

**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.

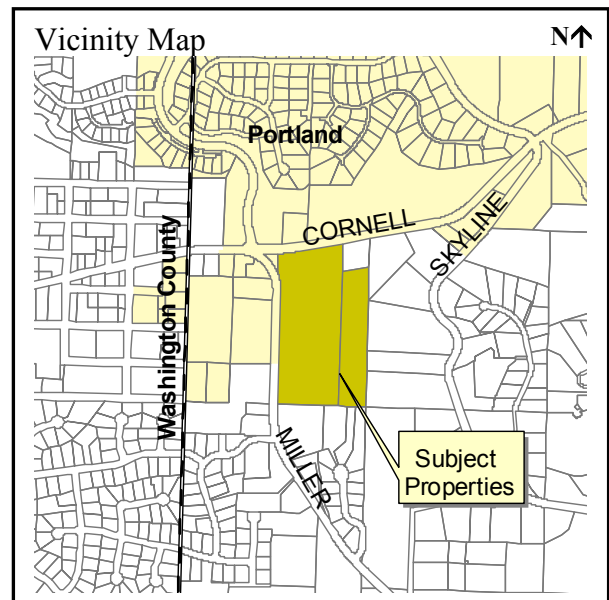
Case File: T2-05-024

Permit: Administrative Decision Of The Planning Director

Location: Southeast Corner of Miller and Cornell Roads
TL 200 & 300, Sec 36BC, T 1N, R 1W, W.M.
Tax Account #R96136-0200 &
R96136-0210

Applicant: Timothy Ramis
Crew Ramis & Bachrach

Owner: Lillian Logan



Summary: Applicant is requesting approval of an administrative decision for the satisfaction of Condition #25 from Case File T3-01-010. Condition #25 required the property owner to provide 4,000 square feet of additional buffer area along the stream corridor for the purposes of the mitigating the encroachment of grading activities within the 100 ft “No Disturb” buffer of the Hillside Development Permit approved as part of T3-01-010.

Decision: Approved with conditions.

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

Issued by:

By: _____
Lisa Estrin, Planner

For: Karen Schilling- Planning Director

Date: Wednesday, May 4, 2005

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, May 18, 2005 at 4:30 pm.

Applicable Approval Criteria: Multnomah County Code (MCC):

Administration and Procedures: Chapter 37

Hearings Officer's Decision T3-01-010: Condition #25

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) and plan(s). No work shall occur under this permit other than that which is specified within these documents. It shall be the responsibility of the property owner(s) to comply with these documents and the limitations of approval described herein.
2. **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. Prior to recordation of the subdivision plat, the property owner or her representative shall show on the subdivision plat the mitigation area approved by this decision as part of the stormwater easement area.

2. Prior to the recordation of the subdivision plat, the property owner or her representative shall include in the C,C & R's a restriction that the area included in the mitigation plan shall be maintained in a healthy condition in accordance with Exhibit A.4 and that it shall not be utilized for non-water quality purposes.
3. Prior to zoning approval of the subdivision plat, the owner shall plant the 4,000 square feet of additional mitigation area and provide documentation that the planting has been completed to Land Use Planning. The area to be planted is shown on Exhibit A.5, and the planting shall be in accordance with the Rosalie Ridge Drainage and Buffer Mitigation Plan (Exhibit A.3).

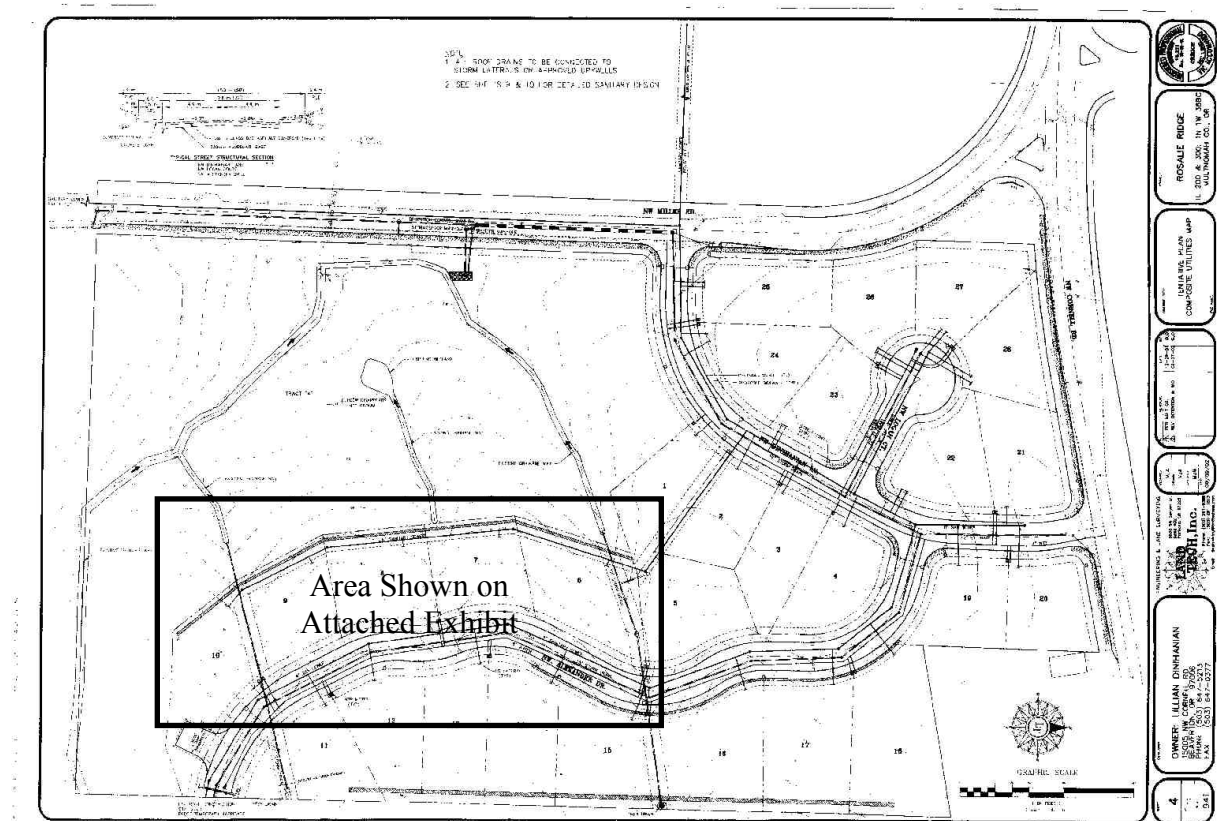
Notice to Mortgagee, Lien Holder, Vendor, or Seller:

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

FINDINGS: Written findings are contained herein. The Multnomah County Code criteria are in **bold** font. Staff comments and analysis are identified as **Staff:** and follow Applicant comments identified as **Applicant:** to the applicable criteria. Staff comments include a conclusionary statement in *italic*.

1.00 *Project History*

In November, 2002 the County's Hearings Officer approved with conditions a 28 lot subdivision on the southeast corner of Miller Road and Cornell Road. Various conditions were placed upon the decision requiring documents be prepared, the preparation of a subdivision plat and modifications to the proposed subdivision in order to comply with the conditions. The approved Tentative Plan Map is shown below.



Along Alexander Drive, the applicant was required to modify Lot 10 and possibly other lots to add 4,000 square feet of area to the mitigation plan for encroaching within 100 ft of the intermittent streams on the site. The following condition is the origin for this decision:

Condition No. 25 of T3-01-010:

The applicant shall be required to provide 4,000 additional square feet of buffer area for the purposes of the mitigation plan. The area may be removed from Lot 10, if Multnomah County Planning staff approves the applicant's redesign of Lot 10. As an alternative, the Multnomah County Planning Department Staff may require that other lots in combination with Lot 10, be reduced to provide a combined total of 4,000 additional square feet of suitable mitigation/buffer area. No lot may be reduced below the 10,000 square foot minimum lot size. The applicant shall complete the plantings described by the mitigation

plan and include requirements in the CC&R's for the maintenance of the described plantings.

1.01 ***Project Description***

Applicant: The purpose of this application is to satisfy staff requirements for the additional buffer area. This application does not address the last sentence, which requires actual planting and drafting CC&R's.

The condition seems to require that an unspecified portion of the additional buffer area be removed from Lot 10. At the pre-filing meeting (PF-05-003, 13 Jan 2005), staff indicated that Lot 10 is not well situated to enhance protection of the vegetative corridors proposed along the three natural drainage ways behind Lots 6-10 on the approved preliminary plan map.

The applicant's mitigation plan was prepared by Schott & Associates (Rosalie Ridge Drainage and Buffer Mitigation Plan, prepared in September 2002). The plan and Sheet L1 of the approved subdivision plans illustrating the mitigation plan are attached as Exhibit 2.

In an attempt to satisfy the hearings officer's findings and condition #25 and the staff concerns about Lot 10, in keeping with the original approved mitigation plan, the applicant proposes the following mitigation plan enhancement:

- ▶ Remove 3,630 square feet from Lot 6 (remaining area: 13,211.78 square feet)
- ▶ Remove 250 square feet from Lot 1 (remaining area: 10,415 square feet)
- ▶ Remove 120 square feet from Lot 10 (remaining area: 14,326.21 square feet) Total: 4,000 square feet (See Exhibit 3.)

1.02 ***Project Site***

Staff: The subject site consists of a 16.02 +/- acre site with varying terrain and is located within the Urban Growth Boundary. The site was logged prior to application for the subdivision and has had most of its tree cover removed. The site has 3 intermittent streams traversing it from east to west and 1 perennial stream that runs from the southern property line towards the western property line adjacent to Miller Road.

1.03 ***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 200 & 300 (combined), Section 36BC, Township: 1 North, Range: 1 West. Assessment & Taxation records show that the land is owned by Lillian Dinihanian, also known as Lillian Logan (Exhibit B.1). The property owner has granted approval for Timothy Ramis of Crew Ramis & Bachrach to make application to satisfy Condition #25 of T3-01-010 in preparation of recording the final plat of the subdivision. (Exhibit A.1). *This criterion has been met.*

1.04 ***Response to Public Comments***

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 March 9, 2005 and was deemed complete as of March 21, 2005. An "Opportunity to Comment" was mailed on March 24, 2005 to all properties within 750 feet of the subject properties in compliance with MCC 37.0530. One written comment was received regarding the application (Exhibit B.2).

Scott Rosenlund requested that Tract A be designated as open space or the developer declares intentions for Tract A. He indicated that this is the same request being made to the City of Portland in regards to the annexation process.

The areas utilized to mitigate the encroachment into the 100 ft buffer zone required by the Hillside Development and Erosion Control Ordinance will be planted and must be maintained as part of this land use decision and T3-01-010. In addition, stormwater easements are required along all drainages as required under MCC 11.45.550(B) as part of the subdivision approval.

2.00 ***Condition No. 25 of T3-01-010***

The applicant shall be required to provide 4,000 additional square feet of buffer area for the purposes of the mitigation plan. The area may be removed from Lot 10, if Multnomah County Planning staff approves the applicant's redesign of Lot 10. As an alternative, the Multnomah County Planning Department Staff may require that other lots in combination with Lot 10, be reduced to provide a combined total of 4,000 additional square feet of suitable mitigation/buffer area. No lot may be reduced below the 10,000 square foot minimum lot size. The applicant shall complete the plantings described by the mitigation plan and include requirements in the CC&R's for the maintenance of the described plantings.

Staff Note - The above condition is based upon two criteria from the Hillside Development and Erosion Control Ordinance contained in MCC 11.15.6700 et al. The specific criteria are as follows:

MCC 11.15.6730 Grading and Erosion Control Standards

Approval of development plans on sites subject to a Hillside Development Permit shall be based on findings that the proposal adequately addresses the following standards. Conditions of approval may be imposed to assure the design meets the standards:

(2) Erosion Control Standards

- a. On sites within the Tualatin River Drainage Basin, erosion and stormwater control plans shall satisfy the requirements of OAR 340. Erosion and stormwater control plans shall be designed to perform as prescribed by the currently adopted edition of the Erosion Prevention & Sediment Control Plans Technical Guidance Handbook (1994) and the City of Portland Stormwater Quality Facilities, A Design Guidance Manual (1995). Land-disturbing activities within the Tualatin Basin shall provide a 100-foot undisturbed buffer from the top of the bank of a stream, or the ordinary high watermark (line of vegetation) of a water body, or within 100-feet of a wetland; unless a mitigation plan consistent with OAR 340 is approved for alterations within the buffer area.**
- e. Whenever feasible, natural vegetation shall be retained, protected, and supplemented;**
 - i. A 100-foot undisturbed buffer of natural vegetation shall be retained from the top of the bank of a stream, or from the ordinary high watermark (line of vegetation) of a water body, or within 100-feet of a wetland;**

ii. The buffer required in (i) may only be disturbed upon the approval of a mitigation plan which utilizes erosion and stormwater control features designed to perform as effectively as those prescribed in the currently adopted edition of the Erosion Prevention & Sediment Control Plans Technical Guidance Handbook (1994) and the City of Portland Stormwater Quality Facilities, A Design Guidance Manual (1995) and which is consistent with attaining equivalent surface water quality standards as those established for the Tualatin River Drainage Basin in OAR 340.

A memorandum was prepared to provide guidance to these OAR guidelines (Exhibit B.3). The Hearings Officer in T3-01-010 utilized this memorandum to determine the applications compliance with OAR 340 which led to Condition #25. Staff directed the applicant to continue to utilize this memorandum in evaluating which areas to add to the mitigation plan. The following are

Encroachment within 25 Feet of a Stream Feature

- ▶ **Establish a vegetated corridor extending 25 feet parallel to the wetland/stream feature.**
- ▶ **Within this corridor, retain a biologist to prepare a vegetative inventory.**

Applicant: The proposed solution extends the approved vegetative corridor and inventory for the northern-most drainage way, using portions of Lots 1 and 6. As noted by the hearings officer, the proposed plantings in the drainage areas serve to “decrease runoff after grading and slow or retard water flowing through the drainage areas.” T3-01-010, Page 71 The additional area is narrower than the established (approved) corridor, but as a result of moving the vegetative area farther uphill, the drainage way will be better protected over a longer natural area. Most of the 4,000 square feet will protect the drainage way located next to Lots 1, 5 and 6. The retaining wall would be extended up the western side of Lot 6 and across the top of the proposed additional buffer area, further protecting the drainage way by stabilizing the lot development uphill. A large portion of the land taken from Lot 6 is shown as a 20-foot-wide storm drain easement on the approved tentative plan map. (Sheet 2) The 120 square feet (3% of the total) taken from Lot 10 is intended only to satisfy the requirement that Lot 10 be included. However, even this small area would enhance the drainage filtration below the retaining wall and improve water quality downhill. Every little bit helps.

Sheet L1 of the approved subdivision plans shows the Landscaping Mitigation and Planting Plan. (See Exhibit 2.) The site drains from east to west, toward Miller Road, using four existing drainage ways. The proposed additional 4,000 square feet of buffering would be placed above the northern-most drainage way, extending the original planting area uphill. The new mitigation plantings in this area will allow the drainage pipe shown on Sheet L1 to be shortened. A shorter drainage pipe means the water from up the hill will enter the ground filtration process higher up, and be underground for a longer period of time, thus improving the water quality downslope. Water draining from Lots 5 and 6 will receive the filtering of natural vegetation sooner, with the proposed 4,000 square feet planted with trees and shrubs, and improve the water quality from that drainage. The additional area would be planted using the same vegetative inventory prepared by Schott for the approved mitigation plan.

Staff: Condition #25 required that an additional 4,000 square feet of area be added to the mitigation plan for the encroachment into the 100 ft buffer required by the Hillside Development and Erosion Control Ordinance. The hearings officer has allowed as part of the condition, for staff and the applicant to consider the appropriate areas to add to the mitigation plantings. The Applicant is proposing to utilize 120 square feet from Lot 10 to satisfy the portion of condition #25 which allows the mitigation area to come from more than one lot at a time as long as a portion comes from Lot 10. The most significant area to be added is 3,640 square feet from Lot 6. This additional mitigation area is 115 feet long and on the northeast end is 25 feet wide and in the southwestern end is 40 feet wide for an average buffer width of 32.5 feet. This area extends the mitigation area northeastwards along the stream channel and reduces the length of stream to be piped under NW Alexander and Lot 6. This day lighting of the drainage with the planting of

vegetation will improve the water quality and allow for a more natural drainageway.

2.01 ► **Uses within the corridor are limited.**

Applicant: The 4,000 square feet of proposed new mitigation area will no longer be under the control of the residents who will own Lots 1, 6 and 10. This new vegetated area will be included in the environmental conservation Tract A on the final plat, and use by residents of the subdivision will not be allowed.

Staff: As proposed the planted mitigation area will not be available for use by residents in the subdivision. A condition of approval has been included requiring that the required C,C&R's for the subdivision include a restriction of use and a requirement for maintenance of the mitigation plantings.

2.02 ► **Design criteria from USA manual**
 ► **Phosphorous removal required if necessary under design criteria in #4.**

Applicant: The proposed additional mitigation will improve the functioning of the water quality filtering established by the original mitigation plan in this area. The Schott & Associates Mitigation Plan considered the USA design standards, described as follows:

“Clean Water Services requires an assessment of the quality of the buffer, and if the buffer is below a good rating mitigation is required to bring it to at least a good status. Their Design and Construction Standards, also, has planting requirements.”

Schott concluded, “[t]he proposed planting plan meets or exceeds Clean Water Services landscaping requirements.” Exhibit 2 The same planting plan will be used in the proposed additional area. For this reason, this standard is met.

Staff: As part of the subdivision approval, T3-01-010 a drainage and buffer mitigation plan was submitted by the applicant (Exhibit A.4). The Hearings Officer found that this plan met the above standards. A condition of approval has been included that the area be planted in accordance with this mitigation plan.

3.00 ***Conclusion***

Based on the findings and other information provided above, the applicant has carried the burden necessary to comply with Condition #25 of T3-01-010. This approval is subject to the conditions of approval established in this report.

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	3/9/05
A.2	7	Narrative Statements	3/9/05
A.3	5	Conditions of Approval – T3-01-010 (Applicant’s Exhibit 1)	3/9/05
A.4	3	Drainage and Buffer Mitigation Plan by Schott & Associates (2002) (Applicant’s Exhibit 2)	3/9/05
A.5	1	Map of proposed new area dedicated to mitigation	3/9/05

(Oversized & 8.5 x 11) with Sheet L1 showing the approved mitigation plan (Applicant's Exhibit 3)

'B'	#	Staff Exhibits	Date
B.1	3	A&T Property Records for Tax Lot 200 & 300, 1N1W36BC	3/9/05
B.2	1	Letter from Scott Rosenlund Regarding Tract A of the Subdivision Plat	4/7/05
B.3	3	Content and Review Criteria for Mitigation Plans Consistent with OAR 340 – Dated 3/12/1998	4/22/05
'C'	#	Administration & Procedures	Date
C.1	1	Complete Letter – Day 1 (March 21, 2005)	3/22/05
C.2	16	Opportunity to Comment	3/24/05
C.3	9	Administrative Decision – Day 44	5/4/05