

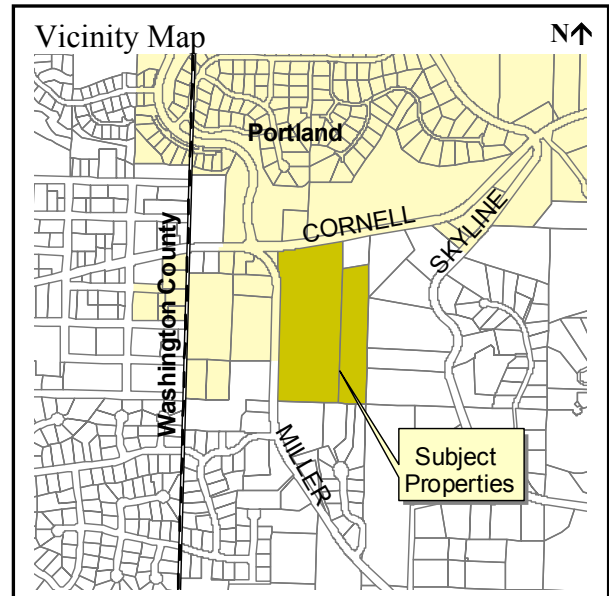
**MULTNOMAH COUNTY****LAND USE AND TRANSPORTATION PROGRAM**1600 SE 190TH Avenue Portland, OR 97233

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: T2-04-072**Permit:** Request for Extension**Location:** Southeast Corner of Miller Rd and
Cornell Rd
TL 200 & 300, Sec 36BC, T 1N, R1W,
W.M.
Tax Account #R96136-0210 &
R96136-0200**Applicant:** Timothy Ramis
Ramis Crew Corrigan & Bachrach
1727 NW Hoyt Street
Portland, OR 97209**Owner:** Lillian Logan
15005 NW Cornell Road
Beaverton, OR 97006

Summary: Request for a six month extension of Tentative Subdivision approval T3-01-010. This subdivision was approved on November 8, 2002 utilizing County regulations. On January 1, 2002 the County transferred planning authority to the City of Portland for all urban areas within its annexation boundaries. Since that date, new zoning regulations have been applied to these urban areas.

Decision: Denied.

Unless appealed, this decision is effective Wednesday, October 6, 2004, at 4:30 PM.

Issued by:

By: _____
Lisa Estrin, Planner

For: Karen Schilling- Planning Director

Date: Wednesday, September 22, 2004

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 Lisa Estrin, 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 Wednesday, October 6, 2004 at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC): Chapter 37 Administration and Procedures, specifically MCC 37.0530(B) Type II Decisions, MCC 37.0550 Initiation of Action, MCC 37.0560 Code Compliance and Applications, MCC 37.0690 Expiration and Extension of Type II and Type III Decision in EFU and CFU Zones, MCC 37.0700 Expiration and Extension of Type II or Type III Decisions in Exception Areas and Lands within the UGB.

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.

Notice to Mortgagee, Lien Holder, Vendor, or Seller:

ORS Chapter 215 requires that if you receive this notice it must be promptly forwarded to the purchaser.

Findings of Fact

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

Request for Extension

Applicant: The Type I land division (for a 28-lot subdivision) and Hillside Development Permit were approved by the county hearing officer November 8, 2002. The approval was good for two years from the effective date of the decision, unless an extension is obtained. (See Exhibit 1, Multnomah County Hearings Officer Decision, Case File T3-01-010, Condition No. 19.)

The applicant is determined to design and construct the home sites permitted under this approval. The development process for a 28-lot subdivision is difficult under ordinary circumstances, requiring detailed preliminary planning and engineering work, and the applicant has spent considerable resources and effort toward development. However, final plat approval depends on several factors out of the applicant's control, and complications in the development process for this property require the applicant to request an extension. Without an extension, if any of the issues discussed below hits a snag, the deadline could expire in frustration of the approval.

The applicant understands that the extension request should be made pursuant to Section 37.0700 of the Multnomah County Code (MCC), because the property is located in the R-10 zoning district within the Urban Growth Boundary. Section 37.0700, which applies to lands within the UGB, would allow a six-month extension up to an aggregate period of one year. The hearings officer's decision in Condition No. 19 identified MCC 37.0690 as the appropriate code to follow to obtain an extension. MCC 37.0690, which is intended to apply to rural lands in the EFC and EFU zoning districts, would allow an initial extension of up to one year. This application will address the standards in both sections. The applicant would prefer the longer initial extension possible under the code section cited by the hearings officer.

The applicant's request is for an extension of six months under MCC 37.0700 or one year under MCC 37.0690.

1.00 ***Administration and Procedures***

1.01 **Type II Case Procedures**

MCC 37.0530(B): ...Upon receipt of a complete application, notice of application and an invitation to comment is mailed to the applicant, recognized neighborhood associations and property owners within 750 feet of the subject tract. The Planning Director accepts comments for 14 days after the notice of application is mailed and renders a decision...

Staff: The application was submitted August 19, 2004 and was deemed complete as of August 27, 2004. An “Opportunity to Comment” notice was mailed on August 30, 2004 to all properties within 750 feet of the subject properties in compliance with MCC 37.0530.

Comments were received from Richard Maughn & Susan Harlan (Exhibit D.1), the City of Portland’s Bureau of Development Services (Exhibit D.2) and Scott Rosenlund, Forest Park Neighborhood Association (Exhibit D.3).

Mr. Maughn and Ms. Harlan are opposed to the extension due to the property owners dissembled attempts to hide his true intentions and the environmental alteration caused by the project.

Mr. Rosenlund is concerned with the impacts to livability, the environmental impacts in the design and due to failure of the applicant to initiate any activities for the subdivision. In addition, it appears that the extension is being sought to avoid new environmental regulations.

The City of Portland's comments are directed towards their concerns with implementing the zoning which came into effect on January 1, 2002. They indicated that the site is protected with the City's Environmental overlay zones and that this development would be nonconforming to the City's zoning regulations. In addition, they indicate that the proposed project would have to be redesigned to comply with the City's zoning regulations.

Mr. Rosenlund and the City of Portland's comments are addressed under the criteria findings below. Mr Maughn and Ms. Harlan's comments are more general and do not reflect current application criteria.

1.02 **Proof of Ownership**

MCC 37.0550 Initiation of Action

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. PC (legislative) actions may only be initiated by the Board of Commissioners, Planning Commission, or Planning Director.

Staff: The proposed project is located on Tax Lot 300 & 200 (combined), Section 36BC, Township: 1 North, Range: 1 West. Assessment & Taxation records show that the land is owned by Lillian Dinihanian. The applicant has clarified as part of the narrative statements that the owner's name is Lillian Dinihanian Logan. The property owner has granted approval for Timothy Ramis of Ramis, Crew, Corrigan & Bachrach to make application for the request for extension for subdivision approval T3-01-010 (Exhibit A.1). *This criterion has been met.*

2.00 ***Extension Criteria***

2.01 **MCC 37.0690 Expiration And Extension Of A Type II Or Type III Decision in EFU and CFU Zones.**

(A) Except for approval of residential developments as specified in (B) below, a Type II or III decision approving development on land zoned for Exclusive Farm Use or Commercial Forest Use outside of an urban growth boundary is void two years from the date of the final decision if the development action is not initiated in that period. The Planning Director may grant one extension period of up to 12 months if:...

Applicant: This written request has been submitted well in advance of the expiration date in November 2004.

The reasons the applicant is unable to continue development of the project to the point of recording the final plat are stated as follows:

1) County right-of-way improvement project (Miller Road). The subject property abuts NW Miller Road. A landslide occurred on the subject property and Miller Road on January 31, 2003, and required closing of Miller Road about 700 feet south of the intersection of NW Miller Road and NW Cornell Road. The county undertook emergency slide repair in the right-of-way and on the subject property. Any easements the county needs to protect the right-of-way in the future will have to be included in the applicant's final plat. The county has filed an application with the City of Portland for environmental review to allow the county to complete its slide repair and remediation project in conformance with city environmental protection review standards in Portland zoning code Chapter 33.430 (LU 04-020644EN). The request is being processed by the City of Portland, and a hearing was scheduled before a city hearings officer on August 11th. (Exhibit 2) The county has requested the applicant's cooperation with the county in the work which the county will be required to perform within the environmental protection overlay zone under a City of Portland permit (requiring an easement to implement an environmental review mitigation plan). In any event, unless and until the city approves the project, the applicant's construction activity for that portion of the site will be in limbo.

2) The applicant's engineer has submitted subdivision plans (including streets, storm and sanitary sewer) to the county staff for review and approval. The fees will be in excess of \$169,000. The applicant has made a partial fee payment (a deposit of \$19,850) to allow the county to review the subdivision design while the project is in limbo. (Exhibit 3) The 2004 construction season is well underway, but these questions remain. The applicant's hope is to extend the approval deadline for at least six months, until May 2005, expecting that the project will be ready for construction by next year's construction season.

3) Sewer service for this property has proved to be difficult to arrange through Clean Water Services (CWS). CWS has agreed to provide the service to the property, but it is up to the applicant to place the sewer line between the property and the existing CWS lines. CWS prefers a sewer route through property west of Miller Road. The applicant's proposal for installing the line beneath Miller Road for connection to the south was disfavored by CWS. CWS has condemnation power, but it is not inclined to use it to secure an easement for this sewer line, unless and until the applicant shows it is not feasible to purchase the required sewer easements. As a result, the applicant is still in the process of negotiating for off-site sewer easements with the owners of property west of Miller Road, which must be crossed by a sewer line built to serve the site. If these negotiations are not successful, CWS condemnation may be possible, but that would take more time.

4) Although annexation to the City of Portland is required by the decision, it is also required to be timed to take effect after the recording of the final plat. (Exhibit 1, Condition No. 12) The timing of the final plat recording is uncertain, because of the factors described above.

Conclusion under MCC 37.0690(A)

For the reasons stated above, the applicant has satisfied the approval standards under MCC 37.0690 and should be granted an extension for one year, with a new expiration date in November 2005.

Staff: The subject property is currently zoned R-10 and is located within the Metro Urban Growth Boundary (Exhibit B.3 & B.4). The criteria for extension under MCC 37.0690 only apply in the EFU and CFU zones. Extensions for properties within the UGB are allowed

pursuant to MCC 37.0700 below. *These criteria have not been met, but more importantly these criteria are not applicable to this request.*

2.02 **MCC 37.0700 Expiration and Extension Of Type II Or Type III Decisions In Exception Areas and Lands Within the UGB.**

(A) All Type II and Type III approvals automatically become void if any of the following events occur:

(1) If, within two years of the date of the final decision, all necessary building permit(s) have not been issued, if required; or

(2) If, within two years of the date of the final decision, the development action or activity approved in the decision is not initiated or, in situations involving only the creation of lots or property line adjustments, the final survey or plat has not been approved by the Planning Director and recorded.

(B) Notwithstanding Subsection (A) of this section, on exception lands the decision maker may set forth in the written decision, specific instances or time periods when a permit expires.

Staff: If the final plat is has not been approved by the Planning Director and recorded by the applicant by November 8, 2004 or an extension is not granted through this decision, the 28 lot subdivision approved via T3-01-010 will expire. The hearings officer as part of her decision for T3-01-010 did not set forth in the written decision a different time period or expiration date for the decision.

2.03 **(C) The Planning Director may extend, prior to its expiration, any approved decision for a period of six months up to an aggregate period of one year; provided, however, that there has been substantial implementation of the permit. Any request for an extension shall be reviewed and decided upon by the Planning Director as a Type II decision.**

Staff: The subject decision, T3-01-010 will expire on November 8, 2004. The application for extension was filed on August 19, 2004. Based upon the findings below, substantial implementation of the decision has not occurred. This application has been processed as a Type II decision.

2.04 **(D) Substantial implementation of a permit shall require at a minimum, for each six month extension, demonstrable evidence in a written application showing:**

(1) The permit holder has applied for all necessary additional approvals or permits required as a condition of the land use or limited land use permit;

Applicant: The conditions of approval in the hearings officer's decision (Exhibit 1) include the following items that must be submitted to the county before the final plat can be filed include (with Condition of Approval #):

- ▶ development agreement for construction in rights-of-way & street lighting (#9);
- ▶ improvement agreement for street trees (#16);
- ▶ all perennial streams and wetlands on tentative plan must be identified and recorded as storm water easement or drainage right of way on final plat (#3);

- ▶ design a water system per Portland Water Bureau Regulations (#11a);
- ▶ obtain sewer service from City or Portland and/or CWS, and negotiate annexation by City of Portland timed so that Multnomah County can retain jurisdiction through the time of final plat approval (#12);
- ▶ submit CC&R's for the subdivision to cover maintenance of the drainage easements (#20), and solar access and some lot restrictions (#26); and
- ▶ file an agreement with the county engineer that includes a schedule for required improvements, a maintenance bond and a surety bond (#27). (MCC11.45.680)

The applicant has taken the following steps toward completion of the conditions of approval for this subdivision:

Multnomah County Project Agreement No. 3806

The applicant has submitted the engineering plans (including streets, storm and sanitary sewer) to the county and requested county plan review and an improvement agreement, as required by conditions of approval. The county fees total more than \$169,000 for the project. Due to the uncertain timing of the project, the applicant has paid a deposit of \$19,850 to pay the initial costs of the staff design review. The purpose of this variance is to provide flexibility to accommodate the owners' construction schedule due to extenuating circumstances including:

- 1) the county has asked the applicant to cooperate with the county for the work which the county will be required to perform under a City of Portland permit, in connection with slide repair mitigation work on a portion of the subject property.
- 2) the applicant is in process of negotiating with adjacent property owners to secure easements for the construction of off-site sanitary sewer lines.

This fee payment schedule is necessary to allow the applicant to get started with plan review of the project now and allow time to coordinate with the county and adjacent owners as needed before project construction begins. (See **Exhibit 3 & Exhibit 4** letter to the county.) [relabeled as Exhibit A.5 & A.6 by County]

It is not feasible to propose the other improvement agreements called for in the conditions of approval until approval of the basic street and public service systems plans. For example, an improvement agreement is required to contain a schedule for completion of the required improvements. MCC 11.45.680 Clearly a schedule for completion for the "construction and modification of public right of ways and street lighting associated with the subdivision " (Condition No. 9) is not possible until the overall plans are approved, and until a construction schedule is worked out in coordination with the county right-of-way project.

The City of Portland staff will design a water system for the subdivision (Condition #11a) after the street and sewer plans are approved by the county.

Additional Comments from Applicant: Rosenlund states that the applicant has failed to initiate any development activities for the subdivision. That is not true as explained in the application narrative and supplemental communications with the county. The applicant has negotiated an agreement with the County for review of construction plans for the subdivision development (Exhibit 3 of the application) [relabeled as Exhibit A.5 by County], and the

applicant's engineer has been working on an engineering package for on site streets, storm drains and other project details.

Rosenlund misreads MCC 37.0690(B). Under this subsection, the residential development approval (defined in subsection (B)(3) as various single family dwellings) would expire in four years if development was not initiated. The approval in T3-01-010 would expire in two years, under Condition of Approval No. 19. MCC 37.0690 is cited by the hearings officer in Condition of Approval No. 19 as the standards for the extension, but in other respects, it relates only to land zoned for Exclusive Farm Use or Commercial Forest Use outside of an urban growth boundary. The subject property is inside the UGB.

Rosenlund misunderstands MCC 37.0700(A) and MCC 37.0700(D)(3). "Substantial implementation of a permit" is defined in Subsection (D)(1-4) and is the basis for the application. The applicant has asked the City of Portland to resume processing the annexation petition, which the City staff still has on file. The applicant is not avoiding the responsibility of annexing to the City of Portland. MCC 37.0700(1) requires the permit holder to apply for necessary approvals required by conditions of approval. The applicant has re-applied for annexation. Condition of Approval No. 12 (T3-01-010) requires a delayed effective date for the annexation, timed to follow the recording of the final plat. The condition allowed the applicant to "amend the petition for annexation if necessary to request a delayed effective date for the annexation." For reasons explained in the application narrative, the date of the recording of the final has been uncertain. The applicant has requested that the City of Portland resume processing the annexation petition, with a delayed effective date, thus satisfying Condition of Approval No. 12 and MCC 37.0700(D)(1).

Staff: The criterion listed above requires that the permit holder apply for all necessary additional approvals or permits as a condition of the land use decision. Staff has identified at least 2 approvals needed to demonstrate *substantial implementation* of T3-03-010.

The first approval is for the addition of 4,000 sq. ft. to the buffer area by removing it from Lot 10 or other adjacent parcels as approved by Multnomah County Planning staff (Condition No. 25). The additional buffer area must be found to be suitable for mitigation/buffer area. As staff will have to make a discretionary decision as to whether the land to be transferred is suitable for the buffer area, this would need to be processed as a land use decision (Type II decision). No land use application has been submitted to staff for this redesign.

The second action needed to fulfill the conditions of approval is to obtain a preliminary approval for annexation to the City of Portland so that sewer service can be provided (Condition No. 12). While the applicant had begun annexation proceeding previously, it appears to have been withdrawn in May 2002 (Exhibit A.11). On September 1, 2004 John Pinkstaff with Ramis Crew Corrigan & Bachrach requested that "the process get started again as soon as possible". Since this application came in on August 19, 2004, at the time of its submittal all necessary additional approvals or permits had not been applied for. Even if the annexation request was not withdrawn in May 2002, its inactivity shows that the permit holder has not worked steadily to implement T3-01-010 approval. *This criterion has not been met.*

- 2.05 **(2) Further commencement of the development authorized by the permit could not practicably have occurred for reasons beyond the reasonable control of the permit holder;**

Applicant: The reasons beyond the applicant's control include the following items:

County Coordination on Miller Road Right-of-Way Stabilization Project

As discussed in response to section 37.0690(A)(3), the county has requested that the applicant cooperate with the county in the project for the work which the county will be required to perform under a City of Portland permit. The applicant is certainly willing to cooperate with the county. However, the county was not yet ready to move ahead with the project (See Exhibit 3.), and the building season is here now. The applicant needs to get in synch with the county before construction of the subdivision project can begin. In addition, any easements the county needs to protect the right-of-way in the future will have to be included in the applicant's final plat.

Sewer Connection Negotiations

The applicant has been attempting to resolve the sewer connection issue through Clean Water Services (CWS) and negotiations with private land owners. Connection to CWS sewer lines that could serve the property are located to the west across private land, or to the south through the Miller Road right-of-way. The applicant's engineer proposed a route by boring underneath Miller Road, but CWS rejected that idea. The remaining route would extend a line west from the site, crossing beneath Miller Road and across private land to connect with the existing CWS sewer system in NW 87th Avenue at NW Johnson Street. (See **Exhibit 5**, map of CWS lines; **Exhibit 6**, map showing site in relation to neighboring properties.) These negotiations with CWS and private parties have been in progress for several months, there is no way to know if negotiations will be successful, or how long it will take to work out an easement with French American International School, one of the owners of land to the west of Miller Road. CWS staff has informed the applicant they prefer not to condemn the land for this sewer line. At the same time, they would welcome this subdivision to their system, because it will also provide future connections to the property uphill and immediately east of the site. The applicant cannot control the actions of CWS or the neighboring land owners.

Annexation to Portland

Annexation must be timed to maintain county oversight of the project through the final plat approval. (**Exhibit 1**, Condition of Approval No. 12) The applicant cannot be certain when the final plat approval could occur, because of the uncertain timing of the county coordination and sewer connection issues discussed above.

Staff: MCC 37.0700(A)(2) specifies that if within two years of the date of the final decision, the final survey or plat has not been approved by the Planning Director and recorded, the Decision will become void. The applicant under response to this criterion indicates under *County Coordination on Miller Road Right-of-Way Stabilization Project* that the project was unable to go forward as "The applicant needs to get in synch with the county before construction of the subdivision project can begin. In addition, any easements the county needs to protect the right-of-way in the future will have to be included in the applicant's final plat." The construction of the subdivision is not mandated before the 2 year period is over. It is the recording of the final plat. In addition, he indicates that the Stabilization easements will have to be included on the final plat. The Stabilization easements are not required as part of T3-01-010 and can be recorded against the property after the recordation of the plat.

The applicant's second reason for why the commencement was not practicable is the Sewer Connection Negotiations. The applicant above indicates that an easement is necessary to

connect to the sewer system and the negotiations for the easements are out of their control and CWS does not want to use condemnation proceedings. Staff disagrees with the applicant's answer that this situation is reasonably out of their control. They are negotiating with the property owner. They could offer more money, a different location or accept the property owner's route. These negotiations are under their control though they may not wish to agree to the other property owner's terms.

The final reason for lack of commencement is the annexation timing with the City of Portland. As indicated in T3-01-010 decision (last paragraph, page 38, Exhibit A.3) the effective date of annexation for this property can be up to 10 years after the date of the proclamation final date of annexation. It just needs to be to a date certain. It seems within their control that they could establish timeline for construction of improvements etc. and set a firm date. In fact, they have set a firm date in their recent request to restart the annexation process (Exhibit A.11). As such, it appears that initiating the process for annexation, providing the required information to the City, recommending a date certain and not stopping the annexation process in May, 2001 and beginning it again in September, 2004 after this application was submitted was in their control. The annexation process could have been completed or near completion by the City by the time of this extension request. It appears that the applicant has some control over this process.

Based upon the above findings, this criterion has not been met.

2.06

(3) The request for an extension is not sought for purposes of avoiding any responsibility imposed by this code or the permit or any condition thereunder; and

Applicant: The applicant is in the midst of a good faith effort to complete the subdivision requirements and record the final plat. The applicant and the applicant's engineer and attorney have applied significant effort and expense toward this goal. The applicant's engineer has prepared extensive subdivision plans and submitted them for review to the county staff, and the applicant has paid a fee to start the county design review process. Negotiations are underway with private land owners for sewer easements. The intent of the requested extension is to keep that process going without losing the right to develop the subdivision. The applicant does not intend to avoid any responsibilities imposed by the code or the subdivision approval.

Staff: The applicant has not requested any other modifications to T3-01-010 other than a request for extension of time to complete. *This criterion has been met.*

2.07

(4) There have been no changes in circumstances or the law likely to necessitate significant modifications to the approval.

Applicant: The county code under which this subdivision was approved remains in effect in relation to this subdivision, even though the City of Portland has taken over zoning jurisdiction of this area. ORS 92.040(2) The conditions of approval and the other requirements of the approval the applicant is striving to satisfy were all promulgated under that county code. (See **Exhibit 7**, letter from City of Portland.)

Conclusion under MCC 37.0700(C)

For the reasons stated above, the applicant has satisfied the approval standards under MCC 37.0700 and should be granted an extension for six months, with a new expiration date in

Additional Comments from Applicant:

1. The memo does not address any approval standards.
2. The memo incorrectly claims that new development on this site has been subject to City of Portland zoning designations and land use regulations since January 1, 2002. The memo states that the subdivision plan “will create development and new lots which are non-conforming to the City of Portland zoning regulations”. These statements are totally wrong legally. The City has no zoning authority over this subdivision. Oregon law requires that the subdivision must be developed under the standards in place when the application was first submitted. ORS 92.040(2) & (3) This is also required by Section III.B.g of the Intergovernmental Agreement to Transfer Land Use Planning Responsibilities between the City of Portland and Multnomah County, effective January 4, 2002. Section III.B.g states as follows:

Pursuant to County Ordinance 967, and in accordance with ORS 92.040(2), for any subdivision application and any subsequent application for construction approved by the subdivision shall be governed by the County land use regulations in effect as of the date the subdivision application was first submitted. The County retains land use service and review responsibility in these cases. However, an applicant may choose to apply the regulations adopted under County Ordinance 967.

The County first adopted Portland land use plans and regulations with Ordinance 967, adopted October 11, 2001, effective January 1, 2002.

3. The memo is inconsistent with the city policy stated in a September 13, 2001, letter from Planner Miriam Hecht. (Exhibit 7 to the application; Copy attached as “GWS”). [relabelled as Exhibit A.7 by County] That letter states: “If the County approves a subdivision on this property, subsequent construction on the property may be subject only to the zoning regulations in effect at the time of subdivision application, if the owner so chooses.” The letter enclosed a copy of ORS 92.040 (a copy of the statute is attached to this email).

Staff: On January 1, 2002 new County zoning regulations came into effect which modified and included new zoning regulations for the R-10 zoning, land division regulations and the addition of environmental overlays over the site. These regulations are the same as the City of Portland’s zoning ordinances, but they have been adopted by Multnomah County. The County transferred through an Intergovernmental Agreement authority to review and approve land use permits in certain areas known as “2040 pockets” (urban lands, unincorporated). The above criterion requires that there have not been any changes to laws which would necessitate significant modifications to the approval if it was to go back through the quasi-judicial process. In many cases, laws remain the same for years and an extension will not affect the outcome of the finished project, if it was to have to repeat the approval process. This is not the case with T3-01-010 preliminary plat. The City of Portland Bureau of Development Services has indicated in their Memo (Exhibit D.2) that the plan would have to be revised as follows:

- Avoid development within the Environmental Protection overlay zone (R10p).
- Remove all portions of private lots from the Environmental Protection overlay zone; reduce lot size and cluster development outside the “p” zone.
- Provide limited street connections through the Environmental Protection overlay

- zone, but only where no access alternatives exist.
- Provide bridge crossings if there is no access alternative to crossing the creek.
- Place the Environmental Protection overlay zone in an environmental resource tract.

Since the preliminary subdivision design does not utilize cluster development, maintain the ‘p’ environmental overlay zone free of residential lots, utilize bridge crossing over the streams, and place the area zoned ‘p’ into an environmental resource tract, it appears that the 28 - lot subdivision will require major redesign to comply with the new zoning and overlays. . In addition, the City of Portland’s comments are not inconsistent with the memo from 2001 as the comments are discussing, if a new subdivision application is submitted to the City of Portland what would be required to be changed to comply with the current zoning regulations.

The applicant is arguing that Multnomah County zoning which was replaced in 2002 only applies to this application due to ORS 92.040(2). Staff disagrees. If the decision becomes void, the applicant would need to utilize the new zoning regulations adopted by the County on January 1, 2002 and administered by the City of Portland. The applicant could not utilize for a new land division application the County’s repealed zoning regulations.

ORS 92.040(2) states:

(2) After September 9, 1995, when a local government makes a decision on a land use application for a subdivision inside an urban growth boundary, only those local government laws implemented under an acknowledged comprehensive plan that are in effect at the time of application shall govern subsequent construction on the property unless the applicant elects otherwise. [Staff emphasis added.]

(3) A local government may establish a time period during which decisions on land use applications under subsection (2) of this section apply. However, in no event shall the time period exceed 10 years, whether or not a time period is established by the local government.

The applicant argument seems to neglect the words “...shall govern subsequent construction...” The term *Construction* relates to the physical improvement of the land with roads, sidewalks, dwellings, sewer lines, etc. If the final plat of the subdivision is not recorded by November 8, 2004 and this extension is not granted, the decision will become void and subject to the new zoning regulations in place.

In the additional applicant comments, it seems that the applicant is stating that the development of the project is restricted solely to these replaced laws and no one has the option to apply the new regulations if desired. The developer can elect after the recordation of the subdivision, to apply the new zoning regulations to the site for the construction of the dwellings. The applicant/developer is not bound to the old codes, if they choose to utilize the new ones.

The applicant argues that the Intergovernmental Agreement requires the use of the old code. The Intergovernmental Agreement is not a land use regulation, it is a contractual obligation for how, when and with who certain land use permits will be reviewed and approved. As it clearly states “The County retains land use service and review responsibility in these cases. However, an applicant may choose to apply the regulations adopted under County Ordinance

967.” If the applicant was to choose to apply the new zoning regulations, the City of Portland would review the applications. This section is to allow the jurisdiction that knows the decision or the code the best to be in charge of the customer’s application.

As such, staff is unable to find that there have been no changes in circumstances or the law likely to necessitate significant modifications to the tentative plan. *This criterion has not been met.*

- 2.08 **(E) New application required. Expiration of an approval shall require a new application for any use on the subject property that is not otherwise allowed outright.**

Staff: If this extension is not granted, T3-01-010 will become void on November 8, 2004. The property owner would need to seek new approvals through the City of Portland.

- 2.09 **(F) Deferral of the expiration period due to appeals. If a permit decision is appealed beyond the jurisdiction of the County, the expiration period shall not begin until review before the Land Use Board of Appeals and the appellate courts has been completed, including any remand proceedings before the County. The expiration period provided for in this section will begin to run on the date of final disposition of the case (the date when an appeal may no longer be filed).**

Staff: No appeal was filed in response to the Hearings Officer’s decision on November 8, 2002.

3.00 **Conclusion**

Based on the findings and other information provided above, the applicant has not carried the burden necessary to grant an extension of the 28-lot subdivision known as T3-01-010. The extension request is denied.

4.00 **Exhibits**

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

Exhibit #	# of Pages	Description of Exhibit	Date Received/ Submitted
A.1	1	General Application Form	8/19/04
A.2	10	Narrative Statements & Applicant’s Exhibit List	8/19/04
A.3	92	County Hearings Officer Final Order – Applicant’s Exhibit 1	8/19/04
A.4	51	County’s Environmental Review Application and Hearing Notice - Applicant’s Exhibit 2 <ul style="list-style-type: none">a. Notice of Public Hearing for Repair Work to Miller Roadb. Zoning Mapc. Vicinity Map	8/19/04

- d. Existing Conditions Drawing for SW Miller Road Emergency Slide Repair - Revised
- e. Development Plan for SW Miller Road Emergency Slide Repair - Revised
- f. Construction Management Plan for SW Miller Road Emergency Slide Repair - Revised
- g. Planting Plan and Details Mitigation Plan Miller Road Slide Repair - Revised
- h. Land Use Review Application
- i. Memo from Tricia Sears to Derrick Tokos regarding Environmental Review for Miller Road Landslide Repair
- j. Vicinity Map SW Miller Road Emergency Slide Repair
- k. Existing Conditions Drawing for SW Miller Road Emergency Slide Repair
- l. Development Plan for SW Miller Road Emergency Slide Repair
- m. Construction Management Plan for SW Miller Road Emergency Slide Repair
- n. Planting Plan and Details Mitigation Plan Miller Road Slide Repair
- o. Memo from David Evans & Ass. To Mult. County for Final Mitigation Plan – Dated 4/9/2004
- p. Natural Resource Impact Evaluation – Dated 4/12/04
- q. Vicinity Map
- r. 2000 Aerial Photo
- s. 2001 Aerial Photo
- t. Alternative Analysis NW Miller Road Embankment Failure

A.5	10	Project Agreement No. 3806 - Applicant's Exhibit 3	8/19/04
A.6	2	Letter to county from applicant's attorney re: variance to payment schedule - Applicant's Exhibit 4	8/19/04
A.7	1	Clean Water Services sewer location map - Applicant's Exhibit 5	8/19/04
A.8	1	Vicinity map - Applicant's Exhibit 6	8/19/04
A.9	3	Letter from city re: ORS 92.040 - Applicant's	8/19/04

Exhibit 7

A.10	1	Tentative Plan Map Rosalie Ridge	8/19/04
A.11	1	Letter from Ramis Crew Corrigan & Bachrach to Barbara Sack, City Planner Regarding Request to Resume Annexation Processing	9/1/04
A.12	1	Email Requesting the Plan Status Update for Miller & Cornell be added to Record with Attached Update	9/10/04
A.13	3	Applicant's Response to Written Comments <ul style="list-style-type: none"> a. ORS 92.040 language b. Copy of September 13, 2001 letter from City of Portland (previously submitted) c. Request to Resume Processing of Annexation File Dated 9/1/04 (previously submitted) d. E-mail to County Regarding Progress Report (previously submitted) 	9/16/04

'B'		Staff Exhibits	Date of Document
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B.1	2	A&T Property Information Printout for Tax Lot 300, 1N1W36BC	8/19/04
B.2	2	A&T Property Information Printout for Tax Lot 200, 1N1W36BC	8/19/04
B.3	1	Zoning Map	9/9/04
B.4	1	Metro Urban Growth Boundary	9/13/04

'C'		Administration & Procedures	Date
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C.1	1	Complete Letter – Day 1 (August 27, 2004)	9/2/04
C.2	2	Opportunity to Comment	8/30/04
C.3	16	Administrative Decision – Day 27	9/22/04

'D'		Comments Received	Date
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D.1	2	From Richard Maughn and Susan Harlan Adjacent Property Owners	9/8/04
D.2	2	Memo from the City of Portland's Bureau of Development Services Regarding Concerns about Extension	9/8/04
D.3	2	From Scott Rosenlund, Forest Park Neighborhood Association	9/13/04