area along with additional area up to approximately 15,000 sq. ft. of the property.

Proposed mitigation area encompasses 5200'—4200' required.

Staff: The applicant proposes to restore the water resources buffer on-site at a rate greater than 1:1. The area impacted is about 4200 square feet. The applicant proposes a mitigation area greater than the required 4200 square feet. In the submitted *Water Resources Area Certification Report* by Mr. Wheeler states that there are three vegetation communities on the property (Exhibit 1.6).

These are as follows:

- 1) "Stream/riparian, constitutes a band of vegetation along the stream/riparian corridor about 80 feet wide consisting of native, volunteer and planted shrubs and trees." It appears from the aerial photo that Mr. Wheeler is describing only the south side of

this area when stating it is 80 feet wide. Measuring on the aerial photo it appears to about an equal distance wide to the north property line in similar condition.

- 2) "Meadow (uplands) extends uphill to the south to the meadow (degraded). The vegetation in this area consists of several meadow grasses and a mixture of forbs. Along the east property line are ornamental shrubs and trees and along the west line ornamental shrubs." "The Meadow (Upland) Corridor, according to Mr. Wheeler is about a 100 feet wide is dominated by meadow grasses and forbs whose canopies cover 50-80% of the ground."
- 3) "Meadow (degraded) extends to Mally Road. It was a storage area for potted ornamental shrubs and trees. A widely scatter grass/forb community constitutes the current community." According to Mr. Wheeler this area is about 115 feet wide.

Mr. Wheeler states that the "stream/riparian" vegetative community corridor has a tree ground cover of at least 80 percent and a canopy of more than 50 percent. He continues, "Overall this corridor is considered in GOOD." There is no development planned for this area.

Mr. Wheeler states that the "meadow (uplands)" area is dominated by grasses/forbs with some trees and shrubs. He classified this area according to Table 2 as being in "MARGINAL" condition. The plans show the mitigation is proposed for the area (Exhibits 1.6 and 1.12). This area is also proposed for the septic and stormwater systems. The proposed mitigation area is the closest area to the stream and is contiguous to the good "stream/riparian" area.

Mr. Wheeler states that the "meadow (degraded)" area is about 115 feet wide. Most of this area is outside the water resources buffer averaging of about 50 feet within the buffer. The proposed development in this area (with the resource buffer) is a small portion of the dwelling (a corner); small portion of the deck (a corner); portion of the septic and stormwater system will be in the "meadow (degraded)" area.

The proposed mitigation plan will require planting in the wet season. This would delay the placement of the dwelling on the property. For economic reasons it is not possible to delay the establishment of the dwelling. It would also be better to complete the grading and reseed the disturbed areas prior to the wet season. For these reasons we find it is not possible to for the mitigation to be completed prior to initiation of development. A condition of approval will require the mitigation to be completed during the next planting with an inspection to verify completion. In order to ensure that on-site mitigation areas once established are maintained, the property owner will be required by condition of approval to record this decision including the mitigation plan. Conditions of approval also require that the painted vegetation be maintained in a living condition and restricts the cutting of trees and the removal of shrubs within the buffer.

7.5.3. MCC 36.4555 (E)(3) Mitigation Plan Standards - Natural resource mitigation plans shall contain the following information:

- (a) A description of adverse impacts that could be caused as a result of development.**
- (b) An explanation of how adverse impacts to resource areas will be avoided, minimized, and/or mitigated.**
- (c) A list of all responsible parties including, but not limited to, the owner, applicant, contractor or other persons responsible for work on the development site.**
- (d) A map drawn to scale, showing where the specific mitigation activities will occur.**

(e) An implementation schedule, including timeline for construction, mitigation, mitigation maintenance, monitoring, reporting and a contingency plan. All in-stream work in fish-bearing streams must be done in accordance with the Oregon Department of Fish and Wildlife in-stream timing schedule.

Applicant: *No adverse impact would occur as a result of the development. The responsible parties will be owners, Bill & Carol Lewis acting as General Contractor, and Scott Dennis as subcontractor for some of the work. At time of this report and application, the name of the manufactured home was not determined, but that information will be provided as soon as that is decided upon by owners (indicated to be within the month of March). Map drawn to scale is included.*

Staff: The *Water Resource Area Certification Report* describes the impacts of the proposed development (Exhibit 1.6). Mr. Wheeler states the septic drainfield will disturb an area 50 feet by 95 feet and the delivery line about 35 feet by five feet in the marginal upland area. The portion of the dwelling and deck within the buffer area as well as the septic tank, delivery line and stormwater system will be in the degraded meadow area.

Mr. Wheeler states marginal upland area will recover within a growing season to “GOOD” condition and the degraded area “...might recover its “MARGINAL” character within a growing season and attain “GOOD” condition the next if free to grow. However, Table 2 describes Good as a “combination of native trees, shrubs, and groundcover covering greater than 80% of the area and greater than 50% tree canopy exists (aerial measure).” The area used by the septic system will never attain the 50% tree canopy criteria to be considered good. While tree cover can never be established grass cover can which will slow and filter overland water flows. The dwelling and deck area of impact are quite small and have been minimized by placing the dwelling toward the front of the property.

The mitigation plan including the map are included a Exhibit 1.12. The plan outlines the trees, shrubs and other vegetation to be planted. The applicant/owners have submitted a mitigation map plan drawn to scale, showing where the specific mitigation activities will occur. The map shows the location of the plantings including species to be planted. This plan will be required to be implemented through conditions of approval. The property owner will be responsible to ensure that the mitigation plan and other conditions of approval are implemented. Conditions of approval will require an implantation schedule that the trees and shrubs be planted during the next planting season. Also the owners will be required to contact County Land Use Planning for an inspection to confirm the planting by February 15, 2005 and completion of the planting by no later than March 15, 2004 if inspection indicates require vegetation is not planted.

8. CONCLUSION

Staff: The development as proposed meets the criteria for a Significant Environmental Concern for Water Resources Permit with the proposed mitigation plan and conditions of approval. This permit application request is approved with conditions.

9 EXHIBITS

9.1 Exhibits Submitted by the Applicant:

- Exhibit 1.1: Application form submitted March 15, 2004 (1 page);
- Exhibit 1.2: Narrative addressing SEC criteria and standards submitted March 15, 2004 (1 page);
- Exhibit 1.3: Site plan map, submitted March 15, 2004 (1 page);
- Exhibit 1.4: Mitigation Plan Map submitted March 15, 2004 (1 page);
- Exhibit 1.5: Water Resource Area Certification Form completed by Richard Wheeler, MF Forest Hydrologist submitted March 15, 2004 (1 page);
- Exhibit 1.6: Water Resources Area Certification Report by Richard Wheeler, MF Forest Hydrologist submitted March 15, 2004 (6 pages);
- Exhibit 1.7: 2004 Aerial Photo provided by County showing approximate boundaries of the stream and water resource are submitted March 15, 2004;
- Exhibit 1.8: Service provider forms for Fire District Review, Water, and On-site Sewage Disposal, March 15, 2004 (6 pages);
- Exhibit 1.9: Deed for the property submitted March 15, 2004 (2 pages);
- Exhibit 1.10: Photographs of the site submitted March 15, 2004, (6 pages);
- Exhibit 1.11: Stormwater Infiltration Field testing and Recommendations by Craig C LaVielle, P.E. submitted March 15, 2004, (10 pages);
- Exhibit 1.12: Revised site plan and mitigation plan submitted April 26, 2004 (2 pages);
- Exhibit 1.13: Manufacture's brochure for proposed lighting fixtures submitted April 26, 2004 (1 page);
- Exhibit 1.14: Addendum to Water Resources Area Certification Report by Richard Wheeler, MF Forest Hydrologist submitted April 26, 2004 (1 page);

9.2 Exhibits Provided by the County

- Exhibit 2.1: County Assessment Record for the subject property (1page);
- Exhibit 2.2: Current County Zoning Map with subject property labeled (1 page);
- Exhibit 2.3: County 2002 Aerial show approximate stream location and SEC-wr boundaries (1 page);
- Exhibit 2.4: *West of the Sandy River Significant Goal 5 Resources and Impact Areas Map 1* (1 page);
- Exhibit 2.5: EESE analysis *Multnomah County West of the Sandy River Natural Resources Inventory and Assessment Riparian Corridor Summary Sheet* (1 page);
- Exhibit 2.6: Memorandum from Alison Winter, County Transportation Planning Specialist addressing the property and adjacent Mally Road Right-of-Way (2 pages).