

**MULTNOMAH COUNTY****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

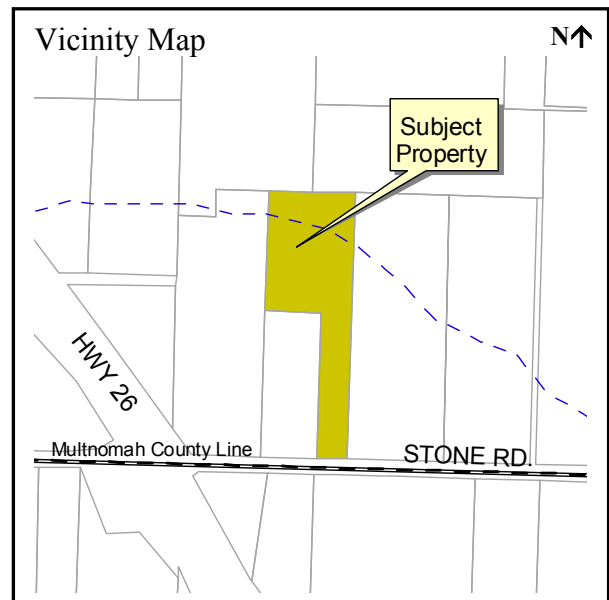
This notice concerns a Planning Director Decision on the land use case(s) cited and described below.

Case File: T2-04-069

Permit: Significant Environmental Concern for
Water Resources (SEC-wr) and Habitat
(SEC-h) Permit

Location: 27427 Stone Road
TL 1700, Sec 24D, T1S, R4E, W.M.
Tax Account #R993240710

Applicant/ John G. Nash
Owner: PO Box 231
Troutdale, OR 97060



Summary: Significant Environmental Concern for Water Resources (SEC-wr) and Habitat (SEC-h) Permit for a single family dwelling, a garage/hobby shop, a 2300 square foot accessory structure for storage of agricultural equipment, and a pump-house.

Decision: Approved with Conditions

Unless appealed, this decision is effective April 18, 2005 at 4:30 PM.

Issued by:

By: _____
George A. Plummer, Planner

For: Karen Schilling- Planning Director

Date: Friday, April 4, 2005

Instrument Number for Recording Purposes: 01099405

Mitigation plan 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 \$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 (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 April 18, 2005 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 - 4560: Significant Environmental Concern for Water Resources and Habitat.

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 1.14 is implemented. The property owner shall contact Multnomah County Land Use Planning and arrange for a site visit to verify completion of the project by February 15, 2006. The owner shall complete all planting by no later than March 15, 2006 if inspection indicates required 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 removed except those marked for removal on the site/mitigation plan (Exhibit 1.14) or that are verified as hazardous trees by an arborist through a report submitted to County Land Use Planning (MCC 36.4555(D)(2)).
3. For trees within 50 feet of the development site that are to remain, a temporary fence shall be installed to protect the trees and their roots systems. Posts located 10 feet on the center as a general rule. For every inch in diameter of the trunk (DBH) allow up to 1 foot of radius from the trunk as the protected area (Example: 24 inch DBH = 24 foot radius of protected root system). If the tree is too close to the proposed development to meet this fencing requirement, the fenced area shall provide for a maximum amount of protected area as possible (MCC 36.4555(D)(5)).
4. The development area shown on Exhibit 1.14 shall be flagged, fenced or otherwise marked to prevent additional disturbance to water resource area (MCC 36.4555(D)(7)).
5. No nuisance plants listed in MCC 36.4550(C) shall be planted on the property.
6. All outdoor lighting fixtures shall be hooded, with light directed downward and shall be placed in a location so that they do not shine directly into undeveloped water resource or habitat areas. The lighting fixtures shall be shown on the building plan with a brochure representing the type of fixture attached. (MCC 36.4550(B)).
7. The property owner shall ensure that the area where there is soil disturbance is revegetated within two weeks after the soil disturbing work associated with the development is completed (MCC 36.4555(D)(8)).
8. 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 1.14) 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 permit sign 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: *The proposed development includes a residence, a car port and a garage/studio as well as a pumphouse/well and the drainfield and its feed line. Already developed is the improved 12 ft. driveway right-of-way, the underground utilities and the spurs to the house and garage/studio. In the southwest corner of the "flag," the owner proposes to build a work/machine shop which lies entirely beyond the 200 ft. riparian zone.*

Staff: The applicant is proposing to build a dwelling, detached garage/hobby studio and a pump-house on the property within the SEC-wr Overlay Zone District (Exhibit 1.14 and 2.2). Additionally a 2300 square foot accessory structure pole barn to be used as an agricultural workshop and machine storage building is proposed in the SEC-h Overlay Zone District

2. SITE AND VICINITY CHARACTERISTICS

Applicant: *This parcel totals 4.54 acres. It is shaped like a flag and flagpole with the pole extending from the "flag" south to Stone Rd. Johnson Cr. flows through the "flag" southeast to northwest. Table 1 provides aerial data on the property.*

Table 1. Area 1 data for the property.

<u>Portion</u>	<u>Sub division</u>	<u>Area (ac.)</u>
Flag	North of creek	1.10
	South of creek	2.04
<u>Flag Pole</u>		<u>1.40</u>
Total Area (ac.)		4.54

The "flag" portion of the property north of the creek is and will remain forested. The dominant tree cover is Red Alder as individual trees and small clumps. The western portion is forested with a brush understory dominated by Himalayan and Creeping Blackberry and Holly, all nonnatives. Isolated Snowberry and common Salmonberry tend to occupy the understory along the north and west fence with isolated Salmonberry along the creek. Both are natives. The southeast corner is dominated by Western Red Cedar and Douglas-fir.

Dead (snags) and dying trees north of the creek will remain as potential habitat for cavity nesting birds except where they pose a public and individual safety hazard. They will otherwise be allowed to fall in-place and decay, providing habitat for small mammals and reptiles and provide a supply of large woody debris/large organic debris (LWD/LOD) for the stream/creek. At present this potential habitat material is dominated by Red Alder.

In the streamside/riparian area (geomorphic/habitat term not regulatory) on both sides of the creek, scattered Salmonberry (native, desirable) grow as well as the dominant Reed Canary Grass (non-native, undesirable).

Numerous medium (10" ≤ 14" dbh) to large (14" ≤ 36" dbh) Douglas-fir dominate the south side of the forested "flag" portion of the property. Only those necessary to allow development of the residential area will be removed as well as those which create a safety hazard.

Grass and forbs dominate the groundcover on the south side though its density is relatively low because of the dominance of the overstory and the shade it creates. It lacks an understory over much of its area.

Table 2 shows the dominant vegetation on the site.

Table 2. Existing vegetation.

<u>Portion of property</u>	<u>No. of Trees</u>	<u>Understory/Groundcover</u>
<i>Flag North</i>	<i>145</i>	<i>Brush/Grass/Forb</i>
<i>Flag South</i>	<i>93</i>	<i>dominant grass/forb</i>
<i>Flagpole</i>	<i>16</i>	<i>grass/forb</i>
<i>Total</i>	<i>254</i>	<i>Not counted</i>

Staff: The property has a wide flagpole, flag lot shape with the pole being a little more than 100 feet wide and the flag portion being about 310 feet wide. The flag pole extends about 530 feet to the north before the property becomes wider (Exhibit 1.14 and 2.3). The flag portion extends about 435 feet further to the north. Johnson Creek runs through the property. The property has very gradual slopes down to the creek. The south side of the stream has substantially more conifer trees than are shown on the site/mitigation plan because many of trees are less than six inches in diameter thus they are not included on the map. Figure 6 in the *Water Resource Report* by Richard H. Wheeler, MF, Forest Hydrologist (Exhibit 1.2) and submitted photos (Exhibit 1.15) show the dense nature of the trees in this area. Within the 100 foot buffer of the stream there is an existing mowed lawn, play area with a swing and a picnic area, that have existed for a number of years. The applicant is proposing to keep these uses as they have existed. The north side of the stream has more alder trees than the south side, along with some cedars. There are areas where the trees are less dense along the stream. This area also has patches of non-native blackberry bushes interspersed among the trees.

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 owner as John G. Nash. Mr. Nash signed the application as the owner (Exhibit 1.1).

4. TYPE II CASE PROCEDURES

Staff: The application was submitted August 8, 2004 and was deemed incomplete September 9, 2004 and again January 6, 2005. The application was deemed complete as of January 27, 2005. An Opportunity to Comment notice was mailed February 7, 2005. The notice was mailed to all

owners of properties within 750 feet of the subject property; and interested government agencies. Those that received the notice were provided a 14-day period to submit comments on the application (MCC 37.0530). Two letters of comment were received.

A memorandum was received from Alison Winter, County Transportation Planning Specialist, which stated no right of way dedication was needed, and indicates a requirement to obtain an access permit including improvements for that access (Exhibit 2.7). A letter was received from Kristy Lakin, Associate Planner, City of Gresham discussing the property's future annexation into the City of Gresham with future industrial zoning (Exhibit 3.1).

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.

Staff: A single family dwelling is an allowed use in the MUA-20 Zone District. The proposed detached garage/hobby studio for hobby project work and a pump-house are customary accessory uses in the West of the Sandy Rural Plan Area.

The applicant also proposes a 2300 square foot accessory structure pole barn to be used as a agricultural workshop and machine storage. For that use we analyzed properties within one-half mile to determine if there are other properties with accessory structures this size or larger. Below is a table listing three properties within a half mile of the subject property which have large accessory buildings located on them. The information in the table was obtained from County Assessment records, attached to this decision as Exhibit 2.6. One of the three the properties are in the agriculture tax deferral program. Like the subject property, the other two properties are classified as residential land by County Assessment. Since the subject property is not in farm deferral, the proposed building would need to be accessory to the residential use. As the table shows, three of nearby buildings are larger than the proposed barn.

	Address	County Assessment Alt. Tax Account #	Size of property in Acres	In Farm Deferral?	Size of Building in Sq. Ft.
1	7741 SE 282 nd Ave.	R993240540	9.52	No	9600
2	27204 SE Jeanette St.	R993240830	15.02	No	3200
3	27215 SE Stone Rd.	R994170220	6.71	Yes	2800

Given that within a half mile there are two larger buildings accessory to residential uses, the proposed building size is customary within the district.

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.

MCC 33.0005(L)(10) Lot Line (Front) – In the case of an interior lot, a line separating the lot from the street or accessway; in the case of a corner lot, a line separating the narrowest frontage of the lot from a street or accessway; and in the case of a flag lot, the lot line closest to and most nearly parallel with the street which serves the lot.

Staff: The applicant has shown on the revised site plan that proposed structures meet the required minimum yard distances (Exhibit 1.14). The standard is met.

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 February 14, 2005 (Exhibit 2.7) Alison Winter, Transportation Planning Specialist, Multnomah County Transportation, states that, “No right of way dedication is required at this time. The proposed development is a substantial distance from the road. This standard is met.

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.

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.

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 applicant has submitted a Contract of Sale dated October 1970 for the property, recorded in Book 759 on Page 1532 (Exhibit 1.9). The 1962 Zoning Map shows that the property was zoned Suburban Residential (SR) which was the zoning that was in effect in 1970 when the contract was signed. The 4.54 acre property is larger than the 40,000 square foot minimum lot size requirement in the SR Zone. The property also abuts a right-of-way as required by the SR zone. The property met all of the zoning requirements when created in 1970. There were no land division requirements for a partition in 1970. The property is a Lot of Record.

6. 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.

6.1 SEC-Water Resource Area

6.1.1 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 property is bisected by Johnson Creek which is designated as a significant riparian corridor in the Goal 5 inventory (Exhibit 2.4 and 2.5). The riparian/vegetated corridor for this property is 200 feet from the top of the stream bank.

6.1.2 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 dwelling, garage/hobby studio, pump-house and some of the driveway are proposed to be within the 200 foot corridor and within the designed within the SEC-wr Overlay (Exhibit 2.2). Thus these uses are subject to an SEC-wr Permit. The proposed accessory pole barn structure and a portion of the driveway are within the SEC-h Overlay thus an SEC-h Permit is required (Exhibit 2.2)

6.2 General Requirements for SEC-wr and SEC-h Overlay

6.2.1 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.

Staff: The applicant has obtained a Grading and Erosion Control Permit T1-02-038 for the proposed development. This permit requires best management practices including use straw mulch, erosion blankets or plastic sheeting for exposed soils such as stock piles. The property has a very shallow slope and is well vegetated. It has a low potential for sediment leaving the site. The GEC Permit requires that if there is an erosion problem related to the development activities, the County can require supplemental measures. This standard is met through implementation of the GEC Permit.

6.2.2 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.

Staff: A condition of approval will require the outdoor lighting to meet this standard.

6.2.3 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:

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

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

6.3.1 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, and a site plan with specific details. The plans are required to show existing and proposed vegetation. Additionally other permits required include a Grading and Erosion Control (GEC) Permit and Building Permit. The applicant has obtained the GEC Permit and will have to obtain required Building Permits. The applicant has submitted the information required by MCC 36.4540(A) that is needed to address the SEC-wr standards. These documents are attached to this decision as exhibits listed as applicant submittal.

The development site has a shallow slope of less than two percent. No wetlands are known on the property other than small pockets immediately adjacent to the stream on the north side. The Stream Corridor ESEE Report, the County Goal 5 Inventory for the site has been included with this decision as Exhibits 2.4 and 2.5. The applicant submitted an analysis titled *Water Resource Area Certification Report* (Exhibit 1.2), *Water Resource Area Certification Report(Addendum)* (Exhibit 1.10) *Wildlife Conservation and Water Resource – WR Mitigation Plan* (Exhibit 1.11) by Richard H. Wheeler, MF, Forest Hydrologist for the site. The reports which include an inventory, assessment of existing conditions, and mitigation/restoration plans (Exhibit 1.14). These reports meet the requirements for this type of inventory, assessment and mitigation/restoration plans. The applicant has submitted materials required under MCC 36.4540(C).

6.3.2 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 proposed development meets the low impact on the site in the form of a residence, carport, garage/studio, and pumphouse within the 100 ft. to 200 ft. portion of the Water Resource Area. The mown lawn, loop driveway access to the house, and driveway extension into the garage/studio and the carport also fall into this area.*

All proposed development in the property will lie outside the 100-year floodplain as shown in Figure 2. A portion of the groomed lawn lies within both the 100-yr. and the 500-yr. floodplain.

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 requirements for mitigation are addressed in the following section of this decision (Exhibit 1.12).

* * *

6.4. Development within the Water Resource Area

6.4.1. 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: *This is a residential property. The landowner will develop no trails, rest points, or view points within the inner 100 ft. buffer. The property will retain an existing picnic area (see last paragraph of point 1 above),*

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

6.4.2. 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: *All trees at least 6 in., dbh on the property have been identified and mapped. Several are dead or dying. Those which present a hazard will be removed as will those which occupy the location of the residence and associated facilities (south side of Johnson Creek in the outer 100 ft. buffer). No trees will be removed north of the creek.*

Staff: The siting of the proposed development will result in the removal of a minimal number of trees. According to the site/mitigation plan, nine trees are slated for removal out of more than 200 (Exhibit 1.14). The applicant proposes to plant 18 trees. The proposed development meets this standard.

6.4.3 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: *See (2) above.*

Staff: Areas of standing trees, shrubs, and natural vegetation will remain connected or contiguous along the natural drainage as shown on the site/mitigation plan. This standard is met.

6.4.4 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: *See the Wildlife and Water Resource Mitigation Plan of December 18, 2004, Table 5, page 6.*

Staff: The proposed mitigation plan meets requirements of (E) as addressed in findings in the following sections of this decision (Exhibit 1.14). A condition of approval requires the mitigation plan to implemented and maintained.

6.4.5 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: *See the Wildlife and Water Resource Mitigation Plan of December 18, 2004. Existing vegetation including trees, shrubs and groundcover will be retained. The only exception to this will be the routine mechanical control of non-native Himalayan Blackberry, English Ivy, and Holly.*

Staff: The drip zone to the trunk of the tree is the support roots that hold up the tree. The roots from the drip line out provide nutrition, water and oxygen. For trees within 50 feet of the development site that are to remain, a temporary fence will need to be installed to protect the trees and their roots systems. The fences should be designed so as posts located 10 feet on the center as a general rule. The protect trees, for every inch in diameter of the trunk (DBH) allow up to 1 foot of radius from the trunk as the protected area (Example: 24 inch DBH = 24 foot radius of protected root system). Some of the trees are located too close to the proposed buildings to meet this fencing standard. Thus, if a tree is too close to the proposed development to meet the fencing standard, the fenced area should provide for a maximum amount of protected area as possible. A condition can address this.

6.4.6 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: *See the Wildlife and Water Resource Mitigation Plan of December 18, 2004, especially the mitigation map. The approved list of native plants for various sites as well as a list of nuisance plants and native plant nurseries is included in the Mitigation Plan.*

Staff: A condition of approval will require revegetation within two weeks after the soil disturbance work is completed.

- 6.4.7 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: *Both the inner and the outer 100 ft. buffers have been flagged.*

Staff: As a Condition of Approval, the development area will be required to be flagged, fenced or otherwise marked to prevent additional disturbance to water resource area.

- 6.4.8 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: *The GEC/FD Application form was filed on 10/15/02. The FEMA Elevation certificate was approved by Edward A. Crane, PLS, 9/25/2002.*

Staff: The applicant's submitted a letter addressing stormwater disposal from proposed impervious surface by Edward A. Crayne, PE for the GEC Permit Review (Exhibit 1.7). Mr. Crayne reviewed the soil infiltration rate of stormwater using the 10 year storm event and recommends the splash blocks. No stormwater facility is needed.

6.5. SEC-WR 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.

- 6.5.1. 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: See Exhibits 1.2, 1.10, 1.11, 1.13, and 1.14

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.

The proposed plan provides a public benefit by allowing a property slated for residential development to be developed for that purpose while substantially enhancing the vegetative corridor along the north bank of 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 existing riparian area is in a “degraded” condition within the area where the development is proposed between 100 feet and 200 feet from the south bank of the stream. Mr. Wheeler notes the degraded nature in his Water Resources Certification Report Addendum on Page 7 (Exhibit 1.10). Mr. Wheeler also documents that the 100 foot stream corridor is in a marginal condition.

The adverse affects of the development in the Water Resource Area is a reduction of habitat and a reduction of potential shading vegetation that could grow in the development area. Past activities have included mowing of the riparian area to keep the blackberries from growing. This has also reduced native shrub communities from being established. The Johnson Creek water resource functions as fish habitat for salmonid species, wildlife habitat, protect water quality, connectivity between areas of habitat and ecologic integrity (Exhibit 2.5).

6.5.2 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: *To compensate for the 1:1 ratio, a 40 ft. wide band from the top of the north bank of Johnson Creek following the creek alignment from the west to the east boundary was substituted. The band along the 353 ft. creek length across the property provided 14127 sq. ft., or 0.324 ac., of mitigation area. This is an easily enforceable area.*

Within this band the owner will plant at least 19 tree seedlings which within 15 years will complement the remaining overstory (canopy cover). The existing canopy already exceeds to 50% criterion for GOOD in Table 2. The planting and maturing of tree seedlings will raise the percentage canopy cover even further.

Planting a mixture of salmonberry and snowberry seedlings, planted individually and in clumps, will complement to existing salmonberry shrubs already within this band. The landowner will tend the tree and shrub seedlings to allow them to grow freely without competition from surrounding grasses and forbs.

No action is needed to improve groundcover which already covers $\geq 80\%$. These actions will raise the condition of this 40ft. band along the north side of Johnson Creek to a GOOD condition as defined in Table 2 by raising the combination of native trees, shrubs and groundcover to covering $\geq 80\%$ of the area. 4. The preceding discussion explains how this 40 ft. band along the north side of Johnson Creek will raise it from MARGINAL to GOOD condition according to Table 2, MCC 36.4555(E)(3).

Staff: The applicant is proposing restoration of a 40-foot wide corridor directly adjacent to the stream on its north side by removal of non-native species, planting of trees and planting understory vegetation (Exhibits 1.11, 1.13 and 1.14). The applicant is proposing a mitigation area equal to the area the proposed development encroaches into the buffer, a one to one ratio. The

mitigation area is in “marginal” condition Exhibit 1.2 and 1.10). The mitigation area is directly adjacent to the water resource, the stream. The mitigation area will be restored to a “good” condition as a result of the mitigation (Exhibit 1.11, 1.13 and 1.14). A condition of approval will require the property owner record the mitigation plan approval in the deed records of Multnomah County and record a deed restriction on the property where the mitigation is required. The deed restriction required will be irrevocable unless a statement of release is signed by an authorized representative of Multnomah County. These standards are met or will be met through conditions.

6.5.3. 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:** Proposed development includes construction of a residence and attendant facilities which cover much of the 0.32 ac. Noise of construction activities as well as workers will disrupt wildlife activities during the day. Once construction activities cease with completion and the family moves into the residence, wildlife activity will return to normal. And with the mitigation plantings of native shrubs and tree seedlings, habitat for small birds and mammals should improve. As snags and dying trees die and fall, they will provide habitat for burrowing rodents, small reptiles and LWD/LOD for the stream which currently has none.*

The driveway is already in-place. The only additional activity in its area will be the construction of the drainfield near the gate and its feed line from the residence and the pump, necessary because the elevation of the drainfield is higher than the residence.

The only other adverse effects will be temporary. This involves the planting of shrubs and tree seedlings/saplings. However, as these establish themselves and grow, habitat will improve to as degree not now present.

Staff: The *Wildlife Conservation and Water Resource-WR Mitigation Plan* by Mr. Wheeler describes the impacts of the proposed development (Exhibit 1.2). Further impacts can be prevented by flagging, fencing or otherwise marking the development area prior to earth disturbance to define the limits. The conditions of approval will require this. The owner will be the responsible party to implement the conditions and the mitigation plan. The applicant proposes that all plantings for the mitigation will occur within one year. These standards are met or will be met through conditions.

6.6. Criteria for SEC-h Wildlife Habitat Permit

- 6.6.1. MCC 36.4560(A) (1) Where a parcel contains any non-forested "cleared" areas, development shall only occur in these areas, except as necessary to provide access and to meet minimum clearance standards for fire safety.**

Applicant: *The driveway and underground utilities lie on the meadowland which has been cleared of forest cover for many decades. The only practicable location for the residence, carport, garage/studio, and pumphouse is within the 2.04 ac. tree-covered portion of the property. However, tree removal will be kept to a minimum to conserve as much of the habitat quality as possible.*

Staff: The proposed development is in the SEC-h area, the accessory building, is in a cleared area and will require the removal of one tree for the driveway. This standard is met.

- 6.6.2. MCC 36.4560(A)(2) Development shall occur within 200 feet of a public road capable of providing reasonable practical access to the developable portion of the site.**

Applicant: *The standard of development within 200 ft. Stone Road is impossible to meet. This is a flag lot and its developable portion is -600 ft. from the road. The driveway and underground utilities already occupy the 1.40 ac. "pole" portion of the lot and the drainfield and its feed line will also as development proceeds.*

Staff: This standard is not met.

- 6.6.3. MCC 36.4560(A) (3) The access road/driveway and service corridor serving the development shall not exceed 500 feet in length.**

Applicant: *The standard: the access road/driveway and service corridor shall not exceed 500 feet in length. This standard of development cannot be met. The platted "pole" portion of this property extends south from Stone Road 550 ft. long, already occupied by the driveway, the underground utilities ROW and the proposed location of the drainfield and its feed line ROW. Residential*

Staff: This standard is not met.

- 6.6.4. MCC 36.4560(A) (4) Fencing within a required setback from a public road shall meet the following criteria:**

- (a) Fences shall have a maximum height of 42 inches and a minimum 17 inch gap between the ground and the bottom of the fence.**
- (b) Wood and wire fences are permitted. The bottom strand of a wire fence shall be barbless. Fences may be electrified, except as prohibited by County Code.**
- (c) Cyclone, woven wire, and chain link fences are prohibited.**
- (d) Fences with a ratio of solids to voids greater than 2:1 are prohibited.**
- (e) Fencing standards do not apply in an area on the property bounded by a line along the public road serving the development, two lines each drawn perpendicular to the principal structure from a point 100 feet from the end of the structure on a line perpendicular to and meeting with the public road serving the development, and the front yard setback line parallel to the public road serving the development.**
- (f) Fencing standards do not apply where needed for security of utility facilities.**

Applicant: *None meet the "minimum 17 inch gap between the ground and the bottom of the fence" standard. All fencing is 4" x4"~4'galvanized steel net wire fence and all meet or exceeds the 2: 1 ratio of solids to void.*

Fences are in place and have been routinely replaced over the past few decades as necessary to allow rotating pastures for livestock and to control trespass onto adjacent property. The newest fence is at the portal to this property and is gated to control access. Most fencing is standard 4" x4"~4'wire net on steel posts.

The north boundary fence is in disrepair with split wood (cedar?)posts and standard net wire topped with two strands of barbed wire. Two large Douglas-firs serve as fence posts.

The west boundary fence is serviceable with treated wood posts and/or steel posts and standard wire net topped with two strands of barbed wire. It is largely overgrown with brush.

Staff: This standard is met.

6.6.5. MCC 36.4560(A) (5) The nuisance plants listed in Table 1 shall not be planted as landscaping and shall be controlled within cleared areas of the subject property.

Applicant: *Nuisance plants will be routinely controlled, principally by mechanical means, along the fence lines, around the trees, and along the creek as well as within the WRAs. No nuisance plants will be planted.*

Staff: This standard can be met through conditions.

6.6.6. MCC 36.4560((B) Wildlife Conservation Plan. An applicant shall propose a wildlife conservation plan if one of two situations exist.

- (1) The applicant cannot meet the development standards of Section (B) because of physical characteristics unique to the property. The applicant must show that the wildlife conservation plan results in the minimum departure from the standards required in order to allow the use; or**
- (2) The applicant can meet the development standards of Section (B), but demonstrates that the alternative conservation measures exceed the standards of Section (B) and will result in the proposed development having a less detrimental impact on forested wildlife habitat than the standards in Section (B).**

Staff: The applicant can meet the development standards by building the dwelling in the 100 foot wide portion of the property nearer the road. Findings addressing the proposed development's compliance with the development standards for Section (B) are in the following section below.

6.6.7. MCC 36.4560((B) (3) The wildlife conservation plan must demonstrate the following:

- 6.6.7.1. MCC 36.4560((B) (3) (a) That measures are included in order to reduce impacts to forested areas to the minimum necessary to serve the proposed development by restricting the amount of clearance and length/width of cleared areas and disturbing the least amount of forest canopy cover.**

Staff: The proposed development area is clear and will result in the removal of one tree removal. This area is adjacent to the proposed dwelling outside the SEC-wr. This standard is met.

- 6.6.7.2. MCC 36.4560((B) (3) (b) That any newly cleared area associated with the development is not greater than one acre, excluding from this total the area of the minimum necessary accessway required for fire safety purposes.**

Staff: The proposed development the accessory building and driveway will be in an existing cleared area. This standard is met.

- 6.6.7.3. MCC 36.4560((B) (3) (c) That no fencing will be built outside of areas cleared for the site development except for existing cleared areas used for agricultural purposes.**

Staff: No fence is proposed. This standard is met.

- 6.6.7.4. MCC 36.4560((B) (3) (d) That revegetation of existing cleared areas on the property at a 2:1 ratio with newly cleared areas occurs if such cleared areas exist on the property.**

Staff: There are no newly cleared areas on the property. This standard is met.

- 6.6.7.5. MCC 36.4560((B) (3) (e) That revegetation and enhancement of disturbed stream riparian areas occurs along drainages and streams located on the property.**

Staff: No revegetation is required by the SEC-h. This standard is met.

7. CONCLUSION

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

8 EXHIBITS

8.1 Exhibits Submitted by the Applicant:

- Exhibit 1.1: Application form submitted 8/12/04 (1 page);
- Exhibit 1.2: *Water Resources Area Certification Report* by Richards H. Wheeler, MF, Forest Hydrologist submitted 8/12/04 (11 pages);
- Exhibit 1.3: Site plan map submitted 8/12/04 (1 page);
- Exhibit 1.4: Certification of Water Service submitted 8/12/04 (1 page);
- Exhibit 1.5: Fire District Review submitted 8/12/04 (1 page);
- Exhibit 1.6: Certificate of On-Site Sewage Disposal 8/12/04 (1 page);
- Exhibit 1.7: Letter addressing stormwater disposal by Edward A. Crane, PE submitted 8/12/04 (1 page);

- Exhibit 1.8: FEMA Elevation Certificate stamped and signed by Edward A. Crane, Registered Professional Land Surveyor submitted 8/12/04 (2 pages);
- Exhibit 1.9: Copy of Contract of Sale recorded in Book 759 on Page 1532 submitted 8/12/04 (1 page);
- Exhibit 1.10: *Water Resources Area Certification Report (Addendum)* by Richards H. Wheeler, MF, Forest Hydrologist submitted 12/21/04 (14 pages);
- Exhibit 1.11: Wildlife Conservation and Water Resource – WR Mitigation Plan by Richards H. Wheeler, MF, Forest Hydrologist submitted 12/21/04 (16 pages);
- Exhibit 1.12: Mitigation Plan Map submitted 12/21/04 (1 page);
- Exhibit 1.13: Addendum narrative of the previously submitted reports and plan by Richards H. Wheeler, MF, Forest Hydrologist submitted 12/21/04 (2 pages);
- Exhibit 1.14: Revised site plan and mitigation plan map, 11 x 17 version without scale labeled Exhibit 1.14a submitted 1/18/05 (1 page each);
- Exhibit 1.15: Photos of the property submitted 8/12/04 (4 pages).

8.2. Exhibits Provided by the County

- Exhibit 2.1: County Assessment Record for the subject property (2page);
- Exhibit 2.2: Current County Zoning Map with subject property labeled (1 page);
- Exhibit 2.3: County 2002 Aerial show approximate stream location (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: County Assessment Record for the accessory building analysis (4 pages)
- Exhibit 2.7: Memorandum from Alison Winter, County Transportation Planning Specialist addressing the property's access and adjacent Stone Road Right-of-Way (2 pages).

8.3. Exhibit Submitted as Comment

- Exhibit 3.1: Letter from City of Gresham Planning submitted 2/18/04 (1 page).